

PLJ 2011 Lahore 222 (DB)

Present: Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ.

Dr. FAISAL MASUD and another--Appellants

Versus

**GOVT. OF PUNJAB through Secretary, Local Government and Rural Development Department,
Civil Secretariat, Lahore
and 3 others--Respondents**

ICA No. 8 of 2004 arising from W.P. No. 10421 of 2002,
heard on 21.6.2010.

Law Reforms Ordinance, 1972 (XII of 1972)--

---S. 3--Constitution of Pakistan, 1973, Art. 199--Intra Court Appeal--Commercialization Rules 2001 repeal and substituted by Province of Punjab through Commercialization Rules of 2008 & 2009--Scope of--Violation of privacy rights--Policy of LDA--Appellant was running a private clinic--Respondent owns adjacent plot had obtained the sanction of commercial building plan in accordance with building bye laws and rules of LDA--On account of sanctioning of the commercial building, the rights of appellants of enjoying the exclusive privacy of their house raised had been adversely affected--Challenged through constitutional petition which had been dismissed by single judge of High Court--Assailed--Writ petition did not specify as to how the privacy rights of the appellants in the use of their property situated over plots had been affected by commercial use--Appellant was admittedly himself making commercial use of a portion of his property constructed over plot wherein he was running a private medical clinic, therefore, he could not be permitted to raise any objection to the commercial use of the adjacent plots by lawful owners--Building plan had been duly approved by LDA and admitted by official respondents by D.B. of High Court and such sanction of commercial building plan also had not been assailed by the appellant through any proceedings before departmental authority or the instant writ petition--Single judge of High Court while passing the judgment had recorded valid reasons for dismissing the writ petition of the appellants--Intra Court Appeal was dismissed. [P. 226] A & B

Dr. A. Basit, Advocate for Appellants.

Mr. Shakeel-ur-Rehman Khan, Addl.A.G. for Respondent No. 1.

Mian Muzaffar Hussain, Advocate for Respondents No. 2 & 3.

Mr. Akhtar Javed, Advocate for Respondent No. 4.

Date of hearing: 21.6.2010.

Judgment

Nasir Saeed Sheikh, J.--This ICA is directed against the judgment dated 09.12.2003 passed by a learned Single Judge of this Court whereby Writ Petition No. 10421/2002 instituted by the present appellants was dismissed as having no force.

2. Briefly stating the facts of the case are that the appellants owns with possession a house constructed over Plots No. 801 & 803 in Block-C, Faisal Town, Lahore in a portion of which the appellant is running a private clinic. The Respondent No. 4 of the writ petition owns adjacent plot Bearing No. 802-C on the same road and the said respondent had obtained the sanction of a commercial building plan from the LDA, Lahore in accordance with the building bye-laws and rules of the LDA.

3. It is the case of the writ petitioners that on account of the sanctioning of the commercial building plan by the LDA in Plot No. 802-C of the Respondent No. 4, the rights of the appellants of enjoying the exclusive privacy of their house raised in Plots No. 801 and 803 has been adversely affected. The appellants moved objection application before the LDA-respondent against the commercial use of the Plot No. 802-C, Faisal Town, Lahore by the Respondent No. 4, through communication dated 18.1.2002. It was also contended by the petitioners in their application dated 18.1.2002 that the Respondent No. 4 is using the Plot No. 802-C for commercial purposes without obtaining any NOC from the LDA. This objection raised by the appellants was rejected by the LDA through an order communicated on 08.2.2002. The LDA-respondent took the plea that the Maulana Shaukat Ali Road upon which the Plot No. 802-C, Faisal Town, Lahore is situated has already been declared a commercial Road after inviting objections from the public in the press and that the owner of the Plot No. 802-C applied for commercialization of his said plot which request was granted by the LDA on 15.12.2001. Thus the request of the appellants of stopping the Respondent No. 4 from commercial use of the Plot No. 802-C, Faisal Town, Lahore was turned down by the LDA. A Writ Petition No. 10421/2002 was instituted before this Court by the present appellants which came up for hearing before a learned Single Judge. The Respondents contested the said writ petition and vide judgment dated 9.12.2003 the learned Single Judge dismissed the writ petition through the impugned judgment against which the instant ICA has been instituted.

4. It is contended by the learned counsel for the appellants that the policy of the LDA as per Commercialization Rules 2001 is ultra vires of the Constitution and is liable to be struck down. The learned counsel for the appellants elaborated that a general commercialization policy with respect to the entire Maulana Shaukat Ali Road is not sustainable as it deprived the appellants an opportunity of raising objection to the commercial use of the plot situate in their neighbourhood. It is further contended by the learned counsel that these rules of 2001 and the policy of LDA are violative of the provisions of Article 14 of Constitution of Islamic Republic of Pakistan.

5. It is then contended that learned Single Judge has not properly appreciated the privacy rights of the appellants which according to the learned counsel of the appellants have been violated by the Respondent No. 4 and LDA did not consider the objection of the appellants with respect to the violation of their privacy rights. It is further contended by the learned counsel that the judgment passed by the learned Single Judge is not sustainable in the eye of law.

6. The learned counsel for the appellants also has first raised an objection that the original Respondent No. 4 has been substituted by the present Respondent No. 4 and the original owner of the adjacent plot had disappeared from the scene without contesting the instant ICA, therefore the present ICA be accepted against Respondent No. 4

7. The contentions of the learned counsel of the appellants have been controverted by the learned counsel of the respondents.

8. It is first of all stated by the learned counsel for the LDA that the Commercialization Rules 2001 have been repealed and substituted by the LDA Land Use Conversion Rules 2008 through notification dated 17.3.2008 which Rules of 2008 have further been repealed by the LDA Land Use (Classification and Declassification and Re-development) Rules 2009. It is further contended that before declaring Maulana Shaukat Ali Road as commercial road the LDA invited objections through publication in the Press dated 28.8.2001 and the appellants did not raise any objection before the LDA and then vide order dated 6.10.2001 Commercialization Committee of the LDA approved the commercialization of the Maulana Shaukat Ali Road. It was further argued that as per policy of the LDA having been enforced there was no requirement that the owner of the Plot No. 802-C, Respondent No. 4, to have obtained any NOC for the commercial use of his property.

9. It is further argued by the learned counsel for the respondent-LDA that appellant himself by making a commercial use of a portion of his property wherein he is running a medical clinic is estopped from raising any objection upon the commercial use of the plot by the Respondent No. 4.

10. The learned counsel for the Respondent No. 4 has also supported the arguments of the learned counsel for the LDA and has further stated that so far no construction has been raised by the Respondent No. 4 on his Plot No. 802-C, only a room with a boundary wall exists thereon and the Respondent No. 4 has collected some building material and is running a store for the sale of said building material. It is further contended that the Maulana Shaukat Ali Road having been declared a commercial road by the LDA therefore there was no need of any NOC to be obtained by the Respondent No. 4 for the commercial use of his Plot No. 802-C. It is further argued that there is no specification by the appellants in their writ petition as to how their privacy rights with respect to their Plots No. 801-C and 803-C have been adversely affected by commercial use of the Plot No. 802-C by the Respondent No. 4. It is further argued that objections were invited by the LDA through press publication and the appellants did not raise any objection. However the appellants subsequently addressed an application dated 18.1.2002 to the LDA complaining regarding the commercial use of the plot by the Respondent No. 4 which objection was turned down by the LDA vide letter dated 08.2.2002 and which letter has not been assailed by the appellants in their Writ Petition No. 10421/2002 although it was instituted on 15.3.2002 after the passing of the order dated 08.2.2002 by the LDA. It is further contended that the order passed by the learned Single Judge of this Court dismissing the writ petition of the appellants is in accordance with law and the instant ICA has no merits at all.

11. The learned Additional Advocate General has also controverted the arguments of the learned counsel of the appellants and has further stated that in view of the repealed rules of 2001 the ICA

of the appellants has become infructuous and the new commercialization rules of the Government of Punjab promulgated and enforced in the year 2008 and later on in the year 2009 as referred to above have not been assailed through the instant writ petition.

12. We have considered the arguments of the learned counsel of the parties and have perused the record.

13. The Respondent No. 4 was impleaded through C.M. No. 486/2006 vide order dated 22.1.2009 and this C.M. was moved by the appellants themselves whereby the successor-in-interest of the original vendee was impleaded in the instant ICA and is contesting the same. After selling out his rights in the Plot No. 802-C the original owner has disappeared from the scene but this does not make any difference as the subsequent vendee who the successor of the original owner has been impleaded as Respondent No. 4 by the appellants themselves in the instant ICA, therefore this contention of the learned counsel for the appellants is not entertainable that on account of disappearance of the original owner of the adjacent Plot No. 802-C, the ICA should be automatically accepted. The successor of the original owner is present before this Court and is contesting the instant ICA.

14. The writ petition was instituted to assail the Commercialization Rules of 2001 which rules have been repealed and substituted by the Province of Punjab through Commercialization Rules of 2008 and later on by Commercialization Rules of 2009. The prayer of the appellants seeking declaration with respect to the Commercialization of Rules 2001 to be declared ultra vires of the Constitution and the law has therefore become in-fructified. However it is also an admitted fact that even during the enforcement of the previous Rules of 2001 the LDA had invited objections on the commercial declaration of the Maulana Shaukat Ali Road and no objection was raised by the appellants at that time to the course being adopted by the LDA with respect to the road in question. The appellants moved an objection application dated 18.1.2002 against the commercial use of the plot by the Respondent No. 4 of the plot owned by the said respondent and this objection of the appellants were turned down through order dated 8.2.2002 which order has not been assailed by the appellants in the writ petition for the reasons best known to them. Even we observe that the writ petition does not specify as to how the privacy rights of the appellants in the use of their property situated over Plots No. 801 and 803 has been affected by the commercial use of the Plot No. 802-C by the Respondent No. 4. The Appellant No. 1 is admittedly himself making commercial use of a portion of his property constructed over Plot No. 803 wherein he is running a private medical clinic, therefore, he cannot be permitted to raise any objection to the commercial use of the adjacent plots by the lawful owners. The building plan of the Respondent No. 4 in respect of Plot No. 802 Block-C, Faisal Town, Lahore has been duly approved by the LDA as stated and admitted by the official respondents before us and this sanction of commercial building plan also has not been assailed by the appellants through any proceedings before the departmental authority or in the instant writ petition. The learned Single Judge while passing the judgment dated 09.12.2003 has recorded valid reasons for dismissing the writ petition of the appellants. We are not persuaded by the arguments of the learned counsel for the appellants to declare the judgment passed by the learned Single judge dated 09.12.2003 to be violative of any principle of law. The instant ICA is without any merits and is accordingly dismissed with no orders as to costs.

(R.A.) I.C.A. dismissed.