

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3868 of 2019

Rafique Ahmed

Versus

Capital Development Authority and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.11.2019	Mr. Abrar Ahmed Kiyani, Advocate for the petitioner.

Through the instant writ petition, the petitioner seeks a direction to the Capital Development Authority ("C.D.A.") to *inter alia* declare legal heirs of Mst. Irshad Begum entitled for allotment of developed plot and compensation of built-up property as per the Islamabad Displaced Persons Rehabilitation Policy, 1984 ("the 1984 Policy").

2. Learned counsel for the petitioner submitted that through *Nikahnama* dated 04.08.1983, the petitioner's mother Mst. Irshad Begum was given as dower a house situated in village *Sari Sarai*, Islamabad; that the land on which the said house was constructed was acquired by the C.D.A. through award dated 09.02.1988; that the name of the petitioner's mother was not included in the list of persons entitled for compensation under the award; that the petitioner's mother was not given any compensation; that on 02.05.1990, she moved an application to the C.D.A. challenging the award; that she also prayed for payment of compensation under the 1984 Policy; that the application was fixed for hearing on 15.05.1990 and then on 04.12.1990 but no order was ever conveyed to the applicant or her legal heirs; that similarly placed affectees were allotted plots but

the petitioner was treated with discrimination; and that in not extending the benefit of the 1984 Policy, the C.D.A. has violated the petitioner's rights under Articles 9 and 14 of the Constitution. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioners and perused the record with his able assistance.

4. The petitioner's claim is that his deceased mother Mst. Irshad Begum was given a house as dower through *Nikahnama* dated 04.08.1983. It is not disputed that name of Mst. Irshad Begum was not incorporated in the revenue record as the owner of the said property. In ground (a) of the petition, the petitioner pleaded that in the revenue record name of his grandfather (Juma Khan) was mentioned as owner in possession of *Khasra* No.1185. The petitioner does not allege that compensation was not paid to his grandfather who was shown as owner of the land and built-up property thereupon in the revenue record. The petitioner has agitated several controversial questions of fact, which in my view, cannot be resolved without recording of evidence.

5. It has been held by the Hon'ble Supreme Court that the appropriate forum for resolving such controversies is the Court of plenary jurisdiction. In this regard, order dated 25.09.2014 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.06/2014 is reproduced herein below in its entirety:-

"The petitioner CDA impugns the judgment of a learned Division Bench of the High Court dated 2.12.2013 whereby Writ Petition No.3603 of

2002 filed by the respondents 1 to 3 namely Nazakat Ali, Ijaz Ahmad and Liaquat Ali was allowed. As a consequence, it was held as under:-

“Contention of learned counsel for the respondent CDA is not correct, as in the comments it has been admitted that petitioners No.1 and 2 were allotted plots No.1273 and 1274 in G-11/1 and third petitioner was also offered plot in the same Sector. Now learned counsel cannot be permitted to argue the case against the comments filed by CDA. The claim of the petitioners stands admitted and accordingly, the writ petition is accepted.”

2. We have heard learned counsel for the parties at length and have also gone through the available record. The order of the High Court is premised on facts and circumstances which are dated subsequent to the acquisition proceedings. The very fact that the award was dated 28.4.1985 and possession was taken under Section 27 of the CDA Act on 26.07.1987, is strong indication that there was no build up area belonging to respondents 1, 2 and 3. However, the High Court had proceeded on the premise which has been reproduced above although strong evidence constituted in the award and the taking over of possession suggests that the case which was subsequently set up i.e. 5 years after the date of award by the respondents Nos.1, 2 and 3 to assert that there was built up area on the acquired land belonging to them has not been taken into account by the High Court. In fact where such factual determination was essential for ascertaining the respective rights and liabilities of the respondents and CDA, writ jurisdiction of the High Court was not the appropriate remedy.

3. In view of the above discussion, we find that the learned Bench in the High Court proceeded to make a factual determination without recording evidence and without taking note of the award dated 28.4.1985 and notification dated 26.07.1987. This, we say with respect, was not appropriate. With such strong, prima facie, evidence favouring CDA, it would not be proper to place a heavy liability on CDA without recording of evidence and due trial. We, therefore, convert this petition into appeal and allow the same. The impugned judgment is set aside. This, however, shall not prejudice either the proceedings in Reference No.28/2007 filed by the NAB or any other proceedings before a competent forum. However, CDA shall retrieve possession of any land which may have been given to

respondents in lieu of the built up area claimed by them. A report in this behalf shall be submitted in Court within 15 days for our perusal in Chambers."

(Emphasis added)

6. Through the said order, the Hon'ble Supreme Court set-aside the judgment dated 02.12.2013 passed by this Court in W.P. No.3603/2002. In the said order, it has been observed that a factual determination was essential for ascertaining the respective rights and liabilities of the C.D.A. and the respondents for which writ jurisdiction of the High Court was not the appropriate remedy. Furthermore, it was observed that a heavy liability could not be placed on the C.D.A. without the recording of evidence and due trial. The Hon'ble Supreme Court of Pakistan set-aside the judgment passed by this Court with the direction to the C.D.A. to retrieve possession of any land which may have been given to the respondents in lieu of the built-up area claimed by them. The earlier judgment dated 02.12.2013 passed in favour of the respondents by this Court was set at naught by the Hon'ble Supreme Court of Pakistan primarily for the reason that disputed questions of fact involved in the matter could not be resolved by the High Court in writ jurisdiction under Article 199 of the Constitution. Consequently, it is my view, based on the said judgment of the Hon'ble Supreme Court that the instant petition is not maintainable.

7. In addition to above, present petition suffer from laches because according to the petitioner, Mst. Irshad Begum (late) moved an application to C.D.A. on 02.05.1990 for the same relief. However, the record does not show any

plausible explanation for inordinate delay of more than two and a half decades in availing legal remedy. As to the delay and laches on the part of a writ petitioner, it is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds on which relief can be refused by a Court exercising writ jurisdiction is that a petitioner is guilty of delay and laches.

8. It is imperative that where the petitioner invokes extraordinary remedy under Article 199 of the Constitution, he should come to the Court at the earliest possible opportunity. An inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of a petitioner. Thus, when the petitioner approaches the High Court with undue delay, the principle of laches disentitles him from discretionary relief under Article 199 of the Constitution particularly, when there is no plausible explanation on a petitioner's part for his blame worthy dilatory conduct.

9. In view of the above, the instant petition is dismissed in *limine* as not maintainable. Should the petitioners decide to agitate their grievances before the C.D.A. or the Court of plenary jurisdiction. A decision may be taken uninfluenced by the observations contained herein.

(MIANGUL HASSAN AURANGZEB)
JUDGE