

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Constitution Petition No. _____ of 2015

1. Aasim Sajjad Akhtar, s/o Sajjad Akhtar, r/o 91-A, Satellite Town, Rawalpindi. CNIC: 37405-3467348-7;
2. Ammar Rashid, s/o Rashid Ahmed, r/o 287A, street 55, F-11/4, Islamabad. CNIC: 37405-9265744-9;
3. Muhammad Zahoor s/o Muhammad Sadiq, Newmal Kuri Road, Chak Shehzad, Islamabad. CNIC: 61101-8938967-7;
4. Rafiullah s/o Muhammad Ullah, r/o I-11/1 *katchi abadi*, Islamabad. CNIC: 61101-9430034-5;
5. Nasir Khan, s/o Muhammad Nazir, r/o I-11/1 *katchi abadi*, Islamabad. CNIC: 61101-7966136-5;
6. Ahmed Agha s/o Akhun, r/o I-10 *kachi abadi*, Islamabad. CNIC: 37405-0981444-7;
7. Ahmed Ali Shah, s/o Mohammad Shariff, r/o I-10/1 *katchi abadi*, Islamabad. CNIC: 61101-0661821-5.

...PETITIONERS

Versus

1. The Federation of Pakistan through Secretary, Ministry of Interior, Islamabad.
2. Capital Development Authority through its Chairman, CDA Head Office, Islamabad.
3. Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad.
4. Inspector General of Police, Islamabad,
5. Secretary Cabinet Division, Islamabad.
6. Chief Commissioner Islamabad.

...RESPONDENTS

**PETITION UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF
PAKISTAN, 1973**

Respectfully Sheweth:

1. That Petitioner No: 1 is an academic and activist. He teaches Pakistan Studies at the Quaid-e-Azam University in Islamabad and works for the welfare of the working class population of the country. Petitioner No. 2 is also an academic and activist. He teaches at Quaid-e-Azam University, Islamabad, and also works for the welfare and rehabilitation of the working class of Islamabad. Petitioner No. 3 is a trade unionist and activist. Petitioner Nos. 1—3 are all residents of Islamabad/Rawalpindi and party members of the Awami Workers Party Pakistan. For several years, these Petitioners have been working for the welfare, rehabilitation and rights of the residents of the various *katchi abadis* located in the Islamabad Capital Territory (the “ICT”). Specifically, over the past couple of years, they have been actively advocating security of the right to shelter and housing of the residents of these *katchi abadis*.
2. The Petitioners have serious concerns with the mode and manner in which the residents of these *katchi abadis* are now being sought to be removed (from the only shelter that these residents have) by the Respondent No. 2 with aid from the remaining Respondents. These *katchi abadis*, as per a CDA report filed in certain proceedings before the Islamabad High Court, exist because labor was brought in from far flung areas of the country, and settled in these *katchi abadis*, to help develop the new capital city of Islamabad.

3. Petitioner Nos. 3 and 4 are residents of the *katchi abadi* located in sector I-11, Islamabad. The rights of Petitioner Nos. 3 & 4, along with thousands of residents of the I-11 *katchi abadi* have been directly and adversely affected through various ex-parte orders of the Islamabad High Court in Writ Petition No. 337 of 2014 which had been filed by one Amin Khan for the issuance of a CNIC. Some residents of this I-11 *kachi abadi* had even filed an application under Order I, Rule 10 of the Code of Civil Procedure, 1908, in the said writ petition, stating therein that orders being passed in the said writ petition were prejudicial to their interests. However, their application was summarily and arbitrarily dismissed with the observation that the matter before the court related only to the issuance of CNIC to one individual (even though prejudicial orders, as explained herein below, had been passed against the applicants in the said writ petition). As a consequence, they are now being evicted from their homes without being afforded due process as guaranteed under the Constitution. The reasons for why they are approaching this honourable court for the protection of their fundamental rights shall be evident from the submissions made hereunder.

4. Petitioner Nos. 5 and 6 are residents of the *katchi abadi* located in sector I-10/1, Islamabad. Several residents of this I-10/1 *katchi abadi* filed a petition under Article 199 of the Constitution, bearing no. 1636 of 2014 before the Islamabad High Court for the enforcement of fundamental rights guaranteed to them under the Constitution and various international treaties to which Pakistan is signatory. However, not only were the contentions raised by those petitioners before the Islamabad High Court completely ignored, the said Court

began active proceedings to deprive them of their right to life. Petitioner Nos. 5 & 6 too are aggrieved by the orders passed ex-parte in the said writ petition.

5. That this petition under Article 184 (3) of the Constitution raises questions of public importance with reference to, *inter alia*, the enforcement of fundamental rights guaranteed by the Constitution and it prays for grant of nothing more than what is **already** guaranteed to the citizens of Pakistan by virtue of the Constitution and various pronouncements of the superior judiciary. As will be evident from the submissions made hereunder, the public at large, especially the tens of thousands of dwellers of the *katchi abadis* of Islamabad are being deprived of their fundamental rights through an arbitrary, malafide, and illegal exercise being conducted by the Respondents. The Respondents, using the guise of the quite questionable ex-parte orders of the Islamabad High Court are currently in the process of forcefully evicting Petitioner Nos. 4—7, along with tens of thousands of other residents of the aforementioned *katchi abadis* with no regard for their fundamental right to life or due process as guaranteed to them by the Constitution.

6. That the Petitioners are all citizens of Pakistan and their fundamental rights to life, equality, dignity, and due process, as guaranteed under Articles 9, 10A, 14, 15, 24 and 25 are being completely negated through an arbitrary exercise being conducted by the Respondents as a consequence of the aforesaid questionable orders passed by a learned judge of the Islamabad High Court in **collateral proceedings**.

7. That the right to life has been interpreted and elaborated at length by the superior Courts of Pakistan. It is now unequivocally understood to mean a life with dignity, with access to basic amenities and facilities which a person born in a free country is entitled to enjoy. These rights include, for example, the right to gainful employment, the right to clean drinking water, the right to a safe and clean environment, and most fundamentally, **the right to shelter**. It is now established that the word 'life' as used in the Constitution is intended to be given a wide meaning, one that enables individuals not only to sustain life, but to enjoy it.

8. That, Article 14 makes it clear that each and every person's dignity and *privacy of home is inviolable*. It is worth noting that not only does the Constitution protect a broadened right to life, it presupposes access to a home, and protects the privacy associated with the same. Therefore, it is one of the fundamental responsibilities of the State, and possibly the most important one, to provide adequate housing and shelter facilities to the citizens and residents of Pakistan. However, this is a responsibility which the State has not only abysmally failed to fulfill, but in the case of Petitioner Nos. 4—7 (along with tens of thousands of their fellow *katchi abadi* residents), it is a responsibility which the State is actively and maliciously flouting at this very moment.

9. That along with Article 9 of the Constitution, the obligation of the State to provide shelter to its citizens comes from the various international treaties and covenants that Pakistan has ratified. To

take just one example, Pakistan has ratified the Universal Declaration of Human Rights, 1948 (the “UDHR”). Article 25 of the UDHR reads in relevant part as follows:

“Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control....”

(emphasis added)

10. That by ratifying the UDHR, Pakistan has made an active commitment to the provision of a certain standard of living to people residing within its borders. By enumerating the right to life and protection of dignity in its Constitution and interpreting these rights to mean more than just a vegetative existence, Pakistan has committed itself to respect and protect its peoples’ right to shelter.

11. That in the landmark case of *Shehla Zia v. WAPDA* (PLD 1994 SC 693), the Honourable Supreme Court looked to the Constitution of the United States of America for an elaboration on what meant by the word ‘life’. It concluded that life includes “*all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.*” (paragraph 13) It went on to cite the Indian

Supreme Court which also held that the right to life cannot be restricted merely to physical existence and must be understood to include adequate nutrition, clothing and shelter. (paragraph 14). The jurisprudence of this honourable court since *Shehla Zia* has only expanded on the definition of the right to life as guaranteed under the Constitution.

12. That the Petitioners are all residents of the capital city of Islamabad and have resided in Pakistan their entire lives. They are, therefore, entitled to the fundamental rights promised to them in the Constitution. However, the State has failed to facilitate the provision of shelter to the Petitioners. Due to this failure on part of the State, Petitioner Nos. 4—7 and thousands of others had no choice but to occupy government land in an attempt to sustain their lives and livelihood. They have been living on this government land for decades and it is the only home they know. Living here, they have provided labour and services to the government and its various institutions whenever the need has arisen. In fact, at the time the ICT region was being developed, they were encouraged to relocate here by the State so that they may provide the necessary labour needs of the newly developing capital city.

However, now that their need for the State has been fulfilled, these very settlers who were once encouraged to locate themselves in these *katchi* abadis are now being forcefully removed therefrom without providing any alternative housing solution.

13. That it is an admitted fact on part of the State that provision of housing to settlers of the *katchi abadis* is a responsibility that the State has to fulfill. The National Housing Policy 2001 (the “2001 Policy”) was introduced precisely to tackle the various housing needs of the citizenry. The 2001 Policy acknowledges that under the UDHR, the State must “... *take appropriate action in order to promote protect and ensure proper realization of provision of adequate housing for its citizens.*” As a consequence of this commitment, Chapter 5 of the 2001 Policy specifically caters to the issue of *katchi abadis* and sets out a policy to ensure that the growth of *katchi abadis* is kept in check. The 2001 Policy further declares that there shall not be any eviction from a *katchi abadi* unless the residents are relocated as per resettlement plans (para 5.2.1 of the 2001 Policy).

14. That insofar as the particular *katchi abadis* of Islamabad are concerned, as stated earlier, a report regarding the same was submitted by Respondent No. 2 before the Islamabad High Court in Writ Petition No. 337 of 2014 (the “Report”). The Report, highlights a few key factors contributing to the existence of *katchi abadis* in Islamabad. Firstly, the Report admits that labour was brought in from various remote areas of Pakistan for development of Islamabad. While the Report only recognizes two labour colonies which were set up for the said purpose, the fact remains that till 15 years ago, Islamabad was still being developed and various new *katchi abadis* had to be set up to cater to the housing needs of the labour brought in for the development of the city.

Secondly, the Report acknowledges “*lack of provision of affordable plots/houses for Urban Poor*” as the primary factor contributing to the existence of *katchi abadis*. Thirdly, the Report acknowledges that residents of 10 *katchi abadis* existing in Islamabad have been relocated and resettled, either completely, or partially, by Respondent No. 2 in recognition of the fact that these people, being citizens of Pakistan, are entitled to adequate housing. Fourthly, the Report directly links the recent growth of *katchi abadis* in Islamabad to the law and order situation in Pakistan and states that the mushroom growth in the number of people dwelling in *katchi abadis* is “...*particularly the result of migration of Christian Community to Islamabad because of security reasons.*”

At the very least, this means that Respondent No. 2 recognizes that Petitioner Nos. 4 – 7 and the thousands of other residents of the *katchi abadis* had no choice but to relocate here since they were facing persecution in other parts of the country and the State had failed to provide them with any protection.

(The Report submitted by Respondent No. 2, CDA, before the Islamabad High Court in W.P. 337 of 2014 is appended as Annex A herewith.)

15. That despite the 2001 Policy and in spite of the recognition that these people have sought shelter here for unavoidable reasons, the Respondents are now in process of razing these *katchi abadis* to the ground. After having failed the Petitioners in every way, the State now wants to deprive them of the temporary housing they have come to call their own. More importantly, the State wishes to deprive them of their home without making *any alternative arrangements for their shelter*. What the State is effectively aiming for is penalizing people

for being homeless. Not only is this a violation of the Petitioners fundamental right to life, it is a crime on part of the State. By first creating homelessness and then penalizing it, the State is targeting its most vulnerable population. Once the Petitioners' homes are demolished and no adequate alternate housing is provided, where does the State expect them to sleep? It is inevitable that the Petitioners and their families will be found sleeping on the roads, in market places, near open sewage, with no access to sanitation, or water, or any kind of basic amenity. Needless to say, far from facilitating the Petitioners in their struggle for shelter, the State is actively committing a gross violation of the Petitioners' fundamental rights.

16. That the current attempt on part of the Respondents to evict the residents of the *katchi abadi* located in sector I-11 needs no factual proof since the same has been highlighted on a daily basis for the past few weeks in print and electronic media. However, the reasons for this illegal and unconstitutional eviction drive on part of the Respondents are as bizarre as the act of the State to make its citizens homeless in the first place.

17. That the earlier mentioned petition bearing Writ Petition No. 337 of 2014 under Article 199 of the Constitution was filed by one Amin Khan, s/o Baz Gul, resident of Katchi Abadi, Sector G-11, Islamabad, against the Federation of Pakistan and the National Database and Registration Authority (NADRA) (hereinafter, "W.P. 337 of 2014") before the Islamabad High Court. W.P. 337 of 2014 related directly to the issue of provision of a computerized national

identity card (CNIC) to the petitioner Amin Khan, and, *inter alia*, prayed that NADRA be directed to issue him a CNIC. However, oddly, and contrary to any precedent or law allowing such an inquiry, instead of addressing the contentions raised by the petitioner, the learned judge presiding over the matter vide order dated 28.01.2014, directed that the Ministry of Interior explain how *katchi abadis* were allowed to emerge in different parts of Islamabad. On the subsequent date of hearing, i.e. 30.01.2014, the Member (Administration) CDA tendered appearance before the Islamabad High Court and undertook to file a comprehensive report in this regard (Annex A to this Petition). Since no one had appeared on behalf of the Ministry of Interior, the Secretary Ministry of Interior was directed vide order dated 30.01.2014 to appear in person on 07.02.2014 and “...*explain that what steps have been taken by the Ministry of Interior to remove Kachi Abadis in which mostly people from outside areas are dwelling.*” It is unclear how the learned judge reached the conclusion that these *katchi abadis* were liable to be removed, what he meant by ‘people from outside areas’, why the learned judge assumed that the Ministry of Interior had failed to remove the *katchi abadis* and what relevance, if any, did the same have to the *lis* pending before him.

18. That, the petitioner in W.P. 337 of 2014 filed C.M No. 734 of 2014 before the Islamabad High Court stating therein that in case his residing in a *katchi abadi* was creating hurdles for the court to pass an appropriate order, he sought to withdraw his *katchi abadi* address and would be satisfied if his address in FATA, where he originally belongs, was reflected on his CNIC. On this application, the learned

judge ordered that this matter should be taken up before the NADRA authorities with a formal application and disposed of the said application. Under any rule of procedure, if the learned judge had forwarded the matter to NADRA, this should have been the end of the proceedings before the learned Islamabad High Court and W.P. 337 of 2014 should have been disposed of. However, the learned judge continued to proceed against the poor and helpless residents of *katchi abadis* of Islamabad. Vide order dated 07.02.2014, on the basis of a statement made only by the Additional Secretary Ministry of Interior and the Inspector General of Police, Islamabad, the learned judge decided that these *katchi abadis* were all “illegal”, and were required to be removed. An undertaking was taken from the concerned authorities to take decisive steps in this regard. No notice whatsoever entitling the residents of these *katchi abadis* to present their point of view on this matter was issued and against all known rules of evidence and procedure, the statements of the Additional Secretary Ministry of Interior and the IG Police Islamabad were assumed to be true and people were ordered to be evicted from their homes

19. That, as stated earlier, some of the residents of the I-11 *katchi abadi*, filed an application under Order 1 Rule 10 CPC in W.P. 337 of 2014 (C.M. No. 1638 of 2014), on the grounds that since the orders being passed by the court in these proceedings were prejudicial to their rights, these applicants should be made party to W.P. 337 of 2014. However, on this application, the learned judge was quick to note vide order dated 24.03.2014 that the W.P. 337 of 2014 pertained only to seeking direction to NADRA for issuance of CNIC,

therefore, the applicants of C.M. No 1638 of 2014 were not necessary parties to the proceedings. It appears that the learned judge lost track of the proceedings he had suo moto initiated against all residents of *katchi abadis* in the same W.P. 337 of 2014.

20. That even though the petitioner Amin Khan stopped pursuing W.P. No. 337 of 2014, and that in any case the same had effectively been disposed of vide order dated 07.02.2014 in C.M. No. 734 of 2014, the learned judge continued proceedings in the matter. The instant Petitioners are not aware of what became of W.P. No. 337 of 2014 after 24.03.2014.

