

Order Sheet  
IN THE HIGH COURT OF SINDH AT KARACHI

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Date	Order with Signature of Judge
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**Suit No. 533 of 2016**

Zain Khan	VERSUS	PLAINTIFF
Taj Roshan & others		DEFENDANTS

**Suit No. 858/2017**

Taj Roshan & another	VERSUS	PLAINTIFFS
Province of Sindh & others		DEFENDANTS

**Dates of hearing: 28.02.2018, 01.03.2018& 05.03.2018**

Mr. Ahmed Ali Hussain, Advocate for plaintiffs in both suits;  
M/s. Mukesh Kumar G. Karara & Munir Ahmed Metlo, Advocates for defendants 4 to 6 in Suit No.533/2016 and for the defendants 2 to 4 in Suit No. 858/2017;  
Mr. Ishrat Zahid Alvi, Advocate for defendant No.11 (LDA) in Suit No.533/2016;  
Mr. Ali Akbar Poonawala, Advocate for defendant No.14 (LDA) in Suit No.858/2017;  
Mr. Ahmed Pirzada, Advocate for defendant No.9 (BoR) in Suit No.533/2016;  
Mr. Sharfuddin Mangi, State Counsel  
Mr. Chaudhry Muhammad Farooq, Advocate for defendant No.12 (NADRA) in Suit No.533/2016;  
Mr. Abdul Sattar Hakro, defendant No.10 in Suit No.858/2017;  
Mr. Imran Arshad Chawala, defendant No.6 in Suit No.858/2017.

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**ADNAN IQBAL CHAUDHRY J.-**

**Subject matter and overview:**

1. The land that is subject matter of these two suits is Survey No.s 5, 8, 223, 224, 225, 258, 259, 260, 261, 262 and 263 in **Deh Lal Bakhar**, Hawksbay area, District West, Karachi, hereinafter the '**Subject Survey No.s**. One version is that the Subject Survey No.s measure 44-20 acres, while another version is that they measure 41-6 acres.

2. The Subject Survey No.s are presently held by Pakistan Baoxin Metal Industry Co. (Pvt.) Ltd. (hereinafter 'Pakistan Baoxin'), a defendant in both suits. Pakistan Baoxin claims registered title to the Subject Survey No.s from Muhammad Khan, who claimed to have derived it from Taj Roshan. Zain Khan (plaintiff of Suit No.533/2016) claims a sale agreement from Taj Roshan for 6 acres 7 ghuntas of Survey No. 262, which is one survey number out of the Subject Survey No.s. Taj Roshan is a defendant in Suit No.533/2016 and plaintiff in Suit No.858/2017. Taj Roshan denies having conveyed title to Muhammad Khan and therefore disputes the title of Pakistan Baoxin. She affirms the sale agreement with Zain Khan, and asserts her ownership over the remaining Subject Survey No.s. The Lyari Development Authority [LDA], which is a defendant in both suits, disputes the title of Taj Roshan to the Subject Survey No.s and that of her predecessors-in-title, and claims that the land of the Subject Survey No.s vested in the Karachi Development Authority [KDA] and now in the LDA.

3. Vide CMA No.66/2017 in Suit No.533/2016 and CMA No.5381/2017 in Suit No.858/2017, the plaintiffs pray that pending suit the defendants be restrained from creating any further third party interest in the Subject Survey No.s. By an interim order dated 3-1-2017 passed in Suit No.533/2016, the parties were directed to maintain status quo, and by an interim order dated 3-4-2017 passed in Suit No.858/2017, the parties were restrained from creating any further third party interest in the Subject Survey No.s.

On 15-2-2018, since CMA No.66/2017 in Suit No.533/2016 was not listed in the order sheet for hearing, the office was ordered to do so for the next day. On the next day, CMA No.66/2017 was again not listed, but on the request of all learned counsels, it was taken up for hearing along with other matters listed in the order sheet.

Chronology:

A chronology of the competing events and documents as gleaned from the record and perused with the assistance of the learned counsels is as follows.

4. Per notification dated 12-7-1984 issued by the KDA, published in the Sindh Gazette, an area of 20,900 acres at Hawksbay-Buleji, District West Karachi, was declared as 'Controlled Area' within the meaning of the KDA Order, 1957 for the purposes of making a development scheme. Such area included:

“1- .....

2- Deh Lal Bakhar No.1, Tappa Gabopat (in full) unsurveyed Deh;

3- Deh Lal Bakhar No.2, Tappa Gabopat (in part) unsurveyed Deh”

The notification also read that “No person,.....any Local or Provincial or Federal Authority shall be permitted to undertake any sale, lease, sub-division, consolidation, conversion, construction.....without permission of the ..... KDA.....”.

5. Per notification dated 2-8-1984 issued by the KDA, published in the Sindh Gazette, “...it is notified for public information that KDA has framed a Development Scheme under Article 37 of KDA Order 1957.....to be called KDA Scheme No.42 Hawksbay Buleji Housing and Recreational Scheme in the area comprising unsurveyed Dehs Lal Bakhar No.1 & 2 and Deh Moach, Tappo Gabopat and Hawksbay area District West, Karachi, measuring 11,450 acres.....” – which is hereinafter referred to as “**Scheme No.42 Hawksbay**”.

6. Vide letter dated 11-11-1986, the Commissioner Karachi, on the orders of the Governor and Chief Minister Sindh in recognition of KDA’s Scheme No.42 Hawksbay, directed the Deputy Commissioners and the District Registrar “that no further leases should be issued in these areas and no mutation, transfer of the land and conveyance deeds should be permitted”.

7. Vide letter/order dated 16-11-1992, the Secretary Land Utilization Department, while taking notice of rampant land grabbing by way of bogus claims of *HaqQabza*, particularly in Districts East and West of Karachi, prohibited all entries in Village Form VII on the basis of *HaqQabza* and directed Revenue Officials to treat such land as State Land, except where claims of *HaqQabza* were substantiated by genuine documents registered as per Rules prior to the year 1947. Revenue Officials were specifically restrained from certifying any *HaqQabza*.

8. By letter dated 6-7-1994, the Deputy Commissioner Karachi West reported to the Deputy Secretary Land Utilization, Board of Revenue Sindh, that *khatedars* of the Subject Survey No.s find mention in the *HaqQabza Yadashat* (Village Form VI) on the basis of long standing possession and that the said *khatedars* now request that their names be entered in Village Form VII.

Per the letter dated 6-8-2015 of the MukhtiarkarMauripur, the said *khatedars* had entered Village Form VI on 6-8-1986 on the basis of *HaqQabza* and their possession was subsequently recognized as ownership on 19-4-1995 by entering their names in Village Form VII as owners of the Subject Survey No.s, which was so done pursuant to a letter of the Deputy Secretary, Land Utilization Department. The said *khatedars* were the ones who subsequently transferred the Subject Survey No.s to Taj Roshan.

9. Vide registered General Power of Attorneys dated 23-8-1995 and 18-1-1996, the aforesaid *khatedars* of the Subject Survey No.s are said to have appointed Akram Khan as their Attorney for *inter alia* selling/transferring the same. Akram Khan is the husband of Taj Roshan. He is a defendant in Suit No.533/2016 and plaintiff in Suit No.858/2017.

10. On 2-9-1996, in a meeting Chaired by the Secretary Housing & Town Planning Sindh between officials of the KDA, LDA, Commissioner Karachi, Land Utilization Department, Survey Department and other Revenue officials, it was decided that allotments of land in Deh Lal Bakhar made by the Board of Revenue on the basis of *HaqQabza* will not be entertained as no agricultural land was available in Deh Lal Bakhar. It was also decided that if any land of Scheme No.42 Hawksbay remains to be handed over to the LDA, that should be done.

11. Vide notification dated 11-1-1996, Scheme No.42 Hawksbay was transferred to the LDA.

12. Form VII issued on 23-8-1999 shows Taj Roshan as transferee/owner of the Subject Survey No.s, said to have been purchased by her from the aforesaid *khatedars* vide registered conveyance deeds dated 2-7-1995 and 27-11-1997. However, the said conveyance deeds are not on record.

13. Per the plaintiffs of both suits, on 5-11-1998, Taj Roshan executed a registered *Mukhtarnama* (a Power of Attorney in the vernacular) at Takhtbai, Mardan, appointing her husband Akram Khan as her Attorney, authorizing him *inter alia* to sell the Subject Survey No.s.

14. On 18-8-2003, 7 co-owners (namely Iqbal & others) of an unspecified area in the Subject Survey No.s (except Survey No.s 5, 8 and

259), are said to have appointed Akram Khan as their registered Attorney, authorizing him to sell their land. This General Power of Attorney is not on record but it finds mention in the sale deed dated 12-4-2004 discussed *infra*.

15. Vide registered sale deed dated 12-4-2004 the aforementioned 7 co-owners (Iqbal & others) are said to have conveyed only half acre (2420 sq. yds.) land to Taj Roshan. On behalf of the said vendors, the sale deed is executed by their Attorney, Akram Khan, whose signature appears also for the vendee, Taj Roshan. Per Form VII (at page 233 of Suit No. 533/2016) it appears that these 7 co-owners had inherited a small area in some of the Subject Survey No.s.

By a registered Power of Attorney dated 17-4-2004 executed at Karachi, Taj Roshan is said to have appointed Akram Khan as her Attorney for the aforesaid half acre conveyed to her by the aforesaid 7 co-owners.

16. On 14-3-2006, one Abdul Razzak filed Suit No. 316/2006 in this Court against Taj Roshan for specific performance of an oral sale agreement coupled with a receipt dated 4-2-2005, allegedly made with Akram Khan as Attorney of Taj Roshan, for the sale of 36-20 acres out of the Subject Survey No.s. Such agreement is denied by Taj Roshan and Akram Khan.

17. Per the plaintiffs of both suits, on 9-5-2008, Akram Khan as Attorney of Taj Roshan, entered into a sale agreement with Zain Khan (plaintiff of Suit No. 533/2016) agreeing to sell him 6 acres 7 ghuntas of Survey No. 262 (out of the Subject Survey No.s). This sale agreement is in the vernacular and is said to have been executed by the parties at Mardan.

18. Civil Petitions No. 446-K, 447-K and 473-K of 2008 before the Supreme Court of Pakistan are *inter alia* challenges by Shehri, the LDA and the erstwhile CDGK to the authority of the Government of Sindh to make allotments of land in Scheme No. 42 Hawksbay and that too at throw-away prices. In the said proceedings, the Honourable Supreme Court by order dated 4-12-2008 and again on 19-2-2009 restrained the creation of third party interest in the land of Scheme No. 42 Hawksbay. The aforesaid petitions before the Supreme Court arose to challenge an order dated 5-09-2008 passed by the High Court of Sindh in C.P. No. D-1277/2003 dismissing the petition before it while observing that the KDA

was not the owner of the land of Scheme No.42 Hawksbay. Per learned counsels for the LDA the said restraining orders passed by the Honourable Supreme Court are still operating.

19. In Suit No.316/2006 (discussed in para16 above), on 1-11-2010 this Court directed the parties of the said suit to maintain status quo (in respect of the Subject Survey No.s). Apart from Taj Roshan, the other defendant in the said suit was the Province of Sindh sued through the Secretary Land Utilization Department, *albeit* it was ex-parte. Per Taj Roshan, she remained unaware of Suit No.316/2006. While orders dated 2-4-2007 and 1-11-2010 passed in Suit No.316/2006 record the presence of an Advocate said to be representing the 'defendant No.1' therein, viz Taj Roshan, it was contended by learned counsel for the plaintiffs that Taj Roshan never appointed such Advocate. It appears that the vakalatnama of such Advocate was subsequently discharged on 15-12-2010.

Be that as it may, the order of status quo dated 1-11-2010 passed in Suit No.316/2006 was scribed by a note on 5-10-2011, in the record of rights of the Subject Survey No.s as is evident from Form VII on the record (at page 249 Part II of Suit No.533/2016).

20. Per the defendants Tajawal Khan and Muhammad Khan, vide a General Power of Attorney dated 18-4-2011 registered on 6-5-2011 (under Registered No.1347, Sub-Registrar Gadap Town, Karachi), Taj Roshan had authorized Tajawal Khan to sell/transfer the Subject Survey No.s, which he did to Muhammad Khan by a lease deed dated 27-8-2011 (registered on 22-9-2011 under Registered No.994, Sub-Registrar Kemari Town, Karachi), followed by a Rectification Deed dated 8-2-2012 (bearing Registered No.115, Sub-Registrar Kemari Town, Karachi). Taj Roshan denies that she executed any General Power of Attorney in favor of Tajawal Khan.

Interestingly, Muhammad Khan to whom Tajawal Khan had sold the Subject Survey No.s, was also one of the marginal witnesses to the General Power of Attorney said to have been executed by Taj Roshan in favor of Tajawal Khan.

21. By a *Mukhtarnama Khas* (a Special Power of Attorney made in the vernacular) dated 18-5-2013, Akram Khan acting as Attorney of Taj Roshan pursuant to the *Mukhtarnama* dated 5-11-1998 (discussed in para13 above), is said to have appointed Aain Khan, the son of Zain Khan,

as Sub-Attorney of Taj Roshan but only to the extent of 6 acres 7 ghuntas of Survey No.262(i.e. the land of the sale agreement dated 9-5-2008). This Special Power of Attorney is said to have been executed at Takhtbai, Mardan; it is not registered, and it appears to authorize Aain Khan only to deal with litigation in respect of the said 6 acres 7 ghuntas.

22. On 5-9-2015, Pakistan Baoxin filed Suit No.1531/2015 before the Senior Civil Judge Karachi West against the LDA to challenge charges being claimed from it by the LDA for granting permits to construct on a part of the Subject Survey No.s. In the said suit, the application of Pakistan Baoxin to restrain the LDA was dismissed,so also an appeal, because Pakistan Baoxin was unable to demonstrate its title to the Subject Survey No.s, which title as noted *infra* was conveyed to it subsequently. When the LDA tried to stop Pakistan Baoxin from raising unauthorized construction on part of the Subject Survey No.s, FIRs were lodged by both sides against use of unlawful force.

23. On 5-11-2015, Suit No.316/2006 (discussed in paras16 and 19 above) filed by Abdul Razzak against TajRoshan,was withdrawn unconditionally, and with that the status quo order dated 1-11-2010 passed therein came to an end. Per learned counsel for the plaintiffs, the timing of the withdrawal of this suit and the immediate conveyance of the Subject Survey No.s manifests collusion between the said Abdul Razzak, Muhammad Khan and Pakistan Baoxin.

24. By a sale deed dated 13-11-2015registered on 7-12-2015 under Registered No.412, Book No.I, Sub-Registrar Kemari Town, Karachi,Muhammad Khan conveyed the Subject Survey No.s to Pakistan Baoxin. This conveyance is challenged by the plaintiffs.

Suit No.533/2016 and Suit No.858/2017 and the case of the plaintiff therein

25. On 29-2-2016, Zain Khan filed Suit No.533/2016for the relief of specific performance against Taj Roshan and her Attorney Akram Khan in respect of the sale agreement dated 9-5-2008 (discussed in para17 above), which is for 6 acres 7 ghuntas of Survey No.262 (one of the Subject Survey No.s), along with possession of such land. This sale agreement is in the vernacular and is said to have been executed by the parties at Mardan. Per the sale agreement, the total sale consideration agreed was Rs.17,74,000 of which Rs.12,00,000 was paid, and the

balance of Rs.5,74,000 was payable on the conveyance of the land to Zain Khan, the date for which was fixed as 3 months from the date of the sale agreement (i.e. on or about 9-8-2008). It is Zain Khan's case that it was in December 2015 when Akram Khan (Attorney of Taj Roshan) agreed to perform the sale agreement and that is when the parties thereto discovered that on the basis of a fake General Power of Attorney purporting to have been executed by Taj Roshan in favor of Tajawal Khan, Tajawal Khan executed a sale deed conveying the Subject Survey No.s, which included the land of the sale agreement, to Muhammad Khan, who then executed a sale deed conveying the same to Pakistan Baoxin (as detailed in paras 20 and 24 above). Therefore, Zain Khan also prays for cancellation of the General Power of Attorney allegedly given by TajRoshan to Tajawal Khan. It is not the case of Zain Khan that he was ever put in possession of the land of his sale agreement.

26. On 31-3-2017, Taj Roshan and her Attorney Akram Khan, filed Suit No.858/2017. Taj Roshan denies that she executed any Power of Attorney in favor of Tajawal Khan and thus prays for its cancellation along with a prayer for declaration of her title to, and possession of the Subject Survey No.s. She also prays that the conveyance of the Subject Survey No.s by Tajawal Khan to Muhammad Khan and by him to Pakistan Baoxin be declared fraudulent. Mr. Imran Chawla, the Chief Executive of Pakistan Baoxin has also been sued in his personal capacity, as it is the case of the plaintiffs that he (Imran Chawla) is the master-mind behind the alleged fraud. Suit No.858/2017 has been filed by TajRoshan and Akram Khan themselves, not through any Attorney, and they had appeared in person to verify the plaint. TajRoshan and Akram Khan admit the sale agreement dated 9-5-2008 with Zain Khan. Therefore, they support the case of Zain Khan in Suit No.533/2016.

