

BEFORE THE LAHORE HIGH COURT
RAWALPINDI BENCH

1

Writ Petition No. 1852/2023

1. PAK DOT GROUP

Through its duly authorized representative
Mr. Arshad Mahmood
Having its office at Suite No. 107,
1st Floor, Business Arcade,
Plot No. 27, Block 06,
PECHS, Karachi

For Private Use
2-11-2023
Examiner
Copy Supply Section
Lahore High Court
Rawalpindi Bench

2. SAEED AKHTAR

Son of Abdul Khalq
White House, GT Road,
Rawalpindi

PETITIONERS

VERSUS

1. FEDERATION OF PAKISTAN

Through Secretary Communications
Federal Secretariat
Constitutional Avenue,
Islamabad

2. DEFENSE HOUSING AUTHORITY

Through its Administrator
Phase 1, Defense Mall,
Defense Avenue, Rawalpindi

3. NATIONAL LOGISTICS CELL

Through its Chief Executive Officer,
GHQ Harding Road,
Rawalpindi

4. NATIONAL ENGINEERING SERVICES PAKISTAN (NESPAK)

2

Through its Managing Director,
NESPAK House, G-5/2,
Islamabad

5. DEPUTY COMMISSIONER RAWALPINDI

Deputy Commissioner's Office,
Katcheri Chowk, Rawalpindi

6. NATIONAL HIGHWAY AUTHORITY

Through its Chairman
28, Mauve Area, Sector G-9/1,
Kashmir Highway, Islamabad

7. NATIONAL DISASTER MANAGEMENT AUTHORITY

Through its Chairman
ERRA Complex, Murree Road,
Opposite Margalla Town,
Shakar Parni, Islamabad

8. RAWALPINDI DEVELOPMENT AUTHORITY

Through its Chairman
RDA Headquarter, Liaquat Bashi,
Murree Road, Rawalpindi

9. DEPARTMENT OF IRRIGATION, GOVERNMENT OF PUNJAB.

Through its Secretary,
Old Anarkali, Lahore

10. ENVIRONMENT PROTECTION AGENCY, GOVERNMENT OF PUNJAB

Through its Director General
Gate No. 8, National Hockey Stadium,
Ferozpur Road, Lahore

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973**

"The fate of the creation is the fate of humanity"

- J. O. Wilson

ATTESTED
27 MAY 2022
Examiner Conv Supply
Section Lahore High Court
Rawalpindi Bench

**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

W.P. No.1852 of 2023

Pak Dot Group and another

Versus

Federation of Pakistan and other

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
------------------------------	---------------------------	--

26.05.2023 M/s. Muhammad Ahmed Masood, Umer Ijaz Gilani and Mirza Moiz Baig, Advocates for the Petitioners.
Mr. Muhammad Sajid Khan Tanoli, Deputy Attorney General on Court's call.
Mr. Muhammad Idrees Rafique Satti, Assistant Advocate-General on Court's call.

Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "*Constitution*"), the Petitioners have sought judicial review of the actions taken by the Respondent No.2/Defense Housing Authority, Islamabad, regarding construction of Soan River Bridge Trunk Road, Rawalpindi (the "Project") on the Grand Trunk, Road Rawalpindi (the "GT Road"), without adopting proper procedure/law.

2. Mr. Muhammad Ahmed Masood, Advocate has submitted that the Project comprises of a bridge consisting of a two-way link road bridge, connecting DHA Rawalpindi with G.T. Road i.e. an Approach Road under passing the National Highway Authority (NHA) existing bridge on Soan River and merging with the GT Road through a defectively designed road ramp blocking the Petitioners' access to their

ATTESTED
27 MAY 2023
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

property. He stated that the Petitioners owned land measuring 7.5 kanals located at the main G.T. Road, Moza Kotha Kalan, Tehsil and District Rawalpindi, adjacent/ adjoining the Project, therefore, they are particularly and profoundly affected by it. He further added that the Respondent No.2 started the Project without acquiring the land; without obtaining requisite NOCs from the concerned agencies; without adopting proper procedure under the relevant laws, rules and regulations i.e. the Pakistan Environmental Protection Act, 1997 (the "Act of 1997"), the Punjab Flood Plain Regulation Act, 2016 (the "Act of 2016"), the Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000 (the "Regulations"); and without providing proper right of hearing to the Petitioners.

3. Mr. Muhammad Ahmed Masood, Advocate further submitted that prior to filing this Petition, the Petitioner approached the Respondents and filed complaints to the concerned Authorities but of no avail. He added that the Project in question infringed Petitioners' fundamental rights i.e. right of exploitation, right of dignity, right to movement, right to life and right to access to public places guaranteed under Articles 3, 9, 14, 15 and 26 of the Constitution. Hence, this Petition.

