JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 441 OF 2022

MUHAMMAD UMER FAROOQ

VS

FEDERATION OF PAKISTAN & 6 OTHERS

Petitioner by	**:**	**Malik Qaiser Masood Advocate.**
Respondents by	**:**	**Barrister Muhammad Saad Buttar and Mr. Aamir Latif Gill, Advocate, for CDA.** **Mr. Sajid Abdullah Sraa, Advocate for DHA.** **Mr. Muhammad Taimoor Janjua, State Counsel for Chief Commissioner Office, Islamabad.** **Mr. Sarfraz Rauf and Raja Zameer Ud Din, Assistant Attorney Generals.**
Date of hearing	**:**	**27.02.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition, the Petitioner [Muhammad Umer Farooq] has assailed the Notification dated 30.03.2021 **("Impugned Notification")** issued by the Respondent No. 5 (Land Acquisition Collector) under Section 4 of the Land Acquisition Act, 1894 **("Land Acquisition Act")**.

2. The brief facts of the case in hand as per the Memo of Petition are that the Petitioner is co-owner in physical possession of land measuring 5½ Marla out of Khasra No.3937 and area of 9 Marla out of Khasra No. 3949, total measuring 14½ Marla situated in the revenue estate of village Sihala, Tehsil & District Islamabad. The land described hereinabove has been inherited by the Petitioner from his father (late Sakhawat Hussain). The Petitioner has constructed his residential house on the entire land measuring 14½ Marla comprised in both the Khasra numbers mentioned above and is living there along with his family members. The Respondent No. 4 [District Collector/Additional Deputy Commissioner (Revenue), ICT, Islamabad], at the behest of Respondent No. 5 [Land Acquisition Collector, Islamabad Capital Territory] has issued the Impugned Notification under Section 4 of the Land Acquisition Act vide Dispatch No. 336/2(218)-DRA-2021 and the same has been got published in the Gazette of Pakistan in its extraordinary issue dated 30.03.2021. The Notification is intended and oriented to acquire among

others land/property of the Petitioners described hereinabove. The Impugned Notification followed by other proceedings in pursuance of the same for acquisition of the Petitioner's land/properties is illegal, unlawful, without lawful competence and jurisdiction, *ultra vires* of the law which militates against the fundamental rights of the Petitioner under Articles 4, 9, 10-A, 15, 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")** therefore, the same along with other allied acts and deeds by the Respondents is liable to be set-aside. Hence, the Petitioner has preferred the instant Petition.

3. The learned counsel for the Petitioner argued that the Petitioner is citizen of Pakistan and has rights to be treated in accordance with law in view of Article 4 of the Constitution; that Respondents Nos. 2 to 5 are public functionaries and are under legal obligations to perform their functions and to discharge their duties strictly in accordance with law, however, unfortunately they are acting otherwise being instrumental to serve the illegal and unlawful designs/motives of DHA; that DHA has been created under Act No. XII of 2013 of the Majlis Shura and according to Section 3(2) of the said Act, DHA is a Body Corporate and empowered to purchase, procure, sell, exchange, hold and dispose of the property with its name and at the same place, it is provided that DHA can sue and can be sued with its given nomenclature; that sub-section 2 of Section 3 of the Act *ibid*, provides that while designing, planning and executing a scheme in the specified area, DHA shall adhere to the master plan of Islamabad and to ensure that all public roads and revenue paths leading to and from their adjoining areas and to access to the graveyard shall as far as possible be maintained and no change or alteration be made in such road, paths or access except with prior approval of the Government; that Section 4 of the Act *ibid* provides for constituting a governing body comprised of officials from civil as well as army service; that DHA is shown to be headed by the Secretary, Ministry of Defence, its powers and functions are given in Section 4 (2) of the Act, thereafter constitution of an Executive Board has been provided under Section 5 along with members and office bearers of the same and its powers and functions are to be performed and provided under Section 6 of the Act and according to sub-section 2 of the same, powers to be exercised by the Board, without prejudice to the generality of the powers under Section 6(1), shall

be relevant into the matters which *inter alia* have been specified therein; that according to Section 21 of the Defence Housing Authority Act, 2013 **("DHA Act")**, its provisions are not to be in derogation or in addition to any other law for the time being in force; that from perusal of the DHA Act, powers and functions of its officials, particularly into the matters of acquisition of land in ICT, exercise of the same are subject to certain legal restrictions and conditions; that examination of the acquisition of the land by DHA through the Impugned Notification in juxtaposition with the relevant provisions of DHA Act, shows that the same suffers from lack of jurisdiction, competence and powers with numerous serious illegalities, and given these facts, the Impugned Notification followed by any proceedings pursuant thereof, if any, are unlawful, null and void for the following reasons:-

i. That Impugned Notification has been issued and got published by Respondent No. 5. It is without lawful competence and without jurisdiction. According to Section 3(c) of the Land Acquisition Act read with Rules 3, 4, 5 and 6 of the Land Acquisition Rules, 1983 **("Land Acquisition Rules")**, it is only the District Collector competent to issue Notification under Section 4 of the Land Acquisition. The Impugned Notification, therefore, enjoys no legal value, effect, sanctity and consequences as the same has been issued and got published by Respondent No. 5. The Impugned Notification is, therefore, *ultra vires* of the law, without lawful competence and jurisdiction, *coram non judice*, null and void with no legal value, sanctity, effect and consequences.

ii. That DHA is neither a Government entity nor a Company registered under the Companies Act or incorporated by any Act of the Parliament or a Society registered under the Societies Act, 1860 and also a registered society within the meaning of Cooperative Societies Act, 1925. Therefore, in view of its character/ status as such, provisions of the Land Acquisition Act cannot be made applicable for acquisition of land in its favour.

iii. That according to the provisions of Section 6(j) of the DHA Act, it is only the Executive Board constituted under Section 5 of the DHA Act to apply for acquisition of land to the Government for initiation and completion of the process of land acquisition in accordance with the law governing the land acquisition. In sheer violation of the same, relevant application for acquisition dated 12.01.2021 has been addressed to the District Commissioner Officer ICT Islamabad (no Officer or Authority being in existence as such).

iv. That the application asking for acquisition of land for DHA, has been filed by Ch. Sajid Abdullah Sraa, an Advocate High Court as legal Advisor instead of Executive Board constituted under Section 6 or even the Administrator appointed under Section 8 of the DHA Act. No proceedings for acquisition of the land could be initiated even by the competent Authorities under the provisions of Land Acquisition Act, except on the application made by the Executive Board or Administrator of DHA and that too to the Government (Federal Government) as per mandate of section 6(j) of the DHA Act.

v. That viewing the legal position as given above, the entire proceedings resulting in issuance and publication of Impugned Notification under Section 4 of the Land Acquisition Act are illegal, unlawful, *ultra vires* of the law, without competence and lawful authority and given its character as such, the same is null and void with no legal effect, value and consequences.

vi. That notwithstanding the above, the Impugned Notification under Section 4 of the Act is opposed to the very application by DHA as made through its Legal Advisor. The application finds mention of land Khasra Nos. 3331, 3332, 3335, 3556, 3994, 3995, 3996, 3998, 3999 and 4042 for the purpose of acquisition while contrary to that Impugned Notification speaks of acquisition of land comprised in Khasra Nos. 3908, 3937, 3938, 3940, 3941, 3951, 3974, 4010, 4024, 4025, 4026, 4038, 4048 and 4042/1 of village Sihala District Islamabad. This being a very serious and glaring contradiction is

indicative of the fact that the Impugned Notification is unfounded in facts and is result of arbitrarily exercise of powers by the Respondent No. 5. The Notification, therefore, is the result of misuse and abuse of powers by him which in view of its given character/status is null and void with no legal value, effect and consequences. The same is also violative of Articles 4 and 10-A of the Constitution.

vii. That in addition to the above, the application seeking acquisition on behalf of DHA is backed by its business in Joint Venture which is duly spelt out by the expression (JV) in its relevant No. as Ltr ID: 7/JVMC/01-21 dated 12.01.2021. As a matter of fact, DHA is conducting its business of real estate on commercial basis in Joint Venture with M/s Behria Town (Pvt.) Ltd. and Habib Rafique (Pvt.) Ltd.

viii. That veritably the land proposed for acquisition through the Impugned Notification is not meant for the purpose and objects as are given in the preamble of the DHA Act. The application seeking the acquisition of land is manifestation of hidden common motives of DHA and its partners in Joint Ventures named above to grab land /property of the Petitioner under the garb of the Land Acquisition Act. It is nothing but a misadventure on the part of DHA to deprive the Petitioner from his land /properties.

ix. That the Impugned Notification speaks of the acquisition of land at the expense of DHA but for public purpose. It negates the very object and purpose of the Constitution and creation of DHA, which in its preamble part of the Act is not empowered to acquire land for public purposes.

x. That given the above facts, acts and deeds of the Respondents along with Impugned Notification under Section 4 of the Land Acquisition Act are neither fair and transparent nor the same qualify the constitutional requirement of "due process" as per the mandate of Article 10-A of the Constitution.

xi. That the Impugned Notification followed by the acquisition of the Petitioner's land along with other owners, in reality, is not required for the public purpose or even for the purpose as shown in the Impugned Notification.

xii. That as a matter of fact the land now being sought to be acquired pertains to 254 commercial and residential plots with an area which have already been sold out to EOBI against a sale consideration of Rs.15,324,000,000/- The DHA, did not own the land underneath these plots nor it was possessed by it.

xiii. That all these plots form part of and located on the proposed DHA Expressway A-Block in its project called as Business Corridor. Majority of the plots so sold by the DHA in favour of EOBI with reference to location, comprised of the land described in terms of Khasra Numbers in the Impugned Notification.

xiv. That EOBI and its officials were found involved in a big financial scam and the august Supreme Court of Pakistan took cognizance of the same in its Suo Moto jurisdiction under Article 184(3) of the Constitution. Now since the incumbent management of EOBI demanded physical possession of the plots along with title of the land underneath the same, which was neither owned by DHA nor possessed.

xv. That in order to overcome the situation and to get rid of the problem, DHA has devised a plan to get the land acquired in the garb of its utilization for its Expressway.

xvi. That in view of the above proposed acquisition of the Petitioner's land along with others and for that issuance of the Impugned Notification, it is not meant for the purpose and object as mentioned therein instead it is veritably required to be delivered to the EOBI. Given these facts, the Impugned Notification and the proposed acquisition of land amounts to making mockery of the law and an attempt to hoodwink the entire legal system.

xvii. That the above facts notwithstanding the Impugned Notification is also violative of the provisions of Section 3(4) of the DHA Act in as much as it is destined to acquire even the public path. Reference to this effect may be made to Khasra No. 4049 which the Impugned Notification by itself shows as a (way).

