

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.9429 of 2021

Public Interest Law Association of Pakistan

Versus

Environmental Protection Agency, Punjab through Director General & others

J U D G M E N T

Date of Hearing.	21-12-2021
PETITIONERS BY:	Mr. Ahmad Rafay Alam, Waqar A. Sheikh, Fahad Malik, Ch. Muhammad Shahid Iqbal, Sheraz Zaka, Rana Muhammad Mehtab, Ijaz Ahmad Khan, Malik Nazir Ahmad, Barrister Amir Zafar Khan, Mirza Muhammad Ahmad, Shezada Mazhar, Tassawar Suhail Bhalli, Humaira Afzal, Razaqat Ali Dogar, Syed Faisal G. Meeran, Syed Ali Zakir Gillani, Tayyab Abbas, Wahab Anwar, Syed Kamal Ali Haider, Shehzad Ahmad Cheema, Mian Faisal Naseer, Farrukh Ilyas Cheema, Asim Sarfraz Uppal, Ch. Sabir Ali Kamboh, Sardar M.S Tahir, Faisal Anwar, M. Zeeshan Sulehria, Muhammad Faizan Saleem, Ch. Liaqat Ali Anjum, Khawaja Haseeb Ahmad, Jawad Khan Lodhi, Muhammad Usman Sheikh, Hassan Mehmood Bhalli, Advocates.
RESPONDENTS BY:	M/s Syed Ali Zafar, Shazib Masud, Asad Buttar, Haseeb Ahsan Javed, Jahanzeb Sukhera, Asna Ahsan, Mehak Zafar and Fareeha Arif, Advocates for RUDA. Sahibzada Muzaffar Ali, Advocate for LDA. Mr. Ahmad Awais, Advocate General, Punjab. Mr. Anis Ali Hashmi, Addl. Advocate General. Rai Shahid Saleem, Addl. Advocate General. Mr. Tayyab Jan, Asst. Advocate General with Nawaz Manik, Director Law E.P.A., Abdul Haseeb Khan, Executive Director (Legal) RUDA, M. Umer Hayat, Law Officer, Majid, SDFO and Faizan Ahmad, SDFO.
AMICUS CURIAE:	Ms. Aminah Qadir, Advocate/ <i>Amicus Curie</i> . Mr. Issam Bin Haris, Advocate/ <i>Amicus Curie</i> .

Shahid Karim, J:-. This judgment will also decide
connected petitions mentioned at ‘Schedule I’

attached herewith. This set of litigation seeks multifarious reliefs. It is difficult to categorize the petitions into sub-sets on the basis of challenges made and relief sought as these are inextricably interwoven but collectively all challenges converge on the legality of a project known as Ravi River Front Urban Development Scheme (“**the Project**”). The project has been conceived and is proposed to be accomplished by Ravi Urban Development Authority set up under Ravi Urban Development Authority Act, 2020 (“**Act, 2020**”).

Overview:

2. The Project is sought to be established by the process of acquisition and the manner for such acquisition has been given in the Act, 2020 as also reliance has been placed on the Land Acquisition Act, 1894 (“**the Act, 1894**”) for which a notification by the District Collector, Sheikhpura has been issued on 06.10.2020. This was followed by a notification under Section 5 on 08.01.2021. Similarly, for areas falling in the Lahore District, a notification under section 4 of the Act, 1894 was published in the official gazette. It has been informed that cumulatively an area comprising 107000 (approximately) acres in total is being acquired by the Authority for setting up of the Project (in three phases). According to RUDA’s

own showing, seven mauzas (320 acres, 2 Kanal, 12 marlas) have been acquired in Lahore whereas in Sheikhpura, a total of sixteen mauzas (4239 acres, 4 Marlas) are the subject of acquisition till date. The features of the Project have been brought forth in the written statement filed on behalf of Ravi Urban Development Authority (“RUDA”) by stating that:

1. *“That the Ravi Riverfront Urban Development Project envisages revival of the dying River Ravi and will provide a recharge of the River Ravi and the entire eco system around it along with an entirely new green city on the River Front. The word project is a misnomer as an entire new city with its green initiatives will add 11 percent green cover. It will be pertinent to mention here that only Lahore currently stands at only one percent to green cover. For this purpose, Ravi Urban Development Authority (the answering respondent No.2) has been established through Act of the provincial Assembly on 11.08.2020.*
2. *That it will be pertinent to mention here that the project has environmental as well as, strategic benefits. The first and foremost benefit being of flood protection which is currently absent and is a huge threat to greater areas of Lahore adjacent to River Ravi. Secondly, India has already made several dams along the River and can control the flow of water and take advantage of water storage. The RRUDP will also give this benefit to the people of Lahore by installing water treatment plants, water storage and eco zones. This will allow a positive impact on both flora and fauna.*
3. *That the RRUDP project will create seventy million jobs and this job creation in a jobless economy will have multifaceted benefits. The goal globally is sustainable development and protecting the environment goes hand in hand with job creation, better living conditions, clean water, green initiatives, green buildings, better habitation and facilitation for the people. RRUDP is a green initiative project at heart and the goal is to provide a city of the future that not only provides better living environment but also brings to the people a city equipped with the challenges of the future both strategic and otherwise.*
4. *That in order to implement this already declared complex and strategic project preliminary study of the area, preliminary engineering and environmental studies were undertaken and a letter by the respondent was sent to the Environmental protection*

Agency (respondent No.1) for advice, as well as, necessary fulfillment of all requirements to carry out a detailed EIA before inception of construction. Letter dated 30.12.2020 followed by another letter dated 04.01.2021 along with a detailed EIA was submitted.”

“8. That clarity and in response to different objections of the petitioners in the titled and connected petitions, it is humbly submitted that the Government of Punjab initiated a Ravi Riverfront Urban Project, for which a detailed study was carried out by an international Consultant Meinhardt which did the comprehensive study of Urban planning, strategic plan, wastewater treatment study and implementation, river training works and channelization which would impact the water table level raising, accordingly a Master Plan for the Project was integrated by the LDA in the Amended Master Plan issued by LDA for Lahore Division and approved by LDA in 3rd/2016 Board Meeting of the LDA held on 14.07.2016 and the said amended Master Plan for Lahore Division was notified by the LDA in the Official Gazette dated 25.07.2016 clearly notifying the area of the project, which is duly protected/validated as area of the authority. Further, the Government of Punjab in order to implement the said project created a special purpose Authority Ravi Urban Development Authority to further carry out the purposes of Ravi Riverfront project, and an Authority was created through Ravi Urban Development Authority to further carry out the purposes of Ravi Riverfront project, and an Authority Act 2020 on 11.08.2020. Under RUDA Act section 51 all actions taken and decision made by either LDA or Government of Punjab were saved and were made to continue and deemed to have been made under the RUDA Act. The Master Plan for the Project was adopted by RUDA in the 2nd Board Meeting of RUDA dated 14.10.2020 and duly sanctioned and approved in the 3rd Board Meeting of RUDA dated 23.12.2020. Thereafter, the said area reserved for the Project was notified in the Official Gazette on 25.05.2021 and 08.06.2021.”

3. The statement set out above was sought to be augmented by written submissions by Mr. Ali Zafar, Advocate and a booklet presented by Mr. Shazib Masud, Advocate and compiled by RUDA to shed light on the various contours of the Project which epitomize the purpose of RUDA and lends it

actuality. It is unnecessary to advert to the booklet (and the written submissions) and its contents as these are beyond the scope of the written statement to which I shall remain confined. RUDA submits that its role is sartorial and is conceived to set up a state of the art suburban centre with water conservation, control of degradation and pollution of river Ravi, control of rapid urbanization of Lahore city, flood protection, air quality, improvement of Lahore city etc. as its core objectives. These are all laudable aims yet this Court is not concerned with the technical aspect of the Project which is for the experts to see. We are here engaged in analyzing the legality of RUDA's actions in setting up the Project and ancillary matters, in doing so.

4. I will pause here to layout the legal limits of judicial scrutiny in these petitions. Traditionally, courts are not concerned with the decisions but with the decision-making process. It is important because all executive powers are derived from Parliament and Parliament never confer unfettered statutory powers on the executive. The courts must act in a supervisory capacity to determine the proper legal limits of a power which is a question of law. The fundamental principle is that the courts will intervene to ensure the powers of a decision-maker are exercised lawfully (*Page [1993] A.C. 682 at 701*).

Lord Steyn (U.K House of Lords) has explained, extra-judicially:

“The proper constitutional relationship between the executive and the courts has often been stated. The courts will respect all acts of the executive within its lawful province, and the executive will respect all decisions of the court as to what its lawful province is. When the executive strays beyond its lawful province the court must on behalf of the people call it to account.”

5. It is not in dispute that the Project was not originally conceived by RUDA as its historical pedigree would show. It was initially conceived by Lahore Development Authority (“LDA”) as part of the Integrated Amended Master Plan of Lahore Division (Integration of existing urban development plans of remaining areas). The Amended Master Plan (AMP, 2016) was initiated by LDA and while referring to the circumstances LDA states in its written statement that:

“It is further submitted that Integrated Master Plan of Lahore was approved by Lahore District Council in 2004. After enhancement of jurisdiction of LDA, amended master plan of Lahore Division was prepared. The boundary of Ravi Riverfront Urban Development Project was also marked in the amended master plan of Lahore Division 2016 (Annex ‘A’). It is submitted that Ravi Riverfront Urban Development Project (RRUDP) was conceptualized in 2013. The proposed project aimed to rehabilitate and develop the dyeing Ravi River into a perennial fresh water body, with high quality waterfront urban development on reclaimed and adjoining land. The LDA Authority in the meeting held on 12.9.2013 and 28.11.2013 directed for issuance of Notifications U/s 18, 13 of LDA Act, 1975 and U/s 4 of Land Acquisition Act, 1894 for area of River Ravi Development Zone Project falling in District Lahore and District Sheikhpura. In compliance with the decisions of the Authority, Notifications U/s 18 and 13 (3) of LDA Act, 1975 and U/s 4 of the Land Acquisition Act, 1894 was

published. Copies of notifications are annexed in Writ Petition page 55 to 583.

In 2020, Ravi Urban Development Authority was established under the RUDA Act, 2020. Afterwards, Chairman RUDA vide letter dated 6.10.2020 requested Director General, LDA to de-notify the area of Ravi Riverfront Urban Development Project. Accordingly, LDA de-notified all the area vide de-notification dated 6.10.2020.”

6. Thus, the Project was part of the Amended Master Plan of Lahore Division which was prepared in the year 2016. An interesting fact to be noted (and which was flagged by the learned counsel for the petitioners in the oral arguments) was that in AMP, 2016, merely the boundary of Ravi Riverfront Urban Development was marked without more. This argument finds support from the written statement filed by LDA and referred above. This aspect will assume greater significance as this opinion proceeds to deal with the challenges made by the petitioners. Later on, as is evident from the reply of LDA set out above, the Project did not proceed beyond the stage of conception and no further steps were taken to have it completed. Finally with the establishment of the Authority, the area of the Project was de-notified by LDA vide de-notification dated 6.10.2020. During this period, LDA (Amendment Ordinance) 2021 was promulgated on 13.04.2021 to amend Lahore Development Authority Act, 1975 (“**LDA Act, 1975**”) and accordingly jurisdiction of LDA was

contracted and was confined to Metropolitan area of Lahore. In terms of the amendment, LDA proceeded to transfer the record of the housing schemes located in District Sheikhpura to Municipal Corporation, Ferozwala vide letter dated 20.05.2021. It will be noted that although the Act, 2020 establishing RUDA had been promulgated, LDA did not transfer the record of housing schemes to RUDA and on the other hand transferred those records to the local governments concerned.

Issues:

7. As adumbrated, this set of petitions can be broadly categorized on the basis of the challenges made in them, and set out below:

i) The Act, 2020 is ultra vires the Constitution as also the notifications under Section 4 of the Act, 1894 which offend not only the Punjab Environmental Protection Act, 1997 but also Article 140A of the Constitution of Islamic Republic of Pakistan, 1973 (“the Constitution”). The conversion of agricultural land for setting up of the Project offends Article 9 of the Constitution which enshrines the right to life.

ii) Notwithstanding the above, the action taken by the Board of RUDA and its officers including CEO are ultra vires the provisions of the Act, 2020 and are therefore illegal.

iii) The approvals by the Environmental Protection Agency are unlawful and prior conditions mentioned in law for consideration

and approval of EIA have been infringed in the matter of setting up and establishing the Project.

iv) The acquisition process is ultra vires the constitution and the provisions of the Act, 1894 ought to be struck down or in the alternative read down in such a manner that the acquisition should not be permitted in respect of cultivable and agricultural land as this relates to the issue of food security which is a fundamental right under the Constitution.

Background facts:

8. The factual backdrop of these cases is essential to be set out in order to lend actuality to the opinion that follows.

9. The Project which is now the subject of challenge in these petitions on various grounds was firstly conceived by LDA in its meeting held on 02.07.2013. The discussion which took place in the meeting of the Authority related to Lake View City near River Ravi in the north of Lahore. The entire case put up by the Authority will have to be reproduced in order to understand the precise nature of the Project and the decision taken on it by the Authority. It stated that:

- 1. "Prime Minister of Pakistan held a meeting at PM Camp Office Raiwind on June 22nd, 2013 to review the progress on realignment of the Southern Loop of Lahore Ring Road (LRR) and development of Lake View City along River Ravi. After the briefings, the Prime Minister shared his vision for the development of Lahore with the participants and emphasized that the development of these components had to be thought of as part*

- of an integrated regional development plan to transform the direction and type of City growth.*
- 2. Prime Minister observed that the growth of the City had taken a Southwest trend due to acceptance of Ravi River as a natural barrier to the City. He said that modern cities such as London had engineered rivers to become a natural feature of the City and had unleashed immense potential of adjacent areas to drive the cities forward economically. He said that, in a similar fashion, he expected Lahore to use this natural river to its advantage and develop the area on both river banks by containing Ravi River in a channel. He said that developing lakes on the river would add numerous entertainment options for the City, including water-based recreation. He further said that development of the river would beautify the City, create prime waterfront property and open access to cheaper land across the river for settlement.*
 - 3. Prime Minister further observed that the Lahore Ring Road, Ravi River development (including Lake View City), Walled City Project and the restoration of heritage sites such as tombs of Noor Jehan and Jehangir, were part of an integrated project to drive the city forward and required board thinking. He said that the immense economic potential of the City would be enough to fund this entire development if creative financing techniques were used to leverage land assets. He said that the success of this project would provide a blueprint for replication in other cities such as Multan, Bahawalpur and Faisalabad.*
 - 4. In this regard, LDA had already identified a project measuring about 17,000 Acres in the name of Lake View City, Lahore which will reduce the burden on existing infrastructure, to meet the growing demands of housing, provision of recreational facilities to encourage the development in the Northern Lahore. Similarly, the land along downstream stretch of river will also be utilized by narrowing its channel width for housing and other commercial purposes.*
 - 5. The new river front City of Lahore will accommodate the land uses like entertainment area, commercial, cultural area, and residential area / apartments, service area, masjid, graveyard, parks etc. Moreover, this Project will not only provide a breathing space for the residents of Lahore but will also serve the neighboring towns like Sheikhpura and Gujranwala etc.*
 - 6. The Project execution requires river channelization through barrages, dikes and river channelization through barrages, dikes and river training works, waste water treatment and land acquisition which needs huge financial resources*

for land acquisition and this Mega Project development works.

- 7. The LDA is not financially in a position to launch this Project at its own. It requires a bankable feasibility study by reputed international / local firms so that International / local funding can be utilized to meet the expense of this Mega Project.*
- 8. It is suggested that Urban Unit may be entrusted the task for selection of the Consultant and undertaking the Feasibility Study on Single Source basis being a Government owned company. Govt. of the Punjab may also be requested to contribute in funding of the Study.*
- 9. The case is submitted for consideration and approval of the Authority.*

10. The meeting, it is evident from the above, was presided by the Prime Minister to review the progress on alignment on the southern loop of Lahore Ring Road and development of Lake View City along River Ravi. It seems that broadly the Project was described as Lahore Ring Road, Ravi River Development which included Lake View City and was to be part of an integrated project to drive the city forward. The Authority was informed that LDA had already identified the Project measuring 17000 acres by the name of Lake View City, Lahore which in the opinion of LDA would reduce the burden of existing infrastructure and meet the demand of providing recreational facilities in Lahore. It was also noted in the meeting that financially LDA was not in a position to launch the project and would require a feasible study by a reputed firm so that international/ local funding could be utilized to meet

the exigencies of the mega project. The decision taken by the Authority is encapsulated as under:

“The case regarding “Ravi Zone River Front Development” was placed before the Authority. The Authority discussed the matter at length and approved to entrust the task for selection of the consultant and undertaking the feasibility study on single source basis to Urban Unit being a Government owned company. The Authority also decided to request Government of the Punjab to contribute in funding of the study.”

11. The Authority entrusted the task of selection of the consultant to the urban unit being a government owned company and also decided to request the Government of Punjab to contribute to the funding of the study. The next meeting in this regard was convened on 12.9.2013. Further on, in the meeting of the Authority held on 14.7.2016 an amendment in the Master Plan of Lahore Division (Integration of Existing Urban Development Plans and Remaining Areas) was considered. The amendment was presented by the Chief Metropolitan Planner LDA and the reasons for undertaking an amendment of the master plan was given as follows:

“After amendment in LDA Act-1975 on 19.09.2013, jurisdiction of LDA has been extended to Lahore Division (the Area) and functions of master planning, housing and land use are entrusted to LDA. Under the LDA Master Plan Rules-2014, the Lahore Development Authority is empowered to prepare, amend or review the Master Plan of the area or part thereof during its currency by selecting the Project Area proposed for amendment. Therefore, in order to have clear picture of the whole division and to set future integrated spatial growth of the division the LDA has already started process of integrated Strategic Development Plan (ISDP-2035). Whereas, in order to cater for emergent need and demand of housing and

industrial areas the LDA has envisaged the amendment in Master Plan of Lahore Division by integrating all notified/urban development plans i.e. the IMPL-2021, ODPs and remaining areas in the form of a compendium to be considered as a unified Master Plan of Lahore Division as an arrangement for the proposed amendment. Thus considering Lahore Division as the Project Area, surveys and studies have been carried out under provisions of LDA Master Plan Rules-2014 to identify the project sites within the Project Area. The major settlements which have potential and trend of spatial growth have also been selected as project sites, as such amendment is not restricted to only the IMPL-2021 and 17 Outline Development Plans but for other project area sites as well. Lahore as the capital of Punjab Province and the 2nd largest city of Pakistan is the major growth pole with rapid urbanization, infrastructure and social transformation. The major components of the social infrastructure is housing and industries, the lack of which begins to offset the positive effects of economic development due to non-provision of unified and integrated spatial development plan. Since, the LDA has initiated the process of ISDP-2035, which is a comprehensive assignment relating to number of components, surveys and studies which is the lengthy and time taking work, therefore, to address the urgent needs relating to housing and industry the Amendment Master Plan has been envisaged by the LDA in the interest of public.

After fulfillment of requirements Rule-9 and public consultation under Rule-10 of LDA Master Plan Rules-2014, the case containing background, need for amendment, development of project area, description of project sites, proposed amendments and other details was presented before the Scrutiny Committee in its meeting held on 21.04.2016. The Scrutiny Committee examined the proposed amendment in Master Plan and observed that the LDA has initiated the proposed Amendment Master Plan of Lahore in line with the provisions of LDA Master Plan Rules-2014. However, in the interest of public it was considered to get the Amendment Master Plan examined by the Sub-Committee constituted vide Scrutiny Committee meeting minutes dated 01.08.2015 for approval of permissible land use and to co-opt three technical planning professionals for expert views and submit its recommendations for placement before the Scrutiny Committee.

As per decision of the Scrutiny Committee, case was placed before the Sub-Committee, co-opted planning experts and CEO of the PIEDMIC in its meeting held on 02.06.2016. The Sub-Committee examined the Amendment Master Plan and decided

unanimously that provision of industrial areas/zones require further detailed investigation and studies, regarding their nature, scale and impacts on surroundings, etc, therefore, the project sites where industrial areas are proposed should be dealt later on and separately in next phase of amendment in the Master Plan. All members were agreed with planning approach adopted in the Amendment Plan and found that the proposed Amendment Master Plan which is prepared so far is satisfactory as an interim arrangement to fulfill the existing housing demand for opening of housing in the whole division and amendment of residential area in southern part of Lahore as agricultural for balanced and compact integrated spatial growth of Lahore. For the project sites identified for housing it was agreed by all the members to proceed for further approval procedures of the amendment in Master Plan to meet with emergent housing needs in the larger interest of public.

In the light of recommendations of the Sub-Committee, the amendment plan for housing proposals was modified and presented before the Scrutiny Committee headed by the Secretary HUD & PHE Department in its meeting held on 11.07.2016. The Committee thoroughly examined the Amendment Master Plan for integration of the existing IMPL-2021, ODPs as prepared by the Housing and Physical Planning Department and remaining areas for the of 40-project sites in whole division for housing purpose. The amendment master plan of Lahore Division (Integration of existing development plans and remaining areas) as recommended by the Scrutiny Committee for its placement before the Authority for approval is now placed before the Authority under Rule 10(4) of LDA Master Plan Rules-2014 for consideration of approval. The salient features of the Amendment Master Plan of Lahore Division are described as under:-

- (i) The whole division is taken as the Project Area and all existing IMPL-2021, ODPs, Agrovilla Development Plans and remaining areas are taken as a unified Master Plan for proposed Amendment Master Plan of Lahore Division (Integration of Existing Urban Development Plans and remaining areas).*
- (ii) Wherever possible the land uses of built up area as proposed in the existing Master Plan, Outline Development Plans and Agrovilla Development Plans are kept intact.*

- (iii) *Future land uses are proposed for housing and Special Development Zones.*
- (iv) *The developers/sponsors shall have to seek necessary NOCs from the Irrigation Department regarding flood prone area and adhere to flood routes/area requirements as specified by the concerned agencies/departments.*
- (v) *For rationalization of housing land use and to provide definite areas for future integrated urban growth following compact growth principle and for potential growth sites land allocations for spatial growth in the form of compact growth limit boundaries are earmarked as the project sites in the shape of circles, semi circles and linear segments for proper integrated form of towns and settlements.*
- (vi) *Transportation contributes much to the development of economic, social, political and cultural fields and uplifting the economic conditions of the people and to ensure synergy in physical growth of the area. Therefore, in addition to existing infrastructure and transport system and to promote better connectivity intra city linkages, bye passes and structure plan roads have been suggested within the Project Area*
- (vii) *The developers/sponsors who have purchased land for housing schemes in proposed agricultural area and have submitted valid ownership documents prior to cut of date published in the Public Notice dated 02.04.2016 would be considered for approval of housing schemes.*
- (viii) *The Army Restricted/ Semi Restricted Area shall apply as per the Army Policy.*
- (ix) *The proposed land uses are indicated in the amendment Master Plan with symbolic colours as shown in legend.*

The draft Amendment Plan of Lahore Division (Integration of existing urban development plans and remaining areas) as amended for housing proposals has been prepared and placed in file and submitted before the Authority for its consideration/approval.”

12. The extensive reproduction of the presentation was significant to underline that in the AMP, 2016 for Lahore Division, only the boundary of River Ravi Urban Development project was marked in order to indicate the area of the Project and a separate Master Plan was not prepared as such. The learned counsel for petitioners stressed upon the fact that merely a boundary in the AMP, 2016 for the Project was marked and there was no Master Plan separately conceived or prepared for the Project. The map of the Amended Master Plan, 2016 has also been attached in the reply filed by LDA which clearly shows the boundary of the Ravi Riverfront Urban Development project and nothing more has been shown in the Amended Master Plan. Thus, the map of AMP, 2016 is bereft of the details which may possibly be drawn from a cursory look of the map and concluded on a proper objective analysis that the Amended Master Plan in fact contained a clear and separate Master Plan for Ravi Riverfront Urban Development. It will be seen in the proceeding paragraphs whether outlining the boundary of a project would be tantamount to preparation of a Master Plan or not. Apart from issuing an Amended Master Plan, issuance of notification under Section 4 of the Act, 1894 for the Project in the Districts Lahore and Sheikhpura and appointment of Messrs

Meinhardt as technical consultant for the Project for consultancy work, no further headway was made as far as LDA was concerned. It can also be culled out from the AMP, 2016 that it was necessitated for broader purposes on account of amendment in the LDA Act, 1975 whereby jurisdiction of LDA was extended to the entire Lahore Division (it has once again been curtailed to the metropolitan area of Lahore). It was felt necessary to amend the Master Plan since the functions of master planning and land use were entrusted to LDA as a consequence of the amendment. The entire preparation of the amended master plan was undertaken under the LDA Master Plan Rules, 2014. Thus, in order to cater for the emergent need and demand of housing and industrial areas, LDA integrated all urban development plans, that is, the IMPL-2021, ODPs and remaining areas in the form of a compendium to be considered as unified Master Plan of Lahore Division as an arrangement for the proposed amendment. The entire Lahore Division was considered as the Project area and survey and studies were carried out under the Rules, 2014 to identify the Project sites within the Project area. The Project area for which the AMP, 2016 was prepared was the entire Lahore Division and was not the Project as is sought to be argued by the RUDA and Govt. of the Punjab. A

scrutiny committee was constituted which considered the Amended Master Plan proposed by LDA and which comprised planning experts and CEO of PIEDMIC. The salient features of the AMP, 2016 of Lahore Division were also placed before the Authority for its consideration. It is significant to note that in the entire presentation made to the Authority in its meeting for consideration of Amended Master Plan, 2016 there is no mention of the Project as a separate entity and the emphasis throughout has been on an amended master plan to cater for the whole of Lahore Division which was considered as the Project area. The Authority also while approving the Amended Master Plan of Lahore Division did not specifically mention the Project and so the decision of the Authority of LDA (on which reliance was placed by RUDA) is conspicuous by a complete absence regarding any discussion of the Project let alone its approval and this fact will exercise a gravitational pull on the arguments made by the petitioners which invite this Court to consider a Master Plan to be the foundational document on which any edifice may be created by RUDA.

RUDA takes over:

13. With the promulgation of the Act, 2020, the Project was taken over by RUDA. Under the circumstances, the Authority of LDA in its meeting

held on 28.01.2020 decided and approved the de-notification of all the areas from Ravi Riverfront Urban Development Project.

14. The meeting of members of the Board of RUDA took place on 14.10.2020. At item No.5 was the approval of Master Plan of Ravi City (**made by Meinhardt**). The following decision was taken in that meeting:

*“The Chairman briefed the Authority members in detail with the help of master plan maps and details for approval and placing this as approved master plan for the new city under the umbrella of RUDA. The Authority shall approach LDA to understand the payment issue and its impact if any for RUDA with its DG and Vice Chairman LDA. **Authority was informed that LDA had approved the Master plan in its internal process already. The Authority approved the Master Plan in principle to be taken to potential investors.**”*

15. The decision taken by RUDA and set out above has a very interesting dimension. It has to be seen in the backdrop of the facts collated in the preceding paragraphs regarding the decisions taken by the Authority of LDA with regard to the Project and preparation of Amended Master Plan, 2016. It has specifically been noted that LDA did not ever approve an independent and exclusive Master Plan in respect of the Project. In oblivion to these facts, the Member of the Board in the meeting held on 14.10.2020 approved the Master Plan for the new city under the umbrella of RUDA. In the first column relating to agenda items and which has been

set out above it stated that the approval of Master Plan of Ravi City which was **made by Meinhardt** was required to be done by the members of the Board. There is thus no mention of the approved Master Plan or Amended Master Plan 2016 which was done purportedly by the Authority of LDA in its meeting referred to above.

16. The members while taking the decision in the meeting of RUDA held on 14.10.2020 were clearly not cognizant of the precise scope of the decision which was required to be taken. Two strands of this statement require unpacking. Firstly, the Master Plan of Ravi City had not been prepared by Meinhardt. It is evident by now that there was no Master Plan as such and Meinhardt had merely been appointed as a technical consultant to prepare certain feasibility reports. It was not the domain of Meinhardt to prepare a Master Plan in any case. The members of the Authority were under a misconception regarding the primary ingredients of the decision required to be taken by them in the meeting. By scheme or artifice, the members of the Board were cajoled into approval of a Master Plan while none existed. Thus, any decision taken by them in that meeting suffers from misdirection of facts which fed through the rest of the decision-making process. Under the circumstances it cannot

be conceived that members of RUDA took an informed and intelligent decision to approve the Master Plan of the Project. The decision states that the Chairman briefed the Authority members in detail with the help of master plan maps and details for approval and placing this as an approved master plan for the new city under the umbrella of RUDA. It is incredulous as to which master plan was being referred to in this decision and on the basis of which the Chairman briefed the members of the Authority. For, as stated above, no master plan was ever prepared by Meinhardt. Further, the decision is conspicuous for its brevity and it is indeed a matter of deep concern that a decision regarding the Project of enormous magnitude should be taken by the members of the Authority without any dilation and extensive deliberation. There is no doubt in my mind that the members of the Authority abdicated the onerous responsibility placed on their shoulders by the statute.

17. Obviously these were matters not within their specialized expertise. Nor was the Chairman an expert in master planning and so equipped to undertake the task of putting the finer points of the purported Master Plan before the members. The appointment of the Chairman is within the discretion of the GoP and section 8 does not specify any

qualifications. RUDA has failed to place on record qualification of any member of the Board stated to be a master planner of any standing.

18. Here, I shall pause to narrate an incident from *Alice in Wonderland*, by Lewis Carroll from the trial scene of the Knave of Hearts. During the trial, Alice is called as a witness. Alice knows nothing. Some said her evidence was important. Other that it was unimportant.

“What do you know about this business? the King said to Alice.

‘Nothing,’ said Alice.

‘Nothing whatever?’ persisted the King.

‘Nothing whatever,’ said Alice.

‘That’s very important,’ the King said, turning to the jury. They were just beginning to write this down on their slates, when the White Rabbit interrupted: ‘Unimportant, your Majesty means, of course,’ he said in a very respectful tone, but frowning and making faces at him as he spoke.

‘Unimportant, of course, I meant,’ the King hastily said, and went on to himself in an undertone, ‘important—unimportant—unimportant—important—’ as if he were trying which word sounded best.”

(From the book, *Leaves from My Library, An English Anthology* by the Rt Hon Lord Denning).

19. The members of the Board, too, unfortunately, knew nothing; like Alice. But RUDA and GOP thought it unimportant and relied on their judgment which was resolutely aloof and laced in with irrationality. This runs counter to the very epitome of good administration and undermines the principles of trust.

20. the famous case of Padfield [1968] A.C. 997 at 1030 closely reflects the constitutional principles underlying *ultra vires*. Amongst other, Padfield has the following features:

1. *The intention of Parliament is that discretion should be used only to promote—and not to undermine—the policy and objects of the legislation.*

2. *The policy and objects of the legislation must be determined by construing the legislation as a whole.*

Later, it was held in Chetnik Developments [1988] A.C. 858 at 872 that:

“Padfield is an application of the aforementioned constitutional principle that statutory powers are only conferred upon trust, and not absolutely.”

21. The members of the Board of RUDA were appallingly unaware of the conferment of powers ‘upon trust’ and breached that trust while making their decisions.

22. In the third meeting of the members of RUDA, further deliberation was made on the agenda item titled as “Business Plan of RUDA and Area/Jurisdiction earmarked by RUDA. Proof about interest shown by foreign companies and international financial institutions.” This meeting was held on 23.12.2020 and the following discussion took place on agenda item No.1:

“The Business Plan and Area/Jurisdiction of RUDA, being the core additional agenda items,

were discussed by the Chairman. The Chairman briefed the Members on the background and importance of the Business Plan and Area/Jurisdiction in the light of the release of Rs. Five Billion soft loan from Government of the Punjab. The Business Plan and Area/Jurisdiction were approved by majority of the members after detailed discussion.

The Chairman further informed the members about the interest shown by foreign companies and international financial institutions.

23. The discussion set out above revolves around the area/ jurisdiction of RUDA. Until then, it is pertinent to mention, the area of RUDA had not been notified by the Govt. of the Punjab. The second issue which was discussed was regarding the release of Rs.5 Billion soft loan from the Govt. of the Punjab. This aspect of taking loan from the government will also be the subject of discussion in the following paragraphs as the petitioners raised serious objections to this with regard to some specific provisions in the Act, 2020.

24. Another aspect which was confirmed in item No.9 of the meeting was regarding **“bridge financing by government to provide collateral to the Board of Revenue, Punjab against land acquisition in phase-I”**. The decision taken by the Board was as follows:

“Board was informed that land acquisition process is underway by the Senior Member, Board of Revenue, Phase-I while section 4 has been implemented in the area through a notification by the Collectors of Lahore and Sheikhpura. It is now being discussed between the Govt. of the Punjab and RUDA regards to bridge financing for further process till RUDA generates funds through

investors for compensation. Chair shall brief the Authority once a consensus decision is taken by the government on this account. Members authorized the Chairman to take necessary decision as agreed between government/ RUDA and Board of Revenue, Punjab.”

25. It is apparent from the decision set out above that RUDA at that point of time had no funds for acquisition purposes and for which bridge financing was being asked from the Govt. of the Punjab. This aspect of the matter shall be dealt with by reference to section 26 of the Act, 2020 which relates to borrowing of money by the Authority. The second aspect of this decision which starkly comes out is the fact that in the ultimate analysis the investors were to pay the compensation and until the amount was given by the investors for acquisition of land, a bridge financing was being arranged to park the funds at the disposal of the Board of Revenue which is a requirement of the Punjab Land Acquisition Rules, 1983. Different arguments according to the learned counsel for the petitioners arise out of this decision made by the Board of the Authority one of which is that the acquisition was being made purely for commercial purposes and in order to benefit the investors who were investing their money into different projects envisaged by the scheme. This is not public purpose, so they argue. This will be discussed while dealing with the arguments of the

learned counsel for the petitioners in the following paragraphs.

26. In the third meeting of RUDA Board, item No.2 dealt with confirmation of minutes of the previous meeting and the Board proceeded to resolve as under:

“The Minutes of the Second RUDA Board meeting, already circulated, were discussed and the matter pertaining to the Master Plan of RUDA was deliberated at length. The participants agreed to approve the Master Plan of RUDA. Further, the Minutes of Second Board meeting were confirmed and adopted by the Board.”

27. In the decision made above, the Board of RUDA approved the Master Plan apparently prepared by RUDA and which is now the subject matter of challenge in these petitions. Once again, it is unclear from the decision set out above as to the precise nature of the discussion that took place amongst the members of RUDA Board and also the precise source from which it could be ascertained that the Master Plan had been prepared by the Authority or any of its officers and consultants or as submitted in the written statement whether the Master Plan of LDA was the one which was approved in the third meeting of RUDA Board. From the contents of the decision above the inevitable indication is that the members of the Board approved “the master plan of RUDA.” This is contrary to the contents of the written statement filed

on behalf of RUDA which admits that none of the officers of RUDA had prepared a master plan but in fact the Master Plan had only been prepared by LDA. This was also the decision made in the previous meeting of the members of RUDA held on 14.10.2020.

28. Before proceeding further, some of the dates (at the cost of repetition) which would assume importance in the backdrop of this opinion may be relevant to be referred. The notification under Section 4 of the Act, 1894 by the Collectors of the District of Lahore and Sheikhpura on the asking of RUDA was gazetted on **06.10.2020**. The area of the Authority as envisaged by section 3 of the Act, 2020 was notified on **08.06.2021**. It is significant that the area of the Authority (RUDA) was notified much later than the acquisition notification under section 4 of the Act, 1894. This fact too underscores the manner in which RUDA operated its affairs.

29. On 18.10.2021 by notification in the official gazette, the Govt. of the Punjab promulgated the Ravi Urban Development Authority (Amendment) Ordinance, 2021 ("**Amendment Ordinance**") by which amendments were made in the Act, 2020. This led the petitioners' counsels to make applications for seeking amendments in the original constitutional petitions in view of the changed

circumstances owing to the promulgation of Amendment Ordinance and further challenges were sought to be made incorporating new challenges to the Amendment Ordinance as well. These applications were allowed by order dated **02.11.2021** and consequently amended petitions were filed by the petitioners who brought a challenge to the constitutionality of the Amendment Ordinance as part of their overall challenges. Amended written statements were also filed by RUDA. Notices in terms of Order XXVII-A, Code of Civil Procedure were also issued to the Advocate General, Punjab. No statements/ replies pursuant to those notices were filed. The Advocate General, Punjab chose to address oral arguments instead.

Structure of Act, 2020:

30. The Act, 2020 sets up a special purpose body by the name of Ravi Urban Development Authority under Section 4. The Authority is tasked with carrying out the purposes of the Act. The Authority is a body corporate with perpetual succession and a common seal with powers to acquire and hold property. The Authority shall exercise its powers through the Board (Section 4A) which consists of Chairman, four ex-officio members not below the rank of Secretaries to the government, five non-official members to be nominated by the government

for three years, two technical experts or professionals to be appointed by the government on such criteria and on such terms and conditions as may be prescribed and the CEO of the Authority. The Board shall exercise powers, perform all functions and do all acts which may be exercised, performed or done by the Authority. Some of the definitions which would assume relevance in the context of this opinion are being referred and reproduced below:

“2. In this Act:

(b) “area” means the area as defined under section 3;

(e) “Collector” means Land Acquisition Collector under the Land Acquisition Act, 1894 (I of 1894).

(r) “housing scheme” means a scheme which provides for residential sites, houses or apartments including ancillary land in the area for uses such as:

(i) building and other facilities for health, education, recreation, culture, transportation, communication and shopping;

(ii) environmental improvement; and

(iii) utility services such as water supply, drainage, sewerage, sanitation, electricity, fuel and other related services

(v) “Master Plan” means the independent Master Plan of the Authority for the area notified and prepared in the traditional method for presenting a set of land usage, allocation and control measures in the form of a map or in graphical form and is supported by written statement of goals and objectives, strategy, financial implications and policies for planning and development for an area and includes a structure plan, an outline development plan,

a spatial plan and a peri-urban structure plan;

(z) *“prescribed” means prescribed by the rules or the regulations*

(cc) *“scheme” means projects approved for urban development, redevelopment, regeneration, or renewal, areas notified for specific use, traffic control plans, classification and reclassification plans, housing scheme or zoning scheme in the area; or infrastructure and services including transportation systems and road networks, healthcare facilities recreational facilities, parks and theme parks, educational facilities, cultural facilities, communication and civic facilities, water supply and drainage systems, sewerage and sanitation, energy generation, procurement, transmission and distribution systems including for electric power through any other energy source or industrial estates and all systems and facilities or works incidental or ancillary thereto, planned, made, undertaken and / or supervised and/ or approved by the Authority under this Act.”*

31. Section 3 relates to the area of the Authority and provides that:

*“3. **Area of the Authority.**– The Government shall, by notification in the official Gazette, specify the area of the Authority as may be determined by the Government”*

Section 6 as originally enacted deals with the powers and functions of the Authority and a major portion of the arguments of the petitioners’ counsel referred to this provision as enacted originally and which provides that:

*“6. **Powers and functions of the Authority.**– Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of this Act, the Authority may, **with the agreement of the local government concerned and on such terms and conditions as may be prescribed**, shall have powers to:*
”

(Section 6 was amended by the Amendment Ordinance and this discussion will follow in the paragraphs below).

Section 15 provides that:

“15. Preparation of schemes.— (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of this Act, the Authority shall, in such form and in such manner as may be prescribed, prepare schemes for the area or any part thereof.

(2) All schemes prepared shall be submitted to the ³¹[Board] for its approval, and after the approval of every scheme, the ³²[Board] shall execute it in such manner as may be prescribed.

(3) The Authority shall publish the sanctioning of any scheme in the official Gazette and shall forthwith proceed to execute the scheme.

(4) The publication of a sanction under subsection (3), shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(5) A person, local government body or Government agency shall not, within the area, prepare a planning or development scheme except with the concurrence of the Authority”

Similarly, section 16 which relates to establishment of housing schemes, projects provides that:

“16. Establishment of housing schemes, projects.— (1) The Authority may prepare, establish and develop housing and any other schemes, buildings, infrastructure, services, commercial, semi-commercial projects or sites, and for the purpose, it may enter into an agreement including joint venture with any person.

(2) A housing scheme under subsection (1) shall be approved in the manner prescribed for the preparation of a scheme under this Act.”

Section 18 is an important provision and deals with the control of Master Plan. It states that:

“18. Control of Master Plan.—(1) The Authority may make, maintain, amend, manage,

enforce and keep in its custody the Master Plan of the area.

(2) *The Authority shall, in the prescribed manner, exercise land use control and perform housing functions in the area without having any interference from any other authority or local government or Government Agency.*

(3) *Notwithstanding anything contained in any other law, a person shall be bound to adhere to the Master Plan, rules and regulations for land use control and housing functions as given under subsections (1) and (2).*

(4) *If any person contravenes any of the provisions of this section, the Authority may direct that till the time the contravention continues—*

(a) *transfer of any immovable property shall be prohibited;*

(b) *the District Collector to impose a ban on the issuance of Fard Malkiat, registration of any document or attestation of mutation in favour of the said person; and*

(c) *a local government, an Agency or a Government agency to stop or discontinue the provision of municipal services to such person.*

(5) *Notwithstanding, anything contained in any other law for the time being in force, the Master Plan of the Authority shall be considered as an independent Master Plan and shall have no nexus whatsoever with the integrated master plans of any other Authority, agency or local government.”*

Section 26 concerns with power of the Authority to borrow money which can only be done under certain circumstances given in that provision which provides that:

“26. Borrowing money.— (1) *The Authority shall be deemed to be a ‘Local Authority’ for the purpose of borrowing money and any scheme or project prepared or undertaken by the Authority shall be deemed to be “work” as defined in section 2 of the Local Authorities Loans Act, 1914 (IX of 1914).*

(2) *The Authority may, in consultation with its financial advisors, borrow money from the financial institutions or raise funds or finances by issuing bonds or debentures or otherwise for carrying out the purposes of this Act at such rate of interest as may be approved by the Authority.*

(3) *The Authority shall also have the powers or mandate to arrange foreign direct investments on any of its schemes, projects or undertakings.”*

Sections 29, 30 and 31 relate to acquisition of land for the Authority and may be set out below as separate set of challenges with regard to acquisition have also been made by the petitioners:

29. Liability to acquisition.— (1) *Notwithstanding anything contained in the Land Acquisition Act, 1894 (I of 1894), or in any other law for the time being in force, any land within the area shall be liable to acquisition at any time in accordance with the provisions of this Act.*

(2) *The Authority may acquire or purchase in a transparent manner any immovable property or land for any public purpose including development of housing or any other scheme, urban renewal, redevelopment, environmental improvement or removal of source of pollution or traffic congestion.*

30. Acquisition of Land for the Authority.— *The Authority may acquire an immovable property under this Act and the provisions of the Land Acquisition Act, 1894 (I of 1894) shall apply. Such acquisitions shall be deemed to be for the public purpose as specified in the Land Acquisition Act, 1894.*

31. Compensation.— (1) *The Authority shall determine the mode of compensation in the form of cash, bonds, debentures, annuities, adjustments, alternate land, developed sites or in a combination of such forms:*

provided that if the compensation of the acquired immovable property is in the form of developed sites then the ^[34][Authority] shall not award such compensation unless the immovable property is transferred or mutated in the name of the Authority.

(2) *Where the Authority determines any mode of compensation other than cash, the person interested shall have the option to receive compensation either in cash or in that mode or in both such forms if so determined by the Authority.*

(3) *Where the compensation is to be paid in cash, it shall be determined by the Collector.*

(4) *If any person has, by mistake, fraud or misrepresentation, received any compensation or*

any excess compensation, which was not payable to him, the ^[35][CEO], Collector or any other person authorized in his behalf shall call upon such person to refund such amount and in case of default the Authority may recover it as arrears of land revenue.

(5) The Authority shall not provide alternate land or developed site in any scheme except the scheme for which the property was acquired.

(6) Where provision of alternate land or developed site is part of a scheme but for any reasons, such land or developed site cannot be provided, the Authority shall pay compensation in cash at such rate as may be determined in the prescribed manner through regulation.

(7) If the Authority, after due diligence, satisfies any claim of compensation, the Authority shall not entertain any subsequent claim in respect of the property and the person who is subsequently declared as person interested shall recover the compensation from the person who earlier received compensation for the said property.

Amendment Ordinance:

32. As adumbrated, during the hearing of these petitions, an Amendment Ordinance was promulgated by the Govt. of the Punjab. In the opinion of the petitioners' counsel this was an attempt to plug the loopholes and to fill the lacunae which had crept in the original Act, 2020 and in order to stunt the grounds of attack made by the petitioners in these petitions. This is not fanciful and the holistic read of the Amendment Ordinance lends credence to this submission. This, in itself, is not unlawful. The question of legality however rests on different considerations. The first amendment was made in section 2(v) of the Act, 2020 by which the words "notified and" were omitted from the term Master Plan. This has to be read with section 3

which was also substituted by the following provision:

“3. Area of the Authority: The area of the Authority shall be as specified in the first schedule”.

33. The omission means that the notified area which was previously done by the Authority shall be substituted by an area specified in the first schedule. It is further to be read with the amendment in section 51 of the Act, 2020 brought about by section 8 of the Amendment Ordinance which is to the following effect:

“51. Savings and transfer of actions.— Notwithstanding the provisions of this Act, all actions taken and decisions made by the Lahore Development Authority or the Government before the commencement of this Act including the acquisition notices under the Land Acquisition Act, 1894 (I of 1894) or any other scheme of the Irrigation Department of the Government in the area shall be transferred to the Authority or any other activities relating to water and sanitations, solid waste managements, water treatments planning or plants shall be continued and deemed to have been validly made under the provisions of this Act.”

34. Thus, the Savings Validation and Transfer of actions clause was substituted with a new section 51. By Sub-section (3) in the newly inserted provision, it was provided that the amendments made to the Act, 2020 by the Amendment Ordinance shall be deemed always to be so inserted to the Act, 2020. In the context of section 3 relating to area of the Authority this would mean that a new area has been specified and which is now specified in the first schedule

(inserted through the Amendment Ordinance) and so the previous area notified on 08.06.2021 has lost its efficacy. By deeming clause however the substitution has been held to be always inserted in the Act, 2020. Read conjointly, it has been argued by the petitioners that it cannot be presumed that the Authority had in its contemplation the area now enacted as first schedule and so prepared the Master Plan on that basis. By the scheme of the Act, 2020, the area of the Authority has to be prescribed first and foremost and thereafter a Master Plan shall be prepared in respect of that area followed by schemes prepared by RUDA in the area. If the new area has now been specified in the first schedule and which was done on 18.10.2021, the Master Plan approved by the Authority in its meeting held on 14.10.2020, that is, more than a year priorly will have no validity. This will be elaborated upon in the discussion that follows.

35. Section 4 of the Amendment Ordinance is most significant, for it provides that:

“4. Amendment of section 6 of Act XVII of 2020.- in the Act, in section 6, the expression “may, with the agreement of the local government concerned and on such terms and conditions as may be prescribed,” shall be omitted.”

36. It can be seen from section 4 set out above that the expression **“may with the agreement of the local government concerned and on such terms**

and conditions as may be prescribed” have been omitted. This was the primary argument mounted by the learned counsel for the petitioners and relying upon the original section 6 of the Act, 2020 it was argued that any scheme or Master Plan to be prepared by RUDA has to be with the agreement of the local government concerned and this was not merely a statutory duty but a constitutional duty in terms of Article 140A of the Constitution. At first blush, this is an acknowledgment by the Govt. of the Punjab as well as RUDA that there was no agreement with the local government concerned while preparing the Master Plan for the scheme. Further, it is an acknowledgment that this was an essential pre-requisite under the Act, 2020. The fact cannot be ignored that the area of RUDA was originally under the jurisdiction of a local government and required an input by the concerned local government on various aspects including but not limited to land use of the area, standing crops and its demographic and ecological impact etc.

37. The provisions of section 8 have also been reproduced above. Suffice to say that saving clause merely reiterates that actions taken by RUDA shall be deemed to have been taken under the Act, 2020 but does not by that statement validate actions which are *ultra vires* or void *ab initio*. The rule is well

settled, i.e. a saving or validation clause does not protect acts which are null or unconstitutional from their inception.

38. The Amendment Ordinance triggered a number of amendments to be made by the petitioners and challenges were brought in to have the Amendment Ordinance struck down. The constitutionality of the Amendment Ordinance was also called in question by Mr. Fahad Malik, Advocate in some of these petitions. This aspect of the matter will be dealt with separately.

Legality of RUDA's actions:

39. As explicated above, the Act, 2020 sets up a special purpose Authority for carrying out its functions within an area defined under Section 3. The Act begins with a Preamble which is also in the nature of a long title and serves as a guide to the legislative intention. The Preamble states that:

*“It is necessary in public interest to establish Ravi Urban Development Authority **for the purpose of comprehensive system of planning and development in the area specified in Master Plan of the Authority** to improve the quality of life in the area; to establish an integrated modern and regional development approach and a continuing process of planning and development by achieving the highest environmental standards, quality of life and modern standard facilities; to make a healthy and prosperous community in its area as determined by the Government from time to time; and, to rehabilitate water aquifer and the dying Ravi River into fresh perennial water body with a state-of-the-art water front and urban development on reclaimed and adjoining lands.*

It is also necessary in public interest to evolve policy and programs relating to the improvement of the environment for housing, industrial

development, traffic, transportation, health, education, water supply, sewerage, drainage, solid waste disposal and other objectives on profit and non-profit basis; to carry out refurbishment, uplifting and maintenance of infrastructure and the performance of other modern civic and municipal ventures or tasks; and, to provide for the ancillary matters.

40. The rules regarding construction of a preamble are well entrenched and it is now settled that preambles which are included in every modern statute is an introduction to and in a sense prefatory or explanatory note in relation to the sections which are to follow. (*Oliver v. Buttigieg [1967] 1AC 115 at 128*). The modern jurisprudence was summarized by Lord Hoffman in *Matthew v. State of Trinidad and Tobago [2004] UK PC 33 at 46* as follows:

“The preamble to a statute cannot override the clear provisions of the statute. But it is legitimate to have regard to it when seeking to interpret those provisions....and any interpretation which conflicts with the preamble must be suspect.”

41. In *Bennion, Bailey and Norbury on Statutory Interpretation, 8th Edition*, the following comment has been made (at p.536) regarding preambles in statutes:

“As noted in Chapter 2, preambles are included in very few modern Westminster Acts. They are never included in Acts of the devolved legislatures. A sixteenth century judge remarked that the preamble is ‘a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress. Lord Morris of Borth-y-Gest said of a preamble: It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow.

There are similarities between long titles and preambles as guides to legislative intention. Where a preamble is included it may be used as a guide to legislative intention. But the courts are unlikely to

allow a preamble to override inconsistent operative provisions...”

42. Thus, there is no doubt that a preamble can be relied upon to discern the purpose of an Act and can be used as an aid to construction with the rider that in case of inconsistency the clear provisions of the statute will override. The preamble to the Act, 2020 has been set out above in order to deal with the arguments of the learned counsel for the petitioners regarding illegalities and gross irregularities which crept in the process of preparing the Master Plan and the scheme for the project sought to be implemented by RUDA. A flanking rather than frontal attack was made by Mr. Waqar A. Sheikh, Advocate to the validity of the provisions of the Act, 2020 on the touchstone of LDA, Act 1975 and the Local Government Act, 2019 yet this argument cannot prosper for the simple reason that provisions of one enactment cannot be struck down on the basis of another statute which are both sub constitutional enactments. The learned counsels, however, mounted serious arguments regarding the actions taken by RUDA and its officers in formulating and preparing the Master Plan and all consequent steps and as an alternate argument submitted that these actions do not, in any case, comport with the provisions of the Act, 2020 and run foul of these

provisions. I shall now proceed to deal with these arguments.

43. Although the preamble in its entirety is a significant statement but there are particular statements which are relevant in the context of these arguments addressed by the counsels while attacking the Master Plan prepared by the Authority. No doubt RUDA has been tasked with preparing a comprehensive system of planning and development in the area specified in Master Plan of the Authority. Therefore, firstly there has to be a defined area within which RUDA would operate and secondly a “Master Plan of the Authority”. These words will be related to the words used in the main enactment in the various provisions of the Act, 2020 and on this basis the learned counsel for the petitioners firstly argued that any Master Plan conceived for the area has to be homegrown and must be conceptualized by the Authority and to substantiate this argument reference was made to different provisions of the Act, 2020. The precise argument was that the Master Plan of the Authority has to be a unique document prepared by the Authority and for the special purpose for which the Authority has been constituted. It should not stand on the crutches of a Master Plan prepared by another authority or agency of the government. In short, it has to be a deliberative and

informed decision based on the standards universally recognized for preparation of master plans of an integrated and modern urban development. Adoption of a Master Plan according to the learned counsels is not permissible.

44. The definition of Master Plan given in section 2(v) has already been set out above. To recapitulate the Master Plan according to the definition means the **independent master plan** of the Authority for the area and prepared in traditional method for presenting a set of land usage etc. in the form of a map or in graphical form which will include a structure plan, an outline development plan and a peri-urban structure plan. The argument that the Master Plan of the Authority has to be a unique document prepared by the Authority itself is reinforced by the words “independent Master Plan of the Authority” used in the definition. This has to be read in the context of historical background which has been brought forth above and which shows that the Authority did not prepare an independent Master Plan for the area but merely adopted a Master Plan which was purportedly prepared by LDA. It is another question whether LDA had at all prepared a Master Plan for the area which is now within the jurisdiction of RUDA or not. The learned counsel for the petitioners vehemently argued that there was

no such Master Plan of the area ever prepared by LDA as is sought to be established by RUDA. Be that as it may, there is substantial force in the primary contention that RUDA was obliged to prepare an independent Master Plan for the area and adopting a master plan prepared some five years ago was in contravention of the provisions of the Act, 2020 which time and again emphasized upon the fact that the Master Plan has to be an independent Master Plan of the Authority and nothing else. There could not be a clearer intention of the legislature expressed throughout the length and breadth of the Act, 2020. The words 'Master Plan of the Authority' and 'Independent Master Plan' used at different places reinforce the underlying purpose of obliging the Authority to prepare its own Master Plan and these words are not a mere painting to be looked at.

45. This brings us to the primary challenge that in any case LDA had not approved a Master Plan of the area which was adopted by RUDA in its meeting held on 14.10.2020. LDA was required to place on record the documents in this regard which was done by the learned counsel for LDA on 08.12.2021 in the form of a report which basically comprised of various documents dealing with the Ravi Riverfront Urban Development Project which was conceived in the meeting of LDA on 12.9.2013. Different acts

were undertaken subsequent to the preliminary meeting held on that date when certain procedural formalities were put in place for the efficient completion of the Project. Although, notifications under Section 4 of the Act, 1894 were issued by the Collector concerned but no further progress was made except that a consultant by the name of Meinhardt was appointed to prepare feasibility reports which have also been placed on record. There was a proposed land use showing plan for the Project. There is no document placed on record which shows that LDA considered and approved the proposed land use plan prepared by Meinhardt. The basic document on which entire reliance has been placed and according to which the Master Plan of the Project now sought to be set up in the area by RUDA was approved is the meeting of LDA held on 14.07.2016. Item No.14 has been relied upon which is entitled “Amendment in Master Plan of Lahore Division” (integration of existing urban development plans and remaining areas). As is evident from the title itself this was a Master Plan which was required to be approved for the purposes of integration of existing urban development plans (already approved by the Master Plan 2021 in the year 2004) and remaining areas which referred to the amendment in the LDA Act, 1975 made on 19.9.2013 whereby

jurisdiction of LDA was extended to the entire Lahore Division. The purpose of meeting and the approval of the Amended Master Plan can be culled out from the following statement which was presented before the meeting:

“Outline Development Plans, Agrovilla Development Plans, etc for Lahore as well as neighbouring settlements within Lahore Division comprising Lahore, Kasur, Sheikhupura and Nankana Sahib districts but most of them have either become outdated or have been thwarted with the onslaught of rapid urbanization, industrialization and infrastructure development during last decades. The Lahore Division comprises districts of Lahore, Nankana Sahib, Kasur, and Sheikhupura. The Master Plan in the form of Integrated Master Plan of Lahore-2021 (IMPL-2021) is in vogue for Lahore and Outline Development Plans prepared by Housing Physical Planning Department from time to time for other settlements of districts of Lahore Division are currently enforced.”

“After amendment in LDA Act 1975 on 19.09.2013 jurisdiction of LDA has been extended to Lahore Division (the Area) and functions of master planning, housing and land use are entrusted to LDA. Under the LDA master plan Rules 2014, the Lahore Development Authority is empowered to prepare, amend or review the master plan of the area or part thereof during its currency by selecting the Project Area proposed for amendment. Therefore, in order to have clear picture of the whole division and to set future integrated spatial growth of the division the LDA has already started process of Integrated Strategic Development Plan (ISDP02035). Whereas in order to cater for emergent need and demand of housing and industrial areas the LDA has envisaged the amendment in master plan of Lahore Division by integrating all notified / urban development plans i.e. the IMPL-2021, ODPs and remaining areas in the form of a compendium to be considered as a unified master plan of Lahore Division as an arrangement for the proposed amendment. Thus considering Lahore Division as the Project Area, surveys and studies have been carried out under provisions of LDA master plan Rules, 2014, to identify the project sites within the Project Area. The major settlements which have potential and trend of spatial growth have also been selected as project sites, as such amendment is not restricted to only the IMPL-2021 and 17

Outline Development Plans but for other project area sites as well...”

46. In the entire presentation made by Chief Metropolitan Planner LDA, there is no mention of the Master Plan being related in any manner to the Ravi Riverfront Urban Development Project. In fact, the Project has not been mentioned in the entire presentation. To reiterate, the amendment of the Master Plan was necessitated owing to the extension of jurisdiction of LDA to the entire Lahore Division. It is pertinent to mention that that extension has now been curtailed and LDA’s jurisdiction merely extends to the metropolitan area of Lahore and not beyond that. Therefore, any purported Master Plan in respect of the Project conceived by RUDA could not have been used by RUDA, for that plan is not relevant in view of the amendment in LDA Act, 1975 confining the jurisdiction of LDA once again. The decision made by the Authority is encapsulated as under:

“The case regarding “Amendment in Master Plan of Lahore Division (Integration of Existing Urban Development Plans and Remaining Areas)” was placed before the Authority. The Authority discussed the matter at length and approved the proposed amendments in Master Plan of Lahore Division (Integration of Existing Urban Development Plans and Remaining Areas) as recommended by Scrutiny Committee.”

47. The decision also does not make any mention of the Master Plan in respect of the area which now comprises the area of RUDA nor does it mention the

Project specifically or any scheme in respect of the Ravi Riverfront Urban Development Project. Thus, the reliance of RUDA on the Master Plan approved by LDA in its meeting on 14.7.2016 is erroneous and has no legal legs to stand upon. In that meeting LDA did not consider let alone approve any Master Plan for the Project which is now conceived by RUDA to be established in the area within its jurisdiction. As a necessary corollary, therefore, the approval by the Board of RUDA of such a Master Plan is again a figment of the members' imagination and they were either not informed properly or were misled into making that decision. The members acted mechanically and reflexively and fell into breach of trust. It follows indubitably that there is no Master Plan as yet prepared by RUDA and so the very basis of setting up a scheme or a housing scheme has been knocked out. There is no question of a scheme being set up unless a Master Plan has been prepared as a first step. For that is the primary requirement of section 6 and is the most vital step in the priority of the steps to be taken by RUDA under the provisions of the Act, 2020. The first step obviously is the demarcation of the area and the next is the preparation to initiate and maintain a continuous process of master planning. Unless a Master Plan has been prepared in the prescribed manner, no

scheme as envisaged by section 15 of the Act, 2020 can be proposed for the area.