4. When confronted how this writ Petition against such action of the Respondents is maintainable; and how the Project in question can be stopped because this Court has already developed doctrine of *judicial restraint* at Rawalpindi Bench in the judgment reported as "Syed Faisal

1
1
ATTESTED
27 MAY 2023
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

Mehboob Vs. Federation of Pakistan and others" (2022 CLC 1153) wherein it has been held that:

"8. In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any government initiative, particularly, taken for the security enhancement because judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Government having financial perspective, outcome and exercise. ... Judicial Restraint asserts and advocates that the judges should hesitate to strike down laws unless they are obviously unconstitutional but in this case, the Petitioner has failed to point out or bring forth any unconstitutional act committed by the Respondents, therefore, any interference by this Court within the purview of Article 199 of the Constitution, will badly hamper the initiatives being taken by the Respondents for security purposes and will also put an embargo on such like security based activities in the future. Even otherwise, for grant of interim relief, it was obligatory upon the Petitioner to establish that all three ingredients (i) prima facie arguable case; (ii) irreparable loss; and (iii) balance of inconvenience were in favor of his claim, which he failed to establish for grant of injunction in his favor. ..."

It has been further held in case titled "Muhammad Azam Vs. Province of Punjab and others" (2022 CLC 532) that:

"4. ... In the absence of any glaring illegality, or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any government initiative to encourage and promote the investment process because judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Government

ATTESTED
27 MAY 2023
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

having financial perspective and outcome and exercise. ...

7. Under Article 199 of the Constitution, the Court is though competent to exercise power of judicial review to examine administrative actions from the touchstone of violation of law and breath of Constitution yet the power of judicial review is regulated by the principle of Judicial Restraint, the purpose and extent of which has already been discussed supra. While using powers under Article 199 of the Constitution relating to a policy of the Government with financial layout and implications, the Court exercise the power of judicial review with judicial restraint as a substantive approach to interfere in such matters within the contemplation of judicial review while exercising Constitutional Jurisdiction. ...”

- This Court in case titled “Muhammad Umair Vs. Cantonment Board Rawalpindi and others” (PLD 2022 Lahore 148) also held that:

“34.

(ii) *Judicial Restraint*

In the absence of any glaring illegality or violation of fundamental rights, it is imperative that the Courts should exercise judicial restraint for passing any adverse order, which can potentially hinder or nullify any initiative taken by government or any Statutory Body/Board to encourage and promote the business activities and to ensure the provision of places of public entertainment for the general public as mandated by Article 26 of the Constitution.

35. *Judicial restraint encourages the judges to exercise their powers with restraint and wisdom and to limit the exercise of their own powers to intervene in the matters relating to policy of the Statutory Bodies/ Board having financial perspective and outcome and exercise.”*

Learned counsel submitted that the Petitioners have fundamental right under Article 23 of the Constitution to acquire, hold and dispose of property and Article 24 of the Constitution clearly states that no person shall be deprived of

T

ATTESTED
27 MAY 2023
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

his property except in accordance with law, hence, they are before this Court for protection of the said rights. He relied on the judgment of this Court reported as "Mst. Asiya Ashraf Ch. v. Government of the Punjab, etc." (2020 CLC 503 Lahore).

5. Learned Deputy Attorney General as well as learned Assistant Advocate-General (on Court's call) unanimously objected to the maintainability of this Petition by stating that the Petitioners have no title of the property, therefore, have no concern whatsoever with the Project. Moreover, they are also not aggrieved persons and have no locus standi to file this Petition.

6. The question before this Court is whether the Respondents before starting the Project have adopted all the codal formalities and procedure in accordance with Law(s) and Constitution. Therefore, notice be issued to the Respondents for 12.06.2023 with the direction to file their replies/report(s) and parawise comments on the points:

- i. *Whether the Respondents have adopted proper procedure before starting the Project?*
- ii. *Whether land of the area in question has been properly acquired or not?*
- iii. *Whether all the NOCs from the concerned Agencies have been obtained?*
- iv. *Whether the EPA has issued NOC before stating the Project?*

C.M. No.01 of 2023

7. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands **disposed of**.

C.M. No.02 of 2023

8. The requirement of Article 199(4) of the Constitution to hear the concerned Law Officer(s) has been met as provided in the recent judgment cited as "Federation of

ATTEC
27 MAY 2023
Examiner Copy Supply
Section Lahore High Court
Rawalpindi Bench

Pakistan through Secretary, Ministry of Energy (Power Division), Islamabad and others v. Shafiq-ul-Hassan and others" (2020 SCMR 2119), therefore, in the meanwhile, the Respondents may execute the entire Project as planned but no construction at site blocking access to the adjacent/ adjoining the property in question (measuring 7.5 kanals), shall be made, till the next date of hearing only.

Copy dasti on payment of ~~usual~~ charges.


(JAWAD HASSAN)
JUDGE

ZIA UR REHMAN


Certified to be True Copy
27 MAY 2023
Examiner Copy Supply Section
Authorised Under Article 17
Qanun-Shahadat Order-1984

26327

Petition No
 Date of Presentation of Application 26/5/23
 Date of Deposit of Fee
 No of Words
 Copping No
 Urgent Fee
 Registration & Postage Fee 24
 Agency Fee
 Court Fee & Application 3
 Total 27
 Name of Copyist
 Date of Receipt of Case
 Date of Completion of Copy 27/5/23
 Date of Delivery of Copy 27/5/23