

2. Learned counsel for the petitioner contends that the petitioner was civil servant, who retired from service in the year 2001 in BPS-21, whereas his wife is lady doctor, who also retired from BPS-20; that the petitioner was allotted Plot No.42, Street No152, Sector G-13/4, Islamabad vide allotment letter dated 21.03.2002 by respondents No.1 & 2 after complete scrutiny and found him eligible for the said allotment but the same was canceled vide impugned letter dated 15.03.2012 in violation of certain criteria; that the petitioner did not conceal any fact nor given false affidavit qua allotment of previous plot to any of his family member as Plot No.7, Park Road, Sector F-8/1, Islamabad was purchased by his wife Razia Ijaz in joint share with Tariq Mehmood, which was transferred in joint names vide transfer letter dated 07.08.1983 much prior to the scheme launched by respondents No1 & 2; that action of the respondents authority is in violation of settled law as wife of the petitioner is not allottee of the said plot in the said letter rather it

was purchased having 50% share, which has nothing to do with the scheme of respondents No.1 & 2.

3. Learned counsel for respondents No.1 & 2 contends that the petitioner concealed important information in his affidavit while applying in the scheme and has given false affidavit of the fact, whereby he has answered particular query with word "No" despite the knowledge that her wife is allottee of Plot No.7, Park Road, Sector F-8/1, Islamabad; that housing authority (erstwhile housing foundation) is competent to cancel any plot at any stage when concealment of facts comes to limelight; that the respondents authority has rightly exercised powers in terms of clause 10 of the provisional offer letter and no legal justification has been brought on the record by the petitioner as to why he concealed such material information.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that the petitioner is ex-civil servant who retired from his service in 2001 in BPS 21, whereas wife of the petitioner is also retired doctor in BPS-21. The petitioner applied in the scheme of respondents No.1 & 2 in the year 1984 and in pursuance of his application, he was allotted Plot No.42, Street No.152, Sector G-13/4, Islamabad vide allotment letter dated 21.03.2002, however, during the course of scrutiny it was found that wife of the petitioner Razia Ijaz is also allottee of 50% of share in Plot No.7, Park Road, Sector F-8/1, Islamabad since 07.08.1983. The allotment of the petitioner has been cancelled through impugned notification dated 15.03.2012. The reasons of cancellation/withdrawal of the said allotment referred in the impugned letter are as under:-

*"You being an employee of Pakistan Computer Bureau, applied for allotment of a Category-I plot in Phase-III Housing Scheme under Serving quota (77%). On the basis of agewise seniority your case matured for allotment*

*therefore, you were issued provisional offer letter on 27.08.1999 and subsequently on clearance of cost of land, final allotment letter was issued to him against Plot No.42, Street No.152, Sector G-13/4, Islamabad on 21.03.2002.*

*2. One Mr. Abid Ali submitted a complaint against you that you by submitting bogus and fake affidavit concealed ownership of Housing No.7-A, Park Road, Sector F-8/1, Islamabad. In order to ascertain the factual position, a letter was referred to the CDA for verification. The CDA vide its letter No. CDA-EM-I-S-8(PR)7/66/3968 dated 16.02.2012 duly signed by Mr. Inayatullah Khan, Estate Management Officer-II, (CDA) confirmed that Plot No.7, Park Road, Sector F-8/1, Islamabad transferred to the joint names of Mr. Tariq Mehmood S/O Mr. Sadiq Ali and Mrs. Razia Ejaz W/O Ejaz Hussain Khawaja vide authority letter dated 07.08.1983.*

*3. It is pertinent to mention here that you while submitting application form for allotment of plot did not mention any allotment in your or in your spouse name. In support, you submitted an affidavit duly attested by Magistrate 1<sup>st</sup> class(copy attached). Through it, it transpires that you deliberately and knowingly submitted wrong information and submitted bogus affidavit. This is concealment of fact. Whereas; in para-10 of Provisional offer letter, it was clearly stipulated that if at any stage, the contents of the documents submitted with application form are found to be fictitious or false or any material facts found to have been concealed/mis-stated or suppressed deliberately and knowingly, the allotment shall be liable to cancellation. In addition, the amount deposited by you shall be forfeited and such legal action as deemed appropriate shall also be taken.*

*4. In view of the above, the concealment of facts stands established upon you therefore, the Provisional Offer Letter of even number and Final Allotment letter of even number against Plot No.42, Street No.152, Sector G-13/4 dated 27.08.1999 and 21.03.2002 respectively may be treated as cancelled/withdrawn."*

