

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.42/1997
R.A No.43/1997

Date _____ Order with signature of Judge _____

**Applicant : Karachi Development Authority,
through Mr. Tahawar Ali Khan,
advocate.**

**Respondents : Samiullah & others through
Mr. Muhamamd Wafi Khan Yousif Zai,
advocate.**

Date of hearing : 26.04.2016

Decided on : 26.04.2016

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Nazar Akbar.J- This revision application was filed on 18.12.1996 challenging the concurrent findings of Civil Judge (Central) Karachi maintained by the Addl. District Judge (Central) Karachi arising out of suit No.4751/1985 (Old No.920/1979) and Civil Appeal No.7/1993.

2. The brief facts of this case are that respondents filed suit for declaration and injunction in respect of various plots bearing No.502, 503, 504, 509, 510 & 511 in North Karachi Township, in Sector 16-B, claiming to be allottees of the said plots. They were aggrieved by the notice of cancellation of the allotment served by the applicant to the respondents and therefore, they filed the suit for permanent injunction against the applicant.

3. The applicant in written statement took plea that the allotments are merely a license and does not confer any legal right to be protected by the courts and also Article 131 of KDA Order V of 1957 was not complied with, therefore, the suit was

not maintainable. They had also taken the plea that they have right to put the plot in question for auction. From the pleadings of the parties trial court framed the following issues.

- i. Whether the suit in its present form is maintainable in law?
- ii. Whether the suit plots had been allotted to Plaintiffs by Defendant No.1 illegally and without jurisdiction and reducing width of the road.
- iii. Whether the cancellation of allotment of suit plots of Plaintiffs and putting the same to auction is illegal, void, and without any lawful authority?
- iv. Whether the Plaintiffs are entitled to relief prayed for?
- v. What should the decree be?

4. The respondents examined their attorney, Naeem Iqbal as Exh-4 and he produced more than 39 documents from Exh.A-1, to Exh.N-1. The respondents have also examined telegraph master Muhammad Moosa. The applicant failed to lead any evidence whatsoever and ultimately after hearing the parties by judgment dated **30.10.1992** the suit of the respondents was decreed. The applicant preferred civil appeal No.7/1993 before the Court of IIIrd A.D.J Central, Karachi and the appeal was also dismissed by judgment **25.8.1996** and therefore, it was followed by present revision application.

5. I have heard learned counsel for the parties and perused the record. Learned counsel for the applicant has vehemently contended that both the courts below have failed to appreciate that there was no proof of delivery of telegraph to the office of the applicant as no such record was available before the trial

court and therefore, mere sending of a notice was not sufficient compliance of **Article 131** of KDA Order 1957. He further contended that allottees were mere licensee and licensee has no right to claim possession of the suit plots against the licensor / actual owner of the plots.

6. In rebuttal counsel for the respondents has argued that by examining the officer of telegraph department and producing the copy of the telegram, the requirement of issuance of notice to KDA had been complied with as the presumption attached with the government department in discharging of the duties is sufficient to proof of the fact that the respondents have duly discharged their statutory duties under **Article 131** of KDA, Order, 1957. Once proved that such notices were sent through proper channel non-delivery or non-availability of record of the said notice in the office of applicant was not relevant. The two courts below on the basis of evidence of the respondent and evidence of the personnel of telegraph office have rightly held that the suit was maintainable and not hit by Article 131 of KDA Order, 1957.

7. The actual issue was issue No.3 regarding the cancellation of allotment order by the applicant. The two courts below have rightly held that straightaway cancellation of allotment without any show cause notice or other ground in the nature of breach any condition of license or allotment was against the principle of natural justice and therefore, both the courts below have held that the cancellation notices were illegal.

8. This being a revision, the scope of this court is very limited. Unless glaring misreading/non-reading of evidence is brought on record and pointed by the learned counsel, concurrent findings on facts cannot be interfered with by this court in exercise of revisional jurisdiction. Keeping this proposition of law in mind on examination of evidence, it is clear that documents produced by the applicants in the pleadings as well as in their evidence have gone un-rebutted. It was not disputed that the respondents were lawful allottees of the respective plots and they were not given any notice prior to the decision of applicants for cancellation of their allotments. No evidence in rebuttal was produced by the respondent and therefore, it cannot be said that there was any misreading of evidence on record, which could be treated as not read or misread by the trial court to come to the conclusion on the issues between the parties.

9. In view of the above facts and circumstances, I do not see any justification for interference in the concurrent findings of the trial court, this revision stands dismissed with no orders as to costs.

JUDGE