

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Suit No.595 of 2006

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

For Further Orders

04.11.2016

Mr. Mushtaq A. Memon, Advocate for the Plaintiff

Mr. Abdul Qayyum Abbasi, Advocate for the Intervener.

Mr. Muhammad Asif Malik, Advocate for Defendant No.1 a/w Sardar Atif Sultan, C.E.O, Malir Cantonment Board.

In pursuant to the previous orders of this Court, Chief Executive Officer of Malir Cantonment Board (Defendant No.1) has affected appearance and provided valuable assistance.

In this long run controversy relating to the approval of the plan for a Housing Society of the employees of the Sindh (‘the Plaintiff’), delays seem to have added unwarranted and unnecessary controversies.

The very brief facts are that the Plaintiff got approved layout plans for the above referred housing scheme from the Defendant No.1 on 11.08.1981, as well as, on 06.08.1996 (hereinafter jointly and severally referred to as 1981 and 1996 approved plans). A review of the order sheets reveal that my learned Brothers have passed numerous Orders with the very intention of adjudicating the matter and bringing the long-awaited legitimate relief to the Plaintiff, however, time and again for one reason or the other the dispute remained pending. Court’s attention was drawn to the Orders dated

01.03.2007, 11.02.2015 and 15.09.2015, where significant development took place towards bridging the dispute, however, it appears that the matter still is as stalled as it was on the day when this suit was filed more than 10 years ago on the simple issue that the approved plans needed extension to complete the developmental work (of which more than 70% is already completed) so that the allottees could commence construction of their houses upon their individual plans upon having these individual plans approved by the Defendant.

CEOMCB (the Chief Executive Officer of Malir Cantonment Board), as well as, counsel representing the Defendant No.1 contended that since a significant time has lapsed since the 1981/1996 plans were approved ground realities have changed on many accounts including that (i) a portion of land for which the approval was granted has come under litigation, (ii) certain areas have exited from the jurisdiction of the Malir Cantonment Board and (iii) new bye-laws and regulations have come into field which provide the revised mechanism for the renewal and modification of sanction scheme. In respect of item (iii), reference was made to clause 12 of Guidelines for Regulating the Preparation/Operation of Housing Scheme on Private Land in Cantonment Areas in Pakistan, 2011 and to a Notification of the year 1999.

At the outset, to me there appears to be a confusion in the mind of the Defendant that that the extension in the date of completion of the developmental work sought by the Plaintiff (say in terms of paragraph 3 of the 1996 approval plan) is to be revisited under the new scheme of laws and regulations as referred

hereinabove and the Plaintiff (and its members/allottees) have to satisfy the new criterion imposed by the these new regulations and the matter of approval of the scheme and the allottees thereof has to be considered afresh and *de novo*, which to my mind as well as at various occasions expressed by my learned brothers is not correct reading of the facts and applicable legislative framework. This Court has on many occasions held that the approval granted in 1981/1996 stand frozen on those date (as per the regulations and criterion prevalent at the respective point of time) and there is no room for interfering into the approvals already granted or to measure the same with the new laws and regulations' yardstick. The Defendant while looking through these already sanctioned approvals from the criterion laid down in Clause 12 (Modifications) of the 2001 Rules is at error while considering the extension as a fresh and revised opportunity to re-issue the approvals. To me this is blatant ignorance and misreading of the principles of law. The fact is that the approvals have already been granted and mere permission to extend the approvals for the developmental work does not warrant any further re-evaluation or re-calibration of the already approved plans with the new land-use or allied standards. There is no room to apply new standards on the layouts which are already approved in 1981 and 1996 as this would result in change of the sizes of the housing units already allotted to the members of the Society wherein vested rights have already been created.

At this juncture CEOMCB drew Court's attention that MCB needs to have knowledge about the part and parcel of the land which is under litigation or has exited its jurisdiction in order to avoid interference with any court orders or third party's rights. To me an

extension of the already approved plans of the Society's schemes would no way endanger the Defendant's bona fide, still for the satisfaction of the later, the Plaintiff's counsel submitted that the Plaintiff has already submitted revised drawings which clearly highlight the areas which are (i) under litigation and (ii) have exited the jurisdiction of the Board and to reaffirm the same, they will submit copies of these drawings in the next few days.

CEOMCB also submitted that the Board also needs information with regards amenity plots (and land-usage) amongst the left over area of land (after the removal of areas under litigation and out of jurisdiction). The learned counsel for the Plaintiff informed the court that the Plaintiff has already submitted revised drawings where amenity uses have been highlighted, however he undertook to re-supply these drawings to the Defendant in the next few days too. Be that as it may, the Defendant, the Board and CEOMCB to ensure these revised drawings and information will in no way be used against the Plaintiff and these land-uses would not be disturbed or re-adjusted and there would be no demand to re-allocate any part or parcel of the land forming part of the already approved layouts, as the approvals given in 1981 and 1996 have become conclusive and cannot be thawed at this juncture.

With the aforesaid background, it is ordered that:

1. The Defendant, its Board and EOMCB to take cognizance of the fact that the plans in respect of the schemes of the Plaintiff have already been approved in 1981 and 1996 thus need no unwarranted interference or review by the aforesaid entities or anyone else acting on their behalf;

2. The Plaintiff to represent to the Defendant:
 - a. details of the part of the land under litigation;
 - b. the land which has been excluded from the jurisdiction of the Defendant;
 - c. details of immunity land-uses in the leftover areas of land, which already stood approved in 1981 and 1996.
3. Upon receipt of the aforesaid information/drawings, the Defendant to grant the requisite permissions and extension for the completion of the development work in the already approved layouts within fortnight without raising any demands or calling for any additional fees or surcharges which the Plaintiff would not have paid under the rules and regulations applicable in 1981 and 1996 for the respective approvals;
4. Defendant on its own cost may wish to conduct a survey (within the above stipulated period) to affirm the boundaries of the 1981/1996 approved layouts and mark the parts of land which are deducted from the above pool on account of litigation or have exited from its jurisdiction. In this regard it is pointed out that the Plaintiff has already conducted and submitted a Joint Inspection of Development Works and filed the same with the Defendant a report prepared in the light of the office letter dated 23.06.06, of which the Defendant would be at liberty to make use of;
5. Defendant with utmost dispatch, to undertake independent technical requirements appraisal of roads, sewerage and other facilities connecting into and onwards of the approved areas in order the smoothly incorporate the approved layout plans of

1981 and 1996 with other surrounding developments falling within the jurisdiction of the Defendant, but at no added cost or adversity to the Plaintiff and its allottees;

6. With regards the individual plans already submitted by the allottees (members of the Plaintiff Society) for the plots which do not fall under the jurisdictional exclusion or which are not under litigation; upon the extension of the Plaintiff's 1981 and 1996 layouts, these individual plans when supported by a letter provided by the Plaintiff to the effect that the piece of land of the individual concerned does not fall within the area of land which is under litigation or which is beyond the jurisdiction of the Defendant, forthwith approval of these individual plans be given by the Defendant and its Board following the appropriate legal provisions applicable on the date when such a plan was filed; without any further delay or without asking any additional fee, which would not have been charged on the date of the presentation of the respective individual plans;
7. Nazir to oversee the process of extension of terms of the 1981 and 1996 approved plans and both the parties to provide the required and necessary assistance as demanded by Nazir or any other technical person engaged by Nazir, for which appropriate cost and fees is to be fixed by Nazir and the same would be paid by both the parties in equal share.

The Nazir to submit his compliance report within three weeks from the date hereof.

Judge