

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

Civil Revision No. 54/2019

Capital Development Authority through its Chairman

Versus

Muhammad Sajjad Haider Jaffari etc.

Petitioner by: Mr. Muhammad Nazir Jawad,
Advocate.

Respondent No. 1 by: Mr. Sajjad Haider Malik, Advocate.

Muhammad Mohsin Pasha, Joint
Estate Officer, Estate Office.

Date of Decision: 26.02.2020.

MOHSIN AKHTAR KAYANI J. Through this Civil Revision, petitioner has assailed the order dated 23.11.2018, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby objection petition filed by the CDA/petitioner against the execution of decree dated 22.09.2016 has been dismissed. The petitioner/CDA has also filed the appeal against the order dated 27.11.2018, whereby the same was also dismissed being infructuous vide order dated 30.11.2018, passed by learned District Judge (West), Islamabad.

2. Learned counsel for the petitioner contends that the learned Executing Court while executing judgment and decree dated 22.09.2016, passed in favour of respondent No.1 regarding allotment and delivery of possession of the quarter i.e. Quarter No. 387-D, Sector G-6/1-4, Islamabad, issued a direction to the Capital Development Authority have been compelled to allot the said accommodation. It has further been contended that the said quarter is a property of Estate Office and as such this Court in case law reported as **2018 PLC (C.S) 344 (Muhammad Hussain Vs. Estate Office etc.** and **W.P No. 3297/2017 (Sheikh Zeeshan Vs. Federation of Pakistan**

through Secretary, Ministry of Housing and Works, Islamabad and others), has decided that the Capital Development Authority pool accommodation could not be used for Estate Office and similarly, the Estate Office is also not permitted to take any property of the Capital Development Authority in exchange and as such the execution of decree by the Executing Court is contrary to said judgments. He further contends that all these questions have not been considered by the forums below.

3. Conversely, learned counsel for respondent No.1 contends that the respondent is a decree holder and the said decree has not been assailed by the Capital Development Authority/petitioner or by the Estate Office, which has attained finality and as such the respondent No.1 has earned the right to have possession as well as allotment in accordance with law, especially when the Estate Office has already given Quarter No.4/4-C, Sector G-9/2, Islamabad in lieu of accommodation allotted to the respondent No.1 i.e. Quarter No. 387-D, Sector G-6/1-4, Islamabad.

4. Arguments heard, record perused.

5. Perusal of record reveals that the Capital Development Authority/petitioner is mainly aggrieved with the order dated 23.11.2018, passed in execution proceedings on the basis of judgment and decree dated 22.09.2016, passed by learned Civil Judge, 1st Class (West), Islamabad, which was not assailed by the petitioner/CDA as well as by the Estate Office and the same attained finality.

6. Before going into the details, it is necessary to reproduce the relief granted to the respondent No.1 by the learned Trial Court in decree dated 22.09.2016, which is as under:-

"In view of my detailed discussion on issue No.1, the suit of the plaintiff stands decree in his favour and he is entitled for the declaration to the effect that he is entitled for allotment of the suit accommodation, hence, the defendants No. 2 & 3 are hereby directed to issue NOC as well as final letter regarding the placement of suit accommodation at the

pool of defendant No.1 after fulfillment of all cordal formalities and defendant No.1 is directed to issue the formal allotment letter of the suit accommodation in favour of the plaintiff, thereafter in accordance with AAR 2002. Parties are left to bear their own costs. Decree Sheet be prepared. File be consigned room after its due and formal completion."

7. The above referred decree has been confronted to learned counsel for the petitioner, who conceded that they have not filed any appeal against the said judgment and decree and as such it has attained finality, however, he further contends that the CDA is the sole judge to consider the eligibility of respondent No.1, who is the employee of CDA and as such the final order will only be issued on the direction of Capital Development Authority, but such course has not been adopted and the learned Executing Court has not considered the judgment of this Court i.e. **2018 PLC (C.S) 344 (Muhammad Hussain Vs. Estate Office etc.** and **W.P No. 3297/2017 (Sheikh Zeeshan Vs. Federation of Pakistan through Secretary, Ministry of Housing ad Works, Islamabad and others)**. I have gone through the said judgment, whereby it was settled that the Estate Office as well as Capital Development Authority were not permitted to exchange their properties and house rather the properties which belong to Estate Office, Ministry of Housing and Works could not be given in exchange to any other Institutions/Department in the light of reported cases discussed above. However, in this case, the respondent No1 has applied for allotment of the subject accommodation in terms of Rule 15(2) of AAR, 2002 as his Father was former civil servant, who was allottee of the suit accommodation i.e. Quarter No. 387-D, Sector G-9/1-4, Islamabad and the respondent No.1 was working in the office of Capital Development Authority/petitioner and as such the Department was non-entitled Department, when the suit was filed, however, there was an arrangement between the Capital Development Authority and Estate Office for adjustment of accommodations and as such the Estate Office

has already handed over the Quarter No. 4/4-C, Sector G-9/2, Islamabad in lieu of the Estate Office accommodation in question.

8. Even otherwise, when Estate Office is not aggrieved in this backdrop and in this regard CDA has not challenged the judgment and decree passed in favour of respondent No.1, then there is no occasion left to consider the plea raised by the Capital Development Authority/petitioner at this stage in any manner. The judgment and decree dated 22.09.2016, passed by learned Civil Judge, 1st Class (West), Islamabad is much prior to the reported cases referred by the learned counsel for the petitioner/CDA, hence the said judgments will not be applied in this particular case.

9. The conduct of the Capital Development Authority/petitioner clearly shows that petitioner has not challenged the judgment and decree, therefore, the petitioner/CDA is estopped by their own words and conduct to challenge the same in an indirect manner by way of objection at this stage, which is not permissible under the law. Even there is no substance in their objections. Learned Executing Court has rightly rejected the objections through a detailed order and no illegality has been observed.

10. In view of above discussion, instant writ petition is misconceived and same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN