

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2122/2014

Date	Order with signature of Judge
1.	For hearing of CMA No. 14126/2014
2.	For hearing of CMA No. 17368/2014
3.	For hearing of CMA No. 2091/2015
4.	For hearing of CMA No. 8141/2015
5.	For hearing of CMA No. 12931/2016
6.	For hearing of CMA No. 12932/2016
7.	For Further Orders O/A's Reference No. 01/2015
8.	For Further Orders O/A's Reference No. 02/2015
9.	For Non-Prosecution.

Plaintiffs : Syed Naveed Aziz Shah Noori & 68 others.

Defendants : Province of Sindh and 13 others.

Mr. Roomi Iqbal, Advocate for plaintiffs.
Syed Naveed Aziz Shah Noori, attorney of
Plaintiffs present in person.

Mr. Khalid Hussain Shaikh, Advocate for
Respondent No.5a/w Syed Nishtar Ali Rizvi,
Deputy Director Master Plan.

Syed Zafar Ali Shah, Advocate for Def. No.11.

Mr. H.A Rehmani, Advocate for Def. No.12.

Date of hearing : 13.12.2016.

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Yousuf Ali Sayeed; J: Vide this common Order I intend to jointly consider and dispose of CMA No. 12931/2016 and CMA No. 12932/2016. As the preceding facts narrated in the Affidavits filed in support of the above-mentioned applications are largely the same, and the alleged violation of the Order passed in this Suit on 16.05.2016 is raised as a ground in support of both applications, arguments on behalf of the parties in respect thereof were heard concurrently on 13.12.2016.

2. In terms of CMA No. 12931/2016, the Plaintiffs pray for suspension of Letter No. URP-33.706/MP&EC-2016/UD/149/L dated 01.07.2016 issued by the Master Plan Department (the “**Impugned Letter**”), as per which the Layout Plan No. URP-33-

643/MPGO/2006/UD-1/409 dated 20.10.2006 (the “**Layout Plan**”) of Jinnah Town Housing Project (the “**Project**”), said to be situated at Naiclass-01, Deh Songal, Sector 29, Scheme No.33, Karachi, as previously approved by the Master Plan Group of Offices, was cancelled/withdrawn. Furthermore, as per CMA No. 12932/2016 it has been prayed that on account of cancellation/withdrawal of the Layout Plan vide the Impugned Letter, contempt proceedings be initiated against certain named public functionaries and one of the private defendants (i.e. Defendant No.11) as well as his counsel.

3. In support of CMA No. 12931/2016 it has been contended by learned counsel that the Plaintiffs booked plots of different categories in the Project and are allottees thereof. It is further submitted that the Layout Plan has apparently been cancelled/withdrawn by the Master Plan Department, presently under the administrative control of the Sindh Building Control Authority, vide the Impugned Letter, and the ostensible reason for doing so, as specifically ascribed therein, is that it has been mentioned in the report submitted by the Official Assignee of Karachi before this Court that no entry exists in favour of the Project in the revenue record. Learned counsel for the Plaintiff contends that the operation of the aforesaid letter ought to be suspended as, according to him, the act of cancellation/withdrawal of the Layout Plan constitutes a clear violation of the order passed in this Suit on 16.05.2016, a copy of which has been attached to the listed application, and also further contends that since the report of the Official Assignee was interim in nature, the contents thereof could not validly form the basis of such cancellation/withdrawal.

4. As to the first ground advanced; from a perusal of the Order dated 16.05.2016 relied upon by the Plaintiffs, the same does not, to my mind, impose any condition or set out any such restraint in

relation to the Layout Plan whereby the action being assailed and sought to be suspended in terms of the listed application (i.e.the issuance of the Impugned Letter) could be regarded as constituting a violation thereof. Furthermore, it appears that such order was passed by my learned brother in respect of CMA 11014/15, which was an application under Order 1, Rule10(2) filed by the Defendant No.12 seeking that his name and that of the Defendant No.1 be struck off from the present suit, rather than for seeking preservation of the Layout Plan. I am therefore of the view that it was in that context that his Lordship had observed that the commissioners report was interim in nature and could not be made the basis for considering and allowing the application subject to his Lordship's order. Even otherwise, as per the Counter Affidavit filed on behalf of the Master Plan Department as well as arguments advanced at the bar, it has been submitted that the Master Plan Department is only a planning agency and does not maintain the ownership records of land. It is submitted further that, as per procedure, a layout plan is prepared by the owners and submitted to the lessor for forwarding the same to the Master Plan Department, and that in the instant case two Layout Plans were apparently received from the lessor (i.e. Deputy Commissioner, East), both of which were approved by the Master Plan Department. It is clarified that, subsequently, in the instant proceedings a report was submitted by the Official Assignee of Karachi regarding the ownership of land, wherein it was submitted as follows:

“Note from the fact of letter of Mukhtiarkar, Gulzar-e-Hijri, Sch.33 Karachi East, it appears that as per record of right and (i) entry No. 1/100 V.F-II dated 01.03.2002, 73-24 Acres in Deh Songal entered in the name of M/s. Professional Builders, leased out by Evacuee Trust Property Board Govt. of Pakistan, (ii) the project in the name and style of M/s. Shahmeer

Residency announced/launched over the land of entry No. 1/100 V.F-II, (iii) regarding the ownership of Jinnah Town, the record of their office is silent/nil entry exist in their favor, Nor the land from C NO. 1, Deh Songal is under the land possession of Jinnah Town.”

5. It has been stated that since the ownership of land measuring 16-50 Acres in favor of M/s. Jinnah Town had been denied by the lessor (DC East Office), the Master Plan Department had no other option but to withdraw/cancel, the Layout Plan approved in favor of Jinnah Town. Hence the same was cancelled and the DC East Office was informed accordingly vide letter dated 01.07.2016. As such, I am of the view that it cannot be said that the Impugned Letter was based solely on an interim report of the Official Assignee, as such report was itself predicated on the findings of the Mukhtiarkar, Gulzar-e-Hijri, Sch. 33, Karachi East to the effect that the record was silent as to the ownership of land by the Project and that no entry existed in the revenue record. Thus, it appears that the basis of cancellation/withdrawal of the Layout Plan is the denial of ownership/title by the lessor.

6. Additionally, if one views the matter in juxtaposition with the prayers set out in the Plaint, it appears that the Layout Plan is not the subject of the suit, in as much as the Plaintiffs have firstly prayed for declaration of title regarding their ownership to land admeasuring 16.5 Acres situated at Naiclass No.1, Deh Songal, Sector No.29, Scheme No.33, comprising various specified plot numbers, and in the context of this first prayer have, for the purpose of specificity as to the property, merely referred to the Impugned Letter, and have further prayed that it be held and declared that the entries/entry No.40/2-205 dated 11.5.1977 and 27.12.2005 are genuine/legal of suit property viz 12 Acres (out of 16 Acres) situated at Naiclass No.1,

Deh Songal, Tapo Songal, Scheme No.33, Karachi. Consequentially, it has been prayed inter alia that the Defendant No.3 (i.e. Mukhtiarkar, ACSO Scheme No.33, Gulzar-e-Hijri, Karachi) be directed to issue the VF-II alongwith NOC of sale and direct the concerned Department/Registrar to lease out the property/plots in favour of the Plaintiffs. Accordingly, the relief sought vide the present application for preservation of the Layout Plan through suspension of the Impugned Letter appears to be beyond the scope of the Suit.

7. As far as CMA No. 12932/2016 is concerned, copies of the aforesaid Impugned Letter and same Order of 16.05.2016 as referred to in the context of CMA No. 12931/2016 herein-above have been attached and filed with the affidavit in support thereof, and it is contended that the issuance of the Impugned Letter constitutes a violation of this Order. As previously observed whilst considering CMA No. 12931/2016, the Order relied upon by the Plaintiffs does not impose any condition or set out any restraint regarding the Layout Plan whereby the issuance of the Impugned Letter could be regarded as constituting a violation thereof, and the preservation of the Layout Plan also appears to be a subject beyond the scope of the Suit. Needless to say, committal for contempt of Court is to be resorted to sparingly and only where *prima facie* a case of violation of an Order of the Court has taken place. However, under the given circumstances in the matter at hand, no case for contempt of Court appears to have been made out.

8. In view of the foregoing, CMA No. 12931/2016 and CMA No. 12932/2016 appear to be misconceived, and vide this common Order both of these applications are dismissed accordingly.

JUDGE

Karachi
Dated: ____01-2017