

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

Civil Appeal No.800 of 2011

(On appeal from the judgment dated 24.10.2007 passed by the Lahore High Court, Rawalpindi Bench in Civil Revisions No. 420/2006 and 430/2006)

Mst. Yawar Azhar Waheed (decd.) thr. LRs.

... Appellant

VERSUS

Khalid Hussain etc.

... Respondents

For the appellant: Ch. Abdus Sattar, ASC
Asst: by Kh. Azhar Rashid, ASC
Mr. M.S. Khattak, AOR (absent)

For R-No.4: Sardar Muhammad Aslam, ASC
Ch. Akhtar Ali, AOR

For R-No.5: Publication—N.R.

Respondent No.6: N.R.

Date of hearing: 24.10.2017

JUDGMENT

DOST MUHAMMAD KHAN, J.-

This appeal with the leave of the Court dated 5.8.2011 has been filed against the judgment and decree of the Lahore High Court, Rawalpindi Bench dated 24.10.2007 in Civil Revisions No.420 and 430 of 2006.

2. The brief description of the controversy is, that the respondents filed a suit for permanent injunction against the appellant

(now dead), represented by her LRs. with the plea that respondents/plaintiffs No.1 & 2 were owners in possession of House No.50 Harley Street, Rawalpindi Cantt., while other respondents were owners in possession of residential houses No.53, 54-A and 50-A respectively.

3. It is further averred in the plaint that plot No.16-B was transferred in favour of one Major Ishtiaq-ur-Rehman Khan, who sold the same through registered sale deed No.148, book No.1, volume No.163 (at page 103), registered with Sub-Registrar, Rawalpindi on 17.1.1998 to the appellant. They further alleged that under the law and rules and the condition of original transfer letter issued by the Cantonment Board, Rawalpindi to the said Major Ishtiaq-ur-Rehman was to build a residential house on the plot however, after purchase of the plot through registered deed measuring 3-k, 6-M and 44 Sq.ft., situated in Harley Street, Housing Scheme, Rawalpindi Cantt, the condition imposed was intriguingly deleted without approval of the competent authority.

4. Subsequently erection of commercial building was planned by the appellants on the plot, which was re-numbered 54 and in blatant violation and utter disregard of Cantonment Land Administration Rules, 1937 framed under the Cantonment Board Act, 1924 [hereinafter referred to as "the Act"] and also section 179 and other relevant provisions of the Act *ibid*, the Board granted approval to the proposed erection of commercial building for running a school.

5. Keeping in view the registered covenant the conversion of the plot from residential to commercial was in violation of the master plan and the rules, therefore, the suit was instituted in the Court of Civil Judge, Muhammad Iqbal Haral, which was dismissed on 2.12.2003.

Aggrieved by that, respondents filed appeal before the learned District Judge, who accepted the same on 24.12.2003 and remanded the case to the Trial Court after recasting certain issues with direction to decide it afresh however, the High Court in Civil Revision Petition set aside the order vide judgment dated 28.10.2004 and sent the case back to the District Appeal Court for decision on merits. After remand, the appeal was allowed on 15.4.2006.

6. This time the appellant feeling aggrieved, filed a revision petition mentioned above while cross revision petition was also filed by the respondents with regard to certain observations of the District Appeal Court. The revision petition filed by the appellant was dismissed through consolidated judgment impugned herein and the suit of the respondents was decreed.

7. From the evidence on record, the provision of the Act, the Cantonment Land Administration Rules, 1937 and the master plan, prepared initially are the deciding factors, therefore, in light of that we have to proceed and see whether those were violated or not?

8. The Cantonment Boards like any Local Government, Provincial Government or the Federal Government are bound by the law, rules, bylaws and the Constitution as well as the State obligation being signatory to the conventions signed by it and by other members of the UNO, therefore, the Cantonment Board under no circumstance could be an exception to that.

9. Under the provision of section 179 of the Act and the Administration of Cantonment Property Rules and more particularly the master plan, initially prepared and published for general information of

the public, containing all the facilities, required under the law and the rules for the residential areas, for which the Cantonment Housing Scheme was established, separate area was allotted for parks, public lavatories, disposal of refuse, animal slaughtering houses and allied facilities besides establishment of educational institutions by the Cantonment Board, to be run and managed by it, however, with the passage of time, the cursing greed to generate fund throwing the fate of the residents of the posh area to dusty wind, it allowed at random the commercialization of the residential area as is evident from the parawise comments without any hesitation to think and take a pause, submitted by the Cantonment Board in this case. The way it has acted in support of the appellant's case extending undue favour in violation of law and rules to the prejudice of the comfort and welfare of the residents of the residential area, it threw weight behind the appellants, to perpetuate illegality, an act to be deprecated and to be condemned because Cantonment Board has become a shopping spree by commercialization of the residential area seriously violating the master plan, the law, rules and the Constitution. This approach of the Cantonment Board on no premises, much less legal one can be approved.

