

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

Civil Revision No.312/2014.

Capital Development Authority **Vs.** **Muhammad Akram
etc.**

Petitioner by: Syed Masood Hussain, Advocate.

Respondents by: Mr. Altaf Hayat Khan and Chaudhry
Fayyaz Ahmed Padana, Advocates.

Date of Decision: **28.01.2020.**

MOHSIN AKHTAR KAYANI, J:- Through this civil revision petition, the petitioner has called in question the judgment & decree dated 14.05.2014, passed by learned Additional District Judge-III (West) Islamabad, whereby civil revision petition filed by the petitioner against the order & decree dated 28.11.2012 passed by learned Civil Judge (West) Islamabad, was dismissed.

2. Brief facts as referred in the instant civil revision petition are that respondent No.1/Muhammad Akram was allotted plot No.505, Sector I-8/3, Islamabad against the reserved quota vide letter dated 24.02.1991 being an employee of CDA with the condition that he or any of his family members does not own any house in Islamabad or in the other eight major specified cities of Pakistan, whereas late respondent No.1 filed an affidavit to that extent, however, during the course of inquiry another house No.134, Sector G-7/2-4, Islamabad was found allotted in the name of respondent No.1 till 23.02.1990. Consequently allotment of plot No.505 was cancelled vide letter dated 16.07.1991. The matter was agitated by respondent No.1 before Civil Court and then up to the Apex Court and the same was decided vide judgment dated 08.05.2006 by the Apex Court, whereby findings of the Courts below were set aside mainly on the ground that separate sale deed was executed by the CDA in favour of respondent No.1, which has not yet been cancelled. The petitioner/CDA filed suit for declaration against the said sale deed for its cancellation, which was rejected vide order & decree dated 28.11.2012 by the learned Civil Judge being time barred. The matter was assailed before the Court of

learned Additional District Judge in civil revision petition, which was also dismissed vide impugned judgment and decree dated 14.05.2014.

3. Learned counsel for the petitioner contends that the petitioner's suit was dismissed purely on technical ground without considering the fact that limitation period of challenging status of sale deed was freezed due to bonafide litigation between the petitioner and respondent No.1, which was initiated by respondent No.1 through civil suit after cancellation of the plot on 16.07.1991 and after disposal of the matter by the Apex Court, the cause of action had accrued to the petitioner and as such the suit was not time barred; that question of limitation is mixed question of law and facts, which could only be resolved after recording of evidence, which exercise has not been done in this case; that findings of the Courts below are contrary to law.

4. Conversely, learned counsel for the respondents contends that the suit was apparently time barred and as such Article 91 of the Limitation Act, 1908 was applicable with effect from the date of cancellation i.e. 16.07.1991, which has been written in the plaint and time cannot be condoned in favour of the petitioner for seeking cancellation of the sale deed; that the petitioner filed revision petition in terms of section 115 CPC before learned Additional District Judge, which was not maintainable and even judgment & decree of learned Additional District Judge has been assailed before this Court in civil revision petition, which is also not maintainable.

5. I have heard arguments of learned counsel for the parties and gone through the record.

6. Perusal of the record reveals that plot No.505, Sector I-8/3, Islamabad was allotted to respondent No.1/predecessor in interest of respondent No.1-A to respondent No.1-F on reserved quota being CDA employee on 24.02.1991 with the condition that he or any of his family member does not own any house in Islamabad or in the other eight major cities of Pakistan on cutoff date. In compliance of the allotment, the applicant at that time filed an affidavit dated 28.11.1990 and undertook that he does not own any plot or house as required in terms and conditions, however, during the course of inquiry House No.134, Sector G-7/2-4,

Islamabad was revealed in the name of respondent No.1, therefore, plot No.505 was cancelled from his name by the petitioner/CDA vide letter dated 16.07.1991.

7. Besides allotment of the plot in favour of respondent No.1 an agreement was also executed on 31.03.1991 between the petitioner and respondent No.1 registered at serial No.1886 before Joint Sub-Registrar, Islamabad containing terms and conditions of sale and purchase qua the plot with specific condition that the allottee shall observe Islamabad Building Regulations, relevant Zoning Regulations and other bye laws of CDA for completion of the building. When ownership of House No.134, Sector G-7/2-4, Islamabad came to limelight, the petitioner/CDA issued notice of cancellation dated 16.07.1991, which was challenged by respondent No.1 through suit for declaration and permanent injunction, which was filed on 20.07.1991 before Civil Court. The same was contested and dismissed vide judgment & decree dated 01.04.2004, however, appeal filed by respondent No.1 U/S 96 CPC was also dismissed vide judgment & decree dated 16.07.2004. The matter was agitated in civil revision petition No.560-D/2004 before Lahore High Court, which was also dismissed and the matter went up to the Apex Court in CP No.1600/2005, which was decided in the following manner vide judgment dated 08.05.2006:-

