

PLJ 1999 Lahore 1108

Present : MUHAMMAD NAWAZ ABBASI, J.
ABDUL QADEER KHAN etc.--Petitioners
versus

CHAIRMAN, C.D.A. through its Chairman etc.--Respondents

W.P. No. 513 of 1992, accepted on 23.10.1998.

(i) Acquisition of Land Act, 1894 (I of 1894)--

---S. 18--Capital Development Authority Ordinance (1960), S. 11 read with Sections 12 & 13, 25 Acquisition of Land by C.D.A. without disclosing any specific scheme and without observing provisions of law--Validity--Notice purported by issued on 25th of June, 1992, contain date of issue under signatures of Deputy Commissioner as 28th June, 1992--Same did not disclose purpose for which land was being acquired--Under Section 11 of Capital Development Authority Ordinance, 1960, all plans and programs are necessarily to be approved by Central Government--Section 12 provides that C.D.A. may ask Local Body to prepare scheme in respect of matters to be dealt with by Local Bodies in specified area--Section 13 authorize C.D.A. to prepare any such scheme itself in specified Area, as mentioned in Section 12 of Ordinance--Section 14 of ordinance talks about all such information regarding manner of execution of scheme, cost, benefits and purpose to be served by scheme--Section 15 authorized Authority to exercise powers given therein for carrying out purpose of Ordinance--Sections 20 and 21 provide manner of removal of buildings in specified area and schemes to be executed after hearing concerned persons and calling objections from them--Section 22 empowers C.D.A. to acquire land within specified area in accordance with provisions of Ordinance--Sections 23 and 24 relate to entry upon land for preliminary survey etc. and compensation for damages under Section 25 of Ordinance, land is acquired, whereas under Section 26, land is marked out, measured and planned--Section 27 provides that before taking step for acquisition, Deputy Commissioner, C.D.A. shall issue public notice in manner as provided therein and Section 33 applies in cases of urgency--Factual position narrated herein before by parties shows that respondents without observing above provisions of law in letter and spirit proceeded for action and mandatory requirement of notice etc. was fulfilled subsequent to action at spot--Held : Illegality committed by respondents would render their action under Ordinance as without lawful authority. [Pp. 1129 & 1130] B

(ii) Capital Development Authority Ordinance, 1960 (XXII of 1960)--

---S. 25--Land Acquisition Act (I of 1894), S. 18--Constitution of Pakistan, 1973, Art. 25--Acquisition of land by C.D.A.--Restriction on construction of residential houses on ground of protecting Rawal Lake from pollution--

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Classification for imposing restrictions--Discrimination--Equality of State subject--Application of Art. 25 of Constitution--Purpose of saving water of Rawal Lake pollution cannot be confined to construction only in Banni Galla--Rawal Lake is surrounded by large *Abadis* on all sides in addition to poultry farm, brick kiln, industry, hotels, motels, as well as rest houses etc. and therefore, partial restriction on construction of few houses in area will not held in reducing pollution without removal of all such *Abadis* in surrounding area within radius of two miles as per notification in question and decision of committee--Consequently this ground cannot be validly pressed into service for imposing restriction on construction only on small portion of land owners only in Banni Galla from constructing residential houses for their personal use and need on pretext that same is located at bank of Rawal Lake--Principle of reasonable classification for purpose of imposing restriction on construction only in Banni Galla through acquisition of land without preparing any scheme is not attracted as similar *Abadis* at similar distance from Rawal Lake having established are in existence with permission of C.D.A.--Art. 25 of constitution contemplates that persons similarly situated and similarly placed were to be treated alike--Therefore, acquisition of land under C.D.A. Ordinance, 1960 must be for some scheme already prepared in accordance with provisions of Ordinance and acquisition must not be in violation of procedure provided thereunder and further land owners for their land under acquisition must be paid market value of land as provided under Art. 24 of Constitution of Islamic Republic of Pakistan, 1973--Deprivation of ownership of land and proprietary rights of property of petitioners safeguarded by constitution through urgent acquisition of law without any scheme and payment of compensation by respondent was not legal--Respondents having authority to acquire land not only would regard all relevant conditions to determine that which area was necessary to be acquired and for what purpose and rights of land owner, but should also treat there at par with others in like circumstances--Land of petitioner has been acquired without acquiring land of land owners in same vicinity having same effect on Rawal Lake and falling in National Park Area--Held : It would be unconstitutional--Ownership of land of petitioners is not changed through impugned acquisition. [Pp. 1130 & 1131] C & D

PLJ 1998 SC 1415. ✓

(iii) **Capital Development Authority Ordinance, 1960 (XXII of 1960)--**

---S. 25--Land Acquisition Act, 1894 (I of 1894), Ss. 18 & 27(1)--Constitution of Pakistan (1973), Art. 9--Acquisition of land by C.D.A. without any scheme, without payment of compensation and demolition of houses--Whether C.D.A. has unfettered power and can acquire land at their sweet will--Question of--Acquisition land for scheme without proper notice u/s 27(1) of Ordinance and payment of compensation, according to prevailing market value of land including built up area as residential houses is not legal--Learned counsel appearing on behalf of respondents forcefully argued that apart from C.D.A Ordinance, 1960, use of land in specified

area can be restricted for purpose of other laws with acquisition of land or residual properties--There is no departure to principle that in case of emergency like war or such other ordinary circumstances, temporary use of property through suspension of fundamental rights or otherwise to meet with emergent situation can be restricted through temporary legislature for specified period, but no law can be enacted to impose permanent restriction on use of private properties for convenient of Government or for benefit of section of people at cost of basic need in life of other in departure to Constitution of Islamic Republic of Pakistan, 1973--Exercise undertaken by respondent cannot from any angle be considered constitutional, legal or moral and no justification can be afforded from such reprehensible act by officials of Government and policy of Development of Capital site must proceed with strict observance of legal and fundamental rights of people guaranteed under constitution--Held : Laws referred would not be used as a lever to place restrictions on lawful use of properties by petitioners and respondents were not supposed to use law oppressively and deprive petitioners from free use of their properties as per their genuine need. [Pp. 1132 & 1136] F, G & H

PLD 1994 SC 693. ✓

(iv) Capital Development Authority Ordinance, 1980 (XXIII OF 1960)--

---S. 25--Land Acquisition Act, 1894 (I of 1894), S. 18--Constitution of Pakistan (1973), Arts. 23 & 24--Acquisition of land by C.D.A.--Violation of Fundamental Rights and invasion on rights of property--Whether permissible under law--Art. 23 of Constitution of Islamic Republic of Pakistan, 1973, provides that every citizen shall have right to hold and dispose of property in any part of Pakistan, subject to constitution and any reasonable restriction imposed by law in public interest--Acquiring, holding and disposing of property is fundamental right of every citizen subject to restriction imposed by any law, but no restriction can be placed on use of property in lawful manner under said Article--It is permissible to Govt. to acquire land in public interest under law, as in present case under C.D.A. Ordinance, 1960 and if same is made in violation of law on subject, it would be in violation of Art. 23 of Constitution of Islamic Republic of Pakistan, 1973--Art. 24 of Constitution provides that no person shall be deprived of his property save in accordance with law and no property can be compulsorily acquired or taken possession of save for public purpose without payment of compensation under authority of law which shall be determined on basis of principle given therein--Thus, acquisition of land under relevant provisions of C.D.A. Ordinance, 1960, is permissible subject to law and payment of compensation for public purpose only, but invasion on right of property is not permissible except in accordance with law as enshrined by Art. 24 of Constitution--Further, Art. 4 of Constitution also recognized this right by providing guarantee that no adverse action can be taken in relation to property of person

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except in accordance with law--If acquisition is done without fulfilling essential conditions given under law, same would be violative of Arts. 23 and 24 read with Art. 4 of Constitution of Islamic Republic of Pakistan, 1973--State cannot deprive person of his property without strict compliance of law in support of action--Provisions of Art. 24(i) read with Art. 4 of Constitution although contemplates deprivation of property other than those of acquisition under clause (2) of said Art. yet, it seems to also refer cases of acquisition through substantial deprivation.

[P. 1132] E

AIR 1954 SC 92. ✓

(v) Capital Development Authority Ordinance, 1960 (XXIII of 1960)--

---Ss. 27(1) & 11--Land Acquisition Act, 1894 (I of 1894), S. 18--Acquisition of land by C.D.A.--Requirements of notice u/S. 27(1) of C.D.A. Ordinance, 1960--Non-fulfilment of--Effect--Notice u/s. 27(1) of Ordinance must contain full description of land to be acquired and also purpose for which land is needed, but in present case, general notice containing *khasra* numbers of village namely Mohra Noor, Islamabad was issued with desire of Central Govt. to acquire land--Respondents, in comments to this petition have categorically stated that notice u/S. 27(1) of C.D.A. Ordinance, 1960 was issued on 28.6.1992--It is requirement of Section II of Capital Development Authority Ordinance, 1960 that notice should be published giving reasonable time which in any case cannot be less than ten days--In present case, notices were served upon owners after taking over possession of land through forcible demolition of houses on 25.6.1992 and 26.6.1992--Mandatory requirement of notice under Section 27(1) of C.D.A. Ordinance, 1960, well before time having not fulfilled acquisition of land was not valid and legal--Non preparation of any scheme and forcible dispossession and initiation of proceedings without compliance of legal formalities have rendered action of respondents without lawful authority--Held : Notice and subsequent acquisition proceedings culminating announcement of award and in consequence thereof change of owner of land in revenue record was illegal--Held further : Acquisition of land by respondent is illegal and without authority.

[P. 1140] I & J

(vi) Capital Development Authority Ordinance, 1960 (XXIII of 1960)--

---S. 36--Constitution of Pakistan (1973), S. 199--Acquisition of land--Appeal against award--Constitutional Petition--Availability of alternate remedy--Maintainability--Alternate remedy of appeal provided under Statute cannot by itself take away power of judicial review of High Court in its Constitutional jurisdiction--Provisions of Section 36 of Capital Development Authority Ordinance, 1960 being not exhaustive in circumstances is not suitable remedy available to petitioners who are challenging very acquisition of land to be illegal and are not claiming

enhancement of compensation--Held : Objection to maintainability of writ petition is not sustainable. [P. 1118] A

M/s. S.M. Zafar, A. Baseer Qureshi & Gul Zaman Khan, Advocates for Petitioners.

M/s. Sardar Muhammad Aslam and Bashir Ahmad Ansari, Advocates for C.D.A.

Dates of hearing : 7, 12 and 13.10.1998.

JUDGMENT

The following writ petitions bearing Nos. 296/1992, 297/1992, 298/1992, 375/1992, 515/1992, 521/1992, 522/1992, 523/1992, 524/1992, 525/1992, 599/1992, 770/1992, 791/1992, 401/1994, 2435/1994 and 1369/1997 involving common question of law and fact are being disposed of through this single Judgment.

2. The petitioners being the owners of the land situated in Banni Galla forming part of Villages Mohra Noor located in the capital area of Islamabad near Rawal Dam have challenged the acquisition of the same by the respondents under the Capital Development Authority Ordinance, 1960 (Ordinance XXIII of 1960) to be illegal and without lawful authority.

3. The facts in the back-ground giving rise to these Constitutional petitions as supplied by the petitioners are that some of the petitioners constructed residential houses on the lands owned by them after getting approval of the site-plans from the Union Council, Bara Kahu, Islamabad, under Section 47 read with Section 32 and the First Schedule to the Capital Territory Local Government Ordinance 1979. Initially, the Capital Development Authority through the notice dated 4.7.1988 under Pakistan Capital Regulation Ordinance, 1960 (MLR 82 of 1960) raised an objection to the construction of the house belonging to petitioner No. 2, widow of Mahmood-ul-Hassan. In reply to the said notice, shall made it clear to the C.D.A. that under Regulation in question, the Capital Development Authority was not empowered to take any action in the area and the construction was being raised on the basis of the site-plans duly approved by the Union Council concerned under Section 4(2) of the said Regulation and consequently the respondent/Capital Development Authority having no jurisdiction to interfere in the matter should withdraw the notices. The respondents thereafter kept silent and did not object to the construction of houses in the area till June, 1992 when one of the petitioners, namely, Muhammad Ayub was restrained from raising the construction, who filed a suit for permanent injunction seeking a restraint order against the respondents from demolishing his house, whereupon the Capital Development Authority while conceding the jurisdiction of the local council in the area made a statement before the Civil Court that the C.D.A. without demolishing the structure would approach the concerned Union Council for the cancellation of site-plan already sanctioned with further request not to sanction any site-plan for the constructions in the area in future. However,

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the construction of houses in Village Banni Gala remained continued on the basis of the building plans duly approved by the Union Council Bahara Kaku with the result that the Capital Development Authority filed ten different suits against the Union Council and the land owners seeking restraint order against the Union Council, Bahara Kaku and the land owners not to approve the site-plans and raise the construction. Later, without waiting the result of the suits, the respondents through an extra legal measure initiated an operation of the forcible demolition of the houses in the after-noon of 25th of June, 1992 which continued till late in the night on the next day i.e. 26.6.1992 during the public holidays. As a result of this unlawful and forcible operation of demolition of houses, a few persons while putting resistance lost their lives and a number of other sustained injuries at the hands of the police. The respondents thereafter withdrew the above said civil suits on 27.6.1992 and on the basis of a directive of Chairman, C.D.A. under Section 33 of the Capital Development Authority Ordinance, 1960 issued notice under Section 27(1) of the said Ordinance with the signature of Deputy Commissioner, C.D.A. purported to have been issued on 25.6.1992 and with the help of police contingent proceeded for the acquisition of land. The notice in question contained the decision of the Government to acquire the land of *Khasra* numbers mentioned therein, the list of which is annexed with this petition. The said notice did not disclose any purpose or the particulars of the scheme for which the land was being required. The service of notice upon the concerned persons including the petitioners is claimed on 25.6.1992 with direction to submit their claim by 9.7.1992, whereas the signatures of the Deputy Commissioner, C.D.A. on the notice bear the date as 28.6.1992 which shows that the notice in question was actually served upon the land owners after making entry into the land and demolition of the houses through physical operation at the spot. The urgency for the acquisition of the land dispensing with the normal procedure provided under the law was also not disclosed. The petitioners have challenged the validity of the impugned notices and the subsequent acquisition proceedings including the announcement of the Award and the change of ownership in the revenue record in the name of the C.D.A.

4. The respondents in the comments submitted to these petitions controverting the above factual position stated that a Phased Master Programme for the development of specified area in addition to the Master Plan was to be prepared subject to the approval of the Central Government and that the Rawal Lake with its surrounding area alongwith Banni Gala forming part of Specified Area and the capital site was included in National Park by the Federal Government through a Notification dated 27.4.1980 under Section 21(1) of Islamabad Wild Life (Protection, Preservation, Conservation and Management) Ordinance, 1979. The Rawal Lake with an area of two Kilometers from the highest water mark was also made part of Margalla Hills National Park and the constructions in the area of Rawal Lake which is the main source of water supply to Rawalpindi City being in violation of Pakistan Capital Regulation, 1960 (MLR 82 of 1960), the land

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owners were constantly warned not to built the area through notices dated 16.10.1987, 11.2.1988, 9.1.1990, 4.11.1990, 30.7.1991, 30.10.1991 and 7.2.1992 (copies placed on record). Further, the Local Councils were also informed by the Administrator, Islamabad that the constructions in the specified area without the permission of the C.D.A. were illegal and that the authority of the said Union Councils of approving the building plans was subject to the Capital Development Authority Ordinance, 1960, Pakistan Capital Regulations, 1960 (MLR 82 of 1960), Islamabad (Preservation of Landscape) Ordinance, 1966, and Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. With a view to avoid pollution in the drinking water of Rawal Lake being supplied to Rawalpindi City, a high powered Committee was constituted by the Federal Government to look into the matter. The said Committee reviewing the situation recommended for the removal of all illegal constructions in the National Park Area and consequently decision was taken for acquisition of all lands located within the radius of two kilometers from the water mark of the Lake. In pursuance thereof, the C.D.A. while proceeding under Section 33 of the Capital Development Authority Ordinance, 1960, after giving notice under Section 27(1) of the said Ordinance demolished the illegal constructions on 25.6.1992 and 26.6.1992. Learned counsel for the respondents pleaded that some of the petitioners filed civil suits against the action of demolishing of houses and acquisition of land which were still pending at the time of filing these petitions and they having availed the remedy of civil suit could not invoke the Constitutional jurisdiction of this Court. It was added that only seven persons raised construction on the basis of sanctioned building plans from the concerned Union Council and out of them only two were the petitioners before this Court.

5. The respondents claimed that notices under Section 27(1) of the Capital Development Authority Ordinance, 1960, were issued on 23.6.1992 which were served on 25.6.1992 and denied that the same were issued on 28.6.1992. However, the respondents have admitted the armed clash and forcible action at the spot with the help of police, as result of which a criminal case was also registered for the sad incident. The main stress of the learned counsel for the respondents was that the Margalla Hills National Park could not be allowed to be converted into a residential colony in violation of Section 21(4)(iv) of Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. It was peladed that except Rawal Town, the remaining construction allowed by the C.D.A. in the surrounding area of National Park was properly planned.

6. Mr. S.M. Zafar, Senior Advocate, assisted by M/s. Abdul Baseer Qureshi and Gul Zaman Khan, Advocates, learned counsel for the petitioners raised the following contentions :-

- (a) Chapter IV of the Capital Development Authority Ordinance, 1960, provides a complete procedure for the acquisition of land according to which after preliminary survey without the

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consent of the occupants, the entry in the building on the garden is not possible whereas in the present case, the notices under Section 27(1) of the Capital Development Authority Ordinance, 1960, were served upon the petitioners on 28th of June, 1992, after three days of the taking over the possession at the spot on 25.6.1992.

