

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

C.P.L.A.1378-L/2013 and C.P.L.A.1563-L/2018

(Against the judgment dated 17.05.2013 & 26.04.2018 passed by Lahore High Court, Lahore in W.P.No.12256/2013 & W.P.No.5018/2017)

***Defence Housing Authority thr. its Secretary
DHA Complex Lahore Cantt.***

...Petitioner(s) in both cases

VERSUS

***Secretary to Government of the Punjab
Cooperatives Department Lahore etc.***

...Respondent(s) in both cases

For the Petitioner : Mr. Faisal Hanif, ASC
(Through Video Link Lahore)
For the Respondent No.3 : Mr. Javed Iqbal Bhatti, ASC
(Through Video Link Lahore)
Date of Hearing : 13.11.2024

JUDGMENT

Mazhar Alam Khan Miankhel, J:-

C.P.L.A.No.1378-L/2013:- The petitioner through instant petition for leave to appeal has impugned the order dated 17.05.2013 of the Lahore High Court, Lahore whereby the constitutional petition of the petitioner was dismissed by the learned Judge in Chambers.

2. The respondents in this case were also put on notice. The issue before us though a very simple issue but has been prolonged for decades. The Respondent No. 3 (the allottee) herein being member of the Local Government and Rural Development Employees Cooperative Housing Society Limited Lahore (**the Society**) having membership No.631 dated 23.07.1990 was allotted a residential plot No.78-B after payment of all the dues as shown in the order dated 15.02.2012 of the Registrar Cooperative Societies (RCS). Because of some issues with the society, the allottee stopped payment of further dues and a petition under section 54 of the Cooperative Societies Act, 1925 (The Act) was filed before the Deputy

District Officer Cooperative, Lahore, but during pendency of the said petition, a merger between Defence Housing Authority (**the Authority**) and the Society took place. But during this process, the management of the Society cancelled the allotment of plot of the allottee before its merger without any lawful authority or issuing any show cause notice. The allottee then approached Registrar of the Cooperative Societies who vide its order dated 15.02.2012 restored his membership and directed The Society to either refund the amount paid by the allottee or allot him alternate plot. The allottee, feeling aggrieved then approached the Secretary, Cooperative Societies who after hearing both the parties modified the order of the Registrar and directed The Authority to allot plot No.78-B as previously allotted to the allottee or allot him an alternate plot of the same value. The Authority feeling aggrieved approached the Lahore High Court, Lahore through constitutional petition and raised the question of jurisdiction that after merger of the Society with the Authority, the appeal before the Secretary, Cooperative Societies was not maintainable and as such the order of the Secretary was without jurisdiction and lawful authority. The learned counsel for the petitioner while admitting the fact of merger and also admitting the fact of acceptance all the liabilities of the Society after the merger, again reagitated the same question of jurisdiction. The learned counsel for the petitioner was of the view that the question of jurisdiction has not been properly appreciated by the High Court as well as by the fora below.

3. The learned counsel appearing for the allottee supported the orders of the fora below as well as the High Court by submitting that after merger of the Society with the Authority, it is the Authority to resolve all the issues of the Society and the order of the Secretary was in accordance with the agreement of merger reached between the Authority and the Society

and the petitioner cannot wriggle out from the same. The learned Law Officer also supported the orders of the fora below and the High Court.

3. We have heard the learned counsel for the parties and have gone through the available record. The record of the case reveals that the respondent No.3 is undisputedly a member of the Society and also an allottee of a plot by the Society. The merger as per available record took place vide agreement dated 12.08.2006 and as per agreement, now it is the Authority to handover the possession of the allotted plots to the owners/allottees of the Society and all such allottees of the Society would be deemed to be the members of the Authority in accordance with the rules, regulation and the by-laws of the Authority. Similarly, it was agreed upon between the parties that all the liabilities and issues of the members would be the liability of the Authority. For ready reference clause 5 and 11 of the agreement is reproduced below:-

“5. DHA shall hand over possession of allotted plots to the owners (members of LG & RD Housing Society), who shall be deemed to be the members of DHA in accordance with rules and regulation and byelaws of DHA.

11. The pending cases files by /against LG & RD Housing Society, as shown on Annex H attached shall be pursued/defended by DHA. DHA will be at liberty to call any member of the management for resolving any outstanding issue or other members for any evidence (if required). In case a new dispute or fresh problem arises which has not been identified in the agreement/earlier. Mr. Tahir Awan Wahla will be responsible to DHA to resolve the same.”

A look at the above clauses of the agreement would make it clear that after the merger of the Society with the Authority, it is for the Authority to resolve all the issues of the owners/allottees without fail. We have noted that agreement between the Society and the Authority is dated 12.08.2006 whereas the allottee having

the accrued rights since 1990 on the strength of his allotment was unnecessarily dragged into litigation in presence of clause 5 and 11 of the agreement *ibid*. This very fact is visible from the order of the Registrar dated 15.02.2012 and the Secretary dated 26.03.2013 and similarly, before the High Court whereas, the case of the allottee was simply an open and shut case who is a member of the Society since 1990.

4. We are sorry to observe that this petition is a bad example of a frivolous and futile exercise despite the clear-cut provisions of the agreement. The allottee, who suffered a lot at the hands of the Society and the Authority, in the given circumstances, would be at liberty to initiate any legal course of action, if so advised. This petition being hopelessly meritless is dismissed with costs throughout and leave refused.

C.P.L.A.No.1563-L/2018:- This petition for leave to appeal impugns the judgment dated 26.04.2018 of the Lahore High Court, Lahore, whereby the writ petition of the petitioner and the DHA was dismissed.

5. We have heard the learned counsel for the parties and have gone through the available record. Through present round of litigation, the petitioner has once again attempted to get the same relief, as involved and discussed in earlier C.P.L.A.No.1378-L/2013, by moving miscellaneous applications asking for review of the earlier orders and treating his said applications under section 12(2) CPC. (The legal discussion in the earlier connected petition should also be considered as part of the instant petition). The stance of the petitioner has no backing of any law and the learned counsel for the petitioner was unable to make

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out a case even for arguments what to talk of any legal backing in support of his arguments. This petition being hopelessly meritless is dismissed with costs throughout and leave refused.

ISLAMABAD

13.11.2024

Approved for Reporting

(Nefan Aslam)