JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.74 of 2020

M/S AL-SAFA GOLDEN CO. (PVT.) LTD.

VERSUS

CAPITAL DEVELOPMENT AUTHORITY AND OTHERS

Appellant by	:	Mr. Wasim Sajjad, Sr. ASC. M/s Idrees Ashraf, Barrister Hanan Alam, and Ahmad Raza Mangat, AHC.
Respondents by	:	Mr. Aamir Latif Gill, ASC. M/s Sabeen Faheem, and Rizwan, AHC.
Date of Hearing	:	09-07-2024.

SAMAN RAFAT IMTIAZ, J.:-

1. The instant Regular First Appeal has been filed by the Appellant [M/s Al-Safa Golden Company (Pvt.) Ltd.] to assail the Judgment and Decree dated 22-1-2020 ("**Impugned Judgment and Decree**") passed by the learned Civil Judge 1st Class (West), Islamabad ("**Trial Court**"), whereby the Suit filed by the Appellant was dismissed.

2. The facts relevant for the disposal of the instant appeal are that the Respondent No.1/CDA [Capital Development Authority, Islamabad] published an Advertisement for the auction (Ex.P1) ("**Advertisement**") of Plot No.5 Markaz F-7, Islamabad ("**Subject Plot**") measuring 3777.78 square yards, (DHS) with Floor Area Ratio ("**FAR**") of 1:5. The Appellant participated in the bidding process and was declared the successful bidder. The Respondent No.2 [Director, Estate Management-II, CDA] issued the Allotment Letter dated 19-05-2010 (Ex.P6) whereby the Subject Plot was allotted to the Appellant subject to certain conditions including FAR of 1:2; two basements; and ground plus four mixed

Certified

commercial and residential storeys. The possession of the Subject Plot was handed over to the Appellant vide Certificate of Possession dated 27-05-2010 (Ex.P7/2-2).

3. On 11-6-2010 the Appellant submitted the building plan for construction on the Subject Plot for approval for Ground plus 7 floors with three basements after deduction of common/circulation area. The Respondent No.3 [Director, Building Control Section, CDA] intimated the Appellant vide letter dated 14-6-2010 (Ex.P9) that the proposed building plan is contrary to the bye-laws specified in Allotment Letter dated 19-05-2010 (Ex.P6) whereby ground plus four with two basements have been allowed only without mention of deduction of common/circulation area. Therefore the Appellant was requested to either amend the plan according to the bye laws or to obtain formal permission for enhanced facility/relaxation of the bye laws.

4. The Appellant wrote a letter dated 16-6-2010 (Ex.P10) to the Deputy D.G. Building Control, CDA seeking deduction of circulation/common area and removal of capping of number of storeys. The Director, Urban Planning Wing, CDA vide letter dated 27-08-2010 (Ex.P11/3-5) addressed to the Appellant and copied to the Deputy D.G. (Planning), Deputy D.G.; Building Control Section; Respondent No.2; Deputy Director (Land Survey Division); P.S. to Member (Planning and Design); and P.S. to FA/Member approved the construction of two basements while informing that the issue regarding deduction of circulation area from the permissible covered area is to be looked into by the Building Control in light of the Board Decision in the case of Avari Hotel.

5. The Respondent No.3/CDA in its Letter dated 8-10-2010 (Ex.P16) copied to the Director EM-II; P.S. to Chairman, CDA; PS to Member Estate; PS Member P&D; PS to Member Finance; Mr. Abdul Qayyum [CEO of the Appellant]; and the Architect [of the Subject Plot] stated that the matter regarding deduction of circulation area from permissible covered area was discussed in the office of the Chairman, CDA and

looked into in light of the Board Decision in the case of Avari Hotel as well as for Marakiz and it has been decided to exclude the circulation/service area from the permissible area in case of the Subject Plot thus removing the cap on the number of storeys.

6. Accordingly, the Building Plan consisting of three Basements + Ground + 7 Floors and Top Floor with Mumty was approved by the Deputy Director, Building Control Section, CDA vide letter dated 09-04-2011 (Ex.P12).

7. Notwithstanding the foregoing, the Respondent No. 3/CDA issued Notice dated 18-1-2012 (Ex. D/2) to the Appellant under Section 49-C sub clause (1) of the CDA Ordinance No. XXIII of 1960 in respect of the Subject Plot alleging violation of Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 ("**Building Control Regulations, 2005**"). The Respondent No. 3/CDA also issued Notice (Ex. D/4) of even date to the Architect and Structural Engineer. Thereafter another letter was issued by the Respondent No.3/CDA on 20-1-2012 (Ex. D/3) stating that for any additional storey the Appellant was required to apply to the Planning Wing, CDA.

8. The Appellant submitted revised plans for the Subject Plot on 02-02-2012 (Ex. P14) and 30-8-2012 (Ex.P13) to Respondent No.3/CDA. The Respondent No.3/CDA issued Letter dated 16-11-2012 (Ex.P17) to inform the Appellant that its request for readjustment of permissible covered area/FAR was presented before the Design Vetting Committee ("**DVC**") in its meeting held on 30-10-2012 and it was approved. The Deputy Director, Estate Management-II, CDA vide its Letter dated 12-2-2013 (Ex.P18) instructed the Appellant to pay the outstanding premium of the Subject Plot.

9. Subsequently, the Respondent No. 3/CDA again issued Letters dated 17-2-2014 and 5-3-2014 (Ex.P25) alleging *inter alia* deviation from the approved plan. The Respondent No.3/CDA then issued a Show Cause Notice dated 24-4-2014 (Ex.P25) under Section 49-C sub clause (1) of the

CDA Ordinance No. XXIII of 1960 as to why the illegal/unauthorized construction at the Subject Plot may not be removed/demolished on account of *inter alia* deviation from the approved plan. Vide Letter dated 23-4-2015 (Ex.P26) the Deputy Director, Respondent No. 3/CDA suspended the approval granted for the adjustment of FAR by alleging deviation from the condition on which the approval was granted.

10. Being aggrieved of the suspension of the revised approved plan the Appellant filed Writ Petition No. 1458 of 2015 before this Court, however, the same was dismissed vide judgment re: *M/s Al-Safa Golden Co. (Pvt.) Limited VS. Capital Development Authority through its Chairman,* 2015 PLJ 395 Islamabad (Ex.P53). Consequently, the Respondent No. 3/CDA issued Letter dated 23-7-2015 (Ex.P27/4-4) with the direction to remove the un-authorized construction at top floor within 7 days.

11. On 27-7-2015 (Ex.P28) the Assistant Director, Building Control Section, CDA sealed the Subject Plot due to the alleged violations of the approved building plan, etc. The Appellant filed a Civil Suit for Declaration, Permanent and Mandatory Injunction along with an application under Order XXXIX, Rules 1 and 2, CPC, and further prayed for de-sealing the premises before the learned Trial Court. The learned Trial Court dismissed the application under Order XXXIX, Rule 1 and 2, CPC vide its Order dated 30-7-2016. The Appellant assailed the said order in appeal, however, the appeal was also dismissed vide the Order dated 3-8-2016.

12. Being aggrieved, the Appellant preferred Civil Revision No. 320/2016 before this Court whereby this Court de-sealed the premises with certain conditions vide order dated 15-8-2015 (Ex.P49). This Court vide Order dated 30-8-2016 (Ex.P49) in Civil Revision No. 320/2016 directed the Appellant to approach the Member (Planning), CDA for resolution of the dispute regarding construction of the 8th floor.

