

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1458 of 2015

M/s Al-Safa Golden Co. (Pvt.) Limited.

Vs.

Capital Development Authority through its Chairman & four (4) others.

Petitioner's by: Mr. Mohammad Ilyas Sheikh, Advocate.

Respondents by: Raja Adnan Aslam, Advocate.

Date of hearing: 29.06.2015.

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Aamer Farooq, J.- Through the instant constitutional petition the petitioner seeks setting aside of letter dated 23.04.2015 issued by respondent No.2 whereby the revision allowed in the 'approved plan' on 16.11.2012 was suspended.

2. The facts, in brief are, that respondent No.1 auctioned Plot No.5 (DHS) Markaz F-7, Islamabad (**the Property**) which was purchased by the petitioner being the highest bidder. The allotment letter was issued in the name of petitioner on 19.05.2010 which was subject to certain terms and conditions. The petitioner applied for approval of the 'building plan' for the purposes of raising multi-storey building on the property which was allowed vide approval dated 09.04.2011. Subsequently, the petitioner sought certain amendments in the approval by way of additional storey which was

also allowed vide approval dated 16.11.2012. The construction on the property with respect to all storeys except floor No.8 stands completed. The Respondents vide letter dated 23.04.2015 have suspended the revision in approval granted on 16.11.2012 which has been assailed in the instant petition.

3. The learned counsel for the petitioner, inter alia, submitted that the impugned letter has been issued by respondent No.2 i.e. the Deputy Director, BCS-1, Capital Development Authority, Islamabad without authority in light of section 41 of Capital Development Authority Ordinance, 1960 (**CDA Ordinance, 1960**). It was further submitted that under the law once approval has been granted and decisive steps have been taken the same cannot be recalled/revoked unless in accordance with the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 framed under CDA Ordinance, 1960. In this behalf it was submitted that under Regulation 3.12.2 period of validity of approval is five (5) years from the date it is issued and under Regulation 3.12.8 CDA/Respondent No.1 is required to inspect the construction periodically and under Regulations 3.9 and 3.10 respondents have the power to stop construction and cancel approval if there are violations; in the present case the regulations have not been followed by the respondents in suspending the approval dated 16.11.2012. It was further contended that under Capital Development Authority Conduct of Business Regulations (Schedule-II), only Director could have suspended or cancelled the approval of building plan and respondent No.2 has no authority to issue the impugned letter. The learned counsel submitted that respondents had knowledge about the construction taking place at

the site and did not raise any objection with respect thereto, therefore, at this stage they are estopped from objecting the construction at the site. In support of his submission, the learned counsel placed reliance on cases titled “Pakistan through Ministry of Finance Economic Affairs & another vs. FECTO Belarus Tractors Limited” (**PLD 2002 SC 208**), “Crescent Industrial Chemical Ltd. through Chief Executive vs. Federation of Pakistan through Secretary M/O Law, Justice & Human Rights Division & three others” (**PLD 2004 Quetta 92**), “M.P. Sugar Mills vs. State of U.P” (**AIR 1979 SC 621**). The learned counsel also submitted that under the principle of locus poenitentiae the impugned letter could not have been issued as decisive steps have been taken in pursuance of approval granted by respondents on 16.11.2012. In this behalf reliance has been placed on cases “Pakistan International Airlines Corporation through Chairman vs. Inayat Rasool” (**2003 SCMR 1128**) and “Chief Secretary, Govt. of Sindh & another vs. Sher Mohammad Makhdoom” (**PLD 1991 SC 973**). The learned counsel also submitted that vested right has accrued in favour of the petitioner which now cannot be taken away. In this behalf reliance was placed on cases “Banu Sugar Mills vs. Inspector, Customs & Central Excise” (**1990 CLC 569**) and “Additional Accountant General Pakistan Revenue vs. M.M. Malik & others” [**2012 PLC (CS) 1370**]. The learned counsel emphasized that no hearing has been given to the petitioner before issuing the impugned letter. In this behalf reliance was placed on cases “Warid Telecom (Pvt.) Limited & four (4) others vs. Pakistan Telecommunication Authority through Chairman” (**2015 SCMR 338**), “Accountant General, KPK vs. Abdul Ali” (**2015 MLD 157**).

