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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 20906 / 2023

Public Interest Law Association of Pakistan

Versus

Federation of Pakistan & 08 others

JUDGMENT

Date of Hearing:	29.05.2023
Petitioners By:	Mr. Ahmad Rafay Alam, Advocate Mr. Fahad Malik, Advocate Mr. Zohaib Babar, Advocate M/s. Muhammad Asad Manzoor Butt and Afzaal Hussain Hashmi, Advocates in connected W. P. No. 27115 / 2023 Mian Khadim Hussain and Anwar-ul-Haq, Advocates in connected W. P. No. 20457 / 2023 Mr. Shahid Shahood Randhawa, Advocate / Petitioner in connected W. P. No. 23256 / 2023 Malik Yasir Abbas Khokhar, Advocate in connected W. P. No. 28283 / 2023
Respondents By:	Mirza Nasar Ahmad, Additional Attorney General for Pakistan Mr. Ali Jaffer Khan, Assistant Attorney General for Pakistan Khawaja Aurangzeb Alamgir, Assistant Attorney General for Pakistan Mr. Muhammad Osman Khan, Assistant Advocate General assisted by Mr. Sikandar Nisar Saroya, Assistant Advocate General, Javed Iqbal, Law Officer, Zafar Iqbal, Dy. Director, Hafiz Muhammad Ijaz, Section Officer (Extension), Agriculture Department; Farrukh Tufail, D.S. Colonies,

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	Qamar Abbas, Consultant, Colonies Department; Abid Hussain Bhatti, Senior Law Officer, Anwaar-ul-Haq, Conservator of Forests (RM), Nadeem Ashraf, Divisional Forest Officer and Muhammad Javed Gill, Chief Conservator of Forest (CZ), Forestry, Wildlife and Fisheries Department; Dr. Syed Nadeem Badar, D.G. (Planning); Dr. Muhammad Asim, AS (Planning), Muhammad Badar, Departmental Representative, office of Director General Planning; Hassan Ashfaq and Sehar Ch., Law Officers, Irrigation Department

ABID HUSSAIN CHATTHA, J: This Judgment shall decide the titled and four (04) connected W. P. Nos. 20457, 27115, 28283 and 23256 of 2023 involving identical questions of law and facts. In essence, common challenge is posed to an arrangement between the Government of the Punjab (the "**GOP**") and the Pakistan Army, a branch of the Armed Forces of Pakistan that envisages the transfer of more than one million Acres of State land vested in the Province of the Punjab or its Departments to the Pakistan Army to venture into Corporate Agriculture Farming (the "**CAF**") on profit sharing basis. The plan after passing through legal processes during the period of caretaker government was accorded approval by the caretaker Cabinet of the Province of the Punjab (the "**Caretaker Cabinet**" or the "**Caretaker Government**" as the context may admit) on 09.02.2023 and formal notification No. 197-2023/0334-CS.II(IX) dated 20.02.2023 (the "**Notification**") was issued under Section 10 of the Colonization of Government Lands (Punjab) Act, 1912 (the "**Colonization Act**"). Pursuant thereto, a Joint Venture Management Agreement dated 08.03.2023 (the "**JVA**") was executed between the GOP and the Pakistan Army. The process of bestowing State land by the Caretaker Government to the Pakistan Army for CAF culminating into the Notification, the JVA and subsequent developments were assailed before this Court.

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I FACTS

2. The unfolded story revealed by the GOP suggests that in order to address the challenge of food insecurity, the GOP conceived the proposal to initiate CAF in the year 2021. The concept of CAF connotes large scale, systematic and organized farming to maximize production with improved quality. It is not limited to the management of farm and agriculture alone but also includes distribution, marketing, export, research and development, better utilization of water resources through innovative irrigation techniques, growth of livestock and preservation of biodiversity. The adverse and detrimental effects of climate change heightened the need to initiate CAF to bring maximum land under cultivation and optimize crop productivity through economy of scale and transfer of technology with the ultimate objective to ensure food security.

3. The Colonies Department of the Board of Revenue, Punjab (the "**BOR**") submitted a summary to the elected government headed by the then Chief Minister, Punjab on 25.06.2021 proposing Statement of Conditions (the "**SOCs**") for CAF. Subsequently, the summary was placed before the elected Cabinet of the Province of Punjab (the "**Elected Cabinet**" or "**Elected Government**" as the context may admit) in its 51st meeting held on 28.02.2022 under Agenda No. 19 titled as, "*Terms & Conditions for Corporate Farming under CPEC".* The term CPEC is an abbreviation of 'China Pakistan Economic Corridor' and refers to a long-term initiative between the Federation of Pakistan (the "**FOP**" or the Federal Government as the context may admit) and People's Republic of China involving multiple projects. The Senior Member, Board of Revenue, Punjab (the "**SMBR**") briefed the Elected Cabinet that the GOP had decided to promote CAF on accessible cultivable / fellow State wasteland. Accordingly, the matter was examined by the BOR and following SOCs were proposed:-

(Emphasis supplied)

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(i) LEASE

State land shall be granted on lease to the applicant / company. In case of more than two applicants / companies, land shall be given on lease through open auction.

(ii) RENT

The current market rent assessed by District Rent Assessment Committee approved by Provincial Price Assessment Committee shall be applicable. In case of more than two applicants / companies, the base rent for auction shall be assessed by District Rent Assessment Committee and approved by Provincial Price Assessment Committee.

(iii) INCREASE IN RENT

The rent shall be increase @ 10% after every year. In case of barren state land, increase shall be made subject to the recommendation of District Collector concerned and approved by the BOR.

(iv) PERIOD

The tenancy granted on these conditions shall be for a period of 20 years.

(v) RENEWAL OF LEASE

The lease may be renewed on the recommendations of District Collector concerned and approved by the BOR subject to satisfactory performance according to the terms and conditions.

(vi) PURPOSE OF LEASE

The land shall be used for the following purposes:-

i. Import substitution
ii. Food security
iii. Standardization & maximization of seed productivity
iv. Any other purpose relating to the Agricultural Sector as deemed appropriate by the GOP from time to time.

(vii) SIZE OF TENANCY

The ceiling of land shall be five hundred acres or above.

(viii) EQUITY

The companies will be allowed to invest 100% foreign, 100% local or mix equity with foreign or local sharing both.

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(ix) INCORPORATION IN PAKISTAN

The companies shall be incorporated in Pakistan under Companies Ordinance, 1984

Or

At least one Joint Venture (JV) shall be registered in Pakistan,

Or

Land shall also be transferred on G 2 G basis.

(x) LOAN FACILITY

The companies may avail loan facility from the scheduled banks for CAF. The leased State land shall not be pledged for the loan purposes.

(xi) INCENTIVE

The GOP will request the FOP for grant of relief / reduction on custom duty, sales tax for agricultural machinery and equipment.

(xii) OBSERVANCE OF LAWS

The lessees / companies shall abide by Federal and Provincial laws relating to land, agriculture, farming and labour, etc.

(xiii) PAYMENT OF TAXES

The lessees / companies shall be responsible for all local, provincial and federal taxes including the Agriculture Income Tax.

(xiv) TRANSFER / ALIENATION OF LEASED LAND

The lessee shall not be allowed to sub-lease, alienate or transfer the leased State land.

(xv) SPECIAL PROVISOS

i. No proprietary rights shall be granted to the lessee in respect of the leased land.

ii. The lessee shall furnish an undertaking to the extent that terms and conditions shall be abided in letter and spirit.

(xvi) CANCELLATION OF LEASE

i. In case of mis-statement, concealment of facts and violation of terms and conditions, lease will be cancelled.

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ii. The District Collector concerned, after affording an opportunity of hearing and if he is satisfied, shall cancel the lease.

iii. The land shall be resumed and superstructure (if any) shall be forfeited.

iv. The loan shall be recovered from the lessee under the law.

(xvii) DISPOSAL OF CANCELLED LAND

After cancellation, the land shall be leased out afresh under these terms and conditions. The ex-lessee shall not be eligible for lease of land.

(Emphasis supplied)

4. The Elected Cabinet was further apprised that the Chief Minister was pleased to approve the placement of proposed SOCs before the Standing Committee of Cabinet on Legislative Business (the "**Standing Committee**") who considered the same in its meeting held on 30.09.2021 and in principle approved the same under the CPEC. It was importantly recommended by the Standing Committee that the matter be placed before the Elected Cabinet for consideration after legal vetting of the draft terms and conditions by Law & Parliamentary Affairs Department and in addition, the same may also be placed before the Provincial Assembly for discussion subsequently. During the process of discussion, the SMBR clarified that the proposal included barren State land only which will be included in the schedule and the purpose of the proposal was to attract foreign investment with special focus on transfer of technology, enhancement in productivity and local employment. The proposal was not limited to CPEC only. The Elected Cabinet considered the proposal and in principle approved the SOCs subject to their placement before the Ministerial Committee consisting of the following members for finalization:-

(Emphasis supplied)

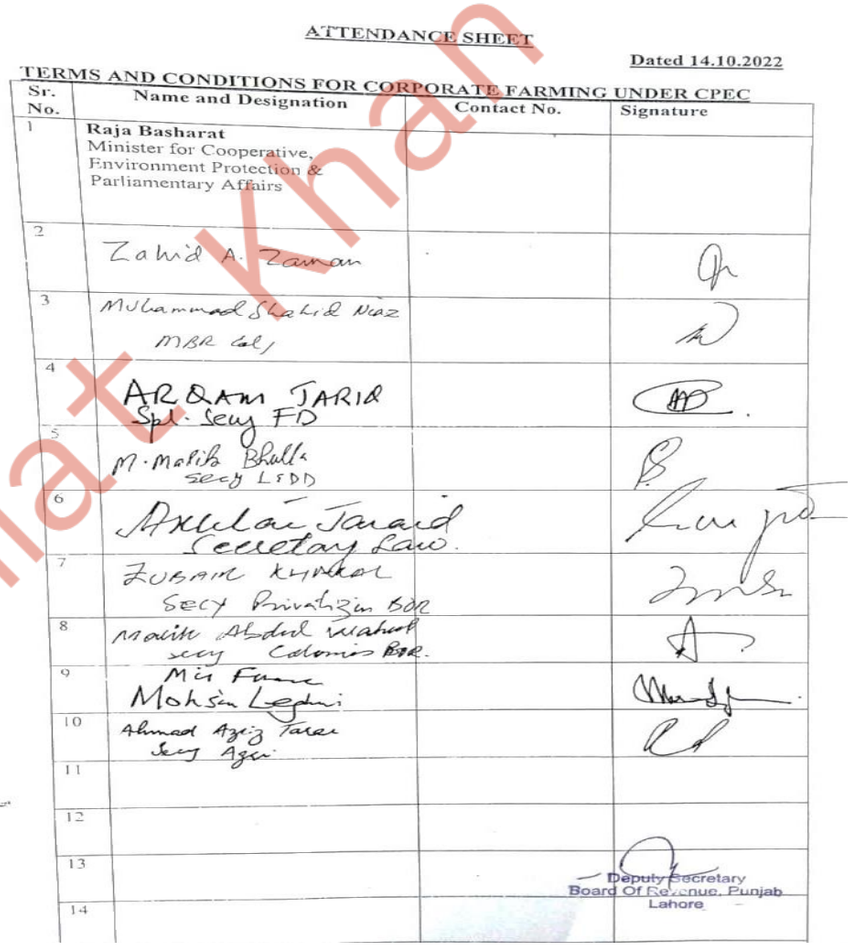
(i) Minister for Law & PA
(ii) Minister for Agriculture
(iii) Minister for Finance

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(iv) Minister for Livestock
(v) SMBR
(vi) Secretary, Agriculture Department
(vii) Secretary, Law & PA Department
(viii) Secretary, Finance Department
(ix) Secretary, Livestock Department

5. Statedly, meeting of Ministerial Committee was held on 14.10.2022 but admittedly, no minutes of the meeting were recorded. To address the Court query, reliance was placed on file noting coupled with an attendance sheet dated 14.10.2022 to demonstrate that such a meeting had in fact taken place. However, it was claimed that SOCs were approved in the Ministerial Committee, whereafter, the draft of SOCs was forwarded to Secretaries of Agriculture, Livestock and Law Departments of the GOP for their input and further necessary action. Admittedly, only one Minister attended the meeting as per attendance sheet dated 14.10.2022. The image of the same is pasted as under:-



ATTENDANCE SHEET

Dated 14.10.2022

TERMS AND CONDITIONS FOR CORPORATE FARMING UNDER CPEC

Sr. No.	Name and Designation	Contact No.	Signature
1	Raja Basharat Minister for Cooperative, Environment Protection & Parliamentary Affairs		
2	Zahid A. Zaman		
3	Muhammad Shahid Niaz MBR Sahib		
4	ARQAM JAVID Spl. Secy FD		
5	M. Mahib Bhatti Secy LSDD		
6	Abdul Jawad Secretary Law.		
7	ZUBAIR KHOKHAR Secy Privatizin BOR		
8	Malik Abdul Wahab Secy Colonies BOR.		
9	Mir Faraz Mohsin Leghari		
10	Ahmad Aziz Tarar Secy Agri		
11			
12			
13			
14			

Deputy Secretary
Board Of Revenue, Punjab
Lahore

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6. After dissolution of the Provincial Assembly of the Punjab, the Caretaker Cabinet was installed on 22.01.2023. On 08.02.2023, the Director General, Strategic Projects, Pakistan Army, General Headquarters, Adjutant General's Branch, Rawalpindi (the "**DGSP**") (represented in the titled and connected Petitions through the Ministry of Defence, Islamabad) directly wrote a letter to the SMBR claiming that the Pakistan Army has rich experience of developing waste barren land placed on military schedule and has developed a comprehensive land development strategy. Accordingly, an offer was made to take land for CAF and proposed a joint meeting with the concerned Departments to discuss its modalities. The text of the proposal contained in paragraph No. 3 of the said letter is as under:-

> "3. Agreed Operational Modalities can be mutually worked out with Punjab Government, as main stakeholder, in the best interest of the country. However, suggested timeline to Initiate the project is as under-
>
> a. Pilot Project - Immediately (10,000 - 15,000 Acre), the earmarked land should be in following categories:-
>
> (1) Irrigated by canal.
> (2) TW Irrigated.
> (3) Pond irrigated.
>
> b. Main Project-1 March 2023 (1 Lac Acre)
>
> c. Identification and Lease of 1 Million Acre in Cholistan Development Authority area of responsibility-April 2023."

7. The following day, in furtherance of claimed purported approval of SOCs by the Ministerial Committee, the matter was placed before the Caretaker Cabinet in its 4th meeting held on 09.02.2023 under Agenda No. 3. The SMBR apprised the Caretaker Cabinet that in the light of approval of Ministerial Committee and feedback of Agriculture, Livestock and Law Departments, SOCs were proposed for approval.

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Accordingly, the Caretaker Cabinet considered and approved the proposed SOCs mentioned at para 3.3 with the following amendments:

> "Under the heading of "lease through single source"
>
> (i) Para 5(1)(c): The provision of having one local company as a partner by the foreign companies were deleted.
>
> (ii) Para 5(2)(e): The Government share shall not be less than thirty-three (33%) percent."
>
> (Emphasis Supplied)

8. The BOR following the approval of the Caretaker Cabinet issued the Notification incorporating the SOCs approved by the Caretaker Cabinet. The SOCs approved by the Elected Cabinet and the Caretaker Cabinet shall hereinafter be referred to as (the "**original SOCs**" and the "**new SOCs**"), respectively. The Notification is reproduced in verbatim as under:-

> "GOVERNMENT OF THE PUNJAB
> COLONIES DEPARTMENT
>
> Dated 20th February 2023
>
> **NOTIFICATION**
>
> No.197-2023/0334-CS.II(IX).- In exercise of the powers conferred under section 10 of the Colonization of Government Lands (Punjab) Act, 1912 (V of 1912), Governor of the Punjab is pleased to issue the following Statement of the Conditions for lease of specified State land for corporate agriculture farming, with immediate effect:
>
> 1. Objectives.- The specified State land may be leased out for agriculture research and farming, import substitution, food security, standardization and maximization of seed productivity, livestock research, breeding and farming, and, for any other purpose relating to the agricultural or livestock sector as deemed appropriate by the Government from time to time.

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2. Definitions.- For the purpose of this Statement of the Conditions, unless there is anything repugnant in the subject or context:

(a) "Act" means the Colonization of Government Lands (Punjab) Act, 1912 (V of 1912);

(b) "barren land" means the kind of land recorded in revenue record as barren and is not cultivable;

(c) "Board of Revenue" means the Board of Revenue established under the Punjab Board of Revenue Act, 1957 (XI of 1957);

(d) "Cabinet Committee" means a Cabinet Committee notified by the Government for the purpose;

(e) "company" means a company as defined in the Companies Act, 2017 (XIX of 2017) and includes a foreign company;

(f) "Government" means Government of the Punjab;

(g) "lessee" means the person to whom the State land has been leased out under this Statement of the Conditions;

(h) "State land" means any land owned by the Government either under the administrative control of the Collector or in use of any department of the Government;

(i) "District Rent Assessment Committee" means a committee duly notified as such;

(j) "Provincial Rent Assessment Committee" means a committee duly notified as such.

3. General.- (1) All leases under this Statement of the Conditions shall be subject to the provisions of the Act and to:

(a) the Federal and Provincial laws relating to land, agriculture, farming, livestock, forest, labour and other relevant laws; and

(b) such instructions as may be issued by the Government for carrying out the purposes of this Notification.

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(2) The Government may notify the Cabinet Committee for approval of size of the lot, schedule, base rent etc. and to take decision regarding export of yield, products and by-products.

4. Lease through open auction.- (1) The specified State land shall be leased out through an open auction for a minimum piece of State land as decided by the Cabinet Committee subject to this Statement of the Conditions for any individual or consortium or company.

(2) Any individual or a company or consortium may participate under this Statement of the Conditions having at least five years' experience of agriculture farming.

5. Lease through single source.- (1) The Government may grant a lease of State land placed on the schedule on a single source basis, without any auction proceedings, to the following:

(a) Departments of the Federal or Provincial Governments, their attached departments, semi-attached department, autonomous bodies, and institutions;

(b) companies having sole ownership of the Federal or Provincial Governments; and

(c) Foreign Governments, through their entities, provided their Embassies in Pakistan certify that such entity is solely owned by the Government concerned:

Provided that the foreign company shall sell its produce in Pakistan and any export shall not be allowed without prior approval of the Cabinet Committee and fulfillment of codal formalities including necessary permission from departments concerned.

(2) In the case of lease through single source, the Board of Revenue shall submit the case to the Government for approval with the following terms and conditions:

(a) details of the State land;

(b) a draft joint venture agreement with the concerned entity;

(c) a draft proposal for the Board of Management for each joint venture with a minimum one-third representation from the Government;

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(d) net profit sharing mechanism and modalities; and

(e) profit share of the Government shall not be less than thirty three percent in the proposed mechanism.

6. Schedule.- (1) The Collector may identify and recommend suitable piece of State land to the Board of Revenue which shall be placed in the schedule under this Statement of the Conditions after approval of the Cabinet Committee constituted for the purpose.

(2) The Board of Revenue may also include or exclude any piece of State land, being used by any department, in the schedule of this Statement of the Conditions.

7. Assessment.- (1) The Collector shall seek the valuation report of rent of the proposed State land from three valuers approved by State Bank. The District Rent Assessment Committee shall assess the base rent of the land keeping in view the valuers' assessment and the other parameters and recommend the case to the Provincial Price Assessment Committee.

(2) The Provincial Price Assessment Committee shall consider the proposal of the District Rent Assessment Committee and place its recommendations before the Cabinet Committee for approval.

(3) The Cabinet Committee may consider the recommendation so received and grant the approval of the base rent.

8. Grant of Lease.- (1) The lease shall be made through open auction on rent which shall not be less than the base rent approved by the Cabinet Committee.

(2) The Collector shall approve the bid and grant the lease within thirty days of the date of the auction.

(3) A single bidder, if fulfilling the Statement of Conditions, may participate in the open auction and qualify on rent equal to or exceeding the base rent. In such case, the approval of the bid shall be granted by the Commissioner concerned within thirty days from the date of auction.

9. Period of lease.- (1) The State land shall be leased out for a period of twenty (20) years, extendable for

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another period of ten (10) years, subject to the satisfaction of the Collector regarding fulfillment of this Statement of the Conditions.

(2) The lease shall be non-extendable or non-renewable on completion of thirty (30) years.

10. Purpose of lease.- The lessee shall utilize the leased State land for the sole and specific purpose for which the lease has been granted.

11. Rent.- (1) The rent for the first year shall be paid in advance within ninety (90) days of the approval of the lease.

(2) The rent for the subsequent years shall be paid in advance before the 30th of June of each year by the lessee.

(3) The rent shall be increased at the rate of ten (10) percent annually, applicable on the 1st of July of each year.

(4) In case of barren land to the extent of this category of State land as certified by the Collector on the recommendation of District Rent Assessment Committee, no rent shall be charged for the initial three years. A valid bank guarantee, equivalent to three years of rent shall be furnished by the lessee which shall be released on the payment of rent for the fourth year. The guarantee shall be forfeited in case of failure to cultivate and develop the leased land in three years.

12. Equity.- (1) The company shall be allowed to invest hundred percent foreign or hundred percent local or mix equity with foreign and local sharing both.

13. Loan facility.- The company may avail of a loan facility from the scheduled banks for corporate agriculture farming; however, the leased State land shall not be pledged for loan purposes.

14. Payment of taxes.- The lessee shall be liable to pay all local, Provincial and Federal taxes including the agriculture income tax.

15. Special provisions.- (1) If the whole leased State land or any part of it is required for a research institute of Agriculture, Livestock or for public purpose, it shall be surrendered by the lessee to the Government i.e. Board of Revenue. The resumption order may be made after providing reasonable opportunity of being heard.

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(2) The lessee will be required to undertake agriculture and livestock research and give access to the functionaries of agriculture and livestock departments to observe the usage of technology, agricultural and livestock practices, and for research & development activities.

(3) No proprietary rights shall be granted to the lessee in respect of the leased State land.

(4) The lessee shall furnish an undertaking to the extent that terms and conditions shall be abided by in letter and spirit.

16. Incentive.- The Government may request the Federal Government for grant of relief or reduction on custom duty, sales tax for agriculture and livestock machinery and equipment.

17. Transfer or alienation of leased land.- The lessee shall not be allowed to sub-lease, alienate or transfer the leased State land.

18. Arbitration.- In case of any dispute between the lessee and the Collector / Commissioner / Government, the Member (Colonies) of the Board shall be the Arbitrator, whose decision shall be final.

19. Cancellation and resumption.- (1) In case of misstatement or concealment of facts or violation of any Statement of the Conditions, the Collector concerned shall be authorized to cancel the lease after giving the opportunity of being heard.

(2) In case of cancellation of the lease, the State land shall be resumed and superstructure, if any, shall be forfeited in favour of the Government.

(3) The arrears or loan, if any, shall be recovered from the lessee under the law for the time being in force.

(4) In case of cancellation and resumption, no compensation shall be granted to the lessee.

20. Disposal of resumed land.- After cancellation and resumption, State land may be leased out afresh and the ex-lessee shall not be eligible for lease of such State land in future.

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21. Compensation.- The lessee shall not, at the expiry of the lease deed, be entitled to any compensation, whatsoever, for un-cut and un-gathered crops, buildings, superstructures, installation and tube wells, etc. existing on the leased State land.

MEMBER/SECRETARY
GOVERNMENT OF THE PUNJAB
COLONIES DEPARTMENT"

(AHMAD RAZA SARWAR)
SECRETARY
Government of the Punjab
Law and Parliamentary Affairs Department"

(Emphasis Supplied)

9. In the meanwhile, after approval of the new SOCs by the Caretaker Cabinet and before the date of issuance of the impugned Notification, the Chief Secretary, Punjab pursuant to the request of the DGSP vide letter dated 08.02.2023 referred above held a meeting on 15.02.2023 for discussion on draft framework provided by the latter and survey teams were constituted. The draft framework was accordingly finalized and decisions were taken.

10. After issuance of the Notification, the matter was placed before the Caretaker Cabinet under Agenda No. 3 in its 7th meeting held on 25.02.2023. The Caretaker Cabinet was apprised that the Director Lands, Pakistan Army had requested for provision of one million Acre land to ensure food security. The Pakistan Army would prepare a tentative framework for obtaining State land under CAF. A formal request from DGSP had been received on 08.02.2023 with the proposal to convene a meeting with different heads of the Departments of the GOP. The framework forwarded by the Pakistan Army indicates that it has a fleet of well-trained manpower which relies on latest farming techniques, technology and tools to focus on greater yield, seed quality, water management and organic farming. CAF will be a partnership project between the Pakistan Army and the GOP incorporating all the concerned

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Departments. The State land was lying in various districts with illegal occupants or in utilized condition which would be handed over to the Pakistan Army by the GOP after a joint survey. All the initial funding would be provided by the Pakistan Army and profit sharing with the GOP will be done on agreed terms. Another meeting was held on 15.02.2023 under the Chairmanship of the Chief Secretary, Punjab which was attended by the SMBR and other Departmental heads including the representative of the Pakistan Army, wherein, certain decisions were taken pursuant to the Notification. It was apprised that the new SOCs approved by the Caretaker Cabinet provide for single source lease and in this respect, approval was sought to proposal contained in paragraphs No. 3.7, 3.8 and 3.9 of the summary reproduced below for ready reference which was readily granted by the Caretaker Cabinet:-

(Emphasis supplied)

"3.7 Furthermore, Pakistan Army had proposed 12,221-Acres of land, for Pilot Project in five districts namely Sahiwal, Khushab, Layyah, DG Khan and Muzaffargarh and 84,350-Acres for main project in remaining districts. Director General Land, Pak Army dated 20.02.2023 had forwarded its proposal which had been examined in the Colonies Department, Board of Revenue, Punjab in the light of the SOCs and submitted to the Chief Minister through a summary:

	Parameters of SOCs	**Proposed Arrangements**
A	Details of the State Land	Pakistan Army authorities had identified: (i) 12,221 acres' land in 5 districts for pilot project. (ii) 84,350 acres' land in other 13 districts for main project. (iii) Additional state land will be identified in Cholistan through Joint Survey Teams.

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B	A draft joint venture agreement with the concerned entity	The Pakistan Army had provided draft Joint Venture Agreement.
C	A draft proposal of the Board of Management for each Joint Venture with a minimum one-third representation from the Government.	The proposed Board of Management for Joint Venture was given as under: It will be consisting of Army representatives: i. Adjutant General ii. D.G. Strategic projects iii. D.G. Lands iv. Director, Lands/CAF Government of the Punjab will be represented by: i. Chief Secretary, Punjab ii. Senior Member Board of Revenue iii. Member(Colonies), BOR iv. Secretary Law v. Secretary Finance vi. Secretary Agriculture vii. Secretary FW&F viii. Secretary L&DD ix. Secretary Irrigation
D	Net profit sharing mechanism and modalities; and	It had been proposed that 20% of the profit will be used for research and development and remaining will be shared on 50:50 basis between Pakistan Army and Govt. of Punjab.
E	Profit share of the Government shall not be less than thirty three percent in the proposed mechanism	As above

3.8 The proposals were submitted through the Secretaries, Agriculture, L&DD, FW&F, Irrigation and Law Department. The Departments furnished their comments/proposals and the

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Chief Secretary Punjab stated that the proposal of Board of Revenue, Punjab had been endorsed by the concerned departments with certain conditions. He further proposed that:

Total land proposed for the Management Agreement with the Pakistan Army was as under:

i. Total land proposed for the Management Agreement with the Pakistan Army was as under:

(a) Land under the use of various departments 96571-Acres (given at para 4(A)/ante.

(b) Land falling within Cholistan = 10,00,000 Acres

(c) Other under-utilized / undeveloped land to be identified by the BOR.

ii. The land shall be leased to the Pakistan Army on single source basis under clause 5 of the Terms and Conditions for Corporate Farming under CPEC.

iii. The lease period shall be 20 years, extendable further for ten years as given in the policy framework.

iv. The leased land shall be utilized purely for Corporate Agriculture Farming only. However, if any department of Government of the Punjab requires land for research purpose, it shall be surrendered to the concerned department as required under clause 15 of the Terms and Conditions. However, a research proposal has to be approved by the Planning and Development Department, Government of the Punjab.

v. A Board of Management, as given at shall approve all the policies for utilization of the land including its commercial and research use.

vi. The Board of Management may establish company/companies for running the operations on the commercial basis.

vii. No violation in the 'restrictions of the land use' shall be made.

viii. Government of the Punjab will provide land as an equity and the Pakistan Army will make all investments on the land (preferable). In case of any other investment proposal, the arrangement shall be submitted before the Cabinet for approval.

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ix. The profit sharing formula shall be on 50:50 basis.

x. In addition to the members representing the Government of the Punjab stated at, Secretary Finance and Secretary Law may also be included.

xi. The terms and conditions stated by the various departments i.e. Agriculture Department, Forest Department, Irrigation Department shall be incorporated.

xii. The suggestions of the Livestock Department cannot be considered as those are against the spirit of the policy framework. As the use of such land is only for the commercial basis, only encumbrance free land shall be considered for the purpose.

3.9 It was also informed that the following Committee may be delegated to negotiate terms and conditions with Pakistan Army on behalf of Government of the Punjab:

i.	Chief Secretary	Chairman
ii.	SMBOR	Member
iii.	Secretary Law	Member
iv.	Secretary Finance	Member
v.	Secretary Agriculture	Member
vi.	Secretary Livestock	Member
vii.	Secretary Irrigation	Member
viii.	Secretary Forest	Member
ix.	Member Colonies, BOR	Member/Secretary
x.	Any other co-opted members(s)	

The committee should be empowered to do the followings:

i. Add/delete land owned by the various departments, to the extent of one million acres, depending upon the suitability as well as commercial potential;

ii. Sign Management Agreement with the Pakistan Army with mutually negotiated Terms and Conditions while remaining within the framework of the Terms and Conditions for Corporate Agriculture Farming.

It was submitted that the draft Joint Venture (JV) agreement furnished by the Pakistan Army, had been vetted by the Law Department."

(Emphasis Supplied)

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11. On 08.03.2023, the JVA was executed between the GOP and the Pakistan Army consisting of six (06) pages which is reproduced as under:-

"JOINT VENTURE MANAGEMENT AGREEMENT

This Joint Venture Management Agreement (hereinafter referred to as the "Agreement") is made at Rawalpindi on Wednesday, 8th day of March, 2023.

BETWEEN

Governor of the Punjab, acting through Member (Colonies), Board of Revenue Punjab (hereinafter referred to as "Lessor"), which expression shall, whenever the context so requires or permits, include the successors, legal representatives and permitted assigns

AND

Pakistan Army, acting through Director General Strategic Projects, Adjutant General's Branch, General Headquarters, having its head office at Rawalpindi (hereinafter referred to as "Lessee"), which expression shall, wherever the context so requires or permits, include the successors, legal representatives and permitted assigns.

Lessor and Lessee shall hereinafter individually be referred to as "the party" and collectively as "the parties".

WHEREAS:

(a) the parties share a mutual interest in long-term cultivation and productivity of the state land under the Statement of the Conditions for Corporate Agricultural Farming Scheme notified vide Notification No.197-2023/0334-CS.II(IX), dated 20.02.2023, which aims at agriculture research and farming, import substitution, food security, standardization and maximization of seed productively, livestock research, breeding and farming, afforestation and preservation of biodiversity, and, for any other purpose relating to the agricultural or livestock sector as deemed appropriate by the Government of the Punjab from time to time; and

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(b) this agreement for lease of state land upto one million acres is governed by the said Statement of the Conditions.

NOW, THEREFORE, the parties have agreed to execute the Agreement to achieve the said purpose in accordance with the terms and conditions mentioned herein.

1. Term of the Lease:

The state land shall be leased for a period of twenty (20) years, extendable for another period of ten (10) years, subject to satisfaction of the Lessor regarding fulfillment of Statement of the Conditions. The lease shall be non-extendable or non-renewable on completion of thirty (30) years.

2. Purposes of Lease:

The Lessee shall utilize the state land for the following purposes:

(a) agriculture farming (planting, cultivating, and harvesting of annual or perennial crops, vegetables or fruits);

(b) survey and development of land;

(c) livestock farming (beef, mutton, poultry and fish);

(d) afforestation and preservation of biodiversity;

(e) research and development activities and other common activities associated with cultivating crops and raising livestock; and

(f) construction or use of already constructed buildings, structures, facilities, ponds, tools and equipment with the prior permission of the District Collector. Provincial Government Department concerned shall make the inventory of all assets in its ownership at the time of handing over.

3. Responsibilities of Lessor:

Lessor may assist the Lessee to:

(a) provide canal water or electricity (wherever available);

(b) construct farm to market roads or tracks (on mutually agreed terms); and

(c) seek benefit from various government subsidy schemes.

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4. Responsibilities of Lessee:

Lessee shall arrange and pay for all utility costs relating to water and electricity etc.

5. Profit Sharing:

(a) Lessee shall share the profit after return of his initial investment as follows:

(1) already cultivated land - after one (01) year

(2) Banjar Qadeem Lands - after three (03) years

(b) Twenty (20) percent of the profit shall be used for research and development after the approval of Joint Management Board and remaining profit shall be shared equally (50:50) between the parties.

(c) Payments of profit shall be made on yearly basis before 30th of June every year in a head of account approved by the Board of Revenue, Punjab.

(d) The annual audit of the accounts including investment by the parties and profit accrued shall be got conducted through a renowned Audit Firm.

6. Company/Companies:

The Board of Management may establish or engage company or companies for running the operations on commercial basis.

7. Payment of taxes:

The lessee shall be liable to pay all local, provincial and federal taxes.

8. Special provisions:

(a) If the whole leased state land or any part of it is required for a research institute of Agriculture, Livestock or for public purpose, it shall be surrendered by the lessee to the Government i.e. Board of Revenue. The resumption order may be made after providing reasonable opportunity of being heard.

(b) The lessee shall be required to undertake agriculture and livestock research and give access to the functionaries of Agriculture, livestock and

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other relevant departments to observe the usage of technology, agricultural and livestock practices, and for research and development activities.

(c) No proprietary rights shall be granted to the lessee in respect of the leased State land.

(d) The lessee shall furnish an undertaking to the extent that terms and conditions shall be abided by in letter and spirit.

(e) The lessee shall abide by the Federal and Provincial laws relating to land, agriculture, farming, livestock, forest, labour and other relevant laws.

9. Cancellation and resumption:

(a) In case of misstatement or concealment of facts or violation of any Statement of the Conditions, the lessor shall be authorized to cancel the lease after giving the opportunity of being heard.

(b) In case of cancellation of the lease, the state land shall be resumed and superstructure, if any, shall be forfeited in favour of the Government.

(c) The arrears or loan, if any, shall be recovered from the lessee under the law for the time being in force.

(d) In case of cancellation and resumption, no compensation shall be granted to the lessee.

10. Compensation:

The lessee shall not, at the expiry of the lease deed, be entitled to any compensation, whatsoever, for un-cut and un-gathered crops, buildings, superstructures, installation and tube wells, etc. existing on the leased state land.

11. Dispute Resolution:

(a) The parties shall make efforts in the spirit of cooperation and mutual trust, to resolve any difficulties or misunderstanding.

(b) Any dispute arising out of the Agreement shall be decided in terms of the Statement of the Conditions notified on 20.02.2023.

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12. Board of Management or Committee:

(a) The Board of Management comprising of the following is constituted to approve all the policies or utilization of the leased state land including its Commercial and Research use:

Government of the Punjab Reps	Designation	Pakistan Army Reps:	Designation
Chief Secretary, Government of the Punjab	Convener	Adjutant General Pak Army	Co-Convener
Senior Member, Board of Revenue Punjab	Member	DG Strategic Projects	Member
Member (Colonies), Board of Revenue Punjab	Member / Secretary	DG Lands	Member
Secretary, Government of the Punjab, Law & Parliamentary Affairs Department	Member	Director Lands / CAF	Member
Secretary, Government of the Punjab, Finance Department	Member		
Secretary, Government of the Punjab, Forest, Wildlife & Fisheries Department	Member		
Secretary, Government of the Punjab, Agriculture Department	Member		

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Secretary, Government of the Punjab, Livestock and Dairy Development Department	Member		
Secretary, Government of the Punjab, Irrigation Department	Member		

(b) The Board of Management shall hold its meetings quarterly.

13. Negotiation Committee:

(a) The following Committee is constituted:

(1)	Chief Secretary, Government of the Punjab	Chairman
(2)	Senior Member, Board of Revenue, Punjab	Member
(3)	Secretary, Government of the Punjab, Law & Parliamentary Affairs Department	Member
(4)	Secretary, Government of the Punjab, Finance Department	Member
(5)	Secretary, Government of the Punjab, Agriculture Department	Member
(6)	Secretary, Government of the Punjab, Livestock and Dairy Development Department	Member
(7)	Secretary, Government of the Punjab, Forest, Wildlife & Fisheries Department	Member
(8)	Member, Colonies, Board of Revenue	Member / Secretary
(9)	Any other co-opted member(s)	

(b) The committee is empowered to:

(1) add or delete land owned by the various departments, to the extent of one million acres,

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depending upon the suitability as well as commercial potential; and

(2) sign Management Agreement with the Pakistan Army with mutually negotiated terms and conditions while remaining within the framework of the Statement of the Conditions notified on 20.02.2023.

14. District Management Committee:

(a) The committee shall facilitate for smooth implementation of the projects:

Ser	Board of Revenue Reps:	Army Reps:
(1)	Deputy Commissioner	Director CAF
(2)	Additional Deputy Commissioner (Revenue)	Agronomist
(3)	Assistant Commissioner	Filed Supervisor (one each for 300 acres)
(4)	District Head Department concerned	

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed in their respective names in two identical counterparts, each of which shall be deemed as the original, as of the day, month and year first above written.

FOR AND ON BEHALF OF THE LESSOR	FOR AND ON BEHALF OF THE LESSEE
Mr. Muhammad Khan Ranjha Member (Colonies), BOR, Govt. of Punjab	Maj Gen Shahid Nazir, HI(M) Director General Strategic Projects, Pakistan Army
WITNESS:	WITNESS
NABEEL JAVED, Senior Member, BOR, Punjab	Maj Gen M. Yousaf Majoka DG. Lands”

(Emphasis Supplied)

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12. Subsequent to the JVA, a meeting of the Negotiating Committee regarding CAF was held on 24.03.2023, wherein, certain decisions were taken. Paragraphs No. 3 to 8 and decisions taken by the Negotiating Committee being relevant are reproduced as under:-

> "3. Senior Member, Board of Revenue, Punjab briefed the participants that the Provincial Cabinet, in its meeting held on 25.02.2023, initially approved the transfer of land under the use of various departments, i.e. 96,571-Acres out of one million lands proposed by Pakistan Army. Director General Strategic Project, vide letter No.7778/CAF/LANDS-1, dated 10.03.2023, requested that the following state land measuring 45,267 acres be handed over:-

Sr. No.	District	Tehsil	Mouza / Rakh	Department	Land in Acres	Proposed Date of Handing Over
a.	Bhakkar	Kalloor Kot	Rakh Ghulaman	Livestock	10,273	17 March 2023
b.	Bhakkar	Kalloor Kot	Rakh Gohar Wala	Forest	23,027	18 March 2023
c.	Bhakkar	Mankera	Rakh Mahni	Livestock	9,424	15 March 2023
d.	Khusab	Khushab	Chak 61 MB	Livestock	981	17 March 2023
e.	Khusab	Quaidabad	Chak 5 MB	Agriculture	837	18 March 2023
f.	Sahiwal	Quaidabad	Chak 13/ 11L	Prov Govt.	725	15 March 2023
				Total	45267	

> 4. The Senior Member, Board of Revenue, Punjab, also stated that as per Cabinet decision the Negotiation Committee is empowered to do the following:
>
> (i) Add / delete land owned by the various departments, to the extent of one million acres, depending upon the suitability as well as potential of corporate farming;
>
> (ii) Sign Management Agreement with the Pakistan Army with mutually negotiated Terms and Conditions while remaining within the framework of the Terms and Conditions for Corporate Farming under CPEC.

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5. The Board of Revenue, Punjab, vide letter No.197-2023/338- CS.II(IX), dated 13.03.2023, requested the Secretaries, Agriculture, L&DD, FW&F and Irrigation Departments to furnish views about the above-detailed land of their department.

6. The L & DD Department proposed the land for handover under Livestock Experiments Station (LES) at Rakh Ghulaman measuring 7316 acres out of 10273 acres, at Rakh Mahni land measuring 7472 acres out of 9424 and at Chak 61 MB, Khushab land measuring 349 acres out of 981 acres proposed by the Pakistan Army.

7. According to the FW & F Department, the Statement of Conditions on Corporate Agriculture Farming (CAF) was approved subject to federal / provincial law compliance. The Forest Act of 1927 states that forest land can only be used for afforestation.

8. The Agriculture Department was of the view that their department had given its consent and focal persons had been nominated for handing over the land to the Pakistan Army.

DECISIONS:

It was decided that requisite assets of the L&DD Department and Agriculture Department be handed over to Pakistan Army for the CAF initiative. It was also decided that all departments will submit proposals for any land or assets needed for Research and Development Projects, along with details of objectives i.e. project name, purpose of the project, land required for attainment of objective, funds required, and time required to complete the project etc. The Pakistan Army will return the required land/assets to the departments for such research and development projects/proposals. The departments concerned may however develop joint management or collaborative arrangements with Pakistan Army for the projects.

It was also decided that:-

(a) Staff/assets of departments concerned may also be part of the project after due consultation with the department concerned.

(b) Government of the Punjab will only pay the monthly salary to the staff.

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(c) All kinds of maintenance and repair of buildings, machinery and equipment will be carried out by Pak Army.

(d) Forest Department land will be used only for biodiversity preservation and afforestation in CAF Project as per law. Secretary Forest may hold a meeting with DG Strategic Projects, GHQ and make an arrangement for land use in CAF Project on the analogy of MoU already signed in the case of RUDA."

(Emphasis supplied)

13. Later, the Colonies Department of the BOR accorded five sanctions for leasing out State land in Districts Sahiwal, Khushab and Bhakkar vide letters dated 29.03.2023 in favour of the Pakistan Army, GHQ Rawalpindi, Ministry of Defence, Government of Pakistan with respect to CAF for a period of 20 years extendable for another period of 10 years under the new SOCs notified vide impugned Notification in compliance with the minutes of 7th meeting of the Caretaker Cabinet dated 25.02.2023 and the JVA. It was directed that the ownership would remain with the GOP, necessary entries be incorporated in cultivation column and the Pakistan Army / Ministry of Defence would be a lessee subject to the condition that the land will be utilized only for the purpose it is being leased out and would be reverted to the Colonies Department when no longer required for the purpose or on expiry of lease period without any compensation. It was further directed that lease deed in the prescribed form may be executed, stamped and registered at the expense of the lessee by incorporating the necessary terms and conditions mentioned in the new SOCs and the JVA.

II NATURE OF GRIEVANCES

14. The titled Petition was instituted by *Public Interest Law Association of Pakistan* registered under the Societies Act, 1860 through its duly authorized Member, Mr. Ahmad Rafay Alam, Advocate. The objects stipulated in its Memorandum of Association, *inter alia*, include to promote and pursue public interest litigation in Pakistan; endeavour to

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protect human, public and fundamental rights; seek to provide effective judicial protection to the weaker sections of the society; to improve government accountability and transparency; improve governance at all levels of government and its Departments; and uphold that the State functionaries abide by the *Rule of Law* and the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"). The Petitioner was intrigued when the revelation of an arrangement of CAF between the GOP and the Pakistan Army surfaced in a news report of the daily *Dawn* on 21.03.2023. Hence, the challenge was brought vis-à-vis the constitutional and legal mandate of the Pakistan Army and the Caretaker Cabinet regarding the purported arrangement coupled with the prayer to set aside the Notification and all subsequent developments and pass consequential directions under the *Doctrine of Public Trust*.

15. W. P. No. 23256 / 2023 was also instituted in public interest by the Petitioner, Mr. Shahid Shahood Randhawa who is an Advocate by profession and naturally has an interest in the preservation and protection of *Rule of Law* and the Constitution. CAF arrangement was questioned on identical lines and premises as in the titled Petition.

16. In W. P. No. 20457 / 2023, it was submitted that vide notification dated 15.03.2023 issued by Secretary Colonies, BOR, a livestock farm established in the year 1953-54 for dairy development and poultry farming spread over 100 Acres of land built with public money under the Colombo Plan and hosting a number of business projects has been included in the land allocated to the Pakistan Army for CAF. Accordingly, it was prayed that a direction may be passed against the Respondents to exclude the livestock farm 'Ghulama's Establishment, District Bhakkar' from its handing over to the Pakistan Army for CAF.

17. Conversely, the concerned Respondent / Livestock and Dairy Development Department in its report and para wise comments submitted that the Department is running a network of livestock farms across the Province of Punjab. The purpose of these farms is to conserve livestock

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genetic resources; production and propagation of superior germ plasm; human resource development through education and capacity building of staff and farmers; and undertaking research and development in collaboration with academia. However, these farms are not being utilized efficiently due to lack of access to modern technologies, inadequate finances and shortage of skilled labour. Moreover, the farms have vast area which is beyond actual requirement and remains underutilized. CAF can address these challenges by introducing modern technologies and innovative practices leading to increased productivity and improved yields. CAF has emerged as a viable solution for achieving greater agricultural and livestock productivity. The large scale commercial farming operations have potential to achieve the economy of scale. Global Halal Food Market consists of about three trillion Dollars in which Pakistan has very negligible share of 0.1%. As such, the livestock farm has been included in CAF arrangement contemplated by the GOP.

18. Writ Petition No. 27115 / 2023 was filed by Major (R) Muhammad Ghulam Sarwar, former Member of the Provincial Assembly of the Punjab against the Notification and the letter dated 10.03.2023 with respect to CAF. As a distinguishing feature, it was submitted that on 07.12.2021, land measuring 800 Kanals out of 725 Acres was sanctioned by the BOR in favour of the Livestock and Dairy Development Department, GOP for the establishment of sub-campus of University of Veterinary & Animal Sciences at Chichawatni, District Sahiwal for which public funds had also been allocated and development work had been initiated. However, the required entries were not made in the revenue record in the name of the concerned Department. The said land along with its project has been included in the land proposed to be handed over to the Pakistan Army for CAF. Accordingly, it was prayed that the impugned Notification and letter be set aside being contrary to notification dated 07.12.2021.

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19. In rebuttal of concerned Livestock and Dairy Development Department, it was informed that a development scheme "*Establishment of sub-campus of University of Veterinary and Animal Sciences at Chichawatni*" was incorporated in Annual Development Plan 2021-22. Consequently, the Department engaged the University of Veterinary and Animal Sciences and directed to formulate and submit PC-1 regarding the said development project which was submitted before PDWP for consideration, accordingly. It was discussed by Planning and Development Board in its PDWP meeting held on 07.09.2021. It was directed to carry out the feasibility study of the project prior to its final approval. Meanwhile, 100 Acres of State land out of total 725 Acres located at Chak No. 13 / 11-L, Chichawatni was provided by the Colonies Department to Livestock and Dairy Development, Punjab for the purpose vide letter No. 2960-2021/3880-CS(II) dated 07.12.2021. The feasibility study of the project was completed. However, meeting was held by Planning and Development Board regarding rationalization of development portfolio of production sector wing, wherein, the instant scheme was capped by the competent authority / forum vide letter No. 8(2)/AC(Food)P&D/2022-23 dated 13.02.2023. It was apprised that although the funds were allocated during the current financial year in the Annual Development Plan yet the same were not released due to the present unapproved status of the project. Hence, 100 Acres of land were still vacant and no development work or activities were in progress at the site. Consequently, the said land was at the disposal of the Department for further consideration and can be handed over by the GOP through the BOR to any person or Department or entity of the government under the policy of the BOR.

20. W. P. No. 28283 / 2023 was pressed by 167 (one hundred and sixty seven) Petitioners impugning the Notification and Letter dated 15.03.2023 for transferring of land to the Pakistan Army. Additionally, it was stated that the dispute relates to sandy land which consists of sand dunes and *banjar* State land in District Bhakkar where cultivation is

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difficult. In order to develop land, various schemes were introduced by the Thal Development Authority (the **"TDA"**) and lands were taken over under the provisions of Thal Development Act, 1949 which are liable to be resumed to the land owners in accordance with the provisions of Section 21 thereof. In the process of development of land, *Rakhs* were created, namely, *Rakh Ghulaman* and *Rakh Qasor* in Tehsil Klur Kot, District Bhakkar. *Rakh* signifies an area reserved for a special purpose. Some area within the said *Rakhs* was reserved for specific purpose of dairy items and livestock to cater the needs of the local inhabitants. However, the excess area was given to various persons including the Petitioners for breaking the same and making it neuter. Certain facilities were provided including the creation of *Chaks*. The Petitioners have been cultivating the aforesaid area since their forefathers, made it cultivable and are regularly paying governmental dues. Various schemes were formulated for granting proprietary rights to the persons in possession of State land but the Petitioners have not been granted proprietary rights till today, perhaps for the reason that *Rakhs* area was reserved for a specific purpose of dairy and livestock. The Petitioners claimed that the area in excess of specified purpose of *Rakh*s under possession of the Petitioners is liable to automatic reversion to the State and as such, they are entitled to get proprietary rights in accordance with Notification dated 19.03.1995. Notwithstanding the same, pending determination of the claim of proprietary rights, the Petitioners are continuing possession over the land. Lately, the Respondents included the land under lawful possession of the Petitioners and specified for *Rakhs* in the land proposed for CAF to the Pakistan Army and are being threatened with dispossession.

21. The stance of the concerned Respondents was that according to instructions contained in Order No. Thal/LHR/G-104/2261-68 dated 24.05.1971 issued by the Administrator, TDA, undisposed agricultural land of the TDA was placed under the control of the Colonies Department. Land measuring 10,273 Acres is under the possession of *Rakh Ghulaman*

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Livestock & Dairy Development Farm which was managed by the Livestock & Dairy Development Department. State land is owned by the GOP and allotted under the policy framed by it. There is no policy for lease of State land to any individual and State land is disposed of through restricted auction under Temporary Cultivation Lease Scheme (the **"TCLS"**). The Petitioners cannot become tenants on the basis of mere possession. Proprietary rights are conferred to those persons who hold legitimate lease under the TCLS issued from time to time by the Colonies Department and subsequently, held entitled for grant of proprietary rights in accordance with the terms and conditions of applicable notifications issued from time to time including Notification No. 1289-1995/843-CL-I, dated 19.03.1995. However, the Petitioners are not lease holders under any TCLS and as such, cannot be granted proprietary rights and have no claim over the land in question. Hence, the Colonies Department as custodian of State land in terms of the Punjab Government Rules of Business, 2011 (the "**Rules, 2011**") lawfully included land in question for CAF for the Pakistan Army in the light of new SOCs issued with the approval of the GOP. However, during arguments, learned Assistant Advocate General conceded that the Petitioners are *Patadars* of Livestock & Dairy Development Department for animal breeding.

III. CONTENTIONS OF THE PETITIONERS

22. Mr. Fahad Malik led the arguments. Addressing the objection of maintainability, he submitted that Petitioner (*Public Interest Law Association of Pakistan*) is a registered society under the Societies Act, 1860 and the objects of its Memorandum of Association empower it to institute the titled Petition in public interest. The Petitioner has a remarkable record in this regard and has successfully challenged the State excesses in projects like the Ravi Riverfront City formulated under the Ravi Urban Development Project, as well as the elevated Expressway Lahore Project. The impugned arrangement relates to the lease of more

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than one million Acres of public property and the Petitioner has initiated the instant proceedings as *pro bono publico* to ensure that public property is dealt with strictly in accordance with law since not doing so would result in grave violations of the fundamental rights of the people of Pakistan in general, and the citizens of Punjab in particular, including, but not limited to, violations of Articles 9, 10A, 14, 18, 19A, 24, 25, 37 and 38 of the Constitution.

