

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 44/2014.

Sultan Mahmood

Versus

Syed Zulfiqar Ali Shah, etc.

Petitioner by: Mr. Zulfiqar Ali Abbasi and Mr. Shahid Munir,
Advocates.

Respondents by: Mr. Nabeel Tahir Mirza, Advocate for respondent
No.1.
Nemo for CDA.

Date of Decision: 20.08.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the concurrent findings of the Courts below, whereby suit filed by the petitioner for declaration, specific performance, mandatory and permanent injunction was dismissed vide judgment & decree dated 08.11.2010, passed by learned Civil Judge 1st Class, Islamabad and judgment & decree dated 13.05.2013, passed by learned Additional District Judge, Islamabad in appeal, whereby appeal filed by the petitioner was dismissed and judgment & decree passed by learned Civil Judge was upheld.

2. Learned counsel for the petitioner contends that petitioner purchased plot No.540, measuring 200 sq. yards (30x60), situated in Model Village, Humak Zamani, Islamabad, which was previously allotted to respondent No.1 vide allotment letter No.CDA/EM-Humak (Zamani)(540)/82, dated 07.05.1982 by respondent No.2/CDA; that petitioner applied for transfer of said plot in the CDA, and respondent No.1 recorded the conceding statement for the transfer of plot but transfer letter was not issued by CDA, resultantly, suit was filed by the petitioner for declaration; that respondent No.1 recorded his conceding

statement in the Court whereas CDA contested the matter through separate written statement with the contention that allotment letter submitted by respondent No.1 in favour of petitioner was forged and was cancelled, having no legal effect; that both the Courts below have not appreciated the evidence in its true perspective, especially when different permissions were granted by the CDA for construction of property and obtaining utility connections, even petitioner has completed the construction and presently enjoying the possession; that learned trial Court has not considered the admissions made by CDA through their evidence brought on record by Muhammad Younas, Assistant Estate Management Section, CDA/DW-1.

3. Conversely, learned counsel for respondent No.1 has supported the version of the petitioner and acknowledged that he has sold out the plot to the petitioner and has received sale consideration but CDA has not issued transfer letter.

4. Counsel for CDA is absent and as such last opportunity was granted to the parties for their arguments, therefore, this Court has no other option except to proceed against the CDA as *ex-parte*.

5. Arguments heard, record perused.

6. Perusal of record reveals that suit plot is claimed to be allotted in favour of respondent No.1 vide allotment letter dated 07.05.1982 and as per his stance the same was handed over to him vide letter dated 04.07.1995, which was sold out to the petitioner against the total sale consideration of Rs.3,60,000/- but the same has not been transferred in favour of petitioner despite recording of statement by respondent No.1 in the office of CDA. The petitioner filed suit for declaration, specific performance, mandatory and permanent injunction, whereby respondent No.1 has conceded the stance of petitioner in the Court.

However, CDA has contested the matter by taking a specific stance in the written statement in the following manner:-

That in regard of Para No.1 of the plaint it is submitted that the answering defendant/CDA has cancelled/with drawn the allotment of the suit plot from the name of the defendant No.1 being forged and fabricated one vide letter No.CDA/EA Humak Zamni/540/655 dated 28.03.2001. The allotment of the suit plot get prepared with forged, factitious and bogus signature of the officials of the CDA and all other documents relating to the suit plot were prepared with the collusion of the official of the CDA. Therefore, after proper investigation the allotment of the suit plot was cancelled on 28.03.2001.

That para No.6 of the plaint is denied. After the cancellation of the allotment of the suit plot, the plaintiff is not legally authorized to start the construction over the suit plot. However, the construction of the suit plot raised by the plaintiff is liable to be demolished being illegal and unauthorized construction. It is also pertinent to mention here that the plaintiff before purchasing the suit plot from defendant No.1 submitted requisition and the answering defendant/CDA had to transfer the suit plot after further investigation. After investigation/verification it came to the knowledge of the answering defendant/CDA that he allotment of the suit plot is forged, fabricated one, therefore, the CDA/answering defendant cancelled the allotment of the suit plot on 28.03.2001.

7. On the basis of above mentioned divergent pleadings, trial Court framed the issues vide order dated 20.04.2005, whereby primary issue No.1 was framed in the following manner:-

Whether the allotment of disputed plot No.540, Humak Zimni in favour of defendant No.1 by defendant No.2 is result of fraud, forgery and fabricated one and defendant No.2 has rightly cancelled the allotment?

OPD2

8. The petitioner appeared as PW-1 in his own support to justify his version and reiterated his stance that he has purchased the said plot alongwith its possession and paid the entire sale consideration but CDA has not transferred the same despite the fact that he has completed the construction and obtained

utility connections of gas, electricity, etc. During the course of cross-examination he acknowledged the following:-

یہ درست ہے کہ۔۔ ان کے انکار کے بعد ذوالفقار نے CDA کے خلاف دعویٰ دائر کر رہا تھا۔ یہ درست ہے کہ ذوالفقار کا دعویٰ خارج ہو چکا ہے۔ میں نے پلاٹ کی فائل گھر بیٹھ کر دیکھی تھی۔ مجھے علم نہ ہے کہ جس وقت میں نے پلاٹ متدعو یہ مدعا علیہ نمبر اسے خرید اس وقت ذوالفقار کی جعلی الاٹمنٹ کی انکوائری CDA میں کی جا رہی تھی۔

9. While considering the above mentioned admissions of the petitioner, it has been proved on record that original allottee respondent No.1 has filed similar suit against the CDA for declaration which was dismissed and as such the matter, which was earlier adjudicated by the competent Court could not be reopened again through an indirect manner by the petitioner in a present form. Even otherwise, the entire onus has to be discharged by the petitioner as to whether the plot was lawfully allotted to respondent No.1 or otherwise, therefore, in order to resolve the controversy, I have gone through the evidence of CDA through DW-1, who has stated that:-

بیان کیا کہ سید ذوالفقار علی شاہ ولد سید عبادت علی شاہ کو پلاٹ نمبر 540 ہمک ضمنی CDA نے الاٹ نہ کیا ہے بلکہ اُس نے خود الاٹمنٹ لیٹر تیار کیا ہے جو کہ جعلی ہے۔

10. DW-1 has acknowledged the possession letter and other correspondence, however, it has not been proved through any evidence that plot was restored after its cancellation, even it is established on record in the cross-examination that alleged allotment letter was signed by one Said Ullah Khan Zamri, which was fake and FIA has already investigated the matter but no final outcome was placed on record. Respondent CDA has produced show cause notice Ex.D-2, cancellation letter Ex.D-3, which clearly established that primary onus has not been discharged. CDA being master regulator is the custodian of record and is the best judge to monitor the affairs of allotment of any plot, however, contrary view could only be taken if documentary evidence is placed on record to prove that allotment letter issued in favour of respondent No.1 is original in terms of Article 117 of Qanun-e-Shahadat Order, 1984. The trial Court has referred in

para-12 of the impugned judgment that suit filed by respondent No.1/Zulfiqar Ali Shah referred as Mark "A" was subsequently withdrawn by his counsel on 07.06.2001, which confirms that similar suit for declaration was earlier filed by respondent No.1 and same has not been adjudicated upon rather same was withdrawn.

11. It is trite law that beneficiary has to discharge the onus in such type of proposition, although issue was framed in this regard and the onus was referred to respondent No.2/CDA but in my humble view petitioner has to request the Court to bring each and every piece of evidence to justify the valid allotment of respondent No.1, which has not been done in this case, even the reasons for cancellation have not been confronted to the CDA officials with reference to any record.

12. In view of above, trial Court as well as Appellate Court have rightly non-suited the petitioner who has failed to establish his own case. Instant civil revision is misconceived and the same is hereby *dismissed*.

(MOHSĪN ĀKHTAR KĀYANI)
JUDGE

Zahid