

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P.NO.3026-2016

Shakir Ali

Vs.

Federation of Pakistan etc.

Petitioner by : In person.
Respondents by : Hafiz Arfat Ahmad Chaudhry, Advocate with
Dr. Shahid Mahmood, Member
(Engineering/Planning & Design, CDA.
Mr. Tariq Zaman, Advocate
Mr. Riaz Hanif Rahi, Advocate
Date of hearing : 12.08.2020

AAMER FAROOQ J. The petitioner, in the instant petition,
has made the following prayers:-

- i) "It is therefore humbly prayed that the public property may graciously be restored and to discourage the land grabbers in the interest of justice.
- ii) The respondent No.2 ordered to get the completion of remaining construction without any further delay to facilitate the public as envisaged in the master plan".

2. The facts, leading to the background of filing of this petition, are that petitioner was awarded a contract by respondent No.2 in the year 1989 for construction of Service Road (North & South), Qaid-e-Azam Avenue between Sector F-8 & G-8, Islamabad. The contract was in the name of petitioner's Company namely M/s Tribson Pvt. Ltd. In the terms of contract, total consideration amount was settled, out of which, part payment was made. As per version of the petitioner, the cutting, filling, compaction of earth and preparation of sub grade for laying broken stone, on both the Service Roads, was completed in 1991 and the reports were satisfactory. In this behalf, however, due to reasons unknown to the petitioner, the work was stopped and consequently,

dispute arose between the petitioner and Capital Development Authority. The petitioner approached the Office of Wafaqi Mohtasib, but his complaint was turned down initially on 14.02.1994. The petitioner filed second complaint, in which, the matter was referred to the Committee to be constituted by the Auditor General for Pakistan for working out the payments made to the petitioner and the amount outstanding, if any. The report furnished was contrary, hence on 20.03.1995 the matter was referred again to be resolved to the Committee and under the same, it was observed that sum of Rs.1,73,74,000/- was to be paid to the petitioner. Respondent No.2 filed representation to the President of Pakistan, which was allowed and the said order was set aside. The petitioner filed petition (W.P. No.2015-2004), which was dismissed. A second petition (W.P. No.2242-2007) was also filed. After creation of Islamabad High Court, said writ petition was transferred from Lahore High Court, Rawalpindi Bench, Rawalpindi to this Court, however, said petition was dismissed with the observation that the matter is contractual in nature. The petitioner filed appeal (ICA No.45-2008), wherein, it was observed that the matter be resolved by Capital Development Authority in light of past precedents within one month. After failure of respondent No.2 to pass the order on the representation of the petitioner in accordance with direction issued by this Court in ICA No.45-2008 vide order dated 22.12.2008, contempt petition was filed which was dismissed and the appeal, preferred against the same order, was also dismissed and eventually, the petitioner filed Criminal Appeal No.285-2014, which was decided by the august Apex Court vide order dated 22.09.2017, in

which, the decision passed on representation of respondent No.2, was set aside as well as the decision of this Court passed in contempt petition and it was observed that respondent No.2 shall decide the matter in accordance with directions issued by this Court in ICA No.45-2008 supra.

3. The petitioner, in person, highlighted the background of the case and also drew attention of the Court towards various applications filed by him for appropriate orders qua compensation to be paid to him as well as referring the matter to FIA for fraud and tampering committed by CDA. It was vehemently contended that Service Road was being encroached by respondent No.3 and it was only when this Court ordered, the matter was rectified. The petitioner contended that respondent No.2 be directed to award the contract to the petitioner for the remaining work with respect to Service Roads. The petitioner also apprised the Court that after various orders passed by this Court, his representation has finally been decided and the order was communicated to him on 10.08.2020. It was submitted that said decision is still in violation of the observations made by the august Apex Court rendered in Criminal Appeal No.285-2014.

4. Learned counsel for respondent No.2, *inter alia*, contended that as per directions of this Court, representation of petitioner already stands decided and the order has been communicated to him. It was submitted that at present, respondent No.2 has no intention of granting contract to any person and there is no plan for construction of Service Roads. It was contended that even otherwise, the matter stands settled inasmuch as the petitioner approached various courts including this Court and the

courts of plenary jurisdiction, wherein his claims were turned down. It was also intimated that at present, there is no encroachment on the Service Roads and in this behalf, affidavit has also been filed by Member (Estate), CDA.

5. Arguments advanced have been heard and the documents, placed on record, examined.

6. The background, leading to filing of instant petition, has already been mentioned hereinabove, therefore need not be reproduced.

7. The relief, which the petitioner claims in this petition, is twofold as stated in afore-noted paragraphs.

8. In so far as the first limb of the prayer is concerned, same has already been granted inasmuch as pursuant to the orders of the Court, representatives of respondents No.2 & 3 confirmed that encroachments, which were there on the Service Roads on the North and South sides of Centaurs, have been cleared. In this behalf, an affidavit was filed by Mr. Saquib-ben-Afzal, Chief Executive Officer, Pak Gulf Construction Pvt. Ltd. as well as Fahim Badshah, Director (Encroachment), CDA.

9. In light of referred position, since there is no encroachment on Service Roads, the relief claimed by the petitioner has borne fruit.

10. In so far as the second limb of the prayer is concerned, respondent No.2 has categorically submitted that at present, it has no intention to continue with the contract. There does not exist any statutory obligation upon respondent No.2 to do the same. In case, the petitioner feels that the referred act of respondent No.2 is in violation of its contractual obligation, he may approach the court of competent jurisdiction for breach of contract, if he has already not done so.

11. Likewise, if the decision on the representation, which was communicated to the petitioner on 10.08.2020 is in violation of observations made by the august Apex Court, or is otherwise not tenable, he may avail appropriate remedies.

12. In so far as the request for referring the matter to FIA is concerned, which was done through C.M. No.2120/2020, the said request is beyond the relief claimed by the petitioner in the instant petition, however, it is observed that petitioner does not require any direction from this Court in this behalf. Likewise, request for payment of amount as determined by the Committee mentioned above and or finalization or settlement of account, which is the subject matter of C.M. No.513/2020, is beyond the relief claimed in writ petition.

13. Since relief as to the first limb of prayer has borne fruit and with respect to the second, cannot be granted, instant petition is disposed of in light of above observations.

14. All pending applications are also disposed of accordingly.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 18.09.2020.

JUDGE

Zawar