23. The jurisprudence regarding such cases relating to the mode and manner in which public property is to be dealt with has received liberal interpretation over the years. He quoted paragraph No. 28 from Habibullah Energy Limited[1] case to substantiate his point, wherein, the Supreme Court of Pakistan after going through several judgments passed by the constitutional Courts in Pakistan and India concluded as follows:

> "An overview of the judgments reproduced or referred to herein above leaves little room for doubt that it is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by mala fide without discrimination and in accordance with law, keeping in view the Constitutional Rights of the Citizens. This would hold true even in the absence of any specific statutory provisions setting forth the process in this behalf. Therefore, it is not really relevant whether the transaction in question was governed by the Ordinance, 2000 or the-Rules, 2004 or neither. It is an equally well settled principle of law that such actions of public functionaries are always subject to Judicial Review. No doubt, while exercising its jurisdiction, the Superior Courts neither sit in appeal over the administrative actions nor interfere on account of inconsequential deviations, as has been observed in Dr. Akhtar Hassan Khan's case (supra). However, where the administrative authority acts in a discriminatory manner and action fails the test of reasonableness, transparency and/or is otherwise unjust and unfair or suffer from mala fide, the Courts not only are vested with the jurisdiction to set aside such action but any failure in such an eventuality to exercise the power of Judicial Review,

[1] Habibullah Energy Limited and another v. WAPDA through Chairman and others (**PLD 2014 Supreme Court 47)**

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when invoked, would make the Court a party to such unreasonable, unfair, mala fide and illegal action."

24. He emphasized that Atta Ullah Khan[2] case extensively reviewed several judgments passed by the Superior Courts with reference to the principles applicable in determining maintainability of a Petition filed as *pro bono publico* with reference to the disposal of public property by the State institutions. The following excerpts detail the main findings in the case:

> "15. It is settled on good authority that in matters pertaining to public interest litigation (also known as "PIL") the rule of "standing" or "locus standi" or "aggrieved person" has received a liberal interpretation over the years and any person/citizen having "sufficient interest" (in the context of larger public interest) can maintain a petition and pass as an "aggrieved person" under Article, 199 of the Constitution, subject to satisfying other requirements of the said Article.
>
> 16. Any citizen or person (part of the public) has "sufficient interest" and is, therefore, an aggrieved person under Article 199 of the Constitution, if public property is being acquired, held, used, or disposed of by public functionaries in violation of the law. Public functionaries as trustees of the people, cannot have any personal interest in any public property, therefore, if there is any abuse of trust or violation of law, it qualifies any member of the general public as an "aggrieved person" with the right to invoke the constitutional jurisdiction of this Court, subject to fulfilling other requirements of Article 199.
>
> 17. The significance of public interest litigation has special importance in our country. Even after 63 years of Independence, we still have fledgling public institutions because unfortunately they could not be nurtured under the shade of democracy due to repeated usurpation of our political space by unelected forces. Lack of democracy over years has taken a toll on our institutions. Absence of basic democratic values and democratic culture within public institutions threatens rule of law and due process breeding unchecked corruption. Disappointed with the undemocratic mindset of public functionaries, people have time and again

[2] Atta Ullah Khan Malik v. Federation of Government of Pakistan through President of Pakistan and 3 others (**2010 PLD Lahore 605)**

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resorted to courts for judicial review through public interest litigation.

18. It is essential for the public functionaries to understand the importance and meaning of a democratic welfare state. "What is democracy? ...It rests on two bases. The first is the sovereignty of the people. This sovereignty is exercised in free elections, held on regular basis, in which the people choose their representatives, which in turn represent their views. This aspect of democracy is manifested in majority rule and in the centrality of the legislative body through which the people's representatives act. This is the formal aspect of democracy. It is of central importance, since without it the regime is not democratic...The second aspect of democracy is reflected in the rule of values (other than the value of majority rule) that characterize democracy. The most important of these values are separation of powers, the rule of law, judicial independence, human rights, and basic principles that reflect yet other values (such as morality and justice), social objectives (such as the public peace and security), and appropriate ways of behaviour (reasonableness good faith). This aspect of democracy is the rule of democratic values. This is a substantive aspect of democracy. It too is of central importance. Without it the regime is not democratic.

21. Public Interest Litigation is therefore a judicial tool to help resurrect or jump start public institutions on the road to healthy democratic values and traditions. Unless substantive democracy takes root in our public administration and our institutions flourish with democratic maturity, court dockets will continue to be filled with public interest litigation. However, the courts will continue to redress public grievance, with the hope that public institutions will soon come of age.

22. The real test, therefore, in Public Interest Litigation is the subject-matter of the petition or the abuse of public trust complained of. Once the court assesses that breach of trust and violation of law by a public institution has taken place, the court must. immediately proceed further to rectify the breach, the identity or antecedents of the petitioner pale into insignificance. If, on the other hand, the court finds the petition to be without merit, camouflaged to foster personal disputes, said petition is to be thrown out. Public Interest Litigation should not be allowed to be "Publicity Interest Litigation" or "Private Interest Litigation" or "Politics Interest Litigation". Reliance is placed on Ashok Kumar Pandey v.

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> State of West Bengal and others (AIR 2004 SC 280). However, if the court is convinced that violation of law has taken place pertaining to public property or public interest, it should matter less who brought the complaint before the Court. Locus standi in such matters stands diluted carrying only cosmetic significance. This is also so because, Public Interest Litigation converts adversarial nature of the proceedings into inquisitorial proceedings. The Court, as guardian of public interest investigates to decipher the truth. This unique remedy is the hallmark of a welfare democratic State, which rests on the principles of social and economic justice enshrined in our Constitution.
>
> 25. Right to information is another corrective tool, which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19A empowers the civil society of this country to seek information from public institutions and hold them answerable. Article 19A, therefore, enthuses fresh life into Public Interest Litigation.
>
> 26. The rules of standing/locus standi have a close connection and nexus with the rule of law. Closing the doors of the court on a petitioner who warns of a public institution's unlawful action means giving that public body a free hand to act without fear of judicial review."

25. In Arshad Waheed[3] case, this Court held that even though the Petition before the Court may not have been otherwise maintainable on merits, if violations in the disposal of public property and breach of public trust by public functionaries have been observed, this Court is obligated to preserve, protect and defend the Constitution and in the circumstances, do right with all manner of people, without fear and favour.

> "36. Non-maintainability of the petition and the power of this Court to proceed further
>
> Non-maintainability of the petition on merits does not oust the jurisdiction of this Court to address other violations of public law which have come to fore during the course of arguments on the petition and after the perusal of the record. Stark

[3] Arshad Waheed v. Province of Punjab and others (**PLD 2010 Lahore 510**)

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violations in the disposal and transfer of public property and heartless breach of public trust by the public functionaries (public trustees) cannot be overlooked. This Court is under oath to preserve, protect and defend the Constitution and in all circumstances do right to all manner of people without fear and favour. For the Court to dismiss the petition on the ground of maintainability alone would not only result in failure of justice, it would also make the Court and its constitutional jurisdiction hostage to technicalities, which cannot be allowed. Once grave violation of law and transparency in the disposal/transfer of public property comes before this court, it transforms the lis into public interest litigation conferring inquisitorial jurisdiction on this Court. No constitutional court can shy away from fully discharging this responsibility. It is useful here to revisit Article 199(1)(a)(ii) of the Constitution, which provides that on as application of the aggrieved person, the court can make an order "declaring that any act done or proceedings taken within the territorial jurisdiction of the Court have been done or taken without lawful authority and is of no legal affect". Again, under Article 199(1)(c) this Court can "make an order giving such directions to any person" within territorial jurisdiction of the Court for enforcement of fundamental rights conferred under the Constitution. These are loud reminders of the jurisdictional expanse enjoyed by this Constitutional Court. This Court is, therefore, at all times equipped with the jurisdiction to probe into any public wrong affecting public at large, when the same has come before it through a petition. It does not matter if the said wrong has been specifically agitated or has coincidentally surfaced during the proceedings. This jurisdiction should not be confused with suo motu jurisdiction exercised by the august Supreme Court of Pakistan under Article 184 of the Constitution, as in the present case jurisdiction of this court has been invoked through a petition placed before the Court by an aggrieved party. I, therefore, proceed further to assess if the Joint Venture Agreement entered into between PUNJMIN and ERPL passes the test of law and transparency."

26. Ch. Munir Ahmad case[4] was also referred which deals with the allotment of State land leased to the Pakistan Army under the Colonization Act.

[4] Ch. Munir Ahmad v. Government of Punjab through Chief Secretary, Punjab Lahore and others (**PLD 2022 Lahore 384)**

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> "6. …Normally a person is considered as aggrieved person whose vital interest is likely to be effected by any discriminative perverse order/action of the executive authority and he may, in absence of any other swift remedy, approach this Court under Article 199 of the Constitution for redressal of the grievance of the citizen in rem. Any citizen being part of society have interest in public assets/ property which is being disposed of arbitrarily or in violation of law/policy by public functionaries, he owes a bounded obligation to agitate the issue and also to inform the legally established fora to take judicial review of such executive order on the touchstone of the constitutionality/legality of said order of the executive, as such, the petitioner who is a citizen of Pakistan is considered as an aggrieved person and he may assail the adverse order of the authority. Even otherwise once sufficient tangible, affirmative information or record is brought before the constitutional Courts who are mighty guardians of fundamental rights of the citizens as well as that of the public assets are placed under unalienable sacred bounded duty to eliminate the illegality and perversity on the order of the executive authority."

27. Learned counsel argued that the perusal of the above judgements reflects that the concept of the 'aggrieved person' and '*locus standi*' in matters related to sale, lease and disposal of public land are to be given an expansive and purposive meaning especially when violations of law have occurred in the impugned transactions. The contention of the Respondents that the Petitioner being a juristic person and not a natural person is estopped from invoking the constitutional jurisdiction of this Court is absolutely untenable since the stance, if agreed to, would mean that no organization or association of persons will ever be able to invoke the extraordinary constitutional jurisdiction of this Court for enforcement of Chapter 1, Part II of the Constitution which would in effect make host of judgments pronounced by the High Courts over time as *per incuriam*. The opposing argument essentially entails that despite flagrant violations of the rights of people, such as, their right to life, property and treatment in a non-discriminatory manner, at the hands of the State, the Court would be

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limbless if the same excesses are being highlighted by a consortium rather than an individual person. Hence, such an argument has no place in the constitutional scheme of Pakistan and is diametrically opposed to established principles of natural justice.

28. Elaborating on the scope of Judicial Review in the instant matter, it was contended that powers of Judicial Review available with this Court on the matters enumerated herein must not be exercised on the standard of Statutes. This is so because the Notification emanates from an executive action and therefore, is liable to be judged on the same benchmark as any other executive action, because the same has not gone through the rigorous accountability of the elected representatives of the people. This Court must apply the principles applicable to Judicial Review of executive actions in relation to the lease of public property as gleaned from the cited Judgments, *inter alia*, that public property is to be dealt with in a fair, just, transparent and reasonable manner, untainted by *mala fide* and without discrimination; that public property cannot be dealt with in a manner that allows for governmental representatives to make decisions regarding the same behind closed doors and with specific entities, defeating the concept of fair competition; and that infractions, if found, in the process of disposal (including lease) of public property cannot be condoned on any account, including, but not limited to, the claim that the same have resulted in public benefit, therefore, the idea of a 'beneficial' deviation from core fiduciary duties of undivided loyalty, prudence and reasonableness, which the State functionaries owe to the people of Pakistan must be rejected in the strongest terms. Thus, once the Court assesses that breach of trust and violation of law by a public institution have taken place, the Court must immediately proceed further to rectify such breach leaving behind the identity or antecedents of the Petitioner. Accordingly, it was urged that objections qua maintainability be discarded.

29. On merits, it was contended that the Elections Act, 2017 (the **"Elections Act"**) codified the prevalent judicial pronouncements on the

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scope and extent of powers of a caretaker government. In order to fully grasp the provision of the Elections Act, it is necessary to peruse the said Judgments to identify the spirit and intent of the legislation which is that any caretaker government is severely limited in the performance of its functions and cannot exercise powers like a democratically elected government since its sole mandate is to assist the Election Commission of Pakistan in ensuring the conduct of free, fair and honest elections. Reference in this regard was made to some relevant excerpts from the Judgments rendered in this context. The Supreme Court of Pakistan in Khawaja Muhammad Asif[5] case has observed as under.

> "13. Essentially, according to the settled and accepted norms/ practice, the Caretaker Government (Prime Minister and Cabinet) is required to perform its functions to attend to the day-to-day matters, which are necessary to run the affairs of the State and also to watch the national interests, etc., in any eventuality in absence of an elected Government, and such Government is not authorized to make decisions/appointments having effect on the working/policies of the future Government, which is likely to take over after the elections. Apart from providing assistance to the Election Commission in organizing free, fair, honest and just elections in the country, it is not vested with the authority to take decisions concerning the affairs of the Government, which are bound to pre-empt the scope and sphere of activity, powers and jurisdiction of an elected Government. A Caretaker Government possesses limited powers and authority particularly in view of the fact that when it is appointed, there is no National Assembly in place and thus the all important aspect of accountability is absent. Further, the exercise of complete powers by the Caretaker Government goes against the doctrine of separation of powers which is the lifeline of any vibrant democracy. As noted earlier, the absence of legislature results in lack of checks and balances. The Caretaker Government also lacks the mandate of the majority of people, which is to be acquired by elected government through the general elections. Therefore, if a Caretaker Government is allowed to exercise complete powers available to an elected Government, it may make an attempt to continue to remain in office for a longer period of time or may take

[5] Khawaja Muhammad Asif v. Federation of Pakistan and others (**2013 SCMR 1205)**

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such decisions which may cause problems for the future elected government."

30. A cursory view of the above reflects that the Supreme Court has restricted the role of a caretaker government to routine, day to day matters and not much beyond that. In fact, in Abdul Rauf[6] case, the Apex Court held that even if a process was initiated by an elected government, the caretaker government cannot finalize the same, if material steps to do so are to be taken by the caretaker government.

> "7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge. A caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery/resources/ manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which takes charge as a result of elections. It was in this context that in a case reported as Khawaja Muhammad Asif v. Federation of Pakistan and others (supra) held that a Caretaker Government/Cabinet has to confine itself to running day to day administration of the State and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution…."

31. The above Judgments received subsequent statutory cover under the Elections Act, Section 230 whereof is to be read in the light of the afore-noted Judgments. As such, it can be safely ascertained that the

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[6] Government of Balochistan through Secretary Services and General Administration Department and others v. Abdul Rauf and 6 others (**2021 PLC (C.S.) 519**)

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powers of a caretaker government are restricted to provide assistance to the Election Commission in organizing free, fair and just elections, to perform functions only to the extent that is necessary for running day to day affairs of the government and the functions so performed must be routine, non-controversial and urgent in nature. A caretaker government must restrict itself from taking an action or measure of permanent and irreversible nature, thereby, preempting the powers and jurisdiction of the future elected government.

32. Various aspects of the impugned transaction show that all the actions are neither routine, urgent or even non-controversial nor do they relate to day to day affairs, necessary for running the functions of the government and are instead of a permanent and irreversible nature, insofar as the powers of not just the next elected government, but at least of the next four (4) elected governments (since the lease is for 20 years extendable by another 10 years) were impaired. In light of the above, any transaction relating to public policy which violates the above principles of transparency, fairness, justice and reasonableness would be violative of the fundamental rights of the citizens of Pakistan, including but not limited to, their right to life, property, equality and a non-discriminatory treatment, as guaranteed to them under the Constitution and any decision thereon by a caretaker government would run contrary to the fundamentals of democracy enshrined in our Constitution.

33. While elaborating scope of the new SOCs, it was stated that the new SOCs generally create terms and conditions on which State land is to be granted to public and private entities for the purpose of 'agriculture research and farming', 'import substitution', 'food security', 'standardization and maximization of seed productivity', 'livestock research', 'breeding and farming' and for any other purpose relating to the agricultural or livestock sectors. The new SOCs allow for grant of State land on lease through open auction and through single source, provide a procedure of determining rent to be paid and specify a lease period of 20

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years, extendable up to a maximum of 30 years. Section 10(2) of the Colonization Act stipulates that the GOP (which means the elected government) may issue SOCs on which it is willing to grant land to tenants. Thus, in the light of Mustafa Impex[7] case, the GOP is to be unequivocally understood as the whole Elected Cabinet, including the Chief Minister. Hence, it is clear that the impugned transaction has not been approved by the GOP as the same was beyond the mandate and scope of the Caretaker Government.

34. The new SOCs were approved by the Caretaker Cabinet which was not empowered to approve and notify any such instrument, given the scope and magnitude of the provisions contained therein since formulating a policy or entering into arrangements regarding 'agriculture research and farming', 'import substitution', 'food security', 'standardization and maximization of seed productivity', 'livestock research', 'breeding and farming', and for any other purpose relating to the agricultural or livestock sectors does not fall under the 'day to day' affairs. The new SOCs deal with a subject which is not 'routine' since admittedly this is the first instance that such new SOCs are being issued on single source basis. The new SOCs create a situation where any lease granted thereunder cannot be reversed by the future elected government. The new SOCs deals with an important, but not urgent, matter of public importance since the facts hereinabove reflect that the previous Elected Government was proceeding with caution in the matter by ensuring to take input from all concerned stakeholders and for this purpose was willing to let the original SOCs remain pending for over two years. The new SOCs make a policy that preempts the exercise of authority by the future elected government. The secrecy and undue haste through which the new SOCs were adopted in breach of explicit constitutional and legal mandate depict that the same are also controversial especially when they deprive at least

[7] Messrs Mustafa Impex, Karachi and others. v. The Government of Pakistan through Secretary Finance, Islamabad and others (**PLD 2016 SC 808**)

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four future elected governments from exercising any authority with reference to leases granted thereunder in a non-reversible manner. Therefore, it is established in unambiguous terms that the new SOCs could not have been issued by the incumbent Caretaker Cabinet.

35. Without prejudice to the fact that in view of the Abdul Rauf case (supra), a process initiated by the elected government cannot be completed by the caretaker government, if it requires substantive steps (such as reviewing changes to the same), even otherwise, there was no unqualified and unconditional approval of the new SOCs notified by the Elected Government vide the Notification. This is on account of the fact that the approval 'in principle' given by the Elected Cabinet dated 28.02.2022 was conditional in nature and was subject to its placement before the specifically constituted Ministerial Committee. The perusal of the above decision reflects that the Elected Cabinet had referred the matter to the Ministerial Committee comprising both, elected representatives as well as members of the civil bureaucracy. The said Ministerial Committee was to review the original SOCs placed before the Elected Cabinet in its 51st meeting held on 28.02.2022 and give its comments thereon. Any comments, changes or suggestions regarding the original SOCs by the Ministerial Committee would have required approval from the Elected Cabinet.

36. Therefore, in light of the Mustafa Impex case (supra) any changes in the original SOCs by the Ministerial Committee required an approval from the Elected Cabinet before issuance of the Notification by the GOP under Section 10(2) of the Colonization Act which is admittedly absent which fact alone is sufficient to declare the impugned Notification as unlawful.

37. Without prejudice to the above, and even otherwise, the new SOCs approved by the Caretaker Cabinet are materially different from the original SOCs conditionally approved 'in principle' by the Elected Cabinet. Further, the new SOCs as approved by the Caretaker Cabinet are

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also different from the new SOCs notified by the BOR. A comparison of the material differences which directly go to the heart of the principles of transparency, fairness and non-discrimination between the original SOCs placed before the Elected Cabinet in its 51st meeting and the new SOCs as presented before the Caretaker Cabinet (having never been seen by the Elected Cabinet) were highlighted as follows:-

New SOCs	Original SOCs	Material Difference
Objectives included agriculture research and farming, import substitution, food security, standardization and maximization of seed productivity, breeding and farming, and for any other purpose relating to the agriculture or livestock sector	Purpose of Lease was import substitution, food security, standardization and maximization of seed productivity, any other purpose related to the agriculture sector.	The Elected Cabinet only considered the SOCs to the extent of the agriculture sector. However, the Caretaker Cabinet have materially expanded the scope to include the livestock sector as well.
Term of lease to be granted was for 20 years, extendable by another 10 years subject to District Collector's satisfaction that the new SOCs have been met.	Term of a tenancy was fixed as twenty years which may be renewed based on recommendations of the District Collector and the BOR subject to satisfactory performance.	A material change was made by enlarging the period of tenancy from the Original SOCs. Furthermore, the new SOCs made extension as of right if the new SOCs were complied with by the lessee, whereas the Original SOCs gave a discretion to the BOR.

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Lease may be through open auction or through single source without any transparent open bidding to certain noted governmental (federal, provincial, local and foreign) entities and State Owned Enterprises.	The only form of lease recognized was a lease through open auction and to private entities.	This perhaps is the most material change to the original SOCs vis-à-vis the new SOCs and completely changes the scope, nature, and process of leases under the new SOCs. This also introduces conditions which are non-transparent, discriminatory towards private entities, and which deny the right to information of the public regarding public property since decisions (as have been made in the instant matter) regarding disposal of public property can now be taken without any public participation, disclosure and knowledge.
Envisages rent for open auction leases, whereas profit sharing model for single source.	Only envisages rental income to be earned by the GOP with no expense, investment or equity of its own.	This too is a material change since it changes the potential of the GOP to generate revenue from the use of public land by other entities. By allowing for a profit sharing model, this actually creates room for loss being suffered by grant of leases of State land to other government entities which can in no manner be deemed prudent.
No size of a tenancy was provided.	Tenancies were to be for five hundred acres or above.	This is a material change since the original SOCs had some indication of the size of tenancies to be

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		granted. On the other hand, the new SOCs presented to the Caretaker Cabinet contained no ceiling, meaning thereby, that an inordinate amount of land may be provided thereunder. This is precisely why a JVA for up to one million acres of land has been envisaged.

38. Furthermore, there were two key material differences *inter se* the new SOCs approved by the Caretaker Cabinet and later notified by the BOR, which are as under:-

New SOCs notified by BOR	**New SOCs approved by Caretaker Cabinet**	**Remarks**
No local partnership was required for a foreign company.	Required a foreign company to enter into a JV with a local partner.	The change was admittedly made by the Caretaker Cabinet, clearly discounting the claim that the new SOCs as notified were approved by the Elected Cabinet.
Profit share of the GOP in (non-transparent) single source lease not to be below 33%	Profit share of the GOP in (non-transparent) single source lease not to be below 50%.	The change was admittedly made by the Caretaker Cabinet, clearly discounting the claim that the new SOCs as notified were approved by the Elected Cabinet and reducing the minimum revenue to be earned therefrom.

39. Accordingly, it was stressed that a perusal of the above tables reflects that there were material changes in the original SOCs as seen by

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the Elected Cabinet, as presented before the Caretaker Cabinet and as approved by the Caretaker Cabinet without following any documented process. Consequently, the Caretaker Cabinet has clearly ventured beyond its constitutional and statutory powers and therefore, the Notification and any other arrangements resulting from it are liable to be struck down on this score alone. Not only was the Caretaker Cabinet barred from completing a process left incomplete by the Elected Cabinet, they were, even otherwise, not competent to make material changes irreversible by the future elected government.

40. Touching upon the mystery relating to the Ministerial Committee's meeting, learned counsel recalled that during the course of proceedings vide order dated 09.05.2023, this Court *inter alia*, posed the following query to bridge the gap between the conditional approval of the original SOCs and the new SOCs:-

> "The proceedings of Ministerial Committee as per decision of the Provincial Cabinet on Agenda No. 19 regarding the original SOCs taken in its 51st meeting dated 28.02.2022."

However, vide additional reply, the concerned Respondents submitted the following in response to the above query:-

> "After principle approval of the Provincial Cabinet on 28.02.2022, a Note for Minister for Law was initiated for obtaining schedule of the meeting of the Ministerial Committee (Annex A). A Notice for the meeting dated 14.10.2022, was issued on 13.10.2022 (Annex B). A copy of attendance sheet is placed at Annex C. The draft statement of conditions was discussed in the meeting and Senior Member Board of Revenue was directed to put up the amended Statements of Conditions (SOCs) before the Provincial Cabinet, however, formal minutes were not issued. This very fact was mentioned in a Summary for the Cabinet (Annex D)."
>
> (Emphasis Supplied)

41. In this context, it was submitted that the said response reflects that no minutes of the Ministerial Committee's meeting, if any held, were recorded. Without prejudice to the fact that this is an egregious violation of

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Rules 22, 28 & 29 of the Rules, 2011, the attendance sheet appended with the Additional Reply which ostensibly reflects that the meeting of the Ministerial Committee was indeed held does not reflect a meeting of the Ministerial Committee formed by the Elected Cabinet vide its decision dated 28.02.2022 on Agenda Item No. 19. This is so because only one member out of the four Ministers identified by the Elected Cabinet in its decision dated 28.02.2022 attended the meeting. Therefore, even if it is assumed that the attendance sheet is authentic, it does not reflect that a meeting of the Ministerial Committee, as envisaged by the Elected Cabinet, had been held.

42. The counter stance of the Respondents placing reliance on Rules 28(8), 28(9) and 28(14) of the Rules, 2011, stating that the attendance by the Secretaries of the concerned Departments may be treated as substitute of the absentee Ministers is untenable because this matter was not so urgent for the Secretaries to not wait for the return of their respective Ministers since the matter had already remained pending for several months. The meeting, if at all, clearly took place in an unreasonable haste, since a matter that had remained pending for over two years, suddenly required that a meeting thereof be held on one day notice (the notice of the meeting was issued on 13.10.2022, whereas, the meeting was ostensibly held on 14.10.2022), violating the prescribed procedure under the Rules, 2011. Secondly, in any event, the Secretaries were obligated to submit the matter and the relevant records under Rule 28(14) of the Rules, 2011 before the concerned Minister once the Minister became available. That is, the final approval of the items discussed in the meeting remained subject to the approval by the concerned Ministers, regardless of their absence from the meeting. However, there is nothing on record to reflect that such mandatory provisions were followed. In fact, admittedly no minutes were issued for the meeting and so, the question of the Minister approving the matters discussed in the meeting does not even arise. Consequently, the reliance by the Respondents on the

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aforementioned Rules to substitute the attendance of the missing Ministers is misplaced at best and a disingenuous attempt to mislead this Court, at worst. This submission is made notwithstanding the fact that the Elected Cabinet had specifically nominated both the Ministers and Secretaries of the concerned Departments, separately. The Ministers, in this scenario, would be deemed to personally constitute as members of the Ministerial Committee and could not have been replaced in their stead.

43. There is nothing on record to establish that any changes to the original SOCs reflected in paragraph 3.3 of the minutes of the 4th meeting of the Caretaker Cabinet held on 09.02.2023, were introduced in the tenure of the Elected Cabinet. Rather, the same appear to have been introduced by the concerned Departments of their own accord. Therefore, the changes to the original SOCs being material in nature are unlawful and liable to be struck down, for lacking the necessary approval from the previous Elected Cabinet.

44. Hence, there is no doubt about the fact that the new SOCs that provided the ground for the JVA were rooted in the action of the Caretaker Government, rather than the Elected Government which contradicts the very premise of the Respondents that the JVA is in furtherance of an exercise taken by the Elected Government. Even otherwise, it appears that the Caretaker Government materially changed the original SOCs precisely to accommodate the request made by the DGSP vide letter dated 08.02.2023, i.e. one day before the new SOCs were approved by the Caretaker Cabinet. As the Caretaker Government had no authority to make a material amendment of this sort to the original SOCs, the JVA must be declared unlawful and *void ab initio*.

45. It was next contented that approval and issuance of the Notification of the new SOCs by the Governor of Punjab was unlawful. Section 10(2) of the Colonization Act provides that the Provincial Government may issue SOCs on which it is willing to grant land in a colony to tenants. The Notification, on the other hand, has been issued by

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the Governor of Punjab, as is evident from the recital thereto. The power to issue SOCs vests exclusively with the GOP. However, the Notification is stated to have been issued by the Governor of the Punjab and is, therefore, not in accordance with the mandate of the Colonization Act. The constitutional Courts of Pakistan have repeatedly held that when a law requires a thing to be done in a particular manner, it should be done in that manner, or not done at all. It is only the GOP which, needless to say means the Cabinet as held in Mustafa Impex case (supra) could have issued the Notification for the new SOCs under Section 10 of the Colonization Act. Therefore, the new SOCs purported to have been issued by the Governor of the Punjab are illegal and *ultra vires* the Colonization Act, hence, are liable to be declared as illegal and unconstitutional forthwith.

46. Questioning the validity of the JVA, it was contended that the JVA has been executed between the Governor of the Punjab and the Pakistan Army as a consequence of the newly added provision for 'single source lease' in the new SOCs. This is a unique document, inasmuch as it contains no reference to any rent or the other processes required to be followed under the Colonization Act and the new SOCs. The JVA is, therefore, also illegal, *void-ab-initio* and liable to be struck down.

47. Highlighting the grounds of attack to the JVA, learned counsel contented that firstly, as with the issuance of the new SOCs themselves (even if it is assumed, without conceding, that the same have been validly issued), the JVA itself deprives at least four future elected governments from exercising rights upon any lands granted thereunder since there is no provision for a 'no-cause' termination contained therein, and the same can only be terminated if the lessee, i.e. the Pakistan Army, contravenes the provisions of the new SOCs. The claim of the Respondents that the transaction being between two governments would always mean that it is reversible, is untenable as the Pakistan Army (or the Federal Government, as the case should be, and the President, in whose name the JVA could have been) is not an attached or associated entity of

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the GOP. The latter has no influence on the same and cannot assume that any request for resumption of land without meeting the conditions of resumption laid out under the new SOCs and the JVA will be honoured. This is even otherwise without prejudice to the fact that the new SOCs only provide for a cancellation of lease if the lessee violates the same itself or any provincial or federal law and even Clause 8 of the JVA only allows for resumption in certain circumstances and does not give any power to the future elected government to cancel the lease simpliciter. This under no stretch of the imagination can be termed as reversible.

48. Moreover, the provisions of the JVA contradict the provisions of the Colonization Act and the new SOCs themselves. Section 10(3) of the Colonization Act stipulates that consequent to issuance of SOCs, the Collector may, subject to the control of the BOR, allot land to any person, to be held subject to such SOCs issued by the GOP, as the Collector may by written order declare to be applicable to the case. No written order has been placed before the Court, wherein, the Collector may have identified any land that is to be leased out under the terms of the new SOCs. Despite this, hundreds of undetermined and unspecified Acres of land is being leased out to the Pakistan Army under the JVA.

49. The above is without prejudice to the fact that nothing has been placed on record to reflect that some consultative or decision-making process was followed either by the FOP under whom the Pakistan Army operates or by the Pakistan Army itself. Furthermore, the process for single source lease as provided under the new SOCs has not been followed which requires that details of State land be specified along with draft JVA and Board of Management. But the JVA only says that this is for ‘up to one million Acres’ of land, without identifying exactly where such land is. The role of the Collector has also been removed in contravention of the parent Statute which requires the Collector to specify land. However, here, a ‘Negotiation Committee’ has been set up in order to release or reclaim land. This is in further contradiction to the new SOCs which do not

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provide for resumption simpliciter without their being a violation by the lessee as a lease has to be for 20 years and further extendable by 10 years. Furthermore, the JVA includes provisions, such as, 'afforestation', which is wholly outside the purview of the Colonization Act which specifies that SOCs can be for agriculture and livestock, as recognized by the new SOCs themselves as well. The grant of Forest Land regarding *Rakh Goharwala* thereunder is even more worrying since the same is a protected forest and cannot be leased out for any purpose.

50. It was pointed out that there appears to have been significant changes in the role and input of the GOP in the whole process. The matter, as originally presented to the Caretaker Cabinet (it is pertinent to reiterate that the Elected Cabinet never even dreamt of such an arrangement) reflected in paragraph 3.5 of the minutes of its 7th meeting dated 25.02.2023 that 'initial funding' shall be provided by the Pakistan Army. The replies filed by both the GOP and the FOP repeatedly refer to the fact that the GOP is only contributing its land. However, the letter dated 08.02.2023 sent by the DGSP to the SMBR stated that the Pakistan Army can provide 'free tubewells' and 'farm-to-market' roads. Yet, when the matter was deliberated by the Caretaker Cabinet in its 7th meeting, in paragraph 3.8 (which was subsequently approved), it was determined that investment would "preferably" be provided by the Pakistan Army. Interestingly, there was no deliberation or statement with respect to tubewells, electricity provision and farm-to-market roads at all in the matter as presented to the Caretaker Cabinet in its 7th meeting. Yet, the JVA in Clause 3 obligates the GOP to provide canal water, tubewells and construct farm-to-market roads, whereas, the lessee, i.e. the Pakistan Army, would only pay for utility charges. The JVA, therefore, is clearly beyond anything that was ever considered by the Elected or Caretaker Cabinet.

51. Furthermore, according to Articles 129 and 139 of the Constitution, the executive authority of the Provincial Government shall be

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exercised in the name of the Governor. The Respondents have placed a reliance on the said Articles to substantiate their position that the Notification was validly issued by the Governor of Punjab. However, it is to be noted here that Federal Government can also exercise its executive powers only in the name of the President and no one else. In the instant scenario, however, while the GOP has entered the JVA in the name of the Governor, the Pakistan Army has done so through the DGSP instead of the President. As elaborated earlier, there is no law allowing for such a deviation from a substantial procedural requirement of this nature, thereby, raising a question mark over the validity of the JVA on this point alone.

52. The above, in any event, is being submitted without prejudice to the fact that, under the Constitution and all applicable laws, including the Rules of Business, 1973 of the Federal Government, (the "**Rules, 1973**") and the Pakistan Army Act, 1952 (the "**Army Act**"), the Armed Forces of Pakistan or any Department, Division, entity or Directorate thereof, has no competence to directly enter into any arrangement with any entity or perform any functions without the express approval of the Federal Government (i.e. the Federal Cabinet) and that too only to the extent that the same relates to the defence of Pakistan from external aggression and while acting in aid of civil powers under any law.

53. The JVA was entered into between the GOP, through the Governor and the Pakistan Army, through the DGSP consequent to the notified SOCs, paving way for the ultimate leasing of up to one million Acres of land to latter. The fundamental requirements of the formation of a lawful contract in terms of the capacity of the contracting parties to enter into such an arrangement was in violation of the relevant constitutional Articles, relevant Rules of the Rules, 1973, the Rules, 2011 and the Judgments of the Supreme Court of Pakistan which demonstrate that the DGSP, meaning thereby, the Pakistan Army lacked the capacity to enter into the JVA with the GOP.

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54. Commenting on the scope of Article 245 of the Constitution, it was stressed that it clearly lays down the limits to the functions and powers of the Armed Forces of Pakistan. Its two main functions are to defend Pakistan against external aggression and to act in aid of civil power, subject to law, and when called upon to do so. With regard to the latter, it must be emphasized here that any action in aid of civil power could be performed by the Armed Forces of Pakistan only when there is a law allowing for the same and when a specific request to this effect is made by the Federal Government. Assuming that the Respondents argue that undertaking the project of CAF falls within the scope of acting in aid of civil powers, even then there is nothing on record that such assistance was requested, or approved, in accordance with the Constitution and law.

55. In the instant scenario, there is nothing on record to show that a request to indulge the DGSP in any commercial venture was made by the GOP, meaning thereby that the Pakistan Army entered into the JVA of its own accord, without any approval by the Federal Government either. The scenario is worsened by the fact that the DGSP is not even one of the attached Departments of the Federal Government as laid down in Schedule III of the Rules, 1973. Furthermore, the Respondents have provided no documents of any sort to explain the process through which the DGSP was created and the rules that govern it. In essence, an agreement allowing for the lease of around 2% of the total territory of Punjab has been entered into by an entity which is surrounded by a total vacuum with regard to the details regarding the process of its formation, governing laws and procedures as well as any records substantiating its lawful capacity to enter the JVA.

56. The only Statute that relates to the conduct and procedures of the Pakistan Army is the Army Act, wherein, no provision is available which authorizes or empowers the Pakistan Army to undertake any activity beyond its composition for the purposes of welfare without the express permission granted by the Federal Government to do so. The Statute is

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completely silent on the scope of functions and powers of the Pakistan Army and deals with subjects, such as, appointments, transfers, termination of the personnel of the Pakistan Army as well as the actions deemed as officers under the Army's code of conduct and so on. However, it speaks nothing about the query at hand, as to whether the Pakistan Army has the capacity to enter into a contract, such as, the JVA, of its own accord and without the express involvement and approval of the Federal Government.

57. The fact that the approval of the Federal Government is necessary, and that too only if a law specifically allows as such, has been determined by the Supreme Court of Pakistan and the Islamabad High Court in multiple Judgments, which are of great significance in determining the parameters of the powers and the scope of the functions of the Armed Forces. In the Sindh High Court Bar Association[8] case, the Supreme Court remarked as under:-

> "53. On a plain reading of the provisions of Article 245(1), the functions of the Armed Forces can be bifurcated into two categories, namely, they shall (1) defend Pakistan against external aggression or threat of war, and (2) subject to law, act in aid of civil power when called upon to do so. Under clause (1) of Article 243, the control and command of the Armed Forces is vested in the Federal Government, therefore, in the performance of both the categories of functions, the Armed Forces act under the directions of the Federal Government. Thus, the provisions of clause (1A) of Article 243 under which the supreme command of the Armed Forces vests in the President, does not, in any manner, derogate from the power of the Federal Government to require the Armed Forces to defend Pakistan against external aggression or threat of war, or to act in aid of civil power in accordance with law."

[8] Sindh High Court Bar Association through its Secretary v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others (**PLD 2009 Supreme Court 879**)

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58. The Supreme Court elaborating the role of Armed Forces in Air Marshal (Retd.) Muhammad Asghar Khan[9] case held as follows:-

> "83. The role and functions of Armed Forces have been discussed in detail in Sindh High Court Bar Association's case (supra) wherein it has been observed that on a plain reading of the provisions of Article 245(1), the functions of the Armed Forces can be bifurcated into two categories, namely; they shall defend Pakistan against external aggression or threat of war; and subject to law, act in aid of civil power when called upon to do so. Under clause (1) of Article 243, the control and command of the Armed Forces is vested in the Federal Government, therefore, in the performance of both the categories of functions, the Armed Forces act under the directions of the Federal Government. Thus, the provisions of clause (1A) of Article 243 under which the supreme command of the Armed Forces vests in the President, does not, in any manner, derogate from the power of the Federal Government to require the Armed Forces to defend Pakistan against external aggression or threat of war, or to act in aid of civil power in accordance with law. The Constitution does not envisage any situation where the Armed Forces may act without any direction by the Federal Government. Clause (3) ibid, provides that the President shall, in consultation with the Prime Minister appoint the Chairman, Joint Chiefs of Staff Committee; the Chief of the Army Staff; the Chief of the Naval Staff; and the Chief of the Air Staff. Under Article 244, every member of the Armed Forces makes oath, inter alia, to the effect that he will bear true faith and allegiance to Pakistan and uphold the Constitution of Pakistan, and that he will not engage himself in any political activities whatsoever. Any action of the Armed Forces undertaken without a direction by the Federal Government shall be unconstitutional, illegal, void ab initio and consequently of no legal effect. Thus, it was held that any member of the Armed Forces, including the Chairman, Joint Chiefs of Staff Committee and the three Service Chiefs, namely, the Chief of Army Staff, the Chief of Naval Staff and the Air Chief, or any person acting under their authority, or on their behalf, who acts in the performance of either of his functions of defending Pakistan against external aggression, or of acting, subject to law, in aid of civil power without any direction by the Federal Government acts in violation of the

[9] Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others (**PLD 2013 Supreme Court 1)**

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Constitution and the law and does so at his own risk and cost."

59. While adverting to the commercial use of land by the Pakistan Army in Islamabad, the Islamabad High Court in Prof. Zahid Baig Mirza[10] case specifically discussed the status and claim of the RVF Directorate and its competence to own land and to execute commercial leases. The following extracts therefrom are of significance:-

> "20. The RVF Directorate is an internal office of the General Headquarters (GHQ) of the Pakistan Army, one of the branches of the Armed Forces. The GHQ is under the administrative control of the Ministry of Defence, Government of Pakistan. The RVF Directorate nor the GHQ have the legal status under the Constitution or the law to own State owned land. As will be discussed later, land is allocated for the use of the branches of the Armed Forces and it is managed and retained in accordance with the scheme of the governing law and, that too, by the entities and public functionaries designated there under.
>
> ….In an earlier judgment this Court has elaborately described the status of the Armed Forces and its locus standi to own and manage State land and the same is reiterated as follows.
>
> The mandate of the Armed Forces of Pakistan has been described in Chapter 2 of Part XII of the Constitution. The three main branches of the Armed Forces are the Pakistan Army, Pakistan Navy and Pakistan Air Force. Article 243 of the Constitution provides that the Federal Government shall have control and command of the Armed Forces. The supreme command of the Armed Forces vests in the President of Pakistan. The latter, subject to law, has the power to raise and maintain the three branches of the Armed Forces. Article 244 makes it a constitutional requirement for every member of the Armed Forces to take an oath in the form set out in the Third Schedule, which includes a solemn pledge and commitment to uphold the Constitution and to serve as required by and under the law. Sub Article (1) of Article 245 explicitly provides that the Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war and, subject to law, act in aid of the civil power when called upon to do so. The Rules of

[10] Prof. Zahid Baig Mirza v. Capital Development Authority through Chairman & others (**PLD 2022 Islamabad 398**)

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Business, 1973 enjoys constitutional backing and section 3 thereof describes how business is to be allocated amongst the Ministries and Divisions listed in Schedule-1 thereto. Sub section (3) provides that the business of the Government shall be distributed amongst the Divisions in the manner indicated in Schedule- II. The Armed Forces of Pakistan i.e. the Pakistan Army, Pakistan Navy and Pakistan Air Force are the administrative responsibility of the Ministry of Defence / Defence Division. It is noted that the administration of Military Lands and Cantonments Group is also under its administrative control. The august Supreme Court, in the case titled "Justice Hassnat Ahmed Khan and others v. Federation of Pakistan/State" [PLD 2011 SC 680] has held that under Article 245(1) of the Constitution, the Armed Forces of Pakistan are bound to remain under the direction of the Federal Government to defend Pakistan against external aggression or threat of war and, subject to law, act in aid of the civil power when called upon to do so. It has been further held that non-adherence to the constitutional provisions, prima-facie, tends to establish denying the oath to uphold the Constitution. It has been further held that deviation from the constitutional mandate by members of the Armed Forces cannot be condoned by the superior courts. In the case titled "Sindh High Court Bar Association v. Federation of Pakistan" [PLD 2009 SC 879] the apex Court has elaborated the scheme of the constitution and has observed that, on a plain reading of Article 245(1), the functions of the Armed Forces can be bifurcated into two categories, i.e. to defend Pakistan against external aggression or threat of war and, subject to law, act in aid of civil power when called upon to do so. Moreover, it has been observed that under clause (1) of Article 243, the control and command of the Armed Forces is vested in the Federal Government, therefore, in the performance of both the categories of the aforementioned functions, the Armed Forces act under the directions of the Federal Government. Reliance is placed on the cases titled "Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, former Chief of Army Staff and others" [PLD 2013 SC 1], "Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others" [PLD 1999 SC 504], Page - 21 W.P. No. 1772 of 2020. "District Bar Association, Rawalpindi and others v. Federation of Pakistan and others" [PLD 2015 SC 401].

The Pakistan Army Act, 1952 [hereinafter referred to as the "Act of 1952"], the Air Force Act 1953 [hereinafter

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referred to as the "Act of 1953"] and the Pakistan Navy Ordinance, 1961 [hereinafter referred to as the "Ordinance of 1961"] have been promulgated to regulate the respective branches of the Armed Forces and its discipline. The aforementioned statutes regulate the discipline and internal working of the respective branches of the Armed Forces but does not empower the officers to undertake any activity beyond the establishments. There is no provision under the afore mentioned laws which authorizes or empowers the Pakistan Army to undertake, directly or indirectly, activities beyond its composition for the purposes of welfare, unless the Federal Government has expressly granted permission to do so. As a corollary, the Pakistan Army has no power nor jurisdiction to, directly or indirectly, engage in business ventures of any nature outside its composition nor to claim the ownership of state land.

… There could be multiple eventualities requiring the Armed Forces to act in aid of the civil power e.g. internal security, natural calamities such as floods, earthquakes etc. The secondary function to act in aid of the civil power is subject to law and can only be undertaken if 'called upon to do so'. In case of both the functions the Armed Forces cannot act on its own. These are the only two constitutional functions mandated to the Armed Forces. Since the command and control of the Armed Forces vests in the Federal Government, therefore, no branch can undertake any activity or perform functions outside their respective establishments unless expressly directed or called upon to do so. The unique responsibilities have been prescribed under the Constitution and, therefore, obedience to the provisions ibid and law is an inviolable obligation of every branch and member of the Armed Forces as provided under Article 5. The branches of the Armed Forces and their members take a constitutional oath in the name of Allah to uphold the Constitution and to honestly and faithfully serve Pakistan as required by and under the law. Violation of law by members of the Armed Forces is definitely a breach of their constitutional oath and a transgression from the prescribed functions. The Pakistan Army nor its officers are authorized or mandated to undertake, directly or indirectly, any activity such as leasing government land for commercial purpose.

The next crucial question is whether the Pakistan Army or its officers are empowered to acquire, own or, in any other manner, deal with immovable property for commercial purposes. The scheme of the Constitution and the relevant

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laws regarding acquiring land for the use of the Armed Forces is unambiguous. Article 173 of the Constitution explicitly declares that the executive authority of the Federation shall extend, subject to any Act of the appropriate legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of the Federal Government or, as the case may be, the Provincial Government and to the making of contracts. Sub Article (2) of the Article 173 explicitly provides that all properties acquired for the purposes of the Federation or of a Provincial Government shall vest in the Federal Government. Sub Article (3) of Article 173 further provides that all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province. The Cantonment Act 1924 [hereinafter referred to as the "Act of 1924"], The Cantonment Lands and Administration Rules, 1937 [hereinafter referred to as the "Rules of 1937"] and the Rules for the Acquisition, Custody, Relinquishment etc., of Military Lands (A.C.R. Rules) 1944 [hereinafter referred to as the "A.C.R. Rules"] govern the manner in which immovable property can be acquired for and put to use for the branches of the Armed Forces. As already noted, it is the mandate of the constitution that property acquired for the purposes of the Federation shall exclusively vest in the Federal Government.

…..The urge of State institutions to act as a state within the state is obvious from the above discussed facts. The authorities entrusted with statutory powers to guard against violations seem to be helpless or complacent. The acts and stance of the RFV Directorate and the GHQ of the Pakistan Army have profound consequences for the rule of law. They acted on their own and while doing so they have seriously undermined the rule of law in derogation to their declared functions under the Constitution..."

60. Similar conclusions were drawn in Mrs. Zeenat Salim[11] case. Therefore, it is established beyond doubt that any organ of the Armed Forces cannot undertake any activity outside its composition without an express approval of the Federal Government and in any event, they may not be able to resume any land which does not fall under the category of

[11] Mrs. Zeenat Salim v. Pakistan Naval Farms, etc. (**PLD 2021 Islamabad 138)**

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cantonment lands and deal with the same on commercial basis. The JVA is thus liable to be set aside on this score alone.

61. The Respondents have placed reliance on Article 147 of the Constitution to make a case that the Province can entrust the Federal Government and its officers with regards to a matter that otherwise falls in the domain of the Province. The said Article is not attracted on several accords. Firstly, neither there is anything on record to show that any request was made by the GOP to the Federal Government with regard to asking for facilitation in entering an arrangement related to CAF, nor any record shows that consent to any such request was given by the Federal Government. Moreover, what further dents the stance of the Respondents is that, as is evident from the proviso of the said Article, it assumes the existence of a Provincial Assembly which shall then ratify such a request. However, in the present scenario of the Province being governed by a Caretaker Cabinet, the question of ratification by the Provincial Assembly does not even arise.

62. The crux of the above discussion is that the Pakistan Army, acting through the DGSP, lacked the capacity to enter the JVA as firstly, it is restricted to do so due to the limitations placed on the scope of its powers and functions by the Constitution. Secondly, even if it is assumed (without conceding) that the Pakistan Army could undertake such a project, it could not have entered the contract of its own accord and an express request for indulging it by the GOP and an approval to the same by the Federal Government were the minimum requirements for the JVA to be a valid contract. However, as nothing on record proves compliance with any of the said procedural requirements, the JVA is liable to be held *void ab initio*.

63. It was vehemently argued that there is nothing on record to reflect that the Federal Government had any input in the decision-making process which led to the Pakistan Army entering into a commercial arrangement with the GOP, which is a gross violation of the mandate of Article 245 of the Constitution. The attempt on the part of the Respondents

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to differentiate ‘executive’ and ‘commercial’ functions of the State to demonstrate that CAF initiative being a commercial function did not envisage any role of the Federal Government is not borne from the Rules, 1973 and the Army Act and is, even otherwise, violative of the express determinations reached by the Superior Courts.

64. Mr. Ahmed Rafay Alam, Advocate supplemented the arguments by contending that even otherwise, the new SOCs and the JVA executed thereunder, both contradict and conflict with stated Federal and Provincial policies as well as international best practices. Without prejudice to the fact that even if it is assumed, without conceding in any way, shape or form, that the new SOCs have been validly issued and that the JVA has been competently entered into and that the same is not in contradiction to the original SOCs and the Colonization Act, the argument that the same are to protect ‘food security’ raised by the Respondents is contradictory to their own stated policies and liable to be declared illegal, being unreasoned, on this score alone. To this effect, it was submitted that Vision, Mission, Goals and Strategic Framework of National Food Security Policy, 2018 do not mention increase in arable land or need for CAF.

65. Pakistan’s National Climate Change Policy, 2012 (updated in 2021) states that Pakistan’s vulnerability to climate change may lead to food security issues and proposes policy measures. None of the policy measures include CAF and as a general measures, it is proposed to promote horizontal expansion of cultivable lands through development of wastelands and rainwater harvesting through community-based approaches to development. Thus, as a policy measure thrust is upon expansion of arable land through development of wastelands but through community participation and not CAF. Similarly, it seeks to ensure food security based on livestock and pasture management and makes policy measures in this regard which do not include CAF or increasing pastureland but adopts as a policy measure to protect the rights of indigenous peoples.

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66. Punjab Agriculture Policy, 2018 does not once mention CAF. A key focus in addressing the agriculture related issues of growth, poverty reduction and food security is strengthening the voice and status of women in the rural Punjab. It further seeks to employ Climate Smart Agriculture to ensure food security. It was further informed that Pakistan adopted UN SDGs in 2016. SDG is Zero Hunger ("End hunger, Achieve Food Security, Improve Nutrition and Promote Sustainable Agriculture") and in this respect, GOP's Zero Hunger SDG goals do not include CAF or increasing arable land.

67. He argued that there are several examples of success in terms of reducing hunger, transforming the agriculture sector and enhancing smallholder productivity. The thrust of international best practices have been to support small farm holdings and to support vulnerable farmers. Thus, the idea that CAF is the answer for food security appears to be misplaced and a thorough research is required regarding the basis of CAF initiative.

68. Finally, it was concluded that the Superior Courts have evolved a '*Doctrine of Public Trust*' relating to the regulation and consumption of natural resources. This doctrine was approved by the Supreme Court of Pakistan in case of Cutting of Trees for Canal Widening Project, Lahore[12]. The doctrine was first introduced by the Sindh High Court in Sindh Institute of Urology and Transplantation[13] case. The doctrine set out briefly in Muhammad Tariq Abbasi[14] case, enjoins the State to preserve and protect the public interest in beaches, lakeshores etc. and that this Court has recognized the 'Public Trust Doctrine' extending it to the natural resources, viz, air, sea, water and forests, which being a gift of nature should be made freely available to everyone irrespective of

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[12] Cutting of Trees for Canal Widening Project, Lahore: In the matter of Suo Motu Case No. 25 of 2009 (**2011 SCMR 1743**)
[13] Sindh Institute of Urology and Transplantation and others v. Nestle Milkpak Limited and others (**2005 CLC 424**)
[14] Muhammad Tariq Abbasi and others v. Defence Housing Authority and others (**2007 CLC 1358**)

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status. Further, the Supreme Court, in Maulana Abdul Haque Baloch[15] case declared that minerals in land are in the nature of public trust and that mineral rules 'act as guardians of the said public trust'. The upshot of the above reflects that, even otherwise, the 'public good' argued by the respective governments in allowing the transaction impugned herein is misleading. This is even otherwise without prejudice to the fact that an illegal arrangement cannot be condoned in the public good.

69. Mr. Shahid Shahood Randhawa, Advocate while endorsing the aforesaid submissions, highlighted the legal and social dangers associated with the impugned transaction. He said that the new SOCs were in fact tailored with *mala fide* intention to accommodate the Pakistan Army as a preconceived plan by thwarting the constitutional and legal mandate. The Pakistan Army used its undue influence and coercion as a powerful and dominant institution to usurp State land under the garb of the impugned transaction. As such, the institution which is essentially created for the protection and security of the State and its people went beyond its constitutional and legal mandate to usurp the public property in breach of the fundamental rights of the people. He explained that the concept of lease and joint venture are completely different and the latter is in conflict with the scheme of law envisaged in the Colonization Act which only allows disposal of State land through a transparent and non-discriminatory leasing scheme. An arbitrary and self-serving definition of lease was deliberately inserted in the new SOCs to assign a new meaning to the concept of 'lease' in derogation to applicable law. The JVA is also void for being uncertain as it relates to unidentified and undisclosed public property in terms of Section 29 of the Contract Act, 1872. He stressed that the impugned transaction has been executed under black clouds of secrecy in a deeply non-transparent manner without advertisement in order to achieve the sinister design of extending extraordinary and undue favour to the

[15] Maulana Abdul Haque Baloch and others v. Government of Balochistan through Secretary Industries and Mineral Development and others (**PLD 2013 Supreme Court 641**)

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Pakistan Army by the Caretaker Government. The impugned transaction is fraudulent within the contemplation of provisions contained in Section 23 of the Contract Act, 1872 as it defeats the express provisions of the Constitution and law, is unconscionable and inflicts irreparable injury to public property. Hence, the transaction is opposed to public policy being in breach of public trust and as such, is not condonable. The undue haste shown in the approval of the impugned transaction by the Caretaker Cabinet in absence of any mandate itself testifies that the transaction is fraudulent. The sovereignty and independence of the future elected government was compromised by conferring its powers to the Negotiating Committee which tantamount to confiscation of executive and legislative prerogatives of the future elected governments. He relied upon case of District Bar Association, Khanewal; and Suo motu case No. 13 of 2009[16]. He rested his case by urging that public policy especially with respect to the State immovable property must be non-discriminatory carried out through advertisement in open auction mode with a specified ceiling so that most of the people can get benefit out of it. The following passage of John Steinbeck's "Grapes of Wrath" was cited in terms of Paragraph No. 13 of Brig. Muhammad Bashir[17] case:-

> "And the great owner, who must lose their land in an upheaval, the great owners with access to history, with eyes to read history and to know the great fact: when property accumulates in too few hands it is taken away. And that companion fact: when a majority of the people are hungry and cold they will take by force what they need. And the little screaming fact that sounds through all history repression works only to strengthen and knit the repressed. The great owners ignored the three cries of history. The land fell into fewer hands the number of the dispossessed increased and

[16] Province of Punjab through Secretary Revenue and others v. District Bar Association, Khanewal and others (**2014 SCMR 1611**); and Suo Motu Case No. 13 of 2009: In the matter of Action on press clipping from the Daily "Patriot, Islamabad dated 04.07.2009 regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (MPCHS) for development of land in Sector E-11, Islamabad) (**PLD 2011 Supreme Court 619**)

[17] Brig. Muhammad Bashir v. Abdul Karim and others (**PLD 2004 Supreme Court 271**)

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> every effort of the great owners was directed at repression. The money was spent for arms for gas to protect the great holdings, and spies were sent to catch the murmuring of revolt so that it might be stamped out The changing economy was ignored, plans for the change ignored, and only means to destroy revolt were considered, while the causes of revolt went on."

70. Learned counsels representing the Petitioners in connected Petitions adopted the above arguments and additionally discussed the distinguishing features of their respective grievances. It was essentially stated that in case CAF initiative is allowed despite constitutional and legal challenges thereto, even then the subject-matter lands highlighted in the connected Petitions are liable to be excluded from CAF initiative for due protection of rights and interests asserted by the Petitioners therein.

IV. CONTENTIONS OF THE RESPONDENTS

71. Mr. Muhammad Osman Khan, learned Assistant Advocate General led the arguments on behalf of the Respondents. Questioning the maintainability of the Petitions, it was pointed out at the outset that under the garb of public interest litigation or acting *pro bono publico*, the titled Petition has been filed by a Karachi based NGO, source of funds and intent whereof remains unclear. Similarly, connected W. P. No. 23256 / 23 has been filed by a practicing Advocate. Both the Petitions clearly fail to meet the basic requirement of Article 199(1)(a) of the Constitution as none of the Petitioners therein is an aggrieved person. Similarly, the other Petitioners in the connected Petitions are not aggrieved persons as the land is vested in the GOP and the latter has every right to deal with it in the best public interest.

72. It was vehemently argued that this Court lacks power to undertake Judicial Review of the impugned transaction for the reason that the same falls within the exclusive policy domain of the GOP. It was stressed that the constitutional scheme is based upon the trichotomy of powers entrenched in our legal jurisprudence and is liable to be honoured by this Court. In this regard, he quoted paragraph No. 12 of the Judgment

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passed by the Supreme Court in Syed Azam Shah[18] case which is reproduced as under:-

> "12. …The compass and magnitude of judicial review of governmental policy is now well settled and defined in which neither the court can act or represent as appellate authority with the aim of scrutinizing the rightness, fittingness and aptness of a policy nor may act as advisor to the executives on matters of policy which they are entitled to formulate. The extensiveness of judicial review of a policy is to test out whether it violates the fundamental rights of the citizens or is at variance to the provisions of the Constitution, or opposed to any statutory provision or demonstrably arbitrary or discriminately. … In the case of Abdul Hameed and others. v. Water and Power Development Authority through Chairman, Lahore and others (2021 SCMR 1230), this Court held that the roles of each organ of the State are defined within the Constitution of the Islamic Republic of Pakistan, so also in different laws. It is not the role of the Courts to interfere in policy decisions, unless it is manifest that such a policy decisions are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable. The court placed reliance on the case of Asaf Fasihuddin Khan v. Government of Pakistan (2014 SCMR 676), in which it was held that the duty of the Court is to confine itself to the question of legality, whether a decision making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached or abused its powers."

73. Further, the case of Messrs Power Construction Corporation of China Ltd.[19] relates to a Chinese Company which participated in the Hydropower Project whose name was included in the pre-qualification bidders but was subsequently deleted and the company was declared disqualified. The following was importantly observed by the Supreme Court in the said case:-

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[18] Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another (**2022 SCMR 201**)

[19] Messrs Power Construction Corporation of China Ltd. through Authorized Representative v. Pakistan Water and Power Development Authority through Chairman WAPDA and 2 others (**PLD 2017 Supreme Court 83**)

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> "27. …It appears that a pragmatic commercial decision was taken not to jeopardize the funding from the IDA and thereby putting the entire project at risk. Such decision falls within the realm of the Public Policy and the Courts in the exercise of their powers of judicial Review, ordinarily, do not interfere therewith and exercise judicial restrain, as has been held by this Court not only in the case, reported as Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt.) Ltd. and others (PLD 2014 SC 1) but also in the judgment, reported as Cutting of Trees for Canal Widening Projects, Lahore: In the matter of Suo Motu Case No.25 of 2009 (2011 SCMR 1743). … as in our opinion, the Constitutional Petition filed by the Petitioner Company was not maintainable, as it sought to encroach into the domain of the Policy Matters in respect whereof the judicial restrain is to be exercised."

74. Learned Assistant Advocate General stressed that this Court in exercise of power of Judicial Review could not scrutinize the policy decision or substitute its own opinion instead of the GOP. Reliance was placed on Wattan Party[20] case. Paragraph No. 57 thereof is reproduced as under:-

> "57. The next question is in respect of the judicial review of the policies of the Government. It is well settled that normally in exercise of the powers of judicial review this Court will not scrutinize the policy decisions or to substitute its own opinion in such matters as held in Messrs Elahi Cotton Mills ibid. Likewise in the case of Balco Employees ibid, the Supreme Court of India observed as follows:
>
> > "Process of disinvestments is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognized that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has while taking a decision, right to "trial and error" as

[20] Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (**PLD 2006 Supreme Court 697**)

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> long as both trial and error are bona fide and within limits of authority."

75. Leveling a serious concern on the *locus standi* of the Petitioners, learned Law Officer argued that the Petitioners have no legitimate right and standing to question an important initiative of CAF which goes to the roots of food security for the people of Punjab and in fact, the initiation of the project is in public interest which could not be jeopardized through judicial intervention. Frivolous Petitions are liable to be discouraged and thrown out to foster public interest. To substantiate his point, he referred the judgment passed by the Supreme Court in the case of Dr. Akhtar Hassan Khan[21]. The relevant paragraph thereof is reproduced as under:-

> "50. While holding that these petitions are maintainable, we would like to strike a note of caution. The Court has to guard against frivolous petitions as it is a matter of common observation that in the garb of public interest litigation, matters are brought before the Court which are neither of public importance nor relatable to enforcement of a fundamental right or public duty. In Ashok Kumar Pandey v. State of West Bengal (AIR 2004 SC 280) the Court was seized of such a petition when it observed as follows:-
>
> > "Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The

[21] Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (**2012 SCMR 455**)

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> Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

He further relied upon the case of Ashok Kumar Pandey[22]. The germane extract therefrom is reproduced hereunder:-

> "The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.
>
> Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra vs. Prabhu, (1994 (2) SCC 481), and Andhra Pradesh State Financial Corporation vs. M/s GAR Re-Rolling Mills and Anr., (AIR 1994 SC 2151). No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived

[22] Ashok Kumar Pandey v. The State of West Bengal (**AIR 2004 SC 280**)

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> and frivolous petitions. (See Dr. B.K. Subbarao vs. Mr. K. Parasaran, (1996) 7 JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.
>
> As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases…."

To further substantiate his points, he also cited other case law[23].

76. He vehemently stated that mandamus can only be invoked by an aggrieved person while the Petitioners lack this mandatory characteristic. Hence, the Petitions are not maintainable before this Court on this score alone. To supplement this argument, the following passages were quoted:-

> "Note:
> 11. As the writ petitions filed before the Lahore High Court, eventually leading to the judgments under review, were for the issuance of either writ of Certiorari or Mandamus, they could have been maintained only by an aggrieved person

[23] Ministry of Information Technology and Telecommunications, Islamabad and another v. C.M. PAK (Pvt.) Ltd., Islamabad and another (**PLD 2020 Supreme Court 551**); Miss Mahnum Hussain and other v. British Council Pakistan and other (**2021 CLC 1583**); Shoaib Asghar Gujjar v. Commissioner Sargodha Division and others (**2023 PLC (C.S.) 415**); 7C'S Corporate Services v. Oil and Gas Development Company Limited and others (**PLD 2017 Islamabad 115**); Muhammad Shafique Khan Sawati v. Federation of Pakistan through Secretary Ministry of Water and Power, Islamabad and others (**2015 SCMR 851**); Ms. Imrana Tiwana and others v. Province of Punjab and others (**PLD 2015 Lahore 522**); Muntizma Committee, Al-Mustafa Colony (Regd.), Karachi and 3 others v. Director Katchi Abadies, Sindh and 5 others (**PLD 1992 Karachi 54**); S.P. Gupta and others v. President of India and others (**1982 AIR (SC) 149**); Islamic Republic of Pakistan v. Muhammad Saeed (**PLD 1961 Supreme Court 192**); Balochistan Medical Association through President v. Government of Balochistan through Secretary Health and others (**2017 CLC 1195**); and Sheikh Ahsan-ud-Din and 2 others v. Federation of Pakistan through Secretary Ministry of Interior and others (**PLD 2018 Islamabad 182**)

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> within the meaning of Article 199 of the Constitution. As held above, neither Noor Elahi nor Syed Khurram Ali Shah fulfilled that condition. The writ petitions filed by these two persons were, therefore, not maintainable…"[24]
>
> "19. In order to invoke Constitutional jurisdiction under Article 199 of The Constitution of the Islamic Republic of Pakistan, seeking relief by way of writ of "Mandamus" or "Certiorari" there must be an "aggrieved party" calling in question "Action" or "Omission" of a person, functioning in connection with affairs of the Federation, a province or a local authority provided no other adequate remedy is available to such party."[25]

He also relied upon the cases of M. Ghulam Nabi Awan, Advocate and Peshawar University Teacher's Association (PUTA)[26].

77. On merits, it was submitted that the summary for the Chief Minister, Punjab qua the original SOCs was moved during the tenure of the Elected Government on 25.06.2021 which after passing through different stages including the Standing Committee was eventually approved 'in-principle', in the 51st meeting of the Elected Cabinet held on 28.02.2022. Placing the matter before the Provincial Assembly was not mandatory as CAF initiative did not require any specific legislation to be passed, as such, the only requirement of approval by the GOP was duly met through approval by the Elected Cabinet as envisaged under Section 10(2) of the Colonization Act. After the in-principal approval, the Elected Cabinet desired the placement of original SOCs before the Ministerial Committee which was duly held on 14.10.2022 in which the original SOCs were further considered and thrashed out and ultimately placed before the Caretaker Cabinet in its 4th meeting held on 09.02.2023. With regard to

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[24] Federation of Pakistan and others v. Mian Muhammad Nawaz Sharif and others (**PLD 2009 Supreme Court 644**)

[25] Bank of Punjab through Group Head of its Special Projects v. Accountability Court No.1, Lahore and 2 others (**PLD 2014 Lahore 92**)

[26] M. Ghulam Nabi Awan, Advocate v. Government of Pakistan and 3 others (**2003 MLD 90**); and Peshawar University Teacher's Association (PUTA) through General Secretary and 3 others v. Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others (**2015 CLC 265**)

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non-issuance of minutes of meeting of the Ministerial Committee created by the Cabinet, it was stated that the Special Committees of the Cabinet are constituted under the command of Rule 25(3) of the Rules, 2011 which reads as follows:-

> "The Cabinet may constitute Standing or Special Committees of the Cabinet and may assign to each a class of cases or a particular case."

78. As is evident from a bare reading of above, the Committees are creatures of the Cabinet in order to assist and aid the Cabinet as and when required. The Committees do not have an independent constitutional or statutory existence or mandate since they are created by the Cabinet for assistance in its day to day working. These Committees cannot be said to have any independent role in executive decision making of the GOP which is the sole prerogative and function of the Cabinet. Therefore, input from these Committees is but only for the consumption of the Cabinet. Further, the Cabinet can take any executive decision on any matter of the Province without referring the same to any of these Committees, considering that the role of the latter is but only to further thrash out any case referred to them by the Cabinet. Even otherwise, non-issuance of minutes was brought into the knowledge of the Caretaker Cabinet, which then proceeded to take the decision, therefore, non-issuance thereof had been virtually rendered of no legal consequence, since the Caretaker Cabinet being a higher body had taken cognizance of the matter and passed a decision exercising its constitutional mandate.

79. The procedure regarding proceedings of the Committees of the Cabinet is provided in Rule 29 of the Rules, 2011, whereby, provisions of Rules 26 and 28 thereof apply *mutatis mutandis* to the Committees as well. Further, reference was also made to the sub Clauses (8), (9) & (14) of Rule 28 of the Rules, 2011, to contend that the said provisions are abundantly clear that a Secretary shall attend every meeting of the Cabinet (unless otherwise directed) and may also, attend a meeting of the Cabinet

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in place of his Minister. As such, a Secretary can also attend the meetings of a Ministerial Committee and such a meeting would be deemed to have been held. It may also be highlighted that every organization of a Department, as per Rule 4 of the Rules, 2011, consists of a Minister and a Secretary and such other officials as may be determined by the GOP.

80. As regards the specific facts of meeting of Ministerial Committee dated 14.10.2022, it was submitted that a note for Minister of Law and Parliamentary Affairs for placing the matter before the Ministerial Committee was moved on 10.08.2022 by the Member (Colonies), BOR. Then the Minister of Law vide noting dated 07.09.2022 sought a clarification as to who shall chair the meeting of Ministerial Committee i.e. the Minister of Law, Punjab or the Minister for Parliamentary Affairs, Punjab? It may be pointed out that previously, Law and Parliamentary Affairs was constituted as one portfolio with one Minister. However, after redistribution of portfolios, there were two Ministers, that is, Minister for Law (Mr. Khurram Shahzad Virk) and the Minister for Parliamentary Affairs (Mr. Muhammad Basharat Raja). As such, upon clarification from the then Chief Minister, Punjab dated 30.09.2022, the Minister of Parliamentary Affairs gave his nod vide noting dated 04.10.2022, for convening the meeting of Ministerial Committee on 14.10.2022. In this regard, letter dated 13.10.2022 was issued by the BOR being the Department concerned. Thereafter, meeting of Ministerial Committee was held on 14.10.2022 as depicted from the Attendance Sheet placed on record. As such, the meeting took place lawfully and non-issuance of minutes thereof can, at best, be taken as a procedural irregularity and therefore, of no legal consequence since through the formal summary, the matter was brought into the knowledge of the higher forum i.e. the Caretaker Cabinet, which, accordingly took decision.

81. Learned Law Officer submitted that the term ‘in principle approval’ is of great significance as the same was accorded by the Elected Cabinet in the year 2022 and the new SOCs were notified during the tenure

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of the Caretaker Cabinet after input from all the relevant Departments. The phrase 'in principle' means 'in theory'[27] or 'theoretically or in essence'[28]. As per online Collins Dictionary, the term 'in principle' means that 'if you agree with something in principle, you agree in general terms to the idea of it, although you do not yet know the details or know if it will be possible'.

82. In view of the foregoing, it was submitted that the term 'in principle approval' as used by the GOP while considering a novel project signifies its approval in 'essence' qua any project under consideration while details and possible dimensions were left to be further thrashed out by the relevant stakeholders. Since the principle approval qua CAF project was granted during the tenure of the previous Elected Government, the concerned Departments completed the spadework and only placed it before the Caretaker Cabinet on 09.02.2023 for its nod qua notification of the new SOCs so prepared by the relevant Departments.

83. Responding to the argument that the new SOCs ought not to have been issued or notified by the Governor Punjab, he submitted that conjunctive reading of Articles 129 and 139 of the Constitution leads to the conclusion that the executive authority of the Province ought to be exercised in the name of the Governor. Further, Article 139(3) mandates the making of rules for allocation and transaction of the business of the Province. It is under the command and in furtherance of this provision that the GOP made the Rules, 2011. Apart from the above constitutional provision, while meeting the mandate and express command thereof, Rule 12(1) of the Rules, 2011 provides as follows:

> "All executive actions of the Government shall be expressed to be taken in the name of the Governor."

84. Further, as per the Third Schedule, Part-A to the Rules, 2011, a list of cases has been provided that require orders of the Governor. It may be clarified that the issuance of SOCs has not been mentioned or

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[27] Oxford Dictionary, Twelfth Edition, Page 1140
[28] Webster's New World College Dictionary, Third Edition, Page-1070

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provided in the said list. As such, after getting the requisite approval from the Caretaker Cabinet and satisfying the essence of Mustafa Impex Case as well, the new SOCs were issued on 20.02.2023 in exercise of powers conferred vide Section 10 of the Colonization Act. Stating the scope of Article 139 of the Constitution, he relied upon the following dicta laid in Aftab Ali[29] case:

> "11. …As already pointed out, though the executive authority of the province is to be exercised in the name of the Governor, but it is to be exercised by the Provincial Government through the Chief Minister, the other Ministers or the officers to whom powers of Provincial Government may have been delegated under clause (2) of Article 139 of the Constitution. Rule 5 of the Sind Government Rules of Business provides that the cases enumerated in Schedule III of the Rules shall be submitted to the Governor for approval. The learned Additional Advocate General conceded that this Schedule does not include cases of remission and suspension of sentences granted by the Provincial Government under section 401, Cr. P. C. In Venkatesh Yeshwant Deshpande v. Emperor(I) (AIR 1938 Nag. 513), Deshpande had prayed to the High Court for an order for being set at liberty on the ground that in view of the remission earned by him, including the remissions granted by the Local Government and the Premier of the Province, he was entitled to be released but was nevertheless being illegally detained. It was contended on behalf of the Government that though, in view of the remissions earned by Deshpande, he was entitled to be released, but two days before the date of his release, the Local Government had varied its previous order and directed that he should not be released until further orders, Deshpande mainly relied, in support of his claim for release, on an order remitting one year of his sentence. This order was made in the name of the Governor but was not issued or approved by him. A Full Bench of the Nagpur High Court held the order of remission to be valid and observed as follows:-
>
> > It is perhaps necessary to explain that though the order is in the name of the Governor, that is the Constitutional form it has to take. It is in reality an order of the Provincial Government. In view of the general misunderstanding on this point the Provincial Government felt it necessary, after it had issued its

[29] Aftab Ali v. The State and 2 others **(PLD 1978 Karachi 807)**

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> order of cancellation dated 28th May, 1938, to issue a press communique explaining this difference. It should be understood that what is here involved are the acts, powers and privileges of the Provincial Government and not of His Excellency the Governor."

85. With regard to the question of previous instances of issuance of SOCs by the Governor himself, learned Assistant Advocate General placed on record copies of following three notifications to contend that all the executive authority is exercised in the name of the Governor:-

(i) SOCs issued vide Notification No. 2104-2019/751-CL(II) dated 13.09.2019 for Grant of Lease to Charitable Institutions or Organizations;

(ii) SOCs issued vide Notification No. 1835-2019/625-CS(II) dated 13.09.2019 for Disposal of abandoned paths, passages and water courses or ponds falling within the private housing schemes; and

(iii) SOCs issued vide Notification No. 1610-2022/1400-CSIII dated 14.04.2022, whereby, SOCs vide Notification No. 1835-2019/625-CS(II) dated 13.09.2019 were amended as provided therein.

86. As such, in view of the foregoing, it was submitted that the new SOCs have been issued validly which do not suffer from any legal infirmity. It was also highlighted in this respect that the Colonies Department has been authorized vide Second Schedule to Rules, 2011, under the head of "Board of Revenue – (a) Colonies Department", Entry No. 9 to transfer the State land from one Department to another and to the Federal Government.

87. It was next contended about the powers of a caretaker government that if the intent of the law-makers was confined to the conduct of elections only, this function could have best been performed by the Election Commission itself. However, a careful and open-minded reading of Section 230 of the Elections Act shall bring forth certain unmistakable and equally important role and functions of the Caretaker

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Government. Section 230 of the Elections Act mandates or provides both positive and negative covenants. The decision taken by the Caretaker Cabinet is fully covered within the ambit and scope of the aforesaid provision of law as the same was necessary to run the day to day business of the GOP; was non-controversial; urgent; in public interest; and reversible by the future elected government. At this juncture, several important questions crop up: (i) If ensuring food security in the most populous Province of Pakistan, i.e. Punjab, shall not be a 'day-to-day function of the GOP', what else is? (ii) If the ever-increasing challenge qua food security does not constitute an 'urgent and non-controversial' affair, then what else does? (iii) If a project aimed at ensuring food security, not only in the Province but also in the country (as Punjab is considered to be the bread basket of Pakistan), does not constitute a matter of 'public interest', what else shall? and lastly (iv) since as per Clause 8 titled 'Special Provisions' of the JVA, whereby, no proprietary rights shall accrue to the lessee, tenure of the lease is for a fixed period of 20+10 years (neither extendable nor renewable) and the land (whole or any part thereof) can be resumed at any time even before the expiry of the JVA, how can the arrangement be regarded as irreversible? Further, the new SOCs qua CAF can be reversed by the future elected government through a simple policy notification to such an effect. As such, the new SOCs and the JVA do not constitute irreversible activities.

88. Similarly, in case of negative covenants as contained in Section 230(2) of the Elections Act, each stipulation is qualified with an exception. The provision states that a caretaker government shall not take major policy decisions, except on urgent matters. If food security does not constitute an urgent matter, what else does? Since the new SOCs and the JVA constitute an arrangement arising therefrom that is reversible and not permanent coupled with the fact that under the Punjab General Clauses Act, 1956, the new SOCs can be withdrawn by the future elected government, the new SOCs and the JVA constitute a reversible

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arrangement for all intents and purposes and do not prevent the exercise of authority by the future elected government.

89. Interpreting 'shall not enter into a major contract or undertaking if it is detrimental to public interest', he explained that the word 'if' is of immense significance in this sentence as it signifies that a caretaker government can enter into a major contract or undertaking as long as it is not contrary to public interest. Hence, given the reversible and urgent nature of CAF project, principle approval whereof had been granted by an Elected Government, if same is not outrightly in public interest, what else is? The fact that the matter relates to 'food security' makes an imperative for any government regardless of its status since the same also derives its validity and force from Article 38(d) of the Constitution which mandates the State to provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. Reliance was also placed on the Principles of Policy enshrined in Articles 29 & 30 of the Constitution. He explained that the importance of Principles of Policy has been highlighted in Miss Benazir Bhutto [30] case in the following words:-

> "This ideal can only be achieved under the rule of law by adopting the democratic way of life as ensured by Fundamental Rights and Principles of Policy. The intention of the framers of the Constitution is to implement the principles of social and economic justice enshrined in the Principles of Policy within the framework of Fundamental Rights. Chapters I and II of Part II of the Constitution which incorporate Fundamental Rights and directive principles of State policy, respectively occupy a place of pride in the scheme of the Constitution, and these are the conscience of the Constitution, as they constitute the main thrust of the commitment to socio economic justice. The directive principles of State Policy are to be regarded as fundamentals to the governance of the State

[30] Miss Benazir Bhutto v. Federation of Pakistan and another **(PLD 1988 Supreme Court 416)**, esp. P-489

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> but they are not enforceable by any Court. Nonetheless, they are the basis of all legislative and executive actions by the State for implementing the principles laid down therein. As the principles of democracy are not based on dogmas and also do not accept the theory of absolutes in any sphere of socio-economic justice, therefore, the authors of the Constitution, by enumerating the Fundamental Rights and the Principles of Policy, apparently did so in the belief that the proper and rational synthesis of the provisions of the two parts would lead to the establishment of an egalitarian society under the rule of law. However, while implementing the directive Principles of Policy, the State should not make any law which takes away or abridges the Fundamental Rights guaranteed by Chapter I in view of the embargo placed by Article 8(1) and (2). Necessarily, therefore, the directive principles of State Policy have to conform to and to operate as subsidiary to the Fundamental Rights guaranteed in Chapter 1, otherwise the protective provisions of the Chapter will be a mere rope of sand. Law, in the achievement of this ideal, has to play a major role, i.e., it has to serve as a vehicle of social and economic justice which this Court is free to interpret."

90. Similarly, right to food has been declared as a fundamental right in various Judgments of the Superior Courts, the relevant portions whereof were relied upon which are reproduced herein below:

> "3. … Learned Additional Attorney-General stated that it is job of the provincial governments to control prices in terms of The Price Control and Prevention of Profiteering and Hoarding Act, 1977 read with Foodstuffs (Control) Act 1958 which is applicable to all the Provinces. There is no doubt that food security has to be ensured by the Federal Government and for this purpose a Ministry in the name of National Food Security and Research has been created and this Ministry has fixed the price of wheat as Rs. 1200 per 40 k.g. for the year 2012-2013 meaning thereby that ordinarily at the cost of Rs.30 per k.g. wheat shall be made available and the Provincial Governments are also duty bound to ensure that the wheat/Ata is supplied and being sold at the subsidized rates. Section 3 of the Foodstuffs (Control) Act, 1958 confers powers upon the Government to control supply, distribution etc. of foodstuffs….
>
> 4. It is also to be noted that under Article 38 of the Constitution of Islamic Republic of Pakistan it is responsibility of the State to secure the well-being of the

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> people by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and to make adequate livelihood with reasonable rest and leisure. Clause (d) of the same provides that the State shall make available basic necessities of life, such as food, clothing, housing, education and medical relief for all such citizens irrespective of sex, caste, creed or race. But, prima facie, it appears that no such mechanism has been adopted so far by the Government in this respect."[31]
>
> "2. …and now in continuation thereof it is well settled that right to food, water, decent environment, education, medical care and livelihood are inherent in right to life; which also encompasses within its fold right to social security…"[32]
>
> "11. Our courts have expanded the right to life over time and held that it includes "the right to legal aid; the right to speedy trial; the right to bare necessities of life; protection against adverse effects of electro-magnetic fields; the right to pure and unpolluted water; the right of access to justice;" the right to livelihood, the right to travel, the right to food, water, decent environment, education and medical care…"[33]

91. Since, food is not only a matter as provided in Principles of Policy of the Constitution but in the light of above dicta of the Superior Courts, it is also amply clear that the same constitutes a fundamental right and any policy made in furtherance of the goal to secure this cardinal right for the people of Pakistan, shall qualify for all the functions as well as exceptions as provided within the scope of Section 230 of the Elections Act.

92. Although, the arguments and averments of Petitioners' side relied on a selective reading of the text of various law(s) and stipulations of the impugned new SOCs and the JVA, however, as per the dicta of the Superior Courts as well as in accordance with jurisprudence as has developed in the matter, the Courts are more inclined to adopt and further

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[31] Regarding enormous increase in the price of Flour: In the matter of Constitutional Petition No. 52 of 2013 **(2014 SCMR 329)**
[32] Nestle Pakistan v. Director PESSI and others **(PLD 2019 Lahore 515)**
[33] Hafiz Awais Zafar v. Judge Family Court, Lahore and 2 others **(PLD 2022 Lahore 756)**

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an approach of purposive and harmonious interpretation of Statues so as to give full meaning and effect to various provisions of law. In this regard, reliance was placed on JS Bank Limited[34] case, wherein, it was held in paragraph No. 13 as under:-

> "13. Moreover, the legal text must be interpreted in the context of its purpose. This Court has consistently ruled that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference can be made to the judgments reported as "Saif-Ur-Rehman v. Additional District Judge, Tuba Tek Singh and 2 others" (2018 SCMR 1885) and "Rab Nawaz Dhadwanai Advocate and others v. Rana Muhammad Akram Advocate and others" (PLD 2014 Lahore 591)."

Further reliance was place on the cases of Saif-ur-Rehman; Messrs Sui Southern Gas Company Limited; Hudabiya Engineering (Pvt.) Limited; and Dr. Tariq Iqbal[35]. It was importantly held in referred Dr. Tariq Iqbal case as under:-

> "8. Before embarking upon the exercise for attempting to interpret the aforesaid provision, it may be appropriate to restate the cardinal and well settled principle of interpretation, which requires that a purposive rather than a literal approach of interpretation be adopted as has been held by this Court inter alia, in the judgment reported as Federation of Pakistan through Ministry of Finance and others v. Messrs Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710), Hudabiya Engineering (Pvt.) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90) and Saif-ur--Rehman v. Additional District Judge, Toba Tek Singh and 2 others (2018 SCMR 1885).

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[34] JS Bank Limited, Karachi and others v. Province of Punjab through Secretary Food, Lahore and others **(2021 SCMR 1617)**

[35] Dr. Tariq Iqbal and 8 others v. Government of Khyber Pakhtunkhwa through Secretary Administration Peshawar and others **(2019 SCMR 859)**; Saif-ur-Rehman v. Additional District Judge, Toba Tek Singh and 2 others **(2018 SCMR 1885);** Messrs Sui Southern Gas Company Limited through Attorney v. Oil and Gas Regulatory Authority through Chairperson and 2 others **(PLD 2021 Islamabad 378);** and Hudabiya Engineering (Pvt.) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others **(PLD 1998 Lahore 90)**

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> 11. It is in the above backdrop, the contention of the learned Additional Advocate General, KPK that a person employed by any department, office or agency that has its own pool of residential accommodation is not entitled or eligible for allotment of accommodation in the general pool even though he is also not entitled to be considered for allotment of residential accommodation in the department, office or agency where he is currently employed cannot be occupied. Such an interpretation would disentitle such persons from residential accommodation both in the department, office or agency as well as in the general pool. Such interpretation could not be considered to be either logical, purposive or beneficial. When viewed in its true perspective, it is clear and obvious that section 7(3) of the Act of 2018 merely provides that a public office holder can either be entitled to or eligible for allotment in the general pool or in the pool of his own department, office or agency if it has such a pool but a public office holder not eligible for allotment under the pool of his department, office or agency, is obviously, eligible for allotment in the general pool, as it cannot be the intention of the legislature to totally exclude such public office holder from any and all official residential accommodations."

93. As such, interpretation of extant provisions of law has to be undertaken with a more purposive approach with regard to various challenges qua laws and their scope especially in situations, where an apparent limited scope of a particular provision of law may result in a situation that may defeat the very purpose of that law.

94. In this regard, Lord Denning in the case of Seaford Court Estates, Ltd.[36] expressed the view regarding the principle laid down in Winchester Court[37] case in the following terms:-

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge,

[36] Seaford Court Estates, Ltd. v. Asher (**1949 All E.L.R. 155 (Vol.2)**)
[37] Winchester Court Ltd. v. Miller (**1944 All E.L.R. Annotated 106 (Vol.2)**)

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> believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature…. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

95. In another case of Tirath Singh[38], the Indian Supreme Court quoting a passage from Maxwell on the Interpretation of Statutes, Twelfth Edition, expressed and recognized it as a well-established rule of interpretation. The passage is as follows:-

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence."

96. Taking heed from above, it is obvious that the need and pertinence of a caretaker setup in the Province is but cardinal when the elections to the Provincial Assembly are to take place in order to ensure and safeguard not only a free, fair, transparent and non-partisan elections for the establishment of a representative government but also to ensure good governance and smooth functioning of the government in the

[38] Tirath Singh v. Bachittar Singh & others (**1955 AIR (SC) 830**)

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interregnum period. As such, interpretation of extant provisions has to be done keeping in view the above.

97. He further emphasized that the principle of "*Casus Omissus*" meaning that cases of omission, that is, an omission in Statute cannot be supplied by construction does not stand in the way of this Court which is called upon to remedy a mischief in matters of cardinal and urgent public interests as held by the Indian Supreme Court in the case of National Taj Traders[39], in paragraph No. 10 that:

> "Two principles of construction-one relating to casus omissus and the other in regard to reading the statute as a whole-appear to be well settled. In regard to the former the following statement of law appears in Maxwell on Interpretation of Statues (12th Edn.) at page 33:
>
> In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. in Artemiou v. Procopiou, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. I.R.C., 1963 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges…."

[39] Commissioner of Income-Tax, Central Calcutta v. National Taj Traders (**AIR 1980 Supreme Court 485**)

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98. Thus, where every attempt must be made to preserve the law as enacted, the Courts while interpreting the same must not loose sight of underlying intent of such a provision of law, especially if it may defeat other extant and equally (if not more) pertinent provisions of law, while having due regard to the very need and therefore, intent of such a legislation. Further, a caretaker government is after all, also a government and is obligated to perform certain functions inherent to any government within the scope and mandate of Section 230 of the Elections Act.

99. Since the State is a continuous entity and does not come to an end, its functions too are of permanent nature and cannot be suspended during any interregnum period, especially when confronted with a function as primary as ensuring 'food security'. The scope and extent may vary of course and the same have been dealt amply within the body of Section 230 of the Elections Act but the impugned new SOCs and the JVA do not constitute any deviation from the said or any other provision of law.

100. Lastly, it was pointed out that during the course of arguments on behalf of the Petitioners, an attempt had been made to give an impression as if the entire land of the Province had been allocated for CAF project at the cost of rights of individuals. This, at the best, is an over statement being far-fetched and in complete divorce to the actual facts of the matter. In fact, CAF project is being undertaken in furtherance of rights of the people of Pakistan qua 'food security'. Further, apart from the said project, there are several ongoing schemes for the consumption and benefit of people of Punjab. One such Scheme is the TCLS announced in the year 2019. Under the TCLS, land has been leased out to eligible individuals as per the following statistics up-till now:-

Land leased out within the Prohibited Zone:	26,400 Acres in 4,218 Lots
Land leased outside the Prohibited Zone:	233,676 Acres in 16,842 Lots
Total land leased out under the said scheme so far:	260,076 Acres in 21,060 Lots

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101. As evident from above, a total of 21,060 lots have been leased out to people under the TCLS and the process is ongoing. Even otherwise, apart from the TCLS, there are several other ongoing schemes which are as follows:

- Lease of State land for NGOs / Charitable Institutions.
- Lease of State land under Petrol Pump Scheme.
- Disposal of State land under utilization of Shops (state land is disposed of either through lease or sale through open auction).
- Exchange of State land in shape of abandoned paths / passages and channels.
- Lease of State land in favour of Divisional Public Schools.
- Transfer of State land in favour of Provincial Government Departments under extant laws.
- Transfer of State land in favour of Federal Government Departments under extant laws.

102. Mirza Nasar Ahmad, learned Additional Attorney General of Pakistan while addressing the constitutional and legal mandate of the Pakistan Army submitted that Article 243 of the Constitution deals with the establishment of Armed Forces of Pakistan and divides them into three separate forces i.e. Army, Navy and Airforce. Article 245 of the Constitution deals with duties of Armed Forces in terms of protection of the country against external aggression and war and subject to any law, to act in aid of civil power. The overall control and command of the Armed Forces is with the Federal Government in terms of Article 243 of the Constitution. There is, however, nothing in the Constitution or law under which limits are placed on the scope of operations of the Pakistan Army except that all the acts of the Pakistan Army must be under the supervision and control of the Federal Government. In this regard, it may be mentioned that the Constitution is not the source of power or authority of the State or its institutions but it only regulates and limits powers, functions and

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authority of the State and its institutions. In the absence of express or implied limitations, the State and its institutions can carry out any function, business and project as long as they are not interfering in the lives of third parties or persons. Thus, it is explicitly clear that under the Constitution and law, there is no limitation on the Pakistan Army to carry out project envisaged under the JVA. Further, there is no direction or instruction of the Federal Government prohibiting the Pakistan Army to be part of such an arrangement. With reference to requirement of approval of the Federal Cabinet by the Pakistan Army or any of its Directorate before entering into a contract, such as the JVA, it was stated that the Constitution itself recognizes a distinction between contracts executed in exercise of executive authority and those which are not in exercise of such authority. Added that bare reading of Article 173 of the Constitution shows that while contract regarding disposition of property will always be in exercise of executive authority but no such restriction is placed on business contracts or projects. Reliance was placed on Rai Sahib Ram Jawaya Kapur[40] case. The Mustafa Impex case (supra) relates to executive authority of the Federation which in turn pertains to execution or implementation of law and performing such other sovereign functions of the State which do not come in the legislative or judicial domain. Any project or business that can be performed or carried out by a private person or company even if performed by a government will not fall within the scope of executive authority and thus, will not be covered by the principles settled in the said case. Consequently, no Cabinet approval was required for such an act by the Federal Government or any of its institution. Needless to state that carrying out a CAF project is not within the scope of sovereign functions of the executive.

103. Learned Federal Law Officer also contended that in terms of Article 243 of the Constitution read with Section 8(2) of the Army Act, the

[40] Rai Sahib Ram Jawaya Kapur and others v. State of Punjab **(1955 AIR (SC) 549)**

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Chief of Army Staff (the "**COAS**") is the sole commanding officer having complete authority over the institution of the Pakistan Army. As such, he can either himself or through delegation of powers may authorize any officer on his behalf to grant permission for entering into an agreement with any government, different departments and public / private bodies or companies. In the instant case, the COAS authorized the DGSP on his behalf to enter into the JVA with the GOP. Even otherwise, the question regarding competence or authority of the person executing the document can only be raised by a party to the document and not by the Petitioners. Since in the instant case, neither the COAS nor the GOP has raised any objection to the authority of the DGSP to execute the JVA, therefore, the objection is liable to be discarded.

104. Learned Federal Law Officer also clarified that the Pakistan Army is not investing any money in the project from its sources or tax payer money, rather, the investment will be made by the local as well as international investors and the Pakistan Army would merely facilitate the project, to ensure food security. Further, in the light of Clause 5 of the JVA, 20% of the total profit shall be used for research and development after the approval of Joint Management Board as visualized in the JVA. The remaining profit shall be shared equally between the parties. The Pakistan Army will re-invest its profit share in CAF for its development on international standards and return the fertile and developed land along with infrastructure after completion of lease period to the GOP as per objective enshrined in Clause 2 of the JVA, that is, the development plan of the leased land which includes farming, raising of Livestock, Research and Development activities and raising of infrastructure. Differentiating the role of Lands Directorate and the DGSP of the Pakistan Army, he clarified that Lands Directorate deals with different matters of military lands including lands for welfare of *Shuhada* while the DGSP was established to deal with projects of strategic nature having national importance which include development of infrastructure and food security. Hence, the

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arrangement between the Pakistan Army and the GOP being in line with the constitutional and legal framework is liable to be endorsed.

105. The able assistance of each one of the learned counsels for the Petitioners and the Respondents is duly acknowledged and this Court expresses its gratitude, accordingly.

V. POINTS OF DETERMINATION

106. The rival contentions of the Petitioners and the Respondents in the titled and connected Petitions have been considered in the light of case law relied upon by them. The following points of determination emerge for decision by this Court.

(i) Whether the Petitions are not maintainable as the Petitioners lack *locus standi* to invoke the jurisdiction of the Court and the impugned transaction falls within the exclusive policy making domain of the GOP?

(ii) Whether the impugned transaction approved by the Caretaker Cabinet is within the ambit of Section 230 of the Elections Act, particularly in view of previous 'in principle' approval by the Elected Cabinet?

(iii) Whether approval of the new SOCs by the Ministerial Committee in its meeting dated 14.10.2022 can be presumed valid in absence of minutes of the meeting?

(iv) Whether the new SOCs approved and notified by the Caretaker Government can be regarded as extension of the original SOCs approved by the Elected Cabinet?

(v) Whether undue haste in the approval of the impugned transaction exposes the *bona fide* intentions of the GOP?

(vi) Whether the impugned Notification is beyond the scope and mandate of Section 10 of the Colonization Act?

(vii) Whether the impugned Notification issued by the Governor is in violation of Section 10 of the Colonization Act?

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(viii) Whether the Pakistan Army in terms of its constitutional and legal mandate is barred to venture into the impugned transaction?

VI FINDINGS

Objection qua locus standi of the Petitioners

107. There is no cavil to the proposition that in order to invoke the jurisdiction of this Court under Article 199(1)(a) and (c) of the Constitution, the Petitioners are required to cross the caveats of 'aggrieved person' or '*locus standi*' and the absence of 'adequate remedy provided by law'. At the same time, Article 199(2) of the Constitution emphasizing the importance of fundamental rights provides that subject to the Constitution, the right to move a High Court for the enforcement of any of the fundamental rights conferred by Chapter I of Part II shall not be abridged. Determination of the eligibility of a person to invoke jurisdiction of the Court under Article 199 of the Constitution is vested, in the first instance, with the Court itself. The rule of *locus standi* has over the time received liberal interpretation and any person or citizen of the State having 'sufficient interest' in the larger public interest has always been entertained to maintain his grievance under Article 199 of the Constitution subject to satisfying the other requirements of the said Article. The rule is discretionary and no hard and fast rule can be laid down with respect to determination of *locus standi* of a person to knock the door of this Court under Article 199 of the Constitution. The discretion is exercised on the basis of sound and established judicial principles depending on the facts and circumstances of each case in the light of nature, substance and gravity of the issues raised vis-à-vis their implications upon the rights and interests of the people.

108. Importantly, when the matter brought to this Court relates to breach or enforcement of any of the fundamental rights affecting the citizens of the State as a whole including the person who has come forward

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to move the Court, the general and traditional rule to question the *locus standi* of such person is relaxed and dispensed with in favour of an exceptional rule and procedure available in public interest litigation provided it is established that the person approaching the Court is acting with *bona fide* and in all sincerity to protect the collective rights of the people. It is well established that the scope and mandate of Article 199 of the Constitution is discretionary, extraordinary and equitable. The rights accruing to the citizens of the State may be in the nature of their personal or collective rights. The initiative may, therefore, come from a concerned citizen regarding the enforcement of a collective right of the society, which of course, is also his own personal right being a member and part of the society. In the instant case, the challenge aims to protect and preserve the State property which, in essence, belongs to the people of Pakistan. Surely, every citizen has 'sufficient interest' to protect and preserve property of the State or at least ensure that it is put to use in the best interest of the people. The Atta Ullah Khan Malik case (supra) extensively deliberated the scope of public interest litigation with reference to public property. It was held that any citizen or person has 'sufficient interest' and is therefore, an 'aggrieved person' under Article 199 of the Constitution, if public property is being acquired, held, used or disposed of by public functionaries in violation of the law since public functionaries as trustees of the people cannot have any personal interest in any public property. Therefore, if there is any abuse of trust or violation of law, it confers a right upon any member of the general public as an 'aggrieved person' to invoke the constitutional jurisdiction of this Court, subject to fulfilling other requirements under Article 199 of the Constitution.

109. Extensive case law was cited by the learned counsels representing the Petitioners and the Respondents on the question of *locus standi* of the Petitioners which has been sufficiently penned in the earlier

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parts of this Judgment relating to their respective contentions. Some other important cases[41] are also of significance.

110. Suffice is to hold that ultimately, the impugned action is adjudged on the touchstone of principles of fairness, justness, transparency, non-discrimination, reasonableness, diligence, *bona fide*, due process, adherence to constitutional and legal provisions, processes and lawful discharge of duties by the functionaries as trustees of public rights and property. Measured on the aforesaid yardstick, if the impugned action does not sustain, the person approaching the Court crosses the bridge of *locus standi*. The quantum of public State land, sanctioning of the impugned transaction by the Caretaker Government and the quest of the Pakistan Army to venture into CAF are unusual aspects of this case which warrant Judicial Review. The rule of '*Standing*' is further diluted when other Petitions were instituted in which the Petitioners were directly affected from the impugned actions of the Respondents. Hence, this Court is constrained to hold that objection of the Respondents qua maintainability of the titled and connected Writ Petitions with respect to *locus standi* of the Petitioners is without substance and the same is overruled.

Objection qua executive exclusivity in policy making

111. The scheme of trichotomy of power envisaged under the Constitution distributes core functions between the three organs of the State, that is, the Parliament, the Executive and the Judiciary in terms of legislation, exercise of executive authority and adjudication of rights and

[41] Human Rights Case No. 11827-S of 2018: In the matter regarding Selling of National Assets including PIA at Throwaway Price **(2019 SCMR 1952)**; Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others **(2014 SCMR 122)**; Hafiz Hamdullah v. Saifullah Khan and others **(PLD 2007 Supreme Court 52)**; Dr. Azim-ur-Rehman Khan Meo v. Government of Sindh and another **(2004 PLC (C.S.) 1142)**; Mian Fazal Din v. Lahore Improvement Trust, Lahore and another **(PLD 1969 Supreme Court 223)**; and Mrs. Ifrah Murtaza and another v. Government of Pakistan and others **(PLD 2019 Lahore 565).**

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interests of the people, respectively. The normal rule is that policy making being an executive function is not amenable to Judicial Review by the Courts unless the policy falls in any of the exceptions to the general rule. The exceptions include if a policy is shown to be in violation of fundamental rights, inconsistent to constitutional and statutory provisions, or demonstrably arbitrary, capricious, *mala fide*, discriminatory or unreasonable opposed to public policy. The challenge to the impugned transaction revolved around breach of several fundamental rights including non-discrimination, equality before law, due process, right to information and protection of public property. Further, serious allegations were raised with respect to various aspects of the impugned transaction qua inconsistency to constitutional and legal provisions, breach of mandatory legal procedures and processes and incapacity of the Respondents to undertake and enter into the impugned transaction in terms of express constitutional and legal limitations. The challenge extended to arbitrariness and unreasonableness of the impugned transaction on the score that it infringes all cannons of transparency, openness, non-discrimination, public trust by fiduciaries and as such, is opposed to public policy. In such circumstances, refusal to exercise the power of Judicial Review with respect to the impugned transaction would constitute a breach of constitutional duty imposed upon this Court. The Courts in Pakistan as ultimate guardian and custodian of the rights and interests of the people have always taken cognizance of violations in the disposal and transfer of public property in order to protect, preserve and defend the Constitution. It is always better if such cognizance is taken at the outset of a contemplated transaction as it allows the government to take remedial measures and protects the parties from colossal loss and injury. Therefore, the objection qua maintainability of the titled and connected Petitions on the score that the impugned transaction being a policy decision is not amenable to Judicial Review by this Court, is turned down.

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Constitutional and legal mandate of the Caretaker Government

112. The concept of 'caretaker government' connotes that it is installed for an interim or interregnum period when an elected or legitimate government is not in place to achieve two-fold objectives, that is, to provide continuity to the business of the State and ensure neutrality to all political stakeholders who may contest the elections to form a future government. 'Caretaker government' is defined as a government that is in power temporarily until an election is held[42]. Similarly, another definition describes 'caretaker government' as a temporary government commissioned by the Governor General or a State Governor, usually for a short period, until a stable government can be formed[43]. Therefore, it follows that a caretaker government is generally established during the time of uncertainty when either an elected or legitimate or stable government, for any reason, is not in place. By its inherent nature, it is temporary in character to be replaced with an elected or legitimate or stable government. Thus, it is generally well established that there are limitations and restrictions with respect to any caretaker government in terms of its powers, functions and duties. Normal rule is that a caretaker government limits itself to routine business of the State and in principle, must refrain from making policy decisions.

113. The concept of 'caretaker government' in Pakistan is rooted in Articles 224 and 224-A of the Constitution which entails that upon dissolution of the National Assembly or a Provincial Assembly, as the case may be, on completion of their term, or in case, they are dissolved earlier in accordance with the Constitution, the President or the Governor, as the case may be, shall appoint a caretaker Cabinet. The explicit reason of installing and providing for a caretaker Cabinet is to fill the vacuum created due to absence of an elected government during the limited or interregnum period when the National Assembly or any Provincial

[42] Dictionary of Politics and Government (Third Addition), P.H. Collin (P-33)
[43] A Dictionary of Australian Politics, Robert Corcoran and Jackie Dickenson (P-29)

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Assembly is dissolved due to completion of its term or is earlier dissolved in accordance with other provisions of the Constitution. Needless to state, that the Constitution does not envisage any period when an elected government is not in place in the country or in any Province except due to expiry of term or where any of them stand dissolved in accordance with the Constitution. Therefore, the 'caretaker government' under Articles 224 and 224-A of the Constitution is meant only for an interregnum period of elections in accordance with the Constitution primarily as a neutral set-up to the political stakeholders taking part in the elections and to provide for continuity to the business of the State during the interregnum period. The powers, functions, duties, limitations and restrictions of the 'caretaker government' are spelled out in Section 230 of the Elections Act which is reproduced as under:-

> "Functions of caretaker Government.— (1) A caretaker Government shall—
>
> (a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;
>
> (b) assist the Commission to hold elections in accordance with law;
>
> (c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and
>
> (d) be impartial to every person and political party.
>
> (2) The caretaker Government shall not—
>
> (a) take major policy decisions except on urgent matters;
>
> (b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;
>
> (c) enter into major contract or undertaking if it is detrimental to public interest;

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(d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;

(e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;

(f) transfer public officials unless it is considered expedient and after approval of the Commission; and

(g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government."

