IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.219 of 2017

Appellants	:	Karachi Metropolitan Corporation and other through M/s. S. Hassan M. Abidi, Shahryar Ahmed, Muhammad Arsal & Khurram Ghayasuddin, Advocates
Respondents	:	M/s. Zafar Memorial Education Society Karachi through M/s. Ahmed Ali Hussain, Aadil Channa and Muzamil Ahmed, Advocates
Date of Hearing	:	02.11.2026
Date of Judgment:		11.11.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through this appeal, the appellants have called in question the judgment dated 08.02.2017 and decree dated 04.03.2017 passed by the learned Single Judge of this Court in Civil Suit No.1555 of 2005, whereby the suit instituted by the respondent Society for declaration and permanent injunction was decreed. The learned Single Judge, while holding that the respondent had acquired enforceable rights pursuant to the correspondence exchanged between the parties and the terms and conditions allegedly executed in 1994, directed the appellants to proceed in pursuance of the purported allotment and memorandum of understanding/agreement.

2. The principal controversy requiring determination in this appeal is whether an amenity plot specifically earmarked as a public park under an approved layout plan could lawfully be allotted, leased or utilized for establishing a school, merely because the proposed use also falls within the general category of public amenities. A further question is whether any contractual right, legitimate expectation or entitlement to specific

performance could accrue in favour of the respondent Society through an administrative arrangement which was inconsistent with the statutory restrictions governing the use of the subject property.

Brief facts:-

3. The respondent Society claims to be the successor of Mumtaz Memorial Educational Society, registered under the Societies Registration Act, 1860, in 1983. Its name was subsequently changed to Zafar Memorial Educational Society through a resolution of its general body dated 24.05.1994. It is the respondent's case that, through an application dated 02.03.1994, the Society approached the then Administrator, Karachi Metropolitan Corporation (KMC), seeking allotment of a piece of land for establishing and running a school at Plot No. ST-12, Block-4, Kehkashan, Clifton, Karachi. In response, the Senior Director, Land and Estate, KMC, through letter dated 06.06.1994, communicated that a portion measuring 6,266.66 square yards out of the larger amenity plot measuring 21,488.88 square yards had been allowed for educational purposes, subject to payment of occupancy value and approval of the competent authority. The respondent claims to have accepted the terms and conditions communicated by KMC through its letter dated 13.06.1994. However, the original challan amounting to Rs.1,26,587/- was not deposited within the stipulated period. The Society subsequently requested revalidation of the challan through correspondence exchanged between 1994 and 1997. According to the respondent, the matter remained pending because the relevant file could not be traced.

4. It is further asserted that, through a letter dated 15.10.2005, the District Officer (Land Management-II), Revenue, CDGK, communicated the revalidation of the previous challan upon enhancement of the occupancy value to the prevailing rate, requiring payment of Rs.43,92,928.66, inclusive of the applicable charges. The respondent deposited the said amount and requested delivery of possession and execution of a 99-year lease.

However, through letter dated 18.11.2005, the District Officer cancelled the challan on the ground that it had been issued without approval of the competent authority and contrary to the provisions of section 124 of the Sindh Local Government Ordinance, 2001. Aggrieved by the aforesaid circumstances, the respondent instituted the instant suit, wherein the following issues were framed for adjudication:

1) Whether the suit is barred under section 42 and 56 of the Specific Relief Act, 1877?

2) Whether the suit is without cause of action and liable to be dismissed?

3) Whether the letter dated 13.06.1994 (annexure F-1) and final terms and conditions (annexure F-2) issued by the respective authorities and duly signed by both the parties created any right in favour of plaintiff or any contractual obligation?

4) Whether after issuance of revalidated challan dated 29.10.2005 in respect of the suit property, the defendant can withdraw from their concluded and binding contract with the plaintiff?

5) Whether promissory estoppel runs against the defendants regarding allotment of suit land?

6) Whether the CDGK has lawfully cancelled the suit property in accordance with law?

7) Whether the plaintiff was condemned unheard? If so, its effect?

8) Whether the plaintiff is entitled to a decree for specific performance of the contract?

9) Whether plot in question is amenity plot reserved for park and the same cannot be converted or used for any other purpose?

10) Whether the plaintiff is in possession of any title documents in respect of the plot in question?

11) What should be the decree be?

