

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.68 of 2013

High Court Appeal No.69 of 2013

Appellant : Pakistan Defence Officers' Housing
Authority, Karachi through Mr. Waseem
Iqbal, Advocate

Respondent : Mst. Ilyas Begum wife of Nisar Ali
through M/s. Muhammad Arif Khan and
Abdul Razzaque, Advocates

Date of Hearing : 19.08.2026 & 25.08.2026

Date of Judgment: 03.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- By this common judgment, we propose to decide both the connected appeals, which arise out of the common Judgment and Decree dated 04.02.2013, passed by the learned Single Judge of this Court, whereby Suit Nos.1114 of 2005 and 1176 of 2005, instituted by the plaintiff/present respondent, were decreed. The appellant, Pakistan Defence Officers Housing Authority (**hereinafter referred to as "DHA"**), being aggrieved by the said Judgment and Decree, has preferred the instant appeals.

2. The controversy involved in both appeals arises from the action taken by the appellant/DHA through its letter dated 26.05.2005, whereby the Executive Board purportedly cancelled seven plots which stood transferred in the name of the respondent. Out of these, five plots constituted the subject matter of Suit No.1114 of 2005, whereas the remaining two plots, namely Plot No.13, 11th Zamzama Street, Phase-V, DHA, Karachi, measuring approximately 600 square yards, and Plot No.169, Khayaban-e-Hilal, Phase-VI, DHA, Karachi, measuring

approximately 689 square yards, constituted the subject matter of Suit No.1176 of 2005.

3. The respondent's case before the learned Single Judge was that she had acquired the aforesaid properties from their respective original allottees and that the transfers in her favour had been duly effected by the appellant/DHA upon completion of the prescribed procedure. In respect of Plot No.13, 11th Zamzama Street, the respondent relied upon the Transfer Letter dated 10.02.1978 issued by the Society, whereas, in respect of Plot No.169, Khayaban-e-Hilal, reliance was placed upon a similar transfer document bearing the same date, i.e. 10.02.1978. According to the respondent, the aforesaid transfer letters constituted the title documents under the system then prevailing in the Society, and the change of ownership had duly been incorporated in its official record.

4. It is an admitted position that the transfers in question were effected in the year 1978. It is equally undisputed that, in respect of Plot No.13, the appellant itself, during 1985-86, addressed correspondence to the original allottee, Capt. Kafeel Ahmed, seeking verification of the sale and transfer. In response, Capt. Kafeel Ahmed, through his letter dated 01.06.1986, confirmed that he had sold the plot to the respondent and that the transfer letter had been issued by the Society.

5. Subsequently, on 11.02.1988, the appellant lodged an FIR against the respondent, her husband and certain former employees, alleging that the transfers had been procured through unlawful means and on the basis of forged and fabricated documents. Upon investigation, the police submitted its report under Section 173 Cr.P.C. before the learned Magistrate, which was accepted by the learned Magistrate vide order dated 06.12.1988, and the case was disposed of in **"Cancelled Class."**

6. Thereafter, the appellant/DHA instituted Direct Complaints Nos.183 of 1990 and 184 of 1990 in respect of Plot No.13 and Plot No.169, respectively, which were the subject matter of Suit No.1176 of 2005 and HCA No.69 of 2013. Both complaints were challenged before this Court through Miscellaneous Applications

Nos.1126 and 1127 of 1992 and were quashed by this Court vide order dated 29.06.1995, whereby the said applications were allowed. The aforesaid order was subsequently challenged before the Hon'ble Supreme Court of Pakistan, which set aside the order of this Court and directed the respondent to avail the remedy available under Section 249-A Cr.P.C. The said remedy was accordingly invoked and was allowed vide order dated 11.06.1998, whereby the respondent and her husband were acquitted by the learned Judicial Magistrate, Karachi South.

7. The appellant/DHA challenged the said order of acquittal before this Court by filing Acquittal Appeals Nos.163 and 164 of 1998. However, the said appeals were dismissed for non-prosecution on 25.11.1999. No applications for restoration were thereafter filed by the appellant before this Court. Consequently, the criminal proceedings arising from the allegations in question came to an end.

8. The respondent thereafter approached this Court by filing Constitutional Petitions Nos.401 and 402 of 1989 in respect of the two plots subject matter of HCA No.69/2013 (Suit No.1176/2005). The said petitions were ultimately disposed of by this Court vide order dated 16.01.2002. The operative portion of the order, insofar as relevant, reads as follows:

“Impugned order dated 17.8.1988, which was passed without notice to the petitioner, be set aside, but the respondent would be free to pass appropriate orders after recording evidence in the presence of and hearing the petitioner in accordance with law.”

9. The import and legal effect of the aforesaid order cannot be overlooked. The appellant was not vested with an unfettered or unqualified authority to cancel the plots afresh. Rather, the liberty granted by this Court was expressly subject to the condition that any further action be taken only after recording evidence in the presence of the respondent and affording her an opportunity of hearing in accordance with law. The appellant was, therefore, under a legal obligation to adopt a fair, transparent and lawful procedure before taking any adverse

action affecting the respondent’s vested rights and interests in the subject properties.

10. Following the aforesaid order, correspondence ensued between the parties. In respect of Plot No.13, the appellant, through its letter dated 12.10.2002, called upon the respondent to obtain an “A” Lease and commence construction over the plot. Similarly, in relation to Plot No.169, correspondence was exchanged between the parties, whereafter the respondent visited the offices of the appellant and produced the documents required by its officials. The respondent subsequently asserted that, notwithstanding the order passed by this Court, the appellant failed to take appropriate steps in accordance therewith, compelling her to initiate contempt proceedings in the aforesaid constitutional petitions.

11. Thereafter, the appellant issued the impugned letter dated 26.05.2005, whereby the respondent was informed that the Executive Board had resolved to cancel the subject plots. Subsequently, through another letter dated 25.07.2005, the respondent was called upon to surrender the original allotment orders. The respondent, however, maintained that the original allotment orders had already been deposited with the Society at the time of transfer and had thereafter remained in the custody of the appellant in accordance with its own prescribed procedure.

12. Aggrieved by the aforesaid action, the respondent instituted Suit Nos.1114 of 2005 and 1176 of 2005, seeking, inter alia, declaration and permanent injunction. The following issues were framed in Suit No.1114/2005 on 17.04.2006:

Sr. No.	Issues	Conclusion / Decision
1.	Whether the defendant Authority has powers under law to issue, act upon and give effect to the contents of its letter dated 26.05.2005, so as to deprive the plaintiff of the properties purchased by her and transferred in her name by the defendant Authority in the year 1978?	Issue No.1 relating to the defendant Authority under the law to issue and act upon its letter dated 26.05.2005, was decided in the affirmative and in favour of the appellant.
2.	Whether the purported decision of the defendant Authority conveyed through its	Issue No.2 was decided in favour of the

letter dated 26.05.2005 is mala fide and in violation of the principles of natural justice, and if so, what is its effect?	plaintiff / respondent on the ground of violation of the principles of natural justice.
3. What should the decree be?	Issue No.3, relating to the decree, was answered by decreeing the suit in favour of the plaintiff/respondent.

In Suit No.1176 of 2005, the following issues were framed on 23.02.2006:

Sr. No.	Issues	Conclusion / Decision
1.	Whether the suit as framed and filed is maintainable in law?	Issue No.1 was not pressed and therefore need not to be decided.
2.	Whether the suit plots were allotted fraudulently and the allotment orders were issued on back dates, whereas the transfer affidavits were filed prior to the dates of allotment of the plots; if so, what is its effect?	Issue No.2 whether the suit plots were allotted fraudulently and the allotment orders were issued on back dates was decided in negative and against the defendant/appellant.
3.	Whether the defendant Authority had powers under the law to issue and act upon the letter dated 26.05.2005 so as to deprive the plaintiff of the properties transferred in her name in the year 1978?	Issue No.3 relating to jurisdiction and power of DHA already stands decided in favour of the defendant.
4.	Whether the plaintiff, through her husband, who was in the service of the defendant, committed forgery in the record resulting in the issuance of fictitious allotment orders?	Issue No.4, whether the plaintiff, through her husband, committed forgery in the record resulting in fictitious allotment orders, was decided in the negative and against the defendant/appellant.
5.	Whether the suit is barred by the law of limitation?	Issue No.5 relating to limitation was also not pressed, therefore, no question of limitation can arise.
6.	What should the decree be?	Issue No.6, relating to the decree, was answered by decreeing the suit in favour of the plaintiff/respondent.

13. The appellant contested the suits and took the position that the disputed allotments and subsequent transfers had been procured through collusion and connivance between the respondent, her husband and certain former employees of the predecessor Society. It was alleged that the allotments had neither been approved by the Managing Committee nor subjected to any process of balloting and that the relevant documents had been manipulated, fabricated or otherwise brought into existence unlawfully.

14. The appellant further relied upon an inquiry conducted by the Director, Transfer & Record, and the subsequent proceedings before the Scrutiny Committee, which recommended cancellation of the subject plots to the Executive Board. The Executive Board thereafter approved the said recommendation, culminating in the issuance of the impugned letter dated 26.05.2005.

15. The learned Single Judge, in the first instance, examined the question of jurisdiction and held that the appellant possessed the requisite legal authority, under the relevant provisions of President's Order No.7 of 1980, to take action in matters falling within the ambit of the powers conferred upon it thereunder. However, while examining the manner in which such power had been exercised, the learned Single Judge found that the respondent had neither been served with proper notice nor afforded a meaningful and effective opportunity of hearing before the cancellation of the subject plots.

16. It was observed that the appellant was fully cognizant of the fact that the plots stood transferred in the respondent's name and that she was the person asserting proprietary and possessory rights therein. The learned Single Judge further held that the mere allegation of fraud could not absolve the appellant from its obligation to observe the principles of natural justice. On the contrary, where an adverse action is proposed on the basis of allegations of fraud, forgery, fabrication or manipulation, the person against whom such allegations are levelled is entitled to be informed of the case set up against her and to be afforded a

reasonable and effective opportunity to controvert the material and evidence relied upon in support thereof.

17. In relation to Suit No.1176 of 2005, the learned Single Judge further held that the burden of establishing the serious allegations of fraud, fabrication, forgery and manipulation rested squarely upon the appellant. Upon appraisal of the evidence available on record, the learned Single Judge concluded that the appellant had failed to discharge the said burden. It was found that several of the objections raised by the appellant were not borne out from the documentary evidence produced before the Court and that the inquiry proceedings, as well as the material relied upon by the appellant, did not inspire sufficient confidence to substantiate the serious allegations forming the foundation of the cancellation proceedings.

18. In view of the foregoing findings, the learned Single Judge decreed both suits in favour of the plaintiff/present respondent. The appellant, being dissatisfied with and aggrieved by the said Judgment and Decree, has preferred the instant appeals before us.

19. The learned counsel for the appellant has mainly contended that the impugned judgment and decree are contrary to law and the evidence available on record. It has been argued that the learned Single Judge failed to appreciate that the very foundation of the respondent's claim that the title of the aforesaid plots was tainted by fraud and fabrication and that the respondent, in connivance with officials and employees of the predecessor of DHA, procured fictitious allotments and transfer documents. According to the learned counsel, where the basic allotment is illegal or fraudulent, every subsequent action based thereupon is equally void and no proprietary right can be claimed on the basis of such illegal or fabricated documents.

20. The learned counsel has further contended that the learned Single Judge failed to attach due weight to the evidence showing that the allotments were not approved by the Managing Committee and were not preceded by the requisite balloting. It has been argued that the documentary circumstances

surrounding the allotments and transfers, including the common dates appearing on a number of allotment and transfer documents, were sufficient to establish that the transactions were not genuine. It has further been contended that a proper inquiry was conducted by the Director Transfer and Record and that the respondent and her husband were called and heard during such proceedings. According to the learned counsel, the report of the inquiry was thereafter placed before the Scrutiny Committee, which made its recommendations to the Executive Board, and subsequently the Executive Board, after due deliberation, exercised the statutory authority vested in it and decided to cancel the plots. It is, therefore, argued that the learned Single Judge incorrectly held that the principles of natural justice had not been observed.

21. With regard to criminal proceedings, learned counsel submitted that the same proceedings could not be treated as a conclusive determination in favour of the respondent since such proceedings did not culminate in a finding affirmatively establishing the genuineness of the allotments and transfers. According to the learned counsel, the criminal proceedings failed primarily for want of sufficient evidence and because of delay, whereas the appellant remained entitled to independently examine the civil consequences of the transactions and to exercise its statutory powers. It has also been argued that the learned Single Judge improperly mixed up the facts and issues arising in Suit No.1114 of 2005 with those arising in Suit No.1176 of 2005, despite the fact that the nature of the allegations relating to the respective sets of plots was not identical. It has been submitted that this resulted in a failure to separately appreciate the evidence and controversies relating to each suit. Lastly, learned counsel for the appellant contended that the original allottees of the plots were necessary and proper parties, particularly when the respondent's claim was based upon alleged purchases and transfers from such persons; however, they were not made party to the suits; as such, the suit was liable to be dismissed. In support of his contention, he has relied upon the cases reported as Muhammad Bashir vs.

Muhammad Hussain and 16 others (2009 SCMR 1256), Mst. Rasheeda Bibi and others vs. Mukhtar Ahmad and others (2008 SCMR 1384), Mst. Sughran Bibi and others vs. Mst. Jameela Begum and others (2001 SCMR 772), Administrator Municipal Corporation Peshawar vs. Taimoor Hussain Amin and others (PLD 2020 Supreme Court 249), The Province of Punjab through Collector, Sialkot vs. Feroz Din and others (2015 SCMR 909), Ghulam Ahmad Chaudhry vs. Akbar Hussain through Legal Heirs and another (PLD 2002 Supreme Court 615), Nasir Ali vs. Muhammad Asghar (2022 SCMR 1054), Mst. Rahim Khatoon (deceased) through LR's vs. Muhammad Yasin and others (2025 SCMR 1694), Mehmood Khan and others vs. Sara Akhtar (2024 SCMR 178), Khan Muhammad vs. Muhammad Din through LR's (2010 SCMR 1351), Khan Bahadur (deceased) through his Legal Heirs and 2 others vs. Ahmed Khan and another (1992 SCMR 1362) and Abdul Karim vs. Muhammad Sughran and 2 others (2001 CLC 1115).

22. Conversely, the learned counsel for the respondent has supported the impugned judgment and submitted that the appellant's case was primarily based on serious allegations of fraud, forgery and fabrication, and as such, the burden of proof squarely rests upon the appellant. It has been contended that the respondent could not be deprived of properties standing transferred in her name since 1978 merely on the basis of suspicion, conjecture or an internal inquiry unsupported by reliable and legally persuasive evidence. It has further been argued that the earlier order dated 16.01.2002 passed by this Court in the constitutional petitions specifically required the appellant to take any further action only after recording evidence in the presence of the respondent and after hearing her in accordance with law; however, according to the learned counsel, the appellant failed to comply with such direction, as no proper show cause notice setting out the allegations and material against the respondent was served upon her, nor was she given a meaningful opportunity to rebut the evidence relied upon for cancellation.

23. Learned counsel for the respondent has also submitted that the appellant itself admitted and recognized the transfers for several decades and that the cancellation in 2005 related to transactions which had taken place in 1978. It has been argued that the appellant was the custodian of the relevant record and was in a far better position to establish its allegations by producing original records and authentic contemporaneous documents. However, according to the learned counsel, such evidence was not produced and the appellant instead relied upon an inquiry report whose evidentiary worth was seriously questionable. It has further been submitted that the learned Single Judge separately framed and considered the relevant questions arising in the two suits and that the fact that a common judgment was rendered after hearing both matters together did not amount to an impermissible mixing of the cases. Lastly, learned counsel contended that the findings were based upon the evidence concerning the respective plots and no material irregularity has been pointed out which may justify interference in appeal.

24. We have heard the learned counsel for the parties at considerable length and have carefully examined the material available on the record.

25. The controversy essentially centres upon the legality and validity of the decision taken by the appellant, communicated through letter dated 26.05.2005, whereby the plots standing transferred in the name of the respondent were cancelled. The appellant maintains that the original allotments and subsequent transfers were founded upon fraudulent, fabricated and manipulated documents and that, under the relevant provisions of President's Order No.7 of 1980, it was competent to annul such allotments and transfers. The respondent, on the other hand, asserts that she had lawfully acquired the subject properties for valuable consideration and that, after having acknowledged and acted upon the transfers for several decades, the appellant could not lawfully deprive her of the properties merely on the basis of allegations of fraud, particularly without

establishing such allegations through cogent, credible and legally admissible evidence and, in any event, without affording her a meaningful and effective opportunity of hearing.

26. The principal questions, therefore, which arise for determination are whether the appellant succeeded in establishing the allegations of fraud, forgery, fabrication and manipulation upon which the impugned cancellation was founded; whether, notwithstanding the existence of statutory authority, the power was exercised in accordance with the procedure prescribed by law and the principles of natural justice; and whether the learned Single Judge, while decreeing the suits, misread or disregarded any material evidence or otherwise committed an error of law or fact warranting interference by this Court in its appellate jurisdiction.

27. The first question requiring consideration pertains to the appellant's statutory competence to take the impugned action. The learned Single Judge, upon examining and interpreting the relevant provisions of President's Order No.7 of 1980, concluded that the appellant possessed the requisite jurisdiction to take appropriate action in circumstances falling within the contemplation of law. The respondent did not succeed before the learned Single Judge on the plea of absolute want of jurisdiction; rather, the said issue was expressly determined in favour of the appellant.

28. We find no justification to take a different view on this limited aspect. However, it is a settled principle of administrative and public law that the existence of statutory jurisdiction and the lawful exercise of such jurisdiction are two distinct concepts. The mere conferment of statutory power upon an authority does not, by itself, render every action taken in purported exercise thereof lawful or immune from judicial scrutiny. The exercise of statutory power must necessarily remain within the parameters prescribed by law and must satisfy the fundamental requirements of fairness, reasonableness and observance of the principles of natural justice.

29. During the course of arguments, we specifically confronted the learned counsel for the respondent as to the documentary material available on record in support of the respondent's contention that she was a bona fide purchaser for valuable consideration and had acquired the subject plots through duly documented transfers. In response, learned counsel referred to the following title and transfer documents available on the record:

A. Residential Plots

(i) Plot No.57, 29th Street, Phase-V, measuring 1,000 square yards, was originally allotted in favour of Flight Lieutenant Shamsuddin Ahmed through allotment letter dated 15.09.1976, pursuant to the decision of the Managing Committee taken in its meeting held in 1976. The said plot was subsequently transferred in favour of the respondent through transfer order dated 20.03.1978. The relevant title documents are available at pages 69 to 75 of the appeal paper book and at pages 21 to 25 of the evidence file in Suit No.1114 of 2005.

(ii) Plot No.39-B, "Q" Street, Phase-VI, measuring 1,000 square yards, was originally allotted in favour of Lieutenant Parveen Akhtar Bhatti through allotment letter dated 30.11.1977 and was subsequently transferred in favour of the respondent through transfer order dated 20.03.1978. The relevant title documents are available at pages 77 to 79 of the appeal paper book and at pages 31 to 35 of the evidence file in Suit No.1114 of 2005.

B. Commercial Plots

(i) Plot No.131-C, Jami Commercial Street-14, Phase-VI, measuring 200 square yards, was originally allotted in favour of Major Mir Baz Khan through allotment letter dated 15.09.1976 and was subsequently transferred in favour of the respondent through transfer order dated 20.03.1978. The relevant title documents are available at pages 81 to 85 of the appeal paper book and at pages 33 to 37 of the evidence file in Suit No.1114 of 2005.

(ii) Plot No.C-6, Nishat Lane No.1, Phase-VI, measuring 200 square yards, was originally allotted in favour of Captain Ahmed Mahmood through allotment letter dated 15.09.1976 and was subsequently transferred in favour of the respondent through transfer order dated 13.09.1978. The relevant title documents are available at pages 87 to 91 of the appeal paper book and at pages 39 to 43 of the evidence file in Suit No.1114 of 2005.

(iii) Plot No.129-C, Jami Commercial Street-14, Phase-VI, measuring 200 square yards, was originally allotted in favour of Captain Ajab Khan through allotment letter dated 15.09.1976 and was subsequently transferred in favour of the respondent through transfer order dated 20.03.1978. The relevant title documents are available at pages 93 to 97 of the appeal paper book and at pages 45 to 49 of the evidence file in Suit No.1114 of 2005.

The aforesaid five plots constituted the subject matter of Suit No.1114 of 2005.

30. Insofar as the two plots forming the subject matter of Suit No.1176 of 2005 and HCA No.69 of 2013 are concerned, learned counsel for the respondent referred to the following documentary material:

(i) Plot No.13, 11th Zamzama Street, Phase-V, Defence Housing Authority, Karachi, measuring 600 square yards, was originally allotted in favour of Captain Kafeel Ahmed through allotment letter dated 15.09.1978 and was subsequently transferred in favour of the respondent through transfer order dated 10.09.1978. The relevant title documents are available at pages 77 to 89 of the record of HCA No.69 of 2013 and at pages 29 to 39 of the evidence file in Suit No.1176 of 2005. Of particular significance is the correspondence exchanged between the appellant and the original allottee. The appellant/DHA addressed a letter dated 15.11.1985 to Captain Kafeel Ahmed seeking confirmation of the transfer of the plot. In response, Captain Kafeel Ahmed, through his letter dated 01.06.1986, expressly confirmed that he had sold the plot to the respondent and that the transfer in her favour had accordingly been effected. The said correspondence is available at pages 49 to 53 of the evidence file.

(ii) Plot No.169, Khayaban-e-Hilal, Phase-VI, Defence Housing Authority, Karachi, measuring approximately 689 square yards, was originally allotted in favour of Captain Malik Matloob through allotment letter dated 06.09.1978 and was subsequently transferred in favour of the respondent through transfer order dated 10.02.1978. The relevant title documents are available at pages 91 to 103 of the record of HCA No.69 of 2013 and at the corresponding pages of the evidence file in Suit No.1176 of 2005.

31. Learned counsel for the respondent also placed reliance upon the documentary record, including the letter dated 08.08.1980 addressed to the Managing Director, Pakistan Defence Officers Housing Society, Karachi, concerning execution of the “A” Lease in respect of the subject property. The said correspondence, according to the respondent, further demonstrates that the appellant had been treating the respondent as the recorded transferee of the property and had dealt with her accordingly.

32. The documentary record assumes considerable significance when examined in the context of the appellant’s subsequent conduct. During the course of hearing, we specifically confronted learned counsel for the appellant with the fact that the

appellant/DHA itself had addressed a letter to Captain Kafeel Ahmed, the original allottee of Plot No.13, seeking confirmation of the transfer, and that the said allottee had categorically confirmed through his letter dated 01.06.1986 that he had sold the plot to the respondent.

33. We, therefore, specifically called upon learned counsel for the appellant to explain why, if the appellant had entertained serious doubts regarding the genuineness or legality of the transfers in favour of the respondent, similar correspondence was not addressed to the original allottees of the remaining plots for the purpose of independently verifying whether they had in fact sold or transferred their respective plots to the respondent. Learned counsel for the appellant was unable to furnish any satisfactory explanation in this regard.

34. This aspect becomes all the more significant because the record demonstrates that the appellant/DHA instituted Direct Complaints only in respect of Plot Nos.13 and 169, which were the subject matter of Suit No.1176 of 2005 and HCA No.69 of 2013. No corresponding criminal complaint or similar proceedings were initiated by the appellant in respect of the remaining five plots constituting the subject matter of Suit No.1114 of 2005, nor has any satisfactory explanation been furnished as to why the same course of action was not adopted in respect of those plots if, as alleged, the entire series of allotments and transfers was tainted by fraud, forgery or fabrication.

35. The selective nature of the action taken by the appellant, viewed in conjunction with its own contemporaneous correspondence and conduct over the preceding decades, is a circumstance which cannot be disregarded while assessing the credibility and evidentiary worth of the allegations subsequently relied upon as the basis for cancellation of the respondent's plots.

36. The next and, indeed, the foremost question requiring our consideration is whether the allegations constituting the foundation of the impugned cancellation were established by the

appellant through cogent, credible and legally persuasive evidence. The cancellation of the respondent's plots was predicated upon allegations of fraud, forgery, fabrication and manipulation of the official record. Such allegations are undoubtedly grave in nature and cannot be sustained merely on the basis of suspicion arising from unusual circumstances, perceived irregularities or procedural discrepancies. The burden squarely rests upon the party alleging fraud to establish the factual foundation thereof through clear, convincing and reliable evidence. A finding of fraud cannot legitimately be founded upon conjecture, surmise or an assumption that, merely because certain transactions bear common or identical dates, the transactions themselves must necessarily be fictitious or fabricated.

37. The learned Single Judge undertook a plot-wise examination of the evidence and found that several circumstances relied upon by the appellant were not substantiated by the documentary evidence brought on record. For instance, the appellant contended that certain transfer affidavits had been executed prior to the allotment of the respective plots. However, upon examination of the relevant documents, the learned Single Judge found that the dates relied upon by the appellant represented the dates of purchase of the stamp papers and not the dates on which the affidavits were actually sworn. The evidence, on the contrary, demonstrated that the relevant transfer affidavits had been sworn subsequently. Thus, the very premise upon which the appellant sought to infer fabrication was found to be factually incorrect.

38. Likewise, the appellant placed considerable reliance upon the allegation that the subject plots had been allotted without following the requisite process of balloting. The learned Single Judge rightly observed that the burden of establishing such an allegation rested upon the appellant, particularly in view of the fact that the appellant was the successor to the Society and was, therefore, the custodian of the relevant official record. The appellant was in a position to produce the original record,

minutes, registers or other contemporaneous material demonstrating the procedure ordinarily followed in respect of genuine allotments and to establish, by reference thereto, that the subject allotments had departed from the prescribed or customary procedure. Mere absence of an express reference to balloting in an individual allotment document could not, in itself, be treated as conclusive proof that no balloting had taken place.

39. Another circumstance strongly emphasized by learned counsel for the appellant was the occurrence of common dates on several allotment and transfer documents, which, according to the appellant, cast serious doubt upon the genuineness of the transactions. We are conscious that such circumstances may legitimately arouse suspicion and furnish sufficient grounds for an authority to initiate an inquiry or call for clarification from the concerned persons. However, once the matter proceeded to adjudication and evidence was brought on record, the controversy was required to be determined on the basis of legally admissible and persuasive evidence rather than upon assumptions, conjectures or hypotheses. We are in agreement with the learned Single Judge that, notwithstanding the circumstances relied upon by the appellant, the latter failed to translate those circumstances into legally convincing proof of fraud, forgery or fabrication in respect of the individual plots.

40. Learned counsel for the appellant further contended that the cancellation was not founded merely upon assumptions or suspicion, but was preceded by an inquiry conducted by the Director, Transfer & Record, followed by submission of a report, consideration of the matter by the Scrutiny Committee and, thereafter, placement of its recommendations before the Executive Board, which ultimately approved the same and caused the impugned action to be taken. This contention also requires careful examination.

41. The learned Single Judge, while considering this aspect of the matter, noted that although a copy of the Scrutiny Committee's report had been produced in evidence, the original report was not available in the office of the appellant. More

importantly, the inquiry proceedings themselves demonstrated that the conclusions regarding fraud and manipulation were substantially drawn from an internal examination of the record, without the respondent having been confronted with the specific allegations, documents and material relied upon against her. The mere fact that an internal inquiry was conducted cannot, therefore, by itself, be treated as conclusive proof of the allegations which formed the basis of the cancellation.

42. Learned counsel for the appellant strongly urged that the respondent and her husband had been called before the concerned authorities and were heard during the inquiry and, therefore, the finding of violation of the principles of natural justice was erroneous. We are unable to subscribe to this contention.

43. Where an administrative or statutory action has the effect of depriving a person of valuable proprietary rights, a meaningful opportunity of hearing cannot be reduced to a mere requirement that the affected person should attend an office or produce original documents. The person against whom adverse action is proposed must be informed, with reasonable clarity and specificity, of the allegations levelled against her and of the material and evidence proposed to be relied upon, so as to enable her to effectively answer, explain and rebut the same. The record, as appreciated by the learned Single Judge, does not establish that the respondent was served with any proper show-cause notice setting forth the allegations of fraud, forgery and fabrication which ultimately constituted the basis for cancellation of her plots.

44. The aforesaid deficiency assumes even greater significance in view of the earlier order dated 16.01.2002 passed by this Court in Constitutional Petitions Nos.401 and 402 of 1989. By the said order, the earlier cancellation was set aside, while liberty was granted to the appellant to pass appropriate orders only after recording evidence in the presence of the respondent and affording her an opportunity of hearing in accordance with law. The direction so issued by this Court was neither ornamental nor

a mere procedural formality. It imposed a substantive obligation upon the appellant to conduct the proceedings in a manner that enabled the respondent to understand the case being advanced against her and to effectively meet the allegations and material relied upon by the authority. The material available on record does not satisfy us that the appellant substantially complied with the aforesaid direction.

45. The contention that the appellant successfully established fraud, forgery, fabrication or manipulation of the record is likewise not borne out by the evidence available on the record. The circumstances relied upon by the appellant may, at the highest, have been sufficient to generate suspicion or to justify initiation of an inquiry; however, in the absence of cogent, credible and legally persuasive evidence, such circumstances could not lawfully be elevated to the status of proof of allegations of such grave character.

46. It is a fundamental principle of law that the burden of proving fraud rests squarely upon the party alleging it, and such burden must be discharged through clear, convincing, unimpeachable and confidence-inspiring evidence. Mere assertions contained in pleadings do not constitute proof and cannot substitute the stringent evidentiary standard required for establishing fraud. Fraud is a serious accusation which may vitiate even the most solemn transactions; nevertheless, fraud cannot be presumed and must be established through cogent and convincing material evidence. In ***Ahsan Ali v. District Judge (PLD 1969 SC 167)***, the Hon'ble Supreme Court of Pakistan categorically held that the burden of proving fraud lies upon the party alleging it and that such burden must be discharged through clear and convincing evidence, particularly where considerable time has elapsed and valuable rights have accrued to the other party. Likewise, in ***Shamir v. Faiz Elahi (1993 SCMR 145)***, the Hon'ble Supreme Court emphasized that an allegation of fraud must be established through strong and independent evidence and observed that, in the absence of supporting evidence, such allegation could not be sustained.

47. We also find considerable substance in the observation of the learned Single Judge concerning the manner in which the statutory power vested in the Executive Board was exercised. The minutes produced in evidence indicate that the Executive Board merely approved the recommendations of the Scrutiny Committee. The material available on record does not satisfactorily demonstrate that the Executive Board independently examined the evidence, assessed the material available against each individual plot and applied its own independent mind before exercising the statutory power vested in it.

48. Similarly, the Scrutiny Committee appears to have proceeded substantially on the basis of the conclusions reached during the one-man inquiry. Thus, the decision-making process appears to have travelled from one internal level to another, without satisfactory evidence demonstrating that the competent statutory authority, the Executive Board, undertook an independent and objective consideration of the relevant material before arriving at the decision to cancel the plots.

49. The contention of learned counsel for the appellant that the learned Single Judge improperly conflated or mixed the two suits also fails to persuade us. It is true that the two suits related to different sets of plots and that separate issues had been framed therein. Nevertheless, both suits arose from the same decision communicated through the letter dated 26.05.2005 and involved substantially interconnected questions concerning the appellant's statutory authority, the manner in which such authority was exercised, and the validity of the allegations upon which the cancellation was founded.

50. The fact that both suits were heard together and decided through a common judgment does not, by itself, constitute any legal infirmity. A careful examination of the impugned judgment reveals that the learned Single Judge separately considered the issues arising in Suit No.1176 of 2005, particularly those concerning the allegations of fraud, forgery and manipulation, while also addressing the questions common to both suits. The

appellant has failed to identify any specific finding which was erroneously imported from one suit into the other so as to cause prejudice or materially affect the adjudication of either case.

51. It is also of considerable significance that, in respect of Plot No.13, the appellant itself had corresponded with the original allottee, Captain Kafeel Ahmed, for the purpose of verifying the transfer. The record, as noticed by the learned Single Judge, establishes that the said allottee responded by confirming the sale and transfer of the plot in favour of the respondent. The subsequent inquiry, however, cast doubt upon such confirmation without bringing on record any satisfactory material establishing that the confirmation letter or the signature appearing thereon was forged or fabricated.

52. In our view, such an approach could not constitute a reliable or legally sustainable basis for depriving the respondent of her valuable proprietary rights. Where the appellant itself had sought independent confirmation from the original allottee and had received an affirmative response, the subsequent rejection of that confirmation required cogent and convincing material establishing its falsity. No such material has been demonstrated before us.

53. The proposition advanced by the appellant that, where fraud is established, all transactions founded upon such fraud may be rendered invalid, is undoubtedly correct as a general statement of law. However, that principle can have no application unless the foundational allegation of fraud itself is first established in accordance with law. In the present case, the learned Single Judge, upon a detailed examination of the evidence, concluded that the appellant had failed to prove fraud, forgery or fabrication in respect of the subject plots.

54. We have independently examined the reasoning adopted by the learned Single Judge and the material to which reference has been made in the impugned judgment. We find no basis to conclude that the said findings were the result of misreading or non-reading of any material piece of evidence.

55. It is equally well settled that, in appellate jurisdiction, interference with findings of fact is not warranted merely because another view of the evidence may be conceivable or possible. Interference becomes justified where the findings are shown to be perverse, unsupported by evidence, founded upon misreading or non-reading of material evidence, or otherwise contrary to law. No such infirmity has been demonstrated before us. On the contrary, the learned Single Judge correctly distinguished between the existence of statutory power vested in the appellant and the lawful exercise of such power. He further correctly placed the burden of proving the allegations of fraud upon the appellant and examined the evidence keeping in view the grave and serious nature of the allegations levelled against the respondent.

56. For the foregoing reasons, we are of the considered view that the learned Single Judge correctly appreciated the controversy and arrived at his conclusions upon a proper appraisal of the material available on record. Although the appellate jurisdiction of this Court, while examining a judgment and decree passed by a learned Single Judge, is sufficiently broad to permit reappraisal of the evidence and reconsideration of the applicable law within the confines of the grounds of appeal, such jurisdiction must nevertheless be exercised judicially and on the basis of demonstrable legal or factual error.

57. An appellate Court is competent to affirm, vary, modify or set aside the judgment and decree under challenge where the same is shown to suffer from an error of law, misreading or non-reading of material evidence, perversity, jurisdictional defect or any other substantive infirmity warranting appellate interference. Such power, however, is not to be exercised merely because another view of the evidence is possible. Having independently examined the reasoning adopted by the learned Single Judge, we find no error, infirmity or perversity warranting interference with the conclusions recorded in the impugned judgment.

58. The learned Single Judge, in our considered opinion, correctly distinguished between the existence of statutory authority vested in the appellant and the lawful exercise thereof.

He further correctly concluded that the allegations of fraud, forgery, fabrication and manipulation had not been established through cogent and reliable evidence and that the respondent had not been afforded the meaningful and effective opportunity of hearing required in the circumstances of the case.

59. The case-law relied upon by learned counsel for the appellant is distinguishable on facts and in the circumstances of the present case and, therefore, does not advance the appellant's case or render the impugned judgment and decree vulnerable to appellate interference.

60. Upon our independent consideration of the entire material available on record, we find no misreading or non-reading of evidence, perversity, illegality, procedural irregularity or jurisdictional defect in the impugned Judgment and Decree dated 04.02.2013 which could warrant interference in exercise of our appellate jurisdiction. Consequently, the instant High Court Appeals are **dismissed**. The impugned Judgment and Decree dated 04.02.2013 passed in Suit Nos.1114 of 2005 and 1176 of 2005 are accordingly **maintained**.

JUDGE

JUDGE

KAMRAN/PS