

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1748 of 2000

Date	Order with Signature of Judge
	Present: Mr. Justice Nazar Akbar
Plaintiff	: Falah-e-Anjum (Registered Wholesales Vegetable Market, Through Mr. Masroor Alvi, Advocate.
Defendant No.1	: City District Govt. Karachi Through Mr. Sameer Ghazzanfer, Advocate
Defendant No.2	: Province of Sindh. (Nemo).
Defendant No.3	: The Deputy Coordination Officer. (Nemo).
Date of hearing	: 27.11.2017
Decided on	: 27.11.2017

JUDGMENT

NAZAR AKBAR, J. Plaintiffs had filed this suit for Declaration, Injunction and Compensation/Damages.

2. Brief facts of the case are that the plaintiff claiming to be a Welfare Association of the wholesalers of vegetables at Subzi Mandi situated at University Road, Karachi. Defendant No.1 was maintaining the wholesale fruit and vegetable market since 1962 as absolute and exclusive owner of the same. At the time of its establishment, Subzi Mandi was far away from main city but with the passage of time population of the city has increased many folds and the limits of the city have expanded in all directions. When the plaintiffs were allotted different spaces/plots for stalls in the market, it was virtually an open land which was divided into plots of various sizes. The plaintiffs not only developed the land and constructed stalls but also the lanes, roads, amenities, toilets and

other facilities at their own expenses. The plaintiffs being wholesalers had advanced huge amounts to growers of vegetables for timely supply of vegetable items to the wholesale dealers without any break to sale the same to the consumers through the retailers. Therefore, the plaintiffs have invested huge amounts of money and a colossal amount was thus in rotation. The plaintiffs are old allottees of defendant No.1 in respect of their stalls for sale of vegetable for the last about more than 30 years. They were regularly paying lease amount to defendant No.1 and under the terms of lease, the lease of the plaintiffs cannot be revoked arbitrarily without giving them any notice. The plaintiffs had carried on improvements from time to time as they were assured that the property will be transferred to them on ownership basis whenever such a decision is taken. Therefore, the plaintiffs have incurred expenses in connection with construction/ renovation/ improvement/ maintenance of stalls in the market as well as have developed amenities and have acquired a vested right in the property. All the improvements were made by the plaintiffs with the knowledge of the defendants. Defendants No.2 and 3 through deployment of Rangers force started threatening to interfere in the plaintiffs' right to the enjoyment of the suit property and it was proposed to forcibly evict the plaintiffs from the Sabzi Mandi, University Road, Karachi. It was reliably learnt that after forcibly evicting of the plaintiffs from the Sabzi Mandi, the defendants proposed to allot the land of Subzi Mandi either to some builders or to other private parties. Therefore, the plaintiff had filed instant suit and prayed for the following relief:-

- a. *That as per the policy of the Defendants, the Plaintiffs are entitled to the allotment of the existing land situated and comprising of the Subzi Mandi, University Road,*

P.S. New Town, Karachi situated within the revenue District of Karachi East;

- b. That the plaintiffs being lessees of the land and having improved upon the same with the knowledge, permission and acquiescence of the Defendants are entitled to the transfer of ownership of the said Subzi Mandi.*
- c. That the plaintiffs are entitled to an alternate accommodation prior to their evidence and uprooting from their respective possession of the Subzi Mandi, University Road, P.S New Town, Karachi within the revenue District of Karachi East and the Defendants be restrained from evicting the plaintiff.*
- d. That in case the Defendants use force against the plaintiffs and forcibly evict the and uproot the plaintiffs from their possession in Subzi Mandi, University Road, Karachi, and/or the plaintiffs are evicted from their present possession of the Subzi Mandi, then the plaintiffs are also entitled to compensation and/or damages in the sum of Rs.5 billion and the Defendants are liable to pay this amount to the Plaintiffs jointly and/or severally to be distributed by the Plaintiffs to the respective members, wholesalers of vegetable in the Subzi Mandi, University Road, Karachi.*
- e. Cost of the suit may be awarded.*
- f. Any other or further relief which may be deemed fit and necessary may be awarded.*

3. Defendant No.1/KMC had filed their written statement wherein they denied the claim of the plaintiff and admitted that KMC is maintaining the wholesale vegetable market near New Town Police Station, University Road since late 60s. comprising about 2422 stalls, thallas, plots, godowns etc of different sizes in the said market. These premises were let out to the wholesale vegetable and fruit sellers on monthly rental basis. Due to rapid growth in the population the city limits have expended in all directions. These markets have come within the residential areas and due to heavy rush traffic problems were being faced by the citizens, therefore, the Government felt need to shift the existing wholesale vegetable and fruit market to some other suitable place. Therefore, the department of Agriculture, Government of Sindh

through its Bureau of Supplies and Prices has acquired a piece of land near Toll Plaza at Super Highway for establishment of new wholesale vegetable and fruit market. The entire process of allotment of shops/stalls in the new market was handled by the said Bureau of Supplies and Prices. The allottees/tenants of KMC in the said market may have membership of the plaintiff's association. But the plaintiffs have not supplied the list of allottees/ tenants. The KMC had not initiated the issue of existing Sabzi Mandi at its own. Such decision has been taken by the Government of Sindh to be implemented through Bureau of Supplies and Prices.

