

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 378/2018.

Capital Development Authority

Versus

Ejaz Mehmood.

Petitioner by: Mr. Amir Latif Gill, Advocate.

Respondent by: Raja Rizwan Abbasi and Ch. Gulfam Ashraf Goraya,
Advocates.

Date of Decision: 09.03.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner CDA has assailed the judgment & decree dated 28.05.2018, passed by learned Civil Judge, 1st Class (East), Islamabad and order dated 05.09.2018, passed by learned Additional District Judge (East), Islamabad, whereby suit for declaration, permanent and mandatory injunction filed by respondent was decreed concurrently.

2. Brief facts referred in the instant civil revision are that respondent filed a suit for declaration, permanent and mandatory injunction on the ground that he is entitled for plot No.320, Chak Shehzad, Islamabad which was approved by CDA to be allotted to the respondent against his claim for built-up property under rehabilitation scheme/policy, issued by the CDA but the allotment letter was not issued to him.

3. Learned counsel for the petitioner CDA contends that respondent is not eligible for allotment of plot under Rehabilitation Policy, 1984 as well as under Rehabilitation Policy, 1996 but despite this fact his case has been considered in connivance with CDA official i.e. the then Deputy Director Land, who appeared as DW-1/Taimoor Ahmed, Deputy Director Land, CDA and while appearing before the Court during trial conceded the claim of plaintiff/respondent and extended undue benefit to the respondent for allotment of plot; that Taimoor Ahmed, Deputy

Director Land, CDA when recorded his statement before the trial Court he was not in possession of any record, nor any such record has been prepared by the CDA under any process and trial Court has blindly passed the impugned judgment & decree without any record; that at that time counsel for CDA was also part and parcel of entire fraud with officials of CDA as well as respondent and gave his opinion not to file any appeal against the said judgment & decree of the trial Court, however, when the said fraud has been surfaced on record, appeal was already time barred and as such the entire chain in the claim of respondent including respondent, CDA officials as well as counsel for CDA were in league with each other to commit this fraud in the Court through technical maneuvering; that this Court in civil revision has ample powers to consider the evidence and record, where-after this Court may condone the delay caused in filing of appeal; that such hyper technical objection and time limitation should not be considered in the interest of justice to set aside the irregularities and illegalities committed by the Courts below, which should not be allowed to perpetuate on the basis of a wrong judgment of the Courts below.

4. Conversely, learned counsel for respondent contends that concurrent findings of the courts below in favour of respondent could not be set aside merely on technical grounds as CDA/petitioner has conceded the claim of respondent in the Court and such conceding statement could not be set aside at this stage; that appeal filed by the CDA before the Appellate Court was time barred and same was dismissed on the said ground as no valid justification has been rendered on record for filing of the appeal beyond the time period; that instant civil revision is also time barred and such delay could not be condoned.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent being plaintiff filed suit for declaration, permanent and mandatory injunction against the CDA with the claim that he is entitled and eligible allottee under rehabilitation benefit as his property has been acquired by the CDA through award and name of plaintiff/respondent has been recorded in the award Ex.P-2 at S.No.17, whereas under CDA Rehabilitation Policy he is eligible for allotment of plot being affectee of acquisition process of CDA under

CDA Ordinance, 1960. As per contents of the plaint, CDA authorities are reluctant to allot plot despite the fact that respondent/plaintiff case has been processed and he was given assurance for allotment of Plot No.320, Chak Shehzad, Islamabad.

7. On the other hand, CDA filed written statement with only one contention against the relevant claim that “denied for want of knowledge”, which was signed by Deputy Director Land, CDA. The trial Court after deciding the application U/O XXXIX Rules 1 & 2 CPC framed the following issues vide order dated 15.03.2017:-

1. *Whether the plaintiff is entitled for decree of declaration, permanent and mandatory injunction, as prayed for? **OPP***
2. *Whether the plaintiff has no cause of action to file the instant suit, hence, it is liable to be dismissed? **OPD***
3. *Relief?*

8. Respondent while appearing as PW-1 through his attorney stated that he is affectee of Mouza Mohrian and his land was acquired by CDA vide award dated 18.01.1982 Ex.P-2 and he was declared entitled for allotment of plot and his case was accepted by CDA, whereby Plot No.320, Chak Shehzad, Islamabad was approved but allotment letter was not issued. During the course of cross-examination, it was not denied that respondent's land was acquired, however, on the other hand petitioner's side produced Tairmoor Ahmed, Deputy Director Land, CDA as DW-1, who recorded his statement to the following effect:-

بیان ازاں تیمور احمد ولد امیر محمد خان سکھ گورنمنٹ ہاسٹل فلیٹ نمبر 43، سیکٹر G-5 اسلام آباد بر حلف بیان کیا کہ میں ڈپٹی ڈائریکٹر لینڈ CDA اسلام آباد ہوں۔ ریکارڈ ہمراہ لایا ہوں مدعی غلام مرتضیٰ کا بیٹا ہے اور موضع موریان داخلی چک شہزاد کے متاثرین میں سے ہے اور صدارتی ایوارڈ تحت 30x70 کے پلاٹ کا حقدار ہے اور ایوارڈ کے سیریل نمبر 17 مدعی کا 175 مربع فٹ مکان ایکواٹر ہوا تھا اور مبلغ -/477 روپے ادائیگی ہو چکی ہے۔ CDA کی ریونیو برانچ نے بھی ایوارڈ کی تصدیق کی ہے۔

9. While considering the above background, there is no denial that land/built-up property of respondent has been acquired through award Ex.P-2 and name of respondent has been reflected at S.No.17 of the award, whereby built-up property measuring 175 Sq. ft. was acquired in village Mohrian and on the conceding statement of concerned Deputy Director Land, CDA/DW-1, the trial Court passed

the judgment & decree in favour of respondent. In order to resolve the controversy, I have gone through the *Islamabad Displaced Persons Rehabilitation Policy, 1984*, which is applicable to the affectees, whose land were acquired by the CDA on or before 01.10.1984 as per clause 1(3) of the said policy, however, unsettled cases of past have been covered by this policy but the most important aspect of this case is as to whether every person whose land or built-up property acquired comes under the definition of affectee in terms of clause 2(1) of *Islamabad Displaced Persons Rehabilitation Policy, 1984*, the same is hereby reproduced as under:-

2(1) “Affectee” means a person or persons whose agricultural land and/or built-up property is acquired under the CDA Ordinance.

10. However, in terms of clause 4 of the Policy certain restrictions for the built-up property have been referred in clause 4(a) and 4(b) of *Islamabad Displaced Persons Rehabilitation Policy, 1984*, same are reproduced as under:-

(A) Affectees due to acquisition of Built-up Property only---Where only built-up property is acquired from the affectees, residential plots in the Sub Urban Centres would be offered to them as a consideration for their permanent rehabilitation. The basis of such an offer will be a single family unit.

(B) Affectees due to acquisition of land or land and built-up property:--

1. Where built-up property or land not less than 4 kanals, or land and built-up property is acquired and the acquired area is less than 40 kanals of culturable land but more than 4 kanals the affectee would qualify for allotment of a residential plot in a Sub Urban Centre.
2. Where land or land and built-up property is acquired and the area acquired is 40 kanals to 100 kanals of culturable land then the affectees would become entitled to consideration for allotment of one agro unit (approx : 20 kanals of agricultural land and a residential plot in an agrovillage).
3. Where land acquired is more than 140 kanals of culturable land [with a margin of (--) 5 kanals], the affectee would be considered for the allotment of two agro units and a residential plot in one of the proposed agrovilles.
4. In case of joint family entitlement on the basis of (1) & (3) above, the affectee family would qualify for allotment of corresponding

number of agro units and residential plots in agrovillage and/or Sub Urban Centre as the case may be.

5. *Those affecttees who wish to be covered under the old scheme of obtaining land available in Colony Districts, would be issued eligibility certificates according to new entitlement, i.e. if culturable land lost in acquisition is 40 kanals or more.*

11. I have also attended to the *Islamabad Displaced Persons Rehabilitation Policy, 1996*, which is applicable to the acquisition of land or built-up property prior to 01.01.1996, but in this policy the concept of built-up property has been defined in Section 2(d) of *Islamabad Displaced Persons Rehabilitation Policy, 1996*, which is as under:-

2(d) “Built up Property” means a residential house with covered area not less than 300 square feet.

And allotment of residential plot has been referred in clause 4 of Islamabad Displaced Persons Rehabilitation Policy, 1996 in the following manner:-

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

(i) *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 size 25x50*

(b) *10 Kanals or more.* = *a plot of size 30x60*

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

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

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

12. Similarly, there are certain general conditions highlighted in the said policy for the old cases of acquisition prior to 1978, which have been governed under clause 8(2) of the said policy.

13. I have gone through both the policies in detail and confronted the learned counsel for the respondent to justify his entitlement of the suit plot which he has claimed in the plaint, whereby learned counsel for the respondent has given only a single argument that conceding statement has been given by Deputy Director Land CDA in his favour and such statement was given on the basis of some record, although the entire court file is silent qua any record nor even any such record has ever been called by the respondent in the Court, even there is no admission in the written statement on the part of CDA that some plot was allotted to the respondent, therefore, while considering the position argued by the parties before this Court, it is necessary to consider the question of onus of proof, whereby Article 117 of the *Qanun-e-Shahadat* Order, 1984 deals with concept of burden of proof which imposes a duty upon a person who desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist and such person to prove the existence of such fact is under obligation to discharge the burden of proof which lies on him. Reliance is placed upon **2016 SCMR 1225 (Phul Peer Shah Vs. Hafeez Fatima)** and **2010 SCMR 1358 (Muhammad Saeed Vs. Mst. Sharaf Elahi, etc.)**. Similarly, if the burden of proof in a suit or proceedings lies on a person who would fail to prove the existence of such fact, it has been assumed that burden has not been discharged in terms of Article 118 of *Qanun-e-Shahadat* Order, 1984, especially when the entire record is silent qua the plot number which has been referred in the plaint by respondent/plaintiff.

14. It is trite law that beneficiary has to discharge the onus at the first instance i.e. the respondent in this case, who has referred Plot No.320 on record but no document or record has been placed before the Court to justify the stance rather the collusive and conceding statement of DW-1 the then Deputy Director Land, CDA has been managed to justify the case of respondent, such conduct on the part of CDA official as well as counsel for CDA is highly objectionable and illegal, especially when there is no record.

15. The counsel for petitioner/CDA i.e. Mr. Amir Latif Gill, Advocate contended that the entire scheme was managed by CDA official as well as counsel for CDA at that time, who were in league with each other to help out the respondent to establish a false claim which is not possible otherwise under Land Rehabilitation Policy, 1984 as well as 1996 mainly on the ground that respondent does not fulfill the requirement of Rehabilitation Policy.

16. As of today, I have confronted the learned counsel for the respondent to justify his eligibility under Rehabilitation Policy which provides different parameters for eligibility of plot as in this case respondent was holding built-up property of 175 Sq. ft., which does not fulfill the criteria to fall under eligibility of the plot.

17. I have gone through the judgment of learned trial Court with able assistance of learned counsel for both the parties and as such the findings on issue No.1 are not substantiated from record nor even looked into by the Courts below in a proper manner in terms of Articles 117 & 118 of *Qanun-e-Shahadat* Order, 1984, the onus has not been discharged, no independent evidence has been brought on record, nor even corroborated from any independent source, neither even a single document has been brought on record to justify that Plot No.320 is in existence in any scheme.

18. I have also gone through the judgment of Appellate Court, whereby RFA filed by CDA was dismissed being time barred by 30 days, although the application for condonation of delay has been filed alongwith appeal, whereby it has been referred in the said application that *“it is relevant to mention here that the previous CDA counsel also caused unjustified delay in intimating about the outcome of civil suit for*

further legal proceedings to challenge the impugned judgment and decree dated 28.05.2018”.

19. While considering the above position, it has been argued by Mr. Amir Latif Gill, Advocate for the petitioner/CDA that the then counsel for CDA namely Mr. Musharaf Khan, Advocate was in connivance with the respondent and has not informed the CDA authorities for filing of appeal, rather has given his opinion that it will be wastage of time and money and the said opinion of the then advocate/counsel was considered by the then Deputy Director Land, CDA, who is member of entire racket in this fraud. The petitioner/CDA in order to justify his position has appended the opinion given by the then counsel which is part of record, therefore, it is necessary to reproduce the same, which is as under:-

SUBJECT. SAJAD MAHMOOD VS CDA (SEVEN CASES) IN CIVIL COURT

The undersigned is counsel on behalf of CDA in seven cases title as following

1. *Sajad Mahmood Vs CDA*
2. *Muhammad Ameen Vs CDA*
3. *Sufaidan bibi Vs CDA*
4. *Muhammad Saeed Vs CDA*
5. *Ejaz Mehmood Vs CDA*
6. *Waheed Akhter Vs CDA*
7. *Imran etc Vs CDA*

All the above mentioned suits for declaration and permanent injunction have been filed by the affectees of Moza Mohrian, Moza Chak Shehzad, Moza Pandori, and Moza Shana etc with the contention that approval has been given by CDA for allotment of plots to them and they are entitled for allotment of plot because their land has been acquired, and approval for allotment already given for allotment of plot to them may not be cancelled.

The plaintiff presented their evidence in connection with the above mentioned contentions and after closing their evidence the CDA also presented the evidence. The evidence of CDA as per record was in consonance with the contentions of plaintiffs. After arguments of both the parties the Court (Samia Noureen, Civil Judge (West), Islamabad decreed all the suits of plaintiffs. (Copies are enclosed).

That keeping in view the above position and evidence presented by CDA there is no need of any appeal as it will be wastage of time and money as

well, however if not agreed the undersigned have stopped the limitation period of six days and may be contact to the undersigned as soon as possible.

Submitted for information and further orders.

20. The above referred fact if considered to be correct then there is no need for further explanation as the then counsel Mr. Musharraf Khan, Advocate has given his own opinion despite the fact that there was not a single record to substantiate that suit plot has ever been allotted to the respondent. I have attended to the written statement of the then counsel of CDA in the light of case reported as **2004 SCMR 1247 (Faisalabad Development Authority Vs. Raja Jahangir Nasir, etc.)** and **2019 SCMR 738 (Kenneth F. Solomon and Sterathal Katzaelson Montigny LLP Vs. Judith Matte-Thompson and 166376 Canada Inc.)**. However, under Chapter XII (Canons of Professional Conduct and Etiquette of Advocate) of the Pakistan Legal Practitioners and Bar Councils Rules, 1976, it is primary duty of an Advocate to give his opinion in the best interest of his client in accordance with law so that the legal right of his client could be achieved from the court of law. The Advocate is an agent of principal i.e. his client and if he fails to disclose a material fact to its client when an opinion has been sought or concealed the material fact from a court of law or he is aware that what he is disclosing before the Court through a fact not reflected from the record or in evidence placed before the Court, he becomes part of misconduct or accomplice to the situation, therefore, a lawyer should take every remedial measures so that the court of law shall not reach at wrong conclusion, even the lawyer may refuse to offer such material, document or fact that he reasonably believes to be false.

21. In view of above, the opinion rendered by the then counsel for CDA for non-filing of appeal is contrary to record and such request could not be considered at this stage, especially when the entire judgment & decree was managed through fraud. The Appellate Court has not considered all these aspects and grounds referred in the application for condonation of delay, which are material for holding that appeal was time barred especially when the petitioner/CDA at that time being appellant was hampered on hyper technical grounds by its own employee i.e. Deputy Director Land as well as the counsel in league with respondent, the beneficiary of decree. As a

result of the said decree respondent is getting the benefit of plot who is not entitled for the same and officials are getting benefit which is not on record but it is State land which could not be given to a person who is not entitled for the same and State being the custodian, can take every step to protect its land/assets, even where fraud has been played through Court to extend the benefit to a non-entitled person. Hence the dismissal of appeal on technical grounds is not warranted under the law, although learned Additional District Judge (East), Islamabad has categorically referred in the impugned judgment “appellant has not attached anything with the application for condonation of delay to show that any action has been taken against the one who is instrumental in delay for filing of appeal”. I have attended to this proposition in the light of PLD 1989 SC 627 (Deputy Collector of Customs and 2 others Vs. Muhammad Tahir and another), which has further been considered by the Apex Court in case reported as 2016 SCMR 1410 (Government of Khyber Pakhtunkhwa through Secretary Industries Commerce and Mineral Development, Peshawar and others Vs. Frontier Chemical Industries Ram Bagh, Mardan) in the following manner:-

