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Impacts of Judicial Verdicts on Land Acquisition Practices for Real Estate in Pakistan

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Abstract

Purpose

It is commonly observed in many regions in the developing countries that inappropriate and legally invalid modes are adopted by realtors (individuals or enterprises facilitating the sale and purchase of property) to procure land, but the reasons behind these procedures are neither documented nor critically analysed, which this paper attempts to do.

Design/Methodology/Approach

Five case studies have been chosen for detailed probe. Each case brings into focus different approaches adopted by realtors to acquire land and develop real estate ventures. Review of the judicial records, assessment of case study information and holding focus group discussions for each case are the main ingredients of research methods. The data was then analysed using content analysis method; the data was coded, themes were identified and conclusions were drawn accordingly.

Findings

The case study accounts included in this study have sufficiently established that the courts verdicts have a contextual connection. These findings point towards the requirement for alternative frameworks and supporting theoretical basis which are attuned with these non-confirmative practices and lie beyond the realm of established international literature and practices like Hartmann & Spit, 2015; Krabben & Jacobs, 2013.

Research Limitations/Implications

The sensitivity of the case studies made affectees uncomfortable in discussing the cases.

Originality/Value

Judicial interventions are often initiated when the desired efficiency and legality is not ensured, as is in the case of Pakistan. In such cases, the internationally established theoretical paradigms fall short of providing any explanations (Hartmann & Spit, 2015; Krabben & Jacobs, 2013). This paper examines in particular how in such scenarios, the status of such land acquisition practices, turns out especially where superior judiciary had to intervene for streamlining the process.

Keywords: Real estate, land acquisition, court intervention, disposal of property, realtors



INTRODUCTION

Real estate comprises enterprises related to developing, disposing, owning, financing, renting and appropriating immovable properties in a tangible context. From a societal perspective, this enterprise offers several merits. It streamlines the rights and responsibilities of owners, state institutions and the society in respect to land and developments undertaken on it. It helps establish the rule of law in relation to various forms of utilization of space by the concerned, privileges possessed and granted as well as limitation in these respects. Clear demarcation of property rights also prevents anarchic practices in various contexts. It is perhaps for this backdrop that property rights have been described and protected by constitutional arrangements in working democracies all across the globe [see for example cases of US Constitution (Harvey,2010; Jacobs, 2010 and Caron, 2018)]. Detailed mechanisms of property developments, promotions, marketing, sales and purchases, modes of dispute resolution, methods of transaction and disposal are provided in legal and administrative frameworks emanating from constitutional arrangements.

Ordinary people repose enormous trust in property market investments. Traditionally the investment in land and property is considered as the safest avenue for ordinary people. In the Pakistani context, circumstantial changes of various kinds have seriously distorted this mechanism. Unabated encroachments and forced occupation of developed and demarcated plots have been commonly done by the politically influential stake holders. Similarly individual owners of apartments, shops and other dwellings have been harassed in many locations, to affect choices of owning, disposing or renting their properties. Like all other markets, land and property dealings require a peaceful environment where transacting parties have complete freedom to make choices. This trading privilege is utmost vital to realize the full potential of the concerned parcel of property. The other attributes that support fair transactions include dependable land / property titles, error free mutation procedures, articulated valuation mechanism, clear schedules of charges and taxation as well as transparency in management of records by land owning agencies. Prevailing scenario in this respect is very disappointing on almost each count in the context of Pakistan. Incidences of fictitious and fraudulent allotments, duplicate and even multiple claims, dubious record keeping and cumbersome mechanism of registration are some of the common ailments in property markets. Even the high profile transactions are not free from such encumbrances. Thus, when some real estate enterprises claim to eradicate all such malpractices and performance errors, investors and ordinary people tend to prefer them over the others. However such enterprises may not follow the practices for land acquisition in a legal and administratively valid manner, which makes the core focus of this research. The paper documents and analyses the practice of these

enterprises in instances where conflict arose, and the SCP had to establish special benches to oversee their progress. The finding points towards the fact that even within the formal sector real estate market, there is room for these unorthodox practices which fall beyond the internationally established theoretical and workable paradigms (Hartmann & Spit, 2015; Harvey, 2010; Oyedele, 2018) and need further theorization, which this paper attempts to do. The rulings by the Judiciary are one such practice, which is reviewed here in detail, and its impact on investors and various stakeholders is analysed. The scope of the paper is to highlight the requirement for development of a theoretical paradigm that addresses irregularities in contested legal deals and deviate from legal and administratively valid practices.

LITERATURE REVIEW

Real Estate in Developing Countries

Real estate can be defined in several ways. According to one definition, it is an enterprise of property production, management and transaction (Hasan, Ahmed, Raza, Sadiq, & Ahmed, 2015). Real estate is an immovable asset or property that is fixed to one location. For urban properties, this includes land and any structure built on it (Oyedele, 2018). Real estate is also considered as a legal term that refers to land and development done on it in various forms and formats. It is not limited to residential use alone. It flourishes and gains greater value when diversity of uses are planned and allowed in an intelligent manner (Bony & Rahman, 2014). Benefits of investing in real estate are several. Steady income, long term financial security, tax benefits, coverage of mortgage payments, gradual value appreciation of real estate over time, hedging capacity against inflation and independence in decision making are some points (Oyedele, 2018).

Wide range of typologies exists for real estate enterprises. Developed and transactable properties can be of various kinds such as apartments, condominiums, villas, commercial accommodation, transitional rentable spaces, warehouses, mansions, retail outlets, service centres and many emerging spatial typologies. The stakeholders comprise real estate developers or realtors, investors, agents, buyers and sellers, service providers, banks and financial institutions as well as regulators. A well performing real estate mechanism is generally gauged by the periodic rise in the volume of trading, transparency, enforcement of essential principles of equity, rational accruing to the investment of shareholders, an all positive image of the business and a general trust subscribed by all the concerned participants (Rehman, 2014). The realtors face many challenges in a bid to accelerate the trading as well as its up scaling. Choice of sites free from encumbrances, follow up of building/zoning regulations, financial governance and its evidences, satisfaction of all stakeholders and assurance of profit making opportunities in a continuous manner are some of the tough hurdles that have to be crossed all the while. Amongst the various activities, the maintenance of



a strong current of transactions remains a paramount challenge. Thus, the realtors stretch out the sales to the financially strong clientele with an objective to expand the capital base. In practice, realtors are not necessarily concerned about the social advantages of the outputs generated by the ventures. As land is precious and finite ingredient of any real estate enterprise, the realtors continue to explore the available options to facilitate ample supply through buy outs, re-cycling and renewal modes, conversions and even intensive utilization. It is common sense that developable urban land – especially in relatively stronger market environments – is in short supply. To augment this factor of production, realtors resort to all business strategies (Rajak & Roy, 2016).

Benefits of investing in real estate are several. Steady income, long term financial security, tax benefits, coverage of mortgage payments, gradual value appreciation of real estate over time, hedging capacity against inflation and independence in decision making are some points. Methods of investments include personal family savings, partnerships, total cost based buying, mortgage, invest in crowd funded real estate and Real Estate Investment Trusts (REIT). Real estate sector has made great advances through information technology options and smart solutions for connecting different stakeholders. Over time connection between the developer and buyer has also greatly improved. Challenges in real estate investment however include timing, being successful in the first deal, general risks involved, opportunity costs of rival investment, getting the right value for money and fraud are common place. Real estate markets in developing countries are underfunded and non-professionally managed. Fraudulent practices are also common in developing countries (Oyedele, 2018). In this backdrop, individuals have to equip themselves with strategic knowledge that can empower them to take correct and timely decisions. Assessment of real estate project for its legality, performance, market appeal, cost benefit options and re-sale prospects are some variables that may be reviewed by individuals before making choices (Ariyawansa & Gunawardhana, 2016).

Real Estate and Land Management Tools

Real estate development comprises of several stages. Land acquisition is the first stage, while maintenance of the estate may be termed as the final stage. From the time of inception to the end of development, the risks related to delays in land acquisition (market and regulatory risks), and actual sale of units (development potential risks) are important factors. These processes depend on the various models involved in the land acquisition, design and development processes. The two models outlined in international literature are 'active' and 'passive' models (Hartmann & Spit, 2015; Krabben & Jacobs, 2013). The active model for land development relies on the role of urban professionals in directly being associated with land development, as is the case in Dutch cities, whereas the passive model, as practiced in German cities in the form of land readjustment, depends on national policies and may or may not

lead to efficient and legitimate access to the housing market (Hartmann & Spit, 2015). The decision related to the adoption of a model directly impacts land value and cost recovery in the longer run. Pre-selling is another option adopted by builders and developers (Oyedele, 2018; Jacobs, 2010).

In order to attract and incentivize the private developers, tax abatements and reliefs are common practices (Mandelker, 2017). Regulatory controls are applied in different manners. In usual cases, the regulatory checks on land acquisition and development are done exercising the usual policing approach. This may be altered and replaced by a practice where public agencies can buy the concerned owner's right to use the land in ways harmful to the community. This shall leave the said owner to use the land only in an appropriate and non-harmful manner. In the American legal context, individualistic bias is often found in taking planning decisions. Planning functions best in such situations where there is a consensus among all the community members. Planning authority must deny development permits in areas which can cause nuisance, danger to the very sustenance of communities and a disaster risk. For instance, development permits must not be allowed in locations which fall in flood plains. In the usual scheme of development, no amount of ordinary construction precaution shall save the future settlers in such areas or the nearby neighbourhoods (Mandelker, 2017). Several models are practiced by developers, especially in South Asia. Direct acquisition from owner, development agreement between farmer/land owners, long term lease from government/land owners, farmers direct investment, redevelopment and private equity funding either through local firms or foreign direct investment are possibilities. Possible risks encountered by realtors include failure in getting desired benefits, unclear land titles, change in government policies, failure in negotiating timely agreements, initial upfront investment, consequences due to ambiguous agreements and conflict among stakeholders (Shah, 2017). These methods fall beyond the realm of general theoretical discourses and have limited analysis available, which this paper attempts to do.

Procedures, processes and approaches adopted by realtors for land acquisition

Mathews, Pai, Sebastian, & Chakraborty (2018) conducted an interesting study in the Indian context. According to them, for rapidly urbanizing regions, it is important to study the mechanisms of land supply for various purposes and for different categories of people. It is also vital for the public agencies to develop a mechanism of land value capture that can enable them retrieve the cost so that present and future investment in building infrastructure can be carried out. Six methods have been studied in this research. The Town Planning Scheme in Gujarat allows private land owners to contribute their land to a public scheme where, after consolidation, physical planning and allocation for infrastructural



provisions, it is given back to the land owners. The owners benefit due to an enhanced threshold status when compared with the original land form, while the government charges a betterment levy to acquire the investment undertaken. Land pooling in Amravati, Andhra Pradesh is done by voluntary pooling of land by owners, for including the land by the government into the master plan. The authority assembles land for various purposes, including infrastructure and housing for the urban poor linked to the area. The authority benefits by the land it retains for amenity purposes and the fee charged in respect to betterment bought to the land. In this particular case, thirteen thousand hectares of land was pooled in two months, which is the largest single undertaking in India of its kind.

In Navi Mumbai Airport Influence Area, the land owners were invited to contribute land for various infrastructural and other required development purposes. In lieu, the participating land owners benefited from additional development rights on the remaining land. Charges were recovered from the sale of amenity parcels, betterment levies on non-participating land owners and space area enhancement related premiums.

Joint Development Model in Haryana is another public private partnership model. The private developer, after seeking permission from the authority, plans, subdivides and sells the plots as per approved plan. The developer also undertakes internal infrastructure development while the trunk/external development is done by the authority. The authority captures the land value through a share in profits as well as partial costs recovered from developers for trunk infrastructure. In Mumbai, the land owners whose land is reserved for a public purpose as per master plan hand over a certain portion for social and physical amenities. In return, they benefit from additional development rights or transferable development rights. The Authority benefits due to free acquisition of land and infrastructure improvement levy imposed on all the users. Furthermore, Cluster Redevelopment Scheme enables private developers to undertake urban renewal in derelict locations (0.4 hectares in the city and 1 hectare in suburbs). For the investment made in urban renewal, the developer benefits from enhanced floor space ration. Development fees is charged by the government in such schemes.

To examine the significance of these alternatives, several parameters are applied. Recognition of public purpose, public purpose land secured, operational process, enabling framework, compensational resettlement and rehabilitation, recognition of rights, participation mandates, cost recovery mechanisms, post development benefits, grievance redressal and extension of court's jurisdiction are some of the parameters. There are some indirect costs which also need to be addressed in any property transaction and an estimate of this cost need to be made in advance. Land Readjustment (Hong & Tierney, 2018) and Transfer of Development Rights (Shahab, Clinch, & O'Neill, 2018) are two such

concepts/ methods. But both these methods assume strong administrative and institutional frameworks in place within the various tiers of government, which is not the case in the context of Pakistan. In theory Land Readjustment is meant to promote sustainable urban development, and the emphasis is on 'institutional and inclusion concerns' (Hong & Tierney, 2018, p. 1) through retention of population, community engagement, densification, public participation and improvement of security of tenure. Thus, in the Pakistani context, models based on public-private partnership and land pooling have greater chances of applicability, since they are based on an understanding and a working relationship between the public and implementation authorities.

In Pakistan, Land Acquisition Act of 1894 cannot be invoked for obtaining land for public housing. However, it can be put to use for infrastructure development, such as building dams, constructing roads and canal works and similar projects. While determining compensation, courts of law review the evidence of sales of land in the same locality during the past one year. However, a scientific procedure to determine the market value of land needs to be worked out. According to the Punjab Private Site Regulations 2005, the developers are bound to own eighty percent land, but they submit plans of real estate schemes which occupy hundred percent of the land. This causes sudden rise in the value of land (Rizwan, 2009).

Conflicts, disputes and intervention of judiciary

Higher courts routinely confront critical issues of constitutional principles, including scope of governmental power to take private properties for initiatives of larger public interest. In some cases, there are conflicts between two private parties on issues of physical demarcation, conduct of nuisance activities, altering existing landscape and more. Often the courts issue a consent decree. It can refer to judicial approval to a settlement reached between contesting parties (Ostow, 2008). This may or may not include government as one of the parties. Such an approach is often resorted to prevent consequential attacks on the land settlement (Sterk, 2011). Superior courts in the United States have traditionally, adjudicated the right of the government to acquire private property, consolidate it for redevelopment, by another profit making owner, all under the justification of 'blight' (Jacobs, 2010).

Not all the efforts to access land are clean, transparent or according to full compliance to the prevailing law. Clandestine attempts to affect zoning regulations, affecting change of land use, impacting on the infrastructure policies, influencing municipal finances to the advantage of real estate development and ensuring cordial relations with the key decision makers, are some of the tenets of these approaches. Benefit to the society only surface as part of the marketing strategy towards the last end of the production ring. The realm of real estate remains confined to upper and upper middle income beneficiaries at best. On numerical counts, the realtors produce numbers that are profitably



viable. They do not draw feasibility of projects from the net housing requirement at the cumulative level in the respective country (Bombay High Court, 2014).

The Coase Theorem, being an economic theory model, argues that under the ideal conditions parties having a dispute about a property can come up with an optimal solution, irrespective of the initial property distribution. In reality these perfect economic conditions do not exist, and Coase Theorem has further divisions of pure and impure models (Clinch, O'Neill, & Russell, 2008) and is better suited to explain the inefficiencies in the real estate market, rather than to resolve any disputes. The 'impure' Coasian solutions, it is argued, delivers community gains, if moderated directly or indirectly (Clinch, O'Neill, & Russell, 2008). This model has some applicability in the context of Pakistan, which is addressed in the findings section.

Realtors often access lands which are prohibited to be used for housing and real estate development purposes. Expropriation causes rise in land less people due to loss of agro-related livelihoods, sudden rise in land prices, loss of agricultural land and production, and negative impact on agro-employment. Environmental impacts due to such developments are also significant. Blockage and obstruction to flood waters and drainage possibilities of adjoining neighbourhoods decrease in ground water level, destruction of wetlands and bio-diversity, air and dust pollution, impacts on transportation and communication are some negative impacts (Akhtar & Hossain, 2011). It gives rise to conflict between regulatory institutions and realtors. As apartment living is becoming a common social trend in many large cities in the developing world, developers try to maximize the opportunities by acquiring land not permitted for such developments. In Dhaka Metropolitan Area, this is becoming very popular, as land is very expensive and majority of people cannot afford to access it for housing (Supreme Court of Bangladesh, 2009).

