ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 459 of 2019

Zahid Iqbal Kiyani and others

Versus

Capital Development Authority through its Chairman, Islamabad and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	16.03.2021	**Qaiser Imam Ch., Advocate for the appellant.** **Malik Javed Iqbal Wains, Advocate for the respondent/CDA.**

TARIQ MEHMOOD JAHANGIRI, J: The instant Intra Court Appeal has been filed against order dated 11.11.2019 passed by learned Single Judge-in-Chambers, whereby writ petition filed by the appellants was dismissed in *limine*.

02. Brief facts of the case are that the appellants filed the writ petition with the grievance that land measuring 295 Kanals and 3 marlas situated in Revenue Estate Saidpur, Islamabad was owned by appellants' predecessor –in-interest namely, Manna Khan s/o Muhammad Akbar Khan; that the said land was acquired through award dated 10.02.1965 and compensation under the award was paid by C.D.A; that the appellants were also entitled to the benefits under the 1996 Policy; that no agro-farm or residential plot was allotted to the appellants; that the appellants moved an application to CDA for allotment of plot but no response was given; that similarly placed

affectees were allotted plots but the appellants were treated with discrimination; and that by not extending the benefit under the 1996 Policy, C.D.A has violated the appellants rights under Articles 9 and 14 of the Constitution.

03. Learned Counsel for the Appellants has submitted that impugned order passed by the Hon'ble Single Judge-in-Chambers is based on surmises and conjectures; that the impugned order has been passed in a hasty manner and has prayed that the order passed by learned Single Judge-in-Chambers be set-aside.

04. On the other hand, learned Counsel for the Respondents has controverted the arguments advanced by the learned Counsel for the appellants and has submitted that the appeal is time barred and there is no application of the appellants for allotment of residential plots on record of the respondents. Learned Counsel for the Respondents has further contended that the appellants have not produced any evidence / document which shows that they are the legal heirs of Manna Khan s/o Muhammad Akbar Khan and has prayed for the dismissal of the appeal.

05. We have heard the contentions of the learned Counsel of both the parties and perused the record with their able assistance.

06. According to the contents of the writ petition the land of the predecessor-in-interest of the appellants was acquired in year 1965,

whereas, the appellants being the legal heirs submitted an application to C.D.A for allotment of plots etc. on 13.06.2019 and have filed the writ petition on 20.11.2019. The appellants kept silent for a very long period of more than fifty (50) years, hence, the writ petition was badly barred by time and was hit by the Principle of Laches. In the case titled "*Ahmed and 25 others VS. Ghama and 5 others reported as 2005 SCMR 119",* it is held by the Hon'ble Supreme Court of Pakistan that *"there is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition"*. It is further held that "*We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case.* The same principle is followed in "*2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514"*.

07. The instant appeal is time barred. It is settled principle of law enunciated by the Hon'ble Supreme Court of Pakistan in a case titled as "*Water and Power Development Authority" (1988 SCMR 1354), "it is well settled that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted*

for". The same law has been laid down in the recent authoritative judgment of larger bench of the Honb'le Supreme Court of Pakistan titled as ***"Khushi Muhammad and others V. Mst. Fazal Bibi and other" (PLD 2016 SC 872).***

08. The claim of the appellants is regarding the allotment of residential plots in their names which was refused by Capital Development Authority. Section 22 of the Islamabad Land Disposal Regulation, 2005 provides:

> *"**Appeal.-** Any person aggrieved by an order may within 3 Months of such order, appeal to the Board whose decision shall be final."*

But appellants instead of availing remedy of appeal before the Board, filed a Constitutional Petition before this Court, which was dismissed *(in an identical case, it was held in a case titled as **"Raja Fida-ur-Rehman and 4 others –versus- Capital Development Authority, Islamabad through Chairman"** (**1996 MLD 1573)** by a Division Bench of Hon'ble Lahore High Court that intra court appeal is not maintainable, hence, the same was dismissed).*

9. Section 3 of the Law Reform Ordinance provides that *"no appeal shall lie, if the application brought to High Court under Article 199 arises out of "Any Proceedings" in which the law applicable provided at least one appeal or one revision or one review to any Court Tribunal or authority*

*against the "Original Order". Therefore, the instant appeal is hit by the afore-referred provision of Law Reforms Ordinance. Reliance is place on "**Deputy Commissioner / Administrator, District Council Attock and another V. Lawrencepur Woolen Textile Mills Ltd" (1999 SCMR 1357)**, "**Iqan Ahmed Khurram V. Government of Pakistan and others" (PLD 1980 SC 153)**, "**Mst. Karim Bibi and others V. Hussain Bakhsh and another" (PLD 1984 Supreme Court 344)**, "**Muhammad Abdullah V. Deputy Settlement Commissioner, Centre-I, Lahore" (PLD 1985 Supreme Court 107)**.*

10. In view of the foregoing reasons, the instant Intra Court Appeal is not maintainable, hence, the same is hereby dismissed.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh