

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**PRESENT:**

MR. JUSTICE JAWWAD. S. KHAWAJA, HCJ

MR. JUSTICE DOST MUHAMMAD KHAN

MR. JUSTICE QAZI FAEZ ISA

**Suo Moto Case No. 12 of 2015**

*(Regarding unsatisfactory investigation in a case  
FIR No.544/15 under section 420/468 471 PPC  
at PS Defence-A, Lahore)*

**AND**

**CMA NO. 5576 OF 2015**

*(Application of Muhammad Hammad  
Arshad and M/s. Orange Holding (Pvt.)  
Ltd. against DHA*

For the Applicant: Mr. Shahid Hamid, Sr. ASC  
(in CMA 5576/2015)

**On Court's notice:** Mr. Amir Rehman, Addl. AGP  
Mr. Mr. Naveed Rasool Mirza, AG Punjab  
Mr. Ehtasham Qadir Shah, PG  
Ch. Zubair Farooq, Addl. PG  
Mr. Muhammad Mumtaz DSP

For DHA: Mr. Asim Hafeez, ASC  
Mr. M. S. Khattak, AOR

For Adnan & Usman: Mr. Mehmood A. Sheikh, ASC  
Mr. Siddique Khan Baloch, AOR

For the Complainant: Mr. Zafar Hussain Chaudhry, ASC  
Qari Abdul Rasheed, AOR

Date of hearing: 01.09.2015

**ORDER**

**Jawwad S. Khawaja, CJ.** The previous orders in this case set out the reasons why this matter has been taken up in our jurisdiction under Article 184(3) of the Constitution. Today we have heard learned counsel representing the parties mentioned above.

2. It is admitted by the learned counsel for the Defence Housing Authority ("DHA"), Lahore that DHA took over possession of land measuring 156.05 kanals knowing fully well that the persons from whom possession was taken *inter-alia* in lieu of Rs.92,00,000/- (ninety-two lakhs

rupees) did not have title and that the said persons were embroiled in litigation with a lady, namely, Nusrat Jahan. The said land in question, however, is statedly in an area known as Phase-VII, DHA, Lahore. According to learned counsel DHA does takes over possession of land against cash payment even where title is not with the person who delivers possession or even when title is disputed. An advertisement has been placed before us showing that plots in Phase-VII are being allotted. However, there is no disclosure at all that DHA has no title in at least the aforesaid land in Phase VII or the said land is under litigation. Plots are being advertised for allotment and people are making payments to DHA notwithstanding this situation.

3. The learned Prosecutor General, Punjab has also informed us that criminal investigation is being undertaken in case FIR No. 544/2015 dated 12.5.2015 registered at PS Defence-A, Lahore to ascertain possible culpability of those who may be involved. The Investigating Officer has issued a questionnaire containing 9 questions addressed to the DHA. The questions of Investigating Officers are as under:

1"	یہ کہ DHA کا رقبہ خریدنے یا لینے کا قانونی طور پر کیا طریقہ کار ہے معہ قانونی حوالہ جات جواب بھیجوا یا جائے۔
2	یہ کہ ڈاکٹر عدنان عثمان وغیرہ نے مسماۃ نصرت جہاں مالک کی غیر موجودگی میں انتقال نمبر 142 مورخہ 10.04.1972 درج کرایا جو مورخہ 21.12.72 کو تحصیلدار صاحب نے نامنظور فرماتے ہوئے خارج کر دیا۔ محکمہ مال کے ریکارڈ میں 1964-65 سے 2014 تک مسماۃ نصرت جہاں مالک رہی ہے۔ آیا کہ اصل مالک نصرت جہاں کی بجائے ڈاکٹر عدنان عثمان سے رقبہ کیسے خریدا اور کتنی رقم ادا کی۔
3	ڈاکٹر عدنان عثمان وغیرہ نے مورخہ 19.3.2014 دالت دیوانی میں دعویٰ دائر کر کے حکم امتناعی حاصل کیا جس کا پنواری نے ریٹ نمبر 225 مورخہ 02.04.2014 کو اندراج کیا۔ STAY کے دوران کوئی فریق بھی رقبہ نہ تو فروخت کر سکتا ہے نہ ہی خرید سکتا ہے DHA نے STAY کے دوران رقبہ کیسے خریدا اور اس کی حیثیت تبدیل کر کے سڑکیں تعمیر کر دیں وضاحت فرمائی جائے۔
4	مسمیٰ ڈاکٹر عدنان عثمان وغیرہ نے جو قبضہ کی بابت نقل گرداوری آپ کو پیش کی اس میں مالکہ نصرت جہاں خود کا رشتہ درج ہے اس نقل رجسٹر گرداوری پر خود کاشت کاٹ کر ڈاکٹر عدنان عثمان ولد عثمان تحریر کیا گیا جو کہ جعل سازی سے تبدیل کی گئی۔ DHA ایک عسکری ادارہ ہے اس نے اس جعل سازی کا نوٹس کیوں نہ لیا۔ ڈاکٹر عدنان عثمان کے خلاف قانونی کاروائی کی بجائے رقبہ خود کرید لیا وضاحت فرمائی جائے۔
5	DHA نے ڈاکٹر عدنان عثمان سے وارثان کی فہرست حاصل کی جبکہ محکمہ مال کے ریکارڈ کے مطابق وہ رقبہ 156 کنال 5 مرلہ کے مالک نہ تھے ان کو کیوں اور کیسے

	Accommodate کیا گیا- وضاحت فرمائی جائے۔
6	DHA کی طرف سے مسماۃ نصرت جہاں کے رقبہ کی بابت پبلک نوٹس جاری کیا گیا کہ مسماۃ مسماۃ نصرت جہاں بیگم اپنا رقبہ فروخت کرنا چاہتی ہے کسی کو اعتراض ہو تو رابطہ کریں مگر بددیانتی سے مسماۃ نصرت جہاں کے والد کا نام نذر حسین کے بجائے وزیر حسین تحریر کیا گیا- وضاحت فرمائی جائے۔
7	رقبہ 156 کنال 5 مرلے مالک ڈاکٹر عدنان عثمان سے بزرگ سید اعتزاز حسین لیفٹیننٹ کرنل (ر) بشارت علی رانا نے قبضہ حاصل کیا جب کہ ڈاکٹر عدنان عثمان مالک نہ تھا جملہ کاغذات بیان حلفی وغیرہ میں مالک کیوں تحریر کیا گیا وضاحت کریں۔
8	ڈاکٹر عدنان عثمان سید اعتزاز حسین کو رقم بزرگ چیک ادا کی گئی تصویریں بنائی گئیں۔ استدعا ہے کہ کلر تصویریں، کلر پرنٹ چیک اور دیگر ثبوت ہائے دئیے جائیں اور بوقت حوالگی اصلی دستخط اور اصلی بیان حلفی پولیس کئیے جائیں تا کہ دستخط کی بابت فرانزک سائنس لیبارٹری سے تصدیق کروا کر آپ کو واپس کیے جائیں۔ جملہ ثبوت تصدیق کر کے فراہم کیے جائیں۔
9	لیفٹیننٹ کرنل (ر) شاہد حیات سیکٹری DHA، لیفٹیننٹ کرنل (ر) محمد صادق خان ADL، لیفٹیننٹ کرنل (ر) بشارت علی رانا، لیفٹیننٹ کرنل (ر) شیخ خالد مسعود- ASO محمد یوسف، پٹواری محمد بشیر کے کوائف معہ شناختی کارڈ فراہم کیے جائیں اور ان کو ہدایت کی جائے کہ وہ اپنا موقف پیش کریں جن کا موقف شامل مثل کیا جائے۔

The answers to the above questions from the DHA are as under:

1. DHA stance is as under:-
  - a. DHA acquires land or possessor rights through contractual arrangements and law permits such rights under the transfer of Property Act. Even, rights in the property which are contingent and subject to happening of a condition are recognized under the Transfer of Property Act.
  - b. DHA has only acquired possession of the area as it falls within the planned area of DHA Phase-VII. DHA has never claimed acquisition of ownership. No Sale Deed has been executed just possession money has been given. The significance of possession has been acknowledged under section 53-A of the Transfer of Property Act.
  - c. DHA cannot determine the legality or genuineness of any revenue document, if it's interpolated or changed it is for the court to declare it void. Dr Usman has filed a suit in 2004 and claimed rights in the property, wherein a stay has been granted. If a stay has been granted it confirms existence of rights in the property. The question of cancellation of mutation is subject to the determination of the litigation. A reference is made to the principle of Lis Pendens.
  - d. That the legal heirs of Mohammad Usman deceased claimed ownership on the basis of Mutation No.142 and possession on the basis of the copies of record of Khasra Girdawari. That factum of possession / ownership was

apparently verified in the judicial proceedings through the appointment of local commission, appointed to verify certain facts including the factum of possession of the land. That one of the legal heir of the deceased has also installed / established a factory unit at the portion of the land, which was there when possession was taken by DHA Lahore. An electricity bill reiterated the factum of existence of factory and possession of the legal heirs. The consideration paid by DHA also includes compensation for the factory / construction existed.

- e. It is evident from the documents that DHA has sought possession and not ownership, which is subject to determination. And any expression used inadvertently to refer to ownership doesn't make DHA or Dr Usman owner?
- f. That DHA Lahore paid possession money to Syed Aittaz Hussain son of Syed Ijaz Hussain, who was nominated / appointed by the legal heirs of Mohammad Usman Khan for signing / execution of various documents and to receive payment of Rs.9,285,941/- on their behalf, which was paid vide Cheque No.962952 dated 3<sup>rd</sup> July, 2007.
- g. DHA is interested to get some right in the land to avoid exploitation at later stage. Upon determination of the ownership land would be acquired through execution of sale deed and payment of compensation."

4. We may note that in the case titled Hamid Mir v. Federation of Pakistan (2013 SCMR 1880) we had held that after the eighteenth amendment and the changes brought about in Articles 169 to 171 of the Constitution it is now the responsibility of the Auditor General of Pakistan to audit of the accounts of the Federal and of the Provincial Governments and the accounts of any authority or body established by, or under the control of the Federal or a Provincial Government. Such audit is to be conducted by the Auditor-General, who shall determine the extent and nature of such audit. Although in terms of our aforesaid judgment Hamid Mir v. Federation of Pakistan (2013 SCMR 1880) it is for the Auditor General to audit the accounts of DHA which has been established by the Federal Government by the Chief Executive's Order of 2002, we were

informed that no audit by the Auditor-General has taken place and DHA is claiming immunity from audit by the Auditor General.

5. The learned Prosecutor General also stated before us that the civil court which was dealing with litigation relating to the above referred land measuring 156.05 kanals has passed an order of status-quo on 2.4.2004. Notwithstanding this situation the DHA in 2006 proceeded to take possession of the said land by payment of a sum of Rs.92 lakhs to persons who were in possession of the same. On a question posed by the Court, it became apparent that there is in fact no transfer of title in favour of DHA and there is no written agreement whereunder the aforesaid amount of Rs.92 lakhs has been paid to the persons from whom possession has purportedly been taken by DHA. From our hearing today it appears that this is not an isolated incident involving DHA.

6. Mr. Shahid Hamid, ASC has drawn our attention to the fact that DHA Lahore started as the Lahore Cantt. Cooperative Housing Society in 1975 having been incorporated as such under the Cooperative Societies Act 1975. It retained that status until 1999 when in September of that year the Defence Housing Authority Lahore Ordinance was promulgated by the Government of the Punjab. Thereafter in 2002 Chief Executive's Order No.26 of 2002 was passed. *Prima facie* there appear to be serious constitutional and legal issues as to the vires of these instruments. Consequently there are a number of issues which arise under the Constitution including questions as to excessive and untrammelled powers being vested in a body which appears to be a commercial enterprise and which remains unaudited. Consequently, we have been informed that the said body, i.e. DHA has issued Notifications on its own in respect of areas which fall within the domain/jurisdiction of the Province and of local governments. The said Notifications include provisions whereby penal

consequences are imposed on individuals for violating the instructions issued by this private organization, namely, DHA. Mr. Shahid Hamid also pointed out that according to his understanding the fundamental rights given in Articles 23 and 24 of the Constitution have also been violated by the aforesaid Notification. The notification and the map showing notified areas have been submitted in Court which have been placed on record.

7. While we have to consider and decide the issues as to vires and constitutionality of the aforesaid instruments, i.e. the DHA Ordinance 1999 and the Chief Executive's Order 26 of 2002, it is also necessary to take note of the matters which relate to 156.05 kanals of land mentioned above and vast tracts of other areas included in the aforesaid notification which have neither been acquired or taken on lease by DHA. We may also record that the Government of Punjab also appears to be opposing the expansionist projects of DHA Lahore. Para 9 of the Summary made for the Chief Minister Punjab on 4.2.2011 is reproduced as under:

"9. After examining the legal and factual position, the committee was of the view that the DHA has notified certain area as "controlled area" beyond the 'specified area'. The notification travels beyond the jurisdiction given by law to the DHA. Hence, it is ultra vires the Order and is of no legal effect. The committee, therefore, proposed that the Government of the Punjab may, in the first place, make a reference, duly vetted by the Lahore Department, asking DHA to review this notification and earlier notifications, if any, which travel beyond the jurisdiction granted to it by the Defence Housing Authority Order 2002.

10. The Chief Minister, Punjab may approve the proposal contained in para-9/ante please.

Sd/- 4.2.2011  
(SUHAIL AAMIR)  
SECRETARY, HUD 7 PHED /  
SECRETARY OF THE COMMITTEE

ADDL:CHIEF SECRETARY/  
CHAIRMAN OF THE COMMITTEE: Sd/- 4.2.2011

CHIEF SECRETARY

Sd/- 5.2.2011

CHIEF MINISTER"

8. In view of the above we had also asked the learned Advocate General Punjab to state his position. He requests for some time. Therefore, we would like to issue notice to the learned Advocate General Punjab and the learned Attorney General for Pakistan under section XXVII-A CPC to assist us in determining the above issues. Notice shall also issue to the Auditor-General of Pakistan and the Federal and Provincial Governments.

9. Mr. Asim Hafeez learned counsel for DHA states that by virtue of sections 2 (j) and (p) of the Chief Executive's Order 26 of 2002, the area which has been shown on the map coloured yellow, even according to him has not been acquired or taken on lease by DHA and as such it cannot be declared as a specified area. The aforesaid provisions are reproduced below:

- (j) *"Controlled area" means an area notified as such by the Authority;*
- (p) *"specified area" means all land acquired by or leased to the Authority in any manner before the commencement of this Order and includes any land that may be acquired by, or leased to the Authority after such commencement;"*

Mr. Asim Hafeez has also acknowledged that according to the Statute the 'controlled area' referred to in section 2(j) would be only such area, consequently the notification dated 5<sup>th</sup> November 2009 to the extent of the areas which have not been acquired outright by DHA cannot be allowed to stand even if the vires of the Chief Executive's Order 2002 is for the time being not considered. We were, therefore, surprised that infrastructure facilities such as roads have already been made and plotting has been undertaken for sale/balloting despite absence of the title. The application of the notification for such areas is, therefore admittedly illegal.

10. Let this case be fixed for hearing on Monday, i.e. 7<sup>th</sup> September 2015. We have been assured by learned counsel for DHA that before the next date, appropriate advertisements shall be issued to forewarn the general public as to the above matter. We also direct that land which is included in larger tracts and in joint *khatas* in which title has not come to vest with DHA, shall not be sold or advertised for sale.

Chief Justice

Judge

Judge

Islamabad, the  
01<sup>st</sup> September, 2015  
(Zulfiqar)