

THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry

Suit No. 1264 of 2008

[Muhammad Shakir Qureshi v. Ahmed Ali & Others]

Plaintiff : Muhammad Shakir Qureshi through M/s. Khawaja Shams-ul-Islam and Imran Taj, Advocates.

Defendants 1&2 : Nemo.

Defendant No.3 : Sub-Registrar-II, Gulshan-e-Iqbal Town, Karachi through Mr. K.A. Vaswani, Assistant Advocate General, Sindh.

Defendants 4-8 : Hanif Abdani & 04 Others through M/s. Asif Ahmed Memon and Shahid Ali Ansari, Advocates.

Date of hearing : 31-08-2021, 08-09-2021, 20-09-2021 & 09-03-2022

Date of Decision : 11-03-2022

ORDER

Adnan Iqbal Chaudhry J. - By CMA No. 9728/2021, the Plaintiff prays for initiating contempt proceedings against a number of persons and officials, including the Defendants 4 to 8, for disobeying the *status quo* order dated 11-09-2008. Per the Plaintiff, despite such order, the alleged contemnors acting in collusion are constructing over the suit land. For preventing the Defendants 4 to 8 from continuing with such constructing, the Plaintiff has also moved CMA No. 10487/2021 for appointing a receiver over the suit land.

2. Mr. Khawaja Shamsul Islam, learned counsel for the Plaintiff drew attention to the Nazir's inspection report dated 27-07-2021 to submit that the suit land (32.35 acres), on which the Nazir had previously appointed chowkidars, was now being constructed upon by the Defendants 4 to 8 despite the *status quo* order dated 11-09-

2008. He submitted that the Defendants 4 to 8 are builders and developers by profession who have encroached the Plaintiff's land with the intent to create third-party interest; and therefore, unless a receiver is appointed to take possession, the suit land will not be retrievable by the Plaintiff. He submitted that the documents relied upon by the Defendants 4 to 8 are manipulated inasmuch as, such documents show that the land they claim to have purchased was granted to their predecessor by way of an exchange which was contrary to section 17 of the Colonization and Disposal of the Government Lands (Sindh) Act, 1912.

On the other hand, Mr. Asif Memon, learned counsel for the Defendants 4 to 8 submitted that they are constructing on their own land of 80 acres, purchased for valuable consideration by way of a registered sale deed; that such land was within the controlled area of the Malir Development Authority [MDA] and separate and distinct from any land that the Plaintiff claims. He drew attention to the fact that the Plaintiff himself, in his counter-affidavit dated 12-05-2011 had stated that the suit land was far from the land of the Defendants 4 to 8. He drew attention to documents on the record to argue that the land which the Plaintiff claims was granted only for 30 years for agricultural purposes, which lease had then been cancelled by the Government of Sindh long ago; that though the Plaintiff had misguided the Nazir to post chowkidars on a part of the land of the Defendants 4 to 8, such order had subsequently been recalled by the Court.

3. Learned counsel were heard and the record was perused with their assistance.

4. The land subject matter of the suit is 32.35 acres as under:

(i) 16 acres in Naiclass No. 137, Deh Taiser, Karachi

(ii) 16.35 acres in Na-Qabooli No. 40, Deh Taiser, Karachi.

The Plaintiff claims to have purchased said land from the Defendant No.1 under a sale agreement dated 20.02.2007. Per the Plaintiff, the suit land was granted/leased to the Defendant No.1 for 99 years

under the Colonization & Disposal of Government Lands (Sindh) Act, 1912.

5. Originally, the suit was only against the Defendants 1 and 2 and the Sub-Registrar of properties (Defendant No.3). It was averred by the Plaintiff that the Defendant No.1 had agreed to sell the suit land to him under a sale agreement dated 20.02.2007; that the Defendant No.1 held the suit land as benamidar of the husband of the Defendant No.2 who had passed away; that the Plaintiff had paid the entire agreed sale consideration, where upon the Defendant No.1 executed a registered Power of Attorney dated 21.07.2007 in favour of the Plaintiff with regards to the suit land and delivered the original title documents and possession of the suit land; but then, subsequently, the Defendant No.1 revoked said Power of Attorney by way of a registered revocation deed dated 19.05.2008; hence the suit praying *inter alia* for compensation and damages in the event the Defendant No.1 does not perform the sale agreement, and for the cancellation of the revocation deed dated 19.05.2008.

Per the written statement of the Defendant No.1, though he did not deny that he had agreed to sell the suit land to the Plaintiff and had delivered possession, he alleged that the sale agreement produced by the Plaintiff was forged by changing two of its pages to show a lesser price than the one agreed; that the actual price agreed was Rs.493,125,000/- which the Plaintiff did not pay; that in addition, the Plaintiff had also agreed to pay the differential price for regularizing the suit land, which he did not pay; that the Power of Attorney dated 21.07.2007 and the original title documents had not been given to the Plaintiff consideration, but only for the purposes of regularizing the suit land, which he never did; and thus the Defendant No.1 revoked his Power of Attorney. The Defendant No.1 has also filed the connected Suit No.1500/2010 praying for cancellation of the sale agreement dated 20.02.2007 and for possession of the suit land.

In the above backdrop, a chronology of events that transpired in the suit is as follows.

Chronology:

5. By an interim order dated 11.09.2008, the parties were directed to maintain status quo. The Defendants 4 to 8 were not parties to the suit at the time.

6. By order dated 08.02.2010, the Plaintiff's application for appointing chowkidars at the suit land was allowed. Per the Nazir's compliance report dated 20-02-2010, he had posted 10 security guards at the cost of the Plaintiff, but only at "16 acres land situated at Na-class No. 137, Deh Taiser".

7. On 04-03-2010, the Defendants 4 to 8, who are builders and developers, intervened in the suit under Order I Rule 10 CPC, alleging that the Plaintiff had falsely portrayed a part of their land as his land, and the Nazir then proceeded to post chowkidars on that part of the land which was the property of the Defendants 4 to 8. Their case is that they are owners of 80 acres i.e. 67.27 acres in Sector-T, and 12.13 acres in Sector S-1, new Sectors 1 and 3, Scheme No.45, Deh Taiser, falling within the controlled area of the Malir Development Authority [MDA], which land they had purchased from Timber Merchants Cooperative Society by a registered Sale Deed dated 19-02-2007. Per the Defendants 4 to 8, the said Society was owner of 80 acres in different survey numbers of Deh Taiser, which had been consolidated by the KDA in 1990 and its control was transferred to the MDA in 2005; and that after the Defendants 4 to 8 purchased the same from the Society, the MDA had approved a layout plan for a building project over such land.

8. The interim *status quo* order dated 11.09.2008 was subsequently confirmed on 23-04-2010 as follows:

"Vide order dated 11th September, 2008, parties were directed to maintain status quo. Learned counsel for the Plaintiff and defendant No.1 have no objection if the same orders are confirmed. Application stands disposed of. Interim order passed earlier will remain continue till final disposal of the suit."

The above order was passed on the Plaintiff's application against the Defendants 1 and 2 only. Right thereafter, i.e. by order of the same day, the joinder application of the Defendants 4 to 8 was taken up and they were added as parties to the suit.

9. The Plaintiff then filed an amended plaint to pray for cancellation of the documents of the Defendants 4 to 8. On the other hand, the Defendants 4 to 8 moved CMA No.9140/2010 under section 12(2) CPC for re-calling the order dated 08-02-2010 whereby chowkidars had been posted on a part of their land.

10. To verify the title of the Defendant No.1 to the suit land, and consequently the case of the Plaintiff who claimed through the Defendant No.1, this Court, by order dated 16-03-2017, called a report from the concerned Mukhtiarkar. The Mukhtiarkar Manghopir submitted his report on 06-06-2017 to state that entries in the revenue record with regards to the suit land had been cancelled in the year 2005. On 13-09-2018, after perusing such report, the Court observed:

“..... Apparently report has shown that the plaintiff has no title in the land in-question.

In the wake of the above outcome from the compliance report, the chaukidar serving as guards on the suit land need not to be maintained”.

The above order was challenged by the Plaintiff by High Court Appeal No. 331/2018 which was dismissed on 30-08-2019 by holding that the observation in the order dated 13-09-2018 that the Plaintiff had no title to the suit land, was only tentative, but the removal of the Nazir's chowkidars from the suit land was endorsed.

11. By order dated 08-03-2021, which was a common order passed in this suit and the connected Suit No. 1500/2010, the Court again observed that it appeared that since the grant/lease of the suit land had been cancelled in 2003 for non-payment of the differential amount, the Defendant No.1 did not have title to the suit land in 2007 when he executed the sale agreement in the Plaintiff's favor.

Opinion:

12. Adverting first to the *status quo* order dated 11-09-2008; in my view, that is being cited by the Plaintiff out of context. The order dated 23-04-2010 whereby said *status quo* order was confirmed (para 8 above), was passed with the consent of the Defendant No.1 to dispose of the Plaintiff's application against the Defendant No.1. It was clearly an order to deal only with the case between the Plaintiff and the Defendant No.1, and not the case between the Plaintiff and the Defendants 4 to 8 who were before the Court as interveners and were disputing the Plaintiff's case. Had the intent of the Court been to apply said *status quo* order to the Defendants 4 to 8 as well, it would have categorically said so while making them parties to the suit by the same order dated 23-04-2010.

13. The chronology of events narrated above is to show that after the *status quo* order dated 11-09-2008 was confirmed on 23-04-2010, and as the suit progressed, this Court raised questions to the title of the Defendant No.1 *vis-a-vis* the suit land, and consequently to the Plaintiff's case which was based on a sale agreement with the Defendant No.1. By order dated 13-09-2018, this Court also recalled the order for posting chowkidars at the suit land, which order was then upheld in HCA No. No. 331/2018. Therefore, as the matter presently stands, the questions whether the Defendants 4 to 8 have encroached the suit land, or whether the 80 acres held by them overlaps the suit land, are secondary. Given the observations made by this Court on 13-09-2018 and then again on 08-03-2021, the Plaintiff has to first demonstrate a *prima facie* case for any further indulgence of this Court, especially where he seeks the appointment of a receiver.

14. From the documents filed by the Plaintiff, he represents to the Court that the suit land was originally granted/leased for agricultural purposes for 30 years under the Colonization & Disposal of Government Lands (Sindh) Act, 1912; that in 1996, such lease was transferred to the Defendant No.1, and then by grant

dated 04.11.1996, the 30-years lease was converted to a 99-years lease for residential/commercial purposes on the recommendation of the Chief Minister Sindh; that on the promulgation of the Sindh Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001 (Ordinance No. III of 2001), the grant of the suit land was cancelled, *albeit* on payment of the differential price under said Ordinance, the same was regularizable; and that by letter dated 12-11-2003, the Land Utilization Department offered to regularize the suit land in favor of the Defendant No.1 on payment of the differential price.

15. Conversely, there are also the following documents:

- (i) The counter-affidavit dated 09-04-2010 on behalf of the Land Utilization Department states: *"The offer letter of regularization which is annexed with the plaint being No.03-43-02/DS-II/106 dated 22.11.2003 is not available in the office of the proposed defendant. Further the order of the Department dated 04.11.1996 issued to the Deputy Commissioner East Karachi is also forged, fabricated and managed, same is not available in the office of answering defendant and all subsequent transfer on the basis of the allotment order dated 04.11.1996 are nothing but an eye-wash."*
- (ii) The report of the Mukhtiarkar Manghopir dated 06-06-2017 states that as per the revenue record, the suit land was originally granted/leased to one Muhammad Marzan for 30 years for agricultural purposes; that in 1996, the 30-years lease to the extent of 16.35 acres from Na-Qabooli No. 40, Deh Taiser, was transferred to the Defendant No.1; that eventually in 2005, entries relating to a number of 30-year leases, including the suit land, were cancelled by the District Officer Revenue; and that the document relied upon by the Plaintiff reflecting the conversion of the suit land to a 99-year lease was forged and bogus.

While objecting to the aforesaid report of the Mukhtiarkar Manghopir, the Plaintiff has filed letter dated 15-05-2012 issued purportedly on behalf of the Land Utilization Department to state that though the suit land was leased to the Defendant No.1 for 99

years, it was cancelled under Ordinance No. III of 2001 for the purposes of paying the differential price; and then the minutes of the Land Committee dated 17-07-2012 to show that the matter with regards to regularization of the suit land was not considered owing to the instant suit.

16. Thus, the documents relied upon by the Plaintiff himself establish the fact that even if the letter of grant dated 04.11.1996 was duly issued and the suit land was leased to the Defendant No.1 for 99 years until it was hit by Ordinance No. III of 2001, it is an admitted fact that the differential price for regularizing such land under said Ordinance has not been paid to-date. Though the Plaintiff relies on the minutes of the Land Committee dated 17-07-2012 to show that regularization was not considered owing to this suit, but then, it is neither the Plaintiff's case nor of the Defendant No.1 that they were willing to pay the differential price between the period 2003 to 2012 but were denied that opportunity. In fact, as per the Defendant No.1, the agreement between him and the Plaintiff was that it was the Plaintiff who had to pay the differential price for getting the suit land regularized, which he never did. It appears that the Plaintiff was wary of the fact that the suit land may not be regularizable and for this reason his prayer in the suit is for compensation and damages in lieu of specific performance.

17. Given the above facts, the case of the Plaintiff does not merit the appointment of a receiver. As discussed in paras 12 and 13 above, the contempt application is also misconceived. Therefore, CMA No. 9728/2021 and CMA No. 10487/2021 are dismissed. CMA No. 10486/2021 for inspection had already been disposed of by order dated 28-06-2021. However, this order is not to be construed as endorsing any possession of the Defendants 4 to 8 over land that is not their own.

JUDGE

Karachi
Dated: 11-03-2022
*PA/SADAM