

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 877 of 2007

**PRESENT:**

**Mr. Justice Arshad Hussain Khan.**

*Nisar Ahmed Japanwala*

*Vs.*

*The Director General Karachi Development Authority*

Plaintiff: Mustafa H. Jivanjee  
through Mr. Muhammad Aqil, Advocate

Defendant: The City District Government Karachi  
through Mr. S. M. Ali Azam, Advocate.

Date of Hg: 06-11-2017

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** The present suit was filed by the plaintiff against the defendant for Declaration, Possession and Permanent Injunction with the following prayers:-

- i) *declare that the Public Notice advertise/publish in Daily Dawn dated 3.4.2007 in which the defendant allegedly demanding Rs.445/- per sq. yds., towards outer development charges from the plaintiff to be paid within 30 days from the date of publication of public Notice dated 3.4.2007 failing which threaten to cancel the allotment of the suit property and imposition of penalties and fines marked as Annexure P-11 is arbitrarily, malafide completely without jurisdiction, unlawful, unconstitutional, void ab-initio and of no legal effect.*
- ii) *Possession of the suit property viz. FL-6, Sector 2-C, measuring 1 Acre, situated in Corridor Development Project Scheme No.33, Karachi, to be handed over to the plaintiff.*

*In case of failure of the defendant to hand over the possession of the suit property to the plaintiff an alternate plot of some size in the same scheme or any other scheme may be allotted and deliver possession thereof to the plaintiff.*

- iii) *permanently injunction restraining the defendant, their servants, agents, representatives, assigns or any person(s) acting through or under them from demanding outer development charges and/or cancelling, imposing of penalties and fines and/or allotting to any other person(s) in respect of the suit property viz. FL-6, Sector 2-C, measuring 1 Acre, situated in Corridor Development Project Scheme No.33, Karachi, directly or indirectly in any manner whatsoever.*
- iv) *award any other relief.*
- v) *award any costs.*

2. Brief facts leading to the filing of present suit as stated in the plaint are that the plaintiff is builder/developer, engaged in the business of construction of house and flats. The defendant published notice dated 19.11.1983 in daily Dawn inviting applications from the construction companies having licence for the construction of housing units of 700 sq. ft. or below covered area for people of low income group. The plaintiff in response to the said publication had applied for the allotment of flat site for one acre in Gulistan-e-Jauhar Karachi through pay order towards 10% costs of the land. The defendant subsequently, instead of allocating the plot in Gulistan-e-Jauhar, scheme No.36, allocated FL-6, Sector 2-C, measuring 1 Acre, situated in Corridor Development Project Scheme No.33, Karachi (the "suit property"). The plaintiff subsequently pursuant to the terms of allocation of suit property deposited further payment of 40% to the defendant to make the total payment of 50% towards cost of land. The defendant after receiving above said amount issued allotment order and later on the plaintiff had deposited remaining 50% to make the 100% towards cost of land including outer development charges to the defendant KDA. It is also stated that the defendant was repeatedly requested orally as well as in writing to demarcate the suit property and hand over possession of the suit property to the plaintiff, however, the defendant failed to fulfill its part of obligation under the term of allotment and instead issued public notice dated 10.04.2007 for all Cooperative Societies, Builders and Private allottees of Scheme No.33 to make payment of outstanding dues in respect of outer development charges within 30 days in order to avoid cancelation of the plots and imposition of penalties and fines. The plaintiff having no other remedy filed the present suit.

3. Upon notice of the present proceedings, the defendant filed its written statement wherein while taking preliminary objections in respect of the maintainability of the present suit as the reliefs claimed by the plaintiff are barred under Sections 42 and 56 of the Specific Relief Act, has denied allegations levelled in the plaint. It has been stated in the written statement that the possession of the suit property

could not be handed over to the plaintiff on account of heavy encroachment, however, the defendant had not disputed the facts regarding claim of allotment, payment of cost of the land.

4. On pleadings, this Court on 27.4.2009 framed the following issues:-

1. *Whether the Defendant failed to demarcate and hand-over the possession of the suit property to the plaintiff due to illegal and unauthorized heavy encroachment by the Afghan refugees in accordance with the allotment order No1024 dated 01.10.1986, if so, tis effect?*
2. *Whether the Defendant failed to allot in exchange or any alternate plot in lieu of suit property?*
3. *Whether the public notice published in daily Dawn dated 03.04.1997 annexure P-11, whereby the Defendant illegally and malafidely demanding Rs.445/- sq. yards towards revised outer development charges in arbitrarily manner from the plaintiff which do not pertains to defendant KDA lands?*
4. *Whether the suit is not maintainable in law?*
5. *Whether the relief claimed is barred under Section 42 and 56 of Specific Relief Act?*
6. *What should the decree be?*

5. Where after, by consent of the parties, the Commissioner for recording of evidence was appointed who after completing the commission submitted his report dated 06.10.2011. From perusal of Commissioner`s report, it appears that the plaintiff in support of its stance in the case examined himself as **[Exh.P]**, and produced the following documents:-

| <i>No.#</i> | <i>Documents</i>                     | <i>Exhibit</i> |
|-------------|--------------------------------------|----------------|
| 01.         | Affidavit in evidence                | P-1            |
| 02.         | Builders Licence                     | P-1/1          |
| 03.         | Public notice dated 19.11.1985       | P-1/2          |
| 04.         | Proforma for Allotment of Land       | P-1/3          |
| 05.         | Acknowledge receipt dated 26.12.1985 | P-1/4          |
| 06.         | Allocation Letter dated 10.08.1986   | P-1/5          |
| 07.         | Payment Challan dated 17.9.1986      | P-1/6          |
| 08.         | Allotment letter dated 17.05.1987    | P-1/7          |

|     |   |                 |
|-----|---|-----------------|
| 09. | Payment challan dated 10.09.1987  | P-1/8           |
| 10. | Two letters dated 19.10.2000 & 03.07.2001 addressed to the Governor of Sindh              | P-1/9, & P-1/10 |
| 11. | Public notice published in Dawn Tuesday April 3, 2007 demanding outer development charges | P-1/11          |

6. The plaintiff was subsequently cross-examined by the counsel for the defendant, which for the sake of ready reference is reproduced as under:-

“It is incorrect to suggest that I have not approached to the defendant after allotment of the suit property. I came to know about the encroachment on the property when I went to see the site of the suit property. I had complained about the said encroachment to Mr. Shamim who was then Director of the KDA. It is correct to suggest that I made prayer in the suit seeking alternate plot in lieu of my allotted plot. It is incorrect to suggest that there is no provision in SLGO 2001 for alternate plot. It is incorrect to suggest that I did not approach to any other person for removal of encroachment and alternate plot except two applications to the Governor of Sindh. Vol: says that I contacted Mr. Major Shamim who the Director of KDA at that time for the above purpose. I have no objection if the Defendant offers me an alternate plot after lifting the ban of same size in the same Scheme or other Scheme and possession thereof delivered to me. It is incorrect to suggest that I filed this false Suit.”

7. After the evidence of the plaintiff, the defendant examined its witness namely; Abdul Karim Paliyo, Additional District Officer (CCC) KDA Wing, as [Exh.D-1] who produced the following documents:-

| <i>No.#</i> | <i>Documents</i>  | <i>Exhibit</i> |
|-------------|---|----------------|
| 01.         | Affidavit in evidence   | D-1            |
| 02.         | Authority letter  | D-1/2          |
| 03.         | Allotment Order of Fl-1, Sector 5-L, North Karachi Township, allotted in lieu of affected FL-14, Sector 1-C, Corridor Scheme No.3, Karachi.                     | D-1/3          |
| 04.         | Certified true copy of allotment order of FL-14, Sector 1-C, Corridor Scheme No.33, Karachi.  | D-1/4          |
| 05.         | Certified true copy of allotment order of FL-1/A, Sector 5-K, North Karachi Township in lieu of Flat site No.FL-3, Sector 19-C, Corridor Scheme No.33, Karachi. | D-1/5          |
| 06.         | Certified true copy of allotment order of FL-3, Sector 19-C, Corridor Scheme No.33, Karachi.  | D-1/6          |

|     |   |       |
|-----|---|-------|
| 07. | Certified true copy of noting portion regarding missing of file of FL-2, Sector 5-L, North Karachi Township | D-1/7 |
|-----|---|-------|

