

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

**W.P. No.2089/2013**

Durdana Bibi & 10 others

*versus*

Capital Development Authority through its Chairman & 02 others

Petitioners by: Syed Usama Shah, Advocate proxy.

Respondents by: Mr. Ghulam Shabbir Akbar, Advocate.

Date of Hearing: 17.02.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioners have prayed for following relief:

*"In these circumstances, it is most respectfully prayed that this Honorable Court may very graciously be pleased to issue a Writ of Mandamus directing the respondents to acknowledge and give effect to the petitioners ownership of land measuring 638 Kanals 06 Marlas in Village Kurri and 76 Kanals in Village Thatha Gujran, Islamabad and pay to them its lawful compensation.*

*It is further prayed that the impugned notification may be suspended and the respondent be restrained from giving effect to it."*

2. Succinctly, the petitioners claim to be legal heirs and successors of Mst. Amina Bibi, daughter of late Maulvi Jameel Ahmad, who have been allotted land measuring 74-Kanals and 538-Kanals & 06-Marlas against their claim No.4447/2 RL-II No.10 in villages / revenue estates of Thatha Gujran and Kurri, Islamabad, respectively, however, their names could not be incorporated in the revenue record. The petitioners at later stage came to know that the total land measuring 612-Kanal and 06-Marla was acquired by the CDA authorities, but no compensation whatsoever has

ever been given to the petitioners in any manner. The petitioners have filed many applications to the Chief Commissioner, Islamabad and even a report has been called by the Assistant Collector, Islamabad, dated 21.12.2002, but no favorable response has been given to the petitioners qua their rights. Hence, instant writ petition.

3. Learned counsel for petitioners contended that the CDA authorities are custodians of the Islamabad Capital Territory and they are bound to allot the land or, if same was acquired by the CDA, to release the compensation against the land owned by the petitioners, as such, petitioners could not be deprived of their legitimate right of ownership without due process of law.

4. Conversely, learned counsel for respondents (CDA) contended that record of RL-II is with District Collector, ICT and the land in question has already been acquired in favour of the Central Government, as such, petitioners could not be compensated in any manner; that even the claims of the petitioners have not been verified and all these questions of disputed facts could not be resolved in constitutional jurisdiction.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioners while claiming to be legal heirs of Mst. Amina Bibi, daughter of Maulvi Jameel Ahmad (late) are seeking their legal rights with respect to total land measuring 612-Kanal and 6-Marla in Villages Thatha Gujran and Kurri, Islamabad as per their claim No.4447/RL-II No.10 as the said land was not incorporated in the revenue record for being acquired in favour of the Central Government by the CDA through acquisition.

7. The petitioners had applied for their legal rights qua allotment of land or compensation in alternate, however the Capital Development Authority has taken a different stance that the petitioners have not come to the Court with clean hands and concealed material facts and as per CDA record, one Asif Makhdoom Tiwana claimed to be General Attorney of the legal heirs of Mst. Amina Bibi, alleged allottee, who approached the Chairman, CDA in the year 1999 for the purpose of compensation or allotment of alternate land being affectee under the policy of CDA as the land of petitioners was already acquired by the CDA. The matter was referred to the Deputy Commissioner, Islamabad in order to ascertain as to whether the land allotted to Mst. Amina Bibi was incorporated in the revenue record or otherwise? In this regard, a report has also been received from Naib Tehsildar office in respect of subject claim of RL-II No.10 of Mst. Amina Bibi, which reveals that the entire revenue record of Village Kurri was examined to ascertain the factual position on the basis of photocopy of RL-II No.10, furnished by the attorney. It has been pointed out in the said report that land bearing Khasra Nos. 329, 404, 2008/412, 424, 427, 461, 462, 475, 480, 488, 501, 503, 506, 507, 511, 519, 522/2, 2005/384, 591, 597, 603, 612, 521, 717, 739, 755, 527, 528, 831, 898, 826, 1963/916, 830, 740, 862, 597, 821, 864, 865, 868, 902, 963, 994, 1041, 1082, 1085/1089, 1155, 1335, 1377, 1379, 1357, 1359, 1453, 1444, 1445, 1448, 1243, 1244 & 1380, measuring 538-Kanal and 6-Marla, were allotted in favour of Mst. Amina Bibi on 06.11.1963, while preparing the periodical record of right for the year 1965-66. The inquiry officer examined the periodical record of right 1965-66, but found no entry having been incorporated in favour of Mst. Amina Bibi in pursuance of this allotment, however the

entries were found in respect of land bearing Khasra Nos. 2001/350, 353 to 357, 362, 512, 1006, 1040,1306, 1333, 1334, 1752, 1823, 1780, 1434 and 1363, which were incorporated in pursuance of RL-II No.10 with regard to land measuring 234-Kanal and 6-Marla in favour of one Nawab Din son of Ghulam Hussain, vide allotment letter dated 10.09.1964. Hence, there is no cavil to proposition that the petitioners' claim being legal heirs of Mst. Amina Bibi is not factually correct, rather the land was allotted to one Nawab Din against RL-II No.10 on 10.09.1964 and same was incorporated in the periodical record of rights for the year 1965-66, as such, some interpolation or amendment was made, whereby the name of Mst. Amina Bibi was inserted, who is un-allotted evacuee, even otherwise, the land claimed by the successors of Mst. Amina Bibi was already acquired in favour of Central Government by the CDA and as such, allotment claimed by petitioners is fictitious.

8. In these circumstances, we have also gone through the Evacuee Property and Displaced Persons Law (Repeal) Act, 1975, notified in the gazette on 28.01.1975, whereby all the laws and regulations relating to displaced persons have been repealed. Whereas, in terms of sub Section 2 of Section 2 of the aforesaid Act, *upon the repeal of the aforesaid Acts and Regulations all proceedings which, immediately before such repeal, may be pending before the authorities appointed thereunder shall stand transferred for final disposal to such officers as may be notified by the Provincial Government in the official gazette and all cases decided by the Supreme Court or a High Court after such repeal which would have been remanded to any such authority in the absence of such repeal shall be remanded to the officers notified as aforesaid.*

9. In view of above legal position, the petitioners have failed to make out their case qua genuineness of their RL-II No.10 vis-a-vis the allotment, therefore, the instant writ petition is hereby **DISMISSED**.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: **23.02.2021**.

JUDGE

JUDGE

Khalid Z.