- (b) That unless a Scheme in the specified area in terms of sections 11, 12, and 13 of the Capital Development Authority Ordinance, 1960, is first made, the land cannot be acquired under Chapter IV of the said Ordinance;
- (c) That the respondents without disclosing the public interest in a clandestine manner and in departure to the normal procedure provided under the Capital Development Authority Ordinance, 1960, as well as in derogation to the Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973, read with Section 13 of the Capital Development Authority Ordinance, 1960 acquired the land.
- (d) That initially the respondents went for the acquisition of the land without preparing any scheme or disclosing the purpose, but later on took the stand before this Court that the land was part of the National Park and the construction was restricted to avoid pollution in the area of Rawal Dam.
- (e) That first demolition of houses through violence and then hurriedly acquisition of the land without following the proper procedure and showing any urgency was *mala-fide*.
- (f) That the acquisition of the land was not in good faith and was discriminatory as the C.D.A. in the remaining area of National Park close to Rawal Lake itself developed the Abadis, namely, Malpur and Chak Shahzad as model villages in addition to Islamabad Club, the Motels, Rawal Town National Institute of Health and Bricks Factories, Farming houses and part of Diplomatic Enclave. Learned counsel added that even poultry Farms on large scales with permission of C.D.A. are located around the Rawal Lake and the residential area of Village Lakhwal adjacent to Village Banni Gala is located at a close distance from Rawal Lake;
- (g) That the provisions of Chapter IV of Capital Development Authority Ordinance, 1960, are oppressive and offend the Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973. Further, Articles 2, 2-A and 227 of the Constitution of Islamic Republic of Pakistan, 1973 do not permit the taking away the property of an individual in extra legal manner. The learned counsel placing reliance on the case of *The Murree Brewery Co. Ltd. Vs. Pakistan through the Secretary to Government of Pakistan, Works Division and 2*

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others (P.L.D. 1972 Supreme Court 279) forcefully argued that acquisition of land was illegal.

7. Mr. Bashir Ahmad Ansari, learned counsel appearing on behalf of Capital Development Authority in reply has argued in the following manner:--

- (i) That the Union Council Bhara Kaku under Islamabad Capital Territory Municipal Ordinance, 1979, was not authorized to approve the site-plans for the erection of buildings in the National Park area forming part of the specified area.
- (ii) that the Capital Development Authority Ordinance, 1960, would not permit sanction of any site-plan unless in the first instance a scheme is sanctioned in terms of Section 12 of the C.D.A. Ordinance, 1960 and further Pakistan Capital Regulation No. 82 promulgated on 26.6.1960 which was protected under Constitution of Pakistan, 1962, read with Islamabad Building Regulation Ordinance, 1963, framed under Capital Development Authority Ordinance, 1960 and the Capital Development Authority Building Regulations, 1992, prohibit such constructions in the specified area.
- (iii) That the disputed land was properly notified as a part of National Park area, therefore, no construction in the said area could be raised under Islamabad Wildlife (Protection, Preservation Conservation and Management) Ordinance, 1979.
- (iv) That the area around the Rawal Lake is required to be developed at international standard through construction of modern hotels, restaurants etc. and the unplanned construction of residential houses would in addition to the source of pollution in the Rawal Lake which supplies drinking water to Rawalpindi City will destroy the beautification of Islamabad ;
- (v) That the respondents/C.D.A. repeatedly through public notices since 1988 warned the owners of the land in the area not to raise the construction. The Press Note dated 4.11.1990, notices dated 20.11.1991, 14.1.1992 and 17.2.1992 in the daily 'Muslim' are an evident proof of the fact that the petitioners were restrained from raising the construction in the area.
- (vi) That as per Master Plan placed on record as Annexure (R-1), Banni Gala is part of the National Park area and the C.D.A. without acquisition of land could place restriction on all types of construction in the said area and thus acquisition of the land under challenge was not at all required under Capital Development Authority Ordinance, 1960, therefore, the objections being raised on behalf of the petitioners were not sustainable.

In a nutshell, learned counsel argued that in view of the restriction the construction in the specified area under different laws, the land in

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question cannot be used for any other purpose except for which it is specified by the C.D.A. and consequently, the C.D.A. without acquisition of land and payment of compensation can restrain the owners from using their land in violation of the Master Plan and further without disturbing the ownership of the petitioners, the use of the property can be regulated by the respondents under Capital Development Authority Ordinance, 1960. Learned counsel for the respondents lastly has questioned the maintainability of this petition on the ground that the remedy of appeal against the Award is provided under Section 36 of the Capital Development Authority Ordinance, 1960.

The Legal Advisor to C.D.A. added that the Union Council Bhara Kaku having no authority to sanction site-plans or the construction in the specified area, the unauthorized construction was demolished and that the irregularities pointed out in the acquisition of land would only relevant for the purpose of determining the compensation but the acquisition cannot be declared as illegal for such reasons.

8. Learned counsel for the petitioners strongly contesting the objection regarding the maintainability of this petition argued that the petitioners have challenged the validity of the alleged notices under Section 27(1) of the Capital Development Authority Ordinance, 1960, and the illegal acquisition of land including the Award and not the inadequacy of compensation, therefore, there was no need to file the appeal against the Award under Section 36 of the Capital Development Authority Ordinance, 1960.

9. I have heard the learned counsel for the petitioners as well as the respondents at length and anxiously considered the impressive arguments. Before proceeding further, I deem it proper to dispose of the preliminary objection regarding the maintainability of this petition. The apex Court in the case of *Murree Brewery Co. Ltd. (Supra)* observed as under :--

"This system of judicial review is radically different from a system of appeals--though it is easy to confuse them, and sometimes they appear to overlap. An appeal means that some superior Court or tribunal has power to reconsider the decision of a lower tribunal on its merits. Sometimes any aspect of the lower decision is open to appeal, but sometimes there is only an appeal on a point of law (as opposed to a question of fact) Rights of appeal are given by statute, and unless some state confers the rights, it does not exist.

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Review, on the other hand, is based not on the merits but on the legality of the lower authority's proceedings. At the root of the matter is jurisdiction, or, more simply, power. If an Administrative Authority is acting within its jurisdiction, or *intra vires*, and no appeal from it is provided by statute, then it is immune from control by a Court of law. But if it exceeds or abuses its powers, so that it is

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acting *ultra vires*, then a Court of law can quash its decision by declaring it to be legally invalid. It is an inevitable consequence of our concept of the separation of powers, and of our lack of administrative Courts, that there is this sharp distinction between appeal and review.

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Judicial control, therefore, means review, and is based on the fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within their true limits.

We may add that no order having been passed under Section 25 of the Ordinance, there was no final order from which the appeal lay under Section 36 of the Ordinance. We, therefore, do not find any substance in the preliminary objection."

The alternate remedy of appeal provided under the statute cannot by itself take away the power of judicial review of this Court in its Constitutional jurisdiction. The provisions of Section 36 of the Capital Development Authority Ordinance, 1960, being not exhaustive in the circumstances is not a suitable remedy available to the petitioners who are challenging the very acquisition of the land to be illegal and are not claiming the enhancement of compensation. Thus the objection relating to the maintainability of the writ petition in the present case is not sustainable.

10. In the light of the foregoing facts, the legal position to be emerged can be seen under Sections 11, 12, 13, 14, 15, 20, and 21 of Chapter III and Sections 22, 23, 24, 25, 26, 27 and 33 of the Capital Development Authority Ordinance, 1960, which are reproduced as under :--

"S. 11.--The Authority shall prepare a Master-Plan and a phased master-programme for the development of the Capital Site, and may prepare a similar plan and programme for the rest of the Specified Area, and all such plans and programmes shall be submitted to the Central Government.

S. 12--(1) The authority may, pursuant to the Master-Plan and the master-programme, call upon any local body or agency operating in the Specified Areas to prepare, in consultation with the Authority, a scheme or schemes in respect of matters ordinarily dealt with by such local body or agency, and thereupon the local body or agency shall be responsible for preparation of the scheme or schemes within a reasonable time.

(2) Such schemes may relates to--

- (a) land use, zoning and land reservation;
- (b) public buildings;
- (c) industry;

- (d) transportation and communications; highways, roads, streets, railways, aerodromes;
 - (e) tele-communications, including wireless, television, radio, telephone;
 - (f) utilization of water, power and other natural resources;
 - (g) community planning, housing, slum clearance, amelioration;
 - (h) community facilities including water supply, sewerage, drainage, sewage disposal, electricity supply, gas supply and other public utilities;
 - (i) preservations of objects or places of historical or scientific interest or natural beauty.
- (3) The Central Government may by notification in the official Gazette, add to, later or amend the list of subjects given in sub-section (2) and any such addition, alteration or modification shall take effect as it had been enacted in this Ordinance.
- (4) The expenditure incurred on the preparation of any such schemes as aforesaid shall be borne as agreed to between the Authority and the local body or agency, and in the event of disagreement between them as may be determined by the Central Government.
- (5) No planning or development scheme shall be prepared by any local body or agency without consulting the Authority.

S. 13.--*Preparation of schemes by Authority.*--The Authority may, pursuant to the master-programme, itself prepare, when it considers it desirable to do so in the public interest, schemes for the Specified Areas relating to the matters enumerated in sub-section (2) of Section 12.

14. *Manner and form, etc. of scheme.*--All schemes under Sections 12 and 13 shall be prepared in such manner and form as the Central Government may specify, and shall contain among other things the following information, namely :--

- (a) description of the scheme and the manner of its execution;
- (b) estimate of cost and benefit;
- (c) allocation of costs to the various purposes to be served by the scheme.

(13)

S. 15.--*Power of the Authority.*--(1) Subject to the other provisions of this Ordinance and the rules, the Authority may take such measures and exercise such powers as may be necessary for the carrying out the purposes of this Ordinance.

(2) Without prejudice to the generality of powers conferred by subsection (1), the Authority may--

- (i) acquire any land in the Specified Areas in accordance with the procedure laid down in Chapter IV;
- (ii) undertake any works in the Specified Areas in pursuance of any schemes prepared under Section 13;
- (iii) incur any expenditure;
- (iv) procure plant, machinery, instruments and materials required for its use;
- (v) enter into and perform all such contracts as it may consider necessary;
- (iv) cause studies, surveys, experiments and technical researches to be made or contribute towards the cost of any such studies surveys, experiments or technical researches made by any other agency at the request of the Authority;
- (vii) issue interim development orders for areas for which a master plan is under a preparation and restrict or prohibit by general or special order any change in the use of land alteration in buildings, structures and installations;
- (vii) cause removal of any works obstructing the execution of its schemes;
- (ix) seek and obtain device and assistance for the preparation of any schemes from any local body or agency and such local body or agency shall given the advice and assistance sought by the Authority to the best of its ability, knowledge and judgment and the additional expenditure, if any, involved in giving such advice or assistance shall be borne by the Authority.

S. 20.--*Removal etc., of buildings after hearing.*--The Authority shall not order or cause any building in the Specified Areas, excluding the

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Capital Site, to be removed or demolished unless an opportunity of being heard has been given to the owner or occupier thereof, and his objection, if any, have been duly considered, and the Authority is satisfied that removal or demolition of the building is essential to the execution of its schemes.

S. 21.--*Schemes to be executed after calling objections.*--The Authority shall not execute or cause to be executed any scheme in the Specified Areas, excluding the Capital Site, unless the persons whose rights and interest are thereby affected have been given a reasonable opportunity to file their objection to such execution, and the Authority has heard such of them as it considers necessary.

S. 22.--*Liability to acquisition.*--All land within the Specified Areas shall be liable to acquisition at any time in accordance with the provisions of Chapter.

S. 23.--*Entry upon land, preliminary survey, etc.*--(1) It shall be lawful for the Authority, and any member thereof, and for the Deputy Commissioner, and any such person as may either generally or specially be authorized by the Authority, in this behalf,--

- (a) To entry upon and survey and take levels of any land;
 - (b) To dig or bore into the subsoil;
 - (c) To do all other acts necessary to ascertain whether land is adapted for the purposes of this Ordinance;
 - (d) To set out the boundaries of the land proposed to be acquired and the intended line of the work, if any, proposed to be made thereon;
 - (e) To mark such levels, boundaries and line by placing marks and cutting trenches; and
 - (f) Where it is necessary for the purposes of survey taking of levels or marking of line, to cut down and clear away any part of any standing crop, fence or jungle.
- (2) No person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least twenty four hours' notice in writing of his intention to do so.

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S. 24.-*Compensation for damage.*--Where any damage is caused to any land in consequence of anything done in pursuance of Section 23, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the provisions hereinafter set out, that is to say,--

- (a) where the amount of compensation can be fixed by agreement, it shall be fixed in accordance with such agreement; and
- (b) where no such agreement can be reached, it shall be fixed by the Deputy Commissioner.

S. 25.-*Power to acquire land.*--(1) Subject to the other provisions of this Ordinance, the rules made thereunder, and the directions of the Authority, the Deputy Commissioner may, by order in writing, acquire any land for the purposes of this Ordinance.

(2) No order under sub-section (1) shall be issued except on the receipt by the Deputy Commissioner of specific directions from the Authority.

S. 26.-*Land to be marked out, measured and planned.*--Where any land is proposed to be acquired under Section 25, the Deputy Commissioner shall cause the land (unless it has been already marked out) to be marked out and measured, and if no plan has been made thereof a plan to be made of the same.

S. 27.-*Notice to persons interested.*--(1) The Deputy Commissioner shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Central Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the 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 interests in the land and the amount and particulars of their claims to compensation for such interest, and their objections, if any, to the measurement 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 serve notice to the same effect on the occupier, if any, of such land and on all such persons known

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or believed to be interested therein, or to be entitled to net for persons so interested.

S. 33-In cases of urgency, the Deputy Commissioner may immediately after the publication of the notice mentioned in subsection (1) of Section 27 enter upon the take possession of the land which shall thereupon vest absolutely in the Authority free from all encumbrances."

11. Keeping in view the law on the subject and the various contentions raised by the learned counsel for the parties, the following questions are formulated for the purpose of disposal of these writ petitions :-

- (a) *Firstly*, whether without disclosing any specific Scheme to be prepared under Section 11 read with Sections 12 and 13 of the Capital Development Authority Ordinance, 1960, the acquisition of land could validly be made and the same was not in contravention to the provisions of the Capital Development Authority Ordinance, 1960.
- (b) *Secondly*, whether the acquisition of land was *bona-fide* and was not bad in law and that without deposit of the compensation as per prevailing market value was not in violation of Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973.
- (c) *Thirdly*, whether the C.D.A under Capital Development Authority Ordinance, 1960, or under any other law for the time being can place restriction on the use of land by the owners without preparation of a proper Scheme and acquisition of land accordingly under Capital Development Authority Ordinance, 1960, in the public interest.

12. The C.D.A. for the first time raised objection on the construction in the area through notice dated 4th of July, 1988, when Petitioner No. 2 as one of the land owners, in reply to the said notice, pleaded that the notice was issued without lawful Authority and consequently C.D.A. kept silent for a considerable period and then resisted the construction of house by one Muhammad Ayub in March/April, 1992, who challenged the authority of the C.D.A. in the area through a civil suit wherein the C.D.A. conceding the authority of the Union Council in the matter, filed suits for permanent injunction against Union Council Bara Kahu and others seeking a prohibitory decree against the defendant Union Council from approving the site-plans for construction in the area of Banni Galla and the defendants/land owners from raising construction at the spot. However, the said suits were later on withdrawn on 27.6.1992. The public notice under Section 27(1) of the C.D.A. Ordinance, 1960 statedly issued on 25th of June, 1992, contained the following contents :-

”ہر گاہ عوام الناس کو بذریعہ نوٹس نمبر 1 مطلع کیا جاتا ہے۔ کہ وفاقی حکومت نے موضع موہرہ نور۔ اسلام آباد کیپٹل ٹیریڈی میں واقع درج ذیل اراضی کے فوری حصول کا فیصلہ کیا ہے۔“

17-2722/2-26-27-2657/57-2724/58-59-60- 2726/61-2730/62-2732/81-82 to 92-2734/93-94 to 128-2736/129-130 to 220-220/1-221 to 252-252/1-253 to 276-276/1-277 to 323-2661/324-2662/324-325 to 329-2665/330-2666/330-331-332-2668/333-2667/333-2669/334-670/334-335 to 581-581/1-582 to 608-2674/609-2673/609-610 to 656-656/1-657 to 715-715/1-716 to 741-741/1-742 to 801-2678/802-2677/802-803-803/1-804 to 821-821/1-822 to 838-839 min-839 min-840 to 882-883 min-883 min-884 to 957-957/1-958 to 1162-1129-1130-1157-1159-1162-1163/1-1164/1-1165/1-1166 to 1258-1258/1-1259 to 1270-1474 to 1620-2691/1621-2692/1621-1622 to 1625-2748/1626-2749/1626-1627 to 1680-2695/1681-2696/1681-2697/1682-2698/1682-1683 to 1721-2701 / 1722-2702 / 1722-2703 / 1723-2704 / 1723-2705 / 1724-2706/1724-1725 to 1804-1805 min-1805 min-1806 to 1849-1849/1-1849-1850/1938-1939/1-1940 to 2219-2222-2229-2230 : Total price 1923 - Total area : 1852 Acres - 1 kanal - 2 malras - Chak Hay Kharaji Mohra Noor : 1282 to 1354 - Total Price : 73 - Total Area 66 Acres - 20 kanals - 4 malras. G. total Price 1996 - G. Total Area 1918 acres - 4 kanals - 6 marlas.

”اس ضمن میں جناب چیئرمین صاحب کیپٹل ڈولپمنٹ اتھارٹی۔ اسلام آباد کا صدیح حکم نامہ زیر دستخطی کو موصول ہو چکا ہے۔ اندر میں حالات جملہ حقداران اراضی مذکورہ جات کو بذریعہ نوٹس ہذا مطلع کیا جاتا ہے۔ کہ وہ مورخہ 9.7.1992 کو 9.00 بجے صبح زیر دستخطی کے دفتر واقع ستارہ مارکیٹ سیکنڈ G-7/2 اسلام آباد میں اصالتاً بذریعہ مختار حاضر آکر اعتراضات زیر دفعہ C.D.A.27(1) آرڈیننس اگر کوئی ہوں۔ نیز اپنے اپنے دعوی جات بابت جملہ مفادات متعلقہ اراضی مذکورہ بالا بصورت تحریری گوشوارہ دستخط شدہ جس میں مذکورہ مفادات کی نوعیت رقم و دیگر تفصیلات بابت معاوضہ مذکورہ کی وضاحت میں داخل کریں بصورت دیگر کارروائی یکطرفہ عمل میں لائی جائے گی۔ اور بعد ازاں کوئی عذر قابل قبول نہ ہوگا۔“

مورخہ 25 جون 1992ء نمبر 66

13. The notice purportedly issued on 25th of June, 1992, contains the date of issue under the signatures of the Deputy Commissioner as 28th of June, 1992. The same did not disclose the purpose for which the land was

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being acquired. However, at page-5 of the preliminary objection of the parawise comments submitted by the respondent to this petition, it is stated:-

"The construction in the area around Rawal Lake/Dam in Banni Galla, were absolutely unjustified in law and necessitated action at the end of the answering respondents. Drinking water from Rawal Lak was being polluted which was causing a health hazard to the inhabitants of the Rawalpindi City, Cantonment and its suburban Areas as also the territory of Islamabad Capital (Annexure R/8). It was also in total violation of the laws mentioned in the last para and in particular the law declaring it as part of the National Park. The Cabinet Committee of the Federal Government took notice of this alarming situation and in its meeting held on 9th December, 1991, the Committee, which comprised Malik Naeek Khan, Minister for Commerce (Chairman), Mr. Anwar Saifullah Khan, Minister for Environment and Urban Affairs (Member) and *Haji* Muhammad Nawaz Khokhar, Deputy Speaker, National Assembly (Member), after reviewing the actions taken by the C.D.A. to stop illegal construction activity in Banni Gala Area, decided that "all illegal construction in the National Park Area including Banni Gala be removed".

Para 7 of the comments on merits is read as under :--

"It is abundantly proved that the individual/public notices were issued since 1987 conveying all concerned that constructions being raised in the area were illegal and actionable under the law. Before action was taken, to demolish illegal constructions, notices for acquisition under Section 27(1) of the C.D.A. Ordinance, 1960 were issued on 23.6.1992 (Annexure R/16) by the concerned authorities in the C.D.A Public notices were also served on all concerned on 25.6.1992 by Respondent No. 3 under Section 27(1) (Annexure R/17 & R/18) and under Section 33 of C.D.A. Ordinance, 1960 (Annex. R/19). In the action, Police Force had to be taken along as some resistance was expected by the Authorities."

The respondents further in para-10 (III), (IV), (V), (VI), (VII), (X) and (XI) stated as under :--

"10. (III).-There is no dispute with the proposition that the land in question could be acquired in the public interest. In the present case, the land in question has been acquired for a public purpose, in public interest, as per Master Plan and the requirements of the Constitution on the subject have been duly complied with".

"10 (IV, V, VI & VII)---Public purpose of the acquisition is not required to be mentioned in the Notice under Section 27(1). Section

27(2) of the CDA Ordinance spells out the contents of the notice. Public nature of the purpose is even admitted by the petitioners. The area was to be protected against pollution and hazard to public health. The area, being part of the Margalla Hills National Park, could not be converted into a residential colony in violation of Section 21(4)(iv) of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. In so far as the question of urgency or otherwise is concerned, it was within the powers of the CDA to decide the question."

"10 (X & XI).....The action has been taken in public interest in accordance with the Planning Scheme and without any discrimination. The precedents, quoted by the petitioners are not relevant in the present proceedings. The said precedents have no bearing and similarity to the illegal activity carried on by petitioners. Firstly, the precedents quoted by the petitioners, are not in the nature of a residential colony except that of Rawal Town which was created before the inclusion of the area to be a part of the Margalla Hills National Park; secondly when those areas were developed, special care was taken to take measures for proper sewerage, drainage and other related pollution oriented sources; and thirdly, those areas are located far away from the bank of Rawal Lake and are down stream of the Rawal Lake."

14. The perusal of the notice R-16 purported to have been issued on 23.6.1992 and the notice R-18 allegedly issued on 25.6.1992 shows that the same have been issued under the signatures of Deputy Commissioner on 25.6.1992 and 28.6.1992 respectively and further notice R-19 under Sections 20 and 21 of the Capital Development Authority Ordinance, 1960, claimed to have been issued under the signatures of Deputy Commissioner before the operation probably was also issued after the impugned action.

15. The above said notices and the Press Notes relied upon by the respondents are silent about the purpose or the preparation of any Scheme for which the land was to be acquired and utilized. In the notices, it is only stated that the land is required by the Central Government whereas in the comments the purpose shown is that the construction around the Rawal Lake/Dam has been restricted to avoid pollution.

Mr. Bashir Ahmad Ansari, the learned counsel representing the respondents taking divergent position to the earlier stands of the respondents contended that the land under acquisition being part of the national park area could not be allowed to be used or any other purpose and that ban on the construction in the said area could be imposed by the C.D.A even without acquisition of land. The respondent has given different reasons for the acquisition of land at different times entirely independent to each other and admittedly neither the compensation of the acquired land has

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been deposited or paid to the land owners by the C.D.A. nor the land was allowed to be used. This would show that the Government was not genuinely interested in the acquisition of the land as stated in the notices and the land owners were deprived from its use by the respondents without any lawful justification and preparation of any Scheme was provided under Section 11 read with Sections 12 and 13 of the Capital Development Authority Ordinance, 1960. It is noticeable that during the pendency of these writ petitions, the respondent repeatedly sought adjournments on the ground that the proposal for the inclusion of the area in question in Zone-4 to make the land useable to the owners in the nature of forming houses was pending before the Cabinet. Zone-4 under Islamabad Capital Territory (Zoning) Regulation, 1992, is described as under :--

"Zone-4. This zone comprises Islamabad Park and rural periphery wedged between Murree road towards north and Lehtrar road towards south and extending beyond Simly road upto the ICT limits in the north-east. This Zone excludes the part of Margallah Hills National Park and Rawal Lake."

The Development Strategy of Zone-4 is as under :--

"Zone-4 :

A. Acquired Area.

- (a) The strategy in this Area regarding development pattern would be to maintain the over all planned character of the area as a park.
- (b) This Area shall be reserved for uses such as large public institutional projects of national importance, sports and recreation, green belt project, orchards and farming scheme, nurseries and on modest scale, schemes for rehabilitation of affectees.
- (c) No industrial activity shall be permitted in this Area. The automatic brick kilns and precast industry already functioning in a small pocket near National Institute of Health shall also be phased out after expiry of their present lease period.

B. Unacquired Area

- (a) Use of land subservient to agriculture shall be permitted so as to retain the present agriculture character of the Area.
- (b) No Agro industry, live-stock, poultry farming scheme shall be allowed in this zone.
- (c) Subject to grant of NOC by the Authority Schemes for orchards/vegetable farms by private developers would be permissible provided the size of such orchard/vegetable farm is not less than 20 Kanals (2.5 Acres). In such schemes, a farm house having a total covered area not exceeding 2,250 sq. ft.

shall be allowed per orchard/vegetable farm of an area of about 20 *kanals*. The schemes of cluster housing and community farming under which houses and farms cluster under one unified scheme would also be permitted provided the criteria of one house with covered area of 2,250 sq. ft. per form land of about 20 *kanals* (2.5 acre) is maintained. The area of such a Scheme shall not be less than 50 acres and its lay out and development specifications shall be subject to approval of the Authority and a completion certificate in respect thereof shall have to be obtained from the Authority.

- (d) It shall be mandatory that the farm house or any other construction within the farm is located at a minimum distance of 100 feet from the edge of right-of-way of the road/street.
- (e) All the buildings to be constructed in the zone shall be subject to the Islamabad Building Regulation, 1963, and the Islamabad Residential Sectors Zoning Regulations, 1985.
- (f) All such permissions shall be subject to payment of Scrutiny Fee/Service charges on account of appraisal of the proposals as determined and levied by the Authority from time to time, and without prejudice to the right of the Authority to acquire the land in public interest.
- (g) No private housing scheme shall be permissible. However, repair of old houses and expansion of existing houses may be allowed by the Authority to the native residents subject to the conditions that the site is located within the main body of the village as defined in the revenue record. The covered area of such construction shall not exceed 1000 square feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property wherever needed. All such requests shall be routed through the concerned Union Council.
- (h) No construction of houses and expansion of settlements shall be allowed in the areas adjoining all water bodies, lakes and reservoirs. The extent of such areas shall be determined after proper hydrological surveys and will be notified."

Thus the respondents by suggesting the proposal in question evidently conceded that the land despite being part of National Park was not required by the C.D.A. for any public purpose as no scheme was either prepared or was already in existence. Learned counsel for the respondents laid much stress that in the Master Plan, the area having shown as part of the national park cannot be used for any other purpose, but he has not been able to show any law that the private residential area could be made part of National Park through earmarking for the purpose of Section 21 of Islamabad Wildlife

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(Protection, Preservation, Conservation and Management) Ordinance, 1979, and that the specified area in the Master Plan would acquire the status of State land and ceased to be utilized by its owner. Instead, learned counsel conceded that the construction of modern Hotel and Restaurants could be made in the area with the permission of C.D.A. It is not denied that there are permanent *Abadis* located at the level of the water around the Rawal Lake apart from Abadi of Banni Galla at same distance from the Lake. Thus, unless all such *Abadis* around the Rawal Lake including Banni Gala are extinguished, pollution cannot be avoided by placing restriction on the construction in a particular area and consequently the purpose of acquisition of a portion of land in the area to avoid the pollution is negated.

16. The Master Plan has been prepared for the development of the capital site and the respondents undoubtedly subject to the rights of the people can acquire the land under Capital Development Authority Ordinance, 1960, for the purpose of implementation of different Schemes prepared thereunder. Section 11 read with Section 13 of the Capital Development Authority Ordinance, 1960, empowers the respondents for preparation of the Schemes and acquisition of land for the implementation of the said Schemes in the public interest as envisages in Section 12 of the said Ordinance, but it is difficult to digest that the C.D.A. in its discretion can acquire any land in the specified are without preparing a Scheme or disclosing the public purpose for which the land is to be acquired. The general statement that the land was required by the Central Government was not enough to serve the purpose of law and in the present case, the respondents having changed the stand at different stages have negated the acquisition of land in good faith and in the public interest. The Master Plan regulates the development of the capital area within the frame-work of the law through the Schemes and the land in question despite having included in National Park as stated being private land was not earlier acquired under Capital Development Authority Ordinance, 1960, for the said purpose and further no such scheme of National Park has been prepared and defined anywhere. Thus, mere ear-marking of an area through a notification under Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, without proper acquisition of the area of National Park originally shown in the Master Plan, the acquisition only of added area would not be justified. Thus, unless a proper scheme of National Park is prepared by the Central Government or the Capital Development Authority under Sections 11, 12, 13 and 14 of Capital Development Authority Ordinance, 1960, as the case may be., the partial acquisition of land in the name of national park was nothing but a device to dislocate the *bona fide* residents of Banni Galla without providing them alternate place for construction of residential houses.

17. The perusal of the above provisions of law would show that under Section 11 of the Capital Development Authority Ordinance, 1960, all plans and programmes and necessarily to be approved by the Central

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Government. Section 12 provides that C.D.A. may ask a local Body to prepare a scheme in respect of matters to be dealt with by the Local Bodies in the specified area. Section 13 authorize the Capital Development Authority to prepare any such scheme itself in the specified area, as mentioned in Section 12 of the Ordinance. Section 14 of the Ordinance talks about all such information regarding the manner of execution of scheme, the cost, benefits and the purposes to be served by the scheme. Section 15 authorizes the Authority to exercise the powers given therein for carrying out the purpose of the Ordinance. Sections 20 and 21 (*ibid*) provide the manner of removal of buildings in the Specified Area and Schemes to be executed after hearing the concerned persons and calling objections from them. Section 22 empowers the C.D.A. to acquire the land within the Specified Area in accordance with the provisions of the Ordinance. Sections 23 and 24 relate to the entry upon the land for preliminary survey etc. and compensation for damages. Under Section 25 of the Ordinance, the land is acquired, whereas under Section 26, the land is marked out, measured and planned. Section 27 provides that before taking step for acquisition, the Deputy Commissioner, Capital Development Authority shall issue public notice in the manner as provided therein and Section 33 applies in cases of urgency.

The factual position narrated herein before by the parties shows that the respondents without observing the above provisions of law in letter and spirit proceeded for the auction and the mandatory requirement of notice etc was fulfilled subsequent to the action at the spot. Consequently, the illegality committed by the respondents would render their action under the Ordinance as without lawful authority.

18. The acquisition of the land namely with the liable of public purpose would not enough to make acquisition of land under the Capital Development Authority Ordinance, 1960, and further no restriction can be placed on the jurisdiction of the Court from going into the question of legality of the acquisition of the lands.

The review of the matter reveals that purpose of saving the water of Rawal Lake from pollution cannot be confined to the construction only in Banni Gala. Rawal Lake is surrounded by large Abadis on all sides in addition to the poultry farm, brick kiln, industry, hotels, motels as well as rest houses etc and, therefore, the partial restriction on the construction of few houses in the area will not be helpful in reducing the pollution without the removal of all such Abadis in the surrounding area within the radius of two miles as per notification in question and decision of the Committee. Consequently this ground cannot be validly pressed into service for imposing restriction on the construction only on a small portion of land through acquisition. It is not fair to deprive a few land owners only in Banni Gala from constructing residential houses for their personal use and need on the pretext that the same is located at the bank of Rawal Lake. Whereas, at the same time, the Abadi of Malpur model village and such other Abadis located

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at the other banks of Rawal Lake opposite Banni Gala have been allowed to remain in existence. Instead, as contended by the learned counsel for the petitioners, the C.D.A. has allowed constructions in the said Abadis situated close to the Rawal Lake except Banni Gala. Thus, the discriminatory treatment by the C.D.A. with the residents of Banni Gala. Thus, the discriminatory treatment by the C.D.A. with the residents of Banni Gala including the petitioners in the matter of use of land as per their need for residential purpose is against the principle of equality and equal protection of law as envisaged under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. The apex Court in the case of *Mehram Ali etc. vs. Federation of Pakistan etc.* (P.L.J. 1998 S.C. 1415) held that equal protection of law does not envisage that every citizen is treated alike in all circumstances, but it contemplates that the persons similarly situated or similarly placed are to be treated alike and that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis. The equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed. The principle of reasonable classification for the purpose of imposing restriction on the construction only in Banni Galla through acquisition of land without preparing any scheme is not attracted as similar *Abadis* at similar distance from Rawal Lake having established are in existence with the permission of the C.D.A. This classification made by the respondents in the circumstances is not reasonable and being not founded on any rational basis offends the spirit of Article 25 of the Constitution. The Government in a democratic set up cannot in public matters make invidious distinctions in the name of "public interest". Thus a person individual or a class of persons is protected from being singled out as a subject to be dealt with discriminatory. Article 25 of the Constitution contemplates that the persons similarly situated and similarly placed were to be treated alike. Therefore, the acquisition of the land under the Capital Development Authority Ordinance, 1960, must be for some scheme already prepared in accordance with the provisions of the Ordinance and the acquisition must not be in violation of the procedure provided thereunder and further, the land owners for their land under acquisition must be paid market value of the land as provided under Article 24 of the Constitution of Islamic Republic of Pakistan, 1973. The deprivation of ownership of land and proprietary rights of property of the petitioners safeguarded by the Constitution through urgent acquisition of land without any scheme and payment of compensation by the respondents was not legal. The respondents having authority to acquire the land not only should regard all the relevant conditions to determine that which area was necessary to be acquired and for what purpose and the rights of the land owners, but should also treat them at par with others in alike circumstances. The land of the petitioner has been acquired without acquiring the land of the land owners in the same vicinity having the same effect on Rawal Lake and falling in the national park area. Consequently, it would be unconstitutional and the

(Muhammad Nawaz Abbasi, J.)

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E ownership of the land of the petitioners is not changed through the impugned acquisition.

F 19. Article 23 of the Constitution of Islamic Republic of Pakistan, 1973, provides that every citizen shall have the right to hold and dispose of the property in any part of Pakistan, subject to the Constitution and any reasonable restriction imposed by law in the public interest. The acquiring, holding and disposing of the property is a fundamental right of every citizen subject to the restriction imposed by any law, but no restriction can be placed on the use of the property in a lawful manner under the said Article. It is permissible to the Government to acquire a land in the public interest under the law, as in the present case under the Capital Development Authority Ordinance, 1960, but the acquisition must be strictly in terms of the law and if the same is made in violation of law on the subject, it would be in violation of Article 23 of the Constitution of Islamic Republic of Pakistan, 1973. Article 24 of the Constitution provides that no person shall be deprived of his property save in accordance with law and no property can be compulsorily acquired or taken possession of save for a public purpose without the payment of compensation under the authority of law which shall be determined on the basis of the principle given therein. Thus, the acquisition of land under the relevant provisions of Capital Development Authority Ordinance, 1960, is permissible subject to the law and payment of compensation for public purpose only, but the invasion on the right of property is not permissible except in accordance with law as enshrined by the Article 24 of the Constitution. Further Article 4 of the Constitution also recognizes this right by providing guarantee that no adverse action can be taken in relation to the property of a person except in accordance with law. If the acquisition is done without fulfilling the essential conditions given under the law, the same would be violative of Article 23 and 24 read with Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The State cannot deprive a person of his property without strict compliance of law in support of the action. The provisions of Article 24(1) read with Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 although contemplate the deprivation of property other than those of acquisition under clause (2) of said Article, yet, it seems to also refer the cases of acquisition through substantial deprivation. The Supreme Court of India in case of *State of West Bengal v. Subodh Gopal Bose* (A.I.R. 1954 S.C. 92) held under :-

"It appears to me that while the framers of the Constitution laid down the requirement of the authority of law for 'deprivation of property' with a larger connotation, they limited the requirement of payment of compensation to what may reasonably be comprehended within the concepts of 'acquisition' and 'taking possession'. With respect, to read these words and phrases in Article 31(2) as meaning the same thing as 'deprivation' used in Article 31(1) and to make the test of 'substantial abridgment' or 'deprivation' as the '*sine qua non*' for payment of compensation under Article 31(2) is to open

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the door for introduction of most, if not all the elements of wide uncertainty which have gathered round the work 'taken' used in the corresponding context in the American Constitution."

The said Court in case of *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.* (A.I.R. 1954 S.C. 119) has further held as under :--

"Article 31 gives complete protection to private property as against executive action, no matter by what process a person is deprived of possession of it. In other words, the Constitution declares that no person shall be deprived of possession of private property without payment of compensation and that too under the authority of law, provided there was a public purpose behind that law. It is immaterial to the person who is deprived of property as to what use the State makes of his property or what title it acquires in it. The protection is against loss of property to the owner and there is no protection given to the State by the Article. It has no fundamental right as against the individual citizen. Article 31 states the limitations on the power of the State in the field of taking property and those limitations are in the interests of the person sought to be deprived of his property. The question whether acquisition has a larger concept than is conveyed by the expression 'taking possession' is really of academic interest in view of the comprehensive phraseology employed by Clause (2) of Article 31."

The respondents in the present case by taking away the entire bundle of rights in the land deprived the petitioners from their valuable property. The question would be whether by taking away substantial part of rights in the property in the name of acquisition would be deprivation for the purpose of Article 24(1) of the Constitution, depends upon the nature of transaction. If an owner of the property has been restricted from its lawful use either through acquisition or otherwise, in an irregular manner and not in good faith and public interest, it would hardly be disputed that the owner has been deprived of his property in violation to the Constitutional guarantee. Reference may also be made to *Syed Wasey Zafar and 4 others v. Government of Pakistan through Secretary, Finance and others* (P.L.D. 1994 S.C. 621).

20. Learned counsel for the respondents without distinguishing the present case from the case of *The Murree Brewery Co.* (P.L.D. 1972 S.C. 279) contended that the law laid down therein is not applicable to the acquisition in present case. The perusal of the judgment under discussion will show that the verdict given by the Apex Court in the matter is fully applicable to the present case and the legal position having not change, the

(Muhammad Nawaz Abbasi, J.)

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C.D.A. in the present case cannot take a different position and consequently the dictum of law given by the Apex Court in the above said judgment would come to the rescue of the petitioners. The basic requirement of law is that there must be direct nexus of the acquisition of land with the purpose for which the land is being acquired and if it is not fulfilled the same is not legal.

21. The law does not give unfettered powers to the C.D.A. to acquire any land at any time in the specified area. The acquisition of land under Capital Development Authority Ordinance, 1960, must be in pursuance of some scheme approved by the competent authority. The Apex Court in the Murree Brewery case (*supra*) with reference to Section 22 of the Capital Development Authority Ordinance, 1960, which provides that the land in the specified area shall be liable to acquisition at any time in accordance with the provisions of the Ordinance, held at page 290 of the judgment as under :--

"We are unable to accept the contention that the C.D.A. has unlimited and undefined a power to acquire all land within the specified Areas. Any acquisition with these areas must have a reasonable reference to the purpose of the Ordinance, and must be carried out strictly in accordance with its provisions."

It is further held at page 293 as under :--

In our opinion the very scheme and purpose of the Ordinance make it clear that the planning and development must proceed in accordance with some Scheme approved by the Central Government. This view finds full support, *inter-alia*, from the provisions of Sections 11, 12, 13 and 14, 19, 20, 21 and 25 of the Ordinance. The preamble further lends support to the view.

Section 22 of the Ordinance provides that all land within the Specified Areas shall be liable to acquisition at any time in accordance with the provisions of this Chapter. The contention of the respondents suffers from a misconception inasmuch as it fails to take note of Section 25 of the Ordinance, which gives the powers to acquire land. Section 25 has categorically provided that the land can be acquired for the purposes of the Ordinance subject to the other provisions of this Ordinance, the rules made thereunder, and the directions of the Authority. This naturally takes us back, *inter alia*, to the provisions of Sections 11, 12, 13 and 14 of the Ordinance. Apart from the purpose of the Ordinance, however, the acquisition under the Ordinance has to be made in pursuance of a Scheme framed under the Ordinance. This is particularly supported by the provisions of Sections 20 and 21 of the Ordinance. The property in question having pucca buildings standing thereon may require to be demolished on acquisition. Under Section 21 there is an embargo on the Authority to execute etc. any Scheme in the specified area excluding the Capital Site, unless a reasonable opportunity to file their objections has been given to the persons whose rights and

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interests are going to be affected and the Authority has heard such of them as it considers necessary. Similarly no order for removal or demolition of any building in the specified area excluding the Capital Site can be made unless the necessary opportunity has been given to owners or occupiers of the buildings and their objections have been heard as prescribed in Section 20. The notice dated the 10th of September 1964 (Annex 'C') evidently appears to be under Section 21 of the Ordinance. This notice, however, does not give the particulars of the Scheme where-under the property in question was sought to be acquired. In another notice of the same date (Annexure 'D') however, it has been mentioned that the land was sought to be acquired for the Central Government for the construction of the Capital, Islamabad. This notice was given under Section 27 of the Ordinance. The latter notice should have preceded the preparation of a Scheme and the marking out and measurement of land and the preparation of plan. It was indeed curious that the two notices Annexures 'C' and 'D' should have been issued simultaneously. The Ordinance deals with expropriation of private properties and in the absence of a clear and unambiguous provision to the contrary such wide and undefined powers as are claimed for the C.D.A cannot be countenanced.

We accordingly hold that the acquisition being in flagrant violation of the provisions of the Ordinance is illegal".

22. Therefore, the contention that the land can be acquired in the specified area without any restriction and framing any scheme is not correct. Section 25 of the Capital Development Authority Ordinance, 1960, unequivocally states that the land can be acquired for the purpose of the Ordinance subject to the other provisions of the Ordinance and the Rules made thereunder and thus the provisions of Section 22 cannot be read in isolation and must not be invoked without giving effect to the Sections 11, 12, 13 and 14, 20 and 21 of the *ibid* Ordinance.

23. The construction already in existence at the spot could not have been demolished without making compliance of Sections 20 and 21 of the Capital Development Authority Ordinance, 1960, merely by issuing notice under Section 27(1) of the said Ordinance. The residents of the area were not supposed to be dislocated without approval of a proper scheme and giving them reasonable opportunity to file objections thereto. The acquisition of the land for a scheme without proper notice under Section 27(1) of the Ordinance and the payment of compensation according to the prevailing market value of the land including the built up area as residential houses is not legal. In the present case, as stated the compensation has been determined under Section 2(k) of the Capital Development Authority Ordinance, 1960, on the basis of value of the land as per its classification during the period from 1954 to 1958 and the acquisition proceedings were initiated before giving the notice under Section 27(1) of the Ordinance which

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was silent about the essential particulars as to the scheme and the compliance of Sections 20 and 21 of the Capital Development Authority Ordinance, 1960. The respondent without observing the legal obligation of the preparation of the scheme for which the land was required and further in complete departure to the mandatory procedure provided under Capital Development Authority Ordinance, 1960 for acquisition of land deprived the petitioners from their valuable properties.

24. The private properties of the citizen could not be taken away by the respondents in extra legal manner under the pretext that the land was part of specified area and the Capital Development Authority Ordinance, 1960, authorized the acquisition of the same. The manner in which the acquisition proceedings in the present case have been initiated and conducted is not recognized in the civilized societies and the States where Govt. is established under Constitution. Thus, the illegality is not curable to be condoned and countenanced. The learned counsel appearing on behalf of the respondents forcefully argued that apart from the Capital Development Authority Ordinance, 1960, the use of the land in the specified area can be restricted for the purpose of other laws referred to above without the acquisition of land or residential properties. There is no departure to the principle that in case of emergency like war or such other extraordinary circumstances, the temporary use of a property through suspension of fundamental rights or otherwise to meet with the emergency situation can be restricted through the temporary legislature for a specified period, but no law can be enacted to imposed permanent restriction on the use of the private properties for the convenient of Government or for the benefit of a section of people at the cost of basic need in life of others in departure to the Constitution of Islamic Republic of Pakistan, 1973. The Apex Court in case of *Ms. Shehla Zia and others v. WAPDA* (P.L.D. 1994 Supreme Court 693) observed that the life is not restricted to animal life or vegetative life under Article 9 of the Constitution. It carries all fundamental and natural rights with in including the right to have a rule of law and protection of law. The exercise undertaken by the respondents cannot from any angle be considered Constitutional, legal or moral and no justification can be afforded from such reprehensible act by the officials of the Government and the policy of the development of the capital site must proceed with strict observance of the legal and fundamental rights of the people guaranteed under the Constitution. Consequently, the laws referred to above would not be used as a liver to place restrictions on the lawful use of the properties by the petitioners and the respondents were not supposed to use the law oppressively and deprive the petitioners from the free use of their properties as per their genuine need.