The land development case studies from the sub-continent inform that land acquisition, expropriation, disposal, agency to individual relations has many anomalies that require intervention by the public agencies. As mostly found, the agencies and public sector departments tend to favour the influential private enterprises more than the individuals. In many cases, the government functionaries tend to bend the rules to support the private enterprises in realizing their real estate ventures.

RESEARCH METHOD

The research uses the case study approach based on five case examples from Pakistan (Figure 1). The cases are selected as each brings into focus a particular approach adopted by the realtor to acquire land and develop a real estate venture. The Railway properties case deals with non-residential estate, while the Webb Ground, Lines Area example deals with illegal conversion of a playground for commercial purposes.

The other three examples essentially comprise mixed use developments with emphasis on residential property units.

Acquisition of land in these case examples followed illegal approaches. Obtaining information for these cases was a difficult task as the promoters often resorted to threat and assault. Given the nature of this study, the authors used methods within the limitation. Relevant literature and cases from regional context provided good bases to understand the issue. Court proceedings and judgments acted fundamental documents to understand the whole process of the malpractices and the stakeholders involved. Project information from relevant government offices as well as archives of civil society organizations that extended support to affectees of projects; such as in Bahria Town (BT) and Webb Ground related communities. These cases have been widely reported and investigated, by the national newspapers; journalists were interviewed to have the depth of the cases and the Realpolitik involved. In the Webb Ground case, a column published in the local Newspaper DAWN on 16 June 2009, was converted into a legal petition.

Five focused groups were structured during 2018 and 2019. Focus groups for New Murree project case and the Railway properties case was organized online using zoom meeting software. In which the first one comprised of Punjab government officials, the affectees and journalists. While, the Railway properties focus group involved the Pakistan Railway officials and the representatives of the employees along with the senior official of the realtor involved. The other three focus groups took place in Karachi. Web Ground focus group involved NGO representatives who represented the community in the court, the community representatives and the journalists. The Scheme 33 focus group involved the government officials, journalists and the representative of the realtor. In Bahria Town Karachi (BTK) focus group, the effected villagers, journalists and the government officials formed the group. Due to nature of the cases it was not possible to involve certain stakeholders to avoid any possible threat.

The court judgments interviews, the focus group documents and the transcriptions were coded and themes were identified in connection with the literature reviews and the conclusions were drawn accordingly. Due to sensitive nature of the issue and the possible threat from the realtors or their associates; the realtors are comparatively less represented in the focus groups and the interviews.

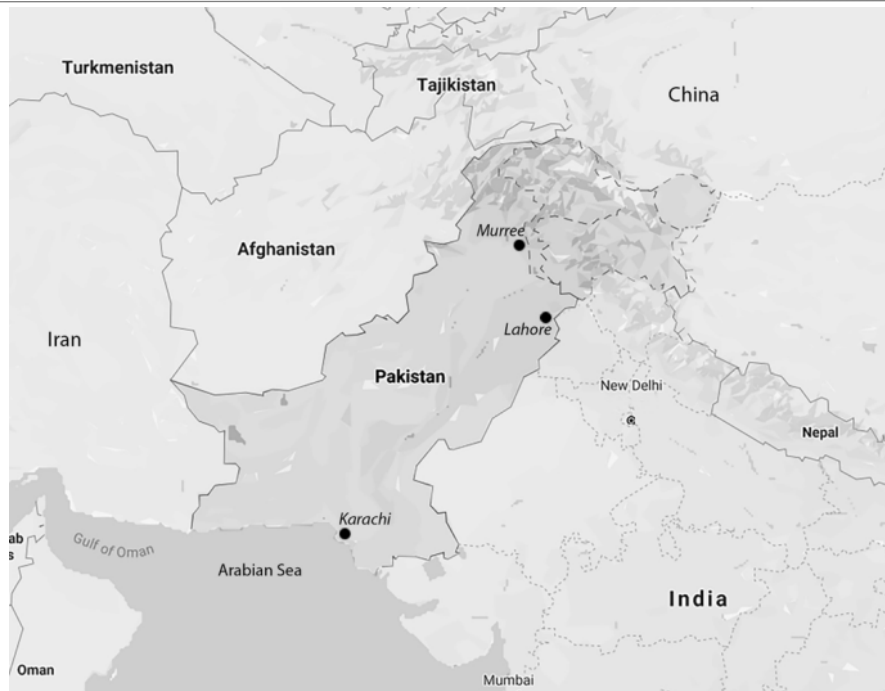


Figure 1. The location of the case study cities in Pakistan

EXPLANATION OF THE CASE STUDIES

Case Study 1: New Murree Development Project, Murree

Murree is a resort town in the northern part of the country, and has recently experienced unapproved development activities by some private developers. The Bahria Town (BT) is one such developer. When noticed, the Supreme Court of Pakistan (SCP) took suo motu notice in 2006-07. After seeking assurances from the concerned parties and the Punjab government that no illegal activities shall be done, the SCP disposed the matter at that time. But the BT began these activities again and invited investments from ordinary public. In the process, the realtors illegally laid claims to Shamlat-Deh (communally owned village lands). Although, in compliance of the SCP order, the Punjab Government announced the closure of the project in 2009, till date the BT real estate venture in the area is progressing unabated. This development, in addition to the enormous damage to the environment in the form of cutting down of forests, levelling of small hills and tampering with the natural topography of the area, has also acquired land belonging to local villagers (Supreme Court of Pakistan, 4th May 2018)

Case Study 2: Railway properties, Lahore

In Lahore, a Railways Golf Club was set up in 1911 to extend recreational facilities to the Railway employees. It stretched on a land tract measuring over one hundred and forty-one acres of land and included a golf course, club house, swimming pool and housing for the staff. In 2000, the government decided to offer the club on commercial basis to interested parties to finance, redesign, redevelop and manage its operations. A consortium was selected that began a redevelopment and renovation exercise in the same year. New membership at

exorbitantly high rates was invited while the old memberships of railway staff were cancelled. The consortium generated about Pak Rupees 1 billion (US \$ 6547467.00) as capital from these operations but defaulted on its mandatory payment. After lengthy deliberations and proceedings, the SCP cancelled the lease to the consortium and appointed a chartered accountancy firm as receiver of the process. The ownership was reverted back to the railways. It also ordered constituted an implementation bench of the court to oversee the execution of the judgment (Supreme Court of Pakistan, 2016). While the SCP orders were carried out, the original members belonging to Railway department were not allowed access the club premises by the interim management.

Case Study 3: Construction of a Super store on a Play Ground in a Low Income Settlement, Lines Area, Karachi

The Webb ground catered to children of an adjoining low income neighbourhood owned by the Karachi Metropolitan Corporation (KMC). In 2002, it was forcibly occupied by the military which passed its control to Army Welfare Trust (AWT), a military institution looking after affairs of soldiers' welfare. A former councillor filed a case in the High Court of Sindh. The court also invited a local NGO, Citizens for Better Environment, to become co-party in this case. A column, published in the local Newspaper on 16 June 2009, was converted into a petition and the Supreme Court began hearings. During the proceedings, it was found that the ownership of the said playground belonged to the city municipality. The Supreme Court declared that the sublease by AWT in favour of the commercial outfit was illegal (Supreme Court of Pakistan, 2009). It ordered the demolition of the super store within three months' period from the day of the judgment and restoration of the space as a playground as before. However, the structure is still intact due to non-implementation of the court order (Supreme Court of Pakistan, 2009).

Case Study 4: Scheme 33, Karachi

A twenty-acre parcel was carved out of land allocated for the construction of sewerage treatment plant for the entire neighbourhood in Karachi. The allottee was interested to subdivide the land and sell it in the form of residential plots. During court proceedings, a government functionary were charged for causing a damage of Pak Rupees 141.67 million and 95 million (US \$ 927,600 and US \$ 62,000) for the thirty and twenty acre parcels respectively. The matter was taken up by Ehtesab (Accountability) Bureau of the country. The High Court of Sindh ordered the cancellation of lease in 1999.

An appeal in the Supreme Court was filed in 1999 for reconsideration. This appeal was not allowed by the SCP which further ordered compliance with the High Court decision that included the removal of the lease entry from the land register of the government. In 2001, the government promulgated a law titled Sindh Urban Land (Cancellation of Allotment, Conversion and Exchanges Ordinance). As per this law, the matters of disputes related to land allotment and exchanges could be



reviewed by a Land Allotment Committee. The complainant then approached this committee for consideration of his case. The members of the committee comprised government officers; its chairman was a retired high court judge. He objected to the inclusion of this case pointing out that the matter had already been deliberated and decided by the High and Supreme Courts. But the members prevailed by virtue of four to one majority. The committee decided to regularize the allotment of this land in the name of the complainant again in 2008. In 2009 the Supreme Court converted a newspaper story about this case into a constitutional petition and summoned the members of the said committee who had violated the SCP judgment as well as the complainant. The allotment was cancelled again in 2009 and contempt of court proceedings were initiated against the government functionaries. The complainant was later found pursuing his claims for the refund of the amount invested for purchasing the said land parcels (The Constitution of the Islamic Republic of Pakistan, 1973; Supreme Court of Pakistan, 11 September 2009)

Case Study 5: Bahria Town Karachi (BTK)

BTK spreads over forty thousand acres and is still expanding. It was launched in 2010. The process of acquisition of land was based on two parallel approaches. The BTK had acquired some barren land on the outskirts of the city which was not to be included in the scheme due to its locational incongruity. The BTK applied for exchanging this land with government land and thus applied for the same to Malir Development Authority (MDA). The other approach adopted was forced expropriation of land from various small to medium scale land owners. Much of this land which made the initial sixteen thousand acres was under cultivation, pastoral and livestock usage by the local indigenous communities. As the project had tacit support from the Government of Sindh, therefore the local police and other officials supported the BTK management in dispossessing the local land owners and occupants. Many orchards, agricultural fields and ancient heritage sites were destroyed as a consequence. Many petitions were filed in various courts of law and adjudicated during the intervening time. Several of them also landed at the SCP. One such petition by a public spirited citizen questioned the exchange of low value private land (owned by BTK) with a higher value government land (Supreme Court of Pakistan, 1st August 2016). The SCP declared the exchange of private land for government land illegal. However, in a subsequent order, the court agreed to a proposal by BTK to pay a penalty of Pak Rupees 460 billion (US \$ 295,000,000) in seven years for adjusting the value of land. The SCP also formed an implementation bench to oversee the evolving situation and conduct of the developer.

Table 1. Summarizes the case studies documented and analysed from Pakistan.

