ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Date	Order with Signature of Judge

PRESENT:

MR. JUSTICE ADNAN-UL-KARIM MEMON, J.
MR. JUSTICE ZULFIQAR ALI SANGI, J.

C.P. No.D-5483 of 2024
(M/s. Mall Developers Pvt. Ltd., v Federation of Pakistan and others)

Date of hearing and order:- 05.03.2026

Mr. Khalid Javed, Advocate for Petitioner.

Mr. Waleed Khanzada, applicant/intervener.

M/s. Malik Naeem Iqbal and Malik Waseem Iqbal, Advocates for the Respondent/DHA.

Mr. Zaeem Haider, Advocate for the Respondent/CBC.

Ms. Wajiha M. Mehdi, Assistant Attorney General.

O R D E R

Zulfiqar Ali Sangi, J. – Through the instant Constitutional Petition instituted under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner company, which is engaged in the business of building construction, has called into question the actions and conduct of the respondents whereby, according to the petitioner, it has been unlawfully deprived of its leasehold rights in respect of land measuring 3600 square yards, situated adjacent to Commercial Plot No. ZAM-1, Zamzama Commercial Area, Phase-V, DHA, Karachi. The petitioner asserts that the aforesaid parcel of land was originally allotted to it under an Agreement dated 17-07-1987 for the specific purpose of developing public amenities, including children's playing facilities and recreational/leisure activities for the benefit of the residents of the locality. It is further the grievance of the petitioner that notwithstanding the fact that the entire consideration amount was duly paid and amended lease rights in respect of 11,600 square yards had been obtained, possession of the remaining land measuring 3600 square yards was taken over in purported execution of the judgment dated 04-02-2014. According to the petitioner, the said judgment relates to a different master lease and is not applicable to

the property forming the subject matter of the present petition. The petitioner, therefore, seeks appropriate directions from this Court for the protection and enforcement of its alleged lawful rights in respect of the said property.

2. Briefly stated in the memo of petition, the petitioner is a private limited company engaged in the business of construction and development and claims to be the lawful possessor of Commercial Plot No. ZAM-1 situated at Zamzama Boulevard, Phase-V, Defence Housing Authority (DHA), Karachi, originally measuring 16,000 square yards under the Master Plan of 1973. Pursuant to an Agreement dated 17-07-1987 executed between the petitioner and Respondent No.2, namely Pakistan Defence Officers Housing Authority (DHA), Karachi, the entire plot was entrusted to the petitioner as a development package. Under the said arrangement, 8,000 square yards were allocated for the construction of a commercial building known as *"Mall Square"*, 4,400 square yards were earmarked for parking facilities, whereas the remaining 3,600 square yards were reserved as a park area to be developed with amenities including children's play facilities and other recreational activities for the residents of the locality. The petitioner submits that it duly paid all development charges in full, whereupon Respondent No.2 acknowledged the said payments, issued a No Demand Certificate, and subsequently executed and registered a C-Lease dated 16-09-1998 in favour of the petitioner in respect of 8,000 square yards of the said commercial plot. Thereafter, in the year 2003, Respondent No.2 approved the allotment of an additional 3,600 square yards at the rate of Rs.5,000 per square yard, against which the petitioner paid an amount of Rs.18,000,000, resulting in the execution of an amended lease deed dated 14-12-2005 in favour of the petitioner for a total area measuring 11,600 square yards as a commercial plot.

3. Subsequently, a private individual filed Constitutional Petition No. D-1143 of 2011 before this Court challenging the inclusion of the amenity land reserved for a park within the commercial plot. The said petition was allowed vide order dated 04-02-2014, whereby directions were issued for restoration of the land as a park. The petitioner challenged the said order before the Supreme Court of Pakistan through *CPLA No.445-K of 2014*, which was subsequently converted into *Civil Appeal No.639-K of 2014*; however, the appeal was dismissed on 12-05-2022, and the review petition filed thereafter was also

dismissed on 11-09-2023. The petitioner, however, contends that the judgment dated 04-02-2014 pertains to a different Master Lease dated 11-11-1975 relating to land situated on Korangi Road and Gizri Area, whereas the property in question forms part of the Master Lease dated 02-05-1972 concerning the Zamzama Commercial Area. Notwithstanding the said distinction, possession of the land measuring 3,600 square yards was taken over by the Nazir of this Court on 23-05-2023, which action, according to the petitioner, is unlawful and without lawful authority.

4. Learned counsel for the petitioners submitted that the entire parcel of land measuring 16,000 square yards was, from its inception, designated as commercial under the Master Plan of 1973. He contended that, in terms of the agreement dated 17-07-1987, the petitioner was duly authorized to develop an area measuring 3,600 square yards for the establishment of requisite amenities, including children's play facilities and other recreational provisions intended for the benefit of the residents of the locality. It was further argued that the petitioner duly fulfilled all contractual obligations arising under the said agreement, including payment of the entire development charges, and subsequently obtained all requisite lease documentation, culminating in the execution of the amended lease deed dated 14-12-2005 in its favour. Learned counsel maintained that the respondents themselves demanded and received an amount of Rs. 18,000,000 from the petitioner in the year 2005 in respect of the additional 3,600 square yards, calculated at prevailing commercial rates, and thereafter executed the aforesaid amended lease conferring leasehold rights upon the petitioner. In these circumstances, it was contended that, having accepted the said consideration and granted leasehold rights, the respondents are legally estopped from depriving the petitioner of possession of the subject land without providing due compensation or suitable alternate relief. Learned counsel further submitted that the judgment dated 04-02-2014 pertains to an entirely different master lease dated 11-11-1975, relating to land situated in the Korangi and Gizri areas, whereas the property in question forms part of the Zamzama Commercial Area governed by the master lease dated 02-05-1972. Accordingly, the said judgment, being distinguishable on facts and law, is not applicable to nor enforceable against the petitioner's property. It was further contended that the act of the respondents in taking possession of the land measuring 3,600 square yards on 23-05-2023, without payment of lawful compensation or provision of an

alternate commercial plot, amounts to an unlawful deprivation of property and is violative of the fundamental rights guaranteed under Articles 4, 23, and 24 of the Constitution of the Islamic Republic of Pakistan, 1973. Lastly, learned counsel submitted that the petitioner has no other adequate or efficacious alternate remedy available under the law, and is therefore constrained to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution. Consequently, the petitioner is entitled to the reliefs prayed for in the instant Constitutional Petition.

5. Conversely, the learned counsel for Respondent No.2 (DHA), the learned counsel appearing on behalf of the Respondent (CBC), as well as the learned Deputy Attorney General, vehemently opposed the instant petition and contended that the same is not maintainable in the constitutional jurisdiction of this Court, as it is hit by inordinate delay and laches. It was submitted that the controversy involved in the present petition already stands conclusively adjudicated by this Court through judgment dated 04.02.2014 passed in C.P. No. D-1143 of 2011 *(Barrister Waleed Khanzada v. Federation of Pakistan and others)*, which was subsequently upheld by the Supreme Court of Pakistan vide judgment dated 12.05.2022; therefore, the matter has attained finality and cannot be reopened in the present proceedings. Learned counsel further argued that the instant petition is also barred by the doctrine of *res judicata* as well as the provisions contained in Order II Rule 2 of the Code of Civil Procedure, 1908, as the petitioner was a party to the earlier proceedings and had fully contested the matter therein; hence, any ground not raised at the relevant time shall be deemed to have been waived. It was further contended that the agreement dated 17.07.1987 pertained to a commercial plot measuring 8,000 square yards, out of which 30% of the area was specifically reserved for amenities including parking spaces, roads, sidewalks and recreational facilities for the benefit of the residents of the locality. It was submitted that although a conditional allotment of an additional area measuring 3,600 square yards was approved in the year 2003, the same was expressly subject to the stipulation that the said plot would be utilized solely for recreational and leisure facilities and would not be developed or converted into a commercial mall. Learned counsel maintained that this Court has already declared the said land measuring 3,600 square yards to be an amenity plot, which could not lawfully be amalgamated or annexed with the commercial plot; consequently, any document or claim asserting otherwise is devoid of

