

1999SCMR2792

[Supreme Court of Pakistan]

Present: Nasir Aslam Zahid and Abdur Rehman Khan, JJ

Mst. SHAHNAZ SAIF----Petitioner

Versus

Dr. TALAT NADEEM and others---Respondents

Civil Petition No.663-L of 1998, decided on 19th April, 1999.

(On appeal from the judgment, dated 20-3-1998 of the Lahore High Court passed in Writ Petition No.4788 of 1993).

Constitution of Pakistan (1973)---

---Art. 185(3)---Allotment of plots in Housing Scheme---Overseas Pakistanis had applied for allotment of plots in the Scheme specially reserved for overseas Pakistanis and in drawing of lots, specific plots were drawn in their names and they paid the price of the plots---Such Overseas Pakistanis acquired vested rights in the said plots and were entitled to allotment of respective plots---Chief Minister of the Province could not allot a plot which had been drawn in the lots in favour of Overseas Pakistanis and that also without notice to affected persons.

Muhammad Aslam Sandhu, Advocate Supreme Court for Petitioner.

Dr. A. Basit, Advocate Supreme Court for Respondent No. 1.

Date of hearing: 19th April, 1999.

ORDER

NASIR ASLAM ZAHID, J.---This petition has been filed by Mst. Shahnaz Saif seeking leave against the judgment dated 20-3-1998 of the Lahore High Court allowing the Constitutional petition filed by respondent No. 1 Talat Nadeem. We have heard Mr. Muhammad Aslam Sandhu, learned Advocate Supreme Court for the petitioner, and Dr. A Basit, learned Advocate Supreme Court for respondent No. 1. We have referred to the relevant record and have also gone through the impugned judgment in which the facts are given in detail.

2. The impugned judgment dated 20-3-1998 of the Lahore High Court allowed two Writ Petitions, being No. 4788 of 1993 of respondent No. 1 Dr. Talat Nadeem and the other being No.3324 of 1993 filed by respondent No. 5, Muhammad Ilyas. Apart from petitioner Mst. Shahnaz Saif, Government of Punjab, Housing and Physical Planning, Lahore and two officers of that Department were the respondents in the writ petitions.

In response to an advertisement by the Government inviting applications for allotment of plots reserved in Scheme Nos. 1 and 3 in Tariq Bin Ziad Colony, Sahiwal, for Overseas Pakistanis, respondent Dr. Talat Nadeem and respondent No.5 Muhammad Ilyas applied and, in the draw of lots, Plot No.9 in Scheme No. 1 was drawn in favour of respondent No. 1 Dr. Talat Nadeem whereas Plot No. 11 was drawn in favour of respondent No.5 Muhammad Ilyas. Subsequently, the Government officials concerned informed respondent that Plot No.9 had been allotted in favour of Mst. Shahnaz Saif and the respondent No. 1 had been given Plot No. 11 (drawn in favour of respondent No.5 Muhammad Ilyas) and respondent No. 5 was informed that he was being given Plot No. 1-A which was still to be created in Scheme No. 1.

However, Plot No. 11 could not be given to respondent No. 1 as Muhammad Ilyas had, in the meantime, filed Writ Petition No. 3324 of 1993 in which stay order had been issued. Respondent No. 1 Dr. Talat Nadeem, then filed his Writ Petition No. 4788 of 1993. In the writ petition it was pleaded by the petitioner that she being widow had applied for allotment of plots in Low Price Housing Scheme No.III and under the orders of the then Chief Minister two plots measuring 7 Marlas each in the said scheme were allotted to her and at her request there was exchange of the two plots (total being 14 Marlas) with Plot No. 9-Z (which had been drawn in favour of respondent No. 1) which plea of the petitioner was not accepted.

The reasoning of the High Court in allowing both the writ petitions is contained in paras. 7 to 11 of the impugned judgment which are reproduced here:-

"7. After hearing the learned counsel for the parties I have reached the conclusion that both these writ petitions merit acceptance.

Both Dr. Talat Nadeem and Muhammad Ilyas (petitioners in these two writ petitions) are Pakistanis living abroad, former being resident of Ireland and the latter of U.S. A, Plots Nos. 9 and 11 were reserved for overseas Pakistanis. Both the writ petitions were successful, in draw of lots; Plot No.9 drawn in the name of Dr. Talat Nadeem and Plot No. 11 to Muhammad Ilyas. Both, as such, acquired vested rights in these plots. However, respondent No.4 manoeuvred in obtaining an order from the Chief Minister, Punjab, for allotment of Plot No.9 in her favour, and thus, shifting of Talat Nadeem to Plot No.9 and Muhammad Ilyas to Plot No. 1-A.

It is open to serious doubt as to whether the Chief Minister, Punjab, was competent to pass the order of her shifting to Plot No. 9-Z. Be that as it may, admittedly neither of the two petitioners in these writ petitions were afforded an opportunity of hearing by any one before passing the impugned order Annexure-IV. On this short ground above the impugned order merits to be struck down.

8. That is not all. Respondent No.4 had been allotted two plots of 7 Marlas each in low price housing scheme. No justification is shown in law as to how she could be shifted to a plot earmarked for Overseas Pakistanis in another scheme. No reason is forthcoming either as to why she was being plot measuring 1 Kanal instead of two plots of 7 Marlas each. It is clear that for extraneous reasons undue favour was shown to her.

9. The impugned order dated Annexure-IX, being without lawful authority is declared as such.