Project	Developer	Context of case study	Illegalities and High Handedness
Case Study 1: New Murree Development Project, Murree	Bahria Town	Murree is a resort town set in the forest covered hilly landscape in Rawalpindi district, north of Pakistan. Clandestine and unapproved development activities began many years ago by BT (BT) and other developers in the town.	This land was sub divided and illegally disposed to private developers, including BT.
Case Study 2: Railway properties, Lahore	M/S Mainland Hussain Pakistan Ltd (MHPL) and Unicon Consulting	Pakistan Railways (PR) is a federal department that owns large swathes of land and properties in all the four provinces of Pakistan.	Bids were invited from the interested parties and consortia through newspaper advertisements.
Case Study 3: Construction of a super market on a Play Ground in a Low Income Settlement, Lines Area, Karachi	Makro Super store: Located on a play ground	Webb Ground, in the south of Karachi, was a playground measuring 4.98 acres.	AWT sub leased it to a commercial company that began construction of a large scale super store in 2006.

STAKEHOLDERS PERSPECTIVE

Five focused group discussions were held during 2018 and 2019 with government functionaries, staff of realtors, allottees, estate agents and civil society organizations/activists. A discussion brief was prepared and shared with the concerned outlining specific questions for each category of groups. Concise findings of each are given in this section.

Senior staff members of realtors

Seven members of the realtors attended this focus group discussion on 24 June 2019. Options of acquiring clean and encumbrance free land in Pakistan were found to be extremely limited. The realtors complained that both urban and sub urban lands had numerous challenges attached to them. For acquiring an urban land within the remit of cities, one was not sure whether the owners with whom the deals were made were the



only legal and rightful owners. Many instances of bogus ownership deeds or estrange family claimants and other type of legal contenders made acquisition of land from private parties a high risk enterprise. The regulatory agencies had a complicated set of rules and regulations that discourages the development of open ended and transparently managed real estate ventures. For instance, the density considerations, floor area ratios, allocation of spaces for public uses and documentation are issues which are mired by complications, deliberately created by functionaries of such agencies. The issues of acquiring permits and necessary approvals are only sorted out through an informal system of illegal payments to the influential functionaries. There is no other way to bypass the system. In respect to sub urban lands, powerful private owners, with enormous political clout, control the processes. In many cases, these land owners intend to become clandestine partners in real estate enterprises. But the terms and conditions that these land owners demand to be incorporated are impossible to accept. Influence in the procurement of construction material and services, close supervision of allotment processes and misreporting the project facts to government agencies and prospective investors are some mentions of illegal practices. Ordinary realtors, especially those who intend to keep the reporting and records straight, find it very difficult to accept such conditions. Many, however, succumb to such pressures. However, super influential realtors, like the BT Management, are able to seek partnership with the top political leaders of respective territory and acquire the demanded benefits and privileges, necessary to carry on with the enterprises. Due to their clout, quality of developed real estate units, brand popularity and the fact that they are able to keep the officialdom under control, the investors and buyers do come forward and invest without fearing losses on investments.

In rare situations, the courts take action on their own, mostly under the influence of media reports. However, the impacts of the court verdicts are temporary. When a verdict is announced, it creates uproar in the media and by some members of the civil society. But soon it is forgotten. If two crucial parties, namely the realtor and the political leadership, are aligned, the court verdicts only cause a temporary aberration in the overall real estate development process. Since the business stakes and scale of capital involved is very high, therefore the owners of real estate enterprises try and use every possible option to secure their enterprises. Unless the government does not create options of acquiring land through an open and transparent manner, like public auctions or joint development mechanisms (Mathews, Pai, Sebastian, & Chakraborty, 2018), these malpractices are likely to continue.

Allottees and beneficiaries of real estate enterprises

Twelve people in this category attended the focus group meeting on 30 September 2019. The participants identified several reasons for investing in respective real estate enterprises. Lack of comparable options of investment for life long savings, chances of value

enhancement of invested capital, stable rental income, and flexibility to reside in the acquired property in case of need was some of the driving reasons. One participant, who was gainfully employed in Bahrain, informed that he had no possibility of investing his savings in other option while being away from Pakistan. Investment in properties is a suitable option as transactions, mostly through online banking options, can be done smoothly. Much of the follow up is provided by the realtor through online platform. Since the clients, like overseas workers, are a significant segment of investors, realtors treat them well and create facilitation mechanisms for helping them and extending service according to their limitations related to being away from the country. The participants however agreed that the risks were enormous. The inappropriate ownership related issues, short comings in documentation, behind the scene dubious conduct of realtors, overall corruption conducted by the related government functionaries are important challenges. People weigh these risks and then make individual choices. They also review parallel options of investments, such as government securities, stock markets and banking institution schemes. However, the preference of real estate remains higher due to comparative advantages accrued in respect to returns. Fluctuating financial policies and inflation rates, limited understanding and non-familiarity with financial markets (including stocks and commodity markets) usually keep the investors away from these options (Payne, 2009; Payne, 2001).

The participants were sceptical on judiciary's role in the safeguard of their interests. They complained that judiciary always took notice of malpractices in real estate ventures after the projects were in advanced stage of implementation. As a consequence of verdicts, the realtors caused greater financial hardship for them. For instance, after BTK verdict of 04 May 2018, the realtor suddenly imposed a levy of thirty-five percent extra surcharges. In the case of grievances and disputes, allottees were not facilitated by regulating building control authority or any other department. The participants suggested that the SCP may consider taking steps to reform the system, beyond individual projects. A real estate market that functions according to open rules, regulations and transactions is in the interest of all, including the investors and some international practices can be learnt from (Hartmann & Spit, 2015; Mathews, Pai, Sebastian, & Chakraborty, 2018).

