

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

W.P. No. 2906 of 2018

Ms Shahnaz Butt

*Vs*

Islamabad Bar Association through its President, etc.

Petitioner by : Petitioner, in person.

Respondents by : 20.06.2019:  
Raja Inaam Amin Minhas, President IHCBA.  
Raja Tahir Mehmood, Vice President IDBA.  
Raja Yasir Shakeel Inajua, General Secretary IDBA.  
Syed Muhammad Tayyab, Deputy Attorney General.  
Mr Amir Latif Gill Advocate, for CDA.

02.10.2019:  
Raja Inaam Amin Minhas, President IHCBA.  
Mr Muhammad Umair Baloch, Secretary IHCBA.  
Mr Muhammad Asif Gujjar, Library Secretary IHCBA.  
Raja Yasir Shakeel Inajua, General Secretary IDBA.  
Mr Amir Latif Gill Advocate, for CDA.

02.03.2020:  
Mr Muhammad Zafar Khokhar, President IBA.  
Mr Sohail Akbar Chaudhary, General Secretary IHCBA.  
Mr Nazeer Ahmed Tabassum, Executive Member IBA.  
Mr Amir Latif Gill Advocate, for CDA.  
Ch. Muhammad Tahir Mehmood, AAG.

15.02.2021:  
Syed Muhammad Tayyab, DAG.  
Rana Waqas Anwar, Addl. Deputy Commissioner.  
Mr Naveed, Member Estate CDA.  
Mr Ayaz, Member Engineering CDA.  
Mr Ali Asghar, Director Development CDA.

Dates of Hearing : 20.06.2019, 02.10.2019,  
02.03.2020 & 15.02.2021.

**ATHAR MINALLAH, CJ.-** The Islamic Republic of Pakistan became a reality as an independent sovereign State after a long drawn struggle, heroically led by the dynamic leader, Quaid-e-Azam Mohammad Ali Jinnah. The founder was a lawyer by profession. He was enrolled as an Advocate of the Bombay High Court on 24<sup>th</sup> of August 1896 and in a short time he was acknowledged as an artist of the legal profession. He had the ability to argue with enviable eloquence and was recognized as one of the greatest lawyers; a thorough professional with unimpeachable integrity. Even his critics widely recognized his incorruptibility and display of the highest standards of professional conduct. Edgar Snow, a distinguished writer, has aptly described his greatest achievement; 'even if one only appraised Jinnah as a barrister, it would be acknowledged that he had won the most monumental judgment in the history of the bar. He had turned the dream of Pakistan into a reality'. This historic victory was achieved through a display of the highest standards of character, discipline, persistence and persuasive art expected from an enrolled advocate'. These characteristics and qualities had enabled the Quaid to lead the momentous movement for the creation of Pakistan and not once did he give his distracters an opportunity to question his conduct. His enviable personality will always remain a beacon and

foundational principle for more than one hundred thousand enrolled lawyers across Pakistan to follow. They can rightly take pride in the fact that they pursue the same profession that the Quaid had adopted. But, simultaneously, this pride is not without responsibilities and duties. There is far greater obligation on a professional lawyer in Pakistan to demonstrably show commitment to upholding the dignity of the profession. This obligation can only be discharged by demonstrably displaying high standards of conduct associated with the legal profession. A lawyer has a responsibility in society to become a role model for others with respect to character and conduct. It is inconceivable for a lawyer in Pakistan to even think of disregarding the law or commit the slightest breach of the high standards of conduct set by the profession, let alone undermining the rule of law. The facts of this case are disturbing because the conduct of a few enrolled lawyers has caused reputational damage to the entire legal fraternity.

2. The extraordinary grievance has raised questions of paramount importance, particularly in the context of erosion of rule of law and commitment of the legal fraternity to enforce the highest standards of conduct, which solely makes the profession distinct. The guardians of rule of law are alleged to have grossly breached their code of conduct. State land meant for the exclusive use of the general public has been encroached for private gains. This phenomenon has been in existence since decades because the functionaries of

the State, whether belonging to the executive or judicial branches, have remained complicit. They have preferred to look the other way and have been instrumental in facilitating grave violations of law and, by doing so, they have made the public good and public interest subservient to the interests of a few private individuals. Such an unacceptable display of the erosion of rule of law has continued for decades in the heart of the Capital of Pakistan. State property has been brazenly violated at the expense of public interest and fundamental rights of the general public. It has obviously happened because public functionaries and institutions of the State were complacent. They chose not to fulfill their constitutional obligations. The abysmal conditions and working environment at the District courts of the Capital is another testament of the apathy and convoluted priorities of successive governments during the past four decades. The actual stakeholders of this most important tier of the judiciary are the people, particularly those who belong to the marginalized and vulnerable classes of the society. The role of the courts and the lawyers is to serve the actual stakeholder.

