

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P. No.D-2471 of 2015

Date	Order with Signature(s) of Judge(s)
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Maalik Gaddi

Muhammad Younus & another Petitioners

V E R S U S

KMC & others Respondents

14.3.2017

Mr. Mushtaq A. Memon, advocate for petitioners
 Mr. Iqbal M. Khurram, advocate for KMC
 Mr. Ahmed Ali Ghumro, advocate for respondent No.4
 Mr. Anwar Ali Shah, advocate for SBCA
 Mr. Shamsheer A. Khan Azeemi, state counsel

Muhammad Ali Mazhar-J. Brief facts of the case are that the petitioners entered into an agreement to sell for the property No.140, Survey Sheet GRE, Old Survey No.15/HC, Nishtar Road, Garden East, Karachi, measuring 4023 sq.yds.

2. The petitioners paid substantial part of the sale consideration and they were put into possession of the subject property vide sale agreement dated 23.6.1997. The subject property was leased out by the Government, on 80 years lease, commencing from 01.8.1915 for agricultural purposes. Upon expansion of city of Karachi, the conditions of lease were converted into residential purposes and for other non-residential purposes with the prior permission of the Government.

3. Since there were some other dispute in relation to illegal occupation and some cases are already pending, therefore, the petitioners in order to protect the subject property from encroachment raised temporary structure to set up a community centre/ lawn on the plot in-question as Lakhpati Community Lawn.

4. Learned counsel for petitioners argued that for the purposes of regularization of the temporary structure in terms of policy (amnesty scheme) announced by Sindh Building Control Authority, the petitioners also submitted application for regularization and deposited requisite fee prescribed for such purpose. On 28.8.2001, SBCA issued a show cause notice to explain as to why action should not be taken on account of use of subject property as marriage lawn. The show cause notice was duly replied. Intervening purchaser Shaukat Hussain filed an application to implead KBCA as party to Suit No.1037/1998.

5. The present grievance of the petitioners through this constitution petition is that the respondent No.1 demolished the boundary wall on 24.04.2015 without any lawful authority, therefore, the petitioners have prayed that the respondents may be restrained from interfering with the use and enjoyment of the property in-question.

6. Learned counsel for the KMC referred to the counter-affidavit filed by Mazhar Khan, Director Land, Anti-Encroachment, KMC. The main emphasis of the learned counsel for KMC is on the notice dated 20.4.2015, which was issued by the Assistant Commissioner and Special Judicial Magistrate, Jamshed Quarters, Karachi East to the owner of

Lakhpati Community Lawn, Nishtar Road, Garden East, Karachi, under Section 3(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010, in which it was alleged that the commercial unit has been established on the land earmarked for footpath/public parking/open compulsory space, which requires to be removed in public interest within 15 days from the date of the notice. However, in the same notice, it was further stated that the owner may prefer a review petition to the government/ tribunal under Section 4(1) of the aforesaid Act within three days from the service of notice/order.

7. Learned counsel argued that on one hand 15 days' time was allowed for the removal, but on the contrary demolishing action was taken on 24.4.2015. He further denied the service of the notice on the owner. Learned counsel further argued that had the notice/order served on the petitioner in time, they could have taken action in accordance with law to protect their interest in the property. Learned counsel for KMC submits that no independent action was taken by KMC, but it was based on the notice issued by the Assistant Commissioner and in compliance thereof assistance was provided by the Anti-Encroachment Department, KMC.

8. Learned counsel for the respondent No.4 argued that the lease in question was expired in the year 1995 and subsequently it was extended till 1997. In response to this objection, learned counsel for petitioners argued that the application for extension of lease is pending with the concerned authority.

9. Be that as it may, notice was issued against some illegal occupation of the land allegedly earmarked for footpath, public parking, open compulsory space and for which removal notice was issued on 20.4.2015. In this notice also, a clear indication/observation has been given that if owner wants to challenge the notice/order dated 20.4.2015, he may approach to the concerned tribunal. We have also gone through the Section 4 of the Sindh Public Property (Removal of Encroachment) Act, 2010, in which it is clearly provided that any person dissatisfied by the order passed under Sub-Section (1) of Section 3 may within three days from the service prefer a review petition to Government or any authority or officer, who has passed such order. This notice was issued under Section 3(1) of the Sindh Public Property (Removal of Encroachment) Act, 2010. The proper remedy is to invoke the review jurisdiction provided under Section 4 of the aforesaid Act.

10. In view of the above, the petitioners may file review petition within ten days under Section 4 of the Sindh Public Property (Removal of Encroachment) Act, 2010 against the impugned notice/order dated 20.4.2015. Till such time the final order is passed on their review petition, no coercive action shall be taken against the plot in-question. The petition is disposed of along with listed application.

Judge

Judge