legal effect. Learned counsel further contended that the present petition involves disputed and controversial questions of fact, including the determination of title and the nature of land use, which necessarily require the recording of evidence and, therefore, cannot be adjudicated in proceedings under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. It was lastly argued that the petitioner has attempted to re-agitate and re-litigate a matter which has already attained finality before competent judicial forums; hence, the present petition is misconceived, frivolous and constitutes an abuse of the process of law, and is therefore liable to be dismissed with costs.

6. We have heard the learned counsel for the parties and have carefully examined the material available on record with their able assistance. After considering the pleadings and the arguments advanced by the learned counsel, the following questions arise for determination:

1. Whether the present petition is maintainable in view of the earlier judgment of this Court and its affirmation by the Hon'ble Supreme Court of Pakistan.

2. Whether the relief sought amounts to re-agitation of issues already decided between the parties.

3. Whether the relief claimed can be granted in constitutional jurisdiction.

7. It is an admitted position that the status of the land measuring 3,600 square yards was directly in issue in Constitutional Petition No. D-1143 of 2011. This Court categorically held that the annexation of the amenity plot with the commercial plot was illegal and directed restoration of the land as a public park. The said declaration was subsequently affirmed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No. 639-K of 2014 and the review petition filed against the same was also dismissed. It is settled by now that once the controversy has been conclusively adjudicated by the highest Court of the land, the same cannot be reopened through fresh constitutional proceedings. For ease of the reference relevant observations of this court in Constitutional Petition No. D-1143 of 2011 are reproduced as under: -

> ***"****12. From the material that has been placed before us and which is not disputed is the Agreement dated 17.07.1987, wherein the area of Zam-1 plot is shown as 8000 square yards. Its price is also shown as Rs.4,825/- per square*

yard and when this price is multiplied by 8000 square yards the total sale consideration comes to Rs.3,86,00,000/-and this is the exact price which the Respondent No.4 paid. It is also an admitted position that at this particular price Zam-1 plot was purchased and additional price was paid by Respondent No.4 for any additional area. The original title document which is "C- Lease" dated 16.09.1998 also shows that the area of Zam-1 plot is 8000 square yards. The change in the area has been subsequently affected by executing amended lease on 14.12.2005 but that also does not narrate that additional area has been annexed to Zam-1 park for any sale consideration. Undisputedly, at the time of sale of plot No. Zam-1, plot admeasuring 3600 square yards meant for park and described as "DHA Park" existed in the relevant records. There is also no supporting document to show that this amenity plot meant for park was first converted into commercial and then sold. In fact the indenture of lease ie. the mother lease, on the basis of which the government of Pakistan transferred 3520 acres to Respondent No.3 clearly establishes that for the transfer of area for amenity purposes, no price was charged nor such area was to be utilized for any other purpose. Respondent No.4 claims that the area of Zam-1 plot is 11600 square yards and not 8000 square yards but this claim also emanates from amended C-Lease and not from the original lease deed and title documents. As to the reliance of Respondent No.4 on the suit proceedings, record of Official Assignee and CPLA show that the area of the plot Zam-1 is 14600 square yards. Suffice to state that area in such proceedings was mentioned only on the basis of the pleadings. No finding as to what is the actual areas of Zam-1 plot was in issue in those proceedings as is the case in the present proceedings. Thus the title documents were not scrutinized in that context in such proceedings nor there was such a dispute involved. Even in 8000 square yards land which was leased to Respondent No.4 it was stipulated in clause 2 of the agreement dated 17.07.1987 that 70% of the same shall be utilized for construction purpose only and the remaining 30% was to be utilized for roads, parks, side walks etc. In other words 70% of the 8000 square yards land was only to be utilized for construction and not the entire 8000 square yards. Hence even on 8000 square yards land under the original "C Lease" dated 16.09.1998, construction on 5600 square yards only was to be raised and the remaining 2400 square yards were meant for roads, parks, side walks etc. In the present case not only 8000 square yards of Plot Zam-1 has been over-utilized in violation of clause 2 of the agreement dated 17.07.1987 but the area of park land has been illegally annexed to Zam-1 plot. Through subsequent unlawful amendment made to the title documents, the area of Zam-1 plot was enhanced from 8000 square yards to 11600 square yards.