(Emphasis supplied)

114. Section 230 of the Elections Act contains both positive and negative covenants, the conjunctive reading of which conclusively establishes that there are serious limitations and restrictions imposed by the Parliament upon the caretaker government in terms of its powers and functions. The mandate or scope of a caretaker government is limited to perform functions with respect to day-to-day affairs deemed to be necessary to run the government which cannot be postponed to a future date. It is obligated to assist the Election Commission of Pakistan to hold elections in accordance with law. It is equally under a legal duty to consciously restrict itself to routine, non-controversial and urgent matters.

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Such caveats or principles were introduced to necessarily refrain it from taking any action which is not reversible by the future elected government. The Parliament in order to ensure that the caretaker government does not exceed its scope and mandate put in place an embargo upon the caretaker regime not to take major policy decisions except on urgent matters or make a policy which would have the effect to pre-empt the exercise of authority by the future elected government. The caretaker government is also barred from entering into any major contract or undertaking detrimental to public interest. The statutory standards have been elaborately interpreted in various factual contexts by the Superior Courts and some of the observations with respect to the interpretation of Section 230 of the Elections Act have already been quoted in Part III of this Judgment by the Petitioners that need not be reiterated to avoid repetition. Section 230 of the Elections Act provides this Court a statutory yardstick to opine on any decision, act or action taken by a caretaker government in exercise of power of Judicial Review depending upon the facts and circumstances of each case.

115. There is no denial of the fact that CAF is a major policy initiative. The importance and significance of CAF was pleaded as a long-term policy response by the Elected Government to the challenge of food insecurity. Accordingly, the formation of the policy was triggered by moving a summary to the Chief Minister, Punjab on 25.06.2021 initially as a part of CPEC. It is apparent that the GOP was considering to open the agriculture sector to attract foreign investment in order to bring the barren accessible State land under cultivation to enhance agricultural productivity and employment with focus on transfer of technology. It may not be out of place to mention that concept of Agriculture Promotion Companies was also introduced under Section 457 of the Companies Act, 2017 to provide for specialized corporate vehicle to facilitate investment in the agriculture sector. After passing through governmental procedures, the original SOCs were approved by the Elected Cabinet in its 51st meeting held on

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28.02.2022. A lease and rental model in conformity with the mandate of Section 10 of the Colonization Act was developed. The minimum threshold of five hundred Acres with no cap on the upper ceiling and minimum lease period of 20 years was fixed with an option of renewal subject to certain conditions as an incentive to attract investment. Importantly, 100% foreign equity was allowed along with some other facilities. Lease was permissible to a company or companies who could form a joint venture amongst themselves. One of such companies, as a part of joint venture, was obligated to register or incorporate in Pakistan. The option of transferring land from government to government was recognized. However, conspicuously, only lease through open auction on rental basis was visualized. Though there is no specific stipulation to this effect yet it is quite apparent from the overall reading of the original SOCs that the option of leasing by the GOP to another government was incorporated with reference to foreign governments and their entities as the major purpose of the initiative was to attract foreign investment and seek transfer of technology. Importantly, there was no concept of transfer of land on lease to any government or its entity on 'single source' and a uniform competitive process was stipulated. The Elected Cabinet conditionally approved the original SOCs, in principle, by directing to place the same before the specifically constituted Ministerial Committee consisting of nine members including four Ministers and five bureaucrats.

116. It is noted that the Elected Government was treading upon CAF initiative with care, caution and responsibility considering the gravity and magnitude of the policy measures. Eight months were taken from the date of moving the summary from the Chief Minister, Punjab to its conditional approval by the Elected Cabinet. It was still ordered to be placed before the Ministerial Committee and had also to be placed before the Provisional Assembly for consideration as per the recommendation of the Standing Committee. The aforesaid facts clearly signify that matter in the opinion of the previous Elected Government was neither a day-to-day

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routine affair nor of an urgent nature, rather, was such a major long-term policy decision having social and economic impact that it required thorough deliberation and consideration before it could be finalized. The importance of CAF policy can be judged from the fact that it was a first policy of its own kind. All previous policies of the GOP regarding leasing land to tenants were for small holdings to alleviate poverty and generate livelihood for maximum households. In the CAF Policy, the size of holding was to be substantially increased to achieve economy of scale. As such, it was a major policy shift from past practices. The lease of a minimum period of 20 years with conditional right of renewal was surely an irreversible policy decision, for once rights were created in favour of lessees, the same could not have been arbitrarily reversed at the whims or option of any future government. There is no doubt that the objective of securing food security is an important public interest but the same imposes a corresponding duty on the public representatives and governmental functionaries as fiduciaries to safeguard public interest as custodians of public property. The decision of the Caretaker Cabinet to approve the new SOCs definitely had the effect to pre-empt the exercise of authority by the future elected governments. As such, the act of the Caretaker Government to pick the thread from where it had been left by the previous Elected Government and proceed further was beyond its scope and mandate in terms of Section 230 of the Elections Act and was a blatant attempt to encroach upon the domain of the future elected governments.

Validity of approval of the new SOCs by the Ministerial Committee

117. The case of the Respondents is that the Caretaker Government was well within its mandate to approve the new SOCs as the same had already been approved ‘in principle’ by the previous Elected Government and the former had merely implemented the unfinished task, as such, had not taken any new policy decision at all. To examine the contention, the alleged meeting of the Ministerial Committee carries utmost importance

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for the reason that it was alleged that the original SOCs were thrashed out by the Ministerial Committee and duly approved in the form and substance of the new SOCs which were later approved by the Caretaker Cabinet and as such, the latter was merely implementing an approved initiative which fell in the day-to-day routine affairs of the Caretaker Government being an urgent measure to ensure food security in public interest.

118. In the original replies filed by the Respondents, there was no record of the minutes or proceedings of the Ministerial Committee. However, when the Respondents were directed to place the proceedings of the Ministerial Committee's meeting on record, the Respondents failed to do so. It was vigorously claimed that such a meeting was indeed held but candidly conceded that no minutes with reference to the meeting of the Ministerial Committee could be recorded. An attendance sheet pasted in the factual part of this Judgment along with file noting was relied upon to substantiate the claim. A feeble attempt was made to persuade this Court that Secretaries as Departmental Representatives validly represented the nominated absentee Ministers which was permissible under the Rules, 2011 and that the Ministerial Committee had approved the original SOCs with certain amendments which were later approved by the Caretaker Cabinet.

119. It is noted that Cabinet is empowered under Rule 25(3) of the Rules, 2011 to constitute Standing or Special Committees and may assign to each a class of cases or a particular case. Unless the Cabinet authorizes otherwise, the decisions of a Committee formed by the Cabinet are subject to ratification of the Cabinet under Rule 25(2) of the Rules, 2011, thus, mandating that after consideration of the matter by the Standing or Special Committee, another approval from the Cabinet in the form of ratification is warranted even if there are no changes or amendments in the matter under consideration by any such Committee. The conjunctive reading of Rule 28 of the Rules, 2011 ordains that the Secretary is ordinarily required to

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attend the Cabinet meeting in the presence of the Minister unless otherwise directed. However, the Secretary, in the absence of the Minister, is required to invariably attend the meeting of the Cabinet, if an item relating to his Department is on the agenda. In the case of absence of the Minister, the Secretary can request for postponement of an agenda. When the Secretary attends a Cabinet meeting in the absence of the Minister, the record of minutes of the meeting regarding relevant items are sent to the Secretary, instead of the Minister, on account of absence of the latter so that the Secretary attending may point out any mistake or omission.

120. The Secretary as administrative head of the Department is under the control of his Minister-in-charge and is obliged to work under his direction and supervision keeping him informed of all important matters, particularly proceedings attended by the Secretary in the absence of the Minister. In fact, the Secretary under Rule 10(1)(e) of the Rules, 2011 is mandatorily required to submit, with the approval of Minister, proposals for legislation to the Cabinet. In the instant case, the concerned Secretaries attending the Ministerial Committee's meeting did not take any approval of their respective Ministers. Rather, in the absence of minutes, there was no question of obtaining any approval. Moreover, the Ministerial Committee consisted of specified persons including Ministers and officers who could not have been substituted by anyone else except without cause which act of absence was subject to mandatory subsequent approval. The mere presence of a Minister and the Secretary in a meeting or the entitlement of the Secretary to represent the Minister in his absence does not mean that the office of Secretary and Minister are synonym or inter-changeable in performance of their constitutional and legal functions. The Rules, 2011 merely allow representation in case of absence for the smooth conduct of official business. In any event, the Rules, 2011 framed under the Constitution are mandatory procedural stipulations for the conduct of official business and do not pre-empt the specific constitutional

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and legal duties imposed by the Constitution and law upon the holders of any constitutional and public office. Therefore, the claim of approval of the new SOCs by the Ministerial Committee by substituting or amending the original SOCs in the absence of minutes and without three out of four Ministers in the absence of their subsequent approval exposes the hollowness and callousness of the assertion and illuminates the dangers associated to any caretaker regime. The claim is in flagrant and blatant disregard of all accepted cannons of transparency and reasonableness even decency. Thus, the averment of approval of the new SOCs by the Ministerial Committee is, at best, based on a presumption on which the entire edifice of legal and executive superstructure in terms of their approval by the Caretaker Cabinet, issuance of the impugned Notification, execution of the JVA and sanctioning of vesting of some chunks of identified land in favour of the Pakistan Army was raised. It is regretted that no member of the Caretaker Cabinet questioned the propriety of the transaction which was completely based on a presumptive hypothesis. The mere fact of non-recording of minutes of the Ministerial Committee was enough for any man of ordinary prudence acting with minimum threshold of wisdom and reasonableness to raise an objection thereto, especially when such record was the bridging trail between the original SOCs and the new SOCs. This Court is, therefore, constrained to hold that the claim of approval of the new SOCs by the Ministerial Committee vide meeting dated 14.10.2022 is a nullity in the eyes of law.

The original SOCs vis-à-vis the new SOCs

121. The new SOCs approved by the Caretaker Cabinet and the subsequent incorporation of the same in the impugned Notification under Section 10 of the Colonization Act manifestly depicts that there were conspicuous and material policy deviations from the original SOCs approved by the Elected Cabinet. The objective of CAF initiative was

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extended from agricultural sector to the livestock sector. The CAF initiative was no longer limited to barren cultivable or accessible land but 'State land' subject to its availability for CAF was defined to mean any land owned by the GOP under the administrative control of the Collector or in use of any Department of the GOP. The GOP was conferred power to establish a Cabinet Committee through a notification for approval of size of the lot, schedule and base rent etc. and to take decision regarding export of products and by-products, meaning thereby, that a fair amount of flexibility was being achieved through delegation of executive authority.

122. The concept of 'lease' through open auction was no longer, the only mode of conferring land since the same was supplemented by 'lease through single source'. The introduction of this new facet completely and substantively altered the original SOCs. Lease through single source was made possible without any auction proceedings in favour of the Departments of the Federal or Provincial Governments and their attached Departments, semi-attached Departments and institutions or companies having sole ownership of the Federal or Provincial Governments and foreign governments through their entities. The BOR was allowed to submit the case of lease through single source directly to the GOP for approval of its terms and conditions including details of the State land, a draft joint venture agreement, a draft proposal for the board of management for each joint venture with a minimum one-third representation from the GOP, net sharing mechanism and modalities and a profit share of the GOP which shall not be less than 33% in the proposed mechanism. As such, not only Clause 5 of the Notification was a clear departure from the original SOCs approved by the Elected Government but was also self-contradictory in terms that a profit-sharing mechanism cannot be termed as a lease. Hence, a completely new methodology of utilizing State land under a joint venture was introduced as a policy measure. The option of forming a joint venture under the original SOCs

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was reserved for the participating lessees but here the GOP itself was conceived to become a joint venture partner. A 'joint venture', in essence, is a partnership between two and more entities and is a separate business model which cannot be termed as a 'lease'. It appears that the use of the word 'lease' was merely used or deliberately inserted due to statutory requirement of Section 10 of the Colonization Act which will be discussed in later part of this Judgment. Power was also conferred upon the BOR to include or exclude any piece of State land being used by any Department in the schedule of the new SOCs after approval of the Cabinet Committee constituted for this purpose. Therefore, two different models, 'lease through open auction on rental model' and 'joint venture on profit-sharing model' were made part of the new SOCs. Moreover, as a policy measure, it had the potential to completely exclude public participation giving rise to the question as to whether it was detrimental or beneficial to public interest. The policy also had serious financial implications for the GOP and the people of the Punjab as the profit-sharing formula is based on a presumption that the joint venture model would always be profitable. Given the checkered history of 'State Owned Enterprises' in our country, the claim is highly objectionable and offends public policy for if there are losses or no profits, who would be responsible to the people as the caretaker Cabinet is not elected by the people and is not accountable to the Provincial Assembly. Clause 5(a) of the JVA importantly states that the Pakistan Army as lessee shall share the profit after return of its initial investment. Needless to state that such initial investment which is also unspecified may never be returned. Importantly, size of the tenancy under the original SOCs was fixed for five hundred Acres or above which normally signify that except in exceptional cases, the ceiling would be adhered to enjoining greater public participation but the new SOCs eliminated the threshold of ceiling altogether. The power of resumption under Clause 15 of the Notification with respect to the new SOCs regarding the leased land was also introduced, in case, the same was

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required by a research institute of Agriculture and Livestock Departments or for public purpose which also appears to be directly in conflict with the initial period of lease of 20 years in terms of Clause 9 thereof since no consequences flowing out of such resumption are stipulated in the Notification vis-à-vis the corresponding vested right of lease in favour of a lessee in terms of the latter's loss of investment. Therefore, it is safely concluded that the new SOCs were drastically and fundamentally distinct and different in terms of policy measures in comparison to the original SOCs in manifold ramifications, and as such, were beyond the mandate and scope of the Caretaker Cabinet. Even otherwise, any change in the original SOCs required mandatory approval by an Elected Cabinet before the issuance of the impugned Notification in terms of statutory stipulation under Section 10 of the Colonization Act and the Mustafa Impex case (supra). In fact, even if there had been no change in the original SOCs by the Ministerial Committee, the Elected Cabinet was required to unconditionally approve or ratify it again since the Elected Cabinet as a whole is not bound by any 'recommendations' or 'no recommendations' of the Ministerial Committee and itself holds the final authority regarding approval of a proposal in its final and conclusive terms. Therefore, the argument that the Caretaker Cabinet was merely implementing an already approved CAF initiative of the previously Elected Government in furtherance of 'in principle' approval of the latter is a mere fantasy. Hence, the approval of the new SOCs by the Caretaker Cabinet was unlawful and of no legal effect.

Undue haste

123. It is equally disturbing to note the undue haste with which the impugned transaction went through different stages of its approval. The Pakistan Army as potential lessee directly approached the GOP seeking land for CAF through letter dated 08.02.2023 even before the approval of the new SOCs by the Caretaker Cabinet and the issuance of the

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Notification. The claim of the Pakistan Army having rich experience in development of waste barren land was not supported by any empirical or statistical data. It was merely a bald claim coupled with a thrust for its self-acclaimed help and cooperation for CAF initiative. It triggered a swift meeting dated 15.02.2023 by the Chief Secretary constituting survey teams in compliance of the communicated desire. All the Departments readily came on board, the partnership proposal in the nature of joint venture was formulated and presented to the Caretaker Cabinet which was duly approved. Interestingly, 96,671 Acres of identified State land belonging to different Departments of the GOP coupled with commitment for the provision of one million Acres of State land in *Cholistan* was approved. The proposed Board of Management for joint venture containing four in-service ex-officio Army Officers i.e. Adjutant General, DGSP, Director General Lands and Director Lands along with a number of bureaucrats as representatives of the GOP was allowed, thereby, completely excluding the elected representatives. The sanctioned proposal also carried a commitment for other unutilized and undeveloped land which was to be identified by the BOR. It was conspicuously stated that the Board of Management under the JVA shall approve all the policies for utilization of State land including its commercial and research use and that the Board of Management may establish companies for running the operations on commercial basis. It was clarified that the GOP will provide land as an equity investment and the Pakistan Army will make investment on the land (preferably). The profit-sharing formula was approved on 50:50 basis after excluding 20% profit for research and development work. Importantly, a Negotiating Committee was also set-up under the chairmanship of the Chief Secretary containing all the bureaucrats which was empowered to add or delete land owned by various Departments to the extent of one million Acres depending upon the suitability of State land. The Negotiating Committee was also given the power to sign Management Agreement with the Pakistan Army with mutually negotiated terms and

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conditions within the ambit of the new SOCs. The JVA was also approved and later executed between the Governor of the Punjab acting through the Member Colonies, BOR and the Pakistan Army acting through the DGSP. The GOP assumed the responsibility to provide canal water or electricity wherever available, construct farm to market roads on mutually agreed terms and conditions and seek benefit from various subsidy schemes. A District Management Committee was also set-up under the JVA for smooth implementation of the project in each District. The Negotiating Committee hurriedly convened a meeting on 24.03.2023 and approved the transfer of readily available 45,267 Acres of the agricultural State land in the use of various Departments out of agreed 96,571 Acres of Departmental land as approved by the Caretaker Cabinet. This was followed by sanction of the said State land in Districts Sahiwal, Khushab and Bhakkar vide letters dated 29.03.2023 in favour of the Pakistan Army and the name of Pakistan Army / Ministry of Defence was directed to be incorporated as a lessee in the cultivation column of revenue record. Thus, the stalled initiative during the period of Elected Government was reignited on 08.02.2023 and was completed on 29.03.2023 to the extent of 45,267 Acres land and CAF as a policy initiative under the complete control and hegemony of the GOP and the Pakistan Army was set in motion for more than one million Acres of land in complete oblivion and exclusion of the future elected governments and elected representatives of the people. The undue haste, abhorrent and horrendous fashion with which the impugned transaction regarding CAF initiative involving huge quantum of public immovable property was approved is extremely deplorable and is perhaps unprecedented by any caretaker government entailing serious breaches of fundamental rights, transparency, reasonableness and openness which is deeply lamented, regretted and accordingly, disapproved.

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Scope and mandate of Section 10 of the Colonization Act

124. Legal shelter was provided to CAF initiative under the Colonization Act, an examination whereof, reveals that it was promulgated to make better provision for the colonization and administration of the GOP lands in the Punjab. Section 3 of the Colonization Act defines 'Tenant' as any person holding land in a colony as a tenant of the GOP. Section 4 of the Colonization Act ordains that the GOP has the power through a notification to extend its application to any other land which at the time of notification is the property of the GOP. Therefore, the Colonization Act has an effective domain to regulate all lands of the GOP, subject to control and directions of the latter. The impugned Notification providing legal sanction to the transaction was issued under Section 10 of the Colonization Act which importantly reads as under:-

> "Issue of statements of conditions of tenancies.– (1) The Board of Revenue subject to the general approval of the Government may grant land in a colony to any person on such conditions as it thinks fit.
>
> (2) The Provincial Government may issue a statement or statements of the conditions on which it is willing to grant land in a colony to tenants.
>
> (3) Where such statements of conditions have been issued, the Collector may, subject to the control of the Board of Revenue, allot land to any person, to be held subject to such statement of conditions issued under sub-section (2) of this section as the Collector may by written order declare to be applicable to case.
>
> (4) No person shall be deemed to be a tenant or to have any right or title in the land allotted to him until such a written order has been passed and he has taken possession of the land with the permission of the Collector. After possession has been so taken, the grant shall be held subject to the conditions declared applicable thereto."
>
> (Emphasis Supplied)

125. It follows that under Section 10(1) of the Colonization Act, the legislature delegated the power upon the BOR subject to the approval of the GOP to grant land to 'any person' on 'such conditions as it thinks fit'. The BOR in exercise of such power was entitled to present a proposal

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to the GOP for grant of land in favour of any person. The proposal was subject to the mandatory condition of approval by the GOP which in the light of Mustafa Impex case (supra) was required to be extended by the Cabinet. This provision is limited to 'grants' only and it may be invoked to confer land to the Departments or any other person to achieve the public purposes as deemed appropriate by the GOP. In contrast, Section 10(2) relates to 'tenants' and it proclaims that land can be granted to tenants only by the GOP itself subject to issuance of a legislative instrument under the doctrine of delegated legislation in the nature of SOCs determining the terms of grant of land in favour of tenants. Therefore, the scope of Section 10(2) is limited to grant of land to 'tenants'. The provision is more stringent than mere grant of land under Section 10(1) and allows for structured discretion in terms of conditions to ensure equality, non-discrimination and transparency vis-à-vis the tenants through the SOCs. Needless to state that the GOP was directly delegated both executive and legislative authority by the Provincial Assembly while promulgating the Colonization Act. The exercise of power of subordinated legislation in terms of issuance of SOCs to grant land to tenants was required to be exercised by the Cabinet in light of Mustafa Impex case (supra). Secondly, the power to issue a notification by the GOP was also required to be exercised precisely in the manner conferred by law[44]. Once a valid notification is issued, the Collector subject to the control of the BOR may allot land to any person with the caveat that land cannot be allotted in contravention of SOCs in terms of Section 10(3) of the Colonization Act. The Collector may declare in his written order of allotment as to which of the terms stipulated in SOCs would apply to the allottee. However, the allotment order must be confined to SOCs and anything beyond that would be unlawful. The significance of the written order of allotment by the Collector is spelled out in Section 10(4) of the Colonization Act which

[44] Abdur Rehman v. Secretary to the Government of West Pakistan Colony Department and others (**1980 CLC 1042**); and Menghay Khan and others v. Karam Din and others (**PLD 1978 Rev. 66**)

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unequivocally declares that no person is recognized as a tenant or can claim any right or title in the allotted land in the absence of written order of the Collector and must take possession of allotted land with the permission of the Collector. Importantly, the text of Section 10(1), (3) and (4) of the Colonization Act uses the word 'person', whereas, Sub-section (2) thereof employs the word 'tenants'. Taken as a whole, Section 10(1) & (2) of the Colonization Act are mutually exclusive as the former relates to 'grants only to any person', whereas, the latter pertains to 'grants to tenants only'. Section 10(3) & (4) of the Colonization Act are in furtherance to the controlling Sub-Section (2) of Section 10 of the Colonization Act. The controlling provision limits the power of the GOP to grant land to 'tenants only' and the furthering provisions spell out the methodology of allotment and possession along with attached covenants. The intentional use of the word 'tenant' in Section 10(2) of the Colonization Act is clarified by the legislature by using the term 'no person shall be deemed as a tenant' employed in Section 10(4) of the Colonization Act leaving no doubt that land can only be granted under Section 10(2) of the Colonization Act to 'tenants' only and 'person' in terms of Sub-sections (3) & (4) of Section 10 of the Colonization Act is no one else but a 'tenant'. The interpretation is in conformity with the cardinal principle of interpretation of Statutes which provides that word or subject used in the charging or controlling Section would control the word or subject used in the procedural or subservient provisions.

126. Section 11 of the Colonization Act further recognizes the 'grant of tenancy' pursuant to and in accordance with any SOCs and later provisions of the Colonization Act deal with various rights and obligations of tenancy confirming beyond doubt that the law primarily relates to regulation of the GOP lands in terms of grants and tenancy. The exercise of power of resumption under Section 24 of the Colonization Act is only possible in case of breach of terms of SOCs. Section 30 of the Colonization Act recognizes the power of the GOP to confer proprietary

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rights and as such, the rights of tenancy can culminate into proprietary rights.

127. The first question confronting this Court is that can the contemplated transaction under challenge be categorized as tenancy in terms of the scheme of law encapsulated in the Colonization Act. In dictionary meaning, 'tenancy' refers to a legal arrangement in which the lessee has a right to use the property owned by someone else in exchange for paying rent to its owner. It would be advantageous to reproduce the definitions of 'lease', 'rent', 'tenant', 'tenancy', 'joint venture' and 'partnership' as follows:-

> "A "lease" of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms[45]."
>
> "Rent" means whatever is payable to a landlord in money, kind or service by tenant on account of the use or occupation of land held by him; but it shall not include any cess, village cess or other contribution or due or any free personal service;
>
> "Tenant" means a person who holds land under another person, and is or, but for a special contract, would be liable to pay rent for that land to that other person;
>
> "Tenancy" means a parcel of land held by a tenant or landlord under one lease or one set of conditions[46]"
>
> "Joint Venture" means a business undertaking by two or more persons engaged in a single defined project. The necessary elements are (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project[47]"

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[45] Chapter V, Section 105 of the Transfer of Property Act, 1882
[46] Sub-Sections (3) (5) & (8) of Section 4 of the Punjab Tenancy Act, 1887 (Act No. XVI of 1887)
[47] Black's Law Dictionary (Tenth Edition), Bryan A. Garner (P-967)

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> "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all[48].

128. It follows that the scope of Section 10(2) of the Colonization Act is limited to tenants who become lessee of the GOP under SOCs and are obliged to pay rent to the GOP. Partnership and joint venture are distinguished from each other in terms that former is an arrangement based on profit and loss sharing between two or more persons within one firm, whereas, a joint venture is a combination of two or more natural or juristic persons, as such, distinct legal entities that seek the development of a single enterprise or project for profit, sharing the risks associated with its development. As a corporate model, it is generally used between two or more entities when they wish to combine such resources which they may not possess separately but deem it necessary for the success of the project. For example, one party has the required investment while the other possesses technology, the combination of which is deemed imperative by both the parties. Thus, 'lease on rent basis' and 'joint venture on profit sharing basis' are two separate models, the latter being effectively excluded from the purview of Section 10(2) of the Colonization Act.

