

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P No. 1462/2021
Arslan Tahir and another
versus
CDA, Islamabad and others.

Petitioners by:	Ms. Saeeda Mirbaz, Advocate.
Respondents	Mr. Muhammad Nazir Jawad, Advocate for CDA. Abdul Wahid Qureshi and Malik Talat Hussain, Advocates for respondent No.3.
Date of Decision:	13.09.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioners have assailed the letter dated 09.04.2021, issued by Directorate of Building Control-II CDA, whereby direction was issued for registration of F.I.R against the petitioners/owners for illegally breaking the seal of the premises.

2. Learned counsel for the petitioners inter-alia contends that petitioners have purchased a commercial plot No.CP-2, Block-H from respondent No.3/Civilian Employees Cooperative Housing Society and submitted their plan for approval of proposed site plan for the purpose of construction before the CDA after fulfillment of all legal formalities including deposit of fee of 3.7 million rupees approximately on 24.01.2021, but the CDA Authorities have not yet approved the construction as well as site plan and sealed the premises without any lawful justification. The petitioners neither de-sealed the property nor committed any offence, but the impugned letter was issued in a mechanical fashion.

3. Conversely, learned counsel for the CDA contends that LOP of the Society has already been cancelled due to violation committed by the society, even plot in question is situated outside the layout plan of the society, even the same does not fall within previously approved plan, rather fall within the extended area, which is not part of the society. It has further been argued that

CDA Authorities have rejected the building plan of the petitioners through letter dated 20.11.2019 with details reasons as the premises have been sealed by the CDA Authorities, which has been de-sealed by the petitioners unauthorizedly and they have raised the construction up to 10 storeys building without any justification.

4. Learned counsel for respondent No.3/Civil Employees Cooperative Housing Society, Islamabad contends that LOP of the society has already been cancelled, though the respondent society has filed additional application alongwith the details by including the plot of the petitioners and same is pending with the respondent CDA for their final action, as such no illegality has been committed by the respondent society. He further contends that affairs of the management have taken over by the Administrator, appointed by the Registrar Societies.

5. Arguments heard and record perused.

6. Perusal of record reveals that petitioners claims to be the owners of plot No. CP-2, Block-H from respondent No.3/Civilian Employees Cooperative Housing Society, which was transferred in their names on 05.09.2018 and they have raised the construction of multiple storeys building, which is presently in shape of a grey structure, even CDA Authorities have issued a notice for illegal construction as they have applied for the approval of site plan, in response, the petitioners have submitted the application alongwith scrutiny fee of Rs. 3.7 million to the office of CDA in 2021 with the proposed site plan, which has been rejected by the CDA vide letter dated 20.11.2019 with the following detail:-

Subject: **OBSERVATION LETTER FOR APPROVAL OF BUILDING PLANS IN RESPECT OF PLOT NO.CP-2, EXPRESSWAY BLOCK-H, SOAN GARDEN (CECHS), ZONE-V, ISLAMABAD.**

Reference your letter dated: 31-07-2019 on the subject noted above, I am directed to inform you that, your case has been examined in this office, but the same couldn't be acceded to due to following observations:-

- i. Plot is not included in approved LOP from Planning Wing, CDA.*

- ii. Transfer letter is issued from society is conditional.
- iii. NOC for Soan Garden is cancelled.
- iv. Forwarding NOC from society is required.
- v. Indemnity bond required from society duly signed by indemnifier and witness's alongwith CNIC copies (attested).
- vi. Illegal/unauthorized construction started at site.
- vii. Fire fighting drawings along with certificate is required.
- viii. Certificate of CDA approved vetting consultant is required.

You are therefore requested to submit/fulfill all aforementioned codal formalities in order to process further in the matter, please.

7. The above mentioned correspondence reveals that the plot in question is not included in the approved LOP from the Planning Wing of the CDA, even otherwise, plot is conditional, which was transferred in the names of petitioners, which is otherwise evident from the transfer letter with the following condition:-

The above plot/property falls in the extended area of the Scheme (Affiliation Block-G&H) for which no LOP/NOC is approved yet, therefore, this transfer is subject to the final decision of the competent authority viz CDA etc. In case the extended area is declared illegal by the competent authority/Court of law, then the transferee himself/herself shall be personally responsible and the society/undersigned shall not be held responsible for any loss/damages caused to the transferee. This transfer is made on the request and risk of the transferee.

8. While considering the above background, it is clear from the available record that the premises in question is not approved by the CDA in any manner nor the layout plan of the extended area of the society is approved, rather the previous LOP was already cancelled by the CDA Authorities due to continuous violation of CDA by-laws.

9. This Court in the proceedings of I.C.A No. 83/17, I.C.A No. 84/17 and I.C.A No. 21/18 have passed numerous directions to the CDA Authorities vide judgment dated 12.07.2018 to comply with the CDA by-laws and CDA Authorities were directed to proceed against all those societies, individuals, companies, firms, developers, who have not obtained any approval of their construction from the CDA Authorities, therefore, in compliance of the direction passed by learned Division Bench of this Court, Directorate of

Building Control-II, CDA issued different letters to the Civilian Employees Cooperative Housing Society dated 28.12.2018 to stop construction in Soan Garden, Islamabad of any plot, which was converted from residential to commercial without obtaining approval from CDA or in violation of approved layout plan. Even the President of the Society has separately been conveyed through letter dated 28.12.2018 with warning notice in compliance of judgment of this Court and thereafter on 23rd December, 2019, CDA has initiated the sealing of commercial plots on account of construction without getting approval from CDA, which is evident from their correspondence referred to the Deputy Commissioner and SSP (Operations), Islamabad after sealing of the premises including under construction plot of the petitioners and other commercial projects have also been sealed by the CDA, but the owners including petitioners have allegedly de-sealed the premises and resumed the work, whereby a letter dated 09.04.2021 was written to S.H.O, P.S Lohi Bher, Islamabad for registration of F.I.R and subsequent letter dated 28.04.2021 confirms the status of de-sealing of the premises. The continuous issuance of letters by Directorate of Building Control-II, CDA to the S.H.O, P.S Lohi Bher further reveals that the S.H.O is in defiance of direction of this Court, which itself is an illegality on his part, who has not complied with the terms of the judgment of this Court in letter and spirit. This entire background speaks volume about the conduct of the petitioners as well as S.H.O, P.S Lohi Bher, though petitioners claims that the application for approval of construction is pending with the CDA, but petitioners are not permitted to argue the case of the society as their LOP and NOC have already been cancelled by the CDA. The question relating to de-sealing of the property or violation of CDA by-laws are question of facts, which could only be resolved when matter would be investigated by the police after registration of F.I.R, therefore, at this stage, this Court is not in position to go into disputed question of facts nor it is justified to take any kind of evidence qua the issue in hand.

10. For what has been discussed above, instant writ petition is misconceived and same is hereby **DISMISSED**. However, S.H.O, P.S Lohi Bher, Islamabad is directed to submit a copy of F.I.R through learned Registrar of this Court within period of two (02) days. Copy of the judgment may also be transmitted to S.S.P (Operations), Islamabad to take departmental action against S.H.O, P.S Lohi Bher, Islamabad for his non-compliance of earlier direction of this Court, despite repeated requests of the Directorate of Building Control-II, CDA through letters dated 27.01.2020, 09.04.2021 and 28.04.2021.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN