



RESEARCH PAPER

A Critical Analysis of Legal Framework Relating to Defence Housing Authority in Pakistan Vis-a Vis the Goal of Housing for All As Envisaged By UN Habitat Agenda

Mirza Shahid Rizwan Baig¹ Rao Qasim Idrees² Hafiz Muhammad Usman Nawaz³

1. Assistant Professor, College of Law, Government College University Faisalabad, Punjab, Pakistan
2. School of Law, University of Gujrat, Punjab, Pakistan
3. Faculty of Sharia & Law, International Islamic University, Islamabad, Pakistan

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ABSTRACT

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**Corresponding
Author:**
qasim.rao@uog.edu.p
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This article deals with the efficacy of the Legal Framework of DHA in achieving the goal of housing for all. This article would highlight various provisions of DHA in the context of provision of housing units to the members of DHA. All the aspects of the regulatory regime positive as well as negative have been discussed with a view to point out the grey areas to further strengthen the Legal Framework of DHA to make it in line with UN Habitat agenda to achieve the goal of housing for all in Pakistan.

Introduction

Right to adequate housing is viewed as one of the most important human rights. UN Habitat has laid down the minimum criterion for adequate housing which includes following things, security of tenure, availability of services, materials, facilities and infrastructure, affordability, availability, accessibility, location and cultural adequacy, privacy, protection against forced evictions and freedom of movement (Right to Adequate Housing, Fact Sheet 21).

DHA is a big housing developer which is doing housing activity in various cities of Pakistan. It is playing its role in meeting the goal of housing for all. It shall be disused to what extent and to whom (class of people social and economic class) it is providing housing units. Before discussing Defense Housing Authority in detail let's have a look how it was originated in Lahore.

Firstly, it was Lahore Cantt Cooperative Housing Society, Lahore and it was developed after acquisition of land under Section 4 of Land Acquisition Act 1894. Land

measuring 12283,2732, and 3651 kanals in villages Charrar, Keer Khurd and Chund Khurd in the Tehsil and District Lahore was acquired to start phase one of Defense Housing Authority (Dr. Muhammad Naseem Javaid Vs Lahore Cantonment Housing Society Ltd).

Origin and Development of Defense Housing Authority (DHA) Lahore

Under Article 128 of the Constitution the governor of the Punjab issued Defense Housing Authority Lahore, Ordinance 1999.

By the above mentioned enactment a new corporate entity in the name of Defense Housing Authority (DHA), Lahore was formed which had a perpetual succession and common seal and it could purchase and sale out land in its own name (The Defence Housing Authority Lahore, Ordinance, 1999). Defence Housing Authority was formed to provide relief to the families of shuhada (martyred for homeland) and Ghazis(those who are able to survive after war) of Pakistan Army. DHA enjoys some special privileges in terms of taxes and other Government dues which are enjoyed by Capital Development Authority and other Governmental agencies. The Defence Housing Authority has replaced the Lahore Cantt Cooperative Housing Society Limited, Lahore which was formed and registered under the Cooperative Societies Act 1927. All the assets, liabilities, officers and bye laws were transferred and attributed to the DHA, Lahore. The acquisition of land by DHA is considered as land acquired under land acquisition Act for public purpose. The management of it was run by the Governing Body consisting of Corps Commander Lahore, as president of executive board the other members of the governing board includes the representatives of the law, finance and housing departments of the provincial Government concerned.

The governing body is assisted by the executive board consisting of the administrator, one member nominated by the governing board and the secretary of the authority is from the members of the executive board. For the purpose of reconstruction of Defence Housing Authority an order was issued in 2002 by the Chief Executive (General Pervaiz Mushrraf) of Pakistan under the name and style of Defence Housing Authority, Lahore Order 2002 (Notification F.NO.2(4)/2002). By this new order an amendment has been introduced in the composition of the management of DHA by declaring the secretary, Ministry of Defence as chairman, the corps commander, Lahore as vice chairman, administrator as a member, two co-opted civilians and secretary of the authority as member of the management (The Defence Housing Authority Lahore).

In order to promote DHA to perform housing activity an exemption from income tax has been provided by law. The Lahore High Court held that DHA being a local authority was exempt from income tax. High court set aside impugned notice for being illegal and without lawful authority (DHA Lahore through Secretary Vs D.C Income Tax). Executive board may perform all the necessary acts on behalf of DHA including acquisition of land under Land Acquisition Act 1894.

There is a gap between theory and practice instead of following the procedure laid down under land acquisition Act a novel procedure has been followed by DHA by getting the help of a middle man land is acquired for DHA. DHA does not pay even a single rupee to purchase the land for DHA.

The land is purchased by the middle men from the land owners and after that this piece of land is transferred in the name of DHA and as a consideration of this land some portion of land in the shape of developed land is returned to the middleman. In order to raise funds for running the day to day affairs of DHA the executive board can raise funds through loans and by imposing charges on the members of DHA. This provision has made the day to day working of DHA on smooth basis. Wide powers have been given to the executive board and governing body to cancel the allotment of the plot after serving a show cause notice to the member of DHA in case of failure to pay installment or development charges.

On the other hand there is a check and balance on DHA as well that in case of cancellation of plot without providing an opportunity DHA was directed to pay damages plus special damages. The facts of the case are that petitioner purchased a plot in DHA and paid all the dues on time and went abroad for nineteen years. In the mean while the allotment of plot was cancelled by DHA and was issued to another person that other person further alienated to another person. After filing of petition DHA was neither able to point out any lapse on the part of the petitioner nor able to show an opportunity of hearing being provided by it before cancellation of plot. The court awarded damages and special damages for mental pain suffered (Mirza Manzoor Hussain Qazalbash Vs Syed Muhammad Faheem).

The above-mentioned penal provision for failure to pay dues is proving very helpful to save DHA from becoming a failure housing developer as we can see many precedents in case of cooperative housing societies. This provision is a kind of internal check and balance on the members of DHA to follow the rules and regulations of DHA in letter and spirit. Another issue faced by the housing societies is that after becoming the member of a housing society the members use the plot for some other purposes other than residence which causes nuisance to the adjoining members of the housing societies in order to control this mal practice a fine at the rate of fine of rupees two thousand rupees per day or an imprisonment up to six months or both punishments can be granted to the member concerned.

In order to stop the members of the housing DHA to deviate from the master plan and raising building in contravention of the DHA laws very wide powers in the shape of removal of the building have been provided which can be exercised after giving an opportunity of being heard. DHA is also bound to follow the master plan which has been approved; a petition was filed by the petitioners when the petitioners were aggrieved of conversion of roads of their residential area into single carriage road for playing commercial vehicles.

In order to change the master plan public hearing is a must thing in terms of Article 9(2) of Pakistan Defence Officers Housing Authority Order 1980. It was only executive board which could do so after hearing objections from the general public. No master plan, planning or development scheme under Article 9(3) of Pakistan Defence Officers Housing Authority Order 1980 can be planned by any local authority or other agency of like nature can do so without consent of the executive board. High Court issued an order to DHA to restore the previous position of master plan and if any change was needed it could be done after following the procedure prescribed by law (Irfan Merchant and others Vs Federation of Pakistan and others).

In order to protect the authority, the governing board, the executive board, the administrator from any suit or proceedings for any action taken in respect of affairs of DHA an indemnity clause has been provided.

This provision seems to be in conflict with the Constitutional guarantee provided under the Constitution of Islamic Republic of Pakistan 1973 that nobody shall be deprived of life or property save in accordance with the procedure of law. A special forum has been provided to decide all pending cases in relation to plots of DHA. All the pending cases are transferred to the Administrator of DHA, Lahore and an appeal against the decision of administrator can be filed to the executive board of DHA.

There are two aspects of the above mentioned provisions of law firstly, positive one that by providing this special remedy in case of any dispute regarding the plot an expeditious remedy has been provided which can be helpful to save the time and money of the aggrieved member of the society, secondly, this provision has a negative aspect i.e. that DHA is itself a judge in its own case and it is violation of the general principle of law that nobody can be judge in his own case.

