

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1438 of 2017

Date	Order with Signature of Judge
	1. For hearing of CMA No.11399/17 (U/O 39 Rule 2(3) CPC)
	2. For hearing of CMA No.9089/17 (U/O 39 Rule 1 & 2 CPC)

09.04.2018

Mr. S. Zafar Ali Shah, Advocate for Plaintiff.
Mr. Mushtaq A. Memon alongwith Mr. Qazi Shunail Ahmed,
Advocates for Defendants No.6 to 9.
Ms. Rukshanda Waheed, State Counsel.

Muhammad Junaid Ghaffar J. This is a Suit for Declaration and Permanent Injunction and CMA No.9089/2017 has been filed under Order 39 Rules 1 & 2 CPC, seeking restraining orders against Defendants No.6 to 11 from attempts to illegally encroach and take possession of the Suit land of village Khuda Buksh Brhi over 30 Acres Deh Thoming Tapo Songal NC No.105 Scheme-33, Malir Karachi till the final disposal of this Suit. CMA 11399/2017 is for allege contempt of order dated 1.6.2017.

Learned Counsel for the Plaintiff submits that Plaintiff and other owners of their respective properties were granted Sanads for plots of 120 Sq. Yds each in the said village for which an order was issued on 20.12.1997 under the Sindh Gothabad (Housing Scheme) Act, 1987. According to the learned Counsel though the private Defendants owned 16 Acres of land as claimed; but they have illegally and unlawfully encroached upon the land of the Plaintiff's village, whereas, after passing of interim orders on 01.06.2017, a wall has been constructed in defiance of such order, for which a contempt application has also been filed. Learned Counsel submits that on 04.12.2017 inspection was ordered by appointing the Nazir as Commissioner with certain directions but such inspection has not been carried out in letter and spirit of the said order, against which objections have also been filed. Per learned Counsel the Nazir instead of associating the concerned officials has merely relied upon the statement of one Tapedar, and therefore, the report cannot be relied upon. According to the learned Counsel insofar as the Plaintiff's claim is concerned, there

is no dispute to that effect that earlier a Petition bearing C.P No.D-525/2016 was filed, in which the concerned Mukhtiarkar and Deputy Commissioner acknowledged that the village is existing lawfully and the residents have been allotted proper Sanads. In these circumstances, learned Counsel has prayed that private Defendants be restrained from acting any further as they have apparently encroached upon the land of the Plaintiff's village.

On the other hand, learned Counsel for the private Defendants has referred to Para-7 of the Plaint and submits that the grievance of the Plaintiff is only to the extent of area reserved for the Amenities/Aasaish and not in respect of their individual plots for which allegedly Sanads were issued. According to the learned Counsel in the order dated 20.12.1997 neither any area for "Aasaish" has been specified nor Survey number or for that matter Na-Class number has been specified, therefore, there is no claim left in the field. Per learned Counsel the order passed on 01.06.2017 was also a qualified order, whereas, pursuant to directions of this Court inspection has been carried out with the assistance of concerned officials and it has come on record that his clients are in possession of the property owned by them and for which a wall has already been constructed . According to the learned Counsel the Defendants' land is different and distinct duly notified and available with the record of the officials and has no concern with the land being claimed by the Plaintiffs for "Aasaish". Learned Counsel has prayed for dismissal of the listed application as well the contempt application.

I have heard both the learned Counsel and perused the record. Insofar as the case of the Plaintiff is concerned he claims to be the General Secretary of the village in question and also owns a plot of 120 Sq. Yds. as per Sanad dated 31.12.2012. In the Plaint in Para-7 and Para-9, it has been alleged that private Defendants in collusion with the officials of the Government and people in power have tried to encroach upon the land of the amenities of the village in question and on 10.05.2017, they attempted to demolish the boundary wall with ulterior motives and intentions. Similar statement has been made in Para-9 regarding cause of action and it is the precise case in the plaint that the Defendants have

encroached upon the land reserved for amenities. At the very outset, I may observe that in Order dated 20.12.1997 issued by the Deputy Commissioner, Malir while exercising powers conferred under Section 3 read with Section 8 & 10 of the Sindh Gothabad (Housing Scheme) Act, 1987, it has been clearly mentioned that an area of Nil Acres from Na-Class No. Nil, Deh-Nil, Karachi Taluka, Malir is reserved for Amenities/Aasaish of above village. Such order is not in dispute and in fact has been relied upon by the Plaintiff while filing this Suit. It clearly reflects that no area was ever allotted for "Aasaish" purposes, therefore, claim in the plaint is itself based on no documents. As regards the land owned by other villagers is concerned, firstly it may be observed that no one else has come before the Court to assert their right in respect of such land nor any application has been filed to treat this Suit as a Suit in a representative capacity. When learned Counsel was confronted to this aspect he had no answer but to state that some other Counsel was earlier representing the Plaintiff. As to the inspection, it may be observed that it has come on record that the land of the private defendants is separate and distinct and on which a wall is already constructed. To the question that allegedly after passing of the interim order, the Defendants have encroached upon the land of the plaintiff, it may be observed that the Plaintiff himself chose not to seek any inspection at the time of filing of instant Suit and it is only on application of the private defendants that the inspection was carried out. Such conduct on the part of the Plaintiff does not in any manner advances his case. It is further noted that the officials have filed their response alongwith documents including map of the area, which clearly reflects that firstly, the land of the private Defendants is distinct and is within a proper boundary wall and secondly even the documents of the Plaintiff and other villagers have been disputed. In fact the case as set up in the plaint is in respect of the area allegedly reserved for amenity / aasaish, whereas, there is no supporting document in respect of such alleged grant or allotment. In these circumstances it will be too harsh an order to restraint the private defendants from utilizing their land for which they are holding proper title as well as possession. Such relief cannot be granted to a party at the stage of injunction in such facts of the case.

In view of such position, I am of the view that no prima-facie case is made out nor balance of convenience lies in favour of the Plaintiff and irreparable loss, if any, will be caused to the private Defendants and not to the Plaintiff, if any injunctive relief is granted. Insofar as the contempt application is concerned again on the basis of record available and the inspection carried out, no case of contempt is even otherwise made out. Accordingly, both these applications are dismissed.

Judge

Ayaz