

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

Writ Petition No. 13623 of 2010

Muhammad Ramzan	Vs.	Secretary Housing Physical and Environmental Planning
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JUDGMENT

Date of hearing:	26.1.2016
Petitioner by:	Mr. Tafazzal H. Rizvi, Advocate
Respondents No.1 to 3	Ms. Asma Hamid, Additional Advocate General, Punjab along with Mr. Muhammad Younas Mughal, Director PHATA, Sub- Region, Sahiwal.
Respondent No.4	In person

Muhammad Farrukh Irfan Khan, J.-The petitioner/Muhammad Ramzan applied on 14.1.1982 for allotment of plot No.75-B/F on the basis of “ First come first served” in the scheme launched by the Government of the Punjab, alleging that he was a homeless and landless person. His application remained pending without any action for about three years and ultimately dismissed by the Deputy Commissioner, Sahiwal, vide order dated 2.2.1985 stating that the said plot had allegedly been allotted to one Faiz Ullah and sale deed executed in his favour. However, on the basis of an inquiry report the Deputy Commissioner/Chairman District Housing Committee, Sahiwal cancelled the allotment of additional area of Plot No.75-B/F in the name of the said Faiz Ullah, against which he filed an appeal before the Additional Commissioner (Revenue), Multan Division, Multan. The

petitioner also filed an appeal for allotment of the excess area which was cancelled from the name of Faiz Ullah. After adjudication appeal filed by Faiz Ullah was dismissed while that of the petitioner was accepted through a consolidated order dated 6.2.1991 with the observation that the excess area of 9.51 marlas, which was illegally got merged by Faiz Ullah may be allotted on preferential basis to the petitioner. Faiz Ullah further filed an appeal before respondent No.1 which was also dismissed and the sale deed of the excess area of 9.51 marlas was ordered to be cancelled. In the said order it was however, observed that the original allotment of Plot No.75-A/F, Farid Town Sahiwal, measuring 6.61 marlas would remain intact in his name. Thereafter a civil suit was instituted by Faiz Ullah seeking a declaration that the orders of the Deputy Commissioner/Chairman, District Housing Committee dated 7.4.1990 and orders of the Additional Commissioner (Revenue), Multan Division, Multan dated 6.2.1991 and of the Additional Secretary, Housing Physical and Environmental Planning Department so far as cancelling excess land in his name and allotment of the same in favour of the petitioner be declared as unlawful, void, without authority, illegal and inoperative. The Province of the Punjab and the Housing Department submitted joint written statement whereafter the suit was dismissed by the Civil Judge 1st Class, vide his judgment and decree dated 31.3.1991. An appeal was preferred by Faiz Ullah which was also dismissed by the Additional District Judge, Sahiwal, vide order dated 15.1.2001. Civil Revision No.497/D/2001 filed against the said judgment and decree by Faiz Ullah, was also dismissed in limine by this Court on 29.10.2001. Order of this Court was further challenged in a

Civil Petition No.81-2 of 2002 which was dismissed by the Hon'ble Supreme Court of Pakistan on 6.1.2003 in the following terms:

“The conclusion as arrived at by the learned Civil Judge affirmed by the learned appellate Court and concurred by the learned High Court being well based hardly warrants any interference. There is no question of law of public importance on the basis whereof leave could be granted. The petition being meritless is dismissed and leave refused.”

It is to be noted that the petitioner although was a party in the above said proceedings but he was not represented before the Hon'ble Supreme Court.

2. The petitioner filed Writ Petition No.5965/2007 which was disposed of by this Court on 20.10.2008 with the following observations:

“Heard. This Court, while exercising its constitutional jurisdiction, does not act as an executing court for the implementation of the orders passed by the domestic administrative forums performing quasi-judicial functions under some law. Similarly, in a civil lis, the decrees passed in favour of the litigating parties are to be executed in the mechanism provided in the Civil Procedure Code and not by the High Court under Article 199 of the Constitution. Resultantly, no relief can be granted to the petitioner, however, the order of the Housing Physical and Environmental Planning Department dated 7.12.1991 has attained finality when challenged by respondent No.4 through a civil suit and he lost the matter upto the Honourable Supreme Court, therefore, he is not entitled to retain 9.51 Marlas of the land as stood cancelled from his name, and he has no right to retain it. Resultantly, the petitioner, if so advised, should approach the concerned authorities of the relevant department to seek the implementation of the order, which I am sure shall be done, if so permissible under the law. However, I feel that respondent No.4 should not be allowed the benefit and premium of his wrong and to retain the possession of the land, which has been cancelled from his name and presently it vested in the government. Therefore, a direction is issued to the Secretary, Government of the Punjab, Housing Physical and Environmental Planning Department, to immediately look into the matter and to take all the necessary steps for taking the possession of such land from respondent No.4.