Defence Housing Authority (DHA) Construction and Development Regulations-2014

The executive board of Defence Housing Authority (DHA) was empowered to make regulations under Article 23 of Chief Executive Order No.26 of 2002. In exercise of the powers conferred upon under Article 23 and Article 4 of the Order these regulations have been prepared for regulating all the affairs of the DHA from beginning till end.

Every person who is able to get a plot in DHA is bound to raise construction in accordance with these regulations. These regulations are mandatory to be followed by every plot holder in DHA in whatever way he has got the plot i.e. by making payment or by way of gift or inheritance or any other legal way (Defence Housing Authority Construction and Development Regulations). The maximum size of a plot in DHA is of 2 kanals and minimum size of plot is 5 marlas it also offers plots of 1 kanal, 10 marlas, 8marlas, 7marlas. The measurement of 1 Marla is equal to 225 square fit. DHA does not acquire land as per Land Acquisition Act. DHA gets land from the middlemen who purchased land from the land owners and then transfer land in the name of DHA. The middlemen take the responsibility of any defect in the title of land in this way DHA

gets land free from all encumbrances. Middlemen purchase lands by paying handsome amounts to the land owners. As a consideration of providing land the middlemen are provided developed plots in DHA housing scheme. In this way DHA without paying a single rupee becomes the owner of the whole land consisting of all the DHA housing schemes in all the cities where the DHA schemes are operating in all over Pakistan.

When a DHA housing scheme is launched in a city, applications are invited from the general public through electronic and print media. It is a common practice that applications are received in bulk and many times more than the plots available in the housing schemes of DHA. Each application is accompanied with a fee. The allotment of plots is done on the basis of balloting. No fee is refunded to the unsuccessful applicants.

In this way billions of rupees are earned by DHA housing schemes in each housing scheme. After getting the land with the help of middlemen the land of DHA is developed by collecting development charges from the members (allottees). Most of the housing schemes launched by the civilians results into failure when no utility services are provided to the housing schemes either due to the lapse on the part of members to pay the development charges or due to lapse on the part of the management of the housing schemes.

Application on the prescribe form is made to the building control branch for supply of water. The charges are paid by the allottees for the connection as well as for monthly consumption. The water and sewerage facilities are both the responsibilities of DHA administration so as contrast to civilian housing schemes time and money is saved. Every allottee (plot holder/member) of plot is bound to construct the plot within a maximum time period of three years from the date of allotment of plot. Construction, addition and alteration can be done only after getting an approval from DHA on a prescribed form.

A new and innovative concept of non-construction penalty has been prescribed by the rules if the plot is not constructed within three years. This is a welcome step as it enables to allottees members to take interest in the development of the scheme and to put a check not to leave the plot as an idle and dead investment. The administration of Defence Housing Authority is not above law, as no plot can be cancelled without providing an opportunity of hearing. Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan 1973 provide protection to the citizens with respect to acquiring, using and holding any property.

DHA is not an exception to the above mentioned law, so, non-fulfillment of contractual obligations on the part of the plot holder does not entitle the administration to cancel the plot without providing an opportunity of hearing to the plot holder. Principle of Audi Alteram Partem is applicable to all the transactions of DHA (Raja Haroon Rashid Vs Defence Housing Authority).

Application for construction should be accompanied by one original tracing cloth and seven copies of ammonia print of drawing, copy of allotment/transfer letter,

site plan(prepared by an engineer containing each and every detail of construction) and computerized identity card, paid challan for dues, architect stability certificate along with form A and B, and undertaking by the allottee that no rule or regulation of DHA has been violated during the construction of the plot.

This provision is a kind of an internal check and balance on the allottees to follow the rules and regulations of DHA. But the matter of construction is not left to the sweet will and discretion of the member/allottee. A complete scrutiny of the drawing and documents is done by the administration of DHA within thirty days. After scrutiny the application can be rejected completely or some modification can be suggested and if some suggestions are recommended the application can be resubmitted after incorporating the suggestions and once again a positive or negative reply on this application shall be given by the administration of DHA within thirty days.

In spite of this exhaustive exercise of scrutiny if some deficiency is not pointed out at the time of scrutiny it does not mean that a permission to construct the plot by violating the rules has been granted. An oversight at the time of scrutiny is necessarily to be corrected when pointed out at later stage by the administration of DHA.

