

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-1573 of 2012

Irfan Merchant & others

Versus

Federation of Pakistan & others

BEFORE:

Mr. Justice Mushir Alam, CJ

Mr. Justice Mohammad Shafi Siddiqui

Date of hearing: 06.11.2012

Petitioner: Through Mr. Salman Hamid Advocate

Respondents No.1,4&5: Through Mr. Meeran Muhammad Shah, Addl. Advocate General.

Respondent No.2: Through Mr. Amir Malik Advocate

Respondents No.6&7: Through Mr. Irfan Hassan Advocate

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.-** Impugned in this petition is the act of conversion of Khayaban-e-Mujahid and Khayaban-e-Shamsheer by respondent No.2 into a single carriage road for plying commercial/public vehicles, as a result of which heavy public transport and commercial vehicles including but not limited to mini-buses, coaches and buses coming from Khayaban-e-Shamsheer and other roads now switched over to Khayaban Mujahid for the return journey and causing disturbance to the traffic of link streets also. The petitioners have precisely prayed as under:-

*“I) To declare that the conversion of Khayaban-e-Mujahid and Khayaban-e-Shamsheer by respondent No.2 into single carriage roads and as a result hurling of all the heavy public and commercial transport on 26<sup>th</sup> Street (60’ only dual carriage) coming from Abdullah Shahghazi Mazhar after crossing Khayaban-e-Shamsheer and traffic of Khayaban-e-Shamsheer (including public transport) from Seaview Road up to Khayaban-e-Hafiz, via Khayaban-e-Mujahid without any provisions being available on them is unlawful, illegal, ultra-vires and unconstitutional, being in violation of the Constitution and legal rights of the petitioners and other residents of such Roads and that Khayaban-e-Mujahid and Khayaban-e-Shamsheer be brought back to their original position by such respondent as these were before arbitrary conversion.*

*II) To declare that the diversion and conversion has been done illegally and without authority and in exploitation of jurisdiction and in contravention of Section 12 of Act 1997 and Rule 57-A Motor Vehicle Rule 1969 and therefore the respondent No.1, 4 and 5 take appropriate measures and actions against respondent No.2, which such respondent have taken in excess of legal authority and also against and in violation of their master plan.*

*III) Restrain the respondents No.2, 4 and 5 immediately in allowing plying of commercial and heavy traffic on the 26<sup>th</sup> Street (coming from Abdullah Shahghazi Mazhar after cross Khayaban-e-Shamsheer) and on to Khayaban-e-Mujahid immediately and direct them to forthwith continue one way traffic on Khayaban-e-Mujahid (South to North) and make available provisions by (erection of barriers)*

*and ensure that heavy traffic and commercial plying on the Roads (Khayaban-e-Mujahid and 26<sup>th</sup> Street) does not continue.*

*IV) Grant cost of this petition.*

*V) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case."*

2. It is contended by learned counsel for the petitioners that main Khayaban-e-Shamsheer was originally serving as a dual carriage road which is 80 feet in width. It is contended by learned counsel for the petitioners that the residents of Khayaban-e-Mujahid have purchased their respective properties in view of and in consideration of master plan of the area which prescribes that the road Khayaban-e-Mujahid is an ancillary road not meant for plying commercial and heavy vehicles and public transport in its normal course and that Khayaban-e-Shamsheer was catering for such service. Learned counsel further submitted that respondents No.2 and 3 are the statutory authorities and they regulate their affairs in terms of their byelaws within their jurisdiction. Learned counsel for the petitioners submitted that respondent No.2 without adhering to the mandatory requirement of law and rules and regulations mentioned in Pakistan Defence Officers Housing Authority Order 1980, Cantonment Act 1924, KBTRP 2002, Presidents Order No.5 of 1957 and in violation of master plan, unilaterally and arbitrarily converted roads (Khayaban-e-Shamsheer and Khayaban-e-Mujahid) into a single carriage causing not only injuries to the privacy of the petitioners but also causing and inflicting injuries to the mandatory provisions of

law which have been totally ignored. He submitted that all these activities physically started in the month of February and March 2012. Learned counsel for the petitioners submitted that in view of such conversion the petitioners are facing the following difficulties:-