4. The learned counsel for the Petitioner further argued that DHA has also occupied public paths comprised in Khasra Nos. 5583, 3297, 3984 of the same village Sihala which acts and deeds on their part were challenged before this Court in W.P No. 3372/2017 titled "Ch. Sabi Zahid vs. Chief Commissioner ICT Islamabad etc", which was allowed vide Judgment dated 18.03.2019; that in addition to above acquisition of land by the Army Welfare Trust predecessor of DHA has already been declared unlawful by the Honorable Lahore High Court, Rawalpindi Bench Rawalpindi vide Judgment passed in case of Muhammad Saqib Abbasi cited as 2013 CLC 158 and the same has been upheld vide Judgment dated 13.11.2018 in ICA No. 140 of 2012 titled Army Welfare Housing Scheme etc. vs. Ch. Ejaz Ahmed etc; that acquisition of land by DHA and issuance of Notification under the provisions of Land Acquisition Act by the Respondent No. 5 are also in violation of CDA Ordinance, 1960 **("CDA Ordinance")** read with the Land Acquisition Regulations 1961; that the latter being special law cannot be overridden by the Land Acquisition Act being general law; that this legal situation is also supported by Section 21 of the DHA Act which speaks clearly on the fact that the provisions of said Act shall be in addition to and not in derogation of another law for the time being in force, therefore, application of the DHA Act in ICT, is derogatory to the CDA Ordinance read with the Land Acquisition Regulations, 1961; that the Impugned Notification with reference to the object and purpose is not at all for any object and purpose mentioned therein; that the officials of DHA are misusing and abusing its legal status for their own benefits and interest; that previously DHA out of the acquired land, sold an area of 01 Kanal 16 Marlas out of Khasra No. 1141 in favour of M/s Behria Town (Pvt.) Ltd. along with other land against the sale consideration of Rs.12,500,000/- vide Mutation No. 7024 dated 15.01.2009 attested by the Revenue Officer; that faced with the impugned, illegal, and unlawful acts and deeds of the Respondents, the Petitioner

has no alternative and efficacious remedy but to invoke the Constitutional jurisdiction of this Honourable Court. Lastly, the learned counsel prayed that the Impugned Notification issued under Section 4 of the Land Acquisition Act, along with any subsequent proceedings aimed at acquiring the Petitioner's land, including that of others, is illegal, unlawful, and outside the lawful competence, authority, and jurisdiction of the Respondents; that the Impugned Notification and subsequent proceedings are in violation of the law, based on *malafide* intent, and an abuse of power by the Respondents; that such actions infringe upon the Petitioner's lawful rights under Articles 2-A, 4, 8, 9, 10-A, 23, and 24 of the Constitution; and that the Impugned Notification as well as the Respondents' actions are alleged to violate the CDA Ordinance, the Land Acquisition Regulations of 1961, and the DHA Act; and therefore, the Impugned Notification under Section 4 of the Land Acquisition Act, along with any subsequent proceedings, be declared void, without legal effect, and be quashed or set aside.

5. On the other hand, the learned counsel for contesting Respondents vehemently opposed the arguments of learned counsel for Petitioner and prayed for the dismissal of the instant Writ Petition.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. As manifest from the arguments advanced by the parties and on perusal of the record, the Petitioner has challenged the validity of the Impugned Notification issued by the Respondent No. 5, for acquisition of land measuring 188 Kanal and 6 Marlas, for DHA for the purpose of construction of road namely Expressway in Village Sihala, Tehsil & District Islamabad on its own expenses for public purpose.

8. The points raised by the Petitioner are adduced by this Court for its determination through this judgment and are given as under: -

(i) Did Respondent No. 5, has the legal authority to issue the Impugned Notification under Section 4 of the Land Acquisition Act?

(ii) Was there a proper request made by the Executive Board of DHA for the acquisition of the land for public purpose?

(iii) Does the stated purpose of the acquisition qualify as a "public purpose"?

(iv) Can the Land Acquisition Collector acquire land in Islamabad Capital Territory (ICT) under the Land Acquisition Act, without obtaining prior approval/NOC from Respondent No. 7 [Capital Development Authority ("CDA")]?

(v) Is CDA the only legally authorized body to acquire land under the Capital Development Authority Ordinance, 1960?

9. Before discussing and dilating upon the above-mentioned points for determination, I would like to mention some background regarding the development of Islamabad Capital Territory.

