

said plots of land to the applicants under the Sanads and Ijazatnama as per The Goth Abad (Housing Scheme) Act, 1987 and Rules 2008. The applicants alongwith hundreds of the persons were the old residents of the said area, admeasuring more than 100 acres of land named Ali Muhammad Brohi Goth/village, situated in Deh Rehri, District Malir, Karachi. The said village comprises residential houses of the applicants and other co-villagers, school, playground, mosque, and Eidgah, community Centre, Technical Training Centre, Dispensary, Maternity Home and Park, were earmarked, as the amenities for the village/residents, in the said land. By the passage of time the applicants and other residents have improved their old houses of Katcha nature to Pucca construction wherein the electric supply has also been provided by the government. Respondent No.1 setup office at the portion of the said village land with the apparent object to encroach upon the said amenity land of the village. When the applicants protested to respondent No.1 against the said encroachment, respondent No.1, instead of removing such encroachment brought their armed men at the site and started evacuation work for constructing a boundary wall around the entire village area of Ali Muhammad Brohi Goth on the one side of the road. In process of such construction work respondent No.1 had demolished some of the houses of the applicants and other villagers and had been threatening to demolish the other houses so situated on that portion of the village at the northern side of the road which respondent No.1 was also attempting to

encroach upon. The applicants approached respondents No.3 and 4 to prevent the said illegal acts of encroachment by respondent No.1 and protect the rights of the applicants to the plots of land so granted by them but respondents No.3 and 4 failed to take any legal action against respondent No.1 on the contrary respondents No.3 and 4 appeared to be in a malafide collusion with respondent No.1 in such acts and threats of encroachment on the said plots and damage to their houses. Respondent No.1 had so started the construction of the said boundary wall around the houses of the applicants and other villagers under the alleged claim of allotment of the land by KDA/ respondent No.5. Therefore, the applicants filed a suit for Declaration, Permanent & Mandatory Injunction & Damages before the learned Senior Civil Judge, Malir, Karachi bearing Civil Suit No.33/2003 and prayed for judgment and decree as under:-

i). Declaration that the plaintiffs are the lawful allottees and in possession of their respective plots of land as described Nos.107, 80, 111, 109, 123, 13, 10, 12, 21, 24, 43, 47, 53, 58, 62, 68, 73, 74, 11, 186, 116, 122, 124, 87, 181, 90, 144, 168, 77, 65, 55, 147, 136, (residential) of the plaintiffs 1 to 33 respectively, two commercial plots of 4-0 acres each (of the plaintiffs 34 and 35) for poultry farms, situated in Naclass-26, Deh Rehri, District Malir, Karachi and plaintiffs are entitled to continue using, possessing and enjoying their said respective plots and the construction raised by them thereon.

ii). Permanent Injunction restraining the respondent No.1, their agents and employees from damaging and/or demolishing the plaintiffs' structures/constructions situated on their said respective plots and/or disturbing or interfering with possession of the plaintiffs' said plots/structures and/or dispossessing the plaintiffs from their said plots and the said

amenity plots so situated in the said village, except through process of the law.

iii). Mandatory Injunction directing the defendant No.1 to remove the boundary wall so partially constructed by the respondent No.1 around the houses of the plaintiffs in the said village and to remove its site office so raised at the land of the said village and also to remove the armed-men so posted at the land for threatening the encroachment on the land.

iv). Recovery of Rs.15 Lacs as damages so caused to the said houses and poultry Farms of the plaintiffs by respondent No.1

v). Cost of the suit.

vi). Any other relief or reliefs, which this Honourable Court may deem fit and proper in the circumstances of the case.

3. Respondent No.1 filed written statement, whereby they denied the allegations of applicants, and stated that the applicants' right over the suit property on the basis of Sanads Sindh Goth Abad Schemes is not sustainable in the eyes of law and the same are forged and fabricated documents. The Government had issued notification on **3.3.1959** No.D-1/59 CORNT/115, Pakistan through which the suit property was given under control of KDA for prevention of Haphazard growth of colonies and buildings and in presence of such notification the suit land cannot be given to anyone under Sindh Gothabad Schemes. It was further averred by respondent No.1 that on **14.11.1985** a letter was sent by the Assistant Director KDA to BCCI Foundation informing that competent authority has been pleased to allocate 92 acres of land to BCCI Foundation for establishment of model integrated center for extremely deprived children and their families. On the basis of such letter the BCCI

