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THE CAPITAL DEVELOPMENT AUTHORITY ORDINANCE 1960

27th June, 1960.

An Ordinance to establish a Capital Development Authority

COMMENTS

Objective of Ordinance, Firstly, planning and development of Capital (Islamabad), secondly completing or authorizing Capital Development Authority to perform functions of a Municipal Committee and to provide for cleanliness, health, education of inhabitants, supply of goods, articles of food and mild, to promote interest of different sections of public. All provisions are for advancing interest and public good. Such statutes not repugnant to Sharia (**PLD 1985 FSC 221**).

Capital Development Authority being a statutory body is expected to deal with citizens fairly, and honestly and conduct its all actions transparently (**2003 CLC 1684**).

WHEREAS it is expedient to establish a Capital Development Authority for making all arrangements for the planning and development of Islamabad within the frame-work of a regional development plan;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement. (1) This Ordinance may be called the Capital Development Authority Ordinance, 1960.

2. It extends to the Specified Areas.

2) It shall come into force at once.

2. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context ---.

- (a) “Agency” means any department or organization of the (Federal) or Provincial Government and includes a corporation, or other autonomous or semi-autonomous body set up by the (Federal) or Provincial Government.
- (b) “Authority” means the Capital Development Authority established under Section 4:
- (c) “Board” means the Board constituted under section 6;
- (d) “building” includes any factory, industrial or business establishment, shop, godown, warehouse, house, outhouse, hut, hutment, shed, garage, stable, well or platform, and any other structure, whether meant for residential or business purposes or not, made of masonry, bricks, wood, mud, thatch, metal or any other material, but does not include a temporary structure made for purposes connected with agriculture;
- (e) “Capital Site” means the part or parts of the Specified Areas declared to be the site for the Pakistan Capital under section 3;
- (f) “Chairman” means the Chairman of the Authority.

(g) “Commissioner” means the Commissioner of the Division concerned, and includes any other officer appointed by the Authority to exercise the powers of the Commissioner under this Ordinance.

“Deputy Commissioner” means the Deputy Commissioner of the District concerned, and includes any other officer appointed by the Authority to exercise all or any of the powers and discharge all or any of the functions of the Deputy Commissioner under this Ordinance;

(i) “land” includes buildings and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(j) “local body” means (the local body) the local council or the municipal body as defined in clauses (23) (24) and (27) of Article 3 of Basic Democracies Order, 1959 (P.O. 18 of 1959), or the Cantonment Board, having jurisdiction in the area concerned, and includes an Improvement Trust within such area;

² (K) “market value” means,___

(i) in relation to land acquired before the first day of January, 1968, the average market value thereof prevailing during the period commencing the first day of January, 1954, and ending on the thirty first day of December, 1958; ³ []

(ii) in relation to land acquired on or after the first day of January, 1968, the aggregate of the average market value as aforesaid determined with reference to its classification recorded in the Register of *Haqdaran Zamin* as in force on that day and twenty five percent of such value ⁴ [and] []

⁵ [(iii)in relation to land acquired on or after the first day of January, 1996, the market value as may be determined in accordance with the provision]

of the Land Acquisition Act, 1894 as applicable in the Province of the Punjab

COMMENTS

Synopsis

- | | | | |
|----|-------------------------------|----|-----------------------|
| 1. | Compensation, principles for | 2. | Modification of award |
| 3. | Improvements | 4. | Un-Islamic |
| 5. | Determination of market value | | |

¹ Ins. by the Capital Development Authority (Amdt.) Act. 1966 (22 of 1966),s.2..

² Subs. by the Capital Development Authority (Amdt.) Ordinance, 1968 (7 of 1968),S.2, for clause (k)

3 Omitted by the Capital Development Authority (Amdt.) Act. 1999 (3 of 1999),S.2.

4 Subs. Ibid., for full stop.

Added ibid.

8.

1. Compensation principles for. Owners whose lands are acquired should be paid compensation which should be just and equitable keeping in view the consideration of land at the time of acquisition on the basis of guidelines gives by Superior Courts (**2002 SCJ 189**) There was a difference between what is called technical definition of the word “market-value” as contained in Section 2(K)(i) and 2(K)(ii) of the Ordinance on the one hand and “the compensation amount” to be paid to the land owners on the other hand. Compensation amount was total and overall amount whereas market value was simply one of the items to be take note of in fixing or claiming the compensation amount. The market value in other words was just a base and start and not the end of the process of compiling the compensation value (PLD 1977 Lab.1200=PLJ 1977 Lab.605). IN subsection (2) the sentence “the aggregate of the average market value as aforesaid determined with reference to its classification recorded in the Register of Haqdaran

Zamin as in force on the that day and 25% of such value” refer back to clause (i) of section 2(K) where 1968, the average market value there of prevailing during the period commencing the first day of January 1954 and ending on the 31st date of December 1958. Thus the aggregate value would be the sum total of average price during 1954-1958 period plus 25% over and above that **(2002 SCJ 189: PLD 1977 Lab.1200 = PLJ 1977 Lab.605)**. While determining market value relevant transaction of the land acquired and of the similar land of neighborhood. locality is also to be taken into consideration **(2002 SCJ 189)**. The date of acquisition is the relevant date for determining compensation (PLR 1977 Lah.1200-PLJ 1977 Lab. 605).

2. Modification of award. Any award of compensation made before the commencement of the Ordinance in respect of any land acquired on or after the first day of January,1968, shall be modified so as to raise the amount of compensation specified therein to the amount which would have been awarded had the award been made after the commencement of this Ordinance (Ord,No.7 of 1968, S. 3).

3. Improvements. The owner of the land is entitled to the value of the property in “its actual condition at the time of expropriation” with all its existing advantages. The indeed is the general law. There is nothing in section 28 read with section 2(k) or in any other provisions of the Ordinance in force to warrant the conclusion that the Deputy Commissioner was not required to award compensation for the land according to existing classification on the date of the expropriation of the owner thereof. Therefore, the directions, if any, issued by the Authority under section 35 of the Ordinance to the effect that in awarding the compensation bona fide improvement made by the land owners to their lands after 1958, but before their acquisition must be ignored, were ultra vites and in excess of the powers vested in the Authority under the Ordinance. Even the amendment introduced subsequently into section 2(k) by the Capital Development Authority (Amendment) Ordinance VII of 1958, but before their acquisition must be ignored, were ultra vites and in excess of the powers vested to the Authority under the Ordinance. Even the amendment introduced subsequently into section 2(k) by the Capital Development Authority (Amendment))Ordinance Vii of 1968) had no effect on this state of affairs on the lands acquired before 1.2.1968 (PLD 1976 SC-752f).

Before amendment of definition of “market value” in relation to land acquired on or after 1.1.1968 as inserted by amending Ordinance,1968, pegging classification of land as recorded in Register of Haqdaran Zamin as criterion for assessment of compensation of acquired land, no such pegging of classification of lands existed nor any restriction imposed by statute in that direction. Nothing in definition of land as given in Ordinance XXIII of 1960 either expressly or by necessary intendment warranted conclusion that embargo against award on account of any rise in level of prices operated in any other decision as well and precluded landowners from claiming compensation for bonafide improvement effected in qualify of their acquired lands during 1954 to 1988. M.L.R 82 of 1960 imposed no bar against landowners in effecting improvements to their agricultural lands by improving upon their classification and agricultural potential as such..

By the introduction of section 2(k) in the Capital Development Authority Ordinance 1960, defining the term “market value” the Legislature has simply pegged up the average prices generally prevailing during 1954 to 1958 in respect of the different kinds of land in general in the locality. There is nothing in the definition, either express or by necessary amendment to warrant the conclusion that this embargo against the award on account of any rise in level of prices, was operative in any other direction as well and precluded the landowners from claiming compensation for the bonafide improvements effected in the quality of their acquired lands made during this period. Under clause 4 (1)(a)(ii) of the Martial Law Regulation No. 82 (known as Pakistan Capital Ordinance 1960) a restriction was imposed to the effect that no person shall within the Capital site convert any land being used for purposes of agriculture to any other use. Similarly under clause 4(1) (b)(ii) of the Regulations it is laid down that no person shall outside the Capital site convert any land used for purposes of agriculture to any other purpose, except in accordance with directions, issued by Deputy Commissioner. In these provisions, there was no bar imposed against a landowner in effecting improvements to his agricultural land by improving upon its classification and agricultural potential as such. There is nothing in section 2(k) or any other provisions of the Ordinance in warrant the conclusion that compensation could not be allowed for any such development to the land effected upto and as on the date of its acquisition. In

practical terms the value of any interest in land which is a compulsorily acquired under the Ordinance must be ascertained by reference to the average market values prevailing generally during the period from 1954 to 1958 and for that purpose the interest in land actually acquired at the material time on the date of expropriation must be deemed to be subsisting during 1954 to 1958. For the first time under 1968 amendment in relation to land acquired on or after the first day of January, 1968, a further clause was inserted in the definition and this had the effect of pegging the classification of the land as recorded in the Register of Haqdaran Zamin as in force on that day, as the criterion for the assessment of the compensation of the acquired land. But before it, there was no such pegging of the classification of the lands. There was no restriction imposed by the statute in that direction and the compensation for the acquired land had to be assessed on the basis of its subsisting classification on the date of acquisition (PLD 1976 SC 752).

4. Un-Islamic. The provisions of section 2(k) and 30 (j) of the Ordinance declared as repugnant to the injunctions of Islam. The Federal Shariat Court, directed, that the required amendment be made in the said Ordinance (PLD 1992 FSC -361).

5. Determination of market value. Authority declined award with regard to compensation of land acquired in 1968 under provisions of Capital Development Authority Ordinance, 1960, as per classification of land entered in Revenue Record. Owners of land so acquired disputed award of the Authority contending that market value of land should have been calculated in accordance with Section 23 & 24 of Land Acquisition Act, 1894 taking into consideration potential value of land. Validity Authorities while determining amount of compensation if land to be made to the owners were possessed of jurisdiction to rely upon law as compensation of land to be made to the owners were possessed of jurisdiction to rely upon law as contained in Section 2(k) of Capital Development Authority Ordinance 1960. Authorities, thus were not bound to take into account potential value of land in question at the time of award of compensation was delivered. In absence of any "legislation by incorporation" making provisions of Section 23 & 24 of Land Acquisition Act, 1894 applicable with retrospective effect. Owners of acquired land could not press into service said provisions. Orders by Authority with regard to determination of market value of land under provisions of Capital Development

Authority Ordinance,1960 having not been shown to be suffering from any defects in law, could not be intererred with (1999 SCMR 1589)

- (i) “Members” means a member of Authority.
- (m) “regulations” means regulations made under this Ordinance..
- (n) “rules means rules made under this Ordinance.
- (c) “scheme means a planning scheme or a development scheme made under this Ordinance.
- (p) “Specified Areas” means the areas specified in the Schedule and such other area or areas as may from time to time be included therein by the “Federal Government) by notification in the official gazette.

COMMENTS;

Levy Of Electricity Duty. Area of Islamabad already being part of Province of Punjab on promulgation of Establishment of West Pakistan Act,1955 became part of West Pakistan and remanded so even after declaration of area of capital by Section 2 of Capital of the Republic (Determination of Area) Ordinance 1963, Province of west Pakistan stood dissolved through Province of west Pakistan (Dissolution) Order 1970, whereafter Constitution (1973) was promulgated and Punjab assembly could not legislate with respect to Capital Area of Islamabad. By virtue of Article 268 of the Constitution Section 13 of West Pakistan Finance Act,1964 being an existing law and no force in Capital Area of Islamabad was to continue in force Section 13 of Finance Act, 1964 as substituted by Section 5 of Punjab Finance Ordinance,1978 would apply to Capital Area of Islamabad with effect from 27.6.1978 (PLD 2008 Ist.30).

