

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE FAISAL ARAB

**CIVIL MISC. APPLICATION NO.376-K OF 2014 IN S.M.C. NO.16 OF 2011.**

Application against the illegal adjustment in Revenue Record Land is being

given to Bahria Foundation, filed by Syed Mehmood Akhtar Naqvi

**AND**

**CIVIL MISC. APPLICATION NO.450-K OF 2014 IN**

**S.M.C. NO.16 OF 2011.**

Objection in C.M.A.408-K/2014 filed by Syed Mehmood Akhtar Naqvi

**AND**

**CRIMINAL ORIGINAL PETITION NOS.20-K TO 23-K OF 2014 IN**

**CIVIL MISC. APPLICATION NO.376-K OF 2014**

Syed Mehmood Akhtar Naqvi

... **Petitioner(s)**

**VERSUS**

Malik Israr, Sr. Member Board of Revenue Sindh (in CrI.O.P.20-K/14)

Muhammad Ali Shah, Deputy Commissioner District West Karachi

(in CrI.O.P.21-K/14)

Jan Muhammad Qazi, Deputy Commissioner District Malir, Karachi

(in CrI.O.P.22-

K/14)

Muhammad Suhail, D.G. Malir, Development Authority

(in CrI.O.P.23-K/14)

... **Respondent(s)**

**AND**

**CIVIL MISC. APPLICATION NO.275-K OF 2015 IN**

**CIVIL MISC. APPLICATION NO.376-K OF 2014**

Written Arguments on behalf of the Senior Member Board of Revenue, Sindh

**AND**

**CIVIL REVIEW PETITION NO.32-K OF 2015 IN**

**CIVIL MISC. APPLICATION NO.376-K OF 2014**

Muhammad Sohail

... **Petitioner(s)**

**VERSUS**

S.M. Akhter Naqvi and another

... **Respondent(s)**

**AND**

**CIVIL MISC. APPLICATION NO.261-K OF 2016 IN**

**CIVIL MISC. APPLICATION NO.376-K OF 2014**

Application for Intervenor filed by Mr. Anees Ahmed for taking action Ex-DG, MDA (Mr.M.Suhail for illegal allotment and recruitment in the Authority

**AND**

**CIVIL REVIEW PETITION NOs.51-K OF 2016 IN  
CIVIL MISC. APPLICATION NO.376-K OF 2014**

Waqas Riffat and others ... **Petitioner(s)**

**VERSUS**

Mehmood Akhtar Naqvi and others ... **Respondent(s)**

**AND**

**CIVIL REVIEW PETITION NO.57-K OF 2016 IN  
CRIMINAL ORIGINAL PETITION NO.6-K OF 2016**

Director General Malir Development Authority ... **Petitioner(s)**

**VERSUS**

Anees Ahmed others ... **Respondent(s)**

**AND**

**CIVIL REVIEW PETITION NO.59-K OF 2016 IN  
CIVIL MISC. APPLICATION NO.376-K OF 2014**

The Province of Sindh and another

**AND**

**CIVIL REVIEW PETITION NO.62-K AND 63-K OF 2016 IN  
CIVIL MISC. APPLICATION NO.6-K OF 2016**

M/s Bahria Town (Pvt.) Ltd. (in C.R.P.62-K/16)

Secy: Local Govt. (HTP), Govt. of Sindh. (in C.R.P.63-K/16)

... **Petitioner(s)**

**VERSUS**

Syed Mehmood Akhtar Naqvi and others ... **Respondent(s)**

**AND**

**CRIMINAL MISC. APPLICATION NO.1699 OF 2016 IN  
CRIMINAL ORIGINAL PETITION NO.6-K OF 2016**

Application on behalf of Muhammad Irfan & 16 others for setting aside the notification dated 21.09.2016 issued by the respondent

**AND**

**CRIMINAL MISC. APPLICATION NO.1816 OF 2017**

Application on behalf of M Irfan and 16 others

**AND**

**CIVIL MISC. APPLICATION NO.1497 OF 2017 IN  
CIVIL MISC. APPLICATION NO.376-K OF 2014**

Application for impleadment by Qamar Bhatti

**AND**

**CRIMINAL ORIGINAL PETITION NO. 211 OF 2017**

Akhtar Ali vs Javid Iqbal and others.

**AND**

**CRIMINAL ORIGINAL PETITION NO. 216 OF 2017**

Anees Ahmed vs Province of Sindh.

**AND**

**CRIMINAL ORIGINAL PETITION NO. 240 OF 2017**

Dr. Muhammad Shafiq-ur-Rahman vs Absar Alam, Chairman, PEMRA, Islamabad etc.

**AND**

**CRIMINAL ORIGINAL PETITION NO. 16 OF 2018**

Mian Ghulam Rasul vs Mr. Muhammad Sohail Khan and others

In Attendance:

For petitioners/applicants

and respondents:

Syed Mehmood Akhtar Naqvi, In person.  
(in CMA.376-K/14, 450-K/14,  
Crl.O.Ps.20-23-K/14)

Mr. Farooq H. Naek, Sr. ASC.  
(in CMA.275-K/15 & CMA.376-K/14).

Mr. Rasheed A. Rizvi, Sr. ASC (For MDA)  
a/w M. Irfan (Law Officer MDA).  
Mr. Munir-ur-Rehman, ASC.  
(in CRP.32-K/15, CMA. 376-K/14 &  
CRP.57-K/16)

Nemo. (in CMA. 261-K/16)

Mr. Aitzaz Ahsan, Sr. ASC (For Bahria Town)  
Mr. Gohar Ali Khan, ASC.  
Mr. M. S. Khattak, AOR.  
M. Asif (Law Officer Bahria Town).  
(in CRP. 51-K/16 & CMA. 376-K/14).

Barrister Zamir Hussain Ghumro, AG, Sindh.  
Mr. Shehryar Qazi, Addl. A. G. Sindh.  
(in CRP.59-K/16 and CMA.376-K/14).

Syed Ali Zafar, ASC (For Bahria Town).  
(in CRP.62-K/16 and CMA. 376-K/14).

Mr. Munir-ur-Rehman, ASC.  
(in CRP. 63-K/16).

Mr. Zakir Hussain Khaskheli, ASC.

Syed Rifaqat Hussain Shah, AOR.  
(in CrI.M.As.1699/16, 1816/17 &  
CrI. O. P.211/17).

Nemo. (in CMA.1497/17 and  
CrI. O. P. 216/17).

Dr. M. Shafiq-ur-Rehman, In person.  
(in CrI. O. P. 240/17).

Mian Ghulam Rasool, In person.  
(in CrI. O. P. 16/2018).

Nasir Mehmood Mughal Sp. Prosecutor  
Along with Qamar Abbasi, IO (NAB)

Date of hearing: 07, 20 to 22.02.2018, 28.02.2018, 06.03.2018,  
14.03.2018, 21 to 22.03.2018 and 27.03.2018.  
(Judgment Reserved).

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## J U D G M E N T

**EJAZ AFZAL KHAN, J.-** C.M.A 376-K of 2014 was filed alleging that Malir Development Authority (**hereinafter called "MDA"**) is adjusting the government land pursuant to the notifications issued by the Board of Revenue, Sindh. It was alleged that the value of the government land was far higher than the value of the private land it was exchanged for. The exchange thus effected was looked at with raised eyebrows. A series of orders was passed by this Court in this behalf. The order passed on 23.07.2015 is quite significant for the purposes of this case. The relevant part of the order deserves a look and thus runs as under:

*"The Deputy Commissioner, Malir admits to have signed the plan defining the boundaries of controlled area. According to him the master plan is comprised of 43 dehs. He states that he has merely forwarded the plan to the Senior Member, Board of Revenue. He further states that all the layout plans are routed through him and the schemes of the layout plans whether private or otherwise are signed by him after verifying their title. He is directed to place before us all the schemes whether public or private with their layout plans, which he has forwarded or verified since the day he assumed the office of Deputy Commissioner, Malir before the next date of hearing.*

Mr. Rasheed A. Rizvi, Senior Advocate Supreme Court for MDA, when confronted as to how the MDA has acquired the title of the land, states that the land is owned by the Provincial Government and there is no notification by the Board of Revenue allowing the MDA to utilize this land. He however, relies upon sections 8 and 14 of MDA Act, 1993, which has been amended in the year 2013 for the purposes of acquiring power of allotment. We with respect disagree with this contention of the learned Counsel. The Board of Revenue under law, with the approval of competent authority has the authority to allot land under the Colonization Act and no other procedure provided in law, for allotment of land.

Another order having meaningful bearing on this case was passed on 09.03.2016. The relevant part of the order reads as under:

*"We are informed by the Chief Secretary, Sindh that the Sr. Member, Board of Revenue has proceeded to Islamabad on account of some family emergency and will be back by today evening. Since the matter relates to the Board of Revenue, therefore, we deem it necessary that he should appear before the Court tomorrow before any Order is passed in this matter. We are further informed that in compliance with the Order passed yesterday, Mr. Muhammad Sohail who was assigned the look after as D.C. MDA has been de-notified. The Sindh Government is directed to appoint any officer of their choice, eligible for the post of D.G. MDA, within one week in the intervening period, the Secretary, Local Government will have the additional charge.*

3. *We restrained the MDA from allotting and/or dealing with the land in any manner whatsoever till further orders. The Sr. Member, Board of Revenue yesterday, while present in Court, has disputed the authority of the MDA to allot or otherwise deal with the land with anyone as, according to him, the land was neither allotted nor given possession to the MDA. According to the Sr. Member, Board of Revenue, the land within MDA is fully owned by Sindh Government. Besides the aforesaid reason, this Court on 28.11.2012 has passed restraining order restricting the powers of authority from allotting state land to anyone. This restraining order also applies to all the authorities under Sindh Government who claimed their title from the state/Board of Revenue."*

On 24.05.2016, this Court apprehending that things are not done in an open, fair and transparent manner, proceeded to pass the order dated 24.05.2016 by observing as under:

*"We have heard Mr. Waqas Qadeer Dar, Prosecutor General NAB, Mr. Qamar Abbas Abbasi, Investigating Officer, Mr. Farooq H. Naek, learned Sr. ASC, Mr. Zia-ud-Din*

Sabir, Director Town Planning, MDA and Mr. Rizwan Memon, Sr. Member, Board of Revenue.

2. NAB has so far not been able to complete the inquiry as directed by this Court on the last date of hearing. However it has filed an interim inquiry report. We have gone through this report and from a cursory glance find that whatever probe that has so far been made is not sufficient to address the issues raised by this Court with regard to allotment of land by Government of Sindh to MDA and its subsequent disposal by MDA. Mr. Waqas Qadeer Dar, Prosecutor General NAB seeks a further period of two months to finalize the inquiry. Time for filing final report is extended by two months, From what has been addressed at the bar today by the learned counsel, we are of the view that inquiry must contain answers to the following questions in order to adequately address the issue which is subject matter of these proceedings.

i) Whether the Sindh Government allotted the state land, which is subject matter of these proceedings to MDA under any legal instrument?

Whether the possession of allotted land was handed over by the Sindh Government to MDA in terms of Section 10(4) of the Colonization & Disposal of Government Lands (Sindh) Act, 1912?

iii) Whether the issuance of the notification dated 26.12.2013 by which 43 dehs were declared as controlled area of MDA created any title in its favour in the land of such dehs?

iv) Whether MDA prepared and issued its master plan after 43 dehs were declared to be its controlled area and if so whether such plan was approved by the competent authority?

v) Under what authority MDA can exchange private land within its controlled area with the state land?

vi) Whether MDA handed over possession of 11000 acres of state land to private land developers and builders which was neither leased out nor handed over by the Sindh Government to MDA?

vii) In what manner MDA transferred the land to Bahria Town or its directors or promoters or to any other private land developer or builder?

viii) Whether MDA was competent to put private persons and land developers and builders in possession of the state land, which the MDA claims to have been transferred to it, on the basis of exchange and or consolidation scheme?

ix) Whether the exchange/ consolidation of the private land with the state land by MDA is permissible under the law and that too beyond the area earmarked by MDA for planning purposes?

x) Whether exchange of approximately 11000 acres of the valuable state land located on the superhighway by the

*MDA with the land of the private person/private developers on the periphery under the garb of exchange and or consolidation scheme was in the interest of the state?*

*xi) Whether Bahria Town or its directors or its promoters or any private developers or private parties lawfully owned and possessed land within the limits of district Malir on the date of inviting applications for allotment from public at large for the Housing Schemes through electronic and print media?*

*xii) Whether before inviting applications for allotments from public at large, Bahria Town, its promoters, directors or other private developers got their Housing Schemes approved from the MDA through Deputy Commissioner Malir? and*

*xiii) Whether Bahria Town or its directors or promoters or any private land developer or builder are in physical possession of land in excess of the land given to them by MDA?*

*3. The NAB shall proceed with the inquiry in an independent manner without being influenced from any quarter. The inquiry in addition to other factors shall probe into the questions formulated hereinabove. For such purpose it shall examine entire record, including the revenue record, which shall be provided by the relevant authority (Senior Member Board of Revenue) to the officers of NAB who are entrusted with the inquiry in the matter. To come up after two months."*

Another order which was passed on 01.08.2016 is also quite comprehensive as it not only deals with the controversy emerging before this Court but also refers to other orders which are relevant for understanding the instant case in its correct perspective, therefore, its reproduction is necessary which reads as under:

*"The Prosecutor General, NAB, has filed interim report dated 25.07.2016 (confidential), along with a copy of the survey report dated 20.07.2015, prepared by the Ministry of Defense Directorate of Survey of Pakistan. It is contended by the learned Prosecutor General, NAB, that after the order dated 24.05.2016, passed by this Court, the Survey of Pakistan, was approached by the NAB, for demarcation of the land in actual possession of the Bahria Town.*

*2. The Director of Survey of Pakistan responded to the request of the NAB and after notices to the Board of Revenue Sindh, Survey and Settlement Department, Sindh, Malir Development Authority (MDA), Deputy Commissioner, Malir, and the Bahria Town Karachi, conducted joint survey in presence of the representatives of the aforesaid organizations and compiled report, copy of which was supplied to the NAB authorities and has been placed before us. The Senior Member, Board of Revenue, states that they have not received any copy of the said report. We direct the NAB authorities to supply copies of the survey report to the Senior*

Member, Board of Revenue, Mr. Aitzaz Ahsan, learned Sr.ASC, for officials of Bahria Town, Mr. K.A. Wahab, AOR for the Bahria Town and Syed Mehmood Akhtar Naqvi, the Applicant, who request to file their objections if they deem it appropriate. The confidential report dated 25.07.2016 submitted by the NAB, shall be kept in sealed envelopes by the office.

3. According to the survey report, the M.D.A has exchanged! consolidated 9140.260 Acres of land to Bahria Town. The survey report contains a portion of green colour with black lines, reflecting that M.D.A has consolidated a piece of land measuring 244.925 Acres which the Bahria Town has not yet developed. The survey report further shows that the total land consolidated by the M.D.A and handed over to the Bahria Town is 93 85.185 Acres. The portion marked with pink colour as "A" reflects that the Bahira Town has developed 386.276 Acres of land which has not yet been consolidated by the M.D.A. The portion of survey report in pink colour marked as "B" reflects that Bahria Town has developed an area of 1975.059 Acres which though developed by the Bahria Town has not been consolidated by the M.D.A. Another portion of the survey report marked as "C" in pink colour shows that the land measuring 410.444 Acres has been developed by the Bahria Town, but has not been consolidated by the M.D.A. The survey report shows that total land developed/under development but not consolidated by the M.D.A comes to 2771.79 Acres. In this respect, total area of land of Bahria Town reflected in the survey report comes to 12156.964 Acres.

4. We have inquired from the Chief Secretary, Senior Member, Board of Revenue, and the Advocate General, Sindh, to satisfy us under which law the M.D.A is competent to exchange private lands with the lands falling in the area which is reserved as corridor area, they could not offer any explanation and submit that no such powers are available with the M.D.A to allot or exchange the private land with the State land. It has come on record that no portion of the land pertaining to the subject matter has ever been allotted and or part in possession under Section 10(4) of the Colonization of Government Lands Act, 1894, by the Sindh Government to the M.D.A, which fact was confirmed by the Senior Member, Board of Revenue and incorporated in the order of this Court dated 09.03 .2016, which has already been reproduced above.

