

## **JUDGMENT SHEET**

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

**WRIT PETITION NO. 1581 OF 2014**

**SHAUKAT MEHMOOD**

**Vs.**

**CAPITAL DEVELOPMENT AUTHORITY**

**Petitioner by : Mr. M.A. Malik, Advocate.**

**Respondents by : Mr. Jehangir Khan Jadoon, Advocate.**

**Date of hearing : 08.09.2020.**

**LUBNA SALEEM PERVEZ, J.** Through this petition, the Petitioner has invoked the constitutional jurisdiction of this court under article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking following prayer:-

*“In these circumstances, it is, therefore, most humbly prayed that the instant writ petition be accepted and the respondent may kindly be directed to transfer the title of the plot No. 60 situated at Farash Town, Tehsil and District, Islamabad in the names of petitioner and other above named legal heirs of the deceased Muhammad Khan in the best interest of justice.”.*

2. Facts as per petition are that the petitioner namely Shaukat Mehmood is the real brother of Khan Muhammad deceased who was a CDA employee and died during his service on 09.10.1995. He was unmarried, therefore, his mother being his next of kin was given all the pensionary and other benefits provided under the law. The mother of the deceased Khan Muhammad also died on 24.06.2009, leaving behind the brothers and sisters of Khan Muhammad who are claiming transfer and possession of the plot No. 60 situated at Farash Town, Tehsil and District, Islamabad, on the ground that said plot was stated to be allotted to their mother, vide balloting held on 24.02.2006, and they being legal heirs are entitled for the said plot.

3. Learned counsel for the petitioner argued that his brother, Khan Muhammad, who was a CDA employee died while in service was entitled for a plot which was allotted after his death through balloting dated 24.02.2006, to their mother who also expired on 24.06.2009, therefore, being the legal heirs, they are the lawful and rightful claimant of the plot situated at Alipur Farash. In this regard, he relied on

decision dated 08.02.2014, passed by learned Civil Judge, 1<sup>st</sup> Class, Islamabad, whereby the petitioner and his brothers and sisters have been declared as legal heirs of deceased Khan Muhammad after the death of their mother and directed CDA to transfer the subject plot in favour of the legal heirs of the deceased. He also relied on balloting result of Alipur Farash plots for the widows of ex/deceased employees, wherein, the name of Khan Muhammad is also reflected. He also referred copy of CDA Board's decision, whereby it has been decided that the first priority would be given to the dependent children and then parents of the deceased employee of CDA for allotment of residential plot in model village Alipur Farash, Islamabad. He submitted that since, late Khan Muhammad was admittedly bachelor his next of kin was his mother and after her demise they are the rightful owner of the suit plot. Therefore, he has urged that writ petition be allowed as prayed for.

4. Learned counsel for the respondent/CDA submitted that name of deceased Khan Muhammad though nominated for Alipur Farash Plot through balloting held in 2006 for which his mother being surviving parent was entitled, however, the plot in question was never allotted to her and before any allotment she also expired in the year 2009, therefore, the petitioner despite being legal heir of deceased mother of late Khan Muhammad cannot claim any entitlement of the subject plot.

5. Arguments heard. Record perused.

6. The petitioner on the basis of an ex-parte judgment passed on 08.02.2014, by learned Civil Judge, 1<sup>st</sup> Class, Islamabad is claiming allotment of the plot of land bearing No. 60, situated at Alipur Farash, Islamabad. Perusal of the said judgment reveals that the documents attached with the present petition were also produced before the learned Civil Judge. These documents consist of death certificate of Khan Muhammad, the pension book of his mother being his legal heir, computerized copy of balloting result of CDA Alipur Farash plots for widows, ex-parte judgment dated 08.02.2014 and copy of internal notes of decision of the Board setting priority amongst dependents of the deceased employees. The petitioner on the strength of ex-parte judgment dated 08.02.2014 filed representation before Member Estate, CDA to first transfer the plot in the name of late mother of the deceased Khan Muhammad and then transfer the same to her legal heirs. From perusal of these documents it is clear that the subject plot, after the balloting result was never allotted to the mother of Khan Muhammad in her life

time and no document of allotment or provisional allotment was produced in this regard. Mere nomination in the balloting result would not grant ownership rights in favour of mother of the deceased employee to further grant heir-ship rights over the subject plot. Admittedly, the mother of Khan Muhammad also expired in 2009 before any further proceedings of allotment or transfer of subject plot in her name, hence, after her death the entitlement of allotment over the plot has been extinguished. The petitioner therefore, cannot legally seek any direction for the respondents for subject plot which was not allotted as per law in the name of mother of late Muhammad Khan.

7. In view of above discussion, instant petition, being devoid of any merit, is hereby **dismissed**.

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

Announced in open Court on this 17<sup>th</sup> day of September, 2020.

**JUDGE**

M. JUNAID USMAN