48. The definition of the term “Master Plan” also alludes to the traditional method for presenting a set of land usage etc. in the preparation of the Master Plan. The term “traditional method” has not been defined but doubtless it refers to certain set of standards recognized universally for the purpose of preparing a Master Plan of any urban development. LDA has enacted LDA Master Plan Rules, 2014 for this purpose and the AMP, 2016 was prepared in conformity with those rules. In terms of Rules, 2014, LDA made the amendment in Master Plan, 2021 and prepared an amendment plan for the area (which means the area of Lahore Division). It could do so for any part of the area too, yet the AMP, 2016 was an amendment plan not for any specific part but for the entire area. Although this is the most critical first step in the preparation of any scheme by RUDA, no rules have been framed under Section 54 of the Act, 2020 for setting guidelines for preparation of a Master Plan by RUDA. This is a serious and appallingly egregious lapse in the entire process and if at all a Master Plan is to be prepared by RUDA, it has to be in conformity with certain set of standards laid down by rules and regulations and cannot be left to the whims of members of the Authority which

would, in turn, breed indiscretion and unmanageable standards. There is a purpose to providing in the definition of Master Plan that it must be prepared in the traditional method. I have no doubt that this reference to the traditional method implies universally accepted standards and cannot be left to the unstructured discretion of the officers of RUDA who are preparing the Master Plan but must be circumscribed by the standards laid down by rules which have been properly enacted in line with the Rules, 2014.

49. Once again, the significance of section 54 must not be lost sight of. In all modern forms of legislation, the primary statute is skeletal in form and the real meat is provided by the rules. RUDA obviously rushed through its acts and utterly misdirected itself. Clearly defined rules is a fundamental concept of rule of law and forms its core. It would suffice to refer to a recent judgment by this Court (**2021 PTD 521**) which alludes to the structuring of powers by rules. It was held that:

“But the most telling aspect, in my opinion, is the absence of the legally manageable standards to guide the officer of Directorate I & I to take cognizance of a matter and to assume jurisdiction. The concept is of amorphous nature. There has to be a statutory regime underpinning the whole array of powers of these officers so as to dispel any spectre of abuse. It is against the grain of the core principles to leave the officers without any structure to constrain and compel them to act compatibly with properly defined rules. It is one of the motifs of a liberal democracy and a fundamental concept

of rule of law that all powers are structured and defined by rules. The rule of law and the due process of law are the twin concepts which constitute the structural foundation of any constitutional democracy. They play a central role in developing the constitutional right of a person to make full answer and defence. It is stated in Article 16 of the 1789 French Declaration of the Rights of Man and Citizen that:

“A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.”

It is also said that ‘arbitrary uncontrolled discretion is likely to run riot at the expense of clear discernable principle’.

10. *Rule of law is concerned with the balance between the establishment of order and the control of governmental power. (C.H. McIlwain, Constitutionalism and the Changing World (Cambridge: Cambridge University Press, 1969) at 82). The concept is essentially aimed at the organization of society and the limitation of governmental powers through law. The rule of law presupposes that governmental power can be exercised and controlled through law.*

11. *The officers of Directorate I & I have, it seems, absolute discretion to proceed in a certain matters. This runs counter to what Justice Douglas remarked in U.S v Wunderlich, 342 U.S 98:*

“Law has reached its finest moment when it has freed man from the unlimited discretion of some ruler...when discretion is absolute, man has always suffered.”

12. *It was said in the Concept of the Rule of Law and the European Court of Human Rights by Geranne Lautenbach that:*

“The rule of law is also directed at the government, and demands that the government can only rule according to law. This more comprehensive aim corresponds with the two core elements of the rule of law: the control of power, by law.

“Secondly the rule of law is aimed at the protection of the individual from arbitrary power. It is based on a view of society centered on the individual. As such, the rule of law is part of a liberal ideology.”

13. *The above statement was distilled from leading authorities and writings on the subject and animates the jurisprudence of almost all developed countries. The above treatise further refers to legality as the central element of the rule of law concept (at p.37) and requires law to conform to certain quality requirements. By reference to the seminal work of Lon L. Fuller, the Morality of Law (New Haven / London: Yale University Press, 1969)*

at 46-91, legality as a concept that sets quality requirements to law was elaborated:

“Fuller has given an elaborate and sophisticated account of legality as a concept that sets quality requirements to law. Fuller tells the parable of King Rex, who fails to set up a legal system for his kingdom in eight different ways, which correspond to a set of eight requirements which must be fulfilled for law to exist. These requirements are the requirements of legality. According to Fuller, a failure to comply with these requirements results in no legal system existing at all. The eight requirements of legality are the following: laws must be general, laws must be promulgated, laws should not be retroactive, laws should be clear, laws should not contradict, laws should not require the impossible, laws should be relatively constant over time and there must be congruence between official action and the declared rules. A short description of these eight elements of legality will be given here:

1. **Generality essentially requires that there are rules. Law must be more than patternless exercise of political power.**
2. *Pro mulgation requires that laws are published so that they can be known by the public.*
3. *Retroacti ve laws are not allowed, as such laws cannot function as a guide to people’s behaviour. Still, exceptions are sometimes allowed to cure irregularities of form, and courts may also sometimes issue a judgment interpreting a law which could lead to retroactive application of their interpretation of law.*
4. **Clarity of the law requires laws to be sufficiently precise, such that the required precision of the law depends on the existence of commonly accepted standards. General words, such as fairness, can have a definite meaning where a body of established practice exists.**
5. *The requirement that laws may not contradict simply entails that the legislature should endeavour not to include conflicting provisions within a single law or enact a law that negates the objects of (a provision of) another law.*
6. *Laws requiring the impossible are incompatible with legality, because one’s conduct cannot be guided by such law. The main example is a strict form of liability which can assign responsibility for occurrences that lie beyond a persons’ powers.*
7. *Stability of the law is important in a similar vein: it allows individuals to be guided by the law. When the law changes frequently it becomes more difficult to conform to the law.*

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8. *There must be congruence between official acts and declared rules; this last requirement entails that some form of control over government must be instituted. Normally this control function is taken up by the judiciary. Consequently, a pressing question is how far the judiciary's power extends in independently interpreting the law."*

14. *The eight quality requirements set out above are the bedrock principles which illuminate the meaning and effect of the concept of rule of law. The first requirement of generality assumes that there are rules and that 'law must be more than patternless exercise of political power'. This, in my opinion, is at the centre of controversy involved in these petitions. There are no rules to guide and direct the officers of Directorate I & I. Since there are no rules, the other set of requirements, too, have gone abegging. Hence, there is no clarity of the law and no means of ascertaining congruence between official acts and declared rules. Tom Bingham (Law Lord of the United Kingdom) in his book, 'The Rule of Law', brought out the correlation between rule of law and official discretion in the following words:*

"The rule of law does not require that official or judicial decision-makers should be deprived of all discretion, but it does require that no discretion should be unconstrained so as to be potentially arbitrary. No discretion may be legally unfettered."

15. *In the above book the author explored eight ingredients of the rule of law one of which was that 'the law must be assessable and so far as possible intelligible, clear and predictable.' He further remarked that:*

"The third reason is rather less obvious, but extremely compelling. It is that the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing commercial rights and obligations. No one would choose to do business perhaps involving large sums of money, in a country where the parties' rights and obligations were vague or undecided. This was a point recognized by Lord Mansfield, generally regarded as the father of English commercial law, around 250 years ago when he said: "The daily negotiations and property of merchants ought not to depend upon subtleties and niceties; but upon rules easily learned and easily retained, because they are the dictates of common sense, drawn from the truth of the case." In the same vein he said: "In all merchantile transactions the gretr object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other. Because speculators (meaning investors and businessmen) then know what ground to go upon."

But this is not an Official Liquidator-fashioned and outdated notion. Alan Greenspan, the former chairman of the Federal Reserve Bank of the United States, when recently asked, informally, what he considered the single most important contributor to economic growth, gave as his considered answer: "The rule of law". Even more recently, The Economist published an article which said: "The rule of law is usually thought of as a political or legal matter.... But in the past then years the rule of law has become important in economics too...The rule of law is held to be not only good in itself, because it embodies and encourages a just society, but also as a cause of other good things, notably growth.

"Given the importance of this principle, we cannot be surprised to find it clearly stated by courts all over the world. In the House of Lords in 1975 Lord Diplock said: "The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal principles which flow from it." He made much the same point a few years later: 'Elementary justice or, to use the concept often cited by the European Court (the Court of Justice of the European Communities), the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or, more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly available."

16. The observations set out above by an eminent common Law Judge are closely tied in with the statements on the subject made by the Geranne Lautenbach which is based on a rich tapestry of case law by European Court of Human Rights and academic works of prominent scholars. It also emphasises the need for a body of accessible legal rules for the successful conduct of trade, investment and business generally. In short, it is universally accepted now that all official acts must conform to rules which are published and accessible. Since there is no intelligible criteria laid down by rules validly promulgated for the exercise of powers by officers of Directorate I & I, the cognizance of a case fails to meet the standards of legality and so is without lawful authority."

50. It was held in the cited precedent that it is universally accepted now that all official acts must conform to rules which are published and accessible as no discretion can be legally unfettered. There

must be congruence between official acts and declared rules. The officers of RUDA are enjoying a patternless exercise of power which is antithetical to the rule of law. It is held that the preparation of a Master Plan without the rules to guide the concerned officer is unlawful.

51. In this context, section 18(5) is another provision which has a significant sway over the aspect of preparation of a Master Plan. It has been reproduced hereinabove. Sub-section (5) of section 18 provides that the Master Plan of the Authority shall be considered as an independent Master Plan and have no nexus whatsoever with the integrated Master Plan of any other authority, agency or local government. This puts paid to the argument of the counsel for RUDA that RUDA had adopted the master plan prepared and approved by LDA in 2016. Sub-section (5) of section 18 restates the intent of the legislature which wants the Authority to make its own independent master plan and which should have no relation **whatsoever** with an integrated master plan of any other authority. Therefore, RUDA could not have referred to AMP, 2016 of LDA and used it for its own purpose by way of adoption. This provision has a clear purpose and which cannot be circumvented or whittled down by RUDA by adopting previously prepared Master Plan without

going through the trouble of preparing its own independent Master Plan uniquely conforming to the purpose for which RUDA has been set up. Not only that the provisions of the Act, 2020 relating to the preparation of the Master Plan were put to the wayside by the members of RUDA, they demonstrated a gross negligence in requiring an independent Master Plan to be prepared on which the schemes, housing schemes and projects could be prepared and established.

52. Section 15 has been set out above and deals with the preparation of schemes. Notably the Authority shall prepare a scheme for the area or in part there of “in such manner may be prescribed”. It has already been brought forth that the word “prescribed” means prescribed by rules or regulations framed under Section 54 of the Act, 2020. Firstly, no rules or regulations to this effect as framed by the Govt. of the Punjab or the Authority have been placed on record nor have any such rules or regulations been relied upon by RUDA. Obviously RUDA claimed that scheme had been prepared for which RUDA admittedly issued an RFP (Request for Proposal). Also the decision taken by the Authority with regard to the preparation of any scheme has also not been placed on record. It is incredulous indeed that RUDA has floated an RFP

for a scheme which has neither been approved nor has it been prepared in accordance with the rules or regulations prescribed for the purpose. The Amendment Ordinance has proceeded to substitute Sub-section (3) of section 15 with the following”

“(3) The Authority shall publish the sanctioning of any scheme in the official gazette within one year of its approval or before the start of construction of scheme whichever is earlier.”

53. The substitution made above shows firstly that RUDA admits that it had not published the sanctioning of any scheme in the official gazette and the period has now been extended by substitution of the original Sub-section (3). However, the prior question still remains i.e. whether any such scheme was at all approved by the Authority and was it prepared in terms of any rules or regulations enacted under Section 15. It merely seems that RUDA has approved a Master Plan which is not to be confused as the same thing as preparation of scheme which has been separately defined in the Act, 2020 and *inter alia* means projects approved for urban development etc. Apart from this, section 16 which has already been reproduced above relates to establishment of housing schemes and projects. The mere fact that housing schemes have been dealt with under a separate provision of the Act, 2020 shows that it has to be treated separately and apart from any scheme

generally prepared under Section 15. Almost 80% of the land in the area of the Authority is sought to be used for establishment and development of housing schemes and projects and other infrastructure relating to these schemes. Sub-section (2) specifically provides that a housing scheme under Sub-section (1) shall be approved in the manner prescribed for the preparation of a scheme under the Act, 2020. Therefore, any housing scheme sought to be prepared by RUDA has to conform to the manner of preparation of schemes generally laid down in section 15. There is nothing on record to suggest that the Authority prepared a housing scheme and had it approved in the manner prescribed by section 16 read with section 15 of the Act, 2020. This will necessarily engage the question of public purpose which the scheme of RUDA serve.

54. In the context of Master Plan further documents, admitted on all hands and submitted by LDA, may be referred and which would shed light on the question of approval of Master Plan firstly by LDA and then by RUDA and the validity of these actions will then be judged on that basis.

55. Mr. Ali Zafar, learned counsel for RUDA in some of these petitions argued in his inimitable way more like a friend of the Court rather than as a

counsel litigating an adversarial claim. I would like to bring on record my appreciation for his approach to the case and the manner in which he sought to reconcile different aspects of the case in the exposition of the Act, 2020. He submitted that Lahore is now one of the largest cities of the world and this urban sprawl has a population which exceeds thirteen million. Lahore, according to him, is facing stressed housing facilities, hospitals, public spaces etc. and these existing facilities are insufficient for the ever increasing populace. According to him, the establishment of RUDA is a step towards planned urbanization and must be viewed on that basis. He contended that housing societies have surrounded all area of Lahore in an unplanned manner with no basic amenities and RUDA plans to fulfill obligations towards the people by providing basic amenities which are essential to living a life with basic provisions and which are acknowledged by the Constitution. This, according to him, is the *raison d'etre* for setting up RUDA.

56. As a backdrop, Mr. Ali Zafar alluded to the documents attached with C.M No.10 of 2021 filed on behalf of the Advocate General, Punjab and the report which was summoned by this Court from LDA in W.P No.30998 of 2021. Primarily, these

facts have already been narrated above and to reiterate they make a reference to various actions taken by LDA in deciding to set up a project and consultants were hired who proposed land use zoning plan. He thereafter referred to the AMP, 2016 and its approval granted in the meeting of LDA held on 14.7.2016. He however could not refer to any portion of the decision taken by LDA in that meeting which specifically approved the Master Plan for Ravi Riverfront Urban Development Project (initiated by LDA). The Act, 2020 was promulgated on 11.08.2020 and Mr. Ali Zafar, Advocate briefly stated the purpose of the Act as well as the decision of the members of RUDA dated 14.10.2020 which too has been set out above.

57. The stage is now set for referring in juxtaposition the arguments made by Mr. Shazib Masud, Advocate for RUDA in the other petitions. Upon query, the learned counsel for RUDA admitted that in fact LDA had not approved any Master Plan relating to the Project. On the contrary, he submitted that the approval by RUDA in its second meeting of 14.10.2020 was merely to certain plans which were made by Messrs Meinhardt, a consultant firm hired by LDA to prepare feasibility report in respect of different aspects of the Project. This contention of

the learned counsel is belied by the decision taken against item No.5 of that meeting which too has been reproduced above and which clearly stated that LDA had approved the Master Plan in its internal process. This was the briefing given by the Chairman to the members of RUDA and undoubtedly proceeded on a wrong and erroneous assumption. Thus, it is clear by now that firstly LDA had not approved any Master Plan regarding setting up of the Project and secondly no such plan could have been approved by the members of RUDA on the premise that it had already been approved by LDA and so adopting an approved Master Plan of LDA would serve the purpose of drawing up a Master Plan under the provisions of the Act, 2020. Thirdly, there is no question that Messrs Meinhardt neither had the capacity nor the legal competence to either prepare or approve a Master Plan. This was a power vested in LDA and the following documents would show that not only that LDA did not approve such a Master Plan but also that at a later meeting the professional competence of Messrs Meinhardt was seriously challenged and ultimately Meinhardt was blacklisted by LDA. This can be found in the minutes of meeting of LDA held on 28.01.2020 whereby different contours of the Project were discussed and primarily the discussion focused on de-notification of areas from Ravi

Riverfront Urban Development Project. After Project Introduction which took the participants of the meeting through the historical facts it was mentioned that Messrs Meinhardt was selected as technical consultant for the Project through competitive bidding for a period of nine months. Further that the consultant in its report identified certain cash and funds which were taken into consideration by a steering committee set up by LDA to review the feasibility report prepared by Meinhardt. What is crucial for our purposes is the following fact mentioned in the report put before LDA:

*“However, meeting of Steering Committee was not held and no further directions by steering Committee are available. **Moreover, M/S Meinhardt was also blacklisted by LDA.**”*

58. From the above decision it is clear that Meinhardt was blacklisted by LDA and further documents would show contrary to what the learned counsel for RUDA invited this Court to believe that blacklisting was precisely on account of poor performance by Meinhardt as consultant in the Project. In this regard, a letter was written on 22.7.2015 by D.G LDA to the Chairman Planning & Development Board and the following extracts are relevant for our purposes:

“M/s Meinhardt Singapore (Pte) Ltd was engaged by Lahore Development Authority on March 3, 2014 for the preparation of Prefeasibility Strategic Development Plan & Feasibility Studies, and Detailed Designing and Procurement Documents of the Ravi Riverfront Urban Development project at a contract amount of Rs.329,934,407 under the scheme titled “Preparatory Work for Ravi Riverfront Urban Development Project (PC-II)”

2. *Due to extremely poor performance by M/s Meinhardt Singapore (Pte) Ltd, including inordinate delays and misrepresentation of professional staff availability, this office feels its professional responsibility to bring on record the consultant’s conduct and recommend initiation of blacklisting proceedings against the company and its subsidiaries.”*

“4. *From the onset, the consultant demonstrated inadequate capacity to execute a contract of this size by using its local subsidiary office M/s. Meinhardt Pakistan (Pvt) Ltd as principal office instead of the main office in Singapore as committed in the bid. As a result, even the signing of the contract was delayed by more than one month while the local office attempted to augment its capacity to handle this large project. Furthermore, the consultant took a plea of substitution for several key positions, as the staff that had been proposed in the technical proposal was not available.*

5. *Despite repeated communication to the Singapore office, the consultant was unable to deploy to full capacity and persisting issues led to time overruns, first with a delay of five weeks in closure of Phase-I and then a substantial delay of 256 days in completion of Phase-II. Due to delay beyond total project duration, Phase-III was not commenced.*

6. *Of graver concern however has been misrepresentation of professional staff availability by the consultant. The team deployed by M/s. Meinhardt Singapore (Pte) Ltd. was found to be of substantially lower quality than the one it was obligated to provide under contract. Key individuals named in the contract were not engaged, and a constant change in staff deployment was observed throughout the project. In response to the repeated highlighting of this issue, the consultant claimed that a number of staff was working directly from the Singapore office. However, contribution of such staff has not been visible in the deliverables nor in the day-to-day office working, nor have any output reports been provided for such Singapore-based foreign staff even upon request. Furthermore, for the greater*

part of Phase-II, the team visibly operated in the absence of the designated team lead, who was later found to have left the project without official intimation or replacement by the consultant, and with limited number of professional staff.”

The letter then went on to highlight the basic deficiencies which had infected the work undertaken by Meinhardt and which compelled LDA to have it blacklisted. It was stated in the letter that:

“LDA was forced to minutely examine each submission, oversee internal working of the individuals and engage in lengthy review process that resulted in this submissions being returned several time to correct basic deficiencies such as:

No logical analysis of size of project based on its socioeconomic and demographic features.

No consideration of water level required in the river to create a waterfront

No layout plans, conceptual design or analysis of barrages

No plan or proposals for provision of fresh water to the river

No cost analysis beyond schedule rates

No consideration on bridge retrofitting or cost and resettlement implications

No structural analysis or calculation-based designs

No consideration of protection dykes beyond project area

No estimation of actual wastewater discharge using field data

Extrapolation of cost of wastewater technologies using per cusec wastewater treatment cost without localization

No consideration of rainwater discharge in wastewater

No study of local and regional economics to devise economic drivers

No real estate study or land price assessments

Costing based on housing society development costs without consideration of trunk infrastructure

No proposals regarding institutions and reforms required to create city of higher standards

No data compilation beyond what was provided by client

No consideration of resettlement impact or costs in overall conceptualization of plan

No consideration of costs, population, or master plan layout in phasing strategy

Generic feasibilities of single units rather than specific ones for different components

Use of Generic designs of river and barrage structures for costing

No physical modeling of proposed river channelization design

No transport modeling to substantiate proposed transport network

No public infrastructure requirements analysis beyond generic benchmarks

No geotechnical analysis of provided geotechnical data or use in planning exercise

No consideration or strategy to accommodate wet weather flow of existing Lahore once river is channeled

No integrated financing strategy or game plan to take the project to market.

Overall, the consultant did not show the level of seriousness required for a project of this size and demonstrated a general lack of understanding of the objective of the project. Similarly deliverables suffered greatly in terms of quality, integration and consistency, requiring major corrections from the client side throughout the process for successful closure of Phase-II."

59. The above is a damning indictment of Messrs

Meinhardt and the letter reproduced above delves in the below par performance exhibited by the consultant in the preparation of feasibility studies. Each aspect of the studies prepared by Meinhardt was trashed and grave and serious deficiencies were pointed out by LDA which rubbishes the integrity of the report prepared by Meinhardt and on the basis of which LDA was constrained to not only reject those reports but also to blacklist Meinhardt.

60. This begs the question whether RUDA could have relied upon such a study prepared by a blacklisted consultant and on the basis of which RUDA seeks to proceed to set up a multi-billion project which has serious ramifications and which requires studies of high-professional quality to be undertaken. In the opinion of LDA Meinhardt had not done any logical analysis of size of the Project based on its socio-economic and demographic features; there was no consideration of protection dykes beyond project area; no structural analysis or calculation-based designs; no proposal regarding institutions and reforms required to create a city of high standards; no consideration of resettlement impact or costs in overall conceptualization of plan; use of generic designs of river and barrage structures for costing; no physical modeling of proposed river

channelization design etc. It is evident that Meinhardt and the feasibility report prepared by it was found to be lacking in all material particulars and on crucial aspects on which the Project was to be structured. The very architecture of the Project was challenged on various grounds by LDA and the negligence and professional incompetence exhibited by Meinhardt was of such an extent that LDA had no option but to blacklist the consultant for any future projects. No material was placed on record to show that these actions were brought under challenge by Meinhardt.

61. In this perspective, petitioners submitted that the incumbent CEO of RUDA was a former employee of Meinhardt and had an interest in approval of its feasibility reports to form the basis of RUDA's Master Plan. This fact (of being a former employee of Meinhardt) was not denied. It was argued by Mr. Waqar A. Sheikh, Advocate that he be removed on the ground of conflict of interest. I shall refrain from entering this thicket as this question does not arise directly in these petitions. A separate challenge may be brought in this respect if so advised.

62. This begs the question; was it prudent on the part of RUDA to have relied upon a feasibility study

prepared by a blacklisted consultant who had shown capricious and uncondonable incompetence in the preparation of the feasibility studies. The members of RUDA while approving these feasibility studies did not even take the trouble to make an independent analysis of the true facts on the ground nor did they demonstrate a high level of vigilance in taking these decisions which was expected of the members to demonstrate in view of the enormous public trust which was placed in their hands. The members of RUDA have been derelict in their duty towards the city of Lahore in taking flawed decisions.

63. In conclusion it is held that no Master Plan has been prepared by RUDA and the further actions, in absence of the Master Plan, are *ultra vires* and struck down being unlawful.

Section 6 Challenge:

64. Section 6 lays down powers and functions of the Authority. The oral arguments of the petitioners' counsels in respect of section 6 however revolved around the words "with the agreement of the local government concerned and on such terms and conditions as may be prescribed". While the oral arguments were being addressed in this Court, the Govt. of the Punjab promulgated the Amendment Ordinance and by section 4 of that Ordinance proceeded to omit these words from section 6. The

learned counsel for Govt. of the Punjab as well as RUDA invites this Court to hold that this omission be always deemed inserted in the Act, 2020 on the basis of Sub-section (3) of section 8 of the Amendment Ordinance which seeks to confer retrospectivity on the amendments made by the Amendment Ordinance. This argument of Govt. of the Punjab and RUDA must fall on barren grounds primarily for two reasons which are discussed below.

65. Firstly, section 6 obligated the Authority to initiate a Master Plan to prepare a scheme with the agreement of the local government concerned. This was clearly not done by RUDA at the relevant time and so it fell foul of the provisions of section 6 in this regard. Simply because a saving clause has been enacted by the Amendment Ordinance will not confer validity on the act of RUDA in initiating and preparing the Master Plan as well as schemes for the Project which are under challenge in these petitions. For, the case of the petitioners is that a Master Plan had already been prepared and a scheme including a housing scheme too had been prepared and at the time of their approval the agreement of the local government concerned was not secured and so the act of RUDA in initiating and preparing the Master Plan as well as any scheme in the area was *ultra vires* the powers of the Authority and cannot be

condoned by retrospective application of a saving clause through the Amendment Ordinance. Since such an act was *void ab initio* it cannot be clothed with legality or lawfulness at a subsequent date by the promulgation of an Ordinance which itself has a validity for limited time period.

66. Secondly, there is a higher constitutional argument which upends any argument on this basis and by extension any substitution made through the Amendment Ordinance. This brings us to Article 140A of the Constitution which provides that:

140A. Local Government. (1) *Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.*

(2) *Elections to the local governments shall be held by the Election Commission of Pakistan.*

67. Before proceeding further the watershed case in which the precise sweep of Article 140A was analyzed by the Supreme Court of Pakistan must be referred. It is reported as Lahore Development Authority through D.G and others v. Mrs. Imrana Tiwana and others (2015 SCMR 1739). The following paragraphs are being reproduced and which relate to the construction put on Article 140A:

“56. *That even after the insertion of Article 140A the Provincial Government would continue to have the authority to enact and amend statutes, make general or special laws with regard to Local Government and local authorities, enlarge or diminish the authority of Local Government and*

extend or curtail municipal boundaries. This power of amendment has, however, to be informed by the fact that if the Provincial Government oversteps its legislative or executive authority to make the Local Government powerless such exercise would fall foul of Article 140A of the Constitution. An excessive or abusive exercise of such authority would not be countenanced by this Court. It would be struck down.

58. *This still leaves the question as to what is to be the scope of the political, administrative and financial authority to be conferred on the Local Governments. It is obvious that the conferment of all such authority on the Local Government would completely efface the Provincial Government within a Province and would violate Articles 137 and 142 of the Constitution. On the other hand, a complete failure to devolve any such authority would violate Article 140A of the Constitution. **It is therefore clear that some meaningful political, administrative and financial authority must be devolved on the Local Governments. The extent of such devolution has to be between nothing and everything. The Constitution makers could have determined the scope of such devolution by enumerating Local Government powers within the Constitution itself. They chose, however, not to do so.***

59. *The omission by the Constitution makers to specifically enumerate such powers was deliberate. They left the scope of such powers to be determined by each Province in accordance with the prevailing circumstances and political realities of the day. **They acknowledged that the process must be initiated, yet were conscious of the fact that it has to be gradual. As Local Governments evolve, more and more powers would have to be devolved. Room was left for political experimentation, constitutional dialogue and growth.** Instead of enumerating Local Government powers the Constitution makers left these to be worked out in harmony between the Provincial and Local Government. Why? Because they were conscious that political processes are evolutionary in nature. Institutions take root over time. They draw strength from a continuous constitutional dialogue between the people and their elected representatives. Implicit in this was also the recognition that the imposition of a ready-made model from the top often proves dysfunctional. It retards rather than accelerates political consensus. Much more stable is a model, which develops after mutual give and take over time. The progress of law, the development of political processes and the growth of institutions is often like the progress of a mountaineer: two steps forward, one step back. It*

may appear to be slow but patience is rewarded with stability.

60. *Judges should be wary of rushing in where Constitution makers hesitated to tread. The line will emerge gradually with time. It will be made apparent by a constant process of give and take at various levels between the two elected government and between the elected representatives and their constituents. A judge made clear bright lined divider would have the advantage of certainty. At the same time it would suffer from the limitations of having by-passed the political processes and having not been tested in the crucible of time. It would be brittle and lack flexibility. It would freeze political debate. It would retard the growth of politics and the evolution of the republic. That is inevitable when unelected judges take over the policing of lines which are better manned by the people and their elected representatives.*

74. *The solution, therefore, lies in reading the provisions of the two statutes in harmony. **The LDA Act, 1975 is to be regarded as an enabling statute. It allows LDA to act in support of and to complement the Local Government in the exercise of its functions and responsibilities. Where the Local Government is unable to act because of a lack of resources or capacity, or where the project is of such a nature that it spills over from the territory of one Local Government to another or where the size of the Project is beyond the financial capacity of the Local Government to execute; the LDA can step in and work with the Local Government.** Economies of scale, spillovers and effectiveness are merely illustrative of the situations in which the LDA can act in the exercise of its functions to carry out developmental and other work and perform its statutory functions. These are not exhaustive. **Life and time may throw up other situations and create circumstances which may warrant LDA action to be taken in consultation with the Local Government within the purview of PLGA, 2013. Closing the categories today will freeze growth and retard progress.***

75. *Likewise the Provincial Government, in the exercise of its legislative and executive authority can aid and support the Local Government. The Provincial Government is also not prevented from taking the initiative for the growth and development of the people and the Province in the exercise of its legislative and executive authority. The exercise of such authority must, however, be in the public interest. It should encourage institutional growth and harmony. **It must be in consultation and with the participation of the Local Government. To complement is not to take over.***

77. Viewed in this light the LDA Act, 1975 and the legislative and executive authority of the Province are not inconsistent with Article 140A of the Constitution. These create a framework where the Provincial and Local Governments and authorities of the Provincial Government work together in the public interest.