- (q.) “Vice-Chairman” means the Vice Chairman of the Authority.”

3. Declaration of Capital Site:- The {Federal Government may, from time to time, by notification in the official Gazette, declare any part or parts of the Specified Areas to be site for the Pakistan Capital.

(2) Notwithstanding any thing contained in this Ordinance or in any other law, any such notification as aforesaid may be made so as to be retrospective to any day not earlier than the first day of June,1959, and where a notification is so made, the provisions of the Ordinance shall, in so far as they effect the Capital Site, apply as if this ordinance were promulgated on the day to which the notification is made retrospective to any day not earlier than the first day of June,1959 and where a notification is so made, the provisions of the Ordinance shall, in so far as they affect the Capital Site, apply as if this Ordinance were promulgated on the day to which the notification is made retrospective.

CHAPTER-II

CONSTITUTION OF THE AUTHORITY

(1) There shall be established an authority to be known as the Capital Development Authority for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire and hold property, both movable and immovable and shall by the said name sue and be sued.

(5) Management.(1) The general direction and administration of the Authority and its affairs all vest in the Board, which may exercise all powers and do all acts and things which may be exercised or done by the Authority.

(2) The Board in discharging its functions shall act on sound principles of development, town planning and housing and shall be guided on questions of policy by such directions as the {Federal Government) may from time to time given.

(3) If any question arises as to whether any matter is a matter of policy or not the decision of the {Federal Government) shall be final

6. Constitution of the Board:- (1) The Board shall consist of not less than three members to be appointed by the {Federal Government}

(2) The {Federal Government) shall appoint a Chairman, a Vice Chairman and a Financial Advisor from amongst the members.

(3) The Chairman and other members shall hold office during the pleasure of the {Federal Government) and unless sooner removed the Chairman and the Financial Advisor shall hold office for a period of five years and other members shall hold office for a period of four years

(4) Any person ceasing to be Chairman, Vice Chairman or member of the Board by reason of the expiry of the terms of his office, shall be eligible for reappointment for another term or for such shorter term as the {Federal Government) may decide.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in p or any defect in the constitution of the Board.

(6) The Chairman or any member may at any time resign. Provided that his resignation shall not take effect until accepted by the {Federal Government)

(7) Remuneration and conditions of service:-The Chairman and each member shall receive such salary and allowances and shall be subject to such conditions of service as may be determined by the {Federal Government).

(8) Disqualification of the members: No person shall be or shall continue to be a member who:-

(a) is or, at any time, has been convicted of an offence involving moral turpitude or

(b) is or, at any time, has been adjudicated insolvent: or © is found to be a lunatic or of unsound mind or

(d) is a minor, or

(e) has a financial interest in any scheme or a conflicting interest directly or indirectly between his interests as a member and his private interests and has failed to disclose such interest in writing to the (Federal Government):

(f) If he is for the time being disqualified for membership of any body established by or under any law for the time being in force of which the constituent members are wholly or partly chosen by means of election.}

‘Subs. By F.A.O(1975, Art 2 and Table for “Central Government.”

‘Substituted by the Federal Laws (Revision and Declaration) Ordinance,1981(XXVII of 1981)‘s. 3 and Sch.II.

(9) Duties and functions of Chairman and other members⊗

1) The Chairman and other members shall discharge such duties and perform such functions as are assigned to them by or under this Ordinance.

2) Until the Board is duly constituted, the Chairman shall, subject to such directions as the {Federal Government_) may from time to time give, exercise the powers, discharge the duties and perform the functions of the Board

3) The Vice-Chairman shall have such powers, duties and functions as may be delegated to him by the Chairman.

(10) Headquarters of the Authority and meetings of the Board

1) Until the Authority establishes its headquarters elsewhere within the Specified Areas, its headquarters shall be situated at Rawalpindi.

2) The meetings of the Board shall be held at such times and places and in such manner as the regulations may provide. Provided that until regulations are made in this behalf, the meetings of the Board shall be held as and when convened by the Chairman.

CHAPTER III

POWERS AND DUTIES OF THE AUTHORITY

11. Master Plan And Master Programme

The Authority shall [re]are 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 Areas, and all such plans and programmes shall be submitted to the {Federal Government) for approval.

12 Preparation Of Schemes By Local Bodies Or Agencies

(1) The Authority may, pursuant to the master plan and the master programme, call upon and 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 the preparation of the scheme or schemes within a reasonable time.

(2) Such schemes, may relate to:

- (a) Land use, zoning and land reservation.
- (b) Public buildings.
- (c) Industry.
- (d) Transportation and communications, highway, roads, streets, railways, aerodromes.
- (e) Telecommunication, 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 supply⁶, gas supply and other public utilities
- (I) preservation of objects or places of historical or scientific interest or natural beauty.

(3) The {Federal Government} ,by notification in the official Gazette, add to alter or amend the list of subjects given in sub section (2) and any such addition alteration or modification shall take effect as if 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 even of disagreement between them as may be determined by the {Federal Government}

(5) No planning or development scheme shall be prepared by any person or by any local body or agency except with the concurrence of the Authority.

Subs. By F.A.O 1975. Art-2 and Table for Central Government”

Subs. By the Capital Development Authority.(Amdt) Act.1966(22 of 1966)s.3.

COMMENTS

Synopsis

1. Lease of public park
2. N.O.C
3. Establishing housing scheme by a Private organization in a sector other than the one specific for such scheme.

1. Lease Of Public Park

Contentions of the petitions were that wherever, a Scheme under the provisions of Section 12 of the Capital Development Authority Ordinance 1960 was prepared by the Authority, amenity plots including the plot for public park, playing field, graveyard and incident open places, etc were earmarked separately, that under Regulation 3 of the Islamabad Land disposal Regulation, 1993 for the purpose of establishing Mini Golf Course on the public park, no permission was sought from the Federal Government nor objections were invited in this behalf in accordance with section 19 read with section 20 of the Capital Development Authority Ordinance, 1960 that the transaction of leasing the plot had been made by the Capital Development Authority with the private party without any lawful authority and jurisdiction as such in this manner the fundamental rights of general public enshrined in Articles 9 & 26 of the Constitution had been denied, that a public park, citizens, including children were not required to purchase tickets and once Mini Golf Course, was established, the entry of general public would be obstructed in term of imposing ordinances including purchase of tickets and to enjoy other amusement against payment and that Development Authority was committed to provide a public park for the residents of the sector concerned which would be maintained by the Authority itself and could not be allowed so he converted into a commercial project by the third party in terms of Regulation 12(3) of Islamabad Land Disposal Regulation if a piece of land had been earmarked for the purpose of public park, same could not be leased out and Capital Development Authority itself was bound to develop the same. Neither the permission was sought to convert the public park into the Mini Golf Course nor before doing so objections were invited from the general public in terms of Section 21, Capital Development Authority Ordinance 1960. Production of original documents with regard to the plot in question for purpose of examining the exact position of the lease and status of the plot by the Supreme Court was denied by the Capital Development Authority stating in writing that the same were not available and were being traced out and will be produced before the Court when the same were found out, Public park if earmarked in a housing Scheme created a tight amongst the public and that right included then right of entry in the park without any obstacle, being fundamental right as enshrined in Article 26 read with Article 9 of the Constitution Liberty of a person, to have access or utilize a right available to him could not be taken away by converting such facility into commercial one, for the purpose of extending benefit to a third

person, as in the present case, considerably a big plot of land measuring five acres had been handed over to a third person at a throw away lease money causing huge loss to the public exchequer therefore, tax payers had a right to inquire from Capital Development Authority, as to how a right of life and liberty could be denied to them. Facts of the case were admitted by the Capital Development Authority, no formal evidence therefore was required to prove the same. Deal between Capital Development Authority and the third person had not been made in a transparent manner, coupled with the fact that the lease of a public park had been given for 15 years at a rate of Rs. 2.55 million per annum to be paid after about 20 months with clear delegated authority to the lessee that it could issue license to the local or international parties for a purpose of providing amusement/commercial activities etc. Such delegation to private person to watch its financial interests of the high degree would tantamount to depriving the Capital Development Authority as well as the public from their valuable rights, for whose benefits such Authority had been created and apparently such action had no legal sanctity. Law on the subject, on the other hand was, that such parks were to be developed to be maintained by the Capital Development Authority itself, Park was earmarked in the original Scheme of the sector, as it was meant for low income group, who were deprived of the benefits of the having their own private gardens. Comparing to higher income groups, therefore, converting such plots for commercial activity with the collaboration of multinational companies would deny the people rights guaranteed to them. Functionaries, exercising statutory power, like Capital Development Authority were bound to discharge their functions strictly in accordance with law, otherwise the action contrary to law would not be sustainable and such Authority shall expose itself for disciplinary action. Without obtaining no objection certificate from the general public, such plot could not be used for any other purpose. Capital Development Authority in such like situation, if at all was interested to leave out the public park instead of developing the same, might have invited fresh proposal instead of calling the third person to enhance the lease money because in granting contracts for the purpose of fetching money to support the public exchequer, the competent authority had an obligation to adopt such devices on the basis of which more money could be procured. Capital Development Authority as per record, was only interested to grant lease to the third party, mala fide. In concluding the transaction with the third party not transparent. Allowing the third party to avail benefit of the lease, in circumstances, would tantamount to perpetuate the unlawful/illegal acts of both Capital Development Authority and the third party. Constitutional petition was accepted by the Supreme Court with directions that lease agreement executed by Capital Development Authority for the development of Mini Golf Course was not sustainable in the eye of law, being contrary to law and fundamental rights of the general public, enshrined under Article 26 of the Constitution, that third party was to hand over vacant public, enshrined under Article 26 of the Constitution, that third party was to hand over vacant possession of the plot, lease of which had been obtained by him from the Capital Development Authority within a period of four weeks in its original condition. Subject to complying with the directions of the Court, Capital Development would refund Rs. 5 lacs to the third party

deposited by it as security, that enquiry report shall be sent to the Registrar Supreme Court within three months for Court's perusal in Chamber and passing further order, if need be, that Board of the Capital Development Authority shall examine the case thoroughly to explore possibility of initiating disciplinary/penal action before the competent forum against the delinquent officers/officials responsible for executing the lease with the third party, in view of the law laid down by Supreme Court in the case of Pervaiz Oliver PLD 1990 Sc 26, that Board of Capital Development Authority will take steps to find out the relevant record of the part, and if record was not made available, then report shall be lodged before the competent law enforcing agency according to law and the Capital Development Authority shall be free to develop the public part itself for the purpose of providing entertainment to the public of Islamabad in discharge of duties under the law (PLD 2006 SC 394).

2. N.O.C

No objection Certificate from Capital Development Authority, not covering entire land sought to be acquired by Acquiring Agency, Validity, not obligatory for Acquiring Agency under Section 12(5) of Capital Development Authority Ordinance 1960 to obtain 'No Objection Certificate' from C.D.A for every piece of land proposed to be acquired through notification from time to time, if aggregate of land was required for same comprehensive scheme {2004 YLR 629}.

Acquisition of land in capital area by Army Welfare Trust for establishing housing scheme. Trust had obtained 60% land from landowners through private negotiations. Trust after lapse of original notification had issued fresh successive notifications to acquire remaining land not purchased earlier privately. No delay in acquisition proceedings, which could defeat or demolish acquisition process itself. Mention of only one village in "No Objection Certificate" would make no difference. No objection certificate issued by CDA was in respect of whole scheme, which would cover all or any acquisition of land forming part and parcel of development scheme as a whole. Description of purpose in original notification as "defense purpose" and in later notifications are establishment of Housing Scheme for Army Personnel. Judicial notice could be taken of acute shortage of accommodation and rehabilitation facility for beneficiaries of Trust. High Court dismissed Constitutional petition (2004 YLR 629)

3. Establishing Housing Scheme By A Private Organization In A Sector Other Than The One Specific For Such Scheme

Housing Foundation was a registered company having senior Federal Government Officials as ex-officio office-bearers of the Foundation. Foundation acquired lands owned by the petitioners in public interest and notification under Section 4 & 17(4) of Land Acquisition Act. 1894, was issued by the Government. Land so acquired was to be allotted only to the employees of federal Government on ownership basis. Validity, Housing Foundation like such other companies

could establish a housing scheme in the specified zone for its members but could not establish such scheme in the are of remaining residential sector. Housing Foundation could not be allowed to establish a private scheme in regular sectors for individuals interests of civil servants in violation of general policy as a special case and privilege. Housing Foundation without enlarging the purpose of acquisition of land to the general use for benefit of public at large, could neither establish such scheme out of the specified zone nor could use the machinery of law and Government for such purpose. Where acquisition of land for a Housing Scheme introduced by the respondent. Foundation was executed for benefit of public at large and was not confined to a limited class of persons, such scheme would definitely advance the spirit of the Constitution. High Court directed the Housing foundation to include certain categories of persons who could also be benefited from the scheme. When all categories of persons referred by High Court cold be benefited from the acquisition of the land by the Housing Foundation, the acquisition could be for public purpose and the same would not be in violation of Article 24 of the Constitution as the same did not prevent establishment of housing colonies in public interest(2000 YLR 1711).

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 maters enumerated in sub section (2) of section 12.

COMMENTS

Synopsis

1. Acquisition of land included in the
2. Master plan
3. Manner and form, etc of scheme

1. Acquisition of land included in the master plan. Acquisition of land without preparing a scheme or disclosing the public purpose for which the land was acquired Validity. Where the master plan had been prepared for the development of the capital site, the Authority, subject to the rights of people, could acquire the land under Capital Development Authority Ordinance, 1960, for the purpose of implantation of different schemes prepared hereunder. Capital Development Authority in its discretion could not acquired any land in the specified area without preparing a scheme or disclosing the public purpose for which the land was to be acquired (1999 YLR 247). Land of petitioner was acquired on the basis of its being shown in the master plan as an area for the National Park. No scheme of Nation al Park had been prepared and defined anywhere and acquisition was made on the basis of mere earmarking o f that area through a notification under Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. Validity, Land in question was a private land, unless a proper scheme of National Park was prepared by the Central Government or the Capital

Development Authority under Sections 11,12,13 & 14 of the Ordinance, partial acquisition of land in the name of National Park could not be justified (1999 YLR 247).

2. Master plan Land owners had raised construction on their lands after getting approval of building plans from the Union Council. Capital Development Authority objected to such constructions and attempted to get the said constructions demolished on the pretext that master plan for the city of Islamabad was duly approved earmarking the lands in question as a national Park and Scheme. Capital Development Authority, though can earmark an area for a particular purpose in the master plan, but scheme a decision cannot be implemented unless a scheme as contemplated by Sections 12 & 13 of Capital Development Authority Ordinance 1960 is prepared by the Authority. Authority has to take steps to acquire the land as provided by Chapter IV of the Ordinance before taking of any concrete steps for implementation of such Scheme. Without taking steps for acquisition of the property, action of Authority would be violative of the Constitutional rights of the landowners on account of restrictions placed on them to use the property in the manner they like. Supreme Court directed that Capital Development Authority will be entitled to initiate acquisition proceedings of the property in question or any other property after farming a proper scheme and if any other law authorizes the Authority to regulate the construction of the buildings in the disputed area, it will be open to the Authority to take action according to law for enforcing the said law or regulations B(1999 SCMR 2636).

3. Manner And Form, Etc Of scheme All schemes under section 12 and section 13 shall be prepared in such manner and form as the (Federal 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 costs and benefits;
-

Subs.by F.A.O. 1975, Art-2 and Table, for “Central Government”

- (c) allocation of costs to the various purposes to be served by the scheme;

14. MANNER AND FORM ETC. OF SCHEME.

All schemes under section 12 and section 13 shall be prepared in such manner and form as the Capital 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 costs and benefits;
- (c) allocation of costs to the various purposes to be served by the scheme.

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 of the purposes of this Ordinance.

(2) Without prejudice to the generality of powers conferred by sub-section (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 scheme prepared under Section 13;

iii) incur any expenditure.

iv) procure plant, machinery, instruments and materials required for its sue;

v) enter into and perform all such contracts as it may consider necessary;

vi) 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 preparation and restrict or prohibit by general or special order any change in the use of land and alteration in buildings, structures and installations;

viii) cause removal of any works obstructing the execution of its scheme.

ix) seek and obtain advice and assistance for the preparation of any planning scheme or for the execution of any scheme from any local body or agency and such local body or agency shall give 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

15 –A Municipal Functions.-

(1) During such period and for such areas within the Islamabad Capital Territory as the (Federal Government) may by notification in the official Gazette, specify, the Authority may, notwithstanding anything contained in any other law for the time being in force, exercise, and perform such powers and functions as a Municipal Committee may exercise and perform in relation to a Municipality under the Municipal Administration Ordinance, 1960.

(2) For the purpose of sub section (1), the provisions of sections 18,33 to 73, 77 to 106,109,115 to 118 and 122 of the Municipal Administration Ordinance, 1960 (X of 1960), and the second, Third and Fifth Schedules thereto shall, so far as may be, apply to the Islamabad Capital Territory as they apply to a municipality, references therein.

- a) to or to the powers and functions of, the Controlling Authority being omitted; and
- b) to Municipal Committee and Government being construed respectively as references to the Authority and the (Federal Government).

COMMENTS

Synopsis

- 1. Jurisdiction and functions.
- 2. Nature of property.
- 3. Levy of property tax.

1. Jurisdiction and functions Capital Development Authority has been authorized to perform functions and exercise powers of Municipal Committee under the Municipal Administration Ordinance, 1960 (**2001 SCMR 809**).

2. Nature of property. Appellants being owners of hotels, motels and restaurants were aggrieved of levy of property tax on commercial rates and claimed to be industry.

¹ Section 15A ins. By the Capital Development Authority (Am dt.) Act. 1966 (22 of 1966) s.4

² Subs by FAO 1975. Art.2 and Table, for “Central Government”.

³ See S.R.O 805 (1)/91 dated 20th Aug, 1991 as amended by S.R.O. 1(1)/99 dated 1st January, 1999.

Subs. By F.A.O. 1975. Art.2 and Table, for “Central Government”.

on the plea that authorities were charging electricity and gas dues on industrial rates from them. Validity No statutory enactment had been made in the Capital Development Authority Rules whereby hotels/motels situated in the jurisdiction of Capital Development Authority were included in the term ‘industry’ industrial or institution, as such appellants could not claim such relief. Appellants were allotted commercial plots for construction of hotels. Order or notifications of Federal Government under other laws declaring business of hotel as industry would not affect the nature of building or use of plots as defined in the Regulation 3 of Islamabad Land Disposal Regulation,1993. Amendment had also been made in Notification No.24(1)/2001, dated 11.1.2001, through Notification No.783 (1)/2003, dated 9.8.2003, whereby non-residential properties outside commercial areas were included in the heading ‘commercial’ Finding of High Court that until no statutory enactment declaring hotel/motels and restaurants located in

Islamabad Capital was made by competent authority, appellants could not, as a matter of right, claim to be charged at such rate was unexceptionable. Appeal was dismissed {2006 SCMR 1738 }

Leave to appeal was granted by Supreme Court to consider whether property tax on hotels, motels and restaurants, establishments would be charged at commercial rates or industrial one {2006 SCMR 1738}

3. Levy of Property Tax Competency of Capital Development Authority to levy property tax on properties situated within area of Islamabad Capital Territory in exercise of its power under Section 15-A. Capital Development Authority Ordinance,1960 challenged. Petitioner's contention was that some of the functions of Municipal Committee which Authority performed under provisions of Municipal Administration Ordinance,1960 were assigned to Capital Development Authority within specified limits of Islamabad Capital Territory. Petitioners claimed that no power was available to Municipal Committee to levy property tax on urban immovable property which was levied under provisions of West Pakistan Urban Immovable Property Tax Act.1958. Leave to appeal was granted to consider petitioner's contention that Capital Development Authority having been assigned only functions of Municipal Committee under Municipal Administration Ordinance,1960 had no authority to levy tax on urban properties alongwith other contention raised {1997 SCMR 466 }. Capital Development Authority under the provisions of Schedule-III, Entry No.1 of Municipal Administration Ordinance 1960, has been empowered to levy property tax {2001 SCMR 809 2001 S CJ 541 }

16. Borrowing powers

(1) The Authority may, with the previous approval in writing of the {Federal Government}, raise funds for the purpose or raising its working capital by issuing bonds and debentures carrying interest at such rates as may be approved by the *{Federal Government}.

(2) The repayment of the principal and the payment of interest due on the bonds and debentures issued by the Authority shall be guaranteed by the {Federal Government}.

Subs.by F.A.O 1975 Art,2 and Table for "Central Government."

17. Execution of scheme etc. through local bodies and agencies.

(1) The Authority may require a local body or agency within whose jurisdiction any particular area covered by a scheme lies to execute a scheme in consultation with the Authority.

(a) To take over and maintain any of the works and services in that area.

(b) To enforce regulations, on behalf of the Authority.

- (2) The expenditure incurred on the execution of any scheme, or on the taking over or maintenance of any work, or the enforcement of a regulations, under this section, shall be borne as may be agreed to between the Authority and the local body or agency and in the event of disagreement, as may be determined by the {Federal Government}.

18. Utilization of Building material:- Notwithstanding anything contained in any other law for the time being in force or in any contract or agreement, no person shall without the prior concurrence of the Authority allocate, exploit or in any manner utilize, except for the purpose of his own personal use, such natural resources used as building material as the Authority may, by notification in the official Gazette, specify in this behalf}

19. Amendment of Schemes: any scheme prepared under section 12 or section 13 may at any time be amended or modified:-

(a) In cases where the amended where the amended or modified scheme should exceed the financial powers of the Authority by the authority with the previous approval in writing of the {Federal Government) and

(b) In other cases, by the Authority” 3* *

*

*

COMMENTS.

‘Subs by F.A.O,1975, Art 2 and Table, for “Central Government”

1‘Subs. By the Capital Development Authority (Amdt) Act 1966 (22 d 1966) a.5 for section 18

2*Subs, ibid, s.6 for colon Proviso omitted ibid.

Appellant, an allottee/lessee of plot for setting up manufacturing cold storage had set up cold storage in his plot, respondents allowed by Authority to set up/construct cooling rooms in their basement of plot allotted to them. Appellant's claim was that respondents had no right to construct cooling units and that Authority was not competent to grant such permission. Appellant failed to point out his vested right to be the sole authorized person to set up the cold storage. Permission to respondents to set up cooling rooms for storage of their vegetables and fruits did not in any hamper the use of Appellant's storage plant. Authority, held was competent to prepare any scheme or phased scheme and could also amend or modify the same at any time. Authority had not given undertaking to appellant that no other cooling unit would be set up in the area, Factual position was that four other cold stage units were already functioning in the area. Appellant, thus could not claim monopoly of being the sole authorized person to set up such plant {1989 CLC 1532)

20. Removal, etc of buildings after hearing. The Authority shall not order or cause any building in the Specified Areas, excluding the Capital Site, to be removed or demolished unless an opportunity of being heard has been given to the owner or occupier thereof and his objections, 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.

COMMENTS.

