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**JUDGMENT SHEET**

**LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

**W. P. No. 8273 of 2024**

Sibghat Elahi Chauhan

**Versus**

The Defence Housing Authority and 02 others

**JUDGMENT**

<b>Date of Hearing:</b>	23.10.2024
<b>Petitioner by:</b>	Mr. Muhammad Riaz Chopra, Advocate
<b>Respondents by:</b>	Mr. Altaf-ur-Rehman Khan, Advocate Mr. Ishfaq Amir, Advocate

**ABID HUSSAIN CHATTHA, J:** Through the instant constitutional Petition, the Petitioner has brought a challenge to Order dated 11.07.2023 passed by Respondent No. 2 / Secretary of Defence Housing Authority (the “DHA”) and seeks a direction to DHA to issue ‘No Demand Certificates’ (the “NDCs”) regarding the plots of the Petitioner in order to enable him to sell the same.

2. Brief facts of this case are that initially, the Petitioner filed W. P. No. 73527 / 2021 before this Court asserting therein that he and his siblings inherited agricultural land from the estate of their deceased parents, out of which 200 Kanals was sold to DHA vide agreement dated 26.01.2004 followed by registered sale deed dated 28.04.2004. Later, further land measuring 192 Kanals was sold, out of which, the Petitioner sold 75 Kanals pursuant to agreement executed in the year 2014 followed by registered sale deed dated 27.01.2015. As part of sale consideration, the Petitioner received a total of 36 exempted plots comprising of 11 commercial plots and 25 residential plots. The above transactions were executed by the Petitioner with DHA on the basis of a general power of attorney dated 23.12.2003 granting power to Mr. Afzaal Elahee Chauhan

(his brother), *inter alia*, to sell his shares in the property. After the execution of registered sale deeds and allocation of the said plots, the transaction between the Petitioner and DHA became a past and closed transaction and he acquired all the property rights with respect to the allotted plots. Later, the Petitioner sold 12 plots to various private persons and was left with 24 plots. However, when he attempted to sell the same, NDCs regarding the same were withheld by DHA by marking a 'caution' thereon which constrained him to file the said Writ Petition before this Court.

3. Vide Order dated 23.05.2022, Writ Petition No. 73527 / 2021 was dismissed by holding that perusal of the contents of the pleadings of the parties indicates a dispute regarding enforcement of obligations arising out of certain agreements executed between them which being factual in character cannot be resolved without recording of evidence and the said exercise cannot be undertaken by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"), therefore, the appropriate course for the Petitioner to adopt, in the given circumstances, is to approach the Civil Court concerned for redressal of his grievance.

4. The Petitioner filed Intra Court Appeal No. 36580 / 2022 before this Court which was disposed of vide Order dated 30.03.2023 with the observation that as and when the Petitioner would approach the DHA through an appropriate application seeking reasons for rejection of applications for verification, the same shall be furnished. Pursuant thereto, the impugned Order in the titled Writ Petition was passed by Respondent No. 2 outlining the reasons for not issuing the NDCs with respect to remaining plots. The said reasons contained in the impugned Order are reproduced as under:-

- "a. *The land transferred by you was an un-partitioned joint share in a joint holding (Khata). You sold different Khasra numbers to DHA and are now offering different Khasra numbers and are thus committing breach of contract.*
- b. *Your real brother and General Attorney, Mr. Ifzaal Elahee Chauhan, who jointly sold/transferred the land measuring 392-*

*Kanals 1-Marla from the joint ownership / khata of the family has filed a suit for partition and permanent injunction, with regard to the same land, including your share of un-partitioned land, which is pending in the court of Civil Judge, Lahore. The aforementioned suit pertains to the entire land comprising in **Joint Khata**, measuring 968-Kanals 7-Marlas, out of which you, your siblings and your mother, (the "**Chauhan Family**") transferred 392-Kanals of land to DHA. Therefore, the matter of land transferred by you to DHA has become sub-judice in the said civil suit.*

c. *The Chauhan Family sold land measuring 392-Kanals 1-Marla in Mauza Sangat Pura, Tehsil Cantt., District Lahore as per following detail:-*

(1) *Land measuring 200-Kanals (**First Tranche**) through registered sale deed Document No.3421 Book No.1 Volume 312 dated 28.4.2004 registered with Sub-Registrar Aziz Bhatti Town, Lahore. This sale deed was executed by the co-sharers as under:-*

(a) *You and your sister Mst Ghazala Elahee executed the sale deed through your General Attorney Mr. Ifzaal Elahee Chauhan.*

(b) *Mst Imtiaz Begum and Mst Tahira Elahee executed the sale deed directly.*

(2) *The aforementioned land measuring 200-Kanals was earlier offered for sale through an Agreement dated 26.01.2004. In this Agreement 128 **Qitaat** had been offered for sale. The Khasra numbers are mentioned in the Agreement as well as the Sale Deed.*

