Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Regular First Appeal No. 26 of 2019

National Police Foundation
Vs
Mian Khan and others

APPELLANT BY:	Mr. Zulfiqar Khalid Maluka, Advocate.
RESPONDENTS BY:	Mian Abdul Razzaq, Advocate. Barrister M. Saad Buttar, Advocate for CDA.
DATE OF DECISION**:**	06.07.2021

BABAR SATTAR,J.- Through this appeal the judgment and decree passed by the learned Civil Judge dated 01.11.2018 has been impugned.

2. The said judgment and decree was passed in a suit for declaration, recovery of possession, mandatory and permanent injunction in relation to 49 kanals and 13 marlas of land allotted in consolidated form by CDA to respondents No. 1 to 15 in Sector E-11 by letter dated 24.05.2006 in exchange of acquisition of their ancestral land in Sectors F-11 and F-12 **("Suit Land").** The consolidation of land was initiated pursuant to an order of the learned Wafaqi Mohtasib and approved by CDA on

23.05.2006, pursuant to which new allotment letters were issued to owners of land in E-11, including respondents No. 1 to 15 and housing societies, etc. The said respondents were allotted 49 kanals and 13 marlas of land in consolidated form from land previously acquired by CDA in E-11. Such Suit Land was in possession of the appellant/National Police Foundation **("NPF")** and as CDA was unable to hand over peaceful and vacant possession to the Suit Land to respondents No. 1 to 15, they filed a civil suit which was decreed by the learned Civil Court. The judgment and decree of the learned Civil Court is now under challenge before this Court. In terms of litigation background, the august Supreme Court took cognizance of the issue of illegal possession of the land by societies in Sector E-11 in HRC No. 3753/2007. The issue of possession of Suit Land by NPF was agitated by some of the respondents before the august Supreme Court, which made efforts to have the matter amicably settled between, *inter alia*, the respondents and the appellant. However, when such amicable resolution did not transpire, the august Supreme Court by order dated 29.05.2008 held that the aggrieved party could avail appropriate remedies under law. Respondents No. 1 to 15 then filed a writ petition before this Court which was withdrawn after this Court observed during the proceedings of such petition that the respondents had an adequate remedy in the form of civil suit. Consequently, respondents No. 1 to 15 filed a

civil suit, the decision in which has now been challenged before this Court.

3. Capital Development Authority **("CDA")** in its report and written statement took the position that the Suit Land had indeed been allotted to respondents No. 1 to 15. It alleged that the respondents had not handed over vacant possession of their ancestral land in F-11 and F-12 in exchange for which they had been allotted the Suit Land. Such allegation was not found to be correct by the learned Civil Court and is not relevant for our present purposes as CDA has not challenged the impugned judgment and decree and as respondent in the present appeal has also not filed any cross-appeal. CDA further acknowledged in its written statement that a demarcation was carried out by Assistant Director Land and Tehsildar, CDA on 19.05.2008, which established that the land owned and allotted to respondents No. 1 to 15 was in the possession of NPF.

4. NPF, the present appellant, was proceeded against ex-parte by this Court (when it was vested with original civil jurisdiction), by order dated 28.03.2011, on the basis that while notices had been served on NPF and repeated opportunities had been provided to it to appear before the court, NPF refused to do so. NPF filed an application for setting aside ex-parte proceedings, which was dismissed by the learned Civil Court on 10.01.2018. In

response to such application respondents No. 1 to 15 had taken the position that the counsel who was representing NPF in W.P No. 2441/2016, which was related to the subject-matter of the suit, had stated before this Court that he had himself informed NPF regarding pendency of the civil suit.

5. Given the litigation background of the subject-matter of the suit having been considered all the way up to the august Supreme Court and NPF being unable to advance sufficient cause for non-appearance before the Court, the learned Civil Court dismissed the application for setting aside the ex-parte proceedings. NPF never challenged the said decision of the dismissal of application for setting aside ex-parte proceedings, which has attained finality. Consequently, at this stage while hearing the appeal the contention of the learned counsel for NPF that he be provided an opportunity to adduce additional evidence before this Court cannot be countenanced.

6. This Court by order dated 20.01.2015 framed the following issues in its original civil jurisdiction:

1. Whether the plaintiffs are entitled to recover market price of the suit land from the defendants? OPP.
2. Whether the plaintiffs handed over the possession of alleged suit property to the defendant No.1? OPP

3. Whether the defendant No.5 with the connivance of defendants No. 1 to 4 got possession of the alleged suit land? OPP
4. Whether the plaintiffs are entitled to the decree, as prayed for in the plaint, according to the allotment letter/transfer letter No. CDA/DLR(32)/E-11/4/98 dated 24.05.2006? OPP
5. Whether the suit is liable to be dismissed under Order VII Rule 11 of the CPC? OPD
6. Whether the instant suit is barred by time? OPD
7. Whether the suit has been instituted by a person, who does not possess any authority to institute the suit? OPP
8. Whether the portion of acquired land, situated in Sector F-12 is in possession of the plaintiffs? OPD
9. Whether the land in Killa, owned by the plaintiffs in Sector E-11 is in the possession of Housing Society namely Police Foundation? OPD
10. Whether the defendants No. 1 to 4 are entitled to special costs under section 35-A CPC?OPD
11. Relief.

7. Inayat Ali, PW-1 exhibited the allotment and transfer of property rights issued in relation to the suit land by CDA by letter dated 24.05.2006 as Exh.P1, which vests respondents No. 1 to 15 (or their predecessors-in-interest) the title and rights to possess the suit land. DW-1, Muhammad Shafique (Gardavar of Directorate of Land, CDA) acknowledged the issuance of Exh.P1 and the claim

of respondents No. 1 to 15 to rights and title of the Suit Land and further that a demarcation was carried out on the order of the august Supreme Court during hearing HRC No. 3753/2007 in which it was found that NPF was in possession of the Suit Land.

8. On the basis that title of Suit Land in favour of respondents No. 1 to 15 was acknowledged by CDA and further that it had been established through evidence that CDA had not handed over vacant possession of the Suit Land to respondents No. 1 to 15 after issuance of allotment letter dated 24.05.2006 as acknowledged by DW-1, the learned Civil Court found in relation to issues No. 1, 3, 4 & 9 that respondents No. 1 to 15 were entitled to the possession of the Suit Land and that CDA was under an obligation to hand over vacant possession of the Suit Land to respondents No. 1 to 15, which presently is in the possession of NPF. In relation to issues No. 2 & 8 the learned Civil Court found that there was no evidence regarding who was in possession of the property acquired by CDA from respondents No. 1 to 15 in Sectors F-11 and F-12, but that CDA as the regulator of land in Islamabad Capital Territory and a public authority had the ability to employ state power to acquire possession of such land which had been acquired from respondents No. 1 to 15 if it was still not in its possession. In relation to issue No. 5 the learned Civil Court found that the suit was maintainable. It held in relation to issue No.6 that respondents No. 1 to 15

had continued to keep pursuing their rights in relation to the Suit Land and consequently the suit was not time barred. It further held that the suit was duly authorized and the plaintiffs had proven their claim in accordance with law.

9. The learned counsel for the appellant stated that PW-1 was not authorized to make any statement on behalf of the other plaintiffs and thus the claim of ownership of such plaintiffs had not been proven in accordance with law. The objection is misconceived. The claim of respondents No. 1 to 15 regarding title of the suit land was conceded by CDA as the regulator of land and repository of ownership record of land allotted by it to third parties within the ICT. And as the Suit Land was allotted to respondents No. 1 to 15 by CDA itself by letter dated 24.05.2006 there was no need to adduce oral evidence in view of availability of documentary evidence available on record, especially given that as respondents No. 1 to 15 all claim their title to the Suit Land on the basis of the same letter dated 24.05.2006, which has been duly exhibited and the contents of which have been acknowledged by CDA. In view of these facts the question of NPF or someone else establishing legal character against the Suit Land could only arise if NPF had established that it had acquired Suit Land either from CDA after its acquisition or from respondents No.1 to 15 after the allotment of such land to them by CDA in 2006.This is not the NPF’s case in

this appeal. NPF's claim is that it acquired proprietary rights from original owners of the Suit Land in the years 2001 and 2002. Such claim is backed by no evidence as NPF elected not to appear before the learned Civil Court and adduced no evidence in support of its claim. NPF's claim makes no logical sense either as the Suit Land was acquired by CDA from original owners of such land and remain vested with CDA till it was allotted to respondents No. 1 to 15 in 2006 and thus it could not have acquired by NPF in 2001 from any other original owner of such land. If NPF did acquire proprietary rights in any land in Sector E-11 from someone else who purportedly claimed to be the owner of the Suit Land, NPF might have a cause of action against such person. But NPF cannot defeat the rights of respondents No. 1 to 15, based on the title to the Suit Land conferred it by CDA and acknowledged by CDA, merely on the basis of adverse possession. Learned counsel for CDA has also stated before us that the title of the Suit Land being vested in respondents No. 1 to 15 is still acknowledged by CDA and it is the fact that the Suit Land remains in the possession of NPF at the present time without title.

10. In view of above, the learned counsel for the appellant has failed to point out any infirmity in the impugned judgment and decree. The learned Civil Court has correctly held that respondents No. 1 to 15 are entitled to possession of the Suit Land and CDA is under a legal

obligation to ensure that vacant possession of the suit land is handed over to respondents No. 1 to 15. It is not disputed that the suit land was allotted in exchange after acquisition by CDA of ancestral land of respondents No. 1 to 15 in Sectors F-11 and F-12. Mere issuance of title or allotment letter in relation to the Suit Land as compensation for acquisition of their ancestral land in Sectors F-11 and F-12 does not amount to compensation for purposes of Article 24 of the Constitution read together with provisions of CDA Ordinance, 1960 and the Land Acquisition Act, 1894. The Constitution grants a right to every citizen to acquire, hold and dispose of property. Article 24 of the Constitution prohibits the State from acquiring the property of a citizen without paying compensation. The obligation to compensate a citizen and how such compensation must equal the market value of the property acquired at the time that the compensation is actually paid has been enumerated by this Court in ***W.P No. 244 of 2018 (Noman Ahmed and 14 others Vs. Capital Development Authority, etc.)*****.** It is therefore a solemn legal obligation of CDA to ensure that vacant possession of the Suit Land is handed over to respondents No. 1 to 15 as its failure to do so would constitute a breach of rights of respondents No. 1 to 15 guaranteed under Articles 23 and 24 of the Constitution and delinquency on part of CDA to discharge its statutory obligations.

11. For these reasons, we find that the impugned judgment and decree suffer from no legal infirmity and that the instant appeal is without merit and is therefore **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE

Saeed.