Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P No. 3450 of 2020

Malik Muhammad Riaz, etc.
Vs
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04-06-2021.	

Vide my consolidated judgment of even date passed in W.P No. 244/2018, titled "*Noman Ahmed and 14 others v. Capital Development Authority, etc.*", the instant petition is allowed in terms of the said judgment.

(CHIEF JUSTICE)

Announced, in open Court on **14-06-2021**.

(CHIEF JUSTICE)

Tanveer Ahmed.

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.244 of 2018

Noman Ahmed and 14 others

Vs.

Capital Development Authority, etc.

Petitioners by	:	M/sZulfiqar Abbasi, Raja Inaam Amin Minhas, Muhammad Shoaib Shaheen, Ch. Afrasiab Khan, Adnan Haider Randhawa, Malik Nasir Abbas, Ghulam Murtaza Watto, Muhammad Shakeel Abbasi, Qazi Ghulam Dastagir, Ahsan Qureshi, Ch. WaqasZamir, Ali Nawaz Kharal, Mansoor Ahmed, Muhammad Umair Baloch, Jahanzaib, Muhammad Rustum Malik, Qaiser Imam Chaudhry, Shaukat Hayat Khan, Muhammad Latif Saeed, Khalil ur Rehman, Shujaullah Gondal Advocates.
Respondents by	:	M/s Amir Latif Gill, Hafiz Arfat Chaudhry, Malik Javed Iqbal Wains, Muhammad Anwar Dar, Jahangir Khan Jadoon, Muhammad Nazir Jawad, Syed Muhammad Shah, Ghulam Shabbir Akbar, Hussain Haider Thaheem Advocates. Mr Naveed Ellahi, member (Estate) CDA. Mr Shafi Marwat, Director, CDA. Dr Satish Sharyar, DC, FGEHA. Mr Khan Zeb, AD, FGEHA.
Date of Hearing	:	**04.06.2021.**

ATHAR MINALLAH, C.J.- The most intrusive power of the State and a fundamental attribute of its sovereignty is its inherent power to condemn private property and transfer its ownership to the government without the consent of its owner. The abuse of this inherent power by the

State through its agents, i.e. public functionaries, can have devastating consequences, so much so that human lives could be destroyed. The abuse of this sovereign power causes gross violations of human rights and the constitutionally guaranteed rights, particularly in the case of those who are poor and belong to the weaker segments of the society. The Capital of the Islamic Republic of Pakistan i.e. the Islamabad Capital Territory has been established and is in the process of being developed pursuant to acquiring land through the exercise of the intrusive power of eminent domain. The responsibility of the State to protect the rights of citizens whose private properties have been or are in the process of being condemned is of paramount importance. It is the duty of the State to ensure, through its agents, that the citizens who are subjected to the power of eminent domain are treated in a just, fair and equitable manner. It is a constitutional duty of the State to ensure that the condemnation of private properties does not result in its confiscation, rather that its owners are justly and fairly compensated. Regrettably, what has transpired during these proceedings unquestionably establishes that the State and its functionaries, instead of protecting the citizens, have grossly violated their guaranteed fundamental rights through abuse of the power of eminent domain, inevitably having the effect of virtually confiscating their private properties. The victims of the abuse of the power of eminent domain in the Islamabad Capital Territory have been subjected to unimaginable agony and trauma for decades and the human cost is definitely immeasurable. The grievances raised in the petitions in hand are essentially regarding the rights of those citizens who have been subjected to the exercise of the power of eminent domain. The facts brought on record during the proceedings have manifested the worst and unthinkable form of abuse of land acquisition or the power of eminent

domain of the State and the resultant grave violations of fundamental rights of the victims whose properties were or are in the process of being subjected to condemnation. Most of the affected victims are stated to be so poor and weak that they have neither the means nor the ability to fight a deeply corrupted governance system which does not favour them. Their right of access to justice is denied because the high cost of litigation is out of their reach and the delays caused during the judicial process renders any relief illusory. Most of the victims are not even aware of their rights and thus they are vulnerable to be exploited because of an apparent collusion between the unscrupulous investors and the public functionaries. It was observed during the proceedings and has become obvious from the material brought on the record that the victims of the abuse of the power of eminent domain have not been treated justly, fairly and as equal citizens of Pakistan. The way they have been treated by the public functionaries shows that as though to their extent the fundamental right which guarantees inviolability of dignity of a human does not exist in the Constitution. The public functionaries and institutions who owe to the people a fiduciary duty to safeguard their rights and to promote their welfare have themselves become beneficiaries of the property acquired by the State by exercising the power of eminent domain. Citizens have been subjected to suffer unimaginable pain and agony for decades. Their rights have been violated by those who owe them a fiduciary duty as agents of the State. It was the duty of the public functionaries to guard the vulnerable citizens against human rights abuse. This required taking appropriate steps to prevent, investigate punish and redress such abuse through effective policies, legislation, regulations and adjudication. The petitions in hand were only a tip of the iceberg and the information brought on record later was shocking and inconceivable in a society which

claims to be governed under the Constitution. The human cost of the acknowledged abuse of eminent domain is definitely immeasurable. The grave nature of violations of guaranteed fundamental rights and the State's failure to protect the guaranteed rights of the citizens, particularly those who are most vulnerable, manifests absolute disregard of the public functionaries and the successive governments for their obligations under the Constitution of the Islamic Republic of Pakistan 1973 (hereinafter referred to as the **'Constitution'**). The acknowledged rights are being denied to those citizens who are poor, weak and voiceless. The treatment of the petitioners and thousands of other similarly placed agonized and tormented citizens on account of the abuse of the power of eminent domain of the State is indeed a fraud that has been played on the Constitution and the guaranteed fundamental rights. The Governments are established to accomplish two fundamental objects; protection of the people and promotion of their welfare. As will be discussed in more detail later, successive governments have been instrumental in perpetuating violations of fundamental rights stemming from abuse of the power of eminent domain. Instead of promoting welfare of the citizens, policies have been formulated to benefit the powerful elite at the expense of the acknowledged rights of citizens and public interest. The petitions listed in **'Annexure-A'** attached hereto have raised questions of paramount public importance in the context of abuse of the power of eminent domain and the resultant grave violations of fundamental rights. It has highlighted a mindset of the agents of the State i.e. public functionaries and the system of governance which, rather than serving the actual stakeholder, the people of Pakistan, has created opportunities that harm the rights of those citizens who are poor, weak and vulnerable. In a nutshell, the proceedings before this Court have brought on record an

unimaginable travesty of justice and the worst form of abuse of exercise of the power of the State to condemn private property. This Court has no hesitation in observing that the phenomena of governance that has prevailed in the Capital of Pakistan for the past many decades has failed to protect the citizens and has instead benefited the privileged and the powerful elites at the expense of their rights.

Manifestation of grave violations of fundamental rights and inconceivable injustices:

2. In order to highlight the nature of grievances raised by the petitioners, as an illustration the facts relating to some of the petitions are briefly discussed as follows;

3. Abdul Qudoos, son of Sajawal Khan, petitioner in W.P. No. 4242/2017, has asserted that his brother, namely Liaquat, was a resident of village Landa Mastal, Islamabad. The latter owned property which was acquired by the Capital Development Authority [hereinafter referred to as the **"CDA"**] in 1968. The brother passed away in 1975 and the CDA informed his mother, namely Mst. Ajaib Jan, that she was entitled to the allotment of a plot. Consequently, she was allotted a plot in Sector I-10, Islamabad. The allotment was later cancelled and another plot i.e. plot no. 1083 in Sector I-14/4, was allotted vide letter dated 21.08.1993. The allotment was subsequently cancelled. The petitioner filed W.P. No. 354/2015 which was disposed of vide order, dated 22.04.2015, pursuant to a statement made on behalf of the CDA. Despite this Court's direction the grievance was not redressed and, therefore, the petitioner filed Criminal Original No. 33/2016 and the same was disposed of vide order dated

19.04.2016. The CDA was seeking the consent of the petitioner for the allotment of a plot in Sector I-12. The offer was not acceptable because Sector I-12 is yet to be developed. The petitioner, therefore, is seeking a direction to the CDA to allot a plot in one of the developed sectors. These facts have been admitted by the CDA in its written comments. The entitled owner of the condemned property had passed away in 1975 and his mother Mst. Ajaib Jan has since been denied her right for more than four decades. The litigation cost and the mental agony suffered by Mst. Ajaib Jan and her family during the last four decades are besides being treated unfairly, unjustly and contrary to the inviolability of her dignity.

4. The petitioner, namely Muhammad Shabbir, in W.P. No. 794/2019, had earlier filed W.P. No. 4177/2010 which was disposed of by this Court vide order dated 14.02.2017. Several other petitions were also disposed of vide the same order. The property of the petitioner was situated in the revenue estates which were acquired for developing Sectors H-16 and I-17 i.e. Noon, Bhattana Kalan, Sheikh Pur, Jhangi Syedan, Kot Kalian, Bajnial, Narehla and Lakhu. The award was announced on 15.01.2009. The entitled claimants were not paid compensation and a perusal of order dated 14.02.2017 of this Court shows that in response to a query the learned counsel for the CDA, after seeking instructions, had conceded that at the time when the award was announced i.e. on 15.01.2009, funds were not available. However, it is an admitted position that those who were influential did manage to receive compensation while the poor were ignored. This Court had, therefore, directed the CDA to pay compensation to the entitled land owners within one month from the date of the order, failing which the claimants would be entitled to get themselves de-notified from the award.

The order of this Court was assailed by the CDA and Civil Petitions No. 1790 and 1859 to 1875 of 2017, titled "CDA through its Chairman and others v. Muhammad Shabbir and others" was dismissed vide order dated 15.05.2018. The award was announced on 15.01.2009 but those who did not have influence remain uncompensated even after the lapse of more than a decade. It is noted that the CDA has informed that the market value which was assessed at the time of announcing the award was about Rs 0.8 million and that the claimants are entitled to on 8% per annum in addition to the evaluated market value in 2009. Whether this would amount to being 'compensated' in terms of the fundamental right guaranteed under Article 23 of the Constitution will be discussed later.

5. The petitioners in W.P. No. 1027/2019, assert that they were residents of village Dherak Mohri, Tehsil and District Islamabad and their built-up properties were acquired through the award dated 16.09.1987. They have sought indulgence of this Court to direct the CDA to compensate them for condemnation of their properties. The CDA, in its comments, has taken the stance that the objections were raised by the Commissioner CDA and pursuant thereto the Deputy Commissioner CDA had conducted an inquiry followed by passing orders, dated 18.07.1988 and 01.09.1988. The latter had verified the rightful claimants but the CDA challenged the orders of its own Deputy Commissioner and the appeals were dismissed by the Commissioner (Appeals) CDA vide order dated 15.05.1990. The CDA filed review petitions and they too were dismissed vide order dated 28.11.2003. In the meanwhile, the National Accountability Bureau [hereinafter referred to as the **"NAB"**] initiated investigations. A meeting between the Chairman NAB and the Chairman CDA was held on 02.11.2007 and, pursuant thereto,

the main award of built-up properties was cleared with the direction to take over possession of the acquired land and release the benefits of the entitled affectees. Reference was filed by the NAB i.e. Reference no. 13/2007 and on conclusion of the trial all the accused were acquitted by the learned Accountability Court vide judgment dated 11.12.2014. Despite suffering the rigors of criminal trial and the genuine status having been verified by the CDA itself, the condemned property owners remain uncompensated.

6. The petitioners in W.P. No. 1237/2019, assert that they are legal heirs of Mst. BibiGul Fatima, who owned property in villages Harno and Thanda Pani, Tehsil and District Islamabad, which was acquired in 1975. The mother, without being compensated, passed away in 1977. Their mother's name appeared in the award. A Scrutiny Committee constituted by the CDA approved and recommended the allotment of a plot in 2011. The petitioners had also approached the Wafaqi Mohtasib (Ombudsman) [hereinafter referred to as the **"Ombudsman"**] and the complaint was disposed of pursuant to an undertaking given on behalf of the CDA.

7. The ancestors of the petitioners in W.P. No. 3106/2019 had settled in village Bekhar Fateh Bux, Tehsil and District Islamabad. The properties were acquired in 1985. The Scrutiny Committee constituted by the CDA had declared the petitioners as entitled for compensation but the Bureau filed Reference no. 21/2007 against them and 83 other citizens. The petitioners and other accused were acquitted by the learned Accountability Court vide judgment dated 11.12.2014. The status of the petitioners as claimants has not been disputed by the CDA in its written comments.

8. The petitioners in W.P. No. 1194/2019 assert that they were affected by the awards dated 02.05.1985 and 16.09.1987, respectively. The written comments filed by the CDA are evasive but ironically a stance has been taken that the 'adult male descendants' were compensated.

9. Muhammad Arshad Khan, petitioner in W.P. No. 963/2019, asserts that land owned by him and his father in village Sangjani, District Islamabad was acquired for the construction of Khanpur Dam. The land was acquired vide award dated 30.01.1991. The petitioner asserts that he has been running from pillar to post since 30.01.1991, but his right is being refused. The CDA, in its written comments, has acknowledged that the allotment file of the petitioner was pending but it could not be processed because the then Capital Administration and Development Division had, vide letter dated 18.05.2016, imposed a ban. It has been further stated that in 2017 fresh SOPs were issued and that the petitioner has been asked to complete the formalities.

10. The petitioners in W.P. No. 3638/2020 claim that they are permanent residents of village Sanyari Sandhuri and that they had inherited properties owned by their ancestors. They are seeking a direction to the CDA to implement decisions taken in the 12th meeting of its Board meeting held on 25.07.2016. The land was acquired for establishing the Army General Headquarters in Sector E-11. The relevant position of the decision is

reproduced as follows:

"**Discussion:**

Deputy Director General L&E presented the Summary and Disseminated the following information to the board.

- Issues pertaining to handing over possession of E-10 and D-11 to GHQ due to encroachments/new constructions within the specified area are being addressed and estimate of BUPs has been determined as approximately 7000 plots of size 25x50ft.
- Survey of two villages 'Parri/Senyari' that fall within the specified area have been completed for BUPs while village Chauntra is still left to be surveyed jointly by CDA and GHQ.
- Two sub-sectors of H-16 have been earmarked for resettlement of affectees of DCI land.
- In compliance of the directive of prime Minister to resolve the issue of compensation mutually by CDA and GHQ a high level meeting was conveyed and it was decided that GHQ will partly contribute in lieu of land compensation and rehabilitation of affectees of sector E-/D-11 to the tune of Rs.4.5 billion. This contribution of GHQ in subsequent meetings has been enhanced on the request of CDA due to inflation and cost of compensation to

the tune of Rs.$billion for acquisition of land and Rs.2 Billion for the Development of two sub-sectors of H-16.

- Other modalities shall be followed as described in Para 4 of the summary.**"**

The CDA has submitted a report but it does not appear to be satisfactory. It has taken a stance which is contrary to the above reproduced decision taken in the 12th meeting of the Board. There is nothing on record to confirm that after the decisions taken in the 12th meeting a credible and transparent survey had been conducted to ascertain the rightful owners of properties.

11. The response of the CDA in most of the cases remained evasive. This Court was also informed that the record relating to certain acquired areas had been taken away by the officials of the National Accountability Bureau (hereinafter referred to as the **"NAB"**) and it was not returned because according to the latter it has been misplaced. It had become obvious to this Court that grave irregularities had been committed, causing unimaginable injustices and agony to the genuine affected owners who had been deprived of their properties due to exercise of land acquisition powers in an arbitrary and non-transparent manner under the Capital Development Authority Ordinance, 1960 [hereinafter referred to as the **"CDA Ordinance"**]. The violations of fundamental rights appeared to be of such a grave nature that this Court would have failed in its constitutional duty by looking the other way. The victims were obviously those who belong to the

weak and vulnerable segments of the society and who could not afford to enforce their rights through the costly litigation process and because of the complex mess created by the public functionaries solely on account of bad governance and for other extraneous reasons. It had also become obvious to this constitutional Court that the governance system prevalent during the last many decades in the Islamabad Capital Territory has not favoured the weak and destitute. The public functionaries themselves created opportunities for corruption by abusing the power of eminent domain. Rather than being accountable for the grave harm they have caused to the citizens who have been arbitrarily deprived of their private properties, the victims are being blamed for committing fraud. Could any citizen have even attempted to commit a fraud if the public functionaries had served them in consonance with their fiduciary duty to protect their rights? The answer is an emphatic no. The opportunities are created by the public functionaries themselves. The failure to timely redress the grievances of agonized victims is obvious because their rights are admitted and acknowledged. The CDA was, therefore, directed to submit a detailed report regarding the status of admitted claims relating to citizens affected by the abuse of the power of eminent domain. The admitted facts brought on record are unimaginable and shocking for this Court, which has been established under the Constitution to enforce and protect the fundamental rights of the citizens. The admitted facts are briefly recorded as follows;

The admitted abuse of power of eminent domain in the Capital:

12. The CDA was established under the CDA Ordinance to plan and develop the Capital of Pakistan pursuant to a meticulously prepared 'master

plan' by experts after extensive deliberations. The 'master plan' was given a statutory backing under section 11 of the CDA Ordinance. The 'master plan' had envisaged that the entire area described in the 'Schedule' of the CDA Ordinance would be acquired for establishing the Capital of Pakistan through the exercise of the States power of eminent domain. After promulgation of the CDA Ordinance, the process for acquiring land was initiated and the first award was announced on 12.02.1961. In order to 'compensate' the owners of the condemned properties, various policies and regulations were issued from time to time i.e. Scheme for Allotment of Agriculture Land to Persons Affected by Acquisition, 1965, Rehabilitation Policy, 1984, The Islamabad Displaced Persons Rehabilitation Policy, 1996, Land Acquisition and Rehabilitation Regulations, 2007, The Land Disposal in Islamabad Regulations, 1985, Land Disposal in Islamabad Regulations, 1988, The Islamabad Land Disposal Regulations, 1993 and Islamabad Land Disposal Regulations, 2005. According to the reports submitted by the CDA, total land measuring 304.62 square kilometer has so far been acquired through respective awards. For reasons best known to the CDA, a practice was adopted at a later stage to acquire land and built up properties separately. The awards were announced separately but not simultaneously. The total number of awards announced by the CDA in relation to acquiring land are 527 while in case of built up properties 158 awards have been notified. In case of land the last award was announced on 23.06.2009 and relating to built-up properties on 06.07.2018. In some cases awards in respect of land were announced a decade ago but corresponding awards relating to built-up properties have been delayed and have not been finalized as yet. This practice of announcing separate awards has created insurmountable complications because it has defeated the essence of 'compensation'. When

the first report was submitted by the CDA the total outstanding amount regarding the admitted claims of compensation relating to awards of acquisition of land was Rs.8.0224 billion. This outstanding amount was in respect of awards which were announced from 1967 till the last award announced in 2009. It is noted that the outstanding amount is based on the market value assessed at the relevant time rather than the current rate. While the proceedings were pending before this Court, some payments were made to the affected persons on the intervention of a Commission notified by the CDA, but on the basis of the awards which had been announced decades ago. The property owners whose claims were admitted have obviously been forced to receive copper for gold for no fault of their own. This Court has been informed that most of the outstanding amount pertains to awards dated 02.12.2008 and 15.01.2009 respectively. It was also informed during the proceedings that the CDA had announced awards on 28.04.1985 for acquisition of land to develop sectors F-12 and G-12. Both the sectors have now been handed over by the Federal Government to the FGEHA for development and allotment of plots to members of specified groups. The FGEHA has recently reassessed the market rate and consequently it has been increased from an average of Rs 11000/- to more than Rs 7 million. Such increase establishes the fact that there has been exponential increase in the market value of the properties which were acquired in 1985. The total outstanding amount yet to be paid to the property owners in the case of acquired built up properties is Rs.73.538 million. The most alarming admitted claims are in respect of commitment of allotment of plots to the affected citizens based on the principle of land sharing. It is acknowledged and admitted that the outstanding number of plots yet to be allotted to those who were subjected to condemnation of land

is 5080 (five thousand and eighty). These admitted claims relate to awards which were announced between 30.12.1968 and 02.12.2008. Likewise, in the case of built up properties 4659 (four thousand six hundred and fifty nine) plots are admitted to be allotted pursuant to announcing various awards from 28.01.1967 till 06.07.2018. The admitted position, therefore, is that the CDA acknowledges the right of allotment of 10739 (ten thousand seven hundred and thirty nine) plots to those who have been deprived of their private properties. Regrettably, this figure may even be higher because of the admitted position that some record is missing while no credible survey has been conducted in certain areas. The CDA has taken a stance that two sectors have been reserved for allotment of plots to the affected citizens i.e.I-12 and I-14. Sector I-12 is yet to be developed. However, both these sectors are not those which have a high demand. It is interesting to note that while the admitted rights of the affected property owners were being denied, during the same period a large number of plots were allotted at throw away prices to employees of the CDA, including those who had served as Chairmen and members of the Board. Plots were created for them in the open spaces and green areas in the most sought after developed sectors. Plots were also allotted to public functionaries of specified groups including selected privileged media persons and lawyers at prices that were far lower than the market rate. 23844 plots were allotted to the employees and officials of the CDA while the share of the other privileged groups was 7127 plots against nominal payments. The abuse of the power of eminent domain was further highlighted when this Court was informed that the CDA had entered into purported settlement arrangements illegally and without the consent of all the affected claimants. In this regard reference was made to a purported settlement arrangement relating to properties acquired in the

revenue estate/village Kurri. The CDA admits that the arrangement is to the effect that only 'male heirs' were declared to be eligible and entitled for compensation. It is also admitted that such an arrangement is being opposed by the female heirs because they were not privy to the settlement. In response to a query, the CDA official could not give any plausible explanation for such an arrangement because it was obviously repugnant to the injunctions of Islam and the constitutionally guaranteed rights. It is also acknowledged that many affected citizens had been unnecessarily subjected to the travails of criminal trials because NAB had initiated proceedings regarding alleged corruption and corrupt practices and irregularities committed by officials of the CDA. The affected citizens were ultimately acquitted and the acquittals have attained finality.

13. The above admitted facts establish gross violations of fundamental rights of property owners who were subjected to abuse of the power of eminent domain. They have and continue to suffer because they don't have the ability and means to enforce their acknowledged rights. Thus they do not have access to justice. Keeping in view the magnitude of the violations of fundamental rights, this Court, vide order dated 07.05.2019, had directed the Secretary, Ministry of Interior and the Chairman CDA to probe into the unexplained and inordinate delay in compensating the affectees of land acquisition in the Islamabad Capital Territory. This Court had also appointed *Mr Asad Umer, Member National Assembly (now a Federal Minister), Mr Ali Nawaz Awan, Special Assistant to the Prime Minister/ Member of the National Assembly and Raja Khurram Nawaz, Member of National Assembly,* as amici to assist this Court. The CDA, vide notification dated 14.05.2019,

had formed a Commission consisting of the following:

i. M Asad Umar, MNA, Member,

ii. M. Ali Nawaz Awan, MNA, Member,

iii. Raja Khurram Nawaz, MNA, Member,

iv. Secretary Interior Division, Member.

v. Chairman, CDA, Member/Secretary of the Commission.

14. The reports of the Commission were submitted from time to time and some of the recommendations were also approved by the Board of the CDA. The Commission had indeed endeavored to redress the grievances but they also appeared to be helpless because of the complex issues created by bad governance and an ineffective executing agency. Moreover, the Commission urged this Court to give its opinion on certain legal issues such as the consequences of delay in payment of admitted compensation. The Commission had managed to achieve some progress because, due to its intervention, development work in Sector E-12 was initiated after several decades. During the proceedings *Mr Ali Nawaz Awan, Member National Assembly and Special Assistant of the Prime Minister,* had informed this Court that the Directorate of Land and Rehabilitation, and other departments of the CDA which were responsible for resolving the hardship and grievances of the affected property owners had not been made fully functional. In response to a query the CDA had informed that officials were reluctant to be posted because of the fear of being exposed to proceedings by NAB and other prosecution agencies. This Court, vide order dated 15.01.2020, had, therefore, directed the Board of the CDA to ensure that the relevant departments were made functional. However, despite sincere endeavors of

the members of the Commission, thousands of affected citizens could not be compensated. Those who were paid outstanding amounts were also not 'compensated' for their lost properties because it was based on assessment of market value made decades ago.

Grievances in WP No 244/2018 (hereinafter referred to as the 'E-12 Petition'):

15. The petitioners in W.P. No. 244/2018 are aggrieved that despite payment of consideration and allotment of plots in Sector E-12 in 1988/1989, no development work had been initiated and thus they were deprived of enjoying their properties. The Sector could not be developed by the CDA because the latter was unable to compensate the affected property owners. However, pursuant to directions given by this Court progress was made and development work has now been partially initiated.

Grievances in WP No 3450/2020 (hereinafter referred to as the 'FGEHA petition'):

16. The petitioners in W.P. no. 3450/2020 are owners of properties in the area which is being acquired to develop Sectors F-14 and F-15 by the Federal Government Employees Housing Authority [hereinafter referred to as the **"FGEHA"**]. They are aggrieved because the latter is refusing to enforce the negotiated settlement which had attained finality between the parties. The terms and conditions were approved by the Executive Board of the FGEHA in its 6th meeting held on 12.08.2020. The relevant portion is

reproduced as follows:

> **"99.** The land of the said sectors measuring 9242 Kanals and 09 Marlas was acquired by the Land Acquisition Act 1894 @ Rs.2, 070,000 per kanal (F-14) & Rs.2,530,000 per kanal (F-15) for allotment of plots to FGE employees and other specified groups vide awards dated 15.11.2016 & 28.09.2017 respectively. The layout plan of sector F-14 has also been approved by the CDA and planning of F-15 is under process with FGEHA planning wing.
>
> **100.** Most of the land affectees (more than 300) challenged the above said awards before Civil/Referee court at Islamabad by filing reference petitions u/s. 18 of the land acquisition Act, 1894 for enhancement of land compensation up to Rs.6,000,000/- per kanal which are pending adjudication. Further the acquisition proceedings were also challenged by the land affectees/locals in Islamabad High Court through a numbers of writ petitions titled 'Malik Bashir Ahmed v. Federation of Pakistan etc.' The Honorable Islamabad High Court (Single Judge) while accepting the said writ petition vide order dated 23.10.2017 and decided that in the presence of CDA Ordinance 1960 which is Special Law, the Land Acquisition Act 1894 is not applicable in Islamabad and CDA has the exclusive jurisdiction, further observed that acquisition does not constitute a valid public purpose and it has become State Largees. Intra Court Appeals (16)

No.364/2017 title 'FGEHF vs. Malik Bashir Ahmad etc' were filed by the Housing Foundation in the Islamabad High Court which was also dismissed on 25.09.2018.

101. The Housing Foundation, therefore, was left with no other option but to file CPLAs in the Supreme Court of Pakistan. The honorable Supreme Court on 06.12.2018 while granting the leave pass the following order:

> ***"In the meantime, the operation of the impugned judgment (s) is suspended, any acquisition would be subject to the final decision of the instant cases an d any construction raised from today onwards shall be at the risk and cost of the person (s) doing so".***

102. A number of hearing in the august Supreme Court took place and final arguments were advanced by both the parties on 14.01.2020 and the Supreme Court reserved the judgment. Since then the parties are waiting even after lapse of more than six months. During the course of proceedings before the before Supreme Court of Pakistan a settlement agreement was arrived at between the parties. Draft settlement agreement was approved in the referred EB meeting dated 21.10.2019 for further submission in the court. The same again presented in the last Board meeting, whereby the EB directed to have opinion of the Cabinet Steering Committee on F-14/15 under the Secretary Cabinet.

The Cabinet steering committee endorsed the settlement agreement and proposed to present before the Executive Board again. The salient features of the settlement agreement are as under:-

a. For all the affectees/landowners the rate of compensation of land in sector F-14 will be Rs.2,070,000/- per kanal + 15% land acquisition charges and interest as per section 34 of land acquisition act, 1894 till date of payment and the rate of compensation of land in sector F-15 will be Rs.25,30,000/- per kanal + 15% Land Acquisition Charges and interest as per section 34 of land acquisition act, 1894 till date of payment. Whereas demand of the land owners for compensation of land for F-14 is Rs.33,00,000/- per kanals and for F-15 is Rs.38,00,000/- per kanals as approved in the 5th E.B meeting held on 21.10.2019, which was agreed by the Chair.

b. The land owners/affectees of Sector F-14/15 shall withdraw all the reference petitions filed U/s 18 of the Land Acquisition Act, 1894 for enhancement of compensation.

c. This agreement will be submitted in the Supreme Court with the request by both the parties to dispose of the CAs No.1476 to 1485/2018 filed by Federal Government Housing Foundation titled 'FGEHF vs

Malik Ghulam Mustafa etc.' as prayed for, accordingly.

d. No further litigation would be instituted by both the parties with regard to any issue of land acquisition, enhancement of price of land and BUPs pertaining to sector F-14/15 in future and the committee constituted by the affectees/locals of the area shall hand over peaceful possession of land and BUPs to develop the housing scheme on payment of compensation of land/BUPs as settled in the revised draft agreement/settlement. The following committee from the affectees/locals shall be responsible for peaceful possession.

1. Syed Sibit-e-Hassan Shah.
2. Syed Inayat Ali Shah.
3. Malik Muhammad Rafique S/o Malik Bashir Ahmed.
4. Malik Sajjad Mehmood, Chairman of UC 39.
5. Malik Rizwan Ahmad
6. Malik GhulamJillani S/o Malik Ghulam Sarwar.
7. Mr. Zulfiqar Hussain Bhutto S/o Khan Gul.
8. Mr. Muhammad Ilyas S/o Fazal Illahi.
9. Mr. Batish Mehmood S/o Muhammad Gulzar.
10. Malik Iftar Mehmood From Mira Akku.
11. Mr. Naseer Ahamd Malik S/o Noor Ahmed.

e. The settlement will be submitted in the Supreme Court of Pakistan for making it rule of the court in consultation with Ministry of Law and Attorney General of Pakistan.

f. In case of a landowner with a land holding of at least 4 kanals or more on 20.05.2015, such land owner opt for land sharing instead of cash compensation as mentioned above in the following manner.

    i. The land sharing formula will be terms that a developed plot of 1 kanal shall be allotted to such land owner/affectee for every four kanals of land acquired from him and other land owner/affectee for every two kanals of land acquired from him 10 Marlas plot will be allotted to him.

    ii. it is the obligation of such landowner to provide 4 kanals and 2 kanals of lands free from all encumbrances.

    iii. In the above case the cost of development shall be borne by such landowners.

    iv. It has also been agreed that only the land within F-14 and F-15 area will be shared with such landowners. All the religious places Graveyards, Mosques, Imam Bargah, Janazgah and other similar

places shall be excluded from the acquisition as mentioned in the awards.

v. The compensation of BUPs will be made on the current schedule rate fixed by the PWD department and the cutoff date for structure would be for 31.12.2017 for Sector F-14 and 31.12.2018 for F-15/3 as approved in the 5th E.B meeting held on 21.10.2019, which was agreed by the Chair.

vi. As per list of 120 affectees of Dhoke Sawayan and Baba Budah to be provided by the aforementioned committee of affectees those who are Affectees or Dwellers, whose Dwelling House has been acquired, will be allotted one residential plot of size 25x50 in sector G-15/3 (subject to availability)/Thallian whereas affectees demand is only G-15/3. Such allotment will be subject to the following conditions.

a) Only one Dwelling House owned by affectees will qualify for the above compensation, and no other built up property (BUP) will qualify for the above mentioned benefit. Other BUP

will be compensated through cash payment as per policy.

b) Only one residential plot will be allotted to a family unit of Affectees/Dweller.

c) Affectees or Dweller means a person who is an old genuine resident of the area being acquired, having his name or his forefathers names in the voter list of year 1996 and has a built up property in form of dwelling house on piece of land being acquired.

vii. It will be the responsibility of the affectees committee/representative of the affectees to sign the settlement agreement as settled above from the affectees/locals of Sector F-14/F-15.**"**

The decision was subsequently affirmed by the Executive Board in the 7th meeting held on 02.09.2020.