129 The impugned contemplated transaction is admittedly a joint venture between the GOP and the Pakistan Army. It is established on record that GOP was willing to grant land as equity and the Pakistan Army was willing to develop and make use of it for CAF. The Pakistan Army was not under any obligation to pay rent or lease money for the land vested in the GOP. Rather, a profit-sharing formula was put in place. The reason of the joint venture was cited as special expertise of the Pakistan Army to undertake the venture and all the specialized Departments of the GOP including Agriculture and Livestock acquiesced to their respective lack of capacity and expertise in this regard. The impugned Notification was

[48] Chapter II, Section 4 of the Partnership Act, 1932

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admittedly issued under Section 10(2) of the Colonization Act as SOCs for grant of State land can only be issued under the said provision. It is quite obvious that a joint venture on profit-sharing basis was beyond the scope of Section 10(2) of the Colonization Act as its mandate was limited to creation of tenancy. However, in order to forcibly bring the transaction within the scope of the controlling provision of Section 10(2) of the Colonization Act, several provisions were incorporated in the Notification forgetting that SOCs cannot travel beyond the scope of the controlling provision and the Colonization Act as a whole. A definition of 'lessee' was inserted in the new SOCs to include any person to whom State land was leased under the new SOCs. This was apparently done to assign a nomenclature of 'lessee' to the Pakistan Army as a joint venture partner to circumvent the limited mandate of Section 10(2) of the Colonization Act. Lease through single source was regarded a 'lease' under the new SOCs yet it was subjected to a profit-sharing formula in contrast to a lease through open auction which was based on a rental model. The incorporation of two separate models in the new SOCs itself testifies that the provisions of the impugned Notification travelled beyond the scope of Section 10 of the Colonization Act as the parent Statute. The arrangement is thus held ultra vires and unlawful.

Issuance of Notification by the Governor

130. The procedural aspect of the impugned Notification relates to its issuance. Its opening part reads as under:

> "In exercise of the powers conferred under section 10 of the Colonization of Government Lands (Punjab) Act, 1912 (V of 1912), Governor of Punjab is pleased to issue the following Statement of the Conditions for lease of specified State land for corporate agriculture farming, with immediate effect:"
>
> (Emphasis Supplied)

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131. In order to address the question, it would be beneficial to reproduce Articles 173, 137, 138 and 139 of the Constitution in this respect which reads as under:

> "173. (1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of, the Federal Government or, as the case may be, the Provincial Government, and to the making of contracts.
>
> (2) All property acquired for the purposes of the Federation or of a Province shall vest in the Federal Government or, as the case may be, in the Provincial Government.
>
> (3) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the President or Governor by such persons and in such manner as he may direct or authorize.
>
> (4) Neither the President, nor the Governor of a Province, shall be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Federation or, as the case may be, the Province, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.
>
> (5) Transfer of land by the Federal Government or a Provincial Government shall be regulated by law.
>
> 137. Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws:
>
> Provided that, in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof.

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> 138. On the recommendation of the Provincial Government, the Provincial Assembly may by law confer functions upon officers or authorities subordinate to the Provincial Government.
>
> 139. (1) All executive actions of the Provincial Government shall be expressed to be taken in the name of the Governor.
>
> (2) The Provincial Government shall by rules specify the manner in which orders and other instruments made and executed in the name of Governor shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the Governor.
>
> (3) The Provincial Government shall also make rules for the allocation and transaction of its business."

132. It is evident from the above that an act of grant, sale, disposition or mortgage of any property in itself is an executive function and is included in the executive authority of a Province. However, it is importantly subject to the Act of appropriate Legislature as in this case, the Colonization Act. Thus, it is pertinent to discover the nature and substance of the executive act. As already stated above, the power conferred upon the GOP under Section 10(2) of the Colonization Act is in the nature of delegated legislation. Any notification to be issued thereunder by the GOP is a legislative instrument. The process of issuance of Notification involves exercise of partly executive and partly legislative authority. For instance, the making of proposal by the BOR, its submission to the Chief Minister, Departmental inputs, consideration and approval by the Cabinet are executive acts but once the same are concluded, the process of issuance of notification under Section 10(2) is a pure legislative act since a notification is a legislative instrument falling within the purview of subordinate or delegated legislation. Once issued, further executive authority is exercised by the functionaries of the GOP as per stipulations listed in such a notification. This is precisely what Article 173(1) holds.

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133. Thus, when the legislature delegated the executive and legislative authority under the doctrine of delegated legislation in terms of Section 10 of the Colonization Act, the executive authority of exercising the grant of lease or for that matter, the legislative authority in terms of issuance of any notification would be regulated as per the express terms of Section 10 of the Colonization Act. Article 139 of the Constitution further ordains that all executive actions of the Provincial Government shall be expressed in the name of the Governor in accordance with the Rules, 2011. Rule 12(1) of the Rules, 2011 requires that no order shall be issued without the approval of the Governor in cases mentioned in Part-A of Third Schedule thereof. However, no item therein relates to delegated legislative instruments such as the impugned Notification. Rather, the matter squarely falls under Rule 14(1) of the Rules, 2011 read with Item No. 19 of Part-A of Seventh Schedule thereof being a case pertaining to 'policy decision' and 'delegated legislation' requiring approval of the Chief Minister through the Cabinet. The case was required to be submitted to the Governor only for information under Rule 13(4) read with Third Schedule, Part B, item No. 3 of the Rules, 2011 which requires that summaries for the Cabinet, minutes and decisions of its meetings will be placed before the Governor for his information. The administration of the Colonization Act fell within the ambit of the Colonies Department of the BOR in terms of distribution of business under Rule 3(3) read with Second Schedule of the Rules, 2011 and the Notification was required to be issued by the Secretary of the Colonies Department on behalf of the GOP. It is noted that it is well entrenched in our jurisprudence that when a law requires a thing to be done in a particular manner, it should be done in that manner, or not done at all. As such, the act of issuance of a notification under Section 10(2) of the Colonization Act is not an executive act but a legislative act which is required to be issued accordingly. Therefore, the impugned Notification was required to be issued by the GOP in exercise of powers conferred by the Colonization Act. On the same corollary and

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without prejudice to legal challenges on other grounds, the execution of the JVA being an executive act, by the GOP expressed in the name of Governor was lawful and that by the Pakistan Army not expressed in the name of the President was unlawful. Therefore, the issuance of Notification by the Governor was unlawful. Several notifications were placed before this Court during the course of arguments under Section 10 of the Colonization Act which showed that some were issued by the Governor while some were issued by the GOP through the Secretary Colonies such as notification No. 947-91/3319-CL-(II) dated 17.10.1991. The confusion, thus, stands clarified, accordingly.

Constitutional and legal mandate of the Pakistan Army

134. The evolution and development of the institution of 'State' is perhaps the most acclaimed, celebrated and cherished achievement of human race in political and social history. Its premises is rooted in dominant human instinct to live an orderly and disciplined life, *sine qua non*, for progress, prosperity and peace of any society. The proclivity to dwell together and form associations culminated into tribes and ultimately evolved into the State. The history of Western State can be traced in ancient Greece. Plato and Aristotle wrote of the *polis* or city-state, as an ideal form of association, in which the whole community's religious, cultural, political and economic needs could be satisfied. This city-state, characterized primarily by its self-sufficiency, was seen by Aristotle as the means of developing morality in human character. The Greek idea corresponds more accurately to the modern concept of the nation i.e., a population of a fixed area that shares a common language, culture and history. Similarly, the Roman *res publica*, or commonwealth, is akin to the modern concept of the State. The *res publica* was a legal system whose jurisdiction extended to all Roman citizens, securing their rights and determining their responsibilities. With the fragmentation of the Roman system, the question of authority and the need for order and security led to

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a long period of struggle between the warring feudal lords of Europe. Eventually, the struggle culminated into the establishment of a modern State in a form of political association or polity that is distinguished by the fact that it is not itself incorporated into any other political association, though it may incorporate other associations. The State is, thus a supreme corporate entity because it is not incorporated into any other entity, even though it might be subordinate to other powers (such as another State or an empire). One State is distinguished from another by having its own independent structure of political authority and an attachment to separate physical territories. The State as a modern political construction which emerged in early modern Europe has been replicated in all other parts of the world. The most important and distinct aspect of the State that separates it from other forms of political associations is its abstract quality that it is an overarching and exclusive corporate entity in a defined territory on which it exercises internal and external sovereignty with respect to a permanent population by establishing a Government having the capacity to maintain internal order and enter into relations with other sovereign States. The State consists, most broadly, upon the agreement of the individuals on the means, whereby, resources are employed in the interest of the people to achieve their will and disputes are settled in the form of laws.[49] In essence, the agreement is a social contract between the people backed by their will and sanction.

135. Pakistan is a State governed by a written Constitution. It is set up as *Islamic Republic* which envisages a federal structure and trichotomy of powers between the Parliament, the Executive and the Judiciary. Various institutions are created under the overarching constitutional scheme which play a crucial role in the governance of the nation and discharge of State obligations, duties, and functions towards the people. It is universally accepted that the primary responsibility of any State is to

[49] https://www.britannica.com/topic/state-sovereign-political-entity. For various aspects of statehood, also see, International Law, 4th Edition by Malcolm N. Shaw.

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maintain law and order which falls within the executive organ of the State. The State of Pakistan is of no exception. Recognizing the same, the preamble of the Constitution unequivocally declares that the territories of Pakistan forming the FOP and all its rights on land, sea and air, shall be safeguarded. The objective is achieved by exercise of power and authority through the chosen representative of the people in accordance with the principles of democracy, freedom, equality, tolerance and social justice. The purpose is to enable the citizens to order and fashion their lives in the individual and collective spheres in accordance with their beliefs in a manner that guarantees fundamental rights including equality of status, opportunity and before law, social, economic and political justice, freedom of thought, expression, belief, faith, worship and association subject to law and public morality so that the people of Pakistan may prosper amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity. [50]

136. The institution of the Armed Forces of Pakistan was conceived to discharge the pivotal duty of the State in terms of protection of its frontiers and its citizens against external aggression and internal disturbances which may impair the collective will of the people of Pakistan to live an orderly and disciplined life regulated by law. Accordingly, Articles 243 to 245 were enacted in the Constitution in the following terms:-

> "243.(1) The Federal Government shall have control and command of the Armed Forces.
>
> (2) Without prejudice to the generality of the foregoing provision, the Supreme Command of the Armed Forces shall vest in the President.
>
> (3) The President shall subject to law, have power—

[50] Preamble of the Constitution

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(a) to raise and maintain the Military, Naval and Air Forces of Pakistan; and the reserves of such Forces; and

(b) to grant Commission in such Forces.

(4) The President shall, on advice of the Prime Minister, appoint—

(a) the Chairman, Joint Chiefs of Staff Committee;
(b) the Chief of the Army Staff;
(c) the Chief of the Naval Staff; and
(d) the Chief of the Air Staff,

and shall also determine their salaries and allowances.

244. Every member of the Armed Forces shall make oath in the form set out in the Third Schedule.

245. (1) The Armed Forces shall, under the directions of the Federal Government defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.

(2) The validity of any direction issued by the Federal Government under clause (1) shall not be called in question in any court.

(3) A High Court shall not exercise any jurisdiction under Article 199 in relation to any area in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245: Provided that this clause shall not be deemed to affect the jurisdiction of the High Court in respect of any proceeding pending immediately before the day on which the Armed Forces start acting in aid of civil power.

(4) Any proceeding in relation to an area referred to in clause (3) instituted on or after the day the Armed Forces start acting in aid of civil power and pending in any High Court shall remain suspended for the period during which the Armed Forces are so acting."

137. It is evident from the bare reading of the aforesaid constitutional provisions that the institution of the Armed Forces was created by the Constitution itself under the control and command of the Federal Government. Realizing the importance of the Armed Forces with respect to its foremost duty regarding the protection of citizens against

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external aggression or internal disturbances, the supreme command was vested in the institution of the President who is the symbol of unity of the State, although the executive authority of the FOP is exercised through the Prime Minister and the Federal Cabinet in terms of Articles 90 and 91 of the Constitution. The Armed Forces are divided into three branches, that is, the Army, Navy and Air Forces corresponding to the duty of the State to protect land, sea and air of Pakistan. Considering the peculiar composition of the institution of Armed Forces, it is required by the Constitution that each and every member of the Armed Forces shall make an oath swearing faith and allegiance to Pakistan, to uphold the Constitution embodying the will of the people, to refrain from engaging in any political activities, whatsoever and honestly and faithfully serve Pakistan as required by and under the law. Article 245 of the Constitution without doubt clarifies that the Armed Forces shall defend Pakistan against external aggression and threat of war under the directions of the Federal Government and can only act in aid of civil power when called upon to do so subject to law. Thus, it is manifestly clear that the Constitution emphasizes that the Armed Forces are always subject to the Constitution and law and directions of the Federal Government.

138. The Army Act has been promulgated for the effective operation and functioning of the Pakistan Army and is employed to run the institution. There is no provision therein which allows the Pakistan Army to undertake any function beyond the prescribed constitutional mandate in Article 245 of the Constitution. Thus, there is not a single act beyond the internal functioning of the institution which can be undertaken by the Armed Forces on their own without the directions or approval of the Federal Government or the command of law. As is customary with every military of the world, Article 260 of the Constitution while defining "members of the Armed Forces" states that the term does not include persons who are not, for the time being, subject to any law relating to the

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members of the Armed Forces. Hence, the pride of any member of the Armed Forces is that as a member thereof, such person is under the law regulating the particular branch of the Armed Forces and in terms of his functions, is not subjected to ordinary law of the land which is applicable to the civilian population. The rationale of the aforesaid dictate is rooted in the cardinal principle that the Armed Forces being a disciplined and armed force in terms of its peculiar duties must be effectively separated from the civilian functioning of the State. Therefore, the members of the Armed Forces as a principle should not be assigned any permanent civilian role which allows their interaction with the civilian population or with the civil administration of the State to avoid disputes and differences which are inherent in any civilian disposition so that each member of the Armed Forces can function beyond political divide and perform his duties in a neutral and non-partisan manner. Such is the importance of this rule that Article 245(3) of the Constitution even ousts the jurisdiction of the High Court under Article 199 of the Constitution in relation to any area in which the Armed Forces of Pakistan, for the time being, are acting in aid of civil power in pursuance of Article 245 of the Constitution. Similarly, Article 199 of the Constitution which provides constitutional remedy to the citizens of Pakistan for the enforcement of their fundamental rights also ordains in sub-Article (3) thereof, that the High Court shall not make an order under sub-Article (1) thereof, on application made by or in relation to a person who is a member of Armed Forces of Pakistan or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or a person subject to such law. The above articulation postulates that the institution of Armed Forces of Pakistan as an institution of the State is to be kept in segregation or oblivion to all other civil institutions of the State so that it can focus upon its primary responsibility of defending Pakistan and protecting its people

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without being involved in any kind of political, social or economic divide which may erode its professional capability, neutrality, prestige and pride.

139. The scope and mandate of the Armed Forces of Pakistan have been exquisitely interpreted in the cases of Sindh High Court Bar Association; Air Marshal (Retd.) Muhammad Asghar Khan; and Prof. Zahid Baig Mirza (supra) which are extensively quoted in Part-III of this Judgment under the head 'contentions of the Petitioners' and need not be reiterated for the sake of brevity. Suffice is to reiterate that it has been rightly concluded therein that any action of the Armed Forces undertaken without the direction or approval by the Federal Government shall always be unlawful, unconstitutional, *void ab initio* and consequently, of no legal effect. It has also been aptly determined that the Armed Forces fall under the control of the Ministry of Defence. Various Directorates have been set up by the General Headquarters of the Pakistan Army for its internal functions. The Directorate or Department dealing with lands has a restricted mandate with respect to land allocated for the use of branches of Armed Forces or the Pakistan Army in order to manage and retain it according to the scheme of governing law. The administration of military lands and cantonments group is also under the administrative control of the Ministry of Defence. Therefore, it is evident from record that the venture to adventure into CAF initiative by the DGSP was not approved by the Federal Government as admittedly no approval of the Federal Cabinet as per the mandate of Mustafa Impex case was placed on record. Although, there is also no approval of the COAS authorizing the DGSP to undertake CAF initiative yet during arguments it was claimed that the DGSP acted under the approval of CAF initiative by the COAS. It is safely concluded that even if there is any such approval, the same without the approval of the Federal Government was unconstitutional and unlawful.

140. The Respondents by conceding that no approval of Federal Government was obtained submitted that CAF initiative being a

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commercial venture did not require approval of the Federal Government. As already discussed above that the Pakistan Army cannot do anything of its own, it is held that the restricted mandate of the Pakistan Army in terms of Article 245 of the Constitution is comprehensive and extends to every function of the Pakistan Army and includes all commercial activities. The Pakistan Army is funded out of public money through budgetary allocation. Learned Additional Attorney General when confronted that how the Pakistan Army undertook to make investment in the CAF initiative as it is not a profit earning institution, submitted that investment was to be received through local and foreign partners and the Pakistan Army was to facilitate such investment for CAF. Again, even the quest for such a role is unlawful and beyond comprehension. Therefore, the contention that CAF initiative being a commercial contract did not require the approval of the Federal Government is misconceived being in flagrant disregard of Article 245 of the Constitution and the holding of the Apex Court to the effect that the Armed Forces cannot do anything of their own without the approval or direction of the Federal Government.

141. The argument of learned Additional Attorney General that the scheme may be construed in terms of Article 147 of the Constitution which empowers the GOP with the consent of the Federal Government to entrust, either conditionally or unconditionally, to the Federal Government, or to its officers, functions in relation to any matter to which the executive authority of the Province extends provided that the Provincial Government shall get the function so entrusted ratified by the Provincial Assembly within 60 days, is inherently flawed and misconceived. This is for the reasons that neither any request of the GOP or the consent of the Federal Government is on record and more so, the Provincial Government is not in existence to ratify the same. This is notwithstanding that such entrustment with respect to CAF initiative would also be in breach of the restricted

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mandate of the Caretaker Government in terms of Section 230 of the Elections Act as well as the mandate of the Pakistan Army.

142. It is universally established and accepted principle that no institution can operate or perform any function beyond the express mandate conferred by the Constitution or law and the moment it steps outside its given mandate, its operation or performance of that function would be unconstitutional or unlawful. Of course, the Pakistan Army is of no exception. The institution of the Armed Forces of Pakistan was established with a clear, restricted and limited mandate. In the modern world, a credible institution takes pride in its excellence in terms of its specialized knowledge, training, expertise and achievements in the field of its activity or defined ambit vis-à-vis other competing institutions within the same field. Conversely, it negatively and adversely reflects upon the reputation and professionalism of an institution that in oblivion to its duties endeavours to assume role assigned to other institutions. The seldom departure by the Pakistan Army may occasion in the peculiar context of history marred with military interventions that blurred the conceived segregation of the Armed Forces from civilian administration of the State. The interference into civilian realm, is therefore, liable to be rectified by the Armed Forces through conscious steps for unwanted historical chapters can be set at naught through affirmative and positive acts of the present and future. The real purpose of Judicial Review by the Courts is not limited to examine the impugned transaction but it affords an opportunity to every institution or functionary whose acts and actions are under scrutiny to redress its transgressions through effective steps and reforms to ensure that such violations are prevented in future leading to an illuminated way forward in conformity with the Constitution and law. The people of Pakistan have the foremost right to expect and demand that the Armed Forces being the foremost institution for the protection of their life, liberty and property may rise to the occasion and be regarded as the most professional, focused and respected militaries of the world. The objective

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can only be achieved by strict adherence to its constitutional role. The act of the GOP and the DGSP to undertake CAF initiative under a joint venture being beyond the constitutional mandate of the Pakistan Army is, accordingly, held as unconstitutional and unlawful.

VII CONCLUSION

143. The constitutional scheme imposes an obligation on the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principles, from each according to his ability to each according to his work. The Constitution guarantees that every person shall have the right to be treated in accordance with law and no action shall be taken which is detrimental to the life, liberty, body, reputation or the property of any person except in accordance with law. The State comprises of the Federal Government, the Parliament, a Provincial Government, Provincial Assembly and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.[51] The Constitution confers a number of important fundamental rights upon the people including the right of every citizen to acquire, hold or dispose of the property subject to the Constitution and any reasonable restrictions imposed by law in the public interest.[52] All State resources including immovable property vested in the State belong to the people of Pakistan. The Government and its functionaries are custodians of the State property and are accountable to the people through their chosen representatives. There are corresponding obligations upon them to be always loyal to the Constitution and in turn, the people of Pakistan and as trustees and fiduciaries, to always hold and dispose of property in accordance with dictates of the Constitution and law. Chapter 2 of Part-II of the Constitution enunciates the directive Principles of Policy and declares that it is the responsibility of each organ and authority of the State and of each person performing functions on behalf of an organ or authority

[51] Articles 1, 3, 4 and 7 of the Constitution
[52] Articles 23 and 24 of the Constitution

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of the State, to act in accordance with those principles in so far as they relate to the functions of the organ or authority. The President in relation to the affairs of the Federation and the Governor of each Province in relation to the affairs of the Province is obligated to get a report prepared and lay it before each House of the Parliament or as the case may be, the Provincial Assembly, regarding implementation and observance on the Principles of Policy.[53]

144. Importantly, Article 37(f) of the Constitution obligates the State to enable the people of different areas through education, training, agriculture and industrial development and other methods to participate fully in all forms of national activities including employment in the service of Pakistan. Similarly, Article 38 of the Constitution requires that the State shall endeavour to secure the well-being of the people, irrespective of sex, caste, creed or race by raising their standard of living, preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees and landlords and tenants. The State is equally under a duty to distribute the available resources in a manner that generates livelihood so that the citizens can have access to the necessities of life such as food, clothing, housing, education and medical facilities. The underlying principle is to reduce disparity in the income and earning of its citizens.[54]

(Emphasis Supplied)

145. It, therefore, follows that the directive Principles of Policy unequivocally expect the governments in the country to frame policies keeping in view the underlying objectives. The impugned policy of CAF is inherently in violation of the guiding principles listed above for the reason that State land comprising more than one million Acres was reserved for one particular entity, thereby, concentrating holding in one hand, whereas,

[53] Article 29 of the Constitution
[54] Articles 37 & 38 of the Constitution

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it is possible and equitable to frame a policy that calls for inclusion of maximum number of persons to ensure that they may earn their livelihood by taking State land on lease. Further, through the impugned policy, the cultivators of State land would become employees instead of being direct lessees which shall reduce their earnings and means of livelihood. The objective of CAF initiative can be well achieved by fixing a ceiling and making a transparent competitive policy so that State land could be divested as lease to maximum beneficiaries who may get benefit from transfer of technology and collaborate with foreign entities willing to invest in the sector. This was precisely the model which was being considered by the previous Elected Government. An equally important policy consideration is that State property may be disposed of in a manner that fetches maximum return to the State because in the last resort the property belongs to the nation as a whole and not to a few beneficiaries of a particular scheme. In this context, the Superior Courts have repeatedly emphasized competitive, published, open and transparent processes to fetch maximum price. The profit-sharing model envisaged by the Caretaker Cabinet with inherent risk of loss is against such dictates. Therefore, the impugned policy does not adhere to the guiding Principles of Policy enshrined in the Constitution. It is also noted that on account of various economic, social and cultural aspects of the policy, it was aptly and rightly recommended by the Standing Committee that it may be considered by the Provincial Assembly.

146. In view of the foregoing, it is safely concluded that the Caretaker Cabinet manifestly acted beyond its legal mandate under a misconceived notion that it was merely completing the legal process regarding an already approved CAF initiative by the previous Elected Cabinet. In the process, the GOP committed serious and flagrant breaches of substantive law and legal processes leading to introduction of the new SOCs which were materially and substantially different from the original SOCs approved by the previous Elected Cabinet. The permission to grant

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land under CAF initiative under 'single source lease', opened a door for conferring State land in a non-transparent, non-competitive, arbitrary and unreasonable manner, offending the directive Principles of Policy and infringed the fundamental rights of the people to life, dignity, equality, due process and property enshrined in the Constitution. It is, therefore, ordered as follows:-

I. For the reasons recorded as aforesaid, the titled and connected Petitions are **allowed**;

II. The impugned transaction consisting of the decisions taken and approval accorded to the new SOCs in the Ministerial Committee's Meeting dated 14.10.2022, the 4th meeting of Caretaker Cabinet on Agenda No. 3 dated 09.02.2023, the Notification dated 20.02.2023 issued under Section 10 of the Colonization Act, the 7th meeting of Caretaker Cabinet on Agenda No. 3 dated 25.02.2023, the JVA dated 08.03.2023 and all subsequent developments including the sanction or transfer of State land in favour of the Pakistan Army are declared unlawful and of no legal effect and are set aside, accordingly. Resultantly, all State land shall stand reverted to the GOP, the Departments and persons as per its previous status. The SMBR is directed to ensure compliance by amending the revenue record, if required, and submit compliance report to the Deputy Registrar (Judicial) of this Court within fifteen days from the date of this Judgment.

III. It is declared that the Caretaker Government lacks constitutional and legal mandate to take any decision regarding CAF initiative and policy in any manner whatsoever, in terms of Section 230 of the Elections Act;

IV. It is directed that the future elected government may resume the CAF initiative after the stage of its conditional approval

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by the previous Elected Cabinet in its 51st meeting dated 28.02.2022 and proceed in accordance with law;

V. It is declared that the Armed Forces including the Pakistan Army and / or its subordinate or attached Departments / offices lack constitutional and legal mandate to indulge and participate in CAF initiative and policy in terms of Article 245 of the Constitution; and

VI. It is directed that office shall transmit certified copy of this Judgment to the Federal Government through Secretary Cabinet Division; Secretary, Ministry of Defence; the Chairman, Joint Chiefs of Staff Committee; the COAS; the Chief of the Naval Staff; and the Chief of the Air Staff. It is expected that the FOP in concert with the afore-mentioned officers will evaluate all activities and projects of the Armed Forces and if required, take appropriate and necessary remedial steps to ensure that they are in conformity with the constitutional and legal mandate of the Armed Forces. Further, necessary steps will also be taken to sensitize each member of the Armed Forces regarding the constitutional and legal mandate of the Armed Forces in the light of prescribed Oath in the Constitution and consequences arising from possible violations thereof, under the Constitution and law.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in open Court on **21.06.2023**.

Judge

WaqaR

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