13. Pursuant to the said Order the Respondents/CDA convened meetings on 21-9-2016 (Ex.P32) and 7-10-2016 (Ex.P33). The Respondents/CDA decided to cancel the lease of the Appellant as reflected in the Summary for Regularization dated 14-11-2017 (Ex.P31). Thereafter the Respondents/CDA issued Cancellation of Allotment Letter dated 3-1-2018 (Ex.P35) ("**Cancellation Letter**") informing the Appellant that the Board of the Respondents/CDA in its meeting held on 14-11-2017 have decided to cancel the allotment of the Subject Plot due to the violation of the building bye-laws and construction of building in violation of rules/permissible FAR.

14. Being aggrieved, the Appellant filed the Suit for declaration and Permanent Injunction ("**Subject Suit**") before the learned Trial Court. The Respondents/CDA filed its written statement on 24-01-2018. Vide order dated 20-9-2019 the learned Trial Court framed following issues:

I. Whether the order of cancellation of lease agreement passed by defendant on 3-1-2018 is illegal, void and contrary to law? OPP

II. Whether the plaintiff has made substantiate violation of terms and conditions of allotment and rules, therefore, his allotment letter dated 19-5-2010 is liable to cancelation? OPD

III. Relief.

The parties led their respective evidence. The learned Trial Court after hearing both the sides passed the Impugned Judgment and Decree dated 22-01-2020 whereby the Suit filed by the Appellant was dismissed. Hence, this Appeal.

15. The learned counsel for the Appellant argued that the real reason for the issuance of the Cancellation Letter was the reference filed by the National Accountability Bureau ("**NAB**") against various CDA officials i.e. (i) Ghulam Murtaza Malik, Director General, BCS, CDA; (ii) Ammar Idrees, Deputy Director BCS, CDA; (iii) Khalil Ahmed, Director BCS, CDA; and (iv) Khadim Hussain, Assistant Director, BCS, CDA as well as Rana Abdul Qayyum, CEO of the Appellant. In this regard he

specifically highlighted the minutes of the meeting held on 21-9-2016 (Ex.P32) wherein it has been recorded that the Member (Planning) CDA conceded that approval was duly granted by CDA as an institution by officers responsible for according the said approvals however there is now an inquiry being conducted against the same officers who accorded those approvals. He relied upon Regulation 3.8.1 of the Building Control Regulations, 2005 according to which a written document along with the approved plan and working drawings signed by the Deputy Director, Respondent No.3/CDA purporting to convey or set forth his sanction, permission approval, order shall be sufficient *prima facie* evidence of the doing of anything under the Regulations which depends upon the sanction, permission, approval or satisfaction of the Respondents/CDA. He emphasized that as per Letter dated 8-10-2010 (Ex.P16) the matter regarding deduction of circulation area from permissible covered area was discussed in the office of the Chairman CDA and it was looked into in light of the Board Decision in the case of Avari Hotel as well as for Marakaz and it was decided to exclude the circulation/service area from the permissible area in case of the Subject Plot thus removing the cap on the number of storeys. He highlighted that by way of the Letter dated 16-11-2012 (Ex.P17) the Respondent No.3/CDA informed the Appellant that its request for readjustment of permissible covered area/FAR was presented before the DVC in its meeting held on 30-10-2012 and it was approved. Thus he submitted that the construction carried out by the Appellant at the Subject Plot was with approval of the Respondents/CDA and in case such approvals were given in violation of any law the Petitioner is protected by the doctrine of 'indoor management'.

16. He also drew the Court's attention to the admissions made by DW-2 i.e. Director BCS-I, CDA on cross-examination whereby it was admitted that the Appellant had made an application for exclusion of circulation area and utility areas from the calculation of FAR which was forwarded to the Planning Wing, CDA who in turn opined that the matter would be decided in light of Avari Hotel. DW-2 also confirmed that it is correct that Respondents/CDA has constituted the DVC whose 10

Members looked at the maps of the Appellant and recommended the same for approval. DW-2 also confirmed that he did not recommend cancellation of plot in the summary prepared for the Board. The learned counsel for the Appellant objected that the Impugned Judgment and Decree has not considered the oral testimony on the record at all.

17. He submitted that in any event the Respondent No. 3/CDA by way of Letter dated 23-7-2015 (Ex.P27) directed the Appellant to remove only the un-authorized construction on the top floor i.e. 8th floor. He also referred to the minutes of the meeting held on 7-10-2016 (Ex.P33) to show that the only issue was in respect of the 8th floor. He contended that there was no show-cause notice issued for cancellation of the Subject Plot and the findings in the Impugned Judgment in this regard is against the record. He highlighted that the 2 notices dated 18-1-2012 treated as show cause notices by the learned Trial Court do not specify cancellation of plot as a consequence. He also highlighted that cancellation may be carried out by EM-I and EM-II in routine cases whereas disputed cases shall be decided by Member (Admin) and the appeal against the order of cancellation of allotment of plot may be made to the Member (Admin) within 3 months of cancellation whereas in the case of the Appellant the matter was decided by the Board of the Respondents/CDA before whom the appeal would lie. Lastly, he contended that the Cancellation Letter is devoid of reasons. He relied upon judgment reported as unreported judgments of the Supreme Court titled as *M/s Golden Tea Company Vs. Capital Development Authority through its Chairman*, Civil Appeal No. 168 of 2018; and *Sarmad Faraz Vs. Capital Development Authority (CDA), Islamabad through its Chairman*, Civil Appeal No.1265 of 2018.

18. Conversely, the learned counsel for the Respondents/CDA submitted that FAR is to be calculated as laid down in Schedule I to the Building Control Regulations 2005 as per Regulation 2.4.1 and that any excess covered area beyond the prescribed limits in Schedule I shall be demolished as per Regulation 2.4.2. He argued that since FAR was to be 1:5 in the RFQ any approval given in violation thereof was unlawful. The

learned counsel submitted that pursuant to Regulation 2.4.3 deviation of rule up to a maximum of 5% is subject to approval of the Respondents/CDA in advance and charges whereas the relaxation given to the Appellant exceeds such upper limit and as such was in contravention of the Building Control Regulations, 2005. He contended that the matter regarding enhancement of FAR in respect of the Subject Plot could not have been submitted to the DVC as the DVC had no authority in this regard and in fact only the Board of the Respondents/CDA could have granted such approval as in the case of the Avari Hotel. He contended that there can be no estoppel against the law and as such an illegality cannot be allowed to persist even if the Appellant was not at fault if the approval was granted in contravention of the applicable regulations. He submitted that such principle is enshrined in Regulation 3.1.1 which provides that the granting of a permit of approval of the drawing and specifications shall in any way relive the owner/allottee from full responsibility for carrying out the work in accordance with the requirements of the bye-laws. He relied upon Regulation 19 of the Islamabad Land Disposal Regulations, 2005 to submit that allotment of a plot can be cancelled *inter alia* on account of violation of Building, Zoning and other Regulations, and other instructions of the Authority. He relied upon judgments reported as *Punjab Provincial Cooperative Bank Limited Vs. Member (Colonies) Board of Revenue Punjab, Lahor*, 2023 CLC 1331; *Ch. Munir Ahmad Vs. Government of Punjab through Chief Secretary, Punjab Lahore*, PLD 2022 Lahore 384; *Justice Muhammad Farrukh Irfan Khan, Judge Lahore High Court Vs. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs Division*, PLD 2019 SC 509; *Shahid Chanzaib Vs. C.D.A.*, 2017 YLR 411; *Sajjad Ahmed Vs. Chairman, Capital Development Authority*, 2016 CLC 896; *Messrs Al-Safa Golden Co. (Pvt..) Limited Vs. Capital Development Authority*, 2016 CLC 210; *Suo Moto Case No. 13 of 2009: Action on press clipping from the Daily "Patriot", Islamabad dated 4-7-2009 regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (MPCHS) for development of*

land in Sector E-11 Islamabad, PLD 2011 SC 619; *Ignees Maria Vs. District Coordination Officer, District Bahawalnagar*, 2012 PLC (C.S.) 772; *Muhammad Shamim Vs. Mst. Nisar Fatima*, 2010 SCMR 18; *Farooq Hamid Vs. L.D.A.*, 2008 SCMR 493; *Muhammad Sidiq Vs. Punjab Service Tribunal, Lahore*, 2007 SCMR 318; *Nazir Ahmad Panhwar Vs. Government of Sindh through Chief Secretary*, 2005 SCMR 1814; *Capital Development Authority Vs. Zahid Iqbal*, PLD 2004 SC 99, *Ayesha Afzal Vs. Chairman, Board of Intermediate and Secondary Education*, 2001 CLC 1765; *Jamil Ahmed Vs. Karachi Building Control Authority*, 2001 MLD 1635; *Ardeshir Cowasjee Vs. Karachi Building Control Authority*, 1999 SCMR 2883; *Muhammad Khurshid Abbasi Vs. Administrator/Assistant Commissioner, Municipal Committee, Murree*, 1999 SCMR 2224; *Mir Afzal Khan Vs. Karachi Development Authority*, PLD 1998 Karachi 283; and *Pakistan through Secretary, Ministry of Commerce Vs. Salahuddin*, PLD 1991 SC 546.

19. In rebuttal, the learned counsel for the Appellant submitted that promissory estoppel is not attracted as the calculation of FAR is an executive decision and not statutory. He relied upon *Capital Development Authority, CDA Vs. Ahmed Murtaza* , 2023 SCMR 61 to argue that where CDA officers have acted in contravention of their own policy they cannot expect the court to correct their wrongs.

20. I have heard the arguments advanced by learned counsel for the parties and perused the record with their assistance. The points for determination which arise in the instant appeal are as follows:

(i) Whether the learned Trial Court erred in concluding that the two notices dated 18-1-2012 produced as Ex.D/2 and Ex.D/4 constituted Show Cause Notices against cancellation of allotment of the Subject Plot?

(ii) Whether the learned Trial Court erred in concluding that cancellation of allotment of the Subject Plot by the Respondents/CDA was not illegal, void and contrary to law by taking into consideration grounds not mentioned in the Cancellation of Lease Order dated 3-1-2018 (Cancellation Letter)?

(iii) *Whether the Trial Court erred in concluding that the case of Avari Hotel was absolutely different from the instant case for purposes of granting approval for enhancement of FAR?*

(iv) *Whether the Trial Court erred in failing to consider the effect of an approval once given by a public authority?*

(v) *Whether an approval granted by a public authority can be revoked/withdrawn/cancelled/rescinded?*

(vi) *Whether deviation of FAR is illegal?*

(vii) *Whether the Respondents/CDA's approval for enhancement of FAR by excluding common/circulation areas by following the Avari Hotel precedent was without jurisdiction?*

(viii) *Whether violations of the Building Control Regulations, 2005 could result in cancellation of the allotment of the Subject Plot?*

(ix) *Whether the learned Trial Court erred in concluding that cancellation of allotment of the Subject Plot was justified due to the violation of Regulation 2.8 of the* Building Control Regulations, 2005*?*

21. I will now take up each of the points for determination in seriatim:

(i) *Whether the learned Trial Court erred in concluding that the two notices dated 18-1-2012 produced as Ex. D/2 and Ex. D/4 constituted Show Cause Notices against cancellation of allotment of the Subject Plot?*

22. The learned Trial Court has held that the notices dated 18-1-2012 produced as Ex. D/2 and Ex. D/4 constitute show cause notices and as such found that the cancellation of allotment vide the Cancellation Letter was not without issuance of prior show cause notice.

23. Whereas the record reflects that after these notices were issued the Respondent No.3/CDA issued another letter on 20-1-2012 (Ex. D/3) stating that for any additional storey the Appellant was required to apply to the Planning Wing, CDA. The Appellant submitted revised plans for the Subject Plot on 02-02-2012 (Ex. P14) and 30-8-2012 (Ex.P13) and Respondent No.3/CDA issued Letter dated 16-11-2012 (Ex.P17) to inform the Appellant that its request for readjustment of permissible

covered area/FAR was presented before the DVC in its meeting held on 30-10-2012 and it was approved. Thus the matters raised vide the notices dated 18-01-2012 stood closed/resolved on 30-10-2012. Any subsequent action by the Respondents under such notices was unwarranted.

24. If, for example, the Respondents/CDA subsequently came to the realization that DVC had no authority to issue approval (as has been held by the learned Trial Court and discussed herein below in relation to point No. (vii) the Respondents/CDA should have issued a fresh show cause notice furnishing the Appellant an opportunity to show otherwise failing which the proposed action would be taken.

25. Speaking of proposed action, perusal of the first notice dated 18-1-2012 (Ex. D/2) shows that the Appellant was directed to remove the stipulated violations failing which the violations would be removed through the Enforcement Directorate at the risk and cost of the Appellant. The violations the Appellant was alleged to have committed were as follows:

i. Deviation of approved plan at top floor.

ii. Covered area on 8th (top floor) is being enhanced above approval of 6526 sft.

iii. Required certificates for Architect/Engineers have not been submitted as per condition 6 (a to m) of approval letter dated 9-4-2011.

iv. Approved design of covering of Nullah have not been submitted.

26. It may be seen that the alleged deviation from the approved plan was only in respect of the top floor i.e. the 8th floor. The same violations were alleged through second notice dated 18-1-2012 (Ex. D/4) which was issued to the Architect with direction to explain his position within three days failing which the case would be recommended for suspension/cancellation of his CDA License.

27. It is noteworthy that neither of the two said notices was to show cause against cancellation of allotment of the Subject Plot. The Supreme

Court of India in the case of *Umc Technologies Private Limited Vs. Food Corporation of India*, AIR 2021 Supreme Court 166 specified the following ingredients that a show cause notice must contain in order to fulfill the requirements of the principles of natural justice:

> *"(i) The **material/grounds** to be stated **which** according to the department **necessitates an action**;*
>
> *(ii) **Particular penalty/action which is proposed to be taken.** It is this second requirement which the High Court has failed to omit.*
>
> *We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement." [Emphasis added].*

28. Bare perusal of the notices dated 18-01-2012 shows that neither cancellation of allotment was particularized nor can it be inferred from the contents thereof. Therefore, the learned Trial Court erred in treating the notices dated 18-01-2012 as show cause notices in respect of the Cancellation Letter.

29. Thereafter the Respondent No.3/CDA issued a Show Cause Notice dated 24-4-2014 (Ex.P25) under Section 49-C sub clause (1) of the CDA Ordinance No. XXIII of 1960 as to why the illegal/unauthorized construction at the Subject Plot may not be removed/demolished on account of *inter alia* deviation from approved plan and suspended the approval granted for the adjustment of FAR vide Letter dated 23-4-2015 (Ex.P26). It bears emphasis that this Show Cause Notice dated 24-4-2014 (Ex.P25) too did not specify cancellation of allotment as a possible consequence.

30. Nevertheless, on 27-7-2015 (Ex.P28) the Assistant Director, Respondent No. 3/CDA sealed the Subject Plot due to the alleged violations of approved building plan, etc. The Subject Plot was de-sealed by order of this Court passed in Civil Revision No. 320/2016. For resolution of the dispute regarding construction of the 8th floor the Appellant was directed to approach the Member (Planning), CDA by this Court vide Order dated 30-8-2016 in Civil Revision No. 320/2016. Pursuant to such order the Respondents/CDA convened meetings

including to one on 14-11-2017 wherein it was decided to cancel the allotment of the Subject Plot pursuant to which the Cancellation Letter was issued.

31. The above summary of events shows that no show cause notice against cancellation of allotment was issued to the Appellant by the Respondents at any time prior to the issuance of the Cancellation Letter. The Appellant was never put on notice that failure to remove the alleged violations of the approved plan would result in cancellation of allotment of the Subject Plot. The only issue for which direction was given to approach the Member (Planning), CDA by this Court vide Order dated 30-8-2016 in Civil Revision No. 320/2016 was for resolution of the dispute regarding construction of the 8th floor yet the meetings convened in this respect culminated in the issuance of the Cancellation Letter. Therefore, the learned Trial Court erred in holding that cancellation of allotment of the Subject Plot was with prior notice.

32. In my opinion this ground alone is sufficient to decide Issue No. I in the affirmative as it is well settled law that no adverse action can be taken against any party without prior notice. I rely upon an unreported judgment dated 19-9-2019 passed in *M/s Golden Tea Company Vs. Capital Development Authority*, Civil Appeal No. 168 of 2018 wherein the Supreme Court observed that it could not agree with the counsel for CDA that before taking the extreme step of cancelling the appellant's lease there was no need for a show cause notice and to provide an opportunity for hearing. The Supreme Court held that a lease is a valuable right in property which cannot be arbitrarily and whimsically cancelled or revoked. The Supreme Court described the act of CDA in straightaway cancelling the lease as completely unjustified and unreasonable and therefore the action of cancelling the lease in such case was held unsustainable. Similarly, in *Khushdil Khan Malik Vs. Secretary, Ministry of Defence Rawalpindi Cantt*, PLD 2017 SC 173 the Supreme Court observed that the appellant had acquired a vested right as a decisive step had been taken in the matter when he deposited the installment after

being declared successful in the balloting process and thus unilateral cancellation of plot without show-cause notice amounted to condemning him unheard which is against the principles of natural justice which is to be read into every statute even if it does not contain it. The Sindh High Court at Karachi in *Yaqoub Eusuf Mayet Vs. Pakistan Defence Officers Housing Authority, Karachi,* 1992 CLC 1444 also set aside the order cancelling the plot of the petitioner on the ground that no prior show-cause notice or opportunity of hearing was granted.

> *(ii) Whether the learned Trial Court erred in concluding that cancellation of allotment of the Subject Plot by the Respondents/CDA was not illegal, void and contrary to law by taking into consideration grounds not mentioned in the Cancellation of Lease Order dated 3-1-2018 (Cancellation Letter)?*

33. Perusal of the Impugned Judgment and Decree shows that while discussing Issue No. I as to whether or not the Cancellation Letter was illegal, void, and/or contrary to law the learned Trial Court observed that according to the Advertisement of auction as well as the Request For Qualifications ("**RFQ**") the Subject Plot was put to auction for commercial and residential use but contrary thereto not only the Appellant submitted a proposal for an exclusively commercial building but such proposal was accepted and approved by the Respondents/CDA. The learned Trial Court held that this was the first illegality in a series of illegal acts causing loss to exchequer and enabling the Appellant to defraud and deceive members of the general public. According to the Impugned Judgment all those companies who participated in the auction submitted their bids in consideration that the Subject Plot is meant for commercial and residential use whereas the bids submitted would have been different had they known that the Subject Plot can be put to use for commercial purposes exclusively.

34. However, the Cancellation Letter makes no mention that the reason for cancellation of allotment of the Subject Plot was that the Appellant submitted a proposal for an exclusively commercial building as opposed to commercial-cum-residential in contravention of the Advertisement

uncertified

and/or the RFQ. According to the Cancellation Letter the Board of CDA decided in its meeting held on 14-11-2017 (Ex.P35) to cancel the allotment of the Subject Plot due to the alleged violations by the Appellant of the building bye-laws and for construction of building in violation of rules and the permissible FAR. Examination of the Summary for Regularization dated 14-11-2017 (Ex.P31) containing the Board decision to cancel the lease of the Appellant shows that submission and approval of proposal for an exclusively commercial building in contravention of the Advertisement and RFQ for commercial and residential use was not even considered by the Board.

35. Moreover, none of the notices on the record which were issued by the Respondents/CDA to the Appellant including the notices which the learned Trial Court treated as show-cause notices for purposes of cancellation of allotment (discussed herein above) mentioned contravention of the Advertisement and/or RFQ. The Sindh High Court in *Yaqoub Eusuf Mayet (Supra)* specifically held that if any action is proposed to be taken in respect of a plot a prior show-cause notice giving full details and the grounds on which cancellation is intended should be given and it is only after fulfillment of all such formalities that the action of cancelling a plot may be taken by the concerned authority.

36. Interestingly enough this was not even a defense taken by the Respondents/CDA in their Written Statement. In the case of *A.F. Ferguson & Co. through Partner Vs. Securities and Exchange Commission of Pakistan through Chairman*, 2005 CLD 454 the High Court of Sindh at Karachi held that issues are to be confined to the points raised in the pleadings on which the parties are at variance and no extraneous contentions are to be considered. There is no iota of evidence on the record that acceptance of the building plan for exclusive commercial use in contravention of the Advertisement and RFQ resulted in loss to the exchequer or that the Appellant was enabled to defraud and deceive members of the public as held by the learned Trial Court. Such

uncertified

finding by the learned Trial Court is therefore beyond the pleadings and evidence on the record and as such unjustified and illegal[1].

37. The learned Trial Court overlooked that the Cancellation Letter alleged violations by the Appellant of the building bye-laws and for construction of building in violation of rules and the permissible FAR. The Appellant's main contention against the Cancellation Letter is that there was no violation by the Appellant of the building bye-laws and of the permissible FAR as construction was as per approvals granted by the Respondents/CDA. Thus the main question relevant for Issue No. 1 was the legality of the approvals granted by the Respondents/CDA to the Appellant for enhancement of FAR.

(iii) Whether the Trial Court erred in concluding that the case of Avari Hotel was absolutely different from the instant case for purposes of granting approval for enhancement of FAR?

38. While discussing the legality of the approvals granted by the Respondents/CDA to the Appellant for purposes of Issue No. 1, the learned Trial Court held that Avari Hotel could not be used as precedent for enhancement of FAR and removal of capping of the number of storeys in respect of the Subject Plot as the two cases were absolutely different.

39. The Impugned Judgment and Decree gives two reasons for its conclusion: (a) that in the case of Avari Hotel the Respondents/CDA Board enhanced the permissible FAR on payment of charges whereas the case of the Appellant was not referred to the Finance Wing, CDA for calculation of applicable charges nor any charges were paid by the Appellant; and (b) that there is nothing on the record to suggest that the enhancement of FAR in the case of Avari Hotel was in violation of its advertisement of auction. With regard to the second reason, the learned Trial Court has held that even if it is assumed that the approvals were in accordance with the rules and regulations since the enhancement of FAR and removal of capping of number of storeys in the case of the Subject

[1] *Habib Carpets (Pvt.) Limited Vs. Karachi Properties Investment Company (Pvt.) Limited (KPICL)*, 2022 MLD 1754

Plot was a deviation from the Advertisement and RFQ, the entire process of allotment stands vitiated and as a result the superstructure built thereupon is bound to fall.

40. On the other hand, perusal of the Summary for Regularization dated 14-11-2017 containing the CDA Board's decision to cancel the lease of the Appellant shows that while the Board acknowledged that the approval of the revised building plans given on 16-11-2012 for enhanced covered area was based on precedents like the Avari Hotel the Board decided that such precedents were inapplicable as they were either prior to the auction or irrelevant. Such reasoning is rather vague. But no further explanation has been given in the Summary for Regularization dated 14-11-2017 or in the Written Statement of the Respondents/CDA to show why the precedent of Avari Hotel was inapplicable in respect of the Subject Plot. Be that as it may, the two reasons given by the learned Trial Court for holding the case of Avari Hotel different from the case of the Subject Plot i.e. failure to pay charges and violation of Advertisement and RFQ are not borne from the record.

41. Moreover, the Impugned Judgment and Decree is self-contradictory as on one hand it holds that deviation from the initial Advertisement, RFQ, and allotment letter is of such paramount importance that it vitiates the entire process of allotment even if the approvals are assumed to be in accordance with the rules and regulations but on the other hand holds that if the Appellant was interested in enhancement of covered area the case ought to have been referred to the Finance Wing for calculation of charges, thereby implying that deviation from the initial Advertisement, RFQ, and allotment letter can be compounded.

42. The Trial Court's observation that there is nothing on the record to suggest that the enhancement of FAR in the case of Avari Hotel was in violation of its Advertisement of auction is also flawed. The Impugned Judgment itself refers to the decision of the Board of the Respondents/CDA as reflected in the minutes of the meeting held on 23-

04-2007 (Ex. D7) according to which the revised parameters for new development in Marakiz were approved for hotels and other big projects including a maximum FAR of 1:5. Thereafter, in the case of Avari Hotel vide Board decision dated 25-3-2008 (Ex. D/8) FAR of 1:5 was calculated after excluding the area used for corridors and mechanical areas thereby increasing the covered area. The Impugned Judgment and Decree has reproduced the relevant paragraph from the Avari Hotel decision which specifically begins by noting that the plot in question has now been bought by Avari Hotel who has requested enhancement of FAR. This in itself establishes that the enhancement of FAR requested by Avari Hotel and approved by the Respondents/CDA was beyond the limits set in the auction advertisement for the plot bought by Avari Hotel as otherwise there would have been no occasion to request enhancement.

43. Therefore, I am unable to agree that the Avari Hotel case was different from the case of the Subject Plot. But even otherwise, the learned Trial Court failed to consider the effect of an approval given by a public authority and whether construction erected in reliance of wrongful approval given by the Respondents/CDA to the Appellant for enhancement of FAR can result in cancellation of the allotment of the Subject Plot.

(iv) Whether the Trial Court erred in failing to consider the effect of an approval once given by a public authority?

44. It is an admitted position that the Appellant sought approval of the Respondents/CDA for deduction of circular/common area and removal of capping of number of storeys so as to increase FAR. The Respondents/CDA could have refused to grant approval. Instead Respondent No.3/CDA by way of its letter dated 14-6-2010 (Ex.P9) gave the Appellant the option to obtain formal permission for enhanced facility/relaxation of the bye laws.

45. Thus the Appellant sought deduction of circulation/common area and removal of capping of number of storeys vide letter dated 16-6-2010 (Ex.P10) addressed to the Deputy D.G. Building Control, CDA. It is the

Director, Urban Planning Wing, CDA who vide letter dated 27-08-2010 (Ex.P11/3-5) informed the Appellant that the issue regarding deduction of circulation area from the permissible covered area is to be looked into by the Building Control in light of the Board Decision in the case of Avari Hotel. Eventually, Respondent No.3/CDA vide its Letter dated 8-10-2010 (Ex.P16) stated that the matter regarding deduction of circulation area from permissible covered area was discussed in the office of the Chairman, CDA and looked into in light of the Board Decision in the case of Avari Hotel as well as for Marakiz and it has been decided to exclude the circulation/service area from the permissible area in case of the Subject Plot thus removing the cap on the number of storeys. Accordingly, the Building Plan consisting of three Basements + Ground + 7 Floors and Top Floor with Mumty was approved by the Deputy Director, Building Control Section, CDA vide letter dated 09-04-2011 (Ex.P12).

46. Thereafter, again the Appellant was told by the Respondent No.3/CDA vide letter dated 20-1-2012 (Ex. D/3) that for any additional storey the Appellant was required to apply to the Planning Wing, CDA. The Appellant submitted revised plans for the Subject Plot on 02-02-2012 (Ex. P14) and 30-8-2012 (Ex.P13) to Respondent No.3/CDA. The Respondent No.3/CDA issued Letter dated 16-11-2012 (Ex.P17) to inform the Appellant that its request for readjustment of permissible covered area/FAR was presented before the DVC in its meeting held on 30-10-2012 and it was approved.

47. Yet the Respondents/CDA issued the Cancellation Letter on account of Board decision to cancel the allotment of the Subject Plot allegedly due to the violation of the building bye-laws and construction of building in violation of rules/permissible FAR. In such circumstances, the question that arises is whether Respondents/CDA after having granted approval for enhancement of FAR in the Appellant’s case in respect of the Subject Plot following the treatment given in the case of Avari Hotel could then withdraw the same subsequently and cancel the Appellant’s

allotment of the Subject Plot on the pretext that the approval was in violation of the bye-laws and permissible FAR and that the precedent of Avari Hotel was inapplicable that too without elaborating on the reasons.

48. After all it was the Respondents/CDA who decided to apply the Avari Hotel precedent in the case of the Subject Plot and allowed the enhancement of FAR by excluding the circulation area from the permissible area and thus removing the cap of the number of storeys to be constructed by the Appellant. There is no allegation that such approval was obtained by the Appellant by employing any wrongful means. Nevertheless, the learned Trial Court failed to consider the effect of a public authority granting approval and subsequently withdrawing the same and instead simply held that since the approvals were granted in gross violation of the rules, regulations, bye-laws, Advertisement, RFQ and allotment letter the construction raised on the basis of such approvals is also illegal which entitled the Respondents/CDA to cancel the allotment.

49. The Respondents/CDA relied upon (a) *Farooq Hamid (Supra)* wherein the Supreme Court directed the authorities to demolish illegally constructed structures and (b) *Muhammad Khurshid Abbasi (Supra)* wherein the Supreme Court refused to compound the violations of the building plan and found no illegality in the order of demolition. However, reliance upon such precedents is misconceived. The circumstances in *Farooq Hamid (Supra)* were starkly different from the instant case as in such case construction had been raised in violation of the sanctioned plan without approval or any permission from any quarter. Moreover, the structure in question was found to have caused damage to the adjoining service roads and private properties therefore the Supreme Court refused to take responsibility for the stability of the said structure. In fact the judgment refers to another case in which the Supreme Court condoned the illegality of additional floors on payment of penalty in view of the fact that the structures were certified as stable and were in conformity of all other laws. In *Muhammad Khurshid Abbasi (Supra)* also construction

was made in violation of the approved plan. The Supreme Court held that it is fallacious to argue that construction can be consciously made in violation of building plans and/or building rules and then compounded and that it cannot provide protection to an act which was intentionally not performed in accordance with the bye-laws. But the most important thing to be noted in these two cases is that even where construction was without requisite permission and approval and the safety and stability of the construction was not beyond doubt the Supreme Court only directed removal of the illegal structures without cancelling the allotment/lease.

50. Whereas, in the case before me the enhancement of FAR and consequent construction of additional storeys on the Subject Plot was with the express approval of the Respondents/CDA. Moreover, CDA neither alleged nor produced any evidence on the record to establish that the construction at the Subject Plot allegedly in violation of the Building Control Regulations, 2005 is unsafe or insecure or otherwise against the interest of the general public. Bare perusal of the notices relied upon by the Respondents/CDA; the Summary for Regularization dated 14-11-2017 containing the decision to cancel the allotment of the Subject Plot and the Cancellation Letter shows that safety or interest of the general public was not amongst the reasons for cancellation. Yet the Respondents/CDA did not just issue demolition orders rather cancelled the allotment of the Subject Plot in favour of the Appellant.

51. Therefore, in the facts and circumstances of the instant case the Trial Court should have considered the effect of approval once granted by a public authority, which it failed to do.

(v) Whether an approval granted by a public authority can be revoked/withdrawn/cancelled/rescinded?

52. There is no cavil to the proposition that an authority that has the power to make an order also has the power to undo it. This power is considered necessary for all authorities empowered to pass orders in order for them to retrace wrong steps taken by them. However, such power is subject to the doctrine of *locus poenitentiae* which is the power of

receding till a decisive step is taken. In other words the power to undo an order to correct a wrong is subject to an exception that where the order has taken legal effect and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights[2].

53. Clearly, a decisive step had been taken by the Appellant when construction was carried out in accordance with the revised building plan at the Subject Plot pursuant to the approval granted by the Respondents/CDA to enhance FAR by excluding the common/circulation area vide Letters dated 8-10-2010 (Ex.P16) and 16-11-2012 (Ex.P17).

54. The learned counsel for the Respondents/CDA argued that no authority can be held bound by a promise not lawfully extended or given. The doctrine of *locus poenitentiae* cannot be invoked in case of an order which is illegal. Perpetual rights cannot be gained on the basis of an illegal order by relying upon the doctrine of *locus poenitentiae.*

55. In this regard, he relied upon *Ardeshir Cowasjee (Supra)*, whereby the approved plan for construction of commercial-cum-residential complex was declared as being without lawful authority as the deviation from the original building plan essentially involved changing the character of an amenity plot into a commercial one which the concerned authority had no power to do under the laws. Thus it was held that perpetual rights cannot be gained on the basis of an illegal order and since the order under which payment was to be made had no sanction of law it does not become irrevocable and a past and closed transaction. Similarly the Respondents/CDA relied upon the judgment passed in *Suo Moto Case No. 13 of 2009: Action on press clipping from the Daily "Patriot", Islamabad dated 4-7-2009 regarding Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (MPCHS) for development of land in Sector E-11 Islamabad,* PLD 2011 SC 619. The Respondents/CDA in this case entered into a Joint Venture Agreement with M/s Multi-Professional Cooperative Housing Society (MPCHS) for

[2] *Pakistan through the Secretary Ministry of Finance Vs. Muhammad Himayatullah Faruki* PLD 1969 SC 407

the development of land in Sector E-11 Islamabad which falls within Zone-I. The Joint Venture Agreement was held inoperative and ineffective on the ground that it was found, *inter alia*, that CDA was not competent to allow private societies to operate in Zone-I. In other words the CDA had no authority under the law to enter into the agreement that it executed with MPCHS.

56. Before considering whether the approvals given by the Respondents/CDA in the instant case were irrevocable or not, it is beneficial to refer to the judgment passed in the case of *Syed Azam Shah Vs. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad,* 2022 SCMR 201 wherein the Supreme Court held that there is no hard and fast rule that if some benefit was wrongly extended due to some misunderstanding, error, misconception of law, or without sanction of competent authority that act should be treated so sacred and sacrosanct that it could not be withdrawn to retrace or redo the wrong decision or action under the guise of the principles of *locus poenitentiae*. The Supreme Court held that a wrong benefit extended beyond the scope of law and rules/policy cannot be claimed in perpetuity or eternity hence the applicability of the doctrine depends on the circumstances of each and every case and cannot apply universally or randomly without adverting to the merits of each case in its peculiar circumstances.

57. Now therefore let us see whether in the facts and circumstances of the instant case the approval given by the Respondents/CDA for the enhancement of FAR by excluding the common/circulation areas in respect of the Subject Plot could have been rescinded.

(vi) Whether deviation of FAR is illegal?

58. The Respondents/CDA allege that the approvals for the enhancement of FAR by excluding the common/circulation areas are in violation of the applicable regulations. First, let us understand what is meant by FAR and the impact of excluding common/circulation areas from its calculation. As stated hereinabove FAR is the Floor Area Ratio.

As per Regulation 1.2.55 of the Building Control Regulations, 2005 it has been defined to mean the sum of gross covered area of all floors of a building on a plot divided by the total area of the plot. By excluding common/circulation areas i.e. corridors, lifts, emergency staircase, common areas, etc., from the calculation of FAR the available covered area increases and the surplus area can be used for additional storeys. Thus, as a result of the approval granted by the Respondents/CDA whereby common/circulation areas were allowed to be excluded from the calculation of FAR the Appellant claims it was able to build additional storeys while maintaining the approved FAR. On the other hand the Respondents/CDA contends that since the approval(s) for the enhancement of FAR was illegal the construction of additional storeys resulted in violation of FAR and the bye-laws.

59. Now let us see whether deviation from FAR is permissible under the Building Control Regulations, 2005. According to Regulation 2.4.1 of the Building Control Regulations, 2005 except as otherwise prescribed or permitted by the Respondents/CDA the maximum Built-up Area of building on a plot/(total FAR) shall be laid down in Schedule-1. Thus, Regulation 2.4.1 itself envisages that FAR can be different from Schedule-1 where permitted by the Respondents/CDA. In circumstances where Respondents/CDA has, in accordance with Regulation 2.4.1, permitted FAR beyond the limits prescribed in Schedule-1, Regulation 2.4.2, which provides that any excess covered area beyond the prescribed limits in Schedule-1 shall be demolished, is not applicable.

60. Furthermore, Regulation 2.4.3 allows for compounding of any deviation up to a maximum of five per cent, where possible, subject to approval of the Respondents/CDA in advance with charges and provided it does not conflict with any other rule. In other words, a deviation from the approved FAR up to a maximum of five per cent can be compounded, where possible, subject to approval of the Respondents/CDA in advance with charges and provided it does not conflict with any other rule. It is undisputed that the approval of Respondents/CDA was obtained by the

Appellant in advance. There is no evidence on the record that the enhancement of FAR as approved by the Respondents/CDA in respect of the Subject Plot was beyond the maximum limit of five per cent or was in conflict with any other rules. Therefore the approval of the enhancement of FAR by the Respondents/CDA cannot be considered illegal on the basis of the evidence on the record.

61. As far as non-payment of charges is concerned, there is no evidence that the Respondents/CDA sought payment of charges from the Appellant and the latter failed to make such payment. Indeed this was one of the reasons the learned Trial Court held that Avari Hotel case as different since charges were made in such case whereas the matter was not even referred to the Finance Wing in the case of the Appellant. However, the learned Trial Court failed to take into consideration that such payment could have been demanded even subsequently.

(vii) Whether the Respondents/CDA's approval for enhancement of FAR by excluding common/circulation areas by following the Avari Hotel precedent was without jurisdiction?

62. The learned counsel for the Respondents/CDA laid much emphasis on the argument that the DVC had no authority to grant approval and as such any approval granted by the DVC was a nullity which cannot create any rights in favour of the Appellant. One of the reasons why the learned Trial Court has held in the Impugned Judgment and Decree that the approval given to the Appellant was in violation of the Regulations/Bye-laws is by holding that the Appellant did not produce any rule, regulation, or bye-law which confers any power upon the DVC to grant the permission accorded to the Appellant in its meeting on 30-12-2012 and conveyed to the Appellant vide Letter 16-11-2012 (Ex.P17). Whereas according to Regulation 3.7.1(d) an application for permission to carry out building works for buildings having covered area more than 10,000 square feet shall be referred to the DVC. Admittedly the covered area in respect of the Subject Plot is more than 10,000 square feet. Therefore

there is no merit in the argument raised on behalf of the Respondents/CDA that DVC was not competent to grant approval.

63. The learned counsel for the Respondents/CDA also argued that only the Board of the Respondents/CDA could have approved the enhancement of FAR as in the case of Avari Hotel and since the matter was never placed before the Board the approval given for the enhancement of FAR in respect of the Subject Plot has no legal sanctity. In this regard, he relied upon *Punjab Provincial Cooperative Bank Limited (Supra)* and *Ch. Munir Ahmad (Supra)* wherein it was held that if any order is passed beyond its jurisdiction such order is a nullity in the eyes of the law and never conveys any absolute title in favour of the beneficiary.

64. However, Regulation 13 of the Capital Development Authority Conduct of Business Regulations, 1985 provides that all architectural/structural designs and plans prepared by the Design Wing and Planning Wing shall be brought before the Board provided that in cases of urgency or any other exceptional circumstances the Chairman may give directions as to the manner of disposal of the case without prior reference to the Board but that such cases shall be reported to the Board at the earliest opportunity. In other words, the Chairman is empowered to dispose of a matter without prior reference to the Board in urgent or any other exceptional circumstances. It is also noteworthy that in such a case, the matter must be reported to the Board at the earliest opportunity but it is not subject to the Board's approval in such circumstances nor does any power vest in the Board to reverse the decision taken by the Chairman.

65. The Letter dated 8-10-2010 (Ex.P16) written by the Respondent No.3/CDA categorically states that the matter regarding deduction of circulation area from the permissible covered area was discussed in the office of the Chairman, CDA and looked into in light of the Board Decision in the case of Avari Hotel as well as for Marakiz and it has been decided to exclude the circulation/service area from the permissible area in case of the Subject Plot thus removing the cap on the number of

storeys. The contents of the said letter clearly indicate that the Chairman, CDA had exercised his powers under Regulation 13 of the CDA Conduct of Business Regulations, 1985 for disposal of the matter without prior reference to the Board in light of an earlier decision of the Board. Thus the approval given on the basis of discussion with the Chairman CDA was not without jurisdiction and cannot be termed illegal and as such is not a nullity.

66. It is plausible that the Chairman, CDA considered it unnecessary to refer to the Board the question of exclusion of common/circulation areas in the case of the Subject Plot given that the matter stood decided in the case of Avari Hotel. But even otherwise, the Appellant cannot be penalized for the acts and omissions of Respondents/CDA officers in contravention of their own regulations by allowing the Respondents/CDA to take a U-turn and to claim that no such circumstances existed for the Chairman, CDA to dispose of the matter without prior reference to the Board or that the matter was not reported to the Board subsequently as required or for that matter that no charges were recovered from the Appellant and that too after the passage of seven years.

67. The learned counsel for the Respondents/CDA relied upon Regulation 3.1.1 to argue that the granting of a permit of approval of the drawing and specifications does not in any way relieve the owner/allottee from full responsibility for carrying out the work in accordance with the requirements of the bye-laws. However, this regulation simply means that notwithstanding any approval that may have been granted by the Respondents/CDA in violation of the law the owner/allottee is responsible for work in accordance with the requirements of the bye-laws and if the same is done the owner/allottee cannot escape liability. But as observed herein above, deviation from any rule is compoundable under Regulation 2.4.3 of the Building Control Regulations, 2005. Thus approvals granted for enhancement of FAR were not in violation of the law.

68. Insofar as any alleged non-compliance of any internal procedures and processes by the Respondents/CDA is concerned in respect of the

approvals granted, Regulation 3.1.1 cannot be pressed into service by the Respondents/CDA as the owner/allottee has no control over such processes and procedures.

(viii) Whether violations of the Building Control Regulations, 2005 could result in cancellation of the allotment of the Subject Plot?

69. Most importantly the learned Trial Court overlooked the fact that the consequence of deviation from or violation of FAR as stipulated in Regulation 2.4.2 is that any excess covered area beyond the prescribed limits in Schedule-1 shall be demolished.

70. The learned counsel for the Respondents/CDA argued that allotment of a plot can be cancelled *inter alia* on account of violation of Building, Zoning and other Regulations, under Regulation 19 of the Islamabad Land Disposal Regulations, 2005. Be that as it may, such an extreme action is not justified in cases where the alleged violation was sanctioned by the Respondents/CDA and there is no allegation that the approval was obtained fraudulently by the Appellant rather it is admitted that it was under a departmental mistake[3].

71. If the Respondents/CDA's stance is accepted it would make all allotments, approvals, permissions, etc., granted by them susceptible to cancellation by the Respondents/CDA's at any time on the pretext of violations of regulations committed internally by the officers of the Respondents/CDA over which innocent third parties such as allottees/owners have no control nor would such third parties be in a position to refute the allegations of the Respondents/CDA regarding whether or not all internal requirements had been fulfilled for want of access to their records.

72. The issue regarding acts of the officers of the Respondents/CDA in contravention of their own policy was discussed in the case of *Capital Development Authority, CDA Vs. Ahmed Murtaza*, 2023 SCMR 61 which involved a plot that could not be transferred or sold outside of the family

[3] *Abdul Hayee Ex.SST (G) Vs. The Accountant General Balochistan*, 2024 PLC (C.S) 393

of the original allottee as per the provisions of the allotment letter and the lease agreement. CDA also relied upon the Islamabad Land Disposal Regulations, 2005 where under community building and facility plots that are to be used for educational purposes, hospitals, maternity homes, or libraries cannot be transferred as these plots are reserved for social welfare projects and only in exceptional cases can these plots be transferred. The Supreme Court noted that notwithstanding such restrictions CDA had allowed transfer of the disputed plot to non-family members from time to time and only raised a dispute with reference to the transfer between the respondents before the Supreme Court. Thus the Supreme Court held as follows:

> *"8. We have heard the matter at great length and find that this is a classic example of a litigant wasting the time of this Court by filing frivolous litigation given that this matter already stands decided by the High Court in the Ahmed Murtaza case (supra). Furthermore, the* ***dispute, if any, raised by the CDA is based on their own conduct as the record shows that they have themselves transferred the disputed plot outside the family members of Dr. Major (Retd.) Bilqees Muhammad Din repeatedly and yet chose to dispute the transfer in favour of Respondent No.1 notwithstanding the earlier transfers made in favour of different transferees. They have taken no action against any officer, nor raised this issue before their own governing body to highlight the fact that their own documents and policy were not being followed by their officers. Instead, they chose to litigate the matter and burdened the courts with litigation which does not raise a question of law or fact in good faith.*** *We find that this kind of litigation being without merit and basis is one an institution, such as the CDA, should not have indulged in. A considerable amount of time has been consumed in hearing this matter, which time admittedly could have actually been consumed hearing other cases not to mention the misrepresentation made by the CDA in failing to disclose the Ahmed Murtaza case (supra). What is most disturbing is that the CDA opted to pursue this matter before this Court against the Respondents in whose favour there are two judgments dated 23.11.2018 and 30.12.2020.* ***We also find that an institution, such as the CDA, must take responsibility for its own decisions and actions even where its officers have acted in contravention of their policy and cannot expect that this Court should interfere and correct their wrongs,*** *particularly when the matter has been litigated against and decided against them. This tendency cannot be condoned and has to be denounced because not only does it waste the time of this Court but it has also wasted a considerable amount of time of the Respondents who have been facing litigation pursued by the Petitioner since 2019 as they have been striving to have the transfer in favour of Respondent No.1 declared illegal when they themselves transferred the disputed plot in favour of Respondent No.2 and admittedly earlier in time, transferred the disputed plot to at least eight different people, which was never challenged by them." [Emphasis added].*

73. Recently, the Supreme Court has held as follows in respect of mistakes of public officers in the judgment passed in *Sunni Ittehad Council and another Vs. Election Commission of Pakistan and others*, Civil Appeal No.333 and 334 of 2024:

> *"What relief would serve the ends of justice?*
>
> *94. Having thus answered the questions of law, we shall now examine what relief would serve the ends of justice in the peculiar facts and circumstances of this case.* ***When we speak of justice, we have the intuitive sense of putting things aright and in their appropriate place, of re-establishing a lost harmony and equilibrium, of remaining true to the nature of things, of giving each his due.*** *In this regard, we are also guided by the following golden words of Kaikaus, J., written in Imtiaz Ahmad:*
>
> > *Any [justice] system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent. The ideal must always be a [justice] system that gives to every person what is his.*
>
> *His lordship further observed:*
>
> > *I am unable to place the mistakes committed by the Administration [public functionaries] on the same footing as mere accidents. The difference is that in one case the harm caused to a party being the result of a mistake committed by the Administration there is an obligation on our part to undo it as far as that is possible. ...* ***In relation to Courts there is a well-known saying that the act of Court will not prejudice anybody. I do not see why the principle of this maxim does not apply to the whole machinery of the Administration [public functionaries] of which the Courts are only a part. No mistake committed by this machinery should prejudice any person as far as that can be helpe****d. If the mistake of the election authorities is like a misfortune why are elections set aside on the ground of irregularities committed by the officers who conduct the elections? Why does not the law regard these irregularities like events, which have happened and cannot be helped?* ***It cannot be the intention of the law that rights of persons should be affected by the mistakes committed by public officers. ...*** *We must put the parties in the same position, as they would have been if no mistake had been committed by the administration as long as we can do that.*
> >
> > *(Emphasis added)*
>
> *The above principle of law, though enunciated by his Lordship in a dissenting judgment, has appealed "to the brooding spirit of the law, to the intelligence of a future day" and has now become well established and well entrenched in our jurisprudence.*
>
> *95. We find that the said principle is not only premised on two maxims: (i) actus curiae neminem gravabit (an act of court [public functionary] shall prejudice no one) and (ii) ex debito justitiae (as a debt of justice), but are also rooted in the constitutional provisions of Article 4 of the Constitution.*

unverified

> *Under Article 4, it is an inalienable right of every citizen, and of every other person for the time being within Pakistan, to enjoy the protection of law and to be treated in accordance with law. This constitutional inalienable right casts a corresponding constitutional inalienable duty on all public functionaries of Pakistan to treat every citizen and every other person for the time being within Pakistan in accordance with law. From this constitutional right and the corresponding constitutional obligation, the principle emerges, in our opinion, that* ***no person should be made to suffer or be prejudiced by an unlawful act or omission of public functionaries. If any person suffers the loss of any right or benefit because of an unlawful act or omission of a public functionary, he is entitled, by reason of an obligation of justice, to be restored to that right or benefit and put in the same position, insofar as is possible, as he would have been if such unlawful act or omission had not been made by the public functionary.”*** [Emphasis added].

(ix) Whether the learned Trial Court erred in concluding that cancellation of allotment of the Subject Plot was justified due to the violation of Regulation 2.8 of the Building Control Regulations, 2005?

74. The learned Trial Court decided Issue No. II in the affirmative by finding that in cross-examination the Appellant admitted violating Regulation 2.8 which provides as follows:

> *“2.8 Permission for occupation of building*
>
> *2.8.1. No building or structure or part thereof shall be occupied or used without obtaining completion certificate (permission to occupy) from the Authority, within three (3) months after the expiry of initial construction period.” [Emphasis added]*

75. It may be noted that neither any prior show cause notice was issued to the Appellant for violation of Regulation 2.8 nor has the same been discussed in the Summary for Regularization dated 14-11-2017 (Ex.P31) wherein the decision to cancel the Appellant’s allotment in respect of the Subject Plot was taken. Therefore, cancellation of allotment of the Subject Plot in favour of the Appellant vide the Cancellation Letter was not justified on the ground of the alleged violation of Regulation 2.8 of the Building Control Regulations, 2005.

Conclusion

76. In short, the Cancellation Letter was illegal, void, and contrary to the law for having been issued without prior show-cause notice for cancellation of the Subject Plot. The learned Trial Court erred in holding otherwise by taking into consideration reasons for cancellation which were neither mentioned in the Summary for Regularization which records

the decision of the Board of the Respondents/CDA Board to cancel the lease of the Appellant nor in the ensuing Cancellation Letter whereby the allotment of the Subject Plot was cancelled and not even in Respondents/CDA's Written Statement filed before the learned Trial Court. Similarly, the Trial Court erred in concluding that the Avari Hotel precedent was different despite the fact that in such case too, the Respondents/CDA allowed calculation of FAR by excluding common/circulation areas.

77. Even otherwise, the learned Trial Court failed to consider whether Respondents/CDA after having granted approval for enhancement of FAR in the Appellant's case in respect of the Subject Plot following the treatment given in the case of Avari Hotel could then withdraw the same subsequently and cancel the Appellant's allotment of the Subject Plot on the pretext that the approval was in violation of the bye-laws and permissible FAR and that the precedent of Avari Hotel was inapplicable. There is no cavil to the proposition that an authority that has the power to make an order also has the power to undo an order to correct a wrong. However, the power to undo an order is subject to an exception that where the order has taken legal effect and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights. Clearly, a decisive step had been taken by the Appellant when construction was carried out in accordance with the revised building plan at the Subject Plot pursuant to the approval granted by the Respondents/CDA to enhance FAR by excluding the common/circulation area.

78. Having said that the doctrine of *locus poenitentiae* cannot be invoked in case of an illegal order. However, the approval granted to the Appellant in this case for the enhancement of FAR by excluding common/circulation areas was not illegal as enhancement/deviation of FAR is permissible under Regulation 2.4 and in doing so the Chairman/CDA excluded the common/circulation areas by following the Avari Hotel precedent in exercise his powers under Regulation 13 of the CDA Conduct of Business Regulations, 1985. Therefore, such approval

was not without jurisdiction or otherwise illegal. The Board without any express power to revoke the decision taken by the Chairman, CDA pursuant to Regulation 13 *ibid* decided that the said precedent is inapplicable and that too on the basis of vague reasoning.

79. The Respondents/CDA cannot defend such decision by the Board by describing their earlier acts as mistakes as no person should be made to suffer or be prejudiced by an unlawful act or omission of public functionaries[4]. Thus even if the enhancement of FAR was beyond the maximum prescribed under Regulation 2.4.3, at the most it could lead to demolition of the excess covered area but in the facts and circumstances of the instant case where enhancement of FAR was approved by the Respondents/CDA, the Respondents/CDA was not justified in the cancelling the Subject Plot.

80. In view of the foregoing, the instant appeal is **allowed**. Resultantly the Impugned Judgment and Decree is set-aside and the suit filed by the Appellant is decreed as prayed for. The office is directed to prepare the Decree Sheet accordingly.

81. Before parting with the judgment, I would like to acknowledge the research assistance provided by Ms. Aamna Bin-te-Iqbal, Law Clerk, which I found to be most beneficial.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on this 7th day of October, 2024.

JUDGE

JUNAID

Approved for Reporting
Blue Slip added.

[4] *Sunni Ittehad Council (Supra)*