13. In view of the undisputed original title documents, we find that there is no difficulty in reaching the conclusion that the actual area of Zam-1 plot which was leased to Respondent No.4 was 8000 square yards only and no more. It has also come on record that the petitioner filed present petition after noticing construction activity on DHA Park in 2011 and hence it does not suffer from laches. No document is shown to establish that the petitioner was a party to any proceedings and identical issue was involved so as to attract the principle of res judicata. The bye-laws of Respondent No.2 specifically provide that even for conversion of residential plot into commercial it requires certain steps to be taken under Bye-Laws 125 and 126 of the Cantonment Board Clifton (Building) Bye-Laws, 2007 but in the present case the amenity plot meant purely for park was annexed with a commercial plot and that too without any consideration when such conversion is not permissible under any circumstances. In C.P. No.D-2585/2009 decided by this Court on 18.01.2014 with regard to conversion of residential plot into commercial it was held as follows:-

> *"We have examined the Bye-laws 125 and 126 of the Cantonment Board Clifton (Building) Bye-Laws, 2007 which are reproduced as under-*
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> > *"125.* ***Change of land use of residential plots.****-(1) No residential plot shall be converted into any other use except with the approval of the Federal Government, MPGO or the City District Government, Karachi (CDGK) after the recommendations of the Board.*
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> > *(2) The applicant shall apply and pay necessary fee to the Board for change of land use of the plot with full justification, which shall examine the case in the light of the planning of the area and forward it to the Federal Government for consideration.*

(3) The Board shall also issue a public notice for the change of land use of the plots in accordance with the provisions of these Bye-laws and the expenses shall be borne by the applicant.

(4) The Board shall give due consideration to the objections from the public before the final decision.

(5) The applicant shall pay the prescribed fees and other charges to Board.

(6) Final NOC of change of land use shall be issued by the Board, after approval of the Federal Government.

(7) Residential plot within a residential neighbourhood can be allowed to be used for education purpose by the Board after inviting public objection from neighbourhood.

***126. Commercialization of plots**- Conversion of residential plot into commercial shall be allowed only according to a uniform commercialization policy formulated and revised fromt time to time with the approval of the Federal Government through notification on the basis of comprehensive study of various urban areas under pressure for commercialization. Individual plots outside the policy will not be considered for commercialization."*

8. Under the Bye-Laws 125 and 126 of the Cantonment Board Clifton (Building) Bye-Lanus, 2007, a residential plot cannot be converted into any other use except with the approval of the Federal Government, MPGO and City District Government and that too after recommendation of the Cantonment Board are received in this behalf. This means that the Cantonment Board has to first decide whether residential property is to be allowed to be converted into commercial or not. Once recommendations in favour of commercialization are made then such recommendations are to be forwarded for approval to the Federal Government, MPGO and City District Government. In this regard, the provisions of the Bye-laws 125 and 126 of the Cantonment Board Clifton (Building) Bye-Laws, 2007 are to be strictly followed. The Bye-Law 126 has overriding effect over the bye-law 125 which provides that conversion of residential plot into commercial can only be allowed according to a uniform commercialization policy that is formulated with the approval of the Federal Government through a Notification on the basis of comprehensive study of various urban areas that are under consideration for commercialization. It is specifically mentioned in the Bye-Law 126 that individual plots will not be considered for commercialization. Thus the Bye-law 126 has overriding effect over the Bye-law 125. In absence of a uniform commercialization policy, commercialization of a residential property cannot be considered. Once it is formulated only than recommendations could be made and only then the provisions of Bye-laws 125 could come into play. Earlier orders passed from time to time in this case wêre obviously subject to final decision of the Court. In the orders dated 29.11.2010, 10.01.2011 and 28.01.2011 on which much reliance has been placed by Mr. Kamal Azfar, it is clearly mentioned, more particularly in the order dated 10.01.2011, that public hearing that was to take place by Cantonment Board shall be subject to final decision of this case.

