

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.257/1989

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicants No.1 & 2 : Salamatullah & Abrar Ahmed through Mr. Iftikhar Jawaid Qazi, advocate.

Applicant No.3 : Muhammad sharif through Shaikh Muhammad Waseem, advocate.

Respondent No.1 : Dastagir Qureshi through Mr. Mehfoozul Haq, advocate

Respondent No.2 : Karachi Development Authority through (None present)

Date of hearing : 31.03.2016

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **15.08.1989** passed by IIInd District Judge (East) Karachi, whereby Civil Appeal No.130 of 1988 filed by Respondent No.1 was allowed and the judgment & decree dated **02.07.1988** and **03.08.1988** of dismissal of his Suit No.2301 of 1985 (Old No.2751/1978) passed by IIIrd Sr. Civil Judge, (East) Karachi, was set-aside. Consequently the suit filed by Respondent No.1 was decreed. This Revision Application is directed against the said appellate decree.

2. Briefly stated the facts of the case are that in the year **1956** Respondent No.4 (KDA) has lawfully allotted Quarter

No.6, Block-67 Area 4-D, Landhi Karachi (the suit property) to Respondent No.1 under a valid allotment order and vacant physical possession was also delivered to him. The controversy arose when Applicants No.1 & 2 (father and son) residing in the neighborhood of Respondent No.1 and carrying on business of provision store jointly and severally played fraud with Respondent No.1 with intention of usurping the suit property by taking advantage of his ailment and unemployment. Respondent No.1 used to purchase provisions on credit basis from applicant No.1 and on account of serious ailment he had also borrowed some money from applicant No.1 for treatment, and as he could not repay the debts in time as such applicant No.1 prevailed upon him and secured allotment order of the suit property as security for repayment of the debts. Later on Applicant No.1 requested Respondent No.1 to accommodate his guests in the suit property for one/two week on the false pretext that they have come to attend marriage ceremony which was acceded to by Respondent No.1 being under obligation. Respondent No.1, therefore, kept all his house hold articles in the kitchen and locked the same and shifted to his mother's quarter No.7, Block-67, Area 4-D Landhi Karachi. Subsequently, in the year 1968 financial position of Respondent No.1 improved, therefore, he offered

and paid the debts of Applicant No.1 asking him to vacate the suit property and to return possession thereof as a consequence Applicant No.1 returned allotment order but mischievously avoided to hand over possession of the suit property by keeping respondent No.1 on false promises. The span of promises was extended on one or the other pretext until it was finally refused and the respondent came to know that applicant No.1 has broken the lock of the kitchen and misappropriated his goods worth Rs.1000/-. Respondent No.1 approached the higher authorities including Administrative Officer of Respondent No.2 but to no avail, ultimately a notice under Article 131 of KDA Order 5 of 1957 was served upon KDA and in reply thereto it transpired that applicant No.1 had fraudulently sold the suit property to his son, applicant No.2 in consideration of Rs.2450/-. Respondent No.1 then approached Anti-Corruption Department whereby record of the KDA was seized and enquiry was conducted and it transpired that KDA with malafide intention and in collusion without serving show cause notice on Respondent No.1 regularized possession of the suit property in favour of Respondent No.2 on the basis of false and bogus documents and thereafter lease was also registered. Subsequently, the suit property was transferred to applicant No.3. Respondent

No.1, therefore, sent legal notices to applicants on **11.07.1978** for recovery of possession and by reply dated **24.07.1978** when the Applicants refused to hand over possession of suit property and claimed the ownership, Respondent No.1 was left with no option but to file suit against applicants for their fraudulent activities with the following prayers:-

- i. A declaration that the Plaintiff is the rightful allottee / owner of quarter No.6, Block-67, area 4-D, Landhi Karachi.
- ii. The possession of the said quarter No.6, Block-67, area 4-D, Landhi Karachi be ordered to be delivered to the Plaintiff by the Defendant No.3.
- iii. An injunction to restrain the Defendant No.3 and 4 from further transferring in any manner the above mentioned quarter in favour of any other person or persons.
- iv. Costs of the suit may be granted to the Plaintiff.
- v. Any other relief be also granted to the Plaintiff to which he might be deemed entitled to.

3. Applicants 1 & 2 in their joint written statement denied the allegation leveled against them by Respondent No.1 and contended that the respondent on his own in the month of February, 1963 offered the allotment of the suit property respondent No.2 in consideration of Rs.2450/-. On **11.2.1963** applicant No.2 had paid the aforesaid amount to respondent No.1 and in consideration thereof no

objection or the agreement of sale was executed in his favour and simultaneously physical possession was also handed over to applicant No.2. Applicant No.2 on **12.2.1969** applied for regularization of his possession to KDA and thereafter not only the suit property was allotted to him but the lease for 30 years was also executed without and fraud or misrepresentation which was subsequently sold by him to applicant No.3.