10. 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 State's power of eminent domain. In pursuant to the Act, the process for acquiring land was initiated and the first award was announced on 12.02.1961. Thereafter, the CDA has announced 527 awards so far, for acquiring land for developing sectors in accordance with the master plan, however, the development of number of sectors is still pending and the allottees are facing immense problems.

<u>Changes to the Master Plan</u>

(a) Originally Islamabad Capital Territory included Rawalpindi, Margallah Hills, and Rural areas.

(b) After a Presidential order, the Master Plan was revised, removing Rawalpindi from Islamabad development area.

(c) In 1992, the Islamabad Capital Territory (Zoning Regulations), 1992 **("Zoning Regulations")** further divided into five zones with distinct development rules.

11. The Zoning Regulations also provides the development strategies of the newly delineated zones. The development strategy of Zone V is here as under:

(a) the existing urban sprawl will be organized into a planned urban development and housing scheme will be encouraged;

(b) a broad outline development plan shall be prepared by the Authority in whose context the schemes shall be considered for approval. The minimum area of such a scheme shall not be less than 100 acres;

(c) the detailed lay-out plan and development specifications of the scheme shall be subject to the approval of the Authority;

(d) the schemes shall have their independent accesses and roads, water supply and primary sewerage treatment systems to be developed by the sponsors at their own cost and expense;

(e) the possession of individual plots in the scheme shall not be handed over to allottees until the land is fully developed by the sponsors and completion certificate in this regard obtained from the Authority;

(f) all land reservations made for roads and utilities in such schemes shall belong to the Authority;

(g) the sponsors shall deposit with the Authority as security hundred percent (100%) estimated total cost of development of the scheme or shall mortgage thirty percent (30%) of the saleable area in lieu thereof till a completion certificate is obtained by the sponsors from the Authority in respect of the scheme;

(h) all the buildings to be constructed in the zone shall be subject to the Islamabad Building Regulations, 1963 **("Building Regulations")**, and Islamabad Residential sectors Zoning Regulation, 1985;

(i) After completion and allotment, the scheme shall be maintained by the sponsors or by an association of the allottees, as the case may be till such time the scheme is taken over by the Authority;

(j) all such permissions shall be subject to payment of Scrutiny Fee/Service charges as determined and levied by the Authority from time to time, and without prejudice to the right of the Authority to acquire the land in public interest;

(k) Individual construction not falling within the scheme approved by the Authority will not be permissible. However, repair of old houses and expansion of existing houses may be allowed once by the Authority to the native residents subject to the conditions that the site is located within the limits of the main body of the village. The covered area of such construction shall not exceed 1000 sq. feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property wherever needed in the public interest, such requests shall be routed through the concerned Union council.

12. Chapter IV of the Zoning Regulations, provided the penalties for violations which says:-

> "Any person, group of persons, organization, etc. if found violating any provision of this Regulation shall be liable to be proceeded against as under: -
>
> (i) The offending structure made in violation of the provisions of this Regulation, the Islamabad Building Regulation, 1963, or the Islamabad Residential Sectors Zoning Regulation, 1985, shall be liable to demolition in accordance with Section 49-C of the CDA Ordinance, 1960, unless regularized by the Authority on the payment of compounding fee as may be fixed by the Authority from time to time.
>
> (ii) The NOC/permission given by the Authority to any person, group of persons, organization, etc, for a scheme shall be liable to be cancelled.
>
> (iii) Any person, group of persons, organization, etc. found guilty of violating any of the provisions of the Regulation of who or which without lawful excuse fails or refuses to comply with any direction or order issued by the Authority in this behalf, may be proceeded against under Sections 46 and 46-B of the CDA Ordinance, 1960, in addition to action under clauses (i) and (ii) above.

13. On 30.1.2020, CDA introduced another Regulation with the name of "Revised Modalities & Procedures (2020) framed under ICT (Zoning) Regulation, 1992 (As Amended) For Development of Private Housing/Farm Housing Schemes in Zones 2, 4 & 5 of Islamabad Capital Territory Zoning Plan".

14. Now coming to the points for determination by this Court one by one.

(i) Did Respondent No. 5, has the legal authority to issue the Impugned Notification under Section 4 of the Land Acquisition Act?

15. According to Section 3 (c) of Land Acquisition Act read with Rule 3 of Land Acquisition Rules, a Collector means the District Collector or any officer appointed by the Board of Revenue or Commissioner to perform the Collector's duty. For ready reference, both the above said Section & Rule are reproduced hereunder: -

> **Section 3 (c) of Land Acquisition Act, 1894**
>
> *"The expression "Collector" means the Collector of a District and includes any officer specially appointed by the Board of Revenue or Commissioner to perform the functions of the Collector of a District under this Act.".*
>
> **Rule 3 of Land Acquisition Rules, 1983**
>
> *"The acquiring agency shall submit an application to the Collector of the District concerned in the prescribed form for the acquisition of land under the Act given full justification of the public purpose involved and the minimum area required by it with full details of all other area owned by it in same locality."*

16. According to these enactments, it is the Collector of a District and includes any officer specially appointed by the Board of Revenue or Commissioner to perform the functions of the Collector of a District. In this regard, Notification dated 15.08.2018 issued by the Chief Commissioner, Islamabad Capital Territory bearing No.1(19)-law/2008/3055 is very much clear, vide which Mr. Kamran Ali Cheema, Additional Deputy Commissioner Revenue, Islamabad, is empowered as Land Acquisition Collector, Islamabad within the revenue limits of Islamabad Capital Territory with immediate effect and until further orders. Hence, Mr. Kamran Ali Cheema, Additional Deputy Commissioner Revenue was competent to issue the Impugned Notification being Land Acquisition Collector, Islamabad.

(ii) Was there a proper request made by the Executive Board of DHA for the acquisition of the land for public purpose?

17. To decide this point, annexure-C is relevant, which is appended with the parawise comments filed by Respondents Nos. 3 to 5, whereby a written request was made by Ch. Sajid Abdullah Sraa, Advocate High Court/Legal Advisor/Counsel on behalf of DHA addressed to District Commissioner Officer, ICT, Islamabad with the subject *"Application under the law of Land Acquisition*

Act, 1894 for land acquisition in Mouza Sihala for the purpose of roads/welfare of the general public as well as DHA", for land acquisition. The said request/application is not submitted by the Executive Board which is required under Section 6.2 (a & j) of the DHA Act, which is reproduced hereunder:-

> *"**6. Powers and functions of Executive Board.-**(1)….*
>
> ***(2)** Without prejudice to the generality of the foregoing powers, the Executive Board may, in accordance with all applicable laws, rules and regulations,-*
>
> ***(a)** purchase, procure, hold, manage, reclaim and take possession of any property in the specified area;*
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> *(b)…*
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> *(c)…*
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> *(d)…*
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> *(e)…*
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> *(f)…*
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> *(g)…*
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> *(h)…*
>
> *(i)…*
>
> ***(j)** apply for acquisition of land to the Government for initiation and completion of process of land acquisition in accordance with the law governing land acquisition."*

18. Thus, it is clear that the said application has not been made by the Executive Board as per the mandate of Section 6.2 (a & j) of the DHA Act.

(iii) Does the stated purpose of the acquisition qualify as a "public purpose"?

19. In order to understand the word "public purpose", I would like to take guidance from the Judgment of the august Supreme Court of Pakistan cited in *Federal Government Employees Housing Foundation, Islamabad and others…vs…Malik Ghulam Mustafa & others*, **2021 SCMR 201**, wherein it has been held that: -

> *"98. The Indian Supreme Court in the case of Ratilal Shankarabhai and others v. State of Gujarat and others 96 held that ordinarily, the Government is the best*

authority to determine whether the purpose in question is a public purpose or not. Furthermore, the declaration made by it under Section 6 is conclusive evidence of the fact that the land in question is needed for a public purpose as in Smt. Somavanti v. State of Punjab. The decision lays down that conclusiveness in section 6(3) of the LAA, 1894 must necessarily attach not merely to a 'need' but also to the question whether the purpose was a public purpose.

99. Invariably, in all the cases so relied on by the learned bench, 'public purpose' for a segment of society was held to be a public purpose. The foundational case on the subject is Ministry of Works Government of Pakistan v. Muhammad Ali, wherein Cornelius, J., speaking for the majority of the bench, held that the acquisition of land for residence of Government servant is a public purpose. None of the case cited by the learned bench supports the case of the Respondents. The appropriate portion has been reproduced below:

> *'The provision of residences is not by itself a matter falling outside the concept of a "public purpose" provided that it is part of a scheme for making general provision of that character. Secondly, the provision of residences for a particular class of persons, even though it may operate so as to provide a particular residence for a particular member of that class is also not excluded from the meaning of the expression "public purpose", nor does it make any difference whether the residences are for completely unprivileged persons like coolies, or for those enjoying the patronage of Government in the capacity of officers And the further conclusion which emerges from these decisions is that the provision of such residences may be included within the meaning of the expression, "public purpose" in the case of coolies because of the benefit to a whole class, and in the case of public servants for the reasons stated by their Lordships of the Judicial Committee, because of the public benefit which accrues from the fact of Government being assisted in maintaining the efficiency of its servants.*

100. The dicta laid down by Cornelius, J. was recently upheld by a three member bench of this court in the case of Younus Habib v. Imranur Rashid and others wherein it was held that the acquisition of land for a housing society is recognized as a public purpose.

101. The scope of 'public purpose' was further extended in the case titled Pakistan through the Secretary, Ministry of Defence v. Province of Punjab and others, wherein it was held that even the construction of shops in a market would be considered to be a public purpose even if profit is earned. The judgment serves as substantive evidence that 'public purpose' is justified even when specific classes of people, such as the shopkeepers in the cited case, are benefitted notwithstanding the fact that the Cantonment Board was earning a profit on such allocation. The relevant extract has been reproduced for convenience sake

> *'Thus if in a market so constructed shops are let out on rent, or some fee is levied as a toll in the market place would not render the purpose merely the earning of profit; but it would still be a public purpose being*

discharged by the Cantonment Board in performance of the duties imposed upon it by Section 116 of the Cantonments Act. The levy of the fee or rent would merely be incidental and would neither deprive the property of its true character nor alter the user of the property from a public purpose to merely profit-making.

I have no cavil with this enunciation and if a property is really used for a public purpose then the fact that a fee is levied for the user of such property would not render the user a non-public purpose, Thus, for instance, the provision of slaughter houses at which a fee is charged for slaughtering cattle will not render the slaughter-house a merely profit-making concern. It would still remain a premises used for a public purpose"

102. The concept of 'public purpose' was further enlarged to include welfare funds to serving personnel, ex-servicemen, and their families who also represented a specified class of people in the five-member judgment of this court titled Fauji Foundation and another v. Shamimur Rehman

'The next question whether the retrieving of G.H.Q welfare funds and the charitable purposes such as those in which the appellant is engaged fall within the concept of 'public purpose' or 'public welfare'. Just as the recovery of government dues cannot but be for public purpose as those not only belong to government but also to the entire people of the country, similarly retrieving of G. H. Q Welfare Funds which are also public funds and committed to the welfare of the serving personnel and ex-servicemen and their families, would also be for a public purpose on account of their purport and beneficial use by a large segment of population as against the private interest of an individual.

All the enumerated items are without doubt purposes involving benefit to a large community of the population and in that view of the matter relatable to public purpose or public welfare. This view seems to gain support further from the use of expression 'any advancement of any other object of general public utility' which necessarily connotes some beneficial advantage and service to the public.'"

20. Similarly, in the same judgment, the word "public purpose" is elaborated by Hon'ble Justice Qazi Faiz Esa as under:-

"6. Acquisition of Private Property for 'Public Purpose': Article 24(2) of the Constitution permits the compulsory acquisition of land provided it is for 'public purpose' and that the acquisition is pursuant to, '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'. I am in respectful agreement with the learned Mushir

Alam, J that the Constitution permits compulsory acquisition if three conditions are met; firstly, the acquisition must be for public purpose; secondly, the land must be acquired pursuant to some law; and, thirdly, such law must provide for the determination of compensation and its disbursement. The Land in these cases was acquired pursuant to the Land Acquisition Act, a law which provides a detailed mechanism for the determination and payment of compensation, hence, the stipulated second and third conditions are met. The first condition - whether the Land was acquired for public purpose - remains to be considered. Public purpose is not specifically defined in the Constitution but it may be gathered from Article 24(3)(e). Article 24(3) commences by stating that, 'Nothing in this Article shall affect the validity of' compulsory acquisition and then lists six categories from (a) to (f). Clause (ii) of the fifth category (e), reproduced hereinbelow, is relevant and applicable: (3) Nothing in this Article shall affect the validity of- (e) any law providing for the acquisition of any class of property for the purpose of- (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; (emphasis added) Providing housing is specifically mentioned in Article 24(3)(e)(ii). Therefore, land which is compulsorily acquired for providing housing is for a public purpose and government/civil servants and lawyers, are a specified class of citizens.

7. Housing is a Public Purpose: The learned Judges of the High Court did not consider the scope of Article 24(2) of the Constitution. They also overlooked Article 24(3)(e)(ii) of the Constitution which stipulates that providing housing is a public purpose. The following precedents have categorically determined that housing is a public purpose. The term public purpose in the context of land acquisition has been interpreted in a number of decisions. The impugned judgments mention that these precedents were cited, but they were not considered. In the case of Pakistan v. Muhammad Ali, this Court held that:

> *It will be sufficient for me to refer firstly to the Land Acquisition Act, 1894, which employs the expression "public purpose" in a very wide sense, and restrains the powers of the Government to acquire private property compulsorily. The Act does not define the expression "public purpose" exhaustively. It is obvious that the omission to define "public purpose" exhaustively is intentional, for it is impossible to place any limit upon the purposes which, in the light of the exercise of governmental power over large territories and populations, in respect of the multifarious activities which go into the establishment and operation of a thorough system of administration, would fall within the meaning.*

This Court went on to hold that providing housing was a public purpose:

> *Provision of residences is not by itself a matter falling outside the concept of a "public purpose" provided that it is part of a scheme for making general provision of that character. Secondly, the provision of residences for a particular class of persons, even though it may operate so as to*

provide a particular residence for a particular member of that class is also not excluded from the meaning of the expression "public purpose", nor does it make any difference whether the residences are for completely unprivileged persons like coolies, or for those enjoying patronage of Government in capacity of officers.

Recently in the case of Yunus Habib v. Imranur Rashid it was held that, 'The acquisition of land for a housing society is recognized as a public purpose'. In Zafeer Gul v. NWFP Province a Division Bench of the Peshawar High Court determined that, 'land acquired by WAPDA Cooperative Housing Society for construction of residential colony would fall under the definition of "public purpose"' by relying on the decisions in Pakistan v. Muhammad Ali (mentioned above) and on a number of Indian authorities. In the case of Ch. Nazir Ahmad v. Province of Punjab, it was held, that, Article 24(3)(e)(ii) 'of the Constitution makes it clear and obvious that the individual can be deprived of his property for the purposes of providing housing to a specified class of citizens and any law or act in this behalf will not offend against the fundamental right granted under Article 24'. In Suo Motu Case No. 13 of 2019, this Court held that the Fundamental Right to life includes shelter. Therefore, the Land, which was acquired to provide housing was acquisition for a public purpose. Reference may also be made to the Principles of Policy and the Objectives Resolution."

21. In the above stated Judgment of the Supreme Court, it is held that:-

(i) The government is the best authority to determine whether a purpose is public or not.

(ii) The declaration under Section 6 of the Land Acquisition Act is conclusive evidence that the land is needed for public purpose.

(iii) The term "Public Purpose" includes housing for government employees and broader public benefits.

22. Hon'ble Justice Qazi Faiz Esa also elaborated a public purpose in the same judgment. According to Article 24(2) of the Constitution, land can only be compulsorily acquired if three conditions are met:

(i) **Public Purpose-** the acquisition must be for a public purpose.

(ii) **Legal Authority-** the acquisition must be carried out under a law.

(iii) **Compensation-** the law must provide a mechanism for determining and paying compensation.

23. According to Black's Law Dictionary 8th Edition, the word "public purpose" is defined as *"an action by or at the direction of a Government for the benefit of the community as a whole"*.

24. In the light of the above discussion and dilating upon the judgment and findings in the ruling cited in the case of Federal Government Employees Housing Foundation, Islamabad *(supra)*, the purpose for which the land needs to be acquired by DHA is construction of road, which will be used by the public, hence, the request for acquisition of land is for public purpose.

(iv) Can the Land Acquisition Collector/Respondent No. 5 acquire land in Islamabad Capital Territory (ICT) under the Land Acquisition Act, 1894, without obtaining prior approval/NOC from Capital Development Authority (CDA)?

25. Guidance in this regard is obtained from the above referred judgment of Hon'ble Supreme Court, relevant paras of which are reproduced hereunder:-

> *"36. It may be observed that not only the LAA, 1894 but the CDAO, 1960 falls within the category of "existing law" that enjoys constitutional protection under Article 268(1) and, irrespective whether such (existing) laws have been adapted as required under sub-Articles (3) and (4) thereof or not, the courts, under the constitutional dispensation, are required to enforce such (existing) laws in accordance with the provisions of Constitution. The assumption of the learned Division Bench that the LAA, 1894 has no constitutional backing, in view of discussion herein, cannot be sustained.*
>
> *e. THE APPLICATION OF THE LAA, 1894 IN ICT:*
>
> *37. In the present situation the LAA, 1894 continued in full force and effect as a Federal legislation by virtue of Article 268(1) & (7) of the Constitution, 1973 as an "existing law", meaning thereby that all laws in force in Pakistan, or any part thereof, or having extraterritorial validity immediately before commencing day i.e. 14 August, 1973, will continue to enjoy the protection under the Constitution. Consequently, the LAA, 1894, which is protected as Federal Law, was amended from time to time by all the Provinces by virtue of the power devolved under the successive Constitutions of Pakistan, as noted above and, by the Parliament to the extent of Islamabad Capital Territory. As discussed earlier in paragraph 29, the applicability of LAA, 1894 in Islamabad Capital Territory was due to the relevant amendments made to the LAA, 1894 by the enactment of The Federal Laws (Revision and Declaration) Ordinance No. XVII of 1981. Therefore, the affirmation of the LAA, 1894 being applicable to ICT, after the enactment of CDAO, 1960, serves as conclusive evidence that the legislature was cognizant of the earlier enactment, yet chose to contemporaneously apply the LAA, 1894 to the ICT. Needless to say that ignorance cannot be attributed to the legislature. Hence, the conclusion arrived by the learned bench in paragraph 24 of the impugned judgment cannot be sustained.*

> *41. It may be observed that in Pakistan both the Federal and Provincial legislatures, in its wisdom, have promulgated numerous legislative instruments for the purpose of 'planning and development' of various cities falling in their respective legislative territory. We have noted that these statutes have either wholly or partially adopted the land acquisition mechanism provided for in the LAA, 1894 either by reference, adaptation or explicitly excluded the applicability of LAA, 1894 in the legislature's sole wisdom and prerogative. The intention of the legislature, as to adoption by reference or otherwise, exclusion or giving the special enactment overriding effect over other comparable statute can be ascertained by a cursory reading of such special statute (Various special statutes providing for 'planning and development' of cities and region for illustrative purposes are discussed in succeeding paragraph 65). Therefore, the CDAO, 1960 does not override the provisions of the LAA, 1894 for Islamabad Capital Territory but each legislation dwells within the extent of its own unique purpose."*

26. In the said judgment, it is held by the apex Court that a land can be acquired under Land Acquisition Act and is fully applicable for acquiring land in Islamabad Capital Territory and the CDA Ordinance does not override the provisions of the Land Acquisition Act for Islamabad Capital Territory but each legislation dwells within the extent of its own unique purpose. Hence, Land Acquisition Collector/Respondent No. 5 can acquire land for "public purpose" under the Land Acquisition Act.

(v) Is CDA the only legally authorized body to acquire land under the Capital Development Authority Ordinance, 1960?

