

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.99 of 2013
Ghulam Raza Chaudhry (late) and others
Versus
The Capital Development Authority

Date of Hearing: 26.11.2019.
Appellants by: Mr. Ummar Ziauddin, Advocate.
Respondent by: Mr. Intazar Hussain, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, we propose to decide regular first appeals No.99/2013 and 111/2013 since they arise from the same judgment and decree and entail common questions of law and fact.

2. Through R.F.A. No.99/2013, the appellants, who are the legal heirs of Ghulam Raza Chaudary (late) ("Ghulam Raza"), impugn the judgment and decree dated 11.03.2013 passed by the Court of the learned Civil Judge, Islamabad, whereby the suit for recovery instituted by the appellants/plaintiffs was decreed to the extent of Rs.99,00,000/-.

3. Through R.F.A. No.111/2013, the appellant, Capital Development Authority ("C.D.A."), impugns the said judgment and decree dated 11.03.2013.

4. The legal heirs of Ghulam Raza hereinafter referred to as the appellants, whereas the C.D.A. shall be referred to as the respondent.

5. The facts essential for the disposal of the instant appeals are that vide letter dated 01.10.1985, Plot No.C, Bazaar No.1, Class-III, Shopping Centre, Sector E-8, Islamabad was allotted to Ghulam Raza. The said allotment was made after Ghulam Raza had successfully participated in an auction and had submitted the highest bid for the said plot. On 01.12.1985, possession of the said plot was handed over to Ghulam Raza. It is an admitted position that the layout plan for the construction of a restaurant on the said plot was approved by the C.D.A.

6. On 11.02.1987, Ghulam Raza filed a suit for permanent injunction against *inter alia* the C.D.A. before the Court of the

learned Civil Judge, Islamabad. Ghulam Raza had sought a permanent injunction to restrain the C.D.A. etc. from interfering in his possession over the said plot. Apparently, the Pakistan Navy had initiated a case for the acquisition of the entire Sector E-8, including the said plot. Vide order and decree dated 28.02.1988, the learned Civil Court restrained the defendants in the said suit from interfering in the Ghulam Raza's possession over the suit plot until the acquisition of Sector E-8. Ghulam Raza's suit was decreed with the observation that if at any stage the C.D.A. acquired the entire Sector E-8, including the said plot for the Pakistan Navy, it should consider allotting an alternative plot of an equivalent value to Ghulam Raza and pay him compensation for the construction raised on the said plot.

7. After the passing of the said order and decree, the C.D.A., on 30.05.1991, gave permission to Ghulam Raza to construct the first storey on the said plot and required him to pay an amount of Rs.1,77,770/-.

8. Since Ghulam Raza's grievance regarding interference in his possession over the suit plot by the Pakistan Navy continued, he filed writ petition No.253/1994 before the Hon'ble Lahore High Court, Rawalpindi Bench. The said writ petition was disposed of vide order dated 18.04.1995. In the said order, the statement of the representative of the Naval Authorities that it had not interfered with Ghulam Raza's business and that this course shall be adopted in future as well, was recorded. Thereafter, Ghulam Raza filed a complaint before the *Wafaqi Mohtasib*. The said complaint was disposed of on 29.12.1999 with the recommendation that the C.D.A. should allot a plot of the same value as the said plot to Ghulam Raza within a period of fifteen days. Perusal of the said order dated 29.12.1999 shows that the Pakistan Navy wanted to purchase the Bazaars in Sector E-8 from the C.D.A. at the market price. A dispute had occurred when the Pakistan Navy did not accede to the C.D.A.'s request to pay the price of the plots at the current market rates. The C.D.A.'s stance was that unless the Pakistan Navy agreed to pay the rates

demanded, it would not be possible to allot alternative plot to Ghulam Raza.

9. It appears that Ghulam Raza filed yet another writ petition (bearing No.916/2005) before the Hon'ble Lahore High Court, Rawalpindi Bench against the C.D.A. and Pakistan Navy. The said writ petition was disposed of vide order dated 19.01.2007 in the following terms:-

“Matloob Hussain, Dy. Director has produced a copy of letter No.CDA/EM-27(1431)85 dated 19.01.2007 showing that the petitioner has been offered allotment of alternate site measuring 10X10 east of plot No.18-A in Markaz F-8 Islamabad in lieu of Plot No.C, Class-III, Shopping Centre, Sector E-8, Islamabad subject to the payment of difference of present value between Sector E-8 and Markaz F-8. The petitioner accepts this offer. This being so, this writ petition has borne fruit. Disposed of as such.”

10. On 25.04.2007, Plot No.18-C, Markaz F-8, Islamabad (“Plot No.18-C”) was allotted to Ghulam Raza in *lieu* of Plot No.C. On 09.05.2007, possession of Plot No.18-C was given to Ghulam Raza. It may be mentioned that the said allotment was made after Ghulam Raza accepted C.D.A.’s offer dated 18.01.2007 for the allotment of an alternative plot and paid a sum of Rs.1,33,70,833/- on account of the difference in the market value of Plot No.C and Plot No.18-C.

11. On 18.05.2007, Ghulam Raza submitted a transfer application form (Exh.D8) for the transfer of Plot No.18-C to (i) Chaudhary Khuda Dad, (ii) Asim Majeed, (iii) Muhammad Qasim, and (iv) Mahmood Akhtar, and on 23.05.2007, Plot No.18-C was transferred to the said transferees.

12. After transferring Plot No.18-C, Ghulam Raza, on 14.09.2007, filed a suit for recovery against the C.D.A. In the said suit, the plaintiff had sought compensation for the construction raised on Plot No.C as well as damages for the inconvenience and distress suffered by him due to giving up Plot No.C in lieu of Plot No.18-C. Ghulam Raza had also taken the position that demand of Rs.1,33,70,833/- made by the C.D.A. as the difference in the value of Plot No.C and Plot No.18-C to be unfair. The income that could have been earned by Ghulam Raza from the utilization of Plot No.C was also sought.

13. The C.D.A. contested the said suit by filing a written statement. In the said written statement, it was pleaded *inter alia* that Ghulam Raza had accepted the offer for the allotment of the alternative plot and had also paid the difference in value between Plot No.C and Plot No.18-C. Ghulam Raza passed away on 11.02.2009 after which an amended plaint was filed. From the divergent pleadings of the contesting parties, the learned Trial Court framed issues on 25.11.2009. Ghulam Raza's son, Abdul Rehman Chaudary (appellant No.1 in R.F.A. No.99/2013) appeared as PW-1, whereas Iftikhar Ali Haideri, Deputy Director (Estate-II), C.D.A. appeared as DW-1. Vide judgment and decree dated 11.03.2013, the said suit was decreed to the extent of Rs.99,00,000/-. The C.D.A. as well as the legal heirs of Ghulam Raza have assailed the said judgment and decree. The legal heirs of Ghulam Raza are seeking an enhancement in the compensation determined in their favour, whereas the C.D.A. is seeking for the said judgment and decree to be set-aside and for the suit for recovery to be dismissed.

14. Appellant No.1 appeared in person and wanted to argue the case himself, but due to ill health, he was unable to do so. Mr. Ummar Ziauddin, Advocate volunteered to represent the appellants in R.F.A. No.99/2013 and sought some time to prepare the brief. After a short adjournment, he submitted a well prepared brief on the case. Other than the facts referred to above, it was stated that the contesting parties had been in litigation since 1987; that the C.D.A had mislead Ghulam Raza on several occasions; that the C.D.A. had allotted a disputed plot to Ghulam Raza in the Defence Complex; that Ghulam Raza had raised construction on Plot No.C by investing a huge amount; that the price differential of Rs.1,33,70,833/- between Plot No.C and Plot No.18-C by the C.D.A. from Ghulam Raza was most unreasonable; that the C.D.A. did not pay compensation for the construction raised by Ghulam Raza on Plot No.C; that Ghulam Raza had also been deprived of his income due to interference in his possession of Plot No.C; that the C.D.A. was not just bound to compensate Ghulam Raza and/or his legal heirs for the construction raised on