4. Applicant No.3, claiming to be bonafide purchaser, has averred that he has purchased the suit property on **21.2.1970** for valuable consideration which had subsequently been mortgaged with the Pakistan Industrial Credit and Investment Corporation from where the facility of loan has been availed by him. It is further contended that name of Applicant No.3 has also been mutated in the recorded of KDA being lawful purchaser and he is in possession thereof.

5. The learned trial court from the pleadings of the parties framed the following issues.

- i. Whether the suit is barred by law of limitation?
- ii. Whether the suit is barred by law of estoppel and acquiescence?

- iii. Whether there is no cause of action against the Defendant No.3?
- iv. Whether the suit is not maintainable in law?
- v. Whether the Plaintiff is the rightful allottee of the property in disposal? If so its effect?
- vi. Whether the Plaintiff in the year 1966 took on credit some provisions from the Defendant No.1? If so its effect?
- vii. Whether the Plaintiff remained in continuous possession of the said quarter since its allotment?
- viii. Whether the Defendant No.1 obtained a temporary possession of the said quarter from the Plaintiff on the ground of accommodating his guests of marriage?
- ix. Whether the transfer of the allotment of the quarter in favour of Defendant No.2 subsequent lease and transfer of quarter in favour of Defendant No.3 is illegal, void and liable to be set aside?
- x. Whether the Plaintiff is entitled to recover the possession of the quarter from the Defendant No.3 and for regularization of the same in his favour?
- xi. What is the effect of the registered sale deed executed by the Defendant No.2 in favour of Defendant No.3?
- xii. Whether the property in question stands mortgaged with the PICIC? If so its effect?
- xiii. Whether the documents of the title and / or property have been obtained from the Plaintiff by Defendant No.1 to 3 by misrepresentation fraud and without consideration? If so its effect?
- xiv. Whether the quarter was transferable?
- xv. What should the order be?

6. Respondent No.1/Plaintiff examined himself as PW-1 at **Ex.5** and produced notices to the various authorities as well as legal notice to the Defendant/Applicants as **Ex.5/1 to 5/13**, Respondent No.1/Plaintiff also examined Sheikh Hyder PW-2 at **Ex.6** and Muhammad Ibrahim PW-3 at **Ex.7** and closed his side. Applicants/Defendants No.1 and 2 examined Mushtaque Ahmed Asstt: Director Lands KDA Korangi at **Ex.8** who produced photo copy of application of Respondent No.2 to KDA for allotment dated 22.05.1969 (Ex.8/A), report for regularization dated 11.11.1968 (Ex.8/B), and the notice to the Respondent/Plaintiff by the KDA dated 12.09.1968 (Ex.8/C) in original as **Ex.8/A to 8/C**. Applicant/Defendant No.1 Haji Salamat also examined himself on behalf of Applicants/Defendants No.1 and 2 at **Ex.9** and he produced the letter dated 08.06.1962 from Applicant No.1 to advocate of Respondent No.1 whereas he reiterated payment of Rs.2450/- to Respondent as cost/sale consideration as **Ex.10**. Applicant / Defendant No.3 examined himself at **Ex.11** and also one witness Fakir Muhammad as **Ex.12** who produced Iqrarnama as **Ex.12/1** then Applicant/Defendant No.3 Muhammad Sharif examined himself as **Ex.13** and also one Zafar Ahmed Hashmi law officer of KDA was examined as **Ex.14** who produced the sale agreement as **Ex.14/A**

and also produced search certificate as **Ex.14/B** and memorandum of deposit of title deed as **Ex.14/C**, Allotment order as **Ex.14/D** and the lease as **Ex.14/E** and also produced plan as **Ex.14/F** and sale deed as **Ex.14/G** and closed the side. Defendant No.4 did not lead any evidence.

7. The learned trial Court after recording evidence and hearing of the parties dismissed the suit filed by Respondent. He preferred an appeal bearing civil appeal No.130 of 1988. The appellate Court comprehensively discussed the evidence in detail and reversed the findings of the trial Court and decreed the suit filed by Respondent No.1 by judgment dated **15.08.1989**. Applicants No.1 to 3 on **12.10.1989** have filed this Revision Application against the appellate decree. By order dated **02.01.1990** the operation of impugned judgment of appellate Court was suspended by this Court on the undertaking given by Respondents that they would not part with the possession of the premises till disposal of this Revision Application. The said undertaking is also available on record.

