JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3807-2022

Ch. Basharat Ali Hanjra and another

Versus

CDA through its Chairman and others.

And

W.P No.34-2023

Multi-Professional Cooperative Housing Society (MPCHS)

Versus

CDA and others.

Petitioners by:	Malik Qamar Afzal, Mr. Muhammad Ishaq Durrani, Advocates.
Respondents by:	Mr. Aamir Latif Gill, Advocate for CDA.
Date of Hearing:	27.05.2025.

MOHSIN AKHTAR KAYANI, J: By way of this common judgment, I intend to decide both these writ petitions having common question of law and facts.

2. Through W.P No.3807-2022, the petitioners have assailed the S.R.O No.576(I)/2015 dated 09.06.2015, whereby Capital Development Authority have imposed the Direct Access and Right of Way (ROW) charges on major roads of Islamabad to Petrol Pump/CNG Stations.

3. Through W.P No.34-2023, the petitioner society has assailed the Show Cause Notice dated 21.12.2022, whereby

CDA has called an explanation from the society for non-depositing of charges for Right of Way (ROW) on the major Roads of Islamabad.

4. Learned counsel for the petitioners contends that the petitioners are residents of River Garden Housing Scheme, Zone-V, Islamabad, which is 1.5 kilometers away from Islamabad Expressway. All major development works have been completed pursuant to applicable enforceable laws, rules, and regulations of the CDA, in accordance with the layout plan approved by CDA on 19.06.2001, whereby NOC was issued on 19.09.2007. The scheme contains 5, 8, 10, 14 marla and 1 kanal plots allotted to the general public with the provision of roads, gas, electricity, water, and sewerage system, whereafter allottees started construction in terms of building bylaws and regulations of the CDA, occupied the same, and are hereby residents of River Garden Housing Scheme, Zone-V, Islamabad since 2008.

5. The respondent CDA has issued SRO 576(I)/2015, the impugned SRO titled "*Direct Access and Right of Way Charges from Major Roads of Islamabad to Petrol Pump/CNG Station, Islamabad,*" dated 09.06.2015, which was published in the Official Gazette of Pakistan Extraordinary Part II on 10.06.2015, applicable with effect from 24.12.2014, wherein the terms and conditions were settled by the CDA Board decision dated 24.12.2014. As per SRO

576(I)/2015, the entities have been categorized subject to proposed direct access and right of way charges as follows:

S.No.	Category	Rate / Amount
1	Petrol Pump / CNG Station/ Amenities.	0.5% of Market Value up to a Maximum of Rs.50,000/- per month.
2	Housing Societies up to 400 kanals	Rs.266,000/- per month.
3	Housing Societies up to 401 to 800 kanals	Rs.562,000/- per month.
4	Housing Societies up to 801 + kanals	Rs.800,000/- per month.

6. Learned counsel for the petitioners further contends that pursuant to SRO 576(I)/2015, the respondent authorities CDA through impugned letter dated July 2022 has directed the petitioners to deposit outstanding amount and through subsequent show cause notice raising demand for payment of Rs.337,442,856/- on account of fee/fine/charges under ROW charges. As per demand notice vide letter dated July 2022, an amount of Rs.800,000/- per month was charged from the housing scheme on the basis of notification referred above at serial No.4 of the table. Learned counsel for the petitioners contends that the respondent CDA has no legal jurisdiction to impose or enforce any tax, fee, rates, rental, toll, charges or surcharges, and even if seen in the context of Section 51 read with 15-A of the Parent Act, the respondent authority has to frame regulations consistent with the rules, whereas Section 15-A confers upon the respondent authority to perform such functions as performed by the Municipal

Committee in terms of Municipal Administration Ordinance 1960. Therefore, no such amount can be charged by the CDA and further contends that after the notification and enactment of ICT Local Government Act 2015, the powers are now vested with the local government assembly as well as local government laws for its notification, enforcement and settlement of the final charges/levy or the rate imposed upon the petitioner societies.

7. Conversely, learned counsel for the CDA opposed these petitions on the ground that powers contained in Section 51 read with 15-A of the CDA Ordinance 1960 fully authorize the CDA Board to issue such notification for imposing the charges of right of way from major roads of Islamabad to petrol pump/CNG station as well as societies, it further contends that harmonious approach is to be applied in these cases while interpreting the powers contained in CDA Ordinance 1960.