5. Upon conclusion of the trial and completion of all requisite proceedings, the learned Trial Court passed the judgment and decree impugned in the present High Court Appeal.

6. The appellants resisted the suit, inter alia, on the ground that the subject plot was reserved for a public park under the approved layout plan and could not be allotted, leased or converted for any other purpose. It was further pleaded that the concerned officers lacked lawful authority to create any enforceable right in favour of the respondent and that payment of an amount pursuant to an unlawful administrative process could not validate an otherwise impermissible transaction.

Submissions of the parties;-

7. Learned counsel for the appellants contended that the learned Single Judge failed to appreciate the legal character of the subject property and the statutory restrictions governing amenity plots. It was argued that the subject plot was admittedly reserved for a public park and, therefore, no right could be created in favour of the respondent for establishing a school thereon. Any correspondence, terms and conditions or challan issued in disregard of the approved layout plan and applicable law were incapable of creating a lawful interest in the property.

8. It was further contended that the learned Single Judge erroneously treated the exchange of correspondence and acceptance of the terms and conditions as a concluded and enforceable contract without first determining whether the proposed transaction was legally permissible. According to learned counsel, neither the payment of the challan nor the doctrine of promissory estoppel could operate to validate an act prohibited by law.

9. Conversely, learned counsel for the respondent supported the impugned judgment and contended that the allotment had been made after due consideration by the competent authorities; that the Society had accepted the terms and conditions; and that, after considerable correspondence, the enhanced occupancy value had been demanded and duly deposited. It was argued that the subsequent cancellation of the challan, without notice or an opportunity of hearing, was arbitrary and contrary to the principles of natural justice.

10. During the course of arguments, we specifically put a question to learned counsel for the respondent as to whether M/s. Zafar Memorial Educational Society Karachi was operating any other school within Karachi or whether, since its registration, the Society had established and operated any educational institution. Learned counsel, in response, fairly stated that no school had been operated by the Society for the last forty years.

11. This response assumes significance in the context of the respondent's claim that the subject property was sought for the genuine and continuing pursuit of its stated educational objectives. The respondent has not been able to demonstrate that the Society was, in fact, operating an educational institution or had undertaken any educational activity for the purpose for which the allotment was allegedly sought. Although the mere absence of an operational school does not, by itself, extinguish the legal existence of a registered society, it is nevertheless a relevant circumstance while examining the bona fides of the claimed entitlement, the purpose of the proposed allotment and the respondent's assertion of an equitable right to specific performance.

12. We have heard learned counsel for the parties and examined the available record.

Questions requiring determination:-

13. In view of the pleadings, evidence and submissions advanced by the learned counsel, the following questions arise for determination:

(i) Whether Plot No. ST-12, Block-4, Clifton, Karachi, was reserved for a public park under the approved layout plan and, if so, whether it could lawfully be allotted or utilized for establishing a school?

(ii) Whether the correspondence exchanged between the parties in 1994, the execution of the purported terms and conditions and the subsequent issuance and payment of the revalidated challan created any enforceable contractual right in favour of the respondent?

(iii) Whether the doctrine of promissory estoppel, legitimate expectation or principles of equity can be invoked to enforce an administrative arrangement contrary to statutory provisions and the approved layout plan?

(iv) Whether the learned Single Judge correctly appreciated the legal effect of the relevant statutory provisions and the reported judgments governing the protection and utilisation of amenity plots?

(v) Whether the respondent was entitled to a decree for specific performance, declaration and permanent injunction?

Legal position governing amenity plots:-

14. The controversy is not res integra. The legal status of amenity plots, particularly those reserved for parks and playgrounds, has repeatedly engaged the attention of the superior Courts. The consistent judicial approach has been that land reserved for a specific public purpose cannot be diverted, converted or utilised for another purpose in disregard of the approved layout plan and the statutory framework governing such land.

15. In this regard, particular guidance is available from the judgments and authorities referred as under, which comprehensively examine the legal framework governing amenity plots in Karachi, the restrictions imposed upon their conversion and the constitutional protection afforded to public spaces.

16. In Abdul Razzak v. Karachi Building Control Authority and others (2002 MLD 1247), the Honourable Supreme Court examined Article 52-A of the Karachi Development Authority Order, 1957 and held that an amenity plot could not be converted without following the prescribed procedure, including inviting objections from the general public and obtaining the requisite governmental approval. The principle emerging from the said judgment is that an administrative authority cannot, by its unilateral decision, alter the designated use of land reserved for a public amenity.

17. The above principle received further consideration in Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority (KMC) and 4 others (1999 SCMR 2883), wherein the Honourable Supreme Court, while examining Articles 40 and 52-A of the Karachi Development Authority Order, 1957 and paragraph 3 of Schedule D to the Karachi Building and Town Planning Regulations, 1979, reiterated that conversion of an amenity plot could not be undertaken without complying with the prescribed procedure. The Court emphasised the requirement of public notice, consideration of objections and approval of the competent Government authority. In the absence of compliance with those mandatory requirements, the purported conversion was held to be illegal and contrary to the approved layout plan.

18. The same approach was reiterated in Province of Sindh v. Syed Kabir Bokhari (2016 SCMR 101) and City District Government, Karachi v. Akram Nabi and others (2024 SCMR 1215), as also in the other judgments of the superior Courts referred to in the aforesaid constitutional proceedings. These authorities reinforce the principle that the public character and designated purpose of amenity land cannot be compromised through an administrative arrangement which has no sanction of law.

19. Absolute prohibition under Regulation 18-4.1 of the Karachi Building and Town Planning Regulations, 2002. An important development in the legal framework occurred upon promulgation of the Karachi Building and Town Planning Regulations, 2002. Regulation 18-4.1 expressly provides:

> *"No amenity plot reserved for the specific purpose shall be converted or utilized for any other purpose."*

20. The language employed in the above Regulation is clear and unambiguous. Unlike the earlier regulatory framework, which provided a procedure for conversion subject to specified conditions, Regulation 18-4.1 introduced an express prohibition

against converting or utilizing an amenity plot for a purpose other than that for which it had specifically been reserved.

21. The effect of this provision has been considered by the Division Benches of this Court in Karachi Stock Exchange through Attorney and another v. Muhammad Ashageen and 6 others (2006 YLR 185) and Mian Trust through Representative Trustee v. Lyari Expressway Resettlement Project through Project Director and 2 others (2022 CLC 543). The legal principle recognized in these judgments is that the prohibition contained in Regulation 18-4.1 is absolute and that an amenity plot reserved for a particular purpose cannot be converted into another use, even if the proposed alternative also falls within the broader category of public amenities. Thus, a plot reserved for a park cannot be converted into a playground or any other amenity, as the specific purpose of reservation is required to be maintained.

22. The above distinction is decisive in the present case. The respondent has sought to justify the proposed allotment on the premise that educational institutions also fall within the general scope of public amenities. However, the question is not whether a school constitutes an amenity in the abstract; rather, the question is whether a particular plot, specifically earmarked for a public park, can be utilized for a school. The answer must be in the negative.

23. The general classification of a school as a public amenity cannot override the specific designation of the subject property as a park. Were such an interpretation to be accepted, the statutory prohibition would become ineffective, as every change of use could be justified by describing the alternative activity as another form of public amenity. Such an interpretation would defeat both the object and the express language of Regulation 18-4.1.

Constitutional protection of public parks and amenity land:

24. The protection afforded to public parks and other amenity spaces is not confined to the interpretation of municipal or town-planning regulations. It also has a constitutional dimension. In Moulvi Iqbal Haider v. Capital Development Authority and others (PLD 2006 SC 394), the Honourable Supreme Court considered the conversion of a public park into a mini golf course and examined the matter in the context of Articles 9 and 26 of the Constitution of the Islamic Republic of Pakistan, 1973. It was held that a public park reserved under a housing scheme creates a corresponding right in favour of the public to enter, access and enjoy that facility without unlawful obstruction. Such a right forms part of the protection of life and liberty guaranteed under the Constitution. The Court further relied upon the earlier decision in Mian Fazal Din v. Lahore Development Trust, Lahore (PLD 1969 SC 223), wherein it was held that plots reserved for public use in a housing scheme cannot be converted to another use.

25. Similarly, in Mall Development (Pvt.) Ltd. v. Waleed Khanzada and others (2022 SCMR 2080), the Honourable Supreme Court reiterated that the right to life under Article 9 encompasses the right of citizens to enjoy public spaces, including parks. It was held that an amenity plot could not be arbitrarily allotted or amalgamated with an adjoining commercial plot in violation of the rights of the public at large. The Court emphasized that commercial or private interests cannot be permitted to prevail over the fundamental rights of citizens to enjoy basic public amenities.

