

Form No: HCJD/C-121

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

F.A.O. No. 14 of 2018

M/s Al-Safa Golden Co. (Pvt.) Ltd through its Chief Executive Officer.

Versus

Capital Development Authority (CDA), Islamabad through its Chairman.

Appellant's by : Syed Zulfiqar Abbas Naqvi and Mr. Mudassar Hussain Malik, Advocates.

**Respondent's by : Hafiz Arfat Ahmad Ch., Advocate.
Mr. Faisal Naeem, Director Building,
Capital Development Authority.**

Date of Decision : 01.08.2019.

AAMER FAROOQ, J. - This appeal is directed against order dated 30.01.2018, whereby the application for interim relief filed by the appellant was dismissed.

2. The facts, in brief, are that respondent No.1 advertised for auction Plot No.5, measuring 3777.78 sq. yard, (DHS) Markaz F-7, Islamabad. The appellant made a bid, which was accepted and the appellant was declared as a successful bidder. A formal allotment letter was issued in favour of the appellant on 19.05.2010. The referred allotment was subject to certain terms and conditions. Clause 1 of the terms of allotment letter read as follows:-

- 1-a FAR (Floor Area Ratio) 1:5.**
- b. 100% ground coverage is allowed.**
- c. 1 car space @ 500 sq.ft.**
- d. Two basements will be allowed.**
- e. No of storey allowed are ground + four mixed commercial & residential use.**

The appellant applied for sanctioning of the building plan, which was accordingly done, vide letter dated 09.04.2011; under the referred letter the appellant could built a building comprising three basements, ground floor + seven floors and top floor alongwith *Mumty*. Application in the revision of the plan was made, which was approved, vide letter dated 16.11.2012, which provided three basements, ground floor + eight stories. Appellant raised construction and while construction was being carried out on 8th floor, possession of the shops and commercial area was handed over and the building/plaza became operational. On account of various violations of the terms of allotment, the approval/ re-adjustment granted on 16.11.2012 was suspended by Capital Development Authority, which was challenged by way of a petition under Article 199 of the Constitution (Writ Petition No.1458/2015). The referred petition was dismissed by this Court and judgment is reported as "*Messrs Al-Safa Golden Co. (Pvt.) Limited Vs. Capital Development Authority through Chairman and 4 others*" **(2016 CLC 210)**. Respondents on account of continuing violations sealed the premises allotted to the appellant; the referred sealing measure was challenged by way of a suit in the Civil Court alongwith an application for interim relief. The referred application was dismissed and appeal against the

said decision was decided against the appellant. Civil Revision was filed in this Court i.e. Civil Revision No.320 of 2016. In the referred petition a conditional order was passed for de-sealing of the premises, whereby the appellant was to fulfill certain conditions for de-sealing of the same. While the matter is pending in this Court and the suit as well in the Civil Court, respondents cancelled the allotment made in favour of the appellant, vide letter dated 03.01.2018, on account of the fact that there are violations of the building by-laws qua permissible FAR, hence the appellant challenged the cancellation of allotment by way of a civil suit and alongwith the same filed an application for interim relief. The referred application was dismissed by the learned Trial Court, vide the impugned order dated 30.01.2018.

3. Leaned counsel for the appellant, *inter-alia*, contended that the reasons, which prevailed with the learned Trial Court are different from the ones mentioned in the cancellation; that there is no violation of the building rules and the by-laws; that the civil revision is pending in this Court and in the same the conditions laid down by the order of this Court have almost all been complied with; that there is no justification or basis for cancellation of the allotment. Learned counsel for the appellant further contended that investment was brought from Saudi Arabia by the Chief Executive of the appellant's company and the country benefited from the same; that during the pendency of the instant appeal, the respondents have issued

letter for possession, which is totally uncalled for and an injunction against the same has been sought by way of an application (C.M. No.677/2019). It was further contended that even inquiry was conducted by National Accountability Bureau and no violation of the building rules or by-laws was found; even the Chief Executive Officer of the appellant was granted bail by the Hon'ble Supreme Court of Pakistan.

4. Learned counsel for the respondents, *inter-alia*, contended that the appellant have failed to establish the three principles required for obtaining an interim relief namely prima facie case; irreparable loss and balance of convenience. It was also contended that the case built up for granting relief requires recording of evidence and the matter cannot be decided prima facie. It was submitted that the approval of the building plan and its revision was done unauthorized by the employees of Capital Development Authority, hence the same were suspended/recalled. It was also contended that originally allotment provided for two basements as well as ground floor + four stories and permission for construction of seven or eight stories was accorded without lawful authority in connivance with the appellant. It was also submitted that in its present form, the building has three basements, ground floor + eight stories and the FAR is around 1:8.2. Learned counsel placed reliance on the case law reported as "*AKOS GROSZ and 7 others Vs. SAIDULLAH SHAH AND CO. through Chief Executive*" (**2016 YLR Note 113**),

"Sajjad Ahmed Vs. Chairman, Capital Development Authority and others" (2016 CLC 896), "Messrs Al-Meezan Investment Management Company Vs. Pakistan Water and Power Development Authority and 2 others" (2016 CLC 1510), "Al-Tamash Medical Society through Secretary Vs. Dr. Anwar Ye Bin Je and 9 others" (2019 CLC 1).