The said witness of the defendant was subsequently cross-examined by the counsel for the plaintiff, which for the sake of ready reference is reproduced as under:-

“It is correct to suggest that it is a fact that the defunct KDA had invited applications for allotment of one acre flat site in Gulistan-e-Johar from the builder for housing of 700 sq. ft. to low income group people, vide public notice published in daily dawn dated 19.11.1985. It is correct to suggest that it is a fact that the plaintiff has applied for allotment of flat site and deposited Rs.1,16,160.00 (Rs: one lac sixteen thousand one hundred and sixty only) through pay order towards 10% cost of the flat site. It is correct to suggest that it is fact that the defunct KDA had allocated FL-6, Sector 2-C measuring 1 acre situated at Corridor Scheme No.33, Karachi and received balance 50% (occupancy value) Rs.3,67,840.00 (Rupees three lac sixty seven thousand eight hundred and forty only) through pay order. It is correct to suggest that the defunct KDA had allotted FL-6, Sector 2-C at Corridor Scheme No.33, Karachi and received full and final balance sale price of Rs.5,14,250.00 in 1987. It is correct to suggest that the defunct KDA has not handed over the possession or demarcate the flat site in question despite repeated requests in writing. Voluntarily says that the same could not be done due to the heavy encroachment by the Afghan refugees. It is correct to suggest that it is fact that no alternate plot has been given so far to the plaintiff. It is correct to suggest that vide public notice date 3.4.2007 published in daily dawn by the project direct Scheme No.33, Karachi demanding therein the outer development charges. Voluntarily says that the said publication was no related with KDA land. It is correct to suggest that in corridor scheme No.33, 197 flat sites were allotted to the different allottees/builders in different sector. It is correct to suggest that Sector 1-C and 2-C of corridor scheme No.33 are under heavy encroachment by Afghan Refugees. It is not in my knowledge that M/s. Khursheed Construction Company who has been allotted FL-14 Sector 1-C corridor scheme No.33 was given in exchange of FL-1 Sector 2-C corridor scheme No.33, and M/s. Amra Limited who has been allotted FL-3, Sector 19-C corridor scheme No.33 exchanged with FL-3 sector 5-L and FL-1/A Sector 5-K in North Karachi township respectively in the alternate. It is incorrect to suggest that the defendant had given the above said alternate plots to M/s. Khursheed Construction Company M/s. Mona Engineering Limited and M/s. Amra limited and I say that my reply is same as already stated above. It is correct to suggest that the defendant maintains the records of the suit property as well as the record of M/s. Khursheed Construction Company, M/s. Mona Engineering limited and M/s. Amra limited in respect of their respective plots. I am ready to produce the detailed report of the records of M/s. Khursheed Construction Company, M/s. Mona Engineering Limited and M/s. Amra limited of their respective plots if available before the learned Commissioner on the next date as an exhibit in the record of this suit. I say that at present there is ban by Government of Sindh on the grant of alternate plot headed by Chief Minister of Sindh and if the ban is removed by the Government of Sindh the

defendant shall be in a position to grant the alternate plot to the plaintiff. It is correct to suggest that the defendant has not given any alternate plot to the plaintiff besides the order and direction given by the Provincial Ombudsman. Voluntarily says that due to non-availability of plot and ban of the Government of Sindh the plot is not given.”

[Emphasis supplied]

**Recalled and reaffirmed:**

“I produce certified true copy of allotment order of FL-1, Sector 5-L, North Karachi township, allotted in lieu of affected FL-14, Sector 1-C, corridor scheme No.33, Karachi, as Ex.D-1/3. I produce certified true copy of allotment order of FL-14, Sector 1-C, corridor scheme No.33, Karachi as Ex.D-1/4. I produce certified true copy of allotment order of FL-1/A Sector 5-K, North Karachi township in lieu of flat site No.FL-3, sector 19-C, corridor scheme No.33, Karachi as Ex.D-1/5. I produce certified copy of allotment order of FL-3, Sector 19-C, corridor Scheme No.33, Karachi as Ex.D-1/6. I produce certified true copy of noting portion regarding missing of file of FL-2, Sector 5-L, North Karachi township as Ex.D-1/7.”