26. A similar principle was enunciated by a Division Bench of this Court in Akram Ali and others v. Province of Sindh through Secretary Local Government, Sindh Secretariat, Karachi and others, wherein it was observed that public property reserved for amenity purposes cannot be utilized for any purpose other than that for which it was originally earmarked. It was further held that public amenity land cannot be leased to private persons or

third parties in a manner that deprives the public of its lawful right to access and enjoy such property. Public functionaries are under a legal obligation to preserve such property and to ensure that it remains available for the purpose for which it was reserved.

27. The above pronouncements leave no room for doubt that the public character of an amenity plot cannot be defeated through an administrative arrangement or a purported contractual obligation. The rights of the general public, protected by the Constitution, cannot be subordinated to a private claim founded upon an arrangement which itself contravenes the governing law.

28. The legal position has also been examined in detail by this Court in C.P.D. No.3473 of 2025, wherein the Court considered the statutory and constitutional restrictions governing the use of amenity plots within Karachi. The judgments referred to in the said proceedings provide further guidance on the question involved in the present appeal. In particular, the Court considered the provisions of the Sindh Local Government Act, 2013, the Sindh Building Control Ordinance, 1979, the Karachi Building and Town Planning Regulations, 2002 and the revival of the Karachi Development Authority Order, 1957 through the Karachi Development Authority (Revival and Amending) Act, 2016.

29. While examining the jurisdiction of KMC under section 72 read with Schedule II of the Sindh Local Government Act, 2013, the Court observed that the functions assigned to the Metropolitan Corporation did not include a general power to regulate amenity plots designated as parks or playgrounds. It was further observed that the exercise of jurisdiction over such properties by KMC, in the absence of a lawful devolution of the relevant functions, would be beyond the authority conferred upon it by the statute.

30. The Court also considered the judgment of the Honourable Supreme Court in MQM (Pakistan) and others v. Pakistan

through Secretary Cabinet Division, Government of Pakistan and others (PLD 2022 SC 439), wherein the constitutional scheme concerning the authority and functions of elected local governments under Article 140-A of the Constitution was examined. The said judgment underscores that statutory functions must be exercised by the authority lawfully entrusted with them and in accordance with the constitutional framework. More importantly, while considering the protection of amenity plots, the Court in C.P.D. No.3473 of 2025 relied upon the decisions in Abdul Razzak, Ardeshir Cowasjee, Moulvi Iqbal Haider, Mall Development (Pvt.) Ltd., Karachi Stock Exchange and Mian Trust (supra), and reaffirmed that an amenity plot cannot be diverted from its designated use in violation of the applicable statutory provisions.

31. The Court also considered the judgment in Akram Ali and others v. Province of Sindh through Secretary Local Government, Sindh Secretariat, Karachi and others, wherein the arrangement made by public functionaries for utilising land reserved for a public park and water supply scheme for a shopping centre was declared unlawful. It was held that public functionaries cannot create private rights in public property through agreements which are beyond their lawful authority. An agreement executed in excess of statutory powers does not acquire legal validity merely because it has been executed by public officers. The significance of the aforesaid authorities in the present matter is that the subject property was not an unreserved piece of land available for discretionary disposal by the municipal authority. It was land forming part of an approved layout plan and specifically earmarked for a public park. Its character and designated use could not be altered merely through an administrative arrangement between KMC and the respondent Society.

Application of the above principles to the present case:-

32. Reverting to the facts of the present case, the first and foremost circumstance which cannot be overlooked is that the subject plot was admittedly an amenity plot reserved for a public

park. The appellants specifically raised this objection in their written statement and maintained throughout the proceedings that the property could not be allotted or leased for establishing a school. The question, therefore, was not merely whether the parties had exchanged correspondence or whether the respondent had deposited the amount demanded through a subsequent challan. The fundamental question was whether the transaction itself was permissible in law.

33. The learned Single Judge, while examining the controversy, proceeded substantially on the basis that the respondent had accepted the offer made by KMC, had agreed to the stipulated terms and conditions and had subsequently deposited the enhanced occupancy value. The learned Single Judge further observed that the proposed educational use also fell within the general scope of an amenity and, therefore, the allotment did not necessarily amount to conversion of the amenity plot to a non-amenity purpose.

