JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

R.F.A No.181 of 2015

Mst. Areeja Sidiqua	**Vs**	**Capital Development Authority through its Chairman, etc**

Appellant by: Sardar Abdul Sami, Advocate.

Respondent by: Mr. Shaharyar Tariq, Advocate.

Date of Decision: 27.01.2025.

INAAM AMEEN MINHAS, J.- Through the instant Regular First Appeal, the appellant has challenged the judgment and decree dated 26.12.2014, rendered by the learned Single Judge in Chambers, exercising original jurisdiction, whereby the suit for Declaration, Permanent Injunction, and Mandatory Injunction filed by the appellant was dismissed.

2. In brief, the facts of the case are as follows: The appellant/plaintiff filed a suit for declaration, permanent injunction, and mandatory injunction against the respondents/defendants/CDA *inter alia* that respondent No.1/ defendant No.1 offered commercial plots No.23 & 24 for sale through open auction and the appellant being interested, participated in the bid in the name of his daughter and declared the successful purchaser of both plots. The appellant paid an amount of Rs. 20,00,000/- (two million) against token No. 44 and a similar amount of Rs. 20,00,000/- (two million) against token No. 45, towards the total sale consideration of Rs. 443,828,000/- for plot No. 23 and Rs. 423,500,000/- for plot No. 24. The amount was to be transferred from abroad but due to international situation prevailing after 9/11 incident, the appellant faced serious difficulties in transferring the amount. Consequently, the respondents cancelled the bid by forfeiting the token money of Rs.4 million against both the plots through letter dated 05.08.2004. The appellant approached the respondents for reconsideration of the matter for restoration of bid. The appellant offered 100% payment against plot

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No.23 and sought 6 months' time for the payment of other plot No.24. Request of the appellant was considered and he was given chance to deposit 100% amount within a period of one week for plot No.23. whereas, against the plot No.24 the matter was remanded to CDA Board with the proposal of 6 months grace period to be provided to the appellant. Subsequently, plot No.23 was allotted and handed over to the appellant but the commitment regarding plot No.24 was not honoured by the respondents, despite repeated reminders. Thereafter, respondents issued letter No.CDA/EM-27(2754)/2005/2201-2202 dated 06.05.2006, whereby appellant was informed that her request was considered by the CDA Board in its meeting held on 20/21.04.2006 and allotment of the plot No.23 was regularized. However, the request regarding plot No.24 was not acceded to. That *Ex-post facto* approval of the CDA Board in respect of one plot out of two is against the legal norms as the Board should have either agreed or disagreed in Toto to the earlier decision of the Chairman regarding the restoration of both plots. That these illegal and unlawful acts of respondents have caused mental agony and torture to the appellant. That the appellant had made an investment in a country with hope and enthusiasm under the fascination and encouragement ensured to the foreign by the then Prime Minister and President of Pakistan but due to illegal and unlawful acts of the respondents the appellant is continuingly facing mental agony and torture. That a huge amount of appellant, approximately Rs.48 Crores, has been kept and utilized by the CDA and the appellant is entitled to receive the interest to the same rate at which CDA has charged for as delay charges i.e. 11.7%.

3. The respondents/defendants filed a written statement, raising preliminary objections, primarily contending that the appellant has no cause of action or locus standi to institute the suit. It was further asserted that the suit is barred under Section 49-E of the CDA Ordinance, 1960, and is liable to be dismissed with cost under Order VII, Rule 11, CPC. Additionally, the suit was stated to be barred under Section 42 of the Specific Relief Act, 1877 and the answering respondents claimed entitlement to special cost under Section 35-A, CPC. On factual grounds, the respondents contended that the appellant was the highest bidder for the suit property and had paid tokens of Rs. 20,00,000/- (two million) for

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each of the two plots. However, she failed to deposit the remaining sale consideration within the stipulated period despite being granted multiple extensions for payment. Due to non-payment of 25% of the total premium within the prescribed time, the token money amounting to Rs.4 million was forfeited under the terms and conditions of the auction Brochure. It was further stated that, upon the appellant's request, a lenient view was taken, and plot No. 23 was restored in his favor, subject to payment of the total cost, delayed charges, and restoration fees. However, the request for the restoration of the bid for plot No. 24 was declined. The respondents emphasized that the six-month grace period for plot No. 24 was merely a proposal that was duly considered and rejected by the CDA Board, being the competent authority. Additionally, it was submitted that the building plans for plot No.23 were promptly forwarded to the relevant department for approval or otherwise. Given the foregoing, the learned counsel for the respondents prayed for the dismissal of the suit.

4. Out of divergent pleading, the following issues were framed:-

ISSUES.

i. Whether the plaintiff has not filed the suit with clean hands? OPD

ii. Whether the plaintiff does not have any cause of action or locus stand to file the instant suit? OPD

iii. Whether the suit is false, frivolous and fictitious and is liable to be dismissed with special costs? OPD

iv. Whether the suit is barred by Section 49-E of the CDA Ordinance 1960? OPD

v. Whether the CDA Board has acted unjustly in declining the request of the plaintiff for restoration of suit plot No 24, F-11 Markaz, Islamabad, vide decision dated 21.04.2006? OPP

vi. Whether the plaintiff is entitled to a decree for declaration the effect that the letter No CDA/EM27(2754)/2005/2201 dated 06.05.2006 is illegal, unlawful without any lawful authority,

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void ab initio and ineffective upon the lawful rights of the Plaintiff? OPP

vii. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants from selling the plot No. 24, F-11, Islamabad by auction or in any manner whatsoever and also desisting from doing any act prejudicial to the lawful rights of the plaintiff? OPP

viii. Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendants to give payment schedule of plot No. 24. F-11, Islamabad? OPP

ix. Whether the plaintiff is entitled to recovery of interest @ 11.07% on Rs. 48 millions? OPP

x. Relief.

5. Upon the framing of issues, the parties were directed to present their evidence. The appellant produced the following witnesses:-

- **PW-1**: Mr. Farrukh Najam Sethi, Sub-Assistant, Estate Management-II, CDA
- **PW-2**: Mr. Manzoor Ahmad, son of Muhammad Khan, Country Head in Saudi Arabia for SEBA-KMT, a company based in Radeburg, Germany.

The appellant produced the following documentary evidence to establish her case:-

- Letter dated 04.05.2006 (Exh. P.W.1/1).
- Noting Sheet of CDA (Exh. P.W.1/2).
- Noting Sheet (Exh. P.W.1/3)
- Noting Sheet (Exh. P.W.1/4)
- Request for extension of time (Exh. P.W.1/6)
- Letter No. 278/2005 (Exh. P.W.1/7)
- Special Power of Attorney dated 28.10.2013 (Exh. P.W.2/1)

Conversely, the respondents produced **D.W.1**, Mr. Sajjad Ehsan Ullah, Assistant Director-I, Estate Management Directorate, CDA, as their

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witness. The respondents also submitted the following documentary evidence:

- Authority letter (Exh. D.W.1/1)
- Minutes of the 25th meeting of the CDA Board for the year 2005 (Exh. D.W.1/x1)
- Minutes of the 25th meeting of the CDA Board for the year 2005 (Exh. D.W.1/x2)
- Terms and conditions for the auction of the commercial I&T Centre (Exh. D.W.1/2)
- Copy of letter dated 29.07.2004 (Exh. D.W.1/3)
- Copy of letter dated 05.08.2004 (Exh. D.W.1/4)
- Copy of letter dated 05.08.2004 (Exh. D.W.1/5)
- Copy of letter dated 30.08.2004 (Exh.. D.W.1/6)
- Copy of request for extension in payment time dated 17.09.2004 (Exh. D.W.1/7)
- Copy of letter dated 28.09.2004 (Exh. D.W.1/8)
- Copy of request for extension in payment time dated 29.03.2005 (Exh. D.W.1/9)
- Copy of request for extension in payment time dated 13.04.2005 (Exh. D.W.1/10)
- Copy of letter dated 04.05.2005 (Exh. D.W.1/11)
- Copy of letter for regularization of bid for Plot No. 23 (Exh. D.W.1/12)
- Copy of letter dated 09.06.2005 for restoration of bid for plot No. 23 (Exh. D.W.1/13)
- Copy of letter dated 07.06.2005 for payment of plot No. 23 (Exh. D.W.1/14)
- Copy of allotment letter dated 11.06.2005 of commercial plot No. 23 (Exh. D.W.1/15)
- Copy of letter dated 25.11.2005 (Exh. D.W.1/16)
- Copy of letter dated 25.11.2005 regarding the proposal for consideration of the bid for plot No. 24 (Exh. D.W.1/17)
- Copy of letter dated 04.05.2006 (Exh. D.W.1/18)
- Copy of letter dated 06.05.2006 (Exh. D.W.1/19)
- Copy of letter dated 26.08.2013 (Exh. D.W.1/20)

7. The learned Single Judge in Chambers, after considering the evidence presented by the parties and the arguments advanced by their respective counsel, dismissed the suit vide impugned judgment and

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decree dated 26.12.2014. Feeling aggrieved by the said decision, the appellant has preferred the present appeal.

8. We have heard the arguments and examined the record with able assistance of the learned counsel for the parties.

9. The respondents/CDA in their written statement to the suit, raised preliminary objection that the appellant has no cause of action or locus standi to file the suit. In this regard learned Single Judge in Chambers framed issue No.2, which is reproduced as under:-

> **Whether the plaintiff does not have any cause of action or locus stand to file the instant suit? OPD**

This issue is a crucial issue, therefore, needs to be discussed first. In order to comprehend the dispute between the parties, it is essential to examine certain relevant conditions regarding the auction of the plots and the mode of payment as stipulated in the Brochure (Exh. D.W.1/2). Accordingly, the pertinent clause of the terms and conditions of the auction, as contained in the Brochure (Exh. D.W.1/2), is reproduced as follows:-

V. **Mode of payment.**

1. **The successful bidder will be required to deposit immediately on the fall of hammer and after adjusting the token money, the balance amount of 25% of the total premium of the plot, if any, within 24 hours. Non-payment of this amount will result in the automatic cancellation of his bid and forfeiture of the token money but not exceeding 10% of the total premium.**

2. In case the bid is finally accepted by the CDA Board, the successful bidder will be informed accordingly requiring him to pay the remaining 75% of the premium within 45% days of the issuance of acceptance of bid letter. The bidder will be required also to deposit with the Government Treasury or authorized branches of the Banks, duties an/or other charges, if any, levied and payable on such transactions and submit receipts to the CDA within 45 days after acceptance of the bid, the acceptance of the bid will

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> stand withdrawn and the bid will stand rejected automatically and paid to the extent of 10% of total premium shall stand forfeited.

10. It is admitted by both the parties that the appellant was declared the successful bidder for plots Nos. 23 and 24, F-11 Markaz, Islamabad in the auction held on 26/28.07.2004. However, the appellant failed to deposit 25% of the sale consideration within 24 hours of the auction, as required under Clause III(5) of the terms and conditions governing the auction and through a letter dated 29.07.2004 (Exh. D.W.1/3) requested for extension of time. Consequently, the CDA allowed the extension of 10 days but appellant failed to deposit the 25% bid amount within extended period and respondents vide their letter dated 05.08.2004 (Exh. D.W.1/4 and Exh. D.W.1/5) forfeited the token money for plots Nos. 23 and 24 on account of default of 25% bid amount as per terms and conditions of mode of payment mentioned in the Brochure Exh.D.W.1/2.

11. Despite the forfeiture of both bids, the appellant once again approached the respondents through a letter dated 17.09.2004 (Exh. D.W.1/7) requesting an extension of three months for payment along with delayed payment charges. However, this request was also rejected by the CDA vide letter dated 28.09.2004 (Exh. D.W.1/8).

12. The appellant, through letters dated 29.03.2005 (Exh. D.W.1/9) and 13.04.2005 (Exh. D.W.1/10) again approached to the CDA for extension of time for payment of subject plots and offered to deposit 100% of the sale consideration for one of the plots within a single day while seeking a short extension of six months to make full payment for the second plot, as stated in Paragraph 5 of the application dated 13.04.2005. The appellant's request was referred to the CDA Board, which was taken up in its 25th meeting held on 15.10.2005 and the CDA Board granted **ex-post facto** approval for the bid of plot No. 23, F-11 Markaz, Islamabad. However, the request to restore the bid for plot No. 24 F-11 Markaz, Islamabad (the subject matter of the present proceedings) was not approved and declined. The minutes of the meeting and the decision dated 15.10.2005, along with the letter dated 25.11.2005 are exhibited as Exh. D.W.1/16. The CDA informed vide

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letter dated 04.05.2005 as Eh. D.W.1/11 regarding the restoration of plot No.23 F-11 Markaz, Islamabad and directed the appellant to deposit the total cost of plot No.23, delayed charges and restoration fee, which was deposited by the appellant through application dated 07.06.2005 attached with pay orders in favour of the respondents. Finally allotment letter dated 11.06.2005 Exh.D.W.1/15 of plot No.23 was issued in favour of the appellant, later on the possession of plot No.23 was handed over to the appellant and she raised construction on it.

13. In light of the documentary and oral evidence adduced by the parties, it is proved that the appellant failed to deposit 25% of the bid amount within 24 hours, as per terms and conditions of Broacher Exh. D.W.1/2 of plot No.24 and bid was cancelled, token money was forfeited vide letter dated 05.08.2004 Exh.D.W.1/4, when the matter was placed before the CDA Board being competent authority and the CDA Board rejected the bid of plot No.24 vide decision dated 15.10.2005 in its 25 meeting, the decision of the CDA Board is Exh.D.W.1/17, the matter was also taken up by the CDA Board second time in its meeting held on 20/21.04.2006 in which the matter was again considered and the previous decision of the Board dated 15.10.2005 was upheld.

14. The appellant's default to deposit 25% bid amount is established through un-rebutted documentary evidence mentioned in above paragraph. Consequently, after rejection of bid due to default no vested right accrued in favor of the appellant as the highest bidder in respect of plot No. 24, F-11 Markaz, Islamabad. It is a well-established principle of law that mere participation in the bidding process and being declared the highest successful bidder does not confer any vested right until the competent authority accepts the bid. The Honourable Supreme Court reaffirmed this principle in ***Munshi Muhammad vs. Faizanul Haq*** **(1971 SCMR 533)**, wherein it was held that:-

> "*The view formed by the High Court is unexceptionable. Since the auctions in favour of the petitioners were not finally approved, they did not acquire any right in the properties, and had, therefore, no locus standi to ask for their transfer. According to the terms and conditions of the auction itself, the highest bids offered in the auctions were*

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subject to the approval of the Additional Settlement Commissioner concerned, who may or may not accept the bids, without assigning any reasons for his action."

15. The aforementioned principle was reiterated by the Supreme Court in ***Babu Pervaiz Qureshi vs Settlement Commissioner Multan and Bahawalpur Divisions, Multan*** **(1974 SCMR 337)**, wherein it was held as under:-

"A mere bid at an auction if the bid is subject to confirmation, does not create any contractual right until the bid is confirmed. It is in the discretion of the auctioneer to confirm or not to confirm it."

16. Moreover, the appellant did not acquire any legal title to the property in question by submitting the highest bid. The fact that the auction in his favor was not confirmed does not grant him the right to file a suit for declaration. This principle was settled by the Supreme Court in ***Meraj Din vs. Noor Muhammad*** **(1970 SCMR 542)**. The relevant portion of the judgment is as follows:

"It is conceded by the learned counsel at the Bar that the auction in favour of the petitioner was never confirmed. He was no doubt the highest bidder at the second auction and had also deposited a substantial amount of the auction money, but until the confirmation of the auction was made in his favour by the relevant authority, he did not acquire any right in the property whatsoever. Paragraph 9 of the terms and conditions of the auction of `building sites' under which the auction in question had been held, provided that the highest bid given by a person could be rejected without assigning any reason for it."

17. A suit for declaration under Section 42 of the Transfer of Property Act, 1882 is maintainable only with respect to pre-existing rights and no suit can be filed in relation to rights that may accrue in the future. Reliance is placed upon ***Director Military Lands and Cantonment Quetta Cantt. Quetta vs. Aziz Ahmed*** **(2023 SCMR 860),** wherein it has been held as under:-

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> *"we are clear in our mind that through a declaration in civil matters claimed under section 42 of the Specific Relief Act a pre-existing right can be declared and a new right cannot be created by grant of a decree by the civil court. Same is the position here, the learned High court under the Constitutional Jurisdiction vested in it under Article 199 can declare a pre-existing right and no new right can be created through a declaration issued under Article 199."*

Similarly, in case of ***Muhammad Jameel vs. Abdul Ghafoor*** **(2022 SCMR 348)** Supreme Court held as under:-

> *"In our view, when the plaintiff claimed a declaration of title, without a pre-existing right, suit for declaration was not competent and the courts below should not have granted a declaratory decree when no pre-existing rights were available with the respondent-plaintiff in the suit "Ihata"."*

18. Given the principles established by the Honourable Supreme Court of Pakistan as mentioned above, the suit of the appellant for declaration was not maintainable as the appellant had not acquired any right in plot No. 24, F-11 Markaz, Islamabad. A declaration under Section 42 of the Specific Relief Act of 1877 can only be sought with respect to a right that already exists. Since our findings are on issue No.2, which is with regard to cause of action or *locus standi* of the appellant and maintainability of the suit, therefore, there was no need to discuss the remaining issues.

19. For the foregoing reasons, the instant appeal is ***dismissed.***

(CHIEF JUSTICE) **(INAAM AMEEN MINHAS)**
JUDGE

APPROVED FOR REPORTING.

R.Anjam

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