

Judgment Sheet
ISLAMABAD HIGH COURT
ISLAMABAD

I.C.A.NO.100 of 2018

ARSHAD IQBAL.

Versus

**FEDERAL GOVERNMENT EMPLOYEES HOUSING
FOUNDATION (FGEHF) THROUGH ITS D.G.**

Petitioner by: ***M/s Waheed Akther and Shakeel Awan, Advocates.***

Respondent by: ***Mr. Altaf Hayat Khan, Advocate.***

Date of decision: ***16.01.2020***

LUBNA SALEEM PERVEZ Through this judgment we intend to dispose of Intra Court Appeal filed against order dated 23.01.2018, passed by the Learned Single Judge in Chamber, in Writ Petition No. 220 / 2018, whereby the petition was dismissed *in limine*.

2. Brief facts necessary for adjudication of this appeal are that Appellant purchased Plot No. 3, measuring 200 sq. yds, situated at Street 33, Sector G-13/2, Islamabad (**the Plot**) from one Ahmed Saleem for the consideration of Rs. 5.6 million and got transferred the same in his name by Federal Government Employees Housing Foundation / Respondent, vide letter dated 01.08.2011. However, later he came to know that someone else has constructed house on the said plot.

3. Learned Counsel for the Appellant stated that the plot was originally allotted to Muhammad Azam (**the First Allottee**) who was employee of Pakistan Railways, which, subsequently was cancelled from his name on 21.02.2011, when it was found that he was not eligible for this category of the plot as he was in BPS-7 and not in BPS-17. The plot was then allotted to one Mrs. Fakhr-un-Nissa on 22.02.2011, being eligible member, who sold the plot to Ahmed Saleem from whom the Appellant purchased the same. Learned Counsel submitted that the Respondent, thereafter, illegally cancelled the plot on

12.05.2016 and transferred the same in the name of First Allottee (Muhammad Azam), hence, the writ petition before this Hon'ble Court seeking directions for the Respondent regarding compensation for cancelling the plot was filed. Learned Counsel submitted that the learned Single Judge in Chamber failed to appreciate the real controversy and erred in law while deciding the writ petition and dismissed the same *in limine*, vide impugned order dated 23.01.2018, being not maintainable and held that alternate remedy under relevant law is available to the Petitioner to seek damages. The Learned Counsel argued that under the fact and circumstances of the case the writ petition under article 199 was maintainable as there was no other efficacious remedy available with Appellant as the Respondent has unlawfully cancelled the plot which was transferred in his name after completing the required formalities including payment of entire consideration to Ahmed Saleem. Learned Counsel lastly argued that Respondent is under legal obligation to compensate the Appellant by allotting him alternate plot. Learned Counsel in support of his contentions referred the case law reported as **(1988 CLC 2267 (Quetta HC); (PLD 2004 SC 108) and (PLD 2010 SC 969).**

4. Conversely, Learned Counsel for the Respondent opposed the contentions of the Appellant and argued that all the actions taken by the Respondent are in accordance with the rules, regulations and in compliance of the direction of the Honorable Courts. Learned Counsel stated that he has placed on record all the documents with parawise comments to the appeal and apprised that the subject plot was under litigation and finally the Hon'ble Supreme Court of Pakistan ordered the allotment of the subject plot in the name of the legal heirs of Muhammad Azam, the first allottee. Learned Counsel further submitted that before transfer of the plot its cancellation was published in newspapers for public information, in particular the Appellant, and other allottees & purchasers were also informed about the pending execution before civil court by the legal heirs of

first allottee. Thus, the contention of the Appellant being contrary to the facts, is not sustainable and the appeal is liable to be dismissed.

5. We have heard the learned Counsel for the parties and have also perused the impugned order as well as available record in the light of the submissions.

6. The contentions of the Learned Counsel for the Respondent carry weight as the Appellant has filed the petition praying that the Respondent be directed to compensate him, for loss incurred, by allotting him other plot which suggest that he was in the knowledge of pending suit by the legal heirs of the first allottee, which fact is also supported with the documents furnished by the learned Counsel for the Respondent. The relief claimed by the Appellant is in fact the claim of damages from the Respondent for cancellation of the subject plot which he has named as compensation. Therefore, the learned Single Judge in Chamber rightly dismissed the writ petition as the alternate remedy was available to the Appellant before appropriate civil court and contention of the Appellant in this regard is not tenable being against the spirit of Article 199 of the Constitution of the Islamic Republic of Pakistan. Moreover, the Writ Petition is no substitute for civil proceedings before appropriate forums on the pretext of being not an efficacious remedy. The Constitutional Petition does not provide short cut method for expeditious redressal of grievance of the aggrieved party through bypassing the courts below provided under the law for effective decision of matters after examining the evidences on the issues. Further, Constitutional Jurisdiction of the High Court, under Article 199 of the Constitution, can only be invoked where no adequate remedy provided by law and it does not speak of efficacious remedy. Nevertheless, It is now been well settled by the superior courts of the country that adequacy and efficacy of a remedy would depend upon the circumstances of each case as what might be efficacious and adequate in the facts and circumstances of a case may not be so in other.

7. The cases relied on by the Learned Counsel for Appellant are of no help to him as the observations quoted from the judgments are in the context of the facts of those particular cases. It would not be out place to reproduce the following

observations of the Hon'ble Supreme Court made in case (cited by the learned Counsel for Appellant in his favour) titled **Muhammad Abbasi Vs. S.H.O. Bhara Kahu** reported as **PLD 2010 SC 969** specifying the circumstances under which the aggrieved party can invoke the constitutional jurisdiction and where such remedy would be declined:-

"..... It is also well settled by now that "extraordinary jurisdiction of the High Court is available only after all the other legal remedies are exhausted. Constitutional jurisdiction of High Court, would be declined where the petitioner has not exhausted all the remedies available to him before filing of constitutional petition." Page 973 para 5

"It is however to be kept in view that "where impugned action or order is challenged on the ground of its being wholly without lawful authority, completely lacking authority for adjudicating; proved malafides; patent flouting of law, by concluding in an oppressive, capricious or unjust manner, the Constitutional jurisdiction of the High Court can be invoked even directly without resorting to alternate remedy available to the petitioner." Page 974 para 6

8. In view of the above, we are of the firm view that the impugned order passed by the learned Single Judge in Chamber is based on sound reasoning which does not call for any interference, hence, instant I.C.A. is hereby dismissed.

(AAMER FAROOQ)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan/-

APPROVED FOR REPORTING.