3. It is noted that since 1980, the District judiciary was never a priority. In the last two years, the administration of this Court has strived to give the District judiciary top priority. We would take this opportunity to record our profound appreciation for the commitment displayed by the current Federal Government because it has ensured that there is no impediment in establishing a state of the art judicial complex

at the five (5) acre plot allotted for this purpose. The Executive branch of the State has indeed given top priority to shifting of the District courts from the current deplorable commercial premises. The government has also earmarked a separate five (5) acre plot so that the enrolled Advocates of the Islamabad Bar Council could establish facilities for themselves. The Islamabad Bar Council has yet to submit plans for approval of the Authority in consonance with the regulatory framework prescribed under the Ordinance of 1960 and the regulations made thereunder. We have been informed by the authorities that a consultant has been appointed and the process of approvals has been put on a fast track so that a state of the art judicial complex at the allotted plot could be established without further delay. We have been further informed that construction would also commence soon.

4. The petitioner is a citizen of Pakistan and currently a resident of the Capital i.e. the Islamabad Capital Territory. She has invoked the constitutional jurisdiction of this Court raising questions of paramount public importance. She is aggrieved because the multipurpose playground in sector Shalimar F-8 Islamabad [hereinafter referred to as the **"Playground"**] has been encroached by enrolled advocates and the occupants of adjoining commercial buildings. She has asserted in her petition that the general public, particularly the youth, have been deprived from their right to enjoy the benefits of the Playground and thus constitutionally

guaranteed fundamental rights have been breached. She has also questioned the failure on the part of the public functionaries to perform their obligations, which has led to the illegal occupation of a public facility by private individuals. The facility was explicitly planned and developed for the benefit and use of the general public. The petition in hand raises questions regarding the conduct of a few enrolled Advocates involved in the menace of encroaching upon State land and thus undermining the rule of law, besides tarnishing the image of their noble profession.

5. The Playground measures 345x419 i.e. 16061.66 square yards and it was developed with the object of offering sports facilities to the general public. It includes facilities for playing sports such as football, squash, basketball and volleyball. The Playground is situated next to a commercial area where the administration of the Islamabad Capital Territory had rented privately owned buildings more than four decades ago for establishing the District Courts. Admittedly, the Playground was encroached and some construction has also been raised by a few enrolled advocates for building their private chambers. The occupants of neighboring buildings also use the Playground for the purpose of unauthorized parking of vehicles. It is not disputed that the Capital Development Authority [hereinafter referred to as the "**Authority**"], vide letter dated 05.01.2018, has earmarked a plot measuring 05 (five) acres (2790x280 i.e. 24200 square yards) in Mauve Area, Sector G-10/1 (hereinafter referred to

as the "**Lawyers' Plot**") for establishing facilities for the lawyers of the Islamabad Bar Council. According to the written report submitted by the Authority, the encroachment of the Playground had started in 2013. It is the case of the Authority that proceedings were initiated for removing the encroachments but restraining orders were passed by various District courts. The Islamabad District Bar had also filed a suit wherein an injunctive order was passed and the Authority was restrained from interfering with the construction of private chambers in the Playground. The effect of the restraining order was to facilitate the illegal encroachment of public property. The injunctive orders were subsequently vacated by this Court. We have been informed that the august Supreme Court had also taken cognizance under Article 184(3) of the Constitution and that the matter is pending. It appears from the record that in 2017 the then office bearers of the Islamabad District Bar had purportedly allotted plots in favour of some lawyers for construction of private chambers. No permission or authorization was obtained from the competent authorities, which is mandatory under various laws. The illegally constructed chambers are traded for consideration without being regulated under the enforced laws as would be discussed later.