Plot No.C and the loss of income but also pay damages for the mental agony and suffering caused to them; that the C.D.A. had filed an evasive written statement to Ghulam Raza's suit; that PW-1 was not cross examined on the material aspects of his testimony; that the testimony of DW-1 was beyond the pleadings in the C.D.A.'s written statement; that since Plot No.C was more expensive than Plot No.18-C, Ghulam Raza should have been compensated by the C.D.A. for the price differential between the said two plots; that this Court could also appoint a local commission in order to determine the compensation payable to the appellants; that the documents available on the record are not sufficient to do complete justice; and that the appellants have been embroiled in litigation due to the unjust decisions of the C.D.A. Learned counsel for the appellants prayed for the modification of the impugned judgment and decree dated 11.03.2013 and for the appellants' suit to be decreed in toto.

15. On the other hand, learned counsel for the C.D.A. submitted that the C.D.A. had admitted before the Hon'ble Lahore High Court that Ghulam Raza was entitled to be compensated by an allotment of an alternative plot in lieu of Plot No.C; that it was opened to Ghulam Raza to have rejected C.D.A.'s offer for the allotment of an alternative plot; that Ghulam Raza could also have refused to pay the price differential between Plot No.C and Plot No.18-C to the C.D.A.; that Ghulam Raza accepted C.D.A.'s offer for the allotment of Plot No.18-C in lieu of Plot No.C without any protest, demur or reservation; that the allotment of Plot No.18-C was made in Ghulam Raza's favour after he had paid Rs.1,33,70,833/- to the C.D.A. as the price differential between Plot No.C and Plot No.18-C; that the allotment of Plot No.18-C had been made after taking into consideration the value of construction raised by Ghulam Raza on Plot No.C; and that since Ghulam Raza had sold Plot No.18-C after the same was allotted to him, he had divested himself of the right to seek return of Rs.1,33,70,833/- or to claim further compensation from the C.D.A. Learned counsel for the C.D.A. prayed for R.F.A. No.111/2013 to be allowed and for the impugned judgment and decree dated 11.03.2013 to be set-aside.

16. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

17. The facts leading to the filing of the instant regular first appeals have been set out in sufficient detail in paragraphs 5 to 13 above, and need not be recapitulated.

18. It is not disputed that Ghulam Raza had purchased Plot No.C in an auction for the purpose of establishing a restaurant thereon. Subsequently, he was permitted by the C.D.A. to use the said plot for commercial purposes. Ghulam Raza had also raised construction on the said plot. After doing so, his possession over the suit plot was interfered with by the Pakistan Navy which wanted to acquire the entire Sector E-8 where the said plot was situated. This caused Ghulam Raza to invoke the jurisdiction of the Hon'ble Lahore High Court as well as the *Wafaqi Mohtasib*. During the pendency of writ petition No.916/2005, the C.D.A. took the position that an alternative plot would be offered to Ghulam Raza in lieu of Plot No.C.

19. Vide letter dated 18.01.2007 (Exh.D5), the C.D.A. offered an alternative plot to Ghulam Raza in Sector F-8, Islamabad. This offer was accepted by Ghulam Raza, who also acknowledged the differential in the value of Plot No.C and Plot No.18-C, which had been offered to Ghulam Raza. After Rs.1,33,70,833/- was paid by Ghulam Raza to the C.D.A., Plot No.18-C was allotted to Ghulam Raza by C.D.A vide letter dated 25.04.2007 (Exh.D6).

20. There is no documentary evidence on the record to suggest that Ghulam Raza had accepted C.D.A.'s offer for the allotment of Plot No.18-C under protest or reservation. After having accepted the C.D.A.'s offer for an alternative plot, Ghulam Raza and/or his legal heirs are estopped from asserting that such acceptance was involuntary or under some sort of a pressure from the C.D.A. Therefore, Ghulam Raza's assertion that Plot No.C was more expensive than Plot No.18-C and his prayer for the return of Rs.1,33,70,833/- is untenable.