With the above observation, this writ petition is disposed of.”

Whereafter respondent No.1 pursuant to the order of this Court got retrieved 9.51 marlas of land from Faiz Ullah and after cancelling it from his name, as per direction of this Court, offered the said plot of land to the petitioner/Muhammad Ramzan at market value. The petitioner is aggrieved of the demand of price of the plot as per market value by respondent No.1. Hence, this writ petition.

3. During the course of this writ petition Faiz Ullah S/o Muhammad Abdul Ghani moved application (C.M.No.1/2011) under Order I rule 10 of the C.P.C. for impleading him as a party to the proceedings, which was contested by the petitioner. The same was, however, allowed by this Court, vide order dated 31.1.2014. Thereafter said Faiz Ullah was arrayed as respondent No.4 and amended memo. of parties was brought on the record.

4. Learned counsel for the petitioner Mr. Tafazzul H. Rizvi, Advocate vehemently contends that petitioner's right for allotment should be reckoned from the day when his application was dismissed by the Deputy Commissioner, Sahiwal on 2.2.1985, therefore, demand for current market price from the petitioner is illegal. Further submits that as the plot was ordered to be allotted to the petitioner on 7.12.1991, therefore, at best the price prevailing at that time in the market can be demanded from the petitioner. Further argued that the petitioner has been deprived of his right by an illegal occupant, respondent No.4 who kept involved the department into litigation for which the petitioner cannot be penalized by charging from him the current market price. It has further been alleged by the learned counsel that the price prevalent at the time of allotment was Rs.24,000/- per marla. He next submitted

that the petitioner is being meted out with discrimination as in the case of one Javed Sher S/o Ch. Muhammad Bashir who was allotted residential plot on 21.8.2002 in the same scheme has been charged at the rate of Rs.2800/- per marla on 21.8.2008. Added that the demand of current market price is violative of the very purpose of forming the said Housing Scheme, which was established to provide land to low income segment of the society. He reiterated that order for allotment of the disputed plot was passed in favour of the petitioner on 7.12.1991 which could not be implemented and finally he had to file W.P.No.5965/2007 whereafter the respondents issued the impugned letter dated 18.1.2010. He emphatically asserted that the respondents have no authority and jurisdiction to demand present market value from the petitioner as it tantamounts to abuse of authority.

5. On the other hand, learned AAG/ Ms. Asma Hamid, representing respondents No.1 to 3 submitted that the petitioner was never allotted the aforesaid plot and no formal allotment order is available on the file; that the Additional Commissioner (Revenue) in its order dated 6.2.1991 had concluded that the petitioner should be given preference while making allotment of the said plot; that currently no policy of the Government is in vogue whereby allotment could be made to the petitioner; that the prevailing law of Disposal of Land Development Authority Regulation Rules, 2002 gives no mandate to the competent authority to make allotment of area/plot of more than 5 marlas; that a plot measuring 5 marlas or more is to be disposed of through auction; that subsequent to the order of this Court in W.P.5965/2007 the land was resumed from Faiz Ullah by the department and that is still in

possession of the department; that in the interregnum Faiz Ullah submitted appeal to respondent No.1 for allotment of the excess area of 9.51 marlas wherein it was observed that matter of said land has been agitated by him upto the level of Hon'ble Supreme Court but he remained unsuccessful, as such it has attained finality. It is argued by the learned AAG that in Writ Petition No.5965/2007 this Court had not made any adjudication in favour of the petitioner rather issued a direction to the Secretary, Government of the Punjab Housing Physical Planning Department to look into the matter and take all necessary steps for retrieving the land from possession of respondent No.4 and so far as the petitioner is concerned, this Court observed that he, if so advised, should approach the concerned authorities to seek implementation of the order which shall be done if so permissible under the law; that as no right is established in favour of the petitioner the order of respondent No.1 dated 18.1.2010 demanding current market value of the property is in consonance with the law and request of the petitioner to charge price of the land as prevalent in 1991 cannot be entertained at this stage.

6. Learned counsel for respondent No.4 in his written statement and during his arguments has reiterated all the facts and points which he had raised in the first round upto the level of Hon'ble Supreme Court.

7. I have heard the learned counsel for the parties and have minutely perused the record.

8. It is an admitted fact that the petitioner applied on 14.1.1982 for allotment of the disputed plot under Housing Project in District Sahiwal which was initiated under the auspices of Housing & Physical Planning Department, Government of the Punjab on the basis that he was

homeless and landless person. The said application was dismissed by the Deputy Commissioner, Sahiwal, vide order dated 2.2.1985, on the ground that the said plot has already been transferred to one Faiz Ullah through a sale deed. However, on the basis of an inquiry report the Deputy Commissioner/Chairman, District Housing Committee, Sahiwal cancelled the allotment of excess area 9.51 marlas of plot in favour of Faiz Ullah. Against this order both the petitioner and Faiz Ullah filed appeals before the Additional Commissioner (Revenue), Multan Division, Multan, who, vide consolidated order held that Faiz Ullah had got merged excess area of land into his plot illegally which may be resumed and that the petitioner be given preference at the time of allotment of that area. Faiz Ullah filed appeal against the said order before respondent No.1, who also dismissed the appeal and cancelled the allotment and sale deed of excess area measuring 9.51 marlas from the name of Faiz Ullah and passed the following order on 7.12.1991:

“I, therefore, cancel the allotment and sale deed of excess area measuring 9.5 marlas from the name of the petitioner and order that it may be allotted to Mr. Muhammad Ramzan, respondent No.4 after observing departmental formalities.”

It is a matter of record that Faiz Ullah challenged these orders right upto the Hon'ble Supreme Court but he remained unsuccessful throughout.

9. From the above backdrop it envisages that the petitioner was the first and original applicant for Plot No.75/B/F. It is also not disputed that the subject plot was somehow given to Faiz Ullah despite the pendency of the petitioner's application. This does not end here as a subsequent inquiry by the Deputy Commissioner revealed an excess area of 9.51 marlas was illegally and arbitrarily sold out to said Faiz Ullah. On appeal, a preferential right was created in favour of the

petitioner, vide order of the Additional Secretary (Dev.), HP&EP Department dated 7.12.1991 which ordained that the excess area should be allotted to Mohammad Ramzan petitioner after observing departmental formalities. The said order dated 7.12.1991 was upheld by the Hon'ble Supreme Court of Pakistan. The petitioner, prima facie, could not be present during the multifarious litigation foisted upon him by Faiz Ullah, this absence, however, cannot take away from him the right to allotment bestowed upon him by the order dated 7.12.1991 as upheld by the Hon'ble Supreme Court of Pakistan. It is settled law that what has been made conclusive between the parties by section 11 CPC is the decision of the Court and not its reasoning which is not necessarily the same thing as its decision Pir Bakhsh v. The Chairman Allotment Committee (PLD 1987 SC 145). It is emphasized that the order of allotment in favour of the petitioner was neither altered nor modified by any superior fora. All what was required to be done was the observance of departmental formalities which were clearly beyond the control of the petitioner.

10. The respondent No.4 Faiz Ullah thereafter resorted to civil litigation in complete disregard of the finality attached to the order dated 6.1.2003 of the Supreme Court of Pakistan. The petitioner moved for the implementation of the order of 7.12.1991 after the Supreme Court had dismissed the Civil litigation vide order dated 6.1.2003. It is a matter of record that the petitioner's earlier Writ Petition No.5965/2007 was disposed of directing him to approach the concerned authorities for implementation of the said order. Ironically, this court at the relevant time expressed its satisfaction that the said order shall be implemented if permissible under the law. The respondents have urged before me that

order dated 7.12.1991 cannot be implemented owing to the Land Development Authority Disposal Rules, 2002. This argument has no force. Firstly, because the said Rules, being subordinate legislation, cannot be allowed to operate retrospectively. Moreover, the provision of section 6 of the General Clauses Act requires the pending *lis* to be decided in accordance with the applicable law in vogue at the time of the initiation of the same/said *lis*. Reliance is placed on the cases of *M.C.B. Bank Ltd., Karachi v. Abdul Waheed Abro and others* (2016 SCMR 108), *Manzoor Ali and 39 others v. United Bank Ltd. through President* (2005 SCMR 1785), *Mubarak Hussain and others v. Government of Pakistan through Secretary, Rehabilitation and Works Division, Islamabad and others* (1997 SCMR 190), *Dad Muhammad and another v. Additional District Judge-I, Quetta and others* (1996 SCMR 1688) and *Muhammad Tariq Badr and another v. National Bank of Pakistan and others* (2013 SCMR 314). Besides, if at all someone is responsible for the denial of the petitioner's right it is the respondents themselves. They certainly cannot be allowed to reap the benefit of their own inaction. In this regard reliance is placed on the cases of *Abdul Rehman Chaudhry v. Deputy District Officer (Revenue), Lahore Cantt. and 2 others* (2005 YLR 264) and *Sharafat Ali v. Government of Punjab through Chief Secretary and 3 others* (2005 YLR 1844).

11. As regards the departmental demand for the payment of the current market value, the same is also without any lawful basis inasmuch as the respondents have failed to explain as to how during the pendency of the application of the petitioner for the allotment of the plot it could be given to Faiz Ullah? It has also not been made clear as to

what action was taken by the department pursuant to the order dated 7.12.1991. Even till date nothing has been placed on file to show that any demand or other correspondence was addressed to the petitioner and he failed to respond to the same. Admittedly, Faiz Ullah was an employee of the relevant department, who succeeded in maneuvering the allotment of the plot in his favour in sheer disregard of the rights of the petitioner. He subsequently litigated for the excess land for a very long period and that too before each and every forum. Prima facie, no inquiry into this whole episode was undertaken in the true perspective. It, therefore, does not lie in the mouth of the respondents to deny the right of the petitioners on the force of the aforementioned arguments. The petitioner has not been shown to be in default of any demand made from in compliance of the order dated 7.12.1991.

12. So far as respondent No.4 is concerned despite having adverse order against him in protracted litigation which finally culminated in C.P.No.82-L/2002 the said respondent had audacity to again oppose W.P.No.5965/97 and ICA No.449/08 which has been dismissed by the Division Bench in the following manner:

“The question of title has been settled right up to by the Apex Court. Learned counsel for the appellant has been unable to show any right, title or interest to the land in dispute. Hence, the observations/directions issued by the learned Judge of this Court by means of impugned order are totally unexceptionable. Even otherwise, Muhammad Ramzan has not been impleaded as a party. In this view of the matter, no case for interference made out. This ICA being misconceived and devoid of any merit stands dismissed accordingly.”

The written statement filed by respondents No.4 reiterates and recites the same questions which have already been adjudicated upon by the Hon'ble Supreme Court. This Court is not competent to review or

comment upon any order passed by Hon'ble Supreme Court of Pakistan. Hence, raising the same questions and issues again in this Court which have been conclusively decided upto the level of the Hon'ble Supreme Court is contumacious in nature. On account of wasting the time of this Court respondent No.4 is burdened with cost of Rs.25,000/- (Rupees twenty-five thousand), which shall be deposited by him in the "Bait-ul-Mall", Punjab within 120 days of passing of this judgment. In case he fails to deposit the costs as directed by this Court it will be recovered from him as arrears of land revenue and deposited as aforestated.

13. As a necessary corollary of the above discussion, this petition is allowed and respondents No.1 to 3 are directed to allot Plot No.75-B/F, Farid Town, Sahiwal, measuring 9.51 marlas, to the petitioner in implementation of order dated 7.12.1991 of the Additional Secretary, Government of the Punjab, Housing Physical and Environmental Planning Department, and to charge from him the market price which was prevalent at the time of passing of the aforesaid allotment order.

(MUHAMMAD FARRUKH IRFAN KHAN)
JUDGE

APPROVED FOR REPORTING:

Rafiq*