8. I have heard learned counsel for the Applicants and counsel for Respondent No.1. None was present for Respondent No.2 (KDA).

9. Counsel for the Applicants has mainly contended that Respondent No.1/Plaintiff has sold out the suit property to Applicant No.2 through an Iqrarnama dated **11.02.1963** and also referred to the show cause notice / cancellation of allotment order in favour of Respondent No.1 by Respondent No.2 (KDA) before issuing the allotment order dated **13.02.1969** in favour of Applicant No.2. He has contended that Respondent No.1 himself has handed over possession of the suit property under the Iqrar Nama and the story developed by Respondent No.1 in the plaint that he has given temporary possession of portion of the suit property in 1966 was not proved as there was no marriage ceremony in the family of Applicants in 1966. He further contended that the lease has been executed by Respondent No.2 (KDA) in favour of Applicant No.2, son of Applicant No.1 on **30.06.1969**. Counsel for the Applicant No.3 has adopted the arguments advanced by the learned counsel for Applicants No.1 & 2 and has only contended that he is a bonafide purchaser and the property duly stand transferred in his favour by Respondent No.2 through registered sale deed and subsequently it is mutated in the record of Respondent No.2 (KDA).

10. In reply counsel for Respondent No.1 has contended that the documents obtained by the Applicants from KDA

are on the face of it illegal and fraudulently prepared documents. There is no dispute and denial by any of the Applicants and Respondent No.2 (KDA) that Respondent No.1 was original lawful allottee of the suit property and he was in physical possession of the suit property since 1956 as a lawful owner till **1966** when Respondents No.1 & 2 who happened to be his neighbors taking advantage of his financial problems and ailment managed to obtain original allotment order as a security for debts and subsequently requested for accommodating their guests in the suit property for a couple of weeks. He further contended that even in their written statement Respondent No.1 & 2 have accepted that the possession of the suit property was handed over by Respondent No.1 to them, however, they have forged an Iqarnama which in any case cannot be termed as an agreement of sale of the suit property in any manner, whatsoever. Therefore, the title of the suit property was not transferred to Applicants No.1 & 2 and their possession was in fact possession of Respondent No.1 through them since the title of the property was in his name. Therefore, Respondents No.1 & 2 had no right and title in the property to sale the same to Applicant No.3. Regarding alleged cancellation of allotment of Respondent No.1 by KDA through letter dated 12.09.1968 (**Ex-8/C**), he

has contended that the Applicants has wrongly termed (Ex.8/C) as cancellation of allotment from KDA. In the first place it is not order of cancellation of allotment and it was issued at the behest of Applicant No.2 when he moved an application on **22.05.1968** for regularization of the suit property in his favour on the basis of possession and this is where collusion of Applicant No.1 with the KDA is apparent. Why copy of cancellation of allotment, if at all it was order of cancellation of allotment, was sent to Respondent No.2. He has referred to Ex.8/C and rightly described it a simple letter of KDA dated **12.09.1968** for payment of dues against the suit property and contended it has been wrongly dubbed as cancellation of allotment or show cause notice by Applicants No.1 & 2 and the trial Court. It has been discussed by the learned appellate Court in detail and even reproduced in impugned appellate order while findings of trial Court were reversed on misreading / misconstruing the said letter of KDA as “show cause” as well as order of cancellation of allotment of Respondent No.1. The learned trial Court had failed to appreciate that “show cause”, if it was to be treated so, was not supposed to contain even the order of “cancellation of allotment” in one and the same letter by KDA. In fact no proceedings to be followed by any show cause notice for cancellation of

allotment took place. KDA has never issued any show cause notice to Respondent No.1.

11. I have also gone through the entire evidence and noticed that none of the documents relied upon by Applicants in defense have supported the contentions raised by them in their written statement. The perusal of report regarding regularization of quarter by so-called Administrative Officer of KDA, Landhi Colony dated **11.11.1966** on the face of it appears to be forged and manipulated and its contents have negated the claim of Applicant No.2 that Respondent No.2 (KDA) has lawfully conferred title of suit property on him. It is worth to reproduce following passage from the report (Ex.8/B).

“The allotment order in the name of previous allottee Mr/Mrs. **Dastaghir** S/o.W/o **Dagroo** (Respondent No.1) has been cancelled and the unauthorized possession of Mr/Mrs. **Abrar Ahmed** S/o.W/o. **Salamatullah** (Applicant No.2) Quarter No.....has been regularised in his favor with effect from **01-7-1963**, as his case covers the policy of regularisation of West Pakistan Government instructions communicated vide letter No.13(4)/63-H&S dated 18-12-1963, on the condition that the amount sofar paid in respect of this quarter in the name of the previous allottee shall be forfeited to the Government and Mr/Mrs. Abrar Ahmed S/o. W/o. Salamatullah shall have to make payment of full cost of the quarter afresh including other charges as admissible.”

The above document has four important things to be noted. Firstly, it shows that original allottee was Respondent No.1; secondly, it does not disclose that on what date and by whom his allotment was cancelled; thirdly the unauthorized possession of Applicant No.2 stand regularized w.e.f. **01.07.1963**; as his case was covered by the policy of regularization dated **08.12.1963**; and fourthly the payments made by original allottee forfeited and full payment of cost has to be paid by new allottee i.e. Respondent No.2.

12. The contents of another letter dated **12.09.1968** issued by another Administrative Officer, KDA, Landhi Township (**Ex.8/C**) has contradicted the so-called above quoted report dated **11.11.1968** regarding regularization of suit property. The allotment of Respondent No.1 was not cancelled until **12.09.1968**, since the KDA has demanded payment of dues from the previous allottee viz Respondent No.1 through the said letter (Ex.8/C). If the suit plot was already regularized by KDA on **01.07.1963**, why Applicant No.2 has filed another application for its regularization. Not only this then why Rehabilitation Commissioner Karachi has also regularized possession of Applicant No.2 on **12.02.1969** as mentioned on allotment order dated **13.02.1969** (Ex.14/D). The documents produced by

Applicants in support of their lawful claim of entitlement as owner of suit property viz. Ex.8/B, 8/C and 14/D do not compliment each other rather these documents appear to be contradictory to each other. The perusal of these documents clearly show that KDA pursuant to report for regularization dated **01.07.1963** under policy of **18.12.1963** has never issued challan of full cost of the suit property nor regularized possession of Applicant No.2. Admittedly, the KDA or any other authority has never issued an order of cancellation of original allotment in favour of Respondent No.1, the previous allottee.

13. Contrary to the contents of above documents, Applicant No.2 has claimed possession on the basis of Iqarnama which he has termed as sale agreement and alleged that he has filed said Iqarnama dated **11.02.1963** (Ex. 12/1) alongwith his application dated **22.05.1968** to Administrative Officer, KDA, Karachi Landhi Colony (Ex.8/A). First question which ought to have come to the mind of trial Court should have been that who had prevented Applicant No.2 from **11.02.1963** to **22.05.1968** from seeking transfer of allotment in his favour on the basis of Iqarnama (Ex.12/1) if he was sure that he has purchased the suit property through the said Iqarnama. The perusal of Iqarnama, (Ex.12/1) shows that if was

photocopy and the original of the same has not been produced by the beneficiary of this Iqrarnama in his evidence and the language used in this Iqrarnama does not say anything about the sale consideration, if any, having been paid by Applicant No.2 to Respondent No.1. In para-4 & 5 of their joint written statement filed by Applicant Nos.1 & 2, the so-called Iqrarnama has been described as “no objection” from Respondent No.2 on payment of **Rs.2450/-**. However, there is no receipt of payment of the said consideration nor the consideration has been mentioned on the Iqrarnama.

14. The burden was squarely on the Applicants to prove bonafide purchase and lawful occupation of the suit property for seeking regularization of their possession by Respondent No.2 in place of Respondent No.1, the original allottee. The learned appellate Court has found that the so-called Iqrarnama (Ex.12/1) has not been proved by Applicant No.1 in accordance with **Article 79** of Qanun-e-Shahadat Order, 1984. Neither its original was produced nor attesting witnesses were produced. It was not proved that it was filed by Applicant No.2 alongwith his application for regularization of the suit property (Ex.8/A) dated **22.05.1968** as is evident from the contents letter of KDA dated **12.09.1968** (Ex.8/C) reproduced by appellate Court

in the impugned judgment. I have reproduced relevant contents of report of regularization in para-10 above to further highlight the contradiction in the official documents which points towards manipulation and collusion of KDA and Applicants No.1 & 2 to surreptitiously confer title of suit property on Applicant No.2. The perusal of record and particularly the so-called report of regularization of KDA (Ex.8/B) reveals that the requirement of fabricating document (Iqarnama) in back date i.e. **11.02.1963** has arisen only to bring the case of Applicant No.2 within the so-called policy of regularization in **1963** referred to in so-called regularization report dated 11.11.1968 (Ex.8/B).The allotment order dated **13.02.1969** (Ex.14/D) has been issued by office of the Rehabilitation Commissioner, Karachi shows that possession of Applicant was regularized on **12.02.1969** as displaced person and not on the basis of Iqarnama. It was contrary to the report submitted by Administrative Officer, KDA whereby Respondent No.2 (KDA) has already regularized possession of Applicant No.2 way back on **01.07.1963**. In the document of lease (Ex.14/E) dated **30.06.1969** Applicant No.2 has **not** been shown as allottee by KDA, his status has been shown as a displaced person, not as an occupant through earlier allottee under agreement to sale/Iqarnama.

15. Aforesaid discussion about possession of suit property by Applicant No.2 and thereafter manner and method of regularization of his possession, allotment orders and lease in his favour read with the detailed discussion and reasoning of appellate Court in the impugned judgments clearly suggest that Applicant No.2 had never been a bonafide occupant of the suit property and the original allottee had been unlawfully deprived of his right and title in the suit property. Admittedly, KDA has not acted in accordance with law and rules applicable for cancellation of allotment of suit property lawfully allotted to Respondent No.1 before its subsequent regularization, allotment and lease to Applicant No.2. In fact there is no specific order cancelling the allotment of Respondent No.1 and, therefore, all the presumptions inferred by the trial Court on the basis of incorrect appreciation of documents and contents thereof in support of the contentions of Applicants have been rightly reversed/set-aside by the learned first appellate Court. Allotment order of Respondent No.1 has never been cancelled by any competent authority till date.

16. The first appellate Court has very elaborately discussed the question of limitation to hold that the suit filed by Respondent No.1 in the given facts of the case was not hit by the law of limitation. The actions taken by KDA

on the request of Applicant No.1 in writing dated **22.05.1968** for regularization of the suit property were on the face of it without jurisdiction. Since the KDA has not cancelled the original allotment of suit property, therefore, any action taken for allotment of the suit property in favour of Applicant No.2 by KDA or any other authority was without jurisdiction and void ab-initio. Applicant No.2 was son of Applicant No.1 and he has been shown as “displaced person” and his occupation of the suit property has been regularized by Rehabilitation Commissioner through a non-transferable allotment order (Ex.14/D). It means application of Applicant No.2 dated **22.05.1968** (Ex.8/A) addressed to Administrative Officer of KDA has not been allowed till date. The office of Rehabilitation Commissioner, Karachi and Administrative Officers of KDA are not and cannot be one and the same office. Applicant No.2 has never pleaded that he was a “displaced person” as defined under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 nor he was registered as displaced person, therefore, the Rehabilitation Commissioner, Karachi, too, had no jurisdiction to issue a non-transferable allotment order dated 13.12.1969 (Ex.14) to a person who was not registered as “displaced person”. Therefore, the stand taken by Applicants No.1 & 2 was

belied by their own documents and in presence of an earlier valid allotment order in favour of Respondent No.1, the so-called repeated regularization of suit property by KDA in 1963 and by Rehabilitation Department in 1969 was definitely an action without jurisdiction on their part. Therefore, as rightly held by learned first appellate Court since the actions taken by KDA were void abinito and without jurisdiction, Applicant No.2 has not acquired any lawful title. The authority exercised by KDA in favour of Applicant No.2 was without jurisdiction and, therefore, the actions of KDA which were detrimental of the lawful right of Respondent No.1 were a continuous cause and no limitation can be set-up by the beneficiary of the actions/order which were taken by the relevant authority outside its jurisdiction.

17. The plea of Applicant No.3 that he was a bonafide purchaser is misconceived. Admittedly, Applicant No.3 cannot claim a better title than Applicant No.2 from whom he has purchased the suit property. Once the possession and title of Applicant No.2, both, were found illegal and unlawful, the title acquired by Applicant No.3 from Applicant No.2 also suffers from the same legal infirmity. It goes without saying that buyers cannot have a better title than the seller.

18. The crux of the above discussion is that the so-called title documents in favour of Applicant No.2 namely the allotment order issued by the Rehabilitation Department dated 13.02.1969 (Ex.14/D) and the lease of suit plot (Ex.14/E) in favour of Applicant No.1 as “displaced person” by KDA are hereby declared unlawful, illegal and of no legal consequence, the same stands cancelled. Consequently, while dismissing this Revision Application and maintaining the order of appellate Court whereby the appeal against dismissal of suit of the Respondent is maintained and, therefore, the suit stand decreed as prayed with directions to the Respondent No.2 to rectify its record and execute the lease deed in respect of suit property in favour of Respondent No.1 on usual terms and conditions. Respondent No.1 should also be put in possession of the suit property by the Applicants.

19. The above are the reasons of dismissal of this Revision Application by short order dated 31.03.2016.

JUDGE