

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.381 of 2003

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Mal Nigran Welfare Association,
Through Mr. Shahab Sarki, Advocate.

Defendant No.1 : Government of Sindh,
Through Ms. Leela Kalpana Devi, AAG

Defendant No.2 : Market Committee,
Through Mr. Parvez Ahmed Memon
Advocate.

Defendant No.3 : Allotment Officer, the Market Committee.

Date of hearing : 22.12.2017

Decided on : 19.01.2018

JUDGMENT

NAZAR AKBAR, J. Plaintiff had filed this suit for Declaration, Permanent Injunction and Specific Performance of unidentified contracts in which none of the defendants is a party.

2. Brief facts of the case are that the plaintiff claiming to be a Welfare Association comprising of just 46 members who allegedly worked as Mal Nigran at **Old Subzi Mandi**, University Road, Karachi. It is averred in the plaint that members of the plaintiff with the permission of KMC were occupying space along the outer-wall of wholesale vegetable market on payment of monthly charges. The new fruit and vegetable market was established at Super High Way under the management and control of defendant No.1, who appointed defendant No.2 as administrator incharge of the Market Committee and defendant No.3 under his advice was granting

allotments of plots/spaces and handing over possession thereof to the respective allottees. The Old Subzi Mandi was shifted to new fruit and vegetable market at Super High Way and initially no proper procedure was adopted and the members of the plaintiff association were allowed to occupy spaces measuring 40X40 ft. without allotment or possession orders. After some time the plaintiff association made repeated requests and representations to the defendants and defendant No.2 on **25.8.2000** and **25.10.2000** had put the case of the plaintiff association to higher authorities and recommended place/ plots for them in new Fruit & Vegetable Market. In the year 2002 the defendants became unhappy with the plaintiff association and instead of redressing their grievance they started giving threats of ejection to the various Mal Nigran, who are members of plaintiff association and, therefore, the plaintiff association filed a Civil **Suit No.998/2002** before this Court and on **01.10.2002** the said suit was disposed of with directions that the defendant No.2 will not take any action except according to law. The plaintiff claimed that the members of the plaintiff Association of Mal Nigran by virtue of their occupation of various plots at the **old Subzi Mandi** are legally entitled to have plots in **new Subzi Mandi** for their successful working as Mal Nigran. The plaintiffs have sent various applications to defendant No.1 and the Administrator Market Committee, Karachi for allotment of plots in their possession but no action has been taken by the defendants. Therefore, the plaintiff had filed the instant suit and prayed for the following relief(s):-

- a. *To direct the defendants to grant allotment as well as possession order to the plaintiffs and on payment of sale consideration of plots measuring 40X40 fts shown in the map in Yellow color and execute lease thereof.*

- b. *To grant permanent injunction thereby restraining the defendants not to dispossess the plaintiffs and/or create third party interest on the spaces/plots under the possession of the plaintiffs.*
- c. *To grant costs of the proceedings.*
- d. *To grant any further/better relief this Hon'ble Court deems fit and proper in the circumstances and the nature of the case.*

3. Defendant No.2 had filed their written statement wherein they denied the claim of the plaintiff that no documents have been filed by the plaintiff to substantiate their contention therefore the suit is not maintainable. Defendant No.2 denied that any of the members of plaintiff's association was allowed to occupy any place in the New Sabzi Mandi. It was alleged that some of the members of the plaintiff's association have encroached upon certain areas of land, located in New Sabzi Mandi. Defendant No.1 by statement dated **30.8.2014** adopted the written statement filed by defendant No.2.

4. While examining the record, I was unable to find issues in the Court file. However, on scrutiny of order sheet, it transpired that some other Welfare Associations have also filed separate but similar suits and the instant suit from **25.10.2004** till **26.2.2007** was listed/tagged with **Suit No.1204/2002** alongwith suit Nos.**720/2002** and **1247/2002**. During this period on **18.09.2006** an order was passed in **Suit No.1204/2002** whereby issues were framed and evidence was ordered to be recoded on commission and the order sheet dated **18.9.2006** in the instant suit reads "*same order as in suit No.1204/2002*". And the order was:-

“18.09.2006

With the consent of learned advocates for the parties following issues are framed:-

1. *Whether the suit as framed is maintainable or not?*
2. *Whether the plaintiff is entitled for allotment of plot in suit?*
3. *Whether the letter annexure ‘D’ to the memo of plaint has been issued by competent authority?*
4. *Whether the plot in question is part of the road and parking?*
5. *What should the decree be?*

Mr. Abdul Ghaoor, Advocate is appointed as Commissioner to record the evidence in the case. A sum of Rs.5000/- per witness may be paid tentatively by the plaintiff. Commission to be returned within four months.”