8. Arguments heard, record perused.

9. Perusal of record reflects that the entire case revolves around the SRO 576(I)/2015 dated 09.06.2015, whereby the SRO was issued in exercise of powers conferred by Section 51 of the CDA Ordinance, 1960 read with Section 15-A thereof. The CDA has been pleased to notify, with immediate effect and till further orders, the access and right of way charges from major roads of Islamabad to petrol pump/CNG station. As per paragraph No.2, the notification

shall be applicable along with the roads known as GT Road, Islamabad Highway, Kashmir Highway, IJP Road and Park Road accordingly. Also, the other terms which are an important feature of this SRO are as under:

> *"3. The Right of Way will be allowed from nearest highway where no CDA Service Road is available.*
> *4. In case where Service Road is available the Right of Way will be allowed upto CDA Service Road.*
> *5. The ROW charges will also be applicable with effect from 24-12-2014, on cases already approved.*
> *6. The said charges are to be claimed from the owners/sponsors/operators in advance for first 05 years and after 05 years with the mutual consent in writing the NOC of ROW will be extended/renewed, the owner shall deposit the charges on yearly basis in advance on revised rates as approved by the Board.*
> *7. The permission of ROW would be purely on temporary basis subject to usual terms and conditions vide CDA Board decision dated 24-12-2014 & the Board decisions revised from time to time.*
> *8. The design of access road would be prepared by qualified structure engineer and got approved from Director Traffic Engineering and Transportation Planning, CDA."*

10. While attending the above-referred provisions, this Court is of the view that the CDA authorities were constituted under Section 4 of the CDA Ordinance, 1960, for the purpose of achieving the objectives outlined therein.

A perusal of Chapter 3 of the Ordinance shows that it governs the powers and functions of the Authority, wherein Sections 11 and 12 emerge as the primary provisions relevant to the exercise of such powers, which are as under:

> *"11* ***Master-plan and master-program****:*
> *The Authority shall prepare a master plan and a phased master program for the development of the Capital Site, and may prepare a similar plan and program for the rest of the specified areas and all such plans and programs shall be submitted to the Federal Government.*
>
> *12* ***Preparation of schemes by local bodies or agencies:***
>
> *i. The Authority may pursuant to the master plan and the master program call upon any local body or agency operating in the specified area 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.*
>
> *ii. Such schemes, may relate to-*
>
> *a. Land use, zoning and land reservation;*
> *b. Public buildings;*
> *c. Industry;*
> *d. Transportation and communications; highways, 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.

iii. 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.

iv. 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.

v. [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.]"

11. On plain reading of these two provisions, it appears that a master plan and master program for development of the Capital Site is to be prepared as well as for the specified areas, also whereby the CDA authority, pursuant to the master plan and master program, may call upon any local body or agency operating in the specified areas to prepare, in consultation with the authority, a scheme for any matter referred in Sub-section 2 of Section 12, Sub-clause (a) to Clause (i), including but not limited to land use, public buildings, industries, transportation, communication, highways, roads, telecommunications, housing, planning, facility of water, sewerage, drainage, electricity, gas, public utilities, etc., wherein the expenditure incurred on the preparation of any such scheme, as aforesaid factors, shall be borne as agreed to between the authority and the local body or agency and, in the event of disagreement between them, determined by the Federal Government. No doubt, at the time of initial enactment of this law, the purpose behind the CDA Ordinance 1960 was to establish the Capital in the territory of ICT, whereby the preparation of schemes by the authority has been covered under Section 13 and powers were vested to CDA in terms of Section 15 of the Ordinance. However, Section 15-A has been inserted later on, dealing with the municipal functions in terms of the Municipal Administration Ordinance 1960, which provides a separate

schedule known as the Second, Third, and Fifth Schedules thereto, highlighting different municipal functions.

12. Section 15-A, which was inserted in the CDA Ordinance, 1960, was repealed by the Islamabad Capital Territory Local Government Act, 2015. Primarily, the most acknowledged reason by the legislature while enacting the Local Government Act was to transfer all powers to the citizens of the Islamabad Capital Territory to choose their representatives for municipal functions, administration, and the levy of any tax, access, or charges for the services provided to the citizens. Therefore, ICT Local Government Act, 2015, is to be treated as the new law, which repeals the previous laws. A transitional provision has also been provided in terms of Section 132. One transitional provision in Chapter 15 of the Local Government Act, including Sections 127, 128, 129, 130, 131, 132, 133, and 134, has been enacted to cater all kinds of scenarios, including but not limited to the repeal of the Islamabad Capital Territory Local Government Ordinance, 2002, Capital Territory Local Government Election Ordinance, 2002, Section 15-A of the CDA Ordinance, 1960, as well as similar provisions of all other laws through the concept of implied repeal.