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The facts, leading to filing of the instant appeal, have been mentioned hereinabove, therefore, need not be reproduced.

7. As stated above, the respondents earlier had suspended the revision in the building plan accorded by the then employees of Capital Development Authority on 16.11.2012, which was the subject matter of the writ titled *"Messrs Al-Safa Golden Co. (Pvt.) Limited Vs. Capital Development Authority through Chairman and 4 others"* (Writ Petition No.1458/2015), which was decided on 29.06.2015, against the appellant and the judgment is reported as **(2016 CLC 210)**. In the referred judgment, this Court observed as follows:-

5. The petitioner was allotted the property vide allotment letter dated 19.05.2010 subject to certain terms & conditions as provided in the allotment letter supra. The approval for construction was granted to the petitioner on 09.04.2011, subject to certain terms & conditions, mentioned in the approval letter. In this regard the relevant clauses are 7, 8, 9

and 11 which are reproduced below for the sake of brevity:

(7) Any construction, in contravention of approval plan, shall be demolished.

(8) Any construction in contravention of prescribed minimum setback shall be demolished without any prior notice from the Authority.

(9) On completion the building, it shall not be occupied without obtaining completion certificate from the Authority.

(11) Any omission in area calculations/services area or in the approved plans will not relieve the owner/architect from any obligation under the Building Zoning Regulation.

6. The petitioner sought revision/readjustment of the permission, for raising additional construction on the 8th floor, which was also granted by the respondents vide letter dated 16.11.2012. Again the same was subject to certain terms and conditions which are reproduced below:

(i) Construction other than the permissible covered area/FAR is not allowed.

(ii) Circulation areas and Utility areas shall not be used as covered areas.

(iii) Charges if any on any account as ascertained by the Authority at later stage shall have to be paid by the Owner/Allottee.

(iv) All other conditions of the approval letter dated 09.04.2011 shall remain same.

(v) In case of breach of any aforesaid conditions the Authority is liable to withdraw the approval.

*7. The plain reading of the revised permission granted by respondents to the petitioner shows that construction other than permissible covered area/FAR was not allowed and circulation areas and utility areas were not to be used as covered areas. Moreover, the petitioner was not to occupy the building without obtaining 'completion certificate' from respondents/Authority and even if in the building plan there was any omission that was not to relieve the petitioner from any obligation provided under Building Zoning Regulations *ibid*. The case of the petitioner is that a vested right has accrued in its favour through grant of approval by*

respondents and the principle of locus poenitentiae shall be applicable. The referred stance/argument is not tenable inasmuch as the approvals granted were subject to certain terms & conditions of Building Zoning Regulations. Even if the approval granted was in violation of Building Zoning Regulations it is the law that has to prevail and the petitioner cannot claim any vested right accrued to it in respect of any violation of the Building Regulations or approval granted to it. In this behalf reliance was placed on case titled "Al-Hajj Raees Ahmed Qureshi vs. Water and Sanitation Agency (WASA)" (2005 YLR 326)."

The findings in the referred judgment attained finality as it was not challenged before any forum. Even otherwise, the bare perusal of the revision in the approved plan showed that one of the conditions was that construction is to be made under the approved FAR and the circulation areas and utility areas are not used as covered areas. There is nothing on record, which establishes the version of the appellant to show prima facie case in its favour and that the construction at the site is within the approved FAR i.e. 1:5. Learned counsel for the appellant argued that eighth floor should be discarded and only seven floors are to be taken into account for calculation of FAR. The said argument is beyond apprehension inasmuch as physically ground + eight floors exist and the FAR is to be calculated accordingly. Even otherwise, the stance of the respondents is that the permissions granted are in violation of the allotment letter. The referred argument has substance inasmuch as the bare perusal of the allotment letter shows that initially the construction that could be raised at site was two basements alongwith ground floor + four storeys, whereas floors No.5, 6, 7 and even 8 are violation of the

terms of the allotment. The question regarding the effect of the referred violation is not a subject matter of the instant appeal inasmuch as the appellant seeks a restraining order against the cancellation letter and / or taking over of the possession by Capital Development Authority. Admittedly, the violations mentioned by Capital Development Authority time and again are in connivance with then employees/officials of Capital Development Authority and in respect thereof a complaint is pending with National Accountability Bureau and the employees of CDA are under investigation. Since the main element for grant of interim relief i.e. prima facie case is not present in favour of the appellant, hence no interference is warranted in the impugned order and / or the act of cancellation of the allotment in favour of the appellant. During the course of proceedings, learned counsel for respondents and Faisal Naeem, Director Bulidng, CDA submitted that status quo shall be maintained provided direction is issued for expeditious disposal of the suit. Learned counsel for appellant, however, insisted that seventh floor be de-sealed as well, to which respondents did not agree.

8. For what has been stated above, the instant appeal is without merit and is accordingly **dismissed**. All pending applications are disposed of accordingly. Learned Trial Court is directed to conclude the trial within three months of this order.

(AAMER FAROOQ)
JUDGE