Foundation Karachi paid the cost of the said land amounting to Rs.23,81,570/- to the KDA and the KDA issued allotment order-cum-possession order to the BCCI Foundation for the suit property. The BCCI took the possession of said land in 1986 and in 1994 the name of BCCI Foundation had been changed to INFAQ Foundation. It has been claimed by the respondent that applicants have no concerned with the suit property and the purpose of filing the suit was only to encroach upon the land allotted and is in possession of respondent No.1 and no cause of action accrued to the applicants. Respondent No.5 (CDGK) also filed written statement in which they have denied the claim of applicants, and supported the version of respondent No.1. Learned trial court from the pleadings of the parties framed the following issues:-

1. Whether the plaintiffs are the legal grantees of the suit land under Sindh Goth Abad Scheme?
2. Whether the land of 92.01 Acres reportedly allotted by the defendant No.5 to the defendant No.1 includes Ali Muhammad Brohi Goth?
3. Whether the defendant No.5 acquired legal title to the land in dispute through notification dated 3.3.1959 or otherwise?
4. Whether the defendant No.5 have legally transferred the land in dispute to the defendant No.1 after obtaining lawful consideration?
5. Whether the Sanad filed alongwith plaint confer any legal title over land in dispute upon the plaintiff and if so to what effect?
6. Whether the defendant No.1 is liable to remove any construction?
7. Whether the defendant No.1 is liable to pay any compensation to the plaintiff?
8. Whether the suit is maintainable under the law?

9. Whether the suit is barred for non-joinder of a necessary party?

4. Both the parties have adduced their evidence in the trial court and the suit filed by the applicants was dismissed and even the appeal preferred by them against the said order has also been dismissed by the appellate court and this Revision is directed against the concurrent findings of the facts.

5. I have heard learned counsel for applicants and respondent No.1 and learned A.A.G for the official respondents. I have also perused the record.

6. Learned counsel for the applicants has again referred to the Sanads issued to them by the Deputy Commissioner to show the legitimacy of possession of the applicants on the suit land. He has also filed all sanads through statement dated 15.07.2010 for perusal of this Court. Learned counsel after going through the orders of the learned appellate Court on the point of the authority of Deputy Commissioner to issue such sanads were restricted to rural area and particularly the measurement/size of plots in possession of each and every applicant was beyond the prescribed limit for such allotment in Gothabad Scheme, was unable to explain that how these "Sanads" could be treated as lawful for conferring any right in the land. The learned appellate Court while concurring with the findings of the trial Court has categorically observed that the sanads produced by the applicants/plaintiffs do not show the date of issuance of sanads and admittedly the piece of land in

dispute was given to the KDA way back in 1959, almost 20 years prior to the promulgation of the Sindh Gothabad (Housing Scheme) Act 1987. The applicants' right and title was based only on sanads issued by the Deputy Commissioner. Irrespective of the fact that the land was not within the control of the government of Sindh for the purpose of Sindh Gothabad Housing Scheme, the allotment on the face of it was in violation of **Section 3** of the Scheme. This section is reproduced below:-

3. Allotment of land. Subject to the other provisions of this Act, the Collector may on the recommendations of the Allotment Committee allot not exceeding two ghuntas for construction of a house to a deserving person in the dehs in which he ordinarily resides free of cost in such manner and on such terms and conditions as may be prescribed.

Provided that the aforesaid limit shall not apply to the land or Asaish whereupon a deserving person has built a house before the coming into force of this Act with a view to taking up permanent residence.

7. The evidence has come on record that there was no recommendation of "allotment committee" for the allotment of suit plots to the applicants.

8. Learned counsel for the respondent has contended that the respondent in his evidence has established that he has lawfully acquired the suit property from KDA. The evidence of respondent has gone un-rebutted. The applicant has placed on record Gazette Notification dated **03.03.1959** showing transfer of land to KDA and payment of cost of land to KDA and other documents have not been rebutted. By referring to **Section 3** of Gothabad Scheme he has contended that the scheme was designed to accommodate the deserving persons who were duly

residing in the area that is why a limit of only two ghuntas for allotment under the scheme has been made mandatory. The applicants pointed out that some of the applicants are having even four acres of land through sanads issued under the Gothabad Scheme, therefore, each and every sanad was forged and fabricated and unlawfully issued. He has further contended that this being the case of concurrent findings, this Court cannot interfere unless a case of misreading or non-reading of evidence is made out. Admittedly the learned counsel for the applicants has not been pointed out any evidence from the record which may be considered as not read or misread by the Courts below. He has relied upon three judgments of Supreme Courts reported as **1997 SCMR 1139, PLD 2003 CS 362** and **PLD 2006 SC 309** in support of his contention that the concurrent findings on facts cannot be interfered with by High Court unless extra ordinary lack of appreciation of evidence is pointed out.

9. In view of above facts and discussion, I do not find any justification to interfere in the concurrent findings of the two Courts below. Resultantly, this revision application is dismissed with no orders as to cost.

J U D G E

Karachi
Dated:22.11.2016.

Ayaz Gul