

HIGH COURT OF SINDH AT KARACHI

Suit No.735 of 2001

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Present:

Mr. Justice Muhammad Ali Mazhar

KPT Officers Cooperative

Housing Society Limited.....Plaintiff

Versus

Government of Sindh & others.....Defendants

**Dates of hearing: 21.11.2017, 06.02.2018, 28.02.2018,
24.04.2018 & 08.10.2018.**

Mr. Mushtaq A. Memon, Advocate for Plaintiff assisted by M/s.Ishtiaq A. Memon, Asif Memon, Shahid Ali Ansari & Qazi Shunail, Advocates and Mr.Munawar Hussain Advocate, holding brief for Dr. Farogh Naseem Advocate.

M/s.Faisal Siddiqui & Saad Fayyaz Advocates for Defendant Nos.8 to 10 & 12 to 20.

Mr.Ravi R. Pinjani, Advocate and Ms. Alina Qadri, Advocate for Defendant No.24.

Mr.Abdullah Munshi Advocate for Defendant No.5, assisted by Mr. Shajee & Mr. Imdad Bhatti, Advocates.

Non present for Defendant No.7.

Mr. M. Afzal Awan, Advocate for Defendant Nos.9 to 11.

Mr. Ameer Ali, Advocate holding brief for Mr.Abdur Rahman, Advocate for Winsom Estates (Pvt) Ltd.

Mr. G.N. Qureshi, Advocate for the Board of Revenue, Government of Sindh.

Mr. Ziauddin Junejo, Assistant Advocate General.

JUDGMENT

Muhammad Ali Mazhar-J. This lawsuit has been brought to entreat permanent injunction against the defendants from taking any adverse action pursuant to impugned letter dated 21.04.2001 and not to cause any interference and obstruction to the land in possession of the plaintiff and its members/allotees.

2. The transitory facts are that the plaintiff is Cooperative Housing Society, governed under the provisions of

Cooperative Societies Act, 1925. The land in question was owned by defendant No.5. On 29.11.1989 and 28.03.1990, the KPT Board sanctioned allotment of land measuring 78 acres and 27 acres in favour of plaintiff for 25 years which is located at Mai Kolachi bypass Express Way across Chinna Creek. The possession of land was handed over to the plaintiff by the Estate Department of defendant No.5 on 09.01.1990 and 20.07.1990. However on actual survey, the land was found to be 130 acres. The defendant No.5 in its meeting held on 01.06.1996 resolved to lease out the land for 99 years in favour of plaintiff for 130 acres. On 22.12.2000 the layout plan was submitted by the plaintiff for approval but suddenly in the month of March 2001 a news report was published showing the apprehension about danger of marine life and ecological environment of Karachi on account of development of land allotted to the plaintiff by defendant No.5. On 21.04.2001 the defendant No.1 sent a DO letter to convey that the Chief Executive during representation made by DHA on 14.04.2001 had desired the cessation of any development work in the area alleging that the said area has significance ecological value with reference to the environment of Karachi city.

3. The defendant No. 2, 3 & 4 filed their written statements and raised a plea that the land in question does not belong to KPT but it is owned by Government of Sindh. They also asserted that the defendant No.5 was never the owner of the land in question. However, in the written statement of the defendant No. 3 & 4 they have admitted that the defendant No.5 since 1887 exercised control over properties falling within the limits of KPT but these properties were never transferred by the Provincial Government to the KPT at any time. The defendant No. 5 in its written statement very vocally stated that all the title

and interest in the property described in the plaint vests in Federal Government, Karachi Port Trust as mentioned in Schedule "A" read with Section 27, Section 29, 29-A, 33 and 40 of the KPT Act 1886. The subject land lawfully vests in the KPT and the defendant No.1, 2, 3 and 4 have no right, title and interest in the property in question. They supported the case of the plaintiff that the lease for 99 years was rightly granted in favour of the plaintiff with the prior approval and consent of the Federal Government.

4. The record reflects that originally this suit was filed only against six defendants i.e. Government of Sindh, Member Land Utilization, Board of Revenue, Commissioner Karachi, Deputy Commissioner Karachi West, KPT and Government of Pakistan through Ministry of Communication. However from time to time, different applications were filed by different interveners for impleading them as necessary party, therefore, the said applications were allowed infrequently and right now according to last amended title filed in view of the order dated 25.01.2016, twenty four defendants are in arena. The defendant No.7 filed written statement in which they have taken a plea that the land was allotted to the plaintiff in violation of law, destruction of mangroves in the Chinna Creek eastern back water will adversely affect environmental issues. It was further stated that the KPT Trustees and officials have misused their powers while allotting land to the plaintiff. Nobody appeared for defendant No.7 to argue the case neither filed any documents for admission nor denied the plaintiff's documents, rather the order dated 12.11.2008 reflects that their learned counsel filed an application for withdrawal of his vakalatnama which was allowed and the name of counsel was scored off from file cover.

5. On 07.04.2006 the issues filed by the plaintiff were adopted by this court with the directions that list of witnesses be filed within two weeks and documents and commission, if any, be notified within two months with further directions that after filing of the documents by the parties, the matter may be fixed before Additional Registrar for admission and denial of documents. However, on 16.12.2008, one additional issue was also framed as issue No.1 and the earlier framed issues were renumbered as issue No. 2 to 5. The issues settled by this court are as under:-

1. Whether on the pleadings of the parties, the Suit is maintainable in law?

2. Whether the Plaintiff is lessee of Suit land measuring 130 Acres at the Southern Bye-pass (Mai Kolachi Road) across Chinna Creek Back Waters Area, Off MT Khan Road, Karachi? Its effect.

3. Whether the Defendant No.1 is owner of the Suit Land?

4. Whether the letter dated 21.4.2001 (Annex O to the Plaint) is lawfully issued? Its effect.

5. What should the decree be?

6. After framing additional issue again this court vide order dated 16.12.2008 allowed four weeks' time to file documents for admission and denial before the Additional Registrar. It was further observed in the order that if the documents produced by the parties are admitted by the parties counsel then no oral evidence needs to be recorded and matter may be fixed straightaway for final arguments. The diary of Additional Registrar O.S. dated 03.03.2009 indicates that in compliance of the order dated 16.12.2008 the exercise of admission and denial of the documents was completed. Since the contesting defendants did not deny the documents produced by the plaintiff, hence on 30.03.2009, the learned single judge by consent directed that the matter may be fixed for final arguments as no oral evidence needs to be recorded.

7. The Issue No.1 germane to the maintainability of the suit, the learned counsel for the plaintiff Mr. Mushtaq A. Memon argued that this suit was filed on account of issuance of D.O. letter dated 21.4.2001 by the Chief Secretary Sindh to the Chairman KPT conveying oral directive of the then Chief Executive of Pakistan that no land development work should be carried out in the vicinity of Mai Kolachi Bypass followed by another Memorandum dated 14.5.2001 addressed by the then Chief Secretary Sindh to the Commissioner Karachi Division requiring the later to take up the matter with the President of the plaintiff-society ensuring stoppage of reclamation and development work in the vicinity of Mai Kolachi Bypass. Neither the title over the land was questioned nor had any right of ownership vesting in the Government of Sindh asserted. The directive allegedly issued by the then Chief Executive of Pakistan had no legal sanctity inasmuch as, firstly, it was not based on a contemporary law nor had cited any legal provision as the source of such directive. The plaintiff-society had not reclaimed any land from the sea. In support of his contention, the learned counsel referred to various documents produced by the plaintiff to strengthen their title. It was further averred that the documents produced by the plaintiff conclusively show that the subject land which is located much closer to the sea that (a) the land was acquired by Karachi Development Authority for development of Scheme No.5 Clifton, (b) Hijrat Colony land measuring 75 acres and (c) land reclaimed by the Defence Officers Housing Authority for extension of Phase-VIII. The Government of Sindh and KDA, apart from the principle of promissory estoppel, cannot dispute the ownership of KPT over the subject land which is leased out to the plaintiff-society by KPT. He argued that the title of land is not in dispute, therefore the injunction has been prayed as main

relief without seeking declaration. Moreover, relief of declaration is to be considered implicit in a suit for possession or injunction. Reference to such proposition was invited through a judgment reported in **PLD 2014 SC 380 (Hazratullah & others vs. Rahim Gul & others)**. The learned counsel further averred that in the absence of any challenge or dispute to the title of plaintiff and or KPT through Memorandum dated 14.5.2001 and correspondence dated 21.4.2001, there was no requirement to pray for declaration. In support of this contention, the learned counsel also referred to following judicial precedents:-

PLD 1987 Karachi 676 (Nizar Ali vs. Noorabad Cooperative Housing Society Ltd. & others), 2001 YLR 1767 (Haji Muhammad Hussain & others vs. Muhammad Abbas), 2003 CLC 122 (Faqirullah & others vs. Khadim Hussain), 2005 SCMR 1872 (Sultan Mahmood Shah & others vs. Muhammad Din & others), 2007 SCMR 236 (Aurangzeb & others vs. Muhammad Jaffar & another) and 2014 CLC 945 (Syed Munawar Hussain Shah vs. Syed Nusrat Hussain & others)

8. While addressing issue No.2 and 3, the learned counsel argued that apart from the admitted documents wherein various functionaries of Government of Sindh as well as the Federal Government decision of the Inter Provincial Conference dated 18.11.1978, recognizing the ownership of land of KPT. Section 27 of KPT Act read with Schedule-A to the said Act conclusively shows that the subject land is owned by KPT. The provision of Section 27 of the KPT Act elucidates that property specified in Schedule-A shall vest in the Board. Item No.XXI of the Schedule-A exemplifies the property included in the Schedule as: "land between China Creek embankment and the sea". The map prepared as a result of joint demarcation also shows that the subject land is part of the land owned by KPT. The reference to interlocutory order passed in Suit No.778/1998 by the learned counsel for Government of Sindh is misconceived. Firstly, an interlocutory order does not lay down law; secondly, KPT was not party to Suit

No.778/1998 and an interim order passed during the course of litigation, cannot bind a person who is not party thereto; and thirdly, Suit No.778/1998 pertained to the land reclaimed from sea. Likewise, the order passed in the case of Modern Terminal Operator by Justice Zia Pervaiz (as his Lordship then was) is also of no help to the defendants since it was set aside by a Division Bench of this court in High Court Appeal. In the present suit, the subject land has not been reclaimed from sea or any river. The land which was granted on lease to the plaintiff consisted of marshy land where the main sewerage from Karachi was discharged. The subject land or its part was not under the sea and the Sea-Retention Wall had been built much prior to the grant of lease to the plaintiff, therefore, the principle enunciated in Suit No.778/1998 is not applicable to the present Suit. It was further contended that the grant of long term lease for 99 years to it, is proved from the admitted documents filed by the plaintiff which includes resolution of KPT Board dated 2.11.1989, Sanction letter by KPT dated 9.1.1990, KPT Board Resolution dated 28.3.1990 for allotment of additional land, lease deed dated 11.5.1990 (25 years) for 78 acres, lease dated 19.12.1991 (25 years) for additional 27 acres, approval by the Federal Government for 99 years lease favoring plaintiff dated 3.7.1996, Sanction letter for 130 acres of land with possession and for 99 years lease dated 26.8.1996, modification of both lease for extension of tenure to 99 years dated 23.10.1996 and 24.10.1996. Moreover, in acknowledgment of the right of plaintiff-society as lessee, the District Registrar Karachi, through Memorandum dated 13.3.1995 had directed area Sub-Registrar to admit documents for registration in relation to the subject land. These documents and admitted position of record proves that plaintiff is lessee of subject land. It may be submitted that approval of Federal Government

was mandatorily required for grant of 99 years lease in terms of provision in Section 18(2) of the KPT Act.

9. With regard to Issue No.4, the learned counsel addressed that perusal of the letter dated 21.4.2001 and memorandum dated 14.5.2001 do not cite any authority for issuance of the order. It is settled principle of law that executive functionaries do not have nor can exercise power unless expressly conferred by some statute. No inherent power can be assumed by the public functionaries in the absence of specific provision of law. It is settled that there is no inherent power in the Executive except what has been vested in it by law, and that the law is the source of all power and duty. Reference was invited to a judgment reported in **PLD 1965 Dacca 156 (Haji Ghulam Zamin & another vs. A.B. Khondkar & others)** and **PLD 1967 Dacca 607 (Haji Ghulam Sabir vs. Pan Allotment Committee & another)**. An oral order has no legal sanctity and cannot be given effect. Reference in this behalf was made to a judgment reported in **PLD 1976 Karachi 207 (Majidullah & others vs. National Industrial Relations Commission, Karachi)**. The arguments advanced by Mr.Mushtaq A.Memon Advocate were adopted by Dr.Farogh Naseem (counsel for plaintiff) and Mr.Abdullah Munshi, learned counsel for the defendant No.5.

10. Mr. Faisal Siddiqui, learned advocate for defendants No. 8 to 10 & 12 to 20 argued that the land in question has been rightly allotted to the plaintiff by the defendant No.5 and the Federal Government. The interests of the defendants No.8 to 20 in the suit land is protected under Section 41 of Transfer of Property Act, 1882. The defendants No.8 to 10 & 12 to 20 are third party purchasers of individual plots in the suit land and they

claim title to individual plots in the suit land by virtue of registered conveyance deeds executed in their favour by persons who were sub-lessees of the plaintiff. Moreover, the defendant No.20 claims title to individual plots carved out from the suit land and base the claim upon sub-leases executed by the plaintiff. The defendants No.8 to 10 & 12 to 20 are bona fide purchasers for value, having no knowledge about the dispute over the suit land and have acted in good faith, hence, the interests of the defendants No.8 to 10 & 12 to 20 in the suit land are protected by virtue of Section 41, Transfer of Property Act, 1882. In support of this contention, the learned counsel referred to **PLD 2005 Supreme Court 511 (Muhammad Saleem Ullah & others vs. Additional District Judge, Gujranwala & others)** and **2002 SCMR 2003 (Muhammad Nawaz Khan vs. Muhammad Khan & others)**. It was further contended that the protection of Section 41, Transfer of Property Act, 1882, is not limited to the purchaser from the ostensible owner but also extends to subsequent purchasers. He also referred to **AIR 1940 Calcutta 565 (Purnendu Nath Tagore vs. Hanut Mull Dogar & others)**, **96 Ind Cas 199 (Gholam Sidhique Khan & others vs. Jogendra Nath Mitra & another)** and **AIR 1923 Calcutta 240 (Baidya Nath Dutt vs. Alef Jan Bibi & others)**.

11. Mr. Ravi Pinjani, advocate for defendant No. 24 argued that in light of language of Article 172(2) of the Constitution of the Islamic Republic of Pakistan 1973 as it stood on the date of the institution of the suit (i.e. prior to the amendment made to Article 172(2) of the Constitution by the 18th Amendment to the Constitution in April 2010); the reclaimed land forming the suit property belongs to the Federal Government, which has duly leased it to the plaintiff through the defendant No.5. Accordingly, the

defendant No.1 cannot lay any claim to it. The defendant No.24 and similarly placed persons must be protected by reason of the doctrines of promissory estoppel and legitimate expectation. He further argued that the question of entitlement as between the Federal Government and the Province was on the date of the institution of the suit. In respect of lands within the continental shelf but beyond the territorial waters, the situation remains unchanged as the Federal Government remains the exclusive owner. He further argued that the Division Bench of this Court in HCA 236/2009 was perhaps not assisted in the best manner to appreciate the effect of Article 172(2) of the Constitution both before and after the 18th Amendment Act 2010. He further averred that the honourable Supreme Court in its order dated 05.05.2015 was pleased to dispose of the petition for leave against the order of the Division Bench (CP No.2191/2013) that the observations made in the judgment dated 3.9.2013 in HCA 236/2009 and the earlier order dated 7.7.2009 on CMA 6159 of 2009 shall be deemed to be tentative in nature for all intents and purposes, therefore at the final disposal of the suit the same shall not prejudice the interest of the litigating parties to these proceedings.

12. Mr. M. Afzal Awan, learned advocate for defendant No.9 to 11 argued that his clients have third party interest in the Plot bearing No. B-119, measuring 600 Sq. Yds. situated at plaintiff's Society against the payment of valuable consideration. The defendant No. 11 purchased the said plot on 28.01.2005 through a Conveyance, which was registered by the Sub-Registrar.

13. Mr.Ziauddin Junejo, learned Assistant Advocate General Sindh argued that the purpose of allotment was

to build residential houses for KPT Employees. In the suit No. 778/1998, this court held that reclaimed land vests in Province of Sindh. The grant of land does not confer title and the Land belongs to Province of Sindh as per Constitution of Pakistan and Sindh Land Revenue Act 1967. The then Chief Executive/President General Pervaiz Musharraf stopped the reclamation of the land on Constitutional grounds which order was communicated to the KPT through the Chief Secretary Sindh. The KPT Act only confers easement/license/profit as prendre rights for the performance of KPT's functions within the limits prescribed by Section 3 of the KPT Act. Section 3 of the KPT Act empowers the Federal Government to define and alter the limits of the Port. The object of Section 3 is only with regard to the Administrative control of the area within the limited scope of powers available to KPT under the Act. Under Section 18, KPT can lease, sell or otherwise transfer its properties. It was further added that powers to grant rights to land are vested in Province and exercised through Colonization of Government Land 1912. (Statement of conditions under Section 10 of the colonization of government land 1912). The learned counsel referred to **PLD 1978 Lahore 113 (Abdur Rahman Mobashir and others vs. Syed Amir Ali Shah Bokhari and others) & AIR 1961 CAL. 411 (Sanat Kumar vs. Hem Chandra)**. It was further contended that the registration of the lease deed between the KPT and plaintiff are void. No transfer of property could take place in terms of the Transfer of Property Act and the Registration Act.

14. Mr. G.N. Qureshi, learned advocate for BOR argued that the channel known as China Creek is flowing in between Keamari in the mainland through swampy track, another channel is flowing from Keamari point towards

Custom House which was in use for small boats and the channel was very shallow. It was terminated into a narrow creek near the town and from there the boats were pulled up to the shore at High Water. The Napier Mole was constructed in the centre of China Creek divided it into two portions i.e. East Wharf and West Wharf. At the Eastern side of China Creek, a railway line was constructed from Keamari up to main line and due to construction of said railway line and the Napier Mole, the area of China Creek came under the reclamation which was filled by flood tides and silt. The first KPT limits were fixed through notification issued by the order of Governor on 23.03.1887. According to the report published in KPT news bulletin Vol. XIV Nos.10-11 that in the year 1909 reclamation of land was started from the China Creek and 177-00 acres of tidal swamp land was purchased from the Karachi Municipality for further expansion. Then followed the reclamation of 61-00 acres upon which the Mansfield Import Yard was laid out and further 115-00 acres between Keamari and China Creek which enable extension of the railway yards in that area. In support of this contention, the learned counsel referred to Section 37 of Bombay Land Revenue Code 1879, Section 64 of the Land Revenue Code, 1879 and Section 50(1) of the Sindh Land Revenue Act 1967. He also referred to Article 152, 172 and 173(5) of the Constitution. It was further averred that according to the Record of Rights only one entry is available in the Register regarding Queens Quarters where in KMC granted the land measuring 26130 sq. yards to the KPT in lieu of 31787 sq. yards of land taken over from KPT at New Khada. The KPT is presuming that all the land which is in the boundary possession of the KPT is the property of KPT. At the time of separation of Sindh from the Bombay presidency, the Government of India fixed new boundaries and altered the limits of the KPT vide

notification dated 02.05.1949 and excluded the entire Dry Land/Resumed Land from the KPT boundary but the KPT has been insisting that, its boundaries are those which were in the year 1875. He further argued that the then Member (Land Utilization), Board of Revenue Sindh pointed out to the Sub-Registrar Clifton, Karachi some violation regarding registration of sale documents in respect of KPT Officers Housing Society but the instructions issued to the Sub-Registrar were withdrawn on 06.11.2003. The KPT Officers Housing Society filed CMA No.6159/2009 for modification of order dated 22.3.2005 and this court on 07.07.2009 modified the said order. Against the order dated 07.07.2009, the Land Utilization Department filed HCA No.236/2009, the learned division bench set aside the impugned order and dismissed the compromise application with the directions to the single Judge to proceed the case in accordance with law. Against this order plaintiff had filed C.P. No.2191/2013 in the Supreme Court of Pakistan.

15. Heard the arguments. Issue No.1 is correlated and concomitant to the maintainability of the suit. Nonetheless, the nomenclature and cataloguing of the lawsuit expresses and articulates a suit for declaration and injunction but in the nutshell and practicality it is a suit for permanent injunction lonesome in which the interim and or final or consequential relief is one and same that the defendants be restrained from causing any interference to the possession of land in possession of the plaintiff and its members, situated at Southern bypass, Mai Kolachi across Chinna Creek backwater area, M.T. Khan Road, Karachi in pursuance of impugned letter dated 21.04.2001. These directives were allegedly issued in the backdrop of information that KPT is undertaking land development work in the vicinity of Mai Kolachi

bypass. First of all no written directions, if any, issued by the C.E.O. were attached with this letter nor in this letter any claim was lodged by the Chief Secretary which may tantamount to believe that the title of the land in question is in dispute and or the Sindh Government is claiming their title on the land including Board of Revenue. The record insinuates that on 22.03.2005 this court ordered the parties to maintain status quo. However, the order dated 07.07.2009 reminiscences that CMA No.6159/2009 was filed for modification of the order dated 22.03.2005 bearing in mind the minutes dated 18.03.2009. This order further resonates that Sub-Committee was constituted by the Chief Secretary Sindh to work out a via media between Government of Sindh and the plaintiff and Sub-Committee proposal is also reproduced in the said order. It is further reflected from the same order that the Secretary Member (L.U) Board of Revenue had agreed that ban be lifted on the undertaking given by the society on certain conditions. In paragraph No. 9 of the same order it was decided by consent that after securing undertaking, the ban on transfer and mutation shall be lifted to the extent of 130 acres only. Despite consent order, the Member (L.U), Board of Revenue, Chief Secretary Government of Sindh, DCO, CDGK and EDO (Revenue), CDGK filed High Court Appeal No. 236/2009. The learned Division Bench set aside the order and dismissed the compromise application i.e. CMA No.6159/2009.

16. What I perceived and sensed from the tenor and sagacity of the above order that the learned division bench was much concerned and anxious to the mechanism devised by the parties for compromise. Nevertheless, the order dated 07.07.2009 was passed by consent on the basis of minutes of Sub-Committee constituted by the Chief Secretary, the order was challenged in appeal and

the learned division bench allowed the appeal but with all humility to my command and self-efficacy, some other points were also converged and touched by the learned division bench on merits and some portions of the order seems to be beyond the issue or controversy before the learned division bench. Conceivably this was the reason that when the appellate order was challenged by the Trustees of Port of Karachi in the Supreme court vide Civil Petition No. 2191/2013, the apex court while disposing of the matter on 05.05.2015, discernibly articulated that the observations made in the impugned judgment in High Court Appeal No. 236/2009 and the order dated 07.07.2009 passed on CMA No. 6159/2009 shall be deemed to be tentative in nature for all intent and purposes, therefore, at the final disposal of the suit the same shall not prejudice the interest of the litigating parties of this proceedings. So in my unpretentious view, the effect of order passed in the High Court Appeal as well as in the compromise application both were tentative in nature and the hon'ble Supreme Court has somehow extinct the aftermath of both the orders, therefore, this lawsuit is to be decided independently on its own merits and in accordance with the law. What I cannot resist to observe here that the judgment in HCA No.236/2009 was mainly based on the provisions of Land Revenue Act and Colonization and Disposal of the Government Lands (Sindh Act 1912) but the upshot and effect of Section 27 of the KPT Act and Schedule-A appended to it was not under discussion while adverting to the terms and conditions of the compromise.

17. An austere look to the substratum of the plaint unequivocally demonstrates and confirms that this is essentially a suit for injunction. The plaintiff has not approached or walked up to entreat a declaration of their

ownership rights or title but they have knocked the door to claim relief of injunction alone. Here according to the plaintiffs' counsel, the defendants never denied the ownership of the plaintiffs but called upon to stop development work. In the case of **Naseem-ul-Haq versus Raes Aftab Ali Lashari, (2015 YLR 550)**, I have discussed the niceties and exactitudes of Section 42 of Specific Relief Act 1877 and held that any man's legal character is generally taken as the same thing as a man's status. Words "right as to any property" are to be understood in a wider sense than "right to property" and words "interested to deny" denotes that defendant is interested in denying right of plaintiff or his legal character. Denial of right constitute a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. Relief of declaration is a discretionary relief that can be granted in the case where substantial injury is established and in absence of denial of right no relief of declaration can be granted. In the case of **Ilyas Ahmed versus Muhammad Munir, (PLD 2012 Sindh 92)**, again I held the expression, legal character has been understood as synonymous with the expression status. Section 42 of the Specific Relief Act applies only to a case where a person files a suit claiming entitlement to any legal character or any right to property which entitlement is denied by the defendants or in denying which the defendants are interested. Section 42 would be attracted to a case in which the plaintiff approaches the court for the safeguard of his right to legal character or property but where right to his own legal character or property is not involved the suit for declaration is not maintainable. In the case of **Nizar Ali vs. Noorabad Cooperative Housing Society Ltd. (PLD 1987 Karachi 676)**, the plaintiff asserted stated that she is owner of the property and the defendant be restrained from disposing

of the same, the court held that under Section 54 of the Specific Relief Act, a mandatory injunction can be issued even when there is a threat of invasion over the right of the plaintiff. Where the title of the plaintiff is not denied by the defendant, a suit for injunction is maintainable. Likewise, in the case of **Sultan Mahmood Shah vs. Muhammad Din. (2005 SCMR 1872)**, the Apex court held that if the title of the property is in dispute, the simple suit for permanent injunction or possession, without seeking declaration of title would not be maintainable. The pleading of the parties and the evidence would clearly show that the controversy between the parties was confined only to the extent of possession and the title of property was not in dispute hence the suit for permanent injunction was maintainable. In the case of **Hazratullah & others vs. Rahim Gul. (PLD 2014 S.C.380)**, the Apex court held that in a suit under Section 8 of the Specific Relief Act, the declaration of the entitlement is an inbuilt relief claimed by the plaintiff of such a case. Once the plaintiff is found to be entitled to the possession, it means that he has been declared to be entitled, which includes the declaration of title of the plaintiff qua the property and this is integrated into the decree for possession. In the case of **Haji Muhammad Hussain & others vs. Muhammad Abbas. (2001 YLR 1767)**, the learned Judge of Lahore High Court referred to the case of **Mst. Sahar Begum vs. Salahuddin (1991 MLD 1594)** wherein this court held that if a person claims to be in peaceful possession, based on a semblance of title, a suit for such relief would be maintainable, the proceedings being governed by section 54 of the Specific Relief Act and controlled by Section 56 of that statute. If this be so, the appellant/plaintiff cannot be nonsuited by rejection of the plaint.

18. Mindful to the nitty-gritties of the case, I feel no reluctance to hold that this suit for permanent injunction is maintainable without seeking relief of declaration. The issue No.1 is answered accordingly.

19. In my considerate view, the Issue No.2 to 5 are inextricably linked. According to the minutes of meeting of Board of KPT dated 21.11.1989, the Trustees vide resolution No. 967 dated 28.06.1989 sanctioned to transfer area of sea bed measuring 78 acres as per attached map. The report of old shore committee referred to under the board resolution No. 405 dated 02.11.1989 is also available in which the committee considered the matter and recommended the terms and conditions of allotment of area of sea bed measuring 78 acres to KPT Officers Cooperative Housing Society Ltd. for 25 years. Vide letter dated 09.01.1990, the Estate Manager, KPT informed the plaintiff society that board has sanctioned the allotment of 78 acres of land in Chinna Creek on the terms and conditions approved by the board. Accordingly, the land was handed over on 09.01.1990 as per the plan attached to this letter. Extracts from the minutes of proceedings of the meeting of the Board of Trustees held on 28.03.1990 is also available, whereby, the additional land measuring 27 acres adjacent to sea bed was also sanctioned within the same vicinity subject to actual survey. Vide letter dated 26.08.1996 by Estate Manager, KPT to the Secretary of the plaintiff, it was communicated that board has sanctioned allotment of 130 acres of land in Chinna Creek back water of Mai Kolachi bypass for a period of 99 years of lease from the date of lease mentioned in the letters dated 29.11.1989 and 28.03.1990 respectively on the terms and conditions already agreed between KPT and KPT Officers Housing Society. Copies of the registered lease deeds executed by

KPT in favour of plaintiff are also available on record which have not been disputed by the Sindh Government or Board of Revenue. On 16.10.1994 the General Manager, Civil Works Division, KPT issued a letter to the Secretary of the plaintiff, whereby, the Society was permitted to sub-lease the plots in accordance with clause 8 of the lease deed. Consequently, vide letter dated 13.03.1995 the District Registrar Karachi directed the Sub-Registrar-T Division-II to proceed with the registration of documents as per approved plan issued by the concerned authority after examination of all original documents according to law if there is no ban from any authority. On 03.07.1996, Section Officer, Ministry of Communication, Government of Pakistan communicated to the Chairman, KPT approval of government as required under provisions of KPT Act with regard to lease of land to KPT Officers Housing Society for 99 years. On 26.08.1996 a letter was also written by the Estate Manager, KPT to the Secretary of the plaintiff, whereby, it was communicated that the Board has sanctioned the allotment of 130 acres of land for a period of 99 years from the date of lease and the possession of land was physically handed over to the plaintiff with effect from 01.08.1996. Two registered documents dated 23.10.1996 and 24.10.1996 are also available on record which were executed for modifying/extending the tenure of lease from 25 years to 99 years period. A letter dated 14.09.1997 is also available on record which was communicated by the Section Officer, Director General of Ports & Shipping, Ministry of Defence, Government of Pakistan to the Chairman, KPT conveying approval of government under Section 18(2) of the KPT Act as per resolution No. 574 dated 07.06.1967 to transfer KPT land to the KDA for development of Scheme No.5. One more letter dated 31.03.1988 issued by Deputy Commissioner South,

Karachi to the Additional Director, KDA it was communicated that as per plan attached with the Notification No. 2047-IV/Administrator/49 dated 12.08.1949 issued by the then Administrator, Karachi the land in question vests in KPT. A letter dated 16.10.1994 is also available which was written by Director Land Acquisition Cell, Directorate of Land Management, KDA. This letter was communicated to General Manager, KPT with regard to the payment of KPT land acquired and utilized for KDA Scheme No.5 Clifton. A letter dated 15.07.1997 is also available which was sent by Director, KDA to the General Manager, KPT which shows the acquisition and utilization of land by KDA for their Scheme No.5, Clifton. In this very letter a request was also made to issue requisite certificates for the land measuring 638 acres and 1590 Sq. yards which was transferred to KDA for mutation in favour of KDA in the revenue record.

20. The letter dated 15.05.1989 is also available on record which was communicated by the then Chief Minister Sindh to the then Prime Minister of Pakistan in which he suggested to the Prime Minister that area of 75 acres of Chinna Creek may be acquired. It is further stated in this same letter that originally the same Chinna Creek land belonged to the Government of Sindh, however, at present the land falls within the jurisdiction of KPT and the same has got to be transferred for the purpose of better utilization and development of city. In concluding paragraph, the Chief Minister requested for necessary instructions to KPT for transferring the land in question to Sindh Government. On 19.11.1989, the Assistant Manager, Estate Department, KPT communicated to the Mukhtiarkar Karachi West, Karachi the decision taken in the KPT meeting to transfer the land from Chinna Creek

back water West Wharf, Bath Island including the area to propose strong water drain up to railway siding on one side and propose Southern bypass express way on the other side total aggregating 75 acres as shown in the plan to the Government of Sindh. A letter dated 10.01.1993 is also available on record which was written by Joint Secretary, Prime Minister Secretariat, Islamabad to the Chief Secretary, Government of Sindh. This letter pertained to 75 acres land, Southern Bypass M.T. Khan Road whereby it was communicated that in September 1989, the Prime Minister was pleased to direct that the said land may be returned to the KPT. Consequent upon this letter, the Deputy Commissioner, Karachi West vide his letter dated 30.05.1996 communicated to Chairman, KPT. However, again on 30.05.1996 the Deputy Commissioner, Karachi West made a request to the Chairman KPT to handover vacant possession of 75 acres of land at Mai Kolachi Bypass. Similarly, the Member (LU), Board of Revenue vide letter dated 02.06.1996 also made a request to the Chairman KPT to handover vacant possession of land at an early date. However on 24.12.1996, the Secretary, KPT informed the Member Board of Revenue that despite lapse of six months KPT has not received any response from Board of Revenue which shows that Government of Sindh is not interested in completing the transaction. Since the Board of Revenue failed to response, the offer was withdrawn by the KPT in terms of resolution passed by Board of Trustees.

21. In order to substantiate that the land belongs to the KPT, the plaintiff in addition to aforesaid documents, also produced a copy of letter dated 17.09.2006 issued to Member (RS&EP) Board of Revenue and also placed on record a notification dated 17.09.2006 issued in exercise of powers conferred by Section 78 of the Registration Act

and Section 9-A of the Stamp Act, whereby the Government of Sindh was pleased to grant exemption from payment of registration fee and stamp duty on the lease deed executed between KPT and United States of America in respect of leasehold rights of Plot No. 3, 4 and 5 measuring 82836 Sq. meter at M.T. Khan/Mai Kolachi Road, Karachi. The opinion of Joint Secretary dated 24.09.1970, Ministry of Law & Parliamentary Affairs, Law Division is also available on record in which a reference of agriculture wing was also given in which they admitted specifically that the reclaimed work was done by the KPT after proper sanctioning of the late Government of India that after independence, Government of Pakistan also accorded sanction to the scheme of the Board for reclamation work and the Government of Pakistan has purchased plots of land in the reclaimed area and also taken leases of the reclamation land from KPT from time to time, therefore, it appears to be no doubt that the title of the disputed land lying with KPT. It was further stated in the same opinion that the ownership of the land in question vests in the KPT under part 3 of Schedule "A" of KPT Act. Another letter dated 21.09.1973 is available on record which was written by Deputy Secretary to the Government of Sindh Land Utilization Department to Director of Project, Government of Pakistan which displays that while discussing some land required to be transferred for project, the deputy Director in paragraph No.5 seemingly avowed that as regard the bed of sea and the fore-shore area up to 50 yards, the Provincial Government has no concern as it is not within its jurisdiction. One more letter dated 31.03.1988 is available which was written to Additional Director, KDA by the Deputy Commissioner, South Karachi, whereby, he reminded that as per plan attached with the notification dated 12.06.1949 issued by the Administrator, Karachi the land

in questions vests in KPT. One more letter dated 24.11.2007 is available which was written by Director Settlement/Survey & Land Record to the Director Sindh Katchiabadi Authority in respect of verification of land ownership of Block-6 in Bath Island situated adjacent to boat basin, Karachi. The Director communicated in this 2007 letter that the matter has been verified from the record of his office which reveals that the land ownership of boat basin Clifton, Karachi still vests with KPT.

22. The plaintiff counsel has also produced a certificate of registration of KPT Employees Cooperative Housing Society issued on 14.02.1949 under Section 10 of Bombay Act, 1925. On 02.05.1940, Government of India, department of communication issued Notification under **Section 5 of Indian Ports Act, 1908**, whereby, the Central Government was pleased to declare the limits of Port of Karachi for the purpose of said Act. In this notification besides including various areas, East Wharf of the entrance of the Chinna Creek backwater is included. Another Notification of the same date i.e. 02.05.1940 was also issued by the Government of India, department of communication in exercise of the powers conferred by **Section 3 of the KPT Act**, whereby, the similar limits for the Ports of Karachi was notified and the same areas were also mentioned in this notification. The only difference in both notifications is that the first was issued under **Section 5 of the Indian Port Act, 1908** and the subsequent notification on the same day was issued under **Section 3 of the KPT Act, 1886**. On 05.10.1991, the Port and Shipping Wing, Ministry of Communication, Government of Pakistan has also issued a notification in exercise of the powers conferred by Section 3 of the Karachi Port Trust Act, 1886 and by means of this notification, Federal Government was pleased to declare

the limits of port of Karachi for the purpose of said Act and while citing various areas forming the limits of Port of Karachi again the area i.e. East Wharves to the entrance of Chinna Creek backwater and thence following the high water marks around the Chinna Creek backwater to Jumma Bandar is also included. So while appreciating these three notifications, no matter the notifications were issued in the year 1940 or subsequently by the Federal Government in the year 1991, the land in question somehow seems to be integral part of the notification defined the limits. Whereas under Section 18 of the KPT Act, the Board is competent, subject to the restrictions contained in sub-section (2) to lease, sell or otherwise transfer of any moveable or immovable property which may, for the purpose of this Act, have become vested in, or been acquired by them and so far as is not inconsistent with the provisions and purposes of this Act. In sub Section 2, sanction of Government is required for every lease of immovable property for a term exceeding twenty-five years with an option to renew for a like period. Section 27 of the same Act pertains to the transfer of government property to the board in which it is explicitly provided that the property specified in schedule "A" shall vest in the Board. For the ease of convenience Section 27 of the KPT Act, 1886 is reproduced as under:-

27. (1) The property specified in Schedule A shall vest in the Board;

Provided that-

- (i) if any question arises between the Federal Government and the Board as to the boundaries of any portion of such property, Government may define and demarcate such boundaries, and the decision of Government in respect to such boundaries shall be conclusive;**
 - (ii) any portion of the land specified in the said schedule which shall be required by the Federal Government for a public purpose may be resumed by the Federal Government without claim to compensation on the part of the Board, except for buildings or other permanent structures erected thereon.**
- (2). Nothing in clause (ii) of the proviso sub-section (1) shall**

apply to land reclaimed from harbour waters, and the Board shall be compensated for any improvements effected by it on any land resumed under that clause.

- (3). **The railway now under construction between the Bander station and the Keamari station may be constructed by Government along the foreshore or on reclaimed land and any other work which the Federal Government may consider necessary in the public interests may be executed by Government in or upon any of the property specified in the said schedule without claim to compensation on the part of the Board except for building or other permanent structures which it shall be necessary to clear away for the purposes of such railway or work.**

According to Schedule "A" attached to Karachi Port Trust Act, 1886 with reference to Section 27, all the right, title and interest of the Secretary of State for India in Council for the lands, buildings, workshops, piers, break-waters, embankments, bridge, light-house, signal-stations, jetty, quay, graving-dock and railway-lines, together with all the fittings and other appurtenances as mentioned in the schedule shall vest in Board (KPT). Part-II of the same schedule mentions the detail of vessels and boats together with all the fittings, gear and other appurtenances thereof. Whereas in part-III of the schedule germane to all other lands, buildings, harbour-works, railway-lines, machinery, plant, tools, furniture, vessels and boats, and other property whatsoever not hereinbefore particularly described heretofore in the charge of Port Officer of Karachi, Port Engineer of Karachi or of the Karachi Harbour Board. In Schedule "A" in the nomenclature of property vested in the board details of various properties are mentioned but in clause XXI, land between China Creek embankment and the sea is also provided with boundaries and the general description such as on the north by China Creek embankment, on the South by sea, on the East by bare sand hills and on the West by sandy ridges. In terms of Section 27 and the Schedule "A" appended to the KPT Act of 1886, the government may define and demarcate such boundaries and the decision of Government shall be conclusive. However, it is further

provided that any portion of the land specified in the said schedule shall be required by the Federal Government for a public purpose that may be resumed by the Federal Government without claim of compensation. However, in sub-section 2 it is distinctly made known that nothing in clause (ii) of the proviso of sub-section (1) shall apply to land reclaimed from harbour waters and the Board shall be compensated for any improvements effected by it on any land resumed under that clause. According to Section 25 of the Act the Board shall for the purposes of this Act, have power to acquire and hold movable and immovable property within or without the limits of the port or city of Karachi. Section 28-A of the of the KPT Act, 1886 envisioned special provision as to the liability of the board to the corporation according to which the board shall pay annually on the thirtieth day of September to the Municipal Corporation of the City of Karachi in lieu of the general tax and fire-brigade tax, if any, leviable by the said Corporation in respect of the property or some portion of the property vested in the Board which would otherwise be liable to be assessed to the said taxes a sum ascertained in the manner provided in sub-sections (2) and (3).

23. According to Section 2 of Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947, existing Pakistan Law means any Act, Ordinance, Regulations, Rules, Order or Bye-Laws which immediately before the appointed day as a force of law in the all or in part of the territories which is from that date form the territories of the dominion of Pakistan but does not include any Act of parliament or any order any government or other instruments made under the Act of parliament or the General Clauses Act. Whereas under Section 3 of the same order it is further provided that as from the appointed day all existing Pakistan Laws shall until repealed or altered or

amended by competent legislature or other competent authority in their application of Pakistan and any part or parts thereof to be subject of the adaptation directed in this order. The appointed day in its adaptation order means the **15th day of August, 1947**. It is clear that from the appointed day the Karachi Port Trust Act, 1886 is in force in Pakistan. Much emphasis were made to Article 172 of the Constitution of Islamic Republic of Pakistan. Prior to 18th amendment it was provided under Article 172 that any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in the Federal Government and according to sub Article (2) all lands, minerals and other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the Federal Government. However, after 18th amendment the nomenclature of Article 172 is same as "Ownerless property" and Sub-Article (1) is also same however, in sub-Article (2), instead of word "**within**" after the word ocean, the word "**beyond**" has been substituted but the fact remains that the implication of this Article in fact relates to the ownerless property but here no issue is involved for any ownerless property but according to Section 27 of the Karachi Port Trust Act the properties specified in schedule "A" appended to the Karachi Port Trust Act vested in KPT Board including the land reclaimed from harbour waters which can only be resumed by the Federal Government under sub-section 2 of Section 27 of the Karachi Port Trust Act on payment of compensation to the KPT for any improvement effected. The learned counsel for the plaintiff argued that land granted on lease to the plaintiff-society consisted of marshy land where the main sewerage from Karachi was discharged. The subject land or its part was not under the sea and the Sea-Retention Wall had been

built much prior to the grant of lease to the plaintiff-society. Quite the reverse, the learned counsel for Board of revenue argued that the land is marshy land/reclaimed land.

