

Stereo. H C J D A-38.

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT AT LAHORE**  
**JUDICIAL DEPARTMENT**

**ICA No. 276 of 2004.**

**J U D G M E N T**

Date of hearing **14:04:2010.**

Appellants by **Mr. Uzair Karamat Bhandari,**  
**Advocate.**

**Ch. Muhammad Yasin, Advocate for**  
**the appellants in ICA No.281 of 204.**

**NASIR SAEED SHEIKH, J:-** This judgment will dispose of ICAs No.276 and 281 of 2004, as they are directed against the same judgment dated 19.05.2004, passed by a learned Single Judge of this Court in WP No.13400 of 2003.

2. Briefly stating the facts of the case are that the Government of the Punjab through its Secretary Housing and Physical Planning Department, Lahore floated a Peoples Housing Scheme at Gujranwala and twenty seven plots were allotted by the Housing and Physical Planning Department in the year 1975 to the appellants of ICA No.276 of 2004 and twenty three other category of persons.

These allotments were confirmed in the year 1981. In the year, 1986, some controversy cropped up with respect to the allotments in question and the Government of the Punjab got registered an FIR No.109 of 1987 on the plea that the signatures of the authorities on the allotment letters were allegedly fake. However, after the investigation, this FIR was cancelled by the DSP. Out of the twenty seven allottees, eight persons whose allotments were cancelled in October, 1986 by the Housing Department of the Government of the Punjab, instituted a civil suit challenging the cancellation of their allotments, which suit was decreed in favour of the allottees. The appeal and the civil revision of the Provincial Government Housing Department failed and the matter was then taken up before the Hon'ble Supreme Court of Pakistan through Civil Petitions No.468-475(L) of 1993, which Civil Petitions came up for hearing before the Hon'ble Supreme Court of Pakistan on 07.05.1994 and were also dismissed. The Hon'ble Supreme Court of Pakistan in the judgment finally observed as follows:-

*“The respondents who were plaintiffs in the above eight suits were able to discharge initial burden that they were bona fide allottees of the plots inasmuch as they produced a Hand Writing Expert who*

*proved the signatures of the officers concerned besides producing a number of other documents. It has been pointed out by the Court below that since officers whose signatures were said to have been forged were alive, it was for the petitioners to have summoned them. On the contrary there is ample evidence on the record to show that the allotments were not forged. Since the respondents had discharged their initial burden, the burden was shifted on the petitioners which they failed to discharge. The Courts could not have taken upon themselves to act on behalf of the petitioners for filling in the lacuna in their evidence.*

4. *The finding of the Courts below seems to be in consonance with the evidence on record. Leave is refused."*

The Provincial Government through its Housing and Physical Planning Department initiated another inquiry by appointing one Muhammad Anees Qureshi as an Inquiry Officer in the year 1998 to look into the validity of the allotments and vide inquiry report dated 08.09.1998, another stance was taken by the Housing and Physical Department of the Provincial Government that the transfers made in favour of the allottees were without lawful authority and a recommendation was made for the registration of another FIR No.96 of 1998, which was registered on 28.09.1998 with the Directorate of Anti-Corruption, Gujranwala. The said Inquiry Officer further recommended that as the allottees have got the possession

of the plots allotted to them and have also raised construction over their respective plots, therefore, they be asked to pay the market price of the plots, which be got recovered from the said allottees. Two Writ Petitions No.22210 and 24063 of 1998 were instituted for the quashment of FIR No.96 of 1998, which writ petitions came up for hearing before a learned Single Judge of this Court on 27.09.2000 and the learned AAG made the following statement in the Court:-

"27.09.2000.

*Sardar Muhammad Latif Khan Khosa, Advocate.*

*Uzair Karamat Bhanddari, Advocate.*

*Salma Malik AAG.*

*Ahmad Ali Assistant Director, ACE.*

*Writ Petition No.24063/1998 and 22210/1998 have been submitted for quashment of FIR No.96 dated 28.9.1998 registered by Directorate Anti-Corruption Establishment, Punjab, Lahore for offence under Section 420, 468, 471, 109 read with Section 5(2) of Prevention of Corruption Act, 1947. Notice of the petition was issued to the respondent. The petition was admitted to hearing on 27.6.2000. Learned counsel for the petitioner as well as learned AAG have been heard in the matter.*

*2. Learned AAG on instructions submitted that as far as petitioners or other private persons were concerned, they were declared innocent during investigation conducted and State was not going to prosecute them. It was, however, submitted that public functionaries were definitely involved in the case and that State intended to pursue the matter against them.*

3. *In view of the statement made by the learned AAG the petitions are allowed. Criminal case FIR No.96 dated 28.9.1998 u/s 420, 468, 471, 109 read with Section 5(2) of PCA, 1947 to the extent of petitioners is hereby declared to have been registered without lawful authority and would be of no consequence."*

The Provincial Government still took another turn in the matter in the year 2003 as it was not satisfied with the progress so far made of the issue as it did not result into its favour. Show cause notices were issued by the District Officer, Housing and Town Planning, Gujranwala against the allottees to the following effect:-

*"This office vide memo No.1907 dated 9.10.1997 and memo No.3048 dated 13.11.1997 directed you to attend this office to produce documents/original record, if available, pertaining to the allotment of plot cited as subject. It is regretted to point out that despite a lapse of considerable period, you did not pay attention to any communication of this office.*

*You are hereby served with final show cause notice to produce documents/record to the undersigned during office hours regarding your claim about allotment of above cited plot within 7-days from the issuance of this letter, failing to produce documents/record within the stipulated period, it will be presumed that you have no documents/record to prove yourself genuine allottee of the said plot. Consequently, action permissible under law will be initiated against you to recover the possession of the plot etc."*

WP No.13400 of 2003 was instituted by nine allottees of the plots, who were issued the notices. The prayer was made that the notices dated 04.09.2003 may be declared as without lawful authority and of no legal consequence with a further prayer that the respondents be directed to effectuate the judgment of the Hon'ble Supreme Court of Pakistan passed in Civil Petitions No.468 to 475(L) of 1993.

3. This writ petition was contested by the respondents Government of the Punjab and its Directorate of Housing and Planning Department. Parawise comments were submitted by the respondents No.2, 3 and 4 of the writ petition, who were respectively the Director General, Housing and Physical Planning Punjab, Lahore, the District Officer, Housing and Town Planning/Secretary District Housing Committee and the Sub Engineer, D.H.C., Gujranwala. This writ petition came up for hearing before a learned Single Judge of this Court, who vide judgment dated 19.05.2004 accepted the writ petition with respect to petitioners No.1,2,4,8 and 9 (five persons only) and dismissed the writ petition with respect to petitioners No.3,5,6 and 7. The learned Single Judge directed the District Officer, Housing and Planning Department, Government of the Punjab, Gujrawala to allot the plots to

the successful writ petitioners finally after fulfilment of all the codal formalities and after verification of the record. The four writ petitioners whose writ petition was dismissed by the learned Single Judge preferred the instant ICA No.276 of 2004 against the portion of the judgment dated 19.05.2004, whereby the relief prayed for was declined to them. The Government of the Punjab through the Secretary Housing and Physical Planning along with other official respondents of the writ petition preferred the connected ICA No.281 of 2004 against the judgment dated 19.05.2004, passed by the learned Single Judge in WP No.13400 of 2003 seeking setting aside of the judgment as a whole. Both these ICAs came up for hearing before us today.

4. It is contended by the learned counsel for the appellants of ICA No.276 of 2004 that the case of the appellants stands on equal footings with those of the other writ petitioners of WP No.13400 of 2003, who have been granted relief by the learned Single Judge through the impugned judgment. The learned counsel further submitted that the learned Single Judge while granting relief to five writ petitioners No.1,2,4,8 and 9 observed in paragraph No.8 as follows:-

*“It is evident from the record that petitioners No.1,2,4,8 and 9 are in possession of the plots and they have raised construction thereon. They are in possession of the property for considerable period of time. Presumption would be that they were genuinely allotted the plots, as the Department never took any steps to evict the petitioners from their property. It would be inequitable and unjust, at this stage, to deprive the petitioners of their vested rights. Therefore, the petition is allowed to the extent of petitioners No.1,2,4, 8 and 9 (five persons only) and District Officer, Housing and Planning Department, Government of Punjab, Gujranwala, is directed to allot the plots to the petitioners finally after fulfilment of all the codal formalities and after verification of record. The needful shall be done within six months from today.”*

