

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.367/2015
Capital Development Authority through its Chairman
Versus
Mrs. Ameer Fatima and another

Date of Hearing: 12.12.2018
Appellant by: Mr. Kashif Ali Malik, Advocate.
Respondents by: Mr. Zaheer Bashir Ansari, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellant, Capital Development Authority, impugns the judgment dated 03.08.2015, passed by the learned Judge-in-Chambers, whereby writ petition No.3750/2010, titled “Mrs. Ameer Fatima and another Vs. Capital Development Authority”, was allowed and the appellant was directed to allot agro-farms to the petitioners in the said petition within a period of thirty days of the pronouncement of the said judgment.

2. Learned counsel for the appellant submitted that the respondents, i.e. the petitioners, in writ petition No.3750/2010 had prayed *inter-alia* for a direction to the C.D.A. to allot them agro-farms in accordance with the rehabilitation policy, 1984; that after the respondents’ land in village Bakar Tola was acquired in 1961-62, they applied for issuance of eligibility certificates for allotment of agricultural land in District Jhang; that the eligibility certificates issued to the respondents were surrendered on 06.07.1994, whereafter the respondents jointly applied for the allotment of agro-farms under the rehabilitation policy, 1984; that the rehabilitation policy, 1996, became operative on 28.12.1996; that on 08.01.1999, the respondents’ application for the allotment of agro-farms in Islamabad was rejected by the C.D.A. on the ground that under the terms of rehabilitation policy, 1996, the option for the allotment of agro-farms after surrendering of eligibility certificates would not be available to the affectees who had been issued eligibility certificates after 01.10.1984; that since respondent No.1 was

issued an eligibility certificate on 16.02.1983 and respondent No.2 on 30.11.1986, they were not entitled to the allotment of agro-farms; that the C.D.A. Board, in its meeting dated 02.04.2010, approved the allotment of one agro-farm plot to both the respondents; and that the respondents could not be allotted two agro-farms under the rehabilitation policies, 1984 and 1996.

3. Learned counsel for the appellant further submitted that prior to filing of the writ petition No.3750/2010, the respondents were allotted plot No.19-A, Orchard Scheme, Murree Road, Islamabad; that during the pendency of the said writ petition, the C.D.A., vide letter dated 11.11.2010, withdrew the said allotment from the respondents; that an Allotment Scrutiny Committee has been constituted to review each and every case afresh to ensure the correctness of information on which the earlier recommendations for allotments had been made; that the allotment in the respondents' favour had been withdrawn during the pendency of writ petition No.3750/2010; that the said writ petition had not been amended at any stage to challenge the said letter dated 11.11.2010; that with the withdrawal of the said allotment from the respondents, the said writ petition had been rendered infructuous; and that even otherwise, the matters agitated by the respondents in their writ petition could not be resolved without the recording of evidence. Learned counsel for the C.D.A. prayed for the appeal to be allowed and for the impugned judgment dated 03.08.2015 to be set-aside.

4. On the other hand, learned counsel for the respondents submitted that the impugned judgment dated 03.08.2015 does not suffer from any legal infirmity; that the respondents have a vested right to be given the rehabilitation benefit of two agro-farms in line with the rehabilitation policy, 1984; that since the judgment dated 22.03.2008, passed by this Court in writ petition No.2744/2002 in the respondents' favour had attained finality, they could not have been prevented from exercising their option for the allotment of agro-farms in accordance with the rehabilitation policy, 1984; and that since the respondents had applied for the allotment of agro-farm plots under the

rehabilitation policy, 1984, they could not be deprived of the benefit under the said policy simply on the ground that a new rehabilitation policy had been framed in the year 1996. Learned counsel for the respondents prayed for the appeal to be dismissed.

5. We have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

6. The record shows that 78 *kanals*, 17 *marlas* of agricultural land in village Bakar Tola was acquired from respondent No.1 (Mst. Ameer Fatima), whereas 79 *kanals*, 12 *marlas* of agricultural land in the said village was acquired from respondent No.2 (Mst. Manzoor Fatima). An award in this regard was issued in the year 1961-62. On 02.12.1974, the respondents are said to have applied for the issuance of eligibility certificates for the allotment of agricultural land in District Jhang. Respondent No.1 was issued an eligibility certificate on 16.02.1983 whereas respondent No.2 was issued such a certificate on 30.11.1986 for allotment of agricultural land in District Jhang. All this was clearly admitted by the C.D.A. in its written comments to the respondents' writ petition No.3750/2010. It may also be mentioned that respondent No.1 was respondent No.2's mother.