13. Similarly, if we focus upon Section 127, all functionaries of local government established under previous laws, including the Federal Capital Local Government Ordinance, 1979, CDA Ordinance, 1960, or the

Municipal Capital Territory Local Government Ordinance, 2010, have been transitioned and converted into the Islamabad Capital Territory Local Government Act, 2015. Therefore, this new law is to be treated as a basic general law as well as a special law for all intents and purposes.

14. The impugned SRO must be considered with reference to the parameters settled and discussed in different judgments of this Court, wherein this Court has already addressed the issues relating to the levy, application, and enforcement of different taxes. In this regard, primary question is whether the SRO, which revolves around two basic terms, i.e., access and Right of Way (ROW) charges, has any legal basis. These two terms have never been defined in any law relating to the CDA Ordinance, 1960, its by-laws, or even the previous laws. Therefore, these provisions are to be considered alien to the existing framework.

15. Although, the concept of Right of Way is referred in Section 2(j) of the N.H.A Act, 1991, which refers to land acquired for the purpose of constructing a national highway or any other road assigned to the authority, the concept of ROW in the NHA Act, 1991, is not applicable to the present scenario. This Court, while considering the Right of Way in terms of case law reported as ***PLD 2022 [Islamabad] 314 (M/s Tulip Project, Riverside Vs. NHA)***, declared that any charge claimed by even the NHA is illegal, as no

corresponding rights have been given to individuals in this regard.

16. This Court has been guided by the concept of rights protected under the constitutional guarantees in terms of Article 23 of the Constitution of the Islamic Republic of Pakistan, 1973, which states: *"Every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restriction imposed by law in the public interest."* Even the restriction has been imposed in sub-article (2) of Article 24 of the Constitution in the following manner:

> *"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 thereof and either fixes the amount of compensation or specifies the principles on and manner in which compensation is to be determined and given."*

17. Although any law providing for the acquisition of any class of property for the purpose of education, medical aid, housing, public facility, or services such as roads is exempted, Article 24 of the Constitution shall not affect the validity of such action. However, one thing is clear that the State has provided a mechanism to protect the rights of individual citizens in the Constitution and, at the same time, empowered the State authorities to exercise their rights for public welfare. Therefore, the concept of public interest, which is not readily found in the impugned SRO

576(I)/2015, and since the CDA has no authority to impose any access or Right of Way charges solely on five roads i.e., GT Road, Islamabad Highway, Kashmir Highway, IJP Road, and Park Road, it reflects a pick and choose approach without any intangible criterion, ignoring the rest of the roads in the Islamabad Capital Territory.

18. Taking an analogy from the municipal functions originally defined in the Municipal Administration Ordinance, 1960, which provided the concept of municipal taxation in Section 33 read with its Third Schedule, it required prior sanction from the government in a prescribed manner. There is also a concept of enforcement of taxes levied by a municipal committee, which shall be notified in the official gazette unless otherwise directed by the government. Section 34(2) of the Municipal Administration Ordinance, 1960, highlights the concept of a proposal for the levy of tax, rate, toll, or fee, or for the modification of tax, rate, toll, or fee, which is a key factor in such cases. The Ordinance also provides the mechanism for the collection and recovery of taxes through a municipal committee, which was empowered to regulate all its affairs in that concept.

19. Surprisingly, the parent Act of Municipal Administration, 1960, which lays down the concept of the constitution of municipal committees being the representatives in the area to represent the public so they

could settle their issues, was not taken into account in its original sense. The Municipal Administration Ordinance, 1960, provides for the composition of a municipal committee comprising elected members, whose number shall in no case exceed 30, and such official and appointed members, if any, as the controlling authority may fix in the prescribed manner. The chairman, appointed under the concept of pleasure of the government, and the vice-chairman, who is an elected member, serve the people of the area for a period of five years and perform all such functions including, but not limited to, enforcement and imposition of taxes on buildings, lands, immovable properties, goods for consumption, sale in municipalities, tolls, professions, trades, callings, births, marriages, adoptions, fees, advertisements, animals, and theatrical shows, entertainments, vehicles, lighting, conservancy charges, execution of public utilities, water supply, school fees, and other public utilities maintained by the municipal committee, including industrial exhibitions, tournaments, public gatherings, markets, and slaughtering of animals.

20. These concepts were not available in the CDA Ordinance, 1960, whose whole purpose is entirely different from municipal administration. Prior to the enactment of the Islamabad Capital Territory Local Government Act, 2015 (ICT LGA 2015), the Capital Development Authority (CDA) was empowered to perform municipal functions in

Islamabad by virtue of Section 15-A of the CDA Ordinance, 1960. This provision enabled CDA to exercise municipal powers under the Municipal Administration Ordinance, 1960 (MAO 1960**)**, subject to notifications issued by the Federal Government.

21. However, Section 15-A was omitted through the ICT LGA 2015. The omission has critical implications for CDA's taxing powers post-2015. For ease of reference, the omitted Section 15A is reproduced:

> **Section 15-A Municipal Functions:**
> *(1) During such period and for such areas within the Islamabad Capital Territory as the Federal Government may, by notification in the official Gazette, specify, the Authority may… exercise [powers] of a Municipality under the Municipal Administration Ordinance, 1960.*
> *(2) The relevant provisions of the MAO 1960, particularly sections 18, 33–73, 77–106, 109, 115–118, 122, and relevant schedules, applied mutatis mutandis to the CDA during the operative period of Section 15-A.*

22. Under the MAO 1960, Sections 33 to 43 form Chapter-II Municipal Taxation, empowers a Municipal Committee, with prior sanction of the Government, to levy taxes, rates, tolls, and fees specified in the Third Schedule of the Ordinance. Sections 33 to 43 of the Municipal Administration Ordinance, 1960, outline the statutory framework for municipal taxation. Section 33 empowers a Municipal Committee, with prior sanction of the Government, to levy taxes, rates, tolls, and fees specified in the Third Schedule of the Ordinance. Section 34 mandates that every proposal for levying a new tax or modifying an

existing one must be published in the official Gazette and made available for public objection. Sections 35 to 43 provide procedural safeguards and detailed mechanisms for assessment, collection, and recovery of such taxes. These include provisions for notice and hearing, preparation of assessment lists, revision, appeals, and enforcement mechanisms like penalties or distress proceedings in case of default. The cumulative effect of these provisions ensures that the imposition of municipal taxes is legally sanctioned, publicly notified, procedurally fair, and administratively regulated under clear statutory authority.

23. The Third Schedule specifies 26 heads of taxes, including property tax, professional tax, advertisement tax, conservancy rate, water rates, school fees, and others. Nowhere does the schedule authorize the imposition of "easement tax" or "accessibility tax" or "right of way" charges. After the promulgation of ICT LGA 2015, municipal functions, including taxation, were transferred to elected local governments established under that law. Since Section 15-A of the CDA Ordinance was explicitly omitted, the delegation of municipal powers, including taxation, ceased to exist.

24. Therefore, CDA's continued imposition of "right to way tax" via SROs lacks statutory backing. This tax is neither enumerated under the Third Schedule of MAO 1960 (when CDA temporarily functioned as a municipal authority) nor is

it protected under Section 132(2) of ICT LGA 2015, which saved prior rules or actions taken lawfully under repealed statutes. Since the tax in question was never validly levied under the 1960 Ordinance, it cannot be protected under any savings clause.

25. Therefore, the CDA authorities, under the garb of Section 15-A read with Section 51, utilized the powers and functions provided under the Municipal Administration Ordinance, 1960, which is not permissible by any stretch of imagination. The concept of taxation for public purposes is to be seen differently through chosen representatives. Taxation must always serve public purposes. Even where statutes are silent, this principle is constitutionally inherent. In Association v. Topeka, 87 U.S. (20 Wall.) 655 (1874), the U.S. Supreme Court ruled that taxation to support private industry is not for a "public purpose":

> *"…They must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied… What lawfully pertains to this and is sanctioned by time and acquiescence of the people may well be held to belong to the public use…"*

26. This principle is applicable in Pakistan as well: tax must serve a public interest and fall within constitutional and statutory parameters. Any tax not fulfilling these requirements is subject to judicial review and liable to be struck down. As held in ***2018 CLC 54 SC AJ&K (Friends Technical Engineering Association, Muzaffarabad/***

Rawalpindi Vs Barrister Syed Iftikhar Ali Gillani)*.** It is a settled position in law that when the validity of imposition of municipality tax is challenged it can be objected on two grounds either under the statute the municipality was not empowered to impose such tax or the tax was not imposed for municipal functions, as held in ***1974 SCMR 440 (Messrs Karimi and Company v. The Karachi Municipal Corporation) and 2009 YLR 775 (ABN Amro Bank v. Karachi Water and Sewerage Board). Thus, when a court is reviewing the imposition of a new tax under its authority of judicial review, before striking down an imposition it has to bear in mind the above-enlisted conditions. Keeping in view the Third Schedule of MAO 1960 read with section 15-A of the CDA Ordinance 1960, it can be safely concluded that CDA was not empowered under the statute to levy 'ROW' tax under the garb of municipality tax.

27. Similarly, the concept of municipal function and local taxes has been provided in the more recent and special law, i.e. ICT Local Government Act, 2015. A specific procedure must be followed to impose any municipal tax, which is now outlined in the Islamabad Capital Territory Local Government Act, 2015. This procedure includes prior government approval, publication in the official Gazette, and adherence to the rules under Sections 88, 89, and 90 of the 2015 Act. However, this procedure was not adopted or followed by the Capital Development Authority (CDA). The

authority exercised by the CDA under the now-omitted Section 15-A of the CDA Ordinance, 1960, to perform municipal functions, including taxation, was drawn from the provisions of Sections 33 to 43 of the MAO 1960. This taxation power, however, was originally designed for elected Municipal Committees established under the MAO 1960. These committees, being elected bodies, represented the will of the people and were grounded in the constitutional principles of representation, as enshrined in Articles 77 and 140A of the Constitution of the Islamic Republic of Pakistan, 1973. In contrast, CDA is not an elected body, and any exercise of taxation authority by it must strictly adhere to both the substantive and procedural requirements set out in Sections 33 and 34 of the MAO 1960 requirements which were not followed in this case.

28. This Court has also been guided by the principle settled in ***PLD 2021 [Islamabad] 144 (MCI Vs. Chairman CDA)***, and holds the following rules and guiding principles for future reference as noted in para 38 of the referred case in the following manner:

1. The notification dated 17.12.2018 is illegal and void as no taxes proposals were issued nor even any objection were invited in terms of Section 88(4) of the ICT Local Government Act, 2015 neither public hearings were given before the imposition of levy of the property tax in Islamabad.
2. CDA has no jurisdiction or authority to impose the property tax or recover the property tax in any manner as it is the sole prerogative of the MCI under ICT Local

Government Act, 2015, hence any tax demand by CDA is illegal.

3. The tax proposal be prepared by MCI and objections be invited from the public through publication of notice in newspapers, whereafter a notification in terms of Section 88 of ICT Local Government Act, 2015 be issued in accordance with law within period of six (06) months positively.
4. All the areas of Islamabad Sectors, Societies, Rural Villages, Model Villages, the properties situated on the land of CDA be included in the notification by imposing the property tax in the Islamabad Capital Territory under the law after considering the concept of rating area, plot area, covered area and the services, which are required to be provided in those area.
5. The MCI after promulgation of the notice of the property tax shall provide the utility services within the Union Councils under the law, which includes the water, gas, electricity, roads, sanitation etc after preparation of different schemes.
6. The Federal Government shall establish the Local Government Fund for settlement of all the issues including the financial autonomy to the MCI, which have not been dependent upon the Federal Government or the CDA.
7. The property tax which has already been imposed under the previous regime within the urban areas of Islamabad Capital Territory shall be charged from all the residents till the new notification is issued under the law after adopting due procedure and the citizens of Islamabad shall pay the property tax in a manner prescribed under the previous law within the next six (06) months, failing which, the surcharge be imposed accordingly, except those areas which were included in the impugned notification for the first time.
8. The tax/funds collected by CDA under the property tax from any of the allottee within Islamabad Capital Territory, shall stand transferred to Metropolitan Corporation, CDA has no authority to use property tax in any manner, nor they are permitted to disburse the same to any other entity or the Government in any manner.

9. The property tax collected by CDA after promulgation of ICT, Local Government Act, 2015 exclusively falls within the jurisdiction of MCI, therefore, special audit be conducted by the Auditor General of Pakistan for the calculation of the tax received by the CDA till date, the same would be transmitted to MCI, in case the amount has been used by the CDA, the CDA authorities shall be liable to return the amount within period of one year from the passing of this judgment.