6. We had appointed two amici curiae vide order, dated 28.01.2019, to assist us in the matter. However, only Mr Hamid Khan, Senior ASC submitted his amicus brief and we record our appreciation for assisting us. Notices were also

issued to the relevant Bars including the Pakistan Bar Council and the Supreme Court Bar Association. The Authority has not been able to give any plausible explanation for its inaction and failure to perform statutory functions despite the vacation of the injunctive orders passed by various District Courts. We have also not been able to fathom how the learned courts had issued injunctive orders to facilitate encroachment of the Playground. By no stretch of the imagination could any court have justified granting an injunctive order on the touchstone of its foundational principles i.e. existence of a prima facie case, irreparable damage and the scales of convenience. The case in hand is definitely a classic example of erosion of the rule of law in the Capital of the country and may be a tip of the iceberg and a reflection of a much wider phenomenon of malaise and erosion of rule of law in the society. It also reflects the values that have developed in the society over many decades. It ironically manifests failure of the State to enforce its writ by ignoring the most obvious and grave breaches of enforced laws. Expediency and resort to the doctrine of necessity appears to have become an acceptable norm, giving rise to erosion of rule of law. The progress, prosperity and stability of a nation is inextricably linked with the status and quality of rule of law in a society. Societies inevitably fall in the abyss of lawlessness, chaos and anarchy when rule of law is under duress. As will be discussed later, the role and conduct of lawyers becomes most crucial in safeguarding a society from the menace of lawlessness and



anarchy because they owe a duty to the society to ensure the supremacy of law. When guardians of the rule of law are involved in violation of enforced laws and have no hesitation in defending it then this points towards signs of lawlessness and anarchy in the society.

7. The questions that have arisen for our consideration are: Whether the encroachment/occupation of the Playground can be justified; if the answer is in the negative, then what consequences ought to ensue; whether the Islamabad District Bar Association was competent and authorized to allow its members, directly or indirectly, to occupy land explicitly planned and developed for the exclusive use of the general public; whether the civil courts, having plenary jurisdiction, were competent to grant injunctive orders and thus facilitate illegal construction on land earmarked for the benefit and use of the people at large.

8. In order to answer the above questions it would be beneficial to survey the relevant laws governing the management and disposal of land in the Islamabad Capital Territory and the regulatory framework governing the prescribed code of ethics and conduct required to be observed by the enrolled Advocates.

**Laws governing the legal practitioners:**

**A.** The Legal Practitioners and Bar Councils Act, 1973 [hereinafter referred to as the "Act of 1973"].

9. The Act of 1973 was promulgated and its preamble declares its object; to regulate the profession of legal practitioners and the Bar Councils. Section 2(a) defines the expression "Advocate" as meaning an advocate who has been entered in any roll under the provisions of the Act of 1973 while "Bar Council" has been defined in section 2(b) as meaning a Bar Council constituted *ibid*. The constitution and incorporation of the Bar Councils has been dealt with under Chapters II and III. The composition of Pakistan Bar Council has been described in section 11. Section 13(d) explicitly empowers the Pakistan Bar Council to lay down and prescribe standards of professional conduct and etiquette for advocates. Section 21 has divided the classes of advocates into four distinct categories. Section 22 provides that no person shall be entitled to practice the profession of law unless he or she, as the case may be, has been duly enrolled as an advocate. Chapter-VII is in relation to the conduct of advocates and describes the mechanism regarding conducting proceedings in case of professional misconduct and prescribes the punishments. Section 55 empowers the Bar Council to make rules. The Act of 1973 is a self contained and exhaustive statute governing all matters relating to persons engaged in the profession of law. It is noted that the scheme of the regulatory framework is based on the foundational principle of

'self regulation'. Section 56, inter-alia, empowers the provincial or the Islamabad Bar Council, as the case may be, to make rules.

**B.** The Pakistan Legal Practitioners And Bar Councils Rules, 1976 [hereinafter referred to as the **"Rules of 1976"**].

10. Chapter VII describes the requirements and procedure for enrollment of an Advocate of the Supreme Court. Rule 107 (c)(iii) has prescribed issuance of a certificate by the High Court as a precondition for being considered for enrolment. The High Court is required to certify that the candidate is a fit and proper person to appear and plead as an Advocate before the Supreme Court of Pakistan. Likewise, chapter VII-A describes the conditions and procedure for enrollment of Advocates permitted to appear before the courts other than the Supreme Court of Pakistan. Rule 108(B)(c) requires every candidate to submit two testimonials from Advocates having at least ten years' standing in respect of the former's 'character and conduct'. It is also implicit in sections 26 and 27 of the Act of 1973 that 'character and conduct' is a crucial factor to be eligible for consideration. Chapter-XII has prescribed the canons of professional conduct and etiquette required to be observed by the Advocates. The conduct has been divided into three distinct categories i.e. in relation to the other advocates, clients and the general public, respectively. The foundational canon of conduct has been

described in rule 134 and the same is reproduced below:

**134.** It is the duty of every Advocate to uphold at all times the dignity and high standing of his profession, as well as his own dignity and high standing as a member thereof."