17. The learned counsel for the FGEHA and the Deputy Commissioner had appeared. They have not denied the above settlement and the decisions/approvals by the Executive Board of the FGEHA. The minutes of the 6th and 7th meetings of the Executive Board are admitted. However, they have taken a stance that the agreed terms and conditions of

the settlement were subject to the approval of the august Supreme Court. However, they could not produce any order whereby the apex Court may have given such a direction. A plain reading of the decision approved by the Executive Board clearly shows that the agreed terms had been finalized by both the parties and that the FGEHA wanted that it should be made a rule of the court by the august Supreme Court. This was obviously not required and in any case, since the parties had negotiated a settlement and had reached an agreement, a courts approval for its execution was not a precondition. Having reached a settlement agreement both the parties were bound to perform their respective obligations.

18. It is noted that earlier some of the affected property owners had challenged the acquisition proceedings and the petition was allowed by this Court vide a judgment rendered in the case titled *"Malik Bashir Ahmad and 4 others v. Federal Government of Pakistan through Secretary Cabinet Division and 6 others" [PLD 2018 Islamabad 68]*. Later a learned Division Bench of this Court affirmed the aforementioned judgment in the case titled *"Federal Government Employees Housing Foundation and others v. Malik Ghulam Mustafa and others" [PLD 2019 Islamabad 1]*. However, the FGEHA challenged the judgments of this Court and they were set aside by the august Supreme Court vide judgment, dated 19.10.2020, passed by the august Supreme Court *in Civil Appeals no. 1476 to 1485 of 2018, titled "Federal Government Employees Housing Foundation, Islamabad, etc. v. Malik Ghulam Mustafa and others"*[hereinafter referred to as the **"FGEHA Judgment"**] by holding that land within the Islamabad Capital Territory could validly be acquired under the Land Acquisition Act 1894 [hereinafter referred to as the **"Land Acquisition Act"**]. It was also held that land

acquired for FGEHA was for a public purpose. The learned counsel for the FGEHA has suggested that the portion regarding land sharing formula be referred to a Referee judge. He, however, could not give any plausible explanation as to why a conclusively agreed and approved settlement agreement arrived at through a negotiated settlement should be referred to another forum.

19. The learned counsels who had represented the CDA had appeared along with one of the Members of the Board. They could not give any plausible explanation for the inordinate delay in compensating the legitimate affected property owners. They have taken the plea that an affected land owner is only entitled to payment of interest in case of delayed payment. They have referred to section 32-A of the CDA Ordinance in support of the stance that for delay of compensation 8% per annum is paid. It has not been disputed that the award announced for acquisition of land in order to develop sector H-16 could not be executed because funds were not available with the CDA. It has been candidly conceded that officials are reluctant to be posted to those departments which are responsible for resolving the disputes and redressing the grievances of the property owners who have been affected by the exercise of the power of eminent domain.

20. The learned counsels have been heard and the record perused with their able assistance.

Opinion of the Court:

21. One of the most important and basic fundamental right of every human being is the right to own property. Every sovereign State has the power to expropriate private property for the benefit of the people. But the abuse of this intrusive power by the agents of the State has a profound impact on the lives of humans. The admitted facts described above unambiguously establish and demonstrate the extent of the abuse of the power of eminent domain in the Islamabad Capital Territory and the resultant loss and damage to the affected citizens. Mst. Ajaib Jan's example is sufficient to demonstrate grave violations of rights and the apathy of public functionaries towards those who have been deprived of their property rights. Her son passed away more than three decades ago without being justly compensated. Indeed, Mst. Ajaib Jan does not belong to a class having the privilege to be able to enforce her admitted and acknowledged right to be allotted a plot. Her other son was compelled to bear the cost of litigation. In the end and after decades she was offered a plot in a sector which is yet to be developed. The plot was committed to her son as compensation for condemnation of his property more than three decades ago so that he and his family could resettle. After his death the right of his mother was acknowledged but she remains uncompensated till the filing of the petition. While an admitted right was being denied to a legitimate victim of eminent domain, those who were to give effect to this right were benefitting by allotting plots to themselves at throw away prices, which included the Chairmen and members of the Board. The agony, trauma, frustration and suffering which Mst. Ajaib Jan and other members of her family have been

subjected to is definitely beyond imagination and a fraud on the constitutionally guaranteed rights. The agents of the State, i.e. the public functionaries, have treated her in such a manner that her constitutionally guaranteed right of inviolability of dignity has become illusory for her. The pain and agony that she must have suffered cannot be comprehended nor can it be compensated. But, ironically, she is not alone. There are more than ten thousand citizens whose right to be allotted plots in lieu of expropriation of property rights is acknowledged but they have not been treated as equal citizens. The acknowledged vested rights of some were created decades ago. Many may have passed away hoping that one day the State would come to their rescue. Widows, orphans and destitute citizens are amongst victims who are suffering solely because the power of eminent domain has been abused. The CDA admits and acknowledges that there are thousands of citizens who are yet to be paid cash compensation. Their rights were created long ago. At the time when the initial report was submitted an amount of almost Rs 8 billion was outstanding. This figure was not based on the current market values but had been assessed at the time when the respective awards were announced, mostly decades ago. What if they are paid the outstanding amounts now in addition to 8% per annum? Would that be a just compensation and in consonance with the fundamental right guaranteed under Article 24 of the Constitution? Could the CDA have entered into a settlement agreement with male heirs to the exclusion of the females? Should the victims be condemned and punished for the opportunities of corruption created by the public functionaries? The CDA admits that records relating to some of the acquired areas are missing. The Commission notified during these proceedings also appeared to be helpless to redress the affected aggrieved citizens and to enforce their acknowledged rights. The

CDA officials fear being prosecuted by the NAB and other prosecution agencies and, resultantly, there is no willingness to be part of the departments which are responsible to enforce acknowledged rights of the affected citizens. The facts highlighted during these proceedings are not only alarming but present an abysmal state of governance. The questions, therefore, that are to be answered by this Court are of paramount importance; what are the rights of property owners who were exposed to the power of eminent domain and how can the acknowledged rights be granted to them; whether an award loses its efficacy if the admitted claimants are not compensated within a reasonable time and in the meanwhile there is exponential rise in market values ; if the answer to the last question is in the affirmative then whether it is mandatory to reassess the market value in order to compensate the affected citizen; how can the citizens whose vested rights are acknowledged be compensated for their loss; and lastly, the duty of the State and its agents towards the affected citizens.

22. It is noted that the State has delegated its invasive power of expropriation or eminent domain to two entities within the Islamabad Capital Territory i.e. the CDA and the FGEHA. Both exercise this power on behalf of the State. The CDA for the purposes of planning and development of the Capital while the FGEHA to establish housing schemes for selected specified groups. This Court has been informed that officers and employees of the NAB have also been included as one of the specified groups. But the source of power exercised in both the cases to acquire private property rights is the same i.e. the inherent sovereign power of the State of compulsory acquisition for public purpose. Whether the power is exercised by the CDA or

the FEGHA, both act as agents of the State. In both cases the eminent domain is exercised through the use of coercive police power that exclusively vests in the State. The protection of the rights of the affected owners of the properties becomes a onerous duty.

Eminent Domain:

23. As already noted above, the power of eminent domain is an inherent attribute of the sovereignty of a State. A sovereign State derives this power because of its dominion over the land within its jurisdiction. The private property rights are thus not absolute. This is based on the principle that public rights take precedence over private rights. The august Supreme Court in the case titled "Fauji Foundation and another v. Shamim ur Rehman" [PLD 1983 SC 457] has held that the power of eminent domain is a proprietary aspect of sovereignty and that its exercise can only be justified on the principle that private interests are subservient to public interest. The exercise of such an evasive power, whereby a citizen is stripped of the right of enjoying legitimately acquired private rights, is definitely profound. The right to own property is indispensable for a citizen's security, liberty and freedom. The effect of expropriating private property through the power of eminent domain is disruptive to individuals and communities who may have settled in the affected areas since the time of their forefathers. Homes are lost and families get separated. Established businesses are uprooted and farmers are made landless. The attachment to religious, cultural and social sites is irreparably harmed because such a loss cannot be compensated. The human cost of condemnation is enormous and in many cases immeasurable. Many become homeless and opportunities of earning a livelihood are lost.

Those who don't possess property rights are in a more disadvantageous position because under the law they cannot be compensated for their displacement. Those who suffer the most are the poor and those belonging to the weaker segments of society. But the exercise of this power is circumscribed by fulfilling two fundamental duties; firstly, that the private property is condemned only for a public purpose and, secondly, that the affected owner is justly and fairly compensated. The expression compensation will be discussed in more detail later. The expressions public purpose, public use and public interest are used interchangeably. The august Supreme Court, in the case titled "Fauji Foundation and another v. Shamim ur Rehman" [PLD 1983 SC 457], has observed that the expression 'public purpose' has no precise and rigid meaning except that it should have the attribute of extending a benefit or advantage to the public as distinguished from the private interest of individuals. The obvious examples are acquiring land for building public roads, parks, dams, utilities, defense purposes etc. However, complications arise when later use of acquired land for public purpose is in conflict with the public interest. The public interest will obviously prevail in the case of the use of the acquired land. If the use of the acquired land is against public interest then it establishes the fact that the power of eminent domain had not been exercised for a legitimate public purpose. The most critical factor of this power is how the agents of the State exercise it. Good governance is pivotal for ensuring that on the one hand the rights of the affected property owners are protected while on the other the intended acquisition for public purpose is achieved. It places a heavy onus on the agents of the State to ensure fair, transparent and enforceable procedures so that the discretion vested in the public functionaries is not abused. If the process is unclear, non-transparent and based on the

arbitrary exercise of discretion by the executing public functionaries, it creates opportunities for corruption and thus the power of eminent domain is abused. In such an eventuality it becomes an onerous duty of the State to redress the grievances of each individual affected land owner. The affected land owners cannot be punished for the wrongdoings of the public functionaries. The poor and weaker segments of the society would thus require special assistance and attention by the State because of their vulnerability. It would also become a duty of the State in the case of established abuse of the power and process of eminent domain to reach out to the affected citizens and redress their grievances. The nature of the power of eminent domain and its disruptive consequences makes it a duty of the State to inform each individual of the latter's rights. In the case of abuse of the power of eminent domain it becomes the duty of the State to remedy the loss and damage caused to the affected citizen, rather than leaving the latter to the mercy of a costly and time consuming judicial process. The rights of property owners and the meaning of the expression 'compensation' will be discussed next.