29. In the light of the foregoing principles, the issuance of SRO constitutes an illegal act and is unconstitutional when examined in the context of Article 77 of the Constitution, which mandates that taxation powers must be exercised with the authority of Parliament. Likewise, Article 140-A of the Constitution of Pakistan provides for the establishment of a local government system and the devolution of political, administrative, and financial powers and responsibilities to elected representatives of the local governments.

30. This concept has been explained and enforced through the ICT Local Government Act, 2015, which is the final authority to impose any charges, including but not limited to those provided in the Schedule of the Act. However, the concept of Right of Way (ROW) and access charges is not seen in the enforced Schedule under Section 88 of the Local Government Act, which deals with the concept of levying the taxes specified in the Schedule. It requires a prior proposal and approval of the tax by the local government to ensure that the proposal is reasonable and in accordance with the law. The use of the word "*reasonable*" by the legislature gives

an entirely different and harmonious construction favoring the general public of the area, who are the true owners of the local government system.

31. Therefore, without adopting the procedure under Section 88, no tax can be imposed, levied, or charged. Surprisingly, even after the enforcement of the ICT Local Government Act, 2015, the Federal Government has been negligent in holding the elected assembly of the local government to provide the people of Islamabad with true representation. For the last five years, the local government assembly has not been in session due to bad governance by the Federal Government and negligence on the part of political parties, who opposed the concept of the local government assembly. Decentralizing power to the grassroots level would result in National Assembly members no longer receiving development funds, which are intended solely for the local government representatives and the people of union councils or municipal corporations.

32. I have also examined the concept of procedural impropriety, where the CDA authorities failed to consider the law in its true perspective. This Court observed that the CDA Authority (Imposition of Taxes) Rules, 1981, provide a complete procedure and mechanism for the imposition of tax. Section 2(e) of the 1981 Rules defines "tax" to include any toll, rate, fee, or other imposition under the Ordinance. Section 2(b) defines "Ordinance" as the Capital Development

Authority Ordinance. Section 3 deals with the publication of a preliminary proposal, and Section 4 deals with objections and suggestions in respect of the proposals. However, none of these concepts were applied, and the SRO was issued in direct violation of all applicable laws.

33. This Court is also mindful of the fact that any vagueness or uncertainty in the legislative scheme defining any concept of levy will be fatal to its validity. There are two kinds of fee-imposing enactments recognized in various judicial pronouncements. One is based purely on the principle of quid pro quo, i.e., a charge payable for rendering specific services or extending a specific privilege, which the payer can avail subject to certain conditions also known as fee simpliciter as held in ***1999 SCMR 1402 (Collector of Customs and others v. Sheikh Spinning Mills)***. In such enactments, there must be a direct and immediate correlation in absolute terms between the service rendered and the fee charged.

34. The other kind of fee-imposing legislation is where cess is imposed as a compulsory exaction in the same manner as taxes, with the distinction that it is imposed for achieving a specific purpose promised in the enactment itself, which, when realized, would bring some benefit for the payer in the future, as held in ***2022 PTD 222 (M/s Attock Petroleum Limited Vs. National Highway Authority)***.

35. Therefore, the entire SRO is illegal. Even otherwise, the SRO is hit by the principle of irrationality, as the imposition of direct access and Right of Way charges from a major road to a petrol pump or CNG station *prima facie* points toward a levy imposed on commercial concerns. However, in the present case, the petitioners are residents of a private society, which is not a commercial entity. Thus, the inclusion of private societies is also a violation of the basic principle of public interest.

36. A comparison of the SRO and the legislative tools used therein, including the CDA Ordinance, 1960, and the Municipal Administration Ordinance, 1960, shows that after the enactment of the ICT Local Government Act, 2015, the concept of implied repeal and specific repeal applies, particularly to the extent of Section 15-A of the CDA Ordinance.

37. This Court has been guided by principles of statutory interpretation, which state that when a provision of a former statute is inconsistent and in conflict with a provision of a later statute, and the two cannot be reconciled or harmonized, then the provision of the earlier statute must give way to the similar provision in the later statute under the doctrine of implied repeal.