4. Defendant No.1 denied that any lease was ever executed in favour of any of the members of the plaintiffs. The plaintiffs were merely tenants of the defendant/KMC and such tenancy was running on month to month basis and the same was liable to be cancelled/revoked on issuance of one month's notice from either side in terms of clause-4 of the Tenancy Agreement. Defendant No.1 also denied that the plaintiffs had carried out any improvements with the assurance that the property will be transferred to them on ownership basis. No such assurance was ever given and no such improvement had ever been made by the plaintiffs.

5. This court from pleadings of the parties on 22.3.2004 framed the following issues:-

1. *Whether the plaintiffs have any locus standi to file the suit?*
2. *Whether the plaintiffs are entitled for allotment of any stall/shop in New Subzimandi in lieu of any right or lien over any stall in old Sabzimandi, University Road at Karachi?*

3. *To what relief, if any, the plaintiff is entitled to?*

4. *What should the Judgment and Decree be?*

6. On 23.02.2007, Mr. Yousuf Moulvi, Advocate was appointed Commissioner for recording evidence of the parties. The plaintiff had filed his affidavit in evidence as Ex.P-1. He also produced various letters issued by KMC, Karachi as Ex:P-2 to P/62. He was cross examined by defence counsel and learned counsel for the plaintiffs closed their side for evidence. Defendant No.1 has filed affidavit-in-evidence of one Muhammad Akmal Dar, Deputy District Officer in the Estate (Revenue) Department CDGK as Ex:D/1. He was cross-examined by the plaintiffs' counsel and their counsel closed the side of defendants for evidence.

7. I have heard learned counsel for the parties and perused the record. My findings on the above issues with reasons thereon are as under:-

8. Learned counsel for the plaintiff contended that they are Welfare Society and registered under the Societies Registration Act, 1860 bearing registration No.2338. The plaintiff was authorized to file the present suit for the benefits of members of the plaintiff association. He has referred to Ex: P/3.

9. Leaned counsel for the defendant contended that there does not exist association by the name and style of Falah Anjuman Whole Sale Vegetable Market any more nor the authorization is in accordance with law to file the instant suit. The suit is misconceived as it appears to be a case of individual grievances of the allottees holding occupancy rights of shops in the old Subzi Mandi. But all of them have already been accommodated in the new Subzi Mandi. The suit for damages cannot be filed by an

association for claiming variable compensations of the loss to its unidentified individual members. He has referred to **Section 4** of the **Societies Registration Act, 1660** which reads as follows:-

4. **Annual list of managing body to be filed.** *Once in every year, on or before the fourteenth day succeeding the days on which according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January a list shall be filed with the Registrar of Joint Stock Companies, of the name, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.*

10. After referring to the above provision of law he has referred to the cross examination of the plaintiff's witness in which the plaintiff has conceded that since 2000 no election of the Association has been held and even list of members of the Association has not been filed. The relevant admissions of the plaintiff's witness are reproduced below:-

*It is correct that **after the year 2000, no election of our association has been held/conducted.** It is correct that there was a stall in the market in my name also. Vol. says that the No. of stall was 155. **It is correct that I have not filed the byelaws of the association along with my affidavit in evidence. It is correct that I also have not filed the list of members of our association along with my affidavit-in-evidence.** It is correct that I with my affidavit in evidence, have not filed any documents to show that the members of my association, have paid their subscriptions/ contribution towards being a member of the association. Vol. says that we have received the subscription, and have issued the receipts to the individuals members. It is correct that **I have not filed with my affidavit in evidence any authorization from any of the tenant of the suit matter.** Vol. says I have acted/fulfilled the requirements of the byelaws of the association, prior to filing the suit and have completed them.*

11. I have examined Ex:P/3 which is a resolution signed by the President of the plaintiff association. It suffers from the basic requirements of authorization for filing a suit by a registered

society. It is an admitted position that the Byelaws of the plaintiff Association have not been filed by the plaintiff nor he has relied on the Byelaws to acquire authority to file the present suit. In this context, **Section 6** of the **Societies Registration Act, 1860** is also relevant, which is reproduced below:-

6. **Suits by and against societies.** *Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion: provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary or the trustees thereof, if any application to the governing body some other office or person be not nominated to be the default.*

Now on reading **Sections 4** and **6** together with evidence, the only conclusion one may draw is that in absence of Rules and Regulations of the plaintiff Society, the plaintiff as General Secretary cannot sue the defendants in the name of the president, chairman, or principal secretary for and on behalf of the plaintiff. In fact in a situation faced by the members of the plaintiff for which filing a suit was imperative, a meeting of governing body should have been called on the occasion of any unlawful action taken by the defendant against the members of the society to sue them. There is no reference to any General Body of its members in the resolution (Ex:P/3), the so-called authorization. And obviously it was not possible since for such governing body the record of the members of the society should have been maintained and filed with the Registrar of Joint Stocks Companies in terms of **Section 4** of the Societies Registration Act, 1860. Therefore, in view of the evidence and the provisions of law, the issue Nos.1 & 2 are

answered in negative. This suit has been incompetently filed. Even on merit, the plaintiff has no case, since he has not been able to produce any evidence that what was the total strength of the effectees of the association. Not a single member of the association has come forward to support the allegations of the plaintiff that he is member of the plaintiff and he has suffered any loss on account of any act of the defendant or the defendants have not provided him shop/stall in the new Subzi Mandi in lieu of his displacement from the old Subzi Mandi.

12. In view of the above, the plaintiffs are not entitled to any relief. It was hopeless suit, therefore, the same was dismissed by a short order dated 27.11.2017 and above are the reasons for the same.

J U D G E

Karachi,
Dated: _____.12.2017

*Ayaz Gul/PA**