A complete system of internal check and balance has been devised to stop any violation of any kind in the construction of plots in each and every housing scheme launched by DHA. Due to this system of check and balance a systematic and uniformity in the construction of housing schemes of DHA is found. A time period of two years is granted by DHA to complete the construction work from the date of approval of the scheme.

Penalty is imposed under DHA regulations on the member who has failed to construct his plot. It is a very good step to put a check and balance on the practice of purchasing of plots for speculation purposes. Check and balance during the construction work each and every member of DHA is bound to get his construction work verified when the layout has been completed, on completion of boundary wall, on construction of main building up to DPC level, before pouring roof of first floor and on final completion and before occupation as well.

After completion and during construction work a surprise visit can be done by an officer of DHA. Maximum height of a building in phase one to four can be 30 feet and 35 feet in phase five. In short, all the possible situations have been answered by DHA Regulations 2014.

Any act on the part of the members (plot holders) of Defence Housing Authority which is based upon forgery, fraud and which is in contravention of the regulations of DHA would lose its validity and fall to the ground (Mustafa Lakhani Vs Pak Defence Officers Housing Authority). After completion of construction work by the member (plot holder) DHA would issue completion certificate which is a proof that house has been constructed by the plot holder as per rules and regulations of DHA.

If there is no lapse on the part of the plot holder (member) and he has constructed the development work as per rules, then it is the right of member and duty of DHA to issue completion certificate. If there is a refusal on the part of DHA to issue completion certificate it would be not only unreasonable but in violation of Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan 1973 (Syed Dost Ali Vs Federation of Pakistan through Secretary Defence).

A plot was owned by the petitioner in a housing scheme in Karachi under the authority of Karachi Development Authority. Later on, the territory of the housing scheme was taken over and included in Cantonment Board in 1997. In 2004 petitioner applied for approval of building plan for construction of house on the plot. Cantonment board demanded fee plus TIR Tax from the petitioner. Petitioner challenged the imposition of TIR Tax on the ground that Statutory Regulatory Order (SRO) on the basis of which this tax was being imposed was issued after he has purchased that piece of land in a housing society which was on that time not part of Cantonment Board so it was not applicable.

This plea was rejected by the Sindh High Court and it concluded that this tax was to be paid by all the members of Karachi Cantonment Board cross the board without any discrimination (Khawaja Muhammad Asghar Vs Govt. of Pakistan through Secretary Ministry of Defence). Due to these complete and compact rules and regulations the DHA housing projects are considered as very successful in Pakistan. Legal framework of DHA is so complete and compact that it contains the answers of all questions of law from the start till end for example even if the plot holder or family member of the plot holder in DHA dies it provides the eligibility for burial in the graveyard of DHA.

As per DHA rules the facility is available for the parents, spouse, dependent children of the registered members. High Court dismissed intra court appeal and declared that DHA regulations were made to maintain structural harmony, privacy, security and tranquility for its residents so it was confined to the extent of members and close relatives of DHA only (Asghar Bin Shahid Jafri Vs Defence Housing Authority).

Defence Housing Schemes Vis -A- Vis Goal of Housing for All Challenges and Grey Areas

What is the role of DHA housing schemes in achieving the goal of housing for all? Whether these schemes have proven helpful to achieve the goal of housing for all as envisaged by the UN Habitat agenda or due to DHA housing schemes the situation has further worse?

Land Acquisition Procedure of DHA

The first step to launch a housing scheme is to acquire land for it and as per DHA Ordinance the pattern to be followed for acquisition of land is to acquire the land as per Land Acquisition Act 1894 but there is a gap between theory and practice and

contrast to theory the land is being acquired with the help of middle men who purchased lands from the landowners at a high rates and sometimes by using coercing measures to sell their lands. The lands so purchased or acquired are sold to DHA housing schemes by these middlemen (contractors). These middlemen take full responsibility to transfer the lands to DHA housing schemes free from all encumbrances. In return of these lands the middlemen get a share from DHA in the shape of developed plots. DHA by spending not a single rupee acquire lands for their housing schemes.

In a similar situation Supreme Court of Pakistan declared that middlemen who had entered into agreements with the Police Foundation to arrange land for establishment of residential housing colony were not entitled to plots without paying the development charges. Furthermore, such middlemen were not entitled to more than their due share of plots. All such allotments to middlemen were declared to be null and void (Suo Motu Case No. 11 of 2011). In another case Supreme Court of Pakistan has raised very serious concerns and raised a big question mark on the mode of land acquisition mechanism adopted by DHA Lahore. DHA Lahore acquired land from Evacuee Trust Property Board for establishment of phase six and seven of DHA Lahore.

Initially it was decided that DHA would pay an area of 33 percent to Evacuee Trust Property Board as a consideration of land acquired by DHA Lahore. Later on, DHA violated the first agreement and promised to pay 25 percent area in the shape of developed plots to Evacuee Trust Property Board. Supreme Court took a suo motu action and directed DHA to abide by its previous commitment of providing 33 percent of land to Evacuee Trust Property Board as a consideration otherwise the court would declare the whole deal as null and void (Suo Motu Action Regarding Illegal Selling Out of Auqaf Properties by Chairman Evacuee Trust Property Board).

In short from time to time the courts have been raising questions on the transparency of the mode of acquisition of lands by DHAs for its housing projects. The positive aspect of DHA housing projects is that rich men (elite class) can get plots in these schemes with all the luxuries at very high prices. A small segment of the society can get housing units at high prices. There is another aspect of this land acquisition process which is negative one that this mode of acquisition of land by DHA has raised prices of the lands many folds and it has become impossible for middleclass and lower middle class to have a plot in DHA.

Due to acquisition of lands in this manner the prices of the lands and subsequently plots become so high that a major portion of the society cannot afford to have housing unit in these schemes. The problem of housing for all has become worse and an artificial inflation is created. So, DHA has proved helpful to provide housing units to only elite class and housing has to have an access to a plot in DHA has become out of reach for a major portion of the society.

Issuance of Possession of Plots only without Ownership of Plot (File System)

There is no concept of registry in DHA, the plots are sold on the basis of file system (the ownership remains with DHA) only the possession of the plots is transferred to the members of DHA. This file system has promoted the dealer mafia in the real estate. A plot is sold many a times due to which the prices of the plots increase many folds. It results into an artificial inflation. Selling of files of the plots has become a nasty business.

Tax Evasion and Deprivation of State from Revenue

In many cases buying and selling of plots is done by the file mafia and property dealers and no registry of plots is done by filing the procedure of Registration Act in case of DHA so it results into tax evasion and loss of revenue for the state.

DHA Itself Judge in Matters of Dispute between DHA and Members of DHA

It is a settled principle of law that nobody can be judge in his own case but this principle is not followed in case of DHA. Whenever there is a controversy of any allottee / member of DHA with DHA administration, the Administrator of DHA would decide that dispute and an appeal would lie to the executive body of DHA. Under this situation the right of fair trial has been denied.

Due to this reason many cases of violation of legal rights have arisen. It was held by Sindh High Court that even Executive board of Defence Officers Housing Authority could not cancel the allotment of plot without providing an opportunity of hearing.

In another case it was held by the court that when there was no evidence on record which could show that prior to cancellation of plot a show cause notice was issued to the plot holder or an opportunity of being heard was provided to the plot holder, the allotment of plot could not be cancelled (Nizam Ahmed Chaudhary through Attorney Vs Defence Officers Housing Authority).

Appellant was an employee of Pakistan Army, he filed a case against the cancellation of plot situated in Pakistan Defence Officers Housing Authority. The plot was cancelled because the said employee got allotment of plot by suppression of facts that he had already got a plot and he could not get double plot. The said allotment was in violation of bye laws of the housing authority. Plaintiff was afforded an opportunity of hearing by the scrutiny committee of the housing society but he deliberately did not appear after proper service of notice. The order of cancellation of allotment of plot was upheld (Major(R) Sheikh Abdul Naseem Vs Pakistan Defence Officers Housing Authority through Secretary).

Another example in which a dispute between a plot holder/member of DHA and DHA was decided by DHA itself in clear violation of DHA Regulation was the case of Mst Zahida Sultana. In this case petitioner was a plot holder and at the time of purchasing plot in DHA Lahore the petitioner (Mst. Zahida Sultana) purchased the

plot which was adjacent to parking area as per master plan and layout plan of the DHA Lahore. When the petitioner constructed her house on her plot DHA converted the parking area into a commercial area by taking decision unilaterally.

The member filed an application to relevant authorities of DHA against this decision which was rejected by DHA administration being a judge in their own cause. It was held by Lahore High Court the DHA could not decide the matter in an unjust way and DHA was bound to develop the site as per master plan and layout plan. The power of the executive board could not be exercised in violation of DHA Regulations (Mst. Zahid Sultan Vs DHA Lahore and others).

Whether Defence Housing Authority (DHA) can sale plots to general public?

It is another relevant question that whether DHAs in various cities of Pakistan, which are the creation of cantonments boards which are formed for the defense of the country and the people of the country. Whether the land allocated to these cants for purely military purposes can be sold to civilian people to earn money (it is purely a business activity) is allowed by law? The answer to this question was provided by the Present Chief Justice of Pakistan (Justice Gulzar Ahmed) in the case of encroachment in the shape of marriage halls constructed in the cantonment area of Karachi that such kind of commercial activity was not allowed by law. A similar kind of case was decided by former Chief Justice of Pakistan Justice Iftikhar Muhammad Chaudhary when it was held by the apex court that Police Foundation was a charitable foundation and being a charitable foundation it was meant to serve the needs of poor and needy officials of the Police Foundation only so it could not take the form of a private housing society to do a business as land was not given to it for this purpose (Suo Motu Case No. 11 of 2011).

Elimination of one-sided agreements to make allotment of plots and apartments

There is a need to eliminate one sided agreements in the housing industry of Pakistan in which buyers investors are required to sign the application form by putting signatures in the dotted lines. An apartment was given to the petitioner in 2003 by Defence Housing Authority as a result of balloting. It was settled that the payment shall be made up to 95 percent and remaining 5 percent payment for the apartment was to be made at the time of delivery of residential apartment. DHA committed to hand over the apartments in 2006 but due to increase in the prices of the construction materials it could not be possible. DHA handed over apartments in 2009 and demanded extra price for it. It was declared by Sindh High Court that DHA could not unilaterally increase the prices of the apartments and it was bound as per terms and conditions of the agreement (Asrar Alam Sheikh Vs Administrator DHA).

Whether the Current Practice is a Deviation from Main Purpose of DHA.

Defence Housing Authority was formed to provide relief to the families of the Shuhada (martyred for mother land) and Ghazis (those who fought for country and survived) in the shape of plots. But under the present conditions it has become a corporate body the main aim of which is to generate profits by doing housing activity

as a pure business activity. DHA Rawat scam is important to mention here, it was a joint project of DHA and Bahria Town. The project was launched in 2008 and amounts were submitted by the investors in 2011 and still people are looking for the allotment of plots. Supreme Court of Pakistan is looking into the matter to provide relief to the victim investors.

Conclusion

From the above said discussion the researchers have arrived to a conclusion that although the Legal Framework of DHA is an exhaustive piece of legislation the regulatory point of view because it covers all the affairs of the housing activity from the sale of plot to the construction of housing units on the plots of DHA housing schemes. Due to a complete and compact sort of enactment there is a very less room of litigation for the parties associated with DHA housing projects in all capacities (investors, developers etc.). In many aspects this regulatory Framework of DHA can be followed by the other regulatory bodies in Pakistan to regulate the housing activity of private housing societies as well as cooperative housing societies. In spite of a lot of positive aspects this Legal Framework has many shortcomings including the mode of land acquisition followed by DHA housing projects being followed which reflects a contradiction between theory and practice, this process of land acquisition has created an artificial inflation and high prices of plots in DHA schemes have made housing for all only a dream for middle class and lower middle class. The Legal Framework relating to DHA needs to be strengthened to bring transparency in the allotment process, refund of cash to unsuccessful applicants and to regulate the unbridled role of property dealers. The present Legal Framework should be designed in such a manner that all segments of the society can have an access to a housing unit in DHA. By introduction of suitable amendments in it the goal of housing for all can be achieved in Pakistan.

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