This Court after going through the survey report dated 20.07.2016 observed as under:

5. After going through the survey report dated 20.07.2016, we, in order to safeguard the public interest and to avoid multitude of proceedings, are constrained to pass the following interim order:-

(i) the Bahria Town is restrained from undertaking any development activity in the area demarcated with green colour with black lines on it measuring 244.925 Acres and or to deal with this portion of land with any person or organization in any manner whatsoever;



(ii) the Bahria Town is further restrained from undertaking any development activity on the portion marked as "A" with pink colour measuring 386.276 Acres, which is not consolidated by the M.D.A, with further restriction to deal with this portion of the land in any manner whatsoever;

(iii) the Bahria Town is restrained from undertaking any development activity on the area marked as "B" with pink colour measuring 1975.059 Acres, which as per survey report has not been consolidated by the M.D.A and to deal with the land in any manner whatsoever;

(iv) the Bahria Town is further restrained from undertaking any further development activity on the area marked as 'C" with pink colour measuring 410.444 acres and or to deal with the land in any manner whatsoever;

(v) the Bahria Town is further restrained from raising any further development activity in area measuring 2771.779 Acres, which has not been consolidated by the M.D.A and to deal with the land in question in any manner whatsoever;

(vi) the M.D.A is restrained from consolidating any further portion of the private land of the Bahria Town or any other private enterprise under the garb of exchange of land in exercise of their powers conferred on them under the M.D.A Act or the Rules framed thereunder;

(vii) We further restrict the Board of Revenue, Government of Sindh, from dealing with the land of M.D.A or any other Authority which is subject matter of these proceedings in any manner whatsoever in defiance of the order of this Court passed by a five Member Bench of this Court on 28.11.2012;

(viii) the MD.A is restrained from dealing with the land which are subject-matter of survey report either with Bahria Town or with any other organization in any manner whatsoever;

(ix) defiance of the interim orders passed hereinabove by any of the organization whether public or private shall expose them to contempt proceedings.

6. In order to ensure that no further construction or development activity is carried out on the land specified hereinabove, we direct the NAB authorities through the Prosecutor General that they should immediately if possible by tomorrow obtain google earth maps/images of the entire land stated to be in possession of the Bahria Town as per the survey report and submit the same for record.

What the orders reproduced above prima facie point to is that the provisions of Colonization of Government Land Act 1912 (**hereinafter**

called **"COGLA 1912"**) and Malir Development Authority Act 1993 (**hereinafter called "the MDA Act"**) were flouted by the Board of Revenue, the Malir Development Authority and Bahria Town. But all the three stated to have stayed within the purview and periphery of the enactments mentioned above.

2. Mr. Farooq H. Naek, the learned Sr. ASC appearing on behalf of the Board of Revenue, contended that the entire process underlying exchange conforms to the relevant dispensation; that Malir Development Authority Ordinance, 1993 was promulgated which was replaced by the Malir Development Authority Act, 1993 (Act XI of 1994); that Malir Development Authority has been established under Section 3 of the MDA Act; that the Authority has been constituted under Section 4 of the MDA Act which is consisting of a Chairman and other members as described in the said provision; what is controlled area, what is a Master Programme and what is a scheme have been defined in Section 2 of the MDA Act, what are the functions of the Authority and how schemes for development of an area are prepared and how the improvement in the socio-economic conditions of the people is brought about, what measures are taken by the Authority for carrying out the purposes of the MDA Act and how the land vested in it can be disposed of by sale, lease, exchange or otherwise have been provided in Section 8 of the MDA Act; that the Authority under Section 14 of the MDA Act has the power to declare an area to be a controlled area if it becomes necessary for the prevention of haphazard growth, encroachment and unauthorized construction, etc. and that the Authority has also power to prepare Master Programme for development, improvement, expansion and beautification of such area or such

sectors of economy if it is necessary in the opinion of the Authority or the Government. The Authority, the learned Sr. ASC added, may and if directed by the Government shall prepare specific scheme or schemes for controlled areas or part thereof in such form and manner as may be prescribed by Section 17 of the MDA Act; that all the schemes prepared under the MDA Act and operated by or on behalf of the Authority shall be deemed to be schemes for public purpose under Section 25 of the MDA Act and that the Authority has the power to acquire by purchase, lease or exchange any moveable or immovable property or any interest therein by entering into an agreement with the party concerned under Section 31 of the MDA Act and that if that cannot be done under the aforesaid section, the Authority can acquire land in accordance with the provisions of Hyderabad Development Authority Act as is provided by section 32 of the MDA Act. The provisions of the COGLA 1912, the learned Sr. ASC maintained, do not have much bearing on the provisions contained in the Malir Development Authority Act. The learned Sr. ASC next contended that even COGLA 1912 provides for incremental housing which means a housing scheme sponsored by the government, authority, autonomous body or a company for providing residential land to a family not exceeding 120 yards. Section 10 of COGLA 1912, the learned Sr. ASC maintained, provides for grant of land to any person in a colony; that sub-section 10 (2A) of COGLA 1912 starting with non-obstante clause provides that the land granted under section 10 shall not be exchangeable with private or kabuli land but it would not be of much significance when the provisions of the MDA Act, rules and regulations framed thereunder, in view of section 47 of the MDA Act, would have effect

notwithstanding anything contained in any other law, rules or regulations. Section 10-A of COGLA 1912, the learned Sr. ASC argued, also provides that no land shall be disposed of except by the government in accordance with the provisions of COGLA 1912 to an autonomous body, authority, company, a person or group of persons save as otherwise provided under section 10-A (2). The learned ASC next contended that the MDA being a purchaser having paid the entire amount of purchase money could not be deemed to be a tenant in terms of section 15 of COGLA 1912, therefore it could exchange the land so granted to it with private or kabuli land notwithstanding the provision contained in section 10 (2A) and proviso to section 17 of COGLA. The learned Sr. ASC next contended that after the insertion of (ff) in Section 2 of the MDA Act through an Amending Act of 2013 the expression "consolidation" means adjustment by way of exchange or otherwise for the purpose of the scheme, therefore, it has to be taken as such while dealing with the controversy raised in this case. The learned Sr. ASC next contended that nothing in the Transfer of the Property Act 1882 would apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein by or on behalf of the Government to or in favour of any person, therefore, any transfer or adjustment in violation of the said Act cannot be held to be illegal or against law. Malir Development Authority, the learned Sr. ASC stated at the bar is carrying out various schemes such as Shah Latif Town, New Malir Housing Project and Taiser Town by exchanging the government land granted under section 10 of COGLA 1912 with private or kabuli land, therefore, exchange of land granted to the MDA with private or kabuli land is not something unusual or

unprecedented. Another objective underlying such schemes, the learned Sr. ASC added, is to ensure planned development and avoid mushroom growth of housing schemes or at random construction of houses. The learned Sr. ASC next contended that how land is to be disposed of and what are the restrictions on its disposal have been provided in paragraph 4 of the notification No. 09-294-03-SO-I/336, dated 25.02.2006 issued by the Government of Sindh under Section 10(2) of the COGLA, 1912; what is the procedure for determination of market price has been highlighted in paragraph 8(1)(a)(b) and 8(2)(i)(ii)(iii) and how the Price Committee submits its recommendations to the Scrutiny Committee has been provided by paragraph 8(3) of the statement of conditions issued in 2006. The learned Sr. ASC next contended that the notification mentioned above was modified vide notification No.09-294-03/SO-I/719 dated 10.11.2010, whereunder constitution of the Land Reservation and Allotment Committee was provided as is evident from paragraph 3 of the notification. The learned Sr. ASC next contended that the Board of Revenue also has the power to reserve and grant the land and that reservation and grant are regulated by law. The process of reservation, grant, consolidation, exchange and disposal of land is not unprecedented and that all the decisions taken in this behalf are reflected in the summary of the Chief Minister; that a meeting was convened on 24.01.2014 wherein the Authority was requested to accord approval regarding the work already done and prepare schemes for execution of Master Programme of 32 out of 43 villages; that the Authority accordingly approved a proposal as described in item No. 1; that the Authority also approved item No. 2 for consolidation, exchange and adjustment of private ownership with

state land; that the Director General, MDA in his note dated 01.01.2015 highlighted the approval of the competent authority i.e. the Chief Minister, Sindh regarding the reservation of 14617 acres of State Land in favour of MDA for public purpose on price; that the land so reserved for MDA was mutated in favour of the MDA as was communicated by the Deputy Commissioner, Malir vide letter dated 28.01.2014 with the request to approach Member Utilization Department, Board of Revenue, Sindh for payment of price as per procedure agreed upon in the meeting held under the Chairmanship of the Chief Secretary, Sindh on 23.01.2014. The request, learned Sr. ASC stated, for fixation of price amounting to Rs.1,25,000/- per acre was also forwarded. The learned Sr. ASC next contended that summary for the Chief Minister would also show the name of the village, area in acres N.C.No., category, market price per acre notified in the years 2011 and 2012, total market price and final approval of the Chief Minister. The learned Sr. ASC next contended that MDA has made payment of Rs. 1.66 Billion to the Board of Revenue for the land measuring 11068 acres in five villages namely, Karkharo, Langheji, Konkar, Kathore and Bolhari at the rate of 25% of market price out of the nine villages measuring 14617 acres. The learned Sr. ASC went on to argue that the entire process of the land adjustment has been transparent as it was made after due publication in various newspapers and that the rights of MDA and the interest of government have been fully protected at every step. The learned Sr. ASC lastly contended that where price of the land has been paid, mere fact that conveyance deed has not been executed would not affect the sale. Learned ASC by referring to the chart describing the categories of the land and their prices fixed in

2006 and then in 2011 contended that the latter are on lower side but they were perfectly justified by the ground realities as no town builder in view of the prices fixed in 2006 came forward to invest in the building project. The learned Sr. ASC by elaborating his arguments contended that the aforesaid rationalization being in conformity with the prices of similar land in the market has been rightly accepted by the Chief Minister Sindh.

3. Mr. Ali Zafar, the learned ASC for the Bahria Town highlighted the necessity of adjustment of property, the quality and quantity of the land owned by the government and the quality and quantity of the land exchanged therefor and the purpose behind such exchange. The learned ASC by referring to the provisions already referred to by the learned Sr. ASC for the Board of Revenue sought to canvass at the bar that the adjustment of the property has been made strictly in accordance with the provisions of MDA Act and in accordance with law and policy as notified in the year 2006 and modified in 2010 and that the complaints against the Board being frivolous be dismissed; The learned ASC maintained that it is the discretion of the government to give any property to any development authority gratis or for a price fixed in accordance with law; that an area of 7068 acres has already been exchanged while an area of 2339 acres is in process of being exchanged and that this is not something unprecedented as New Malir Housing Scheme, Shah Latif Housing Scheme and Taiser Town have mainly been built up by following a similar pattern. Preamble of the MDA Act, the learned ASC contended provides for the development of certain areas of Karachi Division and improvement of the socio-economic conditions of the people and this is what the provisions of the Act aim at and

this is what the Bahria Town strives for. The learned ASC next contended that an apple for an apple and an orange for an orange have been exchanged and that in case the property owned by the government is found to have a better status, differential could be paid by the respondent. The learned ASC lastly contended that the process of consolidation which includes adjustment and exchange has been resorted to because the MDA did not have sufficient funds to start with the project and that it has been ensured that everything be done transparently which can well be gathered from the fee paid in billion by the Bahria Town to the Government and the MDA.

4. Mr. Aitzaz Ahsan, learned Sr. ASC appearing on behalf of the persons exchanging private land with MDA supported the arguments of Mr. Ali Zafar, learned ASC for the Bahria Town, by adding that after the insertion of (ff) in Section 2 of the Malir Development Authority Act through an Amending Act of 2013, the expression consolidation has been given wider ring and connotation, therefore, it has to be read accordingly. The learned Sr. ASC contended that the enterprise of the Bahria Town consisting in building planned towns with ideal surroundings, green areas, stadium, five star hotels, etc. is perfectly in accordance with law; that entire property for building the town has been acquired in conformity with the modes recognized by law; that even if the Court at any stage gathers the impression that the price charged from the respondent is on the lower side that could be ignored. The learned Sr. ASC to support his contention placed reliance on the cases of **Government of Punjab. Vs. M/s Crescent Textile Mills (PLD 2004 SC 108)** and **Dr. Akhtar Hassan Khan and others. Vs. Federation of Pakistan and others (2012 SCMR 455)**. The learned Sr. ASC next



contended that if by any means the Court comes to the conclusion that price of the property acquired by the respondent is less than the price then prevailing in the market, the respondent is willing to make up the deficiency.

5. We have gone through the record carefully and considered the submissions of learned ASCs for the parties.

6. The main issue raised in this case is that enormous tracts of government land were granted by the Board of Revenue to the MDA for launching incremental housing scheme. The MDA instead of launching the scheme on the land thus granted, exchanged it with the Bahria Town through its henchmen. Having thus placed, the Bahria Town proceeded to launch a scheme of its own. MDA defended the grant as well as exchange mentioned above. Bahria Town also defended the grant of the land and its exchange with the private land by seeking refuge under the provisions of the MDA Act providing for declaration of controlled area, preparation of Master Programme and scheme for a controlled area or part thereof. It also defended its scheme by referring to section 17(2) of the MDA Act as the Authority under the aforesaid provision has been given discretion to assist in the preparation of any scheme on the request of any local council, government agency, society, any person or body of persons on such terms and conditions which may be settled between them. While considering the issues raised before us and analyzing the viability of the defence, we have to see how the things originated, progressed and reached the desired culmination. The first step in this behalf is the declaration of controlled area. The relevant provision dealing with declaration of an area to be a controlled area is section 14 of the MDA Act which deserves a look and thus reads as under:

*"14. The Authority may, by notification, declare any area under jurisdiction of Authority to be controlled area and issue such directions and do such things as may be necessary for the prevention of haphazard growth, encroachments, unauthorized constructions or operations in such area and for planned growth of the area."*

What does the Authority consist of has been provided in section 4 of the MDA Act which reads as under: -

*"4. 1["(1) The Authority shall consist of—*

- |   |                              |
|---|------------------------------|
| <i>(a) Minister for Local Government, Public Health Engineering, Rural Development and Housing Town Planning, Sindh</i>   | <b>Chairman</b>              |
| <i>(b) One Local Member of the Provincial Assembly to be nominated by Government</i>                                      | <b>Member</b>                |
| <i>(c) Secretary, Local Government, Public Health Engineering, Rural Development and Housing Town Planning Department</i> | <b>Member</b>                |
| <i>(d) Commissioner, Karachi</i>  | <b>Member</b>                |
| <i>(e) Managing Director, Karachi Water and Sewerage Board</i>  | <b>Member</b>                |
| <i>(f) Director General Malir Development Authority</i>   | <b>Member/<br/>Secretary</b> |
| <i>(g) Two Person to be nominated by Government (one Technocrat and one from the Civil Society)"</i>                      | <b>Member</b>                |

*(2) The Chairman shall be appointed by Government who shall hold office of a period of three years unless he resigns or is removed earlier.*

*(3) A non-official member shall hold office for a period of three years unless he resigns or is removed earlier.*

*(4) A non-official member may, at any time, by writing under his hand addressed to Government resign his membership and the resignation shall take effect from the date on which it is accepted.*

*(5) A casual vacancy in the office of non-official member shall be filled in accordance with sub-section (1) and the member so appointed shall hold office for the un-expired portion of the term of such vacancy."*

A bare reading of the provisions reproduced above shows that the power to declare an area to be a controlled area lies with the

Authority. The Authority is consisting of a Chairman, members of the Provincial Assembly of the area and many others as listed above. How a matter required to be decided by the Authority would be decided by the Authority has been provided in section 9 of the MDA Act which reads as under:

*"9. (1) Any matter required to be decided by the Authority shall be decided in a meeting of the Authority presided over by the Chairman, by vote of majority of the members present in such meeting.*

*(2) Each member shall have one vote; provided that in case of a tie, the Chairman shall exercise a casting vote.*

*(3) One-third of the total members shall form a quorum for a meeting of the Authority.*

*(4) The Authority shall meet at such place and time and in such manner as it may prescribe."*

Who issued the notification dated 26.12.2013 declaring 43 villages as a controlled area is evident from the notification which reads as under:

**"BOARD OF  
REVENUE, SINDH  
GOVERNMENT OF SINDH**

**NOTIFICATION**

*No.PS/SMBR/BOR/KAR/430, Karachi dated 26<sup>th</sup> December 2013. In exercise of the powers conferred under section 16(1) of the Malir Development Authority Act, 1993, the Government of Sindh has been pleased to allow Malir Development Authority to get physical survey and preparation of Road Network / Land used plan of the following notified dehs under its jurisdiction as controlled area for adjustment of affected private / acquired state land for development purpose through consultant so that proper planning and development scenario of the area is generated.*

- |                   |                 |                    |
|-------------------|-----------------|--------------------|
| 1. Lohar Kolang.  | 2. Mitha Ghar.  | 3. Katore          |
| 4. Ghaghar.       | 5. Dhabeji.     | 6. Khadeji.        |
| 7. Allah Phal.    | 8. Shah Mureed. | 9. Dhando.         |
| 10. Narathar.     | 11. Konkar.     | 12. Darsano Channa |
| 13. Tore          | 14. Mahyo.      | 15. Bazar          |
| 16. Shahi Chib.   | 17. Langheji.   | 18. Bolhari        |
| 19. Chuhar.       | 20. Amilano     | 21. Bayal          |
| 22. Karamtani-Lat | 23. Bhad        | 24. Abdar          |
| 25. Mandro.       | 26. Moidan      | 27. Gadap          |
| 28. Khar          | 29. Sundi       | 30. Kharkharo      |
| 31. Tarari.       | 32. Jhunjhar    | 33. Malh           |

- |                  |              |                |
|------------------|--------------|----------------|
| 34. Lusar        | 35. Shoring  | 36. Hidarwah   |
| 37. Mehar Jabol. | 38. Kund     | 39. Jung Khund |
| 40. Shore Kundi. | 41. Wan Kund | 42. Sanharo.   |
| 43. Koteiro.     |              |                |

The authority shall prepare specific, scheme or schemes for execution of the Master Programme in accordance with M.D.A. Act, 1993 amended Act, 2013, specified in Chapter-III and IV of the Act *ibid*, provided all codal formalities are completed as per law and policy.

