

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1518-2021

Rafaqat Hussain Shah Bukhari and others.

versus

Secretary M/o Housing & Works, Islamabad and others.

Writ Petition No.2346-2021

Syed Israr Gillani and others.

versus

F.O.P through Secretary M/o Housing & Works, Islamabad and others.

Writ Petition No.960-2021

Riasat Hussain Qureshi and others.

versus

Secretary M/o Housing & Works, Islamabad and others.

Writ Petition No.4153-2022

Malik Muhammad Ramzan.

versus

F.O.P through Director General, FGEHA, Islamabad and others.

Writ Petition No.3551-2022

Riasat Mahmood and others.

versus

Director General, FGEHA, Islamabad and others.

Writ Petition No.3746-2022

Ghulam Abbas Shah and others.

versus

Director General, FGEHA, Islamabad and others.

Writ Petition No.2047-2022

Sharin akhtar and others.

versus

F.O.P through Secretary M/o Housing & Works, Islamabad and others.

Criminal Original No.138-2021

Nadeem Awan Akhtar and another.

versus

Tariq Rashid, Director General, FGEHA, Islamabad and another.

Petitioners by:

Raja Inaam Ameen Minhas, Syed Wajid

Ali Gillani, Ch. Sajid Abdullah Srae,

Ehsan Ullah Sial, Adil Aziz Qazi,

Haseeb Hassan, Rana Abdul Latif Khan
& Raja Abdul Qayyum Advocates in
respective petitions.

Respondents by:

Mr. Faisal Siddiqui, Shaheena Akbar,
Barrister Muhammad Hassan Alam,
Muhammad Nazir Jawad, Advocates
for FGEHA, in respective petitions.
Basit Khan, Director Law, FGEHA.
Mohsin Pasha, A.D. Law, FGEHA.
Barrister Munawar Iqbal Duggal,
Additional Attorney General.
Usman Rasool Ghummun, AAG.
Mudassir Latif Abbasi & Barrister
Ayesha Siddique Khan, Advocate for
interveners in W.P.1518 & 960 of 2021.

Date of Hearing: 15.12.2022.

MOHSIN AKHTAR KAYANI, J: By way of this common
judgment, I intend to decide all these writ petitions and contempt
petition arising out of similar questions of law and fact.

2. Brief facts stated in writ petition No.1518 of 2021 are that the
petitioners have prayed for issuance of direction to the respondent
Federal Government Housing Authority (FGEHA) to prepare the
list of affectees of Built-up Properties, *herein after referred as BUPs* of
Jhangi Syedan after proper assessment, measurement and on spot
verification manually instead of relying on Google GIS / Image.
Further direction is also sought to respondent authority to
determine compensation of BUPs of petitioners from the date of
taking possession of built-up properties instead of date of
notification under section 4 of the Land Acquisition Act, 1894 in

terms of **2021 SCMR 201 (Federal Government Employees Housing Foundation (FGEHF) Vs. Malik Ghulam Mustafa)**, also prayed for compensation in terms of rehabilitation policy enshrined in awards of different sectors or agreement signed by the affectees with the CDA.

3. In W.P No.2346-2021, the petitioners have challenged the vires of Sections 15, 16, 19 and 20 of FGEHA Act, 2020 and claims that the same may be declared as ultra vires to the constitution of Islamic Republic of Pakistan, 1973; also contended that parliament has no legislative competence to enact the law in respect of acquisition for whole country after 18th amendment.

4. In W.P No.960/2021, the petitioners have assailed the BUPs award dated 15.02.2021, passed by the respondent Authority with the additional claim to announce award after conducting the due survey and measurements of the BUPs on the site.

5. In W.P No.4153-2022, the petitioners claim the payment of compensation as per BUP No.210 being genuine affectees of Pind Paracha, Dakhli Jhangi Syedan, Islamabad.

6. In W.P No.3551/2022, the petitioners have prayed for issuance of directions to the respondents to pay compensation as per the measurements of the BUP owned and possessed by the petitioners in BUP No.910 at Serial No.365 of the list.

7. In W.P No.3746/2022, the petitioners have prayed for issuance of direction to the respondents to pay compensation of 04 kanals of land as mentioned in the revenue record according to the

present market value with further prayer to allot one plot each to the petitioners, as well as correction in the list accordingly.

8. In W.P No.2047/2022, the petitioners have prayed for issuance of direction to the respondents to prepare the list of affectees of BUPs of Jhangi Syedan G-14/1 and G-14/2 and to record number of families in each building with number of units and utility connections on the basis of information provided by the owners/affectees, with further prayer that the Authority be directed to determine the compensation of BUPs of the petitioners from the date of taking possession of the properties instead of date of notification under Section 4 of Land Acquisition Act, 1894 and they be treated equally to similarly placed affectees of the CDA in terms of Rehabilitation Policy, and consequently they be allotted the plots against each affectee in different sectors or in terms of agreements signed between the affectees and CDA.

9. In Criminal Original No.138/2021, the applicants have prayed for initiation of contempt of Court proceedings against the respondents for publication of notice on 23.05.2021 in "Daily Express", misstating the order passed by this Court pertaining to measurement of different houses.

10. Learned counsel for the petitioners have raised multiple questions including the vires of Federal Government employees Housing Authority Act, 2020, as well as upon the process adopted by the respondent / FGHEA for survey, demarcation and acquisition of the properties viz a viz their rehabilitation benefits

which were not granted to the petitioners in line with the rehabilitation policy adopted by the CDA for different acquisition proceedings within Islamabad Capital Territory. It has also been argued that the Federal Government Employees Housing Authority Act, 2020, is illegal as the appellate authority provided in the law is the same Executive Board of the Authority, which amounts to conflict of interest as they are judged in their own cause.

11. Different applicants have also filed applications for impleadment numbered as CM Nos.2002 & 2000 of 2022 in writ petition Nos.1518 & 960 of 2021 respectively, on the ground that they are civil servants who have been allotted plots by the erstwhile Federal Government Employees Housing Foundation and till date the respondent Authority has not been able to deliver the possession due to non-conclusion of the proceedings, and as such the construction cost has raised, while majority of the applicants who have retired from civil service remain shelter less. The applicants have sought directions for early decision of these cases with the claim that the respondent Authority has to take over the acquired land and develop the sectors in accordance with the layout plan in order to settle the miseries of the retired civil servants. No doubt, they are necessary parties to the lis, however, they have been given right of hearing through their counsel Mr. Mudassar Latif Abbasi & Barrister Ayesha Siddique Khan.

12. Learned counsel for the Federal Government employees Housing Authority contends that they have completed the survey

on the basis of Google GIS / images for the BUP as the residents / occupants are not willing to cooperate, furthermore, on directions of this court, committee has been constituted, which has completed the survey after physical inspection of the properties. However, the petitioners on one hand have challenged the vires of law and on the other hand seeking benefits which itself is self-contradictory. It has further been contended that the rights of recognized BUPs will only be settled under the law and any person who has illegally constructed any building or a house is not entitled for any benefit, however, the survey has covered both legal as well as illegal BUPs. Public notices have been given followed by door to door verification carried out in presence of the local committee and by the staff of the FGEHA, however, some of the residents have not cooperated with the respondent Authority, therefore, their cases shall be dealt in terms of Google GIS / Image. The Deputy Commissioner and the staff of the FGEHA have visited on site and even public meetings were carried out, where each individual has been asked to represent his case to avoid any conflict in the measurement of the BUPs. The majority of the area has been settled and measured accordingly as per the survey numbers in BUPs.

13. Arguments heard, record perused.

14. Perusal of record reveals that the petitioners have raised three different questions in these writ petitions, where majority of the petitioners claim that they be compensated for their BUPs from the date of taking over the possession of the property instead of the

date of notification in terms of section 4 of the Land Acquisition Act, 1894, and they are also seeking rehabilitation benefits in shape of plots in different sectors. Some of the petitioners are only aggrieved to the extent of compensation as per measurement of their BUPs claiming that the properties of the affectees should be measured on physical verification in Mouza Jhanig Syed and Challo, which have been acquired by the FGEHA / respondent in order to develop the sectors for the Federal Government Employees, whereas, at the same time in W.P No.2346/2021 vires of Sections 15, 16, 19 and 20 of the FGEHA Act, 2020 have been challenged. In order to settle the issue, this court considers it necessary to settle the vires raised in writ petition No.2346 of 2021, wherein, the vires of section 15, 16, 19, and 20 of the Federal Government Employees Housing Authority Act, 2020, have been assailed.

I. Vires of FGEHA Act, 2020:

15. Federal Government employees Housing Authority Act, 2020 was enacted on 15th of Jan 2020 for the purpose of planning and development of housing scheme for serving and retired Federal Government Employees and other specified groups. The Authority is equipped to purchase the land or to acquire the same to fulfill the objectives narrated in the law. Initially, Federal Government Employees Housing Foundation was established in the year 1989, under the Ministry of Housing and Works. Later on, it was registered as a company limited by guarantee with Securities and Exchange Commission of Pakistan under section 42

of the Companies Ordinance, 1984, on 26th March 1990. In the previous decades, the erstwhile foundation started acquisition of land in terms of the Land Acquisition Act 1894, whereby different sectors were developed with the approval of Capital Development Authority under CDA Ordinance, 1960, and later on Federal Government Employees Housing Authority Act, 2020, was enacted. While challenging the vires of section 15 of the Act, as per stance of the petitioners, wherein enquiry and award of the Deputy Commissioner was taken into account in which the market value of the land, interests of the persons claiming the compensation and the view rendered by the Deputy Commissioner as well as apportionment of such compensation are the key concerns and it has been argued that compensation so determined by the Deputy Commissioner is not justiciable, when the enquiry is conducted by the Deputy Commissioner of the FGEHA, which was not done in the previous law i.e. Land Acquisition Act, 1894, rather it was done by the state machinery on the request of beneficiary company. However, at present the FGEHA authority themselves appointed the Deputy Commissioner who is empowered to determine the market value, rate of compensation and pass an order for payment of compensation, such aspect is adverse to the entire scheme of the law. Under FGEHA Act, 2020, the determination of compensation has specially been vested in the office of Deputy Commissioner of the Authority who will be judge in his own cause as on one side he is under the administrative control of FGEHA Authority and on

the other end, he would be performing judicial assignment, therefore, it is argued that the Deputy Commissioner is not likely to determine the compensation beyond the policy decisions of the respondent Authority.

16. Another important question raised is regarding section 19 of Act *ibid*, which provides the mechanism of appeals and review filed against award of the Deputy Commissioner. An appeal can only be filed before the Executive Board in this regard, whereas, the Executive Board of the respondent authority is also considered adverse to the individuals claim, especially, when the Executive Board established under section 4 of the Act comprises of different members including member from the Authority.

17. It is specifically argued that all such orders, appeals and appellate decisions would be considered in conflict of interests of the respondent Authority. At last, the learned counsel has vehemently argued that the powers of the Deputy Commissioner and the Executive Board were previously not available in such manner.

18. While considering the arguments of the petitioners side, I have gone through the Federal Government Employees Housing Authority Act, 2020, whereby FGEHA, which is controlled through Executive Board, powers of supervisions, control and administration are being exercised by eleven members of the Executive Board comprising, which consists of Minister of the Division concerned and Chairman of the Authority, Secretary of the Division, Draftsman Law and Justice Division, Additional

Secretary of the Division, Managing Director PHA, Director General Pakistan Public Works Department, Chief Commissioner, Islamabad Capital Territory, Chairman Capital Development Authority, Joint Secretary Expenditure Ministry of Finance, Chief (Physical Planning & Housing) Planning Commission, Islamabad and Chief Engineer of the Authority. As such the power and functions are not in one hand, rather different representatives have been fixed from the public servant hierarchy of the Government, where the chairman CDA as well as the Managing Director PHA are different representatives of independent legal entities. The powers and functions have been explained in section 5, which are not restricted in any manner rather the board can perform all necessary functions for effective implementation of the law in question. During the course of proceedings this Court has confronted the petitioner side to assist this Court and demonstrate from the law where any actions have been taken in conflict with Article 10 of the Constitution of Islamic Republic of Pakistan, 1973, read with Article 24 (1) of the Constitution, however, no specific event has been quoted except that "*no one can be judge in their own cause*", however, the primary question in challenging the vires of law is to demonstrate that the provisions are in conflict with the fundamental rights guaranteed in the Constitution, whereas, the petitioners have only confined their case to the extent of four sections of the FGEHA Act, 2020, but so far the test laid down in judgment reported as *PLD 1999 [SC] 1026 (Federation of Pakistan*

and others Vs. Shaukat Ali Mian and others), PLD 1988 [SC] 416

(Benazir Bhutto Vs. Federation of Pakistan and another), 2018

SCMR 802 (Sui Southern Gas Company Ltd. and others Vs.

Federation of Pakistan and others), 2014 CLC 335 (M.Q.M. and

others Vs. Province of Sindh and others), 2015 SCMR 1739 (Lahore

Development Authority through D.G. and others Vs. Ms. Imrana

Tiwana and others), is concerned, it was held that the petitioners

have to demonstrate that the legislation in question is a colorable

legislation and the legislature lacks the legislative power to enact

such law or the vires of an Act can be challenged if its provisions

are ex-facie discriminatory or its certain provisions are

unconstitutional which could be severable from the remaining

statute and the remaining law even then can be able to proceed to

fulfill the objective, those provisions or law could be declared void,

but where parties are not able to demonstrate the violation of any

fundamental guarantee or the lack of legislative power or

perversity in the law, the same could not be struck down. The basic

guidance given in *Imrana Tawana case supra*, further clarifies that

the presumption in favor of constitutionality has to be upheld and

a possible effort should be made to interpret the law as valid

instead of declaring the same as void. Similarly, a reasonable doubt

must be resolved in favor of the statutes being valid and court

should abstain from deciding a constitutional question, if a case

could be decided on other or narrower grounds. There is no doubt

that court was not concerned with the wisdom or prudence of the

legislation but only with its constitutionality on the touchstone that malafide should not be attributed to the legislature. All these parameters have not been demonstrated by the petitioners' side, nor any technical defect was highlighted in this statute or to the extent of provisions challenged by the petitioners side. This court is bound to discover the legislative intent and interpret the laws promulgated by the legislature. While interpreting statute or discovering the legislative intent it is presumed by court that mistake or absurdity cannot be attributed to parliament, even no interpretation can be made to defeat the public interest or protecting the personal interests of few. Therefore, in this backdrop, the question of conflict of interest while referred in section 19 of the Act, where powers and functions were available to the Executive Board of the respondent authority and similarly the question of determination by the Deputy Commissioner of the respondent authority were discussed in detailed by this court in judgment reported as PLD 2021 [Islamabad] 75 (Noman Ahmed and 14 others Vs. Capital Development Authority Chairman and another), whereby, learned judge in chamber of this Court has almost settled these questions as in line with the arguments of the petitioners in para No.42 of the judgment, but the judgment mentioned supra "Noman Ahmed" has been set-aside by the apex court in the judgment reported as 2021 SCMR 201 (FGEHF Vs Malik Ghulam Mustafa etc), whereby, it was held that the foremost rule of interpretation of any statute was the constitution

which set the gold standard to adjudge the constitutionality, repugnancy, and validity and vires of any legislative instrument or provisions contained therein. It was also held that legislature were presumed to know the existing law, judicial pronouncement and general principles of law and all these facts and laws were considered by the legislature, therefore, the apex court while considering the case of vires of the present law settled the question in para No.116 in the following manner:

“116. Thus in case in hand, this Court has taken judicial notice of the Federal Government Employees Housing Society Act, 2020 passed by the Parliament on 15th January, 2020 as brought to the notice of the court. None of the parties took any exception to the new legislative regime leading to land acquisition by the Authority for the purpose and object set out in the preamble of the Act, 2020. Accordingly, we took notice of the change in law as regard acquisition of land subject matter of present controversy. Examining the Act, 2020, it is noted that, it contains an elaborate procedure for enquiry, acquisition of land, payment and determination of compensation, vesting of property on issuance of notification and, right of appeal and all other incidental and ancillary matter relating to acquisition of land.”

While considering the above background the question of vires which has already been settled could not be agitated again, even otherwise the test laid down by the apex court in the judgment reported above as well as in other case laws, the petitioners have failed to justify any constitutional defect, where fundamental rights of the petitioners were considered to be in violation of law. This court has also attained the proposition and comes to

conclusion that by declaring section 15, 16, 19 and 20 of the FGEHA ACT, 2020, as ultra vires would amount to virtually striking down the entire FGEHA Act, 2020, which is a fundamental reason as to why this court should not engage in such abstract constitutional review.