7. In addition to making payment of compensation for the acquisition of land, C.D.A. was also making efforts to rehabilitate the persons displaced by the acquisition. The Islamabad Displaced Persons Rehabilitation Policy, 1984 ("the 1984 Policy") came into force with effect from 01.10.1984 and applied to cases concerning acquisition made on or after 01.10.1984. Unsettled cases of past acquisition were separately covered by the 1984 Policy. In this regard, paragraph (C) of the 1984 Policy, is reproduced herein below:-

"(C) Unsettled cases of the past Acquisition Phases. – The old un-resolved cases from past acquisition phases would be re-settled as follows :-

1. Where an affectee was issued an eligibility certificate for the allotment of district colony land by CDA and which he was unable to utilize for

obtaining land, he would be given option of agricultural land and a residential plot in an agro-village provided that :

- (a) he had lost 40 kanals or more of culturable land in the acquisition,*
- (b) he surrendered the un-utilized eligibility certificate to C.D.A. Where eligibility certificate was issued but the affectee had lost less than 40 kanals of land in acquisition, he will be offered a residential plot in a Sub Urban Centre provided that :*
 - a. he failed to utilize the eligibility certificate for obtaining allotment of land in colony district for which the eligibility certificate was issued,*
 - b. he surrenders the un-utilized eligibility certificate to CDA.”*

8. It is also an admitted position that the respondents applied on 06.07.1994 for the allotment of agro-farms. This was done after the respondents had surrendered their unutilized eligibility certificates. The said application remained pending until after the “Islamabad Displaced Persons Rehabilitation Policy, 1996” (“the 1996 Policy”) was made. The 1996 Policy is said to have come into force on 28.12.1996.

9. The respondents’ case for the grant of rehabilitation benefits in the form of allotment of agro-farms was first considered by the Allotment Scrutiny Committee (“A.S.C.”) of the C.D.A. in its meeting dated 19.02.1997. In the said meeting, the matter was deferred so as to verify whether the respondents were alive and whether possession of the land acquired from them had been taken over by the C.D.A. The A.S.C. of the C.D.A., after verifying that the respondents were alive and had surrendered the acquired land in the C.D.A.’s favour, recommended, in its meeting held on 11.03.1997, that the respondents be allotted an agro-farm. Nevertheless, vide letter dated 24.03.1999, the respondents were informed that their application for the allotment of agro-farms had been rejected. The reason for the rejection of the respondents’ application was that under paragraph 7(3) of the 1996 Policy, the option for applying for an agro-farming plot after surrendering unutilized an eligibility certificate was not available to an affectee who was issued an eligibility certificate after 01.10.1984.

10. Paragraph 6 of the 1996 Policy provided that where an affectee individually, or a group of affectees, had lost in acquisition to the C.D.A., cultivable land not less than 100 *kanals* in area, he, or as the case may be, they, will have the option to apply, in lieu of the residential plot and the agricultural land in the colony districts, for an agro-farm in Islamabad provided that in case of grouping, no member of the group should have lost, in acquisition, less than 10 *kanals* of cultivable land. Paragraph 7(3) of the 1996 Policy provided that the options will not be available to the affectees who were issued eligibility certificates after 01.10.1984 as they were deemed to have already exercised this option.

11. According to the C.D.A., since respondent No.2 had been issued an eligibility certificate on 30.11.1986 (i.e., after 01.10.1984), the land acquired from respondent No.1 could not be joined with the land acquired from respondent No.2 so as to cross the benchmark of 100 *kanals* and entitle them to an allotment of an agro-farm.

12. Aggrieved by the C.D.A.'s decision, the respondents filed a complaint (complaint No.REG.H/2752/2001), before the Wafaqi Mohtasib. On 10.10.2001, the Wafaqi Mohtasib recommended that the matter should be resubmitted to the A.S.C. of the C.D.A. for consideration of the respondents' case on merits and in accordance with the policy in force at the time of their application for the allotment of an agro-farm. Furthermore, it was observed that the 1996 Policy was not applicable to the respondents, because it could not be applied retrospectively to the pending proceedings and because inordinate delay had been caused due to the inefficiency and ineptitude of the C.D.A.'s officers who had been raising piecemeal objections.

13. The C.D.A. filed a representation against the said recommendations dated 10.10.2001 before the President of Pakistan who accepted the said representation and set-aside the Wafaqi Mohtasib's recommendations dated 10.10.2001. The President of Pakistan in his order observed *inter-alia* that the C.D.A.'s policies regarding allotment of plots to the affectees are

in the nature of social welfare programmes and such programmes can be varied from time to time.

14. After this, the respondents filed writ petition No.2862/2002 before the Hon'ble Lahore High Court, Rawalpindi Bench against the C.D.A. After the creation of the Islamabad High Court, the said petition was transferred to this Court and renumbered as writ petition No.2744/2002. Vide judgment dated 22.03.2008, the said petition was allowed by this Court and the matter was remanded to the C.D.A. to reconsider the respondents' case in the light of the observations contained in the said judgment.

15. In the said judgment, it was observed that since respondent No.1 was issued an eligibility certificate on 16.02.1983 (i.e., before the 1984 Policy was made), her case was covered by paragraph 4(C) of the 1984 Policy. As regards respondent No.2, it was observed that since the eligibility certificate was issued to her on 30.11.1986, she was neither covered by paragraph 4(C) of the 1984 Policy nor paragraph 7(2) of the 1996 Policy. Paragraph 7(2) of the 1996 Policy provided that the options under paragraph 5 (for the allotment of agricultural land in the colony districts of Punjab and Sindh) and paragraph 6 (for allotment of agro-farm in Islamabad) will be available to affectees of pre-October 1984 acquisitions irrespective of whether eligibility certificates were issued to them or not. Furthermore, it was provided that where eligibility certificates had been issued, the option will be available to the affectees only if they have not utilized the eligibility certificates and surrendered the unutilized eligibility certificates to the C.D.A. In the said judgment dated 22.03.2008, it was also observed that if an affectee could not get agricultural land in the colony districts because of non-availability of land, he could not be deprived of getting an agro-farm in Islamabad. Furthermore, it was observed that the disability in paragraph 7(3) of the 1996 Policy would have been applicable to respondent No.2 only if land was available in the colony districts but she had decided not to take the same. Since respondent No.2 could not utilize the eligibility certificate issued to her due to the non-availability of

land in the colony districts, it was held by this Court that paragraph 7(3) had no applicability to respondent No.2's case.

16. Aggrieved by the said judgment dated 22.03.2008, the C.D.A. preferred civil petition No.1041/2008 before the Hon'ble Supreme Court. Vide order dated 13.08.2008, the said petition was dismissed. With the dismissal of the said petition, the judgment dated 22.03.2008, passed by this Court in favour of the respondents, attained finality.

17. The A.S.C. of the C.D.A., in its meeting dated 26.03.2010, considered thirty cases for the allotment of agro-farming plots. After examining each case, the A.S.C. recommended fifteen cases for the allotment of agro-farms. The respondents' case was one of those for which the A.S.C. had given recommendation for the allotment of agro-farms. Accordingly, vide letter dated 08.07.2010, the C.D.A. offered plot No.19-A, Orchard/Permanent Nursery Scheme, Murree Road, Islamabad, to be allotted to the respondents subject to conditions contained in the said letter. One of the conditions was the deposit of Rs.25,00,000/- being 25% of the total premium for the said plot within a period of one month. After the said amount was paid by the respondents, the C.D.A., vide letter dated 09.07.2010, issued an allotment letter for the said plot in the respondents' favour. The remaining payment of 75% for the said plot was required to be paid in three installments.

18. The respondents were dissatisfied with the allotment of one agro-farm in lieu of the land acquired from them. The respondents wanted an agro-farm in Islamabad to be allotted to each of them for the 40 *kanals* of the land acquired from each of them in terms of the 1984 Policy.

19. On 25.08.2010, the respondents filed writ petition No.3750/2010 before this Court. In the said petition, the respondents prayed for *inter-alia* a direction to the C.D.A. to allot agro-farms to them in accordance with the 1984 Policy. The respondents were of the view that for the acquisition of 40 *kanals* of their land from each of the respondents, they should each be allotted an agro-farm as rehabilitation benefit. Vide judgment

dated 03.08.2015, the said writ petition was allowed and the appellant was directed to allot agro-farms to the respondents within a period of thirty days from the date of the said judgment. The said judgment dated 03.08.2015 has been assailed by the appellant in the instant appeal.

20. Under paragraph 4(C)(1) of the 1984 Policy, where an affectee was issued an eligibility certificate by the C.D.A. for the allotment of district colony land and such an affectee was unable to utilize such a certificate, he would be given an option for the allotment of agricultural and a residential plot in an agrovillage provided that he had lost 40 *kanals* or more of cultivable land in the acquisition. Since the land acquired from each of the respondents was more than 40 kanals and since they had applied for the allotment of agro-farms when the 1984 Policy was in vogue, they wanted an agro-farm to be allotted to each of them. The 1996 Policy came into force on 28.12.1996. As mentioned above, under paragraph 6 of the 1996 Policy, where an affectee individually, or a group of affectees, had lost, in acquisition to the C.D.A., cultivable land not less than 100 kanals in area, he, or as the case may be, they, had the option to apply, in lieu of the residential plot and the agricultural land in the colony districts, for an agro-farm in Islamabad provided that in case of grouping, no member of the group should have lost, in acquisition, less than 10 kanals of cultivable land. Paragraph 7(2) of the 1996 Policy provided *inter-alia* that the option under paragraphs 5 and 6 was available to the affectees of pre-October 1984 acquisition irrespective of whether the eligibility certificates issued to them had not been utilized and surrendered the same to the C.D.A. Paragraph 7(3) of the 1996 Policy provided that the options will not be available to the affectees who were issued eligibility certificates after 01.10.1984. Although respondent No.1 was issued an eligibility certificate on 16.02.1983 (i.e. before 01.10.1984), respondent No.2 was issued one on 30.11.1986 (i.e. after 01.10.1984). Therefore, this Court in its judgment dated 22.03.2008 passed in writ petition No.2744/2002 had held that respondent No.2 was

not covered by paragraph 4(C) of the 1984 Policy. Furthermore, it was clarified that since no land was available in the colony districts for respondent No.2 to utilize her eligibility certificate, paragraph 7(3) of the 1996 Policy had no applicability in respondent No.2's case.

21. Since respondent No.2 was held not to have been covered by paragraph 4(C) of the 1984 Policy, she could not be allotted an agro-farm under the 1984 Policy. As regards respondent No.1, she did not suffer from this disability. Since the land acquired from respondent No.1 was more than 40 *kanals*, and since she could not utilize the eligibility certificate issued to her on 16.02.1983, she could exercise the option for the allotment of an agro-farm in her own individual right. However, if both the respondents were to team up, they could, in terms of paragraph 6 read with paragraph 7(2) of the 1996 Policy, jointly apply for the allotment of one agro-farm since the land acquired from both of them was more than 100 *kanals*. This would be subject to the verification of the records and non-utilization of their eligibility certificates.

22. Now during the pendency of the said writ petition, the C.D.A., vide letter dated 11.11.2010, withdrew the allotment of plots in Orchard Scheme, Murree Road, Islamabad, from a number of allottees. The respondents were amongst the said allottees whose allotments were cancelled. The C.D.A. Board had decided that the A.S.C. will review each and every case afresh to ensure the correctness of information on which the earlier recommendations of the A.S.C. were based. Vide letter dated 09.04.2013, the respondents' attorney applied to the Chairman, C.D.A. for the restoration of the said plot in the respondents' favour. It may be mentioned that all applications before the C.D.A.; complaints before the Wafaqi Mohtasib; and petitions before this Court were filed/submitted by the respondents through their attorney, Abdul Qayyum Abbasi.

23. Although the allotment of the abovementioned plot No. 19-A was withdrawn from the respondents, writ petition No.3750/2010 had not been amended to challenge the said

withdrawal. There is no mention in the impugned judgment dated 03.08.2015 as to the withdrawal of the allotment from the respondents. Vide notification dated 16.02.2015, the A.S.C. has been reconstituted with the mandate to *inter-alia* scrutinize all cases of agro-farming plots to be allotted to the affectees.

24. We are of the view that the withdrawal of the allotment of the abovementioned plot No.19-A from the respondents and the constitution of the A.S.C. was an important event which ought to have been brought to the notice of the learned Judge-in-Chambers hearing writ petition No.3750/2010. The respondents' case for the allotment of agro-farms is now to be reexamined by the A.S.C. reconstituted through notification dated 16.02.2015.

25. In examining the respondents' case for the allotment of agro-farms under the 1984 Policy, the A.S.C. cannot go behind the judgment dated 22.03.2008, passed by this Court in writ petition No.2744/2002. As mentioned above, with the dismissal of civil petition No.1041/2008 by the Hon'ble Supreme Court, the said judgment dated 22.03.2008 attained finality for all intents and purposes. The C.D.A. can also not be permitted to deviate from its stance taken earlier before this Court regarding the quantum of the total land acquired from the respondents and the non-utilization of the eligibility certificates issued to them, unless fraud of an egregious nature is established.

26. In view of the above referred changed circumstances regarding the withdrawal of the allotment of plot No.19-A, Orchard Scheme, Murree Road, Islamabad, from the respondents and the reconstitution of the A.S.C. vide notification dated 16.02.2015 with the mandate to *inter-alia* scrutinize all cases of agro-farming plots to be allotted to the affectees, the instant appeal is allowed, and the impugned judgment dated 03.08.2015 to the extent of allowing writ petition No.3750/2010 is set-aside. The A.S.C. of the C.D.A. is directed to pass a speaking order on the respondents' applications for the allotment of agro-farms as well as their application for the restoration of the said plot No.19-A, after affording an opportunity of hearing to the respondents' representatives. The A.S.C. of the C.D.A. is

expected to take a decision with an independent application of mind uninfluenced by the observations contained herein. This exercise shall be completed within a period of two months from the date of the receipt of this judgment and a report in this regard be submitted through the Registrar for the perusal of this Court. There shall be no order as to costs.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018

(CHIEF JUSTICE)

(JUDGE)

Qamar Khan* **APPROVED FOR REPORTING**

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