

## IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Syed Hassan Azhar Rizvi, J  
Mr. Zulfiqar Ahmad Khan, J

### C.P No.D-1673 of 2009

[Abuzer Ghaffari Cooperative Housing Society Ltd. v. Federation of Pakistan  
through the Secretary Ministry of Defence and others]

Petitioner : Through Mr. Khalid Jawaid Khan,  
Advocate

Respondent Nos.1, 3 & 4 : Through Mr. Abdul Wasay Kakar,  
Assistant Attorney General

Respondent Nos. 2 & 5 : Through Mr. Muhammad Asif Malik,  
Advocate

Respondent Nos. 6 & 7 : Nemo

Date of Hearing : 15.02.2018

Date of Judgment : 15.02.2018

### JUDGMENT

**Zulfiqar Ahmad Khan, J:-** The case of the Petitioner, a Housing Society duly registered under the Cooperative Societies Act, 1925 is that, through a ballot conducted by Respondent No.7 (Board of Revenue, Government of Sindh) where a number of similar societies were allotted chunks of land, the Petitioner was also allotted 45 acres of land in Scheme No.33, Karachi vide letter dated 25.06.1980 at the rate of Rs.20 per square yard. An agreement to that effect was entered into between Deputy Commissioner Karachi East and the Petitioner. Subsequently, the Petitioner was given three distinct parcels of land admeasuring 30.24, 5.0 and 2.6 acres. Physical possession of 28.00 acres in Sector 53-A and 17 acres in Sector

52-A was handed over on 20.07.1999. A layout plan comprising of three blocks admeasuring 28 acres of land in Sector 53-A was prepared, which was forwarded to various agencies including Cantonment Board Malir, Karachi (Respondent No.2), which originally approved the layout plan vide letter dated 26.06.2007. However, through a letter dated 15.04.2009 the said approval was restricted only to the extent of Block-I and deemed to have been withdrawn in respect of Block-II and Block-III for the specified reasons that *“during physical demarcation of the land by Military Estate Officer it was transpired that Block-II and III of the Society’s land had fallen on Defence land under occupation of Pakistan Air force (PAF) since pre-partition”*. To explain Block-II and III of the Petitioner’s land, the counsel referred to the map attached at Page-93 of the file which shows that Block-II comprised of a chunk of the land admeasuring 5.0 acres and Block-III comprised of only a chunk of land measuring 2.6 acres.

2. Being aggrieved of the said withdrawal of the hard-earned earlier layout approval, the Petitioner approached Respondent No.2. A review of the file shows that number of letters were exchanged between these two parties however the dispute could not be resolved, which agitated filing of the instant petition on 12.08.2009, where a prayer was made that the said withdrawal of earlier approved layout plan in respect of Block-II and Block-III of the Petitioner’s land be declared illegal. Comments were filed by various parties, whereafter in the presence of the counsel for the Petitioner, Respondent Nos. 2, 5 and 7 on 19.08.2014 the following order was passed by this Court:-

“1. Counsel for the respondent No.5 does not press this application, which is dismissed as not pressed.

2. Mr. Khalid Javed Khan, counsel for the petitioner says that petitioner does not claim any portion of the land owned by the

Sindh Employees Cooperative Housing Society as the land of society is totally different and separate. Counsel appearing for Society being satisfied of the statement does not press this application, which is accordingly dismissed as not pressed.

3. In view of the order passed on application listed at Sr. No.2 counsel for the Sindh Employees Cooperative Housing Society does not press this application, which is also dismissed as not pressed.

4to7. Mr. Khalid Javed Khan, learned counsel appearing for the petitioner while inviting our attention to letter dated 15.4.2009 issued by Cantonment Board Malir states that dispute between the parties is that the petitioner was claiming the ownership of 28 acres in Sector 53-A Scheme No.33 Malir, Karachi and has submitted layout plan of phases Block-1, 2 & 3, which were duly approved. However, subsequently on the request of PAF lay out plan in respect of Block-2 & 3 was suspended. He contends that there is no dispute with PAF so far as Block-2 is concern, therefore, suspension of layout plan at least in respect of Block-2 be struck down. Per counsel, dispute in respect of PAF Block-3 is pending before the Apex Court and would be decided accordingly. Consequently he seeks disposal of this petition by striking down the suspension of layout plan in respect of Block-2. Learned counsel appearing for PAF states that PAF has claim over 2.6 acres of land in Block-3 and they have no objection if suspension of layout plan in respect of Block-2 is struck down. On the other hand, Mr. Ashraf Ali Butt, learned counsel appearing for Cantonment Board says that the petitioner has to submit afresh layout plan in respect of Block-2. In response Mr. Khalid Javed Khan contends that though layout plan in respect of Block-2 already stand approved, therefore, the petitioner need not to submit afresh layout plan and they will act strictly in accordance with law and whatever law requires they will accordingly comply.

In the circumstances, by consent of all present this petition is allowed by striking down suspension of layout plan in respect of Bloc-2. Impugned letter of Cantonment Board Malir dated 15.4.2009 would be read accordingly and would apply to Block-3 only.”

