

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.895/2019

Liaqat Ali

Versus

Capital Development Authority through its Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	30.09.2020	Syed Murad Ali Shah, Advocate for the petitioner Mr. Rehan Seerat, Advocate for the respondents

Through the instant writ petition, the petitioner (Liaqat Ali) seeks the issuance of a writ of mandamus directing the respondents *i.e.* Capital Development Authority (“C.D.A.”) to issue a No Objection Certificate (“N.O.C.”) for the transfer of the petitioner’s title in the property situated at Plot No.3/Community Centre, Bazar No.3, Class-III, F-11/3, Islamabad (“the plot”).

2. Learned counsel for the petitioner submitted that vide letter dated 06.10.2002, the plot was allotted to Ch. Muhammad Zahid and Ch. Basharat Ahmed; that vide letter dated 10.03.2004, the plot was then further transferred by first allottees to Muhammad Khalid and Muhammad Ayub; that the said allottees submitted the building plans which were approved by the C.D.A. vide letter dated 15.08.2005 and completion of building notice was submitted on 08.02.2007; that on 21.11.2009, the plot was transferred to the petitioner along with one Muhammad Abbas in equal shares; that on 18.06.2014, the said Muhammad Abbas also transferred his share in the plot to the petitioner and thus he became sole owner of the plot; that on 22.06.2015, the petitioner moved an application to the C.D.A. for transfer of the plot; that the C.D.A. issued a ‘No Demand Certificate’ and an N.O.C. for transfer dated 05.04.2016; that subsequently upon

the petitioner's application for transfer of the property moved to the C.D.A.'s directorate of one window operation vide letter dated 17.01.2019 the petitioner was informed by the Assistant Director Building Control Section that his request for N.O.C. cannot be acceded to due to building being under non-conforming use and due to having been constructed on 100% coverage instead of 70%. Hence this petition.

3. Learned counsel, after narrating the facts leading to the filing of the instant petition, further submitted that the petitioner is an overseas Pakistani who has purchased the plot already constructed; that the approval of the building plan and completion notice predates the transfer to the petitioner; that no observation regarding a non-conforming use was raised by the C.D.A. at the stage of transfer to the petitioner; that vide letter dated 18.06.2014, 50% share of the petitioner's co-allottee was transferred in the name of the petitioner after the issuance of an N.O.C. without any objection; that the petitioner did not raise any construction on the plot; that the petitioner has been paying all the charges and taxes regularly; that no notice of non-conforming use was ever issued to the petitioner; that letter dated 17.01.2019 was issued without any lawful justification; that vide letter dated 17.01.2019, he is illegally shown as owner of 50% share in the plot; and that the refusal of the respondents in issuing the N.O.C. for transfer is unlawful and against the petitioner's fundamental rights. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for the respondents C.D.A. submitted that the plot was

auctioned for the construction of Community Centre; that the building plan was approved for the 70% ground coverage but on site the owner covered 100% area and started making representations for regularization of such violations; that the building on the plot was subjected to non-conforming use 'as office' in violation of clause 2.17.3 of Islamabad Residential Section Zoning (Building Control) Regulations, 2005 and Section 49-C of the C.D.A. Ordinance, 1960; that the notice dated 03.04.2018 was issued to the petitioner in this regard; that construction of building on 100% of the area is in violation of the Islamabad Building Regulations, 1963 and Islamabad Residential Sector Zoning (Building Control) Regulations, 2005; that in the year 2014 at the time of transfer of 50 % share to the petitioner by his co-allottee, the petitioner admitted the violations and submitted an affidavit dated 26.05.2014 to remove the same; that the notice dated 23.04.2018 was issued to the petitioner requiring removal of the building violations but the said violations were not removed; and that the petitioner having concealed the material facts from this Court thus is not entitled for the discretionary relief. Learned counsel for the respondents prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. As mentioned above, the plot measuring 50x60 (3000) square feet was allotted vide letter dated 06.10.2002. It appears from the record that on 16.06.2005, the previous allottees of the plot submitted a building plan proposing ground covered area of 3000 square feet. Vide letters

