JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3981 of 2016
Dr. Hakim Gul
Versus
Federal Government Employees Housing Foundation and another

Date of Hearing:	20.06.2017
Petitioner by:	Syed Asghar Hussain Sabzwari, and Rao Muhammad Akram Khurram, Advocates.
Respondents by:	Mr. Muhammad Nazir Jawad, Advocate, Ms. Sitwat Jahangir, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Dr. Hakim Gul, has agitated his grievance against the inaction on the part of Federal Government Employees Housing Foundation (respondent No.1) in giving him a plot in alternative to Plot No.25, Street No.94, G-14/3, Islamabad ("the case plot").

2. Learned counsel for the petitioner submitted that the case plot was purchased by the petitioner for valuable consideration; that the said plot was transferred in the petitioner's name in respondent No.1's record; that respondent No.1, vide letter dated 06.06.2016, did not grant permission to the petitioner to transfer the case plot on the ground that it had been brought under seizure by the National Accountability Bureau ("N.A.B."); that since the petitioner had paid for the suit plot, the respondents were under an obligation to provide an alternative plot to the petitioner; and that in similar circumstances, the Hon'ble Lahore High Court, vide order dated 14.09.2004, passed in writ petition No.2175/2004, had directed the respondent in the said case to reserve one plot for the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed and for respondent's No.1 letter dated 06.06.2016, to be declared as illegal, and of no legal consequence. Furthermore, learned counsel for the petitioner submitted that a direction should be issued to respondent No.1 to provide an alternate plot to the petitioner.

3. Learned counsel for the respondents submitted that the case plot was a self-created plot, and that the Capital Development Authority ("C.D.A.") had not approved the layout plan regarding the said plot. Furthermore, learned counsel for the respondents submitted that the matter regarding the creation of plots without the approval of the C.D.A., was investigated by N.A.B., and a reference in this regard was pending before the learned Accountability Court; that through a seizure memo, the record pertaining to the case plot as well as several other plots had been taken over by the N.A.B.; that when the said plot was transferred in the petitioner's favour, he executed an undertaking/indemnity bond to the effect that he had inspected the entire record regarding the case plot, and that he would be responsible for any kind of forgery/cheating committed during the transfer of the said plot; that the previous owner of the suit plot had also executed an undertaking to the said effect; that the petitioner was not a direct allottee of the case plot, and that he had purchased the same in the open market; that the petitioner is at liberty to institute a suit for the recovery of the amount that he paid to the seller of the case plot; that the case plot was transferred by the original allottee in favour of Raja Zulsham Riaz within a period of three short days of the original allotment; and that since there are several disputed questions of fact involved in the case, the instant petition is not maintainable. Learned counsel prayed for the writ petition to be dismissed.

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

5. It is an admitted position that the case plot was originally allotted to Raja Imran Latif. Vide transfer letter dated 31.12.2012, issued by respondent No.1, the case plot was transferred from Raja Imran Latif's name to Raja Zulsham Riaz. On 29.08.2013, Raja Zulsham Riaz transferred the case plot in the petitioner's favour. A certificate of transfer was issued by respondent No.1 in the petitioner's favour on 29.08.2013. The petitioner claims to have purchased the case plot for valuable consideration. Apparently, the petitioner applied to respondent No.1 for permission to transfer the

case plot. Vide impugned letter dated 06.06.2016, respondent No.1 informed the petitioner that the case plot had been brought under seizure by the N.A.B. The petitioner was advised by respondent No.1 to wait until the final outcome of the inquiry proceedings. On 30.06.2016, the petitioner applied to the Director General, N.A.B. to clear his file and send it back to respondent No.1.

6. The respondents in their written comments have pleaded that the case plot was a self-created plot since the lay out plan for the said plot had not been approved by the C.D.A. Now since the layout plan with respect to the said plot had not been approved by the C.D.A., respondent No.1 had no business to issue allotment letters and transfer letters regarding the said plot. But for such irresponsible acts by officials of respondent No.1, the present dispute would not have arisen. The genesis of the wrong doing in this case is on the part of respondent No.1's errant officials. Respondent No.1 cannot wash its hands off all obligations arising out of and incidental to the transfer of plots (the layout plan whereof the C.D.A. had not approved) simply because the transferees had issued bonds or undertakings to the effect that respondent No.1 would be indemnified if the plot goes out of the possession or ownership of the purchaser or the purchaser suffers any loss. No bond or undertaking executed by the petitioner has been brought on record by the respondents. Respondent No.1 performs functions in connection with the affairs of the Federation and it is well settled that it is amenable to the constitutional jurisdiction of this Court. Respondent No.1's act of transferring plots (the layout plan whereof had not been approved by the C.D.A.) do not withstand the test of propriety or rationality, and therefore, respondent No.1 must compensate purchasers who suffer due the purchase of such plots. The sale by respondent No.1 of a plot, the layout plan whereof has not been approved by C.D.A. is as good as the sale of a non-existent plot. The mere fact that the petitioner is not an original allottee would not insulate respondent No.1 from liability, because it is well settled that a subsequent transferee steps into the shoes of the original allottee.

7. The present situation is that since a case pending before the Accountability Court regarding the unlawful creation/transfer of

plots by respondent No.1, the petitioner is not being permitted by the respondents to transfer the case plot. The respondents are also resisting the petitioner's claim for the allotment of an alternative plot. The mere fact that the petitioner purchased the case plot in the open market does not absolve respondent No.1 from liability because a certificate of transfer dated 29.08.2013, was issued by respondent No.1 in the petitioner's favour. The issuance of such a certificate is an endorsement by respondent No.2 as to the validity of the transfer. The petitioner in whose favour the said certificate was issued cannot be made to suffer because some of respondent No.1's employees/officials had wrongfully issued the allotment letter to the original allottee.

8. In view of the above, this petition is allowed with the direction to respondent No.1 to compensate the petitioner either by allotting him an alternative plot of equal value or paying him the market value of the case plot prevailing on the date of the payment. The compensation payable to the petitioner will be recovered from the errant employees/officials of respondent No.1 who were instrumental in the decision to allot plots (the layout plan whereof had not been approved by the C.D.A.) to third parties. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham

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