JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 584 OF 2025

MANAF ALI & 26 OTHERS

VS

FEDERAL EMPLOYEES COOPERATIVE HOUSING SOCIETY & ANOTHER

Petitioners by	**:**	**Syed Adil Safdar Gardezi & Ishfaq Ali Raja Advocates.**
Respondents by	**:**	**Sajid Mahmood Abbasi Advocate, for the Respondent No.1**
Date of Hearing	**:**	**13.03.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Petitioners seek issuance of direction to the respondent No.1 to handover the peaceful possession of the plots as well as possession letters thereof to them as per their allotment letters which were issued by respondent No.1 in lieu of their lands.

2. The brief facts of the case as per the memo of petition are that the petitioners along with other family members are ancestral owner of land falling in Khasra Nos.902, 367,360/1, 293,360/2,325, 398, 582/2, 583/2, 586, 587, 588, 589, 278, 284/2, 366, 369, 364, 367, 363/2, 365, 368, 393, 331, 485, 484, 359, 323, 324, 364, 379, 397, 595, situated at Mouza Gagri, Tehsil & District Islamabad. They sold 100 Kanals, including 70 Kanals of excess land, to respondent No.1 through an agreement dated 18.02.2014. In return, respondent No.1 allotted different residential and commercial plots to them via allotment letters duly issued by respondent No.1, detail whereof is mentioned in Para No.3 of the memo of petition. However, despite completing all formalities, respondent No.1 neither handed over possession nor issued possession letters. Repeated requests by the petitioners were ignored, and they later discovered that

respondent No.1 had unlawfully resold the land to respondent No.2 without settling their claims. Respondent No.2 began construction on the plots already allotted to the petitioners, causing them financial loss. The petitioners and other affected parties are now deprived of their legitimate rights due to the respondents' misconduct. It is further mentioned in the memo of petition that the petitioners ran from pillar to post as well as in the offices of the respondents for redressal of their grievances, but of no avail, hence, they were left with no other option except to file the instant writ petition.

3. Learned counsel for the petitioners contended that the act of respondent No.1 in selling the petitioners' land to respondent No.2 is illegal, arbitrary, and infringes upon their legitimate rights; that this sale, driven by *malafide* intent, violates fundamental rights under Articles 3, 4, 9, 14, 18, 22, 23, and 25 of the Constitution of Pakistan, 1973; that the Constitution ensures justice and economic governance, preventing unlawful deprivation of property and livelihood; that respondents ignored binding judgments and failed to treat petitioners fairly, violating principles of good governance and equality; that petitioners' case is identical to other allottees who received plots in Jinnah Garden, and respondents are legally bound to resolve their claims; that the respondents' conduct amounts to fraud, violating the doctrine of fair governance and the Islamic principles of justice, they cannot indefinitely delay petitioners' claims or exploit their authority to deprive them of their lawful property rights; that public functionaries must act fairly and in accordance with the law, ensuring justice and equal protection for all citizens. In the last, learned counsel prayed that direction may kindly be issued to respondent No.1 to handover the peaceful possession of the plots to the petitioners as per their allotment letters and to issue the possession letter to them in this regard accordingly by clearing the petitioners. The learned counsel further prayed that respondents may also kindly be restrained from further alienating the title of the said plots, creating any hurdles, raising illegal construction over the said plots, or doing any other act which is prejudicial upon the legitimate rights of the petitioners.

4. On the other hand, the learned counsel for respondent No.1 vehemently opposed the arguments of learned counsel for the petitioners by contending that instant writ petition is not maintainable under the Cooperative

Societies Act 1925, as an alternative remedy is available under Section 54 of the Act; that the dispute concerns the performance of an agreement to sell dated 18.02.2014, which falls under the Specific Relief Act and should be addressed in Civil Court; that the LOP of Jinnah Garden Phase-II was approved by the CDA on 12.01.2008 vide letter bearing No.CDA/PLW-HS(RP)2(987)/2007-24/Vol-III/405 dated 21.10.2024 and the process for the NOC is ongoing as per Court orders in Crl. No.73/2023; that possession of plots will be given after development is completed; that petitioners have concealed material facts, including previous writ petitions and restraining orders issued by this Court; that the AGM of the respondent society, held on 29.04.2023 and approved on 31.05.2023, confirmed that allottees will receive possession after development; that given the factual nature of the dispute, the petitioners lack locus standi, and the writ petition is liable to be dismissed. In the last, the learned counsel prayed for dismissal of instant writ petition with costs.

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

6. The petitioners claim is that in lieu of their ancestral land, respondent No.1 has handed over residential and commercial plots to them and handed over allotment letters of the plots in the year 2014. The respondent No.1 neither handed over the peaceful possession of the said plots nor issued the possession letters in their favour and other allottees without any reason. The counsel on behalf of the respondent categorically stated that they are ready to hand over possession of plots shortly to the petitioners as per the allotment letters which pertains to Jinnah Gardens Phase-II, as the LOP has been recently approved and development work is in progress. The learned petitioners' counsel in reply stated that an agreement which was entered between Mazhar Hussain, Zulfiqar Ali, Mst. Kaneez Fatima, Mst. Muneer Fatima, Mst. Naseer Fatima, sons and daughters of Ghulam Safdar, Mst. Hameeda Begum (widow of Altaf Ali), Afaq Hussain son of Altaf Ali, Sajida Batool widow of Habdar Ali, Matloob Hussain son of Kala Khan through Raja Ishfaq Ali son of Raja Jandad Khan and Federal Employees Cooperative Housing Society Islamabad through Colonel (R) Nazeer Hussain Islam (President of the Society), vide which it was agreed that the first party will hand over their ancestral land to the second party

in lieu of plots and the plots will be allotted on the same land of the first party. On perusal of the said agreement, it transpires that the first party to the said agreement agreed to hand over land to the second party i.e. the Federal Employees Cooperative Housing Society, on the same land, however, there is condition and subject to the availability of the land can be increased or decreased. Now the question before this court is that as to whether the subject agreement can be enforced through a writ petition or a civil suit for specific performance of the said contract or through a mechanism provided under The Cooperative Societies Act, 1925.

7. The petitioners become members of Jinnah Gardens Phase-II by virtue of acceptance of allotment letters of plots in lieu of their ancestral property. According to section 54 of the Cooperative Societies Act, 1925, any dispute between the member and the Society is to be decided through Arbitration and in that Act, a proper procedure for the redressal of the grievance is provided. The petitioners without availing the said redressal under the said Act directly approached this Court in the Writ jurisdiction which is not warranted under the law. For ready reference, relevant portion of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced as under: -

> *"**199.** (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,--*
>
> *(a) On the application of any aggrieved party, make an order—*
>
> *i. Directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or"*

8. Even otherwise, in the present case, petitioners are claiming their rights from a Contract entered between some of the petitioners and the respondent No.1 relates to contractual obligations which cannot be enforced through writ jurisdiction. Therefore, this court is of the view that the petitioners have got

alternative remedy provided under section 54 of The Cooperative Societies Act, 1925, hence, the instant writ petition is misconceived and devoid of any merits which is **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on 7th day of April 2025.

JUDGE

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