

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.108/1993

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicants : **Dhanji Manocher Sethna & others
through Mr. A. Aziz Khan, advocate.**

Respondent No.1: **Federation of Pakistan
Mr. Muhammad Qasim, Standing Counsel.**

Respondent No.2: **Military Estate Officers, Government of
Pakistan, through Mr. Ashraf Butt,
advocate.**

Date of hearing: **02.06.2016**

Date of Announcement: **26.08.2016**

JUDGMENT

NAZAR AKBAR,J:- This revision is directed against the judgment dated **22.4.1993** passed by IV Additional District Judge, South Karachi, whereby Civil Appeal No.51 of 1992, filed by the Respondents was allowed and the judgment & decree dated **17.11.1991** and **12.1.1992** by the Vth Civil Judge, Karachi-South, in Suit No.461/1987, in favour of applicant/Plaintiff was set aside. Consequently suit filed by the Applicants was dismissed.

2. Brief facts of the case are that Plaintiff/Applicant No.1 claiming to be in lawful possession and having raised structure on the suit property bearing survey No.118 Preedy Street, Saddar Karachi (the suit property) has filed suit for declaration and injunction against the respondents challenging their notice dated **2.3.1987** for vacating the suit property as illegal and null and void. Applicants No.2 to 7/Plaintiffs are the respective tenants of the applicant / Plaintiff No.1 in respect of the portion of the suit property in their respective possession. As per extract of ownership (General Land

Register) maintained by the office of the Military Estate Officers, Karachi, Respondent No.2 herein, the ancestors of Applicant No.1 named Dr.Eddi Phiroze Bharucha was owner of the plot as holder of the occupancy rights (**old grantee**) for all practical purposes and the existing structure has been constructed over the suit plot about 100 years back and renovated in 1984 by applicants who are in possession since 1947. The recorded owner of the suit plot i.e. Eddi Phiroze Bharucha had rented out the said plot to M/s. Hirjima and Company, a family concern of applicants in the year **1947-48** for utilizing as a Teddy shop for which a license was granted by the then Collector Karachi in 1921 and the same remained valid upto the year 1963 when its sale was banned. Then the suit property was converted into a bar named Virgo Bar under a licensee which remained valid upto the year **1976-77** when ban on the sale of liquor was imposed and the suit property was sealed by the Excise and Taxation Department, Government of Sindh. On representation made by applicant/ Plaintiff No.1, the Director General Excise & Taxation after scrutiny ordered to desal the suit property, and handed over its possession to applicant/Plaintiff No.1 on **20.12.1983** under proper acknowledgement. Thereafter Applicant No.1/Plaintiff No.1 let out the various portions of the suit property to the co-applicants/Plaintiff No.2 to 7.

3. It is also averred in the plaint that Government of Pakistan continued to be the landlord of the suit property but exclusive occupancy right were with applicant/Plaintiff No.1 or his agents or sub-lessee. Respondents No.2 by notices dated **7.4.1985** declared that all the applicants are encroachers on Central Government land and threatened to dispossess them. The applicants were constrained to file **suit No.4534/1985** for

restraining the respondents from dispossessing them from the suit property. The respondent got the plaint of Suit No.4534/2005 rejected under **Order VII Rule 11 CPC**. The applicant's preferred an **appeal No.127/1986** which also met the same fate. The applicants' then preferred **Revision Application No.331/1986**. It was not contested by the respondents and on assurance from Respondents that they will act in accordance with law, it was disposed on **19.2.1987** by this Court as withdrawn.

4. Soon after the withdrawal of Revision, the respondents attempted to forcibly dispossess the applicant on **7.3.1987** and served a notice by hand dated **2.3.1987** purportedly under Central Government Lands and Building (Recovery of Possession) Ordinance, 1965 (hereinafter the **Ordinance LIV of 1965**). Therefore, the applicants/Plaintiffs filed another **suit No.461/1987** against the respondents in the Court of Civil Judge (South) Karachi and obtained injunction orders. However, despite stay orders on **9.3.1987** the respondents demolished two shops and partially damaged three other shops on **18.3.1987** with the help of the then area SDM. The Applicants in their suit have prayed for the following relief(s).

