

## JUDGMENT SHEET

### ISLAMABAD HIGH COURT, ISLAMABAD, (JUDICIAL DEPARTMENT)

ICA No.277/2012

Capital Development Authority through its Chairman

*versus*

Maskeen Sultan

Appellant by: Mr. Muhammad Nazir Jawad, Advocate.

Respondent: Ex-parte.

Date of Decision: 12.08.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant intra court appeal, the Capital Development Authority (*CDA/appellant*) has assailed the order of the learned Single Judge in Chambers, dated 04.05.2012, passed in W.P. No.513/2012, whereby the said writ petition filed by Maskeen Sultan (*Respondent*) was allowed and the appellant was directed to allot a plot to said respondent in lieu of his acquired built-up property (*BUP*) measuring 293 sq. ft.

2. Brief facts referred in the instant appeal are that the respondent has filed W.P. No.513/2012 with the contention that he is a sole legal heir of Sikandar Khan son of Elahi, resident of village Chahan, Islamabad, who owned a house in village Chahan, measuring 293 sq. ft. At the time of acquisition of said property by the CDA on 03.05.1963, vide BUP No.58, the subject property was acquired in the name of respondent and was included in list at Serial No.54 of the Award. The respondent has filed several applications to the CDA for allotment of plot against his acquisition of built-up property, including the required fee of Rs.200/-, and had also served several reminders/notices. Finally, the respondent received letter dated 20.06.2012 informing him that the CDA constituted Allotment Scrutiny Committee to resolve the pending cases of affectees under the Islamabad Displaced Persons Rehabilitation Policy, 1996 (*hereinafter referred to as Rehabilitation Policy*). The case of respondent was placed before said Committee on 13.08.2005, but same was rejected having not been covered under

the Rehabilitation Policy, 1996. Accordingly, the respondent approached this Court by filing a writ petition for redressal of his grievance, which was allowed by the learned Single Judge in Chambers vide impugned order dated 04.05.2012. Hence, this intra court appeal.

3. Learned counsel for appellant contends that respondent's case does not fall within the rehabilitation policy as his father had already received the rehabilitation benefit vide Eligibility Certificate No.B002231, dated 08.03.1966, for District Multan for allotment of 100 Kanal agricultural land against his acquired land of 91-Kanals & 6-Marlas from village Chahan, Islamabad; that the appellant is otherwise not eligible under the Policy as his BUP is less than 300 sq. ft., which is not covered under the policy domain for allotment of plot, even when one of the family member has already received rehabilitation benefit same could not be extended to dependent family member; that case of respondent was rejected on 13.08.2005, but writ petition was filed with delay in the year 2012, but this aspect has not been considered by learned Single Judge in Chambers while passing the impugned order, which is in violation of the policy as well as of the law.

4. On the other hand, the respondent was served notices and in response to notice, Mr. Ali Murad, Advocate put appearance on 19.09.2012, though replaced by Ch. Naeem Ali Gujjar, Advocate, who appeared on 04.03.2013 and 30.05.2013, whereas respondent also appeared in-person on 01.06.2015 and 23.01.2020, but later on no one put appearance despite fixation of the case on 13.02.2020. Mr. Shafaqat Mehmood, Advocate again appeared as proxy counsel on 08.06.2020, whereafter on 06.07.2020 notice *pervi* was issued for 16.07.2020, on which date the respondent again absented constraining the Court to issue yet another notice *pervi*. However, despite hectic efforts no one put appearance in this case on behalf of respondent, even name of learned counsel for respondent was reflected in cause list as his power of attorney is still intact and available on record, therefore, there is no other option but to proceed against the respondent ex-parte.

However, his point of view has been taken into consideration from available record of writ petition as well as record appended with this appeal for the just decision of the case.

5. Arguments heard, record perused.

6. Perusal of record reveals that the Capital Development Authority is mainly aggrieved with the order of the learned Single Judge in Chambers, dated 04.05.2012, passed in W.P. No.513/2012, whereby direction was issued for allotment of plot under the Rehabilitation Policy against the respondent's acquired BUP of 293 sq. ft. In order to resolve the controversy the admitted facts reflected from the record are as under:

- a) BUP measuring 293 sq. ft. was acquired by the CDA vide award dated 03.05.1963, through BUP No.58 in village Chahan, Islamabad and name of respondent is reflected at Serial No.54 of award list.
- b) The respondent has received the acquisition benefit of Rs.1043/- against acquisition of 293 sq. ft. of land.
- c) Respondent's father i.e. Sikandar, resident of village Chahan, Islamabad was given Eligibility Certificate No.C001026 for 12-Acres and 4-Kanals of land equal to 100-Kanals in District Multan vide eligibility certificate dated 17.11.1966.

