

ORDER SHEET.

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

C.M. IND. No.280/2020

Nisar Ahmed

Versus

S.M. Tariq Khawaja, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(12)	28.09.2020.	Raja Inaam Ameen Minhas, Advocate for applicant. Mr. Ghulam Fareed Ch., Advocate for respondent No.1. Mr. Ali Nawaz Kharal, Advocate for respondents No.2 & 3. Mr. Naseem Ahmed Shah, Advocate for respondents No.4 & 5. Nadeem Ashraf, Deputy Director (Housing) and Malik Asif Raza, Assistant Director (Legal), NPF.

Through this application, the applicant has assailed the order dated 17.12.2018, passed in W.P No.4199/2017 in terms of Section 12(2) CPC mainly on the ground that said order was obtained by respondent No.1 through fraud, misrepresentation and concealment of facts.

2. Perusal of record reveals that vide judgment dated 17.12.2018, passed by this Court in W.P No.4199/2017 titled S. M. Tariq Khawaja Vs. Registrar Cooperative Societies, Islamabad Capital Territory, etc. was allowed in favour of respondent S.M. Tariq Khawaja, who is claiming his legal rights qua three plots from National Police Foundation (NPF), whereby NPF has taken categorical stance that land which is the subject matter of this case was transferred in favour of society but its possession is still lying with applicant

Nisar Ahmed, whereas Apex Court in *Suo Moto* jurisdiction in case No.11/2011 passed the judgment dated 31.10.2013, ~~and~~ declared that all the affiliations and agreements executed by NPF have no legal effect and due to such reasons the agreed plots could not be handed over to S. M. Tariq Khawaja.

3. The learned counsel for applicant contends that Nisar Ahmed has already filed civil suit for declaration, cancellation of mutations, recovery of possession, mandatory and permanent injunction, which is pending for arguments before the competent civil court.

4. During the course of arguments, it has been conceded before this Court by all the respective parties that applicant is in possession of disputed land which has already been transferred in favour of NPF (society) through mutation and as such the question raised by the applicant could only be resolved through regular civil suit, whereby issue relating to eligibility, entitlement, cancellation and recovery of possession and rights could be resolved after recording of pro and contra evidence of the parties.

5. Learned counsel for NPF/respondent also acknowledges that they have already resolved their dispute with S.M. Tariq Khawaja/petitioner in W.P No.4199/2017 by way of payment of amount Rs.3,77,12,649/- through cross cheque, said compromise has already been recorded in Crl. Original No.29/W/2019 vide order of even date. Leaned counsel

for NPF also conceded that dispute between NPF and Nisar Ahmed could only be resolved through civil suit which is pending before the competent civil court.

6. Be that as it may, instant CM stands ***disposed of*** with direction to the parties to appear before the learned Civil Court seized with the matter for adjudication of their pending civil suit and as such instant application is not considered on merits at this stage as matter has already been raised in the separate civil suit. It is expected from learned Civil Court seized with the matter to conclude the same on or before 30.06.2021. Any observation passed by this Court in these proceedings shall not prejudice the rights of any party in the pending civil suit.

(MOHSIN AKHTAR KAKANI)
JUDGE

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