

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

Intra Court Appeal No. 236 of 2021

Zahid Idrees Mufti

Versus

Deputy Commissioner, Capital Development Authority, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	27.05.2021	Mr. Ali Asghar Pasha Khan, Advocate for the appellant.

TARIQ MEHMOOD JAHANGIRI, J: Through

the instant Intra Court Appeal, the appellant has assailed the Judgment dated 11.03.2021, passed in writ petition No. 4305 of 2014, whereby, the learned single Judge-in-Chambers has dismissed the writ petition filed by the petitioner.

02. Brief facts of the case are that the appellant had challenged orders dated 16.09.2014 and 06.08.2014 passed by the Deputy Commissioner, C.D.A, Islamabad, whereby on failure of the appellant to clear violation qua non-confirming use, penalty of Rs. 5,000,00/- was imposed under clause 2.17.3 of the Islamabad Residential Sector Zoning Building Regulations, 2005, on the ground that the appellant leased out his house to a government department / organization at the time when the policy of non-confirming use was

not applicable on government organizations / departments and that subsequent withdrawal / amendment of said policy would have no any adverse affect upon the appellant and has prayed for setting aside the impugned order passed by Deputy Commissioner, CDA, Islamabad but the writ petition was dismissed by the learned Single Judge-in-Chambers vide impugned judgment dated 11.03.2021, hence the instant Intra Court Appeal.

03. Appellant has stated that the learned Single Judge-in-Chambers has not taken into consideration the fact that the orders passed by the Deputy Commissioner, C.D.A, Islamabad were against the law. In its comments, C.D.A did not deny the basic fact that renting out of house to government subsidiary / company for establishing of guest house was not unlawful as the CDA exemption policy for government organization from non-confirming use was applicable at the time of execution of lease agreement dated 16.05.2011. Learned counsel has further contended that the impugned order is a non-speaking order, sans judicious reason and passed arbitrarily beyond the scope of statutory provision of Section 24-A of General Clauses Act, 1987 and the law settled by Superior Courts and has also placed reliance upon cases titled as “*Mollah Ejahar Ali V. Government of East Pakistan*” (PLD 1970 SC

173) and “*Basit Ali V. Additional Chief Secretary*” (2005 YLR 1719). It has further been contended that finding of learned Single Judge-in-Chambers are against law and facts of the case, therefore, the impugned order is not sustainable and is liable to be set aside.

04. Arguments heard, record perused.

05. The orders dated 16.09.2014 and 06.08.2014 were passed by the Deputy Commissioner, CDA, Islamabad under Section 49-C of CDA Ordinance, 1960 for establishing guest house in a residential premises, whereby a fine of Rs. 5,000,00/- under clause 2.17.3 of Islamabad Residential Sector Zoning Building Regulation, 2005 was imposed. The owner was directed to pay the fine within five days as well as to remove the non-confirming use within a period of 15 days failing which, the violator was liable to pay fine of Rs. 5,000/- per day. It was further ordered that recovery of fine was required to be made under Land Revenue Act, 1967.

06. For ready reference, Section 49-C of CDA ordinance, 1960 is reproduced hereinunder;

“49-C. Removal of building, etc erected or used in contravention of this Ordinance:-

(1) If any building, structure, work or land in erected, constructed or used in contravention of the provisions of this Ordinance or of any rule, regulation or

order made thereunder, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, by order in writing, require the owner, occupier, user or person in control of such building, structure, work or land to remove, demolish or so alter the building, structure or work, or to desist from using or to so use the land, as to be in accordance with the said provisions.

(2) If an order under sub-section (1) in respect of any building, structure, work or land and is not complied with within such time as may be specified therein, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, after giving the person affected by the order an opportunity of being heard, remove, demolish or alter the building, structure or work, or stop the use of the land and, in so doing, may use such force including police force as may be necessary and may also recover the cost therefor from the person responsible for the erection, construction or use of the building, structure, work or land in contravention of the provisions as aforesaid”.

07. The order of Deputy Commissioner, CDA passed under Section 49-C *ibid* is appealable

under Section 36 of CDA Ordinance, 1960. Section 36 of CDA Ordinance, 1960 provides that any person aggrieved by an award or final order of Deputy Commissioner, CDA may within 15 days of such an award or order file an appeal to the Commissioner.

08. As the appeal to the Commissioner is provided under Section 36 of CDA Ordinance, 1960 against the order of Deputy Commissioner, CDA, passed under Section 49-C of CDA Ordinance, 1960. Hence the instant Intra Court Appeal is barred under Section 3 of Law Reform Ordinance, 1972.

09. Law is very much clear in this regard, Section 3 of the Law Reform Ordinance provides that *“no appeal shall lie, if the application brought to High Court under Article 199 arises out of “Any Proceedings” in which the law applicable provided at least one appeal or one revision or one review to any Court, Tribunal or authority against the “Original Order”.* Therefore, the instant appeal is hit by the afore-referred provision of Law Reforms Ordinance. Reliance is placed on the cases titled as *“Deputy Commissioner / Administrator, District Council Attock and another V. Lawrencepur Woolen Textile Mills Ltd” (1999 SCMR 1357), “Iqan Ahmed Khurram V. Government of Pakistan and others” (PLD 1980 SC 153), “Mst. Karim Bibi and others V. Hussain Bakhsh and*

***another” (PLD 1984 Supreme Court 344),
“Muhammad Abdullah V. Deputy Settlement
Commissioner, Centre-I, Lahore” (PLD 1985
Supreme Court 107).***

10. In view of foregoing discussion, instant
Intra Court Appeal is not maintainable, hence
the same is dismissed in limine being merit less.

**(AAMER FAROOQ)
JUDGE**

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**

Bilal

Approved for reporting.