**Cross examination by Mr. Mohammad Aqil for plaintiff.**

“It is correct that FL-1, Sector 5-L as Ex.D-1/3 has been allotted in lieu of effected FL-14 sector 1-C corridor scheme No.33 Karachi as an alternate. It is correct to suggest that FL-1/A Sector 5-K, north Karachi township in lieu of FL-3 sector 19-C, corridor scheme No.33 as Ex.D-1/5, has been allotted in alternate. It is incorrect to suggest that FL-2 sector 5-L has been allotted in lieu of FL-3 sector 2-C, corridor scheme No.33 Karachi. Voluntarily say that the record site of FL-2, sector 5-L, NKT, is not available in the record. It is correct to suggest that if the Honourable Court is pleased to direct to allot an alternate plot to the plaintiff then the defendant CDGK shall allot alternate plot to the plaintiff subject to the availability and approval of the competent authority.”

[Emphasis supplied]

8. Learned counsel for the plaintiff during the course of his arguments while reiterating contents of the Plaint and the affidavit of evidence of the plaintiff has urged that the defendant-KDA neither disputed the documents produced by the plaintiff nor disputed the cost of the suit land paid by the plaintiff; the stance of the defendant in the case is that the possession of the suit property could not be handed over to the plaintiff on account of heavy encroachment and further that at present there is ban imposed by Government of Sindh, on the grant of alternate plot and if the ban is removed by the Government of Sindh, the defendant shall be in a position to grant the alternate plot to the plaintiff. The learned Counsel for the plaintiff during the course of

his arguments has also contended that the ban imposed by the government on the grant of alternate plot is not applicable to the case of the plaintiff as according to the Notification No. PS/DS(B)/S&GAD/4808/98 dated 20<sup>th</sup> July, 1998 issued by Government of Sindh, “Exchange of plots” shall be banned except in respect of the scheme of Oversees Pakistanis, encroached plots and such allied cases of hardship subject to final approval by the Chief Minister.” The learned counsel has placed on record the Notification No. PS/DS(B)/S&GAD/4808/98 dated 20<sup>th</sup> July, 1998 issued by Government of Sindh along with the order dated 06.04.2010 passed by the learned Division bench of this Court in CP No. D-2358 of 2008, some other related property and has contended that clause (i) of the said notification has been considered by the learned Division Bench of this Court. Learned counsel for the defendant did not controvert such position. Learned counsel further urged that pursuant to the terms of allocation [Exh.P-1/5] and allotment [Exh. P-1/7] the plaintiff is entitled to be put into possession of the suit plot and execution of 99-years lease in respect thereof. He further contended that the plaintiff being allottee having paid entire cost of land is entitled for the specific performance of the allotment letter [Exh. P-1/7]. Furthermore, the plaintiff being allottee coupled with payment of entire cost of land/suit plot, is not merely a licensee but has a right in rem in respect of plot allotted to him. Learned counsel further urged that in view of admitted factual and legal position the plaintiff is entitled to decree as prayed. Learned counsel in support of his stance in the case has relied upon the following case law:

- (i) **PLD 1975 Karachi 373-** *Haji NOOR MUHAMMAD and others v. KARACHI DEVELOPMENT AUTHORITY and 2 others*
- (ii) **PLD 1975 Karachi 608-** *NASIRA SULTANA v. HABIB BANK LTD. and others*

9. Whereas on the other hand learned counsel for defendant-KDA has contended that the possession of the suit property could not be handed over to the plaintiff on account of heavy encroachment, further there is ban on the alternate/exchange of plot, however, he did not dispute the facts regarding claim of allotment, payment of cost of the land.

10. I have heard the learned counsel for the parties and also perused the material available on the record as well as the evidence of the parties and my findings on the issues are as follows:-

**Issues No.4 and 5:**

Since these issues are connected with each other and related to the very maintainability of the case, therefore, the same are taken up together first. These issues have been framed on the basis of preliminary objections taken up by the defendant in its written statement. Though none of the counsel for the parties advanced arguments on these issues, yet I feel appropriate to address these issues.