27. Mr. Ahmed Hussain, Advocate for the plaintiffs in both suits, submitted that the following demonstrates that the General Power of Attorney alleged to have been executed by Taj Roshan in favor of Tajawal Khan is fake: (a) that the Subject Survey No.s comprise of 41-6 acres and not 44-20 acres as stated in the impugned General Power of Attorney; (b) that TajRoshan being a *purda* observing lady, could have never interacted with a *na-mehram* Tajawal Khan, so as to give him the impugned General Power of Attorney; (c) that the CNIC purporting to be of Taj Roshan attached to the impugned General Power of Attorney is fake which is evident from the expiry date mentioned therein, which expiry date



is different from the one appearing in TajRoshan's real CNIC; (d) that though Taj Roshan remained unaware of Suit No.316/2006 (discussed in paras 16, 19 and 23 above), the status quo order dated 1-11-2010 passed therein was scribed by a note in the record of rights of the Subject Survey No.s, and in spite of knowledge of such status quo order, the Mukhtiarkar Mauripur issued his NOC to the sale/transfer of the Subject Survey No.s, thereby allowing Tajawal Khan to convey the same to Muhammad Khan vide sale deed 27-8-2011. Mr. Ahmed Hussain concluded that this was a fit case to exercise suo motu powers of appointing a Receiver over the Subject Survey No.s as was done in the case of *Ehsanullah Khan Afridi v. Province of Sindh*, 2007 YLR 2204 which was upheld in PLD 2007 Kar 527.

Case of the defendants Tajawal Khan, Muhammad Khan and Pakistan Baoxin

28. Mr. Mukesh Kumar Karara, Advocate for Tajawal Khan, Muhammad Khan and Toor Khan (the latter being one of the marginal witnesses to the General Power of Attorney impugned by TajRoshan), contended that *Mukhtarnama* and Power of Attorney said to be executed by Taj Roshan in favor of Akram Khan, and the sale agreement dated 9-5-2008 in favor of Zain Khan (documents discussed in paras 13, 15 and 17 above), are all fabricated documents; that Taj Roshan was a resident of Karachi, not Mardan; that TajRoshan was not a *parda* observing lady and had appeared in person before the Sub-Registrar to execute the General Power of Attorney in favor of Tajawal Khan authorizing him to sell the Subject Survey No.s. He therefore contended that the conveyance/transfer of the Subject Survey No.s by Tajawal Khan to Muhammad Khan, and then by the latter to Pakistan Baoxin were all beyond doubt.

Mr. Mukesh Kumar Karara Advocate then argued that before adverting to any other issue, Suit No.533/2016 by Zain Khan has to be first tested on the main relief prayed therein which was for specific performance of the alleged sale agreement dated 9-5-2008. He submitted that the said sale agreement shows that a date of 3 months had been fixed therein for its performance, thereby attracting the first part of Article 113 of the Limitation Act, 1908 and making Suit No.533/2016 hopelessly time barred. In support of such submission he relied on the cases of *Muhammad Ramzan v. Muhammad Qasim* (2011 SCMR 249); *Haji Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247); and *Maulana Nur-Ul-Haq v. Ibrahim Khalil* (2000 SCMR 1305).

29. Despite challenges to its title and its possession over the Subject Survey No.s, Pakistan Baoxin has chosen to remain away from these proceedings, even after the Nazir of this Court inspected the land in its possession. Only when bailable warrants for the presence of its Chief Executive, Mr. Imran Chawlawere issued on contempt applications moved by the plaintiffs, did he appear in Court. While he filed a counter-affidavit to the contempt application, he did not file any reply on behalf of Pakistan Baoxin.

Case of the Lyari Development Authority (LDA):

30. Mr. Ishrat Zahid Alvi, learned counsel for the LDA in Suit No.533/2016, after taking me through the documents discussed in paras 4 to 7 and 10 and 11 above, contended that the land of Scheme No.42 Hawksbay, which includes the Subject Survey No.s, vested in the KDA ever since notifications dated 12-7-1984 and 2-8-1984; that the notification dated 12-7-1984 had categorically prohibited any sale of the said land without permission of the KDA; that vide letter/order dated 11-11-1986 the Commissioner Karachi on the orders of the Governor and Chief Minister Sindh, had acknowledged KDA's title to the land of Scheme No.42 Hawksbay, and had prohibited the Deputy Commissioners and the District Registrar from recording any mutation, transfer or conveyance of such land; that pursuant to notification dated 11-1-1996, the land of Scheme No.42 Hawksbay now vests in the LDA; therefore none of the other parties to the suits can claim any title to the Subject Survey No.s and the question of specific performance of the sale agreement between Taj Roshan and Zain Khan cannot arise until the title of Taj Roshan is decided. He prayed that pending decision in these suits, the land of the Subject Survey No.s be preserved and all documents purporting to create or record any title thereto should be impounded.

31. Mr. Ali Akbar Poonawala, learned counsel for the LDA in Suit No.858/2017, adopted the arguments of Mr. Ishrat Zahid Alvi Advocate. After taking me through the documents discussed in paras 7, 8, 10 and 12 above, he submitted that the *khatedars* who sold/transferred the Subject Survey No.s to Taj Roshan, were only occupants thereof and not owners, who had been entered in the record of rights on the basis of claims of *HaqQabza* which was unlawful, especially when by an earlier letter/order dated 16-11-1992 the Secretary Land Utilization Department had

prohibited all entries in Village Form VII on the basis of *HaqQabza*. Therefore, he submitted that since the *khatedars* of the Subject Survey No.s had no title to the Subject Survey No.s they could not have passed on any title to Taj Roshan, and all subsequent transfers of the Subject Survey No.s was unlawful. To support a restraint on any further transfer of the Subject Survey No.s, Mr. Ali Akbar Poonawala also relied on the proceedings and orders of the Honourable Supreme Court discussed in para18above.