5. Before Mr. Abdul Ghafoor Qureshi, Commissioner for recoding evidence, the plaintiff examined Gohar Zaman Khan claiming to be the Chairman of Plaintiff Association who had filed his affidavit in evidence as Ex:P/1 and only four documents were produced as Ex:P/1 to P/4 in his examination-in-chief and one document was produced as Ex:P/5 during his cross examination. Plaintiff also examined Sultan Khan and Anju Khan, Members of Mal Nigran Association, who had filed their respective affidavit in evidences as Ex:P/6 and Ex: P/7 respectively. None of them has produced any document All the three witnesses of plaintiff Association were cross examined by the defence counsel and learned counsel for the plaintiffs closed their side for evidence. Defendant No.2 has filed affidavit-in-evidence of one Mujtaba Hussain Mirza, Administrator, Market Committee as Ex:D. He was cross-examined by the plaintiffs’ counsel and their counsel closed the side of defendants for evidence.

6. The commissioner's report with evidence was taken on record on **18.5.2009** and since then the suit has repeatedly been listed for final arguments. Prior to that, on **24.3.2008** plaintiff has filed an application (C.M.A No.2287/2008) under **Section 3 & 4** of the Contempt of Court Act. It has never been pressed by the plaintiff counsel since **25.2.2008** when Nazir's report of inspection has been taken on record. The Nazir report has not advanced the case of plaintiff and, therefore, they did not pursue the contempt proceeding against anyone though it was also repeatedly listed for hearing alongwith final arguments. Even otherwise, inspection of property by itself is not a ground to claim proprietary right in an immovable property. This being a case pending for more than **14** years and for the last 8 years after recording of evidence, therefore, on **18.12.2017** in obedience to the directive of the Hon'ble Chief Justice Mr. Justice Saqib Nisar that the judgment has to be announced by the Court within **30 days** after recording of evidence (case of *Messrs MFMY Industries and others ..Vs.. Federation of Pakistan and others* reported in **2015 SCMR 1550**), I passed the following order and adjourned the case to **22.12.2017** at 8:30 am.

18.12.2017

Gohar Zaman, plaintiff in person.

Mr. Pervaiz Ahmed Memon, advocate for the Defendant.

*The plaintiff, Gohar Zaman, is present and he says that he is unable to contact his lawyer. His lawyer is not attending his phone call. This case is listed for final arguments since 04.2.2010. On the last several dates neither the plaintiff was present nor his counsel. However, his counsel has sought dates through different advocates. On 7.4.2017 none was present for the plaintiff, today again only plaintiff is present and seeks time. In view of the following observations of the Hon'ble Supreme Court reported in **2015 SCMR 1550**, which reads as under:-*

After recording of evidence, is supposed to pronounce the judgment per order XX R 1(2), which reads; “the Court shall, after the case has been heard, pronounced judgment in open court, either at once or on same future day not exceeding thirty days, which due notice shall be given to the parties or their advocates”. The judgment thus has to be given by the trial Court within the prescribed period of 30 days, after the hearing of the case has been concluded. It may be relevant to mention here that with the commencement of the trial in a civil lis, the hearing of the case also starts. And with the conclusion of trial, the hearing also concludes. The conclusion of the trial or the hearing means that the parties have concluded and completed their evidence. There is no specific provision in the CPC, which confers the right upon the parties to make oral arguments before the trial Court, but per convention, the oral submissions of the parties are also heard, which exercise, however, must be concluded within 30 days time from the conclusion of the trial, as prescribed by law. If the parties, despite the opportunity granted by the court to make oral submissions, do not avail the same, the court is not bound to wait indefinitely for them and keep on adjourning the matter. This is highly deprecated and should be discouraged, rather the court should pronounce the judgment without their arguments and this (such judgment) shall not be in violation of the rules of hearing.

*As a matter of last chance, adjourned to **22.12.2017** at **8:30** a.m, on which date if nobody appears, judgment will be reserved or announced on the same day without further adjournment.*

Again on **22.12.2017** the counsel for the plaintiff, **Mr. Shahab Sarki, Advocate** was absent and his brief was held by **Mr. Abid S. Zuberi**, Advocate. Therefore, I have heard counsel for the defendants and reserved the suit for orders with the observation that the plaintiff is allowed to file written synopsis of arguments within **one** week. However, nothing turned out even in a week which ended on **29.12.2017** except a request that one week time may further be given for filing written synopsis. Even that extended week ended on **5.01.2018**, therefore, I examined the file in the light of the arguments advanced by the learned counsel for the

defendants on 22.12.2017 and perused the record. My findings on the above issues with reasons are as follows:-

Issue No.1, 2, 3 & 4

7. All the issues are interconnected, therefore, need not be examined separately.

8. Leaned counsel for the defendant contended that there does not exist any association of the plaintiff by the name and style of Mal Nigran Welfare Association any more nor the authorization to file the instant suit was in accordance with law. The suit is misconceived as it appears to be a case of individual grievances, if any, of the so-called allottees if at all any one was holding occupancy rights of stalls in the **Old Subzi Mandi**. He has referred to cross examination of plaintiff's witness in which he has conceded that there is no date of general body meeting in the proceeding filed by him. The relevant admissions of the plaintiff's witness pointed out by learned counsel for the defendants are reproduced below:-

*It is correct to suggest that the documents produced by me with my affidavit in evidence were neither annexed with the plaint nor filed with the list of documents after settlement of issues. **It is correct to suggest that there is no date of general body meeting in the proceeding filed by me.**-----*

*---. It is correct that license Ex:P/5 is in my name only. **It is correct to suggest that there is no number and the area of space mentioned in Ex:P/5. It is correct that this license was valid upto 30.5.2005 and thereafter, it has not been renewed.**-----*

*-----. It is correct that **we have not been issued any written letter but allowed orally to occupy those spaces. Brig. Ghulam Qadir and his team have allowed us to occupy these spaces. It is correct to suggest that the spaces allowed to us have no numbers. Voluntarily state that it is an open plot.***

The suit suffers from the basic requirements of authorization for filing a suit by a registered society. In this context relevant **Section 6** of the Societies Registration Act, 1860 (hereinafter the “Registration Act”) 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.*

The plaintiff has not filed even certificate of Registration of so-called plaintiff association and the perusal of Ex:P/3 said to be memorandum of association of Subzi Mandi Mal Nigran Welfare Association (the plaintiffs) does not confer any authority on the Chairman to file the instant suit. The occasion for filing the suit as alleged was shifting of Old Subzi Mandi from University Road to New Subzi Mandi at Super Highway. Therefore, in terms of **Section 6** of the Societies Registration Act, 1860 the shifting of the premises of Old Subzi Mandi has provided an “occasion” to sue the defendants for and on behalf of the society, the plaintiff was required **“to be appointed by the governing body for the occasion”**. The plaintiff has not filed any document with the plaint and even in the evidence referring to any meeting of governing body to meet a situation, if any, to approach the Court.

9. On merit, not a single allotment order in favour of any one of its identified or unidentified member in **Old Subzi Mandi** has been placed on record in evidence. Even the two witnesses (Ex:PW-2 and

PW-3), who claimed to be the members of Mal Nigran Welfare Association, have not filed any license or allotment order in their favour in **Old Subzi Mandi** to claim any allotment in the **New Subzi Mandi**. The plaintiffs themselves have claimed that they were occupying spaces alongwith outer wall of the wholesale vegetable market (para-2 of plaint). The spaces in possession of its members, if any, were neither demarcated nor the size of any space was mentioned in the plaint or any document. Mere claim of possession of a piece of land by itself does not entitle the occupant to claim ownership. Even otherwise the Government policy whereby Old Subzi Mandi was shifted from University Road was not to handover new Subzi Mandi at Super Highway to different welfare associations. There were at least five different registered Welfare Associations allegedly operating in Subzi Mandi. One **suit No.1748/2000** filed by Falah-e-Anjuman Wholesales Vegetable Market (Regd) was dismissed on merit by this Court on **27.11.2017**. Three other suits which were once tagged with the suit in hand had been filed by different Welfare Associations. Pending **suit No.720/2002** was filed by Anjuman Falah-o-Behbood wa Tahafiz-e-Huqooq Bioyparian-e-Subzi Mandi, other pending **suit No.1204/2002** was filed by Karachi Falah-e-Anjuman Association Wholesale Vegetable Market (Regd) and third pending **suit No.1247/2002** was filed by Anjuman Falah wa Bahbud Tahfiz Haqooq Bioyparian. In these three suits the plaintiffs have not led evidence since **18.9.2006**. Nor these suits have been listed in Court since **07.9.2009**. Be that as it may, the Old Subzi Mandi was not collectively allotted to all the welfare societies or any of the so-called Welfare Association. The Welfare Associations are not supposed to agitate strictly personal/

