Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 63 of 2014

Mst. Nasreen.
Vs
Raja Aftab, etc.

APPELLANTS BY:	Mr. Sher Afzal Khan, Advocate for the Appellants in ICA Nos.63 & 64/2014. Mr. Muhammad Nazir Jawad, Advocate for the Appellants in ICA Nos.89 & 90/2014.
RESPONDENTS BY:	Mr. Shajjar Abbas Hamdani, Advocate for respondent No.2. Mr. Jahangir Jadoon, Standing Counsel.
Date of hearing:	**28-10-2014.**

ATHAR MINALLAH, J.- This order will dispose of instant ICA as well as three connected ICAs bearing Nos.64, 89 & 90 of 2014 as all these four Intra Court Appeals, arise out of judgment dated 22-01-2014, passed in Writ Petitions Nos. 1815/2012 & 2054/2012 (hereinafter referred to as "Petitions"). ICA Nos.89/2014 & 90/2014 have been preferred by the Federal Government Employees Housing Foundation (hereinafter referred to as the "Foundation"), while ICA Nos.63/2014 & 64/2014, by Mst. Nasreen (hereinafter referred to as the "Appellant"), who was not a party in the proceedings before the learned Single Judge.

2. The dispute relates to Plot No.25, St.No.1, Sector G-13/3, in Phase-III, Scheme of the Foundation (hereinafter referred to as the "Plot"). The Plot was initially allotted provisionally to Mr. Muhammad Ramzan (hereinafter referred to as "Respondent No.2") and on 28-03-2002 converted to permanent allotment. Respondent No.2 entered into an Agreement to sell

with Mr. Aftab Ahmed (hereinafter referred to as the "Respondent No.1). A suit was instituted by the latter for specific performance and the same was decreed vide order and decree dated 06-12-2010. The Foundation cancelled the Plot vide order dated 21-02-2011, on the ground that, firstly, the respondent No.2 had misrepresented himself as a permanent/regular employee of the Airport Security Force (ASF) whereas, the latter confirmed vide letter dated 22-01-2011 that he had served on "Contract Basis" from 05-07-1976 till 11-01-1996, secondly that the signatures on the two application forms submitted by the respondent No.2 were different, prima-facie, indicating his malafide intentions. It is an admitted position that neither any notice was served on the respondent No.2 before cancellation of the Plot, nor an opportunity of hearing was afforded to him.

3. While the petitions were pending before this Court, the Foundation allotted the plot to the Appellant, a widow of a civil servant, despite an interim order dated 14-06-2012. It appears from the averments made in ICA's filled by the Appellant that at the time of allotment she was not informed by the Foundation regarding the pending litigation relating to the Plot.

4. The learned counsel for the Foundation contended that the Plot was cancelled after the parent Department confirmed that the respondent No.2 was an employee on contract basis. It is further contended that only regular employees are eligible for allotment of a plot and, therefore, the respondent No.2 had obtained the Plot through misrepresentation and concealment of material facts.

5. The learned counsel of the Appellant argued that she is a widow and, the allotment of the Plot in her name was in accordance with her entitlement. He stressed that since the allotment was made after cancellation

of the Plot from the name of the respondent No.2, therefore, rights have been created in favour of the Appellant.

6. Learned counsel for the respondent No.2 urged dismissal of the appeals on the grounds that the impugned judgment was in accordance with the settled principles of law. He stated that the Plot was cancelled without notice to the respondent No.2 nor was he confronted with the letter dated 21-01-2011, purported to have been issued by the parent Department i.e. the ASF. He further contended that the respondent No.2 was a regular employee of ASF and retired on 12-10-1996 on attaining the age of superannuation. It is claimed that the respondent No.2 received his pensionary benefits which affirms that his employment was not on contract basis. It is also contended that, had the respondent No.2 given a reasonable opportunity of hearing, he would have satisfied the Foundation regarding his bonafides. It is stressed that since the Plot was cancelled in blatant violation of the principles of natural justice, the petitions were, therefore, rightly allowed through the impugned judgment.

7. We have heard the learned counsels and perused the record with their able assistance.

8. The Plot was allotted to the respondent No.2 on permanent basis on 28-03-2002. The application for allotment was supported by necessary documents, including the service book of the Appellant. There is force in the contention of the learned counsel for the respondent No.2 that contract employees are not entitled to pensionary benefits nor serve for such a long period. The Foundation, admittedly, did not give a reasonable opportunity to the respondent No.2 nor was he confronted with the letter of the parent department, dated 21-01-2011. Perusal of the said letter raises questions which essentially required compliance with the requirements of due process of law

before the vested rights accrued in favour of the respondent No.2 could have been taken away. It is a settled law that strict adherence to the principles of natural justice is mandatory in situations where vested rights are likely to be affected.

9. As a universal rule, public authorities while performing their functions and exercising powers conferred by law are required to act fairly and justly. Fair and just exercise of powers can only be ensured by strictly observing the principles of natural justice. The august Supreme Court has consistently held that in cases where the giving of notice is a necessary condition, the failure to do so renders the order void. Reference may be made to *"Collector, Sahiwal and 2 others vs Mohammad Akhtar",* 1971 SCMR 681, *"Commissioner of Income-Taz, East Pakistan vs Fazlur Rahman",* PLD 1964 SC 410, *"Abdul Latif Niazi vs Government of West Pakistan",* PLD 1967 SC 62, *"Mansab Ali vs Amir and 3 others",* PLD 1971 SC 124.

10. The case of the Appellant also raises concerns about the conduct of the Foundation. She is stated to be a widow and was admittedly entitled to a plot. It appears from the averments made in the respective ICA's, that she was not informed regarding the pending petitions challenging the status of the Plot. Even otherwise the Plot could not have been allotted or its status changed in the light of the injunctive order passed by this Court. The acts and omissions of the Foundation, as reflected from the record, in the present appeals, are neither fair nor in accordance with law. Both, the respondent No.2 & the Appellant, have been wronged.

11. In the light of the above, we have not been persuaded to find any legal infirmity to warrant interference with the findings of the learned Single Judge in Chambers as recorded in the Judgment impugned before us.

However, in order to meet the ends of justice, we modify the impugned judgment to the extent that the Foundation shall restore the plot in the name of the respondent No.2. However, the Foundation shall be at liberty to issue a show cause notice to the respondent No.2 and afford him a reasonable opportunity of hearing before passing an order, which may in any manner affect his rights. The Foundation is directed to accommodate the Appellant i.e. Mst. Nasreen, a widow, within sixty days from the date of this order and a report in this regard shall be submitted to the Registrar of this Court.

12. The Intra Court Appeals are, therefore, disposed of in the above terms.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

(ATHAR MINALLAH)
JUDGE

Asif Mughal/*

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