Government officers

Nine government officers related to MDA, Sindh Building Control Authority and Environmental Protection Agency participated on 08 October 2019. Most of them had undertaken management and regulatory tasks in respect to Webb Ground development, BTK and Scheme 33 venture. They unanimously informed that they carry out the roles and responsibilities assigned to them by their bosses, including the political leadership. They accepted that under the table dealing and financial corruption did exist in these ventures, but it took place at the



level of their bosses. They personally had no clue about it. The evidence of their 'innocence' lied in the fact that they faced many departmental inquiries, references by accountability institutions and cases in the courts. The officers agreed that the system of land supply for real estate development was deeply flawed and non-transparent. It was mainly kept like this because it helped maintain the status quo and personal clout of political leaders.

According to these officers, the general public – including the buyers and investors – are to blame for the non-transparency and malpractice. Since the people flock to invest even in improperly documented schemes or ventures with dubious credentials, the realtors get a boost. If people discouraged schemes where blatant malpractices are conducted, then some reform can be expected. They agreed that hundreds of indigenous settlers, livestock herders, farmers and their families were unjustly treated and evicted (in the case of BTK), but they merely obeyed the government orders. The officers informed that they faced enormous risk while working in such assignments. Often the officers had to face repercussions. The role of judiciary in correcting such ventures was very limited. They admitted that none of the city plans favoured utilization of sub urban pastoral or agricultural lands for real estate, but the courts could not do much, as the plans were not legally notified. The officers informed that almost all the real estate projects, large or small, had legal irregularities attached to them. But legal cases were instituted in a few instances only. The courts only relied on documentary evidences and not much of circumstantial evidences and processes. Even when an honest officer would reveal a piece of information under oath, his statement was viewed with scepticism. The officers were of the view that legal intervention was required to remove discretionary powers of political leaders in power. The clandestine clout at work to influence such actions was also required to be examined.

Affectees in real estate ventures

Fifteen people, who were direct affectees of BT development and the Super store in Lines Area, participated in the two focus groups on 22 December 2018 and 04 November 2019. These people complained about the methods adopted to evict them from the locations where they were settled and owned land. Residents of Malir who were evicted due to BT development informed that the government completely favoured the developer. They forced them to sell land at a pittance. When they opposed, fabrication of false charges, such as theft of livestock, mugging or theft of vehicles would be registered. Young members of the family would be arrested by police and then the agents of the realtors would come to negotiate with them. Most of the hapless farmers would buckle under such high handedness and sell the land under duress. Many of these people have lost their only source of livelihood. They complained that the government and elected representatives in their area refused to provide any solution to their problems. For instance, they had requested

for tenancy rights on a temporary basis in an adjoining area to their lands. But the requested was rejected on the premise that since they had sold their lands on 'their own free will', the government has no provision to compensate them.

In the case of the Super store construction, the residents of the area complained that the local police and other government departments would come and harass them, assuming that the court case was filed at their instigation. Even after the SCP judgment, the structure of the Super store was not dismantled and thus no relief was extended. Children and other folks of the area to date have no park or playground access in the neighbourhood.

Both categories of affectees however acknowledged the active support of civil society organizations and print and electronic media (Ali, 2020; Ali, 2019; Anwar, 2014). The role of Orangi Pilot Project (OPP) and Perween Rahman (OPP's ex-director who was assassinated by unknown miscreants in 2013) was highlighted. Perween Rahman had begun a documentation exercise of village settlements where BT is built. She was actively lobbying with the government to ensure safeguard of the settlements. She vocally opposed any option leading to eviction of these settlers from locations of their livelihoods. She informed the villagers about the option of regularization of villages under the Sindh Goth Abad (Village Regularization) Act of 1987. This finding points towards the need for incorporation of such systems and supports as part of the larger formal theoretical frameworks.

The affectees were very critical of the role of SCP. They complained that the court verdict in the case of BT provided relief and protection to allottees and buyers of the property units, but did not extend any support to them. In the verdict, the court has been only overseeing the process of payment of penalty imposed upon BT management and related procedural issues. It has not looked into the issue of forced sales conducted by the realtor in making them virtually surrender their land rights. The affectees suggested that the Supreme Court may be requested to conduct investigation in the overall process of real estate development in Karachi, where their grievances may also be heard. But they also confessed that they have no resources of their own to hire lawyers and initiate this process.

DISCUSSION

As observed in the literature and case examples, real estate essentially comprises investments in properties for securing the capital, assets, freedom to dispose and relative profitability on sums invested over time. The realtors assign enormous attention to these factors while planning and developing enterprises. They understand that the type of exponential rise in profitability that general clientele expects can be seldom acquired through the transparent modes of conduct. Thus, the more regulated forms of investment options, such as REITs, were not adopted by any of the five case examples studies in this research. The

nature of relationship between the executing stakeholders was more of a mutually beneficial type. The dubious relationship between the BT and government bodies to acquire land in different locations is a case in point. By influencing the mechanism of processing the identification and disposal of land, significant strategic advantage was gained by the realtor.

The analysis of judicial intervention in five cases from Pakistan reveals that the judgments could cause only a partial reform in subject matters under litigation. With respect to acquisition land in New Murree, the court cancelled the allotment of communal lands. The Punjab government complied by officially closing the project in 2009, but the private realtor did not stop the highly dubious acquisition/usurpation of communal lands. On several subsequent occasions, the newspaper reports and locals apprised the SCP on the status, but seemingly court orders could not be effectively implemented. In the case of Webb Ground, the original verdict and subsequent judgment on the review petition ordered the playground to be restored back to its original status, but the government could not succeed in implementing the same. The area residents suffer from the non-utilitarian status of a strategically located amenity, meant for their collective wellbeing. Some of the mechanisms that can be implemented in the local context range from active models of land development (Hartmann & Spit, 2015) and implementation of various land pooling and transfer of development right models (Krabben & Jacobs, 2013). This can open up alternative investment options for local residents as well as investors, and safeguard their interests.