Construction of petition over the land owned by him was demolished and land was acquired without completion of legal formalities and without payment of compensation. Validity, such construction could not have been demolished merely by issuing notice under Section 27(1) of the Ordinance. 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. Acquisition of land for a scheme without proper notice under section 27(1) of the Ordinance and the payment of compensation according to prevailing market value

of land including he built up area as residential houses, was not legal. Non preparation of any scheme and forcible dispossession and initiation of proceedings without compliance of legal formalities, rendered the action of the Capital Development Authority. Unlawful and all proceedings after such action were illegal {1999 YLR 247}

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 interests 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.

COMMENTS.

Setting up fruit and vegetable market. Amendment/modification of a scheme. Objection to amendment or modification of a scheme to be invited only in specified areas. Federal Government from time to time by notification in the official Gazette could declare any part of the specified area to be the site for the capital under section 3. Fruit and vegetable market not located in 'specified area' inviting of objections was thus not necessary for amendment and modification of such scheme { 1989 CLC 1532).

CHAPTER IV

ACQUISITION OF LAND

22. Liability to acquisition: All land within the Specified Area shall be liable to acquisition at any time in accordance with the provisions of this Chapter.

COMMENTS.

1. Powers of Authority
2. Reasons for acquisition
3. Acquisition for limited period.
4. Boundaries of the capital area
5. Land acquisition.
6. Powers of Capital Development Authority and jurisdiction of the Court.

1. Powers of Authority: The powers of the Authority to acquire land within the specified areas, are not unlimited. Any requisition within these areas must have a reasonable reference to the purpose of the Ordinance and must be carried out strictly in accordance with the provisions (PLD 1972 SC 279).

2. Reasons for acquisition. It is not within the domain of a Court of law to analyze the sufficiency of the reasons which prevail with an Authority to acquire property, and if apparently the acquisition is for a public purpose, the Court will not interfere unless a question of mala fide is raised (PLD 1970 Lah. 821)

3. Acquisition for limited period. The fact that the public purpose for which the land is being acquired is for limited duration does not affect the powers of acquisition of the Auditor (PLD 1970 Lah. 821 }

4. Boundaries of the capital area. Plea for inclusion of certain village lying on the boundary between District Rawalpindi and Islamabad the capital territory. Validity Boundaries which had already been settled in view of the acquisition of land under section 22, Capital Development Authority Ordinance,1960 and Capital of the Republic (Determination of Area) Ordinance,1963 and other relevant laws, could not be now altered without following the provisions of Article 239, Constitution of Pakistan and therefore any directive or notification requiring any change could not be enforced now. Petitioner, in his alternate plea stated that even with respect to the boundaries were only made in the plans and in the papers High Court, while disposing of the Constitutional petition observed that the Capital Development Authority and the District Coordination Officer of Rawalpindi should hold a meeting for determining a date for joint demarcation of the boundaries in accordance with law and to effect the physical demarcation of the boundaries within a period of three

months from the announcement of the judgment while submitting a compliance report to the High Court ensuring that the same reaches the High Court by the 1st of March, 2003 (PLD 2003 Lah. 55 }

5. Land acquisition. Resumption of acquired land from company in event of its non utilization for restoring the same to previous owners. Initiation of such proceedings under Rule 15 of Punjab Land Acquisition Rules, 1983 in respect of land within Islamabad Capital Territory (Administration) Order, 1980 does not make applicable Punjab Land Acquisition Act, 1886 in its entirety in Islamabad Capital Territory, Punjab Land Acquisition Act 1886 and Punjab Land Acquisition Rules, 1983 are not applicable to Islamabad Capital Territory, which is given district Constitutional status and is a separate area from the Province of Punjab Land Acquisition Act, 1894 is not a law applicable for purpose of acquisition within Islamabad Capital Territory. Compulsory acquisition of land within Islamabad Capital Territory is effected under Capital Development Authority Ordinance, 1960 and Land Acquisition Regulations 1961. General Standing Order No. 28 issued under Land Acquisition Act, 1894 is not applicable in Islamabad Capital Territory premise for initiating proceeding under Punjab Land Acquisition Rules 1983 by Chief Commissioner Islamabad was not legally available {2004 CLC 145}. Government's power to acquire land for public good though unquestionable, such power generally to be exercised on payment of full compensation equal to market value of land (PLJ 1983 FSC 298 }

6. Powers of Capital Development Authority and jurisdiction of the Court. Acquisition of land merely with the label of public purpose will not be enough to make acquisition of land under the Ordinance. Law does not give unfettered powers to the Authority to acquire any land at any time in the specified area. Acquisition must be in pursuance of some scheme approved by the Competent Authority. No restriction could be placed on the jurisdiction of the court to go into the question of legality of the acquisition of lands {1999 YLR 247)

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 authority by the Authority, in this behalf:-

- (a) to enter 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 adopted 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 the 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.

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.

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 the purposes of this Ordinance.

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

COMMENTS.

Synopsis.

1. Power of acquisition
2. Mala fide acquisition
3. Safeguard the ownership of land and Proprietary rights of property.

1. Power of acquisition: Since 25 of the Ordinance 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 there under and the directions of the Authority. This naturally takes back, inter alia, to the provisions of the 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 (PLD 1972 SC 279) Capital Development Authority in its direction could not acquire any land in the specific area without preparing a scheme or disclosing the public purpose for which the land was to be acquired { 1999 YLR 247 }

2. Mala fide acquisition: The Court would not uphold a mala fide acquisition. The acquisition was held to be mala fide in the following circumstances:- (i) Different reasons were given at different times for the acquisition of property. (ii) The land was allegedly acquired for Presidential Secretariat but the Master Plan did not show that the land acquired by the property in dispute was earmarked for setting up the Presidential Secretariat, on the contrary the plan showed quite a different place at a considerable distance from the property in dispute, as earmarked for setting up the Presidential Secretariat (iii) No scheme appears to have been framed under the Ordinance which is applicable to the acquisition of the property in question (iv) The scheme was produced at a very belated stage of the writ petition (v) The acquisition of the property when it was already under requisition and in use for the same purpose (vi) The unseemly hurry in the process of the acquisition (PLD 1972 SC 279).

3. Safeguard the ownership of land and proprietary rights of property. Authority had deprived the petitioner of such rights through urgent acquisition of land without any scheme and compensation to the petitioner. Validity, Authority had power to acquire the land but where the land of the petitioner was acquired without acquiring the land of the land owners in the same vicinity having the same effect on the Rawal Lake and falling in the same area, acquisition of the petitioner's land was unconstitutional in circumstances (1999 YLR 247).

26. Land to be marked out, measured and planned. Where any land is proposed to be acquired under Section 25 of 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.

26. 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 {Federal Government} intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. 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 measurements made under section 23 and the Deputy Commissioner.

Subs. By F.A.O 1975 Art 2 and Table for “Central Government”

May require any such statement to be made in writing and signed by the party or his agent.

- (2) The Deputy Commissioner shall also serve notice to the same effect on the occupier, if any of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested.

COMMENTS.

Notice to party. The Act provided that notice of acquisition must be given to the party interested. The object of law is that the party may be heard and justice be done to him. Therefore, where the party was not given notice by DC, but was heard by Appellate Authority. It was held that even if the petitioner was not given a hearing at the initial stage, he was heard by the appellate authority and all his contentions were taken note and the order of the Deputy Commissioner was modified and the rate of compensation was enhanced from Rs.76 to Rs.112. Therefore, the principles of natural justice have sufficiently been completed with and the impugned order cannot be set aside for that reasons alone (PLD 1968 Lah. 938-PLR 1968 (2) W.P. 432).

27. Enquiry and award of Deputy Commissioner. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Deputy Commissioner shall proceed to enquire into the objections, if any, which any person interested has stated

pursuant to the notice given under Section 27, and into the market value of the land and into the respective interests of the persons claiming the compensation, and shall make an award of:-

- (i) the true area of the land.
- (ii) The compensation which in his opinion should be allowed for the land.
- (iii) The apportionment of such compensation among all the persons known or believed to be interested in the land of whom, or of whose claims, he has information, whether or not they have appeared before him.

COMMENTS.

Dispute between the parties related to apportionment of compensation i.e. as to whom it was payable. Deputy Commissioner under Section 28(iii) of Ordinance is invested with powers to decide the question of apportionment of compensation amongst claimants and his order could be assailed under Section 36 of Ordinance before Commissioner, whose order would be final. Commissioner could not evade his responsibility to decide the question of apportionment of compensation between parties and shift the same in Civil Court. Civil Court had jurisdiction only to see, whether order was passed in accordance with the provisions of Ordinance or not {2001 YLR 2751}.

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

COMMENTS.

Synopsis.

1. Compensation at rates equal to that fixed for other similar land.
2. New plea in Supreme Court.

1. Compensation at rates equal to that fixed for other similar land.

Where petitioner's counsel urged Commission to award at least same rates of compensation as awarded by him in a specified case. Commissioner while accepting such plea, cannot be said to have acted without lawful authority by not advertent to an order neither placed before him nor relied upon {1981 SCMR -21-PLJ 1981 SC 198}. Compensation of market value to be assessed on value prevailing at time of acquisition and not to the notified value fixed in relation to time before such acquisition (PLD 19854 FSC 221 PLJ 1983 FSC.298).

2. New plea in Supreme Court. A plea which could have been raised before Commissioner but not raised before cannot be raised for the first time before High Court. The plea was not allowed to be raised in Supreme Court (1981) SCMR 21-PLJ 1981 SC 198}

Matter to be considered in determining compensation:-

(1) In determining the amount of compensation to be awarded for land acquired under this Ordinance the Deputy Commissioner shall take into consideration:-

First the market value of land {on the date of order of its acquisition made under section 25}.

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

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

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

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

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

(3) In relation to land acquired on or after the first day of January,1996 in addition to the value of land determined as aforesaid, the deputy Commissioner shall in every case award a sum of twenty per centum on such value in consideration of the compulsory nature of the acquisition. }

COMMENTS.

Synopsis

- | | |
|-------------------------------------------|-----------------------------------------------------|
| 1. Compensation-Factors to be considered. | 2. Actual expenses incurred by owner as immaterial. |
| 3. Classified land | 4. Potential value. |
| 5. Loss of business. | 6. Unauthorized structures on |

land.

7. Review of order of predecessor commissioner.

1. Compensation-Factors to be considered. Compensation for acquired land Factors to be considered are (1) market value of the land. (2) damage caused by reason of dispossession, besides the value of land so determined is to include 15% per annum of such value in consideration of compulsory nature of acquisition. In terms of section 31, these factors are not to be ignored while determining compensation (2002 SCJ 189). The principles for fixing compensation may now be summed up as follows (i) The Deputy Commissioner is first to determine and find out as to what is the classification of land acquired as recorded in the register of Haqdaran Zamin as in force on 1.1.1968 (ii) he is there to determine and find out as to what was the average market value thereof during the period 1.1.1954 to 31.12.1958. While so doing it may be noticed that the classification recorded in the Register of Haqdaran Zamin which was in force on 1.1.1968 has to be given retrospective effect and it is to be considered as if the classification of 1.1.1968 was in force during the period 1.1.1954 to 31.12.1958 (iii) to the average value so Sub section (iii) added by the Capital Development Authority (Amdt) Act 1999 (III of 1999) s.3. Determined he is then to add 25% thereof; (iv) the aggregate so obtained by adding (ii) and (iii) will thus come out and constitute the 'market value ' of the land within the meaning of section 2(k)(ii) of the Ordinance, which the Deputy Commissioner in inter alia required to keep under consideration while awarding and assessing compensation under section 31(v) the material date for compensation however is the date of acquisition and not any other date (vi) that while compiling the compensation amount, the potential value of the land as on the acquisition day is not to be lost sight of and is to be duly taken into consideration for whatever worth it may be (see the deductions made while interpreting section 31. fourthly and other analogous provisions) (vii) he is also not to exclude from consideration the individual merits of a particular land acquired within the same classification to which that land belongs or in other words without affecting or changing the general classification of that land (viii) as per section 3 of the Capital Development Authority Amendment) Ordinance VII of 1968 any award of compensation made before the commencement of this Ordinance in respect of any land acquired on or after the first day of January,1968 shall be modified so as to raise the amount of compensation specified therein to the amount which would have been awarded had he award been made after the commencement of the Ordinance 2002 SC 189 PLD 1977 Lah. 1200=PLJ 1977 Lah.605) It follow that where village C was situated 3-4 miles away from village 'B' and its had were nearer to urban area of "R" and were more valuable. Compensation assessed for village 'C' cannot be awarded to petitioners (1982 SCMR 1136 }.

- 2. Actual expenses incurred by owner are immaterial.** In land acquisition proceedings compensation is to be awarded on the basis of market value as defined under section 2(k). The fact that actual expenses incurred by a party to acquire that land had come to an amount for beyond the compensation allowed, would not justify any increase in amount of compensation beyond that permitted by law (PLD 1968 Lah. 938=PLR 1968 (2) W.P. 342}
- 3. Classified land.** Pegging of classification which is meant only for technical definition of the “market value” does not warrant that individual and exceptional merits of any particular piece of land within the same relevant classification can be ignored for compiling compensation amount” when by so doing no change in that classification in any manner takes place (PLD 1977 Lah. 1200-PLJ 1977 Lah. 605) In such cases it is no longer open to introduce the concept of improvements and improved conditions so as to change the classification. Such improvements, etc which purport to change classification of the land for technical definition of market value and is not to affect individual merits of a particular piece of land while remaining within and without effecting or altering, its relevant classification for compiling ‘compensation amount” as distinct from technical market value as aforesaid (PLD 1977 Lah.1200 PLJ 1977 Lah. 605}.
- 4. Potential value.** When determining compensation potential value of land must be considered but it must be the potential value as it existed before acquisition took place. Past acquisition use of land cannot be considered (PLD 1977 Lah. 1200}
- 5. Loss of business.** When the land acquired was being used as a brick kiln by its lessee and the lessee claimed compensation for loss of business. The Court ordered that compensation be paid to the lessee for loss of business (PLD 1977 Lah. 843=PLJ 1977 Lah 481 }
- 6. Unauthorized structures on land.** Where unauthorized structures raised by the lessee of the land are also acquired by CDA alongwith the land, lessee is entitled to compensation for them, because even if they are unauthorized vis-à-vis the lessor, the Capital Development Authority cannot get them free of cost and vis-à-vis the Capital Development Authority the said constructions/additions belong to the lessee and if they are to be taken over compensation for the same shall have to be paid to the lessee (PLD 1977 Lah. 843-PLJ 1977 Lah. 481 }
- 7. Review of order of predecessor Commissioner.** Owners of land were entitled to be awarded just and equitable compensation but the Commissioner had neither considered relevant provisions of law for assessment of market value and compensation nor had followed the guidelines laid down by Supreme Court and High Court through binding upon him in view of Article 189 of Constitution nor had taken note of use of land on the date of acquisition nor its potential value nor market value classification-wise nor had considered the

compensation awarded earlier by predecessor Commissioner in terms of Section 2(k) 30 & 31 of the Ordinance and guidelines of Supreme Court and High Court could not be said to be in violation of law liable to be interfered within exercise of review jurisdiction. Successor Commissioner, in absence of discovery of new and important matter or evidence or error apparent on the face of record or any other sufficient cause could not review a legal and proper order of his predecessor. Supreme Court dismissed the appeal of the Authority holding that High Court was justified in restoring the order of predecessor Commissioner after setting aside the order of his successor (PLD 2002 SC 243 }

Factors to be ignored in determining compensation:

In determining compensation as aforesaid, the Deputy Commissioner shall not take into consideration:-

First, the degree of urgency which had led to the acquisition.

Secondly, any disinclination of the person interested to part with the land acquired.

Thirdly, any damage sustained by him which, if cause by a private person would not render such person liable to a suit.

Fourthly, any increase likely to accrue to the value of the land acquired from the use to which such land will be put on acquisition, and

Fifthly, any increase likely to accrue to the value of the other land of the person interested from the use to which the land acquired will be put.

32. Vesting of land in the Authority:- Immediately on the making of the award under section 28, the land shall vest in the Authority free from all.

33. Encumbrances (and thereupon the Deputy Commissioner may after giving reasonable notice to the occupier, enter upon and take possession of them.

32-A. Payment of additional compensation: When the amount of the compensation determined under section 29 and sub section (3) of section 30 is not paid or deposited with the Deputy Commissioner shall, in addition to such compensation, pay additional compensation computed at the rate of eight per centum per annum on such compensation from the time of so taking the possession until it has been so paid or deposited }

33. Acquisition in cases of urgency. In cases of urgency, the Deputy Commissioner may immediately after the publication of the notice mentioned in sub section (1) of section 27 enter upon and taken possession of the land which shall thereupon vest absolutely in the {Authority} free from all encumbrances.

Provided that the Deputy Commissioner shall not take possession of any building or part of building under this section without giving to the occupier thereof at least twenty four hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

{33-A-Temporary occupation and use of land⊗1) Where the Authority requires any land for temporary occupation and use for the purpose of this Ordinance for a period not exceeding five years, it may direct the Deputy Commissioner to take possession of the land in accordance with the provisions of this section for such occupation and use.

(2) Upon a direction under sub section (1) in respect of any land, the Deputy Commissioner shall give the persons having interest in the land notice in writing of his intention to take possession of the same for the purpose and period specified therein calling upon such persons to submit within ten days of the receipt of the notice written statement describing the nature and extent of their interest in such land.

(3) The Deputy Commissioner, shall after giving the person having interest in the land an opportunity of being heard, determine the amount of

'Added by the Capital Development Authority (Amdt) Act 1966(22 of 1966),s.7

Added by the Capital Development Authority (Admt) Act 1999 (III of 1999) s.r

Subs. By the Capital Development Authority (Admt) Act 1966 (22 of 1966)s.8 for Central Government.

Section 32 A and 33'B ins. ibid, s.9.

Compensation payable for the temporary occupation and use of the land at the rate at which it was rented during the preceding agricultural year and if, it was not rented, at such rate as he may consider fair and equitable, and make an award specifying:-

- (a) the area and description of the land.
 - (b) The purpose and the period for which the land is required.
 - (c) The amount of compensation and shares therein of the person, if there be more than one, entitled thereto and
 - (d) The mode of payment of compensation.
- (4) After making an award under sub section (3) in respect of any land, the Deputy Commissioner may enter upon and take possession of such land for the period and the period specified in the notice under sub section(2)
- (5) If it appears that as a result of the occupation and use as aforesaid any land proposed to be taken possession of under this section is likely to be permanently unfit for the use for which it is for the time being used and the owner applies for its acquisition under this Ordinance, the deputy Commissioner shall report the fact to the Authority and shall, if the Authority so direct:-

- (a) acquire the land under the Ordinance; or
- (b) assess the damage likely to be caused to the land and make an award for reasonable compensation for such damage; or
- (c) terminate the proceedings for taking possession of the land.

(33 B. Payment of compensation to persons under disability and heirs of deceased persons:- (1) If any person entitled to the payment of any compensation under the Ordinance is a minor, or of unsound mind, or under some other legal disability to receive payment, the Deputy Commissioner may by order direct that the payment of such compensation shall be made to the person applying for it on behalf of the person entitled thereto, if the Deputy Commissioner, after making such enquiry as he may deem fit, is satisfied that the person so applying is the proper person to receive payment for the benefit of the person entitled to compensation.

(2) Where a person entitled to receive compensation under the Ordinance dies after the making of an award, the Deputy Commissioner may, to Provide relief in suitable cases, on the application of the heirs or legal representatives of such person and after holding an enquiry into the title of the appellants, direct that compensation shall be paid to the applicants on such terms and conditions as the Deputy Commissioner may deem fit to impose.

(3) Any person made under sub section (1) sub-section (2) shall afford full indemnity to the Authority for the payment made but shall not affect the liability

of the person who has received the payment to account therefore to the person lawfully entitled thereto}

34. Power of Deputy Commissioner to call for information:

With a view to acquiring any land or determining any compensation therefore or to carrying out any other purpose of this Ordinance, the Deputy Commissioner may:-

- (a) require any person, by order in writing to furnish such information in his possession relating to any land as may be specified in the order.
- (b) enter or authorize any person to enter upon any land and take such action as may be necessary.

35. Power of Authority to give directions to Deputy Commissioner. The Authority may give direction to the Deputy Commissioner as respects of the exercise of his powers and the discharge of his functions under this Chapter and Deputy Commissioner shall be guided by, and act in accordance with such directions.

COMMENTS.

Authority to issue directions: Capital Development Authority could issue directions only in consonance with and subordinate to other provisions of Ordinance and not ultra vires of them. Nothing in section 28 read with section (2(k) or in any other provisions of Ordinance warrants conclusion of Deputy Commissioner being not required to award compensation according to existing classification of land on date of expropriation of the owner. Directions issued by Authority under Section 35 to ignore bona fide improvements made after 1958 but before acquisition, held, ultra vires. Amendments subsequently introduced into section 2(k) by amending Ordinance VII of 1968, held further had no effect on land acquired before 1-2-1968 (PLF 1976 SC-752).

Appeal and review:-

(1). The Authority or any person aggrieved by an award or final order of the Deputy Commissioner may, within fifteen days of such award or order, appeal to the Commissioner.

(2) The Commissioner may, after giving the Authority and the person affected by the award or order appealed against an opportunity of submitting an

objection to the appeal and of being heard, pass such orders thereon as he may think fit.

(3) The Deputy Commissioner or the Commissioner, either of his own motion or on application made in this behalf, at any time within five years from the date of an award or order made or passed by himself or by any of his predecessor in office, including an award or order made or passed before he commencement of the Capital Development Authority (Amendment) Act 1960 may after giving the parties concerned a notice and an opportunity of being heard, review the award or order and pass such order thereon as he may deem fit.

Provided that an order under his sub-section shall not, except in so far it corrects an arithmetical, clerical or patent error or mistake in the award or and under review, enhance, the amount of compensation awarded.

(4) Any amount paid to any person which is found, for any reason including fraud or misrepresentation, not to be due or in excess of the amount is entitled to under the award or order as review under sub-section (3) shall be recoverable by the Authority and the Deputy Commissioner shall call upon such person to refund it.

(5) Subject to the provision of sub section (3), the order of the Commissioner passed on any appeal shall be final and shall not be called question in any court}.

COMMENTS.

Synopsis

- | | |
|---------------------------------|-----------------------------------------------------------------------------|
| 1. Review after appeal is filed | 2. Miscellaneous petition if may be converted into Constitutional petition. |
| 3. Review proceedings. | 4. Contempt of Court. |
| 5. Constitutional petition. | 6. Jurisdiction of Commissioner to review order more than once. |

1. Subs. by the capital Development Authority (amdt) Act 1966 (22 or 1966), s.10 for section 36)

1. Review after appeal is filed. Where the CDA filed a review petition before Deputy Commissioner himself after his award had been challenged in appeal by the land dwellers, It was held; that it was clearly not open to the Deputy Commissioner to proceed to review own order during the pendency of the

appeal before the superior officer; nor could the Deputy Commissioner alter the award in review after the appeal had been decided by the Commissioner (1973 SCMR145).