Findings/decisionin Suit No.533/2016:

32. For TajRoshan's title to 6 acres 7 ghuntas of Survey No.262, that was agreed to be sold to him vide sale agreement dated 9-5-2008, Zain Khan relies on a registered sale deed dated 12-4-2002 (discussed in para15 above). But that sale deed only conveyed half acre (2420 sq. yds) land to Taj Roshan. It is strange that Zain Khan entered into a sale agreement without having any clue of the title of Taj Roshan, so also that TajRoshan and Akram Khan do not object to the suit for specific performance by Zain Khan after nearly 8 years when they were not paid the agreed sale consideration in full. Be that as it may, since the sale agreement had fixed a date for its performance, which was 3 months from the date of the sale agreement, and Suit No.533/2016 for its specific performance was filed on 29-2-2016, Mr. Ahmed Hussain Advocate was asked to explain how the relief for specific performance was within time when Article 113 of the Limitation Act, 1908 prescribes a limitation of 3 years from "The date fixed for performance...". The replies/submissions of Mr. Ahmed Hussain Advocate, and my findings thereon are as follows.

33. Mr. Ahmed Hussain's first submission was that the period of 3 months fixed in the sale agreement dated 9-5-2008 did not commence from the date of the sale agreement but from the date the seller was ready with the documents of conveyance, which readiness was expressed by Akram Khan as Attorney of Taj Roshan in December 2015 – hence the suit was within time. To support such submission he relied upon the case of *InamNaqshband v. Haji Sheikh Ijaz Ahmed* (PLD 1995 SC 314), in the facts of which case the Honourable Supreme Court had observed that the mention of "one week" in the sale agreement for the performance thereof would not be a "date fixed" within the meaning of Article 113 of the Limitation Act, 1908. But the facts of that case were that the seller did in fact perform his promise by executing the sale deed within one week as

agreed, but its registration could not go through due to the refusal of the Sub-Registrar on the ground that by that time the father of the seller had sued the seller for a declaration that the property in question was of the father, not of the seller, and the sale of the property was stayed. The purchaser then appealed the refusal of the Sub-Registrar which was dismissed. The purchaser then waited for a decision in the father's suit, and when that was eventually dismissed, the purchaser filed suit for specific performance of the sale agreement. The purchaser's suit for specific performance was resisted by the seller *inter alia* on the ground of limitation, and the suit was dismissed as time-barred while computing limitation from the expiry of 'one week' mentioned in the sale agreement. However, the purchaser's second appeal before the High Court succeeded essentially on the ground that in computing limitation, the period during which the property remained under restraint in the suit of the seller's father, was to be excluded (by virtue of section 15 of the Limitation Act, 1908), thus making the purchaser's suit within time. Such decision of the High Court was upheld by the Honourable Supreme Court in the case of *InamNaqshband*, the ratio of which is in its para 6, which is essentially that where the seller had never refused to perform the sale agreement within the agreed period of one week, and had in fact executed the sale deed as agreed, the cause of action for the purchaser's suit for specific performance matured only on the dismissal of the suit of the seller's father. It was in this context that it was observed that the first part of Article 113 of the Limitation Act, 1908 would not be attracted.

The case of *InamNaqshband* was noticed by the Honourable Supreme Court in the cases of *Muhammad Ramzan v. Muhammad Qasim* (2011 SCMR 249) and *Haji Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247) and it was distinguished on its peculiar facts. In the case of *Muhammad Ramzan* (2011 SCMR 249) the Honourable Supreme Court held where a sale agreement mentioned only the month for performance and not the specific date of the month, that would not take the case out of the words "date fixed" in the first part of Article 113 of the Limitation Act, 1908, and that in such a case the last date of the month would be the terminal date.

Coming to the facts of Suit No.533/2016, my reading of the sale agreement dated 9-5-2008 is that the date for payment of the balance sale consideration was fixed at 3 months from the date of the sale agreement, and that was the date by which the seller (Akram Khan as Attorney of Taj Roshan) had promised to make ready all documents to effect conveyance to the buyer, Zain Khan. There being no ambiguity that a date for

performance of the sale agreement was a “date fixed” in the sale agreement, the case attracted the first part of Article 113 of the Limitation Act, 1908 i.e. limitation commenced from the date so fixed.

34. Mr. Ahmed Hussain’s second submission was that in the circumstances of the case, the second part of Article 113 of the Limitation Act, 1908 would apply, i.e. limitation would run from the date of refusal to perform, and since TajRoshan and Akram Khan have never refused to perform the sale agreement, the suit was within time. I find that the law laid down in the case of *Haji Abdul Karim v. Florida Builders (Pvt.) Ltd.* (PLD 2012 SC 247) completely negates such submission, in which case it has been held by the Honourable Supreme Court that where the case falls within the first part of Article 113 Limitation Act, 1908 “...*the limitation shall commence forthwith from the date fixed by the parties, notwithstanding the alleged failure, inabilities of the respondent to perform its part of the obligations, the alleged interaction between the parties, their conduct, which shall have no relevance in the context of the limitation of those suits covered by the first part of the Article.*” It is not Zain Khan’s case that there was an acknowledgment to perform the sale agreement so as to extend the period of limitation under section 19 of the Limitation Act, 1908; nor is there any such acknowledgment on the record made by Taj Roshan or her Attorney AkramKhan within the initial period of limitation so as to attract section 19 of the Limitation Act, 1908.

35. Mr. Ahmed Hussain’s third submission was, that in any case the sale agreement dated 9-5-2008 could not have been performed by Taj Roshan between 1-11-2010 and 5-11-2015 during the subsistence of the status quo order in Suit No. 316/2006 – in other words, the period during which the status quo order subsisted in Suit No.316/2006 is to be excluded for computing limitation of 3 years by virtue of section 15(1) of the Limitation Act, 1908 which provision reads:

“15. Exclusion of time during which proceedings are suspended: (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.”

