

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R. No.728/2010
Malik Mehboob Hussain & 2 others
versus
Capital Development Authority & 3 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11.12.2019	Nemo for petitioners. Mr. Intizar Hussain, Advocate for respondents.

Vide my detailed judgment of even date passed in
C.R. No.668/2010 (Malik Mehboob Hussain & 2 others v. CDA &
3 others), the instant civil revision petition is hereby **DISMISSED.**

(MOHSIN AKHTAR KAYAN)
JUDGE

Announced in open Court on: 09.01.2020.

JUDGE

Khalid Z.

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

C.R. No.668/2010
Capital Development Authority
versus
Malik Mehboob Hussain & 2 others

Petitioner by: Mr. Intizar Hussain, Advocate.
Respondents by: Mr. Muhammad Munir Paracha and Mr. Nauman
Munir Paracha, Advocates.

and

C.R. No.728/2010
Malik Mehboob Hussain & 2 others
versus
Capital Development Authority & 3 others

Petitioners by: Mr. Muhammad Munir Paracha and Mr. Nauman
Munir Paracha, Advocates.
Respondents by: Mr. Intizar Hussain, Advocate.
Date of Hearing: 11.12.2019.

MOHSIN AKHTAR KAYANI, J: Through this common judgment, I intend to decide the captioned civil revisions for involving similar parties and facts.

2. Through the captioned C.R. No.668/2010, the CDA has called in question judgment and decree dated 13.03.2010 of the learned Additional District Judge, Islamabad, whereby appeal filed by the CDA against judgment and decree dated 16.11.2001, passed by the learned Civil Judge in favour of the respondents/plaintiffs, has been dismissed.

3. On the other hand, through the captioned C.R. No.728/2010, the petitioners namely Malik Mehboob Hussain, Ejaz Ahmad Dar and Mst. Mah Talat Malik (*hereinafter referred to as "respondents/plaintiffs"*) have assailed the judgment and decree of the learned Additional District Judge dated 13.03.2010 to the extent of observations made therein regarding demarcation of Plot No.10.

4. Brief and consolidated facts referred in the captioned civil revision petitions are that the CDA had developed a scheme consisting of 200 Acres of land for orchard

purposes at Murree Road near Faizabad, in which Plots No.76 & 77 were allotted to Manzoor Akhtar & others and Sher Ahmad & others, respectively, followed by its possession in the year 1981. Soon thereafter, the name of the scheme was changed to Poultry and Vegetable Scheme No.4, Murree Road, Islamabad (*hereinafter referred to as "Scheme"*), and the numbers of Plots No.76 & 77 were changed to Plots No.10 & 11, respectively. The said allottees of Plots No.10 & 11 had handed over possession of the said plots to Mst. Mah Talat as well as to Malik Mehboob Hussain and Ejaz Ahmad, respectively, who later on developed the said plots from their own sources. Later on, when the CDA developed a new plot bearing No.11-A, measuring 1.45 Acres, Poultry and Vegetable Scheme-4, Islamabad (*hereinafter referred to as, "suit plot"*), the respondents/plaintiffs filed a suit for permanent and mandatory injunction restraining the CDA from auctioning the suit plot together with declaration to the effect that the respondents/plaintiffs are lawful owners/transferees of the same. The suit was contested by the CDA and the learned trial Court pursuant to framing of issues and recording of evidence of the parties decreed the suit in favour of respondents/plaintiffs vide impugned judgment and decree dated 16.11.2001. Feeling aggrieved thereof, the CDA preferred an appeal, which was dismissed vide judgment and decree dated 01.03.2003, against which the CDA moved the Hon'ble Lahore High Court by filing C.R. No.486/2003, which was disposed of vide judgment dated 14.07.2004 with direction to decide the appeal of CDA afresh. After remand of the appeal, the learned Additional District Judge vide impugned judgment and decree dated 13.03.2010 again dismissed the appeal filed by the CDA but with additional observations that the CDA is competent to reclaim any excess land and carry out demarcation as it likes. Hence, the captioned civil revision petitions.

8. Learned counsel for CDA contended that impugned judgments and decrees of both the Courts below are based on misreading and non-reading of evidence and record; that the learned trial Court has failed to appreciate that the learned Federal Ombudsman has already decided the matter in favour of the CDA, followed by wrong

appreciation on the part of learned first Appellate Court in holding that decision of Federal Ombudsman is not operative as an estoppel between the parties; that the impugned judgments suffer from the mandate envisaged in Order XX Rule 5 CPC as both the Courts below have not thrashed out each and every issue independently and passed the impugned judgments and decrees, which are liable to be set-aside as this Court has powers to interfere with findings which are based on misreading or non-reading of evidence or suffering from jurisdictional defect or illegality of material irregularity.