2. Miscellaneous petition if may be converted into Constitutional petition. Conversion of proceeding of one kind into another lies within the discretion of the Court, if the High Court was satisfied that circumstances of the case justified conversion of miscellaneous application filed by respondents in a disposed of case into proceedings under Article 199 of the Constitution of Pakistan there was no legal bar to such conversion of the proceedings {1994 SCMR 771=NLR 1994 SCJ 372 }

3. Review proceedings: Dispute regarding acquisition of land was finally decided by Supreme Court and direction was issued to the authorities to pay compensation to affectees. Authorities had paid compensation to some of the affectees, when all of a sudden Deputy Commissioner, Capital Development Authority, initiated suo motu review proceedings under Section 36(3) of Capital Development Ordinance, 1960 and excluded the names of certain landowners. Respondents/Commissioner Capital Development Authority allowed, appeal filed by aggrieved landowners and set aside the order passed under suo motu powers by Deputy Commissioner. Validity, after receiving the reports, Deputy Commissioner, a functionary under Capital Development Authority Ordinance 1960, himself visited the site and inspected existence of houses and structures and thereafter according to the policy of Capital Development Authority, affectees opted to remove Malba of buildings subject to deduction of 15% of the value of houses. After the observations of Supreme Court, Authorities had acted with mala fide intention to further delay legitimate payment of compensation which was not justified on any legal or normal ground when the awards were adjudged valid and proper by Supreme Court, the Deputy Commissioner, Capital Development Authority was not empowered to exclude names of affectees from the award after exercising powers of suo motu review. High Court in exercise of Commissioner jurisdiction, assigned to interfere with the order passed by respondent/Commissioner Capital Development Authority. Petition was dismissed in circumstances {2008 CLC 1530}.

4. Contempt of Court. Commissioner reviewed the order of his predecessor on the ground that Supreme Court had misinterpreted the law, which misinterpretation would not be shared by him, thus calling it as mistake patent on the face of record. Successor Commissioner by such observations had showed disrespect to decisions of Supreme Court and High Court, which prima facie would amount to contempt of Supreme Court warranting legal consequences. Notice was issued to Commissioner to show cause as to why proceedings under Article 204 of Constitution read with Section 3 & 4 of Contempt of Court Act, 1976, be not initiated against him for showing his willful disobedience and disrespect to the dignity and decorum of Supreme Court and High Court in violation of such provisions (PLD 2002 SC 243 }

Commissioner, Capital Development Authority, while disposing of a revision petition under section 36 of the Capital Development Authority Ordinance, 1960 had differed in its judgment with the interpretation placed by the High Court and the Supreme Court on Sections 29, 30 and 31 of the said Ordinance in the judgment reported in *Sardar Begum* and others, v. the Capital Development Authority and others PLD 1977 Lah. 1200 and *Muhammad Younus* and others v. Capital Development Authority and others PLD 1976 SC 752 by using intemperate Language. Was obligatory on the Commissioner to follow he said reported judgments in letter and spirit in terms of Article 189 of the Constitution. Although the Administrative Functionaries did not enjoy judicial powers but when they were require to pronounce a judicial decision in judicial proceedings instituted before them, they were bound by the judgments of the superior Courts as if they were functioning as a judicial forum having powers of the Court to the extent of the decisions of the case required to be made by them judiciously. Commissioner, therefore, had no lawful authority to differ with the law laid down in the reported judgments and by not following the same he had made himself liable for contempt of Court because while disagreeing with the principles laid down therein he had used intemperate language. Respondent had tendered unqualified apology for his action and had also placed himself at the mercy of the Court. Perusal of the order passed by the Commissioner way back in 1983, however, indicated that he had not differed with the judgments quoted before him with mala fide intention but on account of non-understanding of judicial principles pertaining to apply the judgments of the superior Courts. Supreme Court, therefore, had extended to the respondent the benefit of such extenuating circumstances and did not exercise jurisdiction of contempt of Court as provided under Article 204 of the constitution .Show cause notice issued to the respondent/Commissioner was discharged accordingly with a warning to him that in future he should remain careful while interpreting judgments passed by the superior Courts, and if he repeated such conduct he would be dealt with strictly without showing any leniency to him (PLD 2002 Sc 399 }

5. Constitutional petition. Remedy of appeal available but such remedy was not exhaustive and thus not suitable. Effect, Where petitioner had challenged the very acquisition of land to be illegal and was not claiming the enhancement of compensation, the provisions of Section 36 of the Ordinance was not a remedy being not exhaustive. Constitutional petition was therefore, maintainable { 1999 YLR 247 }

6. Jurisdiction of Commissioner to review order more than once. Commissioner, after deciding the earlier review application allowed another review application. Validity. Where Commissioner had passed an order on appeal, there arose right of review to any of the parties or a power vesting in the Commissioner, himself to suo motu review the order so passed in appeal. Once such power had been exhausted either suo motu or on an application, the order to appeal would become final. Second review was not competent and the Commissioner acted without lawful authority in entertaining and allowing the

same. Order passed by the Commissioner in second review application was without authority and the same was set aside. Constitutional petition was allowed in circumstances {2002 YLR 1059}

36A. Deputy Commissioner and Commissioner to have powers of civil court, etc. (1) The Deputy Commissioner making any enquiry, or conducting any proceedings for an award under the Ordinance, or the Commissioner hearing an appeal or holding a review under section 36, shall have the same powers in respect of the following matters as are vested in a civil court, when trying a suit, under the Code Procedure, 1908 (Act V of 1908) namely:-

1. Sections 36 A and 36 Bins. By the Capital Development Authority (Amdt) Act,1966, s.11.

- (a) summoning and enforcing attendance of any person and examining him on oath or affirmation;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any record from any court or office;
- (d) issuing commissions for examination of witnesses, inspection of property or making any local investigations;
- (e) appointing guardian ad litem or next friends;
- (f) adding or substituting representatives of deceased parties to proceedings.
- (g) adding or dropping parties from pending proceedings;
- (h) restoration of cases dismissed for default;
- (i) consolidating and splitting up cases; and
- (j) any other matter connected with the holding of an inquiry or hearing of an appeal.

(2) The Deputy Commissioner or the Commissioner exercising powers under this Ordinance shall be deemed to be a court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898), and a proceeding before him shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

36B. Fees on applications:- The Authority may prescribe fees on applications made to it.

CHAPTER V

ESTABLISHMENT

37. Appointment of officers and servants etc.

1) The Authority may from time to time, appoint such officers, servants, experts or consultants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit:

Provided that salaried officers and servants whose remuneration exceeds two thousand and five hundred rupees per mensem shall not be appointed except with the previous approval in writing of the (Federal Government).

(2) Subject to the proviso to sub-section (1), the Chairman may, in cases of urgency, appoint such officers, servants, experts or consultants and on such terms and conditions as he deems fit:

Provided that every appointment made under this sub section shall be reported to the Authority without unreasonable delay.

38. Recruitment conditions of service and disciplinary powers:-

The Authority shall lay down the procedure for the appointment of its officers, servants, experts and consultants, and the terms and conditions of their services including the constitution and management of provident fund for them, and shall be competent to take disciplinary action against them.

COMMENTS

Notwithstanding pre-emptory language of section 38, appointment etc held could be made without framing regulations. Requirements of section 38, held further directory rather than mandatory (PLD 1979 Lah..803).

39. Members, officers, experts – public servants. The Chairman, members, officers, servants, experts and consultants of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (XLV of 1860).

40. Indemnity. No suit, prosecution or other legal proceedings shall lie against the Authority, the Chairman, any member, officer, servant, expert or consultant of the Authority in respect of anything done or intended to be done, in good faith under this Ordinance.

41. Delegation of powers to Chairman, etc. The Authority may, by general or special order, delegate to the Chairman, or a member, or an officer of the Authority, any of its powers, duties or functions under this Ordinance, subject to such conditions as it may think fit to impose.

CHAPTER VI

FINANCE

42. Capital Development Authority Fund:-

(1) There shall be formed a fund to be known as the “Capital Development Authority Fund” which shall vest in the Authority and shall be utilized by the Authority to meet charges in connection with its functions under this Ordinance including the payment of salaries and other remuneration to the Chairman, members, officers, servants, experts, and consultants of the Authority.

(2) To the credit of Capital Development Authority fund shall be placed,.

- (a) grants made by the [Federal Government];
- (b) loans obtained from the [Federal Government];
- (c) grants made by local bodies;
- (d) sale proceeds of movable and immovable property and receipts for services rendered;
- (e) loans obtained by the Authority with the special or general sanction of the [Federal Government];
- (f) foreign aid and loans obtained from the International Bank of Reconstruction and Development or from any other source outside Pakistan, with the sanction of, and on such terms as may be approved by, the [Federal Government]; and
- (g) all other sums receivable by the Authority.

43. Budget.

(1) In the month of February each year the Authority shall submit to the [Federal Government] for approval a statement of the estimated receipts and expenditure in rupees in respect of the next financial year.

(2) In the manner prescribed by the [Federal Government] the Authority shall also submit to the [Federal Government] for approval a statement

Subs by F.A.O. 1975, Art 2 and Table for “Central Government”. of the estimated receipts and expenditure in foreign exchange in respect of the next financial year.

(3) The Authority shall obtain specific sanction of the [Federal Government] in respect of each individual scheme costing rupees twenty five lacs or more to be financed out of the Capital Development Authority Fund.

44. Audit and accounts.

1) The accounts of the Authority shall be audited by not less than two auditors holding certificates under section 144 of the Companies Act, 1913 (VII of 1913), who shall be appointed by the [Federal Government], in consultation with the [Auditor General] of Pakistan (hereinafter referred to as the Auditor General) on such remuneration, to be paid by the Authority, as the [Federal Government] may fix, and the Auditor General shall have the power to give directions to the auditors in regard to the extent and method of their audit subject to the provisions of the Companies Act, and to prescribe the forms of accounts to be maintained by the Authority consistent with the requirements of this Ordinance.

(2) Notwithstanding the provisions of the preceding sub-section, the Auditor General may either of his own motion or upon a request received in this behalf from the [Federal Government], undertake such audit of the accounts of the Authority at such time as may be considered necessary, and the Authority shall, at the time of such audit, produce the account books and connected documents at such place or places as the Auditor General may fix, and furnish such explanations and information as the Auditor General or an officer or officers authorized by him in this behalf may ask for.

(3) Every auditor appointed under sub-section (1) shall be given a copy of annual balance sheet of the Authority, and shall examine it together with the accounts and vouchers relating thereto, and shall have a list delivered to him of all books kept by the Authority, and shall at all reasonable times have access to the books, accounts and other documents of the Authority, and may in relation to such accounts examine any member or officer of the Authority.

(4) The auditors shall report to the [Federal Government] upon the annual balance sheet and accounts and in their report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct.

*Subs. by F.A.O 1975, Art. 2 and Table, for “Central Government”

Substituted by Federal Adaptation of Laws Order, 1975 (Order No.4 of 1975) for “Controller and Auditor General”.

View of the state of the Authority's affairs, and in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(5) The {Federal Government} may at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Authority for the protection of the interests of the '{Federal Government}' and of the creditors of the Authority or upon the sufficiency of their procedure in auditing the affairs of the authority, and may at any time enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted or that any other examination be made by the auditor if in its opinion the public interest to requires.

(6) The Authority shall comply with every direction issued by the {Federal Government} for the rectification of matters objected to in audit.

45. Consultation with the Financial Advisor:- Save as provided in the rules or regulations, the Financial Advisor shall be consulted on every proposal of expenditure.

CHAPTER VII.

PENALTY AND PROCEDURE

46. Penalty:- Whoever contravenes any provision of this Ordinance or of any rules or regulations made or scheme sanctioned thereunder shall, if no other penalty is provided for such contravention, be punishable with imprisonment which may extend to six months or fine or with both.

