

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3473 of 2025

Saifuddin

Versus

Federation of Pakistan & others

Date	Order with signature of Judge
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- 1. For orders on office objections.
- 2. For hearing of CMA 14658/25
- 3. For hearing of main case.

Dated: 26.08.2025

Mr. Muhammad Vawda, Advocate for Petitioner.
Mr. S. Hassan M. Abidi, Advocate for Respondent/KMC.

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C.P. No.D-3473 of 2025

MOHAMMAD ABDUR RAHMAN, J Through this Petition, maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners seek a declaration that a Resolution passed by the City Council of Karachi Metropolitan Corporation dated 19 May 2025 (hereinafter referred to as the “Impugned Resolution”) is illegal and without lawful authority and seek to ensure that amenity plots designated as Parks cannot be utilised for any other purpose other than for the specific amenity purpose that it was designated for including, but not limited to, any other amenity purpose or for commercial use.

A. Facts

2. A Committee of City Council of Karachi Metropolitan Corporation on 19 May 2025, has passed Resolution No 134, by a vote of 7 in favour and 2 against, in the English Translation of which reads as hereinunder:

“ ... DEPARTMENT OF PARKS AND HORTICULTURE
KARACHI METROPOLITAN CORPORATION (KMC)

Agenda No.6, Serial No.11
Memorandum for Karachi Metropolitan Corporation (KMC)
No. Director/ 2010/2025 Dated: 16.5.2025

Subject: Approval Under Resolution No. 107 Dated 20th February 2025 Pursuant to Resolution No. 107 dated 20th February 2025 and upon due consideration by the committee constituted thereunder, approval is hereby granted for the management, renovation and improvement of all parks under the

administrative control of the KMC, including enhancement of related facilities to be undertaken through Public-Private Partnership and/or on a Rental Basis.

It is respectfully submitted that the Department of Parks and Horticulture, in relation to the renovation, beautification, and improvement of facilities in parks under the administrative control of the Karachi Metropolitan Corporation (KMC), proposed to operate these parks under Public-Private Partnership (PPP) or on a Rental Basis. In this regard, the Council of the Karachi Metropolitan Corporation, through Resolution No. 7100 dated 20th February 2025, approved the referral of the matter to the KMC Committee with the direction that the Committee shall re-examine all aspects of the matter thoroughly and submit its report to the Council within 30 days.

In light of the above-mentioned matter, the following meetings of the Committee constituted regarding the operation of all parks under the administrative control of the KMC under a Public-Private Partnership/Rental Basis, for the purpose of renovation, beautification, and improvement of existing facilities, were convened:

First Meeting: Held on Monday, 10th March 2025, at 2:00 PM in the Committee Room, Mayor Secretariat, M.A. Jinnah Road, Karachi.

Second Meeting: Held on Monday, 17th March 2025, at 2:00 PM in the Committee Room, Mayor Secretariat, M.A. Jinnah Road, Karachi.

Third Meeting: Held on Thursday, 10th April 2025, at 2:00 PM in the Committee Room, Mayor Secretariat, M.A. Jinnah Road, Karachi.

Fourth Meeting: Held on Monday, 14th April 2025, at 12:00 PM in the Committee Room, Mayor Secretariat, M.A. Jinnah Road, Karachi.

Fifth Meeting: Held on Tuesday, 13th May 2025, at 2:00 PM in the Committee Room, Mayor Secretariat, M.A. Jinnah Road, Karachi.

During the above-mentioned meetings, the members of the Committee conducted a detailed review and deliberation, and unanimously agreed that the parks constructed at various locations across the city under the administrative control of the Karachi Metropolitan Corporation (KMC) are managed by the Department of Parks, which operates under the supervision of the Director General (Parks & Horticulture). It is the primary objective of the KMC Parks and Horticulture Department to continuously upgrade and renovate all parks from time to time. This ensures that when citizens visit these parks with their families, they experience a pleasant environment and have access to quality recreational facilities. Currently, there are: 51 district-wide parks under KMC's jurisdiction, 4 nurseries located within parks, and 91 additional nurseries situated on green belts owned by KMC. To enhance the aesthetic appeal, maintain a healthy environment, and preserve the natural beauty of the parks, the department regularly plants rare herbs, fruit-bearing trees, and colorful flowering plants. In addition, there are 106 green belts located in medians and on either side of roads across the city, which are also under KMC's control. The Department of Parks is responsible for planting grass and ornamental plants on these green belts and for their ongoing maintenance. Furthermore, the Parks Department is also responsible for providing and maintaining facilities such as shade structures, paved walkways, toilets, and security arrangements within all parks managed by the Karachi Metropolitan Corporation, to ensure a comfortable and safe environment for visiting families.

On behalf of the Committee, it was decided by majority that the management and maintenance of all parks, trees, infrastructure, and other assets under the administrative control of the Karachi Metropolitan Corporation may be handed over on a Rental Basis/Public-Private Partnership, while ownership of these assets shall remain with the Karachi Metropolitan Corporation.

Therefore, in light of the report submitted by the Committee constituted under Resolution No. 107 dated 20th February, 2025, it is respectfully requested that permission be granted to lease out all parks, trees, and related infrastructure on a Public-Private Partnership/Rental Basis to ensure their preservation and improved management.

Sd/-
Municipal Commissioner
Karachi Metropolitan Corporation

3. It seems that thereafter in pursuance of this Resolution, various amenity plots have been handed over on a “Public Private Partnership” basis or have been “rented” out to members of the public who would be responsible for the upkeep of those plots and their maintenance.

B. Contentions on behalf of the Petitioner

4. Mr. Muhammad Vawda entered appearance on behalf of the Petitioners and submitted that on the basis of the Impugned Resolution, the following properties amongst others, have been subject to conversion and are under the cover of “Public Private Partnership Agreements” being put to use other than for what they were designated:

S No.	Park name/Plot Number	Designation in Planning Schemes
1	Jheel Park	Amusement Park
2.	Hill Park, KDA Scheme No. 13, Karachi	Park with 40 plots designated within the park for specific purposes
3.	Umer Sharif Park, ST-13, Block 2, Karachi Development Authority Scheme No 5, Karachi	Park
4.	Bagh e Ibn Qasim, Block 3, Karachi Development Authority Scheme No 5, Karachi	Park
5.	KMC Sports Complex, Kashmir Road	Sports Complex
6.	Hosh Muhammad Shaheedi Park ST-30, Block 5, Karachi Development Authority Scheme No 5, Karachi	Park
7.	ST-4, Clifton, Block 2, Karachi	Park
8.	ST-15, Clifton, Block 2, Karachi	High School
9.	ST-19, Clifton, Block 2, Karachi	Public Building

He submitted that under the provisions of Karachi Building & Town Planning Regulations, 2002 (hereinafter referred to as the KB&TPR, 2002), a prohibition exists in Regulation 18-4.1. which prevent the conversion of an amenity plot that is reserved for a specific purpose to any other purpose.

