

Form No: HCJD/C-121.

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.41 of 2012

Capital Development Authority, through its Chairman, Islamabad

Versus

Malik Javed Iqbal.

**Petitioner's by : Ch. Muhammad Haseeb,
Advocate.**

Respondent's by : Ex-parte.

Date of Decision : 18.02.2019

AAMER FAROOQ, J. - The facts, leading to the filing of the instant petition are that the Respondent alongwith Zafar Mehmood and Muhammad Ajaib were the co-owners of the property situated in village Bheka Syedan, Islamabad. The referred property was acquired by the petitioner and the award was announced on 23.07.1980, where-after, the respondent as well as his aforementioned brothers were declared as effectees. The Petitioner as compensation allotted two plots to Zafar Mehmood and Muhammad Ajaib in Sector I-10, Islamabad, however, the petitioner did not allot any such plot to the respondent, hence, he agitated the matter by way of a civil suit. The referred suit was dismissed vide judgment and decree dated 30.07.2005. Appeal was preferred, which was

allowed, vide impugned judgment dated 22.07.2011. Notice was issued to the Respondent in the instant proceedings but he did not appear and eventually proclamation was made in "Daily Nawa-e-Waqt" on 20.11.2018 and even then no one entered appearance on behalf of the Respondent, hence, he was ordered to be proceeded ex-parte, vide order dated 18.12.2018.

2. Learned counsel for the petitioner, inter-alia, contended that as per the entitlement of the Respondent and his brothers they were to be allotted only one plot in Sector I-10, Islamabad inasmuch as there was one house which was jointly owned and possessed by the respondent and his brothers. It was contended that the learned Appellate Court has mis-interpreted the award and the compensation policy.

3. Arguments advanced by the learned counsel for the petitioner have been heard and the documents placed on record examined with his able assistance.

4. The facts leading to filing of the instant petition have been mentioned with brevity hereinabove, therefore, need not be reproduced.

5. The list contained in the award shows that the house owned by the Respondent and his brothers comprised 1589 square feet and there was one unit. The fact that it had separate rooms did not make it three independent houses/

units. Learned Appellate Court while decreeing the suit of the respondent misapplied the award and policy. It is also an admitted position that the petitioner wrongly allotted separate plots to the two brothers of the Respondent, however, it is at liberty to do the needful for cancellation of one of the plots.

6. The learned Appellate Court erred in decreeing the suit of the Respondent and holding that since two plots have been allotted to the two brothers, hence, the Respondent also be allotted a plot. The jurisdiction exercised by the Appellate Court is with material irregularity, hence, the impugned judgment is not sustainable.

7. For the above reasons, the instant petition is **allowed** and the impugned judgment and decree dated 22.07.2011 is dismissed and the judgment handed down by the learned Trial Court vide judgment and decree dated 30.07.2005 is sustained as a result whereof the suit filed by the Respondent stands dismissed. It is pertinent to observe that the respondent shall be at liberty to make an appropriate claim against his brothers for providing him a share in the plot allotted by Capital Development Authority.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 15/05/2019.

JUDGE