(Copies of orders dated 28.01.2014, 30.01.2014, 07.02.2014 and 24.03.2014 passed in W.P. 337 of 2014 are Annex B/1—B/4 herewith)

21. That subsequently, several residents of the *katchi abadi* located at Sector I-10 Islamabad (all citizens of Pakistan), filed a writ petition under Article 199 of the Constitution before the Islamabad High Court, titled Aziz-ur-Rehman, etc versus Federation of Pakistan etc, bearing Writ Petition No. 1636 of 2014 (hereinafter “W.P. 1636 of 2014”). W.P. 1636 of 2014 was filed by the petitioners therein against the action being taken by the Respondents CDA and Ministry of Interior to forcibly remove them and other residents of the said *katchi abadi* from their homes. W.P. 1636 of 2014 was filed based on the recognized fundamental rights of those petitioners and the citizens of Pakistan in general to be provided with adequate housing. W.P. 1636 of 2014, *inter alia*, prayed that the court may be pleased to declare that the right to adequate housing is a fundamental right of the petitioners; that no forced eviction of the petitioners

could be undertaken by the respondents therein, and that unless adequate alternative housing is provided to the petitioners, they cannot be asked to, or forced to, vacate the *katchi abadi* they were inhabiting.

22. That W.P. 1636 of 2014 too was fixed before the same learned judge who had conducted proceedings in W.P. 337 of 2014. The learned judge ignored the arguments made in the *lis* that was pending before him, and continued with his proceedings against the residents of the *katchi abadis*. On the very first day that the matter was taken up, i.e. 10.04.2014, the learned judge ordered that the Secretary, Ministry of Interior, Chief Commissioner ICT, Chairman CDA, and IG Police Islamabad appear in person and submit a formula on the basis of which action against the *kachi abadis* is being taken and what steps have materialized in light of the order dated 07.02.2014 passed in W.P. 337 of 2014. No mention of any of the arguments raised by the petitioners in W.P. 1636 of 2014 with regards to their fundamental rights was made in the order dated 10.04.2014.

On 16.04.2014, all the aforementioned officers appeared before the learned judge and submitted that a formula for eviction of the residents of the *kachi abadis* would be presented in court in one week. Again, the order makes no reference to the actual petition pending before the court or the arguments with regard to the fundamental rights of the petitioners raised therein. In fact, the learned judge went one step further and directed the Secretary of the Ministry of Interior to supervise the process of eviction himself. Thus far, it appeared that the learned judge was the only person in these proceedings who seemed to be keen on evicting the residents

of the *kachi abadis* from their homes while all others seemed reluctant to make any decisive statement with regards to eviction. Due to an application for urgent hearing filed by the petitioners in W.P. 1636 of 2014, the matter was again taken up on 28.05.2015, and yet again, the learned judge ignored the pleas of the counsel for the petitioners with reference to the *lis* at hand and scolded the CDA for not having completed the eviction process thus far. All the aforementioned officials were again summoned to personally appear in court through order dated 28.05.2015. The petitioners in W.P. 1636 of 2014 thereafter stopped appearing in court, and yet instead of dismissing the matter for non-prosecution, the learned judge single handedly guided the proceedings of the court on 04.06.2015 and 12.06.2015 to ensure that the concerned quarters undertake the eviction drive. As a consequence of the above, matters are now at a position where illegal, forced eviction of the residents of these *katchi abadis* is taking place as this petition is being drafted.

(Copies of Orders dated 10.04.2014, 16.04.2014, 18.02.2015, 28.05.2015, 04.06.2015 & 12.06.2015 passed in W.P. 1636 of 2014 are Annex C/1—C/6 herewith)

23. That the upshot of the above details is that it is clear that no authority or court has thus far paid any heed to the submissions made so desperately by the residents of the *katchi abadis*. Their homes are being demolished, thus depriving them not only of their fundamental right to life and access to housing under Article 9 of the Constitution, but also blatantly ignoring their right to due process guaranteed under Article 10A of the Constitution. Thus far, no responsible institution of the country has even bothered to hear the perspective of these actual affectees of the decisions being taken in Islamabad. The residents of these *kachi abadis*, especially the one

situated in Sector I-11, are overwhelmingly involved with, and are integral part of the system which allows the ICT to function. The residents of the Sector I-11 *katchi abadi* work predominantly in the *Sabzi Mandi* of Islamabad. Without their valuable labor input, the main fruit and vegetable market in Islamabad would cease to function.

24. That the issues raised herein above are of rights and facts which no one has thus far seem to be bothered by. One learned judge and the bureaucratic set up of the country are collectively, without jurisdiction, and completely ignoring the pleas of the affectees of their actions, taking decisions which infringe upon the fundamental rights of thousands of people of Pakistan.

25. That it is interesting to note that in the Report submitted by the Respondent No. 2, CDA, in W.P. 337 of 2014, CDA states that through an internal meeting, they unilaterally decided that all those *katchi abadis* that existed up till December 1995 shall be recognized and consequently regularized or resettled. Under this policy, for the arbitrary cut off date of which no logic, rhyme or reason is stated, only 10 *kachi abadis* were recognized and their inhabitants are being provided with alternative housing where required, and being regularized at their existing locations where possible. The real concern of why the CDA seems to be so eager to remove the remaining *katchi abadis* appears on page 7 of the Report where the concern raised by the CDA is not that these people have occupied government land, but “prime CDA land”—as if, if the land was not “prime”, CDA would have had no problem in regularizing,

recognizing, and allotting the land, as it is supposed to, to the residents of these *katchi abadis*. The above clearly shows the mala fide with which the CDA is dealing with the sensitive and serious issue of *katchi abadis*.

26. That upon investigation, the Petitioners have come across certain writ petitions which had previously been filed on the subject matter, long before the Islamabad High Court was established. These petitions, bearing nos. 1490 of 1998 and 2585 of 2005 were filed before the Rawalpindi bench of the Lahore High Court on the subject of regularizing the existing *katchi abadis* or relocating the same to other areas. In W.P. No. 1490 of 1998, the CDA had stated on 08.06.2001 that Pakistani nationals shall be qualified for rehabilitation and will be accommodated as per the 2001 Policy.

(Copy of order dated 08.06.2001 passed in W.P. 1490 of 1998 is Annex D herewith)

27. That in light of the above fact, all the residents of the Sectors I-10 and I-11 *katchi abadis*—all citizens of Pakistan—should have been rehabilitated as per the 2001 Policy. A false rumour that has been spread by the CDA itself is that the residents of the Sector I-11 *katchi abadi* are not citizens of Pakistan. This has been done by CDA by terming this *katchi abadi* as “Afghan Basti”. It is stated that none of the residents of this *katchi abadi* are “Afghans”. They may be of pakhtun origin, but they hold valid national identity cards of Pakistan. In fact, the United Nations High Commissioner of Refugees has stated that as per the information available with her, there are no documented Afghan refugees in the Sector I-11 *katchi abadi*. In fact, the Afghan Refugees occupy a refugee camp

established in Sector I-12 by the United Nations. A detailed and conclusive news article appeared on this issue in the Friday Times of 17.06.2015 which conclusively settles any misunderstanding or confusion that the CDA has attempted, or may attempt to create before this honourable court regarding the citizenship status of the residents of the so-called “Afghan Basti”. Notwithstanding the CDA’s attempts to mislabel the Sector I-11 *katchi abadi*, it is submitted that the right to life and the right to life with dignity enshrined in the Constitution is not limited to citizens of Pakistan. The Constitution very clearly extends this right to all persons residing in Pakistan. Therefore, even if the residents of the Sector I-11 *katchi abadi* had been Afghan refugees, it would still not vest CDA with the authority to remove them at will.

28. That the Petitioners fail to understand why, even after the State has clearly recognized the fundamental right to adequate housing of the citizens of Pakistan, it remains clearly reluctant to grant the dwellers of the *katchi abadis* in Islamabad this right. This is being done even though the residents of the Sectors I-10 and I-11 *katchi abadis* have been living there for over 20 years (for some residents, it is over 40 years). A completely new generation has been born and raised in these *katchi abadis*. However, it appears that since now their use as labour for the development and construction of the ICT has diminished, so has their welcome in the ICT region..

29. That, even if the residents of these *katchi abadis* for some reason cannot be allowed to remain in the particular areas they are residing in, it is important to note that they are being evicted without being

provided with any adequate alternate place of residence. This, ironically, in a country where the State is renowned for using land acquisition laws for furthering “development imperatives” of both public and private sector entities. In Pakistan, land acquisition is a right vested in the government when land is needed for ‘*public purposes and for Companies*’. Using this law, the government has often procured large tracts of land to facilitate companies in setting up their factories so that the economy may flourish. One may very well wonder why no land is being procured using this law for the public purpose of providing shelter to the most vulnerable population of the capital city.