21. As mentioned above, after Plot No.18-C was allotted to Ghulam Raza, he sold it to (i) Chaudhary Khuda Dad, (ii) Asim

Majeed,

(iii) Muhammad Qasim, and (iv) Mahmood Akhtar. On 18.05.2007, Ghulam Raza submitted a transfer application form (Exh.D8) for the transfer of Plot No.18-C to (i) Chaudhary Khuda Dad, (ii) Asim Majeed, (iii) Muhammad Qasim, and (iv) Mahmood Akhtar, and on 23.05.2007, Plot No.18-C was transferred to the said transferees. DW-1, in his cross examination, had deposed *inter alia* that Ghulam Raza had transferred Plot No.18-C in favour of four persons. This transaction resulted in Ghulam Raza divesting himself of all rights and interests in Plot No.18-C.

22. As regards Ghulam Raza's claim for compensation for the construction raised on Plot No.C, C.D.A.'s offer dated 18.01.2007 (Exh.D5) for the allotment of an alternative plot clearly mentioned that the same was subject to an undertaking that Ghulam Raza will not claim payment for the structure raised on Plot No.C. It appears that no such undertaking was given by Ghulam Raza. It is perhaps for the reason that the learned Civil Court has awarded an amount of Rs.24,00,000/- as compensation for the structure raised by Ghulam Raza on Plot No.C. The learned counsel for the C.D.A. was unable to convince the Court that such compensation was in any manner excessive. DW-1, in his cross-examination, deposed *inter alia* that there was a building constructed on Plot No.C, and that he could not deny the appellants' claim of Rs.24,00,000/- as compensation for the construction. C.D.A., vide letter dated 30.05.1991 (Exh.P4), had granted permission to Ghulam Raza to construct first floor on the single storey constructed building.

23. As compensation for the loss of income from Plot No.C, Ghulam Raza had claimed Rs.2,95,50,000/-. Ghulam Raza had segmented this claim in two portions. The first being until the period when the construction raised on Plot No.C was demolished in the year 1992, and the second being between 1992 and the date when the alternative plot was allotted to him. Against this claim, the learned Civil Court awarded an amount of Rs.75,00,000/- to the legal heirs of Ghulam Raza.

24. DW-1, in his cross-examination, deposed that Ghulam Raza had been deprived of his income from the use of Plot No.C. It is not disputed that had Ghulam Raza been permitted to use Plot No.C for the purpose for which it was allotted, he would have earned income for the period of a decade and a half from the use of Plot No.C. DW-1 had also deposed that Ghulam Raza had been deprived from the use of Plot No.C from 1992 to 2007. Ghulam Raza had invoked the jurisdiction of the learned Civil Court by filing a civil suit (which culminated in the order and decree dated 28.02.1988) and of the Hon'ble Lahore High Court by filing writ petitions No.253/1994 and 916/2005 in order to get an alternative plot allotted in lieu of Plot No.C. Therefore, it cannot be disputed that it was his legal right to be compensated for the period that he was deprived from the use of Plot No.C. Learned counsel for the C.D.A. could not convince the Court that the compensation awarded to the legal heirs of Ghulam Raza in this regard was excessive or unreasonable. Furthermore, the learned counsel for the appellants has also not convinced this Court to hold that the compensation awarded to the appellants was in any manner inadequate.

25. When the C.D.A. allots a plot for a certain purpose to an allottee, it is its statutory obligation to ensure that no impediment is caused to the allottee in the use of the allotted plot. If the Naval authorities had interfered with Ghulam Raza's possession over Plot No.C, it was the C.D.A.'s obligation to have made a timely allotment of an alternative plot of an equal value to Ghulam Raza. As far back as 28.02.1988, the learned Civil Court had restrained the C.D.A. and the Naval authorities from interfering in Ghulam Raza's possession over the suit plot until the acquisition of Sector E-8. Ghulam Raza's suit was decreed with the observation that if at any stage the C.D.A. acquired the entire Sector E-8, including the said plot for the Pakistan Navy, it should consider allotting an alternative plot of an equivalent value to Ghulam Raza and pay him compensation for the construction raised on the said plot. It has taken almost two decades of struggle by Ghulam Raza for an alternative plot to be allotted to him.

26. In view of the above, we do not find any merit in the appeals, which are accordingly dismissed with no order as to costs.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 14-01-2020.

(CHIEF JUSTICE)

(JUDGE)

Ahtesham*