

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE FAISAL ARAB

MR. JUSTICE IJAZ UL AHSAN

Human Rights Case No.96122-P Of 2018

Regarding Eden Garden Housing Scheme, Lahore scam.

In Attendance : Mr. Khurram Raza, ASC for DHA
Brig. Sajid Khokhar, Administrator, DHA, Lahore
Col. Akhtar, Director DHA, Lahore
Col. Mehboob Ahmed, Director DHA, Lahore
Mr. Aurangzeb Daha, ASC (in C.M.A. No.759/2018)
Mr. Azam Nazir Tarar, ASC
Mr. Ahsan Bhoon, ASC (for Hamad Arshad and Murad Arshad)
Mr. Amjad Majid Malik, Dir (Inv.), NAB
Abdul Wahid, ASI
Mr. Imran ul Haq, Spl. Prosecutor
Mr. Tariq Bilal, ASC
Mr. M. A. Ghaffarul Haq, ASC
Mr. Salman Akram Raja, ASC
Syed Razaqat Hussain Shah, AOR

Date of Hearing : 01.01.2019

JUDGMENT

IJAZ UL AHSAN, J- This matter was taken up by the Court in exercise of its jurisdiction under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (*“the Constitution”*). It appears that a project under the name and style of DHA Pearl was floated in 2009, pursuant to which a significant number of citizens submitted application forms for allotment of plots of various sizes and categories in the said Project. We have been informed that sums in excess of Rs.15 billion were deposited in various bank accounts on the promise that in due course the scheme would be developed and plots would be handed over to the applicants. This did not happen as the Project hit snags and disputes arose between Defence Housing Authority (‘DHA’) and Globaco Private Limited (*“Globaco”*). Globaco is a company that had

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entered into an agreement with DHA to procure land and undertake some other services. It was alleged that the directors/shareholders of Globaco fraudulently misappropriated about Rs.15 billion, some of which was allegedly shifted abroad illegally through unlawful channels. The directors of the company namely Hamad Arshad and Murad Arshad absconded but were later apprehended. The matter was referred to the National Accountability Bureau ('NAB'). After inquiry and investigation, it submitted a reference, which is presently pending before an Accountability Court in Lahore. Both the above-named are in custody. In addition, Brig (R) Khalid Nazir Butt and Tariq Siddique (*Chief Operating Officer of Globaco*) were arrested and accused in the NAB reference. A Court of competent jurisdiction has allowed bail to one of the said accused persons, namely, Brig. (R) Khalid Nazir Butt.

2. Before proceeding with the matter, it is necessary to give a brief background of the events which led to the present situation. We have been informed that DHA received a requirement from General Headquarters ('GHQ') to the effect that land may be made available for allotment of plots to the families of *Shohadas*, NCOs, JCOs and the army personnel injured in combat and other military operations. Apparently, the requirement was of 14,600 total plots of land out of which 600 plots measuring 8 marlas each and 14,000 plots measuring 5 marlas each were required.

3. In order to meet the aforesaid requirement, DHA entered into an agreement with Globaco whose Chief Operating Officer at the relevant time was Mr. Tariq Siddique. At a later stage, the name of Globaco was changed to Orange Holdings Private Limited. The

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agreement between the parties dated 26.11.2009 provided that Globaco would transfer 25,000 kanals of land in favour of a special purpose vehicle namely Landco Private Limited (*'Landco'*) which was to be wholly owned by DHA. A timeline for the aforementioned arrangement was made a part of the agreement. In terms of the agreement, land measuring 655 kanals was to be developed as commercial plots measuring 4 marlas. These were to be given to Globaco. Out of 50% of the balance land, 70% (*about 8750 kanals*) of developed plots were to be handed over to Globaco. DHA was to be given 14,600 plots representing 30% of 50% of the residential plots. Further, amenity plots measuring in aggregate of 150 kanals were also to be given to DHA, which was also entitled to receive Rs.140,000/- per kanal as royalty that would come to an aggregate of Rs.3.5 billion. Subsequently, the name of the Project was changed from "DHA Pearl" to "DHA City". As per the agreement, the requisite land was to be acquired by Globaco in the name of Landco as well as Bhatti Farms (Pvt) Ltd ("*BFL*"), both of which companies were wholly owned by DHA. In terms of the agreement, initially 1000 kanals of land were to be transferred in favour of the aforementioned companies on the date of signing of the agreement. Further, land measuring 1000 kanals was thereafter to be transferred by 15.12.2009. The agreement also contained a responsibility matrix in Schedule VI which spelt out the respective responsibilities of DHA and Globaco. Globaco was also responsible for providing the Master Plan for the Project which was to be approved by DHA and for launching the project through a marketing campaign in July, 2010 after buying and transferring the aforementioned minimum of 2000

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kanals of land. It was agreed that all booking amounts will be remitted and received directly in an escrow account jointly opened, held and operated by DHA and Globaco. Such account was opened with HBL, Panorama Center Branch, Lahore ('Bank'). The parties gave irrevocable instructions to the Bank to the effect that out of the total amounts received in the Escrow Account, 5.5% would automatically be credited to the designated account of DHA while the balance of 94.5% would go to the Globaco account.

4. When advertisements were published and the project launched through a media campaign, two types of deals were offered. Applicants were informed that if they deposited 30% of the total price of a plot, they would receive a confirmed booking of a plot which meant that a plot was guaranteed. However, if they deposited 10% as down payment, they would be entitled to a plot in the balloting and would get plots only if their entitlement was determined by the ballot.

5. It may be pertinent to mention here that Globaco was to conduct balloting only for those plots which fell to their share to the extent of 70% of their 50% share of the residential part of the Project and 100 commercial plots. The balloting for commercial plots was to be undertaken at a later stage when development had been completed. We have been informed that at the time of the balloting, total land transferred to Landco and BFL was 2719 kanals of which 70% came to about 951 kanals for which a ballot could be conducted.

6. The project received an overwhelmingly positive response with approximately 10,545 applications received for 4162 kanals of

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developed plots measuring either 5 marlas, 10 marlas or 1 kanal. We have been informed that Globaco dishonestly and fraudulently allotted 3211 kanals of land in excess of what was available for allotment and received part payment for the same. Pursuant to the said allotments, a sum of Rs.3.9 billion was received in the escrow account. Out of the said amount, a sum of Rs.216 million was automatically transferred to the DHA account by way of royalties. The balance Rs.3.2 billion stood transferred to Globaco. At that stage, DHA came to know about the over selling of the plots and took up the matter with Globaco. This resulted in a flurry of Memoranda of Understanding (MoU) dated 5.6.2010 and 12.6.2010 and three Addenda to the original agreement dated 28.1.2011, 14.10.2011 and 5.6.2013.

7. On examination of the pith and substance of the MoUs and the Addenda, we find that the original agreement for all intents and purposes stood novated. However, DHA and Globaco continued to interact on account of the huge sums of money received, the name and market reputation of DHA being at stake, and the large number of affected individuals. At that stage, amounts equivalent to 94.5% were to be transferred to Globaco from the escrow account while 5.5% were to go to DHA by way of royalty. Pursuant to the Addenda and the MoUs, it was agreed that two new accounts will be opened titled "Development Reserve Account" in which 2% of the receipts were to be remitted and "Land Reserve Account" in which initially 10% of the receipts in the escrow account were to be remitted (*this percentage was later enhanced to 91.5%*). This according to the learned counsel for DHA was done in order to

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secure the interest of the investors and to ensure that the Globaco performed its legal and agreed obligations in accordance with the terms and conditions mutually agreed upon between the parties.

8. At this stage, it appears that mistrust developed between the parties and DHA wanted to secure itself against any exposure for acts and omissions on the part of Globaco. Pursuant thereto, Globaco agreed to provide a bank guarantee in the sum of Rs.1 billion in favour of DHA. The condition of the guarantee was that it would gradually stand reduced by Rs.100 million each time sale deeds in favour of Landco or BFL were deposited. As a further security an irrevocable general power of attorney duly supported by an MoU in terms of Section 202 of the Contract Act, 1872 was executed in favour of DHA. This related to land measuring 779 acres owned by Green Farms, a partnership concern of Hamad Arshad which could be sold in case Globaco defaulted on its obligations under the original agreement, MoU, or the Addenda.