24. The nucleus and distillation of research based on survey and review of a number of websites bring to light that glossary “marshy/march” or “reclaimed” lands both are two different genera or genus. A “**marsh**” is a wetland that is dominated by herbaceous rather than woody plant species. Marshes can often be found at the edges of lakes and streams, where they form a transition between the aquatic and terrestrial ecosystems. They are often dominated by grasses, rushes or reeds. If woody plants are present they tend to be low-growing shrubs. This form of vegetation is what differentiates marshes from other types of wetland such as swamps. Marshes are defined as wetlands frequently or continually inundated with water, characterized by emergent soft-stemmed vegetation adapted to saturated soil conditions. There are many different kinds of marshes, ranging from the prairie potholes to the Everglades, coastal to inland, freshwater to saltwater. All types receive most of their water from surface water, and many marshes are also fed by groundwater. Whereas “**reclamation**” is the process of changing land that is unsuitable for farming or building into land that can be used. Land reclamation is the gain of land from the sea, or wetlands, or other water bodies, and restoration of productivity or use to lands that have been degraded by human activities or impaired by natural phenomena. Land reclamation is also known as land fill which is a process of creating new land from oceans, riverbeds or lake beds.

25. Much reliance was placed by the learned AAG as well

as learned counsel for the Board of Revenue to the order passed by this court in **Suit No. 924/2002 “Modern Terminal Operators vs. The City District Government Karachi & others”** (unreported). The brief facts of the case were that the defendant No.5 (KPT) on 08.11.1998 invited tenders for the grant of 25 years lease in respect of two separate under development plots on land alleged to along Estuary of Lyari River for the purpose of tanker staking storage and warehouse. The plaintiff bid was the highest but the bids were scrapped, however, on 13.12.2000, the bids were re-invited for the same two plots. The report was submitted by Waseem Ahmed, Assistant Director, Survey of Pakistan, Karachi to the Official Assignee which is reproduced under paragraph No.53 of the judgment and in paragraph No.54, the learned Judge observed that according to the map plan submitted by KPT, Plot No. 62 & 63 fall under KDA limit and held that said plots did not vest in KPT. The facts of above case are distinguishable as the case in hand is converged and congregated to the exposition of Section 27 and the Schedule-A attached to KPT Act. The learned counsel also referred to the judgment passed in **Suit No.778/1998 “Province of Sindh vs. Administrator, DHA & another”** (unreported). In this case the learned Single Judge while deciding injunction application observed that by reclamation process, the land about 240/250 acres has been emerged at the sea shore and it is not disputed that such land is located under Province of Sindh, therefore, learned Single Judge expressed his view that the reclaimed land through natural process or by artificial process as in the present case would vest to the Provincial Government unless is conferred to any person or authority in accordance with law. The facts of this case are also distinguishable as in this case there was a dispute between Province of Sindh and the DHA and the

suit was filed by Province of Sindh in this court whereas in this case what is apparent and noticeable that the land limits of KPT were notified in the year 1940 and subsequently by the Federal Government in the year 1991 displaying the land in question an integral part of the notifications. Further the land in question is part of Schedule-A attached to the KPT Act in pursuance of Section 27 of the KPT Act but no discussion was made in the aforesaid order but the premise of case was confined to the Land Revenue Act as well as Sindh Land Revenue Act. In the case of **Muhammad Nawaz Khan vs. Muhammad Khan & others (2002 SCMR 2003)**, the court held unless the transaction was not in good faith; the petitioner was not bona fide purchaser and he did not take reasonable care regarding the power of transferor to transfer the property, he could not be denied the protection provided, under section 41 of the Transfer of Property Act. In the case of **Baidya Nath Dutt vs. Alef Jan Bibi & others (AIR 1923 Calcutta 240)**, the court referred to the judgment passed in the case of **Rmnzomar Koondoo vs. McQueen I.A. Sup. 40** and observed that it is a principle of natural equity, which must be universally applicable that where one man allows another to hold himself out as the owner of an estate and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice, of the real title or that there existed circumstances which ought to have put him upon an inquiry that if prosecuted would have led to a discovery of it. Whereas in the case of **Purnendu Nath Tagore vs. Hanut Mull Dogar & others (AIR 1940 Calcutta 565)**, the court held that if the first

transferee from the benamidar is a bona fide purchaser for value without notice, he acquires good title and any transferee from him with or without notice of the real title would in equity acquire a good title. The judicial precedents i.e. PLD 1978 Lahore 113 & AIR 1961 Calcutta 411 relied by the learned Assistant Advocate General do not focus on the actual controversy involved in this lawsuit hence found distinguishable.

26. Throughout the proceedings, the Government of Sindh, Board of Revenue and other contesting defendants have despairingly failed to produce any documentary evidence and also failed to deny the documents produced by the plaintiff including the indentures of leases. Neither they have challenged the lease nor sought any cancellation nor set into motion any independent proceedings for the alleged claim nor claimed any set of in the present proceedings nor take up the matter with Federal Government nor denied the transaction through which KDA acquired land from KPT for KDA Scheme No.5 nor denied the indenture signed between KPT and United State of America for leasehold rights of Plot No. 3, 4 and 5 measuring 82836 Sq. meter at M.T. Khan/Mai Kolachi Road, Karachi nor denied the letter of the then Chief Minister Sindh conveyed to the then Prime Minister in which the CM suggested that an area of 75 acres of Chinna Creek may be acquired. CM further stated in his letter that the land falls within the jurisdiction of KPT and the same has got to be transferred for the purpose of better utilization and development of city to Government of Sindh. The whys and wherefores lead me to the closing stages that the impugned letter dated 21.4.2001 was issued without any lawful authority and it has no legal effect. Likewise, no illegality is found in the lease documents executed by KPT in favour of plaintiff for the

land in question after proper approval of the Board and the Federal Government. The issues No.2 to 4 are answered accordingly.

27. So far as the Issue No.5 is concerned, sanguine to the set of circumstances and ramification as well as connotation of Section 27 read with Schedule-A of KPT Act 1886, the plaintiff is entitled to the decree for permanent injunction. Consequently, the defendant No.1 to 4 shall not take any adverse action in pursuance of impugned letter dated 21.4.2001 against the plaintiff and they shall also not cause any interference or hindrance to the land in possession of plaintiff and its members. The suit is decreed in the above terms. The parties will bear their own cost. The pending applications are also disposed of accordingly.

Karachi:-
Dated.8.2.2019

Judge