

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No. 3203 of 2017

(Against the order dated 05.07.2017 of the Islamabad High Court, Islamabad passed in Writ Petition No. 1573 of 2010)

Dr. Mohammad Aslam Khaki. ... Petitioner

Versus

Khawaja Khalid Farooq Khan and others. ... Respondents

For the Petitioner:	Mr. Ghulam Mehboob Khokhar, ASC. Dr. Mohammad Aslam Khaki, ASC.
For Respondent No. 1:	Syed Asghar Hussain Sabzwari, Sr. ASC.
For Respondent No. 2:	Ch. Aamir Rehman, Additional Attorney-General for Pakistan.
For Respondent No. 3:	Syed Khawar Ameer Bokhari, ASC.
For Respondent No. 4:	Ch. Riasat Ali Gondal, ASC. Raja Abdul Ghafoor, AOR.
For Respondent No. 5:	Sardar Abdul Raziq, ASC. Mr. M. Sharif Janjua, AOR.
Date of Hearing:	22.03.2023.

JUDGMENT

Qazi Faez Isa, J. The petitioner had filed Writ Petition No. 1573 of 2010 in the High Court under Article 199 of the Constitution, which was dismissed by the learned Chief Justice of the Islamabad High Court through the impugned judgment dated 5 July 2017. In his petition the petitioner alleged that the National Police Foundation (**'the Foundation'**) had illegally allotted another plot to its Managing Director, namely, Mr. Khalid Farooq (also referred to as Khawaja Khalid Farooq Khan) (hereinafter **'Mr. Farooq'**), who already had been allotted a plot. The petitioner also alleged that the second plot allotted to Mr. Farooq was designated as a park/green area in the layout plan of the Foundation

approved by the Capital Development Authority's ('**CDA**'). Mr. Farooq, the Foundation, CDA and the Government of Pakistan were arrayed as respondents in the petition before the High Court.

2. When this case had come up for hearing on 15 December 2021 the counsel of the Foundation pointed out that the second plot had been transferred on 9 August 2010 from Mr. Farooq to Mr. Muhammad Zahir Shah (hereinafter '**Mr. Shah**'). However, the transfer of the second plot to Mr. Shah was not disclosed to the High Court in the replies filed to the petition. Therefore, since Mr. Shah could be affected our decision he was arrayed as respondent No. 5. In addition to the notices issued to the respondents, notice in terms of Order XXVIIA of the Code of Civil Procedure, 1908, was also issued to the Attorney-General for Pakistan as interpretation of Federal laws and the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') may be involved.

3. A plot was allotted by the Foundation to Mr. Farooq in the year 1991, which was plot No. 334 in the National Police Foundation Housing Scheme, Sector O9, Islamabad ('**the first plot**'). The '*Terms & Conditions*' stipulated in the '*Application/Membership Form*' of the Foundation, which Mr. Farooq signed and submitted to the Foundation, stipulated that, '*an applicant can apply for only one plot*'. Mr. Farooq sold the first plot, and the transfer in favour of the buyer was confirmed by the Foundation through its letter dated 7 June 2010.

4. Mr. Farooq as Managing Director of the Foundation sought allotment of another plot on 1 June 2009. On his direction Mr. Khuda Bakhsh, Deputy Director (A & H) of the Foundation submitted the following report:

'As directed, the Site Engineer Sector E-11 was deputed to carry out a detailed survey to see whether any piece of land other than the land earmarked for parks/club/mosques etc. is available to consider the request of the Managing Director for allotment of a 500 Sq. plot. Site Engineer reported vide his report placed at Flag/A that a piece of land is available adjacent to plot No. 478.'

5. On the same day that the above report was submitted, the Foundation is stated to have passed the following resolution:

'RESOLUTION

The Board of Directors in its meeting held on 01-06-2009 approved the allotment of a 500 Sqy. Yds. plot to MD NPF in NPF Housing Scheme Sector E-11, Islamabad adjacent to plot No. 478 on the prescribed rates i.e. Rs.15,50,000/- (11,50,000/- cost of land + 4,00,000/- development charges). The officer will also pay Rs.25,000/- as sui gas charges. The number of plot being allotted will be 478-A. Since the schedule of installments has been expired, the above stated amount will be paid in lump sum.

(SHAFIQUE AHMAD KHAN)
Secretary/Director Housing

(A. JAMAL KHAN)
Director Finance/Director
Welfare

(KHALID FAROOQ) PSP
Managing Director'

Despite Mr. Farooq's clear conflict of interest he presided over the meeting which allotted to himself the second plot, being plot No. 478-A, situated in the National Police Foundation Housing Scheme, Sector E-11, Islamabad (**'the second plot'**).

6. The second plot allotted to Mr. Farooq was also not utilized by him. Within a year of the allotment of the second plot Mr. Farooq sold it for sixteen million and five hundred thousand rupees (Rs.16,500,000) making a profit of fourteen million, nine hundred and fifty thousand rupees (Rs.14,950,000), which was a profit of about ten times.

7. The Chief Justice of the Islamabad High Court dismissed the petitioner's writ petition on the ground that since the Foundation was a private trust a writ cannot be issued against it, but observed that the petitioner '*may avail remedy before the court of competent jurisdiction*'. We had heard the submissions made by the learned counsel and by the learned Additional Attorney-General, however, the petitioner and respondent No. 1 also requested to file written submissions; three weeks were granted to do so. We have also considered these submissions.

8. The learned counsel representing the Foundation and those representing the private respondents raised objections to the maintainability of this petition, which has been filed under Article 185(3) of the Constitution. They submitted that against the impugned judgment an appeal lay before the High Court under sub-section (2) of section 3 of the Law Reforms Ordinance, 1972 (**'the Ordinance'**), and relied on the

decisions in the cases of *Muhammad Ilyas v Chief Election Commissioner*¹ and *Government of Punjab v Metropole Cinema*.² Reference was also made to a judgment of a Division Bench of the High Court³ in which the Foundation had succeeded on the very same ground, which was that since the Foundation was a charitable trust a writ could not be issued against it and only a '*court of ordinary jurisdiction*' could exercise jurisdiction against the Foundation; reliance was placed on the cases of *Pakistan Telecommunication Co. Ltd v Iqbal Nasir*⁴ and *Hirjibhai Behrana Dar-e-Meher v Bombay Steel Works*.⁵ Learned counsel also referred to two orders of learned Single Judges of the High Court which had held that since the Foundation is '*a private organization, registered under the Charitable Endowments Act, 1890 writ jurisdiction could not be invoked against it*'.⁶

9. In view of the legal objections that an intra-court appeal under the Ordinance had to be filed and that the Foundation is not amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution, we proceed to first consider these objections.

10. Pursuant to the recommendations made by the Law Reforms Commission the Ordinance was enacted.⁷ Section (3) of the Ordinance is reproduced hereunder:

'3. Appeal to High Courts in certain cases.

(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.

(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a Single Judge of that Court under clause (1) of Article 199 of the Constitution of the Islamic Republic of Pakistan not being an Order made under sub-paragraph (i) of paragraph (b) of that clause:

Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought

¹ PLD 2011 Supreme Court 961.

² 2014 SCMR 649.

³ Judgment dated 28 March 2016 in ICA No. 218/2015.

⁴ PLD 2011 Supreme Court 123.

⁵ 2001 SCMR 1890.

⁶ These unreported orders were brought on record by Mr. Farooq's counsel through CMA No. 9163/2022.

⁷ Law Reforms Ordinance, 1972, Gazette of Pakistan, Extraordinary, 14 April 1972 and PLD 1972 Central Statutes 457.

before the High Court under Article 199 arises out of any proceedings in which the law applicable, provided for at least one appeal or one revision or one review to any Court, Tribunal or authority against the original order.

(3) No appeal shall lie under sub-section (1) or sub-section (2) from an interlocutory order or an order which does not dispose of the entire case before the Court.

(4) Nothing contained in this Ordinance, shall be construed as affecting:

(a) any appeal under the Provisions of the Letters Patent applicable to a High Court or under section 102 of the Code of Civil Procedure, 1908 (V of 1908), which was pending immediately before the commencement of this Ordinance; or

(b) any appeal or petition for leave to appeal from a decree, judgment or order of a single Judge of a High Court made to the Supreme Court before the commencement of the Law Reforms (Amendment) Ordinance, 1972.'

11. Before the Ordinance was enacted an appeal/petition for leave to appeal from a decree, judgment or order of a Single Judge of a High Court was filed in the Supreme Court (under Article 185 of the Constitution). Section 3 of the Ordinance granted an additional right of appeal against a decision of a Single Judge of the High Court under Article 199 of the Constitution, provided it did not arise out of proceedings in which the applicable law, if any, did not provide for an appeal, revision or review to any Court, Tribunal or authority against the original order.⁸ Such an appeal was to a Bench of two or more Judges of a High Court.

12. This Court considered the scope of section 3 of the Ordinance in the following cases, in addition to the abovementioned cases (relied upon by the counsel of the respondents): *Karim Bibi v Hussain Bakhsh*,⁹ *Muhammad Abdullah v Deputy Settlement Commissioner*,¹⁰ *Col. (Retd.) M.R. Hassan v SHO Margalla, Islamabad*,¹¹ *Muhammad Aslam Sukhera v Collector of Land Acquisition*,¹² *Board of Governors v Farah Zahra*,¹³ *Accountant-General for Pakistan v Zia Mohy-ud-Din*,¹⁴ *Abrar-ul-Haq Shami v*

⁸ Ibid., proviso to sub-section (2) of section 3.

⁹ PLD 1984 Supreme Court 344.

¹⁰ PLD 1985 Supreme Court 107.

¹¹ 1998 SCMR 2738.

¹² PLD 2005 Supreme Court 45.

¹³ PLD 2005 Supreme Court 153.

¹⁴ PLD 2008 Supreme Court 164.

*Federation of Pakistan*¹⁵ and *S. M. Waseem Ashraf v Federation of Pakistan*.¹⁶ In all these cases it was decided that since the Ordinance provided for an appeal the appellate forum should not be bypassed unless it attracted one of the stated exceptions.

13. However, there are also decisions of this Court in which the decisions of a Single Judge of the High Court were directly challenged before this Court in an appeal/petition under Article 185 of the Constitution, despite the fact that the stated exceptions mentioned in section 3(2) of the Ordinance were not attracted. In the case of *Commissioner of Income Tax v Media Network*¹⁷ this Court entertained an appeal against an order of a Single Judge, against whose judgment an appeal was available under the Ordinance, by holding that:¹⁸

'36. The objection as to filing of these appeals without availing remedy of Intra-Court Appeals has been taken by the respondents at a belated stage of final hearing of these appeals. Ordinarily, this Court does insist the petitioner or appellant to avail the remedy of Intra-Court appeal, in the first instance, as was done in the case of *Imtiaz Ali Malik (supra)* referred to by Mr. Shahid Hamid, Senior Advocate Supreme Court. However, this is a rule of practice for regulating the exercise of discretion which does not oust or abridge the constitutional jurisdiction of this Court. Therefore, in certain circumstances, this Court can entertain petitions, or as the case may be, direct appeals even where the remedy of Intra-Court appeal under section 3 of the Law Reforms Ordinance, 1973 [*sic*] has not been availed by a party. Reference may usefully be made to the cases of *Mst. Shohrat Bano v. Ismail Dada Adam Soomar* (1968 SCMR 574), *Province of Punjab through Secretary Excise and Taxation, Government of Punjab and others v. Sargodha Textile Mills Ltd., Sargodha and others* (PLD 2005 SC 988) and *Punjab Employees Social Security Institution Lahore and others. Manzoor Hussain Khan and others* (1992 SCMR 441). The present appeals involve important questions of law of great public importance having far-reaching consequences. Therefore, the objection of the respondents is not tenable in the peculiar facts of this case.'

¹⁵ 2012 SCMR 1292.

¹⁶ 2013 SCMR 338.

¹⁷ PLD 2006 Supreme Court 787.

¹⁸ *Ibid*, paragraph 36, pp. 814-15.

Reliance in the aforesaid judgment was placed on the case of *Shohrat Bano v Ismail Dada Adam Soomar*¹⁹ in which a five-Member Bench of this Court rejected the objection to the maintainability of the appeal though the remedy of a Letters Patent had not been availed. The legal provision under consideration in the case of *Shohrat Bano* was different but there is no reason why the principle enunciated therein would not be applicable to cases under the Ordinance.

14. Similarly, in the case of *Province of Punjab v Border Area Committee*²⁰ this Court, by referring to the case of *Commissioner of Income Tax v Media Network* (above), held, that:²¹

'... a window had been kept open by this Court for entertaining a petition or appeal before this Court without insisting upon filing of an Intra-Court Appeal before the High Court if the exceptional circumstances of a case so warranted. A similar approach had subsequently been adopted by this Court in the case of *Chaudhry Muhammad Ilyas Gujjar v. Chief Election Commissioner of Pakistan and others* (Civil Petition No. 317 of 2010 decided on 31-3-2010 by a Bench of seven Honourable Judges).'

'It goes without saying that the issue involved in this respect is based upon a rule of practice regulating exercise of discretion which does not oust or abridge the constitutional jurisdiction of this Court.'

In the case of the *Federation of Pakistan v Dewan Petroleum (Pvt.) Ltd*²² the Federation had filed an appeal before this Court without availing of the intra-court appeal under the Ordinance. The objection to the maintainability of the appeal was set aside by this Court, by holding that:²³

'23. As to the objection of non-maintainability of this appeal under Article 185(3) of the Constitution, suffice it to observe that in the peculiar facts and circumstances of the case, we find it appropriate to entertain this appeal as an exception to the general rule of first availing the remedy of ICA against the impugned judgment of learned Single Judge of the High Court... .'

¹⁹ 1968 SCMR 574, p. 577D.

²⁰ PLD 2011 Supreme Court 550.

²¹ Ibid, p. 554.

²² PLD 2012 Supreme Court 189.

²³ Ibid, p. 210.

And, in a recent decision of a three-Member Bench of this Court, in the case of *Naeem Tahir v Jahan Shah*,²⁴ it was held that the requirement of filing an intra-court appeal did not oust the constitutional jurisdiction vested in this Court under Article 185(3) and that in exceptional cases petitions thereunder may be entertained in matters of public importance:

'It is settled law that where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before this Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable. The requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court. Such petitions, however, have been entertained by this Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences, questions of law as to the interpretation of the Constitution and validity of provincial statutes, and substantial questions of law involving fundamental rights.'

15. Article 175(2) of the Constitution stipulates that jurisdiction on a court is to be '*conferred on it by the Constitution or by or under any law*'. The jurisdiction conferred by the Constitution ranks higher than jurisdiction conferred by law.²⁵ The jurisdiction which has been conferred by law may also, by law, be revoked, but the jurisdiction conferred by the Constitution cannot be revoked by law. The appellate jurisdiction created by the Ordinance and through other laws²⁶ does not take away the appellate jurisdiction of the Supreme Court conferred by the Constitution under its Article 185. However, since the Ordinance created an appellate forum, this Court will not ordinarily permit it to be bypassed, which does not mean that the appellate jurisdiction, which the Constitution vests in this Court, is made redundant. In appropriate cases this Court will not insist that an intra-court appeal provided under the Ordinance, be availed of first.

²⁴ PLD 2023 Supreme Court 207.

²⁵ The Civil Procedure Code, 1908, section 9, grants Civil Courts '*jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred*.' The Criminal Procedure Code, 1898, Part II Constitution and Powers of Criminal Courts, categorizes the classes of Criminal Court (Courts of Sessions and Courts of Magistrates) and their respective powers. There are quite a few other laws, civil and criminal, which grant jurisdiction to the courts, including to the High Court and the Supreme Court.

²⁶ Including and by way of example in civil matters by: section 44 of the Competition Act, 2010, section 19 of the Intellectual Property Organization of Pakistan Act, 2012, section 9(5) and section 155 of the Elections Act, 2017, section 6(14) of the Companies Act, 2017, and, in respect of criminal matters including by: section 10 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984, section 25 of the Anti-Terrorism Act, 1997, section 48 of the Control of Narcotic Substances Act, 1997, section 32 of the National Accountability Bureau Ordinance, 1999.

16. The impugned judgment had dismissed the petitioner's writ petition by holding that it was not maintainable because the Foundation was '*neither a department of Federal Government nor an autonomous body created through a statute, therefore, it cannot be called a person performing functions in connection with the affairs of federation within the meaning of Article 199 of the Constitution*' and as it did not '*receive funds from the state for achievement of its aims and objectives.*' It also held that the Foundation was not susceptible to the writ jurisdiction of the High Court because it was a private trust '*established & registered under Charitable Endowment Act, 1890*'.

17. This case involves important questions of law, however, these have already been decided by this Court. In the matter of *Suo Moto Case No. 11 of 2011*²⁷ this Court had entertained a petition under Article 184(3) of the Constitution because illegalities were being conducted in the running of the Foundation, including the illegal allotment of plots. This Court was also cognizant that the Foundation was a charitable organization established under the Charitable Endowments Act, 1890. It would be appropriate to reproduce the relevant portions from the judgment:

'45. While summing up our discussion made above, we declare that the National Police Foundation was a charitable organization established under section 5 of the Charitable Endowments Acts, 1890 aiming at helping the poor and for those who had lost their lives while being in service or on duty in the shape of education, medical relief etc. the Committee of administration/Rule Making Body was not authorized to make rules in conflict with or in derogation of the substantive provisions of law or the statute under which the rules are framed. Rules cannot go beyond the scope of the Act but the rules/regulations were made by the Committee of Administration of the Police Foundation according to their own whims and not according to the purpose envisaged by the Charitable Endowment Act. The persons mentioned in para 36 above have been allotted plots who were not entitled for such allotment and in some cases they have been allotted more than one plot or even a single plot without observing any bye-laws/rules, as such, the allotment of plots was not made by the Foundation in a transparent manner.'

²⁷ PLD 2014 Supreme Court 389, pp. 455-456.

'45. ...The allotment of plots in the National Police Foundation can be termed a bad example of mal-administration as every officer of the said foundation at the helm of affairs tried to loot the Foundation by allotting plots to their nears and dears without observing any codal formalities required for the purpose.'

'47. While making allotments of plots the then Board of Directors allotted plots to their near and dears ignoring legal heirs/family members of those police personnel who had laid down their lives for this nation. Under the Constitution of Islamic Republic of Pakistan no one can be permitted even though he be the head of the department to purchase all the plots for himself, or to give out the same as per his own choice. There are number of examples of such malpractices on the part of the police high ups who remained at the helm of affairs in the National Police Foundation. Most of the poor policemen were left up without allotment of any plot, though some have been allotted. The high-ups of the police hierarchy have purchased a good number of plots in violation of the purpose the Foundation was established for. Not only that, they after having acquired such plots started business. The Board of Directors without observing any legal or codal formalities such like advertisement in the press and without framing any bye-laws for the allotment of plots doled them out, whereas poor policemen are still facing hardships to acquire a roof to live under. Even the land earmarked for lawns/parks was also converted into plots for allotment to the higher police officers of the ranks of I.G., D.I.G., S.S.P. etc.'

The instant case too involves the conversion and allotment of a designated park/green area. Every designated park/green area must be preserved; these areas may also be for the use and/or benefit of the public. Designated parks and green areas must not be allowed to be converted for exclusive private use and/or private profit.

18. The judgment in the abovementioned case was also considered in the case of *Anjum Aqeel Khan v National Police Foundation*²⁸ (which was a review petition) and this Court observed that deserving police officials were being deprived and that only one plot could be allotted to an individual:

'10. ...we have found that it is a classic case of public importance where loot sale of plots was going on in the name of generation of funds depriving the deserving poor police officials and the same squarely fell within the ambit of Article 184(3) of the Constitution.'

²⁸ 2015 SCMR 1348, pp. 1369E and 1371I.

'12. ...the main purpose of the establishment of NPF [National Police Foundation] was to provide relief to the poor and deserving police officials of all over the country and not to only higher and influential persons as also to their families. The purpose could be justly and fairly met if only one plot was allotted to only deserving police officials, but unfortunately the same has not been done.'

19. This Court in the abovementioned cases (*Suo Motu Case No.11/2011* and *Anjum Aqeel Khan v National Police Foundation*) entertained petitions under Article 184(3) of the Constitution even though jurisdiction thereunder is narrower to the jurisdiction of the High Court under Article 199, as the High Court is not constrained by the stated requirements of Article 184(3) which is to be invoked when '*a question of public importance with reference to the enforcement of any of the Fundamental Rights*' is involved.²⁹ The impugned judgment does not refer to either of these judgments even though they were in the field and respectively reported in the law reports of 2014 and 2015.

20. There is another aspect of the case to be considered and one which makes an intra-court appeal against the impugned judgment effectively redundant. A Divisional Bench of the same High Court had already held that since the Foundation was a charitable trust it was '*not amenable to the jurisdiction under article 199 of the Constitution*',³⁰ which was the same point on which the petitioner had been non-suited by the learned Single Judge of the High Court. However, this determination, that the Foundation was a private charitable trust and was not amenable to writ jurisdiction, is factually and legally incorrect.

21. The Government of Pakistan had paid an amount of twenty million rupees *in trust for a charitable purpose to be known as the National Police Foundation* which was *vested in the Treasurer of Charitable Endowments for Pakistan*.³¹ The Government spends or allocates money from public funds and such money cannot be stated to constitute *private* money or fund. The Government had set up the Foundation and had stipulated that '*the Federal Government is pleased to order that the said amount shall vest*

²⁹ Constitution of the Islamic Republic of Pakistan, Article 184(3).

³⁰ ICA No. 218/2015, *National Police Foundation v Sher Zaman*, judgment dated 2 February 2016.

³¹ *Scheme of Administration for the National Police Foundation*, S.R.O. 334(I)/75 14 March 1975, The Gazette of Pakistan, Extraordinary, 18 March 1975, pp. 446-450.

in the Treasurer of Charitable Endowments for Pakistan and that the said amount and the income thereof shall be applied in accordance with terms of a scheme to be settled under section 5 of the said Act.³² The 'Scheme of Administration for the National Police Foundation' was established, amongst others, 'to provide for construction of low-cost houses of various categories... to beneficiaries whether retired or serving'.³³ The stated beneficiaries³⁴ are serving or retired personnel of the Police Force. The 'Administration of the Foundation' is to be by a 'Committee of Administration' which comprises of senior government servants: Secretary of the Ministry of Interior as Chairman, Director General of the Federal Investigation Agency as Vice Chairman, and its other Members are the Inspector Generals of Police, Commandant of the National Police Academy, a representative of the Ministry of Finance, a representative of the Ministry of Industry and the Managing Director of the Foundation.

22. The Federal Government had paid a considerable amount and had established the Foundation which is a charitable endowment with stated objectives to be adhered to. The Committee of Administration of the Foundation comprises of serving government officers. The Foundation's property can only be used as stipulated in its Scheme of Administration. In presence of these facts to contend that the High Court did not have jurisdiction under Article 199 of the Constitution is inexplicable. Article 199(1)(c) of the Constitution also requires the High Court to ensure the *enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution* and empowers the High Court to give *such directions to any person or authority* to ensure compliance therewith. In the present case a number of Fundamental Rights are also involved, including the right to *life* which is given a wide interpretation by this Court,³⁵ and *dignity of man*.³⁶ A three-Member Bench of this Court held that, '*The Constitution guarantees dignity of man and also right to life under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare*

³² S.R.O. 333(I)/75 dated 14 March 1975, The Gazette of Pakistan, Extraordinary, 18 March 1975, p. 446.

³³ *Scheme of Administration for the National Police Foundation*, Clause I (iii), S.R.O. 334(I)/75 dated 14 March 1975, The Gazette of Pakistan, Extraordinary, 18 March 1975, p. 447.

³⁴ *Ibid.*, 1(a).

³⁵ Constitution of the Islamic Republic of Pakistan, Article 9, *Shehla Zia v WAPDA*, PLD 1994 Supreme Court 693.

³⁶ *Ibid.*, Article 14(1).

necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.' A clean atmosphere and unpolluted environment undoubtedly includes availability of parks and open spaces for recreation. *'The right to use the Park with all amenities... involves enjoyment of life which is covered by the word life employed in Article 9 of the Constitution,'* held a five-Member Bench of this Court.³⁷ In addition, when land secured for a park or designated as green or open area is illegally converted and then unlawfully transferred to private use the people are deprived of their common or collective use of such land which violates Article 24 of the Constitution.

23. Therefore, the objection with regard to the petitioner directly assailing, under Article 185 of the Constitution, the impugned judgment of the learned Single Judge, without first availing of the appeal provided for under the Ordinance, in the facts and circumstances of this case is not sustainable.

24. The learned counsel representing Mr. Farooq had referred to a letter titled *'Status of National Police Foundation'* written by the Ministry of Finance, Government of Pakistan to the Foundation which stated that, *'it has been decided that it [Foundation] should be placed in the Private Sector.'*³⁸ A letter of the National Accountability Bureau addressed to the Foundation was also referred to which is titled *'Complaint against National Police Foundation'* and states that, as the *'Foundation is a trust in Private Sector the case file is returned.'*³⁹ These letters were disingenuously referred to with a view to exclude the Foundation from the writ jurisdiction of the High Court. However, learned counsel surely knows that the legal status of an entity is not determined by what another says about it, and that too in a particular context, but what the law envisages it to be. We had also inquired from the Federal Government about the status of the Foundation and whether more than one plot can be allotted to an individual:⁴⁰

³⁷ *Ardeshir Cowasjee v Karachi Building Control Authority*, 1999 SCMR 2883, p. 2904C, see also *Iqbal Haider v Capital Development Authority*, PLD 2006 Supreme Court 394, p. 406, *Javed Haider Kazmi v Province of Sindh*, 2009 SCMR 1387, p. 1391B, *Suo Motu Case No. 10 of 2005*, 2020 SCMR 361, *Human Rights Cases Nos. 4668/2006, 1111/2007 and 15283-G/2010*, PLD 2010 Supreme Court 759, *Mall Development (Pvt) Ltd. v Waleed Khanzada*, 2022 SCMR 2080, p. 2088K and L.

³⁸ CMA No. 9163/2022, letter No. F.3(52)-IFI/76-2058 dated 26 August 1976.

³⁹ *Ibid.*, letter No. Misc/Addl Dir-II/I&I/NAB04 dated 26 April 2004.

⁴⁰ Order dated 12 May 2022, paragraph 6.

'Let a concise statement be filed on behalf of Federal Government with regard to the status of the National Police Foundation. The concise statements should also attend to the questions whether the listed beneficiaries in the scheme can be allotted more than a single plot.'

The relevant portion from the Government's response is reproduced:⁴¹

'2. It is submitted that National Police Foundation (NPF), was established in 1975 under the Charitable Endowment Act, 1890 by the Government of Pakistan with an allocation of rupees twenty million. Committee of Administration and Board of Directors of NPF comprise of serving Government Officers. Most of the positions in the Foundation are held by serving PSP officers who are posted/transferred by the Establishment Division in consultation with Ministry of Interior. NPF is listed in the schedule, as an autonomous body of the Ministry of Interior, under the Rules of Business, 1973.

3. With respect to question whether the listed beneficiaries in the scheme can be allotted more than a single plot, it is clarified that sub rule (iii) of rule 3 of the NPF Allotment Rules, 2002 states as under:-

"In any case the beneficiary shall not be allotted more than one residential plot/built up unit in the Scheme of Foundation throughout Pakistan."

25. Generally, when a court fails to exercise jurisdiction vested in it and/or does not exercise jurisdiction for an incorrect reason, the case is remanded to that court for a decision on merits. However, the two legal matters involved in this case, firstly, whether a second plot could be allotted by the Foundation to an individual and, secondly, whether a park or green area could be converted to private use have already been decided by this Court, therefore, remanding this case would serve no purpose other than to further waste court's time and resources.

26. Accordingly, we proceed to consider the facts of the instant case and decide the case on merits. The Foundation's 'Application/Membership Form' and the 'Terms & Conditions' printed thereon, which every applicant of a plot signs stipulates that, '*An applicant can apply for only one plot*' (clause 2). The Federal Government has also confirmed this (above). However, the Foundation by disregarding its own stipulated condition states that '*more than one plot allotted to any*

⁴¹ CMA No. 8862/2022, filed by the Additional Attorney-General on 7 November 2022.

person' may be retained by paying 'the market price of the plots' and in support of this contention cites the decisions in *Suo Motu Case No.11/2011* and *Anjum Aqeel Khan v National Police Foundation*.⁴² The Foundation's representatives intentionally misled this Court because in the cited cases no option was given to negate the condition that only one plot can be allotted, and only those who had built houses on such plots that the said option was given. However, once this matter had been decided by this Court the said option could no longer be used for future transgressions. It is regrettable that the Foundation's representatives have put forward an untenable contention, and did so not to safeguard the property of the Foundation, which is for the benefit of the beneficiaries, but to facilitate wrongdoing. We strongly deprecate the filing of misleading CMAs by the Foundation. The foremost duty of the Foundation is to ensure compliance with the law and protect its property, a primary duty which it lost sight of.

27. Mr. Farooq was allotted a plot, the first plot, and then misused his position as Managing Director of the Foundation to allot to himself the second plot, by illegally converting a designated park/green area. The second plot was not needed by him to construct a house for himself, but for personal aggrandizement as he soon sold it. Many in power like him illegally procure land. They also deprive others of their entitlement, including the less privileged and those without any shelter. This elite dismantling of the division between private and public interest disrupts a just social order and the spirit of community. The Constitution requires that Pakistan be '*a democratic State based on Islamic principles of social justice*'.⁴³ Whenever a second plot is allotted to the same person it deprives another, and when this is done at subsidized or below market rates private interest subverts the interest of the State. Land is a valuable asset of the State, therefore, when land is given away for free or at subsidized rates to the powerful elite by an impoverished State it harms the State because selling it at market rate would have alleviated the debt burden which condemns to servitude and poverty those not born yet.

⁴² CMA No. 1467/2023 filed by the Foundation on 2 March 2023.

⁴³ Constitution of the Islamic Republic of Pakistan, Preamble, which by virtue of Article 2A is a 'substantive part of the Constitution and shall have effect accordingly.'

28. The writ petition was filed by the petitioner in the year 2010 and it had sought the following reliefs: (i) to declare that allotment of a second plot to Mr. Farooq was illegal, (ii) to direct the Foundation not to convert and allot green areas, parks and other public places to anyone and (iii) to ensure that the Foundation's housing scheme in sector E-11, Islamabad, as approved by CDA, be implemented in letter and spirit. The petitioner did not want anything for himself. He merely wanted that the Foundation's property be preserved and that the interest of the beneficiaries of the Foundation should not be jeopardized.

29. During the pendency of this case, the petitioner filed an application⁴⁴ alleging that certain persons, who were not entitled to plots in the Foundation's schemes, were also allotted lands, and attached therewith photo copy (with seven signatures) the following document:

'ISSUANCE OF PROVISIONAL ALLOTMENT LETTERS TO THE MEMBERS OF SECTOR E-11 HOUSING SCHEME

A list of members to whom the provisional allotment letters have been issued keeping in view the reasons mentioned against their names in each case is as under:-

- | | | |
|----|------------------------|---|
| 1) | Justice Sh. Riaz Ahmed | Being a chief Justice of Pakistan, a plot has been allotted to him as a very special case. |
| 2) | Mrs. Nusrat Rauf | She is wife of Chairman CDA who has been very helpful to NPF by removing various hurdles of the scheme. |
| 3) | Maj Nadeem Rafique | He being an army officer has been very helpful towards the housing projects of NPF. |
| 4) | Aftab Iqbal Cheema | He used his influence at high level for early maturity of the project. |
| 5) | Awais Akhtar | He managed the land possession from local affectees for creation of plots and has been very helpful in solving problems with affectees at site. |
| 6) | Maj. ® Mushtaq Ahmed | He is an old member & Senior Police Officer. Provisionally |

⁴⁴ CMA No.73/2023 filed on 10 January 2023.

allotment letter was not earlier issued due to short payment.

This statement has been prepared in order to place the copies in the individual files of each case to keep the record straight as discussed in the Development committee meeting held on 5-9-2003.'

30. The petitioner had alleged that the Foundation was intentionally not *providing the requisite information* about the aforesaid. However, the '*Learned counsel for the respondent No.3 states that the respondent has nothing to hide and will provide the requisite information.*'⁴⁵ But, the requisite information was not provided, therefore, we '*directed the information that has been sought in CMA No. 73 of 2023*'⁴⁶ should be disclosed. The Foundation then filed an application,⁴⁷ which concealed more than it revealed. The Foundation did not specifically respond to the allegation with regard to the abovementioned six allotments. Instead it filed a hundred page application containing hundreds of names, leaving us to wade through it, which is not how someone who has *nothing to hide* responds. The only name of the abovementioned six names we could find in this voluminous document was of '*Sheikh Riaz Ahmed (son of) Sheikh Manzoor Ahmed, R/O 86-Shadman-11, Lahore*' who was allotted Plot No. 38-C, measuring 1-Kanal, on 1 September 2003 for a payment of 743,650 rupees. However, since the six persons mentioned in CMA No. 73/2023 are not before us, and as the prayer in the said CMA was not one of the prayers of the petitioner in his petition it may not be appropriate to decide the matter of such allotments herein. We may however observe that, '*being Chief Justice of Pakistan*', or the '*wife of Chairman CDA*', or '*being an army officer [who] has been very helpful*' and one who had used '*influence at high level*' would not justify receiving a plot. Moreover, to offer and receive plots for using one's influence to facilitate the Foundation is scandalous, and may have consequences both for the benefactor and the recipient.

31. We had expected that the Foundation would have welcomed the filing of such a petition, but the Foundation's representatives and counsel fought tooth and nail to ensure that wrongdoing goes unchecked and a

⁴⁵ Recorded in Order dated 31 January 2023.

⁴⁶ Order dated 24 February 2023.

⁴⁷ CMA No. 1467/2023 filed by the Foundation on 20 March 2023.

park/green area is illegally converted to residential use. The only conceivable reason for this unprofessional and unbecoming conduct was to benefit Mr. Farooq, the Managing Director of the Foundation, and to do so at the expense of the Foundation, which they were paid to serve. A classic example of a member of the elite, an Inspector General of Police, audaciously taking land to which he had no entitlement and to then abuse his official position (as Managing Director) and make the Foundation defend the indefensible.

32. Within a year of being allotted the second plot Mr. Farooq sold it and made a hefty (untaxed) profit on his investment. The first plot was also sold by him. While there may be justification to assist serving and retired government servants to have a residence of their own and for this purpose to allot them a plot of land at subsidized or below market rates there can be none if the same is misused for monetary gain. The poor of this nation eke out a living with great difficulty and are lucky if they manage a roof over their heads. The State of Pakistan is heavily indebted and impecunious. In blatant disregard of the people and the country the elite capture land. Autogenously exceptional and self-entitlement is hollowing out the State and creating an unsustainable environment.

33. The petitioner in his writ petition had also sought that the Foundation's housing scheme in sector E-11, Islamabad, as approved by CDA, be implemented in letter and spirit. CDA has made some startling revelations,⁴⁸ which are reproduced hereunder:

'It is submitted that Capital Development Authority (CDA), Islamabad approved the Layout Plan of National Police Foundation Housing Scheme in Sector E-11, Islamabad on 31-08-2004 over an area measuring 1,325 Kanals with 1,195 residential plots of different sizes, subject to certain conditions given in the approval letter dated 31-08-2004 (Annex-A). Later on, No Objection Certificate (NOC) for development of this housing scheme was issued by CDA on 10-06-2005 subject to certain conditions (Annex-B). Due to non-compliance of conditions of NOC and other discrepancies found in the scheme, CDA cancelled the Layout Plan approval and NOC on 29-11-2008 (Annex-C). A public notice in this regard was published on 01-12-2008 in the press for information of general public (Annex-D). The sponsors were advised to submit revised Layout Plan in

⁴⁸ CMA No. 2811/2023, filed on 10 May 2022.

accordance with the valid land ownership within one month of the cancellation which has not been submitted as yet.

2. It is further submitted that the alleged plot No. 478-A in Sector E-11 was not included in the original Layout Plan and it was created by the National Police Foundation itself. Whereas in original Layout Plan the said spot is indicated as "Green". The original layout plan is hereby appended at Annex-E for perusal of the honorable bench of this Court.'

It would be appropriate to reproduce certain extracts from the abovementioned referred to documents. CDA's letter dated 10 June 2005 addressed to the Foundation states:

'iv. The plots reserved for amenities and public buildings shall not be utilized by the sponsor for any purposes other than prescribed in the approved layout plan.'

And, CDA's letter dated 29 November 2008 informed the Foundation that CDA had withdrawn the approval of the Foundation's housing scheme situated in Sector E-11 of Islamabad:

'3. In the light of foregoing the competent authority has withdrawn the approval of Layout Plan and NOC and you are requested to submit revised Layout Plan according to validly allotted/transferred area within one month in accordance with the modalities and procedures framed under ICT Zoning Regulations 1992 for development of Private Housing Scheme.'

34. The Foundation did not controvert the abovementioned findings of CDA. The Foundation's counsel and its representative also did not state why the Foundation had not complied with the stated requirements and conditions imposed by CDA. The Foundation unnecessarily jeopardized its interest, the interest of its beneficiaries and of all those who are residing in the said scheme. This it apparently did to appease/facilitate elite individuals, a sad a reflection on those in charge of a charitable trust. The petitioner, who was not even a beneficiary of the Foundation, was more concerned in safeguarding the properties of the Foundation and to ensure that it be run properly than those whose duty it was and who were paid to do so.

35. Therefore, and for the reasons mentioned above, the prayers in the petitioner's writ petition⁴⁹ should have been granted, which we do so now. However, a complication was created when the second plot was sold by Mr.

⁴⁹ Reproduced in paragraph 28.

Farooq to by Mr. Shah through 'Sale Agreement'⁵⁰ dated 'July, 2010' (date isn't mentioned) and he paid the agreed sale consideration. The petitioner had filed his petition in the High Court on 14 April 2010, that is, before Mr. Shah had entered into the Sale Agreement. Though there is no reason to suspect that Mr. Shah did not act *bona fide* or that he had notice of the pending petition or knew that the said plot could not be sold, but because the sale took place during the pendency of the said petition it is subject to section 52 of the Transfer of Property Act, 1882 and cannot stand. Both Mr. Farooq and the Foundation had concealed from Mr. Shah the fact that the said plot had been designated as a park/green area and that it could not be converted into a residential plot, and sold. If requisite disclosure, which a seller is required to make, had been made then it is most unlikely that Mr. Shah would have entered into the Sale Agreement by paying the then market rate for the plot.

36. The 'Sale Agreement' between Mr. Farooq and Mr. Shah was void because its object, the sale and purchase of a designated park/green area, was unlawful.⁵¹ Therefore, Mr. Farooq is not entitled to retain the amounts received by him and Mr. Shah would be entitled to its refund/compensation.⁵² The Foundation too is not entitled to retain any amount paid to it for the second plot, which was illegally converted and allotted. And since Mr. Farooq had sold the second plot to Mr. Shah the Foundation should refund the amount received in respect thereof to Mr. Shah, and the balance amount/compensation is to be paid by Mr. Farooq to Mr. Shah within thirty days of the announcement of this judgment, failing which Mr. Shah will be within his rights to file a suit for recovery, compensation and/or damages. We hereby declare that the 'Sale Agreement' dated 'July 2010' entered into between Mr. Farooq and Mr. Shah was unlawful; the limitation period for filing a suit for recovery, compensation and/or damages will commence from the date of announcement of this judgment.

37. In conclusion we express our appreciation to the petitioner for coming forward to protect and preserve a park/green area. We are also constrained to express our displeasure toward the representatives of the

⁵⁰ CMA No. 8864/2022, filed on 7 November 2022.

⁵¹ Contract Act, 1872, section 24.

⁵² *Ibid.*, sections 56 and 65.

Foundation and its counsel who regretfully took an adversarial and acrimonious position towards the petitioner and also leveled unnecessary allegations against him, which surprised us since the petitioner was acting in the best interest of the Foundation and his prayer in the petition before the High Court did not seek anything for himself and he had acted in the public interest.

38. Therefore, for the aforesaid reasons, this petition is converted into an appeal and allowed in the stated terms and the impugned judgment is set aside, with costs throughout.

Judge

Judge

Islamabad
16 June 2023
(M. Tauseef)

Announced in open Court on 19 June 2023.

Judge

Approved for Reporting