- i) Driving in or out of their entrance gates has become a struggle due to the non-stop stream of traffic moving on “The Roads” and can result in fatal accidents.
- ii) Public transport buses, coaches and vans ply on “The Roads”, picking and dropping passengers in front of the entrance of houses of petitioners and other residents. Passengers of overcrowded buses sit on the bus roof and have a clear view of the private compounds and residential enclosures. This is a blatant violation of the purdah and privacy rights of the residents.
- iii) Criminal elements can now conduct easy surveillance of their target properties by taking advantage of the facility of sitting on top of buses and looking inside private properties. The safety and security of the residents is thus gravely compromised.
- iv) The level of air and noise pollution on “the Roads” is now unbearable causing serious damages to the physiological and psychological health of the petitioners and other residents of the Roads and their children like hypertension, high stress level, sleep disturbance, aggression, behavioral disorder etc.
- v) Due to the harmful health consequences of such exposure, in developed countries, it is unlawful to allow heavy traffic on narrow roads. Even highways have to be specially curtained by high walls with acoustic sheets to avoid noise pollution, affecting the houses that are built close by.

- vi) Overhead electricity cables, television and internet cables, roadside plants and trees are being regularly damaged by heavy duty vehicles plying here on the Roads. These vehicles are also causing damage to the structure and foundations of houses built on “The Roads” due to excessive vibrations caused by their movements.
  
- vii) On holidays and festive occasions like Eid, New Year etc. massive traffic converges on “The Roads”. Hooligans and rioters engage in socially unacceptable behavior like racing, speeding and removing their vehicle silencers causing disturbance and anguish to the residents.
  
- viii) Due to unbearable sound it is not possible for sick, old people and children to sleep peacefully during the daytime and in fact wake up with a startle during the night upon honking or motorbikes racing without silencers.

3. Learned counsel for the petitioners further contended that this act of conversion was done in haste without compliance of the mandatory provisions of Environmental Protection Act 1997 and also without compliance and adhering to the requirement of Section 192 of the Cantonment Act 1924. Learned counsel submitted that this is in complete violation of master plan and also in violation of principle of natural justice. He submitted that the commercial traffic including all kinds of heavy vehicles, which were plying on 80 feet wide road has now shifted to a 60 feet wide road, which is not meant for this heavy traffic as it was never in the master plan. Besides, it has no pedestrian way/footpath/sidewalks and service lane/parking lane

etc. at the two sides of the width of the road to enable the pedestrians or to the residents coming out and getting in to their houses in their respective vehicle to avoid accident at the time of joining the heavy traffic flow/stream now plying on road immediately out of their houses. Learned counsel submitted that the public transporters are coerced to ply their vehicles on this unlawfully converted road “Khayaban-e-Mujahid” despite the fact that they do not enjoy such permit to ply on Khayaban-e-Mujahid. Learned counsel in support of his arguments has relied on the case of Moulvi Iqbal Haider v. Capital Development Authority reported in PLD 2006 SC 394.

4. In reply to the above learned counsel for respondent No.2 submitted that the petition is not maintainable under the law as the roads which has now been converted as single carriage road are pursuant to a report of NESPAK long time back, which has approved such conversion to cater the traffic jams at and around Khadda Market/ commercial market around Street No.11 to 13 of Khayaban-e-Shamsheer as such it suffers from latches. Learned counsel further submitted that no permission for EIK is required and if at all the petitioners are aggrieved that such permission was not obtained they should seek their remedy under section 20 of the said Act. Learned counsel for respondent No.2 in support of his arguments relied upon PLD 2001 SC 415 and 1993 SCMR 1798.

5. Learned Addl. A.G. appearing for respondents No.1, 4 and 5 at the very outset has opposed such conversion and contentions of respondent No.2 and submitted that by this conversion, a road which was not meant for heavy traffic is now burdened with 541 heavy vehicles which include buses, mini-buses and coaches and other heavy traffic to ply on the said road which has no service lane proper pedestrian way or greenbelt. Learned Addl. A.G. has placed on record a list of route permits which have been affected by this unlawful conversion which constitutes 541 vehicles which may increase with the passage of time.

6. In the same way learned counsel appearing for respondents No.6 and 7 who are transporters also adopted the arguments of learned counsel for the petitioners.

7. We have heard learned counsel for the parties and perused the record.

8. As far as the question of laches is concerned it is an admitted fact that practically the conversion started somewhere in the month of March 2012 whereafter it came to the knowledge of the public at large and the action the part of the petitioners appears to be prompt as they have no knowledge about the report of the NESPAK. Neither any public hearing was given nor any public notice was issued therefore, there was no question of having it in the knowledge of public at large. The question of laches as such is not attracted to the case in hand. More importantly when the public functionaries' act appears to be malafide and taken at the back of parties

concerned, the question of laches would not be relevant. Laches cannot be equated with the statutory bar of limitation. Bar of limitation operates as legal bar for grant of remedy whereas laches operates as bar on equity. The dictate of justice and equity and balance of legitimate right are to be kept in view in applying the principle of laches. In view of the facts and circumstances mentioned above there is hardly any application of the principle of laches.