7. While considering the above admitted facts, we have gone through the Rehabilitation Policy notified by the CDA and observed that benefit for a BUP/land in terms of Section 4 is provided in the following manner:

**4. Allotment of residential plots.** *The residential plots shall be allotted to the affectee according to the following scale namely:*

(1) *Where the land acquired is with or without built up property thereon and the area of land acquired is---*

(a) 4 Kanals or More but less than 10 Kanals = A plot of 25x50 size.

(b) 10 Kanals or more. = A plot of 30x60 size for every complete unit of 10 Kanals of acquired land.

*Provided that where the land acquires is less than 4 Kanals, the affectee will be allowed to join other affectees to make up the deficiency in the minimum area of 04 kanals to be eligible for joint allotment of a plot.*

*(2) Where built up property is acquired in Abadi Deh, residential plots will be allotted to the affectees notwithstanding the ownership of the land beneath the Where built up property on the following criteria:-*

<u>Area of BUP</u>	<u>Plot Size</u>
i) 300 to 499 Square feet	Plot of 25'x50'
ii) 500 Square feet and upwards.	Plot of 30'x60'

*The allotment will, however, be subject to the condition that the affectee has not availed any benefit against acquisition of land, if any, acquired from him, provided that where the acquired built up property is located outside Abadi Deh, residential plots will be allotted to the affectee of the built up property, as in the case of Abadi Deh, only if the land beneath is owned by the affectee himself."*

8. Besides the above referred provision for eligibility benefit for allotment of residential plot, the policy has also notified conditions in general, whereby a restriction has been imposed upon the benefits in Section 8 of the Rehabilitation Policy, which is as under:

**8. Conditions in general.** *(1) Allotment of residential plots, agriculture land or agro-farm shall be subject to prior submission of an affidavit to the effect that no member of the family unit of the affectee owns a plot or house in Islamabad or has already availed of any rehabilitation benefit from the CDA. This affidavit will be further subject to the Scrutiny of and acceptance by the CDA. Any false affidavit will render the executants of that affidavit disqualified for any rehabilitation benefit from the CDA for all times and if any allotment has been made, it will render that allotment liable to be cancelled even if construction has been raised thereon and the amount already paid towards its price liable to be forfeited."*

9. We have gone through the above mentioned policy with able assistance of learned counsel for appellant. As per record the built-up property of the respondent is less than 300 sq. ft., which is the minimum requirement for allotment of plot measuring 25x50 in terms of Section 4(2) of the said Policy. Similarly, Section 8(1) of the policy imposes restriction that, "no member of family unit of the affectee owns a plot or house in Islamabad or has already availed of any

*rehabilitation benefit from the CDA*" As such, respondent's father has already availed rehabilitation benefit through Eligibility Certificate No.C001026, dated 17.11.1966, for land measuring 12-Acres & 4-Kanals in District Multan.

10. In view of above position, the learned Single Judge in Chambers has not properly attended to the proposition, rather gone beyond his jurisdiction while passing direction for the purpose of allotment.

11. The relief claimed by the respondent in writ petition is not made out, whereas one of the case relied upon by respondent in the writ petition was *W.P. No.1521/2006 (Abdul Jabbar vs. CDA)*, but said case is different in nature as to the case in hand, as in the said case family members were not awarded land under the Rehabilitation Policy and as such, their own BUP has been acquired, against which the petitioner (Abdul Jabbar) was claiming benefit, which was allowed by the then Hon'ble Chief Justice of this Court, vide order dated 13.05.2007, therefore, said order/case having diverse facts and circumstances could not be considered to mull over the instant case.

12. Keeping in view the position, the learned Single Judge in Chambers has not considered the law as well as the Rehabilitation Policy in its true perspective, whereby ineligibility of respondent was ignored despite clear mentioning of restrictions in Sections 4 and 8(1) of the Rehabilitation Policy, 1966, hence, the instant intra court appeal is hereby ALLOWED and impugned order dated 04.05.2012 is SET ASIDE. No order as to cost.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.