9. It may be pertinent to mention here that Globaco had issued allotment letters for 11,715 plots of various sizes. In order to meet the said requirement, additional land measuring 7411 kanals was required, including 1200 kanals for roads and other infrastructural facilities. In view of the fact that Globaco had sold plots in excess, it was mutually agreed that initially 14,528 kanals of contiguous developable land would be made available within a specified time in order to meet the minimum requirement, while Globaco would continue to work towards achieving the target of 25,000 kanals.

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10. It is alleged that in order to defraud DHA, Globaco submitted registration documents of approximately 1433 kanals of land which was outside the project and was therefore not relevant. A substantial amount was withdrawn from the escrow account against the said documents. Likewise, Globaco also provided land located outside the project area and Rs.1 billion guarantee was released. Further, by committing fraud, Globaco unlawfully cancelled the irrevocable general power of attorney relating to the Sheikhpura land and thereby deprived DHA of a vital security document which, it had been mutually agreed, would stay in place till the project had been completed or DHA was satisfied that the Project would be completed to its satisfaction.

11. The above circumstances destroyed any remnants of trust left between the parties. At the same time, the news of the aforementioned disputes came into the public domain, which led to discontent and confusion amongst citizens who had deposited substantial sums of money in the hope of getting plots in a DHA phase. There were protests by the affected individuals and approximately 1300 applications were moved in this matter. DHA filed a separate application with NAB which took up the matter and conducted an inquiry. This was subsequently converted into an investigation. The same has since been completed and a reference has been filed by NAB which is pending in an Accountability Court in Lahore.

12. We have been informed that while the proceedings are pending before the Accountability Court, three different civil suits have been filed by Globaco against DHA. DHA has also filed a civil

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suit. All suits are presently pending before the Civil Courts of Lahore. While the aforementioned legal proceedings are pending, the affectees continue to languish. Their hard-earned money is tied up in this scheme with no hope of resolution of this dispute in the foreseeable future. This has caused a lot of anguish, disappointment and anxiety amongst affectees who include orphans, widows and retirees who have deposited their life's earnings in the hope of getting plots. Their predicament has been taken note of by this Court as it is a human rights issue in which the jurisdiction of this Court under Article 184(3) of the Constitution can rightfully be exercised. All concerned parties including DHA, representatives of affectees, and shareholders of Globaco, out of whom Hamad Arshad and Murad Arshad were summoned and appeared before this Court. In view of the fact that Hamad Arshad was actually a pivotal person in this entire transaction and was in custody, he was directed to be produced before this Court on a number of occasions. He also retained and instructed a counsel who represented him. Hamad Arshad was also given an opportunity to address the Court and give a presentation in Court. A presentation was also given by DHA.

13. After having gone through the contents of the presentations, the record of the case and hearing the arguments of learned counsel for both sides, we granted them time to resolve the issue in an amicable manner considering the fact that a human rights issue was involved and about 11,715 affectees were clamoring for justice. Various meetings were held between representatives of DHA and Globaco. However, we were informed today that the parties were unfortunately too far apart in their positions and therefore it

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was not possible to resolve the issue amicably and in a manner that would give some hope to the affectees to get plots for which they had paid for. We have therefore decided to resolve this dispute in a manner which would be in the best interest of the affectees, who are the first priority of this Court and at the same time granting fair and equitable relief to all concerned parties who were involved in this transaction. We may observe that the matter has grossly been mishandled in order to gain personal benefit by officers and officials of both sides involved in this transaction. We do not wish to go into the details of such individuals, who may have obtained personal benefits, as the matter is *sub judice* before the Accountability Court, which is the proper forum through which to investigate, try and punish such individuals. Our focus is to come up with a solution to address the plight of the allottees, who are running from pillar to post to get justice. We find that the best resolution of the disputes lie in freezing the transaction, disengaging the parties, granting to Globaco what is lawfully and fairly due to it and directing DHA to take over the project in its entirety, develop and complete it at its own cost within a timeframe which is being determined in consultation with experts and the timeframe given by DHA during the course of arguments. With the above in mind, we hold as follows:-

- I. The original agreement, the MoUs and the Addenda are vague, self-contradictory, non-specific and uncertain. Their validity is highly questionable and has to be disregarded by us, if this issue is to be resolved. Consequently, the same are hereby struck down as *non est*. Other than the rights and obligations which are determined and spelt out herein, the parties shall not

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have any further rights and obligations directly, indirectly or incidentally arising out of the said agreement, MoUs and Addenda *inter se* each other. All matters pending before the Courts, especially the Accountability Court shall be decided on their own merits. These shall not under any circumstances or for any reason be affected or influenced by any order passed or observations made by this Court in these proceedings which shall be treated independent and on standalone basis.

II. In view of the fact that Globaco had transferred 13,100 kanals of land in favour of Landco and BFL, it is entitled to receive price and cost of the same. We have been informed that the price calculated by NAB as well as DHA is an aggregate sum of Rs.2.1 billion as the cost incurred by Globaco towards purchase of land. However, the stance taken by Globaco is that the sale deeds were executed at DC Rate, which was less than the market rate actually paid by it and an aggregate of Rs. 4 billion was paid to the seller of land. We therefore hold that for the sake of settlement of the dispute, the said amount of Rs.4 billion may be treated as amount due to Globaco from DHA. The said amount is liable to be returned/adjusted against the amounts allegedly misappropriated or unlawfully taken away by Globaco. In case, the amount found due from DHA to Globaco is in excess of what Globaco is to pay DHA, DHA shall and hereby undertakes to make good the difference from its own source or from the guarantee that has been submitted with the Registrar of this Court which shall be kept alive till it is released by this Court through an appropriate order.

III. We have been informed that the following amounts are lying in the respective accounts mentioned below:-

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"Habib Bank Limited (Panorama Branch)

S. No.	Account Title	Account Number	Balance as on 30-Nov-2018 (Amount in Million)
1.	DHA City Land Reserve	1741-79002695-01	1,797.71.
2.	DHA City Land Reserve	1741-79002579-01	354.97
3.	DHA EME Collection	1741-79011249-01	3`5.54

Allied Bank Limited (Phase-XII (EME) Branch.

S. No.	Account Title	Account Number	Balance as on 30-Nov-2018 (Amount in Million)
1.	DHA City Charges	00100026627510010	48.90"

We hereby direct that DHA shall furnish a bank guarantee to the extent of the said amounts and the accrued markup thereon in favour of the Registrar of this Court which shall be deposited within a period of 30 days. On deposit of the bank guarantee which shall be issued by a scheduled bank, all amounts lying in the aforesaid accounts, shall either be released to a specially opened and designated Bank account of DHA or it shall be allowed to operate the said accounts as and when it may deem appropriate through its authorized representatives.

- IV. Henceforth, "DHA City" shall be a project of DHA and shall constitute its Phase-XIII. DHA shall henceforth be responsible for its development in a manner and of a quality equivalent to or better than its existing phases in DHA, Lahore and elsewhere. Globaco shall provide complete details and the entire record of all plots allotted by it in favour of 11,715 affectees. DHA shall simultaneously write to each of the affectees informing them that the project has been taken over by DHA and shall be completed by it. Such letter shall give details of due installments as well as development charges that each affectee is required to deposit within a specified time which shall not be unreasonable. Further, all existing documentation relating to allotment shall be

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changed and DHA shall replace it with its own files, documentation and allotment letters. The price of the plot or amount of development charges shall not be charged under any circumstance.

- V. DHA voluntarily and unconditionally undertakes to purchase/arrange additional land required for implementation of the project, within a period of 18 months from today considering that substantial land would have to be purchased in order to make for one chunk of land in a developable form.
- VI. DHA shall make *bonafide* efforts to develop and complete the project and handover developed plots to the allottees within a maximum period of 6 years, according to the following schedule:-

Activity	Period	Timeframe
Completion of Legal Formalities /taking over of records from GPL (Scrutiny)	3 Months	Mar 19
<u>Land Acquisition (uninterrupted)</u>	*2 Years	Mar 21
a. Immediate Requirement to settle Affectees (2,516 Kanals)	1 Year	
b. To complete Project (10,982 Kanals)	1 Year	
Town Planning	6 Months	Sep, 21
Ballot for Plots Allotment	3 Months	Dec, 21
Execution of Development Works	3 Months	Sep, 24
Unforeseen	3 Months	Dec, 24
Total		6 Years
* Subject to verification of existing land to be acquired and located inside project boundary.		

- VII. We have been informed that a number of Civil Courts have granted restraining orders of various nature against DHA, Landco and BFL restraining them from undertaking any development work in the areas which constitute part of the aforementioned Project. In view of the fact that this Court has taken cognizance of the matter and has passed this order to resolve the dispute, such restraining orders would complicate matters and disturb the timeframe, milestones and mechanisms put in place by this Court. Therefore, we order that all such stay

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orders/restraining orders/injunctive orders shall stand vacated with immediate effect. Further, the Civil/District/High Courts shall not for any reason issue any order relating to the subject matter of these proceedings that may affect issues dealt with or resolved in this order at any stage. Neither Globaco nor any other person or entity directly or indirectly having any nexus or connection with Globaco, Orange Holdings (Pvt) Ltd or any director, sponsor or shareholder of the said entities or on their behest shall obstruct, hinder or delay the project for any reason. In case, any of the parties has any grievance relating to or arising out of this matter, it may move an appropriate application before this Court and the same would be decided in accordance with law in light of the contents of this judgment.

VIII. DHA has alleged that an amount in excess of Rs.15 billion has been misappropriated by Globaco and either the entire or major part of the said amount has been taken out of Pakistan. However, DHA has categorically informed us that notwithstanding the said dispute and whether or not the said amount is recovered, the obligations and undertakings given by DHA, as incorporated in this order, shall be complied with and adhered to in their letter and spirit in accordance with the timeframe and milestones given herein.

IX. The learned ASC has argued that Globaco has certain commercial/amenity files to which it is entitled under the agreement between the parties. In view of the fact that all agreements have been struck down as *non est*, the rights relating to the said commercial/amenity files have been extinguished. Even otherwise, we have been informed that the said files have been printed/prepared by Globaco itself which is a self-serving exercise and the possibility of fraud and causing malicious loss to DHA in order to gain financial benefits cannot be ruled out. We

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consider in the interest of justice, in addition to being fair, just and equitable, hold that any right arising out of the said files has been extinguished. Therefore, Globaco shall not have nor claim any right to any commercial/amenity plot in this project at any stage.

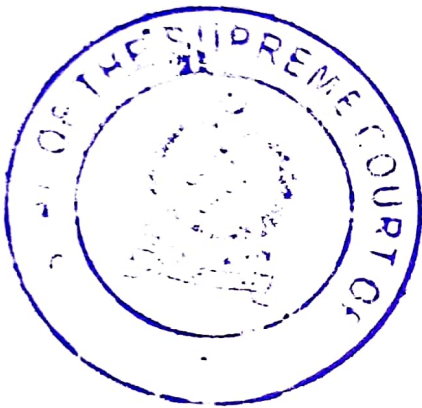
- X. We further hold that the act of Globaco in cancelling irrevocable general power of attorney bearing Document No.1206, Book No.4, Volume No.335 dated 18.12.2010 registered with Sub Registrar, Ferozwala issued in favour of DHA was illegal, unlawful and *mala fide* and is accordingly so declared. With the result that the irrevocable general power of attorney shall stand revived and it will be deemed to have never been cancelled. The deed of cancellation being a fraudulent document is hereby cancelled and its registration revoked. The concerned Registrar of Documents shall make appropriate entries in the relevant record to that effect based upon the order passed by this Court.
- XI. The general power of attorney shall be held by DHA till such time that the matters are settled/resolved in accordance with the terms of any order that may be passed by the Accountability Court. In case, any amount is found due from Globaco to DHA and is not paid by it within 30 days of being notified to do so through a proper notice. DHA shall have the right to sell so much of the aforementioned Sheikhpura land as may be necessary to recover the amounts due. Any balance property/amount left over after settling any amount found due by the Accountability Court shall be paid to Globaco and or its authorized representatives.
- XII. In case, it is found by a Court of competent jurisdiction, where matters between the parties are presently pending that DHA owes any amount to Globaco, such amount shall be paid by DHA within 30 days.

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XIII. We have been informed that two sewerage drains, which pass through the Project area, are a major hindrance in timely initiation of the Project. WASA and Government of Punjab have undertaken to relocate the drains by June, 2021. Let the needful be done within the said timeframe to ameliorate the miseries of the affectees.

14. These human rights proceedings are accordingly disposed of in the aforementioned terms.



Sd/-HCJ

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[Signature]
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Supreme Court of Pakistan
Islamabad

ISLAMĀBAD, THE
1st of January, 2019
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