(3) *Land measuring 192-Kanals 01-Marla (**Second Tranche**) was sold through three separate sale deeds from the Joint Khata. You sold land measuring 75-Kanals through your General Attorney and a co-sharer in the Joint Khata, Mr. Ifzaal Elahee Chauhan vide registered sale deed Document No. 814 Book No.1 Volume 1803 dated 27.1.2015 registered with Sub-Registrar Wahga Town, Lahore. The remaining 117-Kanals 01-Marla land was sold by Mr. Ifzaal Elahee Chauhan and Mst. Ghazala Elahee through separate sale deeds. This land had been offered by the Chauhan Family and accepted for sale through letter dated 03.10.2014*

d. *The land measuring 192-Kanals 1-Marla (Second Tranche) was offered and sold as under:-*

(1) *Land offer affidavit dated 17.09.2014 by you Mr. Sibghat Elahee Chauhan, regarding land measuring 70-K in Khasra Nos. 870, 873, 874, 875, 876, 884, 885, 886, 889 and 892, Mauza Sangat Pura.*

(2) *Land offer affidavit dated 17.09.2014 by Mst. Ghazala Elahee regarding land measuring 47-K 01-M in Khasra in Khasra*

Nos. 869, 887, 888, 898, 900, 903, 905 and 901, Khatooni 55 to 61 Mauza Sangat Pura.

- (3) *Land offer affidavit dated 17.09.2014 by Ifzaal Elahee in Khasra Nos. 893, 894, 895, 896, 897, 899, 901, 902 and 904 falling in Khatooni 55 to 61 Khewat 30 Mauza Sangat Pura. (Copy of Khasra Girdawari of a/m Khasra Nos. in favour of Ifzaal Elahee Chauhan in proof of possession also attached).*
  - (4) *DHA agreed to purchase the land offered for sale and possession as per Khasra Girdawari.*
3. *You sold total 27-Khasras to DHA but handed-over possession of only 15-Khasras at that time. However, now you are offering possession of those Khasras which were not sold to DHA. These Khasras are even otherwise out of the DHA,s planned area. The detail of these Khasra numbers showing their old and new numbers is given below:-*

**Old / New:**

824/870  
827/873  
828/874  
829/875  
830/876  
838/884  
839/885  
840/886  
843/889  
846/892

4. *A caution has been marked on the balance plots in view of the facts mentioned above is based on genuine, lawful and justifiable reasons explained above. Moreover, you and your co-sharer family members are now claiming different Khasra numbers than the ones they had sold under their **Offer Letters** and Agreements.*
5. *You can claim only those plots which fell in the land (Khasras) sold by you to DHA and are not entitled to change the location of the plots at your will and wish. The sale has been stopped through the Caution as the co-sharer and your General Attorney has filed a suit for partition of the disputed land and seeks to grab back the valuable land sold to DHA and move DHA to a location which is outside the area earmarked for development by DHA.*
6. *The Caution on the sale of your plots cannot be removed until the Suit for Partition of land, which includes the joint land transferred by you to DHA, is not decided.*
7. *Articles 23 and 24 of the Constitution have no application / relevance to the instant case. Your relationship with the DHA is governed by the provisions of Transfer of Property Act, 1882, Contract Act, 1872, Land Revenue Act, 1967 and the Land Records Manual.*

8. *For the reasons stated above, your application is found baseless and without any sound justification and accordingly rejected.”*

5. The record depicts that pursuant to agreement dated 26.01.2004 executed between the legal heirs of late Karam Elahee Chauhan and DHA, registered sale deed dated 28.04.2004 was executed between them through which the conveyed land was fully identified. The sale consideration in terms of the said sale deed in shape of cash and / or exempted plots was duly received by the vendors and possession was taken over by DHA, whereafter, the matter was concluded between them. Thereafter, pursuant to agreement executed in the year 2014, another sale deed dated 27.01.2015 was duly executed between the Petitioner and DHA in which the conveyed land was duly identified. The payment of sale consideration in cash and / or exempted plots was duly received by the Petitioner and possession was taken over by DHA. As such, the said transaction was also duly concluded between the Petitioner and the DHA.

6. Admittedly, 12 exempted plots have already been sold by the Petitioner after obtaining NDCs from DHA. Later, DHA marked a ‘caution’ on the remaining plots and refused to issue NDCs. Admittedly, ‘caution’ has been marked on the remaining plots of the Petitioner by DHA much after the concluded transaction with the Petitioner. DHA has raised an alleged dispute unilaterally by exercising its powers as a Regulator of DHA and not as a vendee against the Petitioner which fact is sufficient to hold that DHA has transgressed its lawful authority to mark ‘caution’ with respect to remaining exempted plots of the Petitioner. The Petitioner has denied the existence of any dispute with DHA. Conversely, the nature of alleged dispute asserted by DHA has two dimensions; (i) pendency of civil suit for partition; and (ii) land conveyed to DHA with reference to Khasra Nos. is different from land in possession of DHA. In this respect, it is suffice to hold that the rights to hold land are vested with DHA on the basis of conveyance deeds which are intact. After such deeds, DHA as owner has stepped into the shoes of the vendors including the Petitioner and there is no bar upon the DHA to participate in the pending

suit for partition as per its entitlement in accordance with law. Further, there is also no impediment for DHA to avail appropriate remedy against the vendors / Petitioner in case of any alleged breach of contract. However, it cannot take any unilateral coercive measure in its capacity as a Regulator of DHA to mark 'caution' on the remaining plots of the Petitioner, thus, compelling the latter to file a civil suit when the Petitioner does not acknowledge the existence of any dispute with DHA.

7. Learned counsel for the Respondents was repeatedly confronted to point out any provision of law which authorizes DHA to mark 'caution' with respect to exempted plots received as consideration against sale deed noted above which is admittedly still intact in which the land conveyed has been duly identified and possession thereof was taken over by DHA. However, learned counsel for the Respondents failed to point out any such provision of law which was invoked by DHA to mark 'caution' on the remaining exempted plots of the Petitioner.

8. The case titled, "Raja Haroon Rashid v. Defence Housing Authority through Secretary" (2017 CLC 342) is squarely relevant to address the query in hand. The paragraph Nos. 13 to 16 thereof are reproduced as under for ready reference:-

*"13. In the case in hand, respondent marked caution on the plot of the petitioner on the pretext that he did not fulfill his obligation in furtherance of an agreement/conveyance deed arrived at between the parties. In case such an obligation was not fulfilled, respondent had alternate efficacious remedies available to them under the law, by way of approaching the Civil Court of competent jurisdiction for enforcement/ specific performance of the agreement/conveyance deed or else seek damages from the petitioner. For reference, reliance can be placed upon Messrs Malik and Haq and another v. Muhammad Shamsul Islam Choudhry and 2 others [PLD 1961 SC 531], Mst. Rasheeda Begum and others v. Muhammad Yousaf and others [2002 SCMR 1089], Muhammad Ibrahim and 44 others v. Fateh Ali and 30 others [2005 SCMR 1061] and Ghulam Hussain and others v. Muhammad Yousaf and another [PLD 1981 Lahore 11]. In addition to the above, respondent could have obtained an attachment or a stay order from the Court as contemplated in Orders XXXVIII and XXXIX, C.P.C. whereafter, petitioner could have been restrained from using his plot.*

*14. Non fulfillment of a contractual obligation by no means invest the respondent-authority to mark caution/place embargo on the*

*rights of the petitioner from acquiring, using and holding a property. In the case in hand, instead of approaching the Court of Law for enforcement of their rights, respondent in a Kingly manner and without any authority of law placed a rider on the rights of the petitioner which is in utter violation of Articles 23 and 24 of the Constitution, therefore, is not sustainable.*

*15. Even otherwise, the marking of caution is also violative of Article 10-A of the Constitution as neither any adjudication was made by a court of law which would suggest that petitioner has not fulfilled his obligation as enshrined in the agreement/conveyance deed nor an opportunity of hearing was provided to him prior to taking such action which militate the principle of audi alteram partem.*

*16. It shall not be out of place to mention here that respondent is governed by Defence Housing Authority Lahore Order, 2002. A perusal of the said law would also suggest that respondent is not invested with any authority under the law to mark caution on the rights of a land owner.”*

9. It, therefore, follows that the act of marking ‘caution’ on the remaining exempted plots of the Petitioner was in gross violation of Articles 23 & 24 of the Constitution which guarantee a fundamental right to every citizen to acquire, hold and dispose of property in any part of Pakistan subject to the Constitution and any reasonable restriction imposed by law in public interest; and that no person shall be deprived of his property save in accordance with law. Therefore, after purchase of property of the Petitioner by DHA, the latter became exclusive owner of land conveyed therein and as such, it has every right to defend the alleged pending suit for partition to protect its rights under the sale deed executed in its favour by the Petitioner. Mere pendency of such a suit is no ground to mark ‘caution’ on the remaining exempted plots of the Petitioner. Further, if there is any further grievance of DHA with respect to breach of obligations by the Petitioner pursuant to the sale deed executed by him, the Respondents are free to avail appropriate remedies available to them under the law to safeguard their interest. However, DHA in its capacity as a Regulator cannot transgress its authority by marking ‘caution’ on its own regarding the remaining exempted plots of the Petitioner.

**10.** In view of the above, this Petition is **allowed**; the impugned Order dated 11.07.2023 is set aside; the act of marking 'caution' on the remaining exempted plots of the Petitioner is declared to be without any lawful authority; and in consequence thereof, DHA is directed to remove 'caution' and issue NDCs to the Petitioner with respect to its remaining exempted plots.

**(ABID HUSSAIN CHATTHA)**  
**Judge**

Approved for reporting.

**Judge**

*\*Abu Bakker\**