{46A. Causing damage to property:- Whoever willfully causes damage or allows damage to be caused to any property which vests in the Authority or unlawfully converts it to his own use or to that of any other person shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

46B. Disobedience of orders: Whoever, without lawful excuse, fails or refuses to comply with any direction or order issued by the Authority under this Ordinance shall be guilty of an offence punishable under section 46.

'Subs by F.A.O 1975, Art.2 and Table for "Central Government."

‘Sections 46-A to 46-D ins by the Capital Development Authority (Amdt) Act.1966(22 of 1966)

44.

46-C. Attempts and abetments: Whoever attempts to commit or abets the commission of an offence punishable under this Ordinance shall be deemed to have committed that offence.

46-D. Summary trial of offences: Any Magistrate or Bench of Magistrates empowered for the time being to try in a summary way the offences specified in sub section (1) of section 260 of the Code of Criminal Procedure 1898 (Act-V of 1998), may, if such Magistrate or Bench of Magistrates thinks fit, on application being made in this behalf by the prosecution, try any offence punishable under this Ordinance in accordance with the provisions contained in sections 262 to 265 of the said Code }

47. Cognizance of offences by Courts:- N court shall take cognizance of any offence punishable under this Ordinance except on a complaint in writing made by the Authority or by an officer authorized for the purpose by the Authority.

CHAPTER VIII

MISCELLANEOUS.

48. Submission of yearly reports and returns etc.

(1) The Authority shall submit to the {Federal Government) as soon as possible after the end of every financial year but before the last day of December next following a report on the conduct of its affairs for that year.

(2) The {Federal Government) may after giving sufficient notice to the Authority, require it to furnish the Government with:-

- (i) any return, statement, estimate, statistics, or other information regarding any matter under the control of the Authority, or
 - (ii) a report on any subject with which the Authority is concerned, or
 - (iii) a copy of any document in the charge of the Authority; and the Authority shall comply with every such requisition.
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‘Subs. by F.A.O,1975, Art 2 and Table for “Central Government”

49. Power to dispose of land: The Authority may retain, or may lease, sell, exchange, rent or otherwise dispose of any land vested in it.

COMMENTS

Synopsis

1. Minister’s powers qua allotment of Property.
2. Allotment of pots by Prime Minister from the discretionary quota.
3. Constitutional jurisdiction of High Court.
4. Allotment of public property parliamentarians at Islamabad.
5. Allotment of land plot in Capital area.

1. Minister’s powers qua allotment of property. Capital Development Authority having perpetual succession and a common seal, a Corporation with independent audit and existence CDA Ordinance 1960 vests Authority with independent power of preparation of master plan master programme, schemes and powers of management. No such powers conferred by Ordinance on Minister Incharge. Minister, held devoid of powers to allot property vesting to Authority { 1979 CLC 502 }

2. Allotment of plots by Prime Minister from the discretionary quota. Paragraphs 15(i)(6),15(ii)(7) and 15 (ii-a) of Land Disposal in Islamabad Regulations 1988 having been amended by Notification dated 19.5.1993 which was not published in the official Gazette were ultra vires of the Capital Development Authority Ordinance 1960 as said paragraphs were beyond the scope of the said Ordinance for Prime Minister did not figure in the Ordinance in any capacity. Capital Development Authority, itself could exercise any direction under paras 18© & 19(b) (iii) of the said Regulations for these provisions were also ultra vires of the Ordinance and thus were liable to be struck down alongwith paras 15(i)(6), 15(ii)(7) and 15 (ii-a) of the Regulations. Plots so allotted therefore stood reverted to the Capital Development Authority which was directed to take action in that behalf as ordered by the High Court (PLD 1993 Lah. 155 }

3. Constitutional jurisdiction of High Court. High Court has ample jurisdiction to look into the allotment of plots by the Prime Minister of Pakistan in various Housing Schemes of the Capital Development Authority from their discretionary quota (PLD 1993 Lah. 855).

4. Allotment of public property to Parliamentarians at Islamabad.

Law prepares that an act was bona fide unless same was shown to have been taken with mala fide motion. Mala fides cannot be presumed but has to be proved. If reservation of plots in Development Schemes for other groups or class of people, in particular Advocates to which class petitioner belongs was not objected to and has been treated to be justifiable act, there was no reason to object to reservation of same to other class of people in the same manner. No evidence in reservation of plots for Parliamentarians was warranted in circumstances (1966 CLC 1987}

5. Allotment of land/plot in Capital Area. Lands/plots within limits of Capital area of Islamabad is governed by Capital Development Authority Ordinance 1960 and Rules and Regulations framed thereunder. Statutory Rules and Regulations as regards transfer etc of State land in terms of Articles 260© & 268 (7) of the Constitution have been declared to be the law for purpose of Article 173 (5) of the Constitution. Law therefore, exists for dealing with State land within limits of Capital Area of Islamabad {1996 CLC 1987}.

{**49A.** Recovery of dues etc. Any sum due to the Authority from, or any scum wrongly paid to, any person under this Ordinance shall be recoverable as arrears of land revenue.

COMMENTS.

Sum due to Authority. Actual amount due disputed. Held, same cannot be said to be sum due, unless settled in accordance with law {1979 CLC 565 }

49B. Summary ejection of unauthorized occupants: The Deputy Commissioner or any person authorized by him or the Authority in this behalf may, after giving fifteen days notice, summarily eject any person in unauthorized occupation of any land or property vested in the Authority and may, for such ejection, use such force including police force as may be necessary.

COMMENTS;

Eviction of leave: Plot given by capital Development Authority to Staff Welfare Committee for welfare purpose. Lease of plot by Committee in favour of petitioner for a fixed term. Eviction of petitioner from plot by Authority after expiry of lease while matter of renewal of lease was under process. Petitioner alleged such eviction to be illegal as lessor of plot was Committee which was a separate body from Authority and thus, such lease was outside purview of Capital Development Authority Ordinance, 1960. Validity Committee was not alien to Authority, but was its competent Authority had delegated certain powers to Committee to deal with plot and use its funds for purposes of

welfare of staff. Apprehension was that Authority under political influence would lease out plot surreptitiously to someone else. High Court disposed of constitutional petition with directions to Committee to decide fate of renewal of lease independently within specified time, and on its failure to do so, petitioner would be put in possession of plot till its decision (2006 CLC 745).

Plot lease to the petitioner had been given by the Capital Development Authority to the Welfare Committee of the CDA's employees so that the income derived from the plot be utilized for welfare purpose and said committee was plenipotentiary with respect to all the day to day matters relating to the said plot. Connection of the petitioner, who had obtained the lease from the Staff Welfare Committee, was that action of ejecting him from the plot had been taken at the end of the CDA without any proper decision in connection with re-letting of the plot to the petitioner by the Welfare Committee. Petitioner had further alleged that the authority in the Sections 49A to 49E ins. By the Capital Development Authority (Amdt) Act 1966 (22 of 1966) s.13. CDA with the influence of certain political figures were trying to grab the plot in question and would lease out the same surreptitiously to someone whom the authorities had been directed to accommodate. Validity, Property undoubtedly belonged to the Capital Development Authority and had been given over for welfare purpose to the Welfare Committee, CDA therefore, same had some role in the matter and it was possible that CDA was used in ousting the petitioner at the relevant time after the notice. Welfare Committee was working with the Capital Development Authority and as such was an agency as the CDA being its component same could not be said to be alien to the Body. CDA had delegated certain powers to the Committee with the functional role to deal with plot in hand and use its funds for the purposes of welfare of the Staff. Constitutional petition against the Welfare Committee therefore was maintainable. Welfare Committee being incharge of the plot in question having not acted independently in respect of any action which was required to be taken with respect to the renewal of lease of the plot. High Court directed that the matter be first referred to the Welfare Committee who shall hear the petitioner afresh without prejudice to any past litigation for renewal of the said lease of the plot and shall take a decision on the question of renewal of the lease within three weeks from the announcement of the judgment by the High Court. Status quo, however, was ordered to be maintained during such three weeks, but in case the Committee failed in taking any action in this, behalf, the petitioner shall be put in possession of the plot. In the meanwhile until the Committee decided the fate of renewal of the lease on such terms which were reasonable, according to the market value, genuine and not meant to defeat the rights of the petitioner through deceit or circumvention of procedure in law. Committee shall also ascertain as to what assets of the petitioner were lying at the plot (Petrol pump) at the time its possession was taken over and will take measures for safeguarding his rights in respect of those assets in accordance with law {2004 MLF 1644 }

49C. Removal of building, etc erected or used in contravention of this Ordinance:- (1) If any building, structure, work or land is erected, constructed or used in contravention of the provisions of this Ordinance or of any rule, regulation or order made hereunder, the Deputy Commissioner, or any person

empowered in this behalf by the Authority may, by order in writing, require the owner, occupier, user or person in control of such building, structure, work or land to remove, demolish or so alter the building structure or work, or to desist from using or to so use the land, as to be in accordance with the said provisions.

- (2) If an order under sub-section (1) in respect of any building, structure, work or and is not complied with within such time as may be specified therein, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may after giving the person affected by the order an opportunity of being heard, remove, demolish or alter the building, structure or work, or stop the use of the land and, in so doing may use such force including police force as may be necessary and may also recover the cost therefore from the person responsible for the erection, construction or use of the building, structure, work or land in contravention of the provisions as aforesaid.

48.

49D. Police assistance:- The officer-in-charge of a police-station shall render such police assistance as the Deputy Commissioner may require in the discharge of his function under the ordinance.

49E. Jurisdiction of courts barred:- Save as otherwise provided by this Ordinance no court or other authority shall have jurisdiction to question the legality of anything done or any action taken under the Ordinance by or at the instance of the Authority.

COMMENTS.

Civil Courts Jurisdiction: Section 49-E protests from civil courts jurisdiction only when orders passed in accordance with Act and not illegal orders (PLD 1978 Lah.1116 }. Though section 49E bars the jurisdiction to entertain question of the legality of anything done or any action taken under this Ordinance, yet anything illegally done by Authority or its officers is not said to have been done under Ordinance and courts jurisdiction in such circumstances is not barred (PLJ 1983 FSC 298 }

Mala fides literally means “in bad faith” Action taken in bad faith is usually action taken malicious in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say for collateral or action taken in fraud of the law are also mala fide (PLD 1974 SC 151: PLJ 1974 SC 77 Law Notes 1974 SC 184 }

Civil courts can exercise jurisdiction to examine validity of acts of statutory functionary to find out whether or not it exceeds its powers and section 49E is no bar to exercise of such powers (PLD 1981 Lah. 341}. Under section 49(a) if actual sum due to the authority is in dispute the same cannot be said the sum due unless settled in accordance with law {1979 CLC 565 }

Jurisdiction of Civil Court will be barred only when the legality to anything done or action taken under the Act/Ordinance by or at the instance of the Authority is questioned. Jurisdiction of Civil Court, however, is not barred in a suit for declaration about the nature of the transaction and the status of the parties with consequential relief under section 42, Specific Relief Act,1877 (PLD 1995 SC 457 }

49F. Admissibility of document or entry as evidence: A copy of any receipt, application, plan, notice order or other document or of any entry in a register, in the possession of the Authority shall, if duly certified by the legal keeper thereof or other person authorized by the Authority in this behalf, be admissible in evidence of the existence of the document or entry and shall be admitted as evidence of the matter and transactions therein recorded in every Section 49F ins. by the Capital Development Authority (Admdt) Act 1968 (16 of 1968)s.2. Case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters }

COMMENTS.