- i. Declare that the Defendants cannot take any action against the Plaintiffs and the notice dated **2.3.1987** under which the action is being taken is illegal, unlawful, malafide, arbitrary, unjust, and in contravention of the **Land Grant Policy** to the occupant and to direct the Defendants not to dispose of the suit property other than the Plaintiff No.1/occupier.
- ii. To restrain the Defendants, their Agents, servants, or any other person acting through or under them from demolishing the premises bearing No.118, Preedy Street, and consequently ejecting the Plaintiffs.
- iii. To grant cost of the suit;

iv. To grant any other reliefs which this Hon'ble Court may deem fit and proper under the circumstances of the case.

5. The Respondents in their written statement raised legal pleas that the suit was not maintainable and barred under section **42 & 56** of the Specific Relief Act, 1877 and **Section 11** of the Ordinance, LIV, 1965. It was also averred in the written statement that Civil Court has no jurisdiction and the plaint has not disclosed any cause of action against the respondents. It was also averred that suit property was allotted to Dr. Eddi Phiroze Bharucha who migrated to India during Indo-Pak war of 1965 whereupon the suit property was declared Enemy Property and subsequently purchased by the Ministry of Defence from the Enemy Property Custodian Board. Therefore, the Plaintiffs are unauthorized occupants on Government Property and are liable to be ejected in accordance with the provisions of Ordinance LIV of 1965. It was further contended that suit property was allotted to Dr. Eddi Phiroze Bharucha for his own use with occupancy rights on old grant basis and not on lease basis and under the old grant Rules, the Government can resume the property at any time without any compensation and assigning any reason.

6. The Respondent again filed an application under **Order VII Rule 11 CPC** in the fresh suit and plaint was rejected by the trial Court by order dated **01.02.1988**. However, on appeal by the applicants against the rejection of plaint, the Vth Additional Session Judge, South Karachi in **Civil Appeal No.53/1988** while relying on several case law including **1987 CLC 393 Noor Muhammad ..Vs.. Civil Aviation Authority and another** set aside the order of rejection of plaint and remanded the case back to the trial court. The respondents challenged the remand order through **Civil**

Revision No.221/1988 before this Court. This Civil Revision after contest was dismissed on merit by judgment dated **5.11.1989** and remand order was maintained.

7. After remand the trial court framed the following issues.
 - i. Whether the Plaintiff No.1 is the owner of the suit property?
 - ii. Whether impugned notice bearing No.K-45/74/42 dated 2nd March, 1987 issued by the Defendant No.2 in respect of suit property is malafide, illegal?
 - iii. Whether ordinance No.LIV The Central Government (Recovery of Possession) Lands and Buildings of 1965 applicable in this case and to what extent?
 - iv. Whether Defendants had received rent of suit property from the Plaintiff No.1?
 - v. Whether the suit is not maintainable?
 - vi. Whether the suit is barred under the law?
 - vii. Whether this Court has got no jurisdiction?
 - viii. Whether the plaint does not disclose cause of action?
 - ix. What should the decree be?

Plaintiff No.1 was examined on commission as Ex.P/5 and he produced the following documents.

- i. Sanction in Government Resolution No.C-15052 dated **6.12.1921**, as **Ex.P/6**
- ii. Existing entry in the General Land Register dated **18.3.1953**, as **Ex.P/7**
- iii. License for sale of foreign imported liquors, (Potable) Pak Made Potable Liquors excised at special rate (first July 1975 to 30th June 1976, in favour of Mr. Dhanji Sham Sethena as **Ex.P/8**,
- iv. Letter of desealing of suit property dated **22.12.1983** by Excise & Taxation, Karachi, as **Ex.P/9**,
- v. Mushirnama of desealing dated **12.01.1984** as **Ex.P/10**

