Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3276 of 2014

Raja Zahid Hussain
Vs
GOP, Etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.

13-8-2014. Mr. Muhammad Waqas Malik, Advocate for the petitioner.

Through this petition the petitioner has challenged the notification dated 27th May, 2014, issued by the Land Acquisition Collector, for acquiring land as specified in the said notification for an entity, namely, Federal Government Employees Foundation (hereinafter referred to as "Foundation") which is said to be under the administrative control of the Ministry of Housing and Works, Government of Pakistan. The petitioner further challenges the private housing schemes of respondents No. 7 and 8, both profit earning privately owned juristic persons, within Zone-4 of the Islamabad Capital Territory, on the grounds that the same purported housing schemes are, inter alia, in violation of the Capital Development Authority Ordinance, 1960 (hereinafter referred to as "Ordinance"), the Islamabad Capital Territory (Zoning) Regulations, 1992 (hereinafter referred to as "Zoning Regulations"), the Capital Development Authority (Environmental) Regulations,

2008 (hereinafter referred to as "Environmental Regulations"), the Islamabad Land Disposal Regulation, 2005 (hereinafter referred to as "Land Disposal Regulation") and other enabling laws, regulations, rules, etc.

2. The learned Counsel states that the cumulative effect, inter alia, of sections 22, 25 & 32 of the Ordinance, the Land Disposal Regulation, Zoning Regulation and Environmental Regulation leaves no doubt that respondent No. 2 (hereinafter referred to as "CDA") has no jurisdiction to acquire land for any other entity for the purposes of establishing a private housing scheme or allow privately owned juristic persons to establish a housing scheme, particularly in Zone 4. It is alleged that respondents No. 7 and 8 are illegally inducing innocent citizens to purchase plots in their schemes, despite the fact that the CDA has not issued an NOC, nor can an NOC be issued under the law for establishing a private housing scheme.

3. It is further urged by the learned counsel that the land specified in the schedule of the Ordinance has to be acquired by the CDA, as is evident from section 15 (2) (i) read with chapter IV of the Ordinance, and such land vests in the CDA, as provided under section 32 ibid. There is, therefore, no power or jurisdiction vested in the CDA to acquire, or cause to acquire land for any other entity. Moreover, after acquiring the land, the CDA is

under a statutory obligation to develop the same, strictly in accordance with the Master Plan and master programme prepared and approved under section 11 of the Ordinance.

4. The learned counsel has pointed out that the Zoning Regulations have been made and enacted strictly in accordance with the Master Plan, as is evident from Regulation 3, which states, "For the purposes of this Regulation, the entire Islamabad Federal Capital Territory shall be divided into the following five zones as delineated in the annexed Master Plan--". Regulation 4 provides for the Development strategies of land, and unambiguously provides for conditions in the case of the development of each Zone. Regulation 4 (4) provides for the conditions in the case of Zone 4. It has made a distinction between "acquired area" and "unacquired area". It is evident from the plain reading of the said Regulation that the Master Plan envisages that the object of the planning shall be to maintain the "character of the area as a Park". Stringent conditions have been prescribed, particularly Regulation 4 B (g), which specifically provides that "No private housing scheme shall be permissible". The provision of housing schemes has been provided in Zone 2 and 5 of Islamabad. In conditions in case of Zone 4 have been prescribed so as to protect this environmentally sensitive area. It, inter alia, consists of reservoirs and large catchment area.

5. The learned counsel has stressed that in accordance with the scheme of the law, even if land, acquired or unacquired, was to be offered for establishing private housing schemes in Zone 2 or 5, it was a mandatory statutory duty of the CDA to dispose of the land in a competitive transparent manner. It is alleged that respondents 7 and 8, namely, MS Bahria Town (Pvt) Ltd and M/s Green Tree (Pvt) Ltd respectively, have been illegally extended preferential treatment on account of extraneous considerations. It is alleged that the protected area of Zone 4 is being converted into an unplanned slum with the connivance and facilitation of CDA, because of some influential stakeholders, who have and intend to make windfall profits at the expense of environmental destruction and blatant violations of the Master Plan.

6. Lastly, it has been vehemently argued that the acts, omissions and inactions on the part of the CDA, the statutory regulatory authority under the Ordinance, irreparable damage is being caused to the environment. The adverse environmental effects are causing severe damage to the catchment area, the water reservoirs and, inevitably, affecting the lives of citizens, thereby violating their right to life, guaranteed under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution"). It is stressed that the encroachment of private housing

schemes and other unplanned construction in Zone 4 in violation of the Zoning Regulations is also a violation of the Pakistan Environmental Protection Act, 1997, and the Authority established there under has also failed to carry out its statutory obligations of taking appropriate measures in protecting the environment and taking remedial measures against any adverse effects.

7. The above contentions of the learned counsel of the petitioner raise serious questions of public importance. It, prima facie, appears that the CDA is failing in its statutory obligations to implement the Master Plan and the Regulations. If so, it will have devastating consequences, causing irreparable loss to the environment and the lives of the public at large.

8. The questions raised need consideration, and the petition is, therefore, admitted to regular hearing. Notices be served on the respondents who shall file Para wise comments and report on or before the 6th of September, 2014.

9. Keeping in view the serious questions involved, the public importance attached and the consequences of the alleged acts of the CDA viz-a-viz the right to life of every citizen, a Commission is constituted as under;

i. Member (Environment) CDA, who shall be the Coordinator/Focal person of the Commission.

ii. M/S Saima Ameen Khawaja, Advocate Supreme Court. (Environmental Law expert)

iii. Mr Jawad Chishti. Subhe Nau, (Environmental Expert)

iv. Representative of the International Union for Conservation of Nature, Pakistan (" IUCN").

v. Representative of the World Wide Fund for Nature-Pakistan ("WWF")

vi. A person nominated by the Director General, Environmental Protection Agency.

vii. A person not below the rank of an Assistant Commissioner, nominated by respondent No. 5.

10. The contentions of the learned counsel for the petitioner shall constitute terms of reference for the Commission. The Commission shall submit a detailed report within 45 days from the date of this Order, regarding the adverse environmental effects in Zone 4, along with its recommendations. Respondents No. 2 and 5 are directed to provide complete record and assistance to the Commission and to facilitate its members in preparation of its report. Member (Environment) CDA shall be responsible for coordinating with the Members of the Commission and the submission of a report within the stipulated time. The Member (Environment) shall submit to the Registrar of this Court a weekly report of the progress of the Commission.

11. The respondent No. 5 shall constitute a special team of its revenue officials to carry out a survey of Zone 4, Islamabad, identifying the extent of violations of Regulation 4 of the Zoning Regulations in Zone 4 and submit its report not later than 14-09-2014

12. Mr. Babar Sattar, Advocate High Court, is appointed as Amicus Curie to assist this Court on the following questions;

a. Can land be acquired under the Ordinance or any other law for a private entity for the purposes of establishing private housing schemes?
b. What minimum standards can the CDA adopt to ensure a transparent, competitive process for the disposal of land offered for establishing a private housing scheme?
c. How to make those officials accountable who neglect their statutory obligations likely to cause damage to the environment?

13. The office is directed to serve a copy of this order to the respondents along with the notices. Notices shall be served through courier service and in ordinary course at the expense of the petitioner.

14. This order shall also be posted on the website of this Court and any interested citizen may send his or her recommendations to the Commission through the Member (Environment), CDA.

C.M No.4031/2014

Notice. Instant application for interim relief shall be heard at 10 am on 8-9-2014. The Member (Environment) CDA shall appear in person on the said time and date fixed to, inter alia, explain as under what law private housing schemes have been allowed to establish projects in Zone 4 and whether land can be acquired for private entities in Zone 4 to establish housing schemes. This Court will also be apprised of the steps, approvals, etc taken/obtained under various laws, particularly the Pakistan Environmental Protection Act, 1997.

C.M.No.4032-E/2014

Exemption sought for is allowed, subject to all just and legal exceptions.

(ATHAR MINALLAH)
JUDGE

Asif M*