9. It is an admitted fact that originally Khayaban-e-Shamsheer was meant to cater as a dual carriage road which is 80 feet wide road. The occasion to switch over to Khayaban-e-Mujahid occurred as suggested by respondent's Counsel, on account of some congestion of traffic around and in the vicinity of Khadda Market on account of it being a commercial area. This commercial area is all over the area between Khayaban-e-Shamsheer and Khayaban-e-Mujahid in between 11 to 14 streets. It is the case of respondent No.2 that in order to ease the continuous flow of traffic at Khayaban-e-Shamsheer such alternate measures were adopted and recently, as depicted from the pictures and report of NESPAK that approximately 15 feet wide service lane, apart from pedestrian belt outside the houses were provided at Khayaban-e-Shamsheer though not available at affected commercial area although prescribed by NESPAK. These commercial vehicles were earlier plying on roads most of which are provided with service lane and pedestrian way side walk such as Khayaban-e-Shahbaz, Korangi Road (main Sunset Boulevard) Khayaban-e-Hafiz,



Sea-View. “Some of these roads are over 120 feet whereas Khayaban-e-Ittehad is 100 feet and (vi) Saba Avenue is about 80 feet. All these roads are dual carriage and commercial vehicles ply on them. Thus Khayaban-e-Mujahid where now these commercial vehicles are plying as a result of the arbitrary conversion is only 60 feet in width and is also devoid of any service lane/service road or parking lane and the congestion which was observed on Khayaban-e-Shamsheer at commercial area has not been taken care of at Khayaban-e-Mujahid where in addition to some commercial area a huge mosque is also available and this congestion could be seen with more venom as being 60 feet in width and having huge mosque exactly adjacent to commercial area of Khayaban-e-Mujahid. It is an admitted fact that this road was never meant for plying commercial/ public vehicles in original master plan.

10. Replying to the question as to whether such conversion was done after seeking consent from the Executive Board, learned counsel for respondent No.2 declined and submitted that no such board resolution or board decision is available. Learned counsel for respondent No.2 also submits that no permission from EIK has been obtained as, per learned counsel, it was not the requirement of law.

11. It is rather a very painful act on the part of the respondent No.2 to have acted in a manner whereby a unilateral decision regarding conversion of road (Kh. Mujahid) for a single carriage for plying heavy vehicle has been taken without taking on board

(i) EIK, (ii) Executive Board of DHA, (iii) adhering to the requirements of Motor Vehicle Ordinance and Cantonment Act, 1924 and KBTPR for assistance and guidance.

12 In order to understand the application of above law, we now discuss each of them to show the blatant and gross violation that has been committed by respondent No.2 causing injuries to these “Statutes”.

13. The Motor Vehicle Ordinance, 1965 provides definition of heavy transport vehicles in terms of subsection 13 of Section 2. Section 45A(d)(iii) and (d)(iv) provides that stage carriage required to be issued for the route and the measures to control and reduce environmental pollution and traffic congestion. In the similar way the application for stage carriage permits is provided in terms of Section 48, 49, 50, 51, 52, 53, 54, 57, 58 whereas Section 75 of the said Ordinance provides the mechanism to control traffic, limits of weight and limitation on use.

14. Section 80 provides parking spaces and halting stations. Section 81 of the said Ordinance deals with the designation of main road. In this context the government or any authority authorized by it in this behalf may by notification in the official gazette or by the erection at suitable places of the appropriate traffic signs referred to in Ninth Schedule, designate certain roads as main roads for the purposes of the

regulations contained in the Tenth Schedule. These are parameters, conditions and limitations prescribed by the Motor Vehicle Ordinance, 1965.

