

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Civil Revision No. 361/2018.**

**Capital Development Authority through its Chairman, Islamabad, etc.**

**Versus**

**Muhammad Saleem Ahmed Ranjha, etc.**

Petitioners by: Malik Javed Iqbal Wains, Advocate.

Respondents by: Hafiz Munawar Iqbal, Advocate.  
Mr. M. Mumtaz Ali, AAG.  
M. Mohsin Pasha, Joint Estate Officer.

Date of Decision: 25.02.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this Civil Revision, the petitioners have assailed the judgment & decree dated 29.05.2018, passed by learned Civil Judge, 1<sup>st</sup> Class (West), Islamabad, whereby suit for declaration, permanent and mandatory injunction filed by respondent No.1 was decreed in his favour and the said judgment & decree was further upheld by the learned Appellate Court vide judgment & decree dated 12.09.2018, passed by learned District Judge (West), Islamabad.

2. Learned counsel for the petitioners/CDA contends that respondent No.1 filed a suit for declaration, permanent and mandatory injunction to challenge the notice dated 08.02.2017, issued by CDA referred as Ex.P-3, whereby respondent No.1 was directed to vacate the suit accommodation; that both the Courts below have not appreciated the law on the subject as the suit accommodation was designated house for member CDA Board under Accommodation Allocation Rules (AAR), 2002 and it was allotted to respondent No.1 without adopting due process of law; that CDA is competent to give notice for vacation of the suit accommodation which is within the domain of petitioners under the law; that both the Courts below have not

appreciated the evidence in its true perspective and reluctant to hand over the suit accommodation to the petitioners for designated purpose.

3. Conversely, learned counsel for respondent No.1 contends that suit accommodation was allotted to respondent No.1 on 11.04.2016 by the Estate office in accordance with law as respondent No.1 is a civil servant who is entitled for the allotment of suit accommodation and as such the dispute regarding designated house or its otherwise status has to be regulated between the CDA and Ministry of Housing and Works at their official level and it has nothing to do with respondent No.1.

4. Learned AAG alongwith Joint Estate Officer contends that suit accommodation is not a designated house nor it has ever been given to the CDA and same is in possession of civil servants from day one and as such CDA has no cause of action to claim any right.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.1, DG, IPRE, FBR is allottee of suit accommodation i.e. House No.16, Category-III, Street No.63, F-7/3, Islamabad which was allotted to him on 11.04.2016 through Ex.P-1 by the Estate Office and the possession was handed over to him through occupation report Ex.P-2. The suit accommodation is on the pool of Estate office and during his occupation he received impugned notice dated 08.02.2017 referred as Ex.P-3, issued by Director Administration, CDA whereby he was directed to vacate the suit accommodation as the said **house is one of the CDA Board Member designated house and accordingly, it is CDA property which has been illegally allotted by Estate Officer**. Respondent No.1 has no other choice but to contest the same and he has replied the notice through Ex.P-4 and has also placed the rent deposited by him through Ex.P-5 on record, matter has been contested by the CDA/petitioners, and have filed their written statement, whereby they have taken categorical stance that suit accommodation is a CDA Board Member designated house and same could not be allotted by the Estate office to respondent No.1.

7. I have attended the evidence recorded by the CDA in this regard, whereby Ch. Shahid Kamal, Admin Officer, CDA put appearance as DW-2, who has reiterated the stance of CDA and states that:-

1997 میں ہمیں CDA کو پرائم منسٹر سیکرٹریٹ سے Directive موصول ہوئی تھی کہ مکان متدعوہ کو DC ہاؤس ڈیکلیر کیا جائے۔ مورخہ 11 دسمبر 1997 کو اسٹیٹ آفس کے سینئر جوائنٹ سیکرٹری نے CDA کو مراسلہ بھیجا کہ مکان متدعوہ کو DC ہاؤس ڈیکلیر کریں۔ اسکے بعد 18 فروری 1998 کو CDA نے پرائم منسٹر سیکرٹریٹ کی Directive کی روشنی میں ڈپٹی کمشنر ICT کو بطور Designated ہاؤس ڈیکلیر کر دیا۔ CDA نے اس الاٹمنٹ کو مساوی کیلنگری کے مکان سے مشروط کر کے دیا تھا مورخہ 28 اپریل 1998 کو CDA نے ایک مراسلہ ایڈیشنل سیکرٹری سوشل سیکرٹری پرائم منسٹر سیکرٹریٹ میں مسٹر نذر محمد شیخ کے نام بھیجا کہ مذکورہ مراسلہ میں CDA نے استدعا کی چونکہ مکان متدعوہ مشروط طور پر الاٹ کیا گیا ہے لہذا ہمیں اس کے بدلہ میں مکان نمبر 1G گلی نمبر 51 سیکٹر 4/F-6 الاٹ کیا جائے دیا جائے۔

مورخہ 10 اگست 1998 کو مکان نمبر 5G اولڈ 3G گلی نمبر 51 سیکٹر 4/F-6 CDA کے پول پر مکان متدعوہ کے بدلے کر دیا گیا ہے۔

8. Besides the above referred position it has been admitted by the DW-2 that on 10.08.1998 house No.5-G old 3-G, street No.51, Sector F-6/4, Islamabad was placed on the CDA pool against the suit house but as per his contention the house has not yet been given. The DW-2 has acknowledged in his evidence that:-

یہ درست ہے کہ مذکورہ خط و کتابت ڈائریکٹو PM سیکرٹریٹ مکان متدعوہ مورخہ 16.02.1998 سے اسٹیٹ آفس کے پول پر چلا گیا تھا از خود کہا کہ مکان مذکورہ کے بدلے میں ہمیں دوسرا مکان دینا تھا جو کہ ابھی تک نہیں ملا۔

9. While considering the above stance, I have also taken into account the evidence referred by the CDA, whereby entire record has been placed but all those documents have been marked which could not be considered as a documentary evidence under Qanun-e-Shahadat Order, 1984 but counsel for the petitioners has heavily placed his reliance upon Mark A/D-10 letter dated 21.07.1998 and contends that CDA is entitled to get the suit accommodation being designated house of the member CDA.

10. In order to resolve the controversy, I have confronted the CDA i.e. petitioners to justify the concept of designated house under AAR, 2002, while answering the

said question it is necessary to go through the provision of AAR, 2002, whereby Section 4(3) is referred as under:-

*The Ministry of Housing and Works will provide designated house for specified posts which shall be allocated to the designated officers on an undertaking that they will vacate the house within three months of their transfer from the post and hand over the possession of the house through concerned Inquiry Office irrespective of the fact that alternate accommodation has been allocated to them or otherwise.*

11. The above referred provision only provides the designated house by Ministry of Housing and Works for the specific post and if the said provision has to be read in conjunction with Section 4(1) **"Pool Accommodation"**, the only two departments which are eligible and entitled to be covered i.e. ISI and Ministry of Foreign Affairs and there is no other provision which provides the concept of placing any house at the pool of other department including the CDA, even there is no other concept of designated house.

12. Keeping in view the above position, counsel for CDA has been confronted to justify through any specific order of Ministry of Housing and Works, whereby suit accommodation has been declared as a designated house, however, he failed to do so.

13. Learned counsel for the CDA has heavily relied upon W.P No.3033/2016 titled **Muhammad Yaseen Saleemi Vs. Federation of Pakistan & 7 others**, in which said proposition has been settled in the following manner:-

*However, despite said situation, this Court is of the view that CDA falls within the administrative control of the Capital Administration and Development Division as per Serial No.24 of the Schedule in the Rules of Business and for that matter the principal law which governs the entire position is the Rule 3(i) of the Accommodation Allocation Rules, 2002, whereby all married Federal Government servants in the Ministries or Divisions and their attached Departments are entitled for the allotment of the accommodation, except those who are maintaining their own pool of accommodation, whereas CDA is maintaining their own pool despite that they come under the Rules of Business, therefore, while*

*considering all these aspect this Court is of the view that employees of CDA, who are enjoying the houses of Ministry of Housing and Works under the control of Estate Office, are not entitled to receive benefit of their previous practices where the Ministry of Housing and Works transferred the subject house to the CDA's pool and took one of their own house from CDA's pool in exchange of the same. Such kind of practice blatantly defeats the very wisdom of the law invoked and all such actions amount to bypassing the law and the officers, including Secretary, Ministry of Housing and Works as well as the authorities of the CDA, whether Member Administration CDA or Chairman CDA, are held liable for their contemptuous act whereby they willfully negating the law on the subject, therefore, all such allotments shall considered to be illegal from now onward despite the fact that CDA Board has now decided not to place any further properties in exchange with Estate Office/Ministry of Housing and Works pool. Similarly, the Ministry of Housing and Works shall also not allow such transfer/exchange of their property with the CDA.*

14. In view of above position, I have gone through the concurrent findings of the Courts below and is in agreement with the findings that respondent No.1 is eligible/ lawful allottee of the suit accommodation which was allotted by the Estate office in accordance with AAR, 2002 and as such CDA has no legal authority to claim the said house under any provision of law. Similarly, the judgment of appellate Court is in conformity with the legal proposition and no interference is required, therefore, instant civil revision is misconceived and the same is hereby **dismissed**.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**