

P L D 2002 Supreme Court 1079

Present: Sh. Riaz Ahmed, C.J., Mian Muhammad Ajmal and Muhammad Nawaz Abbasi, JJ

FEDERAL GOVERNMENT EMPLOYEES' HOUSING FOUNDATION through Director-General, Islamabad and another--Appellants

versus

MUHAMMAD AKRAM ALIZAI, DEPUTY CONTROLLER, PBC, ISLAMABAD---Respondent

Civil Appeal No.899 of 1998, decided on 18th June, 2002.

(On appeal from the order dated 5-4-1997 passed by Federal Service Tribunal, Islamabad, in Appeal No. 35(R) of 1997).

(a) Constitution of Pakistan (1973)---

----Art. 212(3)---Leave to appeal was granted by Supreme Court to consider the question whether the allotment of plot claimed by the respondent in the housing scheme of the Housing Foundation fell within the terms and conditions of service so as to attract the jurisdiction of Federal Service Tribunal established under Service Tribunals Act, 1973.

(b) Federal Government Employees Housing Foundation----

---- Object and role of the Foundation---Allotment of plots---Remedy against allotment--- Federal Government Employees Housing Foundation having assigned the role of an agency of Federal Government was working for the benefit of employees of Federal Government including the employees of the Institutions, Corporations and Organizations controlled by the Federal Government---Housing Foundation would stand on different footing to that of the private companies incorporated under the Companies Ordinance, 1984--Grievance of a person relating to the policy of allotment of plots by Housing Foundation or an act done by its functionaries in breach of its policy or infringement of any right of any individual under the policy, would be justiciable by an appropriate forum---Notwithstanding non-statutory status of Housing Foundation, it being an official body while following its Rules in the conduct of its business, must act fairly, justly and in accordance with law---Acquisition of land by Housing Foundation through Land Acquisition Collector, preparation of Schemes, allotment of residential plots and conducting ancillary and incidental matters, must be dealt with by the functionaries of Housing Foundation strictly in accordance with law--Housing Foundation was initially established on the directive of Prime Minister and to all intents and purposes, its control was given to Ministry of Housing and Works, Government of Pakistan and thus while acting as an official agency of Federal Government it was indirectly discharging the function in connection with affairs of the Federation and by implication would be a part of Ministry of Housing and Works Government of Pakistan---In case of any breach, an aggrieved person can bring a suitable action against the Federal Government Housing Foundation by invoking the jurisdiction of an appropriate forum.

Gulshan Hussain and others v. The Collector, Islamabad Capital Territory and the Federal Government Employees Housing Foundation, Government of Pakistan through Secretary, Housing and Works 2000 YLR 1711: Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi PLD 1984 SC 170 and Anwar Hussain v. Agricultural Development Bank of Pakistan PLD 1984 SC 194 ref.

(c) Land Acquisition Act (I of 1894)---

----S.4---Acquisition of private land---Validity---Acquisition of private land for a purpose other than public purpose is not legal and such acquisition for personal benefit of a particular class of employees would not be in the public interest.

Gulshan Hussain and others v: The Collector, Islamabad Capital Territory and the Federal Government Employees Housing Foundation, Government of Pakistan through Secretary, Housing and Works 2000 YLR 1711 ref.

(d) Constitution of Pakistan (1973)---

----Art.199---Companies Ordinance (XLVII of 1984), S.13---Constitutional petition---Maintainability---Judicial review---Acts done by Companies registered under the provisions of Companies Ordinance, 1984---Federal Government Employees Housing Foundation---Status---Ordinarily a company registered under Companies Ordinance, 1984, if is not controlled by the Government and its status and character is not that of an agency of Government, would not be amenable to the Constitutional jurisdiction of High Court---Company like Federal Government Employees Housing Foundation which is functioning under the direct control of the Federal Government and its affairs are being run by the functionaries of the Government cannot claim immunity from judicial scrutiny of a decision made by its functionaries, if the same is found against its declared policy or infringes the rights of its beneficiaries---Housing Foundation by virtue of its character and functions and distinguishable features having assumed the role of an official agency of Federal Government, does not stand at par to that of the private companies registered under the Companies Ordinance, 1984-- Federal Government Employees Housing Foundation for all practical purposes is deemed to be an official body of Ministry of Housing and Works, Government of Pakistan, therefore, its acts and deeds are subject to the judicial review of superior Courts---In the matter arising out of acquisition of land by the Foundation through Land Acquisition Collector, preparation of schemes, allotment of residential and commercial plots or ancillary and incidental matter, an aggrieved person can avail the remedy of civil suit or invoke the Constitutional jurisdiction of High Court---Person being aggrieved of an action of the Housing Foundation either in relation to his right and entitlement of allotment of a plot or in any other matter of public importance, can maintain a Constitutional petition---Immunity can be claimed by an official body for violation of, Rules framed by such body on the plea that non-statutory rules cannot be assailed but the departmental instructions/non-statutory rules framed by such official bodies become enforceable in law without any prohibition in case of breach of non-statutory rules/instructions being continuously and consistently acted upon by such' an official agency---Constitutional petition is maintainable in circumstances.

Maqsood Ahmed Toor v. Federation of Pakistan through Secretary, Government of Pakistan, Ministry of Housing and Works, Islamabad and others 2000 SCMR 928; Gulshan Hussain and others v. The Collector, Islamabad Capital Territory and the Federal Government Employees Housing Foundation, Government of Pakistan through Secretary, Housing and Works 2000 YLR 1711; Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi PLD 1984 SC 170 and Anwar Hussain v. Agricultural Development Bank of Pakistan PLD 1984 SC 194 ref.

(e) Constitution of Pakistan (1973)--

----Art.199---Constitutional petition---Locus poenitentiae, principle of-- Cancellation of allotment of plot---Federal Government Employees Housing Foundation while acting as an official Organization, has framed a policy to regulate its business as per its declaration made in the Memorandum and Articles of Association---Despite the fact that the policy framed by the Foundation has no statutory force, still the Organization

is bound by its policy which is being implemented and followed as departmental instructions of the controlling ministry and mandatory rules---Violation of the policy is challengeable in High Court in its Constitutional jurisdiction-- Notwithstanding any procedural defect in the allotment of plots to the different categories of the employees of Federal Government, the Housing Foundation after making such allotments has no power to rescind the same in the light of principle of locus poenitentiae---Once an allotment is made and taken effect, the same would have legal protection and if in consequence to a subsequent act of Housing Foundation the right of an allottee is affected, such allottee can invoke the Constitutional jurisdiction of High Court to protect his right in the allotment---Entitlement of a person for allotment of plot in the Scheme of Housing Foundation or a right of allotment if already created is undone, on any ground, the aggrieved person can maintain a Constitutional petition in the High Court as the remedy of civil suit in such cases is not efficacious.

(f) Service Tribunals Act (LXX of 1973)---

---S.4---Allotment of plot to a civil servant---Appeal to Service Tribunal--Maintainability---Matter relating to terms and conditions of service---Federal Government Employees Housing Foundation floated a housing scheme for Federal Government employees---Respondent, being employee of Pakistan Broadcasting Corporation, applied for allotment of a plot in the category of civil servants---Housing Foundation declined allotment of plot to the respondent in category of civil servants and considered his application subject to his entitlement from the quota reserved for employees of autonomous bodies---Respondent assailed the act of the Housing Foundation before Service Tribunal in exercise of jurisdiction under S.4 of Service Tribunals Act, 1973---Service Tribunal allowed the appeal and directed the Housing Foundation to consider the application of the respondent in the category of civil servants---Plea raised by the Housing Foundation was that allotment or refusal of plot was not a matter relating to terms and conditions of service, hence jurisdiction of Service Tribunal could not be invoked-- Validity---Allotment of plot in housing scheme established by Federal Government Employees Housing Foundation could not be claimed as terms and conditions of service and not such right could be enforced through the remedy of appeal under S.4 of Federal Service Tribunals Act, 1973---Service Tribunal had no jurisdiction to entertain and adjudicate. the matter which had no nexus with the terms and conditions of service of a civil servant--Housing Foundation was established under the directive of Prime Minister/Federal Government as a welfare organization to establish residential colonies for its employees in Islamabad on ownership basis-- Employees of Federal Government could seek allotment of a residential plot in the scheme of the Housing Foundation as per their entitlement as of right but such right could not be claimed as "terms and conditions" of service as there was no rule under which a civil servant could claim allotment of a house or a residential plot on ownership basis as part of his terms and conditions of service in an official or semi-official scheme---Appeal before Service Tribunal would lie under S.4 of Service Tribunals Act, 1973, against an order passed by a Competent Authority in relation to terms and conditions of service of a person and not otherwise and thus neither the allotment of residential plot in the housing scheme of Federal Government Employees Housing Foundation could be claimed as terms and conditions of service nor such claim could be enforced through the remedy of appeal before the Service Tribunal---Appeal filed by respondent before the Service Tribunal in the present case was not maintainable and the Service Tribunal had no jurisdiction to adjudicate upon the matter---Supreme Court set aside the judgment passed by the Service Tribunal.

Abdul Rahim v. Pakistan Broadcasting Corporation 1992 SCMR 1213; Maqsood Ahmed Toor v. Federation of Pakistan through Secretary, Government of Pakistan, Ministry of Housing and Works, Islamabad and others 2000 SCMR 928 and Gulshan Hussain and others v. The Collector, Islamabad Capital Territory and the Federal

Government Employees Housing Foundation, Government of Pakistan through Secretary, Housing and Works 2000 YLR 1711 ref.

Syed Asghar Hussain Sabzwari, Advocate Supreme Court instructed by Ejaz Muhammad Khan, Advocate-on-Record for Appellants.

Nemo for Respondent.

Date of hearing: 11th April, 2002.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.---This is an appeal by leave of the Court under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, 1973, against the judgment dated 5-4-1997 passed by Federal Service Tribunal; Islamabad.

The appellant No.1, namely Federal Government Employees Housing Foundation, a company by guarantee, has filed this appeal through its Director-General. The appellant No.2 is the Secretary, Ministry of Housing and Works, Government of Pakistan, Islamabad. The Federal Government Employees Housing Foundation is incorporated under Companies Ordinance, 1984, which was formed to accomplish welfare projects of establishing residential colonies on ownership basis for the Federal Government Employees. The appellants with a view to establish a housing scheme in Phase-III acquired land through Land Acquisition Collector, Islamabad in residential (Sector G-13) of the Islamabad Capital Territory. The executive body of appellant No.1 invited applications from the employees of Federal Government who fulfilled the criteria for eligibility given in the brochure of the housing scheme for allotment of residential plots in the said scheme through publication in the newspapers. The Housing Foundation earmarked different categories as special quota and fixed 10 percent. plots in the scheme for the employees of Federal Government autonomous bodies, semi-autonomous bodies and corporations under the control of Federal Government such as Telecommunication Corporation and Pakistan Broadcasting Corporation (PBC). The respondent being an employee of Pakistan Broadcasting Corporation applied for allotment of the plot in the Housing Scheme Phase-III (Sector G.13, Islamabad) floated by the Foundation on the basis of his eligibility as civil servants. The application of the respondent was rejected on the ground that he being not a civil servant was not entitled for allotment of the residential plot in the category of civil servants and that his application would be considered subject to his entitlement from the quota reserved for employees of autonomous bodies. The respondent being aggrieved of the rejection of his application by the Housing Foundation for allotment of plot in his capacity as civil servant, filed an appeal before the Federal Service Tribunal under section 4 of the Federal Service Tribunals Act, 1973, and the Tribunal vide the impugned judgment allowed the appeal with the following observations:--

"As stated earlier, the appellant was a civil servant and fell within the definition of the 'civil servant' and the terms and conditions for allocation/distribution of plots and, therefore, we accept this appeal set aside the impugned order and direct that the appellant may be considered for the allotment of plot in Sector G-13, Islamabad, out of the quota reserved for the civil servants."

The Housing Foundation has challenged the judgment of Service Tribunal firstly, on the ground that the appeal against rejection of the application of the respondent for allotment of a residential plot in the housing scheme of the appellants was not maintainable and secondly, the grievance of the respondent would not be related to the terms and conditions of his service, therefore, the Tribunal has no jurisdiction to take the cognizance of the matter. Precisely the plea of the appellants was that the grievance voiced by the respondent before the Service Tribunal being not arising out of an order

passed by the departmental authority in connection with the terms and conditions of service of the respondent, the same was neither challengeable before the Tribunal through an appeal under section 4 of the Service Tribunal Act, 1973, nor it was adjudicable by the Tribunal. It was pleaded that the policy framed by the Housing Foundation, a welfare organization which has been established by the Federal Government in the form of a company incorporated under Companies Ordinance, 1984 for allotment of residential and commercial plots in its housing scheme, would have no force of law to be claimed as part of terms and conditions of service rather would only be a privileged and the verdict given by the Federal Service Tribunal was without lawful authority. The appellant also disputed the status of the respondents as civil servant to claim allotment of plot in the scheme in such capacity. The respondent originally was an employee of the Federal Government and on the establishment of Pakistan Broadcasting Corporation under Pakistan 'Broadcasting Corporation Act, 1973, he was transferred to the said corporation on the same terms and conditions to which he was entitled in his parent department. In view of law laid down by this Court in the case of Abdul Rahim v. Pakistan Broadcasting Corporation (1992 SCMR 1213) the status of respondent as a civil servant would no more be in dispute, therefore, this question would need no debate.

Leave to appeal was granted in this appeal to consider the question whether the allotment of plot claimed by the respondent in the housing scheme of the Housing Foundation fell within the terms and conditions of service so as to attract the jurisdiction of Federal Service Tribunal established under Federal Service Tribunals Act, 1973.

The Federal Government Employees Housing Foundation was established as a company under Companies Ordinance, 1984 in pursuance of a decision taken by the Cabinet under the directive of the Prime Minister and its control was given to the Ministry of Housing and Works, Government of Pakistan as an official agency of the said Ministry, therefore for proper adjudication of the issues involved in this appeal, it will be essential to determine the true character and status of the Housing Foundation. registered company and whether the employees of the Federal Government can claim allotment of the residential plots in the housing schemes established by the Housing Foundation as terms and conditions of their service and such right is enforceable by way of the service appeal before the Service Tribunal, established under Federal Service Tribunals Act; 1973.

In this context, we before proceeding further would like to examine the object and purpose of establishment of the Federal Government Employees Housing Foundation and the salient features of its projects. The declaration of object made by the Housing Foundation in the Memorandum and Articles of Association is to provide houses to Federal Government Employees in Islamabad on ownership basis under the management and control of Ministry of Housing and Works, Government of Pakistan. The object and purpose has been described in the brochure of the scheme as under:--

"Introduction

"Shelter is the basic human need like food and clothing. A welfare State committed to the development of society and betterment of its people must give high priority to providing basic necessities to its citizens. In this endeavour, importance of decent housing and proper residential environment cannot be over emphasized. Direct and indirect contribution of housing programmes to the national economy and a positive in between housing and productivity has long been universally.

2. The Federal Government took a major initiative to prove shelter to its employees by launching a self-financing housing scheme for them on ownership basis in Islamabad in 1988. Being the first venture of its kind, there was tremendous response from the Federal Government, employees who welcomed and deeply appreciated the scheme.

The second phase of the Housing Scheme was launched in March, 1992 which provided a major breakthrough to overcome the acute shortage of housing in the Federal Capital. Subsequently, similar housing schemes were launched at Karachi and Peshawar to meet the growing demand of the Federal Government employees.

3. The Federal Government Employees Housing Foundation was set up in March, 1990, and registered as a company limited by guarantee under the Companies Ordinance, 1984. It was entrusted with the task of implementing the self-financing housing schemes on ownership basis for Federal Government employees. Within a span of five years, about 1600 houses were constructed under the said scheme in Islamabad and about 4000 plots were allotted to the successful applicants with an option to undertake construction under their own arrangements.

Management

The Federal Government Employees Housing Foundation has a three-tier management system a Board of Governor headed by the Ministry for Housing and Works: an Executive Committee headed by the Secretary, Housing and Works and a Directorate General headed by a Senior Engineer designated as Director-General.

2. The Board of Governors, which gives policy directions to the Execution Committee, consists of the following by virtue of their offices:--

(i) Minister for Housing and Works	Chairman
(ii) Secretary, Works Division	Vice-Chairman
(iii) Secretary, Cabinet Division	Member
(iv) Secretary, Establishment Division.	Member
(v) Secretary, Finance Division	Member

The Executive Committee, which exercises all powers, delegated by the Board for effective control, management, supervision and evaluation of all activities of the Housing Foundation is composed of the following by virtue of their offices:--

(i) Secretary, Housing and Works Division,	Chairman
(ii) Joint Secretary (Works)	Vice-Chairman
(iii) Director-General Pak PVID	Member
(iv) Joint Secretary Cabinet Division	Member
(v) Financial Advisor, Works Division	Member
(vi) Joint Engineering Advisor Works Division	Member
(vii) Deputy Secretary (Adorn.) Works Division	Member
(viii) Director-General FGE Housing Found.	Member

Terms and conditions:

Allocation/distribution of the plots

5. The available residential plots shall be distributed among the various categories of applicants who fulfil the criteria for eligibility as given below:--

(a) Judges of the Supreme Court, High Courts and Federal Shariat Court and Federal Government employees who have been declared as civil servants as defined under Civil Servants Act, 1973 (including civilian employees paid from defence estimates) and were in service on 1-4-1996...77%

(b) Employees of autonomous/semi-autonomous organizations and public sector Corporations under the administrative control of the Federal Government (including

employees serving in the Federal Government Employees. Housing Foundation), who were in service on 1-4-199610%

(c) Journalist ..3 %

(d) Widows of those eligible Federal Government employees governed under Civil Servants Act, 19735%

(e) Widows of those eligible Federal Government employees who died during service or those Federal Government employees who became disabled during service or extremely hardship cases5%

Note.--Armed Forces personnel are not eligible .to participate in the scheme.

Procedure for allotment

(a) The applications received from the Judges shall be forwarded to the Law and Justice Division for their scrutiny and their recommendations for allotment in the light of the laid down criteria for eligibility and allotment of plots as in the cases of other civil servants as defined under Civil Servants Act, 1973.

(b) Allotment to the Journalist shall be made on the recommendations of the Ministry of Information and Broadcasting who will draw up criteria for the purpose.

(c) The applications received from the Federal Government employees and employees of the autonomous/semi-autonomous organizations and public sector corporations under the administrative control of the Federal Government including those of the retired employees shall be scrutinized by the Housing Foundation.

Criteria for allotment

(a) Mode of scrutiny of applications and seniority for the purpose of allotment shall be determined in the order of the date of birth of the applicant. In case of widows of the Federal Government Employees, and those who became disabled during service, the seniority shall be determined on the basis of length of Federal Government service of the deceased/disabled employee.

(b) First priority shall be given to those applicants who or whose spouse(s) or any other member of their families neither own plot/house in Islamabad on 1-4-1996, nor any plot/house was ever allotted to them by the C.D.A., Federal Government Employees Housing Foundation, Defence Housing Authorities. Each applicant shall have to submit an affidavit to this effect duly countersigned by a First Class Magistrate. If at any stage, contents of the affidavit are found to be fictitious or false or any material facts found to have been concealed/misstated or suppressed deliberately and knowingly, the allotment will be cancelled. In addition, the amount deposited will be forfeited and such legal- action as deemed appropriate will also be taken.

(c) Second priority shall be given to those applicants who or those spouse(s) and any other member of their families own plot/house in Islamabad on 1-4-1996 but were never allotted a plot in Islamabad by the C.D.A., Federal Government Employees Housing Foundation/Defence Housing Authorities or any other authority."

This is correct that nor is performing sovereign functions rather by its character, it is functioning as an agency of Ministry of Housing and Works, Government of Pakistan and is enjoying the status of an official body of the said ministry. The Housing Foundation, as per its declared objects and purposes, has undertaken the function of establishing the projects for providing residential houses to the Federal Government Employees as a welfare institution without any financial gain. The Housing Foundation

is not as such being financed from the public exchequer but its affairs are being fully managed and controlled by the machinery of the State and its functionaries are being paid from the public exchequer. The Housing Foundation is operating in the capital area and after acquiring land in the capital territory of Islamabad, through Land Acquisition Collector under Land Acquisition Act, 1894, has prepared the housing schemes for allotment of residential plots to the Federal Government Employees.