19. This court has considered the arguments of petitioners side, where powers under section 15, 16 and 18 of the Act were discussed in order to determine the compensation by passing an award upon acquisition of land but the provisions which extend the power to determine compensation are independent viz a viz the Executive Board. As such, there is no cavil to the proposition that both are two distinct bodies, which are required to pass different orders under the law and this Court is not in agreement with the argument that the FGEHA authorities are judge in their own cause. The next submission rendered by the petitioners is to declare the FGEHA Act, 2020, only operational to the extent of Islamabad Capital Territory and FATA and the parliament has no legislative power to enact the law in respect of the acquisition for the whole country after the 18th amendment. While considering the argument, I have gone through Article 142 (c) of the Constitution, wherein, the Federal Government or the parliament cannot legislate on a residuary subject (subject not specified in the constitution or Federal Legislative List) there is no cavil that FGEHA Act, 2020, deals with the provision of housing to shelterless serving or retired Federal Government Employees. The

Federal Public Service is a matter specifically in entry No.11, Part-I of the Federal Government Legislative List, and it is settled that Federal Government Lists are to be given broader meaning, therefore, welfare measures for Federal Public Service are to be read in this entry being a matter ancillary to Federal Public Service, especially in view of entry 59, Part-I of the Federal Legislative List. By virtue of Article 240 of the Constitution of Islamic Republic of Pakistan, 1973, Parliament has the authority to legislate in respect to the conditions of service of a person in the service of Federation and All Pakistan Services. The proposed welfare measures are included in the terms (condition of service) and the Parliament is constitutionally competent to legislate on the subject, therefore, section 15, 16, 19 and 20 could not be treated as ultra vires to the law rather declared intra vires, but lastly, the issue which has been settled by the apex court in the *Ghulam Mustafa case supra*, clearly envisages the principles of binding judicial precedent in terms of Article-189 of the constitution of Islamic Republic of Pakistan, 1973, therefore, present petition is not maintainable to declare four provisions of the Act, ultra vires to the constitution.

II. GIS Survey Verification:

20. Now adverting towards the second issue raised in this case is relating to the partial and supplementary awards, detail of the same is produced hereunder:

- i. *First Partial Award of Built up Properties Mauza Jhangi Syedan (Sector G-14/1&2) under Section 11 of LAA 1894 dated: 11.08.2020;*
- ii. *Second Partial Award of Built up Properties Mauza Jhangi Syedan & Mauza Chelow (Sector G-14/1&2) under Section 11 of LAA 1894 dated: 28.10.2020;*
- iii. *Third Partial Award of Built up Properties Mauza Jhangi Syedan and Mauza Chelow (Sector G-14/1&2) under Section 11 of LAA 1894 dated: 12.01.2021;*
- iv. *Supplementary Award of Built up Properties (BUPs) of Moza Jhangi Syedan Sector G-15/3 under Section 11 of LAA 1894 dated: 01.02.2021;*
- v. *Fourth Partial Award of Built up Properties Mauza Jhangi Syedan (Sector G-14/2) under Section 11 of LAA 1894 dated:15.02.2021;*
- vi. *Judgment dated: 26.04.2021 in the case of enhancement in Award announced by Deputy Commissioner CDA under CDA Ordinance 1960 Acquisition of Land in villages Chahana, Badia Qadir Bukhsh, Badia Rustam Khan, Maira Sumbal Akku, Maira Akku and Dherak Mohri (Sector F-12/G-12) issued by Deputy Commissioner FGEHA under aegis of Summary dated: 07.07.2020 approved by Federal Cabinet for Sectors F-12 and G-12 Islamabad;*
- vii. *Fifth Partial Award of Built up Properties Mauza Jhangi Syedan (Sector G-14/2) under Section 11 of LAA 1894 dated:17.10.2022;*

21. The above referred history if considered in the light of the proceedings earlier conducted in terms of Land Acquisition Act, 1894, are protected in terms of FGEHA Act, 2020, especially, section 12 of the Act, clearly stipulates that acquisition of any land or any interest in land for the purposes of authority shall be *deemed to be an acquisition for public purposes within the meaning of the*

applicable Land Acquisition Act, 1892 or any other prevailing law for the said purposes, as per policy of the Federal Government. Similarly section 24 of the FGEHA Act, 2020, protects all orders, rights, interests, powers, actions, contracts, agreements, schemes, works, undertaken by the Federal Government Employees Housing Foundation, prior to the enactment of the FEGHA Act, 2020. By virtue of the deeming clause, meanwhile, all the partial awards if taken into account, it appears that the respondent authority is committed to resolve every controversy to clear the land of Mouza Jhangi Syedan and Chello and resorted to multiple award or BUPs based upon GIS / images and physical inspection so that no one could be left unattended, meanwhile, some of the petitioners have challenged the GIS proceedings, therefore, this Court has to protect the rights of the individuals which is evident from the order sheet in the main case by which a committee has been constituted on the joint request of both the sides comprising of seven members initially on 28.05.2021 to conduct the survey to record the measurements of BUPs separately in a single form, one under the GIS Map System and the other through physical verification with the help of committee to complete the data. The action continued for more than 2 years, where affectees committee has also participated in the verification of BUPs, where photographs were taken, the forms signed, each and every structure was measured as sketch was drawn on assessment form, signature/ thumb impressions of the owner has been completed including the

division of the family as narrated by the owners before the survey officials. The respondents were also directed to conduct the survey while considering the electricity and gas meters or any other document which has been produced by any individual during the course of assessment / measurement. It was also settled during the proceedings that in case any individual will not cooperate, the respondent Authority is well within its powers to conclude the measurement under its own rules and regulations and the status of such affectee would be decided at the appropriate stage in due course of time by the respondent authority. The affectee committee has issued different list of individuals, which shows houses were measured and survey officials of the respondent Authority have visited house by house in Mouza chello and Mouza Jhangi Syedan and concluded the proceedings of verification process. There is no denial that respondent authority has adopted its own procedure based upon GIS as well as physical verification and the respective sectors i.e. G-14/1 and G-14/2 have been completed by the survey team, therefore, this Court is not in agreement with any objection and verification methodology of the respondent Authority, rather declares that FGEHA has completed the task up to their best standard, even though, many individuals were reluctant to cooperate, but survey forms were concluded with the help of affectee committee and the necessary records were maintained so that in case any future disputes arises before the respondent

authority or before any other court of law, those records should be considered for the purposes of settlement of any issue.

22. The petitioner side has also raised their concerns qua the mechanism of compensation given to the affectees under different laws i.e. DHA Act, 2013, CDA Ordinance, 1960, Land Acquisition Act, 1894 and FGEHA Act, 2020. No doubt, all four laws have different spheres to deal with the issue and establishment of schemes, whereas the CDA Ordinance, 1960, was enacted to establish the Islamabad Capital Territory when there was no population strength in this territory, as a result whereof, rehabilitation schemes were announced in the acquisition proceedings to extend the benefit to all those individuals who have been dislodged from their houses and business. Although, the compensation is the only mode to be paid to every affectee, whose land or house was taken over by the acquiring agency, however, such practice has been adopted till date, which is not within four corners of law, as all affectees are only entitled to receive financial compensation in terms of money in any acquisition proceedings instead of another plot or land. The compensation should have been given on the standard based upon different yardsticks including but not limited to market value, the dislodgment of the individuals from their native land / houses, the future prospects of the development of area and the cost of resettlement, but all these parameters could only be concluded in shape of money by way of compensation. It is also illegal to extend a benefit of a plot against

the acquisition proceedings when amount of compensation has separately been paid, therefore, the rehabilitation benefit concept of CDA Ordinance, 1960, could not be applied in every case rather it depends upon the policy domain of respondent authority, as to whether they are interested to extend the rehabilitation benefit in shape of future plot to every genuine affectee, who falls within the eligibility criteria settled by the respective authority, however, it should not be treated as matter of right, even otherwise the respondent authority in this case is well within its powers to verify the genuine BUPs or the fake BUPs. Similarly the eligibility of the individual will also be settled by the respondent Authority under certain principles, and the benefit could not be extended by the respondent Authority to every individual, who could not establish his claim within the acquired BUPs.

III. Order II Rule 2 CPC:

23. Learned counsel for the respondent FGEHA has also pointed out that some of the petitioners who were earlier party in the previous round of litigation have again agitated the matter and as such their case is hit by the provision of Order II Rule 2 CPC and as such, he has pointed out petitioner Nos.9, 10, 11 and 12 of writ petition No.1518 of 2021, who have not raised the questions in the earlier rounds, even they omit to sue or include the relief to challenge the constitutionality of selected provisions of FGEHA Act, 2020, therefore, their petitions are not maintainable and reliance has been placed on 2017 YLR N [Lahore] 7 (Anjuman

Mutasreen Garments City Sheikhupura Vs. Government of the Punjab, 2013 SCMR 238 (*Trustees of the Port of Karachi Vs. Organization of Karachi Port Trust Workers*).

IV. Requirement of FGEHA Rules:

24. The purpose referred in FGEHA Act 2020, fully covers the public interest where the authority in order to establish the housing scheme has already been given protection with legislative instrument as well as by the superior court in the Malik Ghulam Mustafa case supra, whereas in such scenario, the FGEHA Act, 2020 has to be applied in strict manner, however, any procedural gaps are required to be filled by way of rules and regulations. Though at this stage it has been stated at bar, that FGEHA authority has not promulgated its rules and regulations to give complete effect to the FGEHA Act, 2020, therefore, in such scenario, the respondent authority is under legal obligation to exercise the power under section 26 of the FGEHA ACT, 2020, to make rules and regulations in order to carry out the purpose of the Act, therefore, following measures may be taken into consideration while formulating the rules and regulations:

- i. A complete mechanism to resolve the survey disputes be devised regarding calculation and measurement of any BUP and the encroachments.*
- ii. Physical verification, photographic evidence, Google GIS images and claim of the aggrieved person may also be covered in order to establish their right who shall be allowed to submit any evidence before the respondent authority in comprehensive manner, so that no further*

litigation could be transmitted to the civil courts or the high courts as the case may be.

- iii. It is expected from the Executive Board of the FGEHA to lay down elaborated procedure of taking over of the possession of the properties and shall not proceed in a piecemeal manner while taking over the land or while acquiring BUPs as the case may be.*
- iv. All the payments to the affectees be made through cheques prepared within a reasonable time of passing of the award and that payment shall be retained separately in a profit bearing scheme if the affectee refuses to accept the same or challenges the same before the respondent authority or any court of law after the amount be released accordingly with the calculated profit if any.*
- v. The Executive Board shall decide the appeal in terms of section 19 & 25 of FGEHA Act, 2020, within period of three months after hearing the aggrieved person in accordance with law and even can receive any additional evidence or may call a report for further elaboration and determination of any land or BUP as the case may be.*
- vi. Review Application may also be decided within period of thirty days after giving due right of hearing to the aggrieved person or any other party whose right have been affected.*
- vii. Any aggrieved person prior to approaching the Civil Court or High Court in terms of constitutional jurisdiction shall, at the first instance, exhaust all the statutory remedies in terms of section 19 & 25 of the FGEHA Act, 2020, except if matter requires determination by way of recording of evidence, the matter shall be agitated before the court of competent jurisdiction.*

- viii. *In case of dispute of survey, aggrieved person may apply to the FGEHA to conduct survey at his own cost from any of the recognized company or a commission, who shall submit its report with detail by way of site plan, photographic evidence, or any other documentary evidence, and the said report will be considered at the appropriate level or in court as the case may be.*
- ix. *The built up property structure (BUPs) acquisition and determination of compensation has to be carried out by FGEHA through their own mechanism but the effect of demolishing the BUP has consequences, whereby, following factors have to be considered while formulating rules and regulations qua the compensation:*
 - a. *Shifting of occupier / owner from the BUP.*
 - b. *Depriving the occupier / owner from his shelter.*
 - c. *Dislodgment from human dwelling.*
 - d. *Occupier / Owner has to built up new shelter, house, structure for his human living.*
 - e. *New construction requires time, labor charges, approval of site plan, amount of construction, while considering the new rates of steel, cement, construction material, etc., electrification, gas, water and other utilities.*
- x. *All these factors prima facie require that rate of payment should be determined keeping in view the prevailing construction cost, while considering new construction, therefore, any payment which has to be made as compensation, the time line should have been started and calculated within six months period before or after the payment as beyond that period changes in construction affects the construction plan of the affectee who would not be able to construct his new abode.*
- xi. *Similarly, during the new construction period, the affectee has to take shelter in any other house or building for which*

he has to pay rent, the same should also be taken into account by the FEGHA.

xii. Old house / BUPs potential usage if it is within the municipal limits where affectee is enjoying all facilities.

xiii. If the BUP is a business premises, then new client in market in future prospects is also to be considered.

V. Public Purpose:

25. The majority of the petitioners' side have argued their case on one common ground that acquisition proceedings carried out by the respondent/Authority for establishment of Housing Scheme for Federal Government Employees, does not fall within the ambit of public purpose, this aspect has already been settled in terms of Articles 4, 23, 24, 152, 172, 173 and 253 of the Constitution of Islamic Republic of Pakistan, 1973, which deals with the various aspect of the property rights, interest in the land issues, whereas all these constitutional provisions conferred that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken, except in accordance with law and individual right to hold and acquire the property as well as to dispose of the same anywhere in Pakistan is also subject to constitution and reasonable restrictions imposed by law in the public interest.

26. Similarly it has also been confirmed under Article 24 of the Constitution of Islamic Republic of Pakistan, 1973, that no person shall be deprived of his property save in accordance with law. The compulsory acquisition concept is only based upon the concept of public purpose, therefore, while considering these constitutional

framework, the Land Acquisition Act, 1894 has been applied and the recent enactment i.e. FGEHA Act, 2020 provided by the Legislature has been enacted with the view to protect the rights of the Federal Government servants and in this regard the Federal Government is the best Authority to determine whether the purpose in question is the public purpose or not. The detailed analysis of public purpose is also considered by the apex Court in judgments reported as 2021 SCMR 201 (Federal Government Employees Housing Foundation (FGEHF), Islamabad Vs. Malik Ghulam Mustafa), PLD 1960 SC 60 (Pakistan, through Ministry of Works, Government of Pakistan, Karachi Vs. Muhammad Ali), 2018 SCMR 705 (Younus Habib Vs. Imran ur Rashid), PLD 1975 SC 37 (Pakistan Vs. Province of Punjab), PLD 1983 SC 457 (Fauji Foundation Vs. Shamimur Rehman), 2000 YLR 1711 (Ghulshan Hussain Vs. Commissioner (Revenue)), and 2002 SCMR 1652 (Muhammad Ishaq Versus Government of Punjab), therefore, this Court is of the clear view that now the public purpose has been explained in categorical terms by the apex court, where housing sector to accommodate the Federal Government servants of all kind covers the very nature of providing shelter to all public servants and same has to be treated in line with the constitutional framework, therefore, basic arguments of all the petitioners against establishing housing sector is meaningless in the light of above dictum of the superior Courts.

VI. Recognized and non-recognized affectees of BUPs':

27. This Court has also observed the prayer clause of Writ Petition Nos. 1518 of 2021 and 4513, 3551, 3746 of 2022, where primary claim of petitioners is to verify the BUPs based upon transparent and justiciable manner and compensation be paid from the date of taking over of possession and may also be given rehabilitation benefit. No doubt every individual is entitled for compensation under the law if his land or property has been acquired by the FGEHA, but in order to ensure that particular individual is entitled for compensation and for that purpose, he has to prove that he is lawful owner in possession of a particular house or land by way of sale deed, periodical record of rights, mutation or through any substantial evidence during the course of inquiry by the acquisition Authority. Similarly when the land has already been acquired with separate award and new proceedings for acquisition of BUPs has to be given effect on different parameters, especially when there is a huge gape in the acquisition of land award as well as in the acquisition of BUPs and during said period, majority of the individuals have raised their construction on the land already acquired by erstwhile FGEHF and now FGEHA.

28. In such scenario, the illegal encroachments or construction raised by any individual on the land of respondent/ Authority will be considered as illegal, but during the course of proceedings in these writ petitions, the FGEHA Authority has recorded each and every structure by way of GIS Google images, physical verification and by their own survey team as well as with the help of Affectee

Committee and filled the proformas on site, even received evidence produced by the individuals of any kind, which are part of the reports available on record as well as with the respondent/Authority, hence there are two categories of individuals, one, who have been recognized by FGEHA and second, who were not recognized under the parameters set-out by the respondent/Authority. Therefore, in this regard, respondent/Authority, at the first instance, has to release the payments of those BUPs, which have been verified in the process of verification including in the survey assessment in shape of cheques.