dated 01.06.2005 and 10.06.2005 issued by the C.D.A. the previous allottees of the plot were required to re-submit building plan in accordance with the C.D.A. by-laws. Afterwards on 02.08.2005, the previous allottees re-submitted the building plan with the ground covered area of 2100 square feet *i.e.* with floor area ratio of 70%. The C.D.A. then vide letter dated 15.08.2005 approved the building plan with total covered area of 6300 square feet for three floors *i.e.* floor area ratio of 70%. Now, copy of this approval letter dated 15.08.2005 is an admitted document and has been appended with the petition. It was only after the owners submitted completion certificate dated 08.02.2007 the C.D.A. vide letter dated 09.07.2007 raised the observations on the completion report which included the observation regarding the covered area being 100 % instead of 70% is in violation of the building plan. It was at this stage that the allottees moved an application for enhancement of the covered area for the plot from 70% to 100%. The actual covered area on completion was shown to be 9775 square feet *i.e.* 100%.

7. The previous allottees moved an application dated 28.07.2009 for the issuance of an N.O.C. for the transfer of the plot. In the said application, they admitted the violation of floor area ratio to be 100 % instead of 70% and voluntarily sought permission to deposit fine of Rs.1,80,000/-. Thereafter, the Deputy Director, Building Control Section-I, C.D.A. issued N.O.Cs. dated 01.08.2009 and 04.11.2009 for the transfer of the plot. In the said N.O.Cs., it was certified that "*there is no violation of Building Regulations in the claimed shares.*" The plot was

then transferred to the petitioner and his co-sharer vide transfer letter dated 21.11.2009.

8. It further transpires from the record that in the year 2013 the C.D.A. noticed that a restaurant was running in the building on the plot which was auctioned for construction of Community Centre, therefore a notice for removal of the non-conforming use was issued.

9. In the meanwhile, the co-owner of the petitioner moved an application for the issuance of an N.O.C. for the transfer between co-owners *i.e.* for transfer of co-allottee's 50% share to the petitioner. Upon the said application, an objection regarding violation of building plan with regard to excess floor area ratio was raised. However, the C.D.A. vide letter dated 27.05.2014 issued an N.O.C. for the transfer between co-owners subject to the condition that an affidavit is submitted for removal of the violation *qua* excess floor area ratio. The petitioner, in his capacity as a purchaser and co-allottee, on 26.05.2014 submitted an affidavit wherein he admitted the violation of the C.D.A.'s Building Regulations, 2005 regarding non-conforming use and 100% ground coverage instead of 70%. In the said affidavit, he also undertook to pay dues on account of violation or to comply with the other instructions of the C.D.A. including removal of violations. The co-allottee of the petitioner Muhammad Abbas also submitted an affidavit dated 23.05.2014, wherein he admitted contravention of the C.D.A. Regulations and undertook to indemnify the C.D.A. against any losses in this regard. In this pursuance vide letter dated 18.06.2014 50% share of Muhammad Abbas co-allottee was also transferred in the name of the petitioner.

10. The C.D.A. vide letters dated 03.04.2018 and 23.04.2018 directed the petitioner to remove; (i) building violations and (ii) non-conforming use of the property '*as office*' instead of Community Centre. Simultaneously, the petitioner's application for the issuance of an N.O.C. for the transfer of the plot was also declined vide letter dated 17.01.2019 until removal of the violations.

11. Now, leaving aside the C.D.A.'s apathy in implementation of building plan and Building Regulations, since the petitioner had admittedly made a solemn undertaking through his affidavit dated 23.05.2014 to remove the violations, therefore he is required to abide by the same. The factual aspect as to whether the violations pointed out by the C.D.A. and admitted by the petitioner have been removed or otherwise cannot be inquired into in the Constitutional jurisdiction of this Court.

12. In view of the above, this petition is disposed of with the direction to the C.D.A. to inspect the building in question and if found that the violations pointed out by the C.D.A. have been removed, the N.O.C. applied for shall be issued to the petitioner in accordance with the C.D.A.'s Regulations.

13. Disposed-of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*