individual proprietary right in the immovable property on behalf of its members. In fact allottees in the Old Subzi Mandi were supposed to individually approach the defendants with proof of his occupation or possession of duly specified/marked piece and parcel of stall/space in the Old Subzi Mandi to claim similar stall/space in the New Subzi Mandi in accordance with Government policy. The plaintiffs in the instant suit have prayed for direction to the official defendants to perform multiple contractual duties such as to issue (1) allotment and (2) possession orders on payment of sale consideration of plots measuring 40x40 ft. (prayer clause "a"). The plaintiff has not filed any document showing any determined or even suggestive sale consideration offered, if at all, by any of the defendants and its even oral/verbal acceptance by the plaintiff in respect of the space claimed by them. A civil Court cannot pass a discretionary decree of specific performance in favour of a group of dubious/unidentified plaintiffs in respect of an unidentified immovable property on payment of an unidentified price/sale consideration against the defendants who are neither owner nor authorized to sale any immovable property. The plaintiffs have not placed on record even Government policy whereby Old Subzi Mandi was shifted to the New Subzi Mandi to assert any claim by indicating its violation. The annexure "D" does not create any legal rights in favour of plaintiff irrespective of the fact that it was issued by the competent authority or not. Strangely enough even photocopy annexure "D" was not produced in evidence.

10. Another important legal aspect of the case is that according to Ex:P/3 (Memorandum of Association), there should have been elections of the plaintiff association after every two years in terms

of **clause 17** of the Memorandum. The very continuation of the same body for last 18 years without compliance of its own bye-laws and mandatory requirement of **Section 4** of the **Registration Act** has no legal authority to represent unidentified group of individuals in Court. In this context relevant **Sections 4** of the Registration Act is reproduced below:-

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.***

The plaintiff Association even in 2003 when the instant suit was filed had seized to be a lawful body since it has never complied with the mandatory requirement of **Section 4** of the Registration Act. It goes without saying that an authority of an elected representative in the managing committee of an association registered under the Registration Act is governed by its Memorandum of Association and it is restricted to the tenure mentioned in its bye-law. Once the tenure to hold an office is expired, the holder of such office ceases to be representative of the association.

11. In addition to violation of **Section 4** of the Registration Act, on perusal of the Memorandum of Association (Ex;P/3) I have noticed that the plaintiff was not registered in accordance with law and it has never acted in furtherance of any of the “purpose” described in **Section 20** of the Registration Act. To appreciate the purpose of an Association (plaintiff) registered under the

Registration Act, the relevant document is always its Memorandum of Association which the plaintiffs had filed with the Registrar under **Section 1** of the Registration Act for its registration. The **purpose** of forming and registration of the plaintiff was required to be strictly in accordance with **Section 20** of the Registration Act. For convenience **Section 1** and **Section 20** of the Registration Act are reproduced below:-

1. **Societies formed by memorandum of association and registration:**— *Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies[4][* * *] form themselves into a society under this Act.*

20. **To what societies Act applies:**— *The following societies may be registered under this Act:- Charitable societies, [14][* * *] societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, [15][the diffusion of political education], the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.*

The perusal of Memorandum of the plaintiff (**Ex:P/3**) discloses only **13** aims and objects in **clause-3** of memorandum. However, except object at serial No.(3) none of the aims and objects falls within the purview of **Section 20** of the Registration Act. The plaintiffs' aims and objects at **serial No.3**, reads **“to establish dispensaries and health centers on charitable basis”**. This aim and object appears to be only an eyewash or an attempt to defraud the statute namely the Societies Registration Act, 1860. For the last 20 years not a single dispensary or health center has been established by the plaintiff, therefore, the plaintiff association even if it was formed for the **“purpose”** described in **Section 20** of the

Registration Act has failed to take any step in furtherance of its aims and objects. All other 12 aims and objects of the plaintiff are of general utility and do not construe to be an object for any of the “purpose” for which the law makers have enacted **Section 20** of the Societies Registration Act. The suit in hand by no stretch of imagination can be considered as an act of the plaintiff to protect and/or promote aims and objects of the plaintiff. The objects of an Association/Society which are inconsistent with the provision of **Section 20** of the Registration Act are inoperative and shall have no legal consequence.

12. In view of the above, the plaintiffs are not entitled to any relief. The hopeless suit was not even maintainable, therefore, the same is dismissed. Pending application is also dismissed for non-prosecution.

JUDGE

Karachi,
Dated: 19.01.2018

*Ayaz Gul/PA**