4. The learned counsel for respondents, inter alia, submitted that controversy raised in the instant petition is factual which cannot be adjudicated under Article 199 of the Constitution. The learned counsel also submitted that approvals granted to the petitioner were subject to certain terms & conditions and the petitioner has violated the same, therefore, respondents are within their right to suspend the approval earlier granted. It was further submitted that time & again the petitioner was informed about the violations committed by it by deviating from approval granted. In this behalf letters were written to the petitioner on 16.05.2013, 21.08.2013, 17.02.2014, 05.03.2014 & 17.09.2014. Since needful was not done, therefore, respondents/ Chairman, Capital Development Authority constituted a fact finding Inquiry Committee. The Committee made certain observations vide its report dated 06.04.2015. According to report submitted by the Committee violations were pointed out in the construction raised by the petitioner on the property and recommended that the needful be done. It was further contended that the petitioner has already availed alternate remedy by making representation to the Chairman, CDA which is pending and since alternate remedy has also been availed, therefore, instant petition is not maintainable. In this behalf reliance was placed on "Mohammad Abbasi vs. SHO, Barakahu, Islamabad" (PLD 2010 SC 969). It was further submitted that in granting initial approval as well as revised approval the Building Regulations and policy of the CDA were to be adhered to by the Staff of CDA and the matter is being probed. In this behalf, however, any illegal construction raised does not create any right in favour of the petitioner on the principle of locus poenitentiae would not be attracted. Reliance was placed on "Al-Hajj Raees Ahmed

Qureshi vs. Water & Sanitation Agency(WASA)” (2005 YLR 326). The learned counsel also submitted that the petitioner alongwith staff of CDA played fraud on the institution, therefore, no vested right has accrued in its favour and principle of estoppel shall also not apply. Reliance was placed on “Lahore Development Authority vs. Firdus Steel Mills (Pvt.) Limited” (2010 SCMR 1097) and “Malik Mohammad Majeed vs. Government of Pakistan” (PLD 2002 Lahore 290).

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 & 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 & 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-Ihajj Raees Ahmed Qureshi vs. Water & Sanitation Agency (WASA)" (2005 YLR 326) in which the Hon'ble Lahore High Court observed that where the construction of building was without sanctioned plan and the same was allowed through interim order by the High Court at petitioner's risk such order would not create any right in favour of the petitioner. Similarly, the Hon'ble Supreme Court of Pakistan in case titled "Farooq Hamid vs. Lahore Development Authority (LDA)" (2008 SCMR 493) laid down the principles with respect to illegal high-rise buildings in Lahore. The Apex Court observed that the illegal construction/structure cannot be allowed by State as no responsibility could be taken for stability of such structure and consequently lives of persons using the same. The Apex Court directed the Authority that illegal constructed structure should be demolished. The respondents vide impugned letter has only suspended the approval granted on 16.11.2012 and has invited the petitioner to raise concern/reservations and in response thereto the petitioner has filed representation before the Chairman, CDA which is pending. The approval has not yet been cancelled and since the petitioner has been invited to raise reservations about the suspension, therefore, no prejudice has been caused to it and the impugned letter is not in violation of the principles of Natural Justice. The fact whether the petitioner has violated the approval granted and/or the Building Zoning Regulations of CDA is a question of fact which cannot be looked into or adjudicated by this Court under Article 199 of the Constitution. Moreover under clause 3.12.11 of 2005 Regulations supra no one can occupy any building unless completion certificate or permission to occupy the same has been obtained from CDA.

The petitioner by occupying the building without completion has violated the terms of approval as well as the referred clause.

8. In so far as objection by the petitioner vis-a-vis respondent No.2 is concerned the action taken by respondent No.2 was in accordance with the findings & recommendations of the Inquiry Committee constituted by the Chairman, CDA. Respondent No.2 is merely an informing agency, therefore, it cannot be said that the impugned letter was issued by respondent No.2 on its own without approval of the CDA Authority. Hence, the arguments of the learned counsel for the petitioner that the impugned letter is without authority has no substance.

9. For the foregoing reasons, the instant petition has no merit and is dismissed.

(AAMER FAROOQ)
JUDGE

Altaf Malik

Approved For Reporting