JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 2913 of 2025

Sajid Yaqub

VERSUS

Defence Housing Authority through its Administrator, etc.

PETITIONER BY:	Petitioner in person
RESPONDENT BY:	Raja Muhammad Masood, Advocate
DATE OF HEARING:	29.09.2026

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AYYAZ SHAUKAT, J:- Through the instant writ petition, the petitioner, being a tenant of the first floor of House No. 36, Street No. 6, Sector B, DHA Phase-II, Islamabad, has assailed the disconnection notices dated 20.08.2024 and 16.06.2025 issued by the Defence Housing Authority Islamabad (the **"DHA"**), whereby utility charges were demanded from him. He also seeks a declaration that Regulations 8.41 and 12.3 of the DHA Islamabad and DHA Rawalpindi Revised Byelaws & Regulations 2022 (the "**Regulations 2022**") are ultra vires, together with a direction for the refund of the charges recovered from him.

2. The facts, briefly stated, are that the petitioner, a retired government official, has been residing on the first floor of the said house since 15.02.2016 under a tenancy granted by respondent No. 2, Lt. Col. (R) Farooque Akhtar, who owns and occupies the house himself. The written tenancy agreement has since expired and, according to the petitioner, the tenancy continues on an oral basis. DHA maintains a separate tenant account in the name of the petitioner (MS No. TNT/1574). The petitioner discharged the monthly charges billed on that account until mid-2019. He

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then ceased to make payment, on the premise that these charges are the sole liability of the owner. Thereafter, DHA has issued several notices to him. By notice dated 17.11.2022, it demanded Rs.1,170,866/- as dues outstanding since July 2019, and characterised the non-payment as "a clear violation of your contract agreement with owner of house". By notice dated 20.08.2024, it demanded Rs. 7,360,963/- for the period from August 2019 to July 2024. By the latest notice dated 16.06.2025, it demanded Rs.530,262/- and warned that all utility services would be disconnected without further notice. The petitioner wrote to the Administrator, DHA, on 20.09.2022, 04.10.2022, 21.11.2022, 01.02.2023 and 30.06.2025, seeking the legal basis and the calculation of these charges. He further alleges that in May 2025 the water supply of the house remained suspended for over a fortnight, that on 29.05.2025 the electricity cable of the house was disconnected at the distribution point by the staff of DHA, and that it was damaged on the following night.

3. The petitioner, appearing in person, submits that DHA was not empowered to recover service charges until the Defence Housing Authority Islamabad Act, 2013 **(the "Act")** was amended in 2023, and that even at present these charges are recoverable from the owner alone. He argues that Regulation 8.41 of the Regulations 2022 wrongly shifts this burden to tenants and interferes with private tenancy agreements, in contravention of Sections 20 and 21 of the Act and the Islamabad Rent Restriction Ordinance, 2001, and contrary to the practice of the Capital Development Authority and other housing authorities. He further contends that the owner is already paying the charges of the house, with the result that, according to him, the same services are being charged for twice; that the demand is unexplained and his letters have remained unanswered; and that the disconnection of water and electricity is unlawful and without lawful

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authority. He also challenges Regulation 12.3 and certain other regulations, and seeks the refund of the charges paid by him.

4. Per contra, learned counsel for DHA contends that the petition is not maintainable, inasmuch as no fundamental right has been infringed and disputed questions of fact are involved. He submits that the petitioner is availing the services of DHA without making payment therefor, and relies on Regulation 8.41.3, which requires the owner to incorporate in the rent agreement a clause for "recovery of utility charges by the tenant to DHA". He adds that the no objection certificate issued for tenants makes it clear that DHA does not enforce agreements between owners and tenants, and that such disputes fall within the domain of the rent court. He, therefore, prays for dismissal of the petition.

5. I have heard the petitioner in person and learned counsel for DHA, and have examined the available record with their assistance.

6. A perusal of the record reveals that the petitioner has raised several grievances of differing nature. His principal contention is that DHA is not competent to bill a tenant. That question shall be considered first, followed by the amount of the demand, the allegation of double billing and the incidents of May 2025. At the outset, the preliminary objection raised by DHA requires consideration. DHA is a body corporate established under Section 3 of the Act and exercises the powers conferred thereunder. The principles governing judicial review of the actions of a statutory authority were considered by the Hon'ble Supreme Court in ***Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed*** **(2013 SCMR 1707)**. DHA, being a body corporate established under the Act, falls within the meaning of "person" under Article 199(5) of the Constitution, and its exercise of the statutory powers under challenge is amenable to judicial review. Article 199(1)(a)(ii) accordingly empowers this Court to examine

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whether the impugned action, taken in the exercise of those statutory functions, is without lawful authority and of no legal effect. Infringement of a fundamental right is not a prerequisite for the exercise of that jurisdiction. The preliminary objection is, therefore, not sustainable insofar as it concerns the challenge to DHA's statutory authority to raise the demand. Whether the disputed factual questions can be adjudicated upon in these proceedings is a separate matter, which is considered below.

7. The power of DHA to provide services and to charge for them is derived from Section 6(2) of the Act. Clause (e) empowers the Executive Board to:

> *"carry out, maintain, arrange, manage and provide all facilities, services and utilities, including water, electricity, gas and sewerage in schemes in the specified area so as to ensure that the property is maintained up to the required standards for benefit of the residents;"*

Clause (g), as substituted by the Defence Housing Authority Islamabad (Amendment) Act, 2023 (Act XL of 2023), empowers it to "*impose, vary and recover any fee or charges for rendering any service within any scheme in the specified area including registration fee, transfer fee, management fee, development or re-development charges or additional development charges and maintenance fee, dues and charges, etc.*"

8. The power to provide services must be distinguished from the power to impose and recover particular charges. Before the amendment of 2023, Section 6(2)(g) referred to development charges and transfer fees; its substituted text expressly provides for fees and charges for rendering services. The earlier provision cannot, therefore, be treated as identical in scope to the amended provision. Whether the charges demanded for earlier periods were lawfully recoverable requires examination of the statutory and regulatory provisions then in force. DHA shall identify that basis while

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deciding the petitioner's objections. The petitioner's payments from 2016 to 2019 do not, by themselves, establish the legal authority for the demand.

9. It is necessary to ascertain the nature of these charges. The bills on record disclose the heads under which the petitioner is charged. These comprise security, garbage collection, mosque, water supply, water bowser, home maintenance, and park and sports charges. On their face, these heads relate to services and amenities rather than a tax on ownership of the property. Their description as service charges does not, however, dispense with the need to establish the legal authority for each charge. The Hon'ble Supreme Court explained the difference between a tax and a fee in ***Collector of Customs v. Sheikh Spinning Mills*** **(1999 SCMR 1402)** in the following words:

> *"Tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered whereas Fee may be generally defined to be a charge for a special service rendered to individuals by some governmental agency."*

A fee, therefore, follows the provision of services. Water is consumed, garbage is generated and security is enjoyed by the person who resides in the house. When the owner lets out his house, it is the tenant who receives these services. The receipt of services by a tenant does not, by itself, establish liability for every charge demanded. Liability and the basis of assessment must be determined under the applicable law and regulations. Nor does assessment by reference to plot size, by itself, convert a service charge into a property tax.

10. Regulation 8.41 of the Regulations 2022 falls to be construed in this light. The printed copy annexed to the reply of DHA reads as follows:

> *"8.41 Imposition of Utility Bills. The utility bills will be issued as soon as the member applies for occupation/partial occupation or occupies/partially occupies the house or shall the process of completion certificate. Utility charges shall be imposed on the*

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constructed house. For the purposes of imposition of utility charges, house shall be bifurcated two categories as under:-

8.41.1 House without tenant.

8.41.2 House with tenant.

8.41.3 Owner of the house shall be bound to insert "recovery of utility charges by the tenant to DHA" in the rent agreement, copy of which shall be submitted in Security Dte for obtaining NOC on prescribed form. Owner shall also obtain and affidavit from his tenant regarding recovery of utility charges on standard prescribe format."

The version reproduced in the petition is differently worded and additionally provides that the owner shall remain liable if the tenant fails to pay. Both versions contemplate payment by the tenant in the first instance. The difference between them nevertheless requires DHA to identify the authenticated version applicable to each period covered by the demand. Whether, and to what extent, the owner also remains liable is a matter which DHA is required to address while deciding the objections of the petitioner.

11. The regulation requires an owner letting out a house in the scheme to incorporate a stipulation for payment of utility charges by the tenant. The owner is required to record in the rent agreement that the tenant will pay the utility charges to DHA, and the tenant is required to furnish an affidavit to that effect, before a no objection certificate is issued. The record does not disclose whether any such clause or affidavit exists in the case of the petitioner, whose written agreement has expired. The existence and effect of any such stipulation or affidavit, and the provision applicable to this tenancy, require examination of the relevant record. The parties remain at liberty to settle the rent and all other terms of their contract. The regulation contemplates payment by the tenant, but the validity of that arrangement must be distinguished from its application to the petitioner's tenancy and the periods in dispute. Under Section 6(2)(b) of the Act, DHA is mandated

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to "maintain, manage and regulate any scheme in the specified area". A requirement concerning payment for services in a rented house is related to the management of the scheme. Such a requirement is not invalid merely because it affects a term of the tenancy, provided it remains within the parent statute and does not conflict with the applicable rent law.

12. The petitioner relies on Section 20, which requires that the regulations shall not be inconsistent with "any other laws", and on Section 21, which provides that the Act shall operate "in addition to and not in derogation of any other law". These provisions do not advance his case unless he can demonstrate a law with which Regulation 8.41 conflicts. Although the petitioner refers to the Islamabad Rent Restriction Ordinance, 2001, he has not demonstrated a specific statutory conflict with the requirement under challenge. A regulation framed under a statute cannot be declared invalid on a bare plea of inconsistency, without identifying the specific provision with which it conflicts. The grounds advanced do not establish that the requirement in Regulation 8.41 for payment of utility charges by a tenant is ultra vires the Act. The challenge fails to that extent. This conclusion does not determine the applicability of the regulation to earlier periods or establish the petitioner's liability for the amounts demanded.

13. The petitioner also asserts that the owner has been paying the charges of the house since 2019. The matter is not free from complexity, inasmuch as the owner resides on one floor of the same house and the petitioner on the other. If the house is billed as one unit, and the owner pays for it, a second bill to the tenant for the same services would amount to a double charge. If, on the other hand, the owner pays only for his own portion, his payments would not discharge the liability in respect of the share of the tenant. A further question arises in respect of the period before

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the Regulations 2022 came into force. The Regulations 2022 cannot, merely by their later promulgation, establish liability for earlier periods. DHA shall identify the provisions and approved charges applicable to each such period. In any event, a fee is a payment for a service. DHA can recover the charge for a service only once, from the person liable under its regulations. It cannot recover the same charge for the same service, for the same house and the same month, from both the owner and the tenant. Whether the owner has in fact paid, for which portion, heads and period, and on what basis the petitioner was billed for each period, are, however, questions of fact. Their determination depends upon the accounts of DHA, which are not before this Court. The Hon'ble Supreme Court has reiterated in ***Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa v. Fayyaz Dawar*** **(2023 SCMR 1442)** that *"disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction"*. This Court cannot, therefore, adjudicate upon the accounts between the parties.

14. That, however, does not leave the petitioner remediless. Where DHA raises a demand under the Act, Section 24-A of the General Clauses Act, 1897 obliges it to act reasonably, fairly and justly, and to furnish reasons for its order. The Hon'ble Supreme Court expounded this duty in ***M/s Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi*** **(1998 SCMR 2268)** as follows:

> *"The doctrine has further been recognized and augmented by the recent insertion of section 24-A in the General Clauses Act, 1897, which declares that where a statute confers a power to make any order or to give any direction to any authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of purpose of the enactment."*

The petitioner repeatedly called upon DHA to furnish the basis and calculation of the demand. The impugned notices merely refer to "a clear

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violation of DHAI-R byelaws", without specifying any byelaw. The notice dated 17.11.2022 relies instead upon the petitioner's "contract agreement with owner of house", although DHA's own no objection certificate states that DHA does not enforce such agreements. DHA must identify the legal basis on which it claims payment directly from the tenant. A stipulation between the owner and tenant, without more, does not establish DHA's authority to recover the demand. In the circumstances of this case, DHA shall furnish the basis and calculation of the disputed demand and decide the petitioner's objections by a reasoned order before taking coercive action to enforce that demand.

15. As regards electricity, it does not figure among the heads of the bills of DHA. According to the petitioner, it is metered and billed by the Islamabad Electric Supply Company, and this assertion has not been controverted by DHA. DHA has not pointed to any law, or any term of its arrangement with that company, that authorises it to disconnect an electricity connection for the recovery of its own charges. Its dues can only be recovered by lawful means. The incidents of 29.05.2025 and 30.05.2025, including the alleged damage to the cable, and the complaint of inflated electricity bills, however, raise disputed questions of fact, including allegations that may require investigation by the competent authorities. The petitioner may pursue his remedies before the proper forums, and I refrain from expressing any opinion thereon. The alleged cut-off of water in May 2025, and the charge for water bowsers in the bill for that month, are matters which DHA shall consider while settling the account.

16. I now turn to the remaining claims of the petitioner. Besides Regulation 8.41, he has also assailed Regulation 12.3, which requires a no objection certificate for renting a house, and some other regulations dealing with the movement of belongings through the gates, fines for traffic

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violations and disputes with contractors. The petitioner has been residing in the house since 2016. Nothing on the record indicates that he has ever been refused a no objection certificate, fined for a traffic violation, or stopped at the gate with his belongings. The regulations on contractors do not concern him at all. His challenge to these regulations is, therefore, not founded on any legal injury to himself. It is premised on a general objection to the manner in which DHA regulates its schemes. Article 199(1)(a) of the Constitution, however, can be invoked only by an aggrieved person, that is, a person whose own legal right or interest has been affected by the action complained of. This principle was laid down by the Hon'ble Supreme Court in ***Mian Fazal Din v. Lahore Improvement Trust*** **(PLD 1969 SC 223)**. This Court does not examine the validity of a regulation in the abstract, at the instance of a person who has not been aggrieved by it. The challenge to these regulations cannot, therefore, be entertained. The claim for refund raises a different issue. The petitioner paid the charges from 2016 to 2019 on his own account, for services received by him. Whether any part of that amount was not payable by him, or was also paid by the owner for the same services, is a question of fact. Its determination requires examination of the relevant accounts and, where necessary, evidence. No order for refund can be made on the present record. The petitioner may pursue the appropriate remedy before the competent forum.

17. For the foregoing reasons, the challenge to Regulation 8.41 is rejected to the extent discussed above, while the challenges to the remaining regulations are not entertained, as the petitioner has failed to establish any legal injury arising therefrom. The prayer for refund is also declined in these proceedings. As regards the disputed demand, the petition is **disposed of** with a direction to DHA to consider the petitioner's objections, afford him an opportunity of hearing, and decide the matter by a reasoned order in accordance with law.

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(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **12.10.2026.**

JUDGE

Saeed.

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