29. The second category of petitioners / affectees, which are not declared legal as per the assessment verification survey conducted by the respondent Authority, the separate decision is required from the Authority on each case, in which the individual should have been given right of hearing and then pass a speaking order and the statutory remedies should have been applied accordingly. Even the orders passed by the FGEHA should have been challenged in the Civil Court if dispute arises, where onus to prove that a particular property was in occupation of individual or his entitlement if not considered by the FGEHA, he may resort to remedy provided under Section 9 of the Civil Procedure Code, 1908 before the Court of plenary jurisdiction, where onus in terms of Article 117 of Qanun-e-Shahadat Order, 1984 lies upon the individual to prove his case with cogent evidence, however, FGEHA Authority which has now recorded all the verification,

assessment and surveys in shape of GIS Google images or through direct survey teams should retain the record for the purposes of a legal decision in any proceedings subsequently.

30. In view of above, the petitioners, who claim their compensation and do not fall within the eligibility list declared by the respondent / Authority should adopt legal course of action, provided under the law.

VII. Judge in their own cause:

31. Now adverting towards the question raised before the Court that FGEHA Act does not fulfill the criteria to protect the individual rights as the FGEHA is acquiring Authority and they are also empowered to settle their own decisions in appeal and review under Section 19 of the FGEHA Act, 2020, where any aggrieved person by an award or final order of Deputy Commissioner, may, within fifteen (15) days of such award or order, file an appeal to Executive Board. Even objections could have been filed by an aggrieved person against the order of Executive Board in appeal. Similarly Section 25 also provides an appeal against the order of Director General before the Executive Board within ninety (90) days of order, though these two substantial rights of hearing in appellate jurisdiction were provided under the law, but it has been argued by the petitioners' side that the respondent/Authority while making their decisions have also retained their appellate Authority, which itself is against

the principle that no one should be a Judge in his own cause as it amounts to conflict of interest.

32. While dealing with the proposition, I have gone through Section 2(c) of the FGEHA Act, which defines the Deputy Commissioner of the District concerned and may include any other officer appointed by the Authority to exercise all or any of the powers and discharge all or any other functions of the Deputy Commissioner under this Act. No doubt acquisition of land is to be made in terms of Section 12 of the Act through the Deputy Commissioner of the Authority, who shall act as a Land Acquisition Collector for the purpose of this Act. While dealing with the measurement, planning, survey, boundaries and with reference to the acquisition of land and house he is also empowered to inquire and pass an award in terms of Section 15 and can award compensation in terms of Section 16. The powers were specifically envisaged in Section 18 to the Deputy Commissioner, these provisions are in line with the concept provided in Land Acquisition Act, 1894 as well as CDA Ordinance, 1960, DHA Act, 2013 NHA Act, 1991, Naya Pakistan Housing and Development Authority Act, 2020, where the officer of the Authority is exercising powers of acquisition and subsequently all of its actions could be challenged by way of appeal and review before the statutory Authority provided in that special law. The other examples in these cases are Oil and Gas Regularity Ordinance, 2002 , NEPRA Act, 1997, Pakistan Electronic Media

Regulatory Authority (Amendment) Act, 2007, Pakistan Telecommunication (PTA) Act, 1996, PMC Act, 2020, Pakistan Engineering Council Act, 1975, Legal Practitioners and Bar Councils Act, 1973, where Designated Officers are performing their duties and passing different orders, which could be challenged before the statutory Authority and the Authority is supervising those designated officers, therefore, such arguments in a legal sense are not in accordance with any scheme of law nor Legislature has placed any restriction in this regard, though in these cases Section 2(C) of the Act has not been challenged by any of the individuals, where Deputy Commissioner has been appointed by the Authority to deal with the land and houses.

33. No doubt it is the right of every individual to be given fair chance in a justiciable manner, where his issue should have been treated and he be given right of hearing in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, therefore, only exception came into limelight is that if any person raises the question of personal biasness against the Designated Officer or Deputy Commissioner in this case, in such circumstances, Authority has to frame certain rules in terms of Section 26 of the FGEHA Act, 2020 so that acquisition Authority may not perform its duty with any biasness, but in such eventuality, the primary onus lies upon the aggrieved person to demonstrate that the Deputy Commissioner has some personal interest or an adverse interest of personal nature against the aggrieved person.

34. The Deputy Commissioner FGEHA as well as Executive Board are somehow performing the *quasi-judicial* functions on the Executive Side with reference to the claims of the aggrieved persons whose lands or houses have been acquired by the respondent authority, but it has generally been observed that the Executive Officers were not fully well versed with the complexity of law, as a result whereof, the aggrieved persons were not satisfied with their orders. In such scenario, I have been guided with the judgment reported as 2006 SCMR 145 (Ghulam Mustafa Bughio Vs. Additional Controller of Rents, Clifton), where non-binding directions were issued to the government to take steps for amendment in the law, therefore, it is expected that legislature should reconsider the remedial hierarchy provided under the statute while catering needs of aggrieved persons, either by appointing the person of legal acumen / background, in the appellate authorities who can understand the nature of rights, evidence and legal procedures for determination of compensation, as well as, assessment of the compensation on different parameters. Similarly, the respondent authorities shall also frame rules and regulations in such a manner to repose the public confidence upon the authority working for acquisition of land or BUPs, as the case may be.

VIII. Federal Government Employees / allottees request for impleadment:

35. I have also attended the applications submitted by the Federal Government Employees / allottees, who have interest in the acquired

land under the new layout plan, but so far they are not able to get their plots, they are also facing hardship and it has been argued at the bar that majority of the allottees have died during the pendency of these litigations and their families are suffering, therefore in the interest of Justice, CM Nos.2002 & 2000 of 2022 filed in writ petition Nos.1518 & 960 of 2021 respectively for impleadment in terms of Order I Rule 10 CPC are accepted. Their arguments have been heard in main case.

