JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2183 of 2017
Farhad Khan
Versus
Federation of Pakistan through Secretary, Ministry of Housing and Works and others

Dates of Hearing:	21.07.2020 & 20.08.2020
Petitioners by:	Mr. Raheel Khan Niazi, Advocate for the petitioners in writ petitions No.2183, 2078, 2217, 2222, 2223, 2224, 2370 of 2017, 4285, 4286, 4288, 4289, 4290, 4291, 4292, 4293, 4531, 4869, 4884 of 2018 and 1653 of 2020. Mr. Muhammad Akhtar Awan, Advocate for the petitioner in writ petition No.2101 of 2017. Ch. Muhammad Zafar Iqbal, Advocate for the petitioner in writ petition No.2032 of 2018. Mr. Aasim Shafi, Advocate for the petitioners in writ petitions No.2242 of 2017 and 206 of 2019.
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General. Barrister Asghar Khan, Mr. Faisal Atta and Mr. Shazeb Khan, Advocates for P.H.A. in writ petitions No.2217 and 2223 of 2017, 4285, 4286, 4288, 4289, 4290, 4291, 4292, 4293, 4531, 4869 and 4884 of 2018. Mr. Abdul Hameed Khan Kundi, Advocate for P.H.A. in writ petitions No.2101, 2183, 2078, 2217, 2222, 2223, 2224, 2242 & 2370 of 2017, 2032, 4285, 4286, 4288, 4289, 4290, 4291, 4292 & 4884 of 2018, 206 of 2019 and 1653 of 2020 Mr. Zubair Thaheem, Assistant Director (Legal), P.H.A.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.2183, 2078, 2101, 2217, 2222, 2223, 2224, 2242 and 2370 of 2017, 2032, 4285, 4286, 4288, 4289, 4290, 4291, 4292, 4293, 4531, 4869 and 4884 of 2018, 206 of 2019 and 1653 of 2020 since they entail common questions of law and fact.

2. The petitioners in all the petitions impugn the advertisement published on 18.05.2017 by the Pakistan Housing Authority Foundation (**"P.H.A."**) inviting applications for allotment of executive apartments to serving federal government officers in BPS-20 to 22. Furthermore, the

petitioners seek a direction to the P.H.A. to complete the process in which the petitioners were allotted apartments.

3. The facts essential for the disposal of these petitions are that the Board of Directors of the P.H.A., in its meeting held on 22.12.2014, decided to renew the membership of the existing members on payment of Rs.5,000/-. Through an advertisement published on 31.01.2015, the P.H.A. invited applications for the renewal of membership of the existing members. The deadline for filing the applications for the renewal of membership was 28.02.2015. Apparently, on the recommendations of the National Assembly Standing Committee and the Ministry of Housing and Works, the said deadline was extended to 16.03.2015. Subsequently, the Board of Directors of the P.H.A., in its meeting dated 07.05.2015, decided to allow renewal of membership for all those applicants who had applied by 07.05.2015.

4. Apartments were to be allotted to members on the basis of balloting. Apartments in projects at Sectors G-10/2 and G-11/4, Islamabad were to be allotted to the registered members in BPS-21 and 22 on the basis of balloting. For this purpose, a Balloting Committee was constituted on 31.05.2016. The Director (Administration), P.H.A. was the Chairman of this Committee. The mandate of this Committee was to conduct transparent balloting in the presence of the registered members or their representatives and the media.

5. Balloting was conducted on 02.06.2016. Apparently, the registered members or their representatives and the media were not present during balloting. Offers for allotment of apartments were made to 510 members who had been selected through balloting. The petitioners are amongst the members to whom allotment letters for specific apartments were issued on 09.06.2016 by the P.H.A. These allotment letters mention the total price of the apartment and the installments in which the petitioners were required to pay the price. The petitioners were required to pay 15% of the price as down payment by 15.07.2016 and the remaining 85% in six installments.

6. Vide the letter dated 12.07.2016, the P.H.A. informed the petitioners that due to reasons beyond the control of the P.H.A., it was

unable to receive any payment from the petitioners and that the deadline of 15.07.2016 no longer remains valid. The petitioners were also informed that the deadline for making the payment would be intimated later. Subsequently, the P.H.A. published another advertisement on 18.05.2017 inviting applications from members for participation in the balloting for allotment of apartments on payment of Rs.1,00,000/-. Aggrieved by the said advertisement, the petitioners filed writ petitions before this Court. Vide the order dated 05.06.2017 passed in writ petition No.2101/2017, this Court directed status quo to be maintained.

7. Learned counsel for the petitioners, after narrating the facts leading to the filing of the petitions, submitted that vested rights had been created in the petitioners' favour after their selection in the balloting process and the issuance of the letters offering allotment of apartments; that after the issuance of such offers, the P.H.A. could not scrap the entire process and reinitiate the balloting process; that the petitioners had renewed their memberships within the deadline advertised by the P.H.A.; that the petitioners also satisfied the eligibility criteria for the allotment of the apartments; that if an illegality had been committed by granting or renewing memberships of some members beyond the stipulated deadline, the petitioners could not be made to suffer for such an illegality; that there is no allegation of ineligibility against the petitioners; that there was no adverse finding against the petitioners in the inquiry report submitted in July, 2016 by Mr. Muhammad Younas Dagha, the then Secretary, Water and Power; that as per the said inquiry report, there were 49 persons who had not renewed their memberships within the deadline but had been allotted apartments by extending undue favour to them; and that none of the petitioners are amongst the 49 persons who had been identified in the inquiry report as having obtained the allotment unlawfully. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

8. On the other hand, learned counsel for the P.H.A. submitted that out of the 26 petitioners, 11 petitioners have already taken a refund of the amount deposited by them; that the petitioners who have taken

such refund have lost their right to be allotted an apartment; that after the balloting had been conducted and offers for allotment were issued to the members selected for allotment, the Prime Minister's office took notice of a news item appearing in the Daily Dawn on 16.06.2016, wherein it was alleged that 350 executive apartments in Sectors G-10/2, G-11/4 and Kurri Road had been allotted to certain government officers after a suspect balloting process; that in the said news item, it was also alleged that the names of certain government officers had been included in the list of beneficiaries who had never even applied for the allotment of apartments; that the Prime Minister had designated the then Secretary, Water and Power to carry out fact-finding probe into the process that lead to the allotment of apartments; that the terms of reference of the inquiry were set out in the letter dated 16.06.2016 from the Prime Minister's office; that in the said letter, it was also mentioned that the balloting shall remain in abeyance and no further action shall be taken; that on 28.06.2016, the P.H.A. issued an office order, according to which, the balloting was held in abeyance and it was directed that payments from successful members should not be received by any officer of the P.H.A.; that the then Secretary, Water and Power conducted a detailed inquiry and submitted his report in July, 2016; that in the said report, it was recommended *inter alia* that the Government may declare the entire allotment process as null and void; that thereafter, the membership drive for allotment of executive apartments was again launched in 2017, and a membership fee of Rs.5,000/- along with upfront payment of Rs.1,00,000/- was received from 1,558 applicants; that balloting could not be conducted due to the injunctive orders passed by this Court; that due to other hurdles such as the delay in the approval of the layout plan by the Capital Development Authority ("C.D.A.") and the non-allotment/clearance of land by the C.D.A. in Sector G-10/2 due to the project being on the bed of a *nullah*, it was decided to inform the members about the said hurdles and to terminate the contracts for the supervisory consultancy services, etc.; that it was also decided to refund the amount deposited by the members and to keep in trust the amount deposited by the members who do not take the refund; that this benefit is also to be

extended to the petitioners who have not taken a refund of the amounts deposited by them; and that the P.H.A. did not commit any illegality in scraping the balloting process since it had to act in accordance with the directions from the Prime Minister's office. Learned counsel for the P.H.A. prayed for the writ petitions to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

10. The facts leading to the filing of the petitions have been set out in sufficient detail in paragraphs 3 to 6 above, and need not be recapitulated.

11. Perusal of the inquiry report submitted in July, 2016 by the then Secretary, Water and Power shows that the primary reason for his recommendation to declare the entire allotment process as null and void was that apartments had been allotted to 49 persons whose membership had not been renewed or who had not been granted membership within the original advertised deadline of 28.02.2015 and the extended unadvertised deadline of 07.05.2015. A list of these 49 persons is attached with the inquiry report. For the purposes of clarity, paragraph ix of the inquiry report is reproduced herein below:-

> ***"ix) The allottees also included those who had become members not only after the original date in the advertisement (28th February 2015 and the extended though unadvertised date of 7th May 2015) but also some are those who were allotted apartments before deposit of membership fee. It also included new members as well as the existing members; whereas the provision for new members was neither declared in any advertisement nor covered even under any Board decision. At least 49 such cases (acceptance of cases after due date and cases of new members) were identified and copies procured and placed at Annexure XII."***

12. It is an admitted position that none of the petitioners are amongst the 49 persons to whom allotments of apartments were made after unlawfully including them in the balloting process or by issuing them offers of allotment without having selected them through a balloting process. It is also not denied that the petitioners had applied for the renewal of their membership or the grant of membership within the advertised deadline of 28.02.2015 and were otherwise eligible to participate in the balloting process. Therefore, the petitioners cannot be made to suffer for the illegalities committed by the officials of the

P.H.A. in extending undue favour to 49 persons by including them in the balloting process or allotting apartments to them even though their membership had not been renewed or they had not been granted membership within the stipulated deadline.

13. Be that as it may, learned counsel for the P.H.A. has confirmed that there is no building that has been constructed in which apartments could be allotted to the petitioners, who had been selected through the balloting process. The documents brought on record by the P.H.A. show that (i) contract for the construction of multi-storey apartment block Nos.37A, 38A and 39A (pocket-I) in Sector G-11/4, Islamabad, (ii) contract for the construct of multi-storey apartment block Nos.71, 72 and 73 in Sector G-11/4, Islamabad, (iii) contract for the construction of multi-storey apartment block Nos.25 and 26 in Sector G-10/2, Islamabad, and (iv) contracts for supervisory and consultancy services for the development of the multi-storey apartments in Sector G-10/2 and G-11/4, Islamabad have been terminated.

14. Learned counsel for the P.H.A. also submitted that pursuant to the decision taken by the Board of Directors of P.H.A., in its meeting held on 27.02.2019, the amounts deposited by the members would be kept in trust by the P.H.A. and that they would be considered for the allotment of apartments as and when the allotment process is reinitiated. This decision would also be applicable to the petitioners (save the 11 petitioners who have already taken a refund of the amount deposited by them) to whom offers for allotment of specific apartments had been made after they had been selected through the balloting process.

15. In view of the above, all the petitions (save the petitions in which the petitioners have already taken a refund of the amount deposited by them) are disposed of with the direction to the P.H.A. to retain the amount deposited by such petitioners in trust, and to allot them apartments in a process that would be initiated in the future without requiring them to participate in the balloting process. It is clarified that the allotments of apartments that may be made to the petitioners have to be for the prices that may be announced for apartments in such future process. The petitioners would be at liberty to take a refund of

the amount deposited by them after they were issued offers of allotment vide the letters dated 09.06.2016. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

Qamar Khan

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