11. Rule 152 explicitly declares that it is a mandatory duty of an enrolled Advocate not to advise any client in any manner which would have the effect of violating any law. Rule 172 imposes an onerous duty on an enrolled Advocate not to indulge in 'deception or betrayal of the public'. The rule declares that 'when rendering -- improper service or advice, the Advocate invites and merits stern and just condemnation". The honour of the profession is advanced when an Advocate renders professional services or gives advice 'undertaking exact compliance with the strictest principles of moral law". It is an integral part of the prescribed code of conduct that an Advocate himself has to observe and advise the client to obey and respect the statute law. "But above all, an Advocate will find his (her) highest honour in a deserved reputation for fidelity to private trust and to public duty as an honest man and or a patriotic and loyal citizen". Rule 175-A declares that non observance or violation of professional conduct and etiquettes shall be deemed to be professional misconduct and thus exposing the latter to disciplinary proceedings. The respective statutory Bar

Councils are the competent forums to regulate the conduct of the enrolled Advocates and hold them accountable for violations of the canons of conduct and etiquettes. It is noted that Bar Associations are also subject to the regulatory framework prescribed under the Act of 1973 read with the Rules of 1973.

**C. The Pakistan Bar Council Free Legal Aid Rules, 1999 [hereinafter referred to as the "RULES OF 1999"].**

12. The Rules of 1999 have been made and duly notified to provide free legal aid to poor, destitute, orphans, widows, indigent and other deserving litigants in cases described in rule 3. These rules have been framed in consonance with the duty the lawyers owe to the society, particularly the marginalized and vulnerable classes.

**D. Islamabad Legal Practitioners and Bar Council Rules, 2017 [hereinafter referred to as the "RULES OF 2017"].**

13. The expression "misconduct" has been defined in rule 1.3(i) as meaning violation of any provision of the Act of 1973, Rules of 2017, Rules of 1976, including non-observance of any direction/ instruction of the Bar Council. Enrollment of advocates has been dealt with under Chapter-VI. For enrollment of an applicant as an Advocate of the lower courts rule 6.2(d) requires submission of two testimonials from Advocates having not less than ten years standing for the 'character and conduct' of the applicant. While for enrollment of an advocate of High Court, rule 6.5 (b) provides that it is

mandatory for an applicant to submit two certificates from Advocates of the High Court for 'good conduct and character'.

**Precedent law regarding role and responsibilities of the enrolled Advocates and their representative bodies.**

14. The august Supreme Court in the case titled "Salamat Ali alias Chamma v. The State and another" [2014 SCMR 747] has observed as follows:

*"The bar exists for the purpose of ensuring access to and delivery of justice. The Bar is also meant to stand up for upholding the rule of law. But the Bar can discharge these functions only if its members abide by their code of conduct and are subjected, like everyone else, to the rule of law."*

15. In the case titled "Federation of Pakistan and other v. Mian Muhammad Nawaz Sharif", [PLD 2009 Supreme Court 284] it was observed as follows:

*"Learned Advocates and the legal fraternity in general is, in fact, the custodian and preserver of the dignity, independence and sanctity of this judicial institution. It must be remembered that their own respect and reverence is attached with the sanctity and*

*reverence of this judicial institution. If a fraction of the legal fraternity is out to disfigure the face of this scared institution or to annihilate its image of impartiality, sacredness, sanctity and independence, none would be there to save them and this institution."*

16. The learned Peshawar High Court, in the case titled "Liaqatullah Khan v. The State and 6 others" [PLD 2015 Peshawar 115], has observed and held as follows:

*"The central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously and with great conscientiousness those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. Lawyers are officers of the Court and they are responsible to the judiciary for the propriety of their professional activities. Within that context, the legal profession has been granted powers, of self-government. Self-regulation*

*helps maintain the legal profession's independence from undue government domination. The lawyer cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystalised into rigid rules but felt by the collective conscience of the practitioners as right. It is necessary to stress that courage, intellectual honesty and moral independence ought to be chief ornaments of the advocate's personality."*

17. In the case titled "Ch Imran Raza Chadhar v. The State" [PLD 2016 Lahore 497], the learned Lahore High Court has observed as follows:

*"The strength of the Bar is not in its number but in its ability to stand up for justice and fairplay on the strength of reason, law and equity. The mark of a good lawyer is his unwavering boldness and unfaltering courage to stand and fight for what is right. Law is a noble profession and requires noble men - full of knowledge and respect for the law and the judicial institution. It cannot be permitted that an advocate first hurls insults at the Court, tarnishing the prestige and honour of the*



*Court in public and then tenders an apology at the end of the day. Defiling the dignity, honour and prestige of the court cannot be tolerated at any cost. Learned Advocate aggrieved of the conduct of the judicial officer may take legal recourse provided under the Constitution or the Law and in no other manner. "It is the duty of an advocate to maintain toward the Court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance, judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. At the same time whenever there is proper ground for complaint against a judicial officer, it is the right and duty of an advocate to ventilate such grievances and seek redress thereof legally."*

**Laws governing use/disposal of land in the Islamabad Capital Territory and all matters relating thereto.**

- a.** The Capital Development Authority Ordinance, 1960 [hereinafter referred to as the **"Ordinance of 1960"**].

18. On the eve of independence, the newly formed nation of the Islamic Republic of Pakistan did not have a

Capital. The first task was to search for the most suitable place which could be declared as the country's Capital. After selecting the place, the Government appointed a renowned architect and city planner having international repute, namely, Dr C. A Doxiadis and his firm to prepare a master plan. After extensive research and deliberations a master plan was proposed and the same was accepted by the then Federal Cabinet in 1960. In accordance with the master plan the Capital Development Authority was established on 01-06-1960 through promulgation of the Ordinance of 1960. Simultaneously, another crucial legislative instrument i.e. the Pakistan Capital Regulation MLR-82, 1960 (hereinafter referred to as the "**MLR-82**") was also enforced. The master plan was given statutory backing by the Ordinance of 1960. It is important to note that the master plan is a comprehensive document describing the planning and development of Islamabad as the capital of Pakistan. The purpose for which the Authority was established and its duty and obligations under the Ordinance of 1960 have been eloquently described by Dr C. A Doxiadis at page 426 of the final report. The preamble of the Ordinance of 1960 describes the object and purpose for establishing the Authority as making all arrangements for the planning and development of Islamabad within the framework of the regional development plan. The Ordinance of 1960 is enforced and operative in the "specified areas" described in the Schedule, which covers an area of almost 1400 square

miles. Section 12 empowers the Authority, pursuant to the master plan and the master programme, to prepare a Scheme or Schemes in respect of matters dealt with by the local body or agency. The scope of a scheme has been described in clauses (a) to (i) of sub-section (2) of Section 12. Section 13 vests the power and jurisdiction in the Authority to prepare on its own a Scheme pursuant to the master programme whenever it considers it desirable to do so in the public interest. The provisions of the Ordinance of 1960 provide the complete legal framework and mechanism for disposal and use of State land.

19. A plain reading of the Ordinance of 1960 explicitly shows that it is a self contained, comprehensive and special statute enacted for establishing the Authority and having the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of the regional development plan. In terms of its regulatory autonomy, it was intended that the Authority would enjoy the same status as that of other regulatory authorities referred to by the august Supreme Court in the judgment titled "*Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division*" [PLD 2012 SC 132].

**b. The rules and regulations made under the Ordinance of 1960.**

20. The Islamabad Capital Territory (Zoning) Regulation, 1992 (hereinafter referred to as the "**Zoning Regulations of 1992**") were framed in order to give effect to the master plan approved in 1960 and having the statutory backing under section 11 of the Ordinance of 1960.

21. The Islamabad Building Regulations, 1963 (*hereinafter referred to as the 'Building Regulations of 1963'*) extends to the Capital Site. The Capital Site is defined in section 2(e) of the Ordinance of 1960. The Authority, in exercise of its powers vested under section 51 of the Ordinance of 1960, has also framed and duly notified the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 (*hereinafter referred to as the 'Building Control Regulations'*).

22. A plain reading of the above provisions unambiguously shows that the Ordinance of 1960 is a self contained, comprehensive and special statute enacted for establishing the Authority and having the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of a regional development plan. It is explicit from the provisions of the Ordinance of 1960 that the Federal Government and the Authority are intended to be distinct and independent of each other. The role of the Federal Government has been expressly described in section 5 i.e. to guide the Authority on questions of policy through directions and its

accountability in the manner prescribed under sections 43 and 48. The Ordinance of 1960 and the regulations and rules made there under are applicable and attracted in the entire land consisting of 1400 square miles of the Islamabad Capital Territory. The expression "Illegal construction" is defined in the Zoning Regulations of 1992 as meaning construction carried out without the permission of the Authority and in contravention of rules and regulations or any laws for the time being enforced in the Islamabad Capital Territory.

23. It is noted that unregulated illegal construction has profound consequences in the context of irreversible damage to the environment, therefore, enforcing the existing enforced laws and regulatory framework in the Islamabad Capital Territory has become inevitable because the right to life guaranteed under Article 9 is being flagrantly violated, not only that of the petitioner but of every resident of the Islamabad Capital Territory and citizen of Pakistan. Reliance is placed on '*Ms Shehla Zia and others v. WAPDA*' [PLD 1994 SC 693], '*Suo Motu Case No.25 of 2009*' [2011 SCMR 1743], '*General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development Punjab, Lahore*' [1994 SCMR 2061]. It is, therefore, obvious that allowing unregulated illegal construction in violation of the enforced laws is surely a death knell for the efforts to protect the environment and guard against the devastating effects of climate change. It would be apt to refer to the case of "*Ali Sarwar and others versus Syed Shujat Ali Naqvi and others*" [PLD 2011 SC 519] wherein the august Supreme Court has held.-

*"The CDA, which is a statutory body, established by law, is mandated not only to make arrangements for the planning and development of the Capital City, but is to be authorized/compelled to perform functions of a Municipal Committee, inter alia, to promote interests of different sections of the society including taxpayers. Any transaction, which is not transparent, and goes against the interests of the general public constitutes violation of Article 9 of the Constitution, which guarantees right to life to all persons."*

24. The sanctity of the functions entrusted to the Authority have been highlighted by the august Supreme Court in various judgments. It has been held in *"Muhammad Ikhtlaq Memon versus Capital Development Authority through Chairman"* [2015 SCMR 294] that the Authority, as a statutory organization, has to act in the public interest. In *"Suo Motu Case No. 13 of 2009"* [PLD 2011 SC 619] the apex Court has observed in the context of the importance of the statutory duties and obligations of the Authority that Islamabad, being the Capital of the country, every inch of its land belongs to the entire public of Pakistan. In *"Human Rights Cases No. 4668 of 2006, 1111 of 2007 and 15283-G of 2010"* [PLD 2010 SC 759] the august Supreme Court has declared and held that the provisions of the Ordinance of 1960 and the rules and regulations made there under are of mandatory nature and binding, so much so that a liberal construction thereof is not permissible. Reference may also be made to the

judgments rendered in "*Capital Development Authority through Chairman and others versus Dr Abdul Qadeer Khan and others*" [1999 SCMR 2636], "*Saad Mazhar and others versus CDA, etc*" [2005 SCMR 1973] and "*Moulvi Iqbal Haider versus CDA, etc*" [PLD 2006 SC 394]. As a sequel, no construction can be justified or allowed to exist if it is in violation of the scheme of the Ordinance of 1960 and the subordinate legislation made there under by way of rules or regulations.

25. It is noted that not an inch of the State acquired land can be put to use in violation of the Ordinance of 1960 and the rules or regulations made there under. It is an admitted position in the case in hand that the construction and encroachment of the Playground has not been authorized by the Authority nor by any stretch of the imagination can it be justified under the Ordinance of 1960 and the rules or regulations made there under. Those who were involved in the illegal construction or its facilitation have, inter alia, exposed themselves to criminal proceedings under sections 46, 46 A and 46 B of the Ordinance of 1960.

