

38/24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Irfan Saadat Khan
Justice Naeem Akhtar Afghan

(AFR)

Civil Petition No.993/2014 and C.M.As.7061/2016, 1850/2015 & 3500/2014 in C.P.L.A.993/2014

Against the order dated 30.4.2014 passed by Islamabad High Court in WP No. 4191 of 2013

Civil Petition No.1117/2014 and C.M.A.3678/2014 in C.P.L.A.1117/2014

Against the judgment dated 27.5.2014 passed by Islamabad High Court in ICA No.249 of 2014

Capital Development Authority, Islamabad thr. its ...Petitioners
Chairman & others (in CP 993/2014)

Ch. Tahir Sattar (in CP 1117/2014)

Versus

M. Sajid Pirzada (in all cases) ...Respondents

For the Petitioners: Mr. Muhammad Nazir Jawwad, ASC
(in CP 993/2014)

Mr. Muhammad Munir Paracha, ASC
(in CP 1117/2014)

For Respondents No.1 to 8: Malik Nasrullah Awan, ASC a/w
Ms. Mehnaz Nadeem, Respondent-4 and Syed
Shozab Zamir son of Respondent No.7
(in CP 993/2014)

For Respondents No.2 to 9: Malik Nasrullah Awan, ASC a/w
(in CP 1117/2014)

For the Applicants: Nemo (in CMA No.7061/2016)

Date of Hearing: 13.05.2024

ORDER

Qazi Faez Isa, CJ. Eight petitioners had filed a writ petition (WP No.4191 of 2013) before the Islamabad High Court against Capital Development Authority ('CDA'), the Pakistan Environmental Protection Agency and Ch. Tahir Sattar. They alleged that 'CDA has illegally, unlawfully changed the Master Plan and created new Plots No.295-A to 295-H and 296-A to 296-B in the closed end Street No.56, Sector F-11/4, Islamabad' ('the said plots') and had sought a declaration that CDA could not do so and that it be restrained from approving the building plans in respect of the said plots and be directed to adhere to the Master Plan. The learned Single Judge allowed the petitions, cancelled the said plots, and further directed CDA to initiate departmental action against those who had violated the Master Plan.

2. Ch. Tahir Sattar had also filed a separate writ petition (WP No.4119/2014) seeking to restrain CDA from interfering in the peaceful possession and construction of a house on the Plot No.296-B, which he had purchased from Ch. Saifullah to whom it had been allotted. His petition was dismissed. He assailed the said judgments in Intra Court Appeals No. 249 and 250 of 2014, but they were dismissed, and the said decisions are assailed in CPLA No.1117 of 2014.

3. CDA challenged the order of the learned Single Judge by directly filing CPLA No.993 of 2014 in this Court. However, since CPLA No. 1117 of 2014 has also been filed, and both assail the same judgments, and as entertaining CDA's petition will not adversely affect the interest of the contesting respondents, we heard both the cases.

4. Neither the learned Single Judge nor the learned Judges of the Division Bench of the High Court realized that only one private allottee, namely, Ch. Tahir Sattar, was arrayed as a respondent before the High Court in WP No. 4191 of 2013. Therefore, *vide* order dated 7 February 2024 we had issued notices to the allottees/purchasers of the remaining plots, and CDA was directed to provide particulars thereof.

5. Learned counsel representing CDA referred to CMA No.2464 of 2024 and stated that only four plots were allotted by CDA, that is Plots No. 295-A, 295-B, 296-A and 296-B (**'the four plots'**). He also referred to CMA No.2568 of 2024 and stated that the four plots were allotted to four persons but since the same were encroached upon, and there was procrastinated litigation going on between CDA and the encroachers, alternate allotments of the four plots were made to them in the year 2008, and that they had relinquished all rights to the earlier allotments, which stood revoked/cancelled.

6. Learned counsel for CDA further states that the said plots formed part of land which was designated for '*Future Use*' in the Master Plan which should be given its ordinary English meaning, that is that the same shall be utilized in *future* by CDA. Therefore, allotments of the same were to be allotted as residential plots since the area is a residential area, and as such the Master Plan was not violated. He has also referred to the amendment made *vide* S.R.O 967(I)/2019, dated 26 August 2019, and stated that the term '*Future Use*' used in the Master Plan is covered by clause 2 (5) which is reproduced hereunder:

‘(5) **Left-over/Un-designated/Un-planned/Un-utilized Land** means CDA acquired land in Planned/Developed Sectors/ Schemes, presently not designated/earmarked/planned/ reserved for any specific use and hence reserved for future use.’

CDA has filed documents, through CMA No.2568 of 2024, showing the location of the said plots which are situated on Street No.56 of Sector F-11/4; Plot No.295-A to 295-H lie at the end of the street on one side of the street, and Plot Nos.296-A and 296-B are on the other side of the said street, where there are only two plots. Concluding his submissions he states that the remaining six plots, which have not been allotted as yet, will be allotted to those facing similar problems and no fresh rights will be created.

7. The learned Mr. Muhammad Munir Paracha, representing Ch. Tahir Sattar, adopts the submissions of CDA’s counsel and further states that the allotment of the plot purchased by him was made in 2008 whereas the petition was filed in 2013, therefore, the petition was hit by the principle of *laches* and no explanation for the belated filing of the petition was offered, and that this was not even considered in either of the two decisions which have been assailed. He further states that the said plots which include Plot No. 296-B do not fall within an area designated for any amenity use or for any other specific purpose. The four plots, which have been allotted, have been allotted for residential purposes in a residential area, and in making such allotments neither any law nor the Master Plan was violated. And, the allotments were made to accommodate those who could not avail of the benefit of the plots earlier allotted to them because they were encroached upon. He concludes by stating that the High Court also disregarded the fact that considerable investment had already been made in raising construction on Plot No.296-B.

8. Learned Malik Nasrullah Awan represents the private respondents, who were the petitioners before the High Court. The learned counsel stated that the said plots could not be earmarked and allotted because they were not shown on the Master Plan. However, he was not able to point out any legal restriction preventing them from being allotted, particularly when the said land was designated on the Master Plan for *Future Use*. Learned counsel then contended that by allotting the said plots the rights of the private respondents would be adversely affected as the said plots were adjacent to theirs and would restrict light and air to

their properties. However, when we called upon him to show us the allotment orders of his clients and whether the same stipulated any restriction, the learned counsel stated that the same had not been filed. We enquired why the other allottees were not arrayed as parties when their valuable property rights could be, and were adversely affected by the impugned decisions. The learned counsel conceded that they should have been arrayed as parties. The Master Plan, the layout plans and the Google map which have been filed show the location of the said plots, which are at the end of Street No. 56 and on the right side there is a narrow lane separating the last plot of one of the respondents from Plot No.295-A whereas the last plot of a respondent on the other side of the street is separated from Plot No.296-A with a twenty-foot wide lane. Therefore, there is no question of the obstruction of light and air. In any case an easement right, if any, could not have been agitated in the constitutional jurisdiction of the High Court, nor in fact was this done.

9. The learned counsel could not show what particular rights of the private respondents had been violated in allotting the said plots but he could not do so nor did he refer to any law which prevented CDA from utilizing, for the benefit of earlier allottees, land designated for '*Future Use*'. The term '*Future Use*' does not mean that the land is to be left open nor does it mean that it is to be used for amenity purposes, which may, have prohibited their allotment. Regretfully, these points were not considered by the learned Judges of the High Court.

10. Therefore, for the aforesaid reasons, these petitions are converted into appeals and allowed by setting aside the judgments of the High Court dated 30 April 2014 and 27 May 2014, and by restoring the cancelled allotments. All listed applications are disposed of.