However, I find that the aforesaid submission is completely contrary to the case set-up by Taj Roshan who has specifically pleaded in para 8 of the plaint of Suit No.858/20017 that she was never served with summons of Suit No.316/2006 and that she only became aware of it when she was

served with Suit No.533/2016. Zain Khan also did not, and could not have had knowledge of Suit No.316/2006, nor is it the case of Zain Khan in his Suit No.533/2016 that the sale agreement dated 9-5-2008 could not be performed due to a status quo order passed in Suit No.316/2006. In fact, the plaint of Suit No.533/2016 categorically states that the parties became ready to perform the sale agreement dated 9-5-2008 in December 2015, and the cause of action of the suit is also premised on the date when the parties are said to have been ready to perform i.e. in December 2015.

36. Therefore, for reasons discussed in paras 33 to 35 above, I hold that the relief for specific performance in Suit No.533/2016 became time-barred after 9-8-2011. However, the matter does not end here. The next point that needs to be considered, though not raised by learned counsel for the plaintiff, is whether the other reliefs claimed by Zain Khan in Suit No.533/2016 i.e. for possession of the land of the sale agreement, and for cancellation of the General Power of Attorney dated 18-4-2011 (registered on 6-5-2011) allegedly given by TajRoshan toTajawal Khan,can be sustained independent of the relief of specific performanceeven if those reliefs, going by the averments in the plaint, are not taken to be time-barred.Such a question arose in the case of *Dr. Muhammad JavaidShafi v. Syed Rashid Arshad* (PLD 2015 SC 212)wherein the Honourable Supreme Court held (the majority view) that in cases where a plaintiff has joined several causes of action and has sought multiple remedies, it is not an absolute rule that the remedy entailing the maximum period of limitation should be resorted to for the purposes of determining limitation for the whole suit; rather such legal aspect should be examined by taking into consideration the facts of each case and particularly the frame and the object of the suit; and to quote from the said judgment, “*And thus it should be determined what main relief is being sought by the plaintiff and whether the other remedies asked for (may be carrying larger period of limitation) are ancillary, dependent and consequential to the main relief. ....The true test for determining the period of limitation is to see the true effect of the suit and not its formal or verbal description.*”

In the case of *Dr. Muhammad JavaidShafi supra* the Supreme Court concluded that where the main relief was one for cancellation of a document under section 39 of the Specific Relief Act, 1877, the relief for possession of immovable property subject matter of such document was merelyancillary, incidental and dependent upon the primary relief, and where the main relief for cancellation was time-barred, the incidental and

consequential relief of possession, even if attracting a larger period of limitation, had to go away along with it.

37. Applying the law laid down in the case of *Dr. Muhammad Javaid Shafisupra* to the facts of Suit No.533/2016, I find that the frame of the suit is ineluctably that for the relief of specific performance of the sale agreement dated 9-8-2008. The relief sought for possession of the land of the said sale agreement is ancillary and consequential, while the relief sought for cancellation of the registered General Power of Attorney allegedly given by Taj Roshan to Tajawal Khan is dependent on the main relief for specific performance. In no way can Zain Khan maintain Suit No.533/2016 for any of the other reliefs absent the relief of specific performance, for then he would have no cause of action. Thus, notwithstanding that the other reliefs sought in Suit No.533/2016 may not be time-barred, if the relief for specific performance is time-barred, the entire suit is time-barred. Mr. Ahmed Hussain Advocate had attempted to argue that limitation would not shield a fraudulent act, viz. the fraud committed through the General Power of Attorney allegedly given by Taj Roshan to Tajawal Khan; but again, the challenge to the alleged fraud being premised on the relief of specific performance is not an independent one. In any case, while such submission may be advanced for the case of Taj Roshan in Suit No.858/2017 against whom such fraud is alleged to have been committed, it cannot, as already discussed, be advanced for the case of Zain Khan in Suit No.533/2016. In fact, even if Taj Roshan is willing to perform the sale agreement with Zain Khan, that can only be done if she succeeds in her Suit No.858/2017.

**38. Therefore, for reasons discussed in paras 33 to 37 above, I hold that Suit No.533/2016 is time-barred, and it is accordingly dismissed under section 3 of the Limitation Act, 1908 along with CMA No.66/2017 therein.**

Findings in Suit No.858/2017:

39. It is not disputed that the land of the Subject Survey No.s is within Scheme No.42 Hawksbay that is at least 'Controlled Area' of the LDA. That much is also established by the fact that Akram Khan, as Attorney of Taj Roshan had addressed letters to the LDA requesting the LDA to consolidate the Subject Survey No.s, so also by the fact that Pakistan Baoxin had sought permits from the LDA to construct on a part of the Subject Survey No.s, *albeit* such permits, per the LDA, were not granted.

The defendant No.10 in Suit No.858/2017, ex-MukhtiarkarMauripur, had appeared in Court and had also submitted that the Subject Survey No.s fall within the Controlled Area of the LDA. However, apart from that, the record so far does not show whether the land of Scheme No.42 Hawksbay was ever allotted to the KDA or the LDA. Be that as it may, even ignoring LDA's claim of title to the Subject Survey No.s, the title of Taj Roshanthereto, and that of her predecessors-in-title,is not free from controversy for the following reasons:

(a) From the discussion in para 8 above it appears that the *khatedars* from whom Taj Roshan is said to have purchased the Subject Survey No.s, had been entered as owners thereof in Village Form VII on 19-4-1995 on the basis of claims of *HaqQabza*, i.e. possession as opposed to ownership.From the discussion in para 7 above it appears that the making of such entries in the Village Form VII (record of rights) on the basis of *HaqQabza* had already been prohibited by the Secretary Land Utilization vide letter/order dated 16-11-1992 unless there was substantial evidence to demonstrate *HaqQabza* prior to 1947. There is nothing on the record so far to show what proceedings or evidence convinced Revenue Officials or the Land Utilization Department to allow said *khatedars* to be entered as owners of the Subject Survey No.s in the record of rights;

(b) As discussed in para 10 above, on 2-9-1996, in a meeting Chaired by the Secretary Housing & Town Planning Sindh between officials of the KDA, LDA, Commissioner Karachi, Land Utilization Department, Survey Department and other Revenue officials, it had been categorically decided that allotments of land in Deh Lal Bakhar (where Subject Survey No.s are situated) made by the Board of Revenue on the basis of claims of *HaqQabza* will not be entertained as no agricultural land was available in Deh Lal Bakhar;

(c) The registered conveyance deeds dated 2-7-1995 and 27-11-1997 mentioned in Form VII whereby Taj Roshan is said to have purchased the Subject Survey No.s from the aforesaid *khatedars*,have not been produced by her so far.

40. The following shows that the case of Tajawal Khan and Muhammad Khan is also not free from doubt. In their written statement in Suit No.858/2017, Tajawal Khan and Muhammad Khan in order to substantiate their version that the *Mukhtarnama* and Power of Attorney discussed in paras13 and 15 above, given by TajRoshan to Akram Khan (her husband) for the Subject Survey No.s, were fake documents, have averred that Taj Roshan had at the time of appointing Tajawal Khan as her



Attorney, caused a public notice 'disowning' the *Mukhtarnama* and Power of Attorney said to have been given by her to Akram Khan. But such public notice in fact acknowledges that Taj Roshan had given the *Mukhtarnama* and Power of Attorney to Akram Khan for the Subject Survey No.s but that he misused them and thus w.e.f. 10-4-2011 she has revoked the said *Mukhtarnama* and Power of Attorney. In other words, whether it was the real Taj Roshan or not who appeared before the Sub-Registrar to execute the General Power of Attorney in favor of Tajawal Khan, the fact that both Tajawal Khan and Muhammad Khan rely on the aforesaid public notice, both of them admit that they had knowledge that the *Mukhtarnama* and Power of Attorney, said to be registered documents (discussed in paras 13 and 15 above) had been given by Taj Roshan to Akram Khan to sell the Subject Survey No.s and yet they proceeded to deal in the Subject Survey No.s and that too directly with Taj Roshan.

41. While observations made in paras 39 and 40 above are only tentative, not to prejudice the case of the parties at trial, the following events are convincing for passing appropriate orders on CMA No.5381/2017 in Suit No.858/2017:

(a) As noted in para 18 above, in Civil Petitions No. 446-K, 447-K and 473-K of 2008 the Honourable Supreme Court of Pakistan had by order dated 4-12-2008 and then again on 19-2-2009 restrained the parties from creating any third party interest in the land of Scheme No.42 Hawksbay. The second order dated 19-2-2009, in my view, enlarged the scope of earlier restraining order in stating that "*.....any attempt to effect allotments or transfer by any of the parties in its own favor or any other person could be treated as contempt*" (underlining supplied by me for emphasis). The parties so restrained included the Government of Sindh and the Board of Revenue Sindh, which would by implication include all Revenue Officials and Registrars of properties under them lest the restraint becomes ineffective. The lease deed dated 27-9-2011 registered on 22-9-2011 under Registered No.994, its Rectification Deed dated 8-2-2012 under Registered No.115, and the sale deed dated 13-11-2015 registered on 7-12-2015 under Registered No.412 (discussed in paras 20 and 24 above), whereby the Subject Survey No.s were conveyed/transferred by Tajawal Khan as Attorney of Taj Roshan to Muhammad Khan, and then by the latter to Pakistan Baoxin, were apparently registered by the Sub-Registrar Kemari Town, Karachi, contrary to the Honourable Supreme Court's restraining order dated 19-2-2009.

(b) As discussed in paras 19 and 23 above, in Suit No.316/2006, on 1-11-2010 this Court directed the parties of the said suit to maintain status quo which was in relation to the Subject Survey No.s, and such status quo order was intact till 5-11-2015 when the said suit was withdrawn. The existence of the said order of status quo was scribed by a note, it appears on 5-10-2011, in the record of rights of the Subject Survey No.s (as is evident from Form VII at page 249 Part II of Suit No.533/2016) and this note appears to have been signed by Mr. Abdul Sattar Hakro as Mukhtiarkar (Revenue), Kemari Town, Karachi. Yet an entry was made in the same Form VII on 18-2-2012 to record the Rectification Deed dated 8-2-2012 bearing Registered No.115 to supplement the lease deed dated 27-8-2011, executed by Tajawal Khan in favor of Muhammad Khan in respect of the Subject Survey No.s. This entry dated 18-2-2012 was also made under the signatures of the same Mukhtiarkar (Revenue), Mr. Abdul Sattar Hakro. Even if the note of the status quo order had not been made in Form VII by 27-8-2011 when the lease deed dated had been executed, it was there when entry dated 18-2-2012 was made, and that gave every cause to the said Mukhtiarkar to stay his hands and to bring the said documents to the notice of his superiors or to the Court in Suit No. 316/2006.

42. The events noticed in paras 41(a) and (b) above manifest that the Subject Survey No.s have been changing hands despite restraining orders passed both by the Honourable Supreme Court of Pakistan and this Court. For that, and for reasons discussed in paras 39 and 40 above, **I am inclined to pass the following order on CMA No.5381/2017 in Suit No.858/2017 :**

(a) The defendants 5 and 6 (Pakistan Baoxin Metal Industry Co. Pvt. Ltd. and its Chief Executive Imran Arshad Chawla) are restrained from selling, leasing, letting, alienating or encumbering in any manner any part of the Subject Survey No.s (Survey No.s 5, 8, 223, 224, 225, 258, 259, 260, 261, 262 and 263 in Deh Lal Bakhar, Hawksbay area, District West, Karachi) and from raising any sort of construction thereat. This restraint does not prevent the LDA from taking action against Pakistan Baoxin Metal Industry Co. Pvt. Ltd. for any unauthorized construction on any part of the Subject Survey No.s, which action shall be strictly in accordance with law.

(b) The defendants 5 and 6 (Pakistan Baoxin Metal Industry Co. Pvt. Ltd. and its Chief Executive Imran ArshadChawla) are directed to deposit the originals of the following documents in respect of the Subject Survey No.s with the Nazir of this Court until further orders of this Court:

- (i) General Power of Attorney dated 18-4-2011 registered on 6-5-2011 under Registered No.1347, Sub-Registrar Gadap Town, Karachi, said to have been executed by Taj Roshan in favor of Tajawal Khan – Annexure P/4 to the written statement of defendants 2 to 4;
- (ii) Lease deed dated 27-8-2011 registered on 22-9-2011 under Registered No.994, Sub-Registrar Kemari Town, Karachi, alongwith its Rectification Deed dated 8-2-2012 bearing Registered No.115, Sub-Registrar Kemari Town, Karachi, executed by Tajawal Khan as Attorney of Taj Roshan in favor of Muhammad Khan - Annexure P/3 and P/2 to the written statement of defendants 2 to 4;
- (iii) sale deed dated 13-11-2015 registered on 7-12-2015 under Registered No.412, Book No.I, Sub-Registrar Kemari Town, Karachi, executed by Muhammad Khan in favor of Pakistan Baoxin Metal Industry Co. (Pvt.) Ltd. – Annexure P/1 to the written statement of defendants 2 to 4.

(c) The plaintiffs (TajRoshan and Akram Khan) are also restrained from dealing with the Subject Survey No.s and are directed to deposit the originals of the following documents in respect thereof with the Nazir of this Court until further orders of this Court:

- (i) Registered General Power of Attorneys dated 23-8-1995, 18-1-1996, and 18-3-2003 whereby the *kahtedars* of the Subject Survey No.s are said to have appointed Akram Khan as their Attorney;
- (ii) Registered conveyance deeds dated 2-7-1995 and 27-11-1997 said to have been executed by the *khatedars* of the Subject Survey No.s in favor of Taj Roshan;
- (iii) Registered *Mukhtarnama* dated 5-11-1998 said to have been executed by Taj Roshan in favor of Akram Khan at Takhtbai, Mardan – Annexure A/1 to the plaint;
- (iv) Registered sale deed dated 12-4-2004 for half acre (2420 sq. yds.) said to have been executed by some of the *khatedars* of the Subject Survey No.s in favor of Taj Roshan;
- (v) Registered Power of Attorney dated 17-4-2004 executed at Karachi, by Taj Roshan in favor of Akram Khan for the aforesaid half acre – Annexure A/2 to the plaint;

(d) The Board of Revenue Sindh is a necessary party to Suit No.858/2017. Thus in exercise of powers under Order I Rule 10(2) CPC it is added as defendant No.20. The Plaintiffs are directed to file an amended title accordingly within 1 week and to issue summons to the said defendant No.20.

(e) the defendant No.9 (MukhtiarkarMauripur) is restrained from making any entry in the record of rights of the Subject Survey No.s, from issuing any NOC for sale of the Subject Survey No.s, and from issuing any extract of Village Form VII with regards thereto until further orders, and he is directed to make a note of this order in the record of rights of the Subject Survey No.s;

(f) the defendant No.11 (Sub-Registrar Kemari Town, Karachi) is restrained from registering any document in respect of the Subject Survey No.s until further orders;

(g) The defendant No.1 (Province of Sindh) and the defendant No.20 (Board of Revenue Sindh) is directed to ensure compliance of directions in paras(e) and (f) above by issuing necessary instructions.

CMA No.5381/2017 is disposed off in the above terms.

CMA No.17818/2017 in Suit No.533/2016 and CMA No.17812/2017 in Suit No.858/2017 (contempt applications):

43. By an interim order dated 3-1-2017 passed in Suit No.533/2016, the parties were directed to maintain status quo, and by an interim order dated 3-4-2017 passed in Suit No.858/2017, the parties were restrained from creating any further third party interest in the Subject Survey No.s. In Suit No.533/2016 inspection orders were passed on 3-1-2017 and again on 18-1-2018. The Nazir's inspection reports are dated 11-1-2017 and 3-2-2018, the latter being filed in both suits.

Mr. Ahmed Hussain Advocate for the plaintiffs filed contempt applications in both suits against Mr. Imran ArshadChawla and Mr. Habibullah Khan (Chief Executive and Manager respectively of Pakistan Baoxin), and against Mr. SattarHakro, ex-MukhtiarkarMauripur,alleging contempt of court. His precise submission was that construction was being raised on 6 acres 7 ghuntas of the land despite interim orders, and to substantiate his averments he relied upon photographs taken prior to the interim order dated 3-1-2017 passed in Suit No.533/2016 and thereafter.

From these photographs it appears that after interim orders (a) a portion of a boundary wall was erected;(b) some girders were erected seemingly for a shed; (c)rocks and boulders were being transported to and dumped on the land by heavy machinery. This was explained by Mr. Imran ArshadChawlain Court by stating that a part of the boundary wall had collapsed during rains and had to be re-erected; that the shed proposed was not a permanent structure, but to cover equipment from rain; and that the rocks and boulders were not meant for any construction on the land but were to be supplied to M/s. KANUPP under a contract of supply. On the directions of the Court, Mr. Imran Chawla submitted an affidavit stating that pending suit he will not raise any construction nor create any third-party interest on the land in question. On being satisfied with the explanation offered and the said affidavit, and finding no violation by Mr. Abdul Sattar(ex-MukhtiarkarMauripur) of at least the interim order dated 3-1-2017 in Suit No.533/2016, I do not find cause to proceed further with CMA No.17818/2017 (in Suit No.533/2016),which is accordingly dismissed with the observation that the affidavit filed by Mr. Imran ArshadChawla in Suit No.533/2016 will also be read also for Suit No.858/2017.

As regards CMA No.17812/2017 in Suit No.858/2017, none of the alleged contemnors have created third party interest in the land after the interim order dated 3-4-2017. Therefore, CMA No.17812/2017 in Suit No.858/2017 is also dismissed.

Dated: 16/04/2018

J U D G E