

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.467/2019

Capital Development Authority through its Chairman
versus
Muhammad Bostan

Petitioner by: Mr. Muhammad Nazir Jawad, Advocate.

Respondent by: Syed Mujtaba Haider Sherazi, Advocate.

Date of Decision: 16.03.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant Civil Revision petition, the Capital Development Authority has called in question concurrent findings of the learned trial Court, dated 02.05.2018, as well as of the learned first Appellate Court, dated 04.05.2019, whereby suit filed by Muhammad Bostan has been decreed by the learned trial Court and upheld by the learned first Appellate Court.

2. Succinctly, Capital Development Authority (*CDA / petitioner*) claims to be owner of land falling in Khasra No.2/1 and Khasra No.386, Village Shah Allah Ditta, Islamabad, whereas Muhammad Bostan (*respondent*) is stated to be owner of land falling in Khasra No.2 of said village, as such, the respondent had allegedly started encroaching upon the land of CDA, as a result whereof, the CDA issued notices to the respondent for removal of the illegal construction. This compelled the respondent to file a suit for permanent injunction, which was contested by the CDA/petitioner and ultimately, the suit has been decreed vide impugned judgment and decree dated 02.05.2018. Feeling aggrieved thereof the CDA/petitioner preferred an appeal, which was dismissed by the learned Additional District Judge (West), Islamabad vide impugned

judgment and decree dated 04.05.2019. Hence, instant civil revision petition.

3. Learned counsel for petitioner contends that the learned trial Court has exercised jurisdiction not vested in it as the respondent had filed a suit seeking permanent injunction, but the learned trial Court went beyond and framed a issue regarding declaration despite the fact that same was not sought by the respondent; that the respondent has not mentioned the exact location, schedule and description of his land in body of plaint, as such, the land of respondent is situated adjacent to the land of petitioner, per se, no map or sketch of respondent's suit land has been placed on record; that both the Courts below have not appreciated the facts and circumstances of the case in accordance with law and passed the impugned judgments and decrees.

4. Conversely, learned counsel for respondent opposed the filing of instant civil revision petition on the grounds that the fact that respondent is owner of suit land is fully described in Register Haqdaran Zameen (2003-04); that respondent is owner in possession of the suit land for valuable consideration, as also recorded in the relevant revenue record, therefore, the CDA has no valid claim of the suit land, per se, such interference on the part of CDA is illegal; that both the Courts below have dealt with the matter in accordance with law while passing the impugned judgments and decrees.

5. Arguments heard, record perused.

6. Perusal of record reveals that Capital Development Authority (CDA) is aggrieved with concurrent findings of the courts below passed in the suit filed by Muhammad Bostan / respondent, whereby the latter challenged the action of the CDA upon his land. The CDA contends that respondent is encroaching upon the land acquired by the CDA vide award

dated 22.10.1985, measuring 377-Kanal & 3-Marla, situated in Mouza Shah Allah Ditta, Islamabad, as such, the respondent has encroached upon Khasra No.386 in the said area by raising construction. On the other hand, the respondent claims that he is actually owner of land measuring 122-Kanal in said area, however he is in possession of land measuring 622-Kanal, which is in *Shamlat Deh*, as recorded in his evidence as PW-1. The learned trial Court with the consent of parties had also appointed a Local Commission vide order dated 14.12.2015 but, the CDA has not participated in the Local Commission proceedings, although the Commission, vide its report dated 10.02.2016, has specifically referred that the house of respondent/plaintiff is situated in Khasra No.2 and not in Khasra No.386. The CDA had filed objections to it but, same were dismissed on 07.09.2017, as a result whereof the Local Commission report, dated 10.02.2016, attained finality.

7. The CDA has produced one Muhammad Shafi, Naib Tehsildar, who has recorded his stance in favour of the CDA that vide award, dated 22.07.1985, the land measuring 282-Kanal & 9-Marla in Khasra No.2/1 has also been included in acquisition but, such aspect is not referred in the written statement of the petitioner, hence same is considered to be out of pleadings and could not be read as part of evidence in any manner.

8. Learned counsel for CDA/petitioner vehemently argued that fresh Local Commission report be sought in order to resolve the dispute at spot, as such, the petitioner's counsel has been confronted regarding their own conduct with respect to proceedings carried out by the learned Trial Court, in which the CDA had not participated in the proceedings despite having knowledge of the appointment of the Local Commission, but no satisfactory answer has been given, even otherwise, the petitioner CDA seeks removal of encroachment in the land situated in Khasra No.386

having been acquired by them but, till date the CDA has not requested the revenue authorities for demarcation of land in any manner and at this stage when the Local Commission report is available on record, which negates the stance of CDA, even then the CDA has again requested for appointment of a new Local Commission.

9. The arguments rendered by the CDA have already been settled by courts below and, as such, there is no jurisdictional defect or illegality in the concurrent findings recorded by both the Courts below, therefore, this Court will not interfere into the same, hence, instant civil revision petition is misconceived and the same is hereby **DISMISSED**.

10. Before parting with this judgment, the CDA / petitioner can approach the Collector, Islamabad independently for demarcation of their claimed land under the law and may also resort to any other remedy available to it against the alleged encroachment by the respondent, if any, after seeking a demarcation report and determination of the encroachment, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.