JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION. NO. 4012 OF 2023

SOHAIL AHMED NOMANI

VS

CAPITAL DEVELOPMENT AUTHORITY & ANOTHER

Petitioner by : Mr. Abdur Rashid Awan, Advocate.

Respondents by : Raja Khalid Mehmood, Advocate.

Date of hearing : 18.04.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as **"Constitution"**), the Petitioner [Sohail Ahmed Nomani] has prayed that Letter bearing No. CDA-EM-S-7(55)18/66/19900 dated 19.10.2023 **("Impugned Letter")** passed by the Respondents may kindly be declared as illegal. He also seeks direction to the Respondents to transfer the allotment and to mutate the title of House No. 18, constructed over a plot of land measuring 1066 Sq Yards located at Street No. 55, Sector F-7/4, Islamabad **("Subject House")**, subject to payment of token fee, in the name of the Petitioner.

2. The brief facts of the case as per the Memo of Petition are that the late Mr. Iqbal Ahmed Nomani, the paternal uncle of the Petitioner was the owner in possession of various immovable properties, including the Subject House. Mr. Iqbal Ahmed Nomani (late), died on 04-01-1996 leaving behind Iftikhar Ahmed Nomani, Siraj Ahmed Nomani (brothers), and one sister, namely Mst. Azra Nomani. She also died unmarried and issueless. Unfortunately, all the aforesaid legal heirs have also since been died. The Petitioner is the sole son of Siraj Ahmed Nomani, as the mother and one sister of the Petitioner have also died. The sister of the Petitioner also died unmarried and issueless. Whereas the late Iftikhar Ahmed Nomani left behind, Aftab Ahmed Nomani, Altaf Ahmed Nomani (sons), Mst. Snober Shuja, Mst. Samina Kamal, Fouzia Ehsan, Nasreen Amjad (daughters), and Mst. Shahida Nomani as a widow. At the time of his

death, the late Iqbal Ahmed Nomani left various movable and immovable properties, including the Subject House. The legal heirs of the late Iqbal Ahmed Nomani for the distribution and partition of the immovable properties, including the Subject House, filed a civil suit before the learned Senior Civil Judge at Rawalpindi on 19-04-2019. Vide Judgment and Decree dated 24-10-2022, on the basis of a Compromise/Family Settlement Deed, the suit was decreed by the learned Civil Judge, Rawalpindi. The Petitioner approached the Respondents and filed an application for the transfer of title of the Subject House in the name of the Petitioner, under Regulation 18(3) of the Islamabad Land Disposal Regulations, 2005 however such application was declined vide the Impugned Letter. Hence, this Petition.

3. The learned counsel for the Petitioner contended that the Impugned Letter is against the facts and law involved in the case; that the Respondents, under Regulation 18 (3) of the Islamabad Land Disposal Regulations, 2005 **("Land Disposal Regulations")** are under a legal obligation to transfer and to mutate the title in favour of the Petitioner on the production of prescribed documents subject to payment of prescribed token fee; that the Petitioner has already provided the required documents i.e. Judgment and Decree dated 24-10-2022 as well as Compromise/Family Settlement Deed duly tendered before the learned Civil Judge at Rawalpindi; that perusal of the said Compromise / Family Settlement Deed will reveal that all the other legal heirs of late Iqbal Ahmed Nomani have already surrendered their shares in favour of the Petitioner; that perusal of the said Compromise / Family Settlement Deed will reveal that all the legal heirs with their free consent have distributed the properties left by late Iqbal Ahmed Nomani and as per para 6 (ii) of the said deed, the Subject House has been surrendered in favour of the Petitioner, therefore, the view taken by the Respondents for the provision of release deed is not only incorrect but also against the Land Disposal Regulations; that instead of acting and implementing the Regulation 18(3) of the Land Disposal Regulations, the Respondents are asking the Petitioner to execute the said decree from Islamabad; that in the light of decree based on the said Compromise/Family Settlement Deed, the Respondents are bound to implement the said decree; that in execution petition, the learned Civil Judge at Rawalpindi has already directed the Petitioner to

approach the concerned Departments for the implementation of the said decree and for the purposes of the Subject House, the Respondents are the concerned department and the direction of the learned Civil Judge at Rawalpindi is binding upon them.

4. The learned counsel appearing on behalf of the Respondents resisted to the instant Petition on the grounds that the Petitioner, instead of filing an execution petition, has directly approached this Court. He prayed for the dismissal of the instant Petition.

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

6. The petitioner filed Suit for Possession through Partition before the Court of learned Civil Judge 1st Class, Rawalpindi on 19.04.2019, which was decreed on 24.10.2022 based on a Compromise/Family Settlement Deed, vide which the Subject House came in the share of the present Petitioner i.e. Sohail Ahmed Nomani along with other properties. Undisputedly, due to clerical error, the Subject House was not mentioned in the final judgment of the learned Civil Judge dated 24.10.2022 but later on it was also included by the same Court on 31.07.2023. The Petitioner applied for the execution of the said final judgment before the Executing Court, and vide Order dated 09.06.2023, the learned Executing Court ordered the Petitioner to get the property transfer from the concerned department in the light of the final Judgment and Decree. The Petitioner applied to the Respondents for transfer of the title in his favour, and the Respondents vide the Impugned Letter, advised to get execute the decree from Islamabad (competent forum) or provide a release deed on behalf of the legal heirs who surrendered their shares. The Petitioner then approached this Court under the Writ Jurisdiction and impugned the said Letter dated 19.10.2023.

7. The Petitioner is one of the legal heirs of the late Iqbal Ahmed Nomani. Following the execution of a Compromise/Family Settlement Deed among the legal heirs before a competent court, the Subject House was allotted to the Petitioner as part of his share. Despite clear directions from the Executing Court, the Respondents have been uncooperative and are insisting that the Petitioner either execute the decree or produce a release deed. The Impugned Letter is

unlawful, as the Executing Court has already directed the Petitioner to approach the relevant department for the transfer of the property in accordance with the final Judgment and Decree dated 24.10.2022 and the existing Compromise/Family Settlement Deed.

8. In view of the above discussion, the instant Writ Petition is **allowed** and the Respondents are directed to transfer the Subject House in the name of the Petitioner in light of the final Judgment and Decree of the learned Civil Judge, Rawalpindi.

(MUHAMMAD AZAM KHAN)
JUDGE

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