38. The necessary conditions for implied repeal of an earlier statute or provision by a later statute are: firstly, the two statutes cannot coexist; secondly, if standing side-by-side,

they would lead to absurd consequences; and thirdly, when the entire subject matter of the earlier statute or provision is taken away by the later statute as held in ***PLD 2006 SC 249 (Tanveer Hussain Vs. Divisional Superintendent, Pakistan Railways)***. This concept was further emphasized in ***PLD 2001 SC 169 (Mumtaz Ali Khan Rajban Vs. Federation of Pakistan)***, wherein it was held that repeal cannot be implied unless there is an express repeal of an earlier act by the later act or it is established that the two acts cannot stand together. Repeal by implication is possible if the provisions are plainly repugnant to a subsequent statute, if the two acts standing side-by-side would lead to wholly absurd consequences, or if the entire subject matter of the first act is taken away by the second act, which is visibly the case here.

39. Similarly, this Court has also been guided by the judgment reported as ***PLD 1973 SC 451 (Mehtab Khan Vs. Rehabilitation Authority)***, where the Supreme Court agreed that repeals by necessary implication apply to earlier laws on the same subject to the extent of their mutual inconsistency or repugnancy. The Court naturally leans against implying a repeal unless the two acts are so plainly repugnant to each other that effect cannot be given to both at the same time. Repeal will not be implied otherwise.

40. This Court has been guided by an earlier judgment reported as ***2020 CLC 731 (Market Committee, Islamabad***

Capital Territory Vs. Metropolitan Corporation Islamabad (MCI), wherein it was categorically held that the Municipal Corporation Islamabad (MCI) is authorized to levy any amount, fee, or tax strictly in accordance with Schedule Part-II of the ICT Local Government Act, 2015, and subject to the conditions laid down therein. Consequently, no other authority, including the Capital Development Authority (CDA), is legally empowered to collect such charges under any provision of law.

41. The principles enunciated in the aforementioned case are grounded in the doctrine of statutory interpretation, particularly the distinction between general and special laws. Where both general and special laws are applicable to a subject matter, the provisions of the special law prevail over those of the general law to the extent of their applicability. Accordingly, the powers claimed under the impugned SRO, being of a general character, are superseded by the special statute i.e. ICT Local Government Act, 2015. This principle must be applied strictly, as affirmed in ***PLD 2003 SC 828 (Dur Muhammad Vs. Abdul Sattar)***.

42. Essentially, the imposition of direct taxes, Right of Way charges, or access charges by the CDA under the CDA Ordinance, 1960 based on municipal functions derived from the Municipal Administration Ordinance, 1960 without following the statutory procedure outlined in Sections 88, 89, and 90 of the ICT Local Government Act, 2015, is unlawful.

43. The entire scheme of imposing such charges without approval from the Local Government Assembly, as mandated under the ICT Local Government Act, 2015, is alien to the statutory framework and not protected under Article 77 read with Article 140A of the Constitution of the Islamic Republic of Pakistan, 1973. Furthermore, there exists no legal concept of "Right Of Way" or "access charges" available to the CDA. There is no precedent for such levies in the past 60 years. The CDA Ordinance, 1960, was enacted for the establishment of the Federal Capital and its development. However, with the evolution of law and governance, the CDA Ordinance has now lost its operative relevance.

44. It is now time for the Federal Government to take appropriate steps to terminate the functioning of the CDA in terms of Section 52 of the CDA Ordinance, 1960, and to formally dissolve the Authority, as its original mandate has been fulfilled. The entire administrative, regulatory and municipal framework of Islamabad Capital Territory is now governed under the ICT Local Government Act, 2015, which is a special legislation enacted to regulate local governance through elected representatives.

45. In view of the above discussion, both the writ petitions are **ALLOWED**. The SRO No.576 (I)/2015 dated 09.06.2015 is declared illegal, *ultra vires*, without lawful authority or jurisdiction, therefore, same is hereby **STRUCK-DOWN**. However, any amount collected from any person or entity

under the said SRO is liable to be refunded, and all actions taken pursuant thereto are declared void and without legal effect. Accordingly, the Federal Government is directed to initiate and conclude the process for the dissolution of the CDA, and to transfer all powers, assets, and functions to the Metropolitan Corporation Islamabad (MCI). This transition shall ensure that the Islamabad Capital Territory is administered under a transparent, accountable, and lawful municipal framework, and that the rights of its citizens are duly protected under the law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

RAMZAN