9. It goes without saying that orders that are passed from time to time in a pending matter are always subject to final decision in the case and in the present, case, recognizing this principle, the Court has itself passed orders on 10.01.2011 whereby the order with regard to calling objections from the public were made subject to final order in this case. Hence no absolute or conclusive decision to start the process of commercialization was given but the same was conditional upon final decision in the case.

> *10. We are of the view that commercialization can only take place after decision is made by the Cantonment Board and in this regard formulation of a uniform commercialization policy is a pre-requisite as provided under Bye-law No.126. In absence of such policy no direction can be given to the Cantonment Board to commercialize the properties of the petitioners. Request of the petitioners could, at best, be only a material for consideration by the concerned authorities when they decide to chalk out a uniform commercialization policy in future under the provisions of Bye-law No.126 but under no specific provisions of law the Court can compel the concerned authorities to start the process of commercialization. The proceedings under Bye-law No.125 are subject to the provisions of Bye-law No.126.*
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> *This case is not even of conversion of residential plot into commercial. Hence the entire exercise of annexing the amenity plot meant for park with commercial plot Zam-1 is illegal, without any lawful authority and is, therefore, of no legal effect. The Respondents No. 1 to 3 are directed to take appropriate action for retrieving the plot originally meant for "DHA Park", remove any constructions that has so far been raised thereon and restore it as a park for the common use of the residents of the area.***"**

8. The aforesaid judgment of this Court was assailed by the petitioner before the Supreme Court of Pakistan. The said Court, while upholding the judgment of this Court, observed as under: –

> **"***11. Further and more importantly, Clause 3 of the Agreement with DHA only allows the Appellant to "develop" the Adjacent Plot with "amenities". As such, the mode and manner in which the Adjacent Plot could be used, has been restricted. The Agreement with DHA was executed in 1987, which means that it has held the field for 35 years. The Appellants cannot at this stage, request the Court to absolve the Appellants of their responsibility to abide by the terms of the Agreement dated 17.07.1987. It is pertinent to mention here that, as per Clause 2 of the Agreement with DHA, the Appellants were only allowed to construct over 70% of the total area of the plot and, 30% of the area of the plot was to be utilized for "amenities". The fact that the Agreement itself mentions the words "amenities" and that too, in the clause relied upon by the Counsel of the Appellants, goes to show that the Adjacent Plot was not merely mentioned as DI-IA Park by inadvertence. We have seen in the record the Minutes of the Executive Board of DHA dated 06.05.1995. The said minutes too, incorporate a decision taken on Item No.37, that construction could not be made on the "park area".*
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> *12....*
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> *13....*
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> *14....*
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> *15. It has been specifically mentioned in the Agreement with DHA and in the C-Lease that the Appellants shall abide by the by-laws of Cantonment Board Clifton and DHA. When the Respondent-Authority has repeatedly informed the Appellants that the Adjacent Plot could not be used for any other purpose; they were bound by such declarations made by DHA. The Appellants cannot at this stage, wriggle out of their part of the Agreement with DHA. This is because they chose to bind themselves by the conditions in the Agreement with DHA and, in the C-Lease. Learned Counsel for the Appellants has stated that this Court "impliedly approved" the Second Building Plan since this Court did not reject it outright. We do not agree with this argument. Merely because this Court did not struck down the Second Building Plan, does not, by any stretch of the language, mean that the Second Building Plan was "approved" by this Court. This Court, in its judgment handed down in CPLAs No. 297-K and 298-K, has nowhere used the word "approved" for the Second Building Plan. This Court, in various judgments, has held that an amenity plot cannot be used for commercial activities and by now it is settled law. Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 protects the fundamental right of life of every citizen of this Country. Right to life has been given an expansive interpretation by this Court. The right to life inter alia includes the right to enjoy public spaces such as parks. This Court is empowered to do complete justice*

and, nobody can be allowed to take fundamental rights guaranteed to the citizens from the citizens, which are protected by the Constitution of the Islamic Republic of Pakistan, 1973. No doubt, commercial activities support the economy. However, commercial activities cannot be a made a basis to deprive citizens of basic amenities such as parks. There is sufficient material on the record to support the proposition that the Adjacent Plot was in fact, an amenity plot by its nature and use, which could not be allotted to the Appellants in an arbitrary and non-transparent manner, as done in the present case. As such, the learned High Court was correct to hold that the adjacent plot was illegally and unlawfully amalgamated with the Commercial plot and that nature and land use of the adjacent plot could not be changed, altered or modified in violation of the rights of public at large which are guaranteed by the Constitution of the country.

16. We find that the learned High Court has proceeded on correct factual and legal grounds in the impugned judgment. The learned ASC for the Petitioners has been unable to point out any misreading or non-reading of evidence by the High Court while passing the Impugned Judgment. Further, no jurisdictional defect, error or flaw in the Impugned Judgment has been found that may warrant interference of this Court. On hearing the learned ASCs for the parties and carefully perusing the record, we have arrived at the same conclusion as the High Court and find no valid ground, reason or basis to take a view different from the one taken by the High Court.

*17. In view of the foregoing, this Appeal is found to be without merit. It is accordingly dismissed. The Impugned Judgment dated 04.02.2014 passed by the High Court of Sindh at Karachi is affirmed and upheld.***"**

9. The petitioner also filed a review petition bearing C.R.P. No. 651 of 2022 before the Supreme Court, which was likewise dismissed by an order dated 11-09-2023, the Court holding that no error was apparent in the impugned judgment.

10. The doctrine of res judicata is founded upon public policy to ensure finality in litigation. The issue regarding the nature and use of the 3,600 square yards land has already been decided between the same parties after full contest. The present petition, although framed in a different manner, essentially seeks to obtain relief that would nullify or dilute the effect of the earlier judgment. Such an exercise is legally impermissible. The principal relief sought by the petitioner is either restoration of rights over the amenity plot or grant of an alternative commercial plot in lieu thereof. Granting such relief would inevitably amount to reopening the consequences flowing from the earlier judgment of this Court, which has already attained finality after affirmation by the Hon'ble Supreme Court. Constitutional jurisdiction under Article 199 cannot be invoked to indirectly review or modify a judgment that has become final. The terms *Res judicata* is a Latin term that literally means *"a matter judged"*. In legal context, it refers to a principle that a final judgment by a competent court is conclusive and prevents the same parties from re-litigating the same issue or claim in the future. It ensures that once a matter has been legally decided, it cannot be brought again, promoting finality and preventing multiple lawsuits on the same dispute. The key points for it are (i) The

judgment must be final and by a competent court. (ii) It applies to the same parties or their legal representatives. (iii) The matter being claimed or litigated must be the same as in the previous case and (iv) It prevents wasting court resources and avoids contradictory judgments. Foe the ease of reference section 11 of the Civil Procedure Code, 1908 is reproduced as under: -

> *11.* ***Res Judicata.*** *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

11. The Supreme Court of Pakistan in the case of ***HABIB-UR-REHMAN and others Versus ABDUL KARIM (deceased) through L. Rs and others (2025 S C M R 1262),*** while discussing the term re judicata has observed as under: -