78. **That being so what should one make of Section 46 of the LDA Act, 1975 which gives its provisions overriding effect. Its use as a tool to demolish the PLGA would be repugnant to Article 140A. To strike it down would mean that even where the provisions of the LDA Act conflict with provisions of other statutes it would not override those. That cannot be the legislative intent. We are of the view that section 46 would apply only in the event of a conflict or inconsistency between its provisions and that of other statutes. It would have no application and cannot be used to make the LDA Act to otherwise stall PLGA 2013 when substantive factual or policy grounds are unavailable.** When harmoniously construed, as stated above, there is no conflict between the provisions of the PLGA 2013 and the LDA Act 1975.

79. The maxim *ut res magis valeat quam pereat* applies. An interpretation that validates outweighs one that invalidates. As observed by Cardozo J albeit in dissent in *Panama Refining Company v. Ryan* 293 U.S. 388, 439 (1935) "When a statute is reasonably susceptible of two interpretations, by one which it is unconstitutional and by the other valid, the court prefers the meaning that preserves to the meaning that destroys". Antonin Scalia and Bryan Garner in their treatise, *Reading Law: The Interpretation of Legal Texts* at page 66 state; "The presumption of validity disfavours interpretations that would nullify the provision or the entire instrument". **Section 46, therefore, need not be struck down. It is interpreted as being a provision which does not trump or destroy or abridge any provision of the PLGA, 2013. Read thus it does not offend Article 140A and need not be struck down.**

80. It will also not be appropriate to enumerate the minimum or maximum political, administrative and financial powers which must be conferred upon the Local Government to satisfy the mandate of Article 140A of the Constitution. These have to be worked out by the Local and Provincial Governments in a constitutional dialogue over time. The contours will emerge and the content will be identified as the political process continues and democracy takes root. It cannot be done wholesale and here and now. **In this the Provincial Government, as the repository of all legislative and**

executive authority in the Province, must take the initiative. It is, therefore, for the Provincial Government to work constantly and tirelessly to fulfill the mandate of Article 140A and realize its ideals.

68. What are the takeaways from *Imrana Tiwana*?

The Supreme Court alluded to the question regarding precise scope of the words used in Article 140A and the concept of devolution of political administrative and financial authority on the local governments. Thereafter, the discourse turned to the balancing exercise in maintaining the respective relation of the Provincial Government viz-a-viz the local governments. It was held that there was a deliberate and conscious omission by the framers of the Constitution to specifically enumerate such powers and left the scope of such powers to be determined by each Province in accordance with the prevailing circumstances and political realities of the day.

69. Although the enumeration of the devolved powers has been left fluid and flexible, this does not give *carte blanche* to a Provincial Government to do so in a whimsical and erratic manner. In particular, where an authority is established to perform functions on a scale which is beyond the capacity of a local government, it is a permissible act. But it must not be forgotten that the devolution of the responsibility and authority is “to the elected representatives of the local governments” and not to

the local governments as such. This distinction is wedded to the notion of devolution. By extension, therefore, the devolution of authority is on the voters of a local government who, in turn, elect their representatives to exercise that authority. If the will of the voters is to prevail, the least that the Provincial Government should do is to consult them as any deprivation or ouster will impact a cluster of constitutional rights which cannot be eroded in the process.

70. In the context of the powers and authority of LDA (which is an authority exercising similar powers as RUDA in the metropolitan area of Lahore) it was said that LDA was to act in support of and complement the local government in the exercise of its functions and responsibilities. In cases where the local government was unable to act because of a lack of resources or capacity, LDA could step in and work with local governments. (This condition, too, has gone abegging in the case of RUDA since, admittedly, RUDA does not have the financial resources to take up and complete the project for which loan is being raised from the Govt. of the Punjab. But this question shall not detain us any further). The essence of *Imrana Tiwana* was that any action taken by LDA has to be in **consultation** with the local government and within the purview of the

local government laws. Similarly, the Provincial Governments were also obliged to act in consultation and with the participation of the local government. It was also the obligation of the Provincial Government, according to *Imrana Tiwana* “**to work constantly and tirelessly to fulfill the mandate of Article 140A and its ideals.**” Importantly, the Supreme Court sounded a warning when it said that the Provincial Governments cannot overstep their legislative and executive authority to make the local government powerless as this would fall foul of Article 140A.

71. The construction put by the Supreme Court of Pakistan on Article 140A is binding law and since it was an interpretation of a constitutional provision, no law can be made or promulgated which offends this holding of the Supreme Court of Pakistan and the establishment of a development authority such as RUDA has to conform to the *ratio decidendi* of the Supreme Court as enunciated in *Imrana Tiwana*. In short, any functions to be performed by RUDA have to be in consultation with the local government concerned and there is no question that in a given case a complete abdication of such a consultative process is envisaged by a statute. Section 6 as originally enacted was in consonance with the holding of *Imrana Tiwana* and omitting these

important words in the Amendment Ordinance is *ultra vires* and unconstitutional. The Provincial Government by deleting these words in section 6 exceeded its authority conferred by the Constitution and such a law has to be struck down. Article 140A is a crucial plank of a republication form of government. Local governments form the foundational tier of a democratic polity. Our Constitution not only establishes them but also enjoins Provinces to devolve powers on them. This presupposes that executive authority vests in the Provincial Government and a reasonable chunk of that authority has to be carved out and devolved upon local governments to confer upon them political, administrative and financial responsibility. This is a constitutional obligation and there is no absolute discretion in the matter. Provinces cannot be guilty of impulsive and whimsical conduct in matters covered by Article 140A of the Constitution. It must be borne in mind that that devolution had already taken place and RUDA encroaches upon the jurisdiction of various local governments as soon as it is set up. To that extent, therefore, the devolution stands withdrawn. Establishing an authority such as RUDA, by withdrawal of devolved powers and to the complete exclusion of the concerned local governments, is impermissible to a Provincial

Government. *Imrana Tiwana* denounces such an act as running against the grain of the core principles of Article 140A of the Constitution. It is all the more egregious if the act envisages a withdrawal of devolved powers. The jurisdiction and authority of local governments cannot be taken away completely and in order to maintain a seamless web, a hybrid system of governance will have to be put in place which rests on reasoned and deliberative policy making and follows the rule of deference and accommodation. It is clear that section 4 of the Amendment Ordinance is actuated by ulterior motives and is disloyal to the language of Article 140A. Nothing could be more antithetical to the instincts and traditions of the people of the area of RUDA since, at a stroke, their constitutional rights to elect their representatives have been taken away. As to a constitutional mandate, U.S. Supreme Court, in *United States v Butler (1936) 297 US 1*, wrote that:

“The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty: to lay the article of the constitution which is involved beside the statute which is challenged and to decide whether the latter squares with the former...This court neither approves any legislative policy. Its delicate and difficult office is to assert and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and having done that, its duty ends...”

In the words of Professor Joha Griffith “Constitutions are shaped by the working relationships between their principal institutions.”

72. Section 4 of the Amendment Ordinance is held to be unconstitutional and is struck down.

73. The consequence which inevitably follows from striking down section 4 of the Amendment Ordinance is that section 6 as originally enacted stands revived. RUDA was, therefore, obligated and under a bounden duty to prepare a Master Plan and a scheme with agreement of the local government concerned. Since it failed to do so, the Master Plan as well as any scheme prepared, for the area under RUDA are struck down, too.

Provisions of Act, 2020__ Constitutionality:

74. Before we proceed to consider the particular provisions which in the arguments of the petitioners' counsel as well as *amici curiae* are sought to be struck down on the ground that they offend the constitutional provisions, it is notable that a common thread that runs through the provisions of the Act, 2020 is the condition for taking actions in accordance with the prescribed manner and 'prescribed' has been defined in the law itself to mean prescribed by rules or regulations. None of the crucial steps taken by RUDA such as preparation of Master Plan, schemes, housing schemes etc. have been accomplished in accordance with the rules as no rules to date have admittedly been framed for such matters. The

legislature in its wisdom required all acts to be taken under the rules and in accordance with the elaborate procedure prescribed in those rules. Clearly, the legislature thought that unbridled and unstructured discretion could not be conferred on the members of the Authority whose powers in all respects must be circumscribed and limited. This purpose of the Act, 2020 has been thrown to the winds in the decision-making process adopted by the members of RUDA whose first obligation was to require rules and regulations to be framed on each aspect which was brought before them for approval.

75. The learned counsel for the petitioners and the *amici curiae* contended that some of the provisions of the Act, 2020 were unconstitutional. Mr. Issam Bin Haris, Advocate referred to the provisions of Sections 29, 30 and 31 which deal with the acquisition process of RUDA and have been reproduced above.

76. Admittedly, the acquisition being conducted by the Provincial Government on behalf of RUDA has been initiated under the Act, 1894. Sections 29, 30 and 31 of the Act, 2020 however provide a distinct procedure in matters relating to acquisition. It can be seen that there is a *non obstante clause* in section 29 which states that any land within the area shall be

liable to acquisition in accordance with the provisions of the Act, 2020 and the provisions of the Act, 1894 will not have any effect. Sub-section (2) of section 29 permits the Authority to either acquire or purchase in a transparent manner any immovable property or land to accomplish the purposes of the Authority. Section 30 is couched in terms which are both unlawful and contradictory at the same time. It states that the Authority may acquire an immovable property under the Act, 2020 and the provisions of the Act, 1894 shall apply. This provision is difficult to reconcile but it seems that the import of section 30 is that acquisition will be under the Act, 2020 and the manner and mode prescribed in the Act, 1894 shall be applicable to all such acquisitions. Yet as stated above, the entire proceedings by the Collector have been taken under the provisions of the Act, 1894 which in my opinion is contrary to Sections 29 and 30 of the Act, 2020. In order to serve the purpose of Sections 29 and 30, a separate Land Acquisition Collector ought to have been appointed and a procedure for determination of compensation should also have been provided. That aspect has been dealt with in section 31 (relating to compensation) however, it does not provide an elaborate procedure for determination of compensation. By Sub-section (3) of section 31 it has been provided that where

compensation is to be paid in cash, it shall be determined by the Collector and the Collector has been defined as one under the Act, 1894. It seems that the provisions of sections 29, 30 and 31 read together provide as system of acquisition which oscillates between the Act, 2020 and the procedure provided under the Act, 1894. But what comes out as an established fact from their combined reading is that the Authority in all matters of acquisition shall proceed under the provisions of the Act, 2020.

77. Article 24 of the Constitution provides that:

24. (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) any law providing for the acquisition of any class of property for the purpose of—

(i) providing education and medical aid to all or any specified class of citizens; or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

78. This provision will be subject to a more extensive consideration while dealing with the challenges regarding acquisition, for the present it is being referred merely to analyze whether sections 29, 30 and 31 conform with the fundamental right of protection of property rights enshrined in Article 24 or not. Sub-clause (2) of Article 24 enjoins that no property shall be compulsorily acquired save for public purpose and save by the authority of law which provides for compensation therefor and either

fixes an amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given. Thus, Article 24 prohibits the acquisition of a property unless it is for public purpose and provides for a controlled manner of determining compensation by specifying the principles and the manner in which compensation is to be determined and given. Seen in the context of Article 24, sections 29, 30 and 31 clearly do not conform to the constitutional mandate and these provisions besides being contradictory also fail to provide for a procedure to determine compensation in accordance with Article 24. Clearly, sections 29, 30 and 31 of the Act, 2020 purport to be a law which deals with compulsory acquisition of property and is thus caught by the mischief of the protection of property rights as given in Article 24. In Sub-section (6) of section 31 it has been provided that Authority shall pay compensation in cash at such rate as may be determined in the prescribed manner through regulation. Once again this provision alludes to prescribing a manner for determination of compensation by either rules or regulations. Doubtless, the provisions of sections 29, 30 and 31 relating to

acquisition of immovable property are not in conformity with Article 24 of the Constitution and are held to be unconstitutional.

79. Similarly, section 6 (xxxiv) of the Act, 2020 provides that:

“(xxxiv)The Authority shall enjoy all the powers of the Local Government as defined in Punjab Local Government Act 2019, and the Municipal Authority independently for the purpose of carrying out any functions under this Act in the area of jurisdiction within its Master Plan.”

80. According to Mr. Issam Bin Haris this provision too runs counter to holding of the Supreme Court in *Imrana Tiwana* as also Article 140A. Article 140A has already been set out above but the crucial aspect which needs to be flagged while reading Article 140A is that not only an obligation has been cast on a Province to establish a local government system but also to devolve political administrative and financial responsibility and authority to the “elected representatives of the local government”. The above provision however confers the powers of a local government on RUDA which is clearly an affront to the entire concept of devolution provided by Article 140A where the emphasis is for devolution to be made on the **elected representatives of the local**

government and not on the local governments themselves. There is a clear distinction between the two concepts and this concept will be stultified if any authority was conferred the powers of local government without there being elected representatives which comprise that authority and who have come to occupy their offices by a democratic process. This provision too is *ultra vires* Article 140A and is held to be unconstitutional. It is struck down.

81. Section 18(2), which has been reproduced above provides that the Authority shall exercise land use control and perform housing functions in the area without having any interference from any other authority or local government or government agency. To the extent that it ousts the local government in the performance of its functions under Sub-section (2) of section 18, this provision too has to be struck down in view of the decision regarding section 6 which requires all functions to be performed with the agreement of the local government concerned. Secondly, it has to be borne in mind that there are local governments already established and to whom administrative

and political functions have been devolved. In view of *Imrana Tiwana* perhaps the two can act harmoniously and in consultation with each other, yet a complete ouster of the local government of the area from decision making on these aspects would offend Article 140A of the Constitution as interpreted in *Imrana Tiwana* and so section 18(2) is also held to be unconstitutional.

Amendment Ordinance-Constitutionality:

82. Article 128 of the Constitution provides that:

128. Power of Governor to promulgate Ordinances. (1) *The Governor may, except when the Provincial Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.*

(2) *An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Provincial Assembly and shall be subject to like restrictions as the power of the Provincial Assembly to make laws, but every such Ordinance—*

(a) shall be laid before the Provincial Assembly and shall stand repealed at the expiration of 1 [ninety days] from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution.

Provided that the Provincial Assembly may by a resolution extend the Ordinance for a further period of ninety days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution

disapproving it is passed by the Assembly, upon the passing of that resolution:

Provided further that extension for a further period may be made only once.

(b) may be withdrawn at any time by the Governor.

(3) Without prejudice to the provisions of clause (2), an Ordinance laid before the Provincial Assembly shall be deemed to be a Bill introduced in the Provincial Assembly.

83. This Article confers power on the Governor to promulgate an ordinance. The power is hedged in by the condition firstly that the Provincial Assembly should not be in session; secondly if the Governor is satisfied that circumstances exist which render it necessary to take immediate action. Therefore, the power is extraordinary and may be exercised sparingly and must satisfy the prior conditions prescribed in Article 128 regarding Provincial Assembly being not in session and existence of circumstances which render it necessary to take immediate action. In a recent judgment of this Court the question regarding the ordinance making power and its constraints was decided. It was held that though it was a legislative power but in actuality it was exercised by the political executive. The following extracts would be relevant to be set

out below from the judgment reported as Vice Chairman Punjab Bar Council v. Govt. of the Punjab (PLD 2021 Lahore 544):

“10. The power to promulgate ordinance vests in the Governor by Article 128 of the Constitution. In essence, it is a legislative power but in actuality it is exercised by the political executive. This is a contradiction in terms but this issue will not detain us any further as it does not arise in the present proceedings. What is relevant to be considered is that the power to promulgate an ordinance by the Governor is subject to the conditions that the Provincial Assembly is not in session and he is satisfied that the circumstances exist which render it necessary to take immediate action. Closely tied in with this concept is the principle that under a written constitution the courts’ duty is to see that the constitution is not infringed and is preserved inviolate (*The Bribery Commissioner v. Ranasinghe* (1964) 2 All E.R. 785, 790). Although ordinance-making power is legislative but it must not be forgotten that the power vests in the political executive. Therefore it should be judged by the tests applicable to determine the validity of executive acts. The challenge to the Amendment Ordinance is therefore bifurcated into various grounds, the first of which entails that since the ordinance is an executive act and so its legality or otherwise must be considered on the touchstone of the principles of administrative law relating to executive acts such as illegality, irrationality and procedural impropriety...”

“12. The constitutional scheme envisages a limited government. It follows indubitably that there are spheres of powers delineated for each organ of the Federal as well as the Provincial Governments to operate. They cannot transgress those spheres and encroach upon other areas of activity. This is the cardinal feature of the Constitution and illuminates the meaning and effect of this centrality.

13. The Rules of Business 2011 have been enacted by virtue of powers conferred by Article 139 of the Constitution. Prior to an advice by the Chief Minister to the Governor for an ordinance to be

promulgated, there are certain essential steps which are required to be followed under the Rules of Business for a draft ordinance to be made into law. An elaborate procedure has been laid down which not only acts as a bulwark against abuse but also ensures that sufficient consultation precedes the making of a law...

“19. Central to the present discussion are two more rules viz. Rule 33 and 35 of the Rules of Business. Rule 35 provides that the provisions of Rule 33 shall mutatis mutandis apply where the proposed legislation is an ordinance. This brings us to Rule 33 which contains crucial aspects with regard to any proposed legislation. It says that the department administratively concerned shall be responsible for determining the contents of the proposed legislation, for consulting the concerned departments where necessary and for obtaining the approval in principle of the Cabinet to the issue involved before asking Law and Parliamentary Affairs Department to give legal shape to the bill (read as ordinance for our purposes by virtue of the mandate of Rule 35). Thus, what comes out starkly from a reading of sub-rule (1) of Rule 33 is that the proposed legislation has to be initiated by the department concerned which shall obtain the approval of the Cabinet to the issue involved before asking the Law and Parliamentary Affairs Department to give legal shape to the bill. Therefore, even if a direction had been given by the Prime Minister, what was to be done by virtue of Rule 33 was for the concerned department to obtain the approval of the Cabinet regarding the issue and that approval was merely for the purposes of seeking directions to initiate the proposed legislation. Thereafter the matter should have been referred to the Law and Parliamentary Affairs Department for giving legal shape to the bill. What was done in the instant case was that the drafts of the laws received from the Federal Government were sent to the Chief Minister in a summary for approval and thereafter placed before the Cabinet to be approved by circulation. The first feature of rule 33 is that it conforms to the constitutional principle of autonomy to inhere in the Province and second for an independent consultation to be undertaken in any proposed legislation and a prior approval of the Cabinet must be obtained

regarding initiation of such a process. Concurrently the role of Law and Parliamentary Affairs Department has been settled by sub-rule (1) of Rule 33 while clearly stating that the said department shall give legal shape to the bill. Sub-rule (3) further provides that while referring the legislation to the Law and Parliamentary Affairs Department after it has been approved in principle by the Cabinet, the concerned department shall send a memorandum indicating the lines on which it is proposed to legislate. The place with the Law and Parliamentary Affairs Department occupies is highlighted by sub-rule (4) which provides that apart from giving shape to the draft legislation, the Law and Parliamentary Affairs Department shall advise the department concerned if any legal requirements are to be complied with as also to advise whether the proposed law disregards or violates any of the fundamental rights conferred by the Constitution. It is thereafter that the concerned department shall submit the case including the advice of the Law and Parliamentary Affairs Department to the Cabinet.”

84. The conclusion drawn in *Vice Chairman Punjab Bar Council* was that since the power vests in the political executive therefore any exercise of ordinance making power could be judged by the tests applicable for determining the validity of an executive act. In all such matters, therefore, the petitioners could invoke the principles of illegality, irrationality and procedural impropriety in making a challenge to an ordinance promulgated by the Govt. of the Punjab. The petitioners have challenged the promulgation of Amendment Ordinance on the constitutional grounds of illegality as well as

irrationality as also that the Amendment Ordinance and its promulgation was outwith the powers of the Provincial Government in the given circumstances of the present cases.

85. Priorly, the provisions of Amendment Ordinance may be considered in order to have a fuller grasp of the precise nature of the Amendment Ordinance and the effect that the provisions are sought to have on the pending litigation being decided through this judgment.

86. Learned Advocate General Punjab as well as counsels for RUDA argued that the Amendment Ordinance was remedial and curative law which sought to save certain acts done by RUDA as also to confer validity upon certain other acts. In essence, the Amendment Ordinance operates retrospectively and confers validity to acts which have already been done by RUDA. It is a settled principle that if there is power to legislate on a matter that power includes the power to legislate retrospectively unless the Constitution provides otherwise. There is no legal limit to the making and unmaking of laws by a legislature and it is within the domain of the legislature to legislate with retrospective effect. The doctrine stems

from the sovereignty of a legislature. Similarly the power to legislate also includes the power to validate. This power to validate has been held to be ancillary and incidental to the power to legislate and is a specie of retrospective legislation. Normally retrospective law confers validation of an action despite the fact that such action when taken was not valid. At the same time it is established that a validating provision has to be construed strictly.

87. The provisions of sections 3 and 4 have already been analyzed in the preceding paragraphs and have been reproduced above. The substituted Sub-section (1) of section 51 makes an interesting reading. **It validates all actions taken and decisions made by LDA prior to the commencement of the Act, 2020 including acquisition notices etc.** This is interesting in the sense that what is sought to be validated had in fact been abandoned by LDA in various meetings to which a reference has been made above. To reiterate, LDA had abandoned the Project by de-notifying the areas which were subject to acquisition and proceeded to blacklist the consultant Messrs Meinhardt. It is incredulous therefore that the

substituted Sub-section (1) of section 51 seeks to validate all of those actions of LDA. This includes the blacklisting of the consultant for dereliction of duties. The law, it seems, requires the members of Board of RUDA to continue to treat the consultant as a blacklisted entity and consequently, not to rely upon any of its feasibility reports or a purported Master Plan. Contrarily, RUDA adopted the exact same Master Plan and, thus, contravened its own law.

88. Sub-section (2) of the substituted section 51 merely validates retrospectively the actions taken by RUDA and Sub-section (3) provides that the amendments made to the Act, 2020 by the Amendment Ordinance shall be deemed always to be so inserted in the Act. The act of validation and the insertion of saving clause through the Amendment Ordinance does not save acts which were void *ab initio* and unconstitutional from their inception. Moreover, the government cannot validate acts so as to rewrite history. In this peculiar case the validation being done and the saving clause which has been brought in has a unique connotation. Firstly by the Amendment

Ordinance certain amendments were made in the Act, 2020 so as to delete the essential requirements which were originally incorporated in the Act, 2020 and thereafter proceeded to confer retrospective validity on those amendments. This is clearly impermissible to the executive by resort to ordinance making power (this agreement was sought to be made resolutely by Mr. Sheraz Zaka, Advocate). What was perhaps permissible was to confer validity on an action taken by an authority. What is extraordinary in the present case is that through an amendment the essential pre-condition of an action has been completely erased as if it did not exist and thereafter a retrospective validity has been sought to be conferred. This is an unconstitutional exercise of the power under Article 128 and the executive cannot be permitted to use its powers under Article 128 for omission of an essential pre-condition properly made by the legislature while enacting the Act, 2020.

89. But the constitutionality of the Amendment Ordinance has been challenged from another standpoint. The contention is that

the promulgation of the Amendment Ordinance offends the essential pre-conditions enumerated in Article 128. Mr. Fahad Malik in particular and the *Amici Curie* underlined the words “circumstances exist which render it necessary to take immediate action”. Doubtless, this is an extraordinary power and it is a power we must bear in mind which is quintessentially legislative and has been conferred upon the political executive. Therefore, it cannot be assumed that the power to legislate can be exercised at the whims of the political executive to the ouster of the Punjab Assembly which is clothed with the primary duty to make legislation on all matters which it is empowered by virtue of Article 142 of the Constitution. Thus, the political executive or the Provincial Government cannot assume as a matter of convenience that an ordinance may be promulgated as and when the political executive deems fit in its discretion which cannot be called in question in any court. Although an inbuilt mechanism has been laid down by clause (2) of Article 128 which obliges an ordinance to be laid before the Provincial Assembly, yet the Provincial Assembly does not have any jurisdiction to analyze the circumstances which

indeed existed and which required immediate action to be taken without resort to the procedure of laying a bill before the Provincial Assembly. The justiciability of such an action is left to the Court to construe in appropriate cases.

90. Although Article 128 provides that it is the satisfaction of the Governor to see whether circumstances exist for an immediate action or not, in actuality the satisfaction is that of the Provincial Government (the Cabinet or the Chief Minister). This concept is culled out from a read of Article 105 of the Constitution which provides that:

105. Governor to act on advice, etc. (1) Subject to Constitution, in the performance of his functions, the Governor shall act on and] in accordance with the advice of the Cabinet or the Chief Minister.

Provided that within fifteen days the Governor may require the Cabinet or, as the case may be, the Chief Minister to reconsider such advice, whether generally or otherwise, and the Governor shall, within ten days, act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered to the Governor by the Chief Minister or the Cabinet shall not be inquired into in, or by, any court, tribunal or other authority.

(3) Where the Governor dissolves the Provincial Assembly, notwithstanding anything contained in clause (1), he shall,—

(a) appoint a date, not later than

ninety days from the date of dissolution, for the holding of a general election to the Assembly; and

(b) appoint a care-taker Cabinet.

(5) The provisions of clause (2) of Article 48 shall have effect in relation to a Governor as if reference therein to "President" were reference to "Governor".

91. Article 105 is the provenance of executive action and lays down that the Governor in the performance of his function is to act on the advice of the Cabinet or the Chief Minister. There is a significant proviso to clause (1) of Article 105 which empowers the Governor to require the Cabinet to reconsider such advice. The importance of this proviso will be unpacked shortly. It is however an established principle that in the exercise of his functions, Governor is bound by the advice of the Cabinet and so acts on that advice. Questions have also been raised as to whether the Governor has to act on the advice of the Cabinet if the words "if satisfied" or is "of opinion" have been used in any provisions of the Constitution. The answer to this is that indeed the Governor is required to act on the advice of the Cabinet or the Chief Minister in all such cases as well which fall in the category of cases enumerated by clause (1) of Article

105. Satisfaction etc. in such matters means satisfaction in the constitutional sense; that is to say, the satisfaction required is not the personal satisfaction of the Governor “but is the satisfaction of the President or of the Cabinet in the constitutional sense under the Cabinet system of government”. [*Shamshair Singh v. State of Punjab* (AIR 1974 SC 2192)] cited and followed in Al-Jehad Trust case (PLD 1997 SC 84, 144, 201).

92. This proposition however does not detract from the fact that the opinion formed by the Cabinet and on the basis of which advice is given to the Governor is justiciable for this Court to see whether indeed circumstances exist which render it necessary to take immediate action on the part of the Cabinet to make and promulgate an ordinance. Doubtless, a Constitution is not a painting to be looked at but its mandate is required to be fulfilled by all public bodies on which the powers are conferred and to whom that mandate is addressed. To reiterate, the power to promulgate ordinances is hedged in and is a limited power and cannot be abused to circumvent the circumstances prescribed in

Article 128 in such a way as to make a mockery of the extraordinary power conferred on the political executive and to mainstream the use of such power while it exists in exceptional circumstances.

93. In *Tirathmal v. State* (PLD 1955 (WP) Kar. 594) Kaikaus J. speaking for the full Bench held:

“The words of this Article are prima facie clear. There are two condition precedents for the exercise of power of promulgating an ordinance. The first is that the Assembly should not be in session. The second is that immediate action should appear to the Governor to be necessary”.

94. In *Farooq Ahmad Khan Leghari v. Federation of Pakistan* (PLD 1999 SC 57, 76) Ajmal Mian CJ. Speaking for a strong Bench of seven Judges of the Supreme Court reiterated the well entrenched proposition of law that:

“Notwithstanding the ouster of jurisdiction of the court and the fact that formation of opinion in terms of the relevant provisions of the Constitution or of a statute is to be based on the satisfaction of a state functionary mentioned therein, the court has the jurisdiction to examine whether the pre-requisites provided in the relevant provisions of the Constitution/ statute for the exercise of the power thereunder existed, when the impugned order was passed. If the answer of the above question is in the negative, the exercise of power will be without jurisdiction calling for interference by the Court”.

95. In a written Constitution the Court’s duty

is to see that the Constitution is not infringed and to preserve it inviolate. The current of recent judicial authority in Pakistan runs strongly against the view that there is any such thing as subjective satisfaction immune from judicial scrutiny. The cases of *Haji Saifullah (PLD 1989 SC 166)* and *Muhammad Nawaz Sharif (PLD 1993 SC 473)* may be cited as instances where actions in contravention of the pre-conditions were held unconstitutional and open to correction through judicial review. In *Sabir Shah case (PLD 1994 SC 738)* Saeed uz Zaman Siddiqui J. said that:

“The existence of a situation in which a government of the Province cannot be run in accordance with the provisions of the Constitution cannot be treated subjective. The satisfaction of the President in this regard must be based on existence of objective conditions justifying issue of proclamation under Article 234”.

96. To what purpose is the doing of something subject to a pre-condition or pre-requisite if that something can be done in disregard of the pre-condition or pre requisite. If the Constitution is supreme, any order for an ordinance to be of valid law capable of creating rights and obligations and conferring powers and jurisdiction, it must satisfy the pre-conditions given in Article 128 of the

Constitution. Since the Constitution itself ordains that the exercise is subject to pre-condition, what the courts do in determining the existence of these pre conditions is to see that the Constitution is not infringed. The rule was enunciated by Lord Atkinson in *A.G. v. De Keyser's Royal Hotel (1920) AC 508* cited in *PLD 1955 FC 435*:

“It is quite obvious that it would be useless and meaningless for the legislature to impose restrictions and limitations upon, and to attach conditions to the exercise by the Crown of the powers conferred by a statute if the Crown were free at its pleasure to disregard these provisions and by virtue of its prerogative do the very thing the statutes empowers it to do”.