5. He next referred to definition of word amenity plot as contained in Regulation 2-7 and which cross referenced that definition with various uses as detailed in Regulations 19-2.2.1 (Government Uses), 19-2.2.2 (Health and Welfare Uses), 19-2.2.3 (Education Uses), 19-2.2.4 (Assembly Uses), 19-2.2.5 (Religious Uses), 19-2.2.7 (Parks), 19-2.2.8 (Playgrounds), 19-2.2.8 (Burial grounds), 19-2.2.9 Transportation Right of Way) and 19-2.2.10 (Parking), 19-2.2.12 (Aquatic

Recreational Areas) of the KB&TPR, 2002 each of which are defined as amenity and particularly referred us to Regulation 19-2.2.7 of the KB&TPR, 2002 and which reads as hereunder:

“ ... *Parks and playgrounds: includes :*

All green spaces, including various related cultural or recreational facilities such as greenhouses, zoological and botanical gardens and their related feasibility, toilet for both sex and fist aid facility, but excluding green spaces ancillary to welfare or educational facilities, and excluding median or other dividing green strips in road rights-of-way”

In this regard he states that the expression “playground,” as distinguished from “parks” has been defined as hereinunder:

“ ... *19-2.2.8 Play Ground*

(a) All open spaces designated for all indoor or outdoor sports activities of all types whether fully developed or not; and

(b) All structures serving sports activities, like sports complex, gymnasium, swimming pools, stadium, racecourses, sports clubs of all kinds, whether they are part of an open space designated for sports activities or are independent structures.

Note:- Spaces reserved for parks and play grounds shall not be converted for any other amenity or for any other use.

He stresses that the expression “playground” having been defined separately, properties as defined as “parks” cannot be utilised for any purpose other than a “park” and which are now being put by the Karachi Metropolitan Corporation, to use as a “playground” on the basis of the Impugned Resolution and which would violate Regulation 18-4.1 of KB&TPR, 2002. In addition, he maintained that there are numerous decisions of the Supreme Court of Pakistan and decisions of this Court which prohibit the conversion of the usage of an amenity plot designated from a specific use, to be used for any other purpose other than for the purpose that it was designated for and pleaded that Impugned Resolution be declared as illegal and that each of the “parks” should be restored to be used for the sole purpose of a “park.”

6. In addition, if it was considered that such plots could be put to a use other than the use that it was designated for, he contended that each of the agreements that have been entered into have been entered into without any procurement process having been followed and were entered into in violation of the provisions of the Sindh Public Procurement Act, 2009 and which agreements could also not be sustained.

C. Contentions on behalf of the Respondents

7. Mr. S. Hassan M. Abdi Advocate entered appearance on behalf of Karachi Metropolitan Corporation and submitted his comments and contended that all the “Parks” that have been subjected to “Public Private Partnership Agreements” continue to function as “amenity plots” and no conversion of land has taken place converting them to a different use.

8. While admitting that certain “Parks” have been put to the use of “playgrounds,” for the use of cricket, football, hockey and Padel, he contended that agreements have been entered into between the Karachi Metropolitan Corporation and various persons on the basis of which each of these properties are being let out for sports so as to generate revenue and which revenue is then applied by those private parties for the upkeep of these amenity spaces. He maintained that in an unreported order of a Division Bench judgment of this Court bearing C.P. No.D-2566 of 2024 entitled **Masjid-e-Saheem & others v. Pakistan Defence Officers Housing Authority & others** and an unreported order of a Constitutional Bench of this Court in petition bearing C.P. No.D-1067 of 2025 entitled **Janib vs. Province of Sindh and others** this Court has permitted the use of properties designated as “parks” for “playgrounds.”

D. Order

9. We have heard Mr. Muhammad Vawda and Mr. Hassan Abidi and have perused the record.

(i) Amenity plots in Karachi

10. The issue raised in this Petition is as to whether an amenity plot can be put to a use, other than a use that it had been designated for. The city of Karachi has been the subject of many town planning laws. e.g., the Sindh Town Planning Act, 1915, the Karachi Improvement Trust Act, 1950, the Karachi Development Authority Order, 1957 etc. Each of these statutes envisages a statutory based system of town planning whereby a town planning scheme is developed, allowing therein, for certain spaces to be reserved for the common benefit of the residents of the area and which would contribute to making living in such areas sustainable and which are referred to as amenity plots. Such usage includes, but is not limited to, space for:

- (a) public buildings e.g., government offices, museums, police stations, etc.;
- (b) educational use e.g., schools, universities, vocational training centers;
- (c) hospitals;
- (d) playgrounds;
- (e) religious use e.g. Mosques, Imam Barghas, Churches, Temples etc.; and
- (f) parks.

11. At the time of the partition, there were many large spaces that were left open for the benefit of the residents of this city. With the migration of persons into this city, such areas came to be squatted on by such migrants as there was physically no other place in the city to accommodate them. As such, at that time, many encroachments occurred in this city on such amenity spaces, primarily on areas which were reserved for the expansion of railways and on other open spaces and which continue to exist today and which encroachments were “tolerated” by this city’s administrators on grounds of compassion.

12. Over the last 70 years, other areas of this city were subject to statutory town planning schemes and which too had designated within them plots of land that were reserved for specific amenity purposes. The land reserved for such amenity use nearly always comprised large areas and which often remained undeveloped and became prey to misuse in a number of different ways and which included, but are not limited to:

- (a) encroachments by persons migrating to Karachi from other parts of Pakistan;
- (b) illegal conversion by local government officials for use as residential or commercial properties; or
- (c) regularization of encroachments under cover of the Sindh Katchi Abadis Act, 1987,
- (d) allotments under the Sindh Gothabad Act, 1987 or
- (e) conversions under Martial Law Orders.

(ii) **No Absolute Bar - Karachi Building and Town Planning Regulations, 1979, Karachi Development Authority Order, 1957 and the Sindh Katchi Abadi Act, 1987**

13. Initially, an absolute prohibition for the conversion of a plot that had been designated as being used for an amenity purpose **did not exist**. Rather a procedure was prescribed for the conversion of such plots and which were found in Paragraph 3 of Schedule D of Part II of the Karachi Building and Town Planning Regulations 1979 which prescribed that:

- “ ... No change of land use or conversion of Amenity, Utility and other plots as defined in sub-section 2(a) through 2(e), 2(h), 2(i), 2(j) part I of Schedule 'G' earmarked in the layout plans of any housing scheme, prepared by any local body, housing society or by any private developer, shall be allowed except in accordance with the following procedure :-
- (a) The local body, housing society or the private developer shall apply to Commissioner, Karachi for the change of land use or conversion from any other purpose or the plots reserved for the purposes as mentioned above with full justification and details.
- (b) The Commissioner shall, on receipt of such an application under sub-section (a), invite objections from the general public through a notice published in one English and One Urdu leading local daily newspaper. The period for filing objections with the Commissioner shall be 30 days from the date of the publication of the notice, which should also be mentioned in the notice
- (c) The applicant shall bear all the expenses of advertisement etc. and deposit the money with the Commissioner, Karachi.
- (d) In addition to the expenses mentioned in sub-section (c), the applicant shall pay the prescribed fee/charges for the change of land use to the Concerned Authority and Scrutiny fee to MP & EC (Authority constituted under. Sind Building Control Ordinance, 1979) fixed from time to time.
- (e) The Commissioner shall after considering the objections received under sub-section (b) and hearing such persons as he may consider necessary, shall forward his recommendations: along with the application and other connected papers to Government for orders.
- (f) The Commissioner, shall also consult MP & EC (Authority constituted under S.B.C. Ordinance, 1979) and the Concerned Authority, before submitting his recommendations to the Government under sub-section (e).

An analogous provision was also found in the KDA order, 1957 Article 52A of which prescribed that:

- “ ... 52 A (1) The Authority shall immediately after any housing scheme is sanctioned by, or altered with approval of, Government, submit to the Commissioner the details including the survey numbers, area and location of each plot reserved for roads, hospitals, schools, colleges, libraries, playgrounds, gardens, parks, community centers, mosques, graveyards or such other purpose and the Commissioner shall notify such details in the official Gazette.
- (2) The Authority or the Housing Society may at any time prior to the utilization of any plot reserved for the purpose mentioned in sub-section (1), apply to the commissioner for conversion of such plot to such other purpose.
- (3) The Commissioner shall, on receipt of an application under sub-section (2), invite objections from the general public through a notice published in one

English and any vernacular leading local daily newspaper and the objections if any shall be submitted to the Commissioner within 30 days from the date of the publication of the notice.

(4) The Commissioner shall, after considering the objections received under sub-section (3) and hearing such persons as he may consider necessary forward his recommendations along with the application and other connected papers to Government for order."

Suh a provision is also found in Sub-Section (4) of Section 19 of the Sindh Katchi Abadis Act, 1987 which prescribes that:

" ... (4) Except as otherwise directed by Government, no area which is reserved for the purposes of roads, streets, water supply arrangements, sewerage or other conservancy arrangements, hospitals, schools, colleges, libraries, playgrounds, gardens, mosques, graveyards, railways, high tension lines or such other purposes or is not safe from flood hazard, shall be declared to be a Katchi Abadi."

14. In the decision reported as **Abdul Razzak vs. Karachi Building Control Authority and others**¹ while interpreting Article 52 A of the KDA Order, 1957 the Supreme Court of Pakistan clarified the procedure that had to be followed in respect of the conversion of amenity plots and held that:

" ... We may point out that even **under the Order, the** KDA is not authorised to change the use of any amenity plot without inviting objections and without obtaining the order of the Government. In this regard, it may be advantageous to reproduce Article 52A of the Order, which reads as follows:--

52-A.--(1) The ,Authority shall, immediately after any housing scheme is sanctioned by, or altered with approval of, Government, submit to the Commissioner the details including the survey numbers,, area and location of each plot reserved for roads, hospitals, schools, colleges, libraries, playgrounds, gardens, parks, community centers, mosques, graveyards or such other purpose and the Commissioner shall notify such details in the official Gazette.

(2) The Authority or the Housing Society may at any time prior to utilization of any plot reserved for the purpose mentioned in subsection (1), apply to the Commissioner for conversion of such plot to any other purpose.

(3) The Commissioner shall, on receipt of an application under' sub section (2), invite objections from the general public through a notice published in one English and one vernacular leading local daily newspaper and the objections, if any, shall be submitted to the Commissioner within 30 days from the date of the publication of the notice.

(4) The Commissioner shall, after considering the objections received under subsection

(3) and hearing such persons as he may consider necessary forward his recommendations alongwith the application and other connected papers to Government for orders." ,,

¹ PLD 1994 Supreme Court 512

18. It may be stated that in spite of presence of the above unambiguous Article in the Order the successive Provincial Governments overlooked the above Article and converted amenity plots into commercial or residential plots and thereby denied to the residents of Karachi inter alia parks and play grounds which contributed towards environmental pollution in the city. “

This decision was approved and followed by a Full Bench of the Supreme Court of Pakistan reported as **Ardeshir Cowasjee and 10 others vs. Karachi Building Control Authority (KMC) and 4 others**² and wherein it was held that:

“ ... 10. Even if we were to accept Mr. Farooq H. Naik's contention that factually the Plot was commercialised, it will not improve the case of respondent No.5, because of Articles 40 and 52-A of the Order and para. 3 of Schedule ' D' to the Regulations. It may be observed that clause (4) of Article 40 of the Order provides that if any person desires to use any land for any purpose other than that laid down in the Zonal Plan Scheme notified under clause (3), he may apply to the Authority for permission to do so and the Authority may order a public hearing and give notice to all persons it deems affected. Whereas Article 52-A deals with the framing of the housing scheme which is to include hospitals, schools, colleges, libraries, play-grounds, gardens, parks, community centres, mosques, graveyards. Its clause (2) envisaged that the Authority or the Housing Society may at any time prior to utilisation of any plot reserved for the purpose mentioned in subsection (1), apply to the Commissioner for conversion of such plot any other purpose. Clause (3) thereof lays down that on receipt of an application under subsection (2), the Commissioner shall invite objections from the general public through a notice published in one English and one vernacular leading daily newspaper and the objections, if any, shall be submitted to the Commissioner within 30 days from the date of the publication of the notice. Whereas clause (4) provides that the Commissioner shall after considering the objections received under subsection (3) and hearing such persons as he may consider necessary, forward his recommendations alongwith the application and other connected papers to Government for orders. It may also be observed that para.3 of Schedule ' D' to Regulations prohibits the change of land use or conversion of amenity, utility and other plots without following the procedure contained therein which envisages inviting of public objections through the newspapers as above and hearing of the objections. The Regulations have been held by this Court to have statutory force in the case of *Multiline Associates v. Ardeshir Cowasjee and others* (supra). Reference may also be made to the judgment of this Court in the case of *Abdul Razak v. Karachi Building Control Authority* (supra), in which this Court with reference to above Article 52-A of the Order has observed that "We may point out that even under the Order, the K.D.A. is not authorised to change the use of any amenity plot without inviting objections and without obtaining the order of the Government".

11. Admittedly, no objections were invited in terms of the above provisions of the Order and the Regulations and, therefore, per se the alleged conversion of the plot for commercial purpose is illegal and contrary to the layout plan of the K.D.A. Scheme No. 5."

Similar opinions regarding the interpretation of Article 52 A of the KDA Order, 1957 have been made by the Supreme Court of Pakistan in the decision reported as **Province of Sindh vs. Chief Secretary and 8 others vs. Syed Kabir Bokhari**,³ **City District Government, Karachi vs. Akram Nabi and others**⁴ and also by Division Benches of this Court in the decisions reported as **Messrs Shaheen Public Educational Society (Regd.) vs. Karachi Development Authority and**

² 1999 SCMR 2883

³ 2016 SCMR 101

⁴ 2024 SCMR 1215

Others,⁵ Sobho Mal and another vs. Karachi Development Authority (K.D.A.) and others,⁶ Shafiqur Rehman and others vs. Province of Sindh through Chief Secretary and others,⁷ Ardeshir Cowasjee and 9 others vs. Karachi Development Authority through Director General and 3 others,⁸ Naseem Ali Khan vs. K.D.A and others,⁹ Syed Mazhar Ali Gillani vs. City District Government Karachi and 2 others¹⁰ Shaikh Kamran Salim And Another vs. Prime Commercial Bank Ltd. And 8 Others,¹¹ Jam and others vs. Taluka Nazim, Taluka Municipal Administration Larkana and others,¹² Ardeshir Cowasjee and others vs. City District Government, Karachi and others¹³ and also by learned Single Judges of this Court in the decisions reported as The State vs. Mazharul Haq and others,¹⁴ Al Jamiaul Arabia Ahasanul Uloom and Jamia Masjid and others vs. Syed Sibte Hasan and others,¹⁵ Dr Zahir Ansari vs. Karachi Development Authority and others,¹⁶ Muhammad Sabir vs. Maj (Rtd.) Muhammad Khalid Naeem Cheema and Others,¹⁷ Musuratullah Siddiqui vs. City District Government Karachi through Nazim e Alla and another,¹⁸ Delhi Mercantile Muslim Cooperative Housing Society Limited through Chairman vs. Muhammad javed and others.¹⁹

(iii) **An Absolute Bar – Regulation 18-4.1.1 of the Karachi Building and Town Planning Regulations, 2002 and Decisions of the Supreme Court of Pakistan on Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973**

15. On 4 April 2002, The Karachi Building and Town Planning Regulations, 1979 were repealed and replaced by the KB&TPR, 2002, Regulation 18-4.1 of which prescribes that:

“ ... 18-4.1 No amenity plot reserved for the specific purpose shall be converted or utilised for any other purpose.”

2 months later on 3 July 2002, the Karachi Development Authority Order, 1957 were repealed by the Sindh Development Authorities Laws (Repeal) Ordinance, 2002 and thereby it was considered that the provisions of the KB&TPR, 2002

⁵ 2002 MLD 1247

⁶ 2005 YLR 2412

⁷ PLD 2006 Karachi 10

⁸ 2007 CLC 668

⁹ 2007 MLD 1880

¹⁰ 2007 YLR 3171

¹¹ 2008 CLC 821

¹² 2010 CLC 860

¹³ 2011 MLD 745

¹⁴ 1998 MLD 1264

¹⁵ 1999 YLR 1634

¹⁶ PLD 2000 Karachi 168

¹⁷ 2010 CLC 1879

¹⁸ 2015 CLC 214

¹⁹ 2025 YLR 33

prevailed in relation to determining whether or not such plots could be converted. Two Division Benches of this Court in judgments and orders reported as **Karachi Stock Exchange through Attorney and another vs. Muhammad Ashaqeen and 6 others**,²⁰ **Mian Trust through Representative Trustee vs. Lyari Expressway Resettlement Project through Project Director and 2 others**²¹ have held that this bar was an absolute bar and hence a plot that was designated as an amenity plot could not be converted to any other use including, but not limited to, any other amenity use. e.g., any amenity plot meant for a “park” could not be converted into a “playground” which was a completely separate amenity use.

16. Additionally, the Supreme Court of Pakistan in the decision reported as **Moulvi Iqbal Haider vs. Capital Development Authority and others**²² has considered that the use of the conversion of a park into a “mini golf course” in Islamabad and in terms of the fundamental rights as guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 has held that:

“ ... 16. There is yet another important provision of law, which prohibits C.D.A. to amend the scheme i.e. sections 19 and 21. Admittedly, in instant case, in terms of these sections, neither the permission was sought to convert the Public Park into the Mini Golf Park nor before doing so objections were invited from the general public in terms of I section 21 of the Ordinance, 1960. This Court way back in 1969 in the case of Mian Fazal Din v. Lahore Development Trust, Lahore (PLD 19.69 SC 223) has held that "the plots in a Housing Scheme for public use cannot be converted for other use". Relevant para. from this judgment has already been reproduced in the order dated 26th December 2005. Admittedly a Public Park, if is earmarked in a housing scheme, creates a right amongst the public and that right includes their entry in the Park without any obstacle, being fundamental right enshrined in Article 26 read with Article 9 of the Constitution. It may be noted that liberty of a person, to have access or utilize a right available to him, t cannot be taken away by converting such facility into commercial one, for the purpose of extending benefit to a third person, because in instant case considerably a big plot of land, measuring five acres, has been handed over to respondent No.2 at a throwaway lease money, causing huge loss to the public exchequer, therefore, tax payers have a right to inquire from C.D.A. as to how a right of life and liberty can be denied to them.”

Similarly in the decision reported as **Mall Development (Pvt.) Ltd vs. Waleed Khanzada and others**²³ the Supreme Court of Pakistan when a plot designated as a park was converted and amalgamated with a portion of plot that was designated to be used for commercial has held that:

²⁰ 2006 YLR 185

²¹ 2022 CLC 543

²² PLD 2006 Supreme Court 394

²³ 2022 SCMR 2080

“ ... This Court, in various judgments, has held that an amenity plot cannot be used for commercial activities and by now it is settled law. Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 protects the fundamental right of life of every citizen of this Country. Right to life has been given an expansive interpretation by this Court. The right to life inter alia includes the right to enjoy public spaces such as parks. This Court is empowered to do complete justice and, nobody can be allowed to take fundamental rights guaranteed to the citizens from the citizens, which are protected by the Constitution of the Islamic Republic of Pakistan, 1973. No doubt, commercial activities support the economy. However, commercial activities cannot be made a basis to deprive citizens of basic amenities such as parks. There is sufficient material on the record to support the proposition that the Adjacent Plot was in fact, an amenity plot by its nature and use, which could not be allotted to the Appellants in an arbitrary and non-transparent manner, as done in the present case. As such, the learned High Court was correct to hold that the adjacent plot was illegally and unlawfully amalgamated with the Commercial plot and that nature and land use of the adjacent plot could not be changed, altered or modified in violation of the rights of public at large which are guaranteed by the Constitution of the country.”

Finally, a Division Bench of this Court in the decision reported as **Akram Ali and others vs. Province of Sindh through Secretary Local Government, Sindh Secretariat, Karachi and others**²⁴ has held that:

“ ... 14. We may observe that use of amenity/public property by the public for enjoyment or other facilities of life is covered by the word "Life" employed in Article 9 of the Constitution of Islamic Republic of Pakistan 1973; such right to enter into and use of the said property without any obstacle is a fundamental right as enshrined in Article 26 read with Article 9 of the "Constitution". The public property/amenity property cannot be used for any purpose other than for which it was carved out, earmarked or reserved. The liberty and right of a person to have free for access to amenity property or to utilize and to enjoy the same cannot be taken away by converting such amenity into a commercial one or for any other purposes for extending benefit to a third person. The amenity/public property meant for the use and enjoyment of general public cannot be leased to any private or third party nor can any type of third party interest be created therein. Any violation in respect of rights relating to the access, use or enjoyment of amenity/public property or change in the use thereof, whether temporary or permanent, by any individual, Government, the relevant municipal authority and all their functionaries are duty bound to keep the amenity/public property free from all types of encroachments and claims; such functionaries and authorities exercising statutory powers are duty bound to discharge their functions and duties strictly in accordance with law otherwise any action by them contrary to law would not be sustainable and such authority shall expose itself to disciplinary action and, if any unauthorized construction or encroachment is made on any amenity/public property, the same, being illegal, has to be removed. However, it is for the Government to ensure that reasonably safe and good living is provided to the people of the city with all amenities which are essential to be provided by the State by building and zoning the cities in appropriate manner with playgrounds, schools, colleges, universities and hospitals easily accessible to the citizens with roads and transport.”

It would therefore seem that as per these decisions once an amenity plot has been designated to being used for a particular purpose, irrelevant as to whether or not an enabling statute permits the conversion of such property, such a change even

²⁴ 2022 CLC 1634

if sanctioned by the Provincial Assembly through a statute, would violate fundamental rights as guaranteed to citizens of this Country under Article 8 read with Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 and which rights would negate the conversion of the usage of that plot causing such a statute to be read down or even struck down.

(iv) The Sindh Local Government Act, 2013, The Sindh Building Control Ordinance, 1979 and the Revival of the Karachi Development Authority Order, 1957

17. The provisions of the Sindh Local Government Act, 2013 govern the workings of the Karachi Metropolitan Corporation and wherein in Section 72 of that statute it is prescribed that:

“ ... 72. Functions of Council.-

A Council shall, subject to rules and directions given by Government and within the limits of the funds at its disposal, undertake all or any of the functions, given in Schedule II in the case of a Corporation, a District Municipal Corporation, Municipal Committee and Town Committee, in Schedule III in the case of a District Council, and in Schedule IV in the case of a Union Council and such other functions as are entrusted to them by Government:

Provided that no Corporation shall undertake such functions as are assigned to and performed by anybody, agency or authority established by or under any law for the time being in force:

Provided further that Government may at any time require the Metropolitan Corporation to perform any function of a District Municipal Corporation subject to such conditions as Government may specify.”

Regarding the functions of a Corporation, like the Karachi Metropolitan Corporation, Part I of the Schedule II of the Sindh Local Government Act, 2013 delimits such functions and prescribes that:

“ ... FUNCTIONS TO BE PERFORMED BY THE METROPOLITAN CORPORATION EXCLUSIVELY

- 1) Planning development and maintenance of Inter-district roads, bridges, street lights and storm water drains.
- 2) Special Development Programme.
- 3) Co-ordination. Monitoring and supervision of all inter-district development / maintenance work.
- 4) Maintenance of Abattoirs and Cattle Colonies to be specified by Government.
- 5) Medical College and Teaching/Specialized Hospitals e.g. Karachi Medical and Dental College, Abbasi Shaheed Hospital, Sobhraj Maternity Home, Sarfaraz Shaheed Hospital, Spencer’s Eye Hospital, Leprosy Hospital and such other institutions as were being managed by City District Government Karachi or Karachi Metropolitan Corporation or as may be specified by Government before commencement of this Act.
- 6) Zoological Gardens, Safari Park, Aquarium, Sports Complex and Beeches.
- 7) Art Gallery, Museum and Metropolitan Library.
- 8) Municipal Watch and Ward.
- 9) Fire Fighting Service.
- 10) Civil Defence.
- 11) Traffic Engineering.

- 12) Milk Supply Schemes.
- 13) Control of Land owned by Metropolitan Corporation and Removal of Encroachments from the properties owned by Metropolitan Corporation.
- 14) Celebration of National Days.
- 15) Reception of Foreign dignitaries / distinguished guests.
- 16) Providing protection against stray animals and animal trespass, and establishing cattle pounds; and
- 17) regulation or prohibition of the establishment of brick kilns, potteries and other kilns within the residential areas;
- 18) Any other function which Government may assign."

A perusal of the functions as listed hereinabove indicate that while the Karachi Metropolitan Corporation has been entrusted within the function of regulating "Zoological Gardens, Safari Park, Aquarium, Sports Complex and Be[a]ches" it does not have the right to regulate amenity plots that are designated as "parks" or for that matter amenity plots that are designated as playgrounds. We are clear that the reference made in item no. 6 to "Zoological Garden" refers to a "Zoo" and the reference that is made to "Safari Park" is a reference not to parks in general but to "Karachi Safari Park" that is located on University Road, Karachi. It would therefore seem that the jurisdiction that has been exercised by the Karachi Metropolitan Corporation in the Impugned Resolution is in excess of the functions entrusted to it under the provisions of the Sindh Local Government Act, 2013.

18. While such powers have not been entrusted by the Provincial Assembly to the Karachi Metropolitan Corporation the Supreme Court of Pakistan in the decision entitled **MQM (Pakistan) and others Vs. Pakistan through Secretary Cabinet Division, Government of Pakistan and others**²⁵ while interpreting the provisions of Article 140 A of the Constitution of the Islamic Republic of Pakistan, 1973 has held that:

" ... We tend to agree with the operative part of the judgment of this Court in **Imrana Tiwana's case** (supra) and thus, would dispose of this petition in the following terms:-

(i) Elected Local Government are presently not in existence in the Province of Sindh. The Provincial Government through its agencies is performing their duties and functions. In the vacuum resulting from the absence of an elected Local Government in Sindh, the initiation, approval and execution of any of the duties and functions of the elected local government are allowed to be carried out by the provincial government and no new project following within the domain of the elected local government shall be undertaken by the provincial government or its agency without prior consultation and consent unless withheld without justified reasons, as the case may be of the elected local government in respect of such project.

(ii) Article 140A of the Constitution of Islamic Republic of Pakistan casts a mandatory obligation on the Provinces to establish Local Government possessing meaningful authority and responsibility in the political arena, administrative and financial matters. It is the duty of a province through the Provincial Government and the Provincial Assembly to purposefully empower Local Governments in the province so as to comply with their mandatory obligation under Article 140A of the Constitution.

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(iii) *The powers in relation to master plan and spatial planning which historically belongs to the elected local government have been superimposed with similar functions vesting in the provincial laws. To the extent of conflict in the exercise of their respective powers and functions by the elected local government and the statutory authorities or on account of legal provisions having overriding effect, Article 140A of the Constitution confers primacy upon the authority vesting in an elected local government over the powers conferred by law on the provincial government or agency thereof. Notwithstanding the above, the provincial government in any case is "under a duty to establish harmonious working relationship with an elected local government" wherein respect is accorded to the views and decisions of the latter.*

(iv) *Thus, the laws made by the provincial government i.e. the Sindh Building Control Ordinance, 1979, KDA Order No.5 of 1957, Malir Development Authority Act, 1993, Liyari Development Authority Act, 1993, Karachi Water and Sewerage Board Act, 1996, Hyderabad Development Authority Act, 1976, Sehwan Development Authority Act, 1993, Larkana Development Authority Act, 1994, any dispensation pertaining to the Board of Revenue or the Master Plan Department or any other Development Authority in the province of Sindh and the Sindh Mass Transit Authority Act, 2014, the Sindh Food Authority Act, 2016, the Sindh Environmental Protection Agency Act, 2014, purporting to override and conflicting action taken by an elected local government are held to be against the scheme of the Constitution and the provincial government is directed to bring all those laws in accord with the mandate of Article 140A of the Constitution.*

(v) *The Government of Sindh shall ensure that all local governments in the province of Sindh do get their share in the divisible pool of funds by implementing the Provincial Financial Commission Award and also to ensure that no arrears in this regard are accumulated and if, there are arrears, the same are released.*

(vi) *Sections 74 and 75(1) of the Act of 2013 are against the principle enshrined in the Objectives Resolution and the fundamental rights enacted in Articles 9, 14 and 25 of the Constitution and are also contrary to and in direct conflict with Article 140A of the Constitution and thus, declared ultra vires and struck down."*

It would seem that the Supreme Court of Pakistan while interpreting Article 140A of the Constitution of the Islamic Republic of Pakistan, 1973 has clarified that the jurisdiction to perform certain functions are and always will fall with the administrative domain of local government and which functions cannot even be statutorily taken away from local governments even by the Provincial Assembly. While we are clear that the regulation of amenity plots will ordinarily fall with the ambit of a function of local government, it would seem that such a function has not been prescribed in the Sindh Local Government Act, 2013 and it would therefore seem that the current jurisdiction that is exercised by any department of the Government of Sindh or for that matter by any statutory body in respect of exercising jurisdiction over the regulation of amenity plots, is as per the decision of the Supreme Court of Pakistan in **MQM (Pakistan) and others vs. Pakistan through Secretary Cabinet Division, Government of Pakistan and others**²⁶ being done in violation of Article 140 A of the Constitution of the Islamic Republic of Pakistan, 1973 and which powers are to be devolved to the Karachi Metropolitan Corporation. However, until such a devolution takes places such powers are

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clearly in excess of the jurisdiction of the Karachi Metropolitan Corporation and cannot be exercised by it.

19. A question also arises as to whether the provisions of the Regulation 18-4.1 of the Karachi Building and Town Planning Regulations, 2002 would govern the regulation of amenity plots. The provisions of the SBCO, 1979 indicate the powers of town planning that are available to the SBCA and which are contained in Section 7B to Section 7E of the SBCO, 1979 and which read as hereinunder:

“ ... **7-B. Town Planning.**

The Authority shall draw up a Master plan for all Districts of the Province which shall, among other matters provide for –

- (a) a survey of the District including its history, statistics, public services and other prescribed particulars;*
- (b) development, expansion and improvement of any part of the District;*
- (c) restrictions, regulations and prohibitions to be imposed with regard to the development of sites, and erection and re-erection of buildings within the district;*
- (d) earmarking of land for mosques where necessary;*

Provided that the Master Plan shall be presented to Government for its consideration and shall be given effect after approval by Government:

7-C. Site Development Scheme.

(1) *Where a master plan has been drawn up and has been approved by Government with or without any modifications, no owner of land exceeding such areas as may be specified in this behalf in the master plan shall develop the site or erect or re-erect a building on any plot or land covered by the master plan, except in conformity with the provisions of a site development scheme sanctioned for the area in the prescribed manner.*

(2) *Among other matters, a site development scheme provide for*

- (a) the division of the site into plots;*
- (b) the streets, drains and open spaces to be provided;*
- (c) the land to be reserved for public purposes and to be transferred to the Council concerned;*
- (d) the land to be acquired by the Council concerned;*
- (e) the works that shall be executed at the cost of the owners of the site or sites;*
- (f) the price of plots;*
- (g) the period during which the area shall be developed.*

7-D. Execution of Site Development Scheme.

(1) *The execution of a site development scheme shall be subject to the inspection of the Authority which may issue such directions with regard to the execution of the scheme as may be necessary and proper for the development of scheme.*

(2) *If any area is developed in contravention of the provisions of approved site development scheme, the Authority may, by notice in writing, require the owner of such area or the person who has contravened the provisions by making alteration in the site as may be specified in the notice, and where such alteration is not made or notwithstanding anything to the contrary contained in any law be carried out or caused to be carried out by the Authority in the prescribed manner,*

or the Authority may require and enforce the demolition of the offending structure and no compensation shall be payable therefore, to such owner or person.

(3) If an area for which a site development scheme has been approved, is not developed within the period provided in the site development scheme and further extension is not allowed by the Authority or if the development is not in conformity with the Site Development Scheme, the Authority may in the prescribed manner take over the development of the site and execute the necessary works and the cost incurred thereon by the Authority shall be deemed to be tax levied on the owner under this Ordinance.

7-D Erection and re-erection of buildings

(1) No person shall erect or re-erect a building or commence to erect or re-erect a building unless the site has been approved, and the building plan has been sanctioned by the Authority.

(2) A person intending to erect or re-erect a building shall apply for sanction in the manner provided in the bye-laws and shall pay such fees as may be levied by the Authority with the previous sanction of Government.

(3) All building applications presented under this paragraph shall be registered in the manner provided in the bye-laws and shall be disposed of as early as possible but not later than sixty days from the date of the registration of the application and if no order is passed on an application within sixty days of its registration, it shall be deemed to have been sanctioned to the extent to which it does not contravene the provisions of the building bye-laws and the Master Plan or Site Development Scheme, if any.

(4) The Authority may for reasons to be stated in writing reject a site plan or a building plan, but any person aggrieved thereby may appeal to Government within thirty days of the order of rejection, and the order passed by Government in appeal shall be final.

(5) The Authority may, sanction a site plan or a building plan, subject to such modifications or terms as may be specified in the order of sanction.

(6) Nothing in this paragraph shall apply to any work, addition or alteration which is declared by bye-laws to be exempt.

7-E. Completion of buildings, etc.

(1) Every person who has erected or re-erected a building shall, within thirty days of the completion of the building, report such completion to the Authority.

(2) The Authority shall cause every building which has been completed to be inspected, and if it has been constructed in violation or contravention of any provisions of this Ordinance, if any, the Authority may require the alterations of the buildings so as to be in compliance therewith, and where such an alteration is not possible, the Authority may require the building or any part thereof to be demolished or, on the application of the owner of such building, compound, the offence of such contravention; provided that no offence shall be so compounded if it involves any violation or contravention of the provisions of a master plan or of a sanctioned Site Development Scheme.

(3) if a building is required to be demolished under the provisions of clause (2), and such requirement is not completed with, within the specified period, the Authority may have the building demolished through its own agency and the cost incurred thereon shall be deemed to be a tax levied on the owner or occupier of the building under this Ordinance and be recovered accordingly:

Provided that no action shall be taken under this paragraph unless the person likely to be affected thereby is given an opportunity of being heard.

7-F. Regulation of buildings.

(1) If any building or anything fixed thereon be deemed by the Authority to be in a ruinous state or likely to fall or in any way dangerous to any inhabitant of such building or of any neighbouring building or to any occupier thereof or to passers-by, the Authority may, by notice, require the owner or occupier of such building to take such action in regard to the building as may be specified in the notice and if there is default, the Authority may take necessary steps itself and the cost incurred thereon shall be deemed to be a tax levied on the owner or occupier of the building under this Ordinance and be recovered accordingly.

(2) If a building is in a dangerous condition, or otherwise unfit for human habitation, the Authority may prohibit the occupation of such building till it has been suitably repaired to the satisfaction of the Authority."

The provisions of Section 7B of the SBCO, 1979 empowers the Authority, as notified under Section 4 of the SBCO, 1979, to draw up a "Master Plan" for all Districts of the Province of Sindh and which "Master Plan" once drawn up has to be presented to the Government of Sindh for its consideration and approved by the Cabinet of the Government of Sindh who have the authority to make amendments thereto.²⁷ Section 7C of the SBCO, 1979 mandates that on the basis of the "Master Plan" notified under Section 7B of the SBCO, 1979 a "Site Development Scheme" should be drawn up for the "Area in the prescribed manner" and which as per the definition of the expression "prescribed" in Sub-Section (l) of Section 2 of the of the SBCO, 1979 must be as per rules developed under Section 21 of the SBCO, 1979. Since the date of the enactment of the Sindh Building Control (Amendment) Act, 2014 on 20 March 2014 no Master Plan has been notified for the District of Karachi under the provisions of Section 7B of the SBCO, 1979, nor have rules been framed under Section 21 of the SBCO, 1979 to "prescribe" the manner in which a "Site Development Scheme" have to be made in terms of the "Master Plan" of the District of Karachi. To our mind this would mean that at present, under the provisions of the SBCO, 1979 prima facie no power to regulate town planning can be exercised by the SBCA and which would only come into play if and when a "Master Plan" for the District of Karachi is notified in terms of Section 7B of the SBCO, 1979. That being said until such a power is exercised, the provisions of the Karachi Building and Town Planning Regulations, 2002 being in the nature of delegated legislation cannot be pressed as such an action would clearly overreach the provisions of the statute.

20. Finally, the Karachi Development Authority Order, 1957 that had been repealed by the Sindh Development Authorities (Laws) Ordinance, 2002 was revived by the Karachi Development Authority (Revival and Amending) Act, 2016 restoring the administration of that statutory body to areas under its administrative control. It would therefore seem that after the re-enactment of that statute, the

²⁷ As per the decision in Mustafa Impex, Karachi vs The Government of Pakistan Through Secretary Finance, Islamabad PLD 2016 Supreme Court 808

provisions of Article 52 A of the Karachi Development Authority Order, 1957 would once again be invoked to regulate the usage of amenity plots within the area administered by it.

(v) **The Conversion of the Usage of Properties by the KMC.**

21. Mr. Muhammad Vawada has in this Petition identified that the KMC is entering into agreements styled as “Public Private Partnership Agreements” and whereby amenity plots are being “provided” by the KMC and which as per the Impugned Resolution are to be maintained by private persons. Mr. Muhammad Vawada states that under cover of each of these “Public Private Partnership Agreements” the persons who have agreed to maintain these “Parks” have developed these parks as “Playgrounds” and are charging a fee for their use for commercial gain.

22. As stated hereinabove, we are clear that the Karachi Metropolitan Corporation in terms of its listed functions under the provisions of Part I of Schedule II read with Section 72 of the Sindh Local Government Act, 2013 had no jurisdiction to administer or regulate parks in the city of Karachi and as such they have asserted rights over properties that it did not own or have a right to administer. In this regard we note that the validity of such “Public Private Partnership Agreements” have been considered by this Court in the decision reported as **Akram Ali and others vs. Province of Sindh through Secretary Local Government, Sindh Secretariat, Karachi and others**²⁸ wherein when a property that was designated as “park” and “water supply scheme” was under cover of a “Public Private Partnership Agreements” put to use as “Shopping Center” a Division Bench of this Court while invalidating such agreements has held that:

“ ... 12. From the above facts and the reports submitted by the Revenue Officials it is established that the disputed plot/land as per Khasra Ghirdwari Register for the year 1971-72 entered in the name of Central Government with remarks in the column Nos. 12 and 13 on page No: 29 referring the use of land as "water supply" and "Banjar Qadeemi" respectively so also the same was in use of the public as park as per the opinion of Judicial Magistrate that "at the land in question there was public park and later on same has been demolished for fulfilling their vested interests of private contractors and concerned department, under the umbrella of public private partnership." There is no any evidence that the disputed plot/land belongs to the Town Committee Ranipur or Government of Sindh. In view of the above the Town Committee Ranipur was not competent to execute agreement with any private person for utilizing the said plot for any other purposes; however the same was to be used for the purposes of amenity as mentioned in the revenue record produced by the Commissioner Sukkur Division Sukkur. We may observe here that public functionaries can deal with the public

²⁸ 2022 CLC 1634

property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if the agreement was executed by the Town Officer and Chairman Town Committee Ranipur in favour of the respondent No.10, authorities concerned would not be bound to follow such illegal and void agreement of even a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high-ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate.
...

