

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-414 of 2004

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Syed Fiaz ul Hassan Shah

Petitioner:- Mst. Gohar Jillani through Mr. Shahenshah Hussain,
Advocate.

Respondent:- Pakistan Defence Officers Housing Authority
through M/s. Khalid Javed and Munawar Juna,
Advocates.

Date of hearing:- 27.10.2025

Date of decision:- 04.11.2025

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Petitioner, working as an Experimental Officer in Pakistan Defence Science & Technology Organization, Ministry of Defence from 1966 to 1977, applied for membership in the Pakistan Defence Officers Housing Cooperative Society Limited, which was granted to her on payment of due fee in April 1967. Later on, the Managing Committee, on consideration of her service profile allotted her two plots namely Plot No.2-C, Zamzama Comm. Lane No.2, measuring 200 sq. yards and Plot No.107, 21st Street, Phase VI, measuring 1000 Sq. yards in two different meetings held on 16.09.1973 and 29.03.1976. Statedly, the said allotment was made through public balloting on payment of prescribed charges in accordance with bylaws of the society.

2. In the year 1980, on imposition of Martial Law and promulgation of Presidential Order 7 of 1980, the said society was re-named as Pakistan Defence Officers Housing Authority. In the year 2002, petitioner received a letter from the Management of the Authority demanding construction on the commercial plot by the petitioner. In response, she started

planning to raise construction on the said plot. Then to her surprise, on 16.02.2004, she received a four lines letter cancelling the two plots in her favour to which she took exception in black and white, and in response received a letter dated 29.02.2004 disclosing to her that she since was not serving in BPS-17 and was working in Grade 16 in Defence Service Estimates, was ineligible for allotment of plot(s) in DHA; hence, her allotment had been cancelled. After such cancellation, she made personal inquiries and came to know that like her, allotment of plots to others had been cancelled by DHA which they had challenged in different constitutional petitions and succeeded in reversing such cancellation, hence the petition.

3. This petition was resisted by DHA by raising the plea that in terms of bylaw 7 only an Officer of Grade 17 and above was eligible for the membership of the society and to allotment of plot therein. The petition was heard and allowed vide judgment dated 28.03.2006. The said judgment was challenged by DHA in the Supreme Court and the Supreme Court after hearing the case by order dated 25.04.2017 has remanded the matter to this Court for a decision afresh by considering the aspect of the alleged fraud raised by DHA in its response to the petition that neither the meeting dated 16.09.1973 of the Managing Committee of the DHA, by virtue of which the allotment letter of one plot was issued in favour of petitioner, was held, nor in the meeting dated 29.03.1976 any decision to allot the plot to the petitioner was taken. Moreover, there was no record of the balloting conducted on the basis of which petitioner could be said to have been allotted the plots in question. Para Nos. 2 and 3 of the Supreme Court's order are reproduced hereunder for ready reference:

2. Learned counsel for the appellant argued that though in the letter of cancellation of the plot in question it is mentioned that the respondent (Mst. Gohar Jilani) was not eligible for allotment as she was in BPS-16 and the plots were only to be allotted to persons in BPS-17 and above, in its reply to the writ petition the petitioner on account of certain in-depth probe

found that neither the meetings dated 16.09.1973 or 29.03.1976 of the Managing Committee of the then Pakistan Defence Officers' Cooperative Housing Society Limited by virtue whereof the allotment letters were issued were held nor was any decision taken regarding the allotment of the plot to the respondent. Moreover, balloting was also not conducted on account of which the respondent can be said to have been allotted the plot in question. This, according to the learned counsel, was clearly stated in the comments filed before the learned High Court in response to the writ petition of the respondent. The comments disclosed a factual controversy but the learned High Court failed to advert to this aspect of the matter and decided the petition only on the basis of the respondent's eligibility.

3. When confronted with the above, learned counsel for the respondent concedes that this is a serious omission on the part of the learned High Court and therefore has no objection if the impugned judgment is set aside and the matter is remanded to the learned High Court to consider the aspect of the alleged fraud, which has been raised. by the appellant in its written comments and then to decide, whether in the light of a factual controversy, the Court should decide the writ petition by itself or decline to exercise its jurisdiction, advising the respondent to resort to the Court of plenary jurisdiction for the purposes of adjudicating, inter alia, said controversial factual aspect of the matter. Accordingly, this appeal is allowed and the impugned judgment is set aside and the matter is remanded to the learned High Court of Sindh.”