11. The question of '*Maintainability of lis*' and 'Entitlement to relief' are two distinct things. '*Maintainability of lis*' is a legal question, inter alia, related to a legal character of the person under the provisions of Section 42 of Specific Relief Act, which requires any person entitled to any legal character or to any right as to any property, may institute suit against any person denying or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled. It would thus be safely stated that the law authorizes a person to seek enforcement of his right to any property by instituting a suit against a person denying his right or title. Relevant judicial precedents are *Parveen Begum and another v. Shah Jehanand another (PLD 1996 Karachi 210)* and *Abdul Razzak Khamosh v. Abbas Ali and others(PLD 2004 Karachi 269)*. Whereas '*Entitlement to Relief*' is the question of facts to be proved through the evidence.

At this juncture, it would be advantageous, for reference's sake to reproduce Sections 42 of Specific Relief Act as under:-

**“42. Discretion of Court as to declaration of status or right.** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.”



From the perusal of above provision, I am of the humble opinion that section 42 of the Specific Relief Act does give a right to institute a suit to any person who has any right as to any property. The 'legal character' is the most important aspect of a lis [case] and in absence thereof one cannot maintain his/her lis though filed for a relief, recognized under 'Specific Relief Act or under any other law' except matters, qualifying requirement of Section 91 of the C.P.C. Furthermore, such aspect of the case can also be decided in a summary manner at initial stages. However, the party seeking entitlement to relief has to prove his entitlement through evidence and such aspect cannot be decided in summary manner but after a proper trial.

12. In the present case, the plaintiff seeks specific performance of contract, entered into between the plaintiff, pursuant whereof allocation letter [**Exh.P-1/5**] and allotment letter [**Exh. P-1/7**] were issued by the defendant in favour of the plaintiff. This Court in case of **AROMA TRAVEL SERVICES (PVT.) LTD. through Director and 4 others v. FAISAL AL ABDULLAH AL FAISAL AL-SAUD and 20 (2017 Y L R 1579)** has expounded the terms 'contract' as follows: -

“12. In the Law Dictionary, 5th edition, page 291, Black has given the meaning of 'contract' as "an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter of a legal consideration, mutuality of agreement and mutuality of obligations." 'Contract' has been defined as "an agreement between two or more persons intended to create a legal obligation between them and to be legally enforceable". Ref: David M. Walker Oxford Companion to Law, 1980 Ed. P. 284. Anson has defined the word contract in the following words: "A contract consists in an actionable promise or promises. Every such promise involves two parties, a promisor and promisee, and an expression of a common intention and expectation as to the act or forbearance promised". Ref: Anson's Law of Contract, 23rd Edition, by A.G. Guest, 1971, p. 23. According to Treitel, "A contract is an agreement giving rise to obligations which are enforced or recognized by law. The factor which distinguishes contractual from other legal obligations is that they are based on agreement of the contracting parties. This proposition remains generally true, in spite of the fact that it is subject to a number of important qualifications." Ref: G.H. Treitel, The Law of Contract, Tenth Edition (1999) by Sir Guenter Treitel, Sweet & Maxwell (1999), p. 1. (Source: MOITRA'S Law of Contract & Specific Relief, Fifth Edition).

13. In the present case the defendant did not dispute the documents viz. allocation letter [Exh.P-1/5], allotment letter [Exh. P-1/7] issued by the defendant in favour of the plaintiff and payments [Exh. P-1/6 and Exh. P-1/8] made by the plaintiff in terms of the said documents towards the occupancy value/cost of the land in respect of the suit property, however, after the said payment when the plaintiff had asked for possession and execution of lease deed, the defendant for one reason or the other failed to perform his part of obligation under the contract, hence the plaintiff, having legal character, within its right to file the present case, however, the entitlement to the relief claimed in the suit will be decided on the basis of the evidence led by the parties. The upshot of the above discussion is that the suit is maintainable and hence these issues are answered accordingly.

