

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 2527 of 2016

Before:**Mr. Justice Arshad Hussain Khan**

Asif Majeed & 03 others

Versus

Karachi Metropolitan Corporation

Plaintiff: Asif Majeed
Through Mr. Khalid Javed Advocate

Defendant Karachi Metropolitan Corporation through its Mayor
Through Mr. Shaban Solangi for Defendant

Date of Hg: 04.03.2020

JUDGMENT

ARSHAD HUSSAIN KHAN-J., The Plaintiff has filed the present suit against the Defendant [KMC] for Declaration, Permanent Injunction, Possession and Damages with the following prayers:-

- a) Declaring that the Defendant KMC is liable and bound to reconstruct the subject property at its own costs as was existing before its demolition and after such reconstruction the reconstructed building has to be handed over by the Defendant to the Plaintiffs within time frame specified by this Honourable Court;
- b) Declaring that in case the Defendant KMC fails to reconstruct and then handover the subject property to the Plaintiffs, the Plaintiffs are entitled and they may be allowed to reconstruct the subject property and the costs of such reconstruction incurred by the Plaintiffs be reimbursed by the Defendant KMC to the Plaintiffs;
- c) In the alternate the Defendant its officers, employees, servants and the persons acting for and/or on their behalf may be directed to provide and lease out an alternate piece of land of same size in the same / nearby vicinity of the same area and of the same market value enabling the Plaintiffs to raise the construction on the said piece of land;
- d) In the alternate appropriate compensation and damages equivalent to the prevailing market value of the subject property, which is presently and tentatively assessed at Rs.50 crores may be paid to the Plaintiffs by the Defendant KMC;

- e) By restraining the Defendant, its officers, employees, servants, agents, and the persons acting for and/or on their behalf from denying the rights of the Plaintiffs over the subject property, interfering in the Plaintiffs' enjoyment of rights of the subject property and from disposing of and creating third party interest in any manner in the subject property;
- f) Cost of the suit; and
- g) Any other relief(s) which this Honourable Court may deem fit and proper under the circumstances of this case, may please be granted.

2. Briefly stated the facts of the present case as narrated in the plaint are that the Plaintiffs No. 1 & 2 are lessees of commercial plot No. PROV- "A" measuring 609.23 sq. yards sheet No.PR-2 with construction thereon situated at Preedy Quarters, Karachi, vide Lease Deed duly registered at No.493, Book-1, registered with the Sub-Registrar KMC & Katchi Abadies Karachi, dated 26.01.2004, M.F. Roll No.U-6442/1657, Photo Registrar, Karachi, dated 11.02.2004 [suit property] which was leased out for 99 years by the then City District Government Karachi in favour of Plaintiffs namely 1) Asif Majeed son of Abdul Majeed and 2) Imtiaz Ahmed Siddiqui son of Muhammad Siddiqui, against valuable consideration. It is averred that the suit property was leased out consequent upon an open auction held under the approval of the High Court of Sindh, Karachi, vide orders dated 15.11.2002 and 23.04.2003, passed in Suit No.1696/2001 and 1697/2001 on the basis of 'as it is and where it is' with the existed building fully commercial and fully covered, at the relevant time. It is further averred that the Plaintiffs and one Saleem Hanif after making valuable consideration, after execution of duly registered lease deed, were handed over the possession of the subject property. Thereafter, the Plaintiffs have invested huge amount on additions / alternations / renovations in the subject property as well. Further averred that the said lease deed duly registered is a lawful document and it cannot be cancelled without intervention of the competent court of law, and on the strength of the said duly registered lease, the Plaintiffs/Lessees have executed some sub-leases including the sub-leases in favour of Plaintiffs No.3 & 4, which have also been duly registered in favour of different parties. It is further stated that the Plaintiffs and the said Sub-Lessees have invested huge amount on the additions and alternations of

the suit property, such additions & alterations were made with the approval of the competent authority [KBCA]. Various shops were carved out in the subject property and completion plan has also been approved by the KBCA. Further averred that on 03.08.2016 at 9.00 a.m. when the entire market was closed, a small portion of the suit property, facing Abdullah Haroon Road, was fell down; none of the Plaintiffs were present at the suit property at that time however, when the Plaintiffs came to know about the said incident some of them have reached at the subject property and tried to get information of the said falling down of the small portion of the subject property. They found that due to such falling down the major part of the remaining subject property has received cracks and damages. Thereafter, the Rescue Team of KMC have started removing debris at the first instance and then the Plaintiffs found that they also started demolishing the remaining part of the subject property and all that has been done without the consent and permission of the Plaintiffs. It is stated that the Plaintiffs have suffered huge financial losses due to the said demolition and they have been deprived from their source of earnings of bread and butter for themselves and for their families and they are continuously suffering loss. It is further stated that due to illegal, mala fide and collusive acts of the Defendant, the Plaintiffs have not only suffered and are being suffered from huge financial losses but they have also suffered mental torture and agony for which the Plaintiffs have tentatively assessed and claim compensation and damages from the Defendant in the sum of Rs.50,00,00,000/- [Rupees Fifty Crores], therefore, the Defendant is liable to pay the said amount to the Plaintiffs for their illegal and tortuous acts so far committed by them against the Plaintiffs. It is stated that the Plaintiffs have issued notices & reminders to the Administrator KMC, and the Mayor as well as the Deputy Mayor KMC, dated 12.08.2016, 03.09.2016 and 28.09.2016 respectively, however, no reply has been given by any of the said authorities to whom the notices were addressed. Hence this suit.

3. Upon notice of the suit, Written Statement has been filed on behalf of Defendant-KMC on 22.04.2017 wherein it has taken the preliminary objections that the Suit is not maintainable being against

the law and that no cause of action has been accrued to the Plaintiffs against the Defendant-KMC.

Apart from the above objections, it has been stated that on 3rd August, 2016, an incident of falling down of Nallah on which the market /shops were constructed, resultantly a small portion of subject property, facing Abdullah Haroon Road, was fell down. And due to that incident the major part of the remaining subject property had received cracks and damages. The Rescue Authorities and the KMC, therefore, demolished the building of the subject plot. It is further stated that the Nallah [Drain] on which the Americano Dry Cleaners existed was covered about 50 years back in the year 1954 with the approval of competent authority at that time and it is not the isolated case where Nallah was covered for construction of commercial shops / building by the KMC but there are many markets of KMC managed by the estate department having more than 4,000/- shops and government offices constructed on different Nallahs and also portions of Nallah were allotted by KMC i.e. Victoria Road Nallah, Frere Road Nallah, Al-Yousuf Chamber Nallah, Preedy Quarters Nalah, Odion Cinema Nallah, New Urdu Bazar Nallah, Shaheen Complex Nallah across the city, which were covered and building were constructed thereon. It has been further stated that the Plaintiffs are the lessees of suit property which was sold out to the Plaintiffs through open public auction held under the approval of Honourable High Court of Sindh at Karachi. Lastly, it has been stated that no cause of action has been accrued to the Plaintiffs against the KMC and the Plaintiffs are not entitled for the reliefs sought in the prayer clause.

4. On 22.11.2017 out of the pleadings of the parties, following issues have been settled by the Court:-

1. Whether the suit is not maintainable in law ?
2. Whether no cause of action has been accrued to the Plaintiffs for filing the suit against Defendant KMC ?
3. Whether the suit property namely commercial plot No.PROV-A, measuring 609.23 sq. yards, Sheet No.PR-2 with construction thereon situated at Preedy Quarters Karachi was purchased by Plaintiff Nos. 1 & 2 and Mr. Saleem Hanif in open auction held under the approval of High Court, which was leased out for 99 years through

duly registered lease by the then City District Government Karachi now KMC to the said lessees ?

4. Whether the Defendant KMC before demolishing the suit property, which was occupied by the Plaintiffs and others who were running their business therein, has served any notice to the Plaintiffs / Occupants ?
5. Whether the Plaintiffs are entitled to re-occupy the suit property and raise the construction thereon at the cost of the Defendant KMC or in the alternate the Defendant KMC has to provide / give an alternate piece of land in the same / nearby vicinity of the same market value in lieu of suit property?
6. Whether the Plaintiffs are entitled for the compensation / damages equivalent to Rs.50 Crore or thereabout from Defendant KMC ?
7. What should the decree be ?

5. Then on the same day, i.e. 22.11.2017, by consent, commissioner was appointed for recording evidence in the matter, who after completion of the same has submitted his Report dated 22.05.2018, which was taken on the record; thereafter the matter came up for final arguments, vide order dated 30.08.2018.

6. From the perusal of the commissioner's report, it appears that on behalf of the Plaintiff one Muhammad Farooque son of Qasim Sattar, being attorney of the Plaintiffs 1 to 4, has been examined as PW-1 who has produced the following documents:-

S.NOS.	DESCRIPTIONS	EXHIBITS
1	Photocopy of registered lease dated 22.1.2004.	P/1
2	Photocopy of registered sub lease dated 13 th May, 2006 in favour of the Plaintiff No.3.	P/2
3	Photocopy of registered sub lease dated 13 th May, 2006 in favour of the Plaintiff No.4.	P/3
4	Photocopy of KBCA Letter dated 28 th May, 2008.	P/4
5	Photocopy of KBCA letter dated 1.2.2008.	P/5
6	Photocopy of CDGK letter.	P/6
7	Photocopy of KBCA letter dated 22 nd October, 2008.	P/7
8	Photocopy of KBCA letter dated 15 th October, 2008.	P/8
9	Photocopy of summary of Project.	P/9
10	Photocopy of Bank Pay Order dated 21 st October, 2008.	Annexure-O [under objection]

11	Photocopy of Order dated 30 th May, 2006, passed by the High Court in JM 43 & 44 of 2004.	P/10
12	Photocopy of judgment dated 31 st March, 2009, passed by the High Court in HCAs 257 &258 of 2006.	P/11
13	Photocopy of Order dated 22 nd October, 2003, passed by High Court in CP 1236/2003.	P/12
14	Photocopy of Notice dated 12 th August, 2016.	P/13
15	Photocopy of Notice dated 3 rd September, 2016.	P/14
16	Photocopy of Notice/Reminder dated 28 th September,2016. All the Original documents seen & returned.	P/15

Then, on the same day i.e. 10.03.2018, the abovenamed witness was cross-examined by the Defendant's counsel and further cross-examination was conducted on 17.03.2018.

7. Whereas on behalf of Defendant-KMC one Shaikh Kamal Ahmed son of Shaikh Bashir Ahmed, Additional Director Land [Auction H&Q], KMC, was examined on 21.04.2018, who had produced his Affidavit-in-evidence as Exhibit 'D'. The witness was also cross-examined by the Plaintiff's counsel.

8. Learned counsel for the Plaintiff at the outset of his argument has submitted that he under the instruction of his client does not press his claim for Damages. During the course of the arguments, learned counsel for the Plaintiff while reiterating the contents of the Plaint as well as affidavit-in-evidence filed by the Plaintiff has argued that in view of the various orders and judgments passed by Divisional Bench of this Court viz. order dated 22.10.2003, passed by the High Court in CP 1236/2003; order dated 30.05.2006, passed by the High Court in JM 43 & 44 of 2004 and judgment dated 31.03.2009, passed by the High Court in HCAs 257 &258 of 2006, vide Exhibits P/12, P/10 & P/11 respectively, the auction proceedings held by the Defendant-KMC, finalized in favour of Plaintiffs 1 & 2 and one Saleem Hanif, has been maintained and upheld. Consequently, the lease deed executed by the Defendant-KMC duly registered in favour of said Plaintiffs had also been upheld and attained finality. The said lease deed duly registered is

a lawful document and it cannot be cancelled without intervention of the competent court of law. Learned counsel urged that on the strength of the said registered lease, the Plaintiffs have executed some sub-leases including the subleases in favour of Plaintiffs 3 & 4, which have also been duly registered in their favour and as such all the plaintiffs have valuable right, title and interest in the suit property. Further argued that the suit property was a constructed commercial property, the building structure was existed before the time, the Plaintiffs have purchased the same and the Plaintiffs have only made the additions and alterations therein and not reconstructed the same. Furthermore, such additions and alterations were made with the approval of the competent authority [the KBCA] and various shops were carved out in the subject property and completion plan has also been approved by the KBCA. It has been further argued that the Plaintiffs being the lawful and bonafide lessees of the suit property having 99 years registered lease / sub lease in their favour have been deprived from their source of earning for themselves and for their families as their running shops have been demolished thereby leaving them on the road. It has also emphatically been argued that all most all the facts pleaded by the Plaintiffs in the Plaint neither disputed nor denied, which amounts to clear admission on the part of Defendant-KMC. Insofar as the only objection with regard to the maintainability of the suit is concerned, it is argued that since all the facts have been admitted by defendant itself, hence these objections being baseless and misconceived, and as such not sustainable. Finally, learned counsel has submitted that the plaintiffs on the basis admission made on behalf of the Defendants are entitled for the reliefs claimed in the suit, hence the suit may be decreed as prayed. In support of his contention, learned counsel has relied upon Sheikh Anwar Saeed v. L.D.A. [2015 CLC 1723].

