

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-2555 of 2007

Date	Order with Signature of Judge
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**Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Nazar Akbar**

Petitioner : Mrs. Sarwat Jawad through LRs.
Through Mr. Sohail Muzaffar, Advocate.

Respondent No.1 : Director/Controller, Master Plan
Department, KMC, Karachi
Through Mr. Rao Sarfaraz Ahmed advocate

Respondent No.2 : Director General, Karachi Development
Authority,
Through Mr. Rao Sarfaraz Ahmed advocate

Respondent No.3 : Administrator, Karachi Municipal
Corporation, (Nemo).

Dates of hearing : 11.10.2017.

Date of Decision : 24.10.2017

JUDGMENT

NAZAR AKBAR, J:- The petitioner is lawful owner of residential plot No.IV-E/11/10, Block-E, Nazimabad, Karachi. The petitioners' plot is situated on the right side 'A' of main road starting from the Lasbella bridge to Nazimabad and the left side of the said road has already been commercialized according to the official policy. However, it is alleged by the petitioner that houses in the row of the petitioner's plot have been used by the owners for commercial purpose for last several decades. The petitioner has also placed on record photographs showing commercial use of the properties on the same road by various owners. The petitioner by letter dated **01.2.2006** requested respondent No.1 to commercialize her Plot No.IV-E/11/10, Block-E, Nazimabad,

Karachi (the suit plot) but the respondents have not acceded to the request of the petitioner, therefore, the petitioner has approached this Court for the following relief(s).

- (a) *That the petitioner is within her lawful right to use her property, the subject matter of this petition for Commercial use like all other properties in the row in which the petitioner's property is located.*
- (b) *That as all the properties in the vicinity of the petitioner's property are being used for Commercial purpose, the petitioner is also entitled to use/convert her property to Commercial use on payment of Conversion Charges as paid by the other property Owners who have put their property to Commercial Use.*

2. After notice, the respondents have filed counter affidavits and have contended that the residential plot of the petitioner cannot be converted into a commercial plot, since it will be a violation of the commercialization policy of KDA Master Plan department. The basic ground for refusal to convert the suit plot to commercial is that it is situated on 40 feet wide road and for commercialization of a plot it should be on a road exceeding 100 feet wide. It has also been contended by the respondents that all the plots referred by the petitioner in the petition have been unlawfully used for commercial purpose by their respective owners. In this regard the stance of all the respondents is same which is taken by Respondent No.1, Master Plan Group of Officer, CDGK in the following para-9 of the counter affidavit:-

9. *As regard para-9, it is submitted that the application regarding change of Landuse of her plot made by the petitioner is self explanatory, wherein, the petitioner has admitted that in commercialization policy whereas right side of Road 'A' Nazimabad is not included in this policy. However, as per change of Landuse & Master Planning Bye Laws-2003, vide Tajveez No.3, City District Government Karachi is authorized to declare any road which is exceeding 100 feet in width, subsequent to approval of Committee and City Council. (Annex-'B').*

3. Respondents No.2 & 3 in their counter affidavit took the following similar stance:-

*On the other side plots have not been declared as commercial but some of the plots are being used as commercial before promulgation of Bye Laws/Policy of the CDGK. However, otherwise CDGK is competent to take action and for this purpose exercise is being conducted but **petitioner's plot cannot be considered for commercialization due to the reason that plot is situated on 40' feet wide road.** It is further pointed out that the survey of the vicinity of plots in question has been conducted and it has been observed that the row in which plots in question lay, facing 40'-00 feet wide road followed by green belt alongwith Nazimabad 'A' Road (Total width of opening in front of row is 40'-00 feet wide road + green belt + Nazimabad Main road comes to 320' feet in width).*

4. Learned counsel for the petitioner has contended that he is being discriminated but on query from the Court that since other owners of the properties are guilty of illegal commercial use of their properties, how it can be considered as discrimination by the official respondents, the reply was that respondents have not taken any action against them. It is an admitted position from the record that the responders have not allowed commercialization of any plot on the road on which the petitioner's plot is situated and therefore, no case of any discrimination is made out. As far as the failure of the respondents to take action against illegal commercial use of the properties by the other owners of the plots on the same road is concerned, the counsel for the respondents has informed that actions have been initiated against many of them. Even otherwise, this Court in this constitution petition cannot pass any order in respect of the misuse or illegal conversion of plot to commercial use by the neighbors of the petitioners for the simple reason that the petitioner has neither impleaded them in this case nor challenged such misuse of their properties by them. The desire of

the petitioner to officially convert her residential plot into a commercial plot cannot be acceded against the policy of the State. The petitioner has not alleged that respondents have refused commercialize of her plot in violation of commercialization policy. A law abiding citizen is not supposed to claim that he has been discriminated because he cannot violate the law like other non-law abiding citizen. Nor this can be a ground to direct the respondents to grant her a permission to convert her plot into commercial plot in violation of commercialization policy on the ground that some other owners of properties have unlawfully started using their plots for commercial purpose.

5. In view of the above, we are unable to appreciate that the respondents have discriminated the petitioner nor can we direct the respondents to commercialize a plot of the petitioners merely because there is some unofficial commercial use of the plots by the owners of the other properties. The petition is, therefore, dismissed.

JUDGE

JUDGE

Karachi,
Dated: -10-2017

*Ayaz Gul P/A**