14. **Issues No.1 and 2:**

Since these issues are also connected with each other therefore, the same are taken up together. From the perusal of record and the evidence, it appears that the defendant through public notice published in daily DAWN dated 19.11.1983 [Exh.P-1/2] invited applications from the construction companies having Builder's license for allotment of flat sites for construction of housing units of 700 sq. ft. or below covered area for people of low income group. The plaintiff in response to the said publication had applied [Exh. P-1/3] for the allotment of flat site in Gulistan-e-Jauhar Karachi through Pay Order towards 10% cost of the land [Exh.P-1/4]. The defendant pursuant to the application of the plaintiff, instead of allocating the plot in Gulistan-e-Jauhar, scheme No.36, allocated FL-6, Sector 2-C, measuring 1 Acre, situated in Corridor Development Project Scheme No.33, Karachi [Exh. P-1/5]. Subsequently, the plaintiff pursuant to the terms of allocation of suit property deposited further payment of 40% through pay-order [Exh.P-1/6] to the defendant to make the total payment of 50% towards cost of land/occupancy value in respect of suit property. The defendant after receiving above said amount issued allotment order [Exh.P-1/7] and later on the plaintiff had deposited remaining 50% through pay-order [Exh. P-1/8] to make the payment 100% towards cost of land including outer development charges to the

defendant KDA. It is also stated that the defendant was repeatedly requested to demarcate the suit property and hand over possession of the suit property to the plaintiff in this regard also addressed letters [Exh.P-1/9, and P-1/10] to Governor Sindh also, however, the defendant failed to fulfill its part of obligation under the terms of allotment and instead issued public notice in daily DAWN dated 03.04.2007 [Exh.P-1/13] whereby the allottees of Scheme No. 33 were directed to must pay their outstanding dues in order to avoid cancellation of allotment. Since, the plaintiff had already paid the entire amount in the year 1998, therefore, in order to avoid any adverse action at the hands of the defendant in respect of allotment of suit property filed the present proceedings. From the evidence of the plaintiff it is manifestly clear that the stance of the plaintiff remained unshaken. Whereas from the evidence, it appears that the defendant not only admitted the documents produced by the plaintiff and payments towards cost of the suit property but admitted the fact that the defendant awarded “alternate lands” to the other allottees whose plots were encroached upon. In this regard the witness of the defendant had also produced record of “alternate land” awarded to different allottees viz. [Exh.D-1/3, Exh.D-1/4, Exh.D-1/5, Exh.D-1/6 and Exh.D-1/7]. The witness of the defendant during his cross examination has admitted as follows :-

“I say that at present there is ban by Government of Sindh on the grant of alternate plot headed by Chief Minister of Sindh and if the ban is removed by the Government of Sindh the defendant shall be in a position to grant the alternate plot to the plaintiff. It is correct to suggest that the defendant has not given any alternate plot to the plaintiff besides the order and direction given by the Provincial Ombudsman. Voluntarily says that due to non-availability of plot and ban of the Government of Sindh the plot is not given.”

The learned counsel for the plaintiff during his arguments in respect of ban by the Government of Sindh on the grant of alternate plot has placed on record notification dated 20.07.1998 issued by Government of Sindh. For the sake of ready reference said notification is reproduced as under:

**“GOVERNMENT OF SINDH  
SERVICES & GENERAL ADMINISTRATION  
DEPARTMENT**

**Karachi dated 20<sup>th</sup> July , 1998**

No.PS/DS(B)/(S&GAD/4808/98 in supersession of previous notification No PS/DS(B)/(S&GAD/4496/98 dated 12<sup>th</sup> February 1998, Government of Sindh are pleased to take the following measures to check the unbalanced expansion of Karachi.

- (a) Regularization of high-rise buildings constructed in violation of the approved plan or without the approval of the plan shall not be allowed under any circumstances.
- (b) Permission/regularization of additional floors in addition to the approved plan shall not be allowed as the Karachi Building & Town Planning Regulations do not provide for grant of additional floors over and above the zoning regulation. Hence no relaxation shall be made under any circumstances whatsoever.
- (c) Building Plan; commercial industrial or residential shall be allowed strictly according to the plot ratio standard prescribed under the rules and regulations of the development Authority (and not through resolutions of Governing Body) and there shall be no relaxation made under any circumstances in respect of the plot ratio.
- (d) Commercialization of plots/land shall only be allowed on six roads which were declared commercial by Government of Sindh in 1989 viz.
  - (i) Shahrah-e-Pakistan (Teen Hati Bridge to Scheme-16)
  - (ii) University Road (Scheme 24/36)
  - (iii) Nazimabad "A" Road (Left side of Main Road towards Paposh Nagar and extension upto Lasbella Bridge on left side)
  - (iv) Rashid Minhas Road (Scheme 16/36)
  - (v) Shahrah-e-Faisal
  - (vi) Tariq Road and its extension upto Bahadurabad commercial Area and Sindhi Muslim Society upto Shahrah-e-Faisal.

Commercialization of any plot/land other than the six roads mentioned above shall not be entertained under any circumstances.

- (e) Provision of change of amenity plot into other uses already withdrawn by promulgation of Amendment in 1984 shall continue to be enforced and there shall be no relaxation allowed in respect of any amenity plot/land under any circumstances whatsoever.
- (f) Amalgamation of plots of 600 sq.yds or above shall not be allowed under any circumstances.
- (g) Regularization/allotment of land on the basis of possession shall not be allowed under any circumstances.
- (h) For restoration and defreezing of plots, a committee comprising the following is constituted:
  - a. Secretary, HTP Convenor
  - b. Secretary Law Member
  - c. Director General of concerned  
Development Authority Member
  - d. Member (LU), BOR  
(in case of revenue land only) Member
  - e. Member or Director  
Land Management (as the case be)  
Of the concerned Development  
Authority Secretary

The recommendations of the said Committee shall be submitted to the Chief Minister through the Minister HTP or Minister Revenue (in case of revenue land only) for final order.

- (i) Exchange of plots shall be banned except in respect of the scheme of Overseas Pakistanis, encroached plots and such allied cases of hardship subject to final approval by the Chief Minister.

2. The policy shall be reviewed after one year in the light of the then prevailing capacity and capability of City's civic and utility services and delivery system by a Committee comprising the following:

|     |  |                  |
|-----|--|------------------|
| 1.  | Minister for LG & RDD                        | Convenor         |
| 2.  | Minister for HTP                             | Member           |
| 3.  | Adviser to the Chief Minister<br>for finance | Member           |
| 4.  | Chief Secretary, Sindh                       | Member           |
| 5.  | Secretary to Chief Minister Sindh            | Member           |
| 6.  | Secretary, LG                                | Member           |
| 7.  | Secretary, Law                               | Member           |
| 8.  | Secretary, HTP                               | Member/Secretary |
| 9.  | Commissioner, Karachi Division               | Member           |
| 10. | Director General, KDA                        | Member           |

The Committee shall submit its recommendation to the Chief Minister for consideration/approval.

3. Total ban on allotment of plots of any category as already imposed shall continue to be enforced.

4. In order to ensure proper parking facilities by commercial buildings and to avoid traffic congestion, the approval of plans of the commercial buildings will be allowed in three steps viz. (i) upto plinth level, (ii) first floor level and (iii) final plan. If a violation of the approved plan is detected at any stage no further approval shall be granted.

CHIEF SECRETARY, SINDH”

[Emphasis supplied]

From perusal of the above notification, it appears that as per clause (i), of the said notification the ban on exchanged of plots was qualified as under:

- “ (i) Exchange of plots shall be banned except in respect of the scheme of Overseas Pakistanis, encroached plots and such allied cases of hardship subject to final approval by the Chief Minister.”

In the circumstance, and in view of admitted factual and legal position, I am of the opinion that the plaintiff has established his case. Accordingly, these issues are answered in affirmative.

15. **Issue No.3:**

Learned counsel for the plaintiff at the very outset of his arguments has made a statement that he does not press this issue, hence the same has become redundant.

16. **Issue No.6:**

In view of the findings of the above issues, I'm of the considered view that the Plaintiff has established his case, hence the present suit is decreed only in terms of the prayer clause (ii) with no order as to cost.

JUDGE

Karachi  
Dated :