



Neutral Citation Number: [2021] EWCA Civ 2781

Case No: C2/2021/0288

**IN THE COURT OF APPEAL (CIVIL DIVISION)**

**ON APPEAL FROM UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)**

**Upper Tribunal Judge Kebede**

**JR/968/2020 (V)**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 26/11/2021

**Before :**

**LADY JUSTICE NICOLA DAVIES**

**LORD JUSTICE NUGEE**

**and**

**LORD JUSTICE SNOWDEN**

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**Between :**

(1) **MALIK RIAZ HUSSAIN**

(2) **AHMED ALI RIAZ**

**- and -**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellants**

**Respondent**

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**Joe Middleton and Tom Lowenthal** (instructed by **Kingsley Napley LLP**) for the **Appellants**

**Lisa Giovannetti QC and Steven Gray** (instructed by **Government Legal Department**) for the

**Respondent**

Hearing date : 2 November 2021

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**Approved Judgment**

**Lady Justice Nicola Davies :**

1.

In proceedings for judicial review the appellants sought to challenge the decisions of the respondent dated 31 January 2020 to cancel their multi-entry visit visas on public interest grounds. The claim for judicial review was dismissed by the Upper Tribunal (Immigration and Asylum Chamber) (“the

Tribunal”) in a judgment dated 17 November 2020. Carr LJ granted permission to appeal on all seven grounds of appeal.

2.

The appellants are Pakistani nationals. Malik Riaz Hussain (“Mr Malik”) born on 15 March 1949 is the father of Ahmed Ali Riaz (“Mr Ali”) born on 24 January 1978. Mr Malik held a 10-year United Kingdom multi-entry visit visa valid to 28 July 2021, Mr Ali held a 10-year United Kingdom multi-entry visit visa valid to 18 May 2021. The visas were originally cancelled on 10 December 2019. In each case the decision was reassessed following further submissions from the appellants and fresh cancellation decisions were made. The respective decisions were communicated to each appellant by a letter dated 31 January 2020.

3.

The appellants’ visas were cancelled under paragraphs V 9.1 and V 9.6 of Appendix V of the Immigration Rules read with paragraphs V 3.3. In respect of each appellant, the decision to cancel the visit visa was based on the following conclusion, namely:

“...whilst there has not been a criminal conviction against you I am satisfied on the balance of probabilities that you have been involved with corruption and financial/commercial misconduct. As a result, having regard to the UKs commitment to combat corruption and financial crime, I believe that your exclusion from the UK is conducive to the public good due to your conduct, character and associations.

... I am satisfied that your visa should be cancelled under paragraph V 9.6 – with reference to paragraph V 3.3 – of the Immigration Rules. V 3.3 states the following: An application will be refused if the decision maker believes that exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant’s conduct (including convictions which do not fall within paragraph V 3.4), character, associations, or other reasons, make it undesirable to grant their application.”

4.

The conclusion of the respondent that the appellants have been involved with corruption and financial/commercial misconduct was founded on their involvement in the affairs of a company, Bahria Town. The company is wholly owned and run by the appellants’ family and is described as the largest property developer in Asia. At all relevant times Mr Malik was the Chairman of Bahria Town, Mr Ali was the CEO.

### **The Immigration Rules**

5.

The relevant provisions are contained in parts V 3 and V 9 of Appendix V and state:

#### **“Not conducive to the public good: exclusion and deportation**

V 3.2 An application will be refused if:

(a) the Secretary of State has personally directed that the applicant’s exclusion from the UK is conducive to the public good; or

(b) the applicant is currently the subject of a deportation order or a decision to make a deportation order.

V 3.3 An application will be refused if the decision maker believes that exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph V 3.4), character, associations, or other reasons, make it undesirable to grant their application.

...

### **Cancellation of a visit visa or leave to enter or remain as a visitor on or before arrival at the UK border**

V 9.1 A current visit visa or leave to enter or remain as a visitor may be cancelled whilst the person is outside the UK or on arrival in the UK, if any of paragraphs V 9.2 – V 9.7 apply.

...

### **Not conducive to the public good**

V 9.6 Where the criteria in V 3.2 - V 3.5. apply.”

6.

Home Office Guidance as to the exercise of the power includes the following:

#### **“General Grounds for Refusal**

##### **Character, conduct or associations**

##### **General**

You must assess if there are cumulative grounds for refusing a person on character, conduct or associations grounds if a person falls under more than one of the categories included in this section ... or there are other reasons for considering refusal.

However, the person must be informed of the reasons why their application is being refused or why a particular course of action (for example, deportation) is being considered or pursued. It is not enough to simply refuse a person on ‘character, conduct and/or associations’ grounds without explaining why.

...

A person does not need to have been convicted of a criminal offence for this provision to apply. To decide if a refusal under this category is appropriate you must consider if there is any reliable evidence to support a decision that the person’s behaviour calls into question their character, conduct and/or associations to the extent that it is undesirable to allow them to enter or remain in the UK. This may include cases where a person has entered into, attempted to enter, or facilitated, a sham marriage to evade immigration control.”

7.

The non-conductive provisions applicable to visitors mirror provisions in paragraph 322(5) of the Immigration Rules (refusal of leave to remain on non-conductive grounds).

### **The appellants’ judicial review proceedings**

8.

The grounds for judicial review are:

i)

The finding of fact that Bahria Town and/or the appellants practised corruption or benefitted from the proceeds of illegitimate activities was irrational (and thus unlawful);

ii)

By failing to give the appellants the opportunity to address the new matters relied upon in the fresh cancellation decisions, the respondent breached the requirements of procedural fairness and the breach was material to the outcome.

9.

The appellants acknowledged that the second ground would add nothing to the claim if there was no merit in the first ground. That being so, it was not actively pursued before the Tribunal.

10.

The court is grateful to Mr Middleton for the appellants and Ms Giovannetti QC for the respondent for their written and oral submissions which were of real assistance.

### **Relevant authorities**

11.

The issue of the burden and standard of proof to be exercised by the respondent has been considered in a number of authorities. In *R (N) v Mental Health Review Tribunal (Northern Region) and Others* [2005] EWCA Civ 1605, Richards LJ at [62] stated:

“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

12.

In *R (Giri) v Secretary of State for the Home Department* [2015] EWCA Civ 784, the decision of the respondent was made pursuant to paragraph 322 of the Immigration Rules. It is accepted by the parties, and represented the approach of the Tribunal, that there is no difference in approach when challenging the rationality of a non-conducive decision made in relation to visitors under Appendix V. Richards LJ at [38] accepted that it was for the respondent to satisfy the court that he/she had discharged the burden of proof on the balance of probabilities. Further, in the context of such a case, the respondent should furnish evidence of “sufficient strength and quality” and the Secretary of State (and the tribunal) should subject such material to “critical” and “anxious” scrutiny.

13.

The decisions in *R (Balajigari and Others) v Secretary of State for the Home Department* [2019] EWCA Civ 673 were taken under paragraph 322(5) of the Immigration Rules. At [37(2)] Underhill LJ stated that the rule “is only concerned with conduct of a serious character”. The standard of proof is the balance of probabilities but that is to be exercised “bearing in mind the serious nature of the allegation and the serious consequences which follow...” [43]. The Secretary of State must be satisfied that the serious misconduct has occurred. At [129] Underhill LJ stated:

“It is not sufficient that there is evidence which ‘casts doubt’ on a person’s honesty: that doubt has to be resolved. The Secretary of State must be satisfied, on the balance of probabilities, that the

applicant was in fact dishonest, and that can only occur if he has called for an explanation and considered any explanation provided.”

### **The decision letters**

14.

The decision letter dated 31 January 2020 sent on behalf of the respondent to Mr Malik included the following relevant information:

“Your 10 year multi-entry United Kingdom visit visa valid from 28 July 2011, until 28 July 2021 was cancelled on 10 December 2019. You have submitted a Pre Action Protocol (PAP) letter against this decision. I have taken into consideration the submissions made by your legal representatives including the PAP letter, enclosed supporting documents and all other correspondence between Kingsley Napley LLP and UKVI regarding this matter.

The decision to cancel your visa has been re-assessed and taking into account this additional information a fresh decision has been made. I am satisfied that the cancellation of your visa is appropriate at this time.

Under Part V9 of Appendix V of the Immigration Rules, an Entry Clearance Officer can cancel a visit visa where the decision maker believes that exclusion of the applicant from the UK is conducive to the public good because, for example, in light of their conduct, character, associations, or other reasons, it would be undesirable to continue to permit the visitor to enter in the UK.

I am aware that you are the Chairman of Bahria Town, a company wholly owned and run by you and members of your family. Noting your high ranking position in the company and taking all the evidence presented in its totality, I am satisfied that you have a significant association with Bahria Town and I am also satisfied that, on the balance of probabilities, you would have had knowledge of the operations of Bahria Town.

I am also aware that the UK National Crime Agency (NCA) has been granted Account Freezing Orders by a UK magistrates’ court and that on the 3 December 2019 the NCA reported that they had accepted a £190 million settlement linked to an investigation of the funds held by your family.

I have also considered:

- The judgments of the Supreme Court of Pakistan concerning Bahria Town (dated 04/05/2018 and 21/03/2019). In particular the judgment dated 04/05/2018, including the dissenting view. I have taken into account the fact that these were not criminal proceedings and that the Supreme Court of Pakistan stopped short of making a finding of bribery. However, I consider that the majority judgments of the Court provide strong support for the conclusion that Bahria Town, you and/or your associates benefited financially from the proceeds of illegitimate activities. By way of example, the court judgment features the following quote ‘Grant of land to MDA for an incremental housing scheme proved to be a gimmick to accomplish the agenda of Malik Riaz aiming at his personal enrichment at the cost of the state and the people. It is, thus, a brazen betrayal of the trust of the state and the people and a blatant fraud on the statute’ (Paragraph 12) which strongly supports this conclusion.
- The NCA applications for account freezing orders, including the fact that you were named in these applications at paragraph 5 (Grounds for Suspicion) which states that there was suspicion that the funds (in the accounts subject to the applications) were proceeds of the criminality of yourself and members of your family.

- The subsequent settlement made between the NCA and your family. In particular, that the settlement was voluntary and substantial and that your family's agreement to pay towards the outstanding amounts owed under Supreme Court order in the judgement dated (21/03/2019) draws a direct connection between your family, yourself and the Supreme Court judgment against the company. I also note that you were one of the individuals ordered to give a personal guarantee in the Supreme Court Judgment dated 21/03/2019.

- That extracts from the Final (Synthesis) Report submitted by the Joint Investigation Team (JIT), who had been instructed by the Supreme Court of Pakistan to conduct an investigation into the matter of Fake Bank Accounts, indicated that money deposited by Bahria Town into Fake Accounts coupled with the interviews of relevant persons had revealed that Bahria Town had used 'artificial' joint venture instruments and 'artificial' real estate gains to disguise 'kickbacks' as ostensibly legitimate gains. Further, that evidence revealed during the investigation of Bahria ICON (Twin Towers) project, shows that institutional collusion of Government departments in Sindh in favour of Bahria to build a real estate empire in Karachi.

- The 'Reference' filed by the Pakistan National Accountability Bureau (02/04/2019). This document relates to investigations into Karachi Land Developments. The reference before the accountability court specifically names Bahria Town Ltd, among others, as the accused. The reference details how public officials had misused their authority to illegally benefit a number of the accused, including Bahria Town Ltd, and concludes, amongst other things, that all the accused persons have committed the offence of corruption and corrupt practices.

Having carefully considered all of the above, whilst there has not been a criminal conviction against you I am satisfied on the balance of probabilities that you have been involved with corruption and financial/commercial misconduct. As a result, having regard to the UK's commitment to combat corruption and financial crime, I believe that your exclusion from the UK is conducive to the public good due to your conduct, character and associations.

Given the above, I am satisfied that your visa should be cancelled under paragraph V 9.6 - with reference to paragraph V3.3 - of the Immigration Rules. V3.3 states the following: An application will be refused if the decision maker believes that exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph V 3.4), character, associations, or other reasons, make it undesirable to grant their application.

#### Further Considerations

...

I have taken into consideration that the PAP letter submitted also alleges procedural unfairness and states that you had no opportunity to address the allegations made in the original visa cancellation letter. This decision was re-assessed and the additional submissions, made on your behalf to date, have now been considered."

15.

The letter to Mr Ali was in identical terms save for bullet points 2 and 5 which stated:

"...

- The NCA applications for account freezing orders, including the fact that you were named in these applications following the NCA investigation into accounts held by yourself and your family in the UK.

...

- The 'Reference' filed by the Pakistan National Accountability Bureau (02/04/2019). This document relates to investigations into Karachi Land Developments. The reference specifically names you and Bahria Town Ltd, among others, as the accused. The reference details how public officials had misused their authority to illegally benefit a number of the accused, including you, and concludes, amongst other things, that all the accused persons have committed the offence of corruption and corrupt practices."

### **The evidence before the respondent**

#### **The judgments of the Supreme Court of Pakistan - Judgment dated 4 May 2018**

16.

These were constitutional proceedings arising from a public law challenge to the transfer of land in Karachi to Bahria Town. The challenge was brought pursuant to article 184(3) of the Constitution of Pakistan 1973 which confers original jurisdiction on the Supreme Court to make an order to protect fundamental rights. The Supreme Court considered the lawfulness of a series of land transactions which resulted in Bahria Town obtaining valuable government-owned land in Karachi to develop, in exchange for other land owned by Bahria Town. The land had been granted to the Malir Development Authority ("MDA") by the Board of Revenue of the Government of Sindh Province. The MDA exchanged the land with private land held by Bahria Town.

17.

The central issue for the court was whether the scheme of transfer was executed in accordance with the statutory regime set out in the Colonisation of Government Land Act 1912 ("COGLA"). The Sindh Board of Revenue, the MDA and Bahria Town contended that it was. The essence of the challenge before the court was that the value of government land was far higher than the value of the private land for which it had been exchanged. The Supreme Court determined (by a 2:1 majority) that the grant of the state land to the MDA, its exchange with the land of Bahria Town and anything done pursuant to it was unlawful and void ab initio. The majority held that the land transfer to Bahria Town could proceed, having regard to the considerable work done by Bahria Town on the land and the third-party interests of allottees. The Chief Justice was requested to constitute an Implementation Bench to give effect to the judgment so as to determine the terms and conditions on which the transfer to Bahria Town of the land in Karachi could take place.

18.

Khan J gave the principal judgment of the majority. At [6] he identified the main issue as being that:

"... enormous tracts of government land were granted by the Board of Revenue to the MDA for launching incremental housing scheme. The MDA instead of launching the scheme on the land thus granted, exchanged it with the Bahria Town through its henchmen. Having thus placed, the Bahria Town proceeded to launch a scheme of its own."

At [10] Khan J addressed the question of:

"... whether a land granted under section 10 of COGLA 1912 could be exchanged with a private or kabuli land. Our answer to the question is a point blank no, because section 10(2A) which has been

given overriding effect over section 10(1) and 10(2) of COGLA 1912 provides in unequivocal terms that a land granted to any person under section 10 of COGLA 1912 is not exchangeable with a private or kabuli land.”

At [12] Khan J, having considered the actions of the MDA, Bahria Town and the Government of Sindh, stated that:

“... It is, thus, a brazen betrayal of the trust of the state and the people and a blatant fraud on the statute. A business adventure of this type cannot be said to have any meaning for the poor people and as such cannot be held to have any of the trappings of a public purpose.”

At [13] Khan J stated:

“We have no doubt in our mind as held above that the land granted under section 10 of COGLA 1912 cannot be exchanged with private or kabuli land. But even if we assume by ignoring the law that the Authority has the power to exchange the land granted under section 10 of COGLA 1912 with private or kabuli land, what mode was adopted for determining the status and price of the government land and that of the one it was exchanged for has not been explained by the learned ASCs appearing for the Board, MDA and Bahria Town. Nor has anything been brought on the record to show that the nature, character, location, potential of the land and those of the land it was exchanged for, stand on equal footing. There is also nothing on the record to explain why did the MDA exchange its compact and well-located blocks of land for scattered strips of land situated in far-off areas. What utility such strips of land could possibly have for MDA also went unanswered.”

At [15] Khan J noted that the price for the land in 2011 was lower than the prices fixed in 2006. He concluded that the 2011 prices had been “contrived and conjured to the advantage of the builders and disadvantage of the government.” At [17] Khan J concluded that a detailed analysis of the case:

“... irresistibly drives us to the conclusion that nothing has been done in accordance with the policy, plan and pattern projected by the relevant enactments. ... the Board bypassed the command of law and chose to dance at the drumbeats of a business tycoon without caring what the law provided and what the Supreme Court asked of it. The MDA too chose to follow the dictates of the business tycoon without caring what the dictates of the MDA Act were. How the project can be said to have been carried under the umbrella of [MDA] when the entire government land has been sold to the Bahria Town for a paltry sum or exchanged for a land lying scattered in far-off areas? ... The mode and manner of doing the things prima facie show that the entire hierarchy of the Executive, the Board of Revenue and the [MDA] conspired to cede valuable public property to an individual for a handful gain. ...”

19.

The concurring judgment of Arab J analyses the factual background, in particular the timing of events and provides a financial estimate of the gain obtained by Bahria Town. At [2] Arab J identifies a meeting held in January 2013 of the MDA at which a decision was taken to provide 2,500 low cost housing units in all MDA schemes in line with the Prime Minister’s Housing Programme. On that same day, 37 Dehs (an area of land) of Karachi were “notified as controlled area of MDA”. The number of notified Dehs was later raised to 43.

20.

MDA sent a summary to the Chief Minister of Sindh seeking approval for its housing schemes, which was approved in December 2013. At [3] Arab J records that when this was being done:



“Bahria had already emerged on the scene on 25.09.2013 and through extensive publicity invited applications from the general public for grant of membership against payment of Rs.15,000/- as only members were to become eligible for making bookings in its three schemes namely ‘Bahria Icon Tower’ in Clifton, ‘Bahria Tower’ on Tariq Road and ‘Bahria Town, Karachi. The location of the last mentioned scheme, which is the subject matter of these proceedings, was however not disclosed at that point in time. On 26.01.2014, through another cycle of advertisements, Bahria for the first time disclosed to the public the approximate location of its scheme ‘Bahria Town Karachi’.”

Arab J records that:

“Bahria then started developing its scheme in Dehs that were part of MDA’s notified area and that too in absence of any lawful agreement to launch its scheme with MDA. Thus Bahria expanded its scheme in five Dehs falling within MDA’s controlled area...”

21.

Arab J observed that minutes of MDA’s board meetings of 2013 and 2014 did not reflect that Bahria was granted permission to launch its scheme on the land falling within MDA’s control area. MDA sent a further summary dated 21 January 2014 to the Chief Minister wherein nine Dehs of the controlled area were identified for the launch of MDA’s housing schemes. It contained no mention of allowing Bahria to launch its own scheme in any Deh falling within MDA’s controlled area.

22.

At [4] Arab J stated that while the work on the Bahria Town scheme was underway:

“Bahria set out four of its agents on a shopping spree to purchase whatever land they could find in other Dehs falling in MDA’s controlled area with the sole intention to exchange the same for the land in Dehs on which Bahria had already launched its scheme. These four agents then claimed to have succeeded in ‘purchasing’ 7068 acres of small and medium sized scattered parcels of land located at scores of far flung locations of thirty-nine notified Dehs. It has come on the record that in many cases, title of owners who had sold their land to the agents of Bahria was either not complete as their co-owners had not agreed to sell their share or the title of certain lands was not duly verified. However, Bahria’s agents very conveniently and in no time succeeded in exchanging the land they claimed to have lawfully purchased with the land which Bahria had already occupied and commenced work on its scheme since January, 2014. Thus, it is apparent that the Bahria Town Scheme was launched at a time when Bahria’s agents had not even completed their task of purchasing lands, which could be exchanged with MDA. Satellite imageries of the township also confirm that Bahria had started development work on the ground by constructing roads and carving out plots soon after inviting applications from the general public in January, 2014 i.e. much before the agents of Bahria had completed their task to purchase land in far flung areas which were to be offered in exchange. Thus, it has become quite apparent that Bahria entered upon MDA’s controlled area for launching of its own scheme without any written authorization in this behalf from MDA. It is for this reason that no demarcation of the land that was to be assigned for Bahria’s scheme was ever carried out. One cannot imagine that MDA would allow Bahria to invite applications from the general public and enter upon a very vast expanse of land falling within its controlled area starting right from main Super Highway without any backdoor understanding.”

23.

Having reviewed the minutes of the meetings and the events of 2013 Arab J at [5] noted that:

“The quiet understanding was to allow Bahria to launch its own housing scheme in five Dehs and derive whatever benefits it can. Thus most prized piece of land in MDA’s entire controlled area located near the developed area of Karachi was quietly allowed to go into the hands of Bahria merely on the pretext of exchange for scores of scattered parcels of lands located in the remote parts of thirty-nine Dehs, title of which too was not entirely free from doubt.”

24.

Arab J considered the value of the land. At [6] it is recorded that land in five “prized” Dehs occupied by Bahria constituted 12,157 acres of land. Arab J stated:

“Record also reflects that MDA has benevolently worked out the value of 7068 acres of most priced land in MDA’s controlled area at Rs.6.12 Billion. This value for land located in the city which is commercial hub of the country is ridiculously low.”

Arab J contrasted MDA’s low valuation of the land in the city with a valuation of land used for housing in the Matli District where he came from. He observed that Matli “is only a town .... Here we are dealing with land located in Sindh’s largest city which is not only a port city but the commercial hub of the entire country.” Having estimated of the approximate financial worth of the 7,068 acres, Arab J concluded the net gain which Bahria could make from the land at the cost of MDA surrendering its role as a real estate development authority was Rs. 225 billion. Arab J also observed that the exchange was prohibited under section 17 of COGLA because the ownership of Qabooli land is in perpetuity and hence vests in the person who owns it in absolute terms.

25.

At [11] Arab J concluded:

“... From the voluminous record of MDA placed on record it is established that no Board meeting of MDA was held in which decision was taken as to what land from its controlled area was to be handed over to Bahria for its scheme, what to speak of settling the terms and conditions on which it was to be handed over. It is for this reason that no site plan was prepared to show on what date, how much land, from which Dehs and with what boundaries is being handed over by MDA to Bahria. Presently Bahria is in occupation of 12157 acres in the above referred five notified Dehs which MDA had acquired from Board of Revenue at concessional rates for launching its own schemes. It is really astounding that Bahria first occupied most valuable land available in MDA’s controlled area without any legal process and straight away launched its scheme and later requested MDA to exchange the land under its occupation for several parcels of land which Bahria at its own convenience had purchased through its agents in far off scattered locations of thirty-nine Dehs and MDA and Government of Sindh bent backwards in obliging it and quietly abandoned the launch of MDA’s housing schemes on such land. Bahria may have the reputation of being one of the leading property developers of Asia but then it should do its business on legitimately acquired land. Bahria’s remarkable reputation as property developer cannot weigh in when the validity and legality of the state land that it had occupied is examined. ...”

26.

In a dissenting judgment, Baqar J examined the powers, authority and function of the MDA and its relationship with the “subject lands” ([2]). He summarised the submissions of counsel as to the legality of the project ([3]). He noted that the high quality of the “planning, designing and development of the Bahria Town” was such that it could be “ranked as one of the best town developments, at least in Asia” and had provided employment to thousands in its construction and development ([7]). At [13] and [15] Baqar J stated his opinion, namely that the development of the

land granted to Bahria Town promoted a public purpose, the creation of a new town, and was consonant with the statutory purpose and mandate behind the creation of the MDA. Baqar J concluded at [15] that:

“... the subject exchanges have been affected in accordance with the law and that there has been no illegality in the process. The exchanges were made to promote and facilitate the cause, purpose and intent behind the creation of MDA, being the development, improvement and beautification of the area. The development of a town that was made possible by the subject exchanges/consolidation of lands, has not only brought huge revenue and created opportunity for such generation with a much greater proportion in future also but has given to the port city of Pakistan, a new town with massive infrastructure, utilities and amenities and has also resulted in creation of jobs and business opportunities for good number of people. This development of the project has also largely contributed to the enormous appreciation in the value of the land in the area, which land is mainly owned by GoS and has given boost to the development activities around it. It is also likely to contribute to the economic and social wellbeing of the people who have been living in the area of the town and around it since before its development, which area until only a few years before was a desolate barren place.”

27.

As to the view of the majority that the land obtained by Bahria Town had been massively undervalued and the inferences which could be drawn from such undervaluation, Baqar J at [17] noted that in the identified area where private individuals/Bahria had been given land in exchange, they owned land other than that which had been exchanged, thus the area was not free from private holdings. Further, the exchange and consolidation had been done for “the mutual benefit of both the parties, by way of compaction and consolidation of their lands.” He noted that “the value and utility of the lands which were far away may also have improved substantially for the reason that the development and growth in the area in the shape of Bahria town and the development that has followed it, the said distant lands have become closer to the well-developed and well-grown areas, which has prompted further growth and development around it.”

28.

Having noted Bahria Town’s offer to revalue the land and pay any shortfall Baqar J proposed that the land be revalued by a special committee but this course was not adopted by the majority.

### **The Supreme Court’s Implementation Bench order dated 21 March 2019**

29.