25. The respondents having taken divergent position before the Court made an attempt to justify the action of compulsory acquisition of land in the specified area of National Park, which itself is not a scheme for the purpose of Section 11 read with Section 13 of the Capital Development

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Authority Ordinance, 1960 and instead is a combination of different projects and schemes such as motels, restaurants, Rest Houses, roads and other buildings, the play-grounds and all amenities for public. The acquisition of land is mainly defended on the basis of a notification under Section 21(1) of Islamabad, Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 read with notification under Sections 22 and 32 of the above said Ordinance issued on 28th of April, 1980, which are reproduced as under :--

(I) "S.R.O.. 443(I)/80.--In exercise of the powers conferred by sub-section (1) of Section 21 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the following areas to be the Margalla Hills National Park, namely :--

- (1) Margalla Reserve Forest Comprising Compartments Nos. 2 to 5, 7 to 23, 28, 30 to 38 (I) and 41 (ii);
- (2) Military Grass Farm comprising compartments 1 to 25.
- (3) Lands falling in villages Mangial, Malach Dakhli, Phulgran, Subhan, Mandla, Jhang Bagial, Malpur (Bijran), Rumli, Narias, Padoh Dakhli, Noorpur Shahan, Ratta Hottar, Saidpur, Dhoke Jiwan, Gandian, Kalinjar and Saniari;
- (4) Area bounded by Shahrah-I-Kashmir in the north, Sharah-I-Islamabad in the west and Murree Road in the south and east upto its junction with Shahrah-i-Kashmir; and

Rawal lake and area within a distance of 2 kilometres from the highest water mark of Rawal Lake.

No. 3(15)/76-CDA.III.(4).

(II) S.R.O. 444(I)/80.--In exercise of the powers conferred by sub-section (1) of Section 22 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the whole of the Islamabad Capital Territory, except the areas declared as wildlife sanctuary and National Park, to be the game reserve.

No. 3(15)/76-CDA.III.(5).

(III) S.R.O. 445(I)/80.--In exercise of the powers conferred by sub-section (1) of Section 32 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to authorize

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the Magistrate of the first class posted in Islamabad to try offences under the said Ordinance.

No. 3(15)/76-CDA.III.(6)."

The examination of the matter in terms of Section 21 (1) of the *ibid* Ordinance do not advance the case of the respondents. Section 21(1) along with Sections 20 and 23 of the said Ordinance is reproduced hereinafter :--

"S. 21. National Park--(1) With a view to protecting and preserving scenery, flora and fauna in natural state, the Federal Government may, by notification in the Official Gazette, declare any area to be a National Park.

(2) The National Park shall be accessible to public for recreation, education and research, subject to such restrictions as the Federal Government may impose.

(3) Provision for access roads to, and construction of rest houses, hotels and other buildings in the National Park alongwith amenities for public may be so made, the forest herein shall be so managed and forest produce so obtained as not to impair the object for which it is declared a National Park.

(4) Except as otherwise provided by this Ordinance and the rules, the following acts shall be prohibited in a National Park, namely :--

- (i) hunting, shooting, trapping, killing, or capturing of any wild animal within a radius of two kilometres of its boundaries;
- (ii) firing any fire-arm or doing of any other act which may disturb any wild animal or interfere with its breeding place;
- (iii) felling, tapping, burning damaging or destroying of, or taking, collecting or removing therefrom, any plant or tree;
- (iv) clearing or breaking up of any land for cultivation, mining or for any other purposes; and
- (v) polluting water flowing in or through it:

Provided that the authorized officer may, for specific purposes, authorized the doing of any of the aforementioned acts."

"S. 20. Wildlife sanctuary.--(1) With a view to securing undisturbed breeding of wildlife, the Federal Government may, be notification in the Official Gazette, declare any area to be a wildlife sanctuary.

(2) Subject to rules, the wildlife sanctuary shall be closed to public, and no exploitation of forest therein shall be allowed except for reducing fire hazards, epidemic or insect attacks or other natural calamities.

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(3) No person shall enter or reside, cultivate any land, damage or destroy and vegetation, introduce any endemic or exotic species of any animal or plant, introduce any domestic animal or allow it to stray, cause any fire, or pollute water, in a wildlife sanctuary, or hunt, kill or capture and wild animal or fire any gun or other fire-arm within one and a half kilometer of the boundaries thereof:

Provided that the authorized officer may, for specific purposes authorize the doing of any of the aforementioned acts."

"S. 23. *Private game reserve.*—(1) Where the Federal Government is satisfied that private land has been dedicated by its owner for the purposes similar to that of a game reserve, it may on the application of the owner of that land, by notification declare such land to be a private game reserve.

(2) Hunting of wild animals by any person other than the owner of the land shall not be allowed in a private game reserve except with the permission of the owner thereof."

The perusal thereof indicates that issue of notification under Section 21(1) *ibid* would generally be applicable to the State land and forest and to the other area notified as part of National Park only for limited purpose given therein and will not authorize the respondents to enter into private land owned by the people except in case of application of Section 23 of the said Ordinance and consequently no punitive action could be taken without first making compliance of the mandatory provisions of Capital Development Authority Ordinance, 1960, as discussed above. The admitted position is that the C.D.A. has not acquired the land earmarked for the National Park area under the above said notice and also has not prepared any scheme as such and thus the acquisition of only a small portion of land being used for residential purposes with the exclusion of remaining area earmarked in the notification specially Malpur etc., model villages, construed at the Bank of Rawal Lake was not justified and would not be in the public interest. Notwithstanding the issuance of a notification under Section 21(1), no notification under Section 20 of Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 having issued, the area of Banni Galla was not declared as an area to be Wildlife sanctuary to close the public entry for the purpose of sub-section (6) of Section 20 *ibid*. The area was also not a private game reserve under Section 23 of the Ordinance. In a nutshell, no scheme of National Park having prepared, the land under acquisition was not needed for any scheme as envisaged under Sections 11 and 13 of the C.D.A. Ordinance, 1960. The purpose of removing the pollution in the lake as a part of Margalla Hills National Park, which is sufficiently surrounded by *Abadis* from all sides, could have also no nexus with the acquisition. Be that as it may, none of the above purpose was shown at the time of acquisition of the land, in an extra ordinary haste through dispensing with the normal process and following the mandatory requirement of giving

I the notices to the land owners and occupants of houses as envisaged under Sections 27(1) read with Sections 20 and 21 of the C.D.A. Ordinance, 1960. A notice under Section 27(1) of the above Ordinance must contain full description of land to be acquired and also the purpose for which the land is needed but in the present case, a general notice containing the Khasra numbers of Village namely Mohra Noor Islamabad was issued with desire of Central Government to acquire the land. The respondents in the comments to this petition have categorically stated that the notice under Section 27(1) of the C.D.A. Ordinance, 1960 was issued on 25.6.1992 where the Deputy Commissioner C.D.A. signed the said notices on 28.6.1992. It is the requirement of Section 11 of the Capital Development Authority Ordinance, 1960 that the notice should be published giving a reasonable time, which in any case cannot be less than ten days. In the present case, the notices were served upon the owners after taking over the possession of the land through forcible demolition of houses on 25.6.1992 and 26.6.1992. The mandatory requirement of notice under Section 27(1) of the Capital Development Authority Ordinance, 1960, well before time having not fulfilled, the acquisition of land was not valid and legal. The non-preparation of any scheme and the forcible dispossession and initiation of proceedings without compliance of legal formalities have rendered the action of the respondents without lawful authority, with the result that the notice in question and the subsequent acquisition proceedings culminating in the announcement of the Award and in consequence thereof the change of ownership of the land in the revenue record was illegal.

J 26. In the light of the above discussion, these writ petitions succeed. The impugned acquisition of land by the respondent is declared to be illegal and without lawful authority. The entries of ownership of the land in question in the name of the C.D.A. in the revenue record, if any, shall be no consequence. The petitioners are declared the lawful owners of the land to be used in accordance with law and are also well within their rights to recover the damages for the loss, if any, caused to them as a result of the forcible and violent operation made by the respondents before acquisition of land at the spot from the Capital Development Authority through the civil suits. However, this judgment will not debar the C.D.A. from acquiring the land for a public purpose in strict observance of law through preparation of a proper scheme under the provisions of Capital Development Authority Ordinance, 1960. The land in question is located near the main Islamabad City and the same is being used for residential purposes solely, therefore, in case of acquisition of land, the C.D.A. before dislocating the petitioners will suitable adjust them in any regular residential scheme as per policy of the C.D.A. in such like cases and payment of compensation to be determined on the basis of the prevailing market value of the land. This writ petition and the other connected writ petitions are allowed with no order as to costs.

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Petitions accepted.

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