15. In addition to the above, such issues have also been taken care of in Karachi Building & Town Planning Regulations, 2002. In terms of Chapter 21 of the said Regulations a complete code/general standard for highways, major roads, boulevards, streets and lanes are provided. The relevant rules are reproduced as under:-

### ***“21-1. Pedestrian Lanes***

- 21-1.1. *Thoroughfares intended exclusively for pedestrian traffic, referred to as “pedestrian lanes”, shall be at least 10 ft. (3m.) wide, as given in Figure-1.*
- 21-1.2. *Pedestrian lanes, if abutting plots on both sides, shall have uninterrupted length not greater than 30 times its width provided that interruption shall be created by other pedestrian lane or vehicular street.*
- 21-1.3. *The grade of pedestrian lanes in cross-section shall be level, and their longitudinal slope may not be greater than 50, provided however, that:-*
- 21-1.3.1. *If the slope of the terrain is greater than 50, the difference in slope may be made up by an appropriate number of steps; the series of steps for each 50 higher slope shall be separated by a landing at least 6.5 ft. (1.97 m) wide also there should be a ramp for wheel chair.*
- 21-1.3.2. *If the lane is along double or single rows of plots in a terrain sloping more than 5%, the difference in slope may be made up by an appropriate number of steps at the bottom end of each double or single row of plots, as the case may be also. Also there should be ramp for wheel chair for special persons.*

### ***21-2. One-Way Streets (Types A, B, C)***

- 21-2.1 *As shown in Figure-2, Typical Street Cross-Sections, appended to this Part, Street Types A, B, and C shall be one way streets.*

21-2.2. *Minimum width of street shall be 24 ft. (7.31 m) with kerb side parking on one side only.]*

21-2.3. *One-way streets shall be intersected by vehicular streets at least every 500 ft. (152 m.).*

### **21-3. Two way Streets (Types D, E, F, G)**

21-3.1. *Minimum width of two way street excluding parking shall be 40 ft. (12.18 m)*

12-3.2. *Street Type E (Figure-2) shall be so designed and maintained as to permit parallel parking on one side only.*

### **21-4. Highways, Major Roads and Boulevard (Types H, I & others)**

21-4.1. *For Highways and major roads of not less than 100 ft. (30 m) right-of-way a permanent service road shall be provided on each side of the Highway/boulevard.*

21-4.2. *The width of side walks (a) shall depend on the pedestrian traffic volume. However, minimum width of side walk shall be 3 feet (0.900 m)*

21-4.3. *New width of green strip (b) in roads will depend on the nature and dimension of the utility lines to be laid under them.*

21-4.4. *The width of the green median shall be at least 10 ft. (3 m.) as to provide adequate pedestrian refuge island at crossing but where necessary such strips may be released by separate train/LAT right-of-way.*

21-4.5. *No direct access to highway or major roads will be allowed except through a service road at appropriate distances.*

21-4.6. *Bus bays/lanes on all major roads shall be provided in consultation with Transport Department.*

### **21-5. Visibility at Cross Roads**

21-5.1. *In the interests of pedestrian safety and vehicular traffic visibility at cross roads, no trees or any other impediment/ structure will be planted within 30 ft. (9.13 m) of any street right-of-way limit.*

21-5.2. *For the same purposes, except as otherwise provided in sub-clause, the borders of streets shall be chamfered at such distances from their crossing as provided in sub-clause 25-1.02.*

### **21-6. Street Lines and Building Lines**

21-6.1. *Street right-of-way shall be regarded as distance between plot lines on opposite side of the street.*

21-6.2. *No structure or part of a structure of ground floor may project beyond such building line or building setback line.”*

16. Similarly Cantonment Act, 1924 also deals with the issue with same analogy and prescribes mode and mechanism of maintaining main roads/boulevards and also such conversions in accordance with law.

17. The KDA Order V of 1957, which is in fact a prescribed code to set up city plan, shows the same modality and ways to provide main roads of boulevards in any specified town, area etc. In the similar way it is a complete code pursuant to the amenities to be provided to the public at large. This order deals with every aspect of the legal authorities which include development, improvement, housing and other schemes. Article 35 of such order deals with the street scheme and Article 40 deals with the zonal plan scheme which plan indicates areas reserved for residential purposes, commercial purposes, industrial purposes, agriculture purposes, open

spaces, height, coverage, type, density, spacing and any other purposes, which the authority may consider necessary.

18. The Pakistan Defence Officers Housing Authority Order, 1980 defines Administrator in terms of Section 2(a) as authority.

19. In terms of section 2(j) of Order 1980 the “Project” means any project of housing or development of lane undertaking or planned by the Society or the Executive Board.

20. Section 5 of the said order 1980 prescribes as under:-

**Section 5. Management.** *(1) The general direction and administration of the affairs of the Authority shall vest in the Governing Body which shall consist of the Secretary-General, Ministry of Defence, Government of Pakistan, as the Chairman and the following officers as its members, namely*

- (a) Vice Chiefs of Staff of the three Services or one Principal Staff Officer from each of the three Services to be nominated by the respective Chiefs of Staff.*
- (b) The President;*
- (c) The Director, Military Lands and Cantonments; and*
- (d) The Administrator*

*(2) There shall be an Executive Board consisting of the Corps Commander posted at Karachi, or, if there is none at Karachi, the most senior serving Armed Forces officer posted at Karachi, as its President and the following officers as its members, namely:-*

- (a) a serving Naval officer not below the rank of a Commodore posted at Karachi, to be nominated by the Chief of the Naval staff*

- (b) *a serving Air officer not below the rank of a Air Commodore posted at Karachi, to be nominated by the Chief of the Air staff*
  - (c) *a serving Army officer not below the rank of a Brigadier posted at Karachi, to be nominated by the Chief of the Army staff*
  - (d) *the Administrator; and*
  - (e) *co-opted members, to be appointed by the Executive Board for a period not exceeding two years at a time, provided that such co-opted members shall not have any right of vote.*
- (3) *The Executive Board shall exercise all administrative, executive and financial powers and do all acts and things which may be exercised or done by the Authority.*
- (4) *The Executive Board in discharging its functions shall act on sound principles of development, town planning and housing, and shall be guided on questions of policy by such directions as may be given to it, from time to time by the Governing Body which shall be the sole judge as to whether a question is a question of policy, and the Executive Board shall be bound to carry out such instructions.”*

21. Section 9 of the Order 1980 describes the powers and functions of the Executive Board as under:-

***Section 9. Powers duties and functions of Executive Board.---*** (1) *Subject to other provisions of this Order, the Executive Board may take such measures and exercise such powers as may be necessary fore carrying out the purposes of this Order.*

(2) *Without prejudice to the generality of the foregoing powers, the Executive Board may---*

- (i) *acquire any land in accordance with the law of the time being in force in the province of Sindh*
- (ii) *undertake any works in pursuance of any scheme or project;*

- (i) *Incur any expenditure,*
- (ii) *Procure plant, machinery, instruments and materials;*
- (iii) *Enter into and perform all such contracts on behalf of the Authority as it may consider necessary,*
- (iv) *Retain, lease, sell, exchange, rent or otherwise dispose of any land vested in the Authority;*
- (v) *Cancel any housing unit in a planned housing project or scheme, either in default of payment of installments called, for or on violation of any terms and conditions for such project or scheme by allottees, transferees or lessees; and*
- (vi) *Do all such acts, deeds and things which may be necessary or expedient for the proper planning and development of the specified area.*

(3) *No master plan, planning or development scheme shall be prepared by any local body or agency for the specified area without prior consultation with, and approval of, the Executive Board.*

22. The report of the NESPAK also devoid of taking note of all such important facts whereby certain obligations were imposed on certain authorities to regulate such affairs. Needless to mention that all these authorities, discussed above, would have played a vital role had it been done in accordance with law and environmental impact of such conversion would have played a decisive role had it been obtained prior to such conversion. As we have already observed that originally Khayaban-e-Shamsheer which admittedly measures 80 feet in width has a category of 2000 sq. yards plots which could be bifurcated into two or three whereas plots situated at Khayaban-e-



Mujahid which has now been converted into a main road having the category of 1000 sq. yards which could be sub-divided into 500 sq. yards plots. Thus, the houses that have been built on Khayaban-e-Mujahid are closure to the road as compared to the house situated and built on Khayaban-e-Shamsheer which houses were constructed after a space/setback of not less than 20 feet which set-back may extend more in some cases and as such this conversion of Khayaban-e-Mujahid would have created a major environmental effect on the houses as far as dust/air pollution and noise is concerned as it was easier for diesel fumes to evaporate on 80 feet wide road with above nomenclature of plots as compare to 60 feet wide road i.e. it gets evaporated in air before it gets into the houses at Khayaban-e-Shamsheer. This aspect could have been discussed had the concerned authorities approached the environmental tribunal/authority for such impact, which has not been done.

23. There may be some questions as regard to the applicability of Karachi Town & Planning Regulations and KDA Order V of 1957. However, the inference drawn in terms thereof cannot be denied. Respondent No.2 has totally relied upon the report of NESPAK which is absolutely silent with regard to seeking inference from any of the aforesaid statutes particularly Pakistan Defence Officers Housing Authority Order, 1980 and Environmental Protection Act, 1997, application whereof is absolutely inevitable.

