

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4051 of 2019

Major (Retd.) Syed Nisar Hussain Bukhari

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.
	25.11.2019	Mian Ghaffar and Mr. Muhammad Sharif Sabir, Advocates for the petitioner.

Through the instant writ petition, the petitioner, Major (Retd.) Syed Nisar Hussain Bukhari, seeks a direction to the Capital Development Authority (“C.D.A.”) to earmark the old residential/*Sakni khasras* which were earmarked for the establishment of village Malpur where the houses of 519 residents were acquired on 04.04.1963. The petitioner also seeks a direction to the C.D.A. to prepare a list of illegal occupants/encroachers on the land acquired by the C.D.A. and get the same vacated by demolishing the encroachments.

2. The petitioner has also voiced his grievance against his illegal detention by the police at the instance of respondent No.4 (Assistant Commissioner Rural I.C.T., Islamabad).

3. The thrust of the petitioner’s case, as set out in the writ petition, is that land of village Malpur was acquired by the C.D.A. on 04.04.1963; that 519 residents of the said village were adversely affected by the acquisition; that the official respondents have the list of the houses and shops which had been constructed when the said acquisition had taken place; that for the residential/*Sakni* area acquired by the C.D.A., no compensation was paid to the owners; that ever since 1963, the owners of the houses in the said village continued to live there; that the C.D.A. offered the residents to purchase the material of

construction; that the petitioner had accepted this offer and had made payment to the C.D.A.; that the petitioner also asserts that the C.D.A. was supposed to allot residential plots in *lieu* of the houses acquired by it; that it was also asserted that the C.D.A.'s officers in collusion with the politically affiliated residents of village Malpur helped outsiders to construct houses in the said village and live there; that the action taken by the C.D.A. to demolish the houses by adopting a policy of pick and choose is unlawful; and that the petitioner had submitted an application to the C.D.A. but to no avail. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

5. Perusal of the contents of paragraph 3 above would show that the petitioner has raised several controversial and contentious matters in the instant petition. The only document annexed with the instant petition is the petitioner's application dated 22.07.2019 to the Chairman, C.D.A.

6. The petitioner has not even annexed the copy of the award dated 04.04.1963 to show that his land or built-up property had been acquired by the C.D.A. There is also nothing on the record to show that the petitioner or his predecessor had any built-up property in village Malpur when the said award was issued. Whether an offer had been given by the C.D.A. to purchase the construction material is a matter of fact which needs to be proved through evidence. Furthermore, the question whether or not the owners of land acquired through the said award had been denied compensation is also a matter that can only be resolved after the recording of evidence. This exercise

cannot be taken by this Court in exercise of the jurisdiction under Article 199 of the Constitution.

7. As mentioned above, the petitioner has agitated several controversial questions of fact, which in my view, cannot be resolved without recording of evidence. It has been held by the Hon'ble Supreme Court that the appropriate forum for resolving such controversies is the Court of plenary jurisdiction. In this regard, order dated 25.09.2014 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.06/2014 is reproduced herein below in its entirety:-

"The petitioner C.D.A. impugns the judgment of a learned Division Bench of the High Court dated 2.12.2013 whereby Writ Petition No.3603 of 2002 filed by the respondents 1 to 3 namely Nazakat Ali, Ijaz Ahmad and Liaquat Ali was allowed. As a consequence, it was held as under:-

"Contention of learned counsel for the respondent CDA is not correct, as in the comments it has been admitted that petitioners No.1 and 2 were allotted plots No.1273 and 1274 in G-11/1 and third petitioner was also offered plot in the same Sector. Now learned counsel cannot be permitted to argue the case against the comments filed by C.D.A. The claim of the petitioners stands admitted and accordingly, the writ petition is accepted."

2. *We have heard learned counsel for the parties at length and have also gone through the available record. The order of the High Court is premised on facts and circumstances which are dated subsequent to the acquisition proceedings. The very fact that the award was dated 28.4.1985 and possession was taken under Section 27 of the C.D.A. Act on 26.07.1987, is strong indication that there was no build up area belonging to respondents 1, 2 and 3. However, the High Court had proceeded on the premise which has been reproduced above although strong evidence constituted in the award and the taking over of possession suggests that the case which was subsequently set up i.e. 5 years after the date of award by the respondents Nos.1, 2 and 3 to assert that there was built up area on the acquired land belonging to them has not been taken into account by the High Court. In fact where such factual determination was essential for ascertaining the respective rights and liabilities of the respondents and C.D.A., writ jurisdiction of the High Court was not the appropriate remedy.*

3. In view of the above discussion, we find that the learned Bench in the High Court proceeded to make a factual determination without recording evidence and without taking note of the award dated 28.4.1985 and notification dated 26.07.1987. This, we say with respect, was not appropriate. With such strong, prima facie, evidence favouring C.D.A., it would not be proper to place a heavy liability on C.D.A. without recording of evidence and due trial. We, therefore, convert this petition into appeal and allow the same. The impugned judgment is set aside. This, however, shall not prejudice either the proceedings in Reference No.28/2007 filed by the N.A.B. or any other proceedings before a competent forum. However, C.D.A. shall retrieve possession of any land which may have been given to respondents in lieu of the built up area claimed by them. A report in this behalf shall be submitted in Court within 15 days for our perusal in Chambers."

(Emphasis added)

8. Through the said order, the Hon'ble Supreme Court, set-aside the judgment dated 02.12.2013 passed by this Court in W.P.No.3603/2012. In the said order, it has been observed that a factual determination was essential for ascertaining the respective rights and liabilities of the C.D.A. and the respondents for which writ jurisdiction of the High Court was not the appropriate remedy. Furthermore, it was observed that a heavy liability could not be placed on the C.D.A. without the recording of evidence and due trial. The Hon'ble Supreme Court of Pakistan set-aside the judgment of this Court with the direction to the C.D.A. to retrieve possession of any land which may have been given to the respondents in *lieu* of the built-up area claimed by them. The earlier judgment dated 02.12.2013 passed in favour of the respondents by this Court was set at naught by the Hon'ble Supreme Court of Pakistan primarily for the reason that disputed questions of fact involved in the matter could not be resolved by the Hon'ble High Court in writ jurisdiction under Article 199 of the Constitution. Consequently, it is my view, based on

the said judgment of the Hon'ble Supreme Court that the instant petition is not maintainable.

9. In view of the above, the instant petition is dismissed in *limine*.

(MIANGUL HASSAN AURĀNGZEB)
JUDGE

Qamar Khan*