ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3357 of 2019
Ministry of Interior Employees Housing Society
Versus
Mst. Tasneem Raees and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	30.10.2019	**Sheikh Muhammad Suleman, Advocate for the petitioner.** **Mr. Tahir Afzal Abbasi, Advocate for respondent No.1.**

Through the instant writ petition, the petitioner (Ministry of Interior Employees Housing Society) impugns the following orders:-

"i. Order dated 25.05.2017, whereby the Court of the Assistant Commissioner (Photohar)/Sub-Divisional Magistrate/ Registrar's Nominee, ICT, Islamabad (respondent No.4) directed the petitioner to give him possession of plot No.3014 measuring 200 square yards in G-16/3, Islamabad.

ii. Order dated 25.09.2017, whereby the petitioner's appeal under Section 56 of the Cooperative Societies Act, 1925 against the said order dated 25.05.2017, was dismissed by the Court of the Deputy Registrar, Cooperative Societies, ICT, Islamabad (respondent No.3),

iii. Order dated 18.10.2018, whereby the petitioner's revision petition against the said orders dated 25.05.2017 and 25.09.2017, was dismissed by the Chief Commissioner, ICT, Islamabad exercising the powers of Secretary Cooperative (respondent No.2)."

2. The record shows that Mst. Tasneem Raees (respondent No.1) having membership No.2698/MICHS was allotted plot No.3014 measuring 200 square yards in G-16, Islamabad. Till date, possession of the said plot has not been handed over to respondent No.1. Respondent No.1 has already paid the total sale consideration for the said plot to the petitioner. The denial by the petitioner to hand over possession of the said

plot to respondent No.1 caused the latter to invoke the jurisdiction of respondent No.4, by filing a complaint against the petitioner. As mentioned above, vide order dated 25.05.2017, respondent No.4 directed the petitioner to give respondent No.1 possession of her plot within sixty days. The petitioner's appeal against the said order was dismissed by respondent No.3 and so was the petitioner's revision petition dismissed by respondent No.2.

3. Learned counsel for the petitioner submitted that the land where respondent No.1's plot was situated, had been acquired by the Capital Development Authority ("C.D.A.") and till date, no compensation has been paid by the C.D.A. to the petitioner; that presently the petitioner does not have land for giving possession of a plot to respondent No.1; and that the reason why respondent No.1 has not been given possession of a plot is beyond the petitioner's control. Learned counsel for petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for respondent No.1 submitted that the concurrent orders passed by the *fora* below do not suffer from any jurisdictional infirmity; that respondent No.1 was allotted the plot in question on 31.01.2009; that vide letter dated 17.08.2009, the petitioner earmarked plot No.3014 measuring 200 square yards in Sector G-16, Islamabad for the respondent No.1 and also provided the schedule in accordance with which payment was to be made by respondent No.1; that respondent No.1 made payment in accordance with the schedule given in the petitioner's letter dated 17.08.2009; that respondent No.1 has paid the entire sale

consideration and did not default in making payments against any of the installments; and that the petitioner has deprived respondent No.1 of her valuable property.

5. Furthermore, it was submitted that on 12.01.2019, the petitioner had filed a civil suit against respondent No.1 and had also challenged the same very orders which have been challenged by the petitioner in the instant writ petition; that the plaint in the said suit was rejected by the learned Civil Court, vide order dated 22.04.2019; that vide order dated 27.07.2019, the learned Appellate Court passed an injunctive order in favour of the petitioner; that during the pendency of the appeal, the petitioner filed the instant writ petition; that after the filing of the instant petition, the petitioner withdrew its appeal; and that in the certificate, with the memo of the writ petition, the petitioner has concealed the factum as to the litigation before the learned Civil Court and the learned Appellate Court. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

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

7. It is not disputed that vide provisional allotment letter dated 31.01.2009, plot measuring 200 square yards in Sector G-16 was allotted by the petitioner to respondent No.1, whose membership number was 2698/MIECHS. The petitioner, vide letter dated 17.08.2009, informed respondent No.1 that as a result of balloting held on 31.07.2009, plot No.3014 measuring 200 square yards in Sector G-16 had been earmarked for respondent No.1. The said letter also contained the schedule of payment for the said

plot. It is not disputed that the entire payment for the said plot had been made by respondent No.1 to the petitioner.

8. Since the possession of the said plot was not handed over to respondent No.1, she filed an application under Section 54 of the Cooperative Societies Act, 1925, before respondent No.4 praying for possession of the said plot to be handed over to her. Vide order dated 25.05.2017, respondent No.1's said application was allowed and it was ordered that respondent No.1 be given possession of her plot in Sector G-16/3 within a period of sixty days. The petitioner's appeal against the said order was dismissed by respondent No.3, vide order dated 25.09.2017. The petitioner's revision petition against the said appellate order was dismissed by respondent No.2, vide order dated 18.10.2018.

9. The primary contention of the learned counsel for the petitioner was that since the petitioner's land has been acquired by the C.D.A. without payment of compensation, possession of respondent No.1's plot could not be given to her. The original order, appellate order, and the revisional order are also silent on the question whether the petitioner had raised a contention that its land had been acquired by the C.D.A. without payment of compensation. However, in the memo of the petitioner's revision petition, it was pleaded that *"approximately 829 kanals of land of the society have been acquired by C.D.A. in Sector H-16 and writ petition No.2450/2012 is pending before Islamabad High Court for payment of compensation..."* In any of the pleadings before the *fora* below, the petitioner did not plead that the land where respondent No.1's plot had been earmarked had been acquired by the C.D.A.

Therefore, the primary ground taken by the petitioner to challenge the three concurrent orders by the *fora* below is without any substance.

10. Respondent No.1 has been deprived from being given possession of her plot despite the fact that it has been several years that she has made payment for the same. In the writ petition, it has not even been pleaded that respondent No.1 had not made payment for the plot in question. Therefore, the direction given by respondents No.2 to 4 to the petitioner to give possession of respondent No.1's plot to her does not suffer from any jurisdictional infirmity warranting interference in the Constitutional jurisdiction of this Court.

11. Learned counsel for respondent No.1 had submitted that the petitioner had concealed the factum as to the filing of a civil suit against the orders which have been challenged in the instant writ petition. Learned counsel for the petitioner had submitted that the factum as to the litigation before the learned Civil Court had been disclosed in paragraph vii of the grounds of the writ petition. The said paragraph is reproduced herein below:-

> *"That approximately 829 kanals of land if the society has been acquired by the CDA in Sector H-16 and in this regard W.P No 2450/2012 is pending before the Islamabad High Court for payment of the compensation at the present market price. The Civil Litigation is also pending between the contested parties of instant writ petition."*
> **(Emphasis added)**

12. Now, along with the instant petition, the petitioner did not file a copy of the civil suit filed by the petitioner on 12.01.2019 before the learned Civil Court. In the said civil suit, the petitioner had challenged the very same orders passed by respondents No.2 to 4 which have been

challenged in the instant writ petition. The petitioner also did not plead the fact that the plaint in the said suit had been rejected, vide order dated 22.04.2019 and that an appeal was pending against the said order before the learned Appellate Court when the instant petition was filed. The petitioner did not annex copies of the said order dated 22.04.2019 and its appeal along with the instant petition. The certificate of the learned counsel for the petitioner with the memo of the writ petition reads as follows:-

> *"It is certified that no subject matter of the writ petition is pending before this Hon'ble Court or the Supreme Court of Pakistan.*
> *Note: WP # 2450/12 titled MIECHS Vs. CDA is pending adjudication before this Hon'ble Court and is related to subject matter of this case."*

13. In the certificate the petitioner was supposed to disclose the factum of the filing of the civil suit and the appeal. Such a disclosure was necessary for this Court to have taken notice as to the pendency of the petitioner's appeal before the learned Appellate Court. The copies of the civil suit, learned Civil Court's order dated 22.04.2019, the petitioner's appeal and the appellate Court's order dated 12.10.2019, whereby the petitioner's appeal was withdrawn were brought on record by respondent No.1. The petitioner had been selective in filing documents along with the instant petition. The petitioner had also not filed a copy of the provisional allotment letter, petitioner's letter dated 17.08.2009, the receipts issued by the petitioner in respondent No.1's favour, etc. This material omission on the part of the petitioner is yet another reason why this petition should be dismissed.

14. Since I do not find the three concurrent orders passed by respondents No.2 to 4 to be suffering from any jurisdictional infirmity, the

instant petition is dismissed. Learned counsel for respondent No.1 has submitted a certificate according to which respondent No.1 has incurred costs amounting to Rs.2,30,000/- in the litigation before the learned Civil Court, the learned Appellate Court and this Court. Since the costs incurred by respondent No.1 in defending the instant writ petition is stated to be Rs.1,00,000/- and since I have no reason to doubt the contents of the said certificate, it is ordered that the petitioner shall pay Rs.1,00,000/- as costs to respondent No.1 under Section 35(1)(iii) of the Code of Civil Procedure, 1908 as amended by the Costs of Litigation Act, 2017.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

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