

# **JUDGMENT SHEET**

## **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

### **WRIT PETITION NO. 2327 OF 2013**

**SUGHRA AKRAM.**

**Vs.**

**FEDERAL GOVERNMENT EMPLOYEES HOUSING  
FOUNDATION, ETC.**

**Petitioner by : Mr. Nauman Munir Paracha, Advocate.**

**Respondent No.1 by : Malik Javid Iqbal Wains, Advocate.**

**Respondent No.2 by : Syed Nazar Hussain Shah, AAG.**

**Respondent No.3 by : Nemo.**

**Date of hearing : 14.10.2020.**

**LUBNA SALEEM PERVEZ, J.** The petitioner, through instant petition has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and has sought the following prayer:-

*“It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted, the order dated 17.05.2013 may kindly be set aside having been passed without lawful authority having no legal effect. It is further prayed that till the disposal of the instant writ petition, no action prejudicial to the interest of the petitioner be taken.”.*

2. Facts of the case are that the petitioner was a government servant in which capacity she applied for allotment of plot. As she was found entitled, therefore, she was offered Category-III Plot measuring 35x70 ft, bearing No. 28, Street No. 130, G-13/4, Islamabad, in Phase-III. She deposited the due cost of the plot along with 2% service charges in National Bank of Pakistan and the plot was allotted to her, vide provisional allotment letter dated 28.06.2002, issued by Federal Government Employees Housing Foundation (FGEHF). However, later the petitioner came to know that her plot was allotted to Respondent No. 3 namely Mr. Mir Rehman, vide allotment letter dated 17.05.2013, without any intimation to the petitioner, hence, present petition.

3. Learned counsel for the petitioner submitted that the petitioner has paid the entire consideration of the plot, as such, the allotment of the subject plot to Respondent No. 3 is illegal; that the subject plot was cancelled without any intimation for cancellation to the petitioner; that the principle of natural justice has been violated before cancelling the plot of the petitioner and submitted that it has been well settled that violation of principle of natural justice renders the entire proceedings as void and *coram non judice* and placed reliance on judgment of this Court titled as *Ch. Mohammad Nawaz v. The Federal Government Employees Housing Foundation [2018 PLC (C.S.) 325]*; that during the pendency of this petition the house has been constructed on the subject plot by Respondent No. 3 and it has been further transferred through sale in some other person's name; that the action of the FGEHF is patently illegal and being owner of the plot, petitioner had a right to be informed by the FGEHF regarding any objection and reasons for cancellation and to submit reply to such objections. Learned counsel further furnished copy of decisions and recommendations of the Board of Directors of FGEHF and referred case of Mr. Faris Rehman Khan, who was allotted a plot on 28.09.2005 for which he paid total cost, but the plot was cancelled by the FGEHF, however, the case of said Faris Rehman was reconsidered after cancellation of his plot and it was decided that "*since he has paid the cost etc. before cancellation his right has accrued*", subsequently his allotment was restored. The learned counsel for the petitioner, therefore, prayed that since, the petitioner has also paid the entire consideration for the subject plot which is still lying with FGEHF, therefore, her right for reconsideration and re-allotment of plot has also been accrued and since, the subject plot has further been transferred / sold, the direction may be given to the respondents to allot a substitute / alternate plot to the petitioner.

4. On the other hand, learned counsel for the Respondent No. 1 submitted that the plot has been acquired by the petitioner by filing false affidavit to the effect that the petitioner / spouse/ dependent children did not own residential plot / house in Islamabad on 01.04.1996, whereas, as per confirmation from CDA record, the husband of the petitioner namely Ch. Muhammad Akram s/o Ch. Karim Bakhsh purchased Plot No. 412, Sector I-8/2, Islamabad, through auction on 24.12.1992, which plot was

subsequently transferred to petitioner and her son Ch. Muhammad Kamran; that intimation for cancellation was given to her, vide letter dated 20.05.2013. He further submitted that as per terms and conditions of housing schemes in Phase-III by FGEHF for Federal Government Employees, the criteria for allotment is that first priority shall be given to the employees of the Federal Government, who are shelterless and have no plot or residential house in Islamabad on 01.04.1996, in the Housing Foundation or Defence House Authority; that the applicant was required to file an affidavit to this effect counter signed by First Class Magistrate, and it is clearly mentioned in the criteria that the plot will be cancelled in case the contents of affidavit are found to be fake or incorrect or there is any concealment of fact and the deposited amount will be forfeited; that, since, the petitioner has filed a false affidavit and concealed the fact of having another plot in her name, her subject plot was rightly cancelled.

5. Arguments heard. Record Perused.

6. Case of the petitioner is that FGEHF issued provisional allotment letter dated 28.06.2002 in respect of plot bearing No. 28, Street No. 130, G-13/4, Phase-III, after receiving full consideration, and thereafter, without issuing any notice for cancellation of the subject plot same was allotted to Respondent No. 3 on 17.05.2013.

7. The facts of the case mentioned in the earlier paras are admitted by the FGEHF, however, non-issuance of notice for cancellation of subject plot to the Petitioner has been denied. In defense the Learned Counsel for FGEHF submitted that the reason for cancellation of petitioner's plot is that the petitioner acquired the plot on the basis of fake affidavit wherein she concealed the fact of having a plot in the name of her husband as on 01.04.1996, therefore, as per criteria laid down in brochure, wherein it has been categorically mentioned that in case of any mis-declaration and concealment of fact, the plot would be cancelled and the amount paid would be liable to be forfeited. As per record the plot was allotted to the petitioner on 28.06.2002 and the said plot was also allotted to Respondent No. 3 on 17.05.2013. The copy of order dated 20.05.2013 for cancellation of allotment of subject plot claimed to have been issued by FGEHF to the Petitioner was furnished to the Learned Counsel for the Petitioner during the course of hearing of this petition. It is pertinent to mention that the

copy of order for cancellation of plot appended with the comments filed by the FGEHF is dated 16.05.2013, issued by Syed Abbas Raza, Assistant Director (E-II), whereas, the copy of the cancellation order provided to the counsel for the petitioner is dated 20.05.2013, issued by the same Assistant Director, copy of which has also been placed on record. It has also been noted that signature of the issuing authority, despite being the same, on both the orders are entirely different. These two cancellation letters give rise to serious doubts on the conduct of FGEFH specifically with regard to the allotment of the subject plot to Respondent No. 3 and apparently these orders have been furnished to the Court and Counsel for the Petitioner to cover the illegality of not intimating the petitioner regarding cancellation of her plot. Thus, contention of the Learned Counsel of the Petitioner that no notice regarding cancellation of subject plot was issued by the FGEHF to her has been proved.

8. The principle of *audi alteram partem* i.e. providing an opportunity to the concerned party calling explanation before proceeding adversely against the person is a well-established norm and established principle of natural justice, which in the present case has been grossly violated by FGEHF, as discussed in the preceeding para. Further, I am also of the view that the subject plot has been illegally allotted to Respondent No. 3 i.e. Mir Rehman as the same was never cancelled from petitioner's name, before its further allotment to Respondent No. 3. This Court in a similar petition titled as ***Ch. Mohammad Nawaz v. The Federal Government Employees Housing Foundation [2018 PLC (C.S.) 325]*** wherein the plot allotted to a Civil Servant was subsequently cancelled and allotted to another person without issuing Show Cause Notice and without providing opportunity of hearing, was held to be illegal and in violation of principle of natural justice. The relevant portion of the said judgment is also reproduced hereunder:-

*"16. It was well settled that if there is a violation of the principles of natural justice, the proceedings would be rendered coram non judice and the order would be void. Right of personal hearing to a person against whom an adverse order is to be made has been equated with a fundamental right and an adverse order made without affording an opportunity of personal hearing is to be treated as a void order. If the principles of natural justice are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of departure from the essential principles of justice. Such a decision must be declared to be no decision. In the case of Hazara (Hill Tract) Improvement Trust v. Mst. Qaisra Elahi (2005 SCMR 678), it has*

*been held that violation of the principle of audialterampartem (no one should be condemned unheard) would be enough to vitiate even the most solemn proceedings. This principle is said to have its origin in the Islamic Principles of Justice. This principle applies to all judicial and non-judicial proceedings. Since neither a show-cause notice was issued by respondent No.1 to the appellant, nor were the appellants afforded an opportunity of hearing prior to cancellation of the allotment of Plot No.34 from their names, the decision dated 09.09.2013, is liable to be declared as void and coram non judice.*

18. *In view of the law laid down by the Superior Courts in the judgments mentioned above, and since Respondent No.1's action of cancelling the allotment of Plot No.34 from the appellants' name was in violation of the principles of natural justice, the letter dated 09.09.2013 is declared as void. Respondent No.1's remain liable to allot an alternate plot to the petitioner in W.P.No.753/2012 or to person whose rights flow from the said petitioner. This appeal is allowed and the impugned order dated 08.04.2015 is set-aside. Consequently, the appellants' Writ Petition No.3763/2013 is allowed.*

In the present case also neither any show cause notice was issued confronting the allegations to the petitioner put forth before this court nor any opportunity for explanation was provided to the petitioner before cancellation of her plot.

9. In view of above, following the precedent set in *Ch. Mohammad Nawaz's case supra* the present petition is also allowed by holding the action of allotting the petitioner's plot to Respondent No. 3, without cancelling the same and without following the proper procedure, to be in violation of principles of natural justice, void, illegal, unlawful and, *coram non judice*. The petitioner is legally entitled to an alternate plot as her plot has admittedly been further sold by the Respondent No. 3, after raising construction on it. The FGEHF is, therefore, directed to allot an alternate plot to the petitioner, preferably in the same sector i.e. G-13, wherein the plot earlier allotted to the petitioner is situated, within a period of ninety days from the date of receipt of this judgment.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in open Court on \_\_\_\_\_.

**JUDGE**

**APPROVED FOR REPORTING.**

*Blue Slip added*

M. JUNAIDUSMAN