16. In view of the above facts and the circumstances of the case we are of the view that the Chairman Town Committee and Town officer Ranipur (Respondents Nos. 8 and 9) were not competent to enter into an agreement with the Respondent No. 10 (M/S Savera Builders) for construction of Shopping Center under the grab of "PUBLIC PRIVATE PARTNERSHIP CONTRACT" as they were not the owners of the plot in question and the plot was being used for the amenity purposes as Public Park and Water Supply Scheme and the said agreement having no legal effect in the eyes of law. The Respondents Nos. 2, 4 and 7 are directed to demolish all the construction made by Respondents Nos. 10 and 11 from the plot in question within 03 months from the date of this order. The Respondents Nos. 2, 4 and 7 are further directed to restore the Public Park and the Water Supply Scheme which were already in existence before the illegal construction raised by respondent No.10 and make sure that the said Public Park and Water Supply Scheme will be maintained to facilitate the public of the locality."

23. We are also of a similar view but on different grounds. The amenity plots as identified by Mr. Muhammad Vawada in the Petition, are each properties the land for which is owned by the Karachi Development Authority or the Ministry of Housing and Works and which therefore was not available to the Karachi Metropolitan Corporation to administer. Further, as the Karachi Metropolitan Corporation in terms of its listed functions under the provisions of Part I of Schedule II read with Section 72 of the Sindh Local Government Act, 2013 does not have the authority to regulate amenity plots including, but not limited to, either parks or "playgrounds" and their usage, until such rights are devolved to it by the Provincial Assembly in compliance of the decision of the Supreme Court of Pakistan reported as **MQM (Pakistan) and others vs. Pakistan through Secretary Cabinet Division, Government of Pakistan and others**,²⁹ it will exercise a jurisdiction that it does not have and on which ground its actions cannot be upheld. Each and every "Public Private Partnership Agreements" that has been entered into by the Karachi Metropolitan Corporation authorising the maintenance of a Park is therefore in act in excess of its jurisdiction and which is illegal and cannot be sustained. In this regard, as we have reached the conclusion that each of the "Public Private Partnership Agreements" that have been entered into by the Karachi Metropolitan Corporation are illegal, we do not need to consider the secondary question as to whether those agreements were entered into in violation of the provisions of the Sindh Public Procurement Act, 2009 and make no opinion on that issue. Suffice to say that each of those "Public Private Partnership

²⁹ PLD 2022 Supreme Court 439

Agreements” are illegal and void as being entered into by the Karachi Metropolitan Corporation in excess of the jurisdiction conferred to it under the Sindh Local Government Act, 2013.

24. We have also considered the usage that the amenity plots are being put to and are if the opinion that the manner in which this has been done would also violate the provisions of Article 52 A of the Karachi Development Authority Order, 1957, as there is a prohibition in that section for the conversion of amenity plots from their designated use to any other use, including any other amenity use, without following the dictates of that section. In this regard in the context of the Karachi Development Authority Order, 1957 we note that there is a clear distinction that is made in the master plan issued for each scheme as can be identified with relevance to the map for Karachi Development Authority Scheme No. 5³⁰ which demarcates “parks” separately from a “playground” thereby indicating that there is clear difference between those two amenities uses and hence the action of putting “parks” to use as “playgrounds” would therefore establish such a violation. As such, regarding each of the properties that have been identified by the Petitioners in the Petition it is clear that all the properties listed therein, except for the KMC Sports Complex, have been put to a use other than for what they were originally designated and which act cannot therefore be ratified under that provision either.

25. We have also considered the two judgements that were relied on by Mr. S. Hassan M. Abidi being an unreported order bearing C.P. No. D-2566 of 2024 entitled **Masjid-e-Saheem & others vs, Pakistan Defence Officers Housing Authority & others** and note that the plot in question was located within the jurisdiction of the Pakistan Defence Officers Housing Authority and was subject to the provisions of the DHA Karachi Building Control & Town Planning Regulations 2020 and which do not have any application to the Karachi Metropolitan Corporation and which order has also been suspended by the Supreme Court of Pakistan in CPLA No. 484-K of 2025 entitled **Masjid-e-Saheem & others v. Pakistan Defence Officers Housing Authority through its Administrator DHA Karachi & others.** The other Order relied upon bearing C.P. No.D-1067 of 2025 entitled **Janib vs. Province of Sindh and others** firstly does not consider the legality of the Karachi Metropolitan Corporation to enter into such “Public Private Partnership Agreements”. and also does not consider the application of Article 52A of the Karachi Development Authority Order, 1957 to the property in question and as to whether the procedure indicated therein was followed and hence is clearly distinguishable.

³⁰ See [https://shehri.org/Scheme%205%20\(Kahkeshan%20Clifton\)%201972%20Map%20\(colour\).pdf](https://shehri.org/Scheme%205%20(Kahkeshan%20Clifton)%201972%20Map%20(colour).pdf)

26. We are careful to note that in exercising our jurisdiction, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, we are not enforcing any fundamental rights as that jurisdiction lies with the Constitutional Bench of this Court and rather are simply considering the administrative jurisdiction of the Karachi Metropolitan Corporation to enter into such “Public Private Partnership Agreements” and the administrative jurisdiction of the Karachi Development Authority to permit the use of such properties in the context of Article 52 A of the Karachi Development Authority Order, 1957. Needless to say, whether or not such an action violates fundamental rights of citizens as guaranteed under Article 8 read with Article 9, or even Article 9A, of the Constitution of the Islamic Republic of Pakistan 1973 would have to be examined in the context of the judgements indicated in Paragraph 15 of this Order by a Court having the jurisdiction to determine the fundamental rights. However, on the basis of the Karachi Metropolitan Corporation lacking jurisdiction and on the grounds that the provisions of Article 52 of the Karachi Development Authority Order, 1957 have not been complied within, we are clear that in this context as indicated herein, this Petition must be allowed.

27. For the foregoing reasons we hereby declare that the Impugned Resolution, the “Public Private Partnership Agreements” that have been entered into by the Karachi Metropolitan Corporation on the basis of the Impugned Resolution and any amenity plots that have been “rented” by the Karachi Metropolitan Corporation on the basis of the Impugned Resolution, being in excess of the functions of that authority as indicated as indicated in Part I of Schedule II read with Section 72 of the Sindh Local Government Act, 2013 are illegal and void and that the usage of amenity plots specifically designated for use other than as a “playground” e.g., as an “Amusement Park”, “Park,” a “Public Building” and a “High School” being put to use as “playgrounds” in violation of the provisions of Article 52 A of the Karachi Development Authority Order, 1957 is also illegal and are set aside. The Petition stands allowed in the above terms with no order as to costs.

JUDGE

JUDGE