

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No. 3831 of 2010

Sakhi Muhammad.
Vs
Capital Development Authority, Islamabad through its Chairman and
06 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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13.06.2019.	Mr. Zaheer Bashir Ansari, Advocate for the petitioner. M/s Muhammad Nazir Jawad, Umar Hanif Khichi, Advocates for the respondents/CDA.
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The petitioner, in the instant petition,
has made the following prayer:-

"Under the circumstances, therefore, it is respectfully prayed that the act of respondent No.1 of creating plots for the benefits of the affectees of other villages in village Poona Faqiran may graciously be declared to be illegal resulting out of victimization, discrimination, violation of fundamental rights, to be struck down as such. Respondent No.1 may kindly be directed as they are in the phase of developing existing Abadi of Village Poona Faqiran as a model village the plots so created may be allotted to the original owners/occupants of the built up property situated there. Respondent No.1 may further be directed not to venture upon any such illegal adventure in future.

Any other relief which this Honourable Court deems just and proper may also be awarded."

2. At the very outset, learned counsel for the respondents submitted that on the issue in question, this Court has already rendered judgment in ICA No.206 of 2014, hence the instant petition be disposed of in light thereof.

3. Learned counsel for the petitioner on the contrary, submitted that the issue raised in the instant petition is similar to the one decided by the Hon'ble Supreme Court of Pakistan in case titled as **"Capital Development Authority VS. Muhammad Banarus" (C.P. No. 1150 of 2012)**.

4. Learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The controversy in hand is about creation of plots. The petitioner has sought direction against creation of plots for the benefit of the affectees of other villages in village Poona Faqiran and also has sought direction that the plots created in village Poona Faqiran be earmarked to the affectees of their village. The Hon'ble Supreme Court of Pakistan while dealing with the matter titled **"Capital Development Authority VS. Muhammad Banarus" (C.P. No.1150 of 2012)** vide judgment dated 05.07.2013, observed as follows:-

"We have seen that the learned single Judge of the High Court has decided the case in the following manner:-

"Para-3. Only one plot shall be allotted to one family whose house is vacated. Allotment shall be made to those displaced persons:

(a) Whose houses have been acquired & not evacuated.

- (b) Who have not been given Agriculture land in Colony Districts.
- (c) Who are still residing in old villages.
- (d) Who have not been allotted any residential plots in Islamabad/Rawalpindi.
- (e) Who do not own any residential land or house in Islamabad under any approved scheme or Rawalpindi. And
- (f) Those who have been paid compensation less than Rs. 2500/-.

This Para-3 does not deprive the petitioners of their right to obtain a plot. The word 'affectee' has been defined in Islamabad Displaced Persons Rehabilitation Policy, 1984, as follows:-

"Affectee" means a person or persons whose agricultural land and/or built-up property is acquired under the CDA Ordinance.

Para-4 of the Policy relates to "Affectees" due to acquisition of Built-up property only and para (b) deals with "Affectees" due to acquisition of land or land and built-up property.

- (1) **Where built-up property or land not less than 4 kanals, or land and built -up property is acquired and the acquired area is less than 40 kanals of culturable land but more than 4 kanals the affectee would qualify for allotment of a residential plot in a Sub Urban Centre.**
- (2) **Where land or land and built-up property is acquired and the area acquired is 40 kanals to 100 kanals of culturable land then the effectee would become entitled to consideration for allotment of one agre unit (aaprox: 20 kanals of agricultural land) and a residential plot in an agreville:**
- (3) **Where land acquired is more than 140 kanals of culturable land (with a margin of (==) 5 kanals), the affectee would be considered for the allotment of two agre units and a residential plot in one of the proposed agrevilles.**
- (4) **In case of joint family entitlement on the basis of (1) & (3) above, the affectee family would qualify for allotment of corresponding number of agro units and residential plots in agreville and/or Sub Urban Centre as the case may be.**
- (5) **These affectees who wish to be covered under the old scheme of obtaining land available in Colony Districts, would be issued eligibility certificates according to new entitlement, i.e. if culturable**

land lost in acquisition is 40 kanals or more."

Under this policy, the petitioners are entitled to the allotment of plots according to the categories shown in sub-para 1 to 5 of Para-B. Some departure has been made from the earlier policy in Islamabad Displaced Persons Rehabilitation Policy, 1996, xxx this policy is not applicable to the petitioners. The petitioners had acquired a vested right under the policy letter dated 3.1.1982 and the CDA Rehabilitation Policy, 1984. Under Article 24 of the Islamic Republic of Pakistan, 1973, no person can be deprived of the property save by the authority of law which provides for compensation or specified the principles on and the manner in which the compensation is to be determined and given. The policy letter dated 3.1.1982 and the Rehabilitation Policy provides the guidelines in detail for award of compensation . The petitioners cannot be deprived of the same. The rehabilitation policy has been framed under the CDA Ordinance, 1960, and has the force of law. Reference may be made to PLD 1975 Lahore 445.

4. For what has been stated above, the respondent authority is directed to consider the case of the petitioners in accordance with the afore-mentioned policy within three months positively. No discrimination against the petitioners shall be made in any respect."

In the impugned judgment, the learned Division Bench of the High Court had dealt with the matter as Under:-

"7. While taking into consideration all attending circumstances of the case, we have also gone through the impugned judgment wherein the learned Single Judge in Chambers observed that respondents are entitled to the allotment of plots under rehabilitation Policy, 1984 and since the acquisition was made under the said policy, subsequently policy of 1996 is not applicable to the case of the present respondents. Above all, through the impugned order, the appellant CDA was directed only to consider the case of the respondents in accordance with the rehabilitation Policy, 1984 within three months positively with further direction that no discrimination shall be made in

any respect with the respondents. Record speaks of the fact that the appellant has not yet finally decided the claim of the respondents, who are waiting for their decision since the year 1994 i.e. for more than fifteen years."

8. It is an admitted fact that the respondents are residing in Dhokes and their agricultural land and built-up property were acquired by the petitioner-CDA, therefore, they are entitled to be compensated in accordance with Policy letter dated 03.01.1982 read with relevant portion of the Policy of 1984 issued by the petitioner-CDA.

9. We are, therefore, of the considered opinion that the impugned judgment and the judgment of the learned single Judge are unexceptionable and no interference is called from this Court. We are, therefore, not inclined to grant leave to appeal, consequently, this petition stands dismissed".

6. The bare perusal of the above judgment shows that the august Apex Court held that the affectees of the agricultural land acquired by Capital Development Authority are entitled to be compensated in accordance with policy letter dated 03.01.1982. The petitioner, who claims to be an affectee is also entitled to be compensated, if his credentials are verified and he is eligible for the same.

7. The instant petition is disposed of in terms of the observation made by the august Apex Court in the abovementioned case provided he is entitled to be compensated in accordance with the relevant criteria.

**(AAMER FAROOQ)
JUDGE**