30. That it goes without saying that no one aspires to live in a *katchi abadi*. It is no one’s life’s mission to occupy a shack in a temporary housing scheme. Living in a *katchi abadi* is one, precarious, and short step removed from living on a sidewalk. It is one, temporary mud wall away from defecating in public view. It is, without a doubt, home only to the most desperate, most vulnerable citizens of the country. If these citizens do not warrant protection of the State under the Constitution, then the Constitution has been reduced to a mere set of words that mean nothing. However, instead of reaching out and facilitating the Petitioners’ access to shelter, the State appears to be bent upon taking away what little the Petitioners have scraped together for shelter and privacy.

31. That it is pertinent to point out that, while we have metro busses and 12 lane highways, signal free corridors, motorways and what not in Pakistan, the State has not invested in any temporary shelters, soup

kitchens or housing for its citizens. Despite annual devastation of innumerable villages due to terrorism, sectarianism, floods and other natural disasters, the State has turned a blind eye to the increasing need for provision of food, shelter and security, especially in its capital city. In the absence of any State provided mechanism, the residents of the *katchi abadis* had no option but to occupy the temporary housing schemes that developed in the ICT. Occupying government land is a not a crime – it was not a crime when the Petitioner Nos. 4—7 and thousands like them settled on this land. By forcefully removing their settlements, the State is punishing them retrospectively for the mere fact of their existence. Surely, existence on government land has not suddenly become a crime and therefore any action taken against the Petitioners is unwarranted and unconstitutional.

32. That, in addition to the fundamental rights guaranteed and the obligations of the State under UNHCR and multiple other treaties, in Article 38, the Constitution of Pakistan promises the promotion of social and economic well being of its people. It states in relevant part:

“38. Promotion of social and economic well-being of the people.

The State shall:

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, 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 by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;*
- (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;*
- (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;*

- (d) 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;
- (e)”

(emphasis added)

It is understood that the Principles of Policy, where Article 38 is located promising the citizens of Pakistan the provision of housing and the opportunity to earn a decent wage are dependent upon the availability of resources. However, it is submitted that the State cannot rely on its own failure to provide the Petitioners with any kind of social and economic support to take away what little means the Petitioners have to survive.

33. That even at a practical level, it is unclear what the Respondents hope to achieve by demolition of the *katchi abadis*. It cannot magically expect the residents, its own citizens to whom the State owes the provision of shelter, to disappear from the city. In addition to the various fundamental rights being violated as described above, the Respondents are also in gross violation of the Petitioners freedom of movement. There is no law, and there cannot be a law that withstands Constitutional scrutiny, which penalizes the Petitioners' presence in Islamabad, wherever that may be. In the absence of legal support, the actions of the Respondents are grossly unconstitutional and must be addressed immediately. This honourable court may also be pleased to take note of the conduct of the learned judge of the Islamabad High Court, and the orders passed by the said learned judge in W.P. 337 of 2014 and W.P. 1636 of 2014 in light of the facts explained herein above.

34. That for convenience, only some documents are being annexed with the instant Petition. The following documents are being separately filed through a CMA along with the instant petition for reference:

- a. National Housing Policy 2001;
- b. W.P. 337 of 2014;
- c. C.M. No. 734 of 2014 in W.P. 337 of 2014;
- d. C.M. No. 1638 of 2014 in W.P. 337 of 2014;
- e. W.P. 1636 of 2014;
- f. W.P. 1490 of 1998;
- g. W.P. 2585 of 2005;
- h. Order dated 21.07.1998 in W.P. 1490 of 1998;
- i. Order dated 16.09.2015 in W.P. 2585 of 2005;
- j. Article titled “‘Afghan’ Basti?” published in Friday Times dated 17.07.2015.

Prayer:

In view of the above it is respectfully prayed that this honourable court be pleased to:

- a. Declare that residents of *katchi abadis* of Islamabad are entitled to the benefits conferred by the Constitution in its Articles 9, 10A and 25;
- b. Declare that the State (in this case Respondent No. 1) is duty bound to provide the aforesaid residents shelter and other amenities as per

the Constitution (as interpreted) and the National Housing Policy 2001;

- c. And, direct that the State do what the declaration above requires it to do;
- d. And, in the meanwhile, the forcible eviction of the aforesaid residents be stopped.

Grant other reliefs deemed appropriate under the circumstances.

Drawn By:	Settled By:	Filed By:
Bilal Hasan Minto ASC	Abid Hassan Minto Sr. ASC	Mahmood A. Sheikh AOR

Assisted By:

Fahad Malik
Advocate High Court