9. On the other hand, learned counsel appearing for the Defendant-KMC in his arguments reiterated the contents of the written statement. It has been argued that on 3.08.2016 an incident of falling down of Naalah, on which the suit property was exited, was occurred due to which a portion of the suit property facing Abdullah Haroon Road, fell down and the major portion of the remaining suit property had received cracks and damages, which were posing threat to the public at large,

therefore, in order to avoid any mishaps the Rescue Authority and KMC demolished the building at the suit property after being declared as hazardous and dangerous. Learned counsel also argued that after execution of lease in respect of the suit property the defendant has no role to play and further the Plaintiffs are not entitled to claim any of the reliefs claimed in the instant suit as no cause of action has been accrued against the defendant and as such the suit may be dismissed being not maintainable in law.

10. I have heard the learned counsel for the parties, perused the record and have gone through case law relied upon by the learned counsel for the Plaintiff; and my findings on the above issues are as follows :-

ISSUES 1 & 2.

Although these issues have been framed on the objection raised by the defendant in the written statement, however, neither in the plaint nor learned counsel for the defendant during the course of argument has been able to explain that under what law this suit is not maintainable ?

The question of '*Maintainability of lis*' is a legal question, inter alia, related to a legal character of the person under the provisions of Section 42 of Specific Relief Act, which read as under:-

“42. Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.”

From the perusal of above provision, I am of the opinion that Section 42 of the Specific Relief Act does give a right to institute a suit to any person, who has any right as to any property. The 'legal character' is the most important aspect of a lis [case] and in absence thereof one cannot maintain his/her lis though filed for a relief, recognized under 'Specific Relief Act or under any other law' except matters, qualifying requirement of Section 91 of the C.P.C. Furthermore, such aspect of the case can also be decided in a summary manner at initial stages. However, the party seeking entitlement to relief has to prove his entitlement through evidence and such aspect

cannot be decided in summary manner but after a proper trial. It would thus be safely stated that the law authorizes a person to seek enforcement of his right to any property by instituting a suit against a person and denying his right or title. Relevant judicial precedents are PARVEEN BEGUM and another v. SHAH JEHAN AND and another (PLD 1996 Karachi 210) and ABDUL RAZZAK KHAMOSH v. ABBAS ALI and others (PLD 2004 Karachi 269).

In the present case, the plaintiffs, whose ownership in respect of the suit property have not been disputed by the defendant, approached this Court for declarations/directions against the defendant-KMC to reconstruct the suit property at its own costs and handover the same to them (plaintiffs) as was existing before its demolition, which was carried out by the KMC. The plea of the plaintiffs is that they lawfully acquired the ownership of the suit property upon payment of huge sale consideration and as such they have fundamental rights guaranteed under the Constitution to occupy and enjoy their property without any let and hindrances. However, the defendant being a government functionary without any notice and or consent demolished the suit property to disadvantage the plaintiffs. In the circumstances, I am of the considered view that the cause of action accrues in favour of the plaintiffs against the defendant and as such the plaintiffs having legal character have rightly filed the present case for enforcement of their rights over the suit property. Accordingly, these issues are answered in affirmative.

11. ISSUE NO. 3: From the perusal of the record, it appears that consequent upon an open auction held under the approval of this Court, vide orders dated 15.11.2002 and 23.04.2003, passed in Suit No.1696/2001 and 1697/2001 on the basis of ‘**as it is and where it is**’, plaintiff No.1 (Mr. Asif Majeed) and plaintiff No.2 (Mr. Imtiaz Ahmed Siddiqi) along with one Saleem Hanif son of Hanif acquired the ownership of suit property viz. commercial plot No. PROV- “A” measuring 609.23 sq. yards sheet No.PR-2 with construction thereon situated at Preedy Quarters, Karachi, by virtue of 99-years Lease duly registered at No.493, Book-1, registered with the Sub-Registrar KMC & Katchi Abadies Karachi, dated 26.01.2004, M.F. Roll No.U-6442/1657, Photo Registrar, Karachi, dated 11.02.2004 [Exh.P/1].

