AWAIS ASLAM ALI

- VS –

CAPITAL DEVELOPMENT AUTHORITY

Writ Petition No. 4132 of 2021, decided on 15th November, 2023.

JUDGMENT

BABAR SATTAR, J.---The petitioner is aggrieved by order dated 16.09.2021 pursuant to which respondent No. 2 has reviewed order dated 31.07.2017.

5. Learned counsel for the petitioner stated that by order dated 10.11.2015 a fine of Rs.500,000/- was imposed by CDA under Section 49-C of the CDA Ordinance, 1960, read together with Clause 2.17.3 of the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005, for non-confirming use. He stated that the said order was impugned before respondent No.2 who after appointment of a commission and in pursuance of the inspection report of the commission (which stated that there was no commercial activity at the said premises), by order dated 31.07.2017 set aside the order of respondent No.1. He stated that CDA then filed a review against order dated 31.07.2017 which has been allowed by the impugned order and the fine has been reinstated. Learned counsel for the petitioner submitted that in deciding the review application respondent No.2 has not acted in consonance with the law laid down in relation to review of an order. He submitted that there was no error floating on the surface of order dated 31.07.2017 and that no such error has been identified in the impugned order and in fact respondent No.2 has re-decided the appeal by taking into account fresh considerations that were never raised before the Deputy Commissioner,

ICT while he passed order dated 31.07.2017.

6. The learned counsel for CDA submitted that Deputy Commissioner, CDA by order dated 10.11.2015 had correctly imposed the fine of Rs. 500,000/- under Clause 2.17.3 of Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005. The said order was set aside by the Commissioner, CDA by order dated 31.07.2017 on the basis that the HVC to the Commissioner (Revenue), ICT Islamabad had been deputed to visit the premises and submit a report. The CDA then sought review of such order on the basis that the breach established against the petitioner existed at the time when the order dated 10.11.2015 was passed and not at the time when the appeal was filed and decided on 31.07.2017. And consequently, the Commissioner, CDA had erred in deciding the appeal. He submitted that by order dated 16.09.2021, Commissioner, CDA correctly reviewed the previous order on the basis that the counsel for CDA presented the screen shot of a webpage, which reflected that the address of the petitioner was reflected as the address of Pakistan Press International (Pvt.) Ltd. and the petitioner was the Chairman of Pakistan Press International (Pvt.) Ltd. and it was on this basis that the Commissioner, CDA concluded that the original fine for non-conforming use had been correctly imposed.

7. A perusal of the order dated 10.11.2015 reflects that it was an ex-parte order and the petitioner was not heard prior to imposition of the penalty. The petitioner then filed an appeal, which came before the Commissioner, CDA, who directed that an inspection of the house premises be conducted by his HVC. The HVC found that the house had been rented out and was in the residential use of one Muhammad Amir. The report also stated that the neighbors had been interviewed and they confirmed that no office had been set up in the premises for the past three years at least. It was on this basis that Commissioner, CDA by order dated 31.07.2017 set aside the findings of the Deputy Commissioner, CDA and the fine imposed. The CDA then filed a review pursuant to Section 36(3) of the CDA Ordinance, 1960, the provision of which states the following:

> "Provided that an order under this subsection shall not, except in so far as it corrects an arithmetical, clerical or patent error or mistake in the award or order under review, enhance the amount of compensation awarded".

8. The proviso reflects that the scope of the review is quite similar to the scope of review before the Courts. The law on question of review is well settled (See Mehmood Hussain Lark v. Muslim Commercial Bank Ltd. (2010 SCMR 1036),

Haji Muhammad Boota v. Member (Revenue) BOR (2010 SCMR 1049) and Arif Shah v. Abdul Hakeem Qureshi (PLD 1991 SC 905).

9. It is apparent from the impugned order dated 16.09.2021 that it has not been passed to correct any error floating on the surface of the record. While passing the impugned order

Commissioner, CDA essentially sat in appeal over the decision rendered by his predecessor and took into account additional factual aspects of the matter, which were never presented before Deputy Commissioner, CDA when he passed the initial order imposing of fine. In view of the arguments of the learned counsel for CDA who presented to Commissioner, CDA the screen shot of a webpage reflecting that the petitioner was Chairman of Pakistan Press International (Pvt.) Ltd. and the address of the petitioner's house was reflected as the address for Pakistan Press International Pvt. Ltd., the Commissioner while exercising review powers concluded that the fine had been correctly imposed. This was neither the basis of CDA seeking the review nor could have been a valid ground for passing an order in review jurisdiction. If at all the facts suggested that the petitioner was liable for non-confirming use of his property, fresh proceedings could have been initiated for such non-confirming use. However such fact as determined by the Commissioner based on the arguments made by the counsel for CDA in the year 2021 could not form a basis to either review the order of Commissioner, CDA dated 31.07.2017 or conclude that the initial fine imposing order passed by Deputy Commissioner, CDA on 10.11.2015 was correct.

10. As aforementioned the scope of a review is very limited. What the CDA sought to do was not to seek the correction of an error floating on the surface of the record, but was to seek the order of the Commissioner to be set aside through a fresh appreciation of facts. And by engaging in such exercise Commissioner, CDA acted beyond his review jurisdiction and sought to decide the matter afresh essentially in exercise of appellate jurisdiction. The impugned order therefore is not sustainable in the eyes of law and is without jurisdiction. The petition is therefore allowed and the impugned order dated 16.09.2021 is set aside.

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