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Att. Syed Mansoor Ali
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IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Abdul Hameed Dogar
Mr. Justice Mian Shaktirullah Jan
Mr. Justice Hamid Ali Mirza

CONSTITUTION PETITION NO. 26 OF 2005

Mr. Saad Mazhar
s/o Mazhar Ali, etc. Petitioners

Versus

Capital Development Authority,
through its Chairman, Islamabad, etc. Respondents.

For the petitioners : Syed Sharif-ud-Din Pirzada, Sr. ASC.
Barrister Zahoor-ul-Haq, Sr. ASC.
Mr. Hamid Khan, Sr. ASC
Malik Muhammad Qayyum, ASC.
Hadi Shakeel Ahmed, ASC. (Absent)
Mr. Salim Aslam Butt, ASC.
Mr. Faraz Khokhar, ASC.
Mr. A. T. Halipota, Advocate.
Mr. Faraz Khokhar, Advocate.
Mr. Azeem Khan Malik, AOR.

For respondent No. 1 : Malik Muhammad Nayaz, ASC.

Respondents (1-5) : Not represented.

Date of hearing : 21.10.2005.

ORDER

This petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan (hereinafter referred to as "the Constitution") has been filed by the petitioners for the enforcement of their fundamental rights of life, liberty and property guaranteed under Articles 9, 14, 15, 23 and 24 of the Constitution.

2. Facts in brief, leading to filing of this petition are that on 8th October 2005 at 8:52 a.m. an earthquake of the magnitude of 7.6

ATTESTED
[Signature]
Secretary
Supreme Court of Pakistan
ISLAMABAD

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Richter scale, jolted the Federal Territory, all cities and villages of Azad Jammu and Kashmir and NWFP, as a result whereof thousand people died and hundred thousand seriously injured, besides millions people have been left homeless. Similarly, due to this earthquake, the Margalla Towers, a ten storied building, collapsed which resulted in heavy loss of life of residents and permanent disability of injured.

3. Petitioners, the affecteds and previous owners/residents of said Towers, have instituted instant proceedings against Capital Development Authority (CDA), the Builders of the fallen structure and its Contractor, on the premises that despite repeated complaints of Margallah Towers, Islamabad Residents Society (Regd) to respondent No.1 (CDA), that building contains material defects which are imminent danger to the persons living in Towers, no action was taken by it to save and secure the life of the residents, as a result whereof the poor construction could not bear have protection against the recent earthquake of such a high magnitude and the two towers of the building crumbled in seconds after the first jolt and resulted in loss of precious lives of Pakistanis and foreigners. That cracks in the building apparently were the result of sub-standard construction but respondents did not carry out requisite repairs and even the original owners of the building fails to attend to the dangerous defects. In the petition following prayers have been made:-

- 1) That instant petition be accepted and appropriate directions be issued to the respondents to compensate the petitioners and affecteds severally and jointly.
- 2) That remedial relief to award compensation, interim compensation be granted and direction be issued to respondents to provide temporary accommodation till the matters are sorted out.

ACCEPTED


 Commissioner
 Government of Pakistan
 Islamabad


- (11)
- 2) That direction be issued to respondents to pay jointly and severally punitive damages for the loss of life and injuries caused to the victims.
 - 3) That a small Committee of Architects and Engineers be constituted to review Building Laws and make amendments to meet such situation and contingency.

4. We have heard Syed Sherrif-ud-Din Pirzade, Sr. ASC for petitioners at a considerable length. Prima facie, we are of the opinion that this petition involves substantial questions of public importance with reference to the enforcement of fundamental rights, guaranteed by the Constitution under Articles 9, 14, 15 23 and 24.

5. Malik Muhammad Nawaz ASC entered appearance on behalf of respondent No.1 and requested for time to file reply of the petition alongwith necessary documents. On our query, he informed that the Capital Development Authority (CDA) had established Camps to accommodate 148 families who have been displaced on account of earthquake, took place on 8th October 2005.

6. A perusal of documents so placed on record reveals that residents of Margalla Towers either were owners or tenants. They had paid considerably huge amounts for the purpose of purchasing the flats and some of them were paying quite handsome rent to the owners. They have been dislodged because of damage seems to have been caused to the building/towers due to earthquake, prima facie, on account of substandard construction under the supervision of CDA, therefore, we are of the opinion that it was the legal obligation of the CDA to provide them alternate accommodation till the time, the buildings, which they have vacated, are not reconstructed or some other arrangements are not made.

ATTESTED



 Superintendent
 Court P-26/3005
 Islamabad

7. Thus, pending decision of petition for adjudication:-

- a) C.D.A. is directed to provide accommodation temporarily to the displaced families of the Margalla Towers, by hiring residences of almost equal sizes as they were occupying in the towers and if it is not possible then a committee should be constituted who would work out within a period of three days monthly rent of each residence, which will be paid to them, so they may make arrangements of their accommodations.
- b) CDA is restrained from transferring/alienating the plots of the land on which the damaged collapsed Towers are located in any manner.
- c) CDA is also directed to place on file complete record of the ownership of Margalla Towers, both the building and plot, to show whether the leasehold rights or ownership of the plot was given to the builders for the purpose of raising construction, alongwith approved plan by the competent authority and complete details of the officers/officials, who remained engaged in the approval of plan, construction of the towers, supervision of the same during process of construction and issuing certificate from time to time, expressing their satisfaction or otherwise with regard to the standard of the construction of the towers.

8. The Inspector General of Police (Islamabad) is directed to appear and submit a comprehensive report, indicating the steps taken by him for causing the arrest of those persons, against whom a case, vide FIR No.101/2005, had been registered at Police Station Shalimar, Islamabad.

ATTESTED


Superintendent
Islamabad