Record also reflects that KBCA issued completion certificate dated 12.5.2008 [Exh.P/4] and NOC for sale and advertisement dated 22.10.2008 [Exh.P/7] in favour of the owners/lessees in respect of the building raised at the suit property. Record also transpires that the Lessees of the suit property subsequently on strength of the registered lease, have executed registered sub-leases [Exh. P/2 and P/3] in favour of plaintiffs No.3 & 4 respectively. The plaintiffs' claim of ownership of the suit property is based on the registered documents and it is settled position of law that presumption of truth and genuineness is attached to the registered instruments, until and unless they are rebutted through strong and cogent evidence. In the instant case, since the documents produced by the plaintiffs have not been disputed by the plaintiff, therefore, there is no reason, cause or justification to hold the said documents otherwise. In this regard reliance can be made to the cases of Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others (1993 SCMR 462).

Moreover, the defendant in its written statement and so also the witness of the defendant in his affidavit-in-evidence admitted the ownership of the plaintiffs. Relevant portion of the affidavit in evidence of the defendant's witness is reproduced as under for the sake of ready reference :-

“.....The premises were auctioned on 22.05.2003 strictly in accordance with the order of High Court and after seeking necessary approval from City Nazim Karachi and the highest bid received from M/s. Asif Majeed and others @ Rs.94,500/= Per Sq.Yards. they deposited 25% of the bid amount and the file is reported to have been submitted by the Land Department for the approval of DCO/City Nazim Karachi. The competent Authority approved the auction bid in favour of Mr. Asif Majeed & others. After payment of full occupancy value and completion all legal & codal formalities, the Plot No. Prov-A measuring 609.23 Sq.Yards situated a Preedy Qarters Sheet PR-2 Saddar Karachi with construction (Americano Dry cleaners) a lease has been executed on 22.01.2004 in favour of Mr. Asif Majeed S/o Abdul Majeed, Mr. Saleem Hanif S/o Hanif and Mr. Imtaiz Ahmed Siddiqui S/o M. Siddiqui for commercial purpose for the period of 99 years vide Regd. No. 493 Book-I dated 26.01.2004 and M.F. Roll No.U-6442/1657 dated 11.02.2004. On 3rd August 2016, an incident of fell down on Nallah on which the Market/Shops constructed, a small portion of the subject property facing Abdullah Haroon Road was fell down. And due to this incident the major part of the remaining subject property has received cracks and damages the rescue authorities and KMC therefore the building of subject plot demolished.”

From the above, it is manifest that the plaintiffs have acquired the suit property in lawful manner after payment of sale consideration and as such this issue is answered in affirmative.

12. ISSUE NO.4: The plea of the plaintiffs in respect of this issue is that on 03.08.2016 a small portion of the suit property fell down due to which other portion of the property received cracks and damages. The defendant while removing the debris of falling down structure, demolished the entire suit property without the consent and permission of the plaintiff. The witness of the plaintiff in para 15 of his affidavit-in-evidence has stated as under:

“15. That on 3rd August 2016 at about 9.00 a.m. when the entire market/shops/bazars were closed, a small portion of the subject property, facing Abdullah Haroon Road, was fell down. None of the Plaintiffs were present at the subject property at that time. When Plaintiffs came to know about the said incident some of them have reached at the subject property and tried to get information of the said falling down of the small portion of the subject property. They found that due to such falling down the major part of the remaining subject property has received cracks and damage. Thereafter, the rescue teams of KMC have started removing debris at the first instance and then the Plaintiffs found that they also started demolishing the remaining part of the subject property and all that has been done without the consent and permission of the Plaintiffs.”

The said plaintiffs’ witness during his cross-examination on this issue has deposed as under:

“...The lease of subject property has issued for the period of 99 year and same has mentioned in the publication/public Notice publish in Daily Jung, Daily Ummat.

I have no notice for demolition from the KMC in respect of demolition of suit property.

The small portion was demolished due to old construction and thereafter the KMC Starting demolition.

It is correct to suggest that due to cracks in the entire suit property, the KMC demolished the subject property but all the said act and exercise are not in my knowledge and no notice issued in respect of said action.

Voluntarily states that the KMC started demolition the plaintiff was not allowed to remove the things/Articles lying in the shops and no time were given to vacate the suit property.

It is correct to suggest that the subject property was leased out under auction proceeding and I specifically mentioned in Para 4 of my Affidavit in evidence.”

From the above, it appears that stance of the plaintiffs has remained unshaken in the evidence. Moreover, the defendant neither with their written statement nor with their affidavit-in-evidence has placed on record any document, which could show that any prior notice was issued and or consent/permission was obtained from the plaintiffs being owners in possession of the suit property before demolishing the same. Record also does not show that the defendant has ever replied to the plaintiffs' legal notices dated 12.08.2016 [Exh.P/13], dated 03.09.2016 [Exh.P/14], dated 28.09.2016 [Exh.P/15] addressed in respect of subject demolition and for redressal of their grievances. The defendant's evidence also corroborates the stance of the plaintiffs. Cross-examination of defendant's witness for the sake ready reference is reproduced as under:

“Q. Please inform that who has given you the information regarding falling down small portion of market shops constructed on the subject property facing Abdullah Haroon Road on 3-8-2016.

A. I came to know about Media as well as verbal information from Anti Encroachment Department (KMC) latter on the remaining portion was demolished by the Rescue Authorities/ District Administration.

Voluntary States that the whole operation conducted under the supervision of district administration.

I do not know whether any notice for said demolition was given to the lessee /Plaintiff before the said demolition.

Voluntary States, that I belong to the land department (KMC) and not from the Anti Encroachment Department.

It is correct to suggest that whatever stated in my Affidavit in evidence and written statement filed in the instant suit is based on record on KMC.

It is not in my knowledge that before filing instant suit the Plaintiff has given Notice mentioned in Para 16 of the Plaint likewise I have no knowledge that the KMC has given any reply of such Notices.

It is correct that I have not filed any Engineering report regarding cracks and damages to the subject property mentioned in Para 2 and 5 of my Affidavit in evidence.

Voluntary States that It is no related with my department and my department has not demolished, it was demolished by the District Administration as per information received from the Media and Anti Encroachment Department KMC.

I have not taken any information from Anti Encroachment Department, KMC.”

From the above, it clearly transpires that the defendant prior to demolishing the suit property have neither addressed any notice nor obtained any permission from the plaintiffs. In the circumstances, this issue is answered in negative.

13. ISSUE NO.5: In view of the findings on Issues 3 and 4, it has been established that the plaintiffs are owners of the suit property and were in possession thereof before its demolition for which neither any notice was issued nor any consent/permission was obtained from the plaintiffs. The right of enjoyment of one's property has been recognized nationally as well as internationally. Article 17 of the Universal Declaration of Human Rights provides that everyone has the right to own property alone as well as in association with others. Further, Part-II of the Constitution of the Islamic Republic of Pakistan, 1973 [Constitution] ensures protection of fundamental rights of the individuals. According to Article 23 of the Constitution every citizen has the right to acquire, hold and dispose of property in any part of Pakistan. Further, as per Article 24 of the Constitution nobody can be deprived of his property except under due process of law. While discussing the importance of right of an individual to protect his property rights, the Hon'ble Supreme Court of Pakistan in the case of *Abdul Sattar v. Land Acquisition Collector* [2010 SCMR 1523] has held as under:-

"The learned ASC has also relied upon the provisions as enumerated in Article 24 of the Constitution of Islamic Republic of Pakistan by ignoring the well-entrenched proposition of law that "before the State can deprive a person of his property, it has first to arm itself with a "law". Even where the law authorizes the Executive to deprive a person of his property under certain circumstances the Executive is bound to strictly follow the procedure which is laid down by the "law" for the taking of the property"

Similarly, the Honourable Supreme Court in the case of *Sub. (Retd.) Muhammad Ashraf v. District Collector, Jhelum and others* [PLD 2002 SC 706], has observed as under:---

"We have minutely perused the provisions as contained in Article 24 of the Constitution. There is no cavil with the proposition that the sanctity of private property has been acknowledged in a crystal clear manner but it must not be lost sight of that where a person is deprived

of his property under the authority of law and according to the provisions of law, he has no ground for complaint under the Constitution and the only embargo which has been imposed under Article 24 of the Constitution is that no private property can be acquisitioned save in accordance with law and that too for a public purpose and on payment of compensation. (*Fauji Foundation v Shamimur Rehman* PLD 1983 SC 457). It can thus be concluded that a land can be acquired for public purpose subject to payment of compensation to be determined by the competent forums provided under the Act."

Somewhat similar view was taken by the Larger Bench of the Hon'ble Supreme Court in the case of *Federation of Pakistan and others v. Shaukat Ali Mian and others* [PLD 1999 SC 1026] wherein it was held, inter alia, that no person can be deprived of his property for public purposes even under any Law of Acquisition without payment of compensation, which should be based on the market rate and not at the rate fixed by the authority, which has acquired or which is instrumental in acquiring the property involved; and, every citizen and every person for the time being in Pakistan is guaranteed as his inalienable right to enjoy the protection of law and to be treated in accordance with law wherever he may be, and in particular no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law.

In another case viz. *Government of Sindh through Secretary Health Department and others v. Dr. Nadeem Rizvi and others* [2020 SCMR 1], while giving dissenting note the Honourable Mr. Justice Maqbool Baqar, inter alia, has observed as under:

"As regards fundamental rights, it may be observed here that indeed the State has guaranteed the protection of fundamental rights enshrined in the Constitution. Nonetheless, one must resist conflating the State with the federal government as the provincial and also the local governments too constitute the State. The State's obligation with regard to fundamental rights is, therefore, to be fulfilled and discharged by all tiers of the government and all organs of the State as per their power, authority, obligation, and competence, strictly as prescribed under the Constitution. Under no notion can any of the said governments be stripped of their rights, authority, or power, nor can they be exempted from discharging or fulfilling their prescribed obligations. If allowed, this would result in complete anarchy and the Constitution would not only be undermined but would become redundant.

In view of the aforequoted precedents of the Hon'ble Supreme Court, it is bounden duty of the Executive to respect an ordinary legal right of a person towards protection of his property and if the

Government even opts to acquire land for a public welfare project, it cannot do so without following the procedure on the subject in addition to paying compensation in lieu thereof as the fundamental rights, guaranteed under the constitution, can neither be treated lightly nor interpreted in a casual or cursory manner rather while interpreting fundamental rights, a cardinal principle has always to be borne in mind that these guarantees to individuals are subject to the overriding necessity or interest of community. A balance has to be struck between these rights of individuals and the interests of the community. If in serving the interests of the community, an individual or number of individuals have to be put to some inconvenience and loss by placing restrictions on some of their rights guaranteed by the Constitution, they should be reasonably compensated.

In the present case, as it has been held while deciding issue No.4, that the defendant demolished the plaintiffs' property without any notice and or obtaining consent/permission, hence the action of the defendant is in clear violation of the inalienable fundamental rights of the plaintiffs being owner to acquire, hold and dispose of their property enshrined in Articles 23 and 24 of the Constitution.

Since it is an admitted position that due to the incident occurred on 03.08.2016, a portion of the suit property was fell down whereas remaining part of the property received cracks and damages, although there is nothing available on the record, which could show quantum of cracks and damages received by the suit property yet one thing, which is sure that the property received cracks and damages, which could be rectify either through repair work or through demolition of entire structure and resurrect the new building in place of the old one, however, in both the occasions the plaintiffs would have to bear the cost of the same. In the circumstances, I am of the view that the plaintiffs are entitled to re-occupy the suit property and raise the construction thereon at their own cost or in the alternate the Defendant KMC has to provide / give an alternate piece of land in the same / nearby vicinity of the same market value in lieu of demolished suit property. In the circumstances, this issue is answered accordingly.

14. ISSUE NO.6: Since the learned counsel for the plaintiffs at the outset of his arguments did not press the claim of compensation and

damages, therefore, this issue being redundant requires no findings to be made.

15. ISSUE NO.7: In view of the findings on Issues No. 3 to 5 above, I am of the opinion that the plaintiffs have established their claim and as such the present suit is decreed in the following terms:-

The defendant shall allow the plaintiffs to re-occupy the suit property and to construct a new building in place of demolished one strictly in accordance with law, however, for any lawful reason if the permission cannot be granted then, **in the alternate**, the Defendant-KMC will have to provide / give an alternate piece of land in the same / nearby vicinity of the same market value in lieu of the demolished suit property.

JUDGE

Karachi

Dated: _____