Rights of affected property owners in case of exercise of the power of eminent domain;

24. The preamble of the Constitution declares that it is the will of the people of Pakistan to establish an order and that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. The preamble further declares that the order established under the Constitution shall guarantee fundamental rights, including equality before law as well as social, economic and political justice. Article 2A has guaranteed that the principles and provisions set out in the

Objectives Resolution are to be treated as the substantive part of the Constitution. Article 4 explicitly guarantees to every citizen the right to enjoy the protection of law and to be treated in accordance with law as an inalienable right. Article 4(2)(a) explicitly provides that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 9 provides that no person shall be deprived of life or liberty save in accordance with law. Article 10-A guarantees that for the determination of civil rights and obligations or in a criminal charge against him a person shall be entitled to a fair trial and due process. Article 11 declares slavery to be non-existent and forbidden. Article 14 guarantees that the dignity of a man and, subject to law, the privacy of home shall be inviolable. Article 18 guarantees the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Article 19A guarantees to every citizen the right to have access to information in all matters of public importance, subject to regulations and reasonable restrictions imposed by law. Article 23 explicitly guarantees the right to every citizen to acquire, hold and dispose of property subject to the Constitution and any reasonable restrictions imposed by law in the public interest. Article 25 guarantees to all citizens of Pakistan that they are equal before law and entitled to equal protection of the law. All these fundamental rights are breached when the power of eminent domain is abused. Article 24 is of paramount importance for the purposes of the adjudication of the matter in hand and, therefore, the relevant portion is reproduced as follows:

> **"24.** (1) No person shall be deprived of his property save in accordance with law.
>
> (2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by

> the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.**"**

25. The Constitution, therefore, empowers the State to compulsorily acquire or to take possession of private property subject to fulfilling two fundamental conditions i.e. for public purpose and by the authority of law which provides for compensation. The law has either fixed the amount of compensation or has specified the principles on and the manner in which compensation is to be determined and given. The expression 'public purpose' has already been discussed above and recently the august Supreme Court in the FGEHA Judgment has declared acquisition for establishing housing societies by the FGEHA as public purpose. The acquisition of property under the CDA Ordinance is definitely public purpose because it is to establish and develop the Capital of the country. The framers of the Constitution have explicitly used the expression 'compensation'. The interpretation of this expression is crucial for determining the rights of the property owners who have been subjected to the power of eminent domain.

26. The Blacks Law (6th Edition) Dictionary defines the expressions 'compensation' and 'just compensation' as follows:

> **"Compensation.** Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position. Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.

Equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description (including medical expense). An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. Hughson Condensed Milk Co. v. State Board of Equalization, 23 Cal.App.2d 281, 73 P.2d 290, 292.

"Just compensation.Compensation which is fair to both the owner and the public when property is taken for public use through condemnation (eminent domain). Consideration is taken of such criteria as the cost of reproducing the property, its market value, and the resulting damage to the remaining property of the owner. The Fifth Amendment to the U.S. Constitution provides that no private property shall be taken for public use, without "just compensation." Within Fifth Amendment provision that private property shall not be taken for public use without just compensation, "just compensation" means the full monetary equivalent of the property taken. U.S. v. Reynolds, Ky., 397 U.S. 14, 90 S.Ct. 803, 805,25 L.Ed.2d 12.

As regards property taken for public use, the term is comprehensive and includes all elements, Jacobs v. U. S., Ala., 290 U.S. 13, 54 S.Ct. 26, 78 L.Ed. 142; Metropolitan Water Dist. Of Southern California v. Adams, 16 Cal.2d 676, 107 P.2d 618, 621, but does not exceed market value. U.S. v. Waterhouse,

C.C.A. Hawaii, 132, F2d, 699, 703. It means a settlement which leaves one no poorer or richer than he was before the property was taken. U. S. ex. Rel. Tennessee Valley Authority v. Indian Creek Marble Co., D.C. Tenn., 40 F.Supp. 811, 818, 819.Adequate compensation. State v. Hale, Tex. Civ. App., 96 S.W. 2d 135, 141.Fair market value. Cameron Development Co. v. United State, C.C.A. Fla., 145 F.2d 209, 210. Full and perfect equivalent of the property taken. U.S. v. 2.4 Acres of Land, More or Less, In Lake County, III., C.C.A., III., 138 F2d 295, 297. It is the fair market value of property taken at time of taking, Danforth v. U.S., Mo., 308 U.S. 271, 60 S.Ct. 231, 236, 84 L.Ed. 240; plus compensation for delay in payment, Kieselbach v. Commissioner of Internal Revenue, 317 U.S. 399, 63 S.Ct. 303, 305, 87 L.Ed. 358; or consequential damages to the owner, In re Board of Water Supply of City of New York, 277 N.Y. 452, 14 N.E.2d 789; or value of use of property from date of taken possession to date of judgment if possession is taken by condemner prior to judgment. Los Angeles County Flood Control Dist. V. Hansen, 48 Cal. App. 2d, 314, 119 P.2d. 734, 735. It requires that the owner be put in as good position pecunairily as he would otherwise have been if the property had not been taken. Almota Farmers Elevator & Warehouse Co. v. U.S., Wash., 93 S.Ct. 791, 794, 409 U.S. 470.Interest is recoverable in eminent domain proceedings as part of "just compensation" when payment is not contemporaneous with the taking. New Hampshire Water Resources Bd. V. Pera, 108 N.H. 18, 226 A.2d 774, 775, 776. Market value at time of taking; i.e. highest price for which property considered at its best and most profitable use can be sold in open market by willing seller to willing buyer, neither acting under compulsion and both exercising reasonable judgment. State Highway Commission v. American Memorial Parks, Inc., 82 S.D. 231, 144 N.W.2d 25, 27. See also Adequate compensation; similar sales.

On government's cancellation of contract, "just compensation" recoverable consists of such sum as in court's

judgment will fairly compensate contractor. Enright v. U.S. 73 Ct. Cl. 416, 54, F.2d, 182, 190. It is the value of contract at time of cancellation, nor profits which it would have produced. De Laval Steam Turbine Co. v. U.S. 284 U.S. 61, 52 S.Ct. 78, 79, 76 L.Ed. 168.**"**

Precedent law regarding interpretation of the expression 'compensation':

27. The august Supreme Court in the case titled "Jibendra Kishore Achharyya Chowdhury and 58 others v. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, Government of East Pakistan" [PLD 1957 SC (Pak.) 9] while interpreting Article 15 which was para material to Article 24 of the Constitution reproduced above has held and observed as follows:

"*It is clear from the terms of this Article that property can be compulsorily acquired by the Government only for a public purpose and under a law which provides for compensation. Besides the necessity of the existence of a public purpose the Article imposes on acquisition the further condition that the law under which acquisition is made must either itself fix the amount of compensation or state the principles on which and the manner in which compensation is to be determined and given. It is not disputed by Mr. Brohi, and it appears to me to be otherwise plain, that the word 'compensation' here is used in the sense in which it is used in the law relating to the exercise of the power of eminent domain, namely, as meaning the market value of the property acquired. While defining*

compensation Nichols in his book "Eminent Domain", 1950 Edition, Vol. I, states at pp. 28-29:

> *"Compensation' as used in the constitutional provision as a limitation upon the power of eminent domain, implies a full and complete equivalent (usually monetary) for the loss sustained by the owner whose land has been taken or damaged.*

*"Many of the State constitutions require that the compensation shall be 'just', 'reasonable' or 'adequate', but these words are mere epithets rather than qualifications and add nothing to the meaning. The phrase 'just compensation' means the value of the land taken and the damage, if any, to land not taken. More than this it does not imply. The adjective 'just' only emphasises what would be true if omitted,-namely, that the compensation should be the equivalent of the property.***"**

28. In the case titled "Malik Aman and others v. Land Acquisition Collector and others" [PLD 1988 SC 32] the august Supreme Court has held and observed as follows:

> **"***It is, therefore, evident that the factors for determination of the market value of the land proposed to be acquired are not restricted only to the time of issuance of the notification under section 4 of the Land Acquisition Act or any period prior to it, but can also relate to the period in future (i.e. to period after the issuance of notification under section 4 of the Act). It is for*

this reason that the "potential value" of the land i.e. the use to which it can be put in future, has in a large number of cases been held to be a relevant factor. As such the fact that long period has elapsed between the issuance of notification under section 4 of the Act and the announcement of the award coupled with the fact that during that period the prices of land or the property in question have risen sharply, is a factor which ought to and should have been taken into account while determining the value of the land in dispute for the purpose of compensating the owner."

29. In the case titled "Province of Sindh through Collector of District Dadu and others v. Ramzan and others" [PLD 2004 SC 512] the august Supreme Court reaffirmed the above principles enunciated in the case of Malik Aman supra and observed and held as follows:

"This Court had also taken notice of the fact that the announcement of award is some times unreasonably delayed after the issuance of Notification under section 4 of the Act. In Malik Aman's case, the period that had elapsed was seven years. Obviously any escalation in the value of property during such period is a potential value of land which must be taken into consideration.

Similar view was taken by this Court in Land Acquisition Collector Abbottabad v. Muhammad Iqbal (1992 SCMR 1245 at 1255-K). In the case of Pakistan Burmah Shell (1993 SCMR 1700), it was once again reiterated that

consideration of market value at the time of Notification under section 4 of the Land Acquisition Act was merely one of the modes for ascertaining the market value and was not absolute yardstick for assessment of compensation. Numerous matters to be considered for determining compensation were elaborately laid down by this Court in Murad Khan's case (1999 SCMR 1647) which was again relied upon in Nisar Ahmed's case (PLD 2002 SC 25). The crux of the matter is that mere classification or nature of land may be taken as relevant consideration but not as absolute one. An area may be `banjar' or `Barani' but its market value may be tremendously high because of its location, neighbourhood, potentiality or other benefits. All these factors, therefore, cannot be ignored.

Our attention is invited to a recent judgment of this Court given in the case of Hyderabad Development Authority PLD 2002 SC 84 where the Court has held that the crucial date for determination of market value is the Notification under section 4(1) of the Land Acquisition Act. We do not disagree with it because that verdict pertains to the determination of `market value' and not to the determination of the compensation. The question of potential value was considered even in that ruling but was not granted because the landowner had not proved the same, being a question of fact."

30. The august Supreme Court, in the above judgment, has explicitly drawn a distinction between determination of market value and determination of compensation. It has been held that market value at the time of issuance of a notification under section 4 of the Land Acquisition Act was only one of the modes for ascertaining the market value and not an absolute yardstick of assessment of compensation.

