

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &
Mohammad Abdur Rahman, JJ,

C.P. No.D-3083 of 2018

Nadeem Elahi

Vs.

Pakistan Defence Officers Housing Authority

1. For hearing of Misc. No.14013/2018 (Stay) :
2. For hearing of main case.

Petitioner : Through Mr. Khalid Javed Khan,
Advocate.

Respondent : Through Malik Naeem Iqbal, Advocate
along with Mr. Talha Abbasi, Advocate
and Executive Director (Legal) DHA
Amir Sarwar

Date of hearing : 18.12.2023

ORDER

MOHAMMAD ABDUR RAHMAN,J: This Petition has been maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking to set aside a letter dated 12 March 2018 issued by the Pakistan Defence Officers Housing Authority (hereinafter referred to as the "DHA") cancelling the Petitioner's entitlement to an amenity bearing Plot No.AL-5, 15th Lane, Phase-VII, Pakistan Defence Officers Housing Authority, admeasuring 1000 square yards (hereinafter referred to as the "Said Property) and which property was to be utilised as a hospital/clinic.

2. There is no dispute as to the facts of this petition. The Said Property was originally allotted to one Mrs. Kubra Tasnim. In turn, Mrs. Kubra Tasnim on 3 June 1998 transferred the Said Property in favour of Begum Khalida Farooque and who through an Agreement to Sell dated 13 June 2003 transferred her entire right, title and interest in the Said Property in favour of the Petitioner. The Petitioner was thereafter, by a Transfer Order dated 21 July 2003 issued by the DHA was accepted as an owner of the Said Property in the following terms:

**TRANSFER ORDER
(PERSONS REGISTERED IN
CATEGORY 'B' TO CATEGORY 'B')**

Reference is made to your letter forwarding affidavit S. No. 778 purchased on 14 May 2003 authenticated on 12 Jun 2003 transferring your Plot No. AL-5, 15th Lane, Phase-VII, Measuring 1000 sq. yds (Approx) in the name of other Person in category "B" Mr. Nadeem Elahi originally allotted to Mrs. Kubra Tasnim and subsequently transferred in the name of Begum Khalida Farooque,

I have the honour to inform you that the transfer of Plot No. AL-5, 15th Lane, Phase-VII, another Person registered in category B. Measuring 1000 (Approx) in the name of another Person registered in category "B" Mr. Nadeem Elahi has been accepted and noted in Authority records.

3. The transfer has been affected on payment of transfer Fee 200/- per sq. yds for Amty plot.

4. This transfer order is issued subject to the conditions that Authority reserve the right to recover subsequent to this transfer any outstanding dues, and any subsequent increase in development charges from the transferee.

5. It is understood and agreed to by the transferer and transferee that this transfer is subject to the condition that the transferee alone is/would be liable/responsible to fill the plot in question at his/her own cost and that the Authority shall not be liable/responsible in any manner whatsoever in respect, thereto and further that the plot in question is being transferred on 'as it is and where it is' basis.

6. The plot or any Part thereof shall not be used for Denting & Painting Shops, Tuning Tyre repairs and other Vehicle Repairs Workshop/Garment Factories."

3. The layout plan of the Said Property was approved by the DHA on 4 August 2004. It seems that soon thereafter on 24 August 2004 a letter was issued by the DHA to the Petitioner complaining that the Said Property had not been developed and which was depriving the residents of the municipal function of a hospital. The letter also informed the Petitioner that at the "Executive Board Meeting No. 2/2004" that was held on 21 Mary 2004, a change in the policy of DHA had been made whereby all amenity properties in DHA, including, but not limited to, the Said Property would from that date be treated as "Non Transferable" and the amenity purpose for which the property had been allotted would also not be changed to any other purpose. Directions were given immediately to

the Petitioner to start construction on the said property failing which the plot would be “cancelled and resumed” by the DHA.