Internal office noting. Objection as to its admissibility in evidence not raised at time of its production in evidence, but raised in revision before High Court. Objections so raised was of no substance {2003 CLC 1684 }

50. Power to make rules. The *{Federal Government) may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance. Provided that no rules shall be made on any of the matters specified in section 38.

51. Power to make regulations: The Authority may make regulations, not inconsistent with the rules, if any, on all matters for which regulations are necessary or expedient; and such regulations shall be published in the official Gazette. }

COMMENTS.

Synopsis

1. Framing of regulations

2. Reservation of plots.

3. Imposition of property tax.

1. Framing of regulation: The Capital Development Authority is the sole arbiter to frame regulation for the terms and conditions of its employees. Requirement of publication cannot make non-statutory regulations statutory (PLD 1979 Lah. 803).

Provisions of Sections 50 & 51 of the Ordinance are ambiguously worded inasmuch as neither of these sections lays down any guidelines as on which subjects the Federal Government was to frame the rules and on which topics Capital Development Authority was to frame regulations, except to the extent that the Rules could not be framed on certain service matters mentioned in section 38 of the Ordinance. If provision of section 49 be read with section 51 of the Ordinance, then it can be said that the Authority could frame Rules for the disposal of the land vesting in it. Land Disposal in Islamabad Regulations 1985 having been neither approved by the Federal Cabinet nor been published in the official Gazette to satisfy the requirement of section 51 of the Ordinance were incapable of being acted upon. If the Authority or any of the functionaries had acted upon these regulations, all that was without lawful authority and of no legal effect (PLD 1993 Lah. 855).

*Subs. by F.A.O 1975, Art. 2 and Table, for "Central Government."

!Subs. by the Capital Development Authority (Amdt) Act, 1966 (22 of 1966), s.14 for s.51.

2. Reservation of plots. Law presumes that an act was bona fide unless same was shown to have been taken with mala fide intention. Mala fides cannot be presumed but has to be proved. If reservation of plots in Development Schemes for other groups or class of people, in particular Advocates to which class petitioner belongs was not objected to and has been treated to be justifiable act, there was no reason to object to reservation of same to other class of people in the same manner. No interference in reservation of plots for Parliamentarians was warranted in circumstances {1966 CLC 1987}. Statutory Rules and Regulations framed thereunder have been declared to be the law for purpose of Article 173 (5) of the Constitution {1966 CLC 1987}

3. Imposition of property tax. Petitioners who owned and operated hotel in Islamabad Capital Territory, had questioned imposition of property tax and its recovery by the Authority. Contention of petitioners was that they being not located in any of the areas mentioned under the heading "commercial" were to be treated as Industrial concern and be charged accordingly. Terms "Industrial", "institution" or "commercial" had not been defined in the Rules framed by Federal Government for the imposition of property tax and recovery thereof. Till such time a statutory enactment including the hotels located in Islamabad Capital Territory in the term "Industry" or "industrial" or "institution" was not made by

Competent authority, petitioners could not claim as a right to be charge as an industrial concern vis-a-viz said property tax {PLD 2004 Lah. 80}

52. Dissolution of the Authority and transfer of its assets and liabilities to the Federal Government and other agency determined by that Government:-

(1) The *{Federal Government} may, by notification in the official Gazette, declare that the Authority shall be dissolved on such date as may be specified in such notification, and the Authority shall stand dissolved accordingly.

(2) On and from the said date:-

(a) (i) all properties, funds and dues placed at the disposal of the

Authority by the {Federal Government) and

ii) all properties, funds and dues exchanged for derived from or otherwise attributable to the properties, funds and dues referred to in sub-clause (i) which, immediately before the said date, were held by or were realizable by the Authority shall vest in and be reliable by the {Federal Government} and

(b) all properties, funds and dues, other than those referred to in cause (a) which immediately before the said date were vested in or were realizable by the Authority shall vest in

*Subs. by F.A.O 1975, Art 2 and Table for “Central Government and be realizable by such agency as the {Federal Government} may determine, and its decision thereon shall be final.

(c) all liabilities which, immediately before the said date, were enforceable against the Authority shall be assumed by and be enforceable against the *(Federal Government} or such agency as the “Federal Government determines under clause (b) as the case may be;

(d) for the purpose of completing the execution of any scheme which has not been fully executed by the Authority and of realizing properties, funds and dues referred to in clause (a) and (b), the functions of the Authority under his Ordinance shall be discharged by the “Federal Government} or by the agency determined by the *{Federal Government } under clauses (b) and (c), as the case may be; and

(e) the agency referred to in clauses (b),(c) and (d) shall keep such accounts of all moneys respectively received and expended by it under this Ordinance, as the *{Federal Government} may prescribe.

THE SCHEDULE

(See section 2(P))

From Triangulation Point 5264 (near Village Nilan Bhotu), Map Ref.191698 (Survey of Pakistan map .scale 1 in.to mile, sheet No.43 G/1), north east along the Rawalpindi tehsil boundary to spot height 4949 Map. Ref: 223713(Survey of Pakistan map, scale 1 in, o 1 mile, sheet 43 G/1) then, south east again along Rawalpindi tehsil boundary to the tehsil boundary and Nala junction at Map Ref. 227707 (Survey of Pakistan map, scale 1 in. to mile, sheet No.43 G/1) from her south-east along the Nala to the junction in the nala at Map Ref. 250701 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43 G/1). From this junction south east across the range of hills and via Village Mangial (Map Ref: 268696) to village Karlot Map Ref: 287693(Survey of Pakistan Map. Scale 1 in. to 1 mile, sheet No.43 (G/1). From village Karlot south east along the Nala to Nala and Kurang Nala junction and along Kurang Nala to Junction of Kurang Map. Ref: 304685 (Survey of Pakistan Map. Scale 1 in to 1 mile, sheet No.43 G/1). From here due east across country to the Rawalpindi tehsil boundary of Map. Ref: 310683 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43 (G/5) and south east along the tehsil boundary to the junction of the tehsil boundary and Kurang Nala at Map. Ref> 315676, then north east along the Kurang Nala to the junction of the Nala and tehsil boundary at Map. Ref. 327678 (Survey of Pakistan map scale 1 in to 1 mile, sheet No.43 (G/5). From this junction south east across country via spot height 2954 Map. Ref> 345664(Survey of Pakistan map, scale 1 in to 1 mile, sheet No.43 G/5) across the range south east to spot height 2276 Map. Ref> 358655 (Survey of Pakistan map, scale 1 in to 1 mile sheet No.43 G/5)located near Rawalpindi tehsil boundary then south-east along the Rawalpindi tehsil boundary to junction of boundary and Gumrah Kas at Map. Ref> 369636 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43 G/6). From this junction south east across country to Village Sambli Tijal on the River Soan, Map. Ref: 405615, then along River Soan and Rawalpindi tehsil boundary east up to Map. Ref: 457595 (bend in the boundary) and south-west again along tehsil boundary to a point at Map Ref. 424541 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43 G/6) 400 yards uth of the Lehtrar Road. Then west along a line parallel to Lehtrar Road (400 yards

south of the road) to a point on Malal Nala at Map Ref. 302523 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.

*See also schedule of the Capital of the Republic (Determination of Area) Ordinance 1963.

43 G/2). Then south-west along the Malal Kas to junction Mala Kas and River Korang Map. Ref> 225455 (Survey of Pakistan map, scale 1 in to 1 mile, sheet No.43 (G-2) From here north-west along River Kurang to the junction of River Kurang and Nala at Map. Ref> 172528 (Survey of Pakistan map, scale 1 in to 1 mile, sheet No.43 G/2) then north west along this Nala via Village Sohan Map. Ref> 166528 (Survey of Pakistan map, scale 1 in. to 1 mile sheet No.43 G/2) to the junction of Nala and Muree Road near Mile-stone 6, Map. Ref> 154537 Survey of Pakistan map, scale 1 in to 1 mile, sheet No.43 G/2). From this junction south west across country to the bend in Lei Nala (Near village Narala at Map. Ref> 138530 (Survey of Pakistan map scale 1 in. to 1 mile, sheet No.43 G/2). Then south west alongwith Lei Nala to junction of Lei Nala and Bedarwali. Map. Ref: 119510 (Survey of Pakistan map, scale 1 in to 1 mile, sheet No.43 G/2). Then south alongwith Leh Nala to a point Map. Ref> 117479 being junction of Leh Nala and a tributary near point Map. Ref:047477 (Survey of Pakistan Map. scale 1 in to 1 mile, sheet No.43(C/14). From this point north-west along the kutchra road to the junction of this Kutchra road and track at Map Ref. 044480 (Survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43, C/14). From here south, west across country to a point 100 yards west of G.T.Road, Map Ref: 040478 (Survey of Pakistan map scale 1. in. to 1 mile sheet No.43 C/14), then north west along a line parallel to the G.T.Road, and at a distance of 100 yards from it to Nicholson Monument at Map. Ref>884588(Survey of Pakistan Map, scale 1 in to 1 mile, sheet No.43/C/14, Then west along the ridge of Margalla Range via spot heights 2613,2981,3371 and 3338 to triangulation point height 3352, Map. Ref> 979604 on the boundary line of districts Hazara and Rawalpindi (survey of Pakistan map, scale 1 in. to 1 mile, sheet No.43 C/14). Then east along this boundary line back to the starting point triangulation height 5264.

LIMITS OF THE SPECIFIED AREAS

Starting from a point, map reference 534125 (sheet 43 F/8, 1 in to 1 mile) map of G.T.S) nearly 2 miles North of Kohala on Azad Kashmir! (Pakistan) border running south along River Jhelum (boundary of Azad Kashmior and Pakistan) upto a point, Map Ref: 641678 (sheet 43 (G/9) being the

junction of boundaries of Murree Tehsil Kahuta Tehsil and Azad Kashmir. Then along the southern boundary of Murree Tehsil up to junction of Khad Nala and Murree Tehsil boundary Map Ref> 568699 (sheet 43 G/9). Then south-west along Khad Nala

!Amendment by Federal Adoption of Laws Order 1975 (Order No.4 of 1975) for “West Pakistan.” and a tributary. Then south-east along the tributary via Village Lehtrar Nala to Nala and track junction at map reference 518594 (sheet 43 G/6). Then along this track via village Marhiman south-west to the track and a Nala junction at map reference 506571 (sheet 43 G/6). Then south-west along this Nala via Village Jambhiri and Pihar to this nala and River Ling junction at map reference 463483 (sheet 43 G/6). From here south-west along River Ling to the junction of Rawalpindi Tehsil boundary and River Ling at map reference 369382 (sheet 43 G/6). Then along eastern, southern and western boundary of Rawalpindi Tehsil up to bend at map reference 910683 (sheet 43 C/13) about a mile south of Village Salargah. Tehn follow along River Harro north east up to a point map Ref> 168810 (shet 43 G/1) near spot height 2518, which is the junction of River Harro and boundary line of Haripur and Abbotabad {tehsils of Hazara District.) Then along southern boundary of Abbotabad Tehsil of Hazara District upto to point map reference 253833 (sheet 43 G/1) at the intersection of Abbotabad Tehsil Boundary and River Karral Harroo, along River Karral Harro due north-east to point map reference 344933 (sheet 43 G/5) being junction of Karral, Harro and Samundar Katha near spot height 3730 and then along Samundar Katha stream up to point Map. Ref: 381017 (sheet 43 F/8) on junction of Samundar Katha Stream and boundary line between Village Tatrila and Nagribala of Tehsil Abbotabad. Then running along the boundary line between Village Tatrila and Nagribala (near spot height 7799). Bagh and Nagribala Bagnotar and Bara Gali, Namli Mira Phalkot and Bakot and Mula and Bakot including Village Nagribala, Bara Gali, Namli Mira and Bakot back to the starting point map reference 534125 (sheet 43 F/8).