34. With respect, the above approach does not address the distinction between the general classification of an amenity and the specific purpose for which the land had been reserved. The fact that an educational institution may itself constitute a public amenity does not confer an unrestricted power upon a municipal authority to substitute it for a park already earmarked under an approved layout plan.

35. The statutory prohibition contained in Regulation 18-4.1 of the Karachi Building and Town Planning Regulations, 2002 is directed against precisely such a course. It prohibits the conversion or utilization of an amenity plot for any purpose other than the specific purpose for which it was reserved. The prohibition is not confined to conversion for commercial or residential purposes. It equally applies where the proposed alternative is another category of amenity. Consequently, the reasoning that the proposed school would continue to serve a public amenity cannot sustain the allotment. Such an interpretation would render the expression "specific purpose" in

Regulation 18-4.1 redundant and would permit public functionaries to disregard the approved layout plan at their discretion.

36. There is another significant aspect of the matter. The original letter dated 06.06.1994 itself stipulated that the grant was subject to approval of the KMC Council/Government and to terms and conditions to be decided subsequently. The respondent's acceptance of the proposed terms and conditions could not dispense with the requirement of statutory approval. Nor has the respondent established that the requisite public notice, invitation of objections and approval, wherever required under the applicable statutory framework, were obtained for altering the designated use of the subject property.

37. It is settled that a public authority can exercise only such powers as are conferred upon it by law. An administrative officer cannot, through correspondence or an undertaking, confer upon a private party a right which the statute does not permit the authority to create. The authority of a public functionary is not enlarged by the consent of the recipient of an allotment, nor can an act beyond statutory jurisdiction be validated through acceptance of consideration.

38. In this regard, the principle laid down by the Honourable Supreme Court in Government of Sindh through Secretary and Director General Excise and Taxation and another v. Muhammad Shafi and others (PLD 2015 SC 380) is directly relevant. It was reiterated that where the law requires an act to be performed in a particular manner, it must be performed in that manner and not otherwise. An act performed in violation of the governing law has no legal sanctity, particularly where the statutory conditions governing its validity have not been fulfilled.

39. Similarly, in Muhammad Amin Muhammad Bashir Limited (2015 SCMR 630), the Honourable Supreme Court emphasized that statutory powers must be exercised reasonably, fairly and justly, in furtherance of the object of the enactment. The exercise

of statutory discretion cannot be arbitrary or contrary to the purpose for which the power has been conferred.

40. Applying these principles, the correspondence exchanged in 1994, even if taken at its face value, could not create an indefeasible right in favour of the respondent in respect of a plot which was reserved for a public park. The original offer was conditional and did not, by itself, constitute a completed transfer of title. The subsequent revalidation of the challan and its payment in 2005 could not cure the inherent legal defect in the proposed transaction.

41. It is also significant that no 99-year lease or agreement to lease was ever executed in favour of the respondent. The terms and conditions themselves contemplated execution of an agreement to lease before execution of the lease. Thus, the respondent did not acquire any proprietary interest in the subject property merely by depositing the amount demanded through the challan. At best, the respondent could assert that certain administrative representations had been made to it; however, such representations cannot be enforced where their implementation would result in an act prohibited by law.

Promissory estoppel and the doctrine of legitimate expectation:-

42. The learned Single Judge also placed considerable reliance upon the conduct of the appellants and the doctrine of promissory estoppel. It was observed that the appellants could not take advantage of their own acts and omissions and that the respondent should not suffer on account of irregularities attributable to the concerned officers. There can be no cavil with the general proposition that a public authority is expected to act fairly and consistently and that a citizen should not ordinarily be prejudiced by arbitrary administrative conduct. However, the doctrine of promissory estoppel cannot be invoked to compel a public authority to act contrary to an express statutory prohibition or to enforce an arrangement which is otherwise unlawful. The doctrine operates within the limits of law and

cannot override statutory provisions. An assurance given by an officer who lacks lawful authority to grant the property, or an undertaking which would require the authority to act in violation of the approved layout plan, cannot create an enforceable right through the application of estoppel. The same principle applies to legitimate expectation. Such an expectation must arise from a lawful representation or established practice and cannot be used to defeat a mandatory statutory restriction. Neither equitable considerations nor the conduct of the parties can confer upon the respondent a right to obtain a public park for a purpose other than that for which it was specifically reserved. The observations of the learned Single Judge that the respondent should not be made to suffer for the irregularities of public functionaries, therefore, cannot be extended to the extent of compelling the appellants to implement an unlawful allotment. The public interest involved in preserving the amenity plot must prevail over any private expectation founded upon an arrangement contrary to law.

Effect of the admission regarding non-operation of schools:-

43. We may also examine the statement made by learned counsel for the respondent in response to the specific question put by this Court during the hearing. The respondent Society claims to have been established for educational and literary purposes and sought the subject property on the representation that it intended to establish and operate a school thereon. However, when questioned whether the Society was operating any other school in Karachi or had operated any school during the approximately forty years following its registration, learned counsel categorically stated that no school had been operated by the Society during that period. This statement is material for examining the respondent's claim of bona fide educational purpose. It is not the case that the Society was already operating educational institutions and merely sought additional premises for expansion of its activities. Rather, the admission demonstrates that the Society had not undertaken the educational activity for last forty years. 11. We are conscious

that the absence of an operational school, by itself, cannot render the Society's registration invalid or conclusively establish any ulterior motive. Nevertheless, when considered alongside the absence of any completed lease, the failure to deposit the original challan within the stipulated period, the conditional nature of the original offer and, above all, the statutory prohibition against changing the designated use of the park, the said admission further weakens the respondent's claim to equitable relief.

44. The learned Single Judge appears to have proceeded on the assumption that the respondent's proposed educational activity justified the allotment and that the Society had acquired an enforceable right to the property. However, the respondent's own counsel has acknowledged that the Society has not operated any school for approximately forty years. This circumstance ought to have been considered while determining whether the respondent had established a genuine and subsisting basis for claiming specific performance of the purported arrangement.

Public interest vis-à-vis private contractual claims:-

45. It must be borne in mind that the subject property is not an ordinary commercial asset of the municipal authority which could be dealt with at its discretion. A public park is reserved for the collective use and enjoyment of the residents of the locality. Its preservation serves environmental, recreational and social purposes and forms part of the facilities contemplated under the approved town-planning scheme. The public at large possesses a legitimate and constitutionally protected interest in the preservation of such spaces. The authority holding or administering the property does so subject to the obligation of preserving its designated character and ensuring that it remains available for public use. The decision in Mall Development (Pvt.) Ltd. (2022 SCMR 2080) makes it clear that the right to life under Article 9 of the Constitution includes the right of citizens to enjoy public parks and open spaces. Such a right cannot be defeated by private arrangements or administrative decisions intended to confer an individual benefit.

46. In the present case, the purported allotment would have the effect of appropriating a portion of the land reserved for a public park in favour of a private society, thereby depriving the public of the use and enjoyment of that portion. The fact that the remaining area was proposed to be developed and maintained as a park by the respondent under clause 8 of the terms and conditions does not alter the legal position. A private arrangement cannot substitute a different public use for the one prescribed in the approved layout plan. Nor can the proposal to develop the remaining portion of the land as a park be treated as a lawful consideration for permitting the conversion of the subject portion. The preservation and development of public parks is an obligation of the competent public authorities and cannot be made a basis for transferring a portion of the park to a private party contrary to the governing law. Accordingly, the learned Single Judge erred in treating the purported arrangement as a valid contractual obligation capable of specific enforcement without first determining whether its subject matter and object were lawful.

Whether the respondent was entitled to specific performance:-

47. The relief of specific performance is discretionary and equitable in nature. A party seeking such relief must establish a legally enforceable contract, its own entitlement to performance and the legal permissibility of the act sought to be enforced. The Court cannot direct performance of an arrangement which, if implemented, would result in violation of statutory provisions or infringement of rights vested in the public.

48. In the present case, the learned Single Judge treated the exchange of correspondence, execution of the terms and conditions and subsequent payment of the challan as sufficient to establish an enforceable contractual relationship. However, the existence of an agreement and its enforceability are two distinct questions. Even if the parties exchanged documents and intended to create contractual obligations, such an arrangement could not be enforced unless its object and implementation were

lawful. The respondent was required to establish not merely that an offer had been made and accepted, but also that the concerned authorities possessed lawful competence to grant the subject property for the proposed purpose and that all mandatory statutory requirements had been fulfilled. The respondent has failed to establish these essential elements. Furthermore, the subject property was never transferred through execution of a lease, nor was possession delivered to the respondent. The original offer was expressly conditional upon approval of the KMC Council/Government. The subsequent payment of the revalidated challan did not confer title or create an indefeasible right in favour of the respondent. The principle that an unlawful administrative act cannot be validated through subsequent payment or acquiescence is well settled. Public property cannot be transferred or appropriated in disregard of statutory restrictions, and no private individual or society can claim an enforceable right on the basis of an act which the public authority was not legally competent to perform. We, therefore, find that the respondent was not entitled to a decree for specific performance or any consequential declaration compelling the appellants to implement the purported allotment.

Effect of failure to provide an opportunity of hearing before cancellation:-

49. The learned Single Judge also placed considerable emphasis on the fact that the respondent was not afforded an opportunity of hearing before issuance of the cancellation letter dated 18.11.2005. It was observed that the appellants had failed to follow the principles of due process as explained in Ishtiaq Ahmed v. Hon'ble Competent Authority (2016 SCMR 943). There is no disagreement with the proposition that an administrative decision adversely affecting the rights of a person must ordinarily be taken after affording a reasonable opportunity of hearing, particularly where such a requirement is attracted under the applicable law. However, the requirement of due process must be considered in the context of the nature of the right asserted and the legality of the underlying transaction. A procedural

irregularity in cancelling a challan cannot confer substantive rights in respect of public property which could not lawfully have been allotted for the proposed purpose in the first place. In other words, the requirement of an opportunity of hearing cannot be employed to perpetuate an illegality or to compel a public authority to complete a transaction prohibited by law. Even if the cancellation was effected without following the appropriate procedure, that circumstance would not render the purported allotment lawful or entitle the respondent to a decree for specific performance. The question of whether the cancellation letter was issued by the appropriate authority and in accordance with the prescribed procedure is, therefore, distinct from the respondent's claim to acquire the subject property. The latter must independently satisfy the requirements of law, which, for the reasons already discussed, it does not.

Findings on the questions formulated:

50. In view of the foregoing discussion, our findings on the questions formulated above are as follows:

(i) The subject property, having been specifically earmarked as a public park under the approved layout plan, could not lawfully be converted or utilized for establishing a school in contravention of the applicable statutory provisions.

(ii) The correspondence exchanged between the parties, acceptance of the purported terms and conditions, and payment of the revalidated challan did not confer any title, proprietary interest or enforceable right upon the respondent contrary to the statutory restrictions governing the subject property.

(iii) The doctrines of promissory estoppel and legitimate expectation cannot be invoked to compel a public authority to act contrary to law or to enforce an arrangement prohibited by the governing statutory framework.

(iv) The learned Single Judge failed to appreciate the distinction between the general classification of an amenity and the specific purpose for which the subject property had been reserved, and consequently did not give due effect to the applicable statutory

provisions and binding judicial pronouncements concerning the preservation of amenity plots.

(v) The respondent failed to establish any enforceable legal entitlement warranting the grant of declaration, permanent injunction or other relief claimed in the suit.

Conclusion and Order:

51. In view of the above findings, we are of the considered opinion that the impugned judgment and decree cannot be sustained. The learned Single Judge, while principally relying upon the correspondence, conduct of the parties and equitable considerations, overlooked the fundamental statutory restriction governing the designated use of the subject property. The mere fact that a school may independently constitute a public amenity does not authorize conversion of a plot specifically reserved for a public park. Equally, no vested or enforceable right could accrue to the respondent on the basis of an administrative arrangement contrary to law. The admission made by learned counsel for the respondent that the Society has not operated any school for approximately forty years further weakens its claim for equitable relief, although our conclusion rests primarily upon the applicable statutory provisions and the binding principles governing amenity plots.

52. Consequently, this appeal is allowed. The impugned judgment dated 08.02.2017 and decree dated 04.03.2017 passed in Civil Suit No.1555 of 2005 are hereby set aside. The suit instituted by the respondent for declaration and permanent injunction is accordingly dismissed.

53. It is, however, clarified that dismissal of the suit shall not preclude the respondent from seeking refund of the amount deposited through the challan, if so advised, before the competent authority in accordance with law. No opinion is expressed regarding its entitlement to such refund or any consequential relief, which shall be determined independently in accordance with law.

54. The appellants shall ensure that the subject property is preserved and maintained for its designated purpose as a public park under the approved layout plan, and that no third-party interest is created therein contrary to law. There shall be no order as to costs.

JUDGE

JUDGE

KAMRAN/PS