**Rule of law and the role of an enrolled Advocate:**

26. The expression 'rule of law' has been described by the United Nations as ' a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated ----. It also requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of

law, -- - legal certainty, avoidance of arbitrariness and procedural and legal transparency'. The quality of governance and protection of rights of citizens are the paramount measure of the status of rule of law. Law is a body of rules and conduct prescribed by competent forums and they have binding force. They must be obeyed and followed and a breach thereof attracts sanctions and legal consequences. Laws are promulgated and enforced to protect the rights and liberties of the citizens and to maintain order in society. When people are given the opportunity by the public functionaries to commit violations of law, it inevitably erodes the rule of law and leads to chaos and anarchy. The beneficiaries in such an eventuality are those who can forcefully take the law in their own hands while the victims are the weaker and marginalized segments of the society. Every citizen, regardless of rank or status, ought to be subject to law besides having equal access to the forums established for dispute resolution, particularly the courts. It is not enough to merely promulgate the laws. If there is no will to enforce them, rule of law is relegated to the status of a farce and thus constitutionally guaranteed rights are breached. Article 4 of the Constitution explicitly commands that 'to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, whoever he may be, and of every other person for the time being within Pakistan'. The State has a commitment with every citizen that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law'. It is ironic that in the petition in hand the State has failed in its duty to protect the fundamental rights of the citizens by not enforcing the promulgated laws. The facts have already been discussed in detail.



They establish how enforced laws have been ignored, neglected or abused so that a few private individuals could benefit at the cost of depriving the general public from the use of the Playground. The enforced laws have failed to protect the citizens against the illegal acts of a few enrolled Advocates. The State is in breach of its commitments under Article 4 of the Constitution. The most important ingredient of or pre requisite for establishing rule of law is accountability. Illegalities and violation of enforced law is an antithesis of the rule of law. It encourages others to follow suit and gives an opportunity to the public functionaries to become complacent. Those who are less privileged or do not have the appropriate means or connections are not immune from the wrath of the State. This has become an undeniable reality of the status of rule of law within the 1400 sq mile area of the Islamabad Capital Territory. The conduct of the State functionaries and the difference in treatment of the citizens has eroded and demeaned the rule of law in the area of the capital of Pakistan. The mere fact that State land, particularly the Playground, could have been encroached and occupied with impunity clearly establishes that there is no rule of law and consequently the constitutionally guaranteed fundamental rights of the citizens are being flagrantly violated. No one is above the law.

27. The status of an enrolled Advocate in a society is extraordinary and unique. They are foot soldiers of no one except the Constitution and the law. They have the distinction of being members of the most noble amongst the professions. They are guardians of the Constitution and law. Their professional obligation requires each member of the legal fraternity to serve the society. The profession is

not a business but service to the society and the nation. It is the duty of every enrolled Advocate to act in the best interest of the society, having regard to strict compliance with the enforced laws. Every student of law offers himself or herself, as the case may be, to be considered for enrolment. While considering enrolment the 'character and conduct' of the candidate is most crucial. The High Court, while forwarding the case of a candidate to be considered for pleading and appearing before the august Supreme Court, has to certify that the latter is 'fit and proper' for the purpose. The character and conduct of a candidate is crucial because it is associated with the 'dignity and high standing' of the legal profession. It is the duty of every Advocate to uphold at all times the dignity and high standing of the legal profession as well as the latter's own dignity and standing. As a mandatory duty an enrolled Advocate cannot give any advice that may have the effect of violating any enforced law. Any such advice is a misconduct. An enrolled Advocate cannot indulge in deception or betrayal of the public. If giving advice to a client in any manner that is in violation of law is misconduct then it is a graver misconduct for an enrolled Advocate to break the law. It is inconceivable for an enrolled Advocate to take the law into his or her own hands. Such an enrolled Advocate, besides committing misconduct, is no more eligible to be certified as 'fit and proper' by a High Court to be considered for pleading or appearing before the august Supreme Court. An enrolled Advocate who has taken the law into his or her own hands also cannot be certified as having 'character and conduct' worthy of being considered for being enrolled as Advocate of the High Court. It is noted that the respective Bars have a crucial role in ensuring that in consonance with

their commitment to upholding rule of law and the dignity of the profession its members strictly observe the professional code of conduct and etiquettes. It is unimaginable that a Bar association in any manner would facilitate its members to take the law into their own hands and act in a manner that is in violation of the law.