97. In *Marbury v. Madison (1803) 5 US 137*, Chief Justice John Marshall (US Supreme Court) wrote:

“To what purpose are powers limited and to what purpose is that limitation committed to writing if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed and if acts prohibited and acts allowed are of equal obligation.”

98. No written statement was filed on behalf of Provincial Government to the amended petitions in which the Amendment Ordinance was challenged by the petitioners. It follows that the Provincial Government did not lay any

material before this Court to firstly establish that the procedure prescribed under the rules of business was meticulously followed and secondly that the Cabinet deliberated upon the circumstances which compelled the Cabinet to render an advice to the Governor to promulgate the ordinance. Since this executive action is justiciable and in fact was brought under challenge specifically on this ground, the failure of the Provincial Government to produce such material compels this Court to hold that no material was available on the record to justify the action of the Provincial Government to promulgate the Amendment Ordinance in haste and under the extraordinary powers conferred by Article 128. In all cases involving challenges to an ordinance, the Provincial Government must satisfy the Court that the rules of business were complied with meticulously as a first step and further that the pre-conditions prescribed by Article 128 stood established. Any advice to the Governor must be accompanied by a statement to this effect to rule out the subjective exercise of power so that objectivity must reign supreme in all such matters. Since the powers to issue an ordinance is carved out of the power to make laws which

vests in the legislature, it must be soundly based. The words ‘circumstances exist which render it necessary to take immediate action’ are not inconsequential and since they are found in the Constitution, it would be heretical trample upon them with impunity.

99. Article 128 is a species of delegation as the primary duty to legislate under the Constitution falls on the legislature. Yet, under compelling circumstances, the executive branch may also legislate subject to an overarching supervision of the Provincial Assembly. Generally, the separation of powers principles engender the non delegation doctrine and but for the ordinance making power vesting in the executive, serves as an important structural limit. In *Mistretta v United States* 488 U.S 361, 371-72 (1989), the U.S Supreme Court stated:

“The nondelegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government. The Constitution provides that all legislative powers herein granted shall be vested in the Congress of the United States...and we have long insisted that the integrity and maintenance of the system of government ordained by the Constitution mandate that Congress generally cannot delegate its legislative power to another branch.”

100. The provincial government’s arrogation of responsibilities under Article 128 has to be

for a legitimate purpose and in the special context of the powers conferred thereby. There are implicit constitutional requirements in order for an exercise of delegated power to be constitutional. These were laid down in *Loving v United States*, 517 U.S. 748, 771 (1996) (in a case decided by U.S Supreme Court):

“Congress must lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.”

Further, in *Mistretta*, it was held that:

“delegation is constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.”

It was said in *American Constitutional Law at 985* (Third edition—volume One by Laurence H. Tribe) that:

“This requirement that delegated power include at least some intelligible principle to guide the delegated party preserves, at least theoretically, both sets of constitutional checks—judicial and political—on the exercise of coercive authority in a government of laws.”

101. Suffice to say, if the act of the delegate contravene the limits of intelligible principles, it is unlawful and thus beyond the sphere of legality.

102. As adumbrated, proviso to clause (1) of

Article 105 confers an important power in the armoury of powers of the Governor in all matters where an advice has been given by the Cabinet or the Chief Minister. This is a further reason for clear grounds to be spelt out on the part of the Cabinet and which should accompany the advice for promulgation of an ordinance so that the Governor may require reconsideration on the basis of this provision. A combined reading of Article 105 and 128 would ineluctably show that in respect of an advice made to the Governor for promulgation of an ordinance, the Cabinet is obliged under the Constitution to give reasons bringing forth clearly the circumstances under which resort to Article 128 is being had by the Cabinet or the Chief Minister and those circumstances must be such which render it necessary to take immediate action. In the present case, although no material was placed on record which could be analyzed by this Court to render a decision on those circumstances, the promulgation of the Amendment Ordinance in any case and the nature of those amendments sought to be brought about in the Act, 2020 do not in any case justify the exercise of powers under Article 128 of the Constitution since the hearing in

these cases was being conducted at that time and the session of the Provincial Assembly could easily have been summoned to consider a bill for making amendments in the Act, 2020 instead of taking the extreme measure of promulgation of an ordinance. The time has arrived therefore for putting an end to the unstructured use of power of promulgating an ordinance and further leeway cannot be given to a Provincial Government to exercise this power without compliance of constitutional conditions mentioned in Article 128.

103. It is held that the Amendment Ordinance is *ultra vires* Article 128 on account of infringement of the conditions mentioned therein and is held to be without lawful authority and of no legal effect.

Acquisition challenges:

104. A set of petitions bring a challenge to the acquisition of properties of the petitioners in those petitions who are farmers as also have properties with built up structures and contend that the acquisition proceedings undertaken by the Govt. of the Punjab on behalf of RUDA are unconstitutional. The arguments in this Court related to irregularities and non compliance of

procedural formalities by the Collector in issuance of notification under Section 4 of the Act, 1894 as well as by the Commissioner in failing to fulfilling the obligations cast upon him by section 6; lack of scheme prepared by RUDA and approved by the members of the Board of RUDA in respect of which acquisition could be done and so according to the petitioners there was no issue of public purpose for this Court to analyze and for which the acquisition took place; EIA has to precede the Section 4 notification under the Act, 1894; the acquisition proceedings engage articles 9 and 14 of the Constitution as acquisition of agricultural and cultivated farmland was a threat to food and water security and hence right to life under Article 9 was severely jeopardized.

105. These petitions raise vexed questions of law relating to “urgency” and the concept found in the provisions of the Act, 1894. It is a “Rolled-up” procedure which dispenses with rights vested in a person facing deprivation of property. We thus take hold of a legal principle which bristles with difficulties as soon as it is touched.

Eminent Domain:

106. The Act of 1894 is an expression of the power of the sovereign to take private property for public use in the public interest and compulsorily. This has its provenance in the American concept of “eminent domain” an expression believed to have been used by Grotius in 1625. He was a Dutch jurist and described the power as:

“The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.”

107. In justification of the power, two maxims are often cited: *Salus Populi est suprema lex* (regard for the public welfare is the highest law) and *necessitas publica major est quam privata* (public necessity is greater than private necessity).

108. Eminent domain is generally defined as the power of a nation or a sovereign state to take or to authorize to take any private property other than the owner’s consent conditional on the payment of just compensation. The power of

eminent domain does not depend for its existence on a specific grant in the Constitution but is an inheritance and existence in a sovereign state without any recognition in the Constitution (26 Am Jur 2d). As was said by Muhammad Haleem, Acting Chief Justice in Fauji Foundation v. Shamimur Rehman (PLD 1983 SC 457, 670) “the power of eminent domain is a proprietary aspect of sovereignty and is inseparable from it and the justification for acquisition of property for public purpose is on the principle that the interests of the public are paramount and that private interests have to be subordinated to public interests and the necessities of Government.

109. Eminent domain, that is compulsory acquisition of private property for public use is qualitatively different from police power as is the expression used in the American Constitution. Generally stated, eminent domain takes property because it is useful to public while the police power regulates the use of or impairs rights in, property to prevent detriment to public interest. (29A Corpus Juris Secundem, Section 8).

110. The entire law of acquisition or deprivation of property is an exception to the right to property guaranteed by Articles 23 and 24 of the Constitution. Any discussion, therefore,

must begin with a consideration of those fundamental rights guaranteed by the Constitution.

“23. Provision as to Property

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan subject to the Constitution and any reasonable restrictions imposed by law in the public interest.”

24. Protection of property rights: (1) *No person shall be deprived of his property save in accordance with law.*

(2) *No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.*

(3) *Nothing in this Article shall affect the validity of—*

(a) *any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or*

(b) *any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or*

(c) *any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or*

(d) *any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or*

(e) *any law providing for the acquisition of any class of property for the purpose of—*

(i) *providing education and medical aid to all or any specified class of citizens; or*

(ii) *providing housing and public facilities and services such as roads, water supply, sewerage, gas and*

electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

111. In America, the power of eminent domain is regulated by the fifth and fourteenth amendments. These clauses are known as the Takings clauses and the power is generally referred to as the takings and just compensation power. Since the power relates to the taking of property and its compulsory acquisition, the meaning of the expression ‘property’ would also become relevant. In the American taking clause, the term ‘property’ has been used to include the entire group of rights inhering in the citizen’s ownership. The term is not used in the “vulgar and untechnical sense of the physical thing with respect to which the citizen exercises rights recognized by law. Instead it....denotes a group of rights inherent in the citizen’s relations to the physical thing as the right to possess, use and dispose of it. The constitutional provision is addressed to every sort of interest the citizen may

possess.”(*US v. General Motors Corp.* 323 US 373).

112. Reference may also be made to *Belfast Corporation v. O.D. Cars* (1960) AC 490, the House of Lords considered the expression ‘take any property’ found in the Government of Ireland Act, 1920 to mean “property is a word of very wide import including intangible and tangible property”.

113. The *Belfast Corporation* case and the definition of term ‘property’ was relied upon in *Guru Datta Sharma v. State of Behar* (AIR 1961 SC 1684) and the Supreme Court of India held:

“We consider the principles laid down in the Belfast case (supra) apt as an aid to the construction of the content of the expression ‘acquired’ in S. 299(2) of the Government of India, Act, 1935. The contention urged by learned counsel for the appellant that the deprivation of the landholder of the right of management and control over the forest without his legal title thereto or beneficial enjoyment thereof being affected amounts to acquisition of land within S. 299(2) of the Government of India Act, 1935 must be rejected. The extract we have made earlier from the judgment of Viscount Simonds affords a sufficient answer to a submission that the right of the landholder to possession was itself a right of property and as this had been taken over it constituted an acquisition within the constitutional provision. Property, as a legal concept, is the sum of a bundle of rights and in the case of tangible property would include the right of possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate and so on. All these, of course, would be subject to the relevant law – procedural or substantive – bearing upon each of these incidents, but the strands that make up the total are not individually to be, identified as those

constituting 'property'. So understood, there is no scope for the contention that the imposition, so to speak, of a compulsory Governmental agency for the purpose of managing the forest with liability imposed to account for the income as laid down by the statute is an 'acquisition' of the property itself within S. 299(2) of the Government of India Act, 1935."

114. Similarly, in Mir Abdul Husain v. Province (PLD 1958 Kar. 175, 200), it was held that "property is a very wide term and it includes not only the property itself but other interests also and in relation to land, it is a bundle of rights".

115. As explicated above, the power of eminent domain is regulated by the fifth amendment to the US Constitution which provides "*Nor shall private property be taken for public use without just compensation*". That clause is made applicable to the states by the fourteenth amendment. The US Constitution limits the Government power of eminent domain to cases where the taking is of a public use. The Supreme Court's definition of public use, thus, defines the scope of Government's taking powers.

116. In America, the US Supreme Court has expanded the narrow doctrine of "eminent domain" to countenance the liberal use of this power by the Government. Some of the major cases decided by the US Supreme Court in this regard are *Hairston v. Danville & Western*

Railway Co., 208 U.S. 598 (1908) where the Court emphasized “the propriety of keeping in view by this court, while enforcing the fourteenth amendment, the diversity of local conditions and of regarding with great respect the judgments of the state courts upon what should be deemed public use in that State.” In *Mt. Vernon-Woodberry Cotton Duck Co. v. Ala. Interstate Power Co.*, 240 U.S. 30 (1916), the Court, in upholding a power company’s authority to condemn land and water rights in order to produce and sell hydroelectric power, formally rejected the use by the public test, with Justice Holmes declaring, “The inadequacy of the use by the general public as a universal test is established.” A few years later in *Rindge Co. v. Los Angeles County*, 262 U.S. 700 (1923), the Court elaborated that it was “not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in an improvement in order to constitute a public use.”

117. The next significant developments in the law of eminent domain in America have been encapsulated in an Article with the title “Eminent Domain after *Kelo v. City of New London*: An Argument for Banning Economic Development, by Cohen, C.E., published in *Harvard Journal of*

Law and Public Policy (2006), 29(2), 509. Some of the extracts from this Article will suffice to lay bare the connotation of the term ‘eminent domain’ as expounded by the US Supreme Court.

“This frenzy of slum clearing and urban redevelopment set the stage for one of the most famous twentieth-century Supreme Court public use cases: Berman v. Parker, 348 U.S. 26 (1954)...”

Justice Douglas, writing for a unanimous court, rejected the department store owners’ claim. He dismissed the contention that the taking was not for a “public purpose” by explaining,

“We deal....with what has traditionally been known as the police power. An attempt to define its reach or trace its outer limits is fruitless, for each case must turn on its own facts. The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation.”

It was held that the fact that private enterprise would be used in redeveloping the area did not mean the public use requirement was violated. The redevelopment project overall served a public use, and therefore “the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established.” Moreover, Justice Douglas rejected the appellants’ claim that the taking of the property was unconstitutional because their property did not contribute to the blighted conditions, stating that “once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to compete the integrated plan rests in the discretion of the legislative branch.”

The Court did not decide another major public use case for thirty years. Then, in Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), the unanimous Supreme Court, in an opinion authored by Justice O' Connor, applied similar reasoning in rejecting a challenge to Hawaii's land reform plan...."

In upholding the land reform plan, the Court cited Berman for the proposition that any permissible governmental purpose could be carried out using the eminent domain power. The Court acknowledged that "a purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void". But, "where the exercise of the eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause." According to the Court, "judicial deference is required because, in our system of government, legislatures are better able to assess what public purpose should be advanced by an exercise of the taking power." While acknowledging a limited role for courts to review a legislature's public use judgment, the Court declared, "when the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings---no less than debates over the wisdom of other kinds of socioeconomic legislation -- are not to be carried out in the federal courts."

After Midkiff, the Supreme Court did not decide a major public use case until Kelo v. City of New London, on certiorari to the Connecticut Supreme Court. There, property owners sued the City of New London and the New London Development Corporation (NLDC), a nonprofit development corporation established by the city, to enjoin use of the eminent domain power in furtherance of a comprehensive economic development plan.

*Justice O'Connor filed a dissenting opinion, joined by Chief Justice Rehnquist and Justices Scalia and Thomas. The dissenters accused the Court of abandoning the "long-held, basic limitation on government power" that property may not be taken from A and given to B. Regarding the majority decision, Justice O'Connor wrote, "**all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded -- i.e. given to an owner who will***

use it in a way that the legislature deems more beneficial to the public – in the process....”

In the dissenters’ view, the dual requirements that a taking be “for public use” and that “just compensation” be paid to the owner were intended to ensure “stable property ownership” by preventing arbitrary, abusive and unfair use of the takings power. The requirement that property may be taken only for a public use “promotes fairness as well as security,” while the just compensation requirement is intended to distribute the cost of takings fairly among the general population. Such protections are particularly important, Justice O’Connor noted for people who are “unable to protect themselves in the political process against the majority’s will.

118. A review of the compulsory purchase powers in Britain may also be alluded to. In June, 1998, government instituted a fundamental review of the laws and procedures relating to compulsory purchase, compensation and the disposal of compulsorily purchased land. They appointed an advisory group whose membership embraced the spectrum of professional competence and relevant interest, and who published an interim report in January, 1999. The group put their final recommendations to the Department for Environment, Transport and the Regions ministers in June, 2000. *Compulsory Purchase for economic development: an international perspective, Journal of Planning and Environmental Law* by Crow, S., (2007).

119. The review was published by the Department of Environment, Transport and the

Regions as the Fundamental review of the laws and procedures relating to compulsory purchase and compensation, London, Department of Environment, Transport and the Regions, 2000. The main thrust of the advisory group's findings was to confirm that the current compulsory purchase arrangements were basically sound, and with adequate safeguards to protect the human rights of those whose property is being taken away from them. However, the group recognized that the existing legislative base was complex and convoluted, with a heavy dependence on case law. The review therefore recommended that new compulsory purchase and compensation legislation, consolidating, codifying and simplifying the law, should be brought before Parliament at the earliest opportunity."

120. The review group acknowledged that there was a difficult balance to be struck between preserving the human rights of those whose properties are at risk and the need for speed and certainty in order to attract adequate and timely funding for replacement schemes. However, the group saw no justification for moving away from the long-enshrined principle that, before compulsory purchase powers were authorised, it must be demonstrated that:

the acquiring authority's scheme is in the public interest;

the scheme has a reasonable prospect of being implemented; and

the acquisition of the individual's land is necessary to achieve the scheme's purpose.

121. The fundamental review formed by the group culminated in what is now the "Planning and Compensation Act, 2004".

122. A reference may also be made to the European Convention of Human Rights. Article 1 of the First Protocol states:

"Article 1 of Protocol 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions except in the public interest. No one shall be deprived on his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

123. Although, according to the European Court of Human Rights, this article is the substantive guarantee of "the right to property", the wording of the article makes it readily apparent that the right is not unlimited. *Curtis, J.J., (1989), Comparison of regulatory undertakings under the United States Constitution and the European Convention of Human Rights, European Law Review, 14(2), 67.*

124. In reconciling these provisions, the European Court of Human Rights has so far recognized three fundamental propositions: first, compensation may be required even if an expropriation advances the public interest; secondly, though the use of property can be restricted under the second paragraph, some restrictions are so harsh as to be the equivalent of a taking and to entitle the owner to compensation; thirdly, a use restriction cannot be tolerated which does not serve the public interest. *ibid.*

125. It will be seen that the term ‘possessions’ has been used in Article 1 of the First Protocol instead of the term ‘property’. The European Court of Human Rights has adopted a broad definition of possessions which may include intellectual property rights, shares, rights to compensation and legitimate expectations. In *Stretch v. U.K (2004) 38 E.H.R.R. 12 at 32.* the European Court seems to follow a more demanding test than that followed by the US Supreme Court:

“Article 1 has been held to contain three distinct prima facie rights: that the peaceful enjoyment of one’s possessions will not be interfered with by the State; that the State will not deprive an individual of his possession; and that the State will not subject possessions to control. An interference with peaceful enjoyment is generally less intrusive than the exercise of control over it or, of course, a deprivation. The ECtHR will look at the

substance of the right in determining whether there has been a deprivation and may find there to be one even if the applicant retains legal ownership. Examples of State control over the use of property include the imposition of taxes, restrictions on evicting tenants and planning controls. The importance of the distinctions is that the EXtHR requires a stronger State justification for deprivations than for control or interferences.”

126. In the context of the American law, a reference may also be made to the judgment of the US Supreme Court in *Lucas v. South Carolina Coastal Council*, 503 U.S. 1003 (1992). The exposition of the Takings and just compensation clauses was made in the said judgment by the US Supreme Court in the following words:

“Prior to Justice Holmes’s exposition in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, it was generally thought that the Takings Clause reached only a “direct appropriation” of property, Legal Tender Cases, 12 Wall. 457, 551 (1871), or the functional equivalent of a “practical ouster of the owner’s possession,” Transportation Co. v. Chicago, 99 U.S. 635, 642 (1879). See also Gibson v. Unites States, 166 U.S. 269, 275-276 (1897). Justice Holmes recognized in Mahon, however, that if the protection against physical appropriations of private property was to be meaningfully enforced, the government’s power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits. 260 U. S., at 414-415. If, instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature would be to extend the qualification more and more until at last private property disappeared.” Id., at 415. These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”

127. As adumbrated, Article 24 of the Constitution gives tacit expression to the concept of eminent domain. Clause (1) of Article 24 guarantees persons as distinguished from citizens against being compulsorily deprived of their “property save in accordance with law.” The exercise of power of eminent domain is vested in the executive branch of the government. There are twin conditions to be decided under Article 24 viz. the existence of public purpose and the giving of compensation. As to what is meant by the term ‘compensation’ will be adverted to in the latter part of the judgment as in my opinion, this term is of great significance and must form the heart and soul of any acquisition to be made under the Act, 1894.

128. The challenge in these petitions is to the acquisition of property of the petitioners being made under the provisions of 1894. A historical perspective of the legislation of acquisition of property has been brought forth in the 10th report of the Law Commission of India in the following words:

“2. The first piece of legislation in India in respect of acquisition of property was the Bengal Regulation 1 of 1824. It applied “throughout the whole of the provinces immediately subject to the presidency of Fort William.” It provided rules for enabling the officers of Government to obtain, at a fair valuation, land or other immovable property

required for roads, canals or other public purposes. By Act I of 1850, some of the provisions of this Regulation were extended to the town of Calcutta with the object of “confirming the title to lands in Calcutta taken for public purposes”. In the middle of the nineteenth century, when the railways were being developed, it was felt that legislation was needed for acquiring lands for them. Act XLII of 1850 declared that Railways were public works within the meaning of the Regulation and thus enabled the provisions of Regulation I of 1824 to be used for acquiring lands for the construction of Railways.”

“5. The first enactment on this subject for the whole of British India was Act VI of 1857. It repealed all previous enactments relating to acquisition and its object, as stated in its preamble, was to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the governance of the East India Company and for the determination of the amount of compensation to be paid for the same. Under this Act, the Collector was empowered to fix the amount of compensation by agreement, if possible, but if there was no such agreement, the dispute had to be referred to arbitrators whose decision was to be final and could not be impeached, except on the grounds of corruption or misconduct of the arbitrators. This Act was amended by Acts II of 1861 and XXII of 1863. A few years’ experience of the working of the Act revealed that the method of settlement of compensation by arbitration was unsatisfactory as the arbitrators were found to be incompetent and sometimes, even corrupt. There was no machinery provided to get their decision revised as there was no appeal provided under the Act against the award of the arbitrators. The legislature had to intervene and Act X of 1870 was passed. This Act, for the first time, provided for a reference to a civil court for the determination of the amount of compensation when the Collector could not settle it by agreement. It laid down a detailed procedure for the acquisition of land and also provided definite rules for the determination of compensation. In 1885, a separate Act (XVIII of 1885) was passed with the object of making provision for the grant of compensation to the owners of mines situated under the land sought to be acquired by the Government, where such mines were not required by the Government but the owners were prevented from working them. This measure, though

styled Land Acquisition (Mines) Act, had, in fact, nothing to do with acquisition. It was purely a law of compensation.

6. *The Act of 1870 was found to be defective in various respects and eventually the Land Acquisition Act, 1894 (Act I of 1894) was passed. This Act was later amended by act IV and X of 1914, XVII of 1919, XXXVIII of 1920, XIX of 1921, XXXVIII of 1923 and I of 1938. It may be noticed here that the amending Act of 1923 introduced, for the first time, an important change, in that it gave an opportunity to the persons interested in the lands proposed to be acquired to state their objections to the acquisition and to be heard by the authority concerned in support of their objections.”*

129. This has also been referred to in the judgment of Supreme Court of India reported as Radhy Shyam through L.R.S and others v. The State of U.P and others (2011) 5 SCC 553 in the following words:

“17. The history of land acquisition legislations shows that in 19th Century, Bengal Regulation 1 of 1824, Act 1 of 1850, Act 6 of 1857, Act 21 of 1863, Act 10 of 1870, Bombay Act 28 of 1839, Bombay Act 17 of 1850, Madras Act 20 of 1852 and Madras Act 1 of 1854 were enacted to facilitate the acquisition of land and other immovable properties for roads, canals, and other public purposes by paying the amount to be determined by the arbitration. In 1870, the Land Acquisition Act was enacted to provide for proper valuation of the acquired land. That Act envisaged that if the person having interest in land is not agreeable to part with possession by accepting the amount offered to him, then the Collector may make a reference to the civil court. The 1870 Act also envisaged appointment of assessors to assist the civil court. If the court and the assessor did not agree on the amount then an appeal could be filed in the High Court. This mechanism proved ineffective because a lot of time was consumed in litigation. With a view to overcome this problem, the legislature enacted the Act on the line of the English Lands Clauses Consolidation Act, 1845. However, the landowners or persons having interest in land did not have any say in the

acquisition process either under pre-1894 legislations or under the 1894 Act (unamended). They could raise objection only qua the amount of compensation and matters connected therewith. The absence of opportunity to raise objection against the acquisition of land was resented by those who were deprived of their land. To redress this grievance, Section 5-A was inserted in the Act by amending Act 38 of 1923.”

130. The background of the Project and some of the related facts which will have to be stated which shall form the backdrop to the discussion that follows will be stated firstly. The background of the Project has been brought forth in the bundle submitted by Aminah Qadir, Advocate, Amicus Curie and has been drawn from the Environmental Impact Assessment (EIA) report prepared for the Project and the Strategic Development Plan (SDP) for River Ravi Front Urban Development Project-January, 2021. Hence, these facts are undisputed. They are set out below:

“1. In August 2020, Prime Minister Imran Khan inaugurated the five-trillion-rupee Ravi City megaproject (the “Project”). Envisioned as the second largest planned city in Pakistan—after Islamabad—the proposed development is planned to cover 102,074 acres and is set to house a population of 10 to 12.5 million people (equivalent to Lahore’s current population) over a 30-year period (“Project area”). The Project seeks to revive River Ravi as a freshwater source through the construction of barrages and lakes and to develop high quality residential, industrial, commercial and recreation zones on both banks in northwest Lahore. The goal of the Project is to provide a solution to the

rapidly growing need for housing in Lahore. The EIA reports that "The new city created at the banks of the river will be economic hub of the region at national and international levels. The new city developed will also known as Economic City. It will open new horizons for business community as well as for professionals.

2. **Most of the Project area (75.78% of the land) is agricultural land covering an area of 77,357 areas. The EIA reports that the livelihood of 82.8% of population in the project area depends on agriculture. The most common crops grown in the Project area are wheat, rice, Sorghum bicolor and corn as well as fruits. The area along Kalakhatai road is famous for producing Basmati rice that is highly priced in the international market.**

3. **There are seven forests in the Project area that span a total area of 5766 acres. 789 acres of forest are under the riverbed, 1235 acres are with the Pakistan army, 3697.5 acres are with the forest Department and 44.5 acres are encroached upon. Out of the area that is with the Forest Department only 1822 acres are planted. There are 1235 acres of Shadanwali, Korotana and Jhok forests that are with the Pakistan Army. Thus it appears that the total planted forest cover is about 4958 acres.**

4. **The EIA reports that most of the agricultural land will be lost as a result of this development in a time frame of 30 years. It does not report an exact or total figure of the forest area that is going to be destroyed as a result of the Project. However, it reports that almost 255 acres of land of Shahdra, Katar Bund, Anno Bhatti, Korotana and Shadanwali forests are expected to be lost in the widening of the river channel. The field surveys conducted in the Project area indicate that there are 14,351 households with a total built up area of 1199 acres. There are an additional 2343 households units with built-up area of 71 acres. To minimize the resettlement impact, only settlements falling in the riverbed will be relocated."**

131. Some of the facts which may be flagged and which have been stated above would

include the fact that 75.78% of the Project area is agricultural land covering an area of 77,375 acres. EIA also reports that the livelihood of 82.8% of population in the Project area depends on agriculture and the Project area produces crops like wheat, rice, corn as well as fruits. There are seven forests in the Project area which span a total area of 5766 acres with planted forests covered by about 4958 acres. EIA report further mentions the fact that most of the agricultural land will be lost as a result of this development. The report does not give an exact figure of the forest area that will be destroyed in the setting up of the Project, however it reports that almost 255 acres of land of Shahdara, Katar Band, Anno Bhattian, Korotana and Shahdan Wali forests are expected to be lost in the widening of the river channel.

132. In 2014, a study was conducted in the Lahore District area called “modeling land use patterns of Lahore (Pakistan) using remote sensing and GIS (attached as Annexure ‘C’ with amended W.P No.23032 of 2021) in which an attempt was made to reveal the land use pattern of Lahore. Some of the features of the study are

important to be reproduced which is done

hereunder:

*“The present research is focused on the land use patterns of Lahore, the 2nd largest city of Pakistan. The term land use is often applied to the urban centers where cities are expanding at the expense of loss in agricultural or forest land. In the realm of urban studies, urban sprawl is a matter of great interest and is seen as having harmful effects on people as a whole. The uncontrolled and haphazard urban sprawl over rural landscape is a matter of great concern; these urban expansions are swallowing rural land and green fields at a rate twice than the actual growth of population (Sultana and Weber, 2007). **Urban expansion can lead to problems, such as transportation, ecological imbalance, income and ethnic segregation of neighborhoods, the differences among jobs and shelter, local economic disparities, alteration of agricultural land to urban uses, and civic isolation, among other maladies.***

*The urban land use has increased from 58,977 hectares in 1972 to 99,173 hectares in 2009 (table 5). The share of urban land was 33.28% in 1972 which increased to 55.97% in 2009. It added 40,196 hectares in urban land use giving an addition of 68.16% in total urban area (table 6). **While there is a loss of 32,500 hectares in agricultural land during this period. The percentage share of agricultural land decreased from 54.08% in 1972 to 35.74% in 2009. Area under forest cover decreased from 5,706 hectares in 1972 to 856 hectares in 2009. This means 85% land under forest vanished from the study area. It is necessary to reveal the fact that the total loss of agricultural and forest land was acquired by urban land use. The population of Lahore increased from 2.6 million in 1972 to 9.3 million in 2009. The population increased three times during this period. This speedy population growth is the chief factor of rapid urban expansion in Lahore. It is also found that no major change occurred in the area consisted of water bodies during this period. The water bodies lost only 457 hectares of area. **It is also evident that the area under other land uses like bare soil, barren land etc also recorded little change. From the table 6 and figure 3 is noted that the major*****

and dramatic change in urban land use occurred during the period 1990-2000

The conclusion drawn in the report was as follows:

“The results revealed that the urban area of Lahore recorded 68% increase since 1972. In 1972 the share of urban land was just 33.2% of the total land area which increased to 55.97% in 2009. The total built up area of Lahore was 58,977 hectares in 1972 that has increased to 99,173 hectares in 2009. In order to cater for the demand of the land more than half of the agricultural land of the study area was acquired for urban land use. The area under agriculture has decreased from 95,838 hectares in 1972 to 63,338 hectares in 2009. The share of agricultural land decreased from 54% in 1972 to 35.7% in 2009. The expanding urban housing replaced the natural vegetation cover with the urban infrastructure. The same time duration recorded a loss of 85% forest land in the study area. Lahore is bounded by river Ravi in North and India in the east. The river channel and territorial demarcation of India have been hindering the urban expansion towards the areas. Resultantly the major urban expansion took place in the south and south western part of the district. It is also observed that most of the urban expansion took place along the highways and major roads. The urban expansion history reveals that more than 200 housing schemes were approved to accommodate the residential demands of increasing population in the city. This expansion reached the boundaries of villages and it is estimated that this urban population specter has swallowed around 250 villages since 1972 to onwards. This rapid urban expansion has changed the land use profile of the district from agriculture to urban. Over the past few decades, urban expansion of Lahore has significantly modified the land use patterns of the area. The built up area has increased remarkably at the expanse of agricultural as well as forest land. This rapid expansion has resulted as haphazard growth, high density population, air, water and noise pollution and unplanned expansion along canal road, Ferozpur road and Raiwind road. This situation has been further aggravated by the lack of an

integrated urban development approach and absence of proper integrated urban planning and zoning. It is, therefore, strongly recommended that further research must be carried on the aspects such as disorganized development, traffic congestion, loss of agricultural land and other environmental issues.

(The study was published in the Global Journal of Science Frontier Research: Environment and Earth Science

Volume 14 Issue 1 Version 1.0 Year 2014 and was undertaken by Omar Riaz, Abdul Ghaffar and Ibtisam Butt).

133. The salient features of the study which can be gleaned from the paragraphs set out above is that there has been a loss of 32500 hectares in agricultural land during the period from 1972 to 2009. The percentage share of agricultural land decrease from 54.08% in 1972 to 35.7% in 2009 and should have decreased further at the time of writing of this judgment. Area under forest cover decrease from 5706 hectores to 856 hectores in 2009. According to the study this meant that 85% land under forest vanished from the study area. A significant aspect highlighted in the report is the fact that total loss of agricultural land and forest land was acquired by urban land use whereas the area under other land uses like barren land etc. recorded little change during this period. It is evident therefore that unchecked urbanization of agricultural and cultivated farmland has been

continuing since 1972 and there are no rules which have been framed to control the acquisition of agricultural land for the purposes of urbanization. As a result, this rapid urban expansion has changed the land use profile of the District from agriculture to urban. Over the past few decades urban infrastructure of Lahore has squarely modified the land use patterns of the area and built up area has increased dramatically at the expense of agricultural and forest land. This has resulted in high density population, air, water, noise pollution and has given rise to serious issues such as loss of agricultural land and other environmental issues.

134. The above facts gave rise to the challenges by the petitioners based on Article 9 and the right to life enshrined in the Constitution which provides that:

“9. Security of person. No person shall be deprived of life or liberty save in accordance with law.”

135. Article 9 of the Constitution has received expansive interpretation by the superior courts of Pakistan. In case No.13 of 2009 (PLD 2011 SC 619) the Supreme Court of Pakistan held that “right to life implies the right to food,

water, decent environment, education, medical care and shelter”. In the case of Messrs Al-Raham Travels and Tours Pvt. Ltd. V. Ministry of Religious Affairs (2011 SCMR 1621) the Supreme Court held that the basic necessities of life include food, clothing and housing. It was stated that “the right to those basic necessities of life are basically and fundamentally economic rights”. In Asghar Leghari v. Federation of Pakistan (PLD 2018 Lah.364) a Single Bench of this Court held that fundamental rights like right to life include a right to healthy and clean environment. The Court went on to state that the right to a clean environment hinges upon the principles of sustainable development, the precautionary principle and the public rights doctrine, amongst others. It was held that:

“12. Fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights.”

136. Thus, the interpretation put by the

superior courts on the right to life enacted by Article 9 include a right to food, clothing, shelter, education, healthcare and a clean and unpolluted environment. Aaminah Qadir Advocate, learned Amicus Curie, contended that in the context of the Project, the EIA and the petitions evidence that prime agricultural land will be converted to urban area and that thousands of forests are going to be felled. There will be a loss of certain natural species especially in the river Ravi. The EIA however does not specify how many trees are to be felled from the already dwindling forests, how the smog cloud over and around the city of Lahore will be impacted by another city on its borders and what will be the effect in food and ecological pattern by consuming an increased amount of agricultural land for urban use. The report is also silent and fails to calculate the actual perceived impact on what type of flower, fauna, crop and natural habitat will be effected.

137. As adumbrated, the petitioners argued that Pakistan is at the cusp of a serious event of food insecurity and this has been brought forth in a report published in 2019 and compiled by the World Health Organization (WHO). It is

entitled “Pakistan Overview of Food Security and Nutrition”. Mr. Fahad Malik, Advocate relies upon this report and the petition filed by him flags the following:

“7. That the above fact has to be viewed in the overall backdrop of Pakistan’s food security issues. Pakistan ranks 80 out of 113 countries on the Global Food Security Index. On food safety specifically, Pakistan scores a 43.5, well below the world average score of 60.4 Neighbouring India, meanwhile, scores 82.5 on the food safety indicator. More than 20% of Pakistan’s population is undernourished, and nearly 45% of children younger than five years of age are stunted, according to the UN World Food Program (USAID) Food Assistance Fact Sheet, April 2, 2020). Based on the 2018 National Nutrition Survey, stunting of children under five years stands at 40.2% nationally, wasting at 17.7% and the proportion of children underweight at 28.9%. A 2019 UN report notes, malnutrition across generations is causing Pakistan to lose 3% GDP/year as lost productivity.”

138. Similarly according to the data released by the Pakistan Bureau of Statistics, the food import bill rose by over 32.99 pc to 14.02bn in 5MFY22 from \$3.02bn over the corresponding period last year. Pakistan spent over \$8bn on the import of edible items in the last fiscal year.

139. Based upon the above report which has gone unrebutted, the food security situation and the issues confronting Pakistan paint a dismal picture as can be seen from the facts explicated above. Pakistan ranks 80 out of 113 countries

on the global food security index and food safety score of 43.5 which is below average score of 60.4. This means simply that Pakistan has to take measures on an emergency basis to curtail the loss of agricultural and cultivated land in order to protect its food security paradigm. Aaminah Qadir, Advocate alludes to similar facts in the bundle submitted by her. Pakistan has a level of hunger that is categorized as 'serious' with a score of 24.7 according to Global hunger Index. 44% of those under the age of 5 are stunted in Pakistan. In the case of Ahmad Pansota v. Federation of Pakistan (PLD 2020 Lah. 229) a learned Single Judge of this Court observed that food insecurity exists when people lack secure access to sufficient amounts of safe and nutrition food for normal growth. The Court noted that this is caused by unavailability of food, insufficient purchasing power etc. Reference has also been made to several international treaties (ratified by Pakistan) that guarantee that all citizens will be provided with a basic standard of living that includes food. The right to life under Article 9 has been invoked by the petitioners and supported by the *amici curiae* to contend that acquisition of agricultural and cultivated

farmland cannot be permitted to be continued without statutory framework which would encompass the entire set of circumstances under which such farmland can be acquired and which should also provide for alternatives and other options. There is no doubt that such a statutory framework must underscore the need for preservation and sustenance of agricultural and cultivated farmland. Only under dire circumstances can a piece of land which is under cultivation be acquired and in case it has to be done the statutory framework must provide for a proportionate area of land to be allocated and which may be brought under cultivation so that the balance of food security should not be disturbed. Aaminah Qadir, Advocate cited two recent cases, one from the Lahore High Court and the other from the Sindh High Court which have taken note of these issues and have underscored the need for addressing the issue of food shortage resulting from a prime agricultural land. In Masood Ahmad Wassan v. Govt. of the Punjab (2020 YLR 2597) the Court noted that there has been a decline in fertile land in Pakistan. It was observed that:

“ 27. Amongst the Pakistan’s principle natural resources are arable land. Agriculture accounts for about 19 to 20% of Pakistan GDP (Gross Domestic Product)...Pakistan is an exporter of rice, cotton, fish, fruits especially mangoes and oranges hence it has an economic importance and the graph is being declined as compared to earlier regime when the contribution towards GDP was significantly higher and the reason of decline is none other but wastage of fertile land.”

140. The Court observed that rural urbanization is taking place rapidly and agricultural lands were being converted at will to housing societies. It was held that:

“...It is important that all over Pakistan good agriculture areas must be preserved for the same purpose only, instead of converting the agriculture lands at free will to housing estates / societies / authorities. Statistics’ shows that we are blessed with fertile land but not blessed with appropriate policies to save such lands from urbanization. Rural urbanization is taking place rapidly, which may be beneficial for the time being but not beneficial from a diversified angle. It further opined “30. We are living in a world where natural resources such as fertile land is being vacuumed up by development of concrete structure and this would count a lot in future and no one would come for our rescue when we have to yield our own food for our own consumption.”

In the opinion of the Court:

“27. ...legislation should be made that the fertile lands of the Province should not be utilized for any other purpose as only then we would be able to save the fertile land for the maximum productivity of food for our future generation and in case we fail in an attempt to do so, the future of our generation would turn bleak as we are already facing shortage of food in sectors where we were self-sufficient.”

141. The importance of preserving

agricultural land was also recognized in Mubashar Ahmad Almas v. Province of Punjab (PLD 2021 Lah. 720) where the Court noted that in the wake of establishing a housing society, we are destroying agricultural lands and grain areas and emphasized that:

“...To preserve the agricultural land the authorities must initiate a campaign ...to attract the people for high-rise buildings to avoid extra use of agricultural land for the purpose of residences/ colonies or commercial plazas...”

142. The need for overhaul of the law relating to acquisition was underlined by the Supreme Court of Pakistan in Federal Government Employees Housing v. Malik Ghulam Mustafa (2021 SCMR 201) and the Court wrote:

“44. It is desirable that one uniform compensation mechanism should also be adopted by the parliament of Pakistan by conducting a similar exercise to bring forth an identical, or more beneficial, legal regime to recompense land owners for the compulsory acquisition of their land. We also observe that the scheme of compensation provided under the Land Acquisition Act, 1894 remains a remnant of colonial times that should have been timely amended to cater to our evolving socio-economic circumstances. Therefore, such overhaul becomes necessary in light of the shortcomings of the current scheme of land acquisition with respect to compensation and matters incidental thereto.”

143. There is no doubt that changes need to be made in the Act, 1894 to cater for evolving socio-economic imperatives as also to deal with

environmental issues confronting Pakistan. The scheme of the Act, 1894 does not envisage a structure which would oblige the Collector of a district to refuse the acquisition of an agricultural and cultivated farmland. No distinction has been made in the entire Act, 1894 for placing the agricultural land as a separate set of land to be treated differently from lands which are not under cultivation. As and when the government seeks to acquire land, the Collector of a district acts mechanically in proceeding to issue a notification under Section 4 of the Act, 1894 and thereafter the proceedings are merely restricted to the determination of compensation and the steps leading towards that. The officers under the Act, 1894 are not empowered to draw a distinction on the basis of agricultural and non-agricultural lands and no discretion lies with such officers to refuse to acquire lands which in their opinion are under cultivation and are being used for agricultural purposes. In short, the issues related to food security and the need to preserve agricultural land do not arise before the Collector of a district at any stage of the process of acquisition. Once the process starts, the entire focus is on determination of

compensation to be disbursed to the persons whose lands are under acquisition. There is a need for a paradigm shift in the entire system of acquisition related to agricultural and cultivated farmland. This cannot be achieved under the present dispensation of the Act, 1894. The Govt. of the Punjab will have to initiate legislation for the purposes of laying down an elaborate framework and a statutory regime will have to be put in place to deal with the issue of acquisition of agricultural land keeping in view the ground realities and the impact of acquisition that such land will have on the socio-economic and ecological development of the Province. The matter cannot be left unattended anymore as we have crossed a threshold where we are threatened with looming food insecurity and which is likely to aggravate in the coming years. This is not only a matter within the purview of Article 9 which ensures right to life but also is a matter of national security which is a concept which must be enlarged to encompass not only armed conflicts and military defence but also issues such as food insecurity and economic stability. Human security must be at the heart of any National Security Policy.

144. Aaminah Qadir, Advocate submits in her written brief that:

“The Courts in the United States of America, particularly in California, have also noted that agricultural land is a finite and irreplaceable resource and thus it must be conserved for agricultural use. In the case of Masonite Corporation vs. County of Mendocino, (218 Cal.App.4th 230, 159 Cal. Rptr. 3d 860 (Cal. Ct. App. 2013)) the Court of Appeal of the State of California, First Appellate District held that: “Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California’s agricultural heritage...”. The Court thus opined that “conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmland close to cities.”...”the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.” A copy of this judgment is at Annex 60...”

“Thus, the need to create housing for an expanding population has to be balanced with the need to protect the county’s agricultural lands. To promote this goal, the Farmland Mitigation Program (“FMP”) was adopted in the county. Under the FMP and its implementation guidelines, the County is not permitted to give final approval to a residential development project until the developer provides for permanent protection of one acre of farmland for every acre of farmland converted to residential use. Agricultural conservation easements (ACEs) granted in perpetuity are the primary means of accomplishing this permanent protection requirement. Thus, for every acre of farmland lost to residential development in the county, a comparable acre of farmland located in the county is protected from being lost to development in perpetuity. The Court concluded that ACEs may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use- even though an ACE does not replace the onsite resources.

The importance of the use of ACEs was

confirmed by the Court in the case of Building Industry Assn of Central California vs. County of Stanislaus (190 Cal.App.4th 582 (Cal. Ct. App.2010)). The case involved a challenge to the county general plan that required developers of projects converting agricultural land to residential use to obtain ACEs on farmland of equal quality in the county, at a 1:1 ratio or pay an in-lieu mitigation fee. The Court recognized that whereas ACEs do not replace the land that is converted, they prevent a comparable piece of agricultural land from a change of use permanently. The Court observed that a residential project would not be approved “until the developer provides permanent protection of one acre of farmland for every acre of farmland converted to residential use...Agricultural conservation easements granted in perpetuity are the primary means of accomplishing this permanent protection requirement...Although the developed farmland is not replaced, an equivalent area of comparable farmland is permanently protected from a similar fate.”

A leaf can be taken from the concept of ACEs to balance the need to protect the country’s agricultural lands. This will mitigate the direct loss of farmland when a project converts agricultural land to a non-agricultural use.

145. Charles A. Francis, Twyla E. Hansen, Allison A. fox, Paula J. Hesje, Hana E. Nelson, penned an article in *International Journal of Agricultural Sustainability*, Vol.10, No.1, February 2012, 8-24 entitled *Farmland conversion to non-agricultural uses in the U.S and Canada: current impacts and concerns for the future* (presented by Issam Bin Haris,

Advocate), and its focus was on conversion of farmland to non-agricultural use and the challenge it presents to future food production.

Its preamble states that:

“Conversion of farmland to non-agricultural uses presents a challenge to future food production and ecosystem services in US and Canada. Expansions of housing, transportation, industry, retail sales, schools and other developments are driving land out of farming. In the US there is annual conversion of 500,000 ha away from food and fibre production systems. Coupled with 1% annual population increase, this will reduce today's 0.6 ha per person to 0.3 ha by 2050. Canada has more land and smaller population, but farmland losses are occurring in fertile areas near coasts and in level valleys where highest quality land is located. Current rates of increase in agricultural productivity will not compensate for this land loss. Compared to US, there are more specific tools and legislation at the provincial level in Canada that provide opportunities for controlling sprawl. Important in both countries is general lack of awareness and concern about loss of productive farmland, a situation that could be improved through education. Stimulating collective understanding of this growing problem and providing viable solutions could provide the basis for national policy strategies to promote and assure sustainable food systems for the future and enhance the capacity to maintain vital ecosystem services.

146. It alludes to the seminal book *Under the Blade: The Conversion of Agricultural Landscapes* Richard Olson and Tom Lyson (1999) which brought together copious statistics from the US Federal Census and those of the American Farmland Trust to quantify the conversion of farmland to other uses and to

evaluate the motivations behind these critical changes. According to the authors, further complicating the future of food production was the loss of the best lands, those that are relatively level and have greatest potential for irrigation, and the lands located near cities.

The article then spells out the consequences of farmland conversion:

Conversion of farmland to other uses in both countries has a number of direct and indirect consequences, including loss of food production, increases in the cost of inputs needed on lower quality land that is used to replace higher quality land, greater transportation costs of products to more distant markets and loss of ecosystem services. Reduced production must be replaced by increasing productivity on remaining land or by farming new lands.

Finally, a warning was sounded that:

We conclude that conversion of land from farming to other human uses continues today at a rate that compromises the capacity of the US and Canada to maintain agricultural production and food exports. Complicated by scarcity of fossil fuels and fresh water to help open new lands, the losses of the most productive lands near cities amplify the impacts of studies that merely quantify the number of hectares moving from agriculture to other uses. In addition to loss of production capacity, there is an alarming loss of ecosystem services on which humans and other species depend. We propose education as the primary route to creating widespread public awareness of the challenges, and urge citizens to become involved to create a political environment that will encourage enactment of policies to reverse the current trends. Our future economic and environmental well-being depends on these changes.

147. Doubtless, the conversion of farmland to other uses presents a real and present danger to food security, environment and social well-being. It is a problem that is wide-spread and afflicts not only Pakistan but has global footprint.

148. Thus, the Act, 1894 in its present form offends Article 9 of the Constitution, in that, it fails to deal with the issue of acquisition relating to agricultural and cultivated farmlands. It will have to be read down on this aspect.

Article 24 and the acquisition by RUDA:

149. The arguments in the context of Article 24 of the Constitution centered on two aspects. One whether the Project was for a public purpose and second whether compensation in monetary terms was adequate compensation and fulfilled the mandate of Article 24 or not. There are ancillary issues of constitutional significance which were raised by both the counsels for the petitioners and *amici curiae*. The two stands of the arguments based on Article 24 shall be dealt with separately.

150. Relying on a cluster of cases decided by the superior courts it was argued by the learned

counsel for RUDA that the Project was for a public purpose and thus the first contention on Article 24 stood satisfied. This was agreed to by the *amicus curie* but only to the extent that priorly the setting up of a housing scheme was a public purpose and for which acquisition could be made. The agreement between the counsel for RUDA as well as the counsel for the petitioners ended at this point. A summary of the cases which have dealt with the term 'public purpose' may be referred before proceeding further.

151. In *suo motu* case No.13 of 2007 (**PLD 2009 SC 217**) the Supreme Court held that acquisition of land for a housing scheme for a limited and specific segment of society was a public purpose. In *Ministry of Works, Government of Pakistan v. Muhammad Ali* (**PLD 1960 SC 60**) the provision of residence for a particular class of persons or members of that class was not excluded from the meaning of the expression 'public purpose'. The scope of public purpose was extended in the case of *Pakistan through Secretary Ministry of Defence v. Province of Punjab and others* (**PLD 1975 SC 37**). Generally the setting up of a housing

scheme that entails benefits to private individuals, has been condoned by the superior courts if the ultimate benefit is to the public and thereby public purpose is served. Thus, in order to constitute public purpose: a) an individual's interest must give way to the interest of the community or a part of it; b) public purpose does not cease to be so on the basis that an incidental benefit will accrue to private individuals; and c) a project can be deemed to be for a public purpose even if profit is earned. Aaminah Qadir, Advocate has rightly relied upon the principles of policy in the Constitution which enumerate that private housing and food is a basic necessity of life that secures the well-being of people and raises their standard of living. This is enshrined in Article 38 of the Constitution which obliges the state to secure the well-being of the people and to provide basic necessities of life such as food, clothing, housing etc.

152. In this case, as in all cases where the question arises before this Court whether a certain project or works being undertaken by any government is a public purpose or not within the meaning of Article 24, the issue

cannot be seen in isolation. This is no more warranted and a balancing act must be done in order to weigh the broader issues relating to ecology and environment which will be impacted by acquisition. Also as has been held in an earlier part of this judgment acquisition of agricultural land cannot be done unimpeded and without regard to the question of food security and hence the right to life under Article 9 of the Constitution. As mentioned in the written briefs submitted by both the amicus curiae, this cannot be done without conducting a detailed study on the types and amounts of food source crops in the area by experts and such report should further consider whether conversion of land from agricultural to urban use can be compensated by increasing yields in other areas. There is no doubt that in the case of present Project, converting over 77000 acres of agricultural land will have a detrimental impact on the supply of food. Although the question whether an acquisition is for public purpose is within the domain of the government, yet it is justiciable by the courts who can judicially review the decision of the government regarding a public purpose. To leave it to the whims and discretion of the government would

be to abdicate the authority conferred on the courts and enshrined in Article 24 of the Constitution relating to protection of property rights. This provision specifies prior conditions to be fulfilled before a person is deprived of his property. Therefore, it is a duty cast upon the courts to see whether the acquisition would serve a larger public purpose and the law which confers the authority provides for adequate compensation. Since the matters relating to ecology and environment have assumed great importance, there is a larger public purpose encompassing these issues and therefore the public purpose of a stated class of persons has to be weighed against that higher public purpose. This entails considerations of climate and inter-generational justice and although on a simpler plane, a scheme conceived by the government may be for a public purpose but if it is upended by the detrimental effects that the project will have on the environment, the public purpose of setting up of a housing project must give way to the higher public purpose of saving the environment and protecting the ecology of the area where the acquisition is likely to be done. The matter of public purpose can no longer be viewed within the prism of whether a

housing project is a public purpose or not. That question if determined in a narrow compass is likely to wreck havoc to all living souls and to future generations.

153. It may not be necessary for this Court to answer the question whether the project serves a public purpose or not. This may be left to be determined in a future case since presently RUDA has not laid before this Court the extensive details of the Project. An outline of the Project has indeed been placed on record but whether these would serve a public purpose cannot be ascertained with any degree of certainty. There is no doubt that some aspects of the Project may come within the ambit of the term public purpose but the overall context of RUDA's plans would assume a different character contrary to the analysis of each plan separately. Since these petitions are being decided on a different plane, the issue of public purpose takes a backseat and may be agitated in a separate litigation. A few observations on this aspect, however, will be in order:

It's home to us. It's home to my parents and my family for a hundred years. Simply put, there is nowhere else I would rather be. My mother has lived there her entire life. She's eighty-three years old. I know she wants to die in that house. I don't think that's asking

too much.

(Matt Dery, plaintiff in Kelo v. New London 545 U.S 469 (2005) quoted in the book, Little Pink house by Jeff Benedict)

154. This case was cited by Mr. Isaam Bin Haris, *amicus curiae*, to hammer in the expansive view courts have taken to allow the use of eminent domain for an economic development plan. In her dissenting opinion, however, Justice O’Conner (joined by three other justices of U.S Supreme Court) argued that ruling of the majority went beyond previous definitions of public use by allowing the transfer of land from one private party to another. At the beginning she quoted Justice Chase from *Calder v Bull*, 3 Dall. 386, 388 (1798):

“An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority...A few instances will suffice to explain what I mean....[A] law that takes property from A. and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it.”

and then wrote:

“Today the court abandons this long-held, basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e., given to an owner who will

use it in a way that the legislature deems more beneficial to the public—in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings “for public use” is to wash out any distinction between private and public use of property—and thereby effectively to delete the words “for public use” from the Takings Clause of the Fifth Amendment. Accordingly I respectfully dissent.”

155. I would rather be swayed by the empathetic and impactful dissent of the minority in Kelo than the majoritarian view in determining the public purpose issue. The plan submitted by RUDA includes strategic development planning and hydrology components. The former relates to specialized thematic urban centres, creation of housing opportunities, commercial and utility plan of industrial zone etc. The latter component ostensibly deals with current issues of Ravi River while reviewing the public purpose, these two components will have an entirely distinct bearing on the issue and one cannot be confused with the other. Undoubtedly, RUDA has not been established to look after the River Ravi Basin but will be engaged in a lucrative commercial activity of urban development. If the Govt. of the Punjab was seriously considering River Ravi Eco-Revitalization, it could have established an Authority for that

exclusive purpose. Mr. Fahad Malik, Advocate, attached with his petition (W.P No.23032/2021) a Report commissioned by the Govt. of the Punjab for Revitalizing the Ecosystem of River Ravi Basin (May 23, 2019). Asian Development Bank (ADB) provided the Technical Assistance. Concepts for pilot projects were brought forth in that Report. Its Introduction stated that:

“The Asian Development Bank (ADB) is providing Technical Assistance (TA 51324-001, Revitalizing the Ecosystem of River Ravi Basin) to the Govt. of the Punjab to develop a long-term, multi-sectoral plan to revitalize and build resilience in the River Ravi basin (Revitalization and Resilience Plan, or the plan). The Punjab Environmental Protection Department (EPD) is the Executing Agency for the TA, alongside a 10-member Steering Committee.

The ADB has engaged the consulting services of International Consulting Firms (ICF) Hagler Bailly Pakistan (HBP) and Tetra Tech ES Inc through Quality Based Selection (QBS), for “Consultancy Services for River Basin Assessment and Management Planning (51324-001)”.

The Report thereafter alluded to the term ‘ecosystem revitalization’:

“This TA is for the ‘Ecosystem Revitalization of the River Ravi Basin’.

The term ‘ecosystem revitalization’ or ‘eco-revitalization’ is typically used in the context of economics, cultural, anthropology and urban planning. It has also been used as a synonym for the term reclamation in ecology (Aronson & van Andel, 2012; Nyberg & Lerner, 2000). It is most commonly used in reference to remediation of contaminated sites, where it is defined as ‘the technical

process of returning land from a contaminated state to one that supports a functioning and sustainable habitat...similar to the one that existed before the impairment occurred' (USEPA, 2009).

In view of the use of the term in the literature and in the context of the TA, eco-revitalization is defined as:

“The process of returning rivers, wetlands and drains from a contaminated state to a more healthy state that supports functioning and sustainable ecosystems that are in balance with the prevailing catchment and river processes”.

The plan for revitalization of the Ravi River ecosystem will draw on lessons learnt in many other river basin but need to be judiciously tailored to the unique set of challenges facing river ecosystems in the Ravi Basin.”

And then the objectives of the TA were given:

To undertake a comprehensive current situation assessment of the river basin, including the pollution situation and its impacts on human ecosystem health, climate change risks and vulnerabilities, institutional gaps and development needs.

To summaries the outcomes as an ADB knowledge produce that can be used to raise public awareness, foster policy engagement and generate support for the revitalization and resilience plan, and its subsequent implementation.

To develop a long-term, multisector plan to revitalize and build resilience in the Ecosystem of River Ravi Basin, including recommendations for investment projects and institutional reforms including:

An analytical framework for the plan developed through multi-stakeholder visioning exercises consultation.

One or two prefeasibility studies will be prepared for identified priority projects.”

156. In short, the Report must form the basis

of any plan for revitalization of River Ravi. Moreso because it was prepared at the asking of the Govt. of the Punjab and the Punjab Environmental Protection Department was the Executing Agency. It would be utterly irrational for the Govt. of the Punjab to put aside the said Report and to assign the task to RUDA which neither has the expertise nor the institutional capacity to do so. Full effect should be given to the Report without further loss of time.

157. Like every other living being, rivers have rights. The most fundamental one is the right of free-flowing water that has sufficient oxygen, and land, or riverbanks, for the river's waters to flow without obstructions. Experts believe that the minimum quantity of good quality water that flows freely and keeps the water body healthy and alive is referred to as environmental flows (e-flows). The concept of e-flows is relatively new but it has rapidly evolved into a set of principles, supported by a range of practical measures.

River Ravi cries out for its revitalization and the ADB Report provides the solution. Govt. of the Punjab is directed to take steps for

implementation of the ADB Report expeditiously.

158. In establishing any project of this magnitude, it is always wise to broaden the consultative process to the fullest so as to ensnare all stakeholders who have a vital interest in and share a common heritage of Lahore. There are eminent experts in environment and social sciences, urban development planners and architects who have devoted their lives to studying River Ravi and ways and means for its revitalization. They must be brought on board. There is no material on record to show that any of them was ever engaged by RUDA to lend an expert advice. It would be doing grave injustice to Lahore and its inhabitants if the experts, whose hearts are filled with the love for Lahore, were left out of the process. It is essential for a project of mortar and bricks to be tempered by the kind and caring hands of the men and women whose souls are immersed in the love for the city of Lahore. Much wisdom will be gained out of this process for 'experience is the teacher of all things.' (Julius Caesar). It was said by Jon Meachan that:

‘Wisdom generally comes from a free exchange of ideas and an acknowledgement that your team might be wrong and the other might be right...To elect to be imperious to argument is to pre-emptively surrender the capacity of reasons to guide us in public lives.’

159. Secondly, the issue of floods in River Ravi is perennial and this is within the jurisdiction of Federal Government authorities such as the Pakistan Commissioner for Indus Waters and Federal Flood Commission with Flood Forecasting Division, Lahore. In the Annual Report 2020 released by the Water Resources Division, Government of Pakistan, the roles of these bodies is brought out as under:

“Pakistan Commissioner for Indus Waters is the only forum through which any clarification or further information can be obtained from India with regard to flood flows data of Chenab & Eastern Rivers (Ravi & Sutlej).”

“FFD, Lahore, the specialized unit of Pakistan Meteorological Department, plays a pivotal role in the Flood Forecasting & issuance of Warnings to concerned quarters;

It obtains hydro-meteorological data from the various National and International sources, which is then analysed to produce weather/ flood forecasts & warnings and disseminated to various Federal/ Provincial organizations and electronic/ print media through various means and also uploaded on PMD Website.”

160. Thus, FFD, Lahore plays a pivotal role in flood forecasting and it is essential and mandatory to consult these two authorities

before preparing a Master Plan for any project on River Ravi. Admittedly, no consultation took place which places the project at a great risk to devastation caused by floods as the world grapples with unexpected flooding of rivers at places which had no history of being battered by swelled rivers.

The Divisional Forest Officer, Sheikhupura / Nankana Forest Division, in his reply, stated that:

*These forest areas are included in the notifications issued under Section 4 of the Land Acquisition Act 1894 issued by the office of the District Collector, Sheikhupura. These forests are a source of **carbon sequestration**. They provide **habitat** to the wild **flora & fauna** inhabiting there. Most of the area is **covered with forest trees** and the balance blank area is being forested under the **10 Billion Tree Tsunami Project Phase-I development** scheme.*

If the land use of above mentioned Forest area are required to be changed, then as per Section-27 of Forest Act, 1927, the following procedure have to be adopted:-

Section:- 27: Power to declare forest no longer reserved.-

- (1) The Government shall not declare or notify a reserved forest or any part of the reserved forest as being no longer reserved forest.*
- (2) The Government shall not allow change in land use of a reserved forest, except for the purposes of right of way, building of roads and development of a forest park, but the Government shall not allow construction of concrete building or permanent structure in the reserved forest.*
- (3) Notwithstanding anything contained in this section, the Government, with the approval of the Provincial*

Cabinet, may, by notification in the official Gazette, declare a reserved forest, or any part of reserved forest as no longer reserved forest, if the organization requiring reserved forest land:-

- (a) Satisfies the Government with cogent reasons in writing that there is no other option but to use the proposed reserved forest land for purposes of a national project of strategic importance;*
- (b) Provide a substitute plant-able land agreed to by the Government, which is
 - (i) Equal to or bigger than the reserved forest land;*
 - (ii) In a compact form and is, as far as possible, situated close to the reserved forest land; and**
- (c) Provide funds for immediate forestation and maintenance of the substitute land as may be prescribed.*
- (4) The Government shall, by notification, declare the substitute land provided under subsection 3 as the reserved forest.*

161. The above reply is self-explanatory. The act of RUDA in acquiring a reserved forest contravenes the provisions of section 27 of Forest Act, 1927. No documents were brought on record to demonstrate the compliance of section 27 and the acquisition of reserved forest is declared illegal on this ground too. This is all the more egregious in view of Pakistan's dwindling forest cover noted in Sheikh Asim Farooq v. Federation of Pakistan (PLD 2019 Lah. 664).

162. This brings us to the second limb of the

challenge made by the petitioners and endorsed in their arguments by the *amicus curiae*. Mr. Issam Bin Haris Advocate raised an ingenious argument so as to give a wider meaning to the term 'compensation' used in clause 2 of Article 24. According to him, thus far, courts have attempted to define the term 'compensation' as connoting monetary and financial compensation and does not regard the compensation to be considered in a broader perspective. The *amicus curie* invites this Court to hold that compensation cannot be construed in the traditional term in which it has been done by the superior courts but any construction on the term 'compensation' must be put by taking into consideration inter-generational equity as part of the public trust doctrine. Referring to case law on the subject, it was argued that common legal definitions of the word 'compensation' seem to require as a pre-requisite some estimation of the loss against which compensation is being sought as a counter balance. However, the petitioners and the *amicus curie*, now invite this Court to hold that the estimation of loss must necessarily include not only the immediate loss suffered by the land owner and to be compensated in monetary

terms but also the wider loss likely to be faced by the community at large.

163. The argument before this Court in this respect is that the words 'save by the authority of law which provides for compensation there for' do not merely refer to the provisions of the Act, 1894 but would also include other laws and the most pertinent law for our purposes is the Punjab Environmental Protection Act, 1997 (**PEPA 1997**) which involves the preparation of an environmental impact assessment (EIA) report and its approval by the Provincial Agency. This would be a compensation not only to the environment but also serve the purposes of climate and inter-generational justice and must be done while awarding compensation to the land owner under the Act, 1894. Section 2 of PEPA, 1997 provides that:

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

(i) "adverse environmental effect" means impairment of, or damage to, the environment and includes:

(a) impairment of, or damage to, human health and safety or to biodiversity or property;

(b) pollution; and

(c) any adverse environmental effect as may be specified in the regulation.

(x) "environment" means-

(a) air, water and land;

(b) all layers of the atmosphere;

(c) all organic and inorganic matter and living organisms;

(d) the ecosystem and ecological relationships;

(e) buildings, structures, roads, facilities and works;

(f) all social and economic conditions affecting community life; and

(g) the inter-relationships between any of the factors in sub-clauses (a) to (f)

(xi) "environmental impact assessment" means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed."

164. According to the definition of EIA above, it means an environmental study comprising collection of data, protection to qualitative and quantitative impacts, comparison of alternative and mitigatory and compensatory measures against others. EIA report makes recommendations regarding environmental feasibility of a project subject to adoption of compensatory and mitigatory measures. The Environmental Protection Agency may stipulate further conditions before granting approval in terms of section 12 of PEPA, 1997. Section 12 provides that:

"12) Initial Environmental Examination and Environmental Impact Assessment (1) No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an initial environmental examination or, where the project is likely to cause an adverse environmental

effect, an environmental impact assessment, and has obtained from the Federal Agency approval in respect thereof.

(2) The Federal Agency shall;

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to:

(i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director-General of the Federal Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or it's proponent; or

(ii) international relations, national security or maintenance of law and order, except with the consent of the Federal Government; or

(iii) matters covered by legal professional privilege.

(4) The Federal Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of

this Act and the rules and regulations made thereunder.

(5) Subject to sub-section (4) the Federal Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-section (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Federal Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3).

165. Thus, section 12 obliges a proponent of a project not to commence construction or operation unless he has filed with the Provincial Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment and an approval has been obtained from the Provincial Agency. The mandate of section 12 is clear and cannot be undermined by any proponent of a project. It categorically states that neither the project shall be constructed nor commence operation unless an EIA has been prepared and submitted to the Provincial Agency. The term 'operation' used in section 12 is wide enough to include the acquisition process for, any approval by the

Provincial Agency must be placed before the Collector in order to enable the Collector to form an opinion that a land in a locality is needed for a public purpose. For, it may be that the approval is withheld by the Provincial Agency underlying a certain project or it may impose conditions which should be fulfilled prior to commencing construction and operation of the project. Since the compensation to the environment as envisaged by PEPA, 1997 presents a larger public interest it must take priority over the public purpose of acquisition of land by the Collector. Unless mitigatory and compensatory measures in respect of a certain project have been taken by the proponent, there is no cause for acquisition to be made and for persons to be deprived of their property rights. Two cases in recent times, that is, Canal Widening Project cases, **2011 SCMR 1743** and **2015 SCMR 1520** and *Imrana Tiwana* case are instances where in order to compensate for the harm to environment, the proponent had undertaken upon directions by Environmental Protection Agency to do certain acts in order to mitigate the loss to environment and for formulation of environmental management.

166. This is an aspect of applying restorative justice to takings law doctrine (acquisition proceedings in our country) that is gaining currency around the world. At the heart of this movement is the theme for remodeling “Just Compensation”. This concept was relied upon by Isaam Bin Haris, Advocate to argue that restorative justice should be at the centre of any expropriation proceedings and this must be evident not only in the collective feasibility study, in the EIA for the project but also should find a permanent dwelling in the statute itself. An article by Shai Stern, *Remodeling Just Compensation: Applying Restorative Justice to Takings Law Doctrine*, published in Canadian Journal of Law & Jurisprudence XXX No.2 August 2017, 413-441 presents an erudite study into the concept. It begins by stating that *Kelo v New London 545 US 469 (2005)* flamed public as well as legal backlash across the United States (this precedent from the US Supreme court was cited by Mr. Isaam Bin haris to elaborate the term ‘public use’ and its various nuances). It goes on to say that while the courts speak in a corrective justice language, their determination of compensation for expropriation involve other, external

considerations including efficiency and fairness.

The author suggested that:

“As an alternative to the current conceptual muddle of justice in expropriation, this article suggests that a different conception of justice will provide a more coherent understanding of just compensation in expropriations. Considering all of the challenges that current law faces, this article suggests that expropriation law should embrace a restorative conception of justice as its underlying basis. While the doctrine of restorative justice is rooted in criminal law, this article contends that its main features provide a normative foundation for the law of expropriation. These features include: a collaborative relationship with the community (rather than a combative one); the consideration of external and internal values; and an equally important focus on both processes and outcomes. Working together, these characteristics turn the restorative conception of justice into a wide enough normative framework for expropriation law.

The fact that the restorative conception of justice has been developed and has flourished in criminal law should not prevent its implementation in other legal fields. This concept is a pillar of my argument and will become one of this article’s prominent contributions to the discourse about legal justice. This call to establish expropriation law on a restorative conception of justice should be regarded as an opportunity to expand the application of restorative justice beyond the limited boundaries of criminal law...”

167. Mr. Stern presents the vision of expropriation through a restorative justice lens.

His thesis is premised on a rich tapestry of comparative studies. It looks at the traditional standards applied by courts and points to the deficiencies in the processes that:

“In the case of Armstrong v. United States, Justice Black describes the purpose of compensation as “barring Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” According to this vision, expropriation is a wrong done by the government to owners, as it requires them to bear public burdens beyond their equal share in the community. Understanding expropriation as a wrong, the concept of compensation as suggested by the Supreme Court is based on the duty of the government to repair its wrongdoing.

In other words, to achieve justice in cases of expropriation, the government must cure the harm caused to the owners and shift the owners back to their former position. The Court does not question the process in which the expropriation is being executed, nor does it question the social implications of this reparation. It overlooks the characteristics of property and of owners, refrains from questioning the pre-expropriation position’s social desirability, and denies any distinctions in treatment as a result of the owners’ economic or political strength. By focusing only on restoring the owner to their prior monetary position, the Court limits its view to the specific case, trying to restore the financial equilibrium to its original position as before the expropriation occurred. This reinforces the understanding that current compensation for expropriation standards not only rely on corrective conception of justice, but they rely on its exclusively.”

In a nutshell, according to Stern, the remedy should correspond to the injustice being rectified (Ernest J Weinrib, *“Corrective Justice in a Nutshell”* ac (2002) 22 UTLJ 349 at 350)

In conclusion:

“This article argues for a conceptual change in expropriation laws/[law’s] remedial scheme by embracing restorative justice as the underlying concept of justice in expropriation law. Establishing expropriation law’s quest for justice on a

restorative basis provides a coherent and circumstances-attentive normative framework, as well as practical instruments, to overcome some of current law's most significant challenges."

168. Current literature and courts fluctuate between two interpretations—whether expropriation should be “used by the public’ or ‘beneficial for the public’. (See *Laura S Underkuffler, “Tehoe’s Requim: The death of the Scalian view of property and Justice”* (2004) 21 Cornell Law Faculty Publications 727). *‘The crucial question is not the rights of the individual owner vis-à-vis the state but the right relationship that must be established between that owner and others in the community’*. The essential underpinning of the process should be that it is attentive to the needs and interests of all parties involved in expropriation including government, the owners and the community.

169. Thus, by reading Article 24 (2) as an integrated whole, it is held that PEPA Act, 1997 is indeed a law within the contemplation of Article 24(2) of the Constitution and compensation not only includes financial loss by the land owners whose land is acquired but also any other damage, harm or adverse effect that is materially caused by such acquisition not only to that person but to the environment at

large. It is evident that the acquisition proceedings carried out in the present case are *void* as they were admittedly initiated before the environmental approval was granted in terms of section 12 of PEPA Act, 1997. The environmental approval has to precede any construction or operation of a project which shall not be commenced by a proponent of a project without such approval.

Article 14—Human Dignity:

170. The need for intensified review by Collector while examining the feasibility is embedded (in addition to other relevant considerations) in the right to inviolability of dignity of man given in Article 14 of the Constitution which provides that:

14. Inviolability of dignity of man, etc: (1)
The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

171. Erin Daly wrote in her book “Dignity Rights”, that “there was no right to dignity. Dignity was an idea, a quality, something to aspire to, or something associated with high office or status. But it was not a right that law recognized. All that changed in the aftermath of the second world war. Dignity is now

recognized as a right in most of the world's constitutions and hardly a new constitution is adopted without its explicit recognition.”

(Erin Daly is a Professor of Law, Widener University Delaware Law School, USA).

172. A large and respectable body of “Jurisprudence of Dignity” has developed at the hands of Judges and academics (see a list of literature on the subject at footnote No.152 at p.85 of Aharon Barak’s book “The Judge in a Democracy”). He wrote:

“Most central of all human dignity is the right to dignity. It is the source from which all human rights are derived. Dignity unites the other human rights into a whole. It also constitutes a right itself and is recognized as such in several constitutions. The right of dignity reflects the ‘recognition that a human being is a free agent, who develops his body and mind as he wishes, and the social framework to which he is connected and on which he depends. Human dignity is therefore the freedom of the individual to shape an individual identity. It is the autonomy of the individual will. It is the freedom of choice. Human dignity regards a human being as an end, not as a means to achieve the ends of others.

When human dignity is expressly mentioned in a constitution, the scope of its application as a right is determined by its relationship with other rights in accordance with the structure of rights protection in that particular constitution.”

173. Human dignity and environmental rights have to be enmeshed with one another and the scope of their application has to be determined

by their relationship with Article 23 and 24 in accordance with the structure of rights protection in the Constitution. Quality environment is inextricably entwined with human dignity and share commonalities. There is no doubt that environmental degradation diminishes human dignity and any legislation that deals with acquisition and compulsory taking must have regard to environmental and climate justice as this, in turn, impacts human dignity. This involves collating the right to just compensation of the owner whose property is being acquired with the constitutionalized rights to human dignity and quality environment of the members of the community in general. Thus, what we have here is a set of competing and countervailing rights which must be weighed and balanced in enquiry under acquisition laws and this is not restricted to the Collector but also engages EPA while receiving the EIA. This would require a wholesale reconsideration of the Act, 1894 by the legislature in order to bring it in conformity with Article 9, 14 and 24 but also to demonstrate the legislative will to structure the law in accordance with the jurisprudence settled by the courts in Pakistan.

174. In a recent article (relied upon by Mr. Isaam Bin Haris, Advocate) Erin Daly with James R. May (Distinguished Professor of Law at Widener University) entitled ‘Bridging Constitutional dignity and environmental rights jurisprudence’(2016) 7 Journal of Human Rights and the Environment 218-242, the eminent academics engaged in a comparative analysis of dignity and environmental rights to argue that the two areas must develop in tandem with each other. Some of the excerpts from the article may be set out below:

“Human dignity is inextricably linked to a quality environment, and vice versa. At a political level, dignity and environmental outcomes share features that narrate world events. Both have been the impetus for and the goal of recent uprising and protests around the world.”

“To be sure, rights to human dignity and to environmental quality have much in common. They have evolved coincidentally, if independently, as drivers in modern constitutionalism. Most constitutions recognize a right to a quality environment, a right to human dignity, or both, as cross-cutting and foundational rights. Both rights are relatively recent inventions, and few—if any—modern constitutions are adopted or amended without attention to both of these features. Moreover, they share commonalities related to identifying causes of action, appropriate parties, and the scope of judicial review and remedies, among others. And both involve complex legal, philosophical, and political dimensions.”

“...Constitutional and other apex courts around the world have long focused on the right to dignity to advance a panoply of human interests. The result is a choate body

of global jurisprudence about dignity rights—a mass of decisions that in our view can serve as a resource for resolving claims sounding in constitutionalized environmental rights. We also posit that the converse holds: that is, that dignity rights jurisprudence would benefit from considering more deliberately how environmental degradation can diminish human dignity.

We maintain that environmental and dignity rights jurisprudence can cross pollinate in mutually reinforcing ways. Those looking to implement environmental rights have much to learn from jurisprudence engaging constitutionalized rights to human dignity. As our analysis reveals, dignity rights jurisprudence has political, social, and economic dimensions that map directly onto environmental rights protection, so it should not come as a surprise that the constitutional right to dignity would be relevant to the development of constitutional environmental rights. Like environmental human rights, many of these interests help to define who we are and how we relate to the world around us. Moreover, dignity rights have both individual and collective dimensions, relevant to understanding each person's relationship to his or her social and natural environment. This has implications for every aspect of constitutional environmental litigation, from standing, to interpretation, to remedies...

175. Citing precedents across the globe, it was stated that international law acknowledges that the right to human dignity embeds a right to live in a quality environment. International conventions were also evoked to illuminate the effect of this statement. (Reference to some of these conventions has also been made by Aaminah Qadir, Amicus Curiae). In summation, it was concluded that:

Indeed, if a healthy environment is essential

to human dignity—essential to the full development of the personality—then the line between humans and nature begins to blur. A healthy environment is not separate from, but is an integral part of human dignity. Human dignity, likewise, resides within nature; humanity is not separate from and certainly not superior to, nature. And the question of whether nature itself has (competing) rights, including dignity rights, becomes less pressing because nature's rights can be enveloped within human rights—not the human right to use and exploit but the right to live in harmony with nature, the right (and obligation or duty) to ensure that nature retains its own integrity, its own dignity. Understanding human dignity in environmental terms thus has the potential to fully integrate environmental protection and human rights.”

Role of Collector and Commissioner in Acquisition Proceedings. Sec.4 and 6 of Act, 1894:

176. In all acquisitions two public officers occupy a central position. One is the Collector of the District and the other is the Commissioner. Mr. Waqar A. Sheikh, Advocate and the *amicus curie* laid stress upon role of the Collector of District in issuance of the first notification under Section 4 of the Act, 1894 and emphasized upon the fact that there is a need to structure the powers of the Collector and to oblige him to apply in letter and spirit the role envisaged for him under the provisions of the Act, 1894 and in particular while issuing the first notification under Section 4.

Section 4:

177. The entire acquisition proceedings are hung on the tenuous structural peg of section 4. This is the foundation on which the edifice is built and stands. In my opinion, therefore, section 4 assumes a pivotal position in the scheme of acquisition proceedings and the process under section 4 must accord with the policy of the Act. It is as they say 'the fundamental sinew of the Act, 1894'. The process must not, thus, evince a tardy or lackadaisical approach to determining the baseline question involved and which must form the basis of the Collector's views and opinion.

178. The question is well-settled. The interpretation of statutory purpose and that of the relevancy of consideration are closely related; since the question in regard to the considerations taken into account in reaching a decision is normally whether that consideration is relevant to the statutory purpose. There is no unfettered discretion in public law. The courts have evolved strict criteria of judicial review in matters of discretionary powers. Thus the power exercised by a Collector u/s 4 is subject to the judicial review of this court and must conform to the objective tests which strike the balance. The law

was stated by a Canadian Judge in a case Roncarelli v. Duplessis (1959) 16 DLR (2d) 689 and cited with approval in Administrative Law, Eleventh Edition, by H.W.R Wade and C.F. Forsyth. Rand J. said:

“In public regulation of this sort there is no such thing as absolute and untrembled ‘discretion’, that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. ‘Discretion’ necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another Province or because of the colour of his hair? The ordinary language of the Legislature cannot be so distorted.”

179. Section 4 is couched in simple terms. It provides:

*“4. Publication of Preliminary notification and powers of officers thereupon. (1) Whenever it appears to the Provincial Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. (2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,--
to enter upon and survey and take levels of any land in such locality.
to dig or bore into the sub-soil;*

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and the line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house unless with the consent of the occupier thereof without previously giving such occupier at least seven days' notice in writing of his intention to do so."

180. We are concerned with sub section (1) more than the remainder of the provision. Sub-section (1) simply says that a notification shall be published in the official gazette by the Collector of the District whenever it appears to him that land in any locality is needed or is likely to be needed for any public purpose. This is indeed a vast and polycentric power vesting in the Collector. Section 4 does not spell out the periphery of the power nor does it specify the considerations which are required to be taken into account by the Collector to form such an opinion. Some insight in this regard can be had by reading the Punjab Land Acquisition Rules, 1983. In my opinion, rules 3, 4, 5 and 6 ought to be read in conjunction with section 4 in order to lend some

actuality to the powers vesting in the Collector.

Rules 3, 4, 5 and 6 are reproduced for facility:

“3. *The acquiring agency shall submit an application to the Collector of the District concerned in the prescribed form for the acquisition of land under the Act giving full justification of the public purpose involved and the minimum area required by it with full details of all other area owned by it in the same locality.*

4. *On receipt of the application under Rule (3) the Collector of the District shall examine its feasibility taking into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and suitability of the area proposed for acquisition keeping in view its alternate uses, if any.*

5. *Where after the examination of feasibility under Rule 4, the Collector of the District is of the view that the land be acquired for the acquiring agency, he shall issue a notification, under Section 4 of the Act stating clearly the name of the revenue estate/village or locality Tehsil, broad details of the dimensions and boundaries of square or rectangles, field numbers and the approximate area to be acquired.”*

181. A holistic reading of the rules would show that the process is triggered by some ‘acquiring agency’ which shall submit an application to the Collector of the District concerned in the prescribed form for the acquisition of land under the Act giving full justification for the public purpose involved and the minimum area required by it with full details of all other area owned by it in the same locality. This is a *sine qua non* and sets into motion the process of acquisition and is the first step towards that process. On receipt of the application, under rule 3, the Collector of the

District shall examine its feasibility taking into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and the suitability of the area proposed for requisition keeping in view its alternate uses if any. The Collector shall examine the feasibility under rule 4 and if the Collector is of the view that the land be acquired for the acquiring agency he shall issue a notification under section 4 of the Act. The rules 3, 4 and 5 of the Rules, 1983 are an elaboration of the essential steps which must precede the issuance of the notification under section 4 of the Act. These rules have a purpose and that purpose must be kept in view by the Collector while making a notification under section 4 of the Act. It seems that the legislator felt a need for prescribing these essential steps in the rules as section 4 does not lay down any criteria to be followed by the Collector in making the notification under section 4. These considerations which are spelt out in the rules give a humane touch to the process of acquisition so that the fundamental rights conferred by Article 24 of the Constitution may not be infringed without due process of law.

182. With reference to the Act, 1894, the Collector of the District, exercising powers under

section 4 is a 'core public authority'. "There are certain bodies that so obviously have the character of a public authority that it is not necessary to mention them." R. (on the application of Quark Fishing Ltd.) v. Secretary of State for foreign and Commonwealth affairs (No.2) [2005] UKHL 57 (Lord Hope of Craighead). Thus the powers of the Collector are circumscribed by the conditions laid down in the rules. In the first instance, the acquiring agency must give full justification of the public purpose involved and the minimum area required by it with full details of all other area owned by it in same locality. In short, the application shall be in the form of a feasibility which shall be examined by the Collector. He shall, for the purpose, take into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and suitability of the area proposed for requisition, keeping in view its alternate uses if any. Thus, the duty of the Collector is an onerous one entailing certain relevant considerations to be taken into account prior to the issuance of section 4 notification. An important aspect of Administrative Law relating to decisions based on irrelevant considerations or failure to take account of relevant considerations,

is thus engaged at this stage. This will, in turn, determine the justiceability of the action by the courts. De Smith's Judicial Review (seven edition) has dilated upon the well-entrenched principle thus:

“When exercising a discretionary power a decision-maker may take into account a range of lawful considerations. Some of these are specified in the statute as matters to which regard may be had. Others are specified as matters to which regard may not be had. There are other considerations which are not specified but which the decision-maker may or may not lawfully take into account...”

“In cases where the reasons for the decision are not available, and there is no material either way to show by what considerations the authority was influenced, the court may determine whether their influence is to be inferred from the surrounding circumstances. In such cases the courts may infer that an extraneous purpose was being pursued....”

“If the ground of challenge is that relevant considerations have not been taken into account, the court will normally try to assess the actual or potential degree of speculation. The question is whether the validity of the decision is contingent on strict observance of antecedents requirement...”

“If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a license, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent, although when the courts conclude that a wide range of factors may properly be considered, they will be reluctant to lay down a list with which the authority will be required to comply in every case.”

183. Some of the relevant considerations have been spelt out in the rules. Yet others may be inferred to be implied in the policy of the Act as relevant to be considered by the Collector. Here, we will pause to refer to another check on

unfettered discretion in the form of the doctrine that discretion must be ‘used to promote the policy and objects of the Act’. For an elaboration of the concept, it will suffice to allude to Administrative Law by H.W.R. Wade and C.F. Forsyth (eleventh edition) and the following extract:

“In two strong and almost simultaneous decisions of 1968 the House of Lords and the Court of Appeal boldly applied the law as so often laid down. In one, the House of Lords asserted legal control over the allegedly absolute discretion of the Minister of Agriculture and held that he had acted unlawful...”

“In Padfield v. Minister of Agriculture, Fisheries and Food the House of Lords had to consider a dispute under the milk marketing scheme established under the Agricultural Marketing Act 1958. The Act provided for a committee of investigation which was to consider and report on certain kinds of complaint ‘if the Minister in any case so directs’...”

“Lord Reid expressly rejected ‘the unreasonable proposition that it must be all or nothing –either no discretion at all or an unfettered discretion’. He said:

Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and object of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

Lord Upjohn said that the minister’s stated reasons showed a complete misapprehension of his duties, and were all bad in law. The scarcely veiled allusion to fear of

parliamentary trouble was, in particular, a political reason which was quite extraneous and inadmissible. One of the fundamental matters confounding the minister's attitude was his claim to 'unfettered discretion:

First, the adjective nowhere appears in section 19 and is an unauthorized gloss by the Minister. Secondly, even if the section did contain that adjective I doubt if it would make any difference in law to his powers, save to emphasise what he has already, namely that acting lawfully he has a power of decision which cannot be controlled by the courts; it is unfettered. But the use of that adjective, even in an Act of Parliament, can do nothing to unfetter the control which the judiciary have over the executive, namely that in exercising their powers the latter must act lawfully and that is a matter to be determined by looking at the Act and its scope and object in conferring a discretion upon the Minister rather than by the use of adjectives.

"The importance of the House of Lords' decision was underlined by Lord Denning MR:

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food which is a landmark in modern administrative law."

184. Thus it inevitably follows that discretion by the Collector must be used to promote the policy and the object of the Act. The policy of the Act, 1894 clearly has its provenance in the Constitution of Pakistan. Right to property is a

fundamental right. Compulsory acquisition is a serious invasion on that right and must be scrupulously and jealously guarded against. Any acquisition must be grounded in public purpose and just compensation. Section 4 and its preconditions are a bulwark against compulsory acquisition and the Collector must bring the full application of his mind to bear upon the feasibility submitted, its examination and formation of his view. It is a two-tier process.

185. As a first step, the acquiring agency shall put forth full justification for the public purpose involved. It must therefore conform to the concept of public purpose as understood as a term of art and as expounded by the courts. The public purpose must be such that it overrides and stumps the individual interest. It has to be based on objective criteria and must have the support and backing of an expert study and requisite facts. This is the essential first step to be complied scrupulously by the acquiring agency as the proposed taking affects a fundamental right. The words 'full justification for the public purpose' has to be given effect fully and purposefully. The justification must be such that it overrides the private interest and any competing public purpose, too.

186. Thereafter the Collector shall proceed to examine the feasibility. For the purpose he shall take into consideration the genuineness of the public purpose involved, the minimum requirement of the acquiring agency and 'suitability of the area proposed for requisition keeping in view its alternate uses if any'. Thus the power to be exercised by the Collector is not a mere painting to be looked at. It is an objective and robust exercise of power keeping in view varying factors which inhere in the compendious term 'suitability of the area proposed for acquisition keeping in view its alternate uses if any'. The term used in rule 4 is pregnant with the diverse nature of the scope of Collector's powers. There is a subtle yet important aspect which needs to be flagged here. The entire process with regard to 'suitability' has to be conducted keeping in view the interest and rights of the persons who own the property liable to be acquired. That is at the heart of the process and examination by the Collector. He must objectively assess whether the area is at all suitable for acquisition and it must qualify the test of 'alternate use' of that land. For example, if the land is agriculture, then the Collector must carry out the examination from the standpoint of food

security which is a looming threat on the horizon. He must ask the question: Will the food security be under threat if a big chunk of land is rendered useless and the people of the area are deprived of essential commodities which sustain them. This will have a spiral effect on the overall food situation; the inflation will rise as would prices of food items which will, in turn, impact the economic and culinary aspects of the public. This is an illustration of competing public interest which the Collector is required to consider in the section 4 determination. The number of illustrations can be myriad depending on the circumstances of each case. There could be human dwellings or trade and businesses being run by people whose most prized possession likely to be affected is the goodwill attached to that vocation. Heritage and buildings of historical and cultural importance ought to occupy the Collector's consideration in the examination. The nature of the project sought to be carried out by the acquiring agency should also have an important bearing on the decision to be made. If the project entails the construction of a road or highway, it may have to be analysed differently from a mere campus block of a college.

187. The power relates to taking of possession. However, read with rule 10 of the Rules, 1983, the Collector must have kept in view the considerations mentioned in rule 10 and append certain certificates and documents/information with the case while submitting a draft notification to the Commissioner. A glance at the rules makes an interesting reading. Rules 10, 11, 12 and 13 of the Rules, 1983 deal with matters relating to the notification under section 5 and 17 of the Act. By rule 10, certain matters, which the Commissioner of the Division will bear in mind while issuing the notification, have been spelt out. This would include a full description of the village, Tehsil and district etc. A note at the bottom of the notification would exclude waqf, state and evacuee lands, tombs, graveyards and places of religious character as also that the Collector of the District has calculated the price of land sought to be acquired. It is also required by rule 10 that the Collector of the District has placed funds equivalent to the estimated cost assessed by him at the disposal of the Land Acquisition Collector. Sub-rule (iii) of rule 10 has an important bearing in the entire setting of the acquisition proceedings. It lays down that no land lying near a town, meant for fodder

cultivation or for orchards or otherwise culturable shall be notified for acquisition for the establishment of any industries. For the location of industrial units all concerned Departments of Government including Health, Industries and Agriculture shall be consulted to ensure that no hazards to public health or agricultural economy would be involved, in case of such an acquisition. This is a paradigm provision and is a bulwark against acquisition of lands which are hazards to public health and agricultural economy. This sub-rule has to be read with the portion of the judgment dealing with the issuance of a notification under section 4 of the Act, 1894. The ineluctable inference is that by the rules the intention of the legislature is that no acquisition should be permitted which would be hazardous to public health or agricultural economy.

188. Rule 11 prescribes the considerations to be mentioned in a draft notification which is forwarded by the Collector of the District to the Commissioner to be issued under section 5 or 17 of the Act. Rule 11 obliges the Collector of the District to append certain certificates, documents/information with the draft notification for the consideration of the Commissioner. A holistic reading of rule 11 would ineluctably

show that the Commissioner has indeed to form an opinion by taking into consideration objective criteria and essential considerations which have been elaborated in rule 11 of the Rules, 1983. Once again by rule 11 the Commissioner while forming an opinion has to return a finding as to whether it would be proper to acquire a certain piece of land so as to minimize loss to the agricultural economy. Special emphasis has been laid for preserving the agricultural economy and while acquiring land special care is to be taken with regard to the preservation of agricultural economy and public health. This seems to be the underlying theme of the rules 10 and 11 and corresponding obligation cast upon the Commissioner of the Division while forming an opinion.

189. Section 4 read with the Rules is an example of a provision in a statute which places on a public body a duty 'to have regard' to some desirable good. Examples abound in this regard. In the Highway Act 1980, section 29 (United Kingdom) local authorities making agreements and orders relating to public footpaths must have due regard to –(a) the needs of agriculture and forestry, and (b) the desirability of conserving flora, fauna and geological and physiographical

features. (In fact, these may comprise some of the factors which the Collector will take notice of in his examination). In De Smith's Judicial Review, these duties have been mentioned as:

“Duties such as these are described as “mandatory” but not imposing “a duty to achieve results”. In challenges to alleged failures to fulfill “to have regard to” duties, the courts have laid down guidelines as to what is expected of a public body. The required approach is contextual: “Due regard’ is the ‘regard that is appropriate in all the circumstances’”. It is not sufficient for the public body to show merely that it made its decision with “a general awareness of the duty”; a “substantial, rigorous and open-minded approach” is required. The test whether a decision-maker has had due regard is a test of the substance of the matter, not of mere form or box-ticking, and the duty must be performed with “vigour and an open mind”. The duty requires a “conscious directing of the mind to the obligations”. “Due regard” must be given “before and at the time that a particular policy that will or might affect disables people is being considered by the public authority in question”. Due regard to the duty must be an “essential preliminary” to any important policy decision, not a “rearguard action following a concluded decision”. Consideration of the duty must be an adoption”.

190. Historically, the principle that if a power is granted for one purpose is exercised for a different purpose, that power has not been validly exercised, was first laid down in cases concerning the exercise of powers of compulsory acquisition. It was held in *Galloway v. London Corp.* (1866) L.R. 1 HL 34 at 43 that when persons were authorised by Parliament to take compulsorily the lands of others, paying to the latter proper

compensations, they cannot be allowed to exercise the powers conferred on them for any collateral object.

191. As explicated above, some of the considerations have been laid down in the Rules, 1983 and which have been dilated upon hereinabove. However, it is reiterated that since the acquisition of property entails a deprivation and taking of property which is protected as a fundamental rights under the Constitution, it is imperative for the Collector to broaden the inquiry under section 4 of the Act. In this regard, a leaf can be taken from the various jurisdictions around the world where the courts have evolved standards to be considered by the Collector in the acquisition of the property and the issuance of notification under section 4 of the Act. The US Supreme Court has laid down in its various judgments the matters to be considered in any inquiry relating to acquisition. They have been brought forth in the Lucas case referred to above. In the majority opinion of the court, Scalia, J. held that:

“...As Justice Brennan explained: “From the government’s point of view, the benefits flowing to the public from preservation of open space through regulation may be equally great as from creating a wildlife refuge through formal condemnation or increasing electricity production through a dam project that floods private property.” San Diego Gas

& Elc. Co., supra, at 652 (dissenting opinion). The many statutes on the books, both state and federal, that provide for the use of eminent domain to impose servitudes on private scenic lands preventing developmental uses, or to acquire such lands altogether, suggest the practical equivalence in this setting of negative regulation and appropriation.”

He further held that:

“The “total taking” inquiry we require today will ordinarily entail (as the application of state nuisance law ordinarily entails) analysis of, among other things, the degree of harm to public lands and resources, or adjacent private property, posed by the claimant’s proposed activities, see, e.g., Re-statement (Second) of Torts Ss. 826, 827, the social value of the claimant’s activities and their suitability to the locality in question, see, e.g., id., Ss. 828(a) and (b), 831, and the relative ease with which the alleged harm can be avoided through measures taken by the claimant and the government (or adjacent private landowners) alike, see, e.g., id., Ss.827(e),...”

192. The nature of inquiry was elaborated upon in the dissent of Stevens, J as well and it was held that:

“It is well established that a takings case “entails inquiry into [several factors:] the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations.” PruneYard, 447 U.S, at 83....”

“The Just Compensation Clause “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” Armstrong, 364 U.S., at 49. Accordingly, one of the central concerns of our takings jurisprudence is “prevent[ing] the public from loading upon one individual more than his just share of the burdens of government.” Monongahela Navigation Co. v. United States, 148 U. S. 312, 325 (1893). We have, therefore, in our takings law frequently looked to the generality of a regulation of property.

For example, in the case of so-called “developmental exactions,” we have paid special attention to the risk that particular

landowners might “b[e] singled out to bear the burden” of a broader problem not of his own making. Nollan, 483 U. S., at 835, n. 4; see also Pennell v. San Jose, 485 U.S. 1, 23 (1988). Similarly, in distinguishing between the Kohler Act (at issue in Mahon) and the Subsidence Act (at issue in Keystone), we found significant that the regulatory function of the latter was substantially broader. Unlike the Kohler Act, which simply transferred back to the surface owners certain rights that they had earlier sold to the coal companies, the Subsidence Act affected all surface owners—including the coal companies—equally. See Keystone, 480 U. S., at 486. Perhaps the most familiar application of this principle of generality arises in zoning cases. A diminution in value caused by a zoning regulation is far less likely to constitute a taking if it is part of a general and comprehensive land-use plan, see Euclid v. Amber Realty Co., 272 U. S. 365 (1962); conversely, “spot zoning” is far more likely to constitute a taking, see Penn Central, 438 U.S., at 132, and n. 28.”

193. The development of law in Britain has also been referred to in the preceding paragraph and a reference was made to the recommendations of an advisory group which was constituted to review the laws and procedures relating to compulsory purchase, composition and the disposal of compulsorily purchased land. Review group so constituted acknowledged that there was a difficult balance to be struck between preserving the human rights of those whose properties are at risk and the need for speed and certainty in order to attract adequate and timely funding for replacement schemes. The long-enshrined principle was adhered to by the review group which is that before compulsory

purchase powers were authorised, it must be demonstrated that the public need was sufficient to outweigh the rights of the individuals by showing that:

- *The acquiring authority's scheme is in the public interest;*
- *The scheme has a reasonable prospect of being implemented; and*
- *The acquisition of the individual's land is necessary to achieve the scheme's purpose.*

(Crow, S., (2007), Compulsory Purchase for economic development: an international perspective, Journal of Planning and Environmental Law, Aug 2007, 1109)

194. An important plank of the recommendations made by the review group was that the local authorities must not exercise the power unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

- *The promotion or improvement of the economic well-being of their area;*
- *The promotion or improvement of the social well-being of their area;*
- *The promotion or improvement of the environmental well-being of their area.*

195. The theme that permeates the compulsory acquisition and the laying down of certain criteria to be satisfied is that compulsory purchase is a severe encroachment on the rights and liberties of the individual and it is clearly important that the

acquiring authority and its development partners where appropriate, adopt a robust and proper approach to that process.

(Winter P. and Lloyd R., (2006), Regeneration, compulsory purchase orders and practical related issues, Journal of Planning & Environmental Law, June 2006, 792).

196. This theme has been echoed in India with the promulgation of ‘The Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (**Indian Act, 2013**). The preamble of Indian Act, 2013 lays out the most humane and empathetic purpose in a piece of legislation with one can come across. It says that:

“An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.”

197. The Indian Act, 2013 is not only about acquisition but is equally about rehabilitation and

resettlement of affected persons and aims to ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status. This, in our opinion, should be at the heart of any inquiry and examination of feasibility to be conducted by the Collector before issuing a notification under section 4 of the Act. It contains a broad definition of the term “affected family” and includes a family residing on the land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land. It requires by section 4 for commencement of consultation and a **Social Impact Assessment study** to be carried out. The contours of the Social Impact Assessment study has been given in subsection (4) of section 4 and is reproduced for facility:

- “(4) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:--*
- a) assessment as to whether the proposed acquisition serves public purpose;*
 - b) estimation of affected families and the number of families among them likely to be displaced;*
 - c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;*

- d) *whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project;*
- e) *whether land acquisition at an alternate place has been considered and found not feasible;*
- f) *study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-à-vis the benefits of the project:*

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

198. By subsection (5) of section 4, the Appropriate Government has been obliged to undertake acquisition while taking into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, source of drinking water, health care facilities, schools, children parks etc. Correspondingly, an Environmental Impact Assessment is also required to be carried out. By section 7 of the Act, the Appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary expert group to be constituted by it. That expert group may form an opinion that the project does not serve any public purpose or the social costs and adverse social impact of the project outweigh the potential benefits and shall make a

recommendation within two months that the project be abandoned forthwith. Thereafter the Appropriate Government upon examination of the report of the expert group on the Social Impact Assessment study, recommend such area for acquisition which would ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected. Quite significantly, section 10 of the Indian Act, 2013 **provides that no irrigated multi-cropped land shall be acquired under this Act save as provided in subsection (2).** Subsection (2) provides stringent conditions under which the irrigated multi-cropped land may be acquired which can only be done under exceptional circumstances as a demonstrably last resort. By subsection (3) it has been enjoined upon the Appropriate Government that **where multi-cropped irrigated land is acquired, a cultivation area of culturable wasteland shall be developed for agricultural purposes for enhancing food security.** Section 10 is a special provision to safeguard food security. I have alluded to this aspect in the earlier part of this judgment and have tried to emphasis that food security is a looming danger and cannot be

disregarded at any cost. Another outstanding feature of the Indian Act, 2013 is the establishment of the office of an Administrator of rehabilitation and resettlement so that the affected families can be rehabilitated and a rehabilitation and resettlement scheme shall be drafted and implemented in terms of sections 16, 17 and 18.

199. A reference to the process of compulsory acquisition in different countries around the world would bring forth ineluctably that the emphasis is on the protection of the fundamental right of the property and in case the power of eminent domain becomes inevitable to be exercised, criteria and standards must be adhered to before the acquisition and compulsory taking can be done. The most progressive law on the subject is the Indian Act, 2013 which casts obligations laden with care and social responsibility on the public authorities undertaking the process of acquisition. Although, the Act of 1894 does not contain any extensive details, the measures which have to be taken at the time of the examination of the feasibility of the acquiring agency by the Collector, yet most of these steps ought to be considered and must be read into the procedure to be followed by the Collector before the issuance of a notification

under section 4 of the Act. There is no doubt in my mind that the steps which have been referred to above are counter measures of public importance and serve the public purpose in equal measure which must be juxtaposed with the public purpose agitated by the acquiring agency. Any notification which fails to conform to these procedures and relevant considerations is ultra vires and must be struck down.

200. We must see a connection between just compensation and any scheme regarding resettlement and rehabilitation to exist necessarily. This will lend more compassion and empathy to the whole process of acquisition. Just compensation must include within it the process of rehabilitation of affected persons, not only as regards their homes and abodes but also with regard to their vocation, business and means of livelihood etc. If the acquisition impacts a person's business which has a goodwill built by the sweat and blood of generations before him, the compensation that he will be entitled to must cater for the resettlement of that goodwill at an alternate place. This connection of just compensation with resettlement and rehabilitation becomes more pronounced when the taking or acquisition affects the livelihood of an affected

person, for the acquisition is in fact strangulating a person financially and all those who depend on him. This is not mere deprivation of property simpliciter but inflicts harm on the dignity of a person and dents his standard of living and that of his future generations. Therefore the process of rehabilitation and resettlement of affected persons is a process which is inbuilt in the examination of feasibility conducted by the Collector as it is a necessary concomitant of the just compensation due to a person. Any scheme for the rehabilitation and resettlement therefore inheres in the term 'just compensation'. It bears reiteration that we are here concerned with the taking away of a fundamental human right and a compulsory deprivation of property. It can only be done for a public purpose and by just compensation. The Act, 1894 must be all about just compensation. That is at the heart of the law in question. Every step in the acquisition proceedings must be taken to attain the goal of just compensation and it begins with the examination of the feasibility of the acquiring agency by the Collector and formation of opinion as to suitability of the land etc. In our view therefore, just compensation is not merely restricted to damages in monetary terms but

necessarily includes affected persons to be recompensed in a sustainable way so that their livelihood is preserved and protected in a dignified manner. Damages alone without more is abhorrent to the idea of just compensation and is anathema to the entire concept.

201. The rehabilitation and resettlement of affected persons whose property is taken, is not one of the features clearly delineated in the Act, 1894 but we have no doubt that this can be culled out from a cumulative reading of Article 24 of the Constitution and the Rules. This is required to be done under the Rules while 'examining the public purpose involved' and the 'suitability of the area' by the Collector. But more importantly, this concept is found embedded in the broader sense of the term 'compensation' used in Article 24. There is no doubt that compensation as used in Article 24 has to be 'just compensation'. It is a compendious term and necessarily means just compensation as used in the fifth amendment to the U.S Constitution. The mere fact that the prefix 'just' does not find mention in Article 24 does not detract from the fact that any compensation has to be 'just'. The determination of just compensation is subject to judicial review of this Court.

202. Article 24 of the Constitution uses the term ‘compensation’ in contrast to the term ‘just compensation’ as used in the fifth and fourteenth amendments of the American Constitution which stipulates that the person shall receive just compensation for property that has been taken. The term ‘compensation’ as used in Article 24 would be construed as just compensation and must be read as such. This is the view taken in *Jibendra Kishore v. Province of East Pakistan (PLD 1957 SC Pak 9 at 34)*: “Besides the necessity of the existence of a public purpose, the Article imposes on acquisition the further condition that the law under which acquisition is made must itself fix the amount of compensation or state the principles on which and the manner in which compensation is to be determined and given.” It was said in *Jibendra Kishore* case:

“that the word compensation here is used in the sense in which it is used in the law relating to the exercise of the power of eminent domain, namely as meaning the market value of the property acquired.” In that connection Muhammad Munir Chief Justice referred to Nichols’ book “Eminent Domain” 1950 Edition, Volume 1, where it states as follows:

“ ‘Compensation’, as used in the constitutional provision as a limitation upon the power of eminent domain, implies a full and complete equivalent (usually monetary) for the loss sustained by the owner whose land has been taken or damaged.

“Many of the State constitutions require that the compensation shall be ‘just’, ‘reasonable’ or ‘adequate’, but these words are mere epithets rather than qualifications and add nothing to the meaning. The phrase

‘just compensation’ means the value of the land taken and the damage, if any, to land not taken. More than this it does not imply. The adjective ‘just’ only emphasizes what would be true if omitted, --- namely, that the compensation should be the equivalent of the property.”

203. In America, the statement by Justice Holmes in *Boston Chamber of Commerce v. Boston* 271 US 189 has often been quoted as the basic principle for determining the amount due to an individual whose property has been taken. Justice Holmes said that the test is “what has the owner lost, not what has the taker gained”.

204. On the threshold, it may be mentioned that no material was placed on record which would show that the acquiring agency which is RUDA in the instant case, made an application in the prescribed form to the Collector for acquisition of land. Any action taken by the Collector of the District without such application, therefore, falls in contravention of the Rules, 1983.

205. The reply of District Collector, Sheikhpura betrays an absence of such a request on the part of either the Govt. of the Punjab or RUDA. It states that:

“It is submitted that the Chief Metropolitan planner, Lahore Development Authority vide letter No.LDA/ CMP/ 9147 dated 09.09.2013 intimated to the Collector Sheikhupura that it is vision of Government of Pakistan to develop a lake city alongwith River Ravi and creation of a vibrant river front along the river.”

“Keeping in view the above mentioned boundaries notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of land in 96 Mouzas for River Ravi zone development scheme locate t Northern and western side of River Ravi falling in district Sheikhupura was issued by the District Collector Sheikhupura on the request of land acquisition collector, Ravi urban Development Authority vide No.LAC/ DRA/ 1395 dated 06.10.2020.”

206. The Collector is relying on a letter dated 09.09.2013 by the Chief Metropolitan Planner, LDA for undertaking acquisition on 06.10.2020. This is indeed a sad reflection on the complete abdication of duty by the Collector who acted without application of mind. Similarly, Commissioner Lahore Division submits in his reply that:

“3. As per requirements of the Ravi Urban Development Authority, notification under Section 4 of the Land Acquisition Act, 1894 (LAA) for acquisition of land in Lahore & Sheikhupura districts located at Northern and Western side of River Ravi was issued by the District Collector, Sheikhupura on the request of Land Acquisition Collector, Ravi Urban Development Authority vide No.LAC/ DRA/1395 dated 06.10.2020 (Annex-II).”

207. The Commissioner has no idea that there is no Land Acquisition Collector of RUDA and no such request was made to the Collectors.

208. Moreover, upon a cumulative reading of rules 3, 4 and 5 of the Rules, 1983 would clearly show that the Collector of the District is obliged to examine the feasibility of the application by taking into consideration the genuineness of the public purpose involved, the requirements of the acquiring agency and suitability of the area proposed for acquisition keeping in view its alternate uses if any. This is encapsulated in rule 4 which may be reproduced for facility:

“4. On receipt of the application under rule (3) the Collector of the district shall examine its feasibility taking into consideration the genuineness of the public purpose involved, the minimum requirements of the acquiring agency and suitability of the area proposed for requisition keeping in view its alternate uses if any”

209. Thus, the Collector of the District cannot act mechanically in issuing a notification under rule 4 and is under a bounden duty to comply with the provisions of rules 3, 4 and 5 of the Rules, 1983. An application of mind has to be made by the Collector with regard to all these aspects while examining the feasibility of the application. The most crucial aspect in my opinion which the Collector is liable to undertake is the alternate uses to which the land can be put and this should be an important

plank of the feasibility undertaken by the Collector of the District. This will require the Collector of the District to hold meetings for the purpose and to sum up his findings in the form of a written statement which will lead to the issuance of the notification under Section 4 of the Act, 1894. As concluded above, the Collector of the District will also be obliged to consider the approval given by Environmental Protection Agency to EIA submitted by the acquiring agency. A holistic view will be taken by the Collector of the District and thereafter an informed decision shall be made and the entire procedure shall precede the issuance of the section 4 notification. None of these procedural formalities were complied with by the Collectors of the Districts of Lahore and Sheikhupura and therefore these notifications which have been issued under Section 4 are held to be without lawful authority and *void ab initio*.

210. Since the notification under Section 4 issued by the Collectors of Lahore and Sheikhupura districts have been declared to be void on the above ground as well as other grounds, the superstructure built upon them

such as the notifications issued under Sections 5 and 6 of the Act, 1894 must also fall to the ground. They too are held to be *ultra vires* and are struck down.

211. Mr. Fahad Malik and Mr. Waqar A. Sheikh, Advocates raise the question whether the acquisition was being made for public purpose or for a company. They contended that the acquisition in this case was for a company and the procedure prescribed for the purpose ought to have been followed. This issue has become moot under the present circumstances since notifications under Section 4, 5 and 6 of the Act, 1894 have been struck down on different grounds. It will not be necessary to go into this question in these proceedings.

Environmental rights challenge:

212. Mr. Ahmad Rafay Alam, Advocate in W.P No.9429 of 2021, W.P No.16491 of 2021, W.P No.54238 of 2021 and W.P No.67029 of 2021 primarily challenges the acquisition proceedings and the EIA submitted to E.P.A on the basis that the preparation of EIA offended the Punjab Environmental Protection (Registration of Environmental Consultants) Regulations, 2017 (“**the Regulations**”). These

Regulations were notified in the official gazette on 9th August, 2017. The Regulations primarily concern with registration of the consultants for the purpose of preparation of environmental assessment under Section 12 of the PEPA Act, 1997. Regulation 3 provides that:

“3. All environmental assessments to be prepared by registered consultants only.- From such date as may be notified by the government in official gazette, which shall not be later than one calendar from the date of commencement of the regulations, the Agency shall not accept an environmental assessment under Section 12 of the Act, unless it is prepared by a consultant validly registered with the Agency under regulation 7.”

213. The regulation 3 set out above enjoins that all environmental assessments have to be prepared by a registered consultant only. It further provides that the Agency shall not accept an environmental assessment under Section 12 of PEPA Act, 1997 unless it is prepared by a consultant validly registered with the Agency under regulation 7. However, this condition has been made subject to a notification issued by the government in official gazette which shall not be later than one calendar year from the date of commencement of the regulations. Till date admittedly the government has failed to notify the date from which the Agency shall stop accepting an EIA

prepared by a consultant other than a consultant registered with the Agency. This failure on the part of the government impinges upon the rights of owners whose land is subject to acquisition as well as people of the community generally where the acquisition takes place and who are affected by environmental impacts on any project sought to be set up in that area. Simply because the government has failed to do so will not absolve the government of its duty cast upon it by regulation 3 with the result that violation of the Regulations continues unabated and without the need for the Regulations to be implemented in letter and spirit. The Regulations cannot be treated as an empty vessel by the government and it is admitted that the government be compelled to implement the provisions of the Regulations so that a proper environmental assessment can be prepared by registered consultants and which fulfill the conditions for registration prescribed by the Regulations. In a crux, the contention of Mr. Ahmad Rafay Alam, Advocate and other counsels is that unless these Regulations are notified and become functional, no project should be permitted to be implemented and established throughout the Province of Punjab.

This contention has considerable force and it is time that environmental assessment be prepared in accordance with the Regulations. On this ground too the EIA prepared by RUDA cannot be held to have been prepared in conformity with the provisions of PEPA Act, 1997 as well as the Regulations. Simply because there is no notification under regulation 3 will not detract from the fact that these Regulations are in force and must be complied with.

214. It is therefore directed that the government shall proceed to notify the Regulations within the next one month of the passing of the judgment by this Court. Thereafter the Consultant Registration Advisory Committee to be constituted in term of regulation 5 shall proceed to consider the applications by prospective consultants who shall thereafter be registered in terms of regulation 7. Till that time no EIA shall be prepared by an outside consultant who has not been registered in accordance with the Regulations throughout Punjab. The EIA prepared by RUDA and admittedly so done by an unregistered consultant is held to be *ultra vires* and unlawful.

Loan by the Authority:

215. The petitioners took serious exception to the borrowing of funds by the Authority which according to them has to be in accordance with the provisions of section 26 of the Act, 2020 which has already been reproduced above. According to this provision, any borrowing to be done by the Authority has to be under the Local Authorities Loans Act, 1914 as the Authority has been deemed to be a local authority for the purpose of borrowing money and any scheme or project prepared by the authority shall be deemed to be the work as defined in section 2 of the Act, 1914. RUDA has admittedly entered into a loan agreement with the Government of Punjab for raising funds for the purposes of land acquisition for its project which were provided by the government to the tune of Rs.5,000 Million during financial year 2020-21. An agreement was executed on 6 January, 2021. This agreement has not been made under the provisions of the Act, 1914. Documents have been placed on record by RUDA which show that a summary was prepared by the Finance Department which does not refer to the loan amount having been issued under Section 26 of the Act, 2020 so as to be

covered by the provisions of the Act, 1914. Suffice to say that the provisions of the Act, 1914 empower a local authority to borrow money from the government on such terms as have been mentioned in the Act, 1914. Since section 26 prescribes a special procedure for borrowing money from the government by RUDA, no other procedure can be adopted for such borrowing and any loan made by the government and raised by the Authority is *ultra vires*. There is no doubt that RUDA is empowered to borrow money from a financial institution which has also been defined in the Act, 2020. Suffice to say that the government is not a financial institution and any loan made by the government has to conform to the provisions of the Act, 1914. Since this has not been done admittedly, the loans made by the government and raised by the Authority is unlawful and is in contravention of the provisions of section 26 of the Act, 2020. It is held to be null and of no effect.

Directions:

216. I am aware of the constraints upon the power of this Court to issue directions to the legislature to initiate legislation. There is,

however, no impediment in issuing such a direction to the Govt. of the Punjab to start the process of amending the Act, 1894 so as to conform with the socio-economic realities of present times and to provide for climate justice. (See for example *PLD 1999 Karachi. 54* and *PLD 2015 Islamabad 7*). The amendments should provide for not only environmental but also social impact assessment to conform with the dignity rights. Crucially, a comprehensive legal framework ought to be brought in relation to acquisition of agricultural and cultivated farmlands, keeping in view the aspect of food security. Any such acquisition must be allowed only under dire and unavoidable circumstances. This process must be completed with all deliberate speed. By reading down, it has been held that till such time that rules are prescribed, acquisition of agricultural and cultivable farmlands is prohibited. These rules (and the amendment in the statute itself) must prescribe circumstances which compel and constrain the taking of such land by the government and the extreme situations to justify it.

'If we want things to stay as they are, things will have to change'. (Il Gattopardo, a

novel, by Tomasi di Lampedusa).

'You are not responsible for the past, but insofar as you can do nothing, you are complicit in the present created by it.' (Jonathan R. Miller).

Before I tear myself away, let me record my appreciation of the invaluable assistance provided by the amici curiae. It has greatly helped me in writing this opinion.

Conclusion:

217. In summation it is held that:

1. *Master Plan is the foundational document under the RUDA Act, 2020 and all schemes follow the Master Plan. RUDA has failed to prepare an independent Master Plan in accordance with the provisions of the Act, 2020 and any further schemes prepared in the absence of a Master Plan are unlawful.*
2. *Section 4 of the Amendment Ordinance is unconstitutional being in contravention of Article 140A of the Constitution. Consequently section 6 in the original Act, 2020 stands revived. As a necessary corollary, any master planning and preparation of schemes by RUDA, in the absence of an agreement with the local government concerned, is illegal.*
3. *Sections 6(xxxiv), 18(2), 29, 30, 31, of the Act, 2020 are held to be unconstitutional.*
4. *The Amendment Ordinance fails to comply*

with the pre-conditions mentioned in Article 128 of the Constitution and hence is unconstitutional. It is struck down.

- 5. The Land Acquisition Act, 1894 shall be read down in such a manner that no acquisition of agricultural and cultivable farmland can be done by the Collector as the provisions of the Act, 1894 offends Articles 9 and 14 of the Constitution. Any acquisition of agricultural land can only take place after a legal framework has been put in place by making necessary amendments in the Statute.*
- 6. It is held that environmental impact assessment and an approval by E.P.A has to precede the commencement of process of acquisition by the Collector under Section 4 of the Act, 1894. It is further held that PEPA Act, 1997 is a law within the contemplation of Article 24(2) of the Constitution for the purposes of just compensation. Since this was not done, the notifications issued under Section 4 of the Act, 1894 are struck down.*
- 7. The Collectors of Sheikhpura and Lahore failed to follow procedural formalities prior to issuance of a notification under Section 4 of the Act, 1894 and the notifications so issued are struck down being ultra vires on this ground, too.*
- 8. The EIA prepared by RUDA and submitted to E.P.A for approval is held ultra vires on the ground that it does not conform with the Punjab Environmental Protection (Registration of Environmental Consultants) Regulations, 2017. The Govt. of the Punjab*

is directed to issue a notification regarding commencement of the Regulations within one month.

9. *The loan borrowed by RUDA offends section 26 of the Act, 2020 as it fails to comply with the provisions of the Local Authorities Loans Act, 1914. The amount of loan procured by RUDA shall be reimbursed to the Govt. of the Punjab within two months of this judgment.*
10. *Govt. of the Punjab is directed to initiate generally the process of legislation for bringing the provisions of the Act, 1894 in conformity with the constitutional mandate and in particular to provide for acquisition of agricultural and farmlands as a distinct category.*

218. *Petitions allowed.*

**(SHAHID KARIM)
JUDGE**

Announced in open Court on 25.01.2022.

Approved for reporting.

JUDGE

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Rafaqat Ali

Schedule 'I'

Sr. No.	W.P. Nos.	Title
1.	12876/2021	Hassan Ali Ranjha Vs. Govt. of the Punjab, etc.
2.	67029/2021	Public Interest Law Association of Pakistan Vs. Environmental Protection Agency, etc.
3.	16491/2021	Public Interest Law Association of Pakistan Vs. Ravi Urban Development Authority, etc.
4.	54238/2021	Suleman Muhammad Sajjad Warriach Vs. Province of the Punjab, etc.
5.	20104/2021	Faqir Muhammad Warraich Vs. Province of the Punjab, etc.
6.	14184/2021	Muhammad Saad Aslam Vs. Ravi Urban Development Authority, etc.
7.	63660/2021	Muhammad Tariq Anwar, etc. Vs. Land Acquisition Collector, etc.
8.	68807/2021	Tayyab Noor Warraich, etc. Vs. Province of the Punjab, etc.
9.	38317/2021	Ikhlaq Ahmad, etc. Vs. Province of the Punjab, etc.
10.	21923/2021	Muhammad Jamil, etc. Vs. Govt. of the Punjab, etc.
11.	63157/2021	Gulzar Begum, etc. Vs. Govt. of the Punjab, etc.
12.	47815/2021	M/s. Gulshan Iqbal Housing Developers Vs. Province of the Punjab, etc.
13.	30998/2021	Muhammad Mushtaq, etc. Vs. Province of the Punjab, etc.
14.	23032/2021	Amir Hussain, etc. Vs. Govt. of the Punjab, etc.

**(SHAHID KARIM)
JUDGE**

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Rafaqat Ali