10. If the entire scheme of the 'Act' is seen, extra care has been taken of the residents of each Cantonment, even for every facility to be provided and violation thereof has been made punishable under the law to ensure the peaceful, calm and healthy living atmosphere for the residents however, each and every Cantonment in violation of its statutory duty and constitutional obligation with a greed to generate fund is rapidly converting the residential areas into commercial one, which is absolutely illegal being in blatant violation of the law and also

against the master plan, initially designed and made public for that purpose.

11. Any housing scheme by the Cantonment Board when is shown in the master plan with all necessary facilities to be provided like parks, playgrounds, public drinking water facilities, filtration of water for drinking purposes and establishment of its own educational institutions, the public was attracted, particularly, the officers from the Army and other Forces to purchase the plot so that they might live a honourable life with dignity and peace of mind.

12. In the instant case, the plot was initially allotted to Major Ishtiaq-ur-Rehman with a condition squarely mentioned in the allotment letter that it shall be used only for residential purpose and no other purpose however, this condition was deleted from the registered sale deed through which the plot was purchased by the appellants' predecessor-in-interest, namely Mst. Yawar Azhar Waheed (deceased).

13. It is shocking that Cantonment Board approved the erection of new building for commercial purposes i.e. to run a school with hundreds of children, thus, conveniently ignored the initial condition imposed by itself that the plot shall not be used for any other purpose except residential house. The sanction was accorded blind-foldedly through third degree tactics without the sanction of law.

14. Once the master plan is notified and it is accepted by the purchaser of the plot and the Board accepts the offer of purchaser and allots the plot, thereafter, the Cantonment Board is left with no authority to bring changes in the master plan, designed for the housing scheme

unilaterally because a binding contract came into existence in such eventuality.

15. Under the provision of the Act, even if a residential building is found overcrowded, the Board has the authority to issue a notice to the owner to reduce the crowd or to face the penalty.

16. Right from the provisions of Chapter IX to Chapter XV the scheme of the provisions of the Act is directed to maintain cleanliness, proper sanitation, water supply and to take extra care of public health, security etc. however none of the Cantonment Boards within the country with exception of few, is abiding by this mandatory provision of law as well as the bylaws. The way the Cantonment Board through parawaise comments has illegally supported the cause of the appellant, would show that it is bent upon to violate the law to mint money and to generate funds but through illegal means. The present case is the classic example where the Cantonment Board in parawise comments without any hesitation has mentioned the operation of dozens of other schools and colleges in the area which too is required to be addressed and the Cantonment Board has to take action in this regard against the delinquent officers as to how these were sanctioned and were allowed to operate when it was basic obligation of the Cantonment Board to establish, manage and run its own educational institutions within the Cantonment limits and no private individual is to be permitted to operate and run such institutions.

17. The appellant purchased the plot on the basis of the allotment order, issued to the original owner of the plot by the Cantonment Board and as stated above, there was a strict condition incorporated therein that the plot shall be used for erection of residential

building thereon however, the purpose of use was in blatant violation of law was converted by the Board to commercial house, while approving the building plan, the only motive behind it was to trample the law on the subject for money and financial benefits and for no other purpose.

18. The respondents' suit was fully justified because they are the residents of the same area situated at a little distance. If the school building is put into operation, hundreds of children would be brought in cars and other vehicles, for which there is no parking facility and even for the employees of the school, besides it would create massive pollution emitting carbon monoxide gas on daily basis. Drinking water consumption would increase manifold which is at present not even sufficient to meet the requirements of the residents of the area. Sanitation condition would be worsen because hundreds of children would definitely create multiple problems like pollution, garbage etc. The security of the area would be compromised in view of the prevailing condition in the country and the lives of the residents would be at stake as well.

19. We have gone through the evidence both documentary and oral as well as the law on the subject and the one cited by the High Court in its impugned judgment and we do not see any reason much less plausible to interfere with the well reasoned judgment of the High Court.

Therefore, this appeal is dismissed with costs.

20. Copy of this judgment be sent to the Attorney General for Pakistan and Secretary Defence who shall ensure that all the private educational institutions i.e. schools, colleges, etc. constructed in the Cantonments and all the commercial buildings erected in residential areas of Cantonments throughout Pakistan shall be removed gradually,

having been constructed in violation of the law and rules as well as bylaws and the master plan and their original shape be restored.

21. Periodical reports in this regard be submitted to the Court for our perusal in Chambers, until the process is completed otherwise this Court would be constrained to issue notice to the Secretary Defence, D.G. Cantonments as to why action under the law and rules shall not be taken against them.

JUDGE

JUDGE

Islamabad, the
24th October, 2017
Nisar/*
Approved For Reporting.