31. In the case "Federation of Pakistan and others v. Shaukat Ali Mian and others" [PLD 1999 SC 1026] a larger Bench of the august Supreme Court has quoted with approval and has affirmed the opinion of *Justice Muhammad Taqi Usmani (Member)* from the judgment of the Shariat Appellate Bench of the august Supreme Court in the case titled 'Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore [PLD 1990 SC 99] and the same is reproduced as follows:

> *"It would be pertinent to reproduce para.4 from the opinion of Justice Muhammad Taqi Usmani (Member), which reads as follows:*
>
> جبری خریداری مین جو چیز زبردستی کسی شخص سے لی جا رہی ہے اس کا معاوضہ جبری خریداری کے تاریخ میں اس شے کے بازاری نرخ ( ) کے مطابق معین کیا جائے' کیونکہ اوپر کسی بحث سے یہ بات واضح ہو چکی ہے کہ شریعت نے جس جگہ خریداری کی اجازت دی ہے وہاں "قیمت" یا "ضمان" کی ادائیگی لازم قرار دی ہے۔ اور "قیمت" یا "ضمان" دونوں کا مطلب "بازاری نرخ" کے مطابق ادائیگی ہے۔ اور محض کسی حاکم کی طرح سے استبدادی طور پر ( ) معاوضہ کے تعین کو "قیمت" یا "ضمان" نہیں کہا جا سکتا۔
>
> بازاری نرخ کے مطابق یہ معاوضہ مطلوبہ شے کا قبضہ لینے سے پہلے یا اسکے ساتھ ساتھ ادا کردیا جائے البتہ اتنی معمولی تاخیر جو انتظامی طور پر ناگزیر ہو، اور جسے قابل زکر تاخیر نہ سمجھا جائے "ساتھ ساتھ" ہی میں داخل سمجھی جا سکتی ہے۔
>
> ان شرائط کی مکمل رعایت کے ساتھ حاکم مجاز کو شرعا یہ اختیار دیا جا سکتا ہے کہ وہ کسی کی ملکیت جبری طور پر خرید لے۔

The legal position seems to be that no person can be deprived of his property even under any Acquisition Law for public purposes without payment of compensation which should be based on the market rate and not at the rate fixed by the authority, which has acquired or which is instrumental in acquiring the property involved."

32. The august Supreme Court in the case titled "NWFP through Collector, Abbottabad Land Acquisition and others v. Haji Ali Asghar Khan and others"[1985 SCMR 767] had enhanced the rate of compensation on the basis of the above principles.

33. The august Supreme Court in the case titled "Land Acquisition Collector and others v. Mst. Iqbal Begum and others" [PLD 2010 SC719] has held and observed as follows:

"*The principles laid down for determination of compensation reflect anxiety of law-giver to compensate those deprived of property adequately enough so as to be given gold for gold and not copper for gold." Various factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity. In our view real, proper and potential value, keeping in view all the relevant factors have been determined and it is unexceptionable.***"**

34. In the case titled "Province of Punjab through Land Acquisition Collector and another v. Begum Aziza"[2014 SCMR 75] the august Supreme Court has held that the market value is normally taken up as one existing on the date of notification under section 4(1) of Land Acquisition Act 1894 under the principle of willing buyer and willing seller, while potential value is the value to which similar land is put to any use in the future. Thus, while determining the quantum of compensation, the exercise may not be restricted to the time of the notification issued under section 4(1) of the Land Acquisition Act 1894 but the future value of land may be taken into account. The last two judgments above were recently quoted and followed by the august Supreme Court in the case titled "Sarhad Development Authority NWFP (Now KPK) through COO/CEO (Officio) and others"[2020 SCMR 265].The august Supreme Court, in the case titled "Province of Punjab through Collector, Bahawalpur and others v. Sh. Hassan Ali and others"[PLD 2009 SC 16], has highlighted the principles and law regarding various factors to be taken into consideration while determining a fair compensation.

35. In the case titled "Murad Khan v. Land Acquisition Collector"[1999 SCMR 1647] the august Supreme Court, after considering the precedent law, has summarized the factors required to be taken into consideration for determining the amount of consideration and the relevant principles for the purposes of adjudication of the matter in hand are reproduced as follows;

> **"(viii)** In determining the quantum of fair compensation the main criterion is the price which a buyer would pay to a seller for the property if they had

voluntarily entered into the transaction.

> **(ix)** The measure of fair compensation is the value of the property in open market which a seller voluntarily entering into a transaction of sale can reasonably demand from a purchaser...this means that Court has to determine the value of the land in the open market at the relevant time on the assumption that the notification of acquisition did not exist."

36. Reliance is also placed on the cases titled "Province of Punjab through Land Acquisition Collector v. Begum Aziza" [2014 SCMR 75], "Land Acquisition Collector, Abbottabad v. Gohar-ur-Rehman Abbasi"[2009 SCMR 771], "Air Weapon Complex through DG v. Muhammad Aslam and others" [2018 SCMR 779] wherein the principle of a willing purchaser and willing buyer at arm's length transaction in an open market without any compulsion has been affirmed.

37. The framers of the Constitution have expressly used the expression 'compensation'. It is obvious from a plain reading of Article 24 of the Constitution and the above discussed precedent law that the power to compulsorily acquire property is subject to the duty to 'compensate' the affected owner. Compensation is based on the principle of equivalence, which essentially has the meaning of restoring an injured party to his/her former position or, in other words, to give an equivalent for the loss sustained. Neither should the affected party be enriched nor impoverished. The duty of the State is to put the owner of the condemned property in the same position as the latter was before. The quantum of compensation must

be equivalent to the injury or loss suffered. In the context of eminent domain it is implicit in the expression 'compensation' that the injured party is at least put in a position as the latter was before so that an opportunity to rehabilitate or resettle is not lost. The august Supreme Court, in the case of Kishore Achharyya Chowdhry, supra, has quoted with approval the meaning of 'compensation' as full and complete equivalent for the loss sustained. It is implicit in the principle of equivalence that copper cannot be an equivalent compensation for gold. Compensation will be just and fair if it is equivalent to the loss suffered due to property being taken by the State for public purpose. In the words of the philosopher Robert Nozick, 'Full compensation is an amount that is adequate, although only just adequate, to make the concerned party say he feels happy, not unhappy, about what happened'. It is not necessary that every affected person would feel happy even if what has been offered is just and adequate. But the adequacy must meet the requirements of the principle of equivalence. Equivalence, therefore, is the foundational principle for ensuring the compensation to be just, fair and equitable. An unjust and unfair compensation will render the compulsory acquisition as confiscatory. In such an eventuality the person who has suffered the loss would be compelled to take the burden of the public for whose benefit the latter's property is taken by the use of the power of eminent domain. The nature of the power of eminent domain is such that the parties do not have an equal bargaining power. The imbalance is enormous because a citizen is subjected to the sovereign power of the State. The citizen is at the mercy of how the power will be exercised by the agents of the State. The fundamental right guaranteed under Article 24 of the Constitution can by no stretch of the imagination be construed as empowering the State to exercise its power of eminent domain to confiscate

private property for public purpose. Such exercise of power will be grossly arbitrary. The affected person must be 'compensated' and the expression must be given strict construction because of the profound consequences in case of abuse of the power of eminent domain and the imbalance in power to negotiate. A full Bench of the august Supreme Court, in the case titled "Federation of Pakistan and others v. Shaukat Ali Mian and others" [PLD 1999 SC 1026], has quoted with approval the concept of compulsory acquisition in Islam which requires determination of market value and makes it mandatory to compensate an affected party for the loss promptly, either before or at the time of taking possession of the property. Only such delay would be justified if it does not exceed the time necessary for completion of administrative formalities for taking the property. If the delay is on the part of the State and during this period the value of the property has increased then the earlier determined market value would lose its efficacy because then it would not compensate the loss but rather become confiscatory. If the argument advanced on behalf of the CDA, that the affected land owners whose properties were acquired through awards announced in 2008 and 2009 are only entitled for the delayed payment at the rate of 8 % per annum in addition to the market value determined more than a decade ago, then this Court would be affirming confiscation of the acquired property rather than protecting and enforcing the fundamental right guaranteed under Articles 9, 23 and 24 of the Constitution. It is an admitted fact conceded before this Court that funds were not available when the awards had been announced in 2008 and 2009. Most of the outstanding admitted amount stems from these two awards. The CDA acknowledges that the affected citizens could not be compensated due to its own failing. Such an exercise of power of eminent domain was definitely a fraud upon the

constitutionally guaranteed rights of the citizens. It is noted that the average market value determined in 2008 and 2009 was Rs 0.8 million per kanal. This Court has been informed that recently, in the case of land acquired by the CDA in 1985 and handed over to the FGEHA for developing sectors, that the latter has reassessed and enhanced the market rate exponentially..

38. The august Supreme Court, in the case titled "Province of Sindh through Collector of District Dadu and others v. Ramzan and others" [PLD 2004 SC 512], has drawn a distinction between determination of market value and compensation. This distinction is crucial and, in the same judgment, the apex Court had taken notice of the fact that escalation of the value of property during the period of unreasonable delay should have been taken into consideration. It is a fundamental right of a person who has suffered loss and injury due to exercise of the power of eminent domain to be 'compensated' and not merely paid the market value assessed at the time when the property was acquired under the relevant law. Any other interpretation of the CDA Ordinance or the Land Acquisition Act would be ultra vires the fundamental right guaranteed under Article 24 read with the other enabling provisions of the Constitution. The power of the State to take private property compulsorily cannot be exercised in a manner that it becomes confiscatory. The right to be compensated on the basis of the principle of equivalence is implicit in the fundamental rights guaranteed under Articles 24 and 23 of the Constitution. No law empowering the agents of the State to compulsorily acquire private property can be construed in such a manner that it would lead to empowering them to confiscate private property. It is the duty of the relevant agency, in case of lapse of inordinate delay from the time the award was made, to reassess the market value and

promptly compensate the affected person so that the latter is compensated on the basis of the principle of equivalence. It is, therefore, declared that the State can legitimately exercise the power of eminent domain and condemn a private party against 'compensation' on the basis of the principle of equivalence. Acquisition, otherwise, would be unconstitutional because it would become confiscatory. The payment of market value or giving the benefit of rehabilitation must be prompt because inordinate delay would result in loss of efficacy of the market value determined long ago.