Pursuant to the judgment of the Supreme Court dated 4 May 2018, an Implementation Bench was established comprising three judges, one of whom was Arab J. Its purpose was to consider, amongst other matters, what the price of the state-owned land which Bahria Town had obtained for the purposes of development should be. The judgment of the Implementation Bench records that at the “very outset” Bahria Town indicated that they were prepared to pay the price of the land in issue and complete the development project. During the course of the implementation proceedings the offers made by Bahria Town were revised and enhanced. The offer, which was accepted by the court, was that Bahria Town would acquire the rights of the land measuring 16,896 acres in the five Dehs for the total sum of Rs. 460 billion.

30.

The offer was accepted by the court on terms as to payment (a down payment of Rs 25 billion and subsequent payments at identified intervals, all payments to be made within seven years from 1 September 2019) and other terms which included the provision of four guarantors, both appellants

together with Mr Malik's wife and their son-in-law, Mr Zain Malik. One of the terms was directed to the Reference which had been prepared by the National Accountability Bureau ("NAB"). The court ordered that the Reference should not be filed for the time being, however if there was any default in making payments in terms of the order or otherwise any other violation of any terms and conditions then the NAB should immediately file the Reference which should proceed in accordance with the law.

### **The Joint Investigation Team ("JIT") report**

31.

The JIT was instructed by the Supreme Court of Pakistan, as a result of separate proceedings to those considered in the judgments of 4 May 2018 and 21 March 2019, to conduct an investigation into bribery and money laundering. It was known as the "Fake Accounts Case". This was an extensive investigation exploring 11,500 bank accounts of 924 account holders. It scrutinised 59 suspicious transaction reports and 24,500 cash transaction reports associated with the identified accounts, together with the loan profile of the 924 account holders.

32.

The investigation found, inter alia, that created and operating were 32 fake accounts and 11 fake entities. There was a modus operandi of laundering proceeds of crime, the laundering was in respect of the proceeds of kickbacks, land grabbing, large scale misappropriation of public funds, and financial and other crimes through the fake accounts.

33.

It was stated that:

"38. The analysis of payments into Fake Accounts and investigation related to these transactions revealed the following types of proceeds of crime transacted through and linked to Fake Accounts: -

- 

Kickbacks against grabbing of State land i.e. Bahria Town Karachi land, Bagh Ibn-e-Qasim land for Bahria ICON twin towers project, Pakistan Steel Mills land

- 

Bribes by Land Mafia and Proceeds against Grabbing of Private Land i.e. private land adjoining the State land illegally allotted to Bahria Town Karachi, Al-Ain holdings land near airport, various prime urban plots and Pink Residency land

...

#### **a) LAND GRABBING - PRIME URBAN STATELAND (BAHRIA AND STEEL MILL) AND PRIVATE LANDS - KICKBACKS AND PROCEEDS**

39. The JIT has discovered that kickbacks against State land and bribe / proceeds from forcible / low cost acquisitions of private lands has been placed, layered and ultimately laundered using 'Fake Accounts'.

##### **i. Kickbacks against Grabbing of State Land by Bahria Town**

40. Examination of the 'Fake Accounts' revealed a huge deposit of **Rs 10.02 Billion** directly into the 'Fake Accounts'. ...

41. Bahria Town has emerged as a huge beneficiary by grabbing thousands of acres of prime urban State as well as private lands for its projects in Karachi against which it paid huge kickbacks. Each of

Bahria's projects in Karachi merit a deep probing which has been done in the subsequent sections in this report. Only a synopsis of kickbacks paid by Bahria Town are mentioned below:-

S	Original Ownership of Land	Total illegally allotted / grabbed Land	Name of Project	Facilitators	Kickbacks	
1	State Land - Express highway	11297 acres	Bahria Town Karachi	Government of Sindh (BOR, MDA)	Rs. 10.02 Billion remitted directly into 'Fake Accounts'  50% share in Bahria ICON Project  Rs 1.22 Billion through JV Opal 225 Scheme	
2	Private Lands adjacent to Bahria Town Karachi	Undetermined (estimated more than 25000 acres)	Bahria Town Karachi	Government of Sindh (MDA, Local Administration and Police)		
3	State Land of Bagh Ibn-e-Qasim Clifton Karachi	7900 Square yards	Bahria ICON Twin Towers	Government of Sindh (BOR, KDA, KMC), M/s Galaxy Construction Pvt Ltd. (Dr Dinshaw Hoshang Ankleseria-Frontman)		
						"

34.

The JIT made a number of recommendations which included:

**"7. HYPER GROWTH OF BAHRIA TOWN SOUTH, WITH THE COLLUSION OF SINDH GOVERNMENT AND THE KICKBACKS RECEIVED BY MR. ASIF ALI ZARDARI AND MRS. FARYAL TALPUR THROUGH 'FAKE ACCOUNTS'**

173. Bahria Town Pvt Ltd. remained the main source of deposits (**Rs 10.02 Billion**) credited into 'Fake Accounts' (A-One International, Dream Trading, Ibrahim Linkers, Iqbal Metals, Logistic Trading, Ocean Enterprises and Umair Associates). Malik Riaz Hussain, personally transferred an amount of **Rs 45 Million** into the account of M/s Lucky International (Fake Entity) in Summit Bank on 08-10-2011. On detecting these huge deposits into 'Fake Accounts' by Bahria Town, the JIT probed into the affairs of Bahria Town (South) and its projects in Karachi.

174. It was found that Bahria Town's declared assets aggregate to Rs 330 Billion as of 2017. Rs 176 Billion is shown in books as advance by Bahria Town for purchase of various lands (mostly unidentified). The illegitimate growth of Bahria Town South and its projects in Karachi mentioned below reveal the reasons for **crediting the 'Fake Accounts' to the tune of Rs 10.02 Billion.**

**a) Bahria Town Karachi - The illegal exchange / consolidation of State Land by Government of Sindh and capture of thousands of acres of Private Land**

175. The Government of Sindh (Revenue Department and Malir Development Authority) has been found complicit in misusing its authority in handing over possession of **7220 acres un-allotted State land**, between Jan 2014 to Dec 2015, situated on main super highway to Bahria Town through five (05) of their employees / relatives of CEO (Malik Riaz). The demarcation report of Survey of Pakistan dated 20-07-2016 revealed that Bahria Town has taken illegal possession of adjoining private and State land and total area under its possession is **12156 acres**. Report by GIS section, Board of Revenue Sindh says that **11297 acres** of land under the possession of Bahria Town is un-allotted State land amounting to **Rs 27 Billion** (as per 2015 notified rates).

176. Bahria Town had collected Rs 215 Billion from general public against selling of plots / development charges in the above mentioned project as of Sep 2017. A ground check conducted by NAB team in Oct 2017 revealed that the area under possession of Bahria Town project is far beyond 12156 acres (Ref. ANNEX-59 for copy of NAB report). The matter is presently under investigation by NAB Karachi. The JIT is of the opinion that grabbing of State and private land on such a massive scale, by Bahria Town (Malik Riaz) in collusion with the Government of Sindh, could not have been possible without the patronage of the top political leadership controlling the Sindh Government and their personal stakes."

35.

The recommendation included the following:

**"NAB may be directed to conduct a thorough inquiry/ investigation to recover the kickbacks and probe into the associated illegal allotments of state land to Bahria Town and file a reference in the Accountability Court. ..."**

36.

At [196] the JIT identified what it described as evidence of the receipt and laundering of Rs 10.02 billion kickbacks:

"196. The papers arranged by Zain Malik (mentioned above) and other related evidence substantiate the following: -

- 

One, that the transfer of amount of Rs 10.02 Billion (2014/15) by Bahria Town to Fake Accounts has been done without any lawful consideration (non-bonafide transfer)

- 

As has been discussed above, Bahria Town was recipient of huge acreage of State Land for Bahria Town Karachi and was occupying huge tracts of adjacent private land with the connivance of Government of Sindh. Hence, the Rs 10.02 Billion was a kickback, Rs 8.3 Billion of which was paid by Bahria through a joint account with Mushtaq Ahmed (confidante of Mr. Asif Ali Zardari)

-

Moreover, Bahria Town has so far invested Rs 27 Billion on the project. (Ref. ANNEX-62 for Zain Malik statement). 50 % of this project is held through M/s Galaxy Construction by Dr. Dinshaw Ankleseria (Frontman). The profile of the individual indicates that Dinshaw and Galaxy are merely paper work in this mega real estate project – the largest Twin towers skyscraper project of Pakistan”

37.