27. Again guidance is sought from the above-referred judgment of the apex Court, relevant paragraph of which is reproduced hereunder:-

> "*42. In the light of discussion made herein, the CDAO, 1960 was examined, which revealed that the legislature did not completely exclude the application of LAA, 1894 in Islamabad Capital Territory, for Public Purpose and for Acquisition by Companies. The conspicuous absence of a 'non-obstante' or overriding clause in CDAO, 1960 manifests the intention of the legislature that each of these contemporaneous statutes to exist side by side and operate in their respective domain. It is not the case of any of the party that there is a competing claim of acquisition of land, under respective statute either for public purpose, under LAA, 1894, or for the Development and Planning of ICT, under the CDAO, 1960. Therefore, it was not considered appropriate in present proceedings to dilate as to which set of proceedings for competing acquisition of land may have preference over the other.*"

28. Thus, both the legislations i.e. Land Acquisition Act and the CDA Ordinance are not in conflict with each other. There is no apparent reason as to why these statutes cannot exist side by side.

29. The Capital Development Authority (CDA)/Respondent No. 7 is responsible for planning and development, whereas the Land Acquisition Collector/Respondent No. 5 focuses on acquiring land for public purposes. However, any changes to CDA's Master Plan require its approval. For ready reference, Sections 11 & 12 of the CDA Ordinance are reproduced hereunder: -

> *"**11. Master-plan and master programme.**—The Authority shall prepare a master-plan and a phased master-programme for the development of the Capital Site, and may prepare a similar plan and programme for the rest of the Specified Areas, and all such plans and programmes shall be submitted to the [Federal Government] for approval.*
>
> ***12. Preparation of schemes by local bodies or agencies.—(1)** The Authority may, pursuant to the master plan and the master-programme, call upon any local body or agency operating in the Specified Areas to prepare, in consultation with the Authority, a scheme or schemes in respect of matters ordinarily dealt with by such local body or agency, and thereupon the local body or agency shall be responsible for the preparation of the scheme or schemes within a reasonable time.*
>
> ***(2)** Such schemes, may relate to—*
>
> > ***(a)** land use, zoning and land reservation;*
> >
> > ***(b)** public buildings;*
> >
> > ***(c)** industry;*
> >
> > ***(d)** transportation and communications; highway, roads, streets, railways, aerodromes;*
> >
> > ***(e)** tele-communications, including wireless, television, radio, telephone;*
> >
> > ***(f)** utilization of water, power and other natural resources;*
> >
> > ***(g)** community planning, housing, slum clearance, amelioration;*
> >
> > ***(h)** community facilities including water supply, sewerage, drainage, sewage disposal, electricity supply, gas supply and other public utilities;*

> ***(i)*** *preservation of objects or places of historical or scientific interest or natural beauty.*
>
> ***(3)*** *The [Federal Government] may, by notification in the official Gazette, add to, alter or amend the list of subjects given in sub-section (2), and any such addition, alteration or modification shall take effect as if it had been enacted in this Ordinance.*
>
> ***(4)*** *The expenditure incurred on the preparation of any such schemes as aforesaid shall be borne as agreed to between the Authority and the local body or agency, and in the event of disagreement between them as may be determined by the Federal Government.*
>
> ***(5)*** *No planning or development scheme shall be prepared by any person or by any local body or agency except with the concurrence of the Authority."*

30. Even otherwise, under Section 3 (4) of the DHA Act, DHA while designing, planning, and executing a scheme in the specified area, shall adhere to the Master Plan of Islamabad and ensure that all public roads and revenue paths leading to and from the adjoining areas and access to the graveyard, shall as far as possible, be maintained and no change or alteration shall be made in such road, paths or access except with prior approval of the Government.

31. In view of my detailed discussion and in light of relevant laws referred above, this Court is of the view that the Respondent No. 5, was empowered through Notification dated 15.08.2018 to acquire land and to issue the Impugned Notification under Section 4 of the Land Acquisition Act. In the light of the judgment of the august Supreme Court passed in the case of Federal Government Employees Housing Foundation, Islamabad *(supra)*, the land can be acquired under the Land Acquisition Act however, under the DHA Act, it is the Executive Board, who can apply for the subject request of land for acquisition to the District Collector and the Legal Advisor was not competent/authorized to do so under the law. According to Section 13 of the DHA Act, no such delegation of powers has been made to Legal Adviser, Ch. Sajid Abdullah Sraa, Advocate High Court. It is well settled law that where a statue has provided for a particular thing to be done in a specific manner then it is to be done in that manner and that the role of Courts is not designed to legislate but interpret statutes according to their ordinary and plain meaning and not to import and or supply words or provisions, no matter how

laudable and desirable it may appear to be. Reliance in this regard is placed on the judgment of august Supreme Court in the matter of *Zahid Iqbal…vs…Hafiz Muhammad Adnan & others* reported as **2016 SCMR 430** and only on this score alone the instant Writ Petition can be allowed.

32. For what has been discussed above, the instant Writ Petition is ***allowed***. However, if DHA still wishes to acquire the land in question, it may start fresh proceedings in accordance with law under the DHA Act, if so desires.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on 7th day of April 2025.

JUDGE

--/Mehboob/--