28. In the case in hand, no one has given any justification nor quoted a law empowering the Islamabad District Bar to make purported allotments on State land for the construction of private chambers. No one could show any law that creates a right for every enrolled Advocate to have the facility of a 'private chamber'. An enrolled Advocate also does not have a right nor can claim a privilege to have a private chamber in the District courts. It is the duty of the executive to establish premises for District courts but there is no commitment of the State with an enrolled Advocate to provide a 'private chamber'. An enrolled Advocate is entitled to only such privileges as have been expressly provided under the Act of 1973 or any other law.

**Conclusion:**

29. In the case in hand the purported allotments made by the Islamabad District Bar in the Playground or elsewhere were without lawful authority and jurisdiction, besides exposing the office bearers who were involved in such illegal acts to disciplinary proceedings for misconduct. Likewise, the enrolled Advocates who had accepted the purported illegal allotments had also no lawful justification to construct chambers on State land. We, therefore, declare, observe and direct as

follows:

**(a)** *The purported allotments made by the Islamabad District Bar in the Playground are illegal, void and without jurisdiction and authority.*

**(b)** *The encroachments on any State land and any construction thereon in violation of the Ordinance of 1960 and the rules or regulations made there under are illegal, void and liable to be removed forthwith.*

**(c)** *An Advocate who takes the law into his or her own hands or violates the law in any manner whatsoever is not eligible to be certified by the High Court as 'fit and proper' to plead and appear before the august Supreme Court. Likewise, an enrolled Advocate who volunteers to take law in his/her own hands cannot be certified as having 'character and conduct' for the purposes of being enrolled as an Advocate of the High Court.*

**(d)** *Since a small fraction of the total number of members of the Islamabad District Bar are beneficiaries of the illegal construction of chambers, therefore, we are confident that as a gesture towards the actual stakeholders i.e. the general public, the members of the Bar will clear the illegal construction and restore the Playground for public use.*

**(e)** *In case the Playground is not restored by or before the 28<sup>th</sup> of March 2021, then the Federal Government and the Capital Development Authority will restore the Playground for the use of the public before the 23<sup>rd</sup> of March, 2021.*

**(f)** *The Federal Government shall make arrangements for holding a football tournament amongst students of public schools on the Pakistan Day i.e. 23<sup>rd</sup> of March 2021, to give tribute to the greatest lawyer of the sub continent and founder of the nation Quaid-e-Azam Mohammad Ali Jinnah.*

**(g)** *The Islamabad District Bar may submit its proposed plan to the Capital Development Authority for consideration and approval in relation to the Lawyers Plot i.e. 5 acre plot separately allotted by the Federal Government for the use of the lawyers.*

**(h)** *The Federal Government is directed to commence and complete the construction of the state of the art complex of District courts without unnecessary delay. The Registrar of this Court will be kept informed regarding the progress on the 1<sup>st</sup> of each month. We expect that the Federal Government will ensure that the state of the art judicial complex is made functional before the next Pakistan Day i.e. 23<sup>rd</sup> of March, 2022.*

*(i) The Federal Government shall enquire into the inaction of the public functionaries and proceed against those officials who were responsible for depriving the general public from exercising the constitutionally guaranteed rights.*

30. This petition is **allowed** and stands **disposed of** in the above terms.

(CHIEF JUSTICE)

(AAMER FAROOQ)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Announced in open Court, on **16-02-2021**.

JUDGE  
JUDGE  
JUDGE  
(CHIEF JUSTICE)

*Approved for reporting.*

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 2906 of 2018

Ms Shahnaz Butt

Vs

Islamabad Bar Association through its President, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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16-02-2021.

We have noted that in paragraph 29 (e) of the judgment, dated 16.02.2021, passed in the instant case, there is a typographical/ clerical accidental slip and the date 28<sup>th</sup> of March, 2021 shall be read as 28<sup>th</sup> of February, 2021. We order correction of this accidental slip and clerical mistake pursuant to powers vested under section 152 read with other enabling provisions of the Code of Civil Procedure, 1908.

2. Paragraph 29 (e) shall, therefore, be read as follows and the same shall be deemed as an integral part of the judgment, 16.02.2021, passed in the instant case:

**"29 (e)** In case the Playground is not restored by or before the 28<sup>th</sup> of February 2021, then the Federal Government and the Capital

Development Authority will restore the  
Playground for the use of the public  
before the 23<sup>rd</sup> of March, 2021.”

(CHIEF JUSTICE)

(AAMER FAROOQ)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE