JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Criminal Original No.363-W of 2017

Muhammad Akbar Chohan
Versus
Sheikh Ansar Aziz, Chairman CDA, Islamabad and another

Civil Miscellaneous (Indp) No.2206 of 2020
IN
Writ Petition No.2932 of 2017

Muhammad Akbar Chohan
Versus
Capital Development Authority through its Chairman and others

Petitioner by:	Mr. Shajjar Abbas Hamdani, Advocate in Crl. Org. No.363-W/2017.
Applicants by:	Mr. Muzammil Din Choudhry, Advocate in C.M (Indp) No.2206/2020.
Respondents/CDA by:	Mr. Amir Latif Gill and Ms. Sabeen Fahim, Advocates in both Criminal Original as well in C.M (Indp).
Date of Hearing:	**02.05.2025.**

INAAM AMEEN MINHAS, J:- Through this single judgment, I shall decide the above titled Criminal Original and C.M (Indp) as the same have arisen out of order dated 19.10.2017, passed by this Court in writ petition No.2932/2017.

2. The facts, in brief, are that petitioner Muhammad Akbar Chohan filed writ petition No.2932/2017 before this Court, wherein he challenged an office order/notification dated 25.07.2017 issued by the respondents/CDA by claiming that he purchased the rights of acquired land from respondents No.3 to 21 through agreement to sells and he as

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attorney of respondents No.14 to 21 is entitled to receive compensation for the acquired land in the form of plots. He further claimed that as per the notification he did not submit his documents/file and the balloting for the compensation is being held on 17.08.2017, therefore, his name be included in the upcoming balloting of the effectees' plots. The said writ petition was disposed of vide order dated 19.10.2017 on the assurance of CDA's Director Land & Rehabilitation that although the petitioner's name was not included in the previous balloting, it would be included in future balloting, which occurs fortnightly. On 21.11.2017, the petitioner filed Criminal Original that the respondents/CDA are not complying with the order passed by this Court, whereas on 17.08.2020, the applicants (respondents No.14 to 21 in W.P No.2932/2017) filed application C.M (Indp) u/s 12(2), CPC.

3. The learned counsel for the petitioner in Criminal Original contended that the respondents/CDA deliberately did not comply with the order dated 19.10.2017 passed by this Court; that the order was passed after due consideration of material placed on record, including the duly executed sale agreements dated 24.10.1996, 10.04.2008 and Iqrar Nama 01.04.2010, through which the applicants and other legal heirs had transferred their rights, interests and claims about the acquired land in his favour; that these documents were executed voluntarily and bear the signatures and thumb impressions of the applicants, thereby confirming their knowledge, consent and intention to part with the rights; that the Special Power of Attorney dated 10.04.2008 **("SPA")** appended to the writ petition, though limited in form, authorized the petitioner to pursue the compensation and represent the interests of the applicants before the respondents/CDA and other forums; that the contention that an attorney cannot file proceedings on behalf of the executants is misconceived, especially in the present case, where the petitioner had acted both under the authority and on the strength of substantive proprietary documents (i.e., sale agreements and Iqrar Nama); that the order merely reflects the assurance given by the competent officer of the respondents/CDA regarding the inclusion of

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the petitioner's name in the balloting process based on the documentation submitted; that no manipulation or fraud can be attributed to the petitioner and the plea that the order violates the applicants' rights is misconceived as the order neither extinguishes their claims nor confers undue benefit upon the petitioner beyond what is already acknowledged by the applicants themselves in the aforementioned documents; that prayer for recalling the order is at belated stage and *mala fide* attempt to resile from legally binding commitments and is liable to be dismissed.

4. The learned counsel for the applicants in C.M (Indp) contended that in July, 2020, the applicants contacted the respondents/CDA to follow up on the plots' allotment related to their acquired land and they were then shocked to know about the order dated 19.10.2017 passed by this Court in writ petition No. 2932/2017; that after reviewing this order, the applicants learnt that the petitioner arrayed them as respondents No. 14 to 21 without prior notice or their knowledge and further intentionally provided incorrect addresses, aiming to prevent the applicants from participating in the writ petition and claimed compensation of the applicants' land by way of concealment of facts; that the applicants and their deceased predecessor were uneducated individuals, who depended on the petitioner for assistance in obtaining compensation from the respondents/CDA concerning the applicants' acquired land; that in 2003, the petitioner obtained their signatures on blank stamp papers claiming the signatures were required by the respondents/CDA, which were later misused by him; that in November 2006, the applicants received Court notices and discovered that the petitioner had filed a suit for specific performance of the agreement dated 24.10.1996, along with a declaration, possession and permanent and mandatory injunction based on fabricated documents; that the applicants contested the suit, however, the same was dismissed for non-prosecution on 26.09.2009; that a restoration application was filed by the petitioner, which was also dismissed vide order dated 22.03.2011 as such attained finality; that the applicants neither executed any

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document transferring property rights to the petitioner nor authorized him to act on their behalf for balloting; that the order dated 19.10.2017 was obtained through concealment, misrepresentation and manipulation of facts; that the petitioner is neither an effectee of land acquisition nor entitled to be substituted in the balloting process.

5. The learned counsel for the respondents/CDA contended that the statement of the Director, Land & Rehabilitation, CDA recorded in the proceedings leading to the order dated 19.10.2017 was limited merely to the inclusion of the name of the petitioner in the forthcoming balloting process; that this statement in itself did not confer any independent legal right or title upon the petitioner rather it was intended to facilitate the interests of the genuine effectees.

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

7. A vital issue in the present case is whether the order dated 19.10.2017 passed by this Court in writ petition No.2932/2017 was obtained through fraudulent means and concealment of facts and whether the present applicants were aware of or informed about the filing and proceedings of the writ petition. Upon examining the available record, it becomes clear that the writ petition was filed on 16.08.2017 and on the same day pre-admission notices were issued but only to the respondents/CDA. The rest of the respondents, including the present applicants were never summoned to appear and present their stance. Furthermore, the addresses mentioned in the writ petition for the present applicants do not match with their actual addresses as per official CNIC records. This discrepancy strongly suggests that the petitioner deliberately provided false addresses to mislead the Court and to avoid proper notice service to the applicants and obtained the order dated 19.10.2017 with concealment.

8. The record further shows that on 11.10.2017 the respondents/CDA raised a key preliminary objection and argued that

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the writ petition should not be entertained because the petitioner did not have the legal standing (*locus standi*) to file it. This was because he was neither directly affected by the matter nor a legal heir of the deceased, Allah Bakhsh. The Court acknowledging this objection, postponed the hearing to allow further arguments, specifically on this issue. However, on the next date of hearing i.e. 19.10.2017, the Court deferred to decide the question of maintainability. The Director (Land & Rehabilitation) of the CDA appeared and right at the beginning stated before the Court that the petitioner's name would be included in the upcoming balloting process. Relying upon the statement and assurance of the director of land and CDA, the Court disposed of the writ petition and neither the petitioner nor the CDA Director assisted the Court on the question of maintainability and entitlement of the petitioner's claim to participate in the balloting of the plots reserved for land effectees.

9. The claim made by the petitioner that he was legally entitled to file the writ petition based on an agreement to sell dated 24.10.1996, allegedly executed by the applicants' predecessor, Allah Bakhsh (deceased) and his subsequent appointment as Special Attorney on 07.11.1997 is not legally tenable. This argument loses its merit when examined in light of the judicial record. It is undisputed that the petitioner had already filed a civil suit in 2006 seeking specific performance of the same agreement, directly against the present applicants. The applicants actively contested that suit, which was dismissed for non-prosecution on 26.09.2009. Although the petitioner then applied to restoration of the suit but he failed to comply with specific directions of the learned Trial Court to serve notice to the defendants/present applicants and deposit the necessary process fee and postal charges, therefore, due to this non-compliance, the restoration application was also dismissed on 13.07.2010. A further attempt to revive that application ended similarly in dismissal for non-prosecution on 22.03.2011. These dismissals were never challenged and thus became final. Most importantly, the petitioner intentionally failed to disclose the critical facts of filing the suit, its dismissal and then

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dismissal of applications for restoration of the suit when he later approached this Court in writ petition No. 2932/2017. This deliberate concealment of prior legal proceedings and binding judicial outcomes amounts to a willful suppression of material facts. As a result, the writ petition was entertained and disposed of based on a misleading presentation, which influenced the issuance of the order dated 19.10.2017.

10. It is essential to highlight that in the earlier civil suit filed by the petitioner against the present applicants, he accurately provided their correct residential address as being in Bahkar Fateh Bukhsh, Islamabad. As a result, the applicants were served correctly, appeared before the Court and actively contested the case. However, when the petitioner later filed the writ petition, he intentionally mentioned a wholly different and incorrect address i.e. House No. Z-492, Gali No. 90, Dhok Ratta, Rawalpindi for the applicants. This address was inconsistent with the one previously used in the civil suit. Such a deliberate and unexplained change strongly indicates that the petitioner intentionally used the wrong address to avoid proper service upon the applicants, he was fully aware that they would again appear and challenge his claim, if they were served. This strategic misrepresentation was intended to secure an ex-parte order without opposition. The suppression of the applicants' accurate address and the consequent denial of their right to be heard is a serious misuse of the Court's process. According to well-established legal principles, any judicial order obtained through fraud, misrepresentation or the suppression of material facts lacks legal sanctity and is liable to be set aside. Therefore, the conduct of the petitioner not only reveals a calculated abuse of the judicial process but also invokes the jurisdiction of this Court under Section 12(2), CPC to revisit and nullify the order passed in such circumstances.

11. Another key argument of the learned counsel for the applicants was that SPA was limited in scope and intended only to protect and manage their interests, which appears to be legally sound and well-

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supported by the document's contents. A straightforward reading of the clauses and language used in the SPA shows that it was explicitly granted to allow the attorney to communicate with the respondents/CDA to represent the applicants before the respondents/CDA and relevant legal forums and to sign documents or fulfill necessary procedural requirements such as obtaining completion certificates. The SPA was administrative and did not grant the attorney any authority to claim compensation or benefits arising from land acquisition in his name. More importantly, there is no explicit or implied clause that empowers the attorney to substitute names of the applicants for that of the petitioner Muhammad Akbar Chohan in matters related to land balloting, allotment of plots, or any transfer of proprietary interest. The document's wording is unambiguous and strictly limits the authority granted, without extending ownership or beneficiary rights to the attorney. Therefore, the petitioner's reliance on this SPA to assert independent claims before the respondents/CDA or the Courts is unjustified and contrary to the legal effect and intent of the instrument.

12. This sequence of events raises concerns as to whether the judicial process was circumvented and whether the order dated 19.10.2017 was obtained in a manner that justifies the invoking of the jurisdiction under section 12(2), CPC for setting aside an order obtained through misrepresentation or concealment of material facts.

13. It is a well-established principle that concealment or suppression of material facts not only undermines the integrity of judicial proceedings but also vitiates the entire process as justice must be founded on truth and transparency. When any party secures a decree or favourable order by withholding relevant facts or misleading the Court, such conduct constitutes fraud. It invalidates the outcome, even if the Court was not directly deceived. This view is supported by the judgment of the apex Court reported as ***Muhammad Jalat Khan vs.***

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Land Acquisition Collector, Tarbela Dam Resettlement Organization, WAPDA, Ghazi (Hazara) and 3 others, **(2003 SCMR 210)**.

14. In light of the above discussion, application u/s 12(2), CPC (C.M (Indp) No.2206/2020) is **allowed** and the impugned order dated 19.10.2017 is **set aside**. The writ petition stands **dismissed**. Since the order against which the petitioner filed Criminal Original has been set aside, therefore question of contempt of Court does not arise. Consequently, Crl. Org. No.363-W/2017) stands **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 15.07.2025.

JUDGE

R.Anjam

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