The Malir Development Authority and Revenue Authorities shall update the record of rights and keep entries in the computerized registers in the future, and so also safeguard the interest of the Government of Sindh.

The concerned Deputy Commissioners and MDA shall update and sign the notification plan maps provided by MDA in light of the provisions of the Sindh Land Revenue Act, 1967. The signed copies of the maps and master plan may be sent to Board of Revenue, Sindh, as and when this exercise is completed.

The Malir Development Authority shall abide by all enforced laws of the Provincial Government, directions and policies from time to time given by Government of Sindh.

Sd/-  
Senior Member  
Board of Revenue, Sindh.

No.PS/SMBR/BOR/KAR/430- Karachi dated: 26<sup>th</sup> December, 2013.  
A copy is forwarded for information and necessary action to :

1. The Chief Secretary, Government of Sindh, Karachi.
2. The Principal Secretary, to Governor of Sindh, Karachi.
3. The Principal Secretary to Chief Minister, Sindh, Karachi.
4. The Administrative Secretaries to G.O.S, ..... (All in Sindh).
5. The Chairman, CMITE and IT, Karachi.
6. The Chairman Anti-Corruption and Enquiries, Sindh, Karachi.
7. The Director General, Malir Development Authority, Karachi.
8. The Inspector General of Registration, Sindh, Karachi with directions to bound down the Sub-Registrars to follow the above direction, while executing the documents.
9. The Commissioner. .... (All in Sindh).
10. The Deputy Commissioner ..... ( All in Sindh).
11. The P.S. to Minister, Local Govt. Karachi.
12. The Section Officer (L&C), Local Govt. Deptt: Karachi, with reference to his letter No.SO(L&C), HTP/MDA/9-37/2013, Dated: 24 December, 2013.
13. The Superintendent Govt. Printing Press, Karachi for publication in next gazette.
14. The P.S. to Secretary, Local Govt. Deptt: Karachi.

Sd/-  
Section Officer (Admn)  
Board of Revenue, Sindh."

The notification reproduced above shows that it was issued by the Senior Member Board of Revenue who does not figure anywhere in the entire scheme in general and section 14 of the MDA Act in particular. What canons of law and jurisprudence would justify an out-right departure from the provisions of the MDA Act has not been explained anywhere. What would be the value of such notification and what effect such declaration would have when it stemmed from a person who has no power and authority to issue it has been rather glossed over. What has stunned and startled us is that the notification thus issued has heavily been banked upon. A corrigendum at a later stage has been issued showing that the notification dated 26.12.2013 was indeed issued by the Secretary Local Government and Housing Town Planning Department, Government of Sindh but he too being a nonentity in the MDA Act neither has the power to declare an area to be a controlled area nor issue a corrigendum. When the basic notification has not been issued by the Authority in terms of section 4, 9 and 14 of the MDA Act, any structure raised thereon would automatically collapse. Reference could well be made to the judgement rendered in the case of **Yousaf Ali v. Muhammad Aslam Zia and 2 others** (PLD 1958 SC 104).

7. What is a Master Programme; how and when it was prepared; what is its tangible form; what is its description in words and who approved it; what is a scheme, how has it been prepared, what does it consist of in terms of section 17(3), where has it been described in words and figures within the framework of the MDA Act have been asked time and again but none of the learned ASCs representing the parties bothered to answer the questions with reference to documents on the record. Land was reserved for MDA

as is apparent from the summary moved in this behalf. It was approved by the Chief Minister on 24.1.2014 but preparation of the Master Programme and schemes conforming thereto never saw the light of the day. A map at page 380 of CMA 1691/2018 was referred to with the marginal notes. We with the assistance of the learned ASCs for the parties tried to decipher the Master Programmes and the schemes therefrom but we could not find any. Learned ASC appearing on behalf of the Bahria Town contended that the Master Programmes or for that matter the schemes may not be palpable on the map but this Court while examining the entire spectrum projected in the case could suggest ways and means by stepping into the shoes of the Authority. Such approach, the learned ASC added, has to be adopted when this Court intervenes through an inquisitorial proceeding under Article 184(3) of the Constitution of the Islamic Republic of Pakistan to ensure proper development of the area and betterment of the people. This argument of the Learned ASC for the Bahria Town is quite tempting but what we have to see at the moment is whether the provisions of law providing for the preparation of the Master Programme and schemes were adhered to? Our answer to the question is in the negative as the MDA, without preparing the Master Programme and scheme worth the name, let the Bahria Town initiate and embark upon an adventure of its own.

8. Let us now see the tenability of the defence set up by the Bahria Town in terms of section 17(2) of the MDA Act. Before we discuss this aspect of the case it is worthwhile to refer to section 17(2) which reads as under:

*“Section 17(2)—The Authority may, on the request of any Local Council, Government agency, society or any person or body of persons, assist in preparation of, or caused to be*

*prepared, any scheme on such terms and conditions as may be settled between them."*

This provision, so to say, provides for the assistance of the Authority on the request of any Local Council, government agency, society or any person or body of persons in the preparation of schemes on such terms and conditions as may be settled between them. But when did the managers of the Bahria Town request the Authority for assistance in the preparation of scheme and what terms and conditions have been settled in between them in this behalf has not been adverted to in the concise statement or during the course of the arguments nor their existence has been substantiated at any stage. How could the Authority own or espouse a scheme of the Bahria Town, which was prepared by the latter on its own without the assistance of the former in terms of Section 17(2) of MDA Act and how could this scheme be held to have been prepared, undertaken or executed under this Act in terms of Section 2(p) of the MDA Act are the questions which went un-commented. All this points to the conclusion as if the Bahria Town is the Authority and the Authority is just a pawn or a plaything in its hands.

9. Next comes the grant of land to MDA by the Board of Revenue and its exchange with private or kabuli land. What is the mode of grant of government land, what are the provisions regulating it and who are the persons such land could be granted to are pivotal questions whose answers can well be found in section 10 of COGLA 1912 which reads as under:

**"10. Issue of statements of conditions of tenancies. - (1)**  
*The Board of Revenue subject to the general approval of the Government may grant land in a colony to any person on such conditions as it thinks fit.*

*(2) The Provincial Government may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenants.*

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), such land shall, not be exchangeable with private or kabuli land.

(3) Where such statements of conditions have been issued, the Collector may, subject to the control of the [Board of Revenue], allot land to any person, to be held subject to such statement or conditions issued under sub-section (2) of this section, as the Collector may by written order declare to be applicable to the case.

(4) No person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector. After possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto.

(5) If a person who has been granted, allotted or leased out, land after applicability of this Act to the Province of Sindh, or a person who may be granted land under this Act hereinafter for specific purpose has –

(a) failed to deposit the occupancy price within a period of six months after the issuance of offer letter or allotment letter regarding grant, allotment or lease of land, such offer letter or allotment letter shall automatically stand withdrawn and shall not be restored; provided that the grantee, allottee or lessee may apply afresh for grant, allotment or lease of the land and the Competent Authority may make a fresh grant, allotment or lease as the case may be; and

(b) failed to use the land for the purpose for which it was granted or allotted or converted or leased out and the period of five years from the date of grant, allotment, conversion or lease has expired, the grant, allotment conversion or lease of the land shall automatically stand cancelled and the amount deposited shall stand forfeited:

*Provided that the competent authority may extend the period for one year more in the justified cases on payment of ten percent (10%) of the occupancy prices*

*Provided further that the Chief Minister may extend the period of completion of projects in respect of land granted for education and health purposes in the cases where the delay in completion of project is not on account of any negligence of part of grantee."*

A careful examination of the section reproduced above shows that the government land could be granted to any person or tenant subject to the statement of conditions issued under section 10(2) of the said Act. Statement of conditions were purportedly issued under section 10(2) of COGLA 1912 by Government of Sindh, Land



Utilization Department vide notification no. 09-294-03-SO-I/336, Karachi dated 25<sup>th</sup> February 2006 and notification no. 09-294-03/SO-I/719, Karachi dated 10<sup>th</sup> November 2010. Land in this case has been granted to MDA under section 10 of COGLA 1912. It in its essence and substance is tenancy and not proprietary on any account as proprietary rights to a tenant or any other person could be granted under section 30 of COGLA 1912 but since section 30 has been omitted from the said Act by Sindh Repealing and Amending Act 1975 (Sindh Act XVII of 1975) such rights cannot be granted to any.

10. Now the question arises whether a land granted under section 10 of COGLA 1912 could be exchanged with a private or kabuli land. Our answer to the question is a pointblank no, because section 10(2A) which has been given overriding effect over section 10(1) and 10(2) of COGLA 1912 provides in unequivocal terms that a land granted to any person under section 10 of COGLA 1912 is not exchangeable with a private or kabuli land. Section 17 of COGLA 1912, however, permits the exchange of tenancy for tenancy but does not permit the exchange of tenancy with private or kabuli land. The rationale behind this provision is that a land comprised in tenancy cannot be equal to the one comprised in proprietary. When the land comprised in tenancy is not equal to private or kabuli land, it cannot be exchanged with the other. Where a land granted under section 10 of the Act cannot be exchanged with private or kabuli land, its exchange being against law would be void ab initio. The learned Sr. ASC for the Board, in his effort to extricate the MDA and even the Bahria Town from the clutches of this prohibition referred to section 8(2)(iii), section 31 and 32 of the MDA Act and thereby sought to canvass at the bar that the aforesaid provisions in view of

section 47 of the MDA Act shall have effect notwithstanding anything contained in any other law, rules or regulation. Before we deal with this argument it would be imperative to refer to the aforesaid provisions:

*“Section 8 (2) The Authority may—*

*(ii) acquire permanently or requisition temporarily property movable or immovable;*

*(iii) dispose any land or other property vested in it by sale, lease exchange or otherwise.*

*Section 31 — The Authority may, by purchase, lease or exchange, acquire any movable or immovable property or any interest therein by entering into an agreement with the party concerned.*

*Section 32 – Where the Authority is of the opinion that nay land needed for any scheme or other public purpose cannot be acquired under section 31, such land may be acquired in accordance with the Hyderabad Development Authority Act, 1976 and any reference in that Act to the Hyderabad Development Authority shall be deemed to be a reference to the Authority”*

A look at section 8(2)(ii), section 31 and section 32 of the MDA Act reveals that the Authority has the power to acquire permanently any moveable or immoveable property by purchase, lease or exchange by entering into an agreement with the party concerned or in accordance with the provisions of the Hyderabad Development Authority Act 1976. Any property thus acquired would vest in the Authority which shall be free to dispose it of by sale, lease, exchange or otherwise in terms of section 8(2)(iii) of the MDA Act. But since the land granted to the Authority under section 10 of the COGLA 1912 is comprised in tenancy and not proprietary it cannot be said to have vested in the Authority. Since it cannot be said to have vested in the Authority, it could not dispose of such land by sale, lease, exchange or otherwise. Therefore, any disposal in any of the modes mentioned above would be void ab initio. In the case of **Abdul Haq and others v**

**Province of Punjab and others (2007 SMCR 1525)** this Court while

dealing with a similar situation held as under:

*“A careful scrutiny of record would reveal that the said order had been passed by the learned Commissioner Sargodha Division in a casual and cursory manner without diligent application of mind by ignoring the fact that the State land could not have been exchanged with private land situated in Chak No. 40-A/M.B., proprietary rights whereof were obtained by the appellants about thirteen years back and mutations were also attested in their favour and duly registered in the Register Haqdarar Zamin. The closed and past transaction could not have been reopened by the Commissioner Sargodha Division having no locus standi whatsoever which amounts to misuse and abuse of authority never conferred upon him. The Commissioner Sargodha Division has violated the Government instructions contained in letter No. 1841-C dated 28-4-1932 which makes it abundantly clear that once the proprietary rights have been acquired in a grant no application for exchange could be entertained. For the sake of argument if it is conceded that the allocation of land in favour of appellants was not “by way of grant” even then State land pertained to Agriculture Department could not have been transferred with private land, proprietary rights whereof had been conferred upon the appellants. Besides that the Commissioner Sargodha Division has ignored the provision enumerated in section 17 of Colonization of Government Lands Act 1912 whereby only the State land can be exchanged for State land and therefore, the order passed by the Commissioner Sargodha Division was in utter violation of section 17 of Colonization of Government Lands Act, 1912.”*

The argument of the learned Sr. ASC for the Board that MDA being a purchaser having paid the entire amount of the purchase money cannot be deemed to be a tenant, therefore, it could exchange the land granted with private or kabuli land notwithstanding the provision contained in section 10(2A) and proviso to section 17 of COGLA, would have been tenable had the proprietary rights been granted to it. But since the provision providing for the grant of proprietary rights has been omitted by virtue of the amendment mentioned above, this argument being shorn of force cannot be accepted. The argument that MDA is carrying out various schemes such as Shah Latif Town, New Malir Housing Project and Taiser Town by exchanging the government land granted under section 10 of COGLA 1912 with private or kabuli land, therefore, exchange of land

granted to the MDA with private or kabuli land is not something unusual or unprecedented has not moved us because nothing has been brought on the record to show that land granted under section 10 of COGLA 1912 was ever exchanged with private or kabuli land. In case it is correct, two or any number of wrongs cannot justify another wrong or make it right. The argument that nothing in the Transfer of the Property Act would apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein by or on behalf of the Government to or in favour of any person, therefore, any transfer or adjustment in violation of the said Act cannot be held to be illegal or against law has no perceptible relevance to the controversy raised in this case as exchange in this case is illegal in view of the provisions contained in COGLA 1912 and not in view of the provisions contained in Transfer of Property Act.

11. Now let us see what was the purpose behind the grant of this land? We have been told time and again that the purpose behind the grant of this land to MDA is to launch an incremental housing scheme. Where does the 'incremental housing scheme' come from and what does it stand for? This scheme, so to speak, was introduced by substituting section 3 and adding section 10-A to section 10-F in COGLA through The Colonization of Government Lands (Sindh Amendment) Ordinance, 2005, Sindh Ordinance No. XIII of 2005. But it being promulgated by the Governor of Sindh under Article 128 of the Constitution of the Islamic Republic of Pakistan, was not a permanent legislation. Nor was it made an Act of the Provincial Assembly. It, therefore, stood repealed after the expiration of 90 days. With the repeal of the Ordinance, the Act was restored to its original position as it stood before the promulgation of the

Ordinance. The incremental housing scheme and whatever was provided in section 3 and Section 10-A to Section 10-F of the Ordinance disappeared altogether. However, in the statement of conditions many other terms with their meanings besides 'incremental housing scheme' have again been introduced in paragraph 2 of the statement of conditions which being relevant for the purposes of this case are reproduced as under:

2. In this statement of conditions, unless there is anything repugnant in the subject or context: -

(a) "**Act**" means the Colonization of Government Lands Act, 1912;

(b) "**amenity purpose**" means a use of plot of land for park, garden playground, graveyard, educational institution, health institution, reading room, library, community centre and place for religious worship;

(c) "**authority**" means a development authority established by Government under any law for the time being in force;

(d) "**autonomous body**" means an autonomous body under the control of Government established under a law and includes an authority but does not include a council;

(e) "**commercial purpose**" means a plot of land used or to be used for the Government;

(f) "**company**" means a company registered under Companies Ordinance 1984;

(g) "**council**" means a council constituted under the Sindh Local Government Ordinance, 2001;

(h) "**District Officer Revenue**" means the District Officer (Revenue) as described in the Sindh Land Revenue Act, 1967 and includes:-

(i) any officer appointed by the Board of Revenue to perform all or any of the functions and exercise all or any of the powers of the District Officer (revenue) under this Act; and

(ii) any Colonization Officer or Assistant Colonization Officer appointed as such before the commencement of this Act, whether or not such officer was by notification appointed to perform all or any of the functions of a Deputy Commissioner under the Act hereby repealed;

(i) "**Executive District Officer (Revenue)**" includes any officer appointed by the Board of Revenue to perform all or any of

the functions and exercise all or any of the powers of a Executive District Officer (Revenue) under this Act;

(j) **"flat site"** means any plot of land used or to be used for constructing residential flats;

(k) **"Government"** means the Government of Sindh;

(l) **"incremental housing"** means a housing scheme sponsored by the Government, or an authority, or an autonomous body or a company for providing residential land to a family not exceeding 120 square yards;

(m) **"industrial purpose"** means use of a plot of land as:-

- a) a cottage, small, medium and large industry or
- b) an Industrial Estate or
- c) an Information Technology Park or
- d) tourism including hotels that offer lodgings;

(n) **"land"** means lands vesting in Government, authority or autonomous body and includes lands is used and may be used for agricultural, commercial, residential, residential cum commercial, industrial and amenity purposes;

(o) **"market price"** means market price and includes occupancy value of the land prevailing at the time of disposal of the land by the Government under this Act;

(p) **"occupancy price"** means the price paid by the occupant of Govt. land granted for non-agricultural purpose or a period not exceeding ninety nine years;

(q) **"project"** means commercial, incremental housing, residential, flat site, residential-cum commercial industrial and amenity projects for which land is granted;

(r) **"residential cum commercial land"** means use of land for construction of flats, shops and or private or public offices;

(s) **"residential land"** means use of a plot of land for constructing residential houses;

(t) **"grant"** means lease of land made under these conditions;

(u) **"price committee"** means the District Price Committee appointed under condition No.8(1)(a);

(v) **"scrutiny committee"** means by Scrutiny Committee appointed under condition 8(1) (b)."

Addition of the expression amenity purpose, commercial purpose, incremental housing, industrial purpose etc and their meanings in paragraph 2 shows that the framers of the statement of conditions in their wisdom also decided to grant the land for the purposes mentioned above. But they instead of using the word 'grant' used

the word 'dispose' in paragraph 3 of the notification. The word 'dispose' has not been defined anywhere in the notification, therefore, its ordinary dictionary meanings are to be looked into. This word according to the Oxford Dictionary means to sell something to someone or get rid of it. But this meaning would tend to change the meaning of word grant as used in section 10 (2) of COGLA 1912, the parent statute which is restricted to grant of tenancy and not sale of proprietary. It becomes all the more clearer when the word 'grant' has also been used in the statement of conditions issued in 2006 and has been defined to mean "lease of land under these conditions". The word 'dispose', therefore, has to be interpreted in harmony with the parent statute or read down as being an addition alien to the parent statute. For it is axiomatic and an extensively known principle of interpretation of statute that a subordinate legislation has to be interpreted in a way which conforms to and stays within the parameters of the parent statute. Such interpretation would be in harmony with the letter and spirit of section 10 of COGLA 1912 particularly after the omission of section 30 therefrom as held above. We, therefore, hold that the word 'dispose' or the word 'grant' would mean grant of tenancy and not proprietary right.

12.           Alright with the addition of the expression incremental housing scheme to the statement of conditions issued in 2006 the land under section 10(2) of the COGLA could be granted for launching an incremental housing scheme. The Board, pursuant to the aforesaid conditions, granted land to Malir Development Authority for launching an incremental housing scheme. The Authority after the grant of land should have proceeded to launch the scheme itself. But to our regret and surprise, the Authority for the

reason best known to it rather opted to exchange the land thus granted with private or kabuli land purchased by the dummies of the Bahria Town before fulfilling the legal formalities and even before taking its possession under section 10(4) of COGLA and thereby abdicated its authority in favour of the Bahria Town in violation of the provisions contained in sections 10(2A) and proviso to section 17 of COGLA. Whereas the Bahria Town with all its magical and mesmerizing prowess and paraphernalia dropped in the land and started the work with goebbelsian fanfare a day after the summary reserving the land for MDA was signed which can well be seen from the aggressive publicity in the newspapers of the following days. The Malir Development Authority which is all in all for the purposes of the MDA Act became a conduit to facilitate the designs of the Bahria Town. At times the MDA appears to have acted as a property dealer and even as a go-between in the deal. Likewise, the government of Sindh which is all in all for the purposes of COGLA acted as more of a collaborator than a protector of the government land. Grant of land to MDA for an incremental housing scheme proved to be a gimmick to accomplish the agenda of Malik Riaz aiming at his personal enrichment at the cost of the state and the people. It is, thus, a brazen betrayal of the trust of the state and the people and a blatant fraud on the statute. A business adventure of this type cannot be said to have any meaning for the poor people and as such cannot be held to have any of the trappings of a public purpose.

13. We have no doubt in our mind as held above that the land granted under section 10 of COGLA 1912 cannot be exchanged with private or kabuli land. But even if we assume by



ignoring the law that the Authority has the power to exchange the land granted under section 10 of COGLA 1912 with private or kabuli land, what mode was adopted for determining the status and price of the government land and that of the one it was exchanged for has not been explained by the learned ASCs appearing for the Board, MDA and Bahria Town. Nor has anything been brought on the record to show that the nature, character, location, potential of the land and those of the land it was exchanged for, stand on equal footing. There is also nothing on the record to explain why did the MDA exchange its compact and well-located blocks of land for scattered strips of land situated in far-off areas. What utility such strips of land could possibly have for MDA also went unanswered. It was stated that MDA paid Rs. 1.66 billion at the rate of 25% of the market price for 11068 acres in five villages to the Board and that MDA exchanged land measuring 7068 acres in 4 villages namely Bolhari, Langheji, Konkar and Kharkharo with henchmen of the Bahria Town in 39 villages. The value of the land of MDA in four villages has been worked out as Rs. 6.12 Billion (Rs. 6120 million) while the value of the land exchanged therefor has been worked out as Rs. 5.859 Billion (Rs. 5859 Million). The differential between the two has been worked out as Rs. 0.26 Billion (Rs. 260 million) out of which Rs. 0.24 Billion (Rs. 240 Million) has been paid, whereas only Rs. 0.02 billion (Rs. 20 Million) is outstanding. But nothing authentic has been brought before us to show as to what was the per acre price of the land in the 4 villages and what was the per acre price of the land situated in 39 villages. When the price of the land in any of the 39 villages has not been determined nor has any basis been provided for its determination, the differential being worked out at random cannot be given any

weight. All this shows that neither the Board nor the MDA cared a fig while dealing with this aspect. Everything appears to have been done mechanically without examining what has been poured in and what has been poured out as a result of exchange. How far the MDA was guided by its sense of proportion when it exchanged 68-30-19 acres situated in Langheji for 68-30-19 acres situated in village Mandaro, an area bordering Balochistan? What equation the MDA saw between 56-36 acres situated in Langheji and an area of 56-36 acres situated in Ghaghar which is bordering district Thatta to justify their exchange? Exchange of the property at Ghaghar for that in Langheji would bring the private owner windfall benefits but what would it bring the Authority when the area at Ghaghar being far off and bordering district Thatta is of no use when viewed in the light of the provisions of the MDA Act. An area of 10 acres situated in Langheji was exchanged for an area of 10 acres in village Shahi Chip which being situated in a far-flung area does not admit of a comparison with the area situated in Langheji. What parity did the Authority find between an area of 75 acres situated in Langheji and an area of 75 acres in Deh Jang Kund, a village situated in an area bordering Balochistan? What was common in between an area of 73 acres situated in Langheji and an area of 73 acres situated in Deh Darsano Chano in terms of their nature and location has been left to speculation. Likewise, no visible similarity is seen between an area of 44 acres situated in Langheji and an area of 44 acres situated in Dhabheji. An area of 68 acres situated in Bolhari was exchanged for an area of 68 acres situated in Deh Tore without ascertaining its surrounding and connectivity – the features which always matter in determining the status of the land. These are a few examples which

go a long way to prove that no homework was done by anybody at any level to strike a balance between the input and the output of exchange. Determination of differential in the absence of such homework would, therefore, be conjectural. A transaction thus settled cannot be held to be transparent.

14. An effort was made to protect the exchange of tenancy with private or kabuli land under the panoply of section 2(ff) of the MDA Act without appreciating what does the aforesaid provision precisely say. It would, therefore, be worthwhile to refer to the said provision which reads as under:

*"2(ff) – consolidation of land means adjustment of plots in a scheme by way of exchange or otherwise for the purpose of the scheme"*

Even a cursory glance at the aforesaid provision would show that it does not deal with the exchange of a land for a land. It indeed deals with adjustment of plots in a scheme by way of exchange or otherwise. Plot according to the definition as given in Rule 2(j) of the Malir Development Authority Disposal of Plot Rules 2006 means:

*"j). "Plot" includes a residential plot, residential cum commercial plot, industrial plot, commercial plot, or flat site in any scheme".*

The word "adjustment" if seen in the light of the definition as given above, by no means covers the exchange of a land for a land in a set-up where no scheme has been prepared even in terms of conception. Granted, that The Malir Development Authority (Consolidation, Adjustment, Exchange of private survey lands and state land) Regulations 2013 provides procedure for exchange of a land for a land but it being against the provisions of the parent statute cannot be sneaked in when according to the latter the expression adjustment means adjustment of plots in a scheme for the

purposes of the scheme. Reference to section 2(ff) being an attempt to clutch at a straw cannot help justify the exchange of a land for a land.

15. What was the occasion calling for the reduction of the prices which were fixed in 2006 notwithstanding the passage of time in between 2006 and 2011 brought an exponential increase therein. What business the secretariat of the President had in the fixation of the prices of the land when the matter relating to land lay within the domain of the province? What weighed and proved to be the catalyst can well be gathered from the summary which is reproduced as under:

“GOVERNMENT OF SINDH  
LAND UTILIZATION DEPARTMENT

SUMMARY FOR THE CHIEF MINISTER, SINDH

SUBJECT: FIXATION OF RATES OF LAND UNDER CONDITION NO.8(1)(b) OF THE STATEMENT OF CONDITIONS FOR GRANT OF STATE LAND FOR NON-AGRICULTURAL PURPOSE AND RECOMMENDED THE CATEGORIZATION OF GOVERNMENT LAND FOR ALLOTMENT OF VARIOUS PURPOSE.

The facts of the case are that Chairman Association of Builders and Developers of Pakistan (ABAD) has made an application to the Honourable President, Republic of Pakistan to rationalize the rates of different Dehs (Annexure-A). The Deputy Director (HD), President's Secretariat (Public Aiwan-e-Sadr Islamabad) has forwarded the same to the Chief Secretary Government of Sindh Karachi for such action as deem appropriate as per rule in the matter vide President's Secretariat U.O. No. 10(106)Dir(HD)/2010(11), dated 21.04.2011 (Annexure-B).

2. Scrutiny Committee was constituted under Condition No.8(1)(b) under Statement of Conditions and in its meeting held on 18.05.2011 (Annexure-C), the Karachi and Association of Builders and Developers of Pakistan (ABAD). After thorough deliberations, the Committee has recommended the following categorization of land and market price for next three years as provided under the said condition:-

- i) Categorization of Government land for allotment of various purposes was recommended as under:-

Category A-1:	Area upto 200 meters falling along with both sides of National, Super and Provincial Highways and other roads having widths of 30 feet
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	metaled area.  Note: This category will not be applicable for the allotment of industrial purpose.
Category A:	Area upto one kilometer beyond the area of Category-A-1.  Note: Industrial plot falling on Highway/Super Highway shall be charged rates of Category "A". The definition of industrial sites may include amusement parks, tourist resorts, hotels and cold storage etc which have commercial potential.
Category B:	Area upto one kilometer beyond the area of Category-A.
Category C:	Area upto one kilometer beyond the area of Category-B.

- ii) Keeping in view the current market prices, the prices for the different dehs were recommended by the Committee as under :-

**"GADAP TOWN"**

Sr. No	Name of Deh	Description	Category A-I	Category A	Category B	Category C
1.	Bund Murad	Rates Notified by Govt. in 2006	36 Lac	24 Lac	14 Lac	8 Lac
			25 Lac	18 Lac	12 Lac	6 Lac
		Rates proposed by ABAD in 2011	25.2 Lac	18 Lac	12 Lac	6 Lac
		Rates recommended by Scrutiny Committee in 2011.				
2.	Allah Phihai	Rates Notified by Govt. in 2006	30 Lac	20 Lac	12 Lac	6 Lac
			25 Lac	18 Lac	12 Lac	6 Lac
		Rates proposed by ABAD in 2011	25 Lac	18 Lac	12 Lac	6 Lac
		Rates recommended by Scrutiny Committee in 2011.				
3.	Khadeji	Rates Notified by Govt. in 2006	25 Lac	15 Lac	12 Lac	NIL
			15 Lac	10 Lac	7.5 Lac	-
		Rates proposed by ABAD in 2011	18 Lac	15 Lac	8 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.				
4.	Abdar	Rates Notified by Govt. in 2006	30 Lac	15 Lac	10 Lac	NIL
			10 Lac	7.5 Lac	5 Lac	-
		Rates proposed by ABAD in 2011	15 Lac	10 Lac	8 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.				
5.	Chuhar	Rates Notified by Govt. in 2006	20 Lac	25 Lac	15 Lac	NIL
			20 Lac	15 Lac	10 Lac	-
		Rates proposed by ABAD in 2011	20 Lac	15 Lac	10 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.				
6.	Jam Chakro	Rates Notified by Govt. in 2006	30 Lac	20 Lac	15 Lac	NIL
			25 Lac	15 Lac	10 Lac	NIL
		Rates proposed by ABAD in				

		2011 Rates recommended by Scrutiny Committee in 2011.	25 Lac	15 Lac	10 Lac	-
7.	Boil	Rates Notified by Govt. in 2006	30 Lac	15 Lac	10 Lac	NIL
		Rates proposed by ABAD in 2011	15 Lac	10 Lac	8 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	15 Lac	10 Lac	8 Lac	
8.	Narath ar	Rates Notified by Govt. in 2006	30 Lac	20 Lac	NIL	NIL
		Rates proposed by ABAD in 2011	20 Lac	12 Lac	10 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	20 Lac	12 Lac	10 Lac	-
9.	Mitha Ghar	Rates Notified by Govt. in 2006	10 Lac	5 Lac	4 Lac	NIL
		Rates proposed by ABAD in 2011	15 Lac	10 Lac	7 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	15 Lac	10 Lac	7 Lac	-
10.	Mai Garhi	Rates Notified by Govt. in 2006	30 Lac	20 Lac	15 Lac	NIL
		Rates proposed by ABAD in 2011	25 Lac	15 Lac	8 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	25 Lac	15 Lac	8 Lac	-
11.	Tore	Rates Notified by Govt. in 2006	1 Crore	75 Lac	60 Lac	NIL
		Rates proposed by ABAD in 2011	50 Lac	40 Lac	30 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	50 Lac	40 Lac	30 Lac	-
12.	Konker	Rates Notified by Govt. in 2006	50 Lac	40 Lac	30 Lac	NIL
		Rates proposed by ABAD in 2011	20 Lac	15 Lac	10 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	se Lac	20 Lac	15 Lac	-
13.	Kharkh aro	Rates Notified by Govt. in 2006	70 Lac	50 Lac	40 Lac	NIL
		Rates proposed by ABAD in 2011	35 Lac	25 Lac	20 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	35 Lac	25 Lac	20 Lac	NIL
14.	Mandr o	Rates Notified by Govt. in 2006	10 Lac	8 Lac	6 Lac	NIL
		Rates proposed by ABAD in 2011	8 Lac	5 Lac	4 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	8 Lac	6 Lac	4 Lac	NIL

		Rates recommended by Scrutiny Committee in 2011.				
15.	Surjani	Rates Notified by Govt. in 2006	60 Lac	50 Lac	30 Lac	NIL
		Rates proposed by ABAD in 2011	60 Lac	50 Lac	30 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	60 Lac	50 Lac	30 Lac	NIL
16.	Metan	Rates Notified by Govt. in 2006	30 Lac	20 Lac	15 Lac	NIL
		Rates proposed by ABAD in 2011	20 Lac	12 Lac	8 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	25 Lac	15 Lac	10 Lac	NIL
17.	Gadap	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	8 Lac	5 Lac	3 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	8 Lac	5 Lac	4 Lac	2 Lac
18.	Karmatiani	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	8 Lac	6 Lac	4 Lac	2 Lac
		Rates recommended by Scrutiny Committee in 2011.	8 Lac	6 Lac	4 Lac	NIL
19.	Shahi Chip	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	20 Lac	10 Lac	8 Lac	3 Lac
		Rates recommended by Scrutiny Committee in 2011.	20 Lac	10 Lac	6 Lac	Nil
20.	Hudawah	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	15 Lac	10 Lac	7 Lac	NIL
		Rates recommended by Scrutiny Committee in 2011.	15 Lac	10 Lac	7 Lac	NIL
21.	Bolhari	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	8 Lac	6 Lac	4 Lac	2 Lac
		Rates recommended by Scrutiny Committee in 2011.	8 Lac	6 Lac	4 Lac	Nil
22.	Langheji	Rates Notified by Govt. in 2006	-	-	-	-
		Rates proposed by ABAD in 2011	10 Lac	6 Lac	4 Lac	2 Lac
		Rates recommended by Scrutiny Committee in 2011.	10 Lac	6 Lac	4 Lac	Nil

23.	Malh	Rates Notified by Govt. in 2006	-	-	-	-
			40 Lac	30 Lac	20 Lac	Nil
		Rates proposed by ABAD in 2011	50 Lac	40 Lac	20 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
24.	Bazar	Rates Notified by Govt. in 2006	-	-	-	-
			30 Lac	15 Lac	10 Lac	Nil
		Rates proposed by ABAD in 2011	30 Lac	15 Lac	10 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
25.	Darsan o Chano	Rates Notified by Govt. in 2006	-	-	-	-
			20 Lac	15 Lac	10 Lac	-
		Rates proposed by ABAD in 2011	25 Lac	20 Lac	10 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
26.	Taiser	Rates Notified by Govt. in 2006	70 Lac	50 Lac	40 Lac	Nil
			80 Lac	70 Lac	60 Lac	Nil
		Rates proposed by ABAD in 2011	70 Lac	50 Lac	40 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
27.	Bijar Buthi	Rates Notified by Govt. in 2006	60 Lac	50 Lac	40 Lac	Nil
			70 Lac	50 Lac	40 Lac	Nil
		Rates proposed by ABAD in 2011	70 Lac	50 Lac	40 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
28.	Nagan	Rates Notified by Govt. in 2006	-	-	-	-
			60 Lac	50 Lac	40 Lac	Nil
		Rates proposed by ABAD in 2011	60 Lac	50 Lac	40 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
29.	Mokhi	Rates Notified by Govt. in 2006	7.475 million	6.25 million	5.175 million	Nil
			70 Lac	50 Lac	40 Lac	Nil
		Rates proposed by ABAD in 2011	70 Lac	50 Lac	40 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
30.	Mangh opir	Rates Notified by Govt. in 2006	-	-	-	-
			50 Lac	40 Lac	30 Lac	Nil
		Rates proposed by ABAD in 2011	50 Lac	40 Lac	30 Lac	-
		Rates recommended by Scrutiny Committee in 2011.				
31.	Halkan i	Rates Notified by Govt. in 2006	50 Lac	40 Lac	20 Lac	Nil



		Rates proposed by ABAD in 2011	25 Lac 35 Lac	17 Lac 25 Lac	12 Lac 15 Lac	Nil -
		Rates recommended by Scrutiny Committee in 2011.				
32.	Thadh o	Rates Notified by Govt. in 2006	- 35 Lac	- 25 Lac	- 15 Lac	- Nil
		Rates proposed by ABAD in 2011	35 Lac	25 Lac	15 Lac	-
		Rates recommended by Scrutiny Committee in 2011.				
33.	Kathor e	Rates Notified by Govt. in 2006	- 50 Lac	- 40 Lac	- 20 Lac	- 10 Lac
		Rates proposed by ABAD in 2011	60 Lac	40 Lac	20 Lac	10 Lac
		Rates recommended by Scrutiny Committee in 2011.				
34.	Amilan o	Rates Notified by Govt. in 2006	5.75 million 40 Lac	4.6 million 30 Lac	3.45 million 25 Lac	1.15 million -
		Rates proposed by ABAD in 2011	45 Lac	35 Lac	25 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
35.	Shah Muree d	Rates Notified by Govt. in 2006	- 25 Lac	- 15 Lac	- 10 Lac	- Nil
		Rates proposed by ABAD in 2011	25 Lac	17 Lac	10 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
36.	Mahyo	Rates Notified by Govt. in 2006	30 Lac 25 Lac	20 Lac 20 Lac	12 Lac 15 Lac	6 Lac 10 Lac
		Rates proposed by ABAD in 2011	25 Lac	20 Lac	15 Lac	10 Lac
		Rates recommended by Scrutiny Committee in 2011.				
37.	Lohark o Langh	Rates Notified by Govt. in 2006	8 Lac 8 Lac	6 Lac 6 Lac	4 Lac 4 Lac	Nil Nil
		Rates proposed by ABAD in 2011	8 Lac	6 Lac	4 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				

**"BIN QASIM TOWN"**

Sr. No	Name of Deh	Description	Category A-I	Category A	Category B	Category C
1.	Khanto	Rates Notified by Govt. in 2006	1 Crore 90 Lac	70 Lac 60 Lac	50 Lac 30 Lac	Nil Nil
		Rates proposed by ABAD in				

		2011 Rates recommended by Scrutiny Committee in 2011.	90 Lac	60 Lac	40 Lac	Nil
2.	Pipri	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	1 Crore 60 Lac 60 Lac	70 Lac 40 Lac 40 Lac	Nil 30 Lac 30 Lac	Nil Nil Nil
3.	Dhabeji	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	- 10 Lac 20 Lac	- 6 Lac 15 Lac	5 Lac 4 Lac 10 Lac	- Nil 6 Lac
4.	Bakram	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	1 Crore 55 Lac 60 Lac	70 Lac 45 Lac 50 Lac	Nil 25 Lac 30 Lac	Nil Nil Nil
5.	Joreji	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	1 Crore 80 Lac 80 Lac	70 Lac 50 Lac 60 Lac	50 Lac 30 Lac 40 Lac	Nil Nil Nil
6.	Landhi	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	1 Crore 80 Lac 90 Lac	70 Lac 40 Lac 70 Lac	40 Lac 25 Lac 40 Lac	Nil Nil Nil
7.	Ghagar	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	Nil Nil 20 Lac	15 Lac 15 Lac 15 Lac	10 Lac 10 Lac 10 Lac	Nil 5 Lac 6 Lac
8.	Koteriro	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	50 Lac 40 Lac 40 Lac	40 Lac 30 Lac 30 Lac	Nil 20 Lac 20 Lac	Nil Nil Nil
9.	Ibrahim Hyderi	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011	1 Crore 70 Lac 70 Lac	Nil 50 Lac 50 Lac	Nil 25 Lac 25 Lac	Nil 15 Lac 15 Lac

		Rates recommended by Scrutiny Committee in 2011.				
10.	Rehri	Rates Notified by Govt. in 2006	1 Crore	70 Lac	50 Lac	Nil
			70 Lac	50 Lac	25 Lac	15 Lac
		Rates proposed by ABAD in 2011	70 Lac	50 Lac	25 Lac	15 Lac
		Rates recommended by Scrutiny Committee in 2011.				
11.	Gangi aro	Rates Notified by Govt. in 2006	80 Lac	60 Lac	Nil	Nil
			70 Lac	50 Lac	40 Lac	30 Lac
		Rates proposed by ABAD in 2011	70 Lac	50 Lac	40 Lac	30 Lac
		Rates recommended by Scrutiny Committee in 2011.				
12.	Dhand ho	Rates Notified by Govt. in 2006	Nil	10 Lac	Nil	Nil
			Nil	10 Lac	8 Lac	Nil
		Rates proposed by ABAD in 2011	15 Lac	10 Lac	6 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				
13.	Khakh ar	Rates Notified by Govt. in 2006	-	-	-	-
			15 Lac	8 Lac	5 Lac	4 Lac
		Rates proposed by ABAD in 2011	15 Lac	8 Lac	5 Lac	4 Lac
		Rates recommended by Scrutiny Committee in 2011.				
14.	Sanehr o	Rates Notified by Govt. in 2006	-	-	-	-
			20 Lac	15 Lac	8 Lac	Nil
		Rates proposed by ABAD in 2011	20 Lac	15 Lac	10 Lac	Nil
		Rates recommended by Scrutiny Committee in 2011.				

**"KEAMARI TOWN"**

Sr. No	Name of Deh	Description	Category A-I	Category A	Category B	Category C
1.	Allah Bano	Rates Notified by Govt. in 2006	-	12 Lac	8 Lac	6 Lac
			Nil	8 Lac	6 Lac	4 Lac
		Rates proposed by ABAD in 2011	10 Lac	8 Lac	6 Lac	4 Lac
		Rates recommended by Scrutiny Committee in 2011.				
2.	Lal Bakhar	Rates Notified by Govt. in 2006	40 Lac	30 Lac	10 Lac	7 Lac
			30 Lac	25 Lac	15 Lac	5 Lac
		Rates proposed by ABAD in 2011	30 Lac	25 Lac	15 Lac	10 Lac
		Rates recommended by Scrutiny Committee in 2011.				
3.	Maindi	Rates Notified by Govt. in	Nil	12 Lac	8 Lac	6 Lac

	ary	2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	Nil 10 Lac	8 Lac 8 Lac	6 Lac 6 Lac	4 Lac 4 Lac
4.	Moach	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	40 Lac 40 Lac 40 Lac	30 Lac 30 Lac 30 Lac	20 Lac 20 Lac 20 Lac	Nil Nil Nil
5.	Gabo Pat	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	Nil Nil 20 Lac	15 Lac 12 Lac 15 Lac	10 Lac 8 Lac 10 Lac	- Nil Nil
6.	Moach ko	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	40 Lac 40 Lac 40 Lac	30 Lac 30 Lac 30 Lac	20 Lac 20 Lac 20 Lac	Nil Nil Nil
7.	Gundpass	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	40 Lac 30 Lac 35 Lac	30 Lac 20 Lac 25 Lac	20 Lac 15 Lac 15 Lac	Nil Nil Nil
8.	Chathara	Rates Notified by Govt. in 2006 Rates proposed by ABAD in 2011 Rates recommended by Scrutiny Committee in 2011.	- 10 Lac 10 Lac	- 5 Lac 8 Lac	- 3 Lac 6 Lac	- 2 Lac 4 Lac

3. It is proposed that the market price of the land as recommended by the Scrutiny Committee in respect of above Dehs may be approved, so that the same may be notified as per Condition No. 8(3) of the Statement of Conditions and Categorization of state land

4. It is further proposed that permission may also be accorded to apply revised rates for the cases processed and cleared by Scrutiny Committee from 1<sup>st</sup> April, 2011.

5. The Honourable Chief Minister Sindh, may like to pass orders on Para 2, 3 and 4.

Sd/-  
SECRETARY TO GOVERNMENT OF SINDH  
LAND UTILIZATION DEPARTMENT.

6. Sd/-  
SENIOR MEMBER.
7. Sd/-  
SECRETARY FINANCE.
8. Sd/-  
MINISTER FINANCE.
9. Sd/-  
CHIEF SECRETARY.
10. Sd/-  
CHIEF MINISTER SINDH."

The table reproduced above shows that the prices in 2006 were much higher than those fixed in 2011. They, in certain cases, are not even half of what they were in 2006. This phenomenon is amazing and even intriguing because every passing day brings a manifold increase in the prices of the land, but here in this case the clock rolled back and prices witnessed a marked decline in 2011. The learned ASC for the Board of Revenue explained the aforesaid phenomenon by stating that no Town Builder in view of the prices fixed in 2006 came forward to invest in this enterprise but this statement is against the inexorable current trend of the market which admits of no exception. The in no case stay static or step down. They, as a matter of fact, get multiplied in days let alone weeks, months and years. What procedure has been prescribed for determination of market price has been highlighted in paragraph 8 of the notification No. 09-294-03-SO-I/336 dated 25.2.2006 reproduced as under:

*"8. Procedure of determination of market price. -(1) There shall be appointed -*

*(a) a price committee consisting of the Executive District Officer (Revenue) to be the convener, Executive District Officer Finance, District Officer (Revenue), District Registrar, Deputy District Officer (Revenue) and two nominees of the local Chamber of Commerce and Industries, one of them shall be from the real estate business shall propose the market price;*

*(b) a scrutiny committee consisting of the Senior Member Board of Revenue as convener, Secretaries of the Land Utilization, Finance and concerned Department of the Government, Chairman Investment Cell Chief Minister's Secretariat and two representatives of Karachi Chamber of Commerce and Industry, one of them shall be from the real estate business, to process the market price proposed by the Price Committee and make recommendations to the Government in this behalf.*

*(2) The Price Committee shall propose the market price in the District after taking into consideration:-*

*(i) the price of land transferred in the same area for similar use during the past twelve months;*

*(ii) the valuation table notified by the Board of Revenue, Sindh under the Stamp Act, 1899 for the purpose of levy of stamp duty at the time of registration of a sale-deed in respect of sale of similar land; and*

*(iii) such other modes as deemed fit provide a fair basis for assessment of such price.*

*(3) The Price Committee shall submit its recommendation to the Scrutiny Committee which shall after such further enquiry as deemed fit submit its recommendation to Government for determination of the market price.*

*(4) The market price determination under section 8(3) may be reviewed at least after every three years."*

Reduction in prices, thus, cannot be said to have been based on any reliable, rational or realistic data. It rather appears to have been contrived and conjured to the advantage of the builders and disadvantage of the government. Even the committee constituted in this behalf has not cited any tenable reason to justify reduction in prices. What mode was adopted for determining market price under paragraph 8(2)(i)(ii)&(iii), reproduced above, is a question which went unanswered. Why the land was not granted through an open auction in view of para 4(a) of statement of condition issued in 2006 notwithstanding the Board and the MDA knew all along that it would be used for commercial purposes at the end of the day is a riddle which went unsolved. We, therefore, do not agree with the aforesaid

reduction nor do we tend to accept it as rationalization of price in any sense of the word.

16. This Court anticipated all this when it passed the order on 28.11.2012 restraining the Sindh Government from dealing with the State land. The relevant part of the order is reproduced as under:

*"7. Under these circumstances, we are constrained to direct that the Deputy Commissioner/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Muthtiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the office of the Mukhtiarkar to any other place. Moreover mindful of rampant corruption and organized crime of land grabbing, particularly, regarding prime state land, and mismanagement/forgeries in the revenue record, we hereby, until further orders restrain the Government/Revenue Department from mutation, allotment, transfer and or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term up to 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner/DCO of the relevant districts/dehs besides others to contempt proceedings.*

A statement was made by the learned Sr. ASC representing the Senior Member Board of Revenue and Ch. Aitzaz Ahsan, learned Sr. ASC representing the Bahria Town that the aforesaid restraining order was modified by a three-member bench of this Court but it sounds strange because a three-member bench could not modify an order passed by a five-member bench. Even otherwise, this contention was repelled by this Court in its order dated 01.08.2016 by observing as under:

*"8. Today, the learned Counsel representing the Senior Member, Board of Revenue, and Ch. Aitzaz Ahsan, learned Sr.ASC, have submitted that the aforesaid restraining order was modified, by order dated 23.06.2014, passed by a three-member Bench, relevant portion of the said order is also reproduced hereunder:-*

*Learned Advocate General, Sindh, submits that the order of this Court regarding stay of allotments, mutations, transfer and conversion of any state land is being complied with in letter and spirit.*

*6. We may at this stage clarify that this order staying the allotment/grant of leases was meant to ensure that the land is not either leased out or allotted for reasons other than bona fide and to land grabbers and this would not prevent the competent authority in the Federal or Government of Sindh to allot or lease out land for a project approved by the concerned authority which is directed towards establishment of any industry or automotive plant or power generating plant or any other initiative in public interest and in accordance with law and the relevant rules.*

*The learned Advocate General, Sindh, shall convey this order to the Chief Secretary and all the provincial secretaries to ensure that the earlier order is not misconstrued and no such project is held up on that account.*

*9. We may clarify that the aforesaid order dated 23.06.2014 was obtained by misleading the Court on the pretext that re-writing/reconstruction of the record has been completed by the Sindh Government. Today, the Senior Member, Board of Revenue, concedes that the reconstruction and rewriting of the record has not been completed till date. We hold that the order dated 28.11.2012, passed by a five Member Bench of this Court, was never modified and holds the field*

*10. This Application is allowed, subject to all just exceptions.*

*11. Copy of this order be faxed to the Chief Secretary, Government of Sindh, D.G, MDA, the Prosecutor General, NAB, Ch. Aitzaz Ahsan, learned Sr. ASC and Mr. K.A Wahab, AOR (C.M.No.502-K of 2016).To come up after two months."*

When the order restraining the Sindh Government from dealing with the state land in any manner till the reconstruction of the entire revenue record was passed no property could be exchanged, adjusted or alienated but the Board, the MDA and Bahria Town having shown scant regard to the orders of the Court exchanged the land, took possession of a great deal of property and raised



construction thereon. Anything thus done cannot be allowed to endure even for a while. It even on this score cannot be granted any legitimacy.

17. A detailed analysis of the case irresistibly drives us to the conclusion that nothing has been done in accordance with the policy, plan and pattern projected by the relevant enactments. Everything appears to have been justified on the ground that it is a *fait accompli*. Damage done to the people and loss caused to the coffers of the state is sought to be offset by offering to pay the differential between the price of the government land and that of the private land it was exchanged for, but the things having gone irrevocably too far leave no scope for acceptance of such an offer. It is rather a case of its own specie where the Board bypassed the command of law and chose to dance at the drumbeats of a business tycoon without caring what the law provided and what the Supreme Court asked of it. The Malir Development Authority too chose to follow the dictates of the business tycoon without caring what the dictates of the MDA Act were. How the project can be said to have been carried under the umbrella of Malir Development Authority when the entire government land has been sold to the Bahria Town for a paltry sum or exchanged for a land lying scattered in far-off areas? What was the magic, the marvel and the miracle that dazed and dazzled the Board and the Authority to bypass the law and the rules? What was the impetus, the incentive and the inciting force that lent a lightning speed to the Board and the Authority to cover the distances of years in days, hours and minutes? Such rapidity may have been seen in movies but not in the real life. How the builders like the Bahria Town could cater for incremental

housing schemes when the project it launched attracted the people rolling in billions? We do not understand how the Chief Minister, the Chief Secretary and persons at the perch of the Board of Revenue became privy to an individual project where public purpose, public betterment and public welfare cannot be seen even through a microscopic eye. The argument of the learned Sr. ASC for the respondent addressed on the strength of the judgements rendered in the cases of **Government of Punjab. Vs. M/s Crescent Textile Mills (supra)** and **Dr. Akhtar Hassan Khan and others. Vs. Federation of Pakistan and others (supra)** would thus sound inane and unconscionable. We needed to be assisted and enlightened by the Learned Senior ASCs for the Board, the MDA and the learned Advocate General Sindh with an element of independence but all the three have rather projected the case of the Bahria Town than that of the Board and the Authority. Provisions of Colonization of Government Lands Act and Malir Development Authority Act have been designedly interpreted as if they were enacted for the project launched by the Bahria Town. The mode and manner of doing the things prima facie show that the entire hierarchy of the Executive, the Board of Revenue and the Malir Development Authority conspired to cede valuable public property to an individual for a handful gain. We have been witnessing such nefarious activities in the past at a small level, but we have not even dreamt of such activities at such a huge, massive and colossal level. We, thus, cannot sit with our eyes shut, hands folded and legs crossed. Inaction would be disastrous and devastating for the state when the watchdogs of the public property allow the grabbers to grab it for a bone or a piece of flesh.

18. Having thus considered, we are constrained to declare that the grant of the land to the MDA, its exchange with the land of the Bahria Town and anything done pursuant thereto being against the provisions of COGLA 1912 and statement of conditions are void ab initio and as such have no existence. The government land would go back to the government and the land of the Bahria Town exchanged for the government land would go back to the Bahria Town. Since a great deal of work has been done by the Bahria Town and a third-party interest has been created in favour of hundreds of allottees, the land could be granted to the Bahria Town afresh by the Board of Revenue under the provisions of COGLA 1912. What would be the terms and conditions of grant, what would be the price of the land, whether it would be the one at which the Bahria Town sold the land to the people by and large, how much of government land and how much of the private land has been utilized by the Bahria Town, and what Bahria Town is entitled to receive in terms of money on account of development of the land are the questions to be determined by the implementation bench of this Court. We, therefore, request the Honorable Chief Justice of Pakistan to constitute a bench for the implementation of this judgement in its letter and spirit. Bahria Town shall not sell any plot, built-up unit, apartment etc after the announcement of this judgement. Any allotment made after the announcement of this judgement shall be void. As a huge amount on account of allotment of plots, built-up units and commercial buildings is still outstanding against the allottees, some makeshift arrangement has to be made to facilitate the recovery and secure it. We, therefore, direct the Additional Registrar of the Karachi Registry to open a special account where

the outstanding amount against the allotments be deposited. All the outstanding amount against allotment of plots, built-up units and commercial buildings shall henceforth be deposited by the allottees with the Additional Registrar of the Karachi Registry of this Court through pay orders, demand drafts or cross-cheques. The NAB shall pick up the thread from where it left and take its investigation to its logical end. The investigation report which was submitted in the Court and sealed under its order may now be collected for further action. The investigation be completed within a period of three months from the date of announcement of this judgement and a reference be filed in the Accountability Court against all those who are found responsible for causing loss to the state exchequer. We have been told that government land has also been allotted to DHA and many other societies on cheaper rates as compared to the rates in this case. If so, we would request the Honourable Chief Justice of Pakistan to take Suo Moto action in this behalf so that like be treated alike.

19. While parting with the judgement, we would thank Barrister Sohaib Shahid, the Law Clerk who rendered valuable assistance in this case.

**JUDGE**

I had the privilege of going through the judgement authored by my learned brother Justice Ejaz Afzal Khan, but have not able to persuade myself to agree with the same and would therefore respectfully add my dissenting note annexed herewith.

**JUDGE**

**JUDGE**

Announced in open court at Islamabad on \_\_\_\_\_

**JUDGE**

**Approved for reporting**  
Barrister Sohaib Shahid

**MAQBOOL BAQAR, J.-** The question that is to be addressed in the present proceedings is as to whether the lands granted to Malir Development Authority ("**MDA**") by the Board of Revenue ("**BOR**"), Government of Sindh ("**GoS**"), were exchanged by MDA with privately owned lands, lawfully or otherwise.

2. In order to address the above issue properly, we firstly need to examine the powers, authority and functions of MDA and its relationship with the subject lands. MDA was created by Malir Development Authority Act, 1993 ("**the Act**"), for the purpose of development of certain areas of Karachi Division as enumerated in its schedule. Amongst its various functions, as specified through section 8 of the Act, are "*to consolidate any land in such manner as may be prescribed by rules*". [Section 8(1)(iii-a)]. To "*dispose of any land or other property vested in it by sale, lease, exchange or otherwise*". [Section 8(2)(iii)]. To "*perform such other function as may be considered necessary for achieving the objective of the authority or as assigned to it by the government*". (Section 8(1)(xxi). Chapter-III of the Act deals with the power of MDA regarding declaration of controlled area, preparation of master

programmes, and schemes, and their execution. In terms of section 14 of the Act, MDA may by notification, declare any area under its jurisdiction to be a controlled area, and to proceed to prevent haphazard growth, encroachments, unauthorized constructions or operations in such area, and take steps for the planned growth therein. As per section 15 of the Act, neither can any building be erected, nor can any material external alteration in, or addition to, be affected in any building without the permission of the authority. MDA, in terms of section 16 of the Act, is obliged to prepare Master programme(s) for the development, improvement, expansion and beautification of such area, or such sectors of economy, as in its opinion, or in the opinion of Government need to be developed, improved, expanded and beautified, and submit such programme for approval of Government. MDA, as laid down by section 17(1) of the Act, may also prepare specific scheme or schemes for a controlled area, or a part thereof, either on its own accord or when so directed by the government. In terms of sub-section 2 of section 17 of the Act, MDA also may, on the request of any local council, government agency, society, person or body of persons, assist in preparation of, or caused to be prepared, any scheme on such

terms and conditions as may be settled between them. The scheme prepared by MDA, in terms of clause (d) of sub-section 4 of section 17 of the Act, may, among other things, contain "*public or private property or such interest affected by the scheme and the proposal to deal with such property or interest*". As provided by section 31 of the Act, MDA "*may by purchase, lease or exchange, acquire any moveable or immovable property or any interest therein by entering into agreement with the party concerned*".

3. As regard the legality and propriety of the subject transaction, the learned counsel appearing for the various parties argued the case almost on similar lines. They thus submitted that MDA in order to carry out its statutory functions, to prepare and execute scheme(s) within its jurisdiction of authority, required a vast stretch of land, clear of all physical and legal obstructions, and encumbrances. In this regard it was imperative for MDA to declare such area to be its controlled area, so that it may prevent haphazard growth, encroachments or unauthorized construction therein (section 14). MDA thus in its meeting held on 12.1.2008, unanimously resolved to declare two areas falling within its jurisdiction, one comprising of two dehs, namely, *Ghaghar*,

*Dhabeji*, and the other comprising of seven Dehs, namely, *Allah Pihai, Shah Mureed, Narathar, Konkar, Tore Mohyo and Shahi chib*, as controlled areas for its development schemes, by the name of, new Malir Housing Project, MDA Scheme-I, Phase-II, and Taiser Town Phase-II. The above nine dehs were thus, through a notification dated 25.2.2008, declared as controlled area. MDA in its meeting held on 4.2.2013, resolved to expand its controlled area by including thirty seven (37) more Dehs within such area, to enable it to "*prepare a master programme for development of planning infrastructure and land use plan*". Through notification dated 20.5.2013, the aforesaid thirty seven (37) dehs also were thus declared as controlled area. On 23.7.2013, MDA floated a summary for the Chief Minister Sindh seeking his permission for "*survey and preparation of road network/land use plan*" of the notified Dehs and for the "*adjustment of affected private survey lands*" to enable MDA to develop the area and launch its new housing scheme(s). The summary was routed through proper channel, and was, after scrutiny, allowed by the Chief Minister on 05.11.2013. A notification in pursuance of the above, granting permission to MDA for physical survey and preparation of "*road network/land use plan*" of the controlled area "*and*



*adjustment of affected private/acquired state land required for development purpose*" was issued on 26.12.2013. A detailed master programme, titled, "*Master Programme Scheme-1 (Phase-I- comprising of 32 dehs out of 43 dehs), (MPS-I), and preparation of PC-I of schemes, or schemes for execution of the master programme*", was unanimously approved by MDA in its meeting held on dated 24.1.2014. The authority in its said meeting also approved "*the proposal for consolidation/adjustment/exchange of the affected private/acquired state land*" in the controlled area. The approval was duly notified by MDA through notification dated 28.1.2014.

4. The learned counsel further submitted that, since throughout the controlled area there were stumbling blocks in the way of the execution of the MPS-I, by way of private land holdings, which holdings were essentially required by MDA for implementation/execution of the scheme, and for acquiring such lands MDA was required, either to pay to the private owners, the price of the lands, or to give to the owners some lands in exchange thereof, but MDA was under severe financial crunch, and had no funds to pay for the purchase of the land, nor was the Government in a position to finance the purchases. In fact as noted by the consultant in their MPS-I

Report, the scheme so prepared was a self-financing scheme and was not included in the than five years plan, or the provincial annual development plan. However, as noted earlier, MDA, in terms of the various provisions of the Act, also have had the option of acquiring such land(s) by way of exchange, but though the land comprising the aforesaid 43 Dehs fell within its jurisdiction, and was also declared its controlled area in terms of section 14 of the Act, still, for MDA to give any land in exchange, such land was required to be transferred in its name. MDA therefore, through letter dated 01.1.2014, requested the Board of Revenue Sindh (BOR) to reserve some land(s), to enable MDA to exchange the same with the private land holding coming in the way of implementation of its development scheme(s). The matter was ultimately placed before the Chief Minister Sindh and was then referred to a scrutiny committee. The scrutiny committee, which was headed by the Chief Secretary Sindh, with the Secretaries, law, Land Utilization, Finance, Local Government, Government of Sindh (GoS), Senior Member BOR, Commissioner Karachi, and Deputy Commissioner, Malir, amongst others, as its members, in its meeting held on 23.1.2014, recommended reservation of 14617 acres of land in favour of MDA at the market price to be

determined in accordance with law. The Chief Minister Sindh allowed the recommended reservation in favour of MDA, such is evident from the endorsement on the relevant summary, and also from the letter dated 24.1.2014, addressed by Secretary, Land Utilization Department ("**LUD**"), GoS, to Deputy Commissioner Malir, Karachi.

5. The LUD, accordingly reserved 14617 acres of land in favour of MDA. Through letter dated 28.1.2014, DC, Malir asked MDA to approach the LUD "*for payment of the market price*", market price, it may be noted had already been notified for various categories of land in the controlled area through notification dated 29.6.2011. However, at the request of MDA for reduction in the price, the Chief Minister Sindh, in view of the fact that the land was granted for public purpose, and also keeping in view the financial health of MDA, allowed MDA to pay the price of the land at 25% of the market price. By 07.3.2015, MDA deposited a total of Rs.1.668 Billion, being the price of 11068 acres of the reserved land, and thus secured such land with entries in the revenue record in its favour as a "*transferee/new owner*" thereof. Having become the owner of the land, MDA through public notices in various daily newspapers, including the daily "Jang", invited all those who

held lands in the controlled area, to exchange their lands with MDA for the purpose of consolidation. In response five individuals, namely, Waqas Riffat, Shahid Mehmood, Mohammad Awais and Wasim Riffat, (the private owners), who owned an aggregate 9407 acres of land in the controlled area, came forward for exchange and consolidation offered by MDA. In order to verify the veracity and genuineness of the said respondents' title to the land, MDA referred their documents to DC, Malir/Revenue Department, and also invited public objection as required by regulation 5(2) of the Malir Development Authority (Consolidation/Adjustment/Exchange of private survey lands and state regulation 2, 3), thus MDA upon satisfactory verification, and there being no objection, proceeded to undertake the exchange(s). However since not all the lands exchanged with each other were equal in value/market price, the private owners paid to the MDA the differential amount, such was done on the basis of the market price of the subject lands prescribed in terms of section 10-B(1) of the COGLA through a notification dated 29.6.2011. As per the learned counsel the total market value of the land given by MDA in exchange for the land it acquired from the private owners was Rs.6.12 billion, whereas the total value of

the lands received from the private owners in exchange, was Rupees 5.589 billion, and thus the difference in value between the two comes to Rs. 2.60 billion, out of which MDA had already received Rs.2.40 billion, whereas .20 billion are to be paid.

6. The learned counsel contended that from the foregoing narrations of facts and in view of the relevant provisions of law as discussed earlier, it can clearly be seen that there has not been any illegality in the subject exchanges and the transactions were/are absolutely lawful. They submitted that in addition to receiving the enormous amount by way of differential in the market price of the land exchanged, MDA has also earned an amount of Rs. 8889.064 million on account of consolidation/adjustment/exchange charges, scrutiny fee, publication/advertisement charges, town planning fee, and outer development charges, etc. Out of which it has received an amount of Rs. 3754.136 million, and the balance of amount of Rs. 4134.928 million is outstanding to be paid.

7. M/s Aitzaz Ahsan and Ali Zafar, learned counsel for the private owners, with whom MDA has exchanged the land, and the Bahria Town (Pvt.) Ltd ("Bahria Town"), respectively,

submitted that MDA and the GoS have not only benefited from the subject exchanges in terms of cash receipts, as noted above, but on account of the high quality conceptualization, planning, designing, and development of the Bahria Town, which undoubtedly can be ranked as one of the best town developments, at least in Asia, has, apart from providing employment to thousands of skilled and unskilled labourers, Engineers, designers, planners and several other categories of professionals, has also provided business to a large number of contractors, manufacturers, suppliers, vendors, transporters and service providers. The project according to the learned counsel has given a heavy boost to the building/construction related industry, and has also generated massive business and commercial activities in the town itself. The learned counsel submitted that the project development work and its ancillary activities are also a major source of revenue for the Local, Provincial and Federal Governments, and above all the successful and impressive development in the Bahria town has also attracted and incentivized others to come forward and invest in the area, and develop it at a compatible level, which has resulted in exponential appreciation in the value of land at least within fifteen (15) kilometers of the scheme all around,

which runs into hundreds of billions of rupees. According to the learned counsel the value of the land in the area, since after the commencement of the Bahria Town has appreciated at least eight to ten times. According to the learned counsel, Bahria has set a bench mark for the others, in terms of planning, designing, execution and implementation of town planning and development, and in respect of various amenities and sustainable facilities, that a full-fledged and self-contained modern town should offer for pleasant, safe, healthy and convenient modern living. Highlighting, some important features of the Bahria town, the learned counsel submitted that the infrastructure built in the town is of such a nature and strength that it shall last for about 200 years. The town has a theme park which is second of its kind in Asia, the earlier being in Singapore. No developer has built or developed a night safari park like the one in Bahria town. State of the art hospital of European standard, with transplant facilities, is now fully functional in Bahria town. Apart from, a top standard school fully functioning, a university by the name of Abdul Sattar Edhi shall soon be inaugurated. The town has its own cinemas open to public. A dancing foundation has been built in the town at a cost of 39 Million euros. The town

contains a 37 hole golf course constructed by a British company at a cost of US Dollar forty million. A cricket stadium with a capacity of forty eight thousands spectators shall soon be completed. A world class five star hotel is under construction. Garbage collection and management is fully functional. Water treatment plants have been installed and are operational. Internal clear water plants also are operational. According to learned counsel Bahria town has invested Rs. five billion to develop and construct an access /approach from express way to the Bahria town and has already paid an amount of Rs. one billion to the Frontier Work Organization for necessary permission. They submitted that more than 150,000 people, who earlier had no job, are now engaged in property related jobs on account of Bahria town and further that 3,000 families have already settled in the town and are living therein, the learned counsel further submitted that more than 90,000 people have invested with Bahria. As per the learned counsel percent 1,2,4,5,6,7-20,24,25 and 35 of the town have already been delivered to the owners.

8. The learned counsel contended that there was no legal impediment in the way of exchange of the land and referred to the various provisions of the law discussed in the



earlier part of the judgment. They further submitted that for the purposes of implementation and execution of their schemes, namely, (1) Shah Latif Town, Scheme 25-A, (2) New Malir Housing Project and (3) Taiser Town, Scheme 45, also, MDA has undertaken exchange/adjustment/consolidation as in the present case and that even Karachi Development Authority ("KDA"), the predecessor of MDA has in respect of its various housing schemes such as, (i) Gulshan-e-Iqbal, Scheme 24, (ii) Surjani Township, Scheme-43 and (iii) Hawksbay, Scheme-42 exchanged state land with privately owned land. They claimed it is not only for its schemes that MDA has exchanged lands but it has also exchanged lands with private individuals/ entities for the latter's projects like, (a) Roti Corporation, (b) Sindh Employees CHS, (c) Omema Construction Co. (Pvt.) Ltd., (d) Wedfry (Pvt.) Ltd., (e) Institute of Engineers Housing Society, (f) Garden City, (g) Muslim City, (h) Model City. Learned counsel further submitted that in fact huge parcels of land have been allotted to entities like, Defense Housing Authority (DHA), Fazaia, in close proximity, with the Bahria town by the LUD, at rates far cheaper than the market price as determined under the law. As per the learned counsel LUD has allotted 19,640 acres of land to DHA at a rate as low

as Rs.1000/- per acre. Such land they emphasized lies within the controlled area of MDA.

9. Indeed in terms of subsection (2A) of section 10 of the Colonization and Disposal of Government Land Act, 1912 ("the **COGLA**"), land granted under section 10 by the LUD, is not exchangeable with private or Kabuli land, however such restriction, as evident from the provisions of section 17 of the COGLA, is applicable only where the land is held by the grantee as a tenant, whereas the status of a tenant, in terms of section 15 of the COGLA, persists with the grantee only till the time the entire amount of purchase money is paid by him and other conditions set forth in the statement of conditions are fulfilled. The grantee's status of a tenant is thus converted into that of an owner upon his paying the purchase money, and fulfilling the relevant conditions, thereby removing the impediment/ restriction imposed by section 10(2A) of COGLA. In any view of the matter, MDA being a statutory body, is governed by its Act, which act and the Rules and Regulations framed thereunder, as ordained by section 47 of the Act, overrides all other laws, rules and regulations, and thus, as rightly emphasized by M/s. Farooq H. Naek and Rasheed A. Rizvi, Advocates, the above said restriction does not apply to

MDA, more so in the facts and circumstances of the case. The Act, it may be noted, fully empowers, authorizes and enables MDA to exchange land for the purpose of consolidation. Section 8(1)(iii-a), thus specifically provides that, "*subject to the general or special directions of Government*", MDA shall "*consolidate any land in such manner as may be prescribed by rules*". Whereas the MDA (Consolidation/Adjustment/Exchange of private survey lands and state lands) Regulation 2013, through its regulation No.3 and 5, prescribes an elaborate procedure for such consolidation/ adjustment/ exchange, including for calling public objection, and for mutation of the consequential transfer, which have been duly complied with in the present case.

10. The act of "*consolidation of land*" has been described by clause (ff) of section 2 of the Act, as "*adjustment of plots in a scheme by way of exchange or otherwise for the purposes of the scheme*". The above definition/description does not give way to any confusion regarding the fact that exchange and consolidation takes place before the implementation and execution of a scheme, it is rather a step towards such implementation. However, in order to have a clearer perception, it may be noted that the word "*plot*" used in section

2(ff) of the Act, has not been defined by the Act, and is therefore to be read, understood, and construed in its ordinary literary sense. The word has been defined by the *Black's Law Dictionary*, as a measured piece of land, a lot, a track of land especially one having specific boundaries, or being used for a given purpose. The meanings assigned to this word by *Merriam Webster dictionary* are, a small area of planted ground; a vegetable plot; a small piece of land in a cemetery, a measured piece of land. Whereas *Chambers 21<sup>st</sup> Century Dictionary* has defined the word "*plot*" as a piece of ground for any of various uses. It can therefore be seen that the literary/dictionary meanings of this word also fully reconciles, and are in harmony with the purpose and spirit of the concept "*Consolidation/Adjustment/ Exchange*" as envisaged by the Act, and goes well with the scheme of law, being the consolidation of land for the purpose of a scheme. It hardly needs to be mentioned that it is only after the consolidation of land, by way of exchange and adjustment, that various residential, commercial, amenity and/or industrial plots are carved out, created and demarcated through a layout plan/site plan, according to the scheme, and not before the consolidation, and therefore, the word "*plot*" as employed by

section 2(ff) of the Act, cannot be said to mean, "*a residential plot, residential cum commercial plot, industrial plot, or a flat site in any scheme*", which meaning has been assigned to the word by Rule 2 (j) of the MDA Disposal of plot Rules 2006, which definition, as is patently clear, even from the nomenclature of the said Rules, has been given to the word, in the limited context of disposal of plots and is also not exhaustive. The definition does not exclude the ordinary/literary meanings of the word, it merely specifies the kinds of plots that can possibly be created and allotted in a scheme, and cannot be borrowed to be read into the definition of consolidation under section 2(ff) of the Act. It may also be relevant to recall here that the subject exchange/adjustment/consolidation, has in fact been permitted by the Government for the purposes of implementation and execution of the scheme proposed through the master programme. Whereas the Master Programme provides for the subject exchange/ adjustment/ consolidation, accordingly, which plan also has been approved by the government, a voluminous report of which programme (titled, the Master Program Scheme-I, Phase-I, in respect of 32 dehs, within the controlled area where exchanges have taken place), contains all the

necessary information and details regarding the essential features of the Master programme and matters ancillaries thereto. Whereas section 17(4) (d) says that the scheme(s) prepared by MDA, shall among other things contain, inter alia, public and private property or such interest affected by the scheme and the proposal to deal with such properties or interest. In other words, while preparing a scheme MDA is required to suggest and provide for the ways, means and manner in which it propose to deal with any property, which may be affected by the scheme, and has in the present case accordingly provided for the exchange and consolidation of such property/land, which was duly approved by GoS, and has accordingly been implemented in consonance with the relevant provision of law.

11. MDA's power to exchange land(s) is further reinforced and fortified through clause (iii) of sub-section (2) of Section 8 of the Act, which says that "*the authority may dispose of any land or other property vested in it by sale, lease, exchange or otherwise*", which provision is fully applicable to the present case, as upon making payment of the market price and execution of lease deeds of the subject lands in favour of MDA by LUD, GoS, for ninety nine (99) years, the title of the

land vested in MDA, enabling it to exchange the land as mandated by the government.

12. It may be relevant to note here that the subject reservation/transfer/grant of land was not a transfer or a grant in favour of a private individual, or a private or commercial entity, but was in favour of a statutory body, discharging functions of the State under the control of the Government. The land was so granted for carrying out the mandate of law by development of a housing scheme, and thereby uplifting the entire area consisting of thirty two (32), dehs, measuring about 406071.16 acres, (mostly barren), which certainly is a public purpose. In fact by reserving and transferring the subject lands, GoS has in fact put the land to a use for carrying a public purpose, through MDA. The grant of land under discussion was/is immune from the restriction contained in section 10(1) (2-A) for this reason also.

13. As to how and why Bahria is undertaking the development work within the controlled area, it may be observed that *firstly*, the lands wherein Bahria is developing its town has not been granted or allotted to it by GoS or MDA, but the same have been acquired by it by way of exchange through the five private owners who originally also owned

lands within the controlled area and gave away the same for the present lands to achieve mutual/reciprocal consolidation, *secondly*, the Act does not necessarily require even a master programme, or the Scheme(s) thereunder to be executed by MDA itself, on the contrary the various clauses of section 8 (1) & (2), more particularly clauses (xii) to (xv) of sub-section (2), envisages the development/ execution of the scheme(s), being undertaken by parties other than MDA also, in fact the Malir Development Authority (Consolidation/ Adjustment/ Exchange of private survey lands and state lands) Regulation, 2013, through its regulation 4(4), provides for issuance of development permits within the notified development scheme and controlled areas. The said regulation also prescribes a procedure therefor. *Thirdly*, the approved master programme itself provides for development by private housing societies and land(s) have been reserved for such purpose accordingly. *Fourthly*, the development being carried by Bahria is in consonance with the purpose and mandate behind the creation of MDA. Bahria is thus promoting a public purpose. It is now well settled that acquisition of land for developing a township or residential or commercial plots is a public purpose. Such an undertaking by a non-governmental concern is a norm rather



than an anomaly, and according to the learned counsel for Bahria even in the controlled area, and the area notified for the Master Programme, various concerns, developers, builders and housing societies have, and are undertaking such development, and to some of them like DHA and Fazaia, BOR itself has granted lands within the controlled area. As per learned counsel such allotment to DHA is made at a rate(s) far less than those applied in case of Bahria.

14. It is indeed true that the market price(s) notified on 29.6.2011, on the basis whereof the differential amount in the value of the subject exchanges were calculated were mostly lower than those fixed in the year 2006. However, the said prices of the year 2011 which were applicable at the relevant time, were fixed, approved and notified on the recommendation of a Scrutiny Committee constituted under condition No.8 (1)(b) of the relevant statement of conditions. The scrutiny committee was headed by the Senior Member BOR, with Secretary LUD, two representatives of Karachi Chambers of Commerce and Industry (KCCI), Executive District Officers of Karachi, Hyderabad and Jamshoro, as its members, and as evident from the minutes of its meeting dated 18.5.2011, the committee made such recommendations, after lengthy

deliberations in a series of meetings, wherein the proposal of the district price fixation committee were analyzed, thoroughly and the representative of KCCI apprised the committee that the rates of the government lands fixed in the year 2006 were three to four times higher than the real market price, which excessive rates discouraged investment in the industrial sector, hampered its growth, and diverted investment towards other venues, causing a heavy dent to the economy. According to him, due to recession, the market rate of lands had dropped to almost 50%. The KCCI representative supported the rationalization of rate done by ABAD and the District Price Committee, which were found to be in consonance with the than prevailing market prices. Similarly, the Chairman ABAD, apprised the committee that private owned lands were available for sale at rates below the rates notified in the year 2006, and suggested 35% to 50% reduction in such rates. The EDO (Revenue), Karachi also informed that prices recommended by the District Price Committee were in consonance with the prevalent market rates, which rates according to him, were mostly lower than the rates notified in the year 2006. He apprised the scrutiny committee that the bench marks recommended through condition No.2 of the

relevant statement of conditions notified on 25.2.2006, being, (i) the prices of lands transferred in the relevant locality for similar use during the past twelve months and (ii) the valuation table notified by the BOR, Sindh, in respect of similar lands, under the stamps Act, 1899, were kept in view, and all other appropriate means and method were employed by the district price fixation committee while assessing and recommending the market price. The scrutiny committee, in view of the foregoing and after taking into consideration the other relevant parameters, and collecting market intelligence, recommended four different categories of lands being category A-1, A, B, C, and also recommended fixation of per acre price of each such category of lands in different dehs, as per the than prevalent market price, which recommendations were duly approved and were notified on 29.6.2011. It may be noted here that before recommending the categories of lands as noted above, the scrutiny committee considered the recommendation of a sub-committee constituted under the members LUD, for the purpose, in that regard.

15. From the forgoing it is now abundantly clear that the subject exchanges have been affected in accordance with the law and that there has been no illegality in the process.

The exchanges were made to promote and facilitate the cause, purpose and intent behind the creation of MDA, being the development, improvement and beautification of the area. The development of a town that was made possible by the subject exchanges/consolidation of lands, has not only brought huge revenue and created opportunity for such generation with a much greater proportion in future also but has given to the port city of Pakistan, a new town with massive infrastructure, utilities and amenities and has also resulted in creation of jobs and business opportunities for good number of people. This development of the project has also largely contributed to the enormous appreciation in the value of the land in the area, which land is mainly owned by GoS and has given boost to the development activities around it. It is also likely to contribute to the economic and social wellbeing of the people who have been living in the area of the town and around it since before its development, which area until only a few years before was a desolate barren place.

16. Indeed it is one of the prime obligation of the State, the Government and the MDA, to provide for housing for lower and middle income group, however, looking at the level of capacity, capability, competence, conviction and commitment

of our public sector organization, and the lack of resources they suffer from, it cannot be said with any degree certainty that the controlled area would have been better-off without the subject exchanges and development that has taken place on the lands consolidated in consequence thereof, more so keeping in view the fact that MDA which was created in the year 1993 has till date not been able to make any substantial or significant development and has not been able to initiate any housing scheme since after its three schemes mentioned earlier, which too cannot be taken as example to emulate.

17. As regards the fact that many of the lands in exchange whereof the five private owners/Bahria were given the present lands were far away from the highway, it may be noted that in the first place it was only the owners of the said land who came forward for the offered exchange/consolidation and further that in the area where these private individual/Bahria have been given land in exchange, they in fact also own lands other than those they obtained in exchange and thus this area also was not free from private holdings, to enable MDA to develop its own scheme there. Furthermore the exchange and consolidation has been done for the mutual benefit of both the parties, by way of compaction and

consolidation of their lands. In fact the value and utility of the lands which were far away may also have improved substantially for the reason that the development and growth in the area in the shape of Bahria town and the development that has followed it, the said distant lands have become closer to the well developed and well grown areas, which has prompted further growth and development around it.

18. The above does not at all mean that the State/Government and the authorities and organizations working under it should abdicate their legal and constitutional role to develop, construct, and provide for housing and other amenities for the lower and middle income group. The GoS and MDA should therefore work towards enhancing their capability by employing/engaging competent and committed personnel with sincerity of purpose. They should provide funds for developing townships for lower and middle income group, keeping in view their welfare and betterment, and for self-contained, comfortable, sustainable, environmental friendly living with fast, convenient, economical and sustainable access and mobility, and with all other necessary facilities and amenities like, water, gas, electricity, parks, playgrounds, educational institutions and complete health care system.

19. It may be noted that Malir District which is under the jurisdiction of MDA comprises of 631848 acres of land and therefore there is no dearth of space or land for the planning and development of such schemes as envisaged above, and if done with proper planning, prudence, honesty, sincerity, and with professional approach some land can also be used for lawful commercial exploitation for generating funds for the proposed development.

20. However, since as noted above, the subject exchanges have been done lawfully and did not suffer from any blemish and there is not even a *prima facie* evidence of any malafide in that regards, nor has it been alleged that any officer involved in the exercise, made any personal gain out of it, the matter therefore does not call for any interference. Minor deviation of rules and regulations, if any, would not justify the judicial review of the subject decision made by the competent authority. It is now well laid down that where a competent authority makes a lawful decision, it would not be just and proper to interfere therewith as the decision made in accordance with the mandate of law falls within the domain of the executive. It is not for the courts to determine as to whether a certain policy or a particular decision in pursuance

of such policy is fair or appropriate. The power of judicial review should be exercised by the Courts in furtherance of public interest and it is only in cases where it would be in the larger public interest.

21 However, since some of the lands received by MDA in exchange from the private owners are distantly located, and though it is claimed that the differential amount charged is based on the market price lawfully determined, by keeping in view all relevant factors, but, since not much material in respect of such claim has been placed before us and the learned counsel for Bahria has himself offered reevaluation of the lands involved and to pay any further amount thus found due and payable, we therefore find it appropriate to constitute a Committee comprising of the following persons:-

Mr. Nasir Mahmood Khan Khosa, Ex-Chief Secretary, Punjab, Lahore	Chairman
Mr. Shabbar Zaidi, Managing Partner, AF Ferguson & Co., Chartered Accountant, Karachi	Member
Secretary, LUD, GoS	Member
Secretary, Finance, GoS	Member
Mr. Arif Hassan, Architect, Visiting Professor, NED University, Karachi, Chairman Orangi Pilot Project, Research and Training Institute, Karachi	Member
Mr. Kaiser Bengali, a prominent economist, Karachi	Member



Mr. Jamil Yousef, Chainman TPL Corporation Ltd., former Chairman CPLC, Karachi	Member
Mr. Karamat Ali, Executive Director, Pakistan Institute of Environmental and Labour Research, Karachi	Member
One (01) member from KCCI, to be nominated by the Chairman in consultation with the president KCCI who should preferably be from real estate business.	Member

The Committee shall assess and evaluate the market price(s) of the lands exchanged between MDA and the five private owners/Bahria that prevailed at the time of the exchange(s), by first bifurcating the lands into different categories, keeping in view the relevant characteristics of the various parcels of the lands in terms of their distance from super highway and those other approaches that were available at the relevant time. The other factors that shall be kept in mind in effecting the above categorization shall be the distance of each portion of the land from the general post office, Karachi, or from any other landmark found appropriate, its contiguity, contours and topography, and may be its geology, if and where relevant. The exercise shall be carried out with the assistance of the senior most officer from the Survey of Pakistan and also with

assistance of such officer from the Survey Department of Government of Sindh, qualified and competent to conduct and/or supervise the same. The committee shall on the recommendation of Mr.Arif Hassan, Architect, Member of the Committee, also engage independent experts/professionals from amongst the best in the field, in terms of qualification, experience and integrity, to be part of the survey and demarcation Team. Upon the above categorization the Committee shall proceed to assess and evaluate the market price of each of the said categories for a development project with reference to the relevant time. In doing so the Committee shall keep in view the location of each category, its contiguity, its distance from the super highway, and also from all other approaches that existed during the relevant time and also the quality, width and motorability thereof. The other determining factors should also include the availability, nature and distance of potable water, gas and electricity, the estimated cost of providing basic amenities to the said categories/zones with reference to the relevant time and the price at which similar category/nature and sizes of lands were sold in the vicinity, or similar vicinities during one year of the relevant time. Information regarding the relevant market price shall

also be gathered from independent Estate dealers of high repute and integrity, who have been operating in the area since before 2014 and had worked as such at least upto the year 2015. Such information should be duly verified and authenticated in the safest possible manner. The Committee shall also seek assistance from some highly reputable property evaluators/assessor, from amongst the panel nominated by the State Bank of Pakistan and the scheduled banks in the country. The future potential that the land promised at the relevant time shall also be kept in mind. The Committee shall also adhere to the other recognized principles and practices in vogue for the requisite assessment/evaluation. All material containing the relevant information, and/or on the basis whereof the Committee and/or any of its member rely, for its analysis and evaluation, shall form part of the report. Before submitting its report the Committee shall also hear an accredited representative of Bahria Town. Since the Committee comprise of Economists, Chartered Accountants, Architects, businessmen, Government Officials and other persons of eminence from different fields, they also may, on their own, or with the assistance of such professionals/experts whom they find suitable, prescribe the evaluation

criteria/formula, and the ways and means for conducting and carrying out the above exercise. The Malir Development Authority, Karachi Development Authority and all the departments/functionaries of the GoS particularly, the Local Government Department, Commissioner Karachi, Board of Revenue, Land Utilization Department, The Municipal Commissioner, Karachi, Secretary Finance, Government of Sindh, Home Secretary, Government of Sindh, who may be called upon by the Committee to facilitate and to provide assistance to the Committee in carrying out the above mandate, shall readily and promptly meet the requisition. The IGP, Sindh as well as DG Rangers shall provide adequate security to the Committee Members during the conduct of the above task, as and when required by them. Bahria Town shall bear all expenses incurred in the above exercise, including the remuneration of the professionals/ staff/field staff engaged by the Committee for the task, and shall also provide to the Committee and its field staff the required transport. The fee of the Members of the Committee shall be determined by the Court keeping in view the volume of work done and the time consumed. Bahria Town shall within four days from today deposit with the Nazir of the High Court of Sindh an amount of

Rs.20,00,000/- (rupees Two hundred thousand only) towards the expense that may be incurred by the Committee and shall, deposit such further amount as and when may be required by the Committee. The amount so deposited shall be released by the Nazir as and when requested by the Chairman of the Committee to enable the committee to meet its expenses towards its task. The committee shall conclude the above assigned task within two (02) months from today and submit its report to the Court so that appropriate order be made by this Court accordingly. The Registrar of this Court shall instantly inform the Chairman and Members of the Committee about the instant order and send to them copies of the order so that a preliminary meeting of the committee be convened by the Chairman at the earliest and the committee may proceed to comply with the orders at a fast pace.

