

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.2888/2019.**

**M/s Al-Safa Golden Company (Pvt.) Limited through its Chief  
Executive**

**Vs.**

**Capital Development Authority through its Chairman etc.**

Petitioner by: Malik Qamar Afzal, Advocate.

Respondents by: Hafiz Arfat Ahmed Chaudhry, Ms.  
Kashifa Niaz Awan & Mr. Aamir Latif  
Gill, Advocates.

Muhammad Shabbir, Director Estate  
Management and Faisal Naeem,  
Director Buidling Control-I, CDA.

Date of Decision: 08.08.2019.

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has assailed the action of the respondents authorities, whereby they have restrained access to three parking floors (basement) 7<sup>th</sup> floor, food Courts and office of Management on 3<sup>rd</sup> floor of Safa Gold Mall, F-7 Markaz.

2. Learned counsel for the petitioner has contended that CDA Authorities have issued notice/letter dated 18.07.2019 and without giving due opportunity of hearing have initiated proposed action of sealing the premises, whereby the legitimate rights of different persons have been jeopardized; that civil suit titled *M/s Alsafa Golden Company (Pvt.) Limited vs. CDA* is pending before Civil Court, whereas application under Order XXXIX Rules 1 & 2 was dismissed vide order dated 30.01.2018, said order was further assailed before this Court in FAO No.14/2018, which was dismissed vide judgment dated 01.08.2019; that CDA Board has not issued any direction to seal the premises as it will effect large number of persons, who are running different businesses in Safa Gold Mall; that by way of imposing restriction upon right of access, the CDA has deprived national ex-chequer from sales tax and other taxes on daily basis.



3. Learned counsel for the petitioner under the instructions of his client has offered CDA Authorities to receive the rental income of the building till completion of their recovery and to allow the petitioner and others to run their business.

4. Notices were issued to the respondents on 07.08.2019, whereupon learned counsel for the respondents and CDA officials have put their appearance. Learned counsel for the respondents has contended that notice impugned in the instant writ petition was available to the petitioner at the time of hearing of FAO No.14/2018, which was argued and discussed as is reflected in the order dated 01.08.2019 passed by Hon'ble Bench-II of this Court and as such the petitioner through instant writ petition is not entitled to raise the controversy, which has already been decided.

5. I have heard learned counsel for the parties and gone through the record.

6. Perusal of the record reflects that the petitioner M/s Al-Safa Golden Company (Pvt.) Limited was allotted plot No.5 in Sector F-7, Islamabad, constructed thereupon Safa Gold Mall, in the year 2010 against certain per-conditions alongwith parameters settled in the bidding document with Floor Area Ratio 1:5 alongwith two basement with four storeys plus ground floor, however, due to violation in construction plan the allotment was cancelled through letter of cancellation, which had been assailed in civil suit titled *M/s Alsafa Golden Company (Pvt.) Limited vs. CDA*. Learned Trial Court/Civil Judge dismissed the application of the petitioner filed under Order XXXIX Rules 1 & 2 CPC vide order dated 30.01.2018, where-after the petitioner assailed the said order in FAO No.14/2018 before this Court, which was also dismissed vide order dated 01.08.2019 with direction to learned Trial Court to conclude the trial within period of 03 months, however, letter dated 18.07.2019 was issued by Deputy Director-I, (BCS-I) in the name of Abdul Qayyum (C.E.O) of M/s Al-Safa Golden Company (Pvt.) Limited with information that Director of Estate Management-II, CDA has decided to take over the possession of cancelled property and CEO was directed to vacate the subject building within 24 hours and hand over the same to CDA. The petitioner filed C.M No.676/2019 in FAO No.14/2018 and placed the said letter on record with the prayer for its suspension and also prayed for issuance of restraining

order against action of CDA, however, CDA Authorities have sealed three basements, one Management Office at 3<sup>rd</sup> floor and Food Courts on 7<sup>th</sup> floor.

7. From the perusal of judgment passed by this Court in FAO No.14/2018 dated 01.08.2019, it has been observed that issue raised in the instant writ petition has already been adjudicated upon by this Court as reflected in para No.3 of the judgment, which is reproduced as under:-

*"The findings in the referred judgment attained finality as it was not challenged before any forum. Even otherwise, the bare perusal of the revision in the approved plan showed that one of the conditions was that construction is to be made under the approved FAR and the circulation areas and utility areas are not used as covered areas. There is nothing on record, which establishes the version of the appellant to show prima facie case in its favour and that the construction at the site is within the approved FAR i.e. 1:5. Learned counsel for the appellant argued that eighth floor should be discarded and only seven floors are to be taken into account for calculation of FAR. The said argument is beyond apprehension inasmuch as physically ground + eight floors exist and the FAR is to be calculated accordingly. Even otherwise, the stance of the respondents is that the permissions granted are in violation of the allotment letter. The referred argument has substance inasmuch as the bare perusal of the allotment letter shows that initially the construction that could be raised at site was two basements alongwith ground floor + four storeys, whereas floors No.5, 6, 7 and even 8 are violation of the terms of the allotment. The question regarding the effect of the referred violation is not a subject matter of the instant appeal inasmuch as the appellant seeks a restraining order against the cancellation letter and / or taking over of the possession by Capital Development Authority. Admittedly, the violations mentioned by the Capital Development Authority time and again are in connivance with then employees/officials of Capital Development Authority and in respect thereof a complaint is pending with National Accountability Bureau and the employees of CDA are under investigation. Since the main element for grant of interim relief i.e. prima facie case is not present in favour of the appellant, hence no interference is warranted in the impugned order and / or the act of cancellation of the allotment in favour of the appellant. During the course of proceedings, learned counsel for respondents and Faisal Naeem, Director Building, CDA submitted that status quo shall be maintained provided direction is issued for expeditious disposal of the suit. Learned counsel for appellant, however, insisted that seventh floor be de-sealed as well, to which respondents did not agree."*

8. The above referred findings clearly spell out that question of de-sealing of 7<sup>th</sup> floor and other terms have not been agreed by the Court and as such the question, which has been argued and settled by this Court once in one kind of proceedings cannot be taken through an indirect manner by way of other kind of proceedings before the same Court. In such type of proposition, the doctrine of election of remedy comes into play, whereby it has been settled that once choice

was exercised and election was made then a suitor was prohibited from launching another proceeding to seek a relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance was recognized as doctrine of election. The doctrine of election was culled by the Courts of law from the well recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II Rule 2 CPC, principles of estoppel is embodied in Article 114 of Qanun-e-Shahadat Order 1984 and principles of res-judicata as articulated in section 11 CPC and its explanations. Once the election was made then the party generally, could not be allowed to hop over and shop for one after another coexistent remedies. Right of fair trial did not envisage recourse to successive remedies one after another against one and the same impugned order on substantially same set of facts and proceedings seeking substantially similar relief as it would be against the doctrine of election. Reliance is placed upon PLD 2018 SC 828 (Trading Corporation of Pakistan vs. Devan Sugar Mills Limited and others), PLD 1988 SC 221 (Mir Salah-ud-Din vs. Qazi Zaheer-ud-Din) & [(1992) 4 Supreme Court Cases 196] Indian Supreme Court (Behar State Co-operative Marketing Union Ltd. vs. Uma Shankar Sharan and another).

9. Keeping in view above background, instant writ petition is not maintainable, especially when civil suit is pending and the question raised in the instant writ has already been decided by this Court in FAO No.14/2018, therefore, the same stands dismissed.

  
 (MOHSIN AKHTAR KAYANI)  
 JUDGE