*Form No: HCJD/C-121.*
*JUDGEMENT SHEET*
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 1571 OF 2011**

Azhar Hussain Shah and others

*Vs*

Capital Development Authority through its Chairman & another.

PETITIONERS BY: Raja Muhammad Aleem Khan Abbasi, Advocate for the petitioners in their respective petitions.

Mr. Zulfiqar Ahmed Abbasi, Advocate for the petitioners in W.P 1571 of 2011.

Ms. Qudsia Kazmi and Ms. Azra Batool Kazmi, Advocates for the petitioners in W.P Nos. 1571/2011, W.P 3624/2014 and W.P No. 1910/2023.

Mr. Waqas Ahmed Abbasi, Advocate for the petitioner in W.P No.1540/2023.

Mr. Zubair Aslam Ghuman, Advocate for the petitioner in W.P No.2338/2014.

Mr. Shahid Munir, Advocate for the petitioners in W.P 1571 of 2011.

Mr. Junaid Ahmed Qureshi and Mr. Haseeb Hassan, Advocates for petitioners No.12 & 13 in Writ Petition No. 1571 of 2011.

Mr. Jan Muhammad Khan and Mr. Zia-ur-Rehman Khan, Advocates for petitioners No. 14 and 15 in Writ Petition No.1571 of 2011.

Mr. Akseer Ahmed Abbasi, Advocate for the petitioners in Writ Petition No.4049 of 2013.

Ms. Rafia Kazmi and Agha Syed Muhammad Murtaza Moosvi, Advocates for the petitioners in Writ Petition No.2678 of 2014.

Mr. Adil Aziz Qazi, Advocate for the petitioner in Writ Petition No. 2477 of 2018 and Criminal Original No. 199-W of 2022 and for the appellant in R.F.A No. 269 of 2021.

Raja Hamza Anwar, Advocate for the petitioners in Writ Petition No.2671 of 2015.

Syed Nayab Hassan Gardezi and Mr. Arif Khan, Advocates for the petitioners in Writ Petition No.2152 of 2009.

Petitioner in person in W.P No. 2949/2012
Petitioner No. 14 in person.

RESPONDENTS BY: M/s Amir Latif Gill, Rizwan Ahmed and Ms. Sabeen Fahim, Advocates for CDA.

DATE OF HEARING: 30.10.2024.

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***BABAR SATTAR, J.***- This judgment will dispose of the afore-titled petition as well as the petitions listed in Annexure-A as they involve similar questions of law emanating from the same fact pattern.

**The grievance in brief and relevant factual background**

2. The petitioners are aggrieved by the inaction of Capital Development Authority **("CDA")** in compensating the petitioners for their Built-Up-Properties **("BUPs")** acquired by CDA pursuant to Compensation Awards dated 23.07.1980, 05.09.1982 and 01.10.1985 **("Compensation Awards")**, which were further amended through Review Orders dated 29.12.1987, 05.11.1989, 18.09.1990, 07.10.1990 and 23.10.1990 **("Review Orders"**, together with Compensation Awards, (**"Awards")**.

3. CDA acquired land in exercise of authority under Section 25 of the Capital Development Authority Ordinance, 1960 **("CDA Ordinance")** that formed part of the Specified Area in terms of Section 3 of the CDA Ordinance. To compensate the affectees, an award was announced on 22.02.1969, which only valued the agricultural land and did not value the

BUP, as the occupants of such property resisted the measurement of their BUP. Subsequently, as CDA managed to measure the property built on the land already acquired under the 1969 award, it issued three Compensation Awards for the affectees of acquisition of BUP alone. There remained individuals who were aggrieved by the Compensation Awards and sought its review for inclusion of their names within the list of affectees. This was done through the Review Orders, and the name of additional affectees, including, *inter alia,* some of the petitioners, were included as affectees of acquisition of BUP, who were entitled to compensation in terms of the Compensation Awards. Some affectees impugned award dated 01.10.1985 before Commissioner CDA, who found that the Compensation Award dated 01.10.1985 was not reasoned and remanded the matter back to DC CDA to determine the entitlement of the affectees to compensation, as well as the quantum of the compensation. The matter was then decided by DC CDA by order dated 07.01.1988, re-affirmed the quantum of compensation as determined in Compensation Award dated 01.10.1985. It was after this that additional affectees sought the inclusion of their names for grant of compensation, for acquisition of their BUP, over the land acquired by CDA by virtue of the 1969 award. And the names of such additional affectees were included through the Review Orders. The matter came to rest as far as the affectees were concerned, in terms of who all were entitled to compensation. The affectees, however, resisted giving up possession of the BUP and entered into negotiations with CDA authorities for allotment of plots in lieu of monetary compensation granted through the Awards. CDA constituted a Committee that held a meeting with affectees of village Bhaika Syedan on 14.01.1990. And such Committee accepted a demand by the affectees that descendants of Baba Muzammil Shah would be granted plots in Sector F-11 in lieu of compensation. And CDA would prepare a list of the direct

descendants of Baba Muzammil Shah for such purposes. The minutes of meeting issued by CDA through memorandum dated 17.01.1990 document such discussions. It is in view of such discussions and assurances made by the Committee constituted by CDA (that direct descendants of Baba Muzammil Shah would be allotted plots in Sector F-11) that the petitioners are seeking the issuance of allotment letters for plots as compensation for acquisition of their BUP. Notwithstanding such discussions and representations, the Awards themselves (together with the monetary compensation they awarded) were never amended or reviewed, and were also not challenged by the petitioners and consequently attained finality.

4. CDA, on the other hand, was aggrieved by the Review Orders. It insisted that the Review Orders were a product of fraud and were a consequence of employees of CDA, including Deputy Commissioners CDA, colluding with those claiming to be affectees, who were not residing in BUP built over land acquired through the 1969 award, but had either built structures on land acquired by CDA after such acquisition or were not related to any BUP on the acquired land at all. CDA took disciplinary action against some employees, including a DC CDA. The payment of compensation to beneficiaries of the Awards also became the subject-matter of an investigation conducted by NAB and subsequently the subject-matter of an accountability reference. The relevant DC CDA was terminated by CDA for having issued a fabricated Review Order. This termination was set aside by the Federal Services Tribunal **("FST")** and FST's decision was upheld by the Supreme Court. Similarly, the allegation of corruption that formed part of the accountability reference also made no headway and the allegation could not be proved. Consequently, the accused public officials were acquitted by

the Accountability Court and appeals against such orders were also dismissed.

5. It is in this backdrop that the petitioners are seeking allotment of plots in lieu of compensation under the Awards on the one hand, and CDA continues to insist that the petitioners are not real beneficiaries of the Awards as their inclusion in the list of beneficiaries is a consequence of collusion and fraud.

**Petitioners' Arguments.**

6. Given the number of petitioners' counsels, and in the interest of economy, this Court will summarize the arguments made on behalf of the petitioners together. Learned counsels for the petitioners argued that the Review Orders were never set aside and consequently the entitlement of the petitioners whose names had been included in the list of beneficiaries of the Awards had attained finality. CDA could not deny grant of compensation to the petitioners merely on the basis that inclusion of their names in the list of beneficiaries of the Awards had remained the subject-matter of a criminal investigation, when such charges were never proved in a Court of law. Once the entitlement of the petitioners to be compensated under the Awards was established, the form of compensation would need to be determined in view of the representations made by CDA to the affectees in meetings held in the year 1990. The minutes of such meetings reflected that the Committee constituted by CDA Board had assured the beneficiaries of the Awards and descendants of Baba Muzammil Shah, including some of the petitioners, that they were entitled to award of plots as compensation for acquisition of BUP in Sector F-11. It was submitted that CDA enacted the Islamabad Displaced Person Rehabilitation Policy, 1984 **("Rehabilitation Policy 1984")**, which provided in Clause 4 that where only BUP was acquired from affectees,

residential plots were to be offered to them as compensation for their permanent rehabilitation. It was submitted that as this policy was given effect on 01.10.1984, the petitioners who were beneficiaries under the Compensation Award of 1985 would be entitled to grant of residential plots. It was the petitioner's case that the Rehabilitation Policy 1984 was replaced by the Islamabad Displaced Persons Rehabilitation Policy, 1996 **("Rehabilitation Policy 1996")**, which similarly provided for grant of residential plots for affectees whose BUP had been acquired and who had not been compensated. The right of affectees, whose BUP had been acquired, to be granted residential plots was then documented as part of the CDA Land Acquisition and Rehabilitation Regulations, 2007 **("Rehabilitation Regulations 2007")**, which recognized the right of a landless person, whose dwelling house had been acquired, to be allotted a residential plot under Rule 11 of the Rehabilitation Regulations, 2007. They further submitted that the latest legal instrument was the Rehabilitation Policy Framework approved on 03.01.2023 **("Rehabilitation Policy Framework 2023")**, which acknowledged that package deals would be honored and outstanding rehabilitation benefits would be released in line with Clauses 4, 7 and 8 of the Rehabilitation Policy, 1996, read with package deals for specific mouzas. It was submitted that once the entitlement of petitioners to compensation under the Awards was recognized, they were entitled to be compensated by grant of residential plots in accordance with the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007, and the Rehabilitation Policy Framework 2023. Learned counsels for the petitioners submitted that grant of alternate land as compensation for land acquisition was recognized in terms of Section 31(1) of the Land Acquisition Act, 1894 **("Land Acquisition Act")**, which was implicitly incorporated under Section 2(k) of the CDA Ordinance for purposes

of determining market value of land acquired. It was further submitted that in view of the long-standing departmental practice of grant of land as compensation for BUP, the petitioners had legitimate expectancy that they would be granted such benefit. In this regard reliance was placed on ***Noman Ahmed and others vs. Capital Development Authority and another*** **(PLD 2021 Islamabad 75),** ***Mst. Asiya Ashraf Chaudhary vs. Government of Punjab and others*** **(2020 CLC 503 [Lahore]),** ***Mst. Nasreen Akhtar and others vs. Province of the Punjab through Collector, Lahore and others*** **(2010 YLR 324 Lahore),** ***Muhammad Rashid vs. Deputy Commissioner, Pakpattan Sharif and others*** **(2000 CLC 553 Lahore),** ***Rana Muhammad Anwar through legal heirs vs. Lahore Development Authority through Director General*** **(2001 CLC 710 [Lahore]),** ***Mst. Sakina Bibi vs. Government of Pakistan and others*** **(PLD 2008 Federal Shariat Court 17),** ***Jibendra Kishore Achharyya Chowdhury and others. Vs. The Province of East Pakistan & Secretary Finance and Revenue (Revenue) Department, Government of East Pakistan*** **(PLD 1957 SC (Pak.) 9),** ***M/s Radaka Corporation and others vs. Collector of Customs and another*** **(1989 SCMR 353),** ***Nazir Ahmad vs. Pakistan and others.*** **(PLD 1970 SC 453),** ***Chevron U.S.A Inc. vs. Natural Resources Defense Council, Inc., Et AI*** **(467 U.S. 837 (1984),** ***Indian metals and Ferro Alloys Ltd., Cuttack vs. The Collector of Central Excise, Bhumansehwar*** **(AIR 1991 SC 1028)** and ***K.P.Varghese vs. Income Tax Officer, Ernakulam and others*** **(AIR 1981 SC 1922)**.

**CDA's Arguments**

7. It was submitted on behalf of CDA that the Review Orders had been fraudulently procured by the petitioners, as their names were not included in

the original list of affectees appended with the Compensation Awards. The petitioners who built property on land already acquired by CDA pursuant to the 1969 award had no entitlement to seek compensation for the acquired structures built on land already vested in CDA. It was submitted that the DC CDA who passed the Review Orders had remained subject to disciplinary action and no sanctity could be attached to the Review Orders passed by the DC CDA. The original list of affectees of the acquisition of BUP in Bhaika Syedan was not more than a couple of hundred, which subsequently grew to thousands by inclusion of fake beneficiaries through Review Orders. It was submitted that those who had erected buildings after 1969 were not entitled to any compensation. It was also submitted that the package deal was never approved by the CDA Board. And the Awards under which the petitioners were seeking compensation had only awarded monetary compensation. Such Awards had attained finality. Even if the entitlement of petitioners to be compensated were to be accepted, they were only entitled to monetary compensation awarded to them pursuant to the Awards and not any residential plots. It was lastly submitted that the petitioners had refused to hand over possession of BUP from 1969 all the way to 2022, when during the pendency of the instant petitions, by virtue of orders passed by this Court, possession of property was finally acquired by CDA, after use of State power to undertake an anti-encroachment operation. It was submitted that as the petitioners remained in use of the BUP, they had suffered no loss due to delay in payment of compensation.

**Constitutional Framework for Protection of Property Rights**

8. The protection of property rights under a rule of law regime is almost as old as the notion of rule of law itself. Article 4(2)(a) of the Constitution explicitly provides that, *"no action detrimental to life, liberty, body,*

*reputation or property of any person shall be taken except in accordance with law."* Article 23 of the Constitution protects the rights of citizens to acquire, hold and dispose of property. Article 24 then provides for mandatory acquisition of property by the State in the following terms:

> *24. (1) No person shall be deprived of his property save in accordance with law.*
>
> *(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.*

9. The Constitution also recognizes that land and property vested in the State is to be managed in the collective interest of the citizens and any grant, sale or disposal of land or property must be regulated by law. Article 173 provides as follows:

> *173. (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of, the Federal Government or, as the case may be, the Provincial Government, and to the making of contracts.*
>
> *(2) All property acquired for the purposes of the Federation or of a Province shall vest in the Federal Government or, as the case may be, in the Provincial Government.*
>
> *(3) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the President or Governor by such persons and in such manner as he may direct or authorize.*
>
> *(4) Neither the President, nor the Governor of a Province, shall be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Federation or, as the case*

*may be, the Province, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.*

*(5) Transfer of land by the Federal Government or a Provincial Government shall be regulated by law.*

10. What emerges from the Constitutional provisions is that property rights of all citizens are to be protected. Where the State must acquire private property in the collective interest of citizens for a public purpose its actions must not be confiscatory but compensatory i.e. to make the citizen whole by paying him/her compensation on the basis of the principle of equivalence so that he/she does not suffer any injury or monetary loss due to condemnation of his/her property in exercise of State's eminent domain power. Articles 24(1) and (2) of the Constitution mandate that the State's eminent domain power shall only be exercised in accordance with law and such law will provide for payment of compensation by fixing the amount of compensation or specifying *"the principles on and the manner in which compensation is to be determined and given."* In other words, the Constitution directs that the legislature must enact laws providing for compulsory acquisition of private property and such law must either fix the amount of compensation or lay down guiding principles as to how the amount of compensation is to be determined. The use of the word "amount" under Article 24(2) is also suggestive that the Constitution itself envisages that compensation for compulsory acquisition of property will be determined in monetary terms. The regulation of the manner in which land is to be transferred under Article 173 of the Constitution manifests a recognition by the Constitution that land is a non-fungible asset of a finite nature, which is to be held by the State as a trust and is to be utilized for the collective benefit of all citizens. And where it is to be the subject of a grant, disposal or transfer, such State action must be backed by law and cannot be left to the

discretion of the executive functionaries of the State. In order to provide for compulsory acquisition of land, the Parliament has enacted the Land Acquisition Act, which applies across Pakistan. Further, Parliament has also enacted the CDA Ordinance, Chapter 4 of which deals exclusively with the acquisition of land. Therefore, in consonance with the Constitutional scheme, the legislature has enacted statutes that regulate the power to acquire land as well as the manner and the form in which affectees of compulsory land acquisition are to be compensated.

