

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.12/2001

Order with signature of Judge

Present: Mr. Justice Nazar Akbar

**Applicants : Shiakh Imran Ahmed
through Mr. M. Farooq, advocate.**

Respondents : K.D.A. & others through (None present).

Date of hearing : 11.03.2016

JUDGMENT

NAZAR AKBAR, J:- This revision is directed against the judgment dated **8.1.2001** passed by IIInd Addl. District Judge, (East) Karachi, in Civil Appeal No.203 of 1999, whereby an appeal filed by the Respondents against the judgment & decree dated 10.11.1999 and 15.11.1999 in Suit No.980/1996 passed by VIth Sr. Civil Judge, (East) Karachi, was allowed and judgment and decree in favour of the applicant was set aside.

2. Briefly stated the applicant on **06.5.1990** filed suit No.435/1990 against the respondents in the High Court of Sindh at Karachi which was later on transferred to the Court of VI Senior Civil Judge, East Karachi and re-numbered as **Suit No.980/1996**. On **29.4.1990** Respondent No.2 had served a notice upon the applicant under **Section 3** of the Sindh Public Property (Removal of Encroachment) Act 1975. (The Encroachment Act, 1975) for removal of encroachment from plot No.ST-13/1, Sector 15-A-3, measuring 522 sq.yards situated in North Karachi Township (suit plot). On **6.5.1990**, the applicant filed the suit on the ground that for the last 20 years he was in occupation and he has raised pacca construction of a residential house in one portion and he is doing business of hotel in the other portion.

The Applicant pleaded that he made applications to KDA and Chief Minister and other authorities for allotment of the suit plot on the basis of long possession and the respondents have advertised in the newspaper for auction of the suit plot and verbally threatened that the applicant shall be evicted forcibly. The applicant claimed to have served statutory notice under **Article 131 of the KDA Order, 1957** upon respondent No.1. The Applicant was apprehending that either he will be forcibly evicted or the plot will be auctioned, therefore, he filed the suit for declaration, permanent and mandatory injunction with the following prayers.

- a. Decree be passed declaring that the action of the Defendant vide notice under Section 3 of the S.P.R. Act 1975 for the eviction of the Plaintiff and auction of the property are both illegal against public policy, against natural justice and the same be declared illegal and of no legal consequence.
- b. Decree be passed permanently restraining the Defendant to allot the suit plot to the Plaintiff at Rs.300/- sq.yards, as quoted by them in the advertisement appearing in daily Jang.
- c. Grant such other further additional alternate relief/reliefs as this Hon'ble Court may deem fit in the circumstances of the case.

3. The Respondents filed written statement and denied all the averments made against them and stated that applicant has illegally encroached upon the suit plot and raised construction unauthorizedly and illegally running hotel as admitted by the applicant himself. It was averred that possession of the applicant was illegal and he is liable to be evicted through due process of law under Sindh Public Property (Removal of Encroachment) Act, 1975. It was further averred in the written statement that merely obtaining the connection of water and electricity does not

confer any right to retain the property illegally. The learned trial court from the pleadings of the parties framed the following issues.

- i. Is the suit not maintainable in law for want of statutory notice as required under Article 131 of KDA Order (President's Order No.5 of 1957)?
- ii. Whether any cause of action accrued to Plaintiff for filing the suit?
- iii. Whether for the reasons given in para-3 of the plaint the Plaintiff cannot be held as encroacher?
- iv. Whether the Plaintiff is not liable to be evicted from the land in dispute belonging to the Defendants in due course of law?
- v. Whether any assurance was ever given to the Plaintiff for regularization of the plot in unauthorized possession of the Plaintiff? if so, its effect?
- vi. Whether the notice dated 24.4.1990 under Sindh Public Property (Removal of Encroachment) Act, served upon the Plaintiff, is illegal and improper? If so, its effect?
- vii. Whether the plot in dispute is required to be disposed of through public auction? If so, its effect?
- viii. Whether the Plaintiff is in occupation of plot No.ST-13/1 Sector No.15-A/3 North Karachi since last 20 years and if so to what effect?
- ix. Whether the Plaintiff is entitled to regularization of his possession in respect of said plot on payment of charges?
- x. What should the decree be?

The Applicant/Plaintiff examined himself as Ex.P/1 and produced the following documents.

- i. Exh. P/2 and P/3 Bill of water board.
- ii. Exh.P/4 Allotment of plot ST-28/4 Block-4, BlockD-4, Sector 4 measuring 246.67 sq.yds Malir Township Karachi.
- iii. Exh.P/5 Resolution regarding Plot ST-1 Block-Q, Section 33/A, Commercial Area, Korangi Township
- iv. Exh.P/6 Summary for Minister

- v. Exh.P/7 Show cause notice to the Plaintiff dated **24.4.1990**.
- vi. Exh.P/8 Copy of statutory notice to respondent No.1
- vii. Exh.P/9 Newspaper clipping
- viii. Exh.P/10 Letter of Asstt: Director Land Management dated **31.1.1994**.
- ix. Exh.P/11 Resolution No.154
- x. Exh.P/12 Copy of written statement filed by the KDA in Civil Suit No.1115/1986.
- xi. Exh.P/13 Copy of judgment in C.S. No.653/1990
- xii. Exh.P/14 to 16 Copy of electric bill challan form PT-I

On behalf of the Respondent Assistant Demolition Officer namely Shakeel Ahmed Siddiqui was examined as Exh.D/1.

4. The learned trial court decreed the suit of applicant. The respondents preferred Civil Appeal No.203/1999 against the judgment before the District & Sessions Judge, East Karachi. The appeal was allowed and the District Judge held that Plaintiff/applicant is un-authorised occupant and KDA has neither passed any resolution in his favour nor he is entitled for allotment of the plot in question without due process of law for such allotment. He was declared liable to be evicted through the due course of law.

5. I have heard the arguments of learned counsel for applicant and also gone through written synopsis of argument filed by him. None appeared for the respondent/KDA. Record perused. Learned Counsel for the applicant has vehemently contended that the Appellant being old occupant of the suit plot was entitled to the transfer of ownership rights in the Suit plot on payment of usual charges to the KDA. He has further contended

that he has always been willing and ready to accept all terms and conditions of KDA for proper allotment/regularization of the suit plot in favour of the applicant. The KDA never considered his application and discriminated with him by not accepting his request. He has further contended that the learned Appellate Court has not examined several documents produced by the applicant before the trial Court in evidence particularly Ex.P/4, P/5, P/6 and P/11 and therefore the finding of the Appellate Court, whereby the appeal of the respondent (KDA) was allowed suffer from misreading of facts/evidence produced by the applicant. It was also contended by the Counsel for the applicant that the Appellate Court has framed five points for determination and has not considered the point raised by the trial Court while reversing the finding of the Trial Court.

6. I have carefully examined the entire record of the case and found that the Appellate Court has rightly reversed the findings of the trial Court, declaring that notice issued under **Section 3** of the Sindh Public Property (Removal of Encroachment) Act, 1975 by KDA was not illegal and unlawful and held to have been issued lawfully. I have already reproduced the Issues framed by the trial Court in para-3 above and following were the points for determination framed by lower Appellate Courts.

1. Whether the plaintiff / respondent occupied the disputed land unauthorisedly and illegally?
2. Whether the plaintiff/respondent is entitled to regularize of his possession in respect of the suit plot on payment of charges?
3. Whether the notice dated 24.4.1990 under Sindh Public Property (Removal of Encroachment) Act 1975 served upon the plaintiff is illegal and improper?
4. Whether the lower court has committed any illegality or irregularity in the judgment and decree?

5. What should the decree be?

The perusal of the points for determination raised by the Appellate Court shows that the contention of the learned counsel for the applicant is misconceived and contrary to record. The first three points raised by the appellate Court for determination in the appeal were in fact repetition of Issue Nos.4, 6 & 9, which were adopted by the trial Court. In fact these three issues were the main issues and the remaining issues of trial Court that is to say issues No.1, 2, 3, 5, 7 & 8 were dependent on the outcome of the main three issues.

7. The Appellate Court has not dilated upon the question of maintainability and the cause of action (**issue No.1 & 2** of trial court) and therefore the applicant is supposed to have any grievance for not examining the said issues by the appellate court. **Issue No.3 & 5** (i.e. para-3 of plaint and assurance, if any, by respondent) were neither proved nor otherwise relevant in the given facts of the case. The applicant in support of contents of Para-3 of the plaint has not produced any policy document of Government and a mere oral statement by an unlawful occupant would not be enough to confer legal character on him. Such occupant can only be held trespasser and encroacher on the Government Land. The applicant has failed to prove any assertion from the plaint about his lawful right under any statute for regularization of the suit plot by the KDA in favour of the illegal occupant. He has not produced any record of any meeting with officers of KDA and even otherwise assurances by any officer of KDA, even if same were extended, such assurance cannot be binding on the KDA for disposal of its land. **Issues No.7** was again of no consequence, whether the suit plot was required to be disposed of through

auction or not, was not concern of the applicant. He was seeking regularization of the suit plot in his illegal possession and the best course for the applicant was to participate in the auction to get the suit plot regularized instead of getting the lawful procedure of transfer of the suit plot stopped through the court. The applicant was unable to justify lawful basis to seek regularization of suit plot without participating in the auction.

Issue No.8, Whether the plaintiff was in possession of land for 20 years was required to be proved by the applicant, which appears to have not been proved. Even if proved it was not sufficient to claim legal cover for such occupation nor it created legal obligation on KDA for conferring title of the suit plot on him. He has not produced any of the rules or regulations of the KDA to show that the possession on the KDA land for 20 years was enough to confer legal status of suit plot on him.

8. Now I will examine the finding of Appellate Court on the main Issues/points for determination. The record shows that at the time of filing of the Suit, it was **not** an open plot and the first ever documents produced by the applicant in evidence to show his possession for the 20 years was based on verbal claim of water connection on the suit plot since 1982, only eight years prior to show cause notice dated **24.4.1990**. However, bill of water board filed with plaint as annexure A and A/1 which were produced in evidence as **Ex.P/2 and P/3** were issued in **1987**. There was no proof of applicnat's connection with the suit plot. The contents of para-3 of the plaint which were also Issue No.3 before the trial Court, were not proved by the applicant. In para-3, he claimed that ever since he came in possession of the suit plot he started making applications to the KDA, Chief Minister and other authorities for the allotment of the Suit Plot to

him on the basis of long possession. He did not place on record a single application moved by him to the Chief Minister or to any high officials of the KDA or any other authority with his plaint nor he filed any such application in his evidence. The only documents of this nature which he filed before the trial Court was (**Ex.P/10**) a letter dated **31.01.1994** from KDA to the Applicant and it is a reply to a Letter dated **10.01.1993** from the applicant to the KDA. How can this letter be treated as an application moved by him for allotment of Suit plot prior to show cause notice dated **24.4.1990** (**Exh.P/7**) under **Section 3** of the Sindh Public Property (Removal of Encroachment) Act, 1975. The perusal of record shows that to give some legal cover to his illegal occupation the applicant has even taken advantage of corruption in the Excise & Taxation Department, Government of Sindh by claiming to have obtained Form **PT-1** in respect of the suit plot and proudly stated that he is paying property tax to the government. He produced payment of tax challan and Form PT-1 as **Ex.P-15 & Ex.P-16**. The challan **Ex.P-15** is for payment of **Rs.8890/-** in respect of **five** shops as noted by the relevant Excise officer in **Form PT-1**. However, the applicant in his examination-in-chief has declared as follows:-

“The plot in question is under my possession since last about 25 years. It is **ground floor building consisting 11 shops and a residential house comprising of four room.**”

In terms of Form **PT-1 form** (**Ex.P/16**) issued from the Excise and Taxation department, Government of Sindh, he is paying property tax only on **(5) five shops** instead of **(11) eleven shops** and there is no mentioned of any tax in respect of the residential portion on the suit plot of more then

500 sq.yds. Both the receipts Ex.P/15 & the PT-1 Ex.P/16 do not disclose the name of owner and occupier.

9. It is pertinent to mention that show cause notice impugned through the suit was supposed to be replied within three days by way of Review application in terms of **Section 4** of the Encroachment Act, 1975. The applicant neither complied the show cause notice by removing the encroachment nor preferred any review and straightway filed Suit No.980/1996 (Old Suit No.435/1990) on **06.05.1990** in response to the show cause Notice dated **24.4.1990** that is to say within 10 days. He has claimed to have sent statutory notice even prior to show cause notice on **25.02.1990**, but he has not been able to prove even dispatch of the notice to KDA. Even his suit was not maintainable. The applicant preferred suit under **Section 42** of the Specific Relief Act, 1877 without showing his own entitlement to any legal character to the suit plot. In terms of **Section 42** of the Specific Relief Act, 1877 the applicant/Plaintiff was supposed to file suit for declaration of his own legal character said to have been denied by KDA, through show cause notice. The applicant neither in the plaint nor in the prayer has sought any declaration about his legal character, right, title or interest in the suit plot, therefore, there was no question of denial of his right by the respondent to invoke provision of **Section 42** of the Specific relief Act, 1877. Thus even the suit was not maintainable. I must observe here that the applicant is guilty of abusing the process of court and apparently official of Anti Encroachment Cell KDA/law department of KDA were also in connivance with the applicant. There was no serious contest from Anti Encroachment Cell, KDA, when their action was challenged by applicant in court. If the court start accepting such frivolous

claims and start issuing directions to the respondent / KDA who were already looking for a pretext of Court orders to regularize illegal possession on the Government Land then every inch of the State land would be awarded to the unscrupulous persons by the unscrupulous Government functionaries in violation of the legal requirements for disposal of Government land in the name of possession of occupant for several years. The law of disposal of government land would become redundant and meaningless. The courts of law are not supposed to help the illegal occupants to perpetuate their possession on the government land which possession was even protected by the corrupt official of Government by their willful inaction. The rules, regulations and the law relevant for the disposal of the State property should have been followed in letter and spirit by the KDA officials instead of hiding themselves behind court on the pretext of court case which was not even contested during the last 16 years. The applicant had no case on merit and even on law, however, he had a meaningful long silence of KDA administration with him.

10. In view of the above facts the whole story was cooked by the applicant apparently with consent of KDA officials to give up the legal course adopted by KDA against the illegal occupant by abusing the process of court. My belief that either side are equally guilty of using the court to perpetuate illegality finds support from the record that during the last 16 years from **23.1.2001** when this revision was filed in this Court the law officers of KDA have never shown their interest in this revision application. On every date the applicant was facilitated in getting adjournment and therefore, the interim status quo orders dated **25.1.2001** passed by this court on CMA No.155/2001 continued ever since. The

application for interim order (CMA No.155/2001) was pending even on the date of final hearing. The applicant has been so confident about taking adjournment that from **2.4.2008**, his counsel stopped coming to the Court and the applicant was comfortably getting adjournment mostly on the frivolous ground that his own counsel was busy in another court or not well. There was hardly any resistance from the respondent side for the adjournment and even the counsel for the respondent stopped coming to the Court from **6.12.2012** onward. This court on **7.3.2016** noticed this abuse of the court and caught the applicant red-handed when he claimed adjournment on the pretext of illness of his counsel who had not appeared in Court for eight long years. Therefore cost of **Rs.10,000/-** was imposed on the applicant for making false statement in court during the past eight years. Thereafter the applicant came with another counsel Mr. Muhammad Farooq, advocate who filed power and advanced arguments. He has also filed written arguments. However, none was present on behalf of the KDA as if it was commitment with the applicant that KDA will never contest.

11. The above discussion was imperative before conclusion of this judgment as the corruption and connivance to the corruption is rampant particularly in the institution like KDA and KMC. In a recent judgment passed by this bench in civil Revision No.14/1993, an illegal occupant on Government Land had filed a frivolous suit in 1963 and subsequently raised 20 shops and four residential units. In April 2016 after almost 53 years when the court directed the relevant authorities to remove illegal construction / encroachment from the Government land it was not complied until contempt notices were issued to the Director and Deputy Director Land KMC and KDA for completion of the task which was even

otherwise their statutory duty. In the case in hand, as discussed above, the connivance of the official of KDA and even the law department in perpetuating illegal occupation of the applicant on the Government land, its conversion into residential and commercial use by him was not possible without help of KDA officials. The help of KDA official is only INACTION as long as the incumbent holds the relevant office. The result is enormous. It goes without saying that in the process of perpetuating the illegality both the applicant and the respondents have conducted themselves in such a fashion that it has also adversely reflected on the image of the court.

12. In view of the above facts and discussion while dismissing this revision application, I am constrained to impose cost of **Rs.200,000/-** on the applicant for illegally occupying government land for 35-40 years including **26 years** in courts, and the respondents are also directed to deposit cost of **Rs.100,000/-** on account of their willful inaction for 16 years which has definitely resulted in damaging the image of judiciary. Both the parties should deposit their respective cost with the Nazir of this Court within 15 days and in case of failure to deposit the cost the Nazir may take any coercive measures for its recovery such as attachment of bank accounts and/or moveable / immoveable properties of the defaulting party. Once cost is received by the Nazir, it should be transferred to the three accounts in equal proportions i.e Rs.1,00,000/- each in account of (1) **clinic** of High Court Bar, (2) **clinic** at Karachi Bar Association; and (3) High Court Bar Library. The Respondent / KDA is directed to complete the requirement of **Section 5** of the

Encroachment Act, 1975 within **10 days** from today and at the same time the Director KDA is also directed to hold an enquiry against the officer of KDA in terms of **Section 8(2)** of the Encroachment Act, 1975.

13. The compliance of **Section 5** showing complete removal of encroachment from the suit plot should be reported to this Court through MIT-II within **15** days alongwith photographs showing removal of encroachment. Similarly compliance of **Section 8(2)** of the Encroachment Act, 1975 requiring action against the relevant officer of KDA should be completed strictly in accordance with law within **90 days**. However, progress of action against relevant officer of KDA should fortnightly (15 days) be placed before this Court through MIT-II in Chamber for perusal.

14. Needless to mention here that non-compliance of the order passed herein above would entail consequence of contempt of Court against the Director KDA and Deputy Director Land, Anti Encroachment Cell, KDA and any other officer responsible for execution of the above orders.

JUDGE

Karachi
Dated:19.05.2016

SM