4. It is in compliance of the said order, we have heard the parties afresh and decided the petition through this judgment.

5. Learned counsel for petitioner has relied upon PLD 1969 Karachi 474, 1978 (SC) 405, 1994 SCMR 2232 and PLD 2005 SC 560 in support of his arguments that if there was any internal issue in the society or the person who had allotted the plots in favour of petitioner had no such power or was not delegated the power to do so, the transaction in favour of the petitioner still could not be held illegal as it was protected by the doctrine of ‘Indoor Management’; that the petitioner was allotted the plots in 1973 and 1976 respectively against which she paid all the charges and no one took exception to it, then in 2002 was asked to raise construction on one of the plots. But suddenly in 2004 after almost 31 years in one case and 28 years in other case, her plots were cancelled on the ground that she was not eligible. Now the plea is being raised that there is no record of

the meetings held for allotment of the plots to her or that there was no balloting at all. Per him, the said grounds taken belatedly have no force in law. Moreover, the petitioner was never confronted with such record before cancelling her allotment. Petitioner has challenged cancellation of her allotment done on the ground that she was not eligible. If DHA was of the view that any alleged fraud was committed and the person who had allotted the plots to petitioner was not competent, DHA may issue such notice to her to let her exercise her right to defend the same, as meanwhile much water has flown from under the bridges and the plots' worth has appreciated; sending her the same amount in the year 2004 paid in 1973 and 1976 is nothing but mockery of justice, and if any fraud was committed by the official of DHA, why DHA shall benefit out of it.

6. On the other hand, learned counsel for respondent has opposed the petition stating that Supreme Court has remanded the matter to consider only one question: whether this Court could decide the petition in exercise of its writ jurisdiction in view of the plea of the alleged fraud raised by DHA. He has further argued that in the written comments, the issue of fraud was raised before this Court and it was specifically stated that the relevant minutes of the meeting dated 29.03.1976 do not show allotment of any plot to the petitioner, whereas, no meeting of Managing Committee was held on 16.09.1973, therefore, there is no question of allotment of the said plots to the petitioner. According to learned counsel, the person who had allotted the plots to petitioner had also allotted so many plots to other persons as well in the same manner, which were cancelled and such cancellation has been upheld up-till the Supreme Court. He has further submitted that this Court cannot stress on the ground of eligibility as the only impediment in the way of petitioner any more, but the question whether this Court can in exercise of writ jurisdiction decide the allegation of fraud. Per him, since such allegations cannot be decided in

writ jurisdiction, the petition is not maintainable. Regarding any formality of show-cause notice to be issued in advance to the petitioner before cancelling her allotment, learned counsel submitted that in the given facts and circumstances when the fraud is alleged, Supreme Court has held that such formality is not necessary. He has relied upon PLD 2002 SC 483, PLD 2010 SC 676, PLD 2005 SC 792, PLD 2005 Karachi 188, 2008 SCMR 611 and order passed by this Court in CP No. D-1240/2003 dated 11.01.2005.

7. We have considered arguments and with reverence gone through the order of the Supreme Court remanding the matter for deciding the question whether this Court can exercise writ jurisdiction to decide the controversy between the parties, since the fraud has been alleged by DHA in allotment of the plots to the petitioner, which requires evidence to be sorted out by the Court of plenary jurisdiction. We have also gone through the previous judgment rendered by this Court allowing the petition.

8. In essence, the petitioner has challenged a letter dated 16.02.2002 (Annexure-A available at Page-27) which in fact is an intimation to her that the amount paid by her against the allotment of the said two plots was being returned to her through cross cheque on cancellation of her allotment of the said two plots. Apart from the said letter, she has also mentioned about another letter dated 08.03.2004 in Para. 9, which according to her, she received in response to her letter dated 29.02.2004 protesting against cancellation of plots. Para 9 of the petition suggests that she has annexed this letter as Annexure-G but currently we do not find a copy of this letter in the petition as Annexure-G. In any case, she has produced contents of the said letter in said para. which have not been contested by DHA to be untrue. For ready reference, the contents of this letter, reproduced in the petition, are being referred herein under:

“The contents of the same are reproduced as under:-

Dear Madam,
Reference: Your fax dated 29th Feb 2004

In accordance with Defence Housing Authority, Karachi Bye Laws, Civilian Officers paid out of Defence Service Estimate and serving in BPS-17 and above are entitled for allotment of plots in Defence Housing Authority. Whereas, as intimated by Defence Science & Technology Orgn, Karachi Laboratories letter No.4064/63/DESTO/ Admin-I dated 21st Nov 2001 (Photocopy enclosed), you were serving in BPS-16. Thus you were ineligible for allotment of plots in Defence Housing Authority, Karachi. Consequence thereof, the following plots allotted to you have been cancelled by Executive Board, please:-

- a. Plot No. 107, 21st Street, Phase VI, measuring 1000 square yards.
- b. Plot No.2-C, Zamzama Comm Lane No.2, Phase-V measuring 200 square yards.....”

9. A reading of the above letter shows that the ground for cancellation of the plots, communicated to the petitioner in the said letter, was that she was serving in Grade-16, whereas, the allotment of plots was only reserved for the employees serving in BPS-17 or above.

10. To reply this, the Court in the earlier judgment has noted after examining bye-laws No. 7 that in terms of said bye-laws (7), the only qualification required for a civilian officer to become a member of the society was that such officer was paid from the Defence Service Estimates and that counsel for DHA had failed to show that such officer was required to be of grade-17 to become a member of the society. On the contrary, the only qualification for a civilian officer to enable him to become a member was that he should be paid from the Defence Service Estimates. It is further observed, that admittedly the petitioner at the relevant time was serving as an officer working with Defence Science & Technology Organization, Karachi Laboratories and was being paid from the Defence Service Estimates, as such, she was fully qualified and entitled to become a member of the society and also to allotment of the plots in question by the Managing Committee of the society.

11. The allotment orders annexed by the petitioner with the petition, available at page Nos.87 and 89 (Annexures E and F), show purportedly that the Managing Committee in its respective meetings held on the said dates had decided to allot the plots in question to the petitioner. She received the said letters and paid the charges and all other outstanding dues against the same without exception from any quarter which implies that not only the person/authority who allotted the plots to her, but other officials of the society who got involved in the process had not raised any objection. Hence, by virtue of such allotment, she became owner of the property which position she continued to enjoy uninterruptedly, without a dispute from any quarter including DHA, till 2004. In fact, in 2002 acting on such allotment, DHA had demanded from her to raise construction over the commercial plot, which was duly replied and thereafter no action was taken against her.

12. The impugned letter dated 16.02.2004 indicates that the cancellation of plots in favour of petitioner had already taken place and through this letter only the amounts paid by the petitioner were being returned to her through cross cheques. Nothing is available on the record to show that when actually the cancellation of plots had taken place and why and what had prompted DHA to resort to such a penal action without even putting the petitioner on a notice. Besides, this letter is completely silent in regard to information as to how after a long period of almost three decades, DHA suddenly found that petitioner was not eligible — as she was working in Grade-16 instead of 17 — to the allotment of plots. Returning the same amount paid in 1973 and 1976, without even interest through the said letter itself was highly questionable and did not meet ends of the justice, as meanwhile the price of the plots had appreciated multiple times.

13. It seems that although, as asserted by learned counsel for DHA, the ground of alleged fraud might have been taken in the earlier round, but neither the said plea was argued by its counsel nor referred to by DHA before this Court in various hearings of the case. This fact is evident from the judgment itself when this Court has, while dealing with bye-laws No.8, stated, without any reference to the alleged fraud, that even otherwise since in terms of bye-laws No. 8 the Managing Committee was entitled to grant membership of the society to persons not otherwise eligible under bye-law No. 7, but in whose favour due to special circumstances and for special reason, allotment has been made by the Managing Committee or otherwise, as such, it was not necessary for the Managing Committee to allot plots only to the regular members and to the persons as envisaged under bye-law No. 7. The Court has further opined in the judgment that such allotment can also be made in favour of the persons who were otherwise not eligible for membership under the said bye-laws. The Managing Committee having allotted to the petitioner the plots in question against valuable consideration about 30 years back, the authority is now stopped from calling in question the validity of such allotment or from cancelling the same. These observations are as good as they were at the time when they were made and still hold field and have not been neutralized by DHA counsel.

14. It seems that the ground of fraud was raised by DHA first time in the Supreme Court and the Supreme Court then decided to remand the matter to this Court to consider the said aspect. No doubt, DHA has mentioned these allegations in comments and has produced the photocopies of relevant documents but at the time of earlier hearings, record is silent whether they had taken this ground or submitted any material in this respect. The relevant comments and record, the file shows, were submitted by DHA only on 01.03.2023 after the Supreme Court's order. The question before us is whether the case of the petitioner could

be construed and rejected on the basis of purported record filed in the Court in the year 2023, after almost 50 years.

15. It may be mentioned that the petition has been filed only to challenge cancellation of allotment of plots on a particular ground of eligibility. The ground of fraud as a *raison d'être* enforcing cancellation of plots was first time urged before the Supreme Court and was never communicated to the petitioner to enable her to present her side of story. Purportedly, this is not the ground of cancellation of plots as evident from the two letters dated 16.02.2004 and 08.03.2004. Letter dated 16.02.2004, as stated above, simply indicates conveyance of information to the petitioner that the amount paid by her against the allotment was being refunded to her on account of cancellation of her plots. Letter dated 08.03.2004 in fact shows that the ground of cancellation was her so-called ineligibility, but that was not accepted by this Court, nor the Supreme Court appear to disagree with the same findings of this Court.

16. Although DHA has emphasized that through a fraud petitioner was allotted the said two plots and the person who had exercised such authority was taken to task and was sent to jail. However, before us nothing of the sort has been produced to lend credence to such allegations: the perpetrator was held responsible and sent to jail or that petitioner was a privy to such fraud or the allotment of plots to her, or that she was in connivance with the said person/authority in getting the allotment of the plots. If the person or authority was incompetent to allot the plots in favour of petitioner, the question is could it be construed a fault on the part of the petitioner or it was an internal issue that needed to be sorted out by DHA itself. There is nothing on the record that when DHA exactly came to know of such fraud and what action was taken against the perpetrator of such fraud and other persons who had accepted the due charges from the petitioner against the allotment without questioning

authenticity of the allotment letters. And if in view of DHA the allotment of plots to the petitioner was a result of such fraud, why the plots were not cancelled on the same ground as soon as the DHA had gained such information. In absence of the relevant links of the chain, to suggest that petitioner was in collusion with or had benefited out of such a collusion with the main culprit would be a farfetched idea. Mere submission of photocopies of minutes of the meeting (which need to be established in the court of law) after a long time, 50 years in this case, no conclusion could be drawn that in fact the allotment of the plots to the petitioner was brought about by some fraud perpetrated by petitioner in collusion with the authority which had allotted her the plots.

17. We are of the view that if the authority allotting the plots in favour of petitioner was not delegated necessary powers or he had acted in violation of any rule or bye-law of the society, still the transaction in favour of the petitioner would be considered valid in terms of doctrine of Indoor Management unless and until it is proved through evidence that a fraud was actually committed by the said authority in allotting the plots to petitioner and that she was privy to it and had acted in collusion with the main culprit, and until and unless it is proved that the charge of fraud was brought against all the responsible ones and that entire record was produced in support of the charge which ended in a conviction of the accused. In absence thereof, and since there is nothing on record that petitioner in accepting the allotments and paying the outstanding dues against them, had acted in bad faith, she cannot be denied her right over the plots. Even otherwise this does not seem to be the case of DHA (her being culprit), therefore, by simply looking at the photocopies of the documents produced after 50 years of the transaction by someone in whose custody its remained since beginning, purporting to be the minutes of the relevant meeting or absence thereof, we cannot conclude that a

fraud was committed and petitioner benefited out of it by being an accomplice in it.

18. We, therefore, allow this petition once again and set aside the impugned order. Nonetheless, DHA may proceed against the petitioner if it has evidence of any fraud and that evidence is confronted to her/her legal heirs through a proper procedure with the right of hearing that the allotment of the plots in favour of the petitioner was a result of fraud and she was privy to it, or was in collusion/or in connivance with the co-accused in getting such allotments or that while dealing with acceptance of allotments, she had not acted in good faith.

The petition is accordingly disposed of in above along with pending applications.

JUDGE

JUDGE

HANIF