4. Soon thereafter, on 13 September 2004, the Petitioner after paying a “Non Utilisation Fee” maintained an application for approval of a construction on the Said Property and which was sanctioned by the DHA on 30 January 2006. It seems that thereafter the Petitioner did not construct on the said property. Her rationale for not commencing construction was explained by her contending that the DHA had informed the Petitioner that they were revising their policies and permitting a larger structure to be constructed on the Said Property and while waiting for such a policy to come into place, the Petitioner elected not to pursue with the original approval.

5. Around this time an issue arose as to whether the DHA was itself obliged to develop amenity plots and hence were prohibited from transferring such plots and which came to be decided in a decision of this Court reported as **Morris Tanvir vs. Federation of Pakistan through Secretary Ministry of Defence, Islamabad and 2 others.**¹ In the decision, after considering the terms of the Lease as between DHA and its Lessor i.e. the President of Pakistan through the Military Estates Officer it was considered that an obligation accrued on the DHA to develop such amenity plots and consequentially such properties had to be developed by the DHA itself and were hence not transferable by it. The Order of this Court was apparently set aside by the Honourable Supreme Court of Pakistan in Civil Appeal No. 85-K of 2010 entitled **Morris Tanvir vs. Federation of Pakistan through Secretary Ministry of Defence, Islamabad etc.** and wherein the Appeal was disposed off subject to the conditions that the allottee would not:

- (i) Change the use of their plot;
- (ii) subject to any change in the policy of the DHA to allow such plots to be leased, not claim any right to a lease for the said Property; and
- (iii) act strictly in accordance with law.

6. That on 13 June 2012 the Petitioner maintained a revised building plan with the DHA and on which apparently, to date, no order has been

¹ 2009 CLC 1199

passed by the DHA. After a lapse of six years on 12 March 2018 (hereinafter referred to as the "Impugned Notice") the Petitioner was served with a letter by the DHA stating that on account of the failure on the part of the Petitioner to develop the Said Property, her rights in the Said Property were cancelled.

7. Mr. Khalid Javed Khan entered appearance on behalf of the Petitioner and contended that:

- (i) The Impugned Notice had been issued in violation of the Rules of Natural Justice as no notice, let alone a hearing, was afforded to the Petitioner prior to the cancellation of the allotment to the Said Property;
- (ii) The Transfer Order dated 21 July 2003 did not provide for any period within which the construction on the Said Property was to be concluded and hence such requirement was illegal;
- (iii) That under the provisions of Article 18 of the Pakistan Defence Officers Housing Authority Presidents Order, 1980 - Presidential Order No. 7 of 1980 (hereinafter referred to as the "DHA Order") while a plot can be cancelled by DHA, such a right did not extend to cancelling a plot on the ground that it was not being utilised;
- (iv) That a penalty in the form of Non Utilisation Fee was imposed on the Petitioner for the failure to develop a property and which being imposed and recovered would create an expectation in favour of the Petitioner not to have their allotment right cancelled for not developing the Said Property;
- (vi) The Petitioner being an allottee of the Said Property, duly recognised by the DHA, had a vested right in the Said Property and which could not be taken away other than in accordance with a specific provision of law. Reliance in this regard was placed on two decisions of the Honourable Supreme Court of Pakistan reported as **Noor Muhammad**

vs. Karachi Development Authority² and **Hafiz Shaikh Anwar vs. Jehan Khan**,³ two decisions of this Court reported as **Dr. Muhammad Junaid vs. Karachi Development Authority**,⁴ **Muhammad Talib vs. Karachi Development Authority**,⁵ and a decision of the Lahore High Court, Lahore reported **Ahmad Khan vs. Multan Development Authority**.⁶ It was also contended that once such a vested right had accrued in favour a person it could not be taken away by invoking Section 21 of the General Clauses Act, 1897. Reliance in this regard was placed on a decision of the Honourable Supreme Court of Pakistan reported as **Badhsha Gul vs. Government of Pakistan**⁷ and two decisions of this Court reported as **Ziauddin vs. Pakistan Defence Officers Housing Authority**,⁸ and **Ahmed Clinic vs. Government of Sindh**⁹

8. Mr. Malik Naeem Iqbal entered appearance on behalf of the DHA and contended that:

- (i) adopting the ratio decidendi of the decision that was given by this Court reported as **Morris Tanvir vs. Federation of Pakistan through Secretary Ministry of Defence, Islamabad and 2 others**¹⁰ in terms of sub-clause (3) of Clause 10 read with Sub-Clause (d) of Clause 17 of the Lease Deed dated 11 November 1975 as entered into between the President of Pakistan and the DHA, the sole and absolute authority to develop an amenity plot such as the Said Property vested with the DHA;
- (ii) as the sole and absolute authority to develop an amenity plot vested with the DHA under the Lease Deed dated 11 November 1975 the allotment made by the DHA to the Petitioner was illegal and hence liable to be “taken over” and which was being implemented in terms of the decision of the

² PLD 1975 SC 373

³ PLD 2001 SC 540

⁴ 2010 MLD 192

⁵ PLJ 1999 Karachi 791

⁶ 1999 MLD 2172

⁷ 2015 SCMR 43

⁸ 1999 CLC 723

⁹ 2003 CLC 1196

¹⁰ 2009 CLC 1199

Executive Board of the DHA at the Executive Board Meeting No. 2/2004;

- (iii) that the power to issue the Impugned Order vested in the Executive Board of the DHA under Sub-Article (3) of Article 5 of the DHA Order and neither Article 9 or Article 18 of the DHA Order could “abridge” the power conferred on the Executive Board under Sub-Article (3) of Article 5 of the DHA Order;
- (iv) that in addition to the powers that vested in in the Executive Board of the DHA Article 17 and 18 of the DHA Order, the in the Executive Board of the DHA also had the Authority under Section 21 of the General Clauses Act, 1897 to cancel such allotments. Reliance in this regard was placed on the decision of this Court reported as **Z.A. Qureshi vs Pakistan Defence Officers Housing Authority**¹¹

9. We have heard the contentions of Mr. Khalid Javed Khan and Mr. Malik Naeem Iqbal and have perused the record.

10. The land which comprises the area known as the Pakistan Defence Officers Housing Authority is owned by the Federation of Pakistan and which is held in the name of President. This land was originally leased by the President of Pakistan to a Cooperative Housing Society, registered under the provisions of the Sindh Cooperative Societies Act, 1925, known as the Pakistan Defence Services Officers Housing Society Limited (hereinafter referred to as the “DHA Society”) and which on account of various restructuring and by virtue of Section 17 of the DHA Order today vests in the authority constituted under Sub-Article (1) of Article 4 of the DHA Order i.e. the DHA.

11. It is a matter of record that the first lease that was executed by the President of Pakistan in favour of the DHA Society was executed on 25 March 1965 and was for an area of 196.21 acres of land and which while allowing the allotment of plots for residential and commercial purposes excepted the allotment of plots for amenity plots by maintaining the following covenant:

¹¹ 1994 MLD 338

- “ ... 14. *After receiving the approval of the Authority to the layout plan the lessees shall allot the plots in the manner, namely: - ...*
3. *Plots reserved for public amenities*
- (a) *The lessees shall cause to be erected and completed in and upon the plots reserved for public amenities the building the erection of which has been provided for the in scheme referred to in these presents and shall not without the previous consent in writing of the Authority erect or suffer to be erected on any such plot or par thereof any building other than those required under the scheme. On the due completion of the said buildings, the lessees shall be entitled to the lease of the said plot on which these buildings stand for a term of 92 years ending on 14-7-2055 on such terms and conditions as may be laid down by the Lessor*

A second Lease Deed was thereafter executed by President of Pakistan and the DHA Society on 11 November 1975 and which was for an area of 1936.42 Square yards and which amongst it had terms similar to those contained in the Lease Deed dated 25 March 1965 and which were in the following terms:

