

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3640 of 2019
Munawar Sultan and others
Versus
Defence Housing Authority and others

Date of Hearing:	12.07.2021
Petitioners by:	Raja Muhammad Tariq Khan, Advocate for the petitioners in W.P. No.3640/2019 Mr. Abdul Sattar Chohan, Advocate for the petitioner in W.P. No.1094/2021.
Respondents by:	Barrister Gohar Ali Khan and Malik Shaukat Mahmood, Advocate for DHA.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3640/2019 and 1094/2021 since they entail common questions of law and fact.

2. Through the instant writ petition, the petitioners impugn the un-dated notice from the Defence Housing Authority (respondent No.1) (“DHA”) calling upon them to clear the service development charges by 31.10.2019 in accordance with the schedule to the said notice.

3. Learned counsel for the petitioners submitted that in reliance on the representations made by the DHA in the advertisement dated 19.11.2008 and the brochure containing the terms and conditions for allotment of plots in the DHA Valley Project, Islamabad, the petitioners applied for the allotment of plots; that the said advertisement provided that payment for the plots would be made in installments over a period of three years; that the petitioners have paid all the installments for the plots allotted to them; that the payments made by the petitioners also included service development charges; that although the petitioners were allotted plots after a balloting process, however, possession of plots has not been given to them; that no development at the site has taken place despite a lapse of several years; that the DHA has conducted a re-balloting resulting in the location of the petitioners’ plots to be changed; that nothing remains payable by the petitioners to the DHA for the plots; and that the DHA’s demand for service development charges through the impugned notice is

unjustified and motivated by the DHA to enrich itself. Learned counsel for the petitioners prayed for the writ petition to be allowed and for the impugned notice for the demand of additional service development charges to be set-aside.

4. On the other hand, learned counsel for the DHA submitted that only provisional allotment letters were issued to the petitioners in the year 2010; that the Project was almost completed in the year 2010 but on 17.05.2010, a petition was filed before the Hon'ble Supreme Court by Lt. Col. (Retd.) Muhammad Tariq Kamal wherein it was alleged that the DHA Valley Project was being established on the site of Dadhocha Dam; that the said complaint was registered as Human Right Case No.26054-P/2010; that during the pendency of the said case, notifications dated 02.11.2010 under Section 4 of the Land Acquisition Act, 1894 ("the 1894 Act"), was issued by the office of the District Officer (Revenue) Rawalpindi, which was published in the official gazette on 03.11.2010; that a substantial portion of the land acquired pursuant to the said notifications was where the DHA Valley Project was to be established; that a report regarding the acquisition of land for the proposed site of Dadhocha Dam was submitted by the Chief Secretary, Government of the Punjab before the Hon'ble Supreme Court; that in order to avoid any inconvenience being caused to the allottees of plots in the DHA Valley Project, the DHA proposed in the proceedings before the Hon'ble Supreme Court that the said Project should be allowed to be completed, and that the DHA would take the responsibility of constructing the Dadhocha Dam; that this proposal was not accepted; that vide order dated 19.07.2012, the District Coordination Officer, Rawalpindi called upon the DHA to stop further construction work on the land which was being acquired; that the acquisition of the land where the DHA Valley Project was to be established caused the DHA to make a new layout plan; that no existing allottee has been deprived of his / her plot; that no new allottees have been brought in as a result of submission of the new layout plan; that 1,633 plots in the DHA Valley Project have been affected due to the acquisition of land for the Dadhocha Dam, whereas the captioned writ petition has been filed only by 67 allottees; that other than the petitioners, all other allottees have agreed to pay

the service development charges which are only for the purpose of providing utilities and development work; that for an eight-marla plot, the service development charges are Rs.4,25,000/- payable over a period of three years in 12 installments; that the delay in the completion of the DHA Valley Project is not attributable to the DHA; and that the petitioners cannot escape their liabilities to pay the service development charges. Learned counsel for the DHA prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The advertisement dated 19.11.2008 issued by the DHA clearly shows that the consideration for the five-marla and eight-marla plots in the DHA Valley Project was to be paid by easy installments spreading over three years. The provisional allotment letters, brought on record, were issued to the petitioners in the year 2010. All the installments for the plots allotted to the petitioners have been paid. The petitioners' case is that they should be given possession of their plots and the demand of service development charges by the DHA through the impugned notice is unlawful.

7. The vital question that needs to be answered is whether the inordinate delay in the handing over of possession of developed plots to the petitioners is for reasons attributable solely to the DHA. It is not disputed that the proposed site of the DHA Valley Project overlaps the catchment area of Dadhochha Dam. The authenticity of the notifications dated 02.11.2010 issued by the office of the District Officer (Revenue) Rawalpindi have not been disputed by the petitioners. It is also an admitted position that some of the land which is the subject matter of these notifications is where the DHA Valley Project is to be established. The mere fact that the District Coordination Officer, Rawalpindi, vide letter dated 19.07.2012 stopped all development and construction work at the site where Dadhochha Dam was to be established and with respect to which notifications under Section 4 of the 1894 Act had been issued go to show that the DHA had continued the development work at the site despite the issuance of the said notifications.

8. The DHA has brought on record documents which show that a public interest litigant had filed an application before the Hon'ble Supreme Court, wherein it was alleged that a housing project was being established by the DHA on the site of the proposed Dadhocha Dam. The said complaint was registered as Human Right Case No.26054-P/2010. The report submitted by the Chief Secretary, Government of the Punjab before the Hon'ble Supreme Court shows that the Dadhocha Dam was an inevitable project to augment the much needed water supply scheme for Rawalpindi. Furthermore, in the said report, it is mentioned that the DHA had, by developing a housing scheme on the proposed site of the Dadhocha Dam, ignored the overall requirements of the city of Rawalpindi. The Government of Punjab's point of view was that in case the development of a housing scheme by the DHA is allowed to be continued, the people of Rawalpindi shall be deprived of their water requirements and the loss would be irretrievable. This report was submitted on 28.10.2010.

9. Subsequently, on 02.11.2010, the office of the District Officer (Revenue) Rawalpindi issued three notifications under Section 4 of the 1894 Act for the acquisition of the land for the construction of Dadhocha Dam. A report to this effect was submitted before the Hon'ble Supreme Court by the Chief Secretary, Government of the Punjab on 03.01.2011. In the said report, it was mentioned that it would be ensured that the proposed site of Dadhocha Dam and its catchment area is free from all types of encumbrances for the purposes of the construction of the Dam. Since the development work on the said site continued, the District Coordination Officer, Rawalpindi, vide order dated 19.07.2012 stopped all construction and development work at the site proposed to be acquired.

10. Now, the petitioners have also not disputed that the DHA's stance that 1,633 plots in the DHA Valley Project have been adversely affected by the land acquisition proceedings. Where the change in the layout plan is necessitated due to some of the land of the proposed site of the DHA Valley having been acquired, the DHA is not to be blamed. Therefore, I am of the view that the delay in the completion of the DHA Valley Project is not for reasons entirely attributable to the DHA.

11. The provisional allotment letters issued to the petitioners also contained the terms and conditions of the allotment. One of the conditions is that the allottee shall be liable to pay the proportionate cost of any facility provided by the DHA for the maintenance of the infrastructure etc. Bearing in mind the circumstances which caused the delay in the completion of the DHA Valley Project, I am of the view that there is nothing unreasonable in the demand made by the DHA for the payment of service development charges of Rs.4,25,000/- payable in three years for an eight-marla plot in 12 installments.

12. The prayer made by the petitioner in writ petition No.1094/2021 that the DHA be directed to accept the last installment for the plot allotted to him in the said case and to compensate the petitioner for the delay in the completion of the project or to accommodate him in another developed project of the DHA cannot be granted by this Court in exercise of the jurisdiction under Article 199 of the Constitution.

13. In view of the above, I do not find any merit in these petitions which are accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 28.07.2021.

(JUDGE)