**Land Acquisition under CDA Ordinance**

11. CDA Ordinance was enacted to make arrangements for the planning and development of Islamabad. Under Section 3 of the CDA Ordinance, it has been declared that Specified Areas constitute the site for Islamabad as the Capital City. And the land within such Specified Areas shall be acquired for purposes of the CDA Ordinance, including preparation and establishment of schemes by CDA, to develop and establish Islamabad as the Capital City. Section 15(2)(i) vests in CDA the authority to acquire any land in the Specified Area in accordance with the procedure laid out in Chapter 4. Section 25(1) provides that, *"subject to the other provisions of this Ordinance, the rules made there under, and the directions of the authority, the Deputy Commissioner may, by order in writing, acquire any land for the purposes of this Ordinance"*. Sections 26, 27 and 28 deal with the process to be adopted, including issuance of notices to the interested persons whose land is to be acquired, and the inquiries to be carried out by DC CDA. Section 32 provides that once an award for land has been issued under Section 28, the compulsorily acquired land shall vest in CDA, free from all encumbrances. And after giving notice to any occupier, the DC may enter and take possession of such land.

12. Let us reproduce for convenience the key provisions of the CDA Ordinance relevant for our present purposes:

> ***2. Definitions:-*** *In this Ordinance, unless there is anything repugnant in the subject or context,-*
>
> *(i) "Land" includes buildings and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;*
>
> *(k) 'market value' means,*
>
> > *(i) in relation to land acquire before the first day of January, 1968, the average market value thereof prevailing during the period commencing the first day of January, 1954, and ending on the thirty-first day of December, 1958;*
> >
> > *(ii) in relation to land acquired on or after the first day of January, 1968, the aggregate of the average market value as aforesaid determined with reference to its classification recorded in the Register of Haqdaran Zamin as in force on that day and twenty-five per cent of such value; and*
> >
> > *(iii) in relation to land acquired on or after the first day of January, 1996, the market value as may be determined in accordance with the provision of the land Acquisition Act, 1894, applicable in the Province of the Punjab.*
>
> ***27. Notice to persons interested.—****(1). The Deputy Commissioner shall then cause public notice to be given of convenient places on or near the land to be taken, stating that the (Federal) Government intends to take possession to the land, and that claims to compensation for all interests in such land may be made to him.*
>
> *2. Such notice shall state that particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Deputy Commissioner at a time and place therein mentioned (such time not being earlier than ten days after the date of publication of the notice) and to state the nature of their respective interested in the land and the amount and particulars of their claims to compensation for such interest, and their objections, if any to the measurements made under section 23, and the Deputy commissioner may require any such statement to be made in writing and signed by the party or his agent.*

*3. The Deputy Commissioner shall also serve notice to the same effect on the occupier, if any of such land and no all such persons known or believed to be interested therein, or to be entitled to act for persons so interested.*

***28. Enquiry and award by Deputy Commissioner.***— *On the day so fixed, or on any other day to which the enquiry has been adjourned, the Deputy Commissioner shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to the notice given under section 27, and into the market value of the land and into the respective interest of the persons claiming the compensation, and shall make an award of;*

*(i) The true area of the land.*

*(ii) The compensation which in his opinion should be allowed for the land.*

*(iii) The apportionment of such compensation among all the persons known or believed to be interested in the land of whom, or of whose claims he has information, whether or not they have appeared before him.*

***29. Compensation.—*** *Where any land is acquired under this Ordinance there shall be paid compensation the amount of which shall be determined by the Deputy Commissioner who shall be guided by the provisions of section 30 and 31.*

***30. Matters to be considered in determining compensation.***— *(1) In determining the amount of compensation to be awarded for land acquired under this ordinance the Deputy Commissioner shall take into considerations.*

*First, The market value of the land (on the date of order of its acquisition made under section25).*

*Secondly, The damage sustained by the person interested, by reason of dispossession of any standing crops or trees which may be on the land.*

*Thirdly, The damage, if any sustained by the person interested at the time of taking possession of the land by reason of severing such land from his other land.*

*Fourthly, the damage, If any sustained by the persons interested at the time of taking possession of the land by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning, and*

*Fifthly, If, in consequence of the acquisitions of the land the person interested is compelled to change his residence or place of business, the reasonable expenses, if any incidental to such change.*

*(2) In addition to the value of the land determined as aforesaid, the Deputy Commissioner shall in every case award a sum of fifteen per centum on such value in consideration of the compulsory nature of the acquisition*.

13. The key features of the statutory scheme enumerated and discussed above include the following:

(i) Land includes the buildings attached to the earth, and consequently any BUP is included within the definition of land as a subset of it and is not to be treated as a category of property independent of the land that is compulsorily acquired.

(ii) Section 27(1) directs that a notice be issued not just to the owner of the land but to all persons who may have a claim to be compensated for any interest in such land, who must then state the nature of their respective interests and the "amount" and particulars of their claim to compensation for such interest.

(iii) The award to be made in terms of Section 28 must include the composite amount of compensation to be paid for all interests in the land, along with an apportionment of how such compensation is to be distributed amongst persons who have interests in such land. This Section clearly envisages one all-encompassing award drawn up by adding the compensation due in relation to the various interests

associated with the land and not piecemeal awards in relation to each distinct interest.

(iv) Section 29 clearly provides that compensation would be paid in an "amount" as determined in view of the considerations mentioned in Sections 30 and 31. The first consideration mentioned in Section 30(1) is the market value of the land, which in itself is a monetary concept and requires determination of value in monetary terms and not by any payment through barter or payment in kind.

(v) In calculating the compensation for land the various interests in the land are to be valued separately including any damage to crops or trees, any damage due to severance of land from other land, any damage to movable or immovable property and any loss caused due to change in residence. The sum total of such values then constitutes the overall value of the award for the land which, as already explained, includes all interests in such land.

14. The scheme of CDA Ordinance for purposes of following a process for acquiring land, valuing it, and paying consideration is not much different from the scheme prescribed by the Land Acquisition Act. Further, the jurisprudence that has evolved in Pakistan in terms of undertaking valuation and the form of compensation is fairly consistent with the jurisprudence developed in other common law jurisdictions. It is fairly settled that the interests in any chunk of land cannot be divided up horizontally, but that all interests arising from and linked to a parcel of land when considered vertically are to be taken into account and compensated while condemning a property. What this means is that there is one composite award that is the sum total of the compensation to be paid for various interests attached to the land to be compulsorily acquired, and the award itself apportions how

the compensation is to be paid to the various interested persons who make a claim for compensation in relation to the land being acquired. So, for example, where the land being acquired is the subject of leasehold rights, while acquiring such land, the land Collector or Deputy Commissioner would be required to value the remaining leasehold period and any other loss inflicted on the leaseholder while determining the quantum of the award for acquisition of such land and then apportioning it between the title holder/owner of the land and the leaseholder. It is settled law that various interests in land cannot be segregated and separately acquired. Where the State is exercising its power of eminent domain, it must simultaneously acquire the land and all interests associated with it[1].

15. Similarly, it is a settled matter that valuation of land to be acquired is to be undertaken in monetary terms. As land is not a fungible asset, its value cannot be determined in terms of other goods or assets. Even if law were to provide that compensation for land may be paid by providing alternative land, determination of such compensation would need be a two-step process, where at step one, the value of land compulsorily acquired would need to be determined in monetary terms, and at step two, another parcel of land of such monetary value would need to be identified as proper compensation for the owner of the land. As compensation for land compulsorily acquired includes compensation for all interests emanating from or affiliated with such land, it becomes immediately obvious that the value of standing crops or trees or a building structure can only be determined in monetary terms. This is more so as the underlying principle

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[1] *Muhammad Saleem vs Commissioner, Rawalpindi Division (PLD 1976 Lahore 1233): "Acquisition must, therefore, relate to entire vertically located property and not its horizontal slices or its constituents. Acquisition procedure with regard to only first floor of building and not for ground floor or land underneath, not permissible under law."*
*Shyam Chunder Mardraj v. Secretary of State for India (I L R 35 Cal. 525): "Therefore, fishery rights are not land, and it is only land, including the rights arising out of it, but not the rights detached from the land, that can be acquired under the Act."*

for calculating compensation is that of equivalence. The object of compensation is not to calculate the value or the benefit that accrues to the State where it compulsorily acquires land, but the loss inflicted on the persons interested in the land that is being acquired. As the value of the award is the sum-total of the value of the various interests emanating from the land, if the award were not made in monetary terms, the apportionment of such award between the various interest holders would become near impossible. If land were to be used as compensation for compulsory acquisition of land, in addition to all the complications identified above, the law regulating land acquisition would then provide for partition of land amongst different interest holders. As the law, in Pakistan and in other jurisdictions, simply does not envisage any barter or in-kind compensation for condemned land, we see no provisions in land acquisition laws that provide for a process for apportioning land or property that has been declared compensation for compulsorily acquired land.

16. The Constitution, the Land Acquisition Act and the CDA Ordinance all use terms such as "amounts" in relation to compensation for compulsorily acquired land. In order to value the loss inflicted or harm caused for compulsory acquisition of land, the concept used is that of market value of land. The common sense meaning as well as the dictionary meaning of market value refers to a monetary value of a good or asset as determined in an exchange between a willing buyer and a willing seller, guided by principles of demand and supply. As the law of eminent domain envisages neither inflicting any loss on the persons whose interests have been affected by compulsory acquisition of land nor creating a windfall for them, it is only by determining the value of land in monetary terms that such compensation

can be determined and then apportioned between the various interested persons whose interests are linked to the land being compulsorily acquired.

17. There was an argument made by the learned counsels for the petitioners that Section 31(3) of the Land Acquisition Act conceives of the Collector making any arrangement with a person having an interest in land and speaks of grant of other lands in exchange or remission of land revenue etc. The argument doesn't help the petitioners for two reasons. One, while CDA Ordinance makes references to and incorporates various provisions of the Land Acquisition Act, it does not include any provisions such as Section 31(3) of the Land Acquisition Act. To the extent that the legislature envisaged grant of lands in exchange for acquired lands, it could very easily do so by incorporating an appropriate provision within the CDA Ordinance, which it has not done. And two, Section 31(3) has been interpreted by the Courts in Pakistan as well as in India as vesting a discretion in the Government to make special arrangements for persons who have a limited life interest in the land being acquired and do not qualify as *"person interested in the land"*. Thus, even in terms of Section 31(3), no land can be granted as compensation to a person interested in the acquisition of land compulsorily acquired by virtue of him being the owner or possessor of a building structure or dwelling house built on the land being acquired[2].

[2] *Faisalabad Development Authority vs Raja Jahangir Nasir and others* (2004 S C M R 1247): "The most important ingredient of the section has to be, kept in view that all the aforesaid arrangements or anyone thereof can be made with person having a limited interest in such land. It requires no effort to hold that the present claimants, in their mind, claim to be full owners of the land acquired and fall accordingly within the definitions of "person interested" as defined by section 3(b) of the Act and have nothing at all to do with person having a limited interest in such land. The very claim is unfounded and void ab initio. No Court can grant such relief for alternate land in lieu of money compensation."
*Dewan Singh vs Government Of Nct Of Delhi and others* (AIR 2011 DELHI 76): "If the law in the field relating to Section 31(3) of the Act is understood in proper perspective there can be no iota of doubt that claim for alternative accommodation is not a vested right in a person whose land is acquired. The language of the section only gives an option to the Collector. It does not really make a provision for grant of alternative accommodation."

18. In summary, there can only be one award to compensate all persons interested in the land being compulsorily acquired, whose interests are separately valued and declared as such through the apportionment declaration that forms a necessary part of the award. Further, the various interests in land cannot be acquired piecemeal and the land along with all interests emanating therefrom must be acquired simultaneously and all such interests form part of the compensation determined for such land. And finally, the compensation as determined and as apportioned is to be assigned a monetary value. The law of compulsory land acquisition does not envisage compensation through barter or transfer of comparable land.

**The Land Acquisition Regulations, 1961, and subsequent Rehabilitation Policies and Regulations**

19. The Land Acquisition Regulations, 1961 **("Land Acquisition Regulations, 1961")** enacted in exercise of authority under Section 51 of the CDA Ordinance are in consonance with Chapter 4 of the CDA Ordinance. Regulation 5 requires a person interested in making a claim for compensation in relation to land being compulsorily acquired to submit particulars of his claim to compensation, including the amount being claimed together with the interest being claimed in relation to the land in question. Regulation 6 requires the Deputy Commissioner to inquire into the market value of land etc. Chapter 3 in the regulations provides for the content of the award and the manner in which the compensation determined is to be apportioned. Regulation 9 within such chapter requires rate of compensation to be proposed for various kinds of land, trees, houses, standing crops etc. and their apportionment. Regulation 11 requires that before drawing up a

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*Lt. K. Padmadas vs State of Kerala and others* (AIR 1992 Kerala 158): "There is nothing to indicate that the Collector is obliged to give alternate land instead of giving compensation or that the acquisition is vitiated in any manner for that reason."

general award, statements in terms of Annexures 3 and 4 to the regulation, and the amount payable to each interested person must be drawn up. Regulation 13 clearly envisages one award in relation to the land acquired and states the following:

> *13. The award among other things shall state:*
>
> > *(a) The total area of the various categories of land taken;*
> >
> > *(b) The rate and the total amount of compensation to be paid on account of land of each category;*
> >
> > *(c)The total amount of compensation to be paid on account of crops, trees, houses, etc.;*
> >
> > *(d) The apportionment of compensation to be enjoyed by different right holders whose land has been acquired;*
> >
> > *(e) His decision on any objections raised by any person interested in the land.*

20. Regulation 15 requires the Deputy Commissioner to pay compensation to the interested persons and Regulation 16 states that the compensation may be paid "*(1) by direct payment, (2) by money order, (3) by cheques."* The entire scheme of the Land Acquisition Regulations, 1961, together with the statements to be prepared in accordance with Annexures 3 and 4 very clearly provide that there can only be one award, which is to include the names of all interested persons in the land, their respective interests, the valuation of their interests, and the manner in which the compensation awarded is to be apportioned amongst them. The Land Acquisition Regulations, 1961, together with provisions of the CDA Ordinance and the relevant Articles of the Constitution as already discussed above, leave no manner of doubt that there can only be one award in relation to all interests related to land being compulsorily acquired. And the compensation must be determined in monetary terms and the award itself

must also specify the manner in which the compensation is to be apportioned between the different 'interested persons' in the land being compulsorily acquired. The Land Acquisition Regulations, 1961, are still in the field and have never been repealed. Reference may also be made to Section 35 of the CDA Ordinance, which vests in the CDA the power to give directions to the Deputy Commissioner for exercise of his powers and discharge of his functions in relation to land acquisition under the CDA Ordinance. It need not be stated that CDA can issue no directions in conflict with provisions of the CDA Ordinance. Section 51, under which the Land Acquisition Regulations, 1961 have been enacted, itself provides that CDA can only make such regulations that are not inconsistent with the rules. And it goes without saying that any regulations in conflict with provisions of the CDA Ordinance would be of no effect, being *ultra vires* the parent statute.