8. Next comes delay of 41 days in filing the petition for leave to appeal. According to the learned Addl. A. G., delay in filing the petition occurred because of late supplies of copies and lengthy correspondence between various tiers of the department. This explanation, in the matrix of the case appears to be satisfactory. It is more so when we see the conduct of the subordinate functionaries who being sell-out are ever ready to do away with anything public for petty gains. In the case of Deputy Collector of Customs and 2 others v. Muhammad Tahir and another (supra) while dealing with an identical aspect held as under:-

"It has recently been held by this Court that the petitions on behalf of the Government or Government functionaries in matters involving Government interest or public interest, the petitioners no doubt would be treated at par with ordinary citizens; but they would be given the same concessions and considerations as given to the other citizens. It has also to be observed that while examining the merits of application for condonation of delay the Court can look into the conduct of the subordinate functionaries, on whose conduct the higher policy maker functionaries have only a remote physical control. Hence, the conduct of the lower functionaries can in appropriate cases be taken as a good

ground for condonation of delay. In this case, prima facie, some of the lower functionaries, as explained in the application, seem to have misconducted in the matter of vigilance and preparation for filing of petition for leave to appeal. And further, as admitted at the Bar, departmental action is being taken against them in this behalf. This amongst other shows bona fides on Government's part. We consider it a fit one for condonation of delay. Accordingly the application in that behalf is allowed and the delay is condoned."

22. At last the case argued before this Court by both the parties persuaded this Court to believe that systematic fraud has been played by the CDA officials in order to give benefit to a person who is not entitled for plot under Rehabilitation Policy and counsel for CDA is also part of this fraud and same is reflected from statement of the then Deputy Director Land, CDA, who accepted the claim of respondent, whereas the CDA denied the claim of respondent in the written statement "being denied for want of knowledge", therefore, in such situation Court cannot sit as silent spectator rather discharged its constitutional and legal obligation as highlighted in case reported as 1981 SCMR 294 (Abdul Rahim, etc. Vs. The State).

23. While considering all these aspects, this Court has to exercise its powers in terms of Section 115(1) CPC read with Section 151 CPC to eliminate the fraud by exercising inherent powers and the discretionary jurisdiction, especially when the illegality has been noticed by this Court, such powers would only be exercised in aid of justice and not to defeat its ends. I am mindful of the fact that power U/S 115 CPC will not be exercised to correct every irregularity in the exercise of jurisdiction, but the same has to be exercised where grave injustice or hardships on account of fraud is apparent. Reliance is placed upon 2010 CLC 1215 Lahore (Province of Punjab through Collector District Lahore Vs. Muhammad Latif), PLD 2008 SC 155 (Asmatullah Vs. Amanat Ullah), PLD 2008 Islamabad 11 (Miss Kiran Arif Man Vs. Miss Kinza Khalid), PLD 2010 SC 1186 (Mst. Banori Vs. Jilani), PLD 2012 SC 400 (Hafeez Ahmad Vs. Civil Judge, Lahore) and 2016 SCMR 24 (Nazim-ud-Din Vs. Sheikh Zia-ul-Qamar). The entire edifice constructed by the respondent through the foul play and fraud left nothing in his favour to achieve the benefit for which he is not entitled, even the time

barred matters have been considered by the Apex Court being custodian of the rights of the parties, even in cases where reasons enumerated in the condonation of delay application were not convincing but at the same time it was established fact that matter was one of public importance.

24. I have considered the proposition in the light of PLD 2007 SC 582 (Zulfiqar and others Vs. Shahdat Khan) wherein it has been held that non-suiting a litigant for not filing appeal would amount to punishing him for not availing a right, which ensured to his benefit. Similarly in another case reported as PLD 2002 SC 630 (Col. (Rtd) Ayub Ali Rana Vs. Dr. Carlite S. Pune and another) wherein it has been held that mere wrong advice by a counsel in the matter by itself, was not considered as sufficient ground for condonation of delay but each case had to be considered in which question of limitation was raised keeping in view peculiar circumstances of that case the High Court rightly proceeded to set aside the same by condoning the delay by holding that in such matters, the point of limitation would not stand in the way of Court to do justice. I have also gone through the case reported as 2007 SCMR 1574 (Government of Balochistan through Secretary Board of Revenue, Balochistan Quetta and others Vs. Muhammad Ali and 11 others) wherein it has been held as under:-

Declaration of title---Appeal barred by limitation---Public property---Public functionaries, negligence of---Plaintiffs sought declaration of title against suit property, ownership of which vested with Forest department---Trial Court decreed the suit in favour of plaintiffs---Appeal against judgment and decree passed by Trial Court was dismissed by Lower Appellate Court solely on the ground of its being barred by limitation---High, Court in exercise of revisional jurisdiction after discussing merits of the case declined to interfere with the judgment passed by Lower Appellate Court---Plea raised by authorities was that as appeal before Lower Appellate Court was not decided on merits, therefore, merits of the case should not have been dilated upon by High Court---Validity---Due to serious lapses and failure to discharge legal duties promptly and within the prescribed period of limitation by all concerned in the matter, in view of the decree of the Trial Court, no actual loss, damage or deprivation of rights had occurred to public functionaries concerned in the matter, rather Government and Forest Department stood completely deprived of the public property solely meant to be used, utilized and dealt with in public interest being a public property of which Government and the Department through its

functionaries were the custodian---Decree of Trial Court was not assailed before Lower Appellate Court within the prescribed period of limitation and for such reason alone, appeal was dismissed, upheld by High Court as well, consequently Government stood divested of huge property for being its custodian and thereby interests of public stood completely jeopardized merely because of grave omissions and inaction on the part of concerned public functionaries--- Supreme Court, in view and for doing complete justice; took notice of delay in preferring appeal before Lower Appellate Court and having preferred civil petition for leave to appeal before Supreme Court much beyond the prescribed period of limitation- and condoned the delay---Judgment and decree passed by Lower Appellate Court was set aside and appeal was remanded to Lower Appellate Court for decision afresh on merits---Supreme Court directed the competent authority to proceed against all the concerned delinquent officers and public functionaries by taking disciplinary action under the appropriate law and rules for not having approached Lower Appellate Court and Supreme Court within the prescribed period of limitation and in accordance with law--- Appeal was allowed.

25. Similarly, the delay has also been condoned in cases where some of the lower functionary has played fraud and committed misconduct in the matter of vigilance and they should be dealt with by way of departmental action. Reliance is placed upon PLD 1989 SC 627 (Deputy Collector of Customs and 2 others Vs. Muhammad Tahir and another), therefore, the ground of limitation argued by the respondent's side in the filing of appeal as well as in this revisional jurisdiction is of no significance.

26. The entire epitome of discussion above gives rise to situation that even in cases where conceding statement was given by the defendant, it is obligation of the Court to satisfy itself regarding the evidence as to whether mere conceding statement of defendant is enough to award the relief to the plaintiff and if the relief is still dependent upon other documentary evidence, witnesses or record, the Court shall call all those evidences and satisfy its conscious. It is also the duty of the trial Court to be more vigilant in cases of State Land and Assets where some official just put his appearance on behalf of any department and record his statement, the Court shall

verify the record by going through the same, subject to relevant law and if Court is satisfied then it is necessary to pass the appropriate order.

27. It is also the duty of the Court in such type of matters to apply inquisitorial approach and direct the official to submit his statement after approval of competent authority in writing in accordance with record so that no fraud could be played qua the State assets. Hence, this Court comes to irresistible conclusion that no record was available qua the allotment of any plot nor the same was produced by CDA in Court, neither plaintiff/respondent was able to justify his eligibility and entitlement under the law as well as under the policies involved, which has not been appreciated by the Courts below, therefore, the instance civil revision is allowed and concurrent findings of the learned Civil Court as well as of the learned Appellate Court are hereby set aside and matter is remanded to learned trial Court to decide afresh while considering the record of CDA and if in case no such record is available or produced then the fate of suit be decided accordingly within a period of three (03) months under intimation to this Court.

28. Before parting with this judgment, it is necessary to pass appropriate direction to the Chairman CDA to initiate action against the then Deputy Director Land CDA, who has recorded the statement without any record, however, in inquiry if it is established that the record is available, which has been withheld, then appropriate measures be taken as to why the officials and functionaries of the CDA could not produce their own record. Similarly, the counsel who has become tool of beneficiary may not be allowed to represent department in future and CDA shall re-visit the conduct of their officials and their counsel who are in league with the individuals for their illegal gains.

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting.

JUDGE

Zahid