9. Conversely, learned counsel for petitioners in C.R. No.728/2010 (plaintiffs in the suit), while supporting the judgment and decree of the learned Civil Judge dated 16.11.2001 contended that the learned first Appellate Court has rightly dismissed the appeal of CDA vide impugned judgment and decree 13.03.2010, but the observations made therein are not supported by law and facts of the case; that there is no mentioning of Plot No.11-A in the original site plan dated 22.02.1982 (Exh.P1), but the CDA has carved out the same by deducting portion of respondents/plaintiffs' land falling in Plots No.10 and 11, while the learned first Appellate Court has given free hand to the CDA to deal with the matter as per their own choice and will, such observations are not sustainable in the eyes of law and are liable to be set-aside to the extent of said observations.

10. Arguments heard, record perused.

11. Perusal of record reveals that Malik Mehmood Hussain, Ejaz Ahmad Dar and Mst. Mah Talat Malik (petitioners of the captioned C.R. No.728/2010) filed a suit for declaration, permanent and mandatory injunction restraining the CDA/defendant from auctioning Plot No.11-A, Poultry and Vegetable Scheme-4, Murree Road, Islamabad (*suit plot*) while claiming to be the lawful owners of the said plot.

12. The respondents/plaintiffs claim to be the allottees of Plots No.10 and 11 (old Plot No.76 and 77), confirmed through Exh.P2, Exh.P3, Exh.P4, Exh.P5, Exh.P6, Exh.P7 & Exh.P8, whereas they are mainly aggrieved with the creation of suit plot (Plot No.11-A) between their plots i.e. Plots No.11 and 10. The entire issue came to

limelight when the CDA notified the auction of the suit plot through Brochure No.370 (Exh.P13).

13. On the other hand, the CDA though admitted the respondents/plaintiffs being the allottees of Plots No.10 & 11, but took the specific stance in reply to Para-7 and 8 of the plaint in the following manner:

<i>Plaintiff/respondents</i>	<i>Defendant/CDA</i>
<i>7. That both these plots have been developed by the allottees and transferees by spending huge amount from their own sources. Now the plaintiffs have come to know that in the revised plan prepared by the CDA recently the land of the plaintiffs plots have been deducted that against this act of the CDA which was done by the CDA without prior approval of the plaintiffs or giving any notice the CDA has arbitrarily and malafidely acted which is the clear violation of the CDA's own Rules and Regulation. The plaintiffs approached the Chairman CDA through an application against this illegal act of the CDA, in which it was requested and pointed out that the act of the CDA Rules and Regulations and requested to restrain from their illegal act and further requested that if it is necessary to deduct land then the deducted land be given to the plaintiffs, if this land is deducted for sale then it may be sold to the plaintiffs to the and the plaintiffs are ready to pay the cost which would be fixed by the CDA, because of the fact that the said land has been developed by the plaintiffs themselves through their own sources. In this respect the application No.1272 dated 27-1-1994 refers.</i>	<i>7. Para 7 is not admitted as the CDA has not deducted any land of the plaintiff. Plot No.11-A is separate plot measuring 1.45 acres and is property of CDA. The plaintiffs have unautherisedly occupied the plot and boundry walls were built by them. As such development of this plot by plaintiff is illegal. They are not owner of this plot.</i>
<i>8. That uptil this time plaintiffs have received no response from the CDA. Now it has come to the notice of the plaintiffs vide Broucher No.370 issued by the Estate Management Directorate CDA in which it is declared that auction for plots will be held on 8,9, and 10 August, 1994 in which the plaintiffs portion of the plot has been included under the No.11-A at Serial No.7 in the showing the vacant plots in various agro-farming schemes upto the extent of 1/45 acres which is in clear violation of the Rules and Regulations, By-Laws of the CDA, because of the fact that said land is already in the lawful possession of the plaintiffs, under the Scheme no plot less than 2.50 acres can be created for Poultry and Vegetable Scheme-4 Murree Road, Islamabad.</i>	<i>8. Para 8 is admitted to the extent that this vacant plot was included in the auction held on 8, 9 and 10. August 1994, but due to interruption of plaintiff this plot was deleted from auction for time being. The contention of plaintiff that no plot less than 2.50 acres is created is not correct. CDA may create plot of any size according to availability of land and requirement of CDA.</i>

The above referred pleadings disclose that the suit plot measuring 1.45 acre is the main bone of contention between the parties, regarding which the CDA has taken the stance that the same being property of the CDA has unauthorizedly been occupied by the

respondents/plaintiffs and have constructed boundary wall around it, though the same has been removed through encroachment staff and as such, the suit plot could not be placed in auction as a dispute has been created by the respondents/plaintiffs.

14. The learned Trial Court on the basis of pleadings of parties has framed seven issues with Issue No.6 being the core issue i.e.:

"Whether plaintiffs are entitled to the decree for declaration, permanent and mandatory injunction as prayed for? OPP

15. The respondents/plaintiffs in order to prove their case have summoned official witness of CDA namely PW-1 Shafique Ahmad/Deputy Director Regional Planning, CDA, who produced the original record of the Scheme, including the site plan of the Scheme, dated 22.02.1982, as Exh.P1 and stated that after termination of previous scheme, Plots No.76 and 77 have been renumbered/notified as Plots No. 10 and 11, having area of 4.5 and 5.27 Acres, respectively, possession whereof was given to the allottees. However, he stated that:

"یہ درست ہے کہ جب نئی سکیم بنائی گئی متدعو یہ پلاٹ نمبر 11-A نہ تھا۔"

During the course of cross-examination, PW-1 Shafique Ahmad admitted that the authority while delivering possession to the allottees on site discerned that the land was in excess, therefore, possession was given to the extent of entitlement of allotted land, while the excess land was converted into a separate plot bearing Plot No. 11-A i.e. the suit plot. He also acknowledged that the CDA received the payment to the extent of land allotted to respondents/plaintiffs and the respondents/plaintiffs had not raised any objection at the time of getting possession of the land.

16. The respondents/plaintiffs have also produced PW-2 S.M. Kamil/Assistant Director Farming Estate Management, CDA, who has produced the original record of the Scheme, including Plots No. 10 and 11, together with letters Exh.P2 to Exh.P10, comprising of allotments, transfers and an application filed by the respondents/plaintiffs, whereby they have raised objection on creation of the suit plot.

17. The respondents/plaintiffs have also called PW-3 Ch. Manzoor to substantiate their claim, who stated that as per site plan the front area of the plot was 660 feet, which has been reduced by the CDA.

18. Similarly, PW-4 Ch. Azad Subhani also put appearance as special attorney on behalf of the respondents/plaintiffs and produced special power of attorney as Exh.P11 and Exh.P12. He stated that a scheme was notified by the CDA in the year 1981, in which Plot No. 76 (now Plot No. 10) and Plot No. 77 (now Plot No. 11) of the Scheme were allotted to respondents/plaintiffs with possession having front area of 660 feet and 510 feet, respectively, and as such, there is no mention of Plot No.11-A in the site plan, which was created through revised plan having an area of 1.45 Acre despite the fact that the minimum size of the plot, as per law, should be 2.5 Acre. He further stated that the respondents/plaintiffs are lawful owners of the suit plot as it is the part of Plot No. 10. He lastly stated that:

"اگر کسی طور پر یہ رقبہ منہا کرنا ضروری ہے تو اس صورت میں یہ رقبہ مدعیان کو فروخت کیا جائے کیونکہ مدعیان نے ہی اس رقبہ پر تعمیر اور ترقی کی ہے۔"

19. However, during the course of cross-examination, PW-4 Ch. Azad Subhani failed to refer the sizes of whole plots, however he confirmed that the size has been referred in the site plan and acknowledged that the old scheme was cancelled in the year 1981. He also acknowledged that Plot No.11-A (suit plot) has the area of 1.45 Acre, while the size of Plot No.11 was 5.27 Acre having front of 660 feet and 510 feet, respectively. He also expressed his ignorance regarding dismissal of complaint filed by the respondents/plaintiffs before the Federal Ombudsman and as such, the entire cross-examination reveals that PW-4 Ch. Azad Subhani is not aware of the factual side of entire case as he denied every question put to him.

20. On the other hand, the CDA has produced Gul Hussain/Deputy Director Estate Management, CDA as DW-1, who has produced allotment letter dated 30.11.1981 of Plot No.76 of National Park Area, allotted to Sikandar and Manzoor, as Exh.D1, confirmation letter dated 01.11.1981 as Exh.D2, withdrawal letter dated 10.03.1982 as Exh.D3, restoration of plot dated 17.10.1984 in the name of Sikandar and Manzoor as

Exh.D4, agreement of CDA with allottees as Exh.D6, possession letter of Sikandar and Manzoor dated 02.04.1981 as Exh.D6, death certificate of Sikandar as Exh.D7 and transfer of plot in the name of legal heirs as Exh.D8, who gave their general attorney to Manzoor Akhtar through Exh.D9. He also produced complaint filed by Manzoor to Wafaqi Mohtasib along with decision dated 23.02.1987, referred as Exh.D10. He also produced the building plan (Exh.D11), revised plan (Exh.D12), application for possession (Exh.D13) and letters for transfer and communication with CDA as Exh.D14 to Exh.D20, in which the plots were transferred to the respondents/plaintiffs. He also referred letter Exh.D21 regarding violations committed by Mst. Mah Talat Malik and letter Exh.D22 by the CDA, where illegally constructed boundary wall was demolished and the proceedings were referred as Exh.D23. DW-1 Gul Hussain/Deputy Director has also referred the history of Plot No.77 (now Plot No.11), which was allotted to Shabir Ahmad vide allotment letter dated 30.09.1981 (Exh.D24) together with its cancellation, restoration, possession, execution of special attorney, building plan, revised plan, transfer in the name of respondents/plaintiffs and lease agreement through Exh.D24 to Exh.D35. He lastly reiterated the sizes of plots as per record and confirmed that the suit plot was wrongly occupied by the respondents/plaintiffs.

21. During the course of cross-examination, DW-1 Gul Hussain/Deputy Director acknowledged the size of Plot No. 76 having front of 660 feet and Plot No. 77 having front of 510 feet. He also acknowledged that the suit plot is referred in the revised plan.

22. On the basis of above referred detailed evidence, the learned Trial Court while deciding Issue No.6 has given conclusive findings in favour of plaintiffs/respondents in the following manner:

"12. It is very much important to mention here that Ch. Manzoor Akhtar lodged a complaint before Wafaqi Mohtasib against the CDA regarding its decision to create another plot by reducing the plot of the complainant by stating therein that he and his brother were allotted the plot No.76 in Orchard Scheme of the CDA on 30.9.1981 and that due to re-planning the agency dropped the scheme and a new scheme known as Poultry and Vegetable Scheme was introduced. The allottees including the complainant of the Orchard Scheme were accommodated in the new scheme and Plot No. 10 was allotted to them. Their contention was that as per approved plan, the area of this new plot was 5.57 Acres but the Agency offered them only 4.54 Acres at the time of handing over the possession of the plot. The complainant requested the CDA to allot them

the entire plot of 5.57 Acres as per approved drawings but the request was not exceeded. The application of the plaintiffs was rejected with the observation that the learned Federal Ombudsman was satisfied by the statement of Agency that the complainant has been allotted an alternate plot of the size equal to the previous allotted plot and the CDA was free to create an additional plot if the land for the same was available. This is an admitted fact that in the new scheme, the land of the Plot No. 10 has been reduced from 5.57 Acres to 4.54 Acres and the plaintiffs were handed over the possession according to the map Exh.P1 in which the front of plaintiff's plot No.10 is 660 feet but in the revised plan Exh.P1/1, the area of Plot No. 10 has been reduced by deducting 120 feet from front side of the said plot. Thus the plaintiffs have succeeded to establish that when the defendants tried to auction plaintiff's portion of land of plot No.10 in the garb of Plot No.11-A shown in alleged revised plan Exh.P1/1, new cause of action accrued in favour of plaintiffs and accordingly they are not estopped to file this suit.

13. *Keeping in view of above discussion, plaintiffs have successfully proved that in fact the area of Plot No. 11-A in dispute is part and parcel of the Plot No. 10 which is already in possession of plaintiffs on the either hand. Defendants have failed to prove that Plot No. 11-A is a separate plot and plaintiffs have un-authorisedly occupied the same and that they have not deducted any land from the plot of the plaintiffs. I accordingly, therefore, decide this issue in positive in favour of plaintiffs and against the defendants.*

23. The CDA being aggrieved with the said findings challenged the same by way of appeal, which was dismissed by the learned Additional District Judge, Islamabad vide judgment and decree dated 13.03.2010 with essential observations in Paras No.10 & 11, which are reproduced as under.

"10. Learned counsel for the appellants had zeroed in on the statement of PW-1 (Muhammad Shafique Chaudhary, Deputy Director, CDA) whereby land was found in excess when the officials approached the spot to deliver the possession and said patch was numbered as 11-A, which was in the plaintiffs' illegal occupation. He has also tried to make much out of Ch. Azad Subhani PW 4's statement that if at all some land was to be deducted, the plaintiffs were entitled to its transfer since having made improvements, which has enough telltale. Added that the plaintiffs could hardly escape the consequences of omission to provide the exact measurement of the plots and admitted certain broad facts in guarded terms.

11. *The plaintiffs have sounded off about unilateral deduction in their land and remonstrated about the behavior patterns as exhibited by the Capital Development Authorities, for not finding awaiting years for their earnest requests. I may observe that without providing the stakeholders opportunity, any move aiming at deduction of their land would be hard to stomach, nevertheless, beyond that any land would be belonging to CDA regarding which it may embark upon some suitable plan and treat it the way it likes; that it shall also be open to it to carry out demarcation and reclaim the excess land.*

24. The CDA is still aggrieved with the abovementioned findings, whereas the plaintiffs/respondents are aggrieved to the extent of aforesaid observations recorded in Para-10 of the impugned judgment and decree.

25. Keeping in view the above details, the primary question before the Court is to see as to whether the CDA has any power to create a plot or a scheme under the law or otherwise. In this regard, Sections 11 and 12 of the CDA Ordinance, 1960 (*hereinafter referred to as "Ordinance"*) empowers the CDA to prepare a master plan and phased programme for development of capital site in specified areas and pursuant to master plan, prepare a scheme for land use, zoning and land reservation in terms of Section 12(2)(a) of the Ordinance. Similarly, the manner in which schemes have to be executed is referred in Section 14(a) of the Ordinance, which provides the description of scheme and manner of its execution, however the CDA in terms of Section 15 of the Ordinance can exercise a power and take all necessary actions to acquire any land, issue interim development orders of the areas, restrict or prohibit by general or through special orders any change in the use of land in terms of Section 15(2)(i)(vii) of the Ordinance as well as the CDA may amend any scheme in terms of Section 19 of the Ordinance.

26. While considering the above powers of the CDA, I have attended the proposition raised by the respondents/plaintiffs regarding their claim of being lawful allottees of the suit plot, which has been mediated with the site plan (Exh.P1), whereby it has been observed that Plots No. 76 and 77 have been transferred and renumbered as Plots No.10 and 11 having specific size i.e. 4.5 Acre and 5.27 Acre, respectively, but it has been determined from DW-1 Shafique Ahmad that possession was delivered to allottees on site and it was the obligation of the CDA to deliver complete possession as per the size referred above and the extra land was separately identified as Plot No. 11-A, which is not the part of Plots No. 10 and 11, especially when the payment has been received from the allottees/respondents to the extent of their allotted land as per the terms of allotment, therefore, the question of exclusion of certain piece of land of Plots No. 10 and 11 claimed by petitioners is contrary to record, even otherwise, PW-4 Ch. Azad Subhani, Special Attorney of the respondents/plaintiffs confirms the sizes of Plots No.

10 and 11 in his examination-in-chief while expressing his reservation on creation of the suit plot, which was not established at the time of allotment of Plots No.10 and 11 to the respondents/plaintiffs, but this does not mean that the CDA was not authorized to establish any plot on the land, which belongs to the CDA in terms of the powers available under the Ordinance.

27. The decree of declaration in terms of Section 42 of the Specific Relief Act, 1877 could only be passed on the claim of respondents/plaintiffs if they have some legal right or character qua the suit plot, whereby PW-4 Ch. Azad Subhani, Special Attorney of respondents/plaintiffs in his examination-in-chief stated in categorical terms that:

"پلاٹ نمبر 11-A سند عویہ کا رقبہ پلاٹ نمبر 10 کا حصہ ہے اور مدعیان اس کے قانونی مالک ہیں۔ اگر کسی طور پر یہ رقبہ منہا کرنا ضروری ہے تو اس صورت میں یہ رقبہ مدعیان کو فروخت کیا جائے۔"

28. The above referred stance placed a heavy onus upon the plaintiffs/respondents to discharge burden of prove in terms of Article 117 of the Qanun-e-Shahadat Order, 1984 to establish their legal right, which is dependent on existence of fact, which the plaintiffs asserts, however there is no evidence on record through which it could be proved that the claim of respondents/plaintiffs qua the suit plot has been proved in any manner as they have not produced any site plan for confirmation that the suit plot was part of Plot No.10 as claimed by PW-4 Ch. Azad Subhani, therefore, the requirements of Article 117 of the Qanun-e-Shahadat Order, 1984 have not been complied with, which otherwise calls for the effect of Article 118 of the Qanun-e-Shahadat Order, 1984 as the burden of proof in a suit lies on plaintiffs, who have failed to discharge their onus. Although, the respondents/plaintiffs have called the evidence of record keeper of the CDA, but there is no admitted fact on record that the suit plot was carved out of Plot No.10. In such eventuality, the findings given by the learned Trial Court relating to Issue No.6 are contrary to the CDA By-laws and Regulations as the learned Trial Court has not considered the mandate of the Ordinance, which empowers the Authority to prepare a scheme and to execute the same for the purpose of land use in the concept of master plan or phased master programme in terms of Section 11 of the Ordinance, therefore, the legislative intent referred in Section 49-E of the Ordinance (*Jurisdiction of*

Court Bared), comes into play barring jurisdiction of any Court or Authority to question the legality of anything done or any action taken under this Ordinance by or on the instance of the Authority and as such, this aspect was not considered by the learned Trial Court despite the fact that Issue No.2 was framed in this regard, whereby the suit was barred coupled with Section 56 of the Specific Relief Act, 1877.

29. The learned Additional District Judge in appeal has rightly observed in Para-10 that the CDA can carry out demarcation and reclaim any excess land as and when required, to which no permission is required from the respondents/plaintiffs.

30. The petitioners in C.R. No.728/2010 (plaintiffs) by claiming the right in the suit plot with the contention that they are ready to purchase the suit plot if the same is carved out separately, however they have also challenged the auction brochure Exh.P13 and as such, this aspect establishes the principle of approbate and reprobate, whereby the respondents/plaintiffs cannot blow hot and cold in the same breath. The stance taken by PW-4 Ch. Azad Subhani in his examination-in-chief is contrary to the standards and requirements of Section 42 of the Specific Relief Act, 1877, even otherwise, allowing such relief would encourage illegal occupants who have illegally occupied the State land belonging to CDA. Similarly, the claim of respondents/plaintiffs qua the land in question that they had spent a huge amount on the State land is also not justiciable, even if the same could be sold in their favour, as such, this claim is also in violation of the very spirit of the CDA Ordinance, 1960.

31. The settled position persuades this Court to hold that the CDA has right to reclaim the land illegally occupied by occupants or trespassers by use of force and is empowered to declare any land under a scheme for the purpose of auction keeping in view the By-laws of the Authority, and as such, the very claim of respondents/plaintiffs qua the suit plot is illegal, however both the Courts below have not seen the wisdom laid down in the CDA Ordinance, 1960 and other By-laws, whereas it was settled that no sanctity is attached to concurrent findings of the facts, if the same are suffering from the defect of misreading and non-reading of evidence, or where merits of the case demanded that challenged order be set aside, or where case decided by the Courts

subordinate to the High Court committed error or irregularity which requires rectification. Reliance is placed upon PLD 2010 SC 582 (Province of Punjab through Collector v. Muhammad Farooq), 2004 SCMR 1001 (Ghulam Muhammad v. Ghulam Ali), 2014 SCMR 1358 (Province of Punjab through District Officer Revenue, Rawalpindi v. Muhammad Sarwar) and 2012 SCMR 1942 (Province of Punjab through Collector v. Muhammad Farooq).

32. In view of above settled position, the judgment and decree passed by the learned Trial Court dated 16.11.2001 as well as judgment and decree dated 13.03.2010, passed by learned Additional District Judge being contrary to law are hereby SET ASIDE as both the Courts below have not exercised their jurisdiction in accordance with law, therefore, this Court while exercising the powers conferred under Section 115 of the CPC is under obligation to uphold the wisdom laid down in the CDA Ordinance, 1960 as well as in the Land Disposal Regulations by declaring that the suit plot i.e. Plot No. 11-A is property of CDA and it could only be allotted by way of public auction and not otherwise. The CDA is directed to take over Plot No. 11-A by all means and put the same in public auction in upcoming auction as fixed by the CDA, however the respondents/plaintiffs are at liberty to participate in the auction, if so desired.

33. In view of above discussion, the captioned C.R. No.668/2010 (CDA v. Malik Mehboob Hussain, etc.) is hereby ALLOWED and C.R. No.728/2010 (Malik Mehboob Hussain, etc. v. CDA) is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 09.01.2020.

JUDGE

Khalid Z.