The learned counsel submitted that the four appellants of ICA No.276 of 2004 have been declined the relief just on the basis of one sentence recorded by the learned Single Judge in the following manner:-

*“As far as rest of the petitioners are concerned, they were unable to satisfactorily establish their claims, therefore, the petition to their extent is dismissed.”*

The learned counsel argued that this one sentence is not based upon any valid reasons for refusing the relief to the appellants by the learned Single Judge. In this context, the learned counsel for the appellants of ICA No.276 of 2004 drew the attention of the Court towards paragraphs No.3 and 4 of the writ petition, wherein the appellants

specifically raised their claim of possession over their respective plots, which fact was not specifically denied in the reply submitted in the parawise comments by the respondents, rather the respondents described the petitioners as unauthorized occupants of the plots and contended that the appellants have raised boundary walls over their respective plots in order to claim the alleged plots. The learned counsel thus concluded that the possession of the appellants was not specifically denied and their construction was also admitted in the parawise comments, therefore, there was no valid basis for the learned Single Judge to decline to them the relief which was allowed to the other five petitioners of WP No.13400 of 2003 through the impugned judgment dated 19.05.2004.

5. The learned counsel for the official appellants of ICA No.281 of 2004, who are also respondents in ICA No.276 of 2004 has contended that the official respondents have validly issued notices against all the writ petitioners as they were illegal occupants of the plots in their respective possession and since only notices were issued against them, therefore, the writ petitions were not competent as no final order was passed against the writ petitioners. The learned counsel therefore prayed for the

acceptance of ICA No.281 of 2004 preferred by the official respondents by setting aside the impugned judgment dated 19.05.2004 and also prayed for the dismissal of WP No.13400 of 2003 as well as that of ICA No.276 of 2004.

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

7. The history of the case reflects that the allotment was made in favour of all the writ petitioners as well as another set of eighteen persons out of which eight persons instituted a civil suit against the official respondents before the learned Senior Civil Judge, Gujranwala, which matter was decided in favour of the plaintiffs by the Civil Court vide judgment and decree dated 06.11.1989, and the judgment and decree was maintained up-till the Hon'ble Supreme Court of Pakistan.

8. The registration of first FIR on the plea that the allotments claimed by twenty seven allottees were bogus and fabricated was disbelieved by the DSP/Investigation Officer and the FIR was cancelled. The official respondents then adopted another method of depriving the allottees of

their allotments by initiating an inquiry, wherein the allottees were called upon to pay the price of the allotted plots and another FIR No.96 was registered in the year 1998 against the allottees in order to cause harassment to them against which FIR No.96 of 1998, two Writ Petitions No.22210 and 24063 of 1998 were instituted before this Court and the learned AAG made a statement to the effect that the petitioners or other private persons (allottees) have been declared innocent during the investigation and the State was not going to prosecute them. Having failed in the first two processes initiated by the official respondents against the private allottees, yet another effort was made by the official respondents by issuing the impugned notices dated 04.09.2003 against the allottees, which were ultimately challenged by the nine petitioners of WP No.13400 of 2003. The learned Single Judge accepted the writ petition of five writ petitioners on the ground that they were in possession of their respective plots and have raised construction thereon and, therefore, the notices issued against those five writ petitioners were declared to be illegal, without lawful authority and *malafide* and the writ petition was accepted to their extent. However, the present four appellants of ICA No.276 of 2004 were denied the relief by the learned Single Judge through a short sentence that

they were unable to establish their claim. This observation of the learned Single Judge is vague and is not based upon any legally sound reasons and is the result of overlooking the admission made by the official respondents in the parawise comments wherein not only possession of the appellants was admitted but even the construction raised by them was specifically described and only it was pleaded that the construction raised have been done illegally in order to justify their claims.

9. We are of the considered view that the case of the present appellants of ICA No.276 of 2004 is not at all distinguishable from the case of other five writ petitioners of WP No.13400 of 2003, who have been granted the relief through the impugned judgment dated 19.05.2004 by the learned Single Judge. We do not find any valid justification in the impugned judgment for declining the relief to the present appellants, who were also co-writ petitioners of WP No.13400 of 2003.

10. The contention of the official respondents of ICA No.281 of 2004 that the WP No.13400 of 2003 was incompetent, because only the show cause notices were issued against them, has no force. We have asked the

learned counsel for the official respondents as to under which provision of law, the impugned show cause notices were issued by the Directorate of Housing and Physical Planning against the writ petitioners, the learned counsel could not refer to any such provision and just made a generalized reply that the Government is vested with the power to get vacated the land/property, which belongs to the Government.

11. The Hon'ble Supreme Court of Pakistan in Civil Petitions No.468-475(L) of 1993 has expressed specific and positive opinion noted and quoted in para 2 above, qua the connected co-allottees whose cases are also at par with the cases of the present writ petitioners as well as of the appellants of ICA No.276 of 2004. The objection of the learned counsel for the appellants of ICA No.281 of 2004 that the writ petitions are not competent against the show cause notices is repelled. It is a consistent law laid down in the reported judgments below that where show cause notices issued are challenged through writ petitions on the plea of being illegal, without lawful authority and biased one, the writ petitions were entertained and were accepted by the Superior Courts:-

- i. *Seven-up Company vs. Kohinoor Thread Ball Factory and 3 others (PLD 1990 Supreme Court 399 (b))*
- ii. *Adamjee Insurance Company Ltd vs. Pakistan thorough the Secretary to Government of Pakistan in the Ministry of Finance, Islamabad and 5 others (1993 SCMR 1798 (a))*
- iii. *Wattan Party through President vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 Supreme Court 697)*
- iv. *Haider Ali Muljee vs. Secretary, Government of Sind (1986 CLC 1136)*
- v. *Pakistan Metal Industries vs. Assistant Collector, Central Excise and Land Customs and another (1990 CLC 1022)*
- vi. *Maple Leaf Cement Factory Limited vs. Collector of Customs, Customs House, Faisalabad (2000 MLD 1989 (a))*
- vii. *Haji Noor-ul-Haq vs. Collector of Customs and others (1998 MLD 650 (c))*
- viii. *Attock Cement Pakistan Ltd. vs. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others (1999 PTD 1892).*
- ix. *Commissioner of Income Tax vs. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 PTD 1392)*

12. Keeping in view the history of the case and the arguments of the parties, we are convinced that the impugned show cause notices issued against all the writ petitioners including the present appellants of ICA No.276 of 2004 were not only illegal and without lawful authority,

but were also issued due to malafides of the official respondents as it was a third attempt made by the official respondents to deprive the writ petitioners of their respective plots. The writ petition was rightly accepted by the learned Single Judge through the impugned judgment dated 19.05.2004. However, the relief granted to the five writ petitioners have been illegally denied to the present appellants. The ICA No.276 of 2004 is, therefore, **ACCEPTED** and the denial of the relief to the extent of the present appellants through the impugned judgment dated 19.05.2004 is set-aside and the WP No.13400 of 2003 in respect of all the writ petitioners is ordered to be accepted granting the relief allowed in writ petition to all the writ petitioners including the present appellants.

13. The ICA No.281 of 2004 is devoid of any merits and is accordingly **DISMISSED**, without any orders as to costs.

(Mian Shahid Iqbal)  
JUDGE.

(Nasir Saeed Sheikh)  
JUDGE.

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Judgment Sheet  
**IN THE LAHORE HIGH COURT AT LAHORE**  
JUDICIAL DEPARTMENT

**ICA No. 281 of 2004.**

**J U D G M E N T**

Date of hearing **14.04.2010.**

Appellants by **Ch. Muhammad Yasin, Advocate.**

**NASIR SAEED SHEIKH, J:-** For the reasons recorded in our detailed judgment of even date passed in ICA No.276 of 2004, the instant ICA is **DISMISSED** without any orders as to costs.

**(Mian Shahid Iqbal)**  
JUDGE.

**(Nasir Saeed Sheikh)**  
JUDGE.