According to the Master Plan of Capital Territory of Islamabad, the development schemes in the capital area are governed by the Capital Development Authority Ordinance, 1960 and the construction in the residential sectors is regulated by CDA Building Regulations, 1993. The Capital Development Authority, Islamabad has allocated Sector G-17 for establishing private housing schemes by the private companies incorporated under Companies Ordinance, 1984 and under the scheme of law no such project can be established by a private body in any other sector including G-13, under the CDA Ordinance, 1960. It is the function of Capital Development Authority to prepare housing schemes in all other residential sectors except G-17 for allotment of plots to the public in general in the prescribed manner. The Federal Government Housing Foundation in its capacity as an official agency of Ministry of Housing and Works, Government of Pakistan with the approval of the Cabinet Division and CDA established the housing scheme in Sector G-13 in departure to the scheme of law as the Foundation is being run by the Ministry of Housing and Works, Government of Pakistan on official pattern by the functionaries of the said ministry through the use of State machinery. The land for the housing project is acquired under Land Acquisition Act, 1894 for the benefit of the employees of Federal Government and the project of foundation is directly operated by the Executive Committee and governing body of the Foundation headed by the Minister and Secretary, Ministry of Housing and Works, Government of Pakistan respectively and thus by ostensible character, the Housing Foundation despite being a registered company, is discharging functions in connection with the affairs of the Federal Government as its official agency. The area of Sector G-13 where the Housing Foundation has established its housing scheme was earmarked as public sector in the master plan to be developed by the CDA and the plots in the said sector were to be sold to public in general in the prescribed manner and every citizen of Pakistan would be entitled to the allotment of the residential and commercial plot in the said sector from the CDA but the area of said Sector was allocated for Housing Foundation by the CDA under the direction of Federal Government and in preference to the public purpose, the land in the said sector was acquired by the Housing Foundation for the benefit of a limited class of employees of the Federal Government. The Housing Foundation thus by virtue of its object and purpose has acquired the status of an official organization in the form of a company incorporated under the Companies Ordinance, 1984, which is functioning under the direct control of Ministry of Housing and Works, Government of Pakistan, as its official wing and is recognized as an agency of the Federal Government. It will not be "out of place to mention here that Mr. Justice Muhammad Bashir Jehangiri retired Chief Justice of Pakistan while discharging his functions as Wafaqi Mohtasib (Ombudsman) while dealing with a complaint against Federal Government Housing Foundation observed as under:--

"For execution of its schemes the Housing Foundation does not buy land from the market but acquires land through CDA or other Government agencies under the Land Acquisition Act, 1894. In fact, for some schemes CDA had directly given the land to the Housing Foundation for execution thereof. Such facility is certainly not available to other private agencies.

The Director-General and other senior officers of the Housing Foundation are appointed by the Federal Government as on deputation from other Government Departments. There will not be any private company where Federal Government lends the services of civil servants. As held in Central Board of Revenue and Others versus S.I.T.E. (PLD 1985 Supreme Court 1997), when the

veil is lifted, it reveals that the Housing Foundation is functioning/operating just like a department of the Government notwithstanding its incorporation on the basis of contributions of the Government employees. "

(Underlining is by us to provide emphasis).

It is also noticeable that the Federal Government Employees Housing Foundation submitted report in this Court in CPLA No.614 of 1997 wherein it was stated that in pursuance of decision of Cabinet in the meeting held on 20-12-1993, a Committee was constituted under the chairmanship of Cabinet Secretary to look into the possibility of housing scheme and the said Committee after detail deliberations made the following recommendations:--

"(i) The Federal Government Employees Housing Foundation may acquire the land in Sector G-13, Islamabad through DC, Islamabad under Land Acquisition Act, 1894 for the proposed housing schemes. The existing charter of the Housing Foundation was reasonably broad-based and would require no change for the implementation of the Scheme.

(ii) Only plots may be provided to the target groups instead of constructed houses.

(iii) The Housing Foundation may draw up detailed proposals for implementing the scheme after approval in principle to the above recommendations. "

The above recommendations were approved by the then Prime Minister as contained in an office memorandum of the Cabinet Division and in the light thereof, the Board of Governors headed by the Minister for Housing and Works while taking essential steps to implement the schemes made necessary decision in the meeting held on 3-10-1994.

We may observe here that Federal Government Employees Housing Foundation having assigned the role of an agency of Federal Government was working for the benefit of employees of Federal Government including the employees of the Institutions, Corporations and Organizations controlled by the Federal Government and would stand on different footing to that of the private companies incorporated under the Companies Ordinance, 1984. Consequently, the grievance of a person relating to the policy of allotment of plots by the Housing Foundation or an act done by its functionaries in breach of its policy or infringement of any right of any individual under the said policy shall be adjudicable by an appropriate forum and notwithstanding non-statutory status of Housing Foundation, it being an official body while following its rules in conduct of its business must act fairly, justly and in accordance with law. The acquisition of land by Housing Foundation through Land Acquisition Collector, preparation of schemes, allotment of residential plots and the ancillary and incidental matters, must be dealt with by the functionaries of Housing Foundation in strict observance of law and in case of any breach an aggrieved person can bring a suitable action against the Federal Government Housing Foundation by invoking the jurisdiction of an appropriate forum.

Learned Deputy Attorney-General, appearing on behalf of the appellants-Housing Foundation, while placing reliance on *Maqsood Ahmed Toor v. Federation of Pakistan* through Secretary Government of Pakistan Ministry of Housing and Works, Islamabad and others (2000 SCMR 928) contended that the allotment of a residential plot by the Housing Foundation would not fall within the definition of terms and conditions of service of a civil servant or an employee of a Corporation, therefore, no such right can be enforced as term and condition of service under Civil Servants Act, 1973, through an appeal before the Service Tribunal and the said Tribunal would have no jurisdiction to entertain and adjudicate such an appeal. The learned Deputy Attorney-General added that in an identical situation in the above-referred case, this Court has held that the allotment of a plot in a scheme floated under any policy decision of the

Government or a non-statutory company, is not enforceable as of right and it is not a term and condition of service of a civil servant. It was also held that Housing Foundation being not a statutory body was not amenable to the Constitutional jurisdiction of the High Court. The relevant paras. from the above-referred judgment containing the observation relating to the status of Housing Foundation are reproduced hereunder:--

"10. We are least impressed by the submission of the counsel as the question of jurisdiction of the Court and maintainability of the petition being admitted facts can be lawfully allowed to be raised before this Court. It is not disputed that the petitioners are essentially seeking the enforcement of their right as civil servants against the Foundation and not against the Federation of Pakistan which has been impleaded as respondent No.1 only to confer jurisdiction on the High Court. Undoubtedly, respondent No.2 by virtue of its registration under, the, Companies Ordinance, 1984 does not enjoy the status of a statutory corporation established and controlled by the Federation, nor is it performing any of sovereign functions of the State so as to be declared as a body corporate performing functions in connection with the affairs of the Federation. We are fortified in this view by the case reported as Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244) wherein it was held that private organization or persons as distinguished from Government or Semi-Government agencies and functionaries cannot be regarded as persons performing functions in connection with affairs of Federation or province simply because their activities happen to be regulated by laws and by State. It was observed that persons, including body corporate, can be regarded as persons performing functions in connection with affairs of Federation etc. if functions entrusted to them are indeed functions of State or if control of organization vests substantially in hands of Government. Evidently respondent No.2 has not been entrusted with performance of State functions.

11. Identical view was expressed by a Division Bench of the High Court of Sindh, of which one of us (Rang Bhagwandas, J.) was a member, in Noor Jehan Shah v. Pakistan Defence Officers Housing Authority (1997 MLD 2261), wherein following principle laid down in Salahuddin's case (supra) was reiterated:--

'The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public powers whether the control of the organization in a substantial manner is in the hands of Government, and whether the bulk of the funds is provided by the State.'

12. Alternatively, it may be observed that assuming for the sake of argument that the petitioners be treated as civil servants as defined under the Civil Servants Act, on the crucial date, obviously they do not have a right guaranteed under the law or -the Constitution in relation to their terms and conditions of the service which may be enforced in the Constitutional jurisdiction of the High Court. Surely, there is no right to allotment of a plot of the Government accommodation in a scheme floated under any policy decision of the Government or a statutory corporation. Reference in this behalf may be made to the view expressed in Amin-ur-Rehman Khan v. Pakistan through Secretary, Ministry of Works (1989 SCMR 1948).

13. For the aforesaid facts and reasons, both the petitioners are without any merit and are hereby dismissed. Leave to appeal is accordingly declined. "

We having gone through the judgment in question find that the essential characteristics and features of the Housing Foundation, an agency of the Federal Government, being run in the Ministry of Housing and Works, Government of Pakistan under the control of the Board of Governors headed by the Minister for Housing and Works through its

executive committee which is chaired by the Secretary, Housing and Works, have not been brought to the notice of the Court to distinguish it from a private company registered under Companies Ordinance, 1984. The Housing Foundation was initially established on the directive of Prime Minister and for all intents and purposes its control was given to the Ministry of Housing and Works, Government of Pakistan and thus while acting as an official agency of Federal Government was indirectly discharging the functions in connection with affairs of the federation and by implication would be a part of Ministry of Housing and Works, Government of Pakistan. We may point out that in an identical matter, one of us (Muhammad Nawaz Abbasi, J. as Judge of the High Court) while disposing of a writ petition titled Gulshan Hussain and others v. The Collector, Islamabad Capital Territory and the Federal Government Employees Housing Foundation, Government of Pakistan through Secretary Housing and Works reported in 2000 YLR 1711 held as under:--

"15. The first question requiring consideration is regarding the maintainability of this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, against the Housing Foundation, a registered company. The petitioners through this petition have not only challenged the notifications on technical ground but they have also questioned the notifications under section 4 and section 17(4) of the Land Acquisition Act 1894, on a substantial question law that the land being acquired by the Land Acquisition Collector for Housing Foundation was not a 'public purpose'. Therefore, the objection that the Housing Foundation being a registered Company, which is beneficiary of the land, is not amenable to the writ jurisdiction of this Court has no force. The notification for acquisition of land under challenge has been issued by the Land Acquisition Collector, Islamabad, and not by the Housing Foundation, therefore, the objection is not entertainable and the petitioners can competently invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, in the matter. It may also be observed that despite the fact that the Housing Foundation is a registered Company, but is being run officially by the Federal Government and thus had assumed as role of an Official Agency of Federal Government under the direct control of the Federal Government. The members of the Executive Committee and the Board of Governors act ex officio in their official capacity. The machinery of Federal Government is being utilized in the management of the affairs of the Housing Foundation and practically this Foundation having acquired the character of an official Organization discharges its function in connection with the affairs of Feral Government. Therefore, it is difficult to digest that such Government-controlled and supervised Companies are not amenable to the judicial review of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

16. The second question relates to the acquisition of land by a Company for a Housing Scheme. The land forming part of Capital Territory, Islamabad, is utilized under Capital Development Authority Ordinance, 1960, under the Zoning System according to which a private Housing Scheme can only be established in Zone 5 and the Housing Foundation, a registered company, which is being run under 'the direct control of Federal Government got the land acquired for its scheme in an area which was to be offered for sale to public in general after acquisition by the C.D.A. for establishment of a housing scheme by the C.D.A. for the benefit of public in general and the plots were to be allotted to the individuals through ballot on invitation of applications from the public in general. The Housing Foundation while restricting the benefit of this land to a limited class of civil servants of Federal Government has deprived a common person to acquire the property through C.D.A. in Islamabad in violation of Article 23 of the Constitution of Islamic Republic of Pakistan, 1973. The Housing Foundation for the benefit of a limited class of persons while assuming the role of an official Agency on the pretext of "public interest" acquired the land to utilise the same to establish the individual interest, therefore, this Court in public interest litigation can extend its

jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, to examine the validity of acquisition and its purpose. The apex Court in *Fauji Foundation v. Shamimur Rehman* (PLD 1983 Supreme Court 457) held as under:

'Here I may add that the power of eminent domain is a propriety aspect of sovereignty, and is inseparable from it, and the justification for acquisition of property for "public purpose" is on the principle that the interest of the public are paramount and that private interests have to be subordinated to public interests and the necessities of Government. This right is constitutional as a private property can: be expropriated save in accordance with law and that too for a public purpose and on payment of compensation. This fundamental right also provides an exception whereby property can be compulsorily acquired despite the aforesaid limitation, as, for instance clause (3) of Fundamental Right NoA4 of the 1962 Constitution, clause (3) of Article 21 of the Interim Constitution of 1972 and clause (3) of Article 24 of the 1973 Constitution.'

17. The acquisition of land for a 'public purpose' for welfare of the community or general utilization would not be against law and unconstitutional and advance spirit of principles of policy as provided under Chapter 2 of the Constitution of Islamic Republic of Pakistan, 1973 read with Objectives Resolution, 1949, which has been made part of the Constitution by virtue of Article 2A of the Constitution but the distribution of State or a private property as booty is prohibited. The private property of the people cannot be required for individual benefit of others except for public purpose. This may be pointed out that during the period of Hazarat Umar at one occasion such a situation had arisen with regard to some land and the Mujahideen demanded the distribution of said land to them but the Caliph refused to give the said land to the Mujahideen with the consideration that Islam strictly prohibits the establishment of an individual interest in the State property in preference to the public interest.

As observed in the preceding paragraph that the Housing Foundation like such other Companies can establish a Housing Scheme in the specified Zone for its members but cannot establish such scheme in an area of remaining residential sectors except the specified Zone 5 for such schemes and thus the Housing Foundation cannot be allowed to establish a private scheme in regular sectors for individual interest of civil servants in violation of general policy as a special case and privilege. Therefore, the foundation in the light of the definition of 'public interest' unless includes all the employees of the Federal Government inside or outside Islamabad and all the those persons who are discharging functions in connection with the affairs of the Federation such as employees of the National Assembly, Election Commission of Pakistan, Supreme Court of Pakistan, the Employees of High Court discharging function at Rawalpindi Bench of Lahore High Court, Federal Shariat Court and the Autonomous Bodies, Corporations, Institutions, Government or semi-Government Organizations which are directly or indirectly discharging the functions under the control of the Federal Government, Doctors, Engineers, Lawyers and Educationists, who in any manner are connected with the Federal Government and Federation in public or private sectors and are bona fide running their affairs in Islamabad, such-like Journalists, the acquisition of land for a Housing Scheme exclusively for the benefit of limited class of civil servants in Sector G-13 will not be in the 'Public interest'. Similarly, the senior members of the Armed Forces who having completed their service are at the verge of their retirement or being in the retirement tenure or retired are discharging their function at their Headquarters in Islamabad and Rawalpindi are also entitled to be given representation in the Housing Scheme of Housing Foundation like the members of the superior judiciary. Thus, the Housing Foundation without extending the benefit of the scheme to the public and private sectors on the basis of a reasonable classification and ratio by including people from every

walk of life in, official or semi-official position cannot justifiably acquire land for the benefit of only for the employees of Federal Government in Sector G-13 as such, employees are not definable as a Community for the purpose of public purpose. Therefore, the Housing Foundation notwithstanding its Memorandum and Articles of Association without enlarging the purpose of acquisition of land to the general use for benefit of public-at-large can neither establish such scheme out of Zone-5 nor use the machinery of law and Government for such purpose."

The position relating to the status and functions of Federal Government Housing Foundation described above is also fortified by the Ombudsman referred hereinbefore passed in a complaint (Reg. and 44 others) against the Federal Government Employees. The similar view was taken by this Court in *Principal, Kohat v. Muhammad Shoab Qureshi* (PLD 1984 SC 170). It was held in *Anwar Hussain v. Agricultural Development Bank of Pakistan* (PLD 1994 SC f 94) that the Rules, Regulations and Orders of such a body shall have force of law and should be treated at par to that of the statutory rules. We may observe that there can be no cavil to the proposition that the acquisition of the private land for a purpose other than the public purpose is not legal and such acquisition for the personal benefit of a particular class of employees would not be in the public interest. We are therefore, of the view that there can be no exception to the view taken in the judgment of the High Court (2000 YLR 1711) (*supra*).

Keeping in view the ratio of the above-referred two judgments, there can be no cavil to the proposition that ordinarily a company registered under the Companies Ordinance, 1984, if is not controlled by the Government and its status and character is not that of an agency of Government, would not be amenable to the writ jurisdiction of the High Court but a company like Federal Government Employees Housing Foundation which is functioning under the direct control of the Federal Government and its affairs are being run by the functionaries of the Government cannot claim an immunity from judicial scrutiny of a decision made by its functionaries if the same is found against its declared policy or infringes the rights of its beneficiaries. The Housing Foundation by virtue of its character and functions and distinguishable features having assumed the role of an official agency of Federal Government would not stand at par to that of the private companies registered under the Companies Ordinance, 1984, and thus for all practical purposes would be deemed as an official body of Ministry of Housing and Works, Government of Pakistan, therefore, its acts and deeds shall be subject to the judicial review of the superior Courts. Consequently, in the matters arising out of acquisition of land by the Foundation through Land Acquisition Collector, preparation of schemes, allotment of residential and commercial plots or an ancillary and incidental matter, an aggrieved person can avail the remedy of civil suit or invoke the Constitutional jurisdiction of the High Court. The offices of the Housing Foundation are being managed and controlled by the functionaries of Federal Government in their official capacity, through Ministry of Housing and Works, Government of Pakistan, therefore, if an action of such public functionaries infringes the rights of a person guaranteed under the declared policy of the Housing Foundation, it shall not be exempted from scrutiny by the superior Courts in exercise of their powers of judicial review. We having noted the distinguishable features of Federal Government Employees Housing Foundation do not agree with the view taken in *Maqsood Ahmed. Toor v. Federation of Pakistan* (2000 SCMR 928) regarding the non availability of the remedy-of writ petition against the Housing Foundation, a registered company. The Federal Government Employees Housing Foundation despite being incorporated as a company under Companies Ordinance, 1984, while functioning under the control of the Federal Government is recognized as an official agency and not a private body against which the remedy of writ petition cannot be availed by an aggrieved person. We therefore, while taking a contrary view hold that a person being aggrieved of an action of the Housing Foundation either in relation to his right and entitlement of a plot or in any other matter of public importance, can maintain a writ petition. We may

observe that an immunity can be claimed by an official body for violation of rules framed by such body on the plea that non-statutory rules cannot be assailed but the departmental instructions/non-statutory rules framed by such official bodies become enforceable in law without any prohibition in case of the breach of the non statutory rules/instructions being continuously and consistently acted upon by such an official agency.

We may add that Housing Foundation while acting as' an official organization, has framed a policy to regulate its business as per its declaration made in the Memorandum and Articles of Association and despite the facts the said policy has no statutory force, still the organization would be bound by its policy which is being implemented and followed as departmental instructions of the controlling ministry and mandatory rule, therefore, the violation of said policy would be challengeable in the High Court in its Constitutional jurisdiction. Notwithstanding any procedural defect in the allotment of plots to the different categories of the employees of Federal Government, the Housing Foundation after making such allotments has no power to rescind the same in the light, of principle of locus poenitentiae and once an allotment is made and taken effect, the same would have legal protection and in consequence to a subsequent act of Housing Foundation the right of an allottee is affected, such allottee can conveniently invoke the Constitutional jurisdiction of-High Court to protect his right in the allotment. In nutshell, the entitlement of a person for allotment of a plot in the scheme of Housing Foundation or a right. of allotment if already created is undone, on any ground, the aggrieved person can maintain a writ petition in the High Court as the remedy of civil suit in such cases is not an efficacious.

In the light of, foregoing discussion, the question relating to the allotment of plots in the housing scheme of the Housing Foundation to the civil servants as a part of their terms and conditions of service and enforcement of such rights by way of invoking the jurisdiction of the Service Tribunal under Service Tribunals Act, 1973 is answered in the negative and the contention of the learned Deputy Attorney General in this behalf is correct. We therefore, hold that the allotment of a plot in the housing scheme established by the Housing Foundation cannot be claimed at terms and conditions of service and no such right can be enforced through the remedy of appeal under section 4 of the Federal Service Tribunals Act, 1973. We also hold that the Federal Service Tribunal has no jurisdiction to entertain and adjudicate the matters which have no nexus with the terms and conditions of service of a civil servant. We have noted that Housing Foundation was established under the directive of the Prime Minister/Federal Government as a welfare organization to establish residential colonies for its employees in Islamabad on ownership basis and undoubtedly, the employees of Federal Government can seek allotment of a residential plot in the scheme of Housing Foundation as per their entitlements as of right but such right cannot be claimed as terms and conditions of service as there is no rule under which a civil servant can claim allotment of a house or a residential plot on ownership basis as part of his terms and conditions of service in an official or semi-official scheme.

Under section 4 of the Federal Service Tribunals Act, 1973, an appeal before the Federal Service Tribunal would lie against an order passed by a competent authority in relation to the terms and conditions of service of a person and not otherwise and thus neither the allotment of residential plot in the housing scheme of Federal Government Employees Housing Foundation can be claimed as terms and conditions of service nor such claim can be enforced through the remedy of an appeal before the Service Tribunal and consequently the appeal filed by respondent before the Service Tribunal was not maintainable and further the Service Tribunal also had no jurisdiction to adjudicate upon the matter.

For the foregoing discussion, we hold that:--

(a) An action, of the Housing Foundation, in relation to any matter concerning with policy and the rights of the employees of Federal Government or any other person, is subject to judicial scrutiny either in the civil suit or a writ petition in the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

(b) The allotment of residential plot in the housing scheme of Housing Foundation cannot be claimed as terms and conditions of service by a civil servant to be enforced through a service appeal before the Federal Service Tribunal established under Federal Service Tribunals Act, 1973.

In the light of legal position explained above, we set aside the impugned judgment -of the Federal Service Tribunal and allow this appeal with no order as to costs.

Q.M.H./M.A.K./F-68/S Appeal allowed.

