

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision Petition No.39 of 2020
Capital Development Authority
Versus
Mst. Mumtaz Begum, etc.

Petitioner by : M/s Tariq Zaman Ch. and Hafiz Arfat
Ahmad, Advocates
Respondent No.1 by : Mr. Naseer Anjum Awan, Advocate
Respondent No.2 by : Mr. Altaf Hayat Khan, Advocate
Date of Hearing : 17.09.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant civil revision petition, petitioner/C.D.A. impugns judgments and decrees dated 28.02.2019 and 02.11.2019, passed by the learned Civil Judge, 1st Class and learned Additional District Judge, Islamabad (West) respectively, whereby suit for declaration, permanent and mandatory injunction filed by the respondent No.1 was decreed while appeal filed by the petitioner/C.D.A. was dismissed.

2. Facts, relevant for the disposal of instant civil revision petition, are that the late husband of respondent No.1 applied for a residential plot being a government official which, as per decision of the Executive Committee of respondent No.2, was allotted to her on the basis of hardship quota after completion of codal formalities. She paid all dues, where-after a formal allotment letter was issued to her by the respondent No.2. Thereafter, respondent No.2 submitted documents to the petitioner/C.D.A. for issuance of No Demand Certificate ("N.D.C.") but was replied in negative on the ground that the prescribed quota of 80 percent has already been exhausted. According to the petitioner, its stance is contrary to the one taken by the respondent No.2/F.G.E.H.F whereby only 71.5 % quota has so far been exhausted and that few plots were still available for allotment by the respondent No.2. The respondent No.1 agitated her

grievance time and again but to no avail which led to filing of the suit which was decreed by the learned trial Court, vide judgment and decree dated 28.02.2019. The petitioner preferred an appeal against the said judgment and decree but it was dismissed vide judgment and decree dated 02.11.2019, hence, the instant civil revision petition.

3. Learned counsel for the petitioner contends that the complete record was not before the learned trial Court otherwise the result could have been different; that the learned Appellate Court non-suited the petitioner on the point of limitation without dilating upon merits of the case and that findings qua co-widow of the respondent No.1 are not legally sustainable, therefore, the impugned judgments and decrees are liable to be set-aside and the matter may be remanded for decision afresh.

4. Learned counsel for the respondent No.1 argued that the sluggish attitude of the petitioner can be witnessed from the fact that they never applied for provision of certified copy of the order passed by the learned trial Court and preferred to file an appeal by placing a copy of the judgment applied by the respondent No.2; that the respondent No.1 has been agitating her grievance since 2012 but the petitioner despite allotment letter in her favour has not issued the N.D.C; that concurrent findings of two Courts below have been exercised within their jurisdiction and no arguments has been advanced by the petitioner's side that same has been exercised illegally.

5. Heard the learned counsels for the parties and perused the record with their able assistance.

6. The entitlement of the respondent No.1, issuance of allotment letter, besides No Objection Certificate ("N.O.C.") by the F.I.A authorities are admitted facts. The petitioner is also not refuting the claim of the respondent No.1 but expressed inability for issuance of N.D.C. due to

non-availability of the plots against the said quota. The bone of contention was to this effect only and the learned trial Court responded to the same in terms that the allocation of quota and its equalization is the concern of petitioner and the respondent No.2 i.e. C.D.A. and F.G.E.H.F. while the respondent No.1 has nothing to do with the same and being lawful allottee of the plot, is entitled to reap benefit of said allotment. It was also observed that she cannot be deprived of her lawful allotment due to the dispute of the petitioner and respondent No.2.

7. Adverting to the ground qua dismissal of appeal being time barred, suffice it to observe that the conduct of the petitioner depicted by the learned Appellate Court cannot be termed to be responsive and keen to file an appeal on the basis of copy of the judgment of the learned trial Court prepared for respondent No.2 had been used by the petitioner. It was held that brazen attempt has been made to seek condonation of delay no other view could be taken except that the petitioner is not entitled to any relief.

8. In addition, it is also noticed that the appeal of the petitioner was not merely dismissed being time barred but the merits with regard to existence or otherwise of the referred quota was also discussed. There was a consensus on the entitlement of the respondent No.1 and, therefore, in such an eventuality the petitioner cannot refuse to issue N.D.C. to the respondent No.1 in due course without any loss of time.

9. It is important to mention that the respondent No.1, a widow, has already paid more than eight lakh rupees to the respondent No.2 since 2012 and is still wandering for her legitimate right and except a piece of paper nothing is in her possession, which is quite heart-rending and deserves prompt action by the petitioner.

10. The question that interpretation of the two Courts below is against the law and facts and that the matter can be interpreted in favour of the petitioner, has no legal force because the Hon'ble Apex Court in recent judgment reported as "Shahbaz Gul and others V. Mohammad Younas Khan and others (2020 SCMR 867)" held that:-

"Furthermore, where two different interpretations were possible of the evidence brought on record, as is the matter in the instant case, then appraisal of facts of lower courts should not have been overturned by the learned High Court in its revisional jurisdiction under Section 115, C.P.C. between two possible interpretations, the one adopted by the learned Trial and Appellate Court should have been maintained, keeping in mind the limited scope of revisional jurisdiction."

11. Both the learned Courts have properly evaluated the evidence and the conclusion arrived at by the learned two Courts is not open to any exception. Consequently, the instant civil revision petition stands dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Announced in open Court on 30.09.2020.

JUDGE

M.A. Raza