21. Another provision that needs to be taken note of is Section 49 of the CDA Ordinance, which vests in CDA the power to dispose of land. A question can arise as to whether such power can be used to broker package deals and/or compensate persons interested in land being compulsorily acquired through allotment of plots in lieu of compensation. The answer is in the negative for two reasons. One, it is a settled principle that when law requires a thing to be done in a certain way, it must be done in such way or not at all[3]. Article 24 of the Constitution mandates that compulsory acquisition must be regulated by law. CDA Ordinance has specific provisions that regulate the acquisition of land that have been discussed above, and do not provide for payment of compensation through allotment of land as compensation. As there are specific provisions within CDA Ordinance that

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A. [3]Commissioner Inland Revenue Vs Pakistan Oilfields Ltd (2024 S C M R 853)
B. Nadir Khan Vs Qadir Hussain and others (2024 S C M R 770)
C. Muhammad Akram Vs Mst. Zainab Bibi (2007 SCMR 1086)

direct the manner in which compensation is to be determined and the form in which compensation is to be paid, CDA cannot exercise its general powers to enter into contracts under Section 15 or to dispose of land under Section 49 in a manner that is in conflict with the specific provisions that regulate land acquisition, and determination and payment of compensation. And two, where CDA acquires land in accordance with provisions of the CDA Ordinance, the purpose of acquisition is to discharge its duties and functions by establishment of schemes that serve a public purpose. CDA does not acquire land with the stated purpose that such acquisition shall be used for purposes of compensating the affectees of compulsory land acquisition. Such purpose would obviously be self-contradictory, as CDA would be acquiring land from one set of private property owners to hand it over to another set of private property owners whose land has been compulsorily acquired. It is for this obvious reason that where the power of eminent domain is being used by a State, prerequisite for such use is that the State has the financial means to compensate the affectees whose property is being compulsorily acquired. In this sense, the position of the State is different from other private land developers. A private land developer can enter into a contract with a private land owner to purchase his agriculture or undeveloped land on the basis of some land sharing agreement. There is nothing that applies any constraint on the private land developer to enter into such arrangement. And there is nothing that forces the private land owner from entering into a private land sharing arrangement with the private land developer. The position of the State while exercising the power of eminent domain is different. The State is using its police powers to condemn private property while affording no option to the property owner who refuse to hand over such property to the state. This power of eminent domain is then regulated by the Constitution and the law, which provides the manner in which

compensation is to be determined and the form in which it is to be paid. As such power is regulated by law, the State and its instrumentalities must act in accordance with provisions of the law in determining compensation and paying the same. The State is thus not free as a private citizen to engage in a contract while determining the quantum and form of compensation at its discretion, while simultaneously exercising its power of eminent domain and leaving the private property owner no option but to hand over his/her property in lieu of the compensation as determined in accordance with law.

**The Rehabilitation Policy, 1984**

22. The Rehabilitation Policy, 1984 **("Rehabilitation Policy 1984")**, to the extent that it envisages acquisition of BUP independent of the underlying parcel of land or exercise of land acquisition power by CDA to acquire of BUP alone, is not inconsonance with provisions of the CDA Ordinance. The Rehabilitation Policy, 1984, was given effect as of 01.10.1984 and would therefore be applicable to the petitioners as well to the extent that they claim compensation pursuant to the compensation award issued in 1985. The Rehabilitation Policy, 1996, similarly, conceives issuance of awards in exercise of land acquisition powers under CDA Ordinance that deal with compensation for land and compensation for BUP in a piecemeal fashion. The separate schemes to compensate persons interested in land and persons interested in BUP has been adopted by the Rehabilitation Regulations 2007, and such scheme has been reiterated by the applicable Rehabilitation Framework 2023.

23. For our present purposes, we need not engage with specific provisions of the aforementioned legal instruments. The first thing to note is that CDA is vested with no authority to adopt a policy or issue any directions to DC CDA under Section 35 of the CDA Ordinance or in general exercise of

this authority under Section 15 of the CDA Ordinance that is in conflict with provisions of the CDA Ordinance. Section 35 only vests in CDA the limited power to issue directions to DC CDA in relation to exercise of his powers and discharge of his functions re land acquisition to the extent that such powers and functions are not already regulated by provisions of the CDA Ordinance that leave open limited discretion to be exercised by the DC himself. Similarly, CDA can exercise authority under Section 51 of the Ordinance to enact regulations. But the exercise of such delegated authority to create a sub-statutory instrument must be in accordance with provisions of the CDA Ordinance (and also not in conflict with any rules framed by the Federal Government under Section 50 of the CDA Ordinance).

24. The legality of the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007, and the Rehabilitation Framework, 2023, has not been directly challenged before this Court. The petitioners are seeking the enforcement of the aforementioned legal instruments to the extent applicable to them for purposes of (i) seeking enforcement of a package deal entered into by a Committee constituted by CDA and affectees of Bhaika Syedan, and (ii) allotment of plots in lieu of monetary compensation awarded pursuant to the awards. It is thus that the enforceability of provisions of the aforementioned policies and regulations has come before the Court as a collateral matter. It has now been settled by the Supreme Court that a constitutional court can look at the legality of statutory or sub-statutory provision even collaterally[4]. It is only to the extent of the claims of the petitioners, while relying on provisions of the

[4] *Sindh High Court Bar Association through Secretary vs. Federation of Pakistan* (PLD 2009 SC 789)
*Muhammad Hanif Abbasi vs. Jahangir Khan Tareen* (PLD 2018 SC 114): "point of law can be allowed to be raised at any stage of the proceedings and no valid structure can be built upon a foundation of the law which is void ab initio…no rights and liabilities can be created on the basis of such law."

aforementioned instruments, that the Court has considered the enforceability of provisions of the rehabilitation policies and regulations cited above.

25. The doctrine of *ultra vires* is also well-established. It is a settled principle that a subsidiary legislation can neither limit the scope of statutory provisions nor expand the same where the legislature delegates authority to the executive or its instrumentalities to enact subsidiary legal instruments such as rules and regulations. The provisions of such subsidiary legal instruments must not be in conflict with provisions of the parent statute[5]. Where the provisions of a subsidiary legal instrument are either in conflict with provisions of the parent statute or in excess of the power created by the parent statute when considered in juxtaposition with the object of such statute, such provisions are *ultra vires* the parent statute and consequently unenforceable.

26. As has already been discussed at length above, the CDA Ordinance mandates that there may only be one award for compensation of land, and land as defined under Section 2(i) of the CDA Ordinance includes the BUP constructed upon and/or attached to the land. It was held in ***the State of Punjab & Others vs Sharan Pal Singh (AIR 1995 SC 186)*** that there can only be one award for land and provisions of the Land Acquisition Act do not permit for piecemeal acquisition of interests in the same parcel of land.[6] The provisions of Land Acquisition Act are in *pari materia* to provisions of the CDA Ordinance that deal with acquisition of land. The provisions of the CDA Ordinance when read with the Land Acquisition Regulations, 1961, provide

[5] *Farrukh Raza Sheikh vs The Appellate Tribunal Inland Revenue* (2022 S C M R 1787): "It is trite law that Rules cannot override the specific provisions of the parent statute. The Rules are to carry out the purposes of the Ordinance and cannot offend, oppose or be inconsistent with the provisions of the parent statute (Ordinance in this case).5 Any rule, to the extent of any inconsistency with the parent statute is, therefore, ultra vires of the parent statute."

[6] see footnote 1

that there will only be one award for acquisition of land and such award will include evaluation of all interests attached to or emanating from the land including the BUP on such land. Therefore, any provisions of the Rehabilitation Policy, 1984, the Rehabilitation Policy, 1996, the Rehabilitation Regulations, 2007 and Rehabilitation Framework 2023, to the extent that it makes allowance for issuance of separate awards for acquisition of land and for acquisition of BUP on land already acquired by CDA, are in conflict with provisions of the CDA Ordinance. In relation to acquisitions undertaken by CDA, this question came up as an ancillary matter before this Court in ***Noman Ahmed Vs. Capital Development Authority*** **(PLD 2021 Islamabad 75),** where it was observed that, *"this practice of announcing separate awards has created insurmountable complications because it has defeated the essence of 'compensation."*

27. Section 32 of CDA Ordinance provides unequivocally that, *"immediately on the making of the award under Section 28, the land shall vest in the authority, free from all encumbrances and thereupon the Deputy Commissioner may, after giving reasonable notice to the occupier, enter upon and take possession of the same."* In view of the clear language of Section 32, it cannot be countenanced that the land, including trees, crops and buildings built on such land, can vest in CDA with the award being limited to the underlying parcel of land alone and not land as defined in the CDA Ordinance to include structures, etc. Section 32 of the CDA Ordinance uses the definition of land as provided in Section 21 of the CDA Ordinance, which includes crops, trees, building structures and dwelling houses, etc. Section 28 of the CDA Ordinance also requires that the award must include the value of all such interests as well as the apportionment of compensation

between the various persons interested in the land and the interests emanating from it.

28. The provisions of the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007 and the Rehabilitation Framework 2023, are also in conflict *with* provisions of the CDA Ordinance to the extent that such instruments conceive of determination of compensation and its mode of payment in any form other than money. Article 24 of the Constitution read with provisions of the CDA Ordinance clearly envisages determination of compensation and its payment in monetary terms. There is no provision in the CDA Ordinance that provides for determination or payment of compensation in any form other than money and it is therefore not up to CDA to enact regulations or adopt policies providing that compensation is to be paid on land sharing basis or through allotment of plots.

29. The policy proposing allotment of plots in lieu of compensation for BUP, other than being in conflict with provisions of the CDA Ordinance, is also irrational. The principle of equivalence that underlies the concept of compensation requires that the affectee of compulsory land acquisition must be made whole to the extent of his/her interest in the land compulsorily acquired. To the extent that a person has built any structure or dwelling house on land being compulsorily acquired, the harm being caused to such interested person is to the extent of the value of the BUP and cost of relocation of residence in the event that such interested person resides in such BUP. Both these forms of interests are envisaged under the fourth and fifth consideration provided under Section 30(1) of the CDA Ordinance and the cost of such interest is to be valued and included in the overall cost of award for land acquisition. The owner of BUP to the extent that he/she is not

the owner of the land being compulsorily acquired and has an interest independent of the interest of the landowner, while making his claim for BUP can only claim the cost or replacement cost of the BUP constructed by him/her. It has to be borne in mind that land is an appreciating asset, the value of which escalates over time. BUP, on the other hand, is a depreciating asset, the value of which decreases and can come close to zero when the structure is not habitable anymore. The value of BUP can therefore not be confused with the value of land and is to be determined by applying the principle of equivalence that underlies the scheme of compensation within the law on eminent domain. To the extent that the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007, and the Rehabilitation Framework 2023, conceive that any building structure greater than 1000 square feet entitles the owner of such structure to a residential plot is in conflict with the compensatory principle already discussed. While valuing the BUP, it is for the DC to determine the cost and/or replacement cost of such structure in view of its condition and the materials used together with the age of structure. To compare a newly built state of the art structure comprising a certain covered area with an old and dilapidated structure comprising an equal covered area would be like comparing apples and oranges. Also, the owner of the BUP, to the extent that he/she does not possess ownership or co-ownership rights in the underlying land, cannot be granted land in lieu of compensation for a building structure or dwelling house alone without disregarding the principle of equivalence that guides the determination of compensation in compulsory land acquisition cases. To the extent that the aforementioned rehabilitation policies and regulations adopted by CDA provide for compensating BUP owners with land, the same is questionable on grounds of equity and public policy as well. The Rehabilitation Regulations 2007, for example, envisage

grant of land to a landless owner of BUP who has been displaced due to compulsory land acquisition. Article 24 of the Constitution read with provisions of the CDA Ordinance requires that a person who has rights affiliated with land being acquired be compensated. But allotting a plot as compensation to the landless owner of BUP in effect means that all citizens who have a collective interest in the land that vests in CDA are in effect subsidizing a landless BUP owner through disposal and exploitation of public land – a finite resource in which they have shared interest. It makes no logical sense for a landless BUP owner to be granted proprietary rights in land as compensation for acquisition of the BUP owned or constructed by him/her. In this context, to the extent that CDA has used its executive authority to enact such scheme, not only is such exercise of authority in conflict with provisions of the CDA Ordinance, but it also falls foul of requirements of Section 24-A of the General Clauses Act, 1897, for not being a just, fair and reasonable compensatory scheme.

30. The history of evolution of compensatory schemes adopted by CDA reflect that at the time of promulgation of the CDA Ordinance there was no confusion with regard to the manner in which compensation was to be determined and the form in which it was to be paid, as evident from provisions of the Land Acquisition Regulations, 1961. Over time, CDA failed to give effect to the requirement of Section 32 of the CDA Ordinance in taking control of the land and all buildings and/or things appended to such land after announcement of an award under Section 28 of the Ordinance. CDA's failure to take possession of acquired land that vested in CDA along with all associated interests including BUP led to the emergence of a practice whereby CDA began issuing awards to compensate for the land and awards to compensate for BUP disjointedly and separately. Such practice is clearly in

conflict with provisions of the CDA Ordinance as already discussed. Subsequently, without any amendment to provisions of the CDA Ordinance or even without repealing the Land Acquisition Regulations 1961, the CDA began adopting policies such as the Rehabilitation Policy 1984, the Rehabilitation Policy 1996 and Regulations such as the Rehabilitation Regulations 2007, to provide a fig leaf of regularity to its practice of awarding separate awards for land and BUP.

31. It has been argued by the petitioners that the long standing practice creates legitimate expectancy that everyone will be treated in accordance with such practice. This argument is without merit. It is settled law that any departmental practice that is in conflict with law cannot be given effect or bestowed with legitimacy. It is a settled principle that there is no estoppel against law and any practice in conflict with law creates no rights[7].

32. Let us now apply the law and legal principles as enumerated above to the facts of the present case. The land in question was acquired by CDA by an award in 1969. Such award did not include the value of BUP, as required by provisions of the CDA Ordinance, because the owners of BUP purportedly refused to allow CDA to measure their BUP for purposes of valuation. This ought not have been used as an excuse by CDA to issue separate awards for land and BUP as was done in the present case where the land award was issued in 1969 and the Compensation Awards were issued in 1980, 1982 and 1985. As the 1969 award was issued almost 55 years back and the Compensation Awards were also issued decades back, such Awards have been largely given effect and have become past and closed transactions. This Court will therefore not rule on the legality of such Awards at this stage. The Compensation Awards, the enforcement of which has been sought

[7] *Syed Azam Shah vs Federation of Pakistan* (2022 SCMR 201)
*Shams ur Rehman vs Military Accountant General* (2020 SCMR 188)

through the present petitions, have valued BUP structures claimed by affectees in monetary terms. The award includes the apportioned value in view of the measurement of the BUP to be awarded to each affectee. The petitioners initially challenged the quantum of compensation. In appeal, DC CDA by order dated 07.01.1988, re-affirmed the valuation as determined in the compensation award of 1985. The petitioners did not challenge order dated 07.01.1988, which then attained finality. It is thus not in contention that the Awards including the Compensation Awards were never reviewed in terms of the compensation determined and the form of compensation. The only change to the Compensation Awards brought about by the Review Orders was with regard to the list of beneficiaries who were entitled to be paid compensation at par with the compensation determined and granted through the Compensation Awards. The petitioners at this stage can therefore not claim that the quantum and form of compensation as determined in the Compensation Awards, that have become final, be altered by virtue of subsequent negotiations between the beneficiaries of such Compensation Awards and CDA authorities.

33. The petitioners can also not seek the enforcement of any purported package deal negotiated between affectees of land acquisition in Bhaika Syedan and CDA authorities for multiple reasons. One, such negotiations never culminated into an agreement that was concluded and documented in a legally binding and enforceable form. Two, the effect of declaring that the package deal negotiated between the petitioners and CDA authorities in 1990 is enforceable would have the effect of altering the quantum and form of compensation as determined in the Compensation Awards. As the Compensation Awards have become final, they can no longer be altered indirectly through a subsequent negotiation between the parties carried out

on the basis that the petitioners or their predecessors-in-interests were refusing to hand over acquired BUP to CDA. Three, in terms of Section 32 of CDA Ordinance, the land acquired by CDA stood vested in CDA in 1969 and any structure built on such land was to be valued by CDA as of 1969. There is some difference of opinion as to the cut off point for purposes of valuing compulsorily acquired land. In terms of Section 4 of the Land Acquisition Act, the market value of the land and structures built thereon is to be determined as of the date on which notice has been issued, declaring the State's intent to compulsorily acquire such land. The law on the issue has however evolved and the Courts have recognized that in view of the prospective value of land, to the extent that there is a significant gap between the issuance of notification for acquisition of land and the announcement of the award, any escalation of market value within the period between the issuance of the notification and the actual announcement of the award is also to be taken into account[8]. However, the date of the award is the date when the property absolutely vests in the State in an un-encumbered manner and no question of any subsequent increase in the value of the land or interests emanating from it can be conceived because as of the day of announcement of the award, it is the Government that is the owner of the land and all interests emanating therefrom. The only right of the affectees of such acquisition is the right to collect compensation. The relevant date of valuation of BUP in the instant case was when the acquisition award of 1969 was announced and no structures built or improved after such date could be valued for purposes

[8] *Federal Government Of Pakistan vs Mst. Zakia Begum* (P L D 2023 Supreme Court 277) "Secondly, the foremost basis of potential value is that land must be valued not only in terms of its market value as on the date of the notification under Section 4, keeping any delays and time lapse under consideration to the time of the award, but it must include the potential value of the land with reference to the use it is reasonably capable of being put to."
*Land Acquisition Collector vs Mst. Surraya Mehmood Jan* (2015 SCMR 28): "The best method of determination of the market price of the plots of land under the acquisition is to ely on instances of sale about the date of notification under section 4(i) of the Act"

of compensation of the owners of such BUP in view of Section 32 of the CDA Ordinance. Consequently, the BUP owners, as recognized by the Compensation Awards, could not seek to renegotiate the quantum of compensation due to them after the announcement of the Compensation Awards in 1985. The reason for CDA's inability to announce the Compensation Awards along with the award for acquisition of land in 1969 was the refusal of BUP owners to allow the measurement of BUP and to hand over possession of BUP. It is due to such resistance that CDA sought to engage in negotiations to strike a package deal, which otherwise has no basis in the law of eminent domain as already discussed. The question of CDA entering into package deals came before the Supreme Court in ***Suo Moto Case No.13 of 2009*** (***PLD 2011 Supreme Court 619)*** **("MPCHS case")** and the Supreme Court laid down in no uncertain terms that as an instrumentality of the State, CDA cannot engage in any negotiations and/or offer any incentives for acquiring possession of land acquired by CDA as the same would be in conflict with provisions of the CDA Ordinance. Further, the inspiration for entering into such package deal to incentivize BUP owners and/or land owners to hand over possession of acquired land would create a perverse incentive to resist handing over possession of land after compulsory acquisition of property by the State and would be contrary to public policy. Article 24 of the Constitution does not envisage collective bargaining as a means to acquire compulsorily acquired State property and neither do provisions of the Land Acquisition Act or the CDA Ordinance envisage such bargaining. Consequently, even in the event that a package deal had been negotiated between CDA and the petitioners for purposes of handing over possession of the BUP acquired pursuant to the Compensation Awards, such package deal would fall foul of the CDA Ordinance as well as the law laid down by the Supreme Court in ***MPCHS***.

34. The arguments furnished on behalf of CDA that the Review Orders are devoid of sanctity as the DC's who issued such orders were subjected to disciplinary action and the Review Orders also formed the subject-matter of an accountability reference, is without merit. The record produced before the Court reflects that the disciplinary action taken against one DC who issued one of the Review Orders by dismissing him from service was set aside by the FST and the judgment of the FST was not interfered with by the Supreme Court. The Review Orders also formed part of the subject-matter of **Reference No. 80 of 2003** (***State vs. Muhammad Ameen Khan***), in which the charges against DC CDA were dismissed by order of Accountability Court No. III, dated 20.01.2011. CDA has acknowledged that the Review Orders were never set aside by a Court of competent jurisdiction. In view of the record as discussed above, neither the disciplinary charges against DC CDA nor the criminal charges in relation to the Review Orders were proven by the State. In these circumstances, the Review Orders have continued to hold the field and to the extent that they declare the petitioners as beneficiaries of the Compensation Awards, such Review Orders are to be given effect.

35. This Court has taken note of the fact that it is during the pendency of the instant petitions various orders were passed enabling CDA to take possession of BUP that form the subject-matter of the Compensation Awards, including orders dated 28.03.2023 and 08.05.2023. Section 32A of the CDA Ordinance provides that where compensation has been determined under Sections 29 and 30 but has not been paid to the affectees, CDA shall pay to such affectees, in addition to the compensation, additional compensation at the rate of 8% per annum from the time of taking possession until the compensation has been paid. The question of payment

of additional compensation due to delay in payment of the compensation as determined by the award has also been considered by various jurisdictions. It has been provided in statutes in other jurisdictions dealing with the law on eminent domain that to the extent that an interested person whose land/property has been acquired retains adverse possession of such acquired land, such affectee is not entitled to claim additional compensation due to delay in payment of the compensation as determined.[9] The reason is straightforward. Where an affectee retains adverse possession over the land/property, delay in payment of compensation causes no injury to him/her and consequently there is no additional compensation due to him/her. However, in the instant cases, where the petitioners have handed over property after the issuance of the compensatory awards, they would be entitled to 8% additional compensation from the date of handing over possession of BUP till the date of being paid the compensation due to them as determined by the Compensation Awards. It will be for CDA to determine in case of each of the petitioners the date on which he/she handed over the BUP in order to calculate the additional compensation due to them in terms of Section 32A of the CDA Ordinance in addition to over and above the monetary compensation determined and declared in the Compensation Awards on the basis of the square footage of the BUP. In the event that there arises a factual dispute regarding the date of handing over possession, the party aggrieved would have a remedy before a court of plenary jurisdiction.

36. For the aforementioned reasons, the petitions are ***allowed*** in the following terms:

[9] 26 Pennsylvania Consolidated Statutes § 713 (2023)

(i) The petitioners' shall be paid compensation in monetary terms, as determined and declared by the Compensation Awards (23.07.1980, 05.09.1982 and 01.10.1985), together with additional compensation in terms of Section 32A of the CDA Ordinance for the period from handing over possession of BUP till the payment of compensation.

(ii) The petitioners, to the extent that their names have been included as beneficiaries of the Compensation Awards through Review Orders, are declared to be the beneficiaries of the Compensation Awards as if their names were included in the original Compensation Awards and the compensation to be awarded to them shall be calculated in monetary terms on the basis of the square footage of their BUP as determined by CDA prior to the issuance of the Compensation Awards or Review Orders. To the extent that they retained adverse possession of the BUPs, which are depreciating assets, they would not be entitled to additional compensation in terms of Section 32A of the CDA Ordinance for such period. To the extent that they made any improvements to the BUP or developed fresh BUP since after the 1969 award, they would not be entitled to any compensation in lieu of such BUP. In determining the quantum of compensation due to them, CDA will apply the same formula as applied in the Compensation Awards by DC CDA as well as the same rate, based on the data available with CDA, to determine the compensation that would have been awarded to them at the time of issuance of the compensation award in 1985. They would however be entitled to additional compensation as held in sub

para (i) in terms of Section 32A of CDA Ordinance from the date of handing over possession of the BUP till the date of payment of compensation.

(iii) Article 24 of the Constitution read together with Chapter 4 of the CDA Ordinance does not permit the determination of compensation for compulsory land acquisition in the form of any package deal. The compensatory principle incorporated under provisions of the CDA Ordinance is based on the principles of equivalence as enumerated in detail by this Court in **Noman Ahmed** and such compensatory principle has no room for collective bargaining or determination of compensation on the basis of package deals entered into for purposes of handing over possession of compulsorily acquired land by persons interested in such land to the State. Any package deal negotiated by CDA or entered into by CDA for purposes of seeking possession of BUP therefore has no basis in law. And to the extent that the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007 and the Rehabilitation Framework 2023 make allowance for CDA entering into package deals for purposes of determining compensation or acquiring possession of compulsorily acquired land, such provisions of policies and/or regulations are in conflict with provisions of the CDA Ordinance.

(iv) Article 24 of the Constitution read together with provisions of the CDA Ordinance and provisions of the Land Acquisition Regulations, 1961, mandate the determination and payment of compensation in terms of an "amount" and therefore in

monetary form. Provisions of the CDA Ordinance, therefore, require CDA to issue a composite all-encompassing award for purposes of acquiring land, which award includes within it the valuation of all interests affiliated with the land including BUP trees, crops etc., as well as a declaration with regard to apportionment of compensation between the interested persons affected by compulsory acquisition of land. CDA is vested with no authority to determine and/or grant compensation through allotment of plots. Provisions of the CDA Ordinance envisage the issuance of a singular all-encompassing award for acquisition of land and all interests emanating from or attached to or affiliated with such land. The practice of issuing separate awards for land and BUP is in conflict with Sections 2(i), 27, 28, 29, 30 and 31 of the CDA Ordinance and such practice ought to be suspended forthwith. To the extent that the Rehabilitation Policy 1984, the Rehabilitation Policy 1996, the Rehabilitation Regulations 2007 and Rehabilitation Framework 2023 provide for issuance of separate awards for land and BUP, provide for determination and payment of compensation in the form of allotment of plots, and provide for entering into package deals for seeking possession of compulsorily acquired land and/or BUP, such provisions of the said instruments are in conflict with the CDA Ordinance and ought not be acted upon. The CDA Board ought to review the aforesaid instruments and make appropriate amendments to bring them in conformity with requirements of the CDA Ordinance, as explained hereinabove, within a period of 90 days.

37. The declarations made in this judgment shall not affect any past and closed transactions. To the extent that any beneficiaries of the compensation awards have already been allotted plots as compensation and such plots have been transferred in their names in the CDA record and possession handed over to them, the same will be treated as past and closed transactions. CDA shall terminate the practice of issuing separate awards for acquisition of land and BUP, allotting plots in lieu of compensation for compulsory acquisition of land and/or BUP, and engagement in package deals for acquisition or for acquiring possession of acquired land and/or BUP.

38. Let a copy of this order be sent to Chairman CDA, who will have it placed in the next meeting of the CDA Board and ensure compliance with it. The compensation due to the petitioners in the terms mentioned hereinabove shall be calculated by CDA within a period of 30 days and paid to them within a period not exceeding 60 days, subject to codal formalities.

**(BABAR SATTAR)**
**JUDGE**

Approved for reporting.

Shakeel Afzal/-

# ***ANNEXURE-A***

| Sr. No. | Case No. | Case Title |
|---|---|---|
| 1. | W.P. No.4049/2013 | Mst. Khursheed Bibi, etc. vs. CDA |
| 2. | W.P No.2338/2014 | Ijaz Ali, etc. vs. CDA |
| 3. | W.P. No.2678/2014 | Zakia Khatoon, etc. vs. CDA |
| 4. | W.P No. 2993/2014 | Syed Sibtain Ali Kazmi Vs. CDA |
| 5. | W.P No. 3624/2014 | Sadaqat Hussain Shah Vs. CDA |
| 6. | W.P No. 2671/2015 | Anjuman-e-Darbar Alia Baba Sakhi Shah Vs. CDA. |
| 7. | W.P No. 2477/2018 | Shah Nawaz Vs. CDA |
| 8. | W.P No. 2478/2018 | Naseem Bibi Vs. CDA |
| 9. | W.P No. 2479/2018 | Adeesa Batool Vs. CDA |
| 10. | W.P No. 2480/2018 | Syed Nisar Kazmi Vs. CDA |
| 11. | W.P No. 2481/2018 | Ghulam Abbas Shah Vs. CDA |
| 12. | W.P No. 2482/2018 | Nargas Kazmi Vs. CDA |
| 13. | W.P No. 2483/2018 | Mohsin Kazmi Vs. CDA |
| 14. | W.P No. 2484/2018 | Syed Rahat Kazmi Vs. CDA |
| 16. | W.P No. 2485/2018 | Syeda Waseem Kazmi Vs. CDA |
| 17. | W.P No. 2486/2018 | Syed Sadaqat Hussain Shah Vs. CDA |
| 18. | W.P No. 3970/2019 | Syed Tazeem Hussain Shah Vs. CDA |
| 19. | W.P No. 1540/2023 | Muhammad Qadir etc. Vs. CDA |
| 20. | W.P No. 1542/2023 | Muhammad Tariq, etc. Vs. CDA |
| 21. | W.P No. 1910/2023 | Mrs. Nazish Kazmi, etc. Vs. CDA |
| 22. | W.P No. 3598/2023 | Ishtiaq Husssin Shah Vs. CDA |
| 23. | W.P No. 3599/2023 | Ghulam Abbas, etc. Vs. CDA |
| 24. | W.P No. 3904/2023 | Khaliq Dad Vs. CDA |