It made a further recommendation that:

**“NAB may be directed to conduct a thorough inquiry/ investigation, recover the kickback amount and precious State Land or its present market value.”**

**The NAB Reference (dated 2 April 2019) filed with the Accountability Court pursuant to the JIT report into the Fake Bank Accounts case**

38.

The Reference was filed by the Chairman of the NAB. 18 individuals or companies/institutions are named in the Reference, including Mr Ali and Bahria Town (Private) Ltd. At [4] it is stated that the evidence established that public office holders in connivance with each other:

“... misused their authority in extending illegal benefit to beneficiaries / accused persons and with malafide intention regularized 07-00 Acre land in question for Rs. 7,348,600/, whereas, the said land was worth Rs.847 million (approximately) as per the Government notified rates of 2012.”

39.

Paragraph 6 of the Reference records that Mr Ali was the CEO and one of the authorised Directors of Bahria Town Ltd. During his tenure more than Rs 1.5 billion were transferred from the accounts of Bahria Town to three fake bank accounts. The monies transferred were used, amongst other purposes, through money laundering for the payment of differential “malkano” for the illegal regularisation and:

“... for the purchase of the 07-00 Acre land in question which has established that he is one of the beneficiaries of said land acquired through corrupt, dishonest and illegal means. Payments were made through Fake Bank Accounts to disguise and conceal the true origin of funds to defeat the purpose of the Anti-Money Laundering Act.”

40.

The 07-00 acre piece of identified land is not a part of the Karachi land identified in the Supreme Court judgment.

**The application by the National Crime Agency (“NCA”) for an Account Freezing Order (“AFO”)**

41.

On 14 December 2018 an AFO was granted by the District Judge at Westminster Magistrate’s Court under the [Proceeds of Crime Act 2002](#). The AFO related to £19,999,984.27 GDP which was being transferred by Mubashra Ali Malik (wife of Mr Ali) from her personal account in UAE to the company account of Premier Investments Global Ltd (a BVI registered company of which Mubashra Malik and her husband Mr Ali were currently the ultimate beneficial owners). On 12 August 2019, pursuant to an application dated 8 August 2019, the NCA obtained a further eight AFOs in relation to money held in the accounts of Mr Ali, other family members and associated companies of which Mr Ali and his wife were said to be the current ultimate beneficial owners. The combined total value of the frozen sums was in the order of £140 million. At [5] the application states:

“In brief summary I suspect that these funds represent, either in whole or in part, the proceeds of the criminality of Malik Riaz HUSSAIN (Father), Ahmed Ali RIAZ (Son) and Bahria Town Limited (A private company owned by Malik Riaz HUSSAIN and Ahmed Ali RIAZ) which was conducted in Pakistan. I suspect criminal offences conducted to be that of land theft, bribery and money laundering (the Pakistani offences).

6. I suspect that if this conduct had taken place in the UK, it would also be criminal offending contrary to:

- Common Law-Specifically:
  - o Conspiracy to Commit Misconduct in a Public Office; and
  - o Conspiracy to Cheat the Public Revenue.
- [Proceeds of Crime Act 2002](#) - Specifically:
  - o Section 327 - Concealing Criminal Property;
  - o Section 328 - Arrangements in Relation to Criminal Property; and
  - o Section 329 - Acquisition, Use and Possession of Criminal Property.
- [Fraud Act 2006](#)- Specifically:
  - o Section 2 - Fraud by False Representation; and
  - o Section 4 - Fraud by Abuse of Position.
- [Bribery Act 2010](#)- Specifically:
  - o Section 1 - Offences of Bribing another Person;
  - o Section 6 - Bribery of Foreign Public Officials; and
  - o Section 7 - Failure of Commercial Organisations to Prevent Bribery”

42.

In the “Grounds for Suspicion” reference is made to the 4 May 2018 decision of the Supreme Court in the Karachi land case, the acceptance by the court on 21 March 2019 of Rs 406 billion (equivalent to 2.3 billion GBP) from Bahria Town in settlement of the judgment and to the existence of the four personal guarantors. Reference is also made to the JIT investigation and to the fact that it had identified that Bahria Town had laundered Rs 10.02 billion (approximately equivalent to 50 million GBP) through fake accounts as bribe payments. It noted that a criminal investigation was being conducted by the NAB which identified that Mr Ali, Zain Malik and Bahria Town had transferred in excess of Rs 2.5 billion (approximately equivalent to 12.5 million GBP) through fake accounts to illegally obtain and regularise a plot of land in Karachi.

43.

Detailed are the facts that in February 2017 the combined cash assets of Mr Ali and his wife Mubashra Ali Malik, in a bank account in London, were £56,917,357.00. By December 2019 the combined cash assets with the same bank were £138,505,397.00. At [31] it is stated that:



"I consider the timing of this significant increase of cash reserves held in the UK as highly suspicious and suggestive of attempts to conceal the proceeds of criminal conduct from the Government of Pakistan, especially when considered alongside the political and judicial developments in Pakistan..."

44.

In summarising the application it is stated:

"33. Bahria Town Limited are suspected to have consistently committed the criminal offences of bribery and fraud since it began work on large developments. In his position Ahmed Ali RIAZ would have a knowledge of this, and is assessed to have been involved in the criminality. He is also assessed to directly benefit financially from the criminal proceeds.

34. It is suspected that the proceeds of the corrupt activities have been layered into the United Kingdom assets described and is funding the lifestyle of Mubashra Ali MALIK, Ahmed Ali RIAZ, Bina RIAZ and Malik Riaz HUSSAIN.

35. Given the suspicion surrounding the source of the funds identified in this application, I suspect that the total of approximate equivalent to £119,426,532.82 GBP sterling to be, either in whole or in part, recoverable property."

45.

On 3 December 2019 the NCA issued a press statement announcing that it had agreed a £190 million settlement as a result of its investigation into Mr Malik. The settlement included a UK property valued at approximately £50 million and all the funds in the frozen accounts. The NCA announced that the assets would be returned to the State of Pakistan. The settlement was underpinned by a "Framework Agreement" dated 6 November 2019 made between the NCA and Mr Ali. It identified that the monies which had been the subject of the settlement would be paid towards the Rs 460 billion Bahria Town were ordered to pay by the Supreme Court of Pakistan in its judgment dated 21 March 2019. As a result of this agreement the AFOs were subsequently set aside by agreement.

### **The Tribunal judgment**

46.

The original grounds of challenge in the judicial review proceedings were considered. At [29] Upper Tribunal Judge Kebede ("the judge") stated that the applicants' counsel "accepted that the second ground added nothing to the first ground and he therefore focussed on the first ground, which was a rationality challenge." At [38] the judge stated that she had "no hesitation in accepting ... that the respondent was entitled to find that the burden had been met on the evidence produced and had indeed met that burden." At [39] the judge observed that the applicants' counsel's "... attempt to diminish the weight to be accorded to the various individual documents and proceedings did not go anywhere near meeting the high threshold for an irrationality challenge."

47.

In considering the evidence relied upon by the respondent, the judge found that the Supreme Court judgment of 4 May 2018 was "a majority decision reached by two senior judges in accordance with legal procedures in a civilised state". She saw no reason why Khan J's judgment should not be accorded weight. She noted that there was no objection in the judicial review grounds to the judgment of Arab J, who not only concurred with Khan J but who gave an independent judgment in "strong and scathing terms", inferring that there had been some "backdoor arrangements" between Bahria Town and the MDA. The judge did not accept that the two Supreme Court judgments were based simply on

constitutional issues of procedural irregularities and questions on competing land valuations, they provided detailed records of backhanded dealings which deprived the public of a substantial housing development scheme and instead produced huge profits for Bahria Town [41].

48.

As to the order of the Implementation Bench of the Supreme Court, the judge at [45] noted that the agreement to pay money:

“... was reached, and the transfer of the land to Bahria Town permitted to remain, only because of the significant third party interests which had already been established in light of the commencement of extensive development work by Bahria Town prior to the proceedings. ... that demonstrated that the land transfer was not considered purely as a procedural breach by Bahria Town, but that the payment which Bahria Town was to make to the government was to rectify the position that the public had been deprived by them of over £2 Billion worth of land.”

49.

In considering the JIT report and the NAB Reference, at [46] the judge noted that:

“... the JIT report followed an extremely large-scale investigation into hundreds of companies and that it was clearly linked to the Karachi Land case and the Supreme Court judgment as it included an investigation into Bahria Town in which both applicants were involved. Bahria Town is mentioned throughout the JIT report, which provided details of how the company conducted itself with officials in relation to corrupt payments made for the acquisition of land. These were not simple accusations, but were detailed allegations made on the basis of in-depth analyses of payments into fake bank accounts for the purposes of kickbacks made for the acquisition of state land. The NAB Reference, being based upon the JIT report, was of equal relevance to both applicants.”

50.

At [47] the judge considered the NCA agreement and concluded that:

“... the respondent was clearly entitled to have regard to the fact that the freezing orders were only set aside because the applicants agreed to pay a substantial amount of money, to the amount of £190 Million, to an account held by the Supreme Court of Pakistan in part-payment of the amount ordered in the Supreme Court judgment. Further ... the payment of the sum of money to the Government of Pakistan with the applicants’ agreement undermines their previous assertion that they would robustly resist the freezing of their assets and that the assertion that the Supreme Court judgment was tainted by the animus of Justice Khan.”

51.

At [48] the judge concluded:

“In all the circumstances it seems to me that there is an overwhelming case to be made for saying that the respondent was entitled to reach the conclusion that she did and that there was nothing irrational in her doing so. As accepted by Mr Middleton, the immigration rules and relevant policy do not require there to be any criminal findings or convictions in order for the respondent to conclude that the applicants’ conduct made it undesirable for them to return to the UK, for the purposes of paragraph V.3.3 of Appendix V. It seems to me that the majority judgment of the Supreme Court of Pakistan is in itself ‘serious and cogent evidence’ justifying a finding of misconduct by the applicants, but taken together with the compelling results of the detailed investigation by the JIT and the action taken against the applicants, together with the applicants’ agreement to pay the significant amount of

money that they did to settle the case against them, albeit absent any criminal charges or findings of criminal liability, unequivocally justified a decision by the respondent to exclude them from the UK under paragraph V.3.3. There was accordingly nothing irrational about the respondent's decision to cancel the applicants' visas."

### **Grounds of appeal**

(1)

The judge wrongly rejected the appellants' challenge to the respondent's reliance on the Supreme Court judgment in concluding that the appellants were involved in corruption;

(2)

The Tribunal wrongly rejected the appellants' challenge to the respondent's approach to the Supreme Court Implementation Bench's order;

(3)

The Tribunal wrongly rejected the appellants' challenge to the respondent's approach to the JIT Report in the Fake Accounts Case;

(4)

The Tribunal wrongly rejected the appellants' challenge to the respondent's approach to the NAB's interim reference;

(5)

The Tribunal wrongly rejected the appellants' challenge to the respondent's approach to the account freezing proceedings;

(6)

The Tribunal wrongly rejected the appellants' challenge to the respondent's cumulative reliance on weak strands of evidence;

(7)

The Tribunal wrongly rejected the appellants' challenge to the respondent's failure to acknowledge the differences in the evidence against the appellants.

### **The appellants' case**

52.

In making a non-conductive decision it is accepted the respondent has a broad discretion but that the discretion is narrow in respect of matters of fact. In summary, the rationality challenge is that the decision-maker failed to take into account relevant considerations e.g. the content and implication of Baqar J's dissenting opinion in the judgment of the Supreme Court and the fact that the JIT report is said to be superseded by the NAB Reference. Further, the decision-maker took into account irrelevant considerations such as the NCA's reliance on the same material emanating from Pakistan and Bahria Town's agreement to pay "a vast sum of money as consideration for a vast amount of land, valued at market price".

53.

The decision-maker and the Tribunal wrongly concluded that the majority opinions provided serious and/or cogent evidence of the appellants' corruption. Reliance is placed upon the dissenting judgment of Baqar J which is said to amount to a complete vindication of Bahria Town and reveals no prima facie evidence of bad faith. This judgment demonstrates there were legitimate differences as to the

interpretation of evidence, in particular as to whether there had been a gross and deliberate undervaluation of the land obtained by Bahria Town and whether the land had been developed for a public purpose. The majority did not make findings of wrongdoing against the appellants or their company, it being accepted that such findings were outwith the remit of the proceedings. Further, what is described as the intemperate language used by Khan J was of itself a reason to treat his judgment with caution.

54.

Before the Tribunal the appellants adduced a report from a retired Supreme Court judge, Khokhar J, which addressed the Supreme Court's powers and the limits of its competence in constitutional proceedings. It placed the JIT report and NAB Reference in the context of Pakistan's legal system and addressed the presumption of innocence issues under the laws of Pakistan. Khokhar J confirmed that Baqar J's analysis was sustainable.

55.

The order of the Implementation Bench is said to undermine any inference of corruption as its terms, which were offered by the appellants and agreed by the court, indicated that the appellants were merely agreeing to pay an appropriate consideration for the new land. It was not intended to be a penalty, a fact which was irrationally overlooked by the decision-maker, as was the fact that the Supreme Court was not seeking to take forward any criminal proceedings or investigation into the Karachi Land Case providing the payment schedule was adhered to. As to the decision-maker's view that the inference of corruption was supported by the requirement for the appellants to provide personal guarantees in support of Bahria Town's reacquisition of the land, the appellants' expert evidence was to the effect that seeking guarantees was standard practice in civil transactions of this magnitude.

56.

The allegations contained in the JIT report and the NAB Reference are in respect of a separate matter, the Fake Account Case. The JIT report is no more than a prosecutorial document containing untried and untested allegations. It makes no mention of Mr Ali, thus it cannot be relied upon to conclude he was guilty of alleged offences. The investigations were secondary to the NAB Reference. The allegation taken forward by the NAB was not related to the Karachi Land Case. Mr Malik was not named as an accused in the NAB Reference. It was perverse of the decision-maker to proceed on the basis of guilt by association or guilty knowledge when the JIT and the NAB were clear in their approach in respect of identified individuals.

57.

The NCA's reliance on the allegations in Pakistan in the "Grounds of Suspicion" did not make those allegations any more true or reliable. It was irrational of the respondent to treat the NCA's reliance on those allegations as additional evidence of corruption. The ruling of the Tribunal that the respondent was entitled to rely on the account holder's agreement to pay Rs 190 million as part payment under the Supreme Court Implementation Bench's order as implicitly representing evidence that the appellants were corrupt was wrong. Bahria Town agreed to pay a figure in consideration for the new town land, there was no reason for Mr Ali and the other account holders not to agree to use funds they held in the UK to pay off part of that debt.

58.

The individual strands of evidence relied upon by the decision-maker amounted, at most, to weak evidence of corruption. Disparate strands of weak evidence cannot be rationally treated as reinforcing

each other so as to produce strong and reliable evidence of corruption. The appellants have not been charged or tried in relation to either the Karachi Land Case or the Fake Accounts Case. Bahria Town has been allowed to keep the land they obtained in the Karachi Land Case. Neither Mr Malik nor Mr Ali has any criminal convictions in any jurisdiction.

### **Respondent's submissions**

59.

The test which the decision-maker was required to apply in the case of each appellant was a broad one, it did not have to represent a finding that either appellant was guilty of criminal conduct nor that either appellant was guilty of a specified offence. The decisions were not required to be lengthy judgments. The role of the decision-maker was to identify the correct issues, correctly apply the legal standard to the decision and identify the key material taken into account so that the recipient of the decision could understand why it had been taken.

#### **Supreme Court judgments**

60.

At [2] to [6] of his judgment, Arab J identified the essence of the case. Having analysed the facts and financial implications he was properly able to draw an inference as to backdoor understanding and complicity. The identified activity was flagrantly contrary to the public interest and disadvantaged the public and the poor. The judges in the Supreme Court were local judges and thus well placed to possess knowledge of land prices. The findings made and inferences drawn by Khan and Arab JJ were based upon their analysis of the evidence of the activities of institutions and companies in respect of specific areas of land. That being so, the respondent was entitled to place substantial weight on the majority judgments which raised an issue of serious concern. Account was taken of the dissenting judgment but of itself it was insufficient to undermine the weight of the majority judgments.

61.

The JIT report sets out the extensive investigations undertaken in respect of 32 fake accounts and the detailed evidence underpinning its conclusions. It is a prosecutorial document which contains untested allegations, but that does not preclude the decision-maker from taking this material into account in making the decision. The Tribunal understood the nature of the JIT report and was entitled to take note of the fact that it does not contain simple accusations but contains "detailed allegations made on the basis of in-depth analyses of payments into fake bank accounts for the purposes of kickbacks made for the acquisition of state land" [46].

62.

The NAB Reference names Mr Ali and not Mr Malik, however Bahria Town is named as an accused in the Reference, thus it is relevant to both appellants. It can be described as a prosecutorial document but that does not preclude the respondent from taking the material into account. It is notable that having considered the matters which are the subject of the JIT report, the NAB considered it justified to file its Reference with the Accountability Court.

63.

As to the NCA application for AFOs, the respondent relies upon the facts contained in the Grounds for Suspicion. The settlement in those proceedings was underpinned by a Framework Agreement dated 6 November 2019 made between the NCA and Mr Ali. The funds which were frozen do not appear to be held to the order of Bahria Town. It follows that the structure of the settlement draws a direct connection between the appellants, their family and the relevant Supreme Court judgments in relation

to Bahria Town as the decision letter states. The AFOs were set aside as a result of an agreement whereby the entirety of the funds which were subject to the AFOs would be returned to the state of Pakistan. The decision letters disclose no error on the part of the decision-maker regarding the nature of the proceedings, the structure of the settlement or the effect of the same. Likewise the Tribunal's assessment of the relevance of the NCA proceedings discloses no error.

64.

The Tribunal properly considered whether the evidence relied upon by the respondent when read together and considered as a whole provided a lawful and rational basis for the conclusion on the balance of probabilities that each appellant had been involved with corruption and financial/commercial misconduct. That was the correct approach for the Tribunal to take. The conclusions are set out at [48] and are conclusions which, on the evidence, the Tribunal was entitled to reach.

65.

The two decision letters are drafted differently in respect of the NAB Reference, it is clear that the decision-maker understood the NAB Reference to name Bahria Town and Mr Ali as accused persons but not Mr Malik. It is also clear that the Tribunal understood the difference in the evidence in relation to each appellant as demonstrated by [43] and [46] of the judgment. Critically, what was relied upon by the decision-maker, unchallenged by the appellants, was the significant association of each appellant with Bahria Town and the conclusion, on the balance of probabilities, that each appellant would have knowledge of Bahria Town's activities.

66.

Having considered all the relevant material the decision-maker made a clear conclusion on the balance of probabilities that both appellants have been involved with corruption and financial/commercial misconduct. There is ample material to support that clear conclusion as the Tribunal properly concluded.

## **Discussion and conclusion**

67.

In approaching the issue of the exclusion of a person from the UK on the ground that it is conducive to the public good due to the individual's conduct, character and associations, a broad discretion is accorded to the decision-maker. In making the decision, the burden of proof is upon the respondent. The civil standard of proof is to be applied with the qualification that the seriousness of the allegation is to be reflected in the quality of the evidence required which is to be subject to critical and anxious scrutiny. As was stated by Richards LJ at [62] of N, in applying the civil standard of proof there is a flexibility which permits consideration of the level and quality of the evidence appropriate to the seriousness of the allegation. For the individuals in the authorities of N, Giri and Balajigari the consequences were that they would be uprooted from their residence in the UK. In the case of each appellant what is contemplated is not removal or expulsion but an inability to visit the UK, a consequence which is of a different nature and degree to that exercised in the cited authorities. It was no part of the appellants' case that the decisions made on behalf of the respondent contain any errors of law in respect of the burden and standard of proof.

68.

Before the decision-maker were the judgments of the Supreme Court of Pakistan dated 4 May 2018 and 21 March 2019, the report of the JIT, the Reference filed by the NAB and the NCA applications for AFOs. In the respective decision letters, the decision-maker acknowledged that Mr Malik is the Chairman of Bahria Town, a company wholly owned and run by himself and members of the family and

that Mr Ali is CEO of the company. Each letter referred to the “high ranking position” in the company which each appellant held. I regard the findings that each appellant had a “significant association” with Bahria Town and that “on the balance of probabilities, you would have had knowledge of the operations of Bahria Town” as being logically and reasonably based upon the totality of the evidence before the decision-maker. In my view there are critical findings linking each appellant to the activities of Bahria Town and, following from that, possessing knowledge of the same.

69.

It is clear from each letter that the decision-maker considered all three judgments of the Supreme Court dated 4 May 2018. The judgments of Khan J and Arab J contain detailed analyses of the facts before the court relating to the Karachi land transactions, the role of Bahria Town, the MDA and the Government of Sindh. The analysis of Arab J at [18] to [24] above is of particular relevance. Judicial findings are made and inferences drawn by local judges following careful consideration of a considerable amount of evidence. The conclusion of Khan J, with which Arab J concurred, was that that Bahria Town, the appellants and/or their associates benefitted financially from the proceeds of illegitimate decisions in respect of the Karachi land. Further, that the identified activity was contrary to the public interest and disadvantaged the public and the poor. Criticism has been levelled at what is said to be the intemperate language of Khan J. In my view, such criticism does not undermine the validity of his findings of fact nor the inferences drawn. The decision-maker did consider the dissenting opinion of Baqar J but did not conclude that the dissenting judgment, of itself, provided a basis for undermining the detail of the factual findings and inferences drawn in the majority judgments. I agree. In my judgment, the decision-maker was entitled to place substantial weight upon the majority judgments and to the issues and concerns contained therein.

70.

There is nothing in the decision letters to indicate that the author of each had any difficulty understanding the judgments of the Supreme Court. The opinion of Khokhar J, a retired Supreme Court judge, who had played no role in the proceedings, and whose report was not before the decision-maker, was properly viewed by the Tribunal as providing no basis which would preclude the respondent from relying on the observations and conclusions formed by a majority of the Supreme Court on the evidence before them.

71.

It was accepted by the decision-maker that the Supreme Court proceedings were not criminal. It was not the role of the Supreme Court to make findings of specific criminal offences. It is accepted that neither appellant has a criminal conviction in Pakistan or the UK.

72.

A consequence of the Supreme Court majority judgments was the establishment of the Implementation Bench, its purpose being to ascertain the price now to be paid by Bahria Town for the state-owned land which it had acquired from MDA. Arab J was a member of the Implementation Bench. It is of note that in those proceedings Bahria Town did not maintain that the sum originally provided in exchange for the land was sufficient.

73.

The striking feature of the Implementation Bench proceedings is the price offered by Bahria Town and accepted by the court for the Karachi land. It is the sum of Rs 460 billion. At the request of this court, the parties jointly sought to identify the original price which Bahria Town paid for the land it had obtained from MDA. This was not a straightforward task and we are grateful for their efforts. The land

was acquired by Bahria Town pursuant to an arrangement whereby it was exchanged for other plots of land. In the judgments of the Supreme Court it is variously recorded that the MDA quantified the value of 7,068 acres of land at Rs 6.12 billion. The entirety of the land totalled 16,896 acres, which was the amount of land identified in the offer made to the Implementation Bench by Bahria Town. This was accepted by the Implementation Bench on the ground that it was about Rs 100 billion more than that which Arab J had considered in his 2018 judgment to be the approximate monetary benefit of the land to MDA, namely Rs 360 billion, had it been transferred to Bahria Town at market value. The increased payment was also judged to reflect the fact that the money would be received by way of deferred instalment payments.

74.

What Bahria Town's offer to the Implementation Bench demonstrates is the gross undervaluation of the land obtained by Bahria Town from MDA. The undervaluation is at one with the analyses of Khan J and in particular Arab J, judges who had knowledge of local land prices. It demonstrates how Bahria Town benefitted financially from the proceeds of illegitimate decisions. The fact that the final price was not described as a penalty adds nothing to the appellants' case.

75.

The order of the Implementation Bench included the provision of guarantees by each of the appellants. I regard the guarantees as representing a direct connection between each of the appellants and the Supreme Court judgment concerning the activities of Bahria Town. The existence of such guarantees was a matter of which the decision-maker could take account.

76.

In September 2018 the Supreme Court appointed the JIT to investigate reports made in 2015 of suspicious transactions involving allegedly fake bank accounts. The JIT report was detailed in respect of specified individuals, companies and bank accounts. It identified fake accounts, payees and beneficiaries and provided evidence of the activities of Bahria Town, their use of artificial joint venture instruments and the steps which were taken to disguise "kickbacks" as legitimate gains. The report went far beyond broad and general allegations of corruption, it was the product of a detailed and thorough investigation. As such the decision-maker was entitled to place significant weight upon the report, in particular as to its findings which were consistent with the findings of the Supreme Court in respect of the land dealings in Karachi. What this report demonstrated was how Bahria Town and individuals within it had operated in order to disguise the way in which monies were being used in transactions.

77.

Arab J, in his judgment dated 4 May 2018 at [4], observed that:

"One cannot imagine that MDA would allow Bahria to invite applications from the general public and enter upon a very vast expanse of land falling within its controlled area starting right from main Super Highway without any **backdoor understanding**." [emphasis added]

In my view, the inference drawn by Arab J is consistent with the JIT finding that:

"... grabbing of State and private land on such a massive scale, by Bahria Town (Malik Riaz) in collusion with the Government of Sindh, could not have been possible without the patronage of the top political leadership controlling the Sindh Government and their personal stakes."

78.



The Supreme Court judgments of Khan J and Arab J identified how the Karachi land transactions came about, the JIT provided details of financial dealings relating to the land and how those involved dealt with the monies. Each complemented the other and represented a pattern of financial misconduct.

79.

I accept that the JIT report was a prosecutorial report but that does not diminish the scope of its investigation, nor the detail and analysis which led to its findings. It was a report which was required to be subjected to critical scrutiny by the decision-maker and it was. The conclusions set out in the decision letters as to the use by Bahria Town of artificial joint venture instruments, the means used to disguise kickbacks, the institutional collusion of government departments in Sindh in favour of Bahria and the link to the land in Karachi, could properly be drawn following scrutiny of this detailed report.

80.

A point taken on behalf of the appellants is that within the JIT report allegations were made against Zain Malik (Mr Malik's son-in-law) and Mr Malik himself but not against Mr Ali. In my judgment, that submission fails to reflect the findings of the JIT in respect of Bahria Town, the company of which Mr Ali was CEO, and the significant association and knowledge of the operations of Bahria Town which the decision-maker properly concluded he possessed. At [173] Bahria Town was identified as the main source of deposits (Rs 10.02 billion) credited into fake accounts.

81.

The JIT findings led to the NAB Reference, it was all part of the same process. The NAB is a statutory body that investigates and prosecutes corruption offences in the Accountability Court. What the Reference demonstrates is that the JIT had provided sufficient evidence to justify the Reference. It is accepted that the land contained in the NAB Reference was not the same land as that contained in the Supreme Court judgment but, in my view, it was the same pattern of conduct by the same company or individuals, albeit different aspects of it.

82.

In the Supreme Court judgment dated 4 May 2018 the court had directed the NAB to commence the investigation against Bahria Town with regard to the Karachi land. In the order of the Implementation Bench dated 21 March 2019 it is recorded that the Bench were subsequently informed that the investigation had been completed, the Reference had been prepared and was ready to be filed in the Accountability Court. In paragraph 7 of the order it was directed that the Reference should not be filed "... for the time being. However, if there is any default in making payments in terms of the aforesaid order or otherwise any other violation in any of the terms and conditions mentioned herein above, NAB shall immediately file said Reference, which shall be proceeded with in accordance with law." Thus, it is clear, that the reason the Reference has not been filed is because there has been no default in respect of the payments ordered by the Implementation Bench.

83.

The appellants seek to limit the effect of the NAB Reference by reason of the fact that it framed accusations of corruption and corrupt practices against Mr Ali but not Mr Malik. This ignores the fact that Bahria Town was named as one of the accused in the Reference. As stated in [67] above, a critical finding made by the decision-maker was the significant association of each appellant with Bahria Town and the conclusion that each appellant would have knowledge of Bahria Town's activities.

84.

I accept that the NCA applications for AFOs relied on the evidence from Pakistan which does not, of itself, add further evidential weight to the judgments or reports from Pakistan. The relevance of the

NCA's proceedings is that identified by the decision-maker in that they provide another link between the Supreme Court judgment against Bahria Town and Mr Ali and Mr Malik. It is also of relevance, as stated by the decision-maker, that the NCA proceedings were voluntarily settled, the settlement was underpinned by a Framework Agreement made between the NCA and Mr Ali. The fact that the AFOs were set aside does not undermine their significance because that was done only as a result of an agreement, the result of which was the entirety of the funds subject to the AFOs would be returned to the State of Pakistan. I do not accept the appellants' contention that the decision letters demonstrate an error on the part of the decision-maker as to the nature of the proceedings, the structure of the settlement or its effect.

85.

Before the decision-maker were separate strands of evidence. The approach which was properly taken by the decision-maker was to consider the totality of the evidence. The Home Office Guidance states: "You must assess if there are cumulative grounds for refusing a person on character, conduct or associations grounds." It was open to the decision-maker to consider the cumulative effect of each strand of evidence and in so doing to draw inferences having regard to the whole of the evidence. The totality principle requires relevant evidence to be examined cumulatively and not piece by piece.

86.

I am satisfied that the cumulative effect of:

i)

the evidence and findings set out in the majority judgments of the Supreme Court in May 2018;

ii)

the significantly increased sum of money paid by Bahria Town for the Karachi land in the 2019 Implementation proceedings; and

iii)

the detail provided in the JIT investigation, which was consistent with the findings of Khan J and Arab J;

of themselves provided evidence of sufficient strength and quality to enable the decision-maker, on the balance of probabilities, to conclude that by reason of each appellant's involvement with corruption and financial/commercial misconduct his exclusion from the UK would be conducive to the public good due to the conduct, character and associations of each appellant. Further, it is clear from the detail of each letter that the evidence had been subject to critical scrutiny by the decision-maker.

87.

The reality of the appellants' challenge is that no Secretary of State could rationally have reached a conclusion on the material before him/her that the test set out in the Immigration Rules was satisfied. In my judgment there was ample material before the decision-maker in the case of each appellant to provide a sound evidential basis for the decisions made in respect of each appellant. I agree with the judge's conclusion at [38] of her judgment that on the evidence the decision-maker was entitled to find that the burden had been met. I also agree with her observation at [39] of his judgment that the appellants' attempts to diminish the weight to be accorded to documents and proceedings "did not go anywhere near meeting the high threshold for an irrationality challenge." It follows, and I so find, that the determination of the Tribunal which scrutinised the same evidence and correctly applied the relevant legal principles is not susceptible to a successful challenge.

88.

Seven grounds of appeal are relied upon by the appellants. Grounds 1 to 5 challenge the decision-maker's reliance on specified pieces of evidence and the Tribunal's refusal to accept the appellants' challenge to the same. For the reasons given, I am satisfied that the decision-maker was entitled to rely on each piece of evidence identified in the decision letters and to give such weight to the evidence as was deemed appropriate. As to ground 6, cumulatively, the separate strands of evidence, in particular the majority judgments of the Supreme Court dated 4 May 2018, the valuation of the land accepted by the Implementation Bench and the JIT report, considered in the context of the "high ranking" role which each appellant played in the activities of the family-owned and managed company Bahria Town, provided ample evidence for the respondent's cancellation decision in respect of each appellant.

89.

The decision letters do recognise different findings in respect of each appellant, that being so, there is no merit in ground of appeal 7.

90.

For the reasons given, and subject to the views of Nugee LJ and Snowden LJ, I would dismiss the appeals of Malik Riaz Hussain and Ahmed Ali Riaz.

**Lord Justice Nugee:**

91.

I entirely agree. I add just a few words on Ground 6. The submission for the appellants was that disparate strands of evidence, not in themselves strong enough to establish corruption, cannot rationally be treated as reinforcing each other to make a sufficiently strong case.

92.

No authority was cited for that proposition. I do not think it is either good sense or good law. It has been said that it is of the essence of a successful case of circumstantial evidence that the whole is stronger than the individual parts (*JSC BTA Bank v Ablyazov* [\[2012\] EWCA Civ 1411](#) at [52] per Rix LJ). That applies in criminal cases where juries are often directed to avoid piecemeal consideration of a circumstantial case (see *ibid*); to allegations of contempt, as in the *Ablyazov* case itself; and in civil cases, such as those involving an allegation of scuttling (see, for example, *The Atlantik Confidence* [\[2016\] EWHC 2412 \(Admlty\)](#)). I see no reason why it does not equally apply to the consideration by the decision maker of involvement in corruption and financial/commercial misconduct, and the decision maker was in my judgment not only entitled, but right, to have regard to the totality of the material before them in reaching a conclusion on that question.

93.

As Nicola Davies LJ has said (paragraph 86 above) the cumulative effect of (i) the majority judgments in the Supreme Court concluding that Bahria Town had acquired public land in Karachi at a gross undervalue; (ii) the agreement by Bahria Town to pay the sum of Rs 460 billion (equivalent to over £2 billion) for the land; and (iii) the evidence in the JIT report to the effect that Bahria Town had made a deposit of Rs 10.02 billion (some £50 million) into fake accounts, linked by the report to the same land in Karachi, together made a sufficiently strong case that Bahria Town was engaged in corrupt practices. It is not necessary to consider whether any one of those strands would have been sufficient by itself, as that is not the question. The question is whether the decision maker was acting rationally in coming to the conclusion that each appellant was involved with corruption and financial/commercial misconduct, having regard to the cumulative effect of all the material taken together.

94.

I agree that the appeal should be dismissed.

**Lord Justice Snowden:**

95.

I agree with both judgments and have nothing further to add.