*6. The petitioner has taken specific stance in reply to the above said cancellation/withdrawal that his wife was never applicant nor she was allotted the plot by CDA, DHA or Housing Foundation in any manner and the plot purchased by his wife falls within category of allotment, whereas the respondents side has produced original record in compliance of order of this court, whereby the*

application submitted by the petitioner has been confronted. The application was submitted by the petitioner in the year 1984, which contains two questions and the same are reproduced as under:-

*“18(a) Do you or any member of your family (wife/husband, dependent children own(s) any house/residential plot allotted by CDA, Federal Government Employees Housing Foundation, Defence Housing Authorities in Islamabad?”*

*-No-*

*19(a) Was a house/residential plot in Islamabad ever allotted to you or any member of your family (wife/husband, dependent children) by the Capital Development Authority, federal Government Employees Housing Foundation, Defence Housing Authorities.*

*-No-”*

7. Similarly, the affidavit submitted by the petitioner to the Housing Authority also contains his contention, which has its own consequences in case of concealment of any fact or false information. In order to resolve the controversy, I have gone through the broacher, which contains specific criteria for allotment in such type of matter, which is reproduced as under:-

*“First priority shall be given to those applicants who or whose spouse(s) or any other member of their families neither own plot/house in Islamabad on 1.4.1996, nor any plot/house was ever allotted to them by the CDA, Federal Government Employees Housing Foundation, Defence Housing Authorities. Each applicant shall have to submit an affidavit to this effect duly countersigned by a First Class Magistrate. If at any stage, contents of the Affidavit are found to be fictitious or false or any material facts found to have been concealed/mis-stated or suppressed deliberately and knowingly, the allotment will be cancelled. In addition, the amount deposited will be forfeited and such legal action as deemed appropriate will also be taken.”*

8. While considering the above background, it has not been denied by the petitioner that her wife is not allottee of half of Plot No.7, Park Road,

Sector F-8/1, Islamabad vide allotment letter dated 07.10.1983 and same has been found correct by the CDA vide letter dated 16.02.2012.

9. In view of above background, this Court believes that eligibility criteria for allotment clearly spells out that first priority shall be given to those applicants who or whose spouse(s) or any other member of their families neither own plot/house in Islamabad on 01.04.1996 nor any plot/house was ever allotted to them by the CDA, Federal Government Employees Housing Foundation as such the petitioner has failed to justify his contention nor able to demonstrate from the record that his case falls within exception when his wife is allottee of Plot No.7, Park Road, Sector F-8/1, Islamabad. The plea taken by the petitioner that the said plot was purchased by his wife does not mean that purchased plot is exempted from the eligibility criteria. In order to reach at just conclusion, guidance has been sought from unreported judgment of Apex Court passed in *C.P No.1592/2012*, titled *Ghulam Mujtaba Bhatti vs. FGEHF and others*, in which it has been held that:-

*“In our view the key question in the matter as has been dealt with and highlighted by the learned High Court is whether the petitioner has procured the second plot on the basis of concealment of facts? When questioned in this behalf, learned counsel for the petitioner has not been able to controvert that at the relevant point the petitioner would have given a false affidavit by concealing the earlier allotment. And had he disclosed the fact of such allotment, the petitioner was disentitled to the allotment of the plot in question. Undoubtedly, on the basis of above glaring fact contemplating misrepresentation and fraud on part of the petitioner, the High Court has rightly held that the discretionary constitutional jurisdiction cannot be exercised in his favour, enabling him to retain ill-gotten gain. In our view this is the correct exposition of law because it shall be like awarding a premium for one's fraud; and this is strictly impermissible under the law.*

*4. In the light of above, we do not find any merit in this petition, which is accordingly dismissed. Leave refused.”*

10. While considering the above legal and factual aspects, the affidavit given by the petitioner as well as answers given to questions No18-A and 19-A have wrongly been answered as there is no denial that wife of the petitioner is owner of Plot No.7, Park Road, Sector F-8/1, Islamabad, whether she purchased the same or otherwise, it is in her name when the petitioner applied in the scheme as such he was not otherwise eligible to that plot if he answers the questions that her wife is already allotted with the plot. Even otherwise when concealment of fact is apparent from the record, the Apex Court has taken specific view, which cannot be changed by this Court and it has binding effect in terms of Article 189 of the Constitution of Islamic Republic of Pakistan 1973. The discretionary relief cannot be achieved on the basis of concealment and even Apex Court has declared that ill-gotten gain cannot be given protection.

11. In view of above discussion, the instant writ petitioner bears no merits, therefore, the same is hereby **dismissed.**

(MOHSIN AKHTAR KAYANI)  
JUDGE

R.Anjam