

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 67 of 2022

Ali Saeed Wahla

Versus

Capital Development Authority through its Chairman, Islamabad and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	23.02.2022	Raja Muhammad Irshad, Advocate for the appellant.

TARIQ MEHMOOD JAHANGIRI, J:

The instant Intra Court Appeal has been filed against Order dated 13.01.2022, passed by learned Single Judge-in-Chambers, whereby writ petition filed by the appellant was dismissed in limine.

02. Brief facts of the case are that the appellant in a writ petition has challenged the cancellation letter No. CDA/DLR/C-16/3619/2017/440 dated 22.08.2017, in respect of plot No. 3619, Sector C-16, Islamabad issued to respondent No. 4 / Malik Tahir

Mehmood, on the grounds that the appellant purchased the plot from respondent No. 4 through sale agreement and before executing the sale agreement in his favour he visited the concerned office of CDA to satisfy himself about the correctness and authenticity of allotment letter, issued to the respondent No. 4 and after completing all legal and codal formalities plot was transferred in the name of appellant in the office of CDA on 26.03.2015. Respondent No. 4, who was the original allottee of said plot, being affectee of Islamabad is an accused person who committed series of acts of fraud and forgery and got allotted the plot in his name which has subsequently been cancelled on the ground that it was allotted fraudulently and no land of respondent No. 4 / Malik Tahir Mehmood was acquired by CDA and he was not affectee of the said area. Writ petition filed by the appellant for challenging the

cancelation letter dated 22.08.2017 was dismissed vide order dated 13.01.2022, hence the instant ICA.

03. Learned counsel for the appellant *inter alia* contends that learned Single Judge-in-Chambers has decided fate of the petition in a slipshod manner and passed a very sketchy order that negates the principles of proper dispensation of justice; cancellation letter of the subject plot was no doubt addressed to the allottee / respondent No. 4 but after issuance of transfer letter to the appellant, subject plot was in ownership of the appellant who has been deprived of his proprietary rights under Article 24 of the Constitution; learned single Judge-in-Chambers has failed to apply his judicial mind to the concept of locus standi and the citation quoted in the impugned order is distinguishable and is not attracted in the facts and circumstances of this case; learned Single Judge-in-Chambers has failed to

adjudicate the proprietary rights vested in the appellant, keeping in view the established canons of administration of justice laid down by the apex Court of the Country and has prayed for setting aside of the impugned order dated 13.01.2022.

04. Arguments advanced by learned counsel for the appellant has been heard and record has been perused with his able assistance.

05. Admittedly, plot No. 3619 Sector C-16 was allotted in the name of respondent No. 4 / Malik Tahir Mehmood being the affectee of village Sarai Kharbouza, Golra Sharif, Islamabad subsequently it revealed that Malik Tahir Mehmood / respondent No. 4 after showing himself as affectee of Village Sarai Kharbouza through fake and bogus ownership of land and with the help of land mafia, on the basis of fake and bogus revenue reports got allotted plot in his name as no land of the respondent

No. 4 / Malik Tahir Mehmood was ever acquired by CDA in Village Sarai Kharbouza and he was not the affectee of the area, hence cancellation letter of the plot was issued on 22.08.2017.

06. Allotments of plots to the affectees of Islamabad are made under Islamabad Land Disposal Regulations, 2005. Section 22 of Islamabad Land Disposal Regulation, 2005 provides as under:

"Appeal.- Any person aggrieved by an order may within 3 Months of such order, appeal to the Board whose decision shall be final".

07. As the appeal is provided, the appellant / allottee (respondent No.4) could challenge the cancellation of allotment of plot allotted against the affectee quota, before the board of CDA within a period of three (03) months according to Section 22 *ibid*. It was held in an identical case titled as **Raja Fida-ur-Rehman and 4 others Vs. Capital Development Authority, Islamabad through Chairman (1996 MLD 1573)**

by a Division Bench of Hon'ble Lahore High Court that intra court appeal is not maintainable, hence, the same was dismissed.

08. Section 3 of the Law Reforms Ordinance provides that *"no appeal shall lie, if the application brought to High Court under Article 199 arises out of "Any Proceedings" in which the law applicable provided at least one appeal or one revision or one review to any Court Tribunal or authority against the "Original Order". Therefore, the instant appeal is hit by the afore-referred provision of Law Reforms Ordinance.*

Reliance is place on the cases titled as

Deputy Commissioner /
Administrator, District Council
Attock and another Vs. Lawrencepur
Woolen Textile Mills Ltd (1999
SCMR 1357), Iqan Ahmed Khurram
Vs. Government of Pakistan and
others (PLD 1980 SC 153), Mst.
Karim Bibi and others Vs. Hussain

Bakhsh and another (PLD 1984 Supreme Court 344), Muhammad Abdullah Vs. Deputy Settlement Commissioner, Centre-I, Lahore (PLD 1985 Supreme Court 107).

09. That the impugned cancellation letter was issued on 22.08.2017, whereas the petitioner has filed the writ petition on 12.01.2022 i.e. after the delay of more than four years, hence the writ petition was badly barred by time and hit by the principle of laches. In a case titled as **Ahmed and 25 others Vs. Ghama and 5 others (2005 SCMR 119)**, it is held by the Hon'ble Supreme Court of Pakistan that:

"There is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition". It is further held that ***"We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108***

days which cannot be ignored without sufficient justification which is badly lacking in this case. The same principle is followed in the **2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514.**

10. The appellant filed first **writ petition No. 3210/2017 titled as Ali Saeed Wahla Vs. Capital Development Authority, etc.** on 20.09.2017, through different counsel with the prayer that the cancellation letter dated 22.08.2017 be declared illegal and unlawful etc. and respondent / CDA be directed to take strict legal action against the respondent's official who are involved in fraud, in accordance with law, which was dismissed vide judgment dated 24.04.2018.

11. Second **writ petition No. 109/2022 titled as Ali Saeed Wahla Vs. Capital Development Authority, etc.** was filed on 12.01.2022, with the prayer that the cancellation letter dated

22.08.2017 be declared without lawful authority and for passing of order for registration of criminal case to carry out discreet investigation for complete justice in the matter, which was dismissed in limine vide impugned order dated 13.01.2022.

12. Both the writ petitions were filed with the same prayer. The appellant has not mentioned any single justification for filing of the second writ petition with the same cause of action, hence the second writ petition was barred by the principle of Resjudicata.

13. As the plot was allotted in favour of respondent No. 4 as an affectee, after verification, it revealed that the allotment has been maneuvered on the basis of false documents and in connivance of concerned revenue officials, the foundation of the allotment was, therefore, found to be illegal and void.

14. It is settled law that when the basic order is without lawful authority

then no superstructure can be built thereon, and if that is the case then such structure also falls on the ground automatically. Reliance is placed on the cases titled as **Muhammad Nadeem Arif and others Vs. Inspector General of Police, Punjab, Lahore and others (2011 SCMR 408), Executive District Officer (Edu), Rawalpindi Vs. Mst. Rizwana Kausar and 4 others (2011 SCMR 1581), Nazir Ahmed Panhwar Vs. Government of Sindh through Chief Secretary, Sindh and others (2005 SCMR 1814), Executive District Officer (Education), Rawalpindi Vs. Muhammad Younas (2007 SCMR 1835) and The Engineering-In-Chief Branch through Ministry of Defence, Rawalpindi and another Vs. Jalaluddin (PLD 1992 SC 207).**

15. ICA can be filed when the impugned judgment of learned Single Judge-in-Chambers is shown to have

been delivered against the provisions of law or a result of misreading, non-reading and same has caused miscarriage of justice or mistakes of law which are liable to be corrected by the Division Bench otherwise.

16. In view of foregoing discussion, instant Intra Court Appeal is not maintainable, hence the same is **dismissed in limine** being meritless with the cost of **Rs. 50,000 (Fifty Thousand only)** to be deposited by the appellant in the Federal Treasury within a period of thirty (30) days and to submit deposit receipt before Additional Registrar (Judicial) of this Court.

(BABAR SATTAR)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-

Approved for reporting.