IX. Conclusion:

36. While going through each and every aspect of the case, this Court is of the clear view that FGEHA Act, 2020 has been enacted by the Parliament while considering the Land Acquisition Act, 1894, and CDA Ordinance, 1960 and the working of erstwhile FGEHF and now FGEHA based upon its objective and its earlier development in the Islamabad Capital Territory as well as in other parts of the country, therefore, any legislative instrument could not be struck down or declared void or unconstitutional unless it has been proved that the constitutional framework has not been adhered to or it is *prima facie* against the fundamental guarantees enshrined in the Constitution, which is not the case in hand, every presumption has to be seen in favour of constitutionality, rather to declare unconstitutional, as such petitioners have failed to point out any provision or possible event whereby this Act should have been declared void, especially when petitioners themselves confined

their case to the extent of four sections of law and it is settled law that no abstract interpretation could be made to declare those provisions as unconstitutional.

37. No reasonable doubt has been raised by the petitioners in the reconciliation of provision of FGEHA Act, 2020. The wisdom and prudence of the legislature is visibly seen within the constitutional framework and no illegality or violation of law for personal individual fundamental right has been seen to strike down any provision, especially when four sections of FEGHA Act, 2020 are in question. In this regard I have been guided with the principle set out in PLD 1966 SC 854 (Province of East Pakistan Vs. Sirajul Haq Patwari), PLD 1975 SC 397 (Mehreen Zaibun Nisa Vs. Land Commissioner), 1995 SCMR 362 (Multiline Associates Vs. Ardeshir Cowasjee), 2000 SCMR 1956 (Tariq Nawaz Vs. Government of Pakistan), PLD 2006 SC 697 (Wattan Party through President Vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad), PLD 2010 SC 265 (Mst. Kalsoom Bibi Vs. Additional Sessions Judge), 2013 SCMR 1337 (Engineer Iqbal Zafar Jhagra Vs. Federation of Pakistan), PLD 1999 SC 1026 (Federation of Pakistan Vs. Shaukat Ali Mian), PLD 1957 SC 9 (Gulab Noor Vs. Azad J & K Govt), 2015 SCMR 1739 (Lahore Development Authority Vs. Ms. Imrana Tiwana), as a result whereof, these petitions are not maintainable.

38. This Court has also considered the FGEHA Act, 2020 in line with the objective resolution and principle of policy while considering the question of interpretation of the fundamental rights guaranteed under Constitution of Islamic Republic of Pakistan, 1973 and as such the harmonious interpretation has to apply which save the provisions under challenge, however certain issues of conflict of interest should have been dealt in accordance with the rules and regulations based upon the suggestions referred in the body of the judgment.

39. While going through the previous history of Islamabad Capital Territory, which was established by the Government of Pakistan in order to establish a capital for effective administration and enforcement of laws in the entire country as a result whereof, different Ministries, Offices, Departments, Organizations have been provided with the structural base in the Islamabad Capital Territory and all the employees working with the Government, either civil servants in terms of Civil Servants Act, 1973 or part of Executive, Judges of District Judiciary, Police Authorities and Officers of the Administration and employees of the administration including Ministries Attached Departments are the key stakeholders, who have been promised by the respective authorities as well as by the State to provide them with at least one shelter so that they may enjoy life in terms of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973, however there is no cavil to the proposition that while establishing housing

scheme by the FGEHA, recognized in terms of CDA Ordinance 1960, the rights of affectees of the land should not be curtailed and their dues have to be extended in an unequivocal terms while considering their dispossession, dislodgement from their native villages and lands, which have been established since time immemorial. It is established phenomenon from history of acquisition in Islamabad that the affectees lose their sense of belonging, title and their historical recognition stand eliminated, when their lands and houses were acquired and they stand vanished from particular area, therefore, in this regard they should have been given handsome compensation notwithstanding formula arrived by the Executive Authority of the FGEHA, rather they be compensated in a fair manner while considering the potential market value, so that they can happily receive their compensation and will start their new life.

40. In view of above all the writ petitions stand **DISMISSED** and respondent/Authority is directed to release the necessary compensation after verifying the eligibility and entitlement of each individual / affectee and those individuals, whose cases have not been approved by the respondent/Authority, due to non-availability of any title document, record or any other evidence to justify their lawful occupation or illegal construction or their structure falls within the encroachment, or where FGEHA consider that the BUP has been made in order to get compensation by way of misrepresentation and fraud, they may resort to appellate

jurisdiction of the FGEHA in terms of remedy provided under section 19 & 25 of the FGEHA Act, 2020. Any dispute among the affectees qua their rival claims against each other with reference to any particular property, BUP or land, or its compensation, they may resort to civil court to get a decree in their favour and then approach to the respondent / Authority for release of their compensation, till then their compensation be retained by the FGEHA Authority and same shall be invested in a profit bearing scheme, so that individual may receive the compensation alongwith profit as and when his legal rights would be established from Court of law in a conclusive manner. However, the FGEHA Authorities are directed to conclude the acquisition proceedings by all means within the period of next three (03) months and due compensation shall be released to the affectees and all acquired properties be vacated, demolished within the timeframe and the FGEHA scheme shall be given effect so that the allottees may get their plots within next 6 to 8 months positively after development of scheme as per approved layout plan and amenities shall be provided by the FGEHA.

41. The Criminal Original No.138 of 2021 titled as "*Nadeem Akhtar and other*" is not maintainable and same is also **DISMISSED** in the light of the detail reasons recorded above.

42. The Executive Board of FGEHA in exercise of powers under section 26 of FGEHA Act, 2020, shall make their rules and regulations for purpose of this Act, within period of next six

months positively under intimation to this Court while considering
the observations recorded in this judgment.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on: **13.03.2022**

JUDGE

A.Waheed.