

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 2531 of 2016

Date	Order with signature of Judge
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Suit No.2531 of 2016.

1. For hearing of CMA No.7725 of 2016.
2. For hearing of CMA No.12569 of 2016.

Suit No.559 of 2013.

1. For order on Nazir Report dated 12.01.2016.
2. For hearing of CMA No.5425 of 2013.
3. For hearing of CMA No.5426 of 2013.
4. For hearing of CMA No.18896 of 2015.
5. For hearing of CMA No.18897 of 2015.
6. For hearing of CMA No.3578 of 2016.

Suit No.1696 of 2012

For hearing of CMAs.

1. 13299 of 2012.
2. 482 of 2013.
3. 483 of 2013.

JM No.14 of 2013.

1. For hearing of CMA No.3550 of 2013.
2. For hearing of Main Application [under Section 12(2) CPC].

Dated 01-06-2017

Mr. Abdul Wajid Wyne, Advocate for the Plaintiffs.

Mr. Moeen Qamar, Advocate for Intervenors in this Suit and for Plaintiff in Suit No.1696 of 2012.

Mr. S. Wajahat Abbas, Advocate for Defendant No.8 in Suit No.1696 of 2012.

Mr. Muhammad Wawda, Advocate.

Mr. Sharafuddin Mangi, State Counsel.

Mr. Ghulam Shabbir Shaikh, Advocate for KDA.

After hearing the learned counsel for the respective parties in all these connected matters and particularly perusal of the Report dated 22.05.2017 prepared by Mukhtiarkar (Revenue) Sub-Division Model Colony District Korangi, Karachi, in compliance of the earlier orders of this Court, it would be just and proper to pass the following order. It is clarified that this order will be treated as an interim arrangement, unless modified by a subsequent order of this Court.

- (i). In the latest Report of Defendants (Mukhtiarkar and Board of Revenue) dated 22.05.2017 (available at Page-249; second part in Suit No.2531 of 2016)

chain of entries have been mentioned in respect of the properties / lands in dispute, which are falling within Survey Nos.300 to 3011, situated in Deh Mehran Tappo Malir, District Karachi (**subject lands**).

(ii). It has also been recommended in the above said Report that a fresh joint demarcation is necessary by Survey Superintendent through instruments in order to settle the issues / disputes once and for all. This recommendation of the Defendant-Mukhtiarkar appears to be fair, is accepted and Secretary Board of Revenue to ensure that the recommended survey of the above survey numbers/subject lands is carried out and furnish a Report in this Court within three (03) weeks from today. Costs of the survey shall be borne by the Defendant-Board of Revenue itself. Parties to these suits will be associated with above survey and the same will be supervised by the Official Assignee of this Court. For such supervision, the fee of Official Assignee will be Rs.25,000/- (tentatively) to be borne by Plaintiffs of all suits proportionately. Official Assignee will have all powers under the Rules to ensure compliance of this order.

(ii). It has also been observed in various cases including the present one that on account of misleading pleadings and Reports submitted by the concerned officials of Board of Revenue, the issues and litigation instead of getting resolved are multiplied; burdening the parties and the Court, which consumes the time of Court and other genuine litigants and resultantly pendency of litigation in the Courts is increasing. Henceforth the concerned Branch / Office is directed not to accept parawise comments from the Board of Revenue in respect of the litigation about lands and disputed claims, but every such parawise comments will be filed in the form and shape of Written Statements/pleadings verified on oath, so that in case it is found during the proceedings that a misleading and false report or pleadings have been filed then appropriate action can be taken against the delinquent officials. It is

ironic that genuine Khatedars / owners of the lands have to pay a huge cost to protect their proprietary rights, which otherwise is guaranteed under the Constitution of Pakistan as one of the fundamental rights. In such land disputes it is the duty and obligation of a competent authority and custodian of the record to assist the Court in a fair and diligent manner, so that decisions and judgments are delivered expeditiously, and a right and interest of a genuine litigant is protected rather than jeopardized.

(iv). The above Report dated 22.05.2017 with respect to the status of the subject land and the Written Statement filed by the then Defendant No.6- Mukhtiarkar in disposed of Suit No.383 of 1982 are reasonably identical, but, when the Written Statement filed by Defendants No.2, 3 and 6 who all are officials of Board of Revenue in Suit No.1696 of 2012 is examined, the same appears to be a misleading and by design an incomplete one. The said Written Statement which is admittedly subsequent in time, has deliberately concealed the information and record about other subsequent transferees who are also plaintiffs in connected matters. Without prejudice to the claim of any of the parties including Plaintiffs in Suit No.1696 of 2012, it is apparent that Written Statement is nothing, but a perjury committed by those officials who filed it (Written Statement) by swearing oath. Therefore, Secretary Board of Revenue is directed to initiate disciplinary action against the delinquent officers, who have sworn a false Written Statement in Suit No.1696 of 2012, within three (03) days from today besides lodging a FIR against such officers, by including, *inter alia*, Section 193 of the Pakistan Penal Code (Act XLV of 1860). A compliance report of this portion of the order will be submitted within five (05) days from today before the MIT-II, who will place the same on record of Suit No.1696 of 2012.

(v). That in order to forestall further litigation and complication in the pending proceedings and considering the conduct of officials as well as

parties, it would be just and proper to appoint Official Assignee as a Receiver in respect of the above mentioned Survey numbers / subject lands. It is further clarified that Receiver will take over the possession of only open lands in these survey numbers and the possession in respect of built up properties/houses, which are occupied and other building shall not be disturbed. This again would be without prejudice to the pleadings and stance of respective parties in all these connected suits.

Fee of the Official Assignee will be determined by the Official Assignee himself which will be paid half by the Plaintiff Hasan Mehmood of Suit No.559 of 2013 and the rest half shall be equally divided amongst the Plaintiffs of other suits.

Official Assignee will submit his first interim Report within ten (10) days from today. It is pointed out by the learned counsel for the Plaintiffs in Suit No.559 of 2013 that there are certain structures at the subject lands, which though are not occupied, but existing. The Official Assignee will take over the possession of those structures as well and if any party wants to occupy it, the Official Assignee will first determine the physical condition of the structure and whether it is in a habitable state, or the party is seeking permission merely to create complication. Such permission will only be granted by the Court after considering the Report of the Official Assignee and other ground realities. It has been pointed out by Mr. S. Wajahat Abbas, who represents Defendant No.8 in Suit No.1696 of 2012 that certain portion of open land also comprises of land owned by Defendant No.8 (Kazimabad Society), which is allotted to various allottees and they might in due course want to raise construction thereon; in such a situation all these applications will be filed before the Official Assignee, who will place it before the Court for its orders along with his Note.

In view of the above order, all pending CMAs except those applications filed by different interveners stand disposed of. However, those Plaintiffs who have preferred Contempt Application would be at liberty to file fresh one if henceforth some purported violation of order is reported either by a party to the proceeding or the Official Assignee.

The Official Assignee besides exercising his powers under the Code of Civil Procedure, 1908, and Sindh Chief Court Rules, shall have powers to approach the Police and Anti encroachment cell, for assistance in carrying out the above task. If in case the Official Assignee Report points out that any officials either from Board of Revenue, Police or some other Government Department is not cooperating with him or through their inaction trying to give benefits to any of the parties to the proceedings, such action or inaction may be construed as a Contempt of Court and the delinquent official may be proceeded against not only under the contempt of Court proceeding but under Pakistan Penal Code, being abettors in the crime.

Copy of this order be communicated to_

- (i) The Secretary Board of Revenue through Fax for compliance.
- (ii) The MIT-II for his appropriate action in the matter.
- (iii) The Registrar (O.S) for his information and necessary action.

JUDGE