3. When the said order was not complied with, a contempt application was moved and during the hearing of the said contempt application on 22.09.2016, the Court was informed that this Court’s order dated 19.08.2014 has been set-aside by the Hon’ble Supreme Court of Pakistan vide Order dated 17.03.2016 passed in Civil Review Petition No.17-K of 2015 and in Civil Petition No.334-K of 2014. The Court was further informed that the Hon’ble Supreme Court has directed this Court to decide the petition afresh on merits as before the apex Court it was

alleged that due opportunity of hearing was not provided to the concerned parties. Order of the apex Court dated 17.03.2016 is reproduced as under:-

“After hearing the learned Deputy Attorney General for Pakistan, learned ASC for the Respondent NO.1 as well as learned Assistant Advocate General Sindh and careful perusal of the order under review and the impugned judgment dated 19.08.2014, with their consent, this review petition is allowed. Civil Petition for Leave to Appeal No.334-K of 2014 is converted into appeal and allowed in the terms that the impugned judgment dated 19.08.2014 is set aside and the case is remanded to the High Court of Sindh at Karachi for fresh disposal of C.P D-1673/2009 on merits and in accordance with law after due opportunity of hearing to the concerned parties.”

4. In the light of the directions of the Hon’ble Supreme Court, the case heard afresh and notices were issued to all the respondents including DAG as well as Advocate General, Sindh for 31.10.2017, on which date Additional Military Estate Officer (MEO) Saima Shabir effected appearance on behalf of Military Estate Office and stated that their office would be represented by DAG and whatever the statement filed by the DAG that would be binding upon their office. On this statement, DAG was directed to file objections (if any) within 15 days’ time.

5. The case was heard at length in the open Court today, where the counsel for the Petitioner apprised the Court of the details of the first round of litigation, a summary of which has been produced hereinabove. Upon conclusion of his arguments when opportunity of hearing was given to Mr. Muhammad Asif Malik, Advocate appearing for PAF, he placed reliance on the counter affidavit to CMA No.12344 of 2010 filed on behalf of Officer Incharge, Works and Revenue Squadron, PAF Base Malir Karachi, where in Paragraph-7, the said Respondent clarified that claim of PAF is only in respect of 2.6 acres of the land forming part of Block-III only around which area a boundary wall has already been erected by PAF and

with regard to Block-II, PAF has no claim. He candidly supported the conclusion arrived by this Court in the earlier order of 19.08.2014 to the extent that if at all the layout plan was to be cancelled, it could only be so cancelled in respect of Block-III admeasuring 2.6 acres as PAF has a claim on the said land.

6. Mr. Abdul Wasay Kakar, Assistant Attorney General by referring to the written observation/reservations of Respondent Nos. 1, 3 & 4 dated 13.02.2018 and by placing reliance on Paragraph-5 thereof submitted that 28 acres of land in Sector 53-A being developed by the Petitioner in respect of which layout plan was earlier approved by MEO Karachi and Cantonment Board Malir and demarcation was infact demarcated in the absence of Respondent No.3, therefore, the said demarcation being unilateral is not acceptable to the Respondent No.3. He further referred to the statement dated 09.06.2010 filed by the Respondent No.1, 4 and 5 where in terms of Paragraph-B it is contended that the entire land comprising of Block-II and III fall as defence land known as "China Malir" being part of GLR Survey No.88 as it stood in the possession of PAF since pre-partition. When confronted with the statement made by the learned counsel appearing for PAF as well as the written statement filed by PAF Officer Incharge Works and Revenue PAF Base Malir, Karachi that their claim is only in respect of 2.6 acres of land forming part of Block-III, he could not find any satisfactory reasons substantiating his assertions that entire chunk of land comprising Block-II and III are part of defence/PAF land.

7. In the given circumstances, it appears that the second round of litigation after going through 360° degrees has reached again to the same

conclusion which was drawn by this Court in its order dated 19.08.2014 in terms of which by placing reliance on the statement made and documents available, this the Court reached to the conclusion that since the claim of PAF is only in respect to 2.6 acres forming part of Block-III, no legal justification for suspension of the layout plan in respect of Block-II existed, therefore, the impugned letter of Cantonment Board Malir Karachi dated 15.04.2009 on the ground that both chunks of Society's land designated as Block-II and Block-III were under occupation of PAF are devoid of any merit as PAF has categorically stated that its total claim is in respect of 2.6 acres, which is the complete chunk of land comprising of Block-III of the Society.

8. We therefore, allow this petition by holding that the impugned letter of Cantonment Board Malir, Karachi where layout plans in respect of both Block-II and III were withdrawn/canceled could only apply to the chunk of land admeasuring 2.6 acres in Block-III of the Society, therefore there was no legal justification for withdrawal or cancellation of the layout plan in respect of Block-II, in our view the said letter dated 15.04.2009 should be construed to be read as withdrawal/cancellation of approval in respect of Block-III alone.

Ordered accordingly.

Judge

Judge