It is apparent that while court judgments caused a set of reliefs to many, they do not alter the on-going practices in land acquisition by realtors and other stakeholders. None of these judgments caused a policy alteration by respective agencies. Similarly the missing policies and laws for mitigating social impacts of real estate development could be promulgated. It appears that governments favour realtors more than the ordinary people in contested enterprise. Overt and covert benefits extended by the realtors to the political decision makers as well as functionaries are willingly accepted. Besides, the court judgments did not cause a clear policy alteration beyond the subject matter under review. Coase theorem (Clinch, O'Neill, & Russell, 2008) can be referred to here to come up with some solution to address the disputes and irregularities.

In each of the cases discussed, the government was not willing to uphold or safeguard the rights of original owners or occupants. Being vulnerable, politically weak and immobilized, such user groups become victim of insufficient protection by the governments as well as the court verdicts. These rights were most strongly violated in the case of BTK. An organized land acquisition strategy was unleashed which was augmented by forced evictions. State functionaries became supporter of the realtor, since the top political leadership was favouring the venture.

Despite a representative governmental framework, the dispossessed could neither secure livelihoods nor obtain any relief from the court on the injustice done to them. With their case possessing limited legal merit, the option of legal contestation was weak. The judgment was able to obtain some remedy for the state exchequer by imposing a penalty for the monetary losses caused in the process. This judgment, which focused on the question whether the land grant institution was legally authorized to adjust state land in lieu of private land of lesser value, could not go beyond this matter. At the onset, there was no law that could enable the villagers claim the right to land and livelihood, except applying for regularization of villages through Sindh Goth Abad (Village Regularization) Act of 1987. A model based on greater community involvement and public private partnership (Caron, 2018; Mandelker, 2017) if implemented can safeguard interests of the poorer sections of the society.

The safeguard of third party interest was reasonably safeguarded by court verdicts in all the concerned cases discussed in this paper. In the BTK case, the court ordered that the rights and investments of the allottees shall be protected. It was also observed after announcement of the verdict that the BT administration did not expressly cancel any allotment (Zaman & Ali, 2017; Zaman & Ali, 2009). The investors continued to make transactions despite the restrictions imposed by the court in other operational respects. Probably the clientele was prepared to take the calculated risk after observing that the judgment did not undo the enterprise and that the court was intending to find a reconciliatory solution in favour of the allottees. However, the court could not make the BT administration comply with the orders in the New Murree Project. New allotments and investments were accepted by the realtor despite a clear ban after the verdict. While legally the situation for those investors may sound precarious, the reality is otherwise. There is no credible evidence to suggest that investors in any scheme were denied access to land or property once they were given documentation by the realtor. In the other two cases, the investors faced tremendous losses. In the case of super store in Karachi, the new dispute between the investor and AWT evolved, which obviously caused hardship for the investor. In the case of Railway Club, the losses to the consortium were tremendous. Similarly, the buyer of parcels of land in Scheme 33 lost his investment, as the court did not advise the government to make immediate returns. But since the amount paid was far less than the actual value and the investor retained the possession of the land during the intervening period, it is found that he may have benefited rather than faced any financial hardship.

CONCLUSION

In the Pakistani context, at the onset, the real estate ventures, especially the large scale examples, appear to be marriages of convenience between realtors and government officials. They do not seem to be



equal opportunity enterprises. In many instances they become tools to jeopardize the public interest where courts intervene to correct the course. The judgments create a perception that the wrongs committed in respect to land acquisition and other stages of land use development can be set right by the SCP. In addition, it is often assumed that these judgments shall cause a precedent effect to set the future actions on an appropriate course. We find that the nexus between powerful realtors and facilitating elements within the government machinery continue to generate new forms of mutually beneficial relationships. None of the judgments, reviewed in this paper, caused the government to change or revise its policy or practice of land disposal, allotment and allocation. This research points towards the requirement for a larger framework that addresses the conflicts that arise in real estate dealing, and the possibilities of learning from internationally established models and directions (Clinch, O'Neill, & Russell, 2008; Hartmann & Spit, 2015; Harvey, 2010; Krabben & Jacobs, 2013; Mandelker, Fall 2017).

This is so that in resource starved contexts like Pakistan, the governments exercise the privilege of land grant as a political tool to expand their authority or extend direct benefits to the selected realtors. The plight and issues of the vulnerable remain at the least priority. These hapless masses face the scourge of resourcelessness at every instant, judicial forum being one of them. Filing litigation, legal follow up and sustaining the effort requires resources which are absolutely scant with this segment of the society.

The accounts included in this study have sufficiently established that the courts verdicts have a contextual connection. In the Pakistani context, the SCP does not seem to possess trust on the government functionaries. Therefore, in many cases it passed verdicts to institute implementation benches to directly supervise implementation and oversee the progress. The courts do not have the power to alter the laws nor create new laws. A glaring legal short fall experienced in these examples is the possibility of fresh legal safeguard for the project affected persons as was the case in Karachi examples. The desire of realtors to possess access to a transparent and open process of land acquisition remains a remote possibility given the jealously guarded status of land in the priorities of governments.

CONFLICT OF INTEREST

No conflict of interest was declared by the authors.

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