

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah

Mrs. Justice Ayesha A. Malik

CIVIL PETITION NO.3709 of 2022

[Against judgment dated 29.09.2022 passed by the Islamabad High Court Islamabad in W.P. No.1978/2022]

Capital Development Authority, CDA,
through its Chairman, CDA, Islamabad ...Petitioner(s)

Versus

Ahmed Murtaza and another ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Nazir Jawad, ASC

For the Respondent(s) : Mr. Saqib Jillani, ASC
(via video link, Lahore)

Date of Hearing : 02.11.2022

JUDGMENT

AYESHA A. MALIK, J.- The Petitioner, Capital Development Authority (**CDA**), Islamabad, has impugned judgment dated 29.09.2022 passed by the Islamabad High Court, Islamabad (**High Court**) essentially on the ground that plot No.12-H/2, G-8 Markaz, Islamabad measuring 500 sq. yds. (**disputed plot**) was a non-transferable plot and could not have been sold or transferred outside of the family of the original allottee.

2. Counsel for the Petitioner argued that the impugned judgment failed to consider this fact and, in this context, failed to consider the relevant provisions of the allotment letter No.CDA/EM-27(1223)/83 dated 11.06.1983 (**allotment letter**) as well as the lease agreement dated 18.06.1983 (**lease agreement**). He further argued that in terms of the Islamabad

Land Disposal Regulation, 2005, community building and facility plots that are to be used for educational purposes, hospitals, maternity homes, or libraries cannot be transferred as these plots are reserved for social welfare projects and only in exceptional cases can these plots be transferred. The case of the CDA is that the disputed plot was to be used for a clinic when it was leased out to Dr. Major (Retd.) Bilqees Muhammad Din, the original allottee. Learned counsel further stated that Respondent No.1 filed a suit for specific performance of the contract before the Civil Judge, Islamabad, against Respondent No.2 for completion of the sale of the disputed plot. The suit was decided, by way of a consent decree on 23.11.2018, in favour of Respondent No.1 on the basis of which the disputed plot was transferred to Respondent No.1. The Petitioner filed a petition under Section 12(2) of the Code of Civil Procedure, 1908 (**CPC**) on 30.09.2022 before the trial court against judgment dated 23.11.2018. The petition was allowed on 19.04.2022 and judgment and decree dated 23.11.2018 was set aside. Respondent No.1 challenged the order of 19.04.2022 in a constitutional petition which was accepted vide the impugned judgment.

3. On behalf of the Respondents, learned counsel stated that the matter in issue has been decided by the High Court in FAO No.3 of 2020 reported as Ahmed Murtaza v. Naseera Fatima Sughra and 2 others (**2021 CLC 400**) wherein Respondent No.1 challenged order dated 16.12.2019 passed by the Civil Judge 1st Class (West) Islamabad whereby the objection petition filed by Respondent No.2 was allowed and the decree

dated 23.11.2018 was declared as not executable. In the said FAO, the merits of the case were considered and decided in favour of Respondent No.1. So, the whole issue of transferability of the disputed plot was considered and decided in favour of Respondent No.1. CDA then challenged the same before this Court, through C.P. No.3010 of 2021, only to withdraw the same so as to avail appropriate remedy. Subsequently, CDA challenged judgment dated 23.11.2018 before the Civil Judge under Section 12(2) of the CPC. This petition was decided in its favour on 19.04.2022 whereby the consent decree dated 23.11.2018 was set aside and the matter was reopened to be decided afresh on its merits. Respondent No.1 filed a constitutional petition before the High Court which decided the matter in his favour through the impugned judgment wherein the High Court concluded that CDA failed to prove fraud, misrepresentation, or want of jurisdiction in any manner and that the CDA is bound by the judgment of the High Court, rendered in the Ahmed Murtaza case (*supra*), wherein the same issue was agitated and decided.

4. We have heard the learned counsel for the parties at length and find that the facts of the case speak volumes to the matter in issue raised before us. Essentially, CDA claims that the disputed plot was a non-transferable plot, which could not have been transferred outside of the family members of the original allottee, Dr. Major (Retd.) Bilqees Muhammad Din. The allotment letter issued in favour of Dr. Major (Retd.) Bilqees Muhammad Din provides that the plot is to be used for building a clinic and that the plot is non-transferable outside the family

members being the wife, husband and unmarried children. The lease agreement executed between CDA and Dr. Major (Retd.) Bilqees Muhammad Din also provides that the disputed plot is non-transferable outside the family members. Respondent No.1 filed a suit for specific performance of the agreement to sell dated 19.04.2016 against Respondent No.2, mainly stating that he entered into an agreement to sell on 19.04.2016 with Respondent No.2 for the sale of the disputed plot on which Sughra Bilquis Memorial Hospital had been constructed and that she was not performing her part of the obligation despite the fact that he had done what he was required to do. As per the compliance report filed by CDA in the said suit, it was confirmed that initially the plot was allotted to Dr. Major (Retd.) Bilqees Muhammad Din, however, the property was transferred to Respondent No.2 vide CDA letter No.CDA/EM-27(1223)/83/1059-6-1075 dated 11.03.2003 and confirmation of ownership was issued in favour of Respondent No.2 on 03.10.2007. Therefore, for the purposes of transfer, the CDA informed the Court that the disputed plot had been transferred by them in favour of Respondent No.2. On the basis of this report and the conceding statement made by the CDA, a consent decree was issued on 23.11.2018 in favour of Respondent No.1.

5. An execution petition was filed by Respondent No.1, in which, CDA filed its objections. These objections were allowed on 16.12.2019 declaring judgment and decree dated 23.11.2018 as not executable. Against this order, FAO No.3 of 2020 was filed by Respondent No.1 which was allowed on 30.12.2020

whereby order dated 16.12.2019 was set aside and the matter was remanded to the Executing Court to execute judgment and decree dated 23.11.2018. Against the order of the High Court, CDA filed Civil Petition No.3010 of 2021 in this Court which was withdrawn on 20.08.2021. These facts are admitted; however, these facts have not been pleaded by the CDA in its petition before us nor have they appended copies of the orders pertaining to the objection petition filed against the execution of judgment and decree dated 23.11.2018 or of the civil petition filed before this Court. In this regard, we are of the opinion that CDA has deliberately neglected to state these facts and instead has just mentioned that it assailed some order before the High Court in an FAO as well as before this Court and withdrew its case on 20.08.2021 to seek appropriate remedy.

6. We have examined the Ahmed Murtaza case (*supra*) and the question before the Court in the said case was the transfer of the disputed plot which was considered at length and the Court concluded that no appeal was filed by the CDA against judgment and decree dated 23.11.2018 as it was in result of a consenting statement between the Respondents. Thus, no basis for fraud was made out. The Court also held that the CDA was a party to the suit and the trial court put a specific query to the CDA with reference to the transfer of the disputed property in favour of Respondent No.2 to which the CDA confirmed that the disputed plot was transferred in the name of Respondent No.2 vide its letter dated 11.03.2003. The CDA was also asked whether this plot was under dispute before any court of law to which they said that they were not aware of any such

case. Consequently, the trial court proceeded to decree the suit for specific performance in favour of Respondent No.1 given that the CDA, as per its record, admitted to having transferred the disputed plot in favour of Respondent No.2. To our minds, the matter in issue was decided on its merits in the Ahmed Murtaza case (*supra*) which judgment, the CDA challenged only to withdraw the matter from this Court in order to seek some other appropriate remedy. Consequently, the CDA is bound by the findings recorded in the Ahmed Murtaza case (*supra*) with reference to the transfer of the disputed plot in favour of Respondent No.2.

7. The admitted position is that the disputed plot was transferred from the original allottee/lessee, Dr. Major (Retd.) Bilqees Muhammad Din by CDA in favour of Respondent No.2 vide letter No.CDA/EM-27(1223)/83/1059-6-1075 dated 11.03.2003. We also note that the order of transfer dated 11.03.2003 clearly provides that CDA transferred the disputed plot from the names of eleven persons to the name of Respondent No.2. We asked the CDA who these eleven persons were and we were informed that prior to the transfer in favour of Respondent No.2, the disputed plot had been transferred in the names of persons mentioned in its letter No.CDA/EM-27(1223)/83/1059-6-1075 dated 11.03.2003. The counsel also admitted that these eleven persons were not specifically family members of Dr. Major (Retd.) Bilqees Muhammad Din. Apparently, persons listed at Sr. Nos.1 to 3 are related to Dr. Major (Retd.) Bilqees Muhammad Din, however, admittedly none of the others are related to her. Hence, it transpires that

CDA allowed the transfer of the disputed plot to non-family members, from time to time and only raised a dispute with reference to the transfer in favour of Respondent No.2 and Respondent No.1.

8. We have heard the matter at great length and find that this is a classic example of a litigant wasting the time of this Court by filing frivolous litigation given that this matter already stands decided by the High Court in the Ahmed Murtaza case (*supra*). Furthermore, the dispute, if any, raised by the CDA is based on their own conduct as the record shows that they have themselves transferred the disputed plot outside the family members of Dr. Major (Retd.) Bilqees Muhammad Din repeatedly and yet chose to dispute the transfer in favour of Respondent No.1 notwithstanding the earlier transfers made in favour of different transferees. They have taken no action against any officer, nor raised this issue before their own governing body to highlight the fact that their own documents and policy were not being followed by their officers. Instead, they chose to litigate the matter and burdened the courts with litigation which does not raise a question of law or fact in good faith. We find that this kind of litigation being without merit and basis is one an institution, such as the CDA, should not have indulged in. A considerable amount of time has been consumed in hearing this matter, which time admittedly could have actually been consumed hearing other cases not to mention the misrepresentation made by the CDA in failing to disclose the Ahmed Murtaza case (*supra*). What is most disturbing is that the CDA opted to pursue this matter before this Court against

the Respondents in whose favour there are two judgments dated 23.11.2018 and 30.12.2020. We also find that an institution, such as the CDA, must take responsibility for its own decisions and actions even where its officers have acted in contravention of their policy and cannot expect that this Court should interfere and correct their wrongs, particularly when the matter has been litigated against and decided against them. This tendency cannot be condoned and has to be denounced because not only does it waste the time of this Court but it has also wasted a considerable amount of time of the Respondents who have been facing litigation pursued by the Petitioner since 2019 as they have been striving to have the transfer in favour of Respondent No.1 declared illegal when they themselves transferred the disputed plot in favour of Respondent No.2 and admittedly earlier in time, transferred the disputed plot to at least eight different people, which was never challenged by them.

9. During the course of the case, we confronted the Petitioner, CDA with these facts and gave them an opportunity to explain why special costs should not be imposed upon them for dragging the Respondents to Court unnecessarily and for wasting the time and resources of this Court. The Petitioner was confronted with the misstatements in their pleadings specifically the fact that they chose not to mention that they had transferred the disputed plot in favour of Respondent No.2 vide letter No.CDA/EM-27(1223)/83/1059-6-1075 dated 11.03.2003 and that they had transferred the disputed plot in favour of eight other persons prior to Respondent No.2. We also

confronted them with the fact that they failed to mention the Ahmed Murtaza case (*supra*) and merely referred to it in passing that FAO No.3 of 2020 was filed before the High Court which was allowed vide judgment dated 31.12.2020. They neglected to give details of this case and neglected to append the judgment, which clearly shows that the intent was to mislead the Court.

10. Rule A(3) of Order XXVIII of Part VI of the Supreme Court Rules, 1980 (**Rule**) provides that this Court may impose costs on a party who files a false or vexatious appeal or other proceedings and thereby wastes the time of the Court. This Court has imposed such costs, to curb frivolous litigation, in the cases of Syed Iqbal Haider v. Federation of Pakistan (**1998 SCMR 1318**), Muhammad Akbar v. Major Tajjuddin (**2007 SCMR 140**), and Commissioner of Inland Revenue v. Packages Limited (**2022 SCMR 634**) for prolonging the agony of the respondents and wasting the time of this Court which could have been spent in resolving legitimate disputes.

11. Under the circumstances, we are not inclined to dismiss the petition simpliciter as we believe that such frivolous litigation overburdens this Court with vexatious cases thereby delaying and thus denying the rightful claim of access to justice guaranteed under Article 9 of the Constitution. Such frivolous litigation also impairs expeditious justice and offends Article 37(d) of the Principles of Policy under the Constitution. Court time can be well spent on handling genuine cases as opposed to pursuing cases which are vexatious and meritless on their face and which have already been decided between the parties. The Petitioner is a responsible public institution which is to work

and function for the benefit of the public and undeniably, the same deliberately wasted time and resources of the Court which itself runs on taxpayer's money. It must be appreciated by CDA that it is not the role of the courts to "fix" the internal managerial shortcomings of the institution. CDA sought to bring a matter of its own internal affairs into the Court, instead of resolving the matter at its own end, for what only appears to be an attempt to unduly emphasize on one transfer and ignore all others. The Respondents, on the other hand, without any fault on their part, have suffered long drawn periods of litigation.

13. A display of such conduct by the Petitioner is in clear violation of the law and cannot be ignored. The circumstances warrant imposition of special costs to the tune of Rs.500,000/- on the Petitioner. The aforementioned costs shall be deposited in any approved charity. The deposit slip shall be placed on record within one month of this order. In case of failure, office shall put up the case before the Court for necessary orders.

15. Consequently, this Petition is dismissed and leave refused.

JUDGE

JUDGE

Islamabad
02.11.2022
'APPROVED FOR REPORTING'
Azmat/Alizeh*