- “ ... 10. *After receiving the approval of the Lessor to the layout plan the Lessees shall allot the plots in the manner, namely:*
- (1) *Plots reserved for residential purposes:*
 (2) *Plots reserved for commercial purposes:*
 (3) *Plots reserved for public amenities:*
- (a) *The Lessees shall cause to be erected and completed in and upon the plots reserved for public amenities the buildings the erection of which has been provided for in the scheme referred to in these presents and shall not without the previous consent in writing of the Lessor erect or suffer to be erected on any such plot or part thereof any building other than those required under the scheme. On the due completion of the said buildings, the Lessees shall be entitled to the lease of the said plot on which these buildings stand for a term of 99 years commencing from 23rd August, 1975 and ending on 22nd August, 2074 A.D. on such terms and conditions as may be laid down by the Lessor.*
- (b) *Any plot which is or which may from time to time fall vacant or become in the opinion of the Military Estate Officer available for disposal either due to a default of the Lessees, a sub-lessee or a lessee or by operation of law or otherwise shall be disposed of in accordance with the provisions of sub-clause (a) of this clause...*

17. *And the Lessees do hereby covenant with the Lessor: ...*

(d) To erect at their/his own cost and finish fit for habitation/use on the premises hereby demised buildings for amenities and dwelling houses together with all necessary out-houses and other appurtenances in accordance with a plan or plans for each allotted plot to be approved in writing by the Cantonment Board under the provisions of the Cantonments Act, 1924.”

12. We have no doubt that terms existed in each of the leases and which were interpreted by a Learned Division Bench of this Court in the decision reported as **Morris Tanvir vs. Federation of Pakistan through Secretary Ministry of Defence, Islamabad and 2 others**¹² holding that in the area that was leased by the President of Pakistan to the DHA, all amenity plots that were planned and developed therein by the DHA were not capable of allotment to third parties and as per the terms of the lease each such plot had to be developed by the DHA itself.

13. On the basis of such an interpretation of the terms of the leases as between it and the President of Pakistan, it is agitated by Mr. Malik Naeem Iqbal, that as the terms of the Lease were violated by the DHA by allotting various amenity plots including, but not limited to, the Said Property conferring thereon a right to develop such amenity plots; rights as conferred to the allottees including but not limited to the Petitioners right to the Said Property was illegal and could not be sustained. The question therefore arises is that where there is in existence a lease and the lessee of which assigns rights to a third party e.g. Sub-Lessee, the terms of which violate a covenant of the head lease; as to whether there is any liability on the third party for the breach of that covenant in the head lease.

14. This issue has been addressed in the decision reported as **Akhoy Kumar Chatterjee vs. Akman Molla and Ors.**¹³ In this case a lease had been issued by the lessor to persons referred to in that judgement as “tenure-holders” and in which lease a covenant existed that certain tanks on the demised property would not be excavated. The “tenure-holders” sub-leased the property to persons who thereafter excavated such tanks but in which sub-lease there was no covenant prohibiting such excavation. On an action brought by the Lessor as against the” tenure-holders” and

¹² 2009 CLC 1199

¹³ 27 Ind Cas. 397

the sub-leases seeking a mandatory injunction to refill the excavated tanks and for damages it was held that:

“ ... *The tenure-holders are liable for breach of covenant, even if it be assumed that they have no remedy against their sub-lessee. [Penley v. Watts 7 M. and W. 601 (1841), Smith v. Howell 6 Ex. 730 (1851), Walker v. Hatton 10 M. and W. 249 (1842).] This does not, however, show that the Plaintiff is entitled to ask for damages as against the first Defendant. **It is well-settled that there is neither privity of contract nor privity of estate between the head lessor and the under-lessee, and hence the under-lessee is not personally liable for the rent reserved by, nor on the covenants contained in the head lease.** [Berney v. Moore 2 Ridgeway Parl. Rep. 310 at p. 331 (1791) and Holford v. Hatch 1 Doug. 183 (1779); Laws of England, Ed. Halsbury, Vol. XVIII, Art. 865.] Consequently, the Plaintiff has no cause of action against the first Defendant.”*

This is patently correct. Similarly, as each of the leases executed between the President of Pakistan and the DHA represent obligations *inter se* the Lessor i.e. the President of Pakistan and the Lessee i.e. the DHA, such rights comprise a privity of estate¹⁴ as between each of them and if a breach of a covenant has occurred then the DHA and the DHA alone would be liable to the President of Pakistan for the breach of such covenant. What is quite interesting is that we have not been made aware as to whether the President of Pakistan has either objected to the allotment of such amenity plots by the DHA and if so what action has been taken by the President of Pakistan as against the DHA for such purported violation of the covenant of the lease. As it is well within the right of the President of Pakistan to amend such terms and to grant such permission to DHA or even for the DHA to allege that the President of Pakistan, by its conduct, has acquiesced to such allotments we pass no comment on this issue and simply state that if there has been such a violation, it would be incumbent on the President of Pakistan to enforce its rights for the breach of such a covenant under the terms of the lease against the DHA. We are however clear, and which we have no hesitation in saying, that on account of there being no Privity of Estate or for that matter any Privity of Contract as between the President of Pakistan and allottees of such amenity plots such as the Petitioner, the term in the Lease as between the President of Pakistan and the DHA cannot be enforced by the President of Pakistan as against the allottees. While we are willing to consider that there would be a privity of estate if the assignee was an absolute assignee

¹⁴ See Dr. P.P. Saxena, *Mulla The Transfer of Property Act*, New Delhi, (2013) at pg. 875-878

to the rights under the head lease, that is not the case over here as the entire estate of the DHA clearly has not been assigned to the Petitioner. We also do not see the covenant being a covenant running with the land so as to have the protection of Section 40 of the Transfer of Property Act, 1882 but rather as a personal obligation as between the President of Pakistan and the DHA and which being might even be assignable. Clearly if the DHA had in deviation of the layout plan that it had developed allotted a land meant for an amenity plot to the Petitioner for some other purpose, such a covenant would be a covenant in the land and would be enforceable as against the Petitioner, but this is not the case here. The covenant therefore is not enforceable as against the Petitioner.

15. We are equally clear that the breach on the part of the DHA to the President of Pakistan cannot prejudice the allottees who have clearly not acted in breach of the terms of their allotment and which are enforceable as between them and the DHA. The contention of Mr. Malik Naeem Iqbal that as there was breach of the Lease as between the President of Pakistan and DHA the allotment as between the DHA and the Sub-lessee would stand invalidated is therefore not sustainable and is therefore rejected as the DHA cannot take action as against its allottees, for the breach of a covenant of its Lease, as there is no Privity of Estate to bind such allottees, including but not limited to the Petitioner, to such a Covenant. Respectfully, we disagree with the earlier interpretation that had been cast on the rights of such persons by the Learned Division Bench of this Court and which, having been set aside by the Honourable Supreme Court of Pakistan, are now not binding on us. We therefore hold that each of the obligations, as per each privity of estate, are distinct and are enforceable as between each of the parties to each of those estates and the DHA cannot claim there to be an illegality having been committed entitling them to cancel the rights of the Petitioner to the Said Property on the basis of a breach of the Covenant of the Lease as between it and the President of Pakistan.

16. Mr. Malik Naeem Iqbal next placed reliance on the Extract of Minutes of the Executive Board Meeting No. 2/2004 and contended that under Sub-Article (3) of Article 5 of the DHA Order the Executive Board of the DHA had absolute power in respect of all matters and which could not be circumscribed by Article 9 or Article 18 of the DHA Order to "abridge" such power. Sub-Article (3) of Article 5 of the DHA Order reads as under:

“ ... *The Executive Board shall exercise all administrative, executive and financial powers and do all acts and things which may be exercised or done by the Authority.*”

The Power given to the Executive Board to cancel an allotment is found in clause (i) of the proviso to Article 17 of the DHA Order, which is where the allotment was made in violation of the byelaws of the predecessor in interest of the DHA, and in Article 18 of the DHA Order and which reads as under:

“ ... (1) *The Executive Board may cancel any allotment, transfer, license or lease in respect of any plot or housing unit in any project or scheme in the specified area if the allottee, transferee, licensee or lessee fails to pay the dues or installments including development charges in respect of such plot or housing unit, within six months from the date of receipt of the demand in writing or within such extended time as the Executive Board may, in special case, fix, and thereupon the plot or the housing unit, with or without construction thereon, shall be resumed by the Authority.*

(2) *When a plot or a housing unit is resumed by the Authority under clause (1), the Authority shall sell it by public auction or otherwise and refund the sale proceeds, after deducting its dues and the expenses incurred on the public auction to the defaulting allottee, transferee, licensee or, as the case may be, lessee.*

We have no doubt that the Executive Board of the DHA has been conferred a general power to “*exercise all administrative, executive and financial powers and do all acts and things which may be exercised or done by the Authority*” under Sub-Article (3) of Article 5 of the DHA Order. However, in terms of the right to cancel an allotment it has inter alia been given a special authority under clause (i) of the proviso to Article 17 of the DHA Order and under Sub-Article (1) of Article 18 of the DHA Order to cancel allotments and which in the latter Article is on account of the failure of a person holding a property, within a specified time, “*to pay the dues or installments including development charges in respect of such plot or housing unit*” and for which default the right to a property can be cancelled and the property resumed by the DHA and that too only after complying with due process which would include, but not be limited to, the rules of natural justice e.g. issuing a proper show cause notice, affording a hearing and passing a speaking order. It is well settled that when interpreting such provisions, where general powers and special powers are found in the same enactment, that under the maxim “*Generalia Speciabibus non*

derogant” the general power must yield in favour of the special power. We are clear that the general power that has been conferred by Sub-Article (3) of Article 5 of the DHA Order on the Executive Board of the DHA to act has to give way to the special power conferred in clause (i) of the proviso to Article 17 of the DHA Order and Sub-Article (1) of Article 18 for cancellation of allotments and which power to cancel allotments is therefore governed solely by that provision.¹⁵

17. Mr. Malik Naeem Iqbal further argued, that notwithstanding the provisions of Sub-Article (3) of Article 5 and Sub-Article (1) of Article 18 of the DHA Order, the Executive Board of the DHA had an independent right under Section 21 of the General Clauses Act, 1897 to recall its order of allotment. He based his contentions on a Judgement of a Learned Division Bench of this Court reported as **Z.A. Qureshi vs Pakistan Defence Officers Housing Authority**¹⁶ and in which an allotment to a property located in the DHA was subject to a show cause notice premised on the proviso to Article 17 of the DHA Order and in which it was held that:

“ ... We are, however, of the opinion that there is another aspect of the matter which has not been considered by either of the counsel in this case, section 21 of the General Clauses Act, 1897 is as follows:---

"Power to make, to include power to add to, amend, vary or rescind orders, rule or bye-laws. Where by any (Central Act) or Regulation, a power to (issue notifications), orders, rule or bye-laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued)."

*The above section clearly indicates that if any power is exercisable by virtue of any Central Act or Regulation to issue notifications, orders, rules etc. such power would also include a power- to add to, amend, vary or rescind any such notification, order etc. It, therefore, follows that if the said authority would pass order allotting the plot in question to the petitioner can also pass are order cancelling such allotment. **The only case in which exercise of such power is restricted is that of locus poenitentiae. In the present case, it is not the case of the petitioner that on the basis of the allotment, he has taken any such steps which are not possible for him to retrace.** Subsequently in our view even if*

¹⁵ See **Amir Akber Khan and others vs. National Accountability Bureau and others** PLD 2022 Sindh 440;

¹⁶ 1994 MLD 338

Article 17 or Article 18 of the said President's Order, action can be taken by the respondent under section 21 of the General clauses Act.

While agreeing with Mr. Malik Naeem Iqbal that the statutory rights under the proviso to Article 17 and Article 18 of the DHA Order to cancel an allotment must be read independently of the statutory right under Section 21 of the General Clauses Act, 1897 of the Executive Board to reverse an order passed by it, such a statutory rights are excepted by the principle of *locus poenitentiae* and which was very succinctly explained by the Honourable Supreme Court in the decision reported as **Pakistan through Secretary, Ministry of Finance vs. Muhammad Himayatullah Farukhi**¹⁷ wherein it was held that:

“ ... *There can hardly be any dispute with the rule as laid down, in these cases that apart from the provisions of Section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of receding till a decisive step is take, is available to the Government or the relevant authorities. In fact, the existence of such a power if necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to undo it. **But this is subject to the exception that where the order has taken legal effect, an in pursuant thereof certain rights have been created in favour of any individual, such a order cannot be withdrawn or rescinded to the detriment of those rights.***”

As has been held by the Honourable Supreme Court of Pakistan, and which proposition is now well settled, the right of an authority to “amend, vary or rescind” its orders cannot occur where a right comes to “vest” in favour of a person on the basis of such an order.¹⁸ Having come to the conclusion that the breach of the covenants of the Lease Deed as between the President of Pakistan and the DHA cannot invalidate the rights of the Petitioner to the Said Property, there is no question that remains to be answered as to the legality of the allotment of the Said Property so as to impede such a right to so vest in the Petitioner. The “Vested Right” that has accrued in the Petitioner is a right to the Said Property¹⁹ and which accrued the moment she acted upon the terms of

¹⁷ PLD 1969 SC 407

¹⁸ See **Federation of Pakistan vs. Muhammad Irfan Baig** 1992 SCMR 2430; **Army Welfare Sugar Mills Ltd. vs Federation of Pakistan** 1992 SCMR 1652; **Hashwani Hotels Ltd. vs. Federation of Pakistan** PLD 1997 SC 315; **Chairman, Selection Committee/ Principal King Edward Medical College, Lahore vs. Wasif Zamir Ahmad** 1997 SCMR 15

¹⁹ See **Haji Noor Muhammad and others vs. Karachi Development Authority and 2 others** PLD 1975 Karachi 373; **Nasira Sultana vs. Habib Bank Ltd. and others** PLD 1975 Karachi 608.

the Transfer Order dated 21 July 2003 and which is manifested in the facts and circumstances of this Petition, as the Petitioner has paid all demands made by the DHA on the Said Property from that date onwards. Clearly the DHA cannot rely on the provisions of Section 21 of the General Clauses Act, 1897 to justify the Impugned Notice as rights have come to vest in the Petitioner which cannot be ousted within the prescriptions of that section as mandated by the Honourable Supreme Court of Pakistan.

18. In addition, no material has been placed on record to show that DHA had, prior to issuing the Impugned Notice, issued the Petitioner a show cause notice or afforded her a hearing or had passed a speaking order on the basis of the alleged breaches identified in that show cause notice. None of this was done and which, quite aside from the Impugned Notice being in excess of the jurisdiction of the DHA as indicated hereinabove, also indicates that the Impugned Notice was issued in violation of the rules of Natural Justice.²⁰

19. The issue of the scope of the authority of the Executive Board to cancel an allotment having being settled, it is clear that the Impugned Notice cancelling the Petitioners right to the Said Property is not based on an allegation of the failure on the part of the Petitioner to pay any fiscal demand on the Said Property but rather on the delay taken to construct on the Said Property. This is not a ground available to the Executive Board to cancel the Petitioners allotment to the Said Property either under the proviso to Article 17 and Article 18 of the DHA Order. The actions on the part of the Executive Board in this regard are clearly in excess of the jurisdiction of the Executive Board and cannot be sustained and are hence void.

20. For the foregoing reasons, the Impugned Notice that has been issued by the DHA to the Petitioner, having been issued in excess of its jurisdiction under the proviso to Article 17 and Article 18 of the DHA Order is held to be void *ab inito* and is set aside and on account of which we had on 18 December 2023, by a short Order, allowed this Petition and these are the reasons for that Order.

J U D G E

J U D G E

Karachi dated 12 February 2024

²⁰ See *Collector Customs, Model Customs Collectorate , Peshwar vs. Muhammad Ismail* 2023 SCMR 1219; *Sohail Ahmad vs. Government of Pakistan through Secretary of Interior Ministry, Islamabad* 2022 SCMR 1387; *Capital Development Authority through Chairman, Islamabad vs. Shabir Hussain* 2022 SCMR 627