

JUDGMENT

Before Shaukat Aziz Siddiqui, J

**CAPITAL DEVELOPMENT AUTHORITY, through Chairman, CDA Secretariat,
Islamabad----Petitioner**

Versus

Sufi MUHAMMAD SAGHEER KHAN and 2 others----Respondents

Civil Revision No.116 of 2013, decided on, 15th January, 2018.

SHAUKAT AZIZ SIDDIQUI, J.--- Instant Civil Revision under section 115, C.P.C. has been preferred against impugned judgment and decree dated 18.02.2013, passed by the learned Additional District Judge-IV, Islamabad (West), whereby, Judgment and decree dated 22.04.2011 passed by the learned Civil Judge, Islamabad has been set aside and suit for permanent injunction of the plaintiff/ respondent No.1 has been accepted.

2. Brief facts relevant for disposal of instant petition are that the petitioner authority allocated plot No.15, measuring 170' x 135', Sector I-9 Markaz, Islamabad for Masjid, vide letter No.CDA/PLW-UP-I-9 Markaz (26)/92/ 1520, dated 31.03.1992. That possession of the plot was taken over by the Masjid committee in 1993 and later on during the demarcation proceedings the actual size of the plot was found to be 157.6' x 135' accordingly size of the plot was reduced by the petitioner authority after fulfilling the legal requirements under the building and zoning (Regulations). That respondents were intimated in writing about the reduction of plot size and plan for construction of Masjid at the above mentioned plot of (reduced size) was also approved by the petitioner authority. That during demarcation it was found that respondents have made construction over the plot without getting proper/formal possession of the plot and have illegally constructed structure over the public lane measuring 25' x 135'. That respondents were requested time and again to remove the illegal construction which they failed to do so and instead of removing the same filed a suit for permanent injunction before the learned trial court. That trial court after recording of evidence and hearing both the sides vide judgment and decree dated 22.04.2011 dismissed the suit. That respondents filed an appeal against the judgment and decree dated 22.04.2011, before the learned Additional District Judge who while setting aside the judgment and decree passed by trial court accepted the appeal. Hence this petition.

3. Learned counsel for the petitioner contended that impugned judgment and decree is illegal, void ab-initio, perverse, rarity, against the norms of justice and nullity in the eyes of law and that the learned court below exercised its jurisdiction with material irregularity by accepting the appeal with a consequence of decree of the suit. Learned counsel further contended that learned appellate court failed to appreciate the admitted fact that respondents made illegal encroachment over the land and not only the possession of the land was taken illegally but also raised illegal construction without prior approval as required. Learned counsel added that findings of the appellate court on the issues framed are totally irrelevant and on different circumstances. The findings of the trial court on the issues were quite legal but the appellate court illegally set-aside the findings of the

lower court. Learned counsel submitted that appellate court has ignored the solid, strong and corroborated evidence of the petitioner and has passed the impugned judgment and decree on the basis of conjecture and surmises which infact is misreading and non-reading of evidence. Learned counsel prayed for accepting instant petition, setting aside the impugned judgment and decree and restoring the judgment and decree passed by the learned trial court.

4. On the other hand, learned counsel for respondents supported the impugned judgment, dated 18.02.2013 on the ground that suit plot was allotted for the purpose of construction of Masjid and sufficient evidence is available on record to prove their case and the same fact has rightly been concluded by the appellate court while setting aside the judgment and decree passed by the learned trial court. Learned counsel added that master plan once issued cannot be changed and according to that there is no street as pleaded by the petitioner authority. Learned counsel further stated that all the material fact and circumstances have been discussed by the appellate court in its findings. Learned counsel lastly contended that petitioner has no locus standi to file instant petition and approached the court with unclean hands. That Impugned order is justified as well as lawful and prayed for dismissal of instant petition.

5. I have heard the learned counsel for the parties and perused the judgments and decrees passed by the courts below as well as relevant record.