24. Plain reading of section 12 of Pakistan Environmental Protection Act, 1997 in terms of following subsection of Section 2 reveals as under:-

“(XXXV) “Project” means any activity plan, scheme, proposal or undertaking involving any change in the environmental and includes.

(a) Construction by use of building or other works;

(b) Construction or use of road or other transport systems;

(c) Construction or operation of factories or other installations

(d) Mineral prospecting, mining quarrying, stone-crushing, drilling and like;

(e) Any change of land use or water use; and

(f) Alteration expansion, repair, decommissioning or abandonment or existing buildings or other works, roads or other transport systems, factories of other installations.

25. There can hardly be two views that in terms of clause ‘b’ the road which was not used for plying commercial/heavy vehicles if reclassified for commercial activities such as plying of public vehicles, heavy public transport would likely to cause adverse environmental impact as not only a large number of additional heavy diesel vehicles

emerging diesel fumes would pass through such area but would also cause noise and dust pollution besides air pollution as discussed. It has already been admitted by the learned Counsel appearing for DHA that such Environmental Impact Assessment was not obtained from the Government Agency. They have not placed anything on record to show that before considering such reclassification of road any consultation has taken place between the DHA through its “Executive Board” and Pakistan Environmental Protection Agency. The perusal of section 12 of the Act 1997 further reflects that no proponent or project shall commence construction or operation unless he has filed with the Government Agency designated by the Federal Environmental Protection Agency or Agencies, or, where the project is likely to cause an adverse environmental effect an Environmental Impact Assessment, and has obtained from the Government Agency approval in respect thereof. Needless to mention that such reclassification and conversion of road for plying of heavy commercial and public vehicle would fall within the purview of “project” and in view of section 12 of the Pakistan Environmental Protection Act, 1997 the very commencement of its operation as such without filing an initial environmental examination with the Federal Agency and without its approval regarding Environmental Impact Assessment, was grossly illegal and even constitute an offence under Pakistan Environmental Protection Act, 1997. If any reference with regard to the above context is needed, authorities/cases such as follows can be looked into:

(vii) Shehri-CBE Vs. Government of Pakistan (2007 CLD 783

(viii) Shehri-CBE Vs. Lahore Development Authority (2006 SCMR 1202)

(ix) Nighat Jamal Vs. Province of Sindh (2010 YLR 2624).

26. None of the laws referred above were followed and the decision of conversion of Khayaban-e-Mujahid as a main road was taken in complete disregard of the laws applicable thereon and in complete haste. It appears to be an exercise undertaken by whosoever (not the competent authority) to satisfy their own desire and wishes.

27. It is also very surprising to note that M/s NESPAK who have prepared a report regarding impugned conversion has not undertaken such exercise before preparing report and the fact of environmental effect, when the traffic which in fact originally plying on 80 feet wide road would be converted/switched over to ply on 60 feet width road and that its impact of noise/dust/pollution, has not been considered at all. It is needless to mention that all roads are certainly not meant for these heavy vehicles to ply on and it is for this reason that the view of its impact on environment from the concerned authority/agency is considered as pre-requisite. We may not comment more as to whether it may or may not have environmental impact but then the authority concerned should have been taken on board to discuss the burning issues of effectees. It is also needless to mention that before bringing any changes in the master plan the public hearing is to be given particularly to all those who would

likely to be affected by such act which has not been done. In terms of Article 9(2)(ii) of the 1980 Order it is only the Executive Board which has the power to undertake any work in pursuance of any scheme or project whereas Article 9(3) of the 1980 Ordinance stipulates that no master plan, planning or development scheme shall be prepared by any local body or agency without prior consultation and with the approval of the Executive Board. The action of the governing body to implement such conversion without executive board's consent is an act which is not approved by this Court.

28. In view of such glaring violations of law we allow this petition, direct the respondent No.2 to immediately restore the original position of the two roads i.e. Khayaban-e-Shamsheer and Khayaban-e-Mujahid and in case if at all any changes in the master plan are required for the public interest, the same may be done in accordance with law after following the procedure and taking all concerned authorities on board referred above and last but not the least giving public hearing to all those who are likely to be affected by such change/conversion.

29. The findings reached by this Court as far as environmental aspects are concerned are absolutely tentative and shall not cause any prejudice to the case of respondent No.2 in case they approach the authorities under Environmental Protection Act, 1997 and/or any other concern and they would give their own independent findings with regard to such conversion.

**Judge**

**Chief Justice**