“The cancellation of allotment of the demised plot vide order dated 16.07.1991 of respondent No.2 would not have suffered from any illegality if there was only an allotment order in favour of the petitioner. The fact is that in pursuance of allotment order dated 24.02.1991 respondent CDA executed a sale deed in favour of the petitioner before the Sub-Registrar, Islamabad. After execution and registration of the sale deed the petitioner had acquired a vested right and had become owner of the demised plot. He could be divested of such vested right/ownership only if the sale deed was set aside, cancelled or rescinded in accordance with law. A duly registered sale deed can only be cancelled or rescinded in pursuance of the provision of section 39 of the Specific Relief Act. Neither the CDA nor the Foundation had any Authority in law to cancel the sale deed depriving the petitioner of his proprietary rights/ownership in respect of the demised plot. It will not be appropriate at this stage to enter into discussion whether the non-declaration by the petitioner of earlier allotment of Plot No.134, Sector G-7/2-4, Islamabad would or would not be ground for getting the sale deed cancelled/rescinded as during the course of arguments it was submitted on behalf of the respondents, after the provision of section 39 of the Specific Relief Act was brought to the notice of their learned counsel/law office, that they would have recourse to the proceedings under the relevant provision of law for getting the sale deed in question cancelled/rescinded. Any observation or

expressing an opinion will be likely to adversely affect, the case of one of the parties during the course of proceedings, which may be initiated by the respondents for getting the lease deed rescinded/cancelled.

8. For the foregoing facts, reason and discussion the petition is converted into an appeal and allowed. The judgment of all the three courts are set aside. Parties are left to bear their own costs."

8. In the light of above referred judgment of the Apex Court, findings of the Courts below were set aside with the observation that the agreement executed between the petitioner/CDA and respondent No.1/Muhammad Akram was not cancelled, therefore, the petitioner/CDA filed suit for declaration with the following prayer:-

"In the above mentioned circumstances, it is, most humbly prayed that a decree for declaration to the effect by cancelling the suit agreement may kindly be passed in favour of the Plaintiff and against the Defendant throughout with cost."

9. The matter was contested by respondent No.1 and learned Civil Judge rejected the plaint while observing Article 91 of the Limitation Act, 1908, wherein the time of limitation starts from the date of knowledge, which was admittedly accrued in the year 1991 when allotment in favour of respondent No.1 was cancelled. Even otherwise, the petitioner being plaintiff in the suit referred this fact in Para 4 and Para 6 of the plaint, which gives rise to legal presumption that it was in their knowledge that the plot has been cancelled but the agreement has not been cancelled and no effort was made to seek cancellation of registered instrument. It is trite law that suit for declaration is only maintained when pre-requisite of section 42 of Specific Relief Act, 1877 are visible i.e. legal right or character in favour of the plaintiff i.e. petitioner in this case as such the cancellation was finalized up to the Apex Court but the Apex Court set aside the concurrent judgments, hence, the only question left for determination of this Court is as to whether second suit filed by the petitioner/CDA is maintainable in terms of Article 91 of the Limitation Act, 1908, which provides limitation of three years for filing of the suit when the fact came into knowledge. In this situation, the matter cannot be settled in a manner, in which the petitioner has proceeded.

10. I have also taken into account the conduct of the petitioner/CDA, who filed civil revision against the decree of Trial Court dated 28.11.2012 and did not resort

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to legal remedy in terms of Section 96 CPC. This aspect was also discussed by learned Revisional Court in the impugned judgment dated 14.05.2014 and the matter was not converted into Regular First Appeal, even otherwise, the civil revision petition was time barred at that time, which shows slackness on part of the petitioner/CDA, who is not serious for its rights. Another question raised in the proceedings is that the petitioner has filed instant civil revision petition against the judgment & decree dated 14.05.2014 passed in civil revision by learned Additional District Judge, which itself is not maintainable. Series of mistakes have been made by the petitioner in the judicial proceedings but question remains the same as to whether plot No.505 can be considered validly allotted to respondent No.1/Muhammad Akram or his legal heirs, the answer is “No”.

11. In view of above, the proposition in hand is governed under Article 91 of the Limitation Act, 1908, which provides limitation of three years for cancellation of instrument, which is not otherwise provided in the schedule and the time period begins to run from the date of knowledge and as such the cancellation of plot was made on 16.07.1991, therefore, the very filing of the suit by the CDA/petitioner was time barred, hence, learned Trial Court has rightly settled the question in terms of Order VII Rule 11CPC and no illegality has been observed in this regard. The instant civil revision petition is **DISMISSED** on merits as well as due to non-maintainability.

(MOHSIN AKHTAR KAYANI)
JUDGE

¹ R Anjam