

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.431 of 2002**

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

Plaintiff No.1 : Pir Muhammad  
Plaintiff No.2 : Pir Muhammad  
Plaintiff No.3 : Moosa Jan  
Plaintiff No.4 : Bakhtiar Muhammad  
Plaintiff No.5 : Agha Jan  
All through Mr. Barkat Ali, Advocate.

Defendant No.1 : Province of Sindh, through Chief Secretary  
Through Ms. Leela Kalpana Devi, AAG

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

Date of hearing : 16.02.2018

Judgment/Reasons: 03.03.2018

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiff had filed this suit on **06.4.2002** for Declaration and Permanent Injunction.

2. Brief facts of the case are that the plaintiffs alleged that they were allottees of KMC old Sabzi Mandi, University Road, Karachi and doing business of wholesale vegetable. The Government of Sindh announced new project of Sabzi Mandi and wanted to shift old Sabzi Mandi. The main object of shifting was to accommodate all allottees and occupants of old Sabzi Mandi in the New Sabzi Mandi at Super High Way and provide big place to meet the requirement of buyers. Due to huge misappropriation the project could not be completed within time and the material used in the construction was highly inferior. Several changes were also made in site plan by the management of the Karachi Market Committee to accommodate their

men, therefore, several suits and petitions were filed before this Court and ultimately the matter reached to the Hon'ble Supreme Court. The Hon'ble Supreme Court referred the matter to the Ombudsman, Government of Sindh for decision. The Ombudsman conducted enquiry and summoned all concerned parties and thereafter gave its decision wherein it was observed that serious misappropriations in allotment were committed by the management of the Karachi Market Committee. Thereafter the matter went into the hands of Monitoring Cell, a list of eligible persons for allotments was prepared. As per list prepared by the Rangers, the plaintiffs were entitled to get the allotment in the new Sabzi Mandi and also as per judgment delivered by Ombudsman as well as consent order passed in **Suit No.271/1994** by this Court. The plaintiffs have paid all the price of plots/shops vide Challan issued by the Market Committee and the management of the Market Committee handed over possession of shops to the plaintiffs. Prior to handing over possession, balloting was conducted in the month of April, 2001 in compliance of the order of Brig. Ghulam Qadir. The plaintiffs were declared successful in obtaining shops. As per balloting the area of each shop was 390 sq. ft., but defendant No.2 had given possession of only 300 sq. ft. to each plaintiff on **17.4.2002** but no allotment letter was issued to the plaintiffs despite repeated requests made to defendant No.2 and the management of defendant No.2 was demanding money for issuance of the allotment. Therefore, the plaintiff had filed the instant suit and prayed for the following relief(s):-

- a. *To declare that the plaintiffs are entitled to get shop/ open space ad-measuring 390 sq. ft. as per the result of the balloting and entitlement as declared by the Hon'ble Ombudsman in his decision and by virtue of the order passed in **Suit No.271/94** by this Hon'ble Court.*

- b. *To direct the defendant No.2 to issue allotment letters to the plaintiffs for 390 sq. ft. and also give additional space of 90 sq. ft. to each plaintiffs.*
- c. *To restrain the defendants, their agents, representative, employees, officers or any person acting on their behalf from allotting the plots of the plaintiffs to any third party or dispossessing them, interfering into their business in any manner.*
- d. *Any better/additional/further relief/reliefs which this Hon'ble Court deem fit and proper in the circumstances of the case may also be awarded.*
- e. *Cost of the proceedings may also be awarded.*

3. Defendant No.2 had filed their written statement on **18.5.2002** wherein they have raised legal objections that no cause of action accrued to the plaintiffs and the suit is not maintainable as each and every plaintiff has to file separate suit. It was averred that possession was not handed over to any of the plaintiffs. All of them were trespassers and illegal occupants. No balloting was held as contended by the plaintiffs.

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 Welfare Associations have also filed separate but similar suits and the instant suit from **25.8.2003** till **04.5.2009** was listed/tagged with **Suit No.1204/2002** alongwith suit Nos.**720/2002, 1247/2002** and **381/2003**. 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 Muhammad Ramzan claiming to be the attorney of all the plaintiffs. He had filed his affidavit in evidence as Ex:P/1 and produced various documents as Ex:P/1 to P/23 and Photostat copies of order of Ombudsman and order of High Court in suit No.271/1994 as Ex: "X" and "X-1". He was 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 Anwar Ali, Administrator, Market Committee as Ex:D. He was cross-examined by the plaintiffs' counsel and their counsel closed the side of defendants for evidence. The commissioner's report with evidence was taken on record on **07.9.2009** and since then the suit has repeatedly been listed for final arguments.

6. I have heard learned counsel for the parties at length and perused the record and evidence. My findings on the above issues are as follows:-

**Issues No.1, 2, 3 & 4**

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

8. The learned counsel for the plaintiffs himself has referred to the judgment of this Court in suit No.271/1994 copy whereof was filed with the plaint and it was not denied by the defendants in their written statement. The following criteria was laid down by this Court in the said suit for the allotment of shops and stalls in New Subzi Mandi:-

*The following conditions and apply for allotment for allotment of shop/open space in the new Fruit & Sabzimandi being constructed at Super Highway, will be given preference and be accommodated before any shop and open space is allotted to others:*

- a) *That such dealer/trader/commission agent/whole-seller, as the case may be, should be an existing bona fide allottee of any shop/open space in the old Sabzimandi,*
- b) *That he holds valid license from the Market Committee and has held the same for at least three consecutive years,*
- c) *That he has been paying the market fee regularly as such dealer/trader/commission agent/whole-seller, as the case may be, and*
- d) *That he is presently engaged in whose-sale business of fruits and/or vegetable or onion or potato in the old Sabzimandi.*

However, after referring to the criteria, learned counsel was unable to bring the case of plaintiffs within the above parameters. Admittedly, none of the plaintiffs in this particular case has been able to show any document showing the lawful existence of the plaintiffs in the Old Subzi Mandi. The plaintiffs have built their case on forged documents said to have been issued by office of the Market Committee, Karachi. The plaintiffs claimed to have paid cash amount of Rs.10,000/- with their applications for allotment of stalls in New Subzi Mandi. Their alleged applications for allotment are exhibits P/5, P/12, P/17, and P/21. All these documents are undated. They have failed to produce three consecutive license for doing business in the Old Subzi Mandi

and, therefore, neither conditions No.1 nor 2 was fulfilled by the plaintiffs. The documents filed by the plaintiffs on the face of it are forged and fabricated. None of the documents are of any three consecutive years to bring some legitimacy to the claim of the plaintiffs within the criteria laid down by the High Court in suit No.271/1994. Learned counsel for the plaintiffs has contended that the plaintiffs were members of Fruit and Vegetable Wholesale Welfare Association working in the Old Subzi Mandi, however, they have not produced proof of any membership of the Association. The suit No.381/2003 was filed by a Welfare Association which has already been dismissed by this Court on 19.1.2018. The present suit said to have been identical with the suit No.381/2003 as already mentioned in para-4 above and even the issues settled in suit No.381/2003 were also adopted as issues in the suit in hand. By a very comprehensive judgment Suit No.318/2003 was dismissed by this Court on **19.1.2018**. The case of the present plaintiffs is not very different from the said suit.

9. In view of the above, the plaintiffs have no case. The plaintiffs are not entitled to any relief, therefore, the suit was dismissed by a short order dated **16.2.2018** and above are the reasons for the same.

JUDGE

*Karachi,*  
*Dated: 03.03.2018*

*Ayaz Gul/PA\**