

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.986 of 2015

Bibi Ibrat Fatima

Versus

Capital Development Authority through its Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.02.2020

**M/s Ajam Naz Malik and Muhammad Luqman, Advocates for the petitioner.
Barrister Jehangir Khan Jadoon and Mian Muhammad Faisal Irfan, Advocates for the C.D.A.
Mr. Muhammad Azim Khan Afridi, Advocate for respondent No.3.**

Through the instant writ petition, the petitioner, Bibi Ibrat Fatima, seeks a direction to the Capital Development Authority ("C.D.A.") to complete the formalities for given her peaceful possession of plot No.386/A, Sector F-11/3, Islamabad. Furthermore, the petitioner seeks an injunction against the creation of a third party interest over the said plot.

2. Learned counsel for the petitioner submitted that the petitioner is one of the descendants of Baba Sakhi Muzammal Shah; that the petitioner owned land in village *Bhaika Syedan*, which had been acquired by the C.D.A.; that the award for the acquisition of land in village *Bhaika Syedan* was issued on 01.10.1985; that as a compensation, the said plot No.386/A was allotted to the petitioner by the C.D.A. vide allotment letter dated 25.08.1990; that the list of affectees in village *Bhaika Syedan* also includes the petitioner's father, brothers and sister to whom the plots in the vicinity of plot No.386/A were allotted; and that since the petitioner is the lawful allottee of plot No.386/A, the C.D.A. is bound to give peaceful possession of the said plot to her.

3. Learned counsel for the petitioner further submitted that plot No.386/A is presently in unlawful possession of respondent No.3; that the person from whom respondent No.3 claims to have purchased plot No.386/A was not a resident of village *Bhaika Syedan*; and that the C.D.A. may be directed to handover peaceful possession of plot No.386/A to the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for respondent No.3 submitted that respondent No.3 (Muhammad Iqbal) was the *bonafide* purchaser of plot No.386/A vide transfer/allotment letter dated 20.08.2014 issued by the C.D.A.; that respondent No.3 has been in lawful possession of the said plot ever since he purchased the same from the original allottee namely Mr. Abdul Jalil (respondent No.4); that at no material stage was plot No.386/A allotted to the petitioner; that there is no reference to plot No.386/A in the allotment letter dated 25.08.1990; that vide letter dated 25.08.1990, only a conditional offer of allotment of a plot measuring 30 x 70 feet in Sector F-11, as a special case, was made to the petitioner; that vide the said letter, the C.D.A. required the petitioner to submit an affidavit to the effect that no residential plot/house in Islamabad stood in her name; that in paragraph 2 of the writ petition, it has wrongly been pleaded that plot No.386/A was allotted to the petitioner; that in the prayer clause of the said writ petition, the petitioner has prayed for peaceful possession of plot No.386/A to be handed over to her; and that since plot No.386/A has never been allotted to the petitioner, the question of possession of the said plot to be given to her does not arise. Learned

counsel for respondent No.3 prayed for the writ petition to be dismissed.

5. Learned counsel for the C.D.A. submitted that as compensation for the acquisition of the petitioner's property in village *Bhaika Syedan*, the petitioner was offered plot No.188 (measuring 30 x 70 feet) in Sector F-11/4 by the C.D.A.; that plot No.386/A had not been allotted to the petitioner; and that the petitioner has no vested right for plot No.386/A to be allotted to her. Learned counsel for the C.D.A. prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. The petitioner asserts her rights over plot No.386/A on the basis of C.D.A.'s letter dated 25.08.1990. Perusal of the said letter shows that a conditional offer for allotment of a plot in Sector F-11, as a special case, was made to the petitioner by the C.D.A., and the petitioner was required to swear an affidavit deposing to the effect that no residential plot/house in Islamabad stood in her name or in the name of her spouse or dependent children. A formal allotment letter was not issued to the petitioner. The said affidavit was required from the petitioner so that a formal allotment letter could be issued to her. Therefore, the petitioner's assertion that plot No.386/A had been allotted to her by the C.D.A. is not supported by any document on the record.

8. The petitioner relied on a document annexed at page 14 of this petition to show that plot No.386/A had been allotted to her, and that her father, brothers and sister had been allotted plots in the same vicinity as plot No.386/A. No reference

to this document has been made in the letter dated 25.08.1990 addressed by the C.D.A. to the petitioner. It is not known who the author of the said document is. This document cannot be given the status of an allotment letter, therefore, I am of the view that the petitioner cannot assert ownership rights over plot No.386/A on the basis of the said document.

9. In the parawise comments filed on behalf of the C.D.A., it has been pleaded with clarity that the petitioner had been offered plot No.188 (measuring 30 x 70 feet) in Sector F-11/4 and that the said plot had been earmarked for allotment to her after the fulfillment of procedural requirements. The petitioner instead of accepting the offer of allotment of plot No.188, is seeking to be given possession of a plot of her choice. It is my view that it is not an affectee's right or prerogative to be allotted a plot of his/her choice. No plausible explanation has been given by the learned counsel for the petitioner for not accepting the offer for the allotment of plot No.188 in Sector F-11/4.

10. Plot No.386/A was transferred to respondent No.3 by the C.D.A. through allotment letter dated 20.08.2014. The said transfer/allotment letter shows that the plot had been transferred from the name of Mr. Abdul Jalil in respondent No.3's name. Since the petitioner was never allotted plot No.386/A, she cannot insist on respondent No.3's plot to be allotted to her. The mere fact that the petitioner's family members had been allotted plots in the said vicinity as plot No.386/A would not confer a vested right on her to be allotted plot No.386/A.

11. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*