6. To understand the basic controversy between the parties Para 3 of the plaint and reply in written statement thereof, submitted by the defendants during the trial are of vital importance, which for convenience are reproduced hereunder:

"3. That the defendant allotted Plot No.15, in Sector I-9, Islamabad, for the above said Mosque. Vide letter No. C. D.A. / PLW-UP-I-9, Markaz (26)/ 92/ 1520 dated 31.03.1992, size of the plot was specifically mentioned to be 170' x 135'.

PARA-3. That Para 3 is denied to the extent that the structure mentioned has neither approval of the Authority nor possession for the same was handed over by the Authority, as such all the construction if raised is illegal."

Before proceeding further, contents of (Ex-P.1 & P.2) letters dated 31.3.1992 and 23.6.1994 for ready reference are reproduced herein below:

(Ex.P.1)

CAPITAL DEVELOPMENT AUTHORITY

(UP DATE:)

No. CDA PLW-UP-(26)/92/1520.

Islamabad, Mar:

To,

Mr. Muhammad Khalid Sarwari,

President,

Management Committee Masjid Sulmani, I-9 Markaz,

Islamabad.

Subject:- SIZE OF MOSQUE PLOT IN I-9 MARKAZ.

With reference to your application dated 30.01.1992.

It is informed that planned size of mosque sulamani I-9 Markaz is 170' x 135'.

Sd/xxx

(GHULAM SARWAR SANDHU)

Town planner- IV

(Ex-P.2)

CAPITAL DEVELOPMENT AUTHORITY

(URBAN PLANNING DTE)

No. CDA/PLW-UP-I-9(26)/Markez/94/1731,

Islamabad 23, June

Subject:- PLOT FOR MOSQUE IN MARKEZ I-9.

It is informed that plot No. 15 measuring 157.5' x 135' markez I-9 has been earmarked for mosque only. However Imam and Moazzan quarters will be permitted as per approved building plan for the plot.

Sd/xxx

(GHULAM SARWAR SANDHU)

Town planner- IV

Mr. Shahb-ud-Din,

President Mosque

Committee Majid

Sulmani Markez I-9.

Bare perusal of the above Para's and letters dated 31.03.1992 (Ex.P.1) and 23.06.1994 as (Ex.P.2)

reveal that suit plot was never allotted in favour of any persons(s) and there is no proof, like Board's resolution of handing over of plot to respondent with permission to raise construction and manage the affairs of Masjid. Entire correspondence in favour of respondent is by one Deputy Director, Ghulam Sarwar Sindhu, but without any sort of formal approval by the competent authority. In the year 1992, a simple letter (not allotment letter) issued showing measurement 170' x 135', by the above mentioned official. Petitioner's authority claims that there is no corresponding record to show the handing over of plot to respondent. Size of the plot reserved for Masjid was 157.6' x 135' even, if for the sake of arguments it is accepted that size of the plot reserved for Masjid was 170' x 135' reduced by its title holder to 157.6' x 135' for public interest what locus standi respondent has to raise any objection. On perusal of letters of 1992 and 1994 it transpired that even letter dated 31.03.1992, upon which the respondents have been relying throughout all the rounds of litigation nowhere suggest that plot number so and so has been allotted/handed over for the construction of Masjid at Sector I-9. In the said letter only a reference has been given and it has been intimated that planned size of plot for Masjid is 170' x 135', which depicts that it is just a layout plan and as per the CDA regulations the CDA has the powers to change the layout plan in the interest of public. Whereas, letter dated 23.06.1994 has been issued by authority, whereby, information regarding a specific plot along with measurement, earmarked for the purpose of construction of Masjid at Sector I-9 Markaz has been notified as per approved building plan. From the available record it transpires that construction has been raised without the approval by the authority, which fact has been admitted by respondent No.1, in his statement given during the trial while appearing as PW-1 (plaintiff No.2), which is reproduced herein below.



That in the meetings between the petitioner's authority and respondents it was held that a 25' wide public lane was illegally encroached upon at the time of construction of Masjid which will be removed and CDA will pay an amount of Rs.2,75,000/- for removal as well as fresh construction but later on neither petitioners authority nor the respondents acted upon the agreed terms. I may observe over here with great concern that raising construction of Masjid and shops in the street covering 25' part of a public street without the approval of concerned authority according to CDA regulations, is not only illegal but depicts attitude of a particular mindset, that in the name of construction of Masjid everything is permissible, but this approach is against the Islamic principles and teachings.

7. Islam encourages Muslims to compete with each other in good deeds, to donate their own lands or buy lands for the construction of Masjid and other charitable purposes, but Islam forbids seizing someone else's land for such purpose. Prophet Muhammad (peace and blessings be upon him) encouraged the building of Masjid and it has been reported both on the authority of Sahih al-Bukhari and Sahih Muslim wherein, it is provided in the following words:

"He who builds a Masjid for the sake of Allah, seeking the pleasure of Allah, Allah would reward him with a dwelling in Heaven." (Sahih al-Bukhari 439, Sahih Muslim 533)

In the building of a Masjid the best example before us is that of the Messenger of Allah, who began

to build a Masjid as soon as he migrated from Makkah to Madinah. The examples set by the Prophet Muhammad (peace and blessing be upon him) at times are not followed, Masjid-e-Nabvi's construction was not started until owners (orphans) accorded permission. But unfortunately now a day's trend is that if some place is found vacant certain people with their own aims and objects, declare it for Masjid and raise illegal and unauthorized construction which caused more harm to Islam. The Masjid's are for Almighty Allah and not for a particular person(s), group, party, sect, or sub-sect (maslaq). In building Masjid another best example is also of Prophet Muhammad, (peace and blessings be upon him), who, despite being offered free land, purchased the land on which he built a Masjid, which was open to all Muslims, men and women, old, young, every race and colour. Thus keeping in view the Islamic, Constitutional and Legal values it can be derived that to forcefully build a Masjid on another's land, including land held by a government or a statutory authority tantamounts to overcoming someone else's property, which is a sinful act. Land grabs and illegal encroachments, even for the purpose of building a Masjid, contravene the CDA Ordinance and the Constitution of Pakistan. Shariah requires everyone to observe the laws of a country. If the law requires the submission and seeking approval of building plans before building a Masjid the same must be complied with. It can thus safely be concluded that the act of raising any construction over a public lane is contrary to Quranic injunctions and the example and sayings of the Holy Prophet (peace and blessings be upon him). Even otherwise civic body holding title of any property has the authority to alter, change and adjust the same in the larger interest of public. It is admitted fact that size of public street is 25' wide, out of which area measuring 13' x 135' is encroached for construction of shops etc.

8. Intervener in the case has a stance that in open auction held CDA, he purchased plot No.2-B, 1-9 Markaz Islamabad. He annexed with his application, allotment letter dated 17.06.2015, approved site plan and demarcation report. Now question arises that, if a person(s) purchases plot from CDA by paying almost Rs. 9 crores, how he can be deprived of passage of 25' wide lane on one side of his plot. His claim is so strong that stance of respondents looks so feeble and without plausible justification. I am constrained to observe that learned appellate court below failed to appreciate the pleadings, evidence and conduct of parties, misreading and non reading of evidence is visible, application of judicial mind is lacking and facts are misconstrued.

9. As far as management of the affairs of Masjid is concerned, CDA must place the matter before its Board in order to evolve a proper procedure to cater such like situations. The possession with permission to raise construction for Masjid must not be handed over to any person(s) without evolving a prescribed procedure and final approval by the Board. Plot allocated for Masjid does not mean that whosoever starts construction, same shall be presumed to be allotted to that person(s).

10. In the light of above discussion, instant civil revision is allowed impugned judgment and decree dated 18.02.2013 is hereby, set aside, the suit of the respondent No.1/plaintiff will be deemed to be dismissed and the petitioner's authority (CDA) is at liberty to act in accordance with law. No order as to costs.

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