JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.464 of 2025

National Police Foundation

Versus

Capital Development Authority and others

Petitioner by:	Mr. Baber Saeed Butt, Advocate.
Respondents/CDA by:	Mr. Muhammad Nazir Jawad, Advocate.
Date of Hearing:	**18.06.2025.**

INAAM AMEEN MINHAS, J:- Through instant writ petition, the petitioner has assailed the orders dated 01.08.2023, passed by respondent No. 3/Deputy Commissioner, CDA, whereby on the complaint of CDA u/s 46 & 49 of the CDA Ordinance, 1960 and clause 5(i) & (ii) of the ICT Zoning Regulations, 1992 fine of Rs.5,000,000/- (Five Million) was imposed upon the petitioner under sections 46 and 49-C of the Capital Development Authority Ordinance, 1960, along with directions to halt alleged illegal constructions and encroachments alongside the Nullah in Sector E-11, Islamabad and 10.10.2024 passed by respondent No. 2/Commissioner, ICT, whereby the appeal filed by the petitioner against the order of respondent No.3 dated 01.08.2023 was dismissed.

2. Brief facts are that Town Planner (Housing Society) CDA, Islamabad forwarded a complaint dated 04.01.2022 to respondent No.3 alleging therein that the petitioner had violated the CDA Ordinance, 1960, the ICT Zoning Regulations, 1992, and the approved Layout Plan of the housing scheme by unlawfully constructing buildings and structures alongside a Nullah in Sector E-11, Islamabad, in the housing scheme sponsored by the petitioner. It was further alleged that such

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unauthorized development posed a serious threat to the lives and properties of the residents due to the increased risk of urban flooding. The CDA had earlier issued letters dated 30.07.2021 and 04.01.2022, directing the petitioner to remove the violations, but no compliance was made. Respondent No.3 issued a notice on 11.01.2022 followed by a show-cause notice on 07.02.2022. In response, the petitioner appeared and submitted a written reply denying all the allegations. After hearing both parties, respondent No.3 passed the impugned order dated 01.08.2023, concluding that the petitioner was indeed engaged in illegal construction alongside the Nullah in contravention of applicable laws. Consequently, a fine of Rs.5,000,000/- (Five Million) was imposed on the petitioner with direction to the Director of Housing Societies and the Director of Enforcement, CDA, to take necessary action to halt the unlawful development and construction near the Nullah. Feeling aggrieved from the said order, the petitioner filed an appeal before respondent No.2, which was dismissed vide the impugned order dated 10.10.2024, hence, this petition.

3. The learned counsel for the petitioner contended that the complaint dated 04.01.2022 forwarded by Town Planner (Housing Society) CDA, Islamabad to respondent No.3 was vague and lacked any specific allegations against the petitioner; that despite generalized nature of the complaint, respondents No. 2 and 3 acted on it without due scrutiny and passed the impugned orders that are factually and legally flawed; that the petitioner before establishing the housing scheme, had already obtained the required NOC and approval of the Layout Plan (LOP) from respondent No.1. He further contended that the petitioner denied any construction on the land of the Nullah and the respondents did not identify any specific illegal structure yet, a substantial fine was imposed on assumptions without concrete evidence and that the impugned orders are based on misreading and non-reading of the material available on records, therefore, are liable to be set aside.

4. On the other hand, the learned counsel for the respondents contended that the petitioner in Sector E-11 had violated ICT Zoning

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Regulations, 1992 and approved Layout Plan by constructing illegal buildings alongside Nullah, therefore, management of the petitioner was directed to remove all illegal and unauthorized buildings constructed alongside Nullah but the petitioner did not remove the same, therefore, the complaint was made to respondent No.3 and that the impugned orders have been passed in accordance with law.

5. I have heard the arguments of the learned counsel for the parties and gone through the record.

6. As per record, a complaint for violation of the CDA Ordinance 1960 and the ICT Zoning Regulations 1992 was filed against the petitioner on 04.01.2022 in respect of illegal construction of structures and buildings alongside the Nullah in Sector E-11. Before passing of the impugned order dated 01.08.2023 respondent No.3 issued a notice dated 11.01.2022 to the petitioner to stop illegal construction/structure followed by show cause notice dated 25.01.2022 and final show cause notice dated 07.02.2022. Contents of the complaint dated 04.01.2022 are as under:-

> *"I am directed to inform that the National Police Foundation situated in Sector E-11 has violated CDA Ordinance, 1960, ICT Zoning Regulations, 1992, and approved Lay-Out Plan (LOP) by constructing illegal structures and buildings along-with the Nullah. Thus, this situation creates threat for lives and properties of the residents of the said scheme/society from the urban flooding. Furthermore, this office has already directed National Police Foundation, Sector E-11, Islamabad vide letter No.CDA/PLW/IHS(90)/2021/31 dated 30th July, 2021, and letter No.CDA/PI.W/HS(90)/2021/01 dated 4th January, 2022. It is pertinent to mention that NPF did not head to the serious matter.*
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> *2. Above situation in view, it is requested to take cognizance of the above mentioned offence under CDA Ordinance 1960, and ICT Zoning Regulations 1992 in the best public interest."*

7. The above referred complaint dated 04.01.2022 is vague and lacks clarity as it does not point to any particular structure or location

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where the petitioner is alleged to have carried out unauthorized construction near the Nullah in E-11, Islamabad. This complaint contains broad allegations without identifying any specific act of violation. More importantly, CDA did not provide any supporting evidence such as a detailed site map, on-ground inspection report or photographs to demonstrate the exact nature and location of the supposed encroachments. In the absence of such concrete material, it becomes impossible to establish a clear link between the alleged illegal constructions and the petitioner.

8. Although the petitioner denied the allegations and submitted a written reply in response to the show-cause notices but neither respondent No.3 nor the CDA appears to have conducted any thorough inquiry or verification to determine the truth of the matter or to establish the petitioner's responsibility for the alleged violations. No site inspection, technical assessment or independent verification was carried out to substantiate the claims made in the complaint. It is a well-established principle of law that no adverse order, especially one involving penalties or coercive consequences, can be passed merely on assumptions or unverified claims. Such actions must be grounded in credible, objective evidence and follow a fair and transparent process. Administrative decisions must be lawful, reasonable and proportionate to the alleged violation and supported by clear justification. In this case, the absence of such procedural safeguards reflects a serious lapse and undermines the legality of the impugned orders.

9. The process leading to the imposition of the fine on the petitioner lacks fairness, transparency and adherence to the principles of due process. Before passing such a serious and punitive order, respondent No.3 was legally bound to conduct a proper inquiry, allowing the petitioner to participate meaningfully in the proceedings. However, no such inquiry was held. The petitioner was not allowed to question any witnesses, review or challenge the evidence relied upon or request an independent verification of the alleged violations. These are basic safeguards under the principles of natural justice, which require that a

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person be given a fair opportunity to defend himself before any adverse action is taken. The absence of these essential procedural rights weakens the proceedings' credibility and renders the entire process legally flawed and unjust.

10. It is important to note that an officer of CDA during the proceedings admitted that the Nullah in question is situated outside the land acquired by them. This admission raises a profound and fundamental question whether CDA has the legal authority to regulate construction activity or impose penalties on the land that does not fall within its jurisdiction. Jurisdiction is the foundational basis for any administrative action and without it, the measures taken by the authority become legally doubtful. Suppose CDA lacks ownership or regulatory control over the land, where the alleged violations occurred in that case, its actions, such as issuing notices, conducting proceedings or imposing fines are procedurally improper and legally unsustainable. Any administrative step taken beyond the scope of lawful authority undermines the rule of law and cannot be upheld.

11. CDA itself has acknowledged that another private developer, namely Capital Residencia Apartments has undertaken construction over the Nullah. In such circumstances, holding the petitioner responsible for acts allegedly committed by a third party is legally unjustified. Under settled legal principles, liability cannot be shifted onto someone else without proof of their involvement or complicity. So far, no evidence has been presented to link the petitioner to the alleged encroachment. Additionally, the matter regarding these constructions is already under consideration before the Civil Court, where the issue of responsibility is yet to be decided. Since no adverse findings have been recorded against the petitioner in that ongoing litigation, it would be premature and unlawful to impose penalties or take coercive action against it based on unproven allegations relating to the conduct of another entity.

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12. CDA has failed to present any clear or concrete evidence showing that the petitioner has directly committed any violation of law. Instead, the entire case relies on assumptions, with no specific findings or proven wrongdoing linked to the petitioner. Moreover, CDA's actions reflect a misapplication of its authority, especially since doubts remain about its jurisdiction over the area in question. When administrative measures are taken without proper investigation and outside the bounds of lawful authority, they cannot be sustained in the eyes of the law.

13. In view of the above discussion, the instant writ petition is **allowed**, the impugned orders are set aside. The matter is **remanded** to respondent No.3 to decide the complaint dated 04.01.2022 within a period of two months after conducting a detailed inquiry, associating all relevant stakeholders, including the petitioner and other private developers active in the area. During the inquiry, CDA shall identify the illegal constructions or encroachments and determine, who is responsible based on documentary evidence also. The petitioner shall be granted fair hearing and allowed to submit any documentation including NOC, approved Layout Plans and site maps.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 17.07.2025

JUDGE

R.Anjam

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