

*Form No: HCJD/C-121.*  
**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

ICA No. 1043 of 2013

Abid Ali  
***Vs***  
Capital Development Authority through its Chairman, etc.

DATE OF HEARING: 11.02.2020.

APPELLANT BY: M/s Syed Mudasir Ali Rizvi and Azid Nafees, Advocates.

RESPONDENT BY: Mr. Shahid Naseem Gondal, Advocate.

**ATHAR MINALLAH, C.J.-** This Intra Court Appeal is directed against judgment, dated 02.10.2013, whereby the learned Single Judge has dismissed W.P no. 2181/2005.

2. The facts, in brief, are that plot no. 6, National Park Area, Islamabad (hereinafter referred to as the "***Plot***") was allotted in favour of M/s Norway Brick Works in 1986. The Plot was allotted for establishing a brick-kiln. The use of the Plot was later converted to agro farm/agro industrial plot. In 1996, the lease hold rights were transferred in the name of three individuals. The lease hold rights were purchased by the petitioner and it was confirmed vide letter, dated 19.12.1998. The Capital Development

Authority vide letter, dated 11.11.2002 informed the petitioner that the terms and conditions of the allotment were not fulfilled. It was further alleged that the dues were also not paid. The petitioner filed a reply to the show cause notice. The Capital Development Authority cancelled the lease of the Plot vide order, dated 14.05.2003. The petitioner preferred an appeal before the Board of the Capital Development Authority. The petitioner filed W.P no. 2181/2005, which was dismissed by the learned Single Judge vide the impugned order, dated 02.10.2013. The petitioner had also filed a civil suit on 19.04.2012 which was later amended. The writ petition through the impugned order was dismissed on the ground that factual controversies were involved, which obviously could not be resolved while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The appellant was, therefore, advised to pursue his remedies before the competent court where the suit filed by him was pending.

3. The learned counsel for the petitioner has been heard at length. He has argued that filing of a suit was not an alternate efficacious remedy, therefore, constitutional petition was maintainable. He has placed reliance on the judgments titled "Government of Sindh through Secretary, Board of Revenue, Hyderabad and another vs. Niaz Ahmed and others" [1991 SCMR 2293], "Muhammad Ashraf Butt vs. Muhammad Asif Bhatti" [PLD 2011 SC 905] and

“Anjuman-e-Ahmadiya, Sargodha vs. The Deputy Commissioner, Sargodha and others” [PLD 1966 SC 639].

4. The learned counsel for the Capital Development Authority, on the other hand, has stated that the impugned order does not suffer from any legal infirmity; the suit filed by the petitioner is an alternate efficacious remedy and, therefore, the writ petition was rightly dismissed by the learned single Judge.

5. The learned counsels have been heard and the record perused with their able assistance.

6. Admittedly, one of the grounds regarding cancellation of the Plot was failure to fulfil the terms and conditions of allotment. The allottee was required to develop the Plot as an “orchard farm” which according to the stance of the Capital Development Authority, had not been done. This obviously raised disputed questions which could not have been decided while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. It is not denied that relating to the same grievance the appellant had filed a suit which was later amended. The suit is pending before a competent court. There is no force in the argument raised by the learned counsel for the appellant that the suit filed by the latter and pending before the competent court is not an efficacious alternate remedy. Moreover, the appellant had admittedly preferred an appeal challenging cancellation order, dated 14.05.2003. It is, therefore,

obvious that the relevant law provided a right of appeal before the Board of the Capital Development Authority against the cancellation order, dated 14.05.2003. In such an eventuality an Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 is not competent.

7. The proviso to sub-section 2 of section 3 of the Law Reforms Ordinance, 1972 is unambiguous and places a bar on the maintainability of an Intra Court Appeal, if the matter assailed, by invoking the jurisdiction under Article 199 of the Constitution, arises out of any 'proceedings' in which the law applicable provides for at least one appeal to any court, tribunal or authority against the original order. In the instant case the original order is obviously order, dated 14.05.2003. The right of appeal is provided against the said order before the Board of the Capital Development Authority.

8. The august Supreme Court in the case of 'Karim Bibi and others v. Hussain Bukhsh and others' [PLD 1984 SC 344] has held that the test laid down by the legislator under the proviso is that "if the law applicable to the proceedings from which the constitutional petition arises provided for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more judges of the High Court". The expression 'original order' has also been interpreted in the same judgment. The august Supreme Court while interpreting the proviso has further held that the requirement of

availability of an appeal under the law applicable is not in relation to the impugned order in the constitutional petition, which may be the order passed by the lowest officer or authority in the hierarchy or any order passed by the higher authorities in appeal, revision or review. Reliance is also placed on the cases of 'Muhammad Aslam Sukhera and others v. Collector Land Acquisition, Lahore, Improvement Trust, Lahore and others' [PLD 2005 SC 45] and 'Muhammad Abdullah v. Deputy Settlement Commissioner, Center-1, Lahore' [PLD 1985 SC 107]. Moreover, there is also no force in the argument raised by the learned counsel that the suit filed by the appellant was not an efficacious alternate remedy.

9. In view of the above, the instant appeal is not maintainable and, therefore, accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(CHIEF JUSTICE)

Saeed..