- vi. Clearance Certificate of rent paid upto January, **1980** from A/C & SDM Harbour City Courts, Karachi, dated **08.12.1980**, as **Ex.P/11**.
- vii Pay Order dated **17.11.1986** in favour of MEO, as **Ex.P/12**
- viii Letter dated **17.1.1987** from MEO to Applicant No.1, as **Ex.P/13**
- ix Bill dated **11.2.1984**, as **Ex.P/14**
- x Bill of water dated **15.5.1985**, as **Ex.P/15**
- xi Receipt issued by the Karachi Cantt. dated **18.12.1984**, as **Ex.P.16**
- xii Rent receipts from **April, 1988** to **December 1988**, **Ex.P/17 to P/19**
- xiii First ever notices dated **7.4.1985**, as **Ex.P/20 to P/25**
- xiv Copy of statement and orders of Hon'ble High Court in civil revision No.331/1986 both dated **19.2.1987**, as **Ex.P/26 and P/27**
- xv Impugned Notice dated **02.03.1987** bearing No.K-24/74/42 from MEO, Karachi, as **Ex.P/28**
- xvi Photographs of shops **Ex.P/29 to 42**.
- xvii Copy of counter affidavit to contempt application by Contemnor No.3, as **Ex.P/43**.
- xviii Copy of order/judgment. dated **10.5.1988** in Civil Appeal **No.53/1988**, as **Ex.P/44**
- xix Applicant's petition to acquire the property, as **Ex.P/45**
- xx Letter dated **03.03.1988** from the Presidential Secretariat (Public) as **Ex.P/46**
- xxi Reply to request of applicants dated **27.3.1988** from office of Quartering General, as **Ex.P/47**

Defendant examined one witness namely Iqbal Ahmed Siddiqui Deputy Military Estate Officer as **Ex.D-6** who has also produced the documents i.e (i) Authority Letter dated **13.2.1991** as **Ex.D/7**. (ii)

Sanction letter dated **7.2.1979** as Ex.D/8, (iii) notice dated **2.3.1987** from Military Estates Officer Karachi Circle Karachi to Mr. Dhanji Manocher Sethna, as **Ex.D/9**. (iv) Mutation letter dated **19.2.1991** as **D/10**, (v) Notice dated **7.4.1985** as Ex.D/11, (vi) acknowledgement of payment from Deputy Director / Custodian, to MEO, Karachi Circle, Karachi as **Ex.D/12**, dated **4.12.1985**, letter from Station Headquarters, Karachi Cantt, to MEO Karachi as **Ex.D/13**, letter dated **3.3.1988** from Director PP&WC-II to Q.M.G. Br. GHQ, Rawalpindi, as **Ex.D/14**.

8. After hearing the parties, Civil Judge decreed the suit as prayed by judgment dated **12.11.1991**. However, learned IVth Additional District Judge (South) Karachi allowed **civil appeal No.51/1992** preferred by respondents by judgment dated **22.4.1993** and set aside the judgment and decree of the trial court. The applicants have filed this revision against the judgment of the appellate court.

9. I have heard learned counsel for the applicant and Mr. Ashraf Butt, advocate for Respondent No.2. However, since no serious assistance was extended by the counsel in their oral submissions, the counsel were also allowed to file written argument, if so desired. Except counsel for the applicants none has filed written argument. However, I have gone through the written arguments filed by Respondent No.1 in Civil Appeal No.51/1992 as appellant so that no prejudice should be caused to the respondents on the ground that their representatives have not taken the pain of advancing arguments in open court or placing their written argument in Court.

10. Learned counsel for the applicant has contended that while reversing the findings of the trial court, the appellate court has failed to appreciate that the main dispute between the parties was whether the applicants were “encroachers” of the property bearing plot No.118 Preedy Street Saddar Bazar Karachi Cantonment, which was specifically mentioned in the first ever notice dated **7.4.1985** and/or “illegal occupants” according to the 2nd notice dated **2.3.1987** from the Respondent No.2. In both the notices applicants were required to vacate the suit premises, the Central Government Land. The applicants have demonstrated legality of their possession by giving accounts of possession of the suit premises from 1921 till date. The applicants have filed resolution of Government sanction dated **6.12.1921** showing possession of suit property to run business of Teddy. The learned Appellate Court was misdirected / misguided by incorrect or wrongly worded issue No.1 that whether the applicants are owner of the premises in question. In fact the applicants have never claimed ownership of the suit plot / land. They have claimed ownership of only existing structure on the suit land and lawful possession as they have been paying rent of the suit land to the previous owners since **1947** whose name was incorporated in General Land Register on **18.3.1953** (Ex.P/7) by RespondentNo.2 in accordance with Rule 3 of the **Cantonment Land Administration Rules, 1937**. The issue No.1 according to the learned counsel should have been whether the applicants are in lawful occupation of the suit premises instead of owner of the suit property. The actual controversy was not the title of the applicants, it was about modus operandi adopted by Respondent No.2 in **1985** to forcibly eject the applicants from the suit land without due process of law under