39. It is the right of every person whose property is intended to be taken to be dealt with fairly, justly, equitably and in accordance with law. It is implicit in this right that the duty of the public functionaries is to ensure that the market value is determined in a transparent manner. The procedures and policies should be clear, predictable and enforceable. The adoption of the principles of good governance is of paramount importance for ensuring that the affected person does not lose confidence in the system. The august Supreme Court, in the case titled "Province of Sindh through Chief Secretary and 8 others v. Syed Kabir Bokhari" [2016 SCMR 101], has held that it is the obligation of the government and its departments to act justly and fairly towards the citizens and if the latter suffers any loss or injury on account of illegal and unlawful conduct then there is a constitutional duty to compensate the citizen. In the case titled "Habibullah Energy Limited and another v. WAPDA through Chairman and others" [PLD 2014 SC 47] it has been observed that the basis of discretionary power of State functionaries is the delegation of authority by the principal i.e. the people of Pakistan. It has been further observed that the legal authority is derived from such fiduciary relationship and when such fiduciary duty is breached, the authority of the State to administer and enforce the law is

eroded. The State functionaries and instrumentalities stand in a fiduciary relationship to the people. In the case titled "Muhammad Yasin v. Federation of Pakistan and others" [PLD 2012 SC 132] it has been observed that public functionaries are first and foremost fiduciaries and trustees for the people of Pakistan and, while performing the functions of their office, they can have no interest other than the interest of the people of Pakistan. This fiduciary obligation and duty is breached when public functionaries abuse their power and exercise discretion in an arbitrary manner. Unfair non transparent procedures lead to inequitable compensation. During one of the hearings the Deputy Commissioner FGEHA and representative of the CDA were asked regarding the criterion applied for determination of the market price. They informed that the DC rates and the values recorded in the revenue records are relied upon. It is not disputed that the DC rates nor values recorded in the revenue records reflect the actual market rates of the properties. Neither the CDA Ordinance nor the Land Acquisition Act bars appointing an independent commission consisting of expert valuation experts to assist the authority in its exercise to determine fair and just market value. Regrettably, as is evident from the above described admitted facts, the governance system in the Islamabad Capital Territory is in such an abysmal state that it has become a duty of the public functionaries to take extraordinary measures in order to ensure transparency, fairness and credibility of the process. This is of paramount importance because most of the affected persons are poor and belong to the weaker segments of the society and are not even aware of their rights. They do not have the means to seek professional advice or bear the cost of litigation.

40. It is settled law that the main criterion for determination of

market value is the price which a willing buyer would pay to a willing seller if they were to enter the transaction voluntarily and at arms-length. As already noted above, in the case of eminent domain there is an obvious imbalance in the bargain power. The agency, whether in this case the CDA or the FGEHA, as the case may be, act as agents of the State to exercise the extraordinary power attributable to its sovereignty i.e. compulsory land acquisition or eminent domain. Since they act as agents of the State to exercise this power, they are simultaneously under a constitutional duty to protect the rights of the citizens who are likely to be affected. The parties are not on equal footing to exert influence over the other because the executing agency has to its advantage the use of police and the coercive power of the State. It, therefore, becomes an onerous duty of the public functionaries to achieve the intended purpose with great care so that the rights of the citizens are not harmed. It thus becomes a duty to initiate the process of meaningful negotiations before resorting to the inherent coercive power of the State. The good faith of the public functionaries to negotiate with the citizens must be demonstrably obvious from the proceedings and the record. The august Supreme Court, in the FGEHA Judgment, has highlighted the need for having a uniform compensation mechanism. The apex Court has explicitly observed that the Land Acquisition Act 'remains a remnant of colonial times that should have been timely amended to cater to our evolving socio economic circumstances. Therefore, such overhaul becomes necessary in light of the shortcomings of the current scheme of land acquisition with respect to compensation and matters incidental thereto'. The CDA Ordinance also incorporates a scheme of acquisition similar to the Land Acquisition Act. These shortcomings make it an even more onerous duty of the public functionaries involved in the process of compulsory acquisition affecting the

rights of the citizens to demonstrably show fairness, transparency and good faith. A direct resort to the coercive power of the State in a non-transparent manner would thus be in breach of the fiduciary duty which the public functionaries owe the citizens. The imbalance of power to negotiate also entails a duty of the State to inform the likely affected citizen of his/her rights regarding 'compensation'. A process of meaningful negotiations ought to be a pre-condition for resorting to the use of the powers vested under the relevant law. If the negotiation process fails then it is the duty of the public functionaries to proceed fairly, justly, adopting transparent procedures and having regard to the rights of the affected citizens. However, if the negotiations are successful and the amicable settlement has been approved by the executing agency then it would be binding on the parties, particularly the agent of the State, because of its superior power to exert influence. In the case in hand it was appreciable on the part of the FGEHA to have earnestly made an effort to reach a negotiated settlement. It was successful and the terms were approved by the competent forums. The FGEHA now cannot avoid the concluded and approved commitments and doing so would be a breach of fiduciary duty towards the affected citizens because it is exercising the power of the State.

41. Another most important right of a citizen who is subjected to the power of eminent domain is the latter's inviolability of dignity. Every such citizen must be treated with respect. It is an onerous duty of the public functionaries to protect the rights of the citizens, particularly when they are weak and belong to the vulnerable segments of the society. It becomes a duty of the State not only to protect such citizens because of the enormous human cost of the exercise of eminent domain but to reach out to such

citizens when there are signs of its abuse. It imposes a duty on the public functionaries to resolve and redress the grievances of the victims of the abuse of the power of eminent domain. Most of the citizens affected by the exercise of the power of eminent domain are poor and their properties in rural areas are subject to compulsory acquisition. In a society where more than 24% of the population lives under the poverty line, the duty of the public functionaries to protect their rights becomes more crucial. They deserve respect and special attention from the agents of the State because their private property rights are compulsorily taken away for a public purpose. As the august Supreme Court, in the case of the FGEHA Judgment has observed, the enforced compulsory acquisition law is a remnant of a colonial past and greater care is required to ensure that the mindset of the agents of the State is changed. This regrettably does not appear to have been observed in the proceedings before this Court. Citizens have been gravely wronged and they have not been treated as they should have been in a society governed under the Constitution. The CDA is neither willing nor has the capacity to enforce the acknowledged vested rights of citizens. It was astonishing for this Court when a worthy member of the National Assembly and a Special Assistant to the Prime Minister informed that the departments of the CDA responsible for redressing the grievances of the affected citizens were not fully functional. This reflects a colonial mindset of those who have a fiduciary duty towards the citizens to protect their rights and to serve them as servants of the State.

The FGEHA:

42. The FGEHA has been established under the FGEHA Act, 2020 [hereinafter referred to as the **"FGEHA ACT"**] and the object of its

promulgation, as described in the preamble, is to establish the FGEHA for the purposes of planning and development of housing schemes for serving and retired Federal Government employees and other specified groups. The composition of the Executive Board has been described in section 4 while its powers and functions in section 5. Section 12 empowers the FGEHA to acquire land or any interest in land for the purposes of the Authority and that it shall be deemed to be an acquisition for public purposes within the meaning of the applicable Land Acquisition Act or any other prevailing law for the said purposes and as per policy of the Federal Government. The land acquired by FGEHA vests in the Authority in accordance with section 17. Section 19 provides for a right of appeal or review of a final order of the Deputy Commissioner before the Executive Board. The FGEHA Act has been declared intra vires by the august Supreme Court in the FGEHA Judgment. The beneficiaries of the schemes of the FGEHA, includes all those who are involved in the process of land acquisition. The Deputy Commissioner and members of the Executive Board have a direct or indirect interest and the FGEHA acts as an agency of the State when it exercises the power of eminent domain. The fiduciary duty of the FGEHA towards those who are subjected to the exercise of this inherent power of the State becomes more onerous. Moreover, under the FGEHA Act the final authority in the context of compulsory acquisition of land is the Executive Board because a right of appeal or review lies before it. The decision of the Executive Board is, therefore, final. It is noted that in the case of the FGEHA greater care has to be exercised in the context of fairness and transparency. Any negotiated settlement with the affected property owners is binding on the FGEHA because of its superior status to negotiate as an agent of the State, since it is vested with the power to compulsorily acquire private properties. In the

FGEHA Petition the petitioners are affected property owners who had entered into negotiations pursuant to terms offered by the FGEHA. The land sharing formula is applied by the CDA as well and, therefore, it has remained a legitimate mode of compensation for the acquisition of land in the Islamabad Capital territory. However, the FGEHA, despite its superior bargaining power, had voluntarily entered into a negotiation process, which indeed was appreciable and in consonance with the duty of an agency empowered to exercise the power of eminent domain on behalf of the State. After the negotiations the agreed terms were placed before and approved by the Executive Board in its meeting held on 21-10-2019. It was then approved by the Cabinet Steering Committee for F-14/15, chaired by the Secretary Cabinet. It was thereafter placed before the Executive Board in its 6th meeting and was accordingly approved. Later the decision was affirmed in the 7th meeting of the Executive Board. The terms and conditions have been reproduced above. The settlement was unequivocal and entered into by the parties voluntarily. There was no dispute left to be decided by any competent court. The settlement was so unambiguous that the FGEHA wanted it to become a rule of the Court by the august Supreme Court. However, the learned counsel for the FGEHA has not placed any order whereby the apex Court may have made such a negotiated settlement subject to approval. The settlement was, therefore, binding on both the parties and they were and continue to be bound by its unambiguous agreed terms of settlement. The FGEHA, having entered the settlement voluntarily despite having the superior bargaining power, cannot refuse its implementation unless the other party fails to fulfill its obligations. The refusal on the part of the FGEHA is arbitrary and contrary to its fiduciary duty towards the affected land owners.

