

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**F.A.O. No.53 of 2016**  
**Defence Housing Authority Islamabad**  
**Versus**  
**Shafqat Rasool & others**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>20.09.2016</b>	<b>Mr. Rashid Mehmood Sindhu, Advocate for the appellant,</b> <b>M/s Abdul Shakoor Paracha, Wajiha Pervez, Advocates for respondents No.1 &amp; 2,</b> <b>Mr. Naseem Ahmad Shah, Advocate for respondents No.3 to 5</b>

Through this F.A.O., the appellant, Defence Housing Authority, impugns the Order dated 17.03.2016, passed by the Court of the learned Senior Civil Judge, Islamabad (East), dismissing the appellant's application for the setting aside of the order dated 21.05.2015, whereby the appellant was proceeded against ex-parte.

2. The record shows that respondent No.1 and 2's property in Village Kortana Tehsil and District Islamabad, was acquired through an Award dated 26.02.2000. Aggrieved by the said Award, respondents No.1 and 2 on 30.01.2002, filed a reference/objections (Reference Petition No.7 of 2002) under Section 18 of the Land Acquisition Act, 1894, for the enhancement of compensation before the learned Civil Court. Vide order dated 20.04.2006, the appellant was proceeded against ex-parte, and the matter was adjourned for respondent No.1 & 2's ex-parte evidence. As respondents No.1 & 2 did not produce evidence, despite several opportunities, the learned Civil Court, vide order dated 18.06.2009, closed respondents No.1 & 2's right to produce evidence by

invoking the provisions of Order XVII, Rule 3 C.P.C., and dismissed the reference ex-parte for want of evidence. Respondents No.1 and 2 assailed the said order dated 18.06.2009 before this Court in F.A.O. No.91/2009. Vide order dated 06.11.2014, this Court allowed the said appeal and set aside the order dated 18.06.2009. Furthermore, the matter was remanded to the learned Civil Court with the direction to provide a final opportunity to respondents No.1 and 2 to produce their evidence and then to decide the Reference Petition in accordance with the law. The remand order was passed subject to the payment of cost of Rs.5,000/-. After the case was remanded, the appellant did not appear before the learned Civil Court on several dates. Consequently, on 06.05.2015, the learned Civil Court ordered summons to be issued to the appellant through a proclamation in the newspaper "the Daily Pakistan". Despite the proclamation in the newspaper, the appellant did not appear before the learned Civil Court. Vide order dated 21.05.2015, the appellant was, once again, proceeded against ex-parte. On 15.09.2015, the appellant filed an application for setting aside of the ex-parte proceedings against the appellant. This application was contested by respondents No.1 and 2 by filing a reply thereto. Vide order dated 17.03.2016, the Court of learned Senior Civil Judge, Islamabad (East), dismissed the said application and adjourned the matter for respondents No.1 and 2's evidence. The said order dated 17.03.2016, was impugned by the appellant in the instant appeal.

3. Learned counsel for the appellant submitted that this Court while remanding the matter to the learned Civil Court, vide order dated 18.06.2009, did not fix a date on which the appellant was supposed to appear before the learned Civil Court; that respondents No.1 and 2 did not even deposit cost of Rs.5,000/- as ordered by this Court; that the appellant has filed the appeal under Section 54 of the Land Acquisition Act, 1894, in the same way in which respondents No.1 and 2 had filed F.A.O. No.91/2009; that the case pertains to the territorial jurisdiction of the learned Civil Judge, Islamabad (West), whereas after the remand of the case on 18.06.2009, the case was erroneously fixed before the Court of learned Civil Judge, Islamabad (East); that therefore, the order dated 21.05.2015 passed by the Court of learned Civil Judge, Islamabad (East), was wholly without jurisdiction. The learned counsel for the appellant prayed for the appeal to be allowed and the matter be remanded to the learned Civil Court with the direction to decide the Reference Petition on merits. In making his submissions, the learned counsel for the appellant placed has placed reliance on the law laid down in the case of Land Acquisition Collector Vs. Muhammad Nawaz (2010 AC 542).

4. Learned counsel for the respondents No.1 and 2, after narrating the sequence of the events after the filing of Reference Petition No.7 of 2002 until the passing of the impugned order dated 17.03.2016, submitted that the attitude of the appellant had been most negligent in defending the said Reference Petition; that the appellate order dated

18.06.2009, was passed by this Court in the presence of the learned counsel for the appellant, therefore, the appellant should have appeared before the learned Civil Court soon after the remand of the case; that in the post remand proceedings, several opportunities were given to the appellant to appear before the learned Civil Court, but to no avail; that the appellant did not appear despite a proclamation in the newspaper; that the order dated 21.05.2015, to proceed against the appellant ex-parte did not suffer from any legal infirmity; that the learned Civil Court did not commit any illegality by dismissing the appellant's highly belated application for the recall of the said order dated 21.05.2015. The learned counsel for respondents No.1 and 2 prayed for the appeal to be dismissed. In making his submissions, the learned counsel for respondents No.1 and 2 placed reliance on the law laid down in the cases of Chaudhri Shakeel Ahmad Vs. Ghulam Farid, (2015 YLR 957), Najeeb Ullah Khan Vs. Mst. Hameeda Chaudhry (2016 YLR 1538), Iftikhar Hussain Shah Vs. Pakistan (1991 SCMR 2193), and Engineer Hafeezullah Vs. CEO (PTCL) (2011 SCMR 442).

5. I have heard the arguments of the learned counsel for the contesting parties and perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

6. There is no denying the fact that after the remand of this case by this Court on 18.06.2009, the appellant seems to have lost interest in defending the Reference Petition,

and did not appear before the learned Civil Court on several dates of hearings. Consequently, the learned Civil Court was constrained to issue summons to the appellant through publication in the newspaper. Despite the publication of summons, the appellant did not appear before the learned Civil Court. Vide order dated 21.05.2015, the learned Civil Court, proceeded ex-parte against the appellant. Even though due to some administrative error, the case was entrusted to the Court of learned Civil Judge, Islamabad (West), (which did not have territorial jurisdiction over the matter) this did not absolve the appellant from the obligation of attending the said Court and pointing out the administrative error to the learned Presiding Officer. On 15.09.2015, the appellant filed an application for the recall of the said order dated 21.05.2015.

7. Now it is most pertinent to bear in mind that the said order dated 21.05.2015 was passed by the Court of learned Civil Judge, Islamabad (West), which, admittedly, did not have the territorial jurisdiction with respect to the matter in dispute. Vide order dated 09.06.2015, the Court of the learned Civil Judge, Islamabad (West), on the request of the learned counsel for respondents No.1 and 2 transferred the case to Civil District Division (East) for further proceedings in the matter, referred the matter to the learned District & Sessions Judge Islamabad (West) for appropriate orders. For ease of reference, the said order dated 09.06.2015, is reproduced herein below:-

*"At this stage, learned counsel for the petitioners has pointed out that the suit*

*property is situated at Civil District Division (East), therefore, this court has got no jurisdiction to entertain this suit. He requested for transfer of the case to Civil District Division (East) for further proceedings in the matter. In the circumstances, the file is respectfully placed before the Worthy District & Sessions Judge-West, Islamabad for appropriate orders, where all concerned shall appear on 15.06.2015. Ahlmad is directed to transmit the file forthwith."*

8. Vide order dated 15.06.2015, the learned District & Sessions Judge, Islamabad (West), transferred the case to the learned District & Sessions Judge, Islamabad (East), for want of territorial jurisdiction. For ease of reference, the said order dated 15.06.2015, is reproduced herein below:-

*"In compliance with the Notification No.5649/Genl/IHC dated 10.04.2012, issued by the Hon'ble Islamabad High Court Islamabad, and in view of the reference submitted by learned Senior Civil Judge-West, Islamabad, the instant case pertaining to Sessions Division (East) Islamabad is transferred to the Worthy District & Sessions Judge (East) Islamabad for want of territorial jurisdiction. Office is directed to transmit the file forthwith to the learned transferee court after necessary completion and compilation by preparing index through worthy District & Sessions Judge (West) Islamabad."*

9. Thereafter, the matter was entrusted to the Court of the learned Senior Civil Judge, Islamabad (East), for further proceedings. As mentioned above, vide order dated 17.03.2016, the Court of learned Senior Civil Judge, Islamabad (East), dismissed the appellant's application for the setting aside of the order dated 21.05.2015.

10. Perusal of the impugned order dated 17.03.2016, shows that the learned Civil Court did not take account of the fact that the order dated 21.05.2015 (whereby the appellant was proceeded against ex-parte) was passed by a

Court, which did not have territorial jurisdiction over the matter. It is by now well settled that an order is treated as void when it is passed by a Court, Tribunal or any other authority which had no jurisdiction either as regards the subject matter, pecuniary value or territorial limits. Reference in this regard may be made to the law laid down in the cases of Chief Settlement Commissioner, Lahore Vs. Raja Muhammad Fazeel Khan (PLD 1975 Supreme Court 331), Niaz Ahmad Vs. Muhammad Saleem (2004 CLC 1482), and Mian Muhammad Sharif Vs. Income Tax Appellate Tribunal, Lahore (2016 PTD 296). In the last referred judgment, it has been held at paragraph 20 of the report as follows:-

*"20. The proposition of law laid down in the judgments referred to above has since been followed by the Supreme Court of Pakistan in later judgments reported as Abdul Majeed and 6 others Vs. Muhammad Subhan and 2 others (1999 SCMR 1245), Abdul Rehman and others Vs. Ghulam Muhammad through L.Rs. and others (2010 SCMR 978) and Muhammad Raz Khan Vs. Government of N.W.F.P. (PLD 1997 SC 397). However, a common thread which runs through these judgments is the construction put on the term 'void order' only to mean when it is made by a Court, Tribunal or other authority which had no jurisdiction either as regards the subject matter, pecuniary value or territorial limits. Such an order has been described as amounting to "usurpation of power unwarranted by law" and accordingly, nullity in law..."*

11. The order dated 21.05.2015 was passed by the Court of the learned Civil Judge, Islamabad (West), from where the case was transferred to the Court of the learned Civil Judge, Islamabad (East), on the request of the learned counsel for respondents No.1 and 2. This transfer was made because the Court of

the learned Civil Judge (West) did not have the territorial jurisdiction over the matter.

12. In exercise of the powers conferred vide Law & Justice Division's Notification No.F-17(2)/80-Pub, dated 31.12.1980, issued in pursuance of Article 2 of the Islamabad Capital Territory (Administration) Order, 1980 (P.O.No.18 of 1980) and all other enabling powers in this behalf, the Chief Commissioner, Islamabad Capital Territory, vide Notification No.11(1)-Admin,/2011, dated 28.05.2011, divided the area of Islamabad Capital Territory into two Sessions division in terms of Section 6(4) of the Islamabad High Court Act, 2010 read with Part-II, Chapter-II-A, B & C of the Code of Criminal Procedure, 1898 (Act V of 1898) and Section 4 of the Civil Courts Ordinance, 1962 (Ordinance II of 1962), with the following territorial limits:

**ISLAMABAD WEST:** All Sectors, all municipal limits, Union Council Shah Allah Ditta, Saidpur, Noor-Pur Shahan and areas falling on Western Side of the Murree Road starting from Faizabad and leading towards Bharakau.

**ISLAMABAD EAST:** 11 Union Councils i.e. Rawat, Sihala, Koral, Tarlai, Bhara Kau, Kirpa, Chirah, Sohan, Kurri, Tumair & Phulgran including villages Ojri and Malpur.

13. As the Court competent (i.e. having territorial jurisdiction) to adjudicate upon the Reference Petition was the Court of the learned Civil Judge, Islamabad (East), all orders including (the order dated 21.05.2015) passed by the Court of the learned Civil Judge, Islamabad (West), were clearly without jurisdiction and therefore, void. The Court of the learned Senior Civil Judge, Islamabad



(East) while deciding the appellant's application for recall of the order dated 21.05.2015, did not advert to this serious jurisdictional error in his order dated 17.03.2016. This lapse renders the said order dated 17.03.2016, liable to be set aside.

14. As the appellant had been negligent in defending the Reference Petition in the post remand proceedings, I am inclined to allow this appeal with the direction that the appellant shall pay to respondents No.1 and 2 costs to the tune of Rs.50,000/- on 30.09.2016, on which date the parties shall appear before the learned Senior Civil Judge, Islamabad (East) for further proceedings in the Reference Petition. As the said Reference Petition has been pending ever since 30.01.2002, the learned Civil Court is directed to decide the same expeditiously and preferably within a period of four months from the date of receipt of this Order. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**APPROVED FOR REPORTING**

Qamar Khan\*

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