(Justice Maqbool Baqar)

**Faisal Arab, J.-** I have had the privilege of going through the judgment proposed by my learned brother, Ejaz Afzal Khan, J and am in respectful agreement with his opinion. However, I wish to discuss certain aspects of the case as I look at them.

2. The record produced on behalf of Malir Development Authority (MDA) reflects that in the meeting held on 30.01.2013, a decision was taken to provide 2500 low-cost housing units in all MDA schemes in line with the Prime Minister's Housing Program. On that very day thirty-seven *Dehs* of Karachi were notified as controlled area of MDA. The number of notified *Dehs* was later raised to forty-three on 20.05.2013. Minutes of MDA's meeting held on 23.07.2013 show that Director General, MDA has sent a summary to the then Chief Minister seeking approval of MDA's own housing schemes described as Schemes No. 2 to 4. This summary was followed by another summary for revival of Malir Development Authority Act, 1993 which at that time was not in force. On 27.11.2013, Malir Development Authority (Revival & Amending) Ordinance, 2013 was promulgated reviving Malir Development Authority Act, 1993 with retrospective effect. After such revival, the then Chief Minister of Sindh on 26.12.2013 approved the proposals made in the summary dated 23.07.2013 for launching MDA's schemes No.2 to 4 and for this purpose MDA's governing body i.e. the Board needed to be constituted which was accordingly done on 20.01.2014 and on the very next day i.e. 21.01.2014, the newly constituted Board convened its meeting and sent a summary to the Government of Sindh to reserve nine out of forty-three *Dehs* for its housing schemes.

3. The record of this case also reflects that while all this was being done, Bahria had already emerged on the scene on 25.09.2013 and through extensive publicity invited applications from the general public for grant of membership against payment of Rs.15,000/- as only members were to become eligible for making bookings in its three schemes namely 'Bahria Icon Tower' in Clifton, 'Bahria Tower' on Tariq Road and 'Bahria Town, Karachi. The location of the last mentioned scheme, which is the subject matter of these proceedings, was however not disclosed at that point in time. On 26.01.2014, through another cycle of advertisements, Bahria for the first time disclosed to the public the approximate location of its scheme 'Bahria Town Karachi' as 9 KM from Karachi Toll Plaza on the Super Highway and a 25-minute drive from Jinnah International Airport. The advertisement offered for sale (i) residential plots measuring 2000, 1000, 500, 250 and 125 square yards, (ii) commercial plots measuring 250, 200 and 125 square yards, (iii) built-up houses on plot sizes 125 and 200 square yards and (iv) apartments having 2, 3 and 4 bedrooms. Residential plots were priced between Rs. 8,600/- per square yard to 14,250 square yards. Commercial plots were priced between Rs.99,600 to Rs,100,000/- per square yard. In February, 2014 an overseas block of the scheme was also launched offering plots to non-resident Pakistanis at rates charged in US dollars, which were relatively higher than what were offered to the general public. Bahria then started developing its scheme in *Dehs* that were part of MDA's notified area and that too in absence of any lawful agreement to launch its scheme with MDA. Thus Bahria expanded its scheme in five *Dehs* falling within MDA's controlled area namely *Deh Bolhari*, *Deh Langhaji*, *Deh Konkar*, *Deh Kharkharo* and *Deh Kathore*.

Several copies of the minutes of MDA's Board meetings of 2013 and 2014 have been filed but none of them reflect that Bahria was granted permission to launch its scheme on the land falling within MDA's controlled area. On the contrary at that point in time MDA had sent another summary dated 21.01.2014 to the then Chief Minister wherein nine *Dehs* of controlled area were identified for launch of MDA's own housing schemes. In the said summary there was no mention of allowing Bahria to launch its own scheme in any *Deh* falling in MDA's controlled area.

4. While the work on Bahria Town scheme was underway on the land on which MDA on papers was planning to launch its own schemes, Bahria set out four of its agents on a shopping spree to purchase whatever land they could find in other *Dehs* falling in MDA's controlled area with the sole intention to exchange the same for the land in *Dehs* on which Bahria had already launched its scheme. These four agents then claimed to have succeeded in 'purchasing' 7068 acres of small and medium sized scattered parcels of land located at scores of far flung locations of thirty-nine notified *Dehs*. It has come on the record that in many cases, title of owners who had sold their land to the agents of Bahria was either not complete as their co-owners had not agreed to sell their share or the title of certain lands was not duly verified. However, Bahria's agents very conveniently and in no time succeeded in exchanging the land they claimed to have lawfully purchased with the land which Bahria had already occupied and commenced work on its scheme since January, 2014. Thus, it is apparent that the Bahria Town Scheme was launched at a time when Bahria's agents had not even completed



their task of purchasing lands, which could be exchanged with MDA. Satellite imageries of the township also confirm that Bahria had started development work on the ground by constructing roads and carving out plots soon after inviting applications from the general public in January, 2014 i.e. much before the agents of Bahria had completed their task to purchase land in far flung areas which were to be offered in exchange. Thus, it has become quite apparent that Bahria entered upon MDA's controlled area for launching of its own scheme without any written authorization in this behalf from MDA. It is for this reason that no demarcation of the land that was to be assigned for Bahria's scheme was ever carried out. One cannot imagine that MDA would allow Bahria to invite applications from the general public and enter upon a very vast expanse of land falling within its controlled area starting right from main Super Highway without any backdoor understanding.

5. From the minutes of several meetings held by MDA's Board and the summaries sent to the then Chief Minister in the years 2013 and 2014, it is evident that Malir Development Authority Act, 1993 was revived in November, 2013 and its Board constituted to facilitate launching of its own schemes in eleven out of forty-three *Dehs* falling within its controlled area. For such purpose, MDA also hired services of Logix Private Limited on 03.09.2014 for a hefty fee of Rs.280 million to act as its consultant in the preparation of master program Scheme No. 2 to 4. It is also astonishing to note that MDA hired services of yet another consultant namely ECIL in the same year i.e. 2014 for another hefty fee of Rs.280 million to act as its consultant in the preparation of master program No.1, Scheme 1 on the

remaining thirty-two *Dehs* falling within its controlled area. The entire paperwork of MDA's intentions to launch its own schemes after engaging two consultants for a hefty consultation fees of Rs.560 Million as is evident from several minutes of the meetings and summaries sent to the then Chief Minister seems to be was just a hoax, an eye wash. The quiet understanding was to allow Bahria to launch its own housing scheme in five *Dehs* and derive whatever benefits it can. Thus most prized piece of land in MDA's entire controlled area located near the developed area of Karachi was quietly allowed to go into the hands of Bahria merely on the pretext of exchange for scores of scattered parcels of lands located in the remote parts of thirty-nine *Dehs*, title of which too was not entirely free from doubt.

6. Malir Development Authority (MDA) as the name suggests, is an entity entrusted with the obligation to plan, develop and execute housing schemes in its controlled area. It was argued that MDA allowed Bahria to launch its scheme on account of its financial constraints. The MDA's record show that the main reason that prompted MDA to launch its housing schemes in the year 2013 was to generate funds to ameliorate its precarious financial condition. This object could have only been achieved had MDA itself sold plots to the general public and not by giving up land in its prized five *Dehs* to Bahria, which then went on to occupy 12157 acres of land. What a pity that MDA with the largest government land available at its disposal in the city of Karachi which would have made it the most financially viable public sector development authority of the province, squandered the opportunity in favour of

Bahria at a stage when it was a cash strapped entity. Record also reflects that MDA has benevolently worked out the value of 7068 acres of most priced land in MDA's controlled area at Rs.6.12 Billion. This value for land located in the city which is commercial hub of the country is ridiculously low. This reminds me of the value of land having the potential to be utilized for housing that was prevalent at about the same time i.e. four or five years ago in Matli, District Badin, Sindh where I am from. There the value of land on the outskirts of Matli Town for its utilization for housing at that time was around Rs.5,000,000/- (five million rupees) per acre. Matli is only a town, it is not even a district. 95% of the readers of this opinion would not even know whether any town by this name exists. Here we are dealing with land located in Sindh's largest city which is not only a port city but the commercial hub of the entire country.

7. It is also surprising to note that in the written arguments counsel for Bahria has claimed that apart from the price of 7068 acres of land, Rs.8889.064 Million, in other words Rs.8.89 Billion are also payable to MDA towards various charges, scrutiny fee, advertising charges, town planning fee etc. out of which 3754.136 Million have been paid and the balance Rs.5134.928 Million is outstanding. This can't be correct. It is unimaginable that above referred charges could be to the extent of Rs.8889.064 Million or Rs.8.89 Billion exceeding even the value assessed by MDA for 7068 acres of its land. The quantum of such charges appear to be misleading. Considering the stature of the counsel who have stated so in his written submissions, hopefully such misleading figures may not have

been deliberately stated and could be on account of some typographical mistake.

8. It is claimed that Bahria is presently in occupation of 12156 acres of land, well beyond 7068 acres occupied in exchange for scattered parcels of lands located in the thirty-nine *Dehs*. Let us as an example work out an approximate financial worth of atleast these 7068 acres only, which can be done on the basis of facts and figures that have come on the record. When 40% of 7068 acres i.e. 2,827 acres are excluded on account of its utilization for amenities such as roads, pathways, mosques, parks and other public places etc., the remaining 60% area i.e. 4241 acres could safely be presumed as marketable land, having the potential of being offered for sale as residential and commercial plots, built-up houses and apartment buildings or put to other revenue generating enterprises of Bahria Town itself. The area of 60% of marketable land translates into i.e. 20,525,472 square yards. 7% of this marketable area could safely be said to come under commercial use and the remaining 93% under residential. The average price for commercial plot fixed by Bahria itself in its advertisements in the year 2014 was Rs.99,600/- per square yard. This commercial rate for 7% of marketable land (1,436,783 square yards) at the advertised rate translates into Rs.143,103,591,000/-. The remaining 93% of marketable land (19,088,689 square yards) at an average rate at which Bahria sold residential plots to the general public i.e. Rs.10,000/- per square yard translates into Rs.190,886,890,000/-. Both these estimates of residential and commercial use are for 60% of 7068 acres only. The value of the remaining 40% land has not been taken into consideration as the

same is allocated for various public amenities such as roads, pathways, mosques, parks and other public places etc. It may be clarified here that Bahria's financial gains from constructed built-up residential houses, apartment buildings as well as other revenue generating facilities in the scheme have not been taken into consideration in the above estimates as profits made therefrom does not relate to estimating the financial worth of the marketable land out of 7068 acres of land. This value on the basis of above computation can be summed up as follows: -

Value of commercial utilization of land:	Rs.143,103,591,000/-
Value of residential utilization of land:	Rs. <u>190,886,890,000/-</u>
Total value of both the above:	Rs. <u>333,990,481,000/-</u>

From the above revenue estimate of approximately 334 billion rupees following estimated expenses can safely be deducted to arrive at the net gain which Bahria would have eventually made from marketable land only.

In Billions Rupees

<b>Estimated revenue as worked out above:</b>		<b>334</b>
Less: planning and consultancy charges etc.:	2	
20% of revenue for infrastructure/ amenities:	67	
Management, admin expense:	7	
10% of total revenue for Bahria as its role of property developer:	<u>33</u>	
Total deductions from gross earnings from land only:	<u>109</u>	<b><u>109</u></b>
Net estimated gain from marketable land:		<b><u>225</u></b>

9. From the above estimate of net gain it is quite apparent that Bahria could exclusively make a whopping 225 Billion Rupee from 7068 acres of land at the cost of MDA surrendering its role as a real estate development authority. Had MDA launched its own schemes on the land in question with all sincerity and honesty and had hired services of experienced and reputable real-estate consultants and land developers or for that matter even entrusted the development and planning works to Bahria for a hefty fee even then notwithstanding the incompetency and lack of vision of its management, the net gain for MDA would have at least been somewhere around 150 Billion Rupees as against the 225 Billion Rupees of net estimated earnings which Bahria was going to make from 7068 acres of land. What a charity on the part of MDA at the state expense to say the least whose own job is to plan, develop and execute such schemes and not to barter away land which it obtained from the Board of Revenue at concessional rates for launching its own schemes. What a pity that MDA, with the largest government land available at its disposal in the city of Karachi and with it came the opportunity of becoming the most financially viable public sector development authority of the province threw the opportunity out of the window and continue to remain a cash-strapped entity not having sufficient funds even to pay for the salaries of its employees in time.

10. MDA had the chance to generate a huge amount of money which would have been used for developing other areas falling under its controlled areas but it squandered the opportunity. The functionaries of MDA and Government of Sindh very graciously

allowed its most prized land located in its controlled area near the developed area of Karachi to be occupied by Bahria and to justify such occupation got it exchanged for scattered parcels of lands located in the most remote parts of thirty-nine *Dehs* was used in defence. Even if it is presumed that wrong decision on the part of MDA and the Government of Sindh was on account of their inefficiency and incompetency, if not for anything else, all this has caused a colossal financial loss to MDA which cannot be ignored and must be probed into. The exchange in question even otherwise is prohibited under Section 17 of the Colonization of Government Lands Act, 1912 and there is a sound reason for that. The status of *Qabooli* land is that of a freehold property. Its ownership is in perpetuity, hence vests in the person who owns it in absolute terms. The reason behind imposing prohibition on exchange of *Qabooli* land with the land granted by government on lease is that land granted on lease, be it for 30 years, 99 years or any other term, becomes a source of income for the government. Upon expiry of lease period the same becomes renewable only on payment of lease money. If such land is exchanged with *Qabooli* land then the person who has surrendered *Qabooli* land for leased land may claim that his title to the exchanged land be also treated the same i.e. in perpetuity as was held by him in the *Qabooli* land which he gave in exchange. The legislature did not intend to allow such a claim to arise as it would close a perpetual source of income for the government upon expiry of lease period, which is necessary to augment financial resources to run its affairs. It is for this reason that prohibition on exchange with *Qabooli* land has remained in force on

land that is granted under the provisions of Section 10 of the Colonization of Government Lands Act, 1912.

11. Bahria Town Scheme no doubt has a dynamic modern design and its layout gives a spectacular look and is also being well organized by its management but does that mean that this should be one of the considerations in overlooking the illegality committed in the transfer of MDA's land in its favour. From the voluminous record of MDA placed on record it is established that no Board meeting of MDA was held in which decision was taken as to what land from its controlled area was to be handed over to Bahria for its scheme, what to speak of settling the terms and conditions on which it was to be handed over. It is for this reason that no site plan was prepared to show on what date, how much land, from which *Dehs* and with what boundaries is being handed over by MDA to Bahria. Presently Bahria is in occupation of 12157 acres in the above referred five notified *Dehs* which MDA had acquired from Board of Revenue at concessional rates for launching its own schemes. It is really astounding that Bahria first occupied most valuable land available in MDA's controlled area without any legal process and straight away launched its scheme and later requested MDA to exchange the land under its occupation for several parcels of land which Bahria at its own convenience had purchased through its agents in far off scattered locations of thirty-nine *Dehs* and MDA and Government of Sindh bent backwards in obliging it and quietly abandoned the launch of MDA's housing schemes on such land. Bahria may have the reputation of being one of the leading property developers of Asia but then it should do its business on legitimately acquired land.



Bahria's remarkable reputation as property developer cannot weigh in when the validity and legality of the state land that it had occupied is examined. I, therefore, entirely agree with the comprehensive and well-reasoned opinion of my learned brother, Ejaz Afzal Khan, J declaring the whole transaction between MDA and Bahria to be nullity in the eyes of law.

**JUDGE**

Dated: 4<sup>th</sup> of May, 2018.

**ORDER OF THE COURT**

With the majority of two by one, the final order of this Court is recorded in paragraph 18 above of the majority judgement.

**JUDGE**

**JUDGE**

**JUDGE**

Islamabad  
04 May 2018  
Barrister Sohaib Shahid