Conclusion:

43. The above admitted and acknowledged vested rights had accrued in favor of the affected property owners long ago, in most of the cases decades ago. They were to be compensated for the loss rather than being treated in a manner that would result in confiscation of their properties. Their constitutionally guaranteed rights have definitely been violated. Who is responsible for the unimaginable agony and suffering they have been exposed to? They are regrettably victims of a deeply corrupted governance system. The public functionaries, rather than serving the citizens, have usurped their rights and caused unimaginable pain and harm to them. The CDA has failed to enforce the acknowledged and admitted vested rights which were created long ago. There were no funds available and yet awards were announced in 2009 and 2008. The CDA has taken the stance that the affected persons are entitled to only 8% per annum in addition to the market value determined more than a decade ago. It has also been admitted by the CDA that during this period there was exponential increase in the market value. There could not have been a more classic example of travesty of justice and violation of constitutional guaranteed rights because, while about eleven thousand affected citizens were waiting for the allotment of plots, some since 1968, more than twenty thousand plots were allotted at throw away prices to employees and officials of the CDA. including its Chairmen and members of the Board. They created plots for themselves in sought after sectors but denied the vested acknowledged rights of citizens who were deprived of their private properties. The abuse of

the power of eminent domain stands established. Records are missing and innocent property owners were made to suffer the travails of criminal trials for no fault of their own. The public functionaries, who had created opportunities for corruption through abuse of the power of eminent domain by adopting unclear and non-transparent processes, have caused loss and damage to citizens whose vested rights are admitted and acknowledged. Most of them are poor and belong to the weaker segments of the society. They have not been treated as equal citizens by the agents of the State i.e the public functionaries. It is ironic that in a society governed by the Constitution they need special attention and assistance. The successive governments have failed them and, before they lose faith in the system and the rule of law, it has become inevitable to enforce their vested rights without further delay. Who would redress their grievances? The proceedings before this Court has established that the CDA does not have the capacity nor the will to ensure that acknowledged rights are enforced. The elected representatives, belonging to the party in the Federal Government, were appointed as amici by this Court and notified by the CDA and despite their commitment seemed to be helpless because of the mismanagement and bad governance prevailing within the CDA. It is not a recent phenomenon but a result of decades of neglect and apathy of the successive governments in the past several decades, otherwise vested rights created in 1968 would not have been denied till today. The Federal Government, interpreted by the august Supreme Court as meaning the worthy Prime Minister and members of the Federal Cabinet, has a crucial statutory responsibility and function under section 5(2) of the CDA Ordinance. It provides that the Board of the CDA shall be guided on questions of policy by such directions as the Federal Government may from time to time give. The CDA has failed in its

obligations towards the citizens who have been irreparably harmed and denied enforcement of their acknowledged rights for decades. It is, therefore, the duty of the Federal Government to formulate a policy and give directions to the CDA regarding enforcement of admitted rights of the citizens and ensure that the power of eminent domain is not abused in the future. Likewise, the land acquisition by the FGEHA and the subsequent execution of schemes thereon has been explicitly made subject to the policy of the Federal Government under section 14 (1) of the FGEHA Act. It is, therefore, a statutory responsibility and duty of the Federal Government that there is no abuse of the power of eminent domain exercised by the FGEHA under the FGEHA Act. The refusal of the FGEHA to implement the settlement terms and conditions with the affected property owners is illegal and arbitrary.

44. For the above reasons the FGEHA Petition is ***allowed*** and it is declared that the negotiated settlement approved by the Executive Board of the FGEHA in its 6th meeting is binding and, therefore, the parties are committed to perform their respective obligations. The settlement agreement reproduced above meets the requirements of just compensation in the context of Article 24 of the Constitution. The Federal Government shall, therefore, ensure that the settlement agreement is implemented.

45. All the other petitions are ***disposed of*** by declaring and directing as follows:

a) The power of compulsory acquisition or eminent domain has been abused by the CDA by denying to the

affected property owners their acknowledged vested rights as described above. It is a constitutional and statutory duty of the CDA and the Federal Government to 'compensate' all the affected citizens whose rights stand admitted and acknowledged.

b) Every affected citizen who was subjected to the power of compulsory land acquisition and whose right to either allotment of plot or payment in monetary terms is acknowledged by the CDA has a constitutional right to be 'compensated' without further delay based on the principle of equivalence, otherwise it will be confiscatory and in violation of fundamental rights guaranteed under Articles 9, 23 and 24 of the Constitution.

c) It is a statutory and constitutional duty of the Federal Government to formulate a policy regarding enforcement of acknowledged vested rights of the affected citizens who were subjected to the power of eminent domain but have not been compensated despite lapse of inordinate delay. The Federal Government will give such directions to the CDA as are necessary to enforce the acknowledged vested rights.

d) The Federal Government shall cause a probe to be conducted regarding failure on the part of the CDA to enforce the acknowledged vested rights and hold those

officials accountable who were responsible for causing unimaginable agony and trauma to the citizens whose vested right to be compensated has been acknowledged.

e) The market values determined through awards announced before 2010 have lost their efficacy and payment made on the basis thereof is likely to have confiscatory effect even if it is in addition to 8% per arum. No property can be legitimately condemned by exercising the power of eminent domain if the owner is not 'compensated'. It has, therefore, become mandatory to reassess the market values in a fair and transparent manner to avoid the likelihood of confiscatory effect, followed by prompt payment directly to the affected owner of the property. The reassessment of market value has already been done by the FGEHA.

f) The Federal Government shall formulate a policy to enforce the acknowledged vested right of allotment of plots to more than ten thousand affected property owners without further delay and shall give such directions to the CDA or any other authority as would be necessary in this regard.

g) The Federal Government shall direct the CDA to put in place an effective mechanism and provide an exclusive forum for redressal of the grievances of the affected

property owners whose right to be compensated is acknowledged. Each will be dealt with fairly, justly and in accordance with the fundamental right guaranteed under Article 14 of the Constitution. In order to prevent exploitation of the affected person, whose right stands acknowledged, the CDA shall endeavor to deal with the latter directly and not through third parties including power of attorney holders. It is the duty of the CDA to reach out directly to each affected citizen who has been denied the acknowledged right of compensation. The cases of the petitioners shall be scrutinized and dealt with in the light of policy formulated by the Federal Government.

h) The Federal Government, while formulating a policy, shall, inter alia, prescribe a time frame for effectively enforcing the acknowledged rights and give such directions to the CDA as may be necessary in this regard. This Court, however, expects that the acknowledged rights would be enforced within a period of six months.

i) The Federal Government shall formulate a uniform policy regarding the acquisition of land, determination of market value or giving rehabilitation benefit in case of exercise of the power of eminent domain by the CDA or the FGEHA, as the case may. While formulating the policy it shall be ensured that it is in consonance with the rights of the citizens likely to be affected and the duties of the

public functionaries towards them, as highlighted in this judgment. The Federal Government, through its policy directions, will ensure that the procedures adopted while exercising the power of eminent domain will be clear, predictable, transparent and fair so that opportunities for corruption are not created. The Federal Government may also consider directing the CDA and the FGEHA, as the case may be, to issue awards for the acquisition of land and built up properties simultaneously so as to avoid insurmountable complications.

j) The Federal Government is expected to review the laws enforced in the Islamabad Capital Territory relating to compulsory acquisition with the object of protecting the rights of the citizens who are subjected to the inherent power of the State. This has become inevitable in the light of the observations made by the august Supreme Court in the FGEHA Judgment. The apex Court has emphasized the need of overhauling the laws with respect to compensation so that they cater to the evolving socio economic circumstances. The remnants of colonial era and the mindset of the public functionaries vested with the power of eminent domain needs to be changed.

k) The fundamental rights of the petitioners in the E-12 Petition have also been violated. They were issued allotment letters of plots in 1989 against payment of

consideration. The sector was not developed. The Federal Government may, therefore, formulate a policy regarding development of sectors in order to ensure that sector E-12 is developed and possession of plots is handed over to the allottees without unnecessary delay.

l) The Secretary, Ministry of Interior is directed to place copies of this judgment before the Federal Cabinet i.e. the worthy Prime Minister and members of the Cabinet in one of the meetings scheduled to be held within two weeks from the date of receiving a certified copy.

46. The Registrar of this Court is directed to send a certified copy of this order to the Secretary, Ministry of Interior through a special messenger for compliance.

(CHIEF JUSTICE)

Announced in open Court on ***14-06-2021***.

(CHIEF JUSTICE)

Approved for reporting.

Tanveer Ahmed/*

ANNEXURE-A		
1.	W.P No. 244/2018	Noman Ahmed and 14 others v. Capital Development Authority, etc.
2.	W.P No. 3450/2020	Malik Muhammad Riaz, etc. v. Federation of Pakistan, etc.
3.	W.P No. 4242/2017	Abdul Qudoos v. Capital Development Authority, etc.
4.	W.P No. 794/2019	Muhammad Shabbir v. Capital Development Authority, etc.
5.	W.P No. 1027/2019	Gulistan, etc. v. Capital Development Authority, etc.
6.	W.P No. 1237/2019	Syed Aftab Hussain Shah etc. v. Capital Development Authority, etc.
7.	W.P No. 3106/2019	Tariq Quddous, etc. v. Capital Development Authority, etc.
8.	W.P No. 1194/2019	Muhammad Azam, etc. v. Capital Development Authority, etc.
9.	W.P No. 963/2019	Muhammad Arshad Khan v. Capital Development Authority.
10.	W.P No. 3638/2020	Iftikhar Hussain Shah, etc. v. Capital Development Authority, etc.
11.	W.P No. 964/2011	Abdul Bashir Mir, etc. v. The Chairman, Capital Development Authority, etc.
12.	W.P No. 345/2015	Zahid Hussain Shah, etc. v. Capital Development Authority, etc.
13.	W.P No. 1142/2015	Fazal Hussain, etc. v. The Chairman, Capital Development Authority, etc.
14.	W.P No. 1632/2017	Riaz Hussain Shah, etc. v. Capital Development Authority.
15.	W.P No. 3394/2018	Muhammad Liaquat, etc. v. Capital Development Authority, etc.
16.	W.P No. 4547/2019	Ch. Imtiaz Ahmed. v. Capital Development Authority, etc.
17.	W.P No. 2232/2019	Muhammad Rasheed, etc. v. Capital Development Authority, etc.
18.	W.P No. 3450/2020	Malik Muhammad Riaz, etc. v. Federation of Pakistan, etc.
19.	W.P No. 943/2017	Ch. Afrasiab Khan. v. Capital Development Authority, etc.
20.	W.P No. 243/2020	CDA Labour Union, through its General Secretary v. Capital Development Authority, etc.
21.	W.P No. 3487/2020	Iftikhar Hussain Shah, etc. v. Capital Development Authority, etc.
22.	W.P No. 3376/2020	Hameed Hussain, etc. v. Capital Development Authority, etc.
23.	W.P No. 3489/2020	Muzafar Hussain Shah, etc. v. Capital Development Authority, etc.
24.	W.P No. 3567/2020	Mst. Channi Bibi, etc. v. Capital Development Authority, etc.
25.	W.P No. 3164/2020	Syed Hassnain Kazmi, etc. v. Capital Development Authority, etc.

26.	W.P No. 3485/2020	Zulfiqar Hussain Shah, etc. v. Capital Development Authority, etc.
27.	W.P No. 3532/2020	Tariq Zaman, etc. v. Capital Development Authority, etc.
28.	W.P No. 14/2020	Mst. Zubeda Khanum v. Capital Development Authority, etc.
29.	W.P No. 866/2020	Muhammad Sarfraz, etc. v. Capital Development Authority, etc.
30.	W.P No. 591/2020	Muhammad Saleem, etc. v. Capital Development Authority, etc.
31.	W.P No. 3578/2020	Muhammad Yasin v. Capital Development Authority, etc.
32.	W.P No. 3486/2020	Jahangir Hussain Shah, etc. v. Capital Development Authority, etc.
33.	W.P No. 3488/2020	Qadeer Hussain Shah etc. v. Capital Development Authority, etc.
34.	W.P No. 3416/2020	Allah Dad Chughtai, etc. v. Capital Development Authority, etc.
35.	W.P No. 3484/2020	Syed Adnan Kazmi, etc. v. Capital Development Authority, etc.