> *8. If we examine the doctrine of res judicata as accentuated under Section 11, C.P.C., it reveals certain constituents which establish that no court shall try any suit or issue in which the matter directly and substantially in issue has already been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. According to the six explanations attached to this very Section, the expression "former suit" shall denote a Suit which has been decided prior to the suit in question whether or not it was instituted prior thereto; for the purposes of this Section, the competence of a court shall be determined irrespective of any provisions as a right of appeal from the decision of such court; the matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly, or impliedly by the other; any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit; any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this Section, be deemed to have been refused and where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this Section, be deemed to claim under the person so litigating. In our considerate view, what the aforesaid Section unambiguously advocates is that, before non-suiting under this doctrine, it is obligatory for the courts to carry out a diagnostic exercise to determine whether the circumstances pleaded actually attract the principle of res judicata or not, rather than summarily dismissing the lawsuits on mere contentions without judicious reasoning.*

> *9. The far-sightedness or prudence ingrained in this doctrine of res judicata protects against never-ending litigation and ensures finality, thereby saving parties from the rigors of protracted or multiplicative*

> *proceedings. A cause of action finally adjudicated on merits must not be re-litigated. This doctrine also connotes "claim preclusion," whose indispensable elements include that the erstwhile judgment must be valid and final between the parties, and the same issue must not be brought again for re-litigation. Furthermore, this rule is essential to avert repetitive litigation and to ensure justice, equanimity, and dependability in judicial proceedings by curbing frivolous and vexatious litigation, often initiated with mala fide intention or ulterior motives just to drag the opponents in courts for reopening matters already conclusively decided. Simultaneously, it also lightens the court's docket and helps eliminate time-consuming and meritless litigation. At this juncture, we are reminded of the renowned Latin maxims: "Nemo debet his vexari pro una et eadem causa", no man should be vexed twice for the same cause, and "Interest reipublicae ut sit finis litium", it is in the best interest of the State to put an end to litigation. What is generally done or believed along the lines of conventional astuteness is that one judicial contest is sufficient for litigants to lodge their claims or put forward a defense rather than litigating for one and the same cause of action between the same parties for the same subject matter again and again.*

12. Further, Section 2(2) of the Code of Civil Procedure, 1908 (CPC) pertains to the "definition of the terms 'Court' and its jurisdiction." Subsection (2) of Section 2 is reproduced below:

> *(2) "Code" includes rules: "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint [the determination of any question within section 144 and an order under rule 60, 98, 99, 101, or 103 of Order XXI], but shall not include–*
>
> *(a) any adjudication from which an appeal lies as an appeal from an order, or*
>
> *(b) any order of dismissal for default.*

13. The Supreme Court of Pakistan in the case of ***HABIB-UR-REHMAN and others Versus ABDUL KARIM (deceased) through L. Rs and others (2025 S C M R 1262),*** while discussing the section 2(2) CPC has observed as under: -

> *10. According to the Section 2(2), C.P.C., "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary or final. It shall be deemed to include the rejection of a plaint, the determination of any question within Section 144 and an order under Rules 60, 98, 99, 101, or 103 of Order XXI, but shall not include: (a) any adjudication form which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Section 2(2), C.P.C., further explains that a decree is preliminary when further*

proceedings have to be taken before the suit can be completely dispose of. It is final when such adjudication completely disposes of the suit and it may be partly preliminary and partly final.

11. The survey of various dicta laid down by this Court and the Supreme Court of India resonate with an all-encompassing and comprehensive discussion on the ways, and whys and wherefores, of including rejection of plaint within the definition of decree provided under the C.P.C. In the case of Abdul Hamid and another v. Dilawar Hussain alias Bhalli and others (2007 SCMR 945), it was held that the rejection of plaint is not an adjudication on merits. It is a decree only by fiction, therefore, there is no bar to filing a fresh suit. It was further emphasized that the statute must be read as an organic whole as laid down by this Court in various pronouncements and also referred to Mian Nawaz Sharif s case (PLD 1993 SC 473) and Mst. Iqbal Begum's case (PLD 1993 Lah. 183). The cases of Deepchand v. Land Acquisition Officer (AIR 1994 SC 1901), Alcon Electronics Pvt. Ltd. v. Celem S.A. (AIR 2017 SC 1) and Sayyed Ayaz Ali v. Prakash G. Goyal (2021 (7) SCC 456) similarly reflect the same well-settled exposition of law that a decree means a formal expression of an adjudication which conclusively and finally determines the rights of the parties with regard to all or any of the matters in controversy in the suit. In line with Order VII Rule 13, the rejection of the plaint on any of the grounds, mentioned under Order VII Rule 11, C.P.C., shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. In the case of Diwan Bros. v. Central Bank of India, Bombay (AIR 1976 SC 1503), it was held, while considering the question of maintainability of an appeal that the court fee paid was insufficient to start with but the deficiency is made good later on, that the provisions of the Court Fees Act and the C.P.C. have to be read together to form a harmonious whole and no effort should be made to give precedence to one over the other unless the express words of a statute clearly override the other. The Court opined that Section 4 of the Court Fees Act is not the final word and the court must consider the provisions of both the Act and the Code and harmonize the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. It was further held that in order to understand the expression "having the force of a decree" occurring in this article of the Court Fees Act, it would be useful to derive guidance from the definition of a "decree" contained in Section 2(2), C.P.C., according to the provisions of which, a decree is a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy before the Court. The expression "decree" is not defined either in the Court Fees Act or in the General Clauses Act. It may, therefore, be safely assumed that this expression as used in the Court Fees Act, bears the meaning given to it by Section 2(2), C.P.C.

14. In view of the facts and circumstances of the present case, it is manifest that the controversy raised by the petitioner has already been conclusively adjudicated by this Court and subsequently affirmed by the Supreme Court of Pakistan. In accordance with the well-settled doctrines of *res judicata* and *finality of judgments*, the present matter

cannot be reopened or reconsidered merely on the basis of a modified or recast version of the factual narrative. Permitting such re-litigation would be contrary to established legal principles, public policy, and the administration of justice, which seek to prevent multiplicity of proceedings and abuse of the process of court. It is evident that the issues raised in the instant petition are identical to those previously determined between the same parties. Consequently, having regard to the foregoing, this petition is not maintainable, and the petitioner is not entitled to the relief sought herein.

15. Turning to the claim for allotment of an alternative commercial plot or recovery of the alleged amount paid towards commercialization essentially arises from contractual dealings between the petitioner and Respondent No.2. Such claims involve disputed questions of fact and possible entitlement to compensation, which are matters ordinarily adjudicated by competent civil forums after recording of evidence. These issues cannot be examined within the limited scope of constitutional jurisdiction. It is well-settled in law that constitutional jurisdiction of this Court under Article 199 is primarily intended to address matters of illegality, unconstitutionality, and jurisdictional error committed by public authorities. It is not a forum for adjudicating disputes which are essentially factual in nature. The Supreme Court of Pakistan in various judgments has consistently held that matters involving contested facts, including claims of contractual obligations, possession, and performance, are to be adjudicated by competent civil or other specialized forums and not under the constitutional jurisdiction of the High Court. The Supreme court of Pakistan in the case of ***Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others (2001 SCMR 1493),*** has held as under:-

> *"Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan".*

16. Similarly, in ***Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279)***, the Supreme Court of Pakistan observed as under: -

> *"The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused".*

17. For the foregoing reasons, this Court is of the considered view that the controversy regarding the land measuring 3,600 square yards has already been conclusively determined through earlier judicial proceedings; the present petition amounts to re-litigation of matters that have attained finality; and the relief claimed cannot be granted within the scope of constitutional jurisdiction under Article 199 of the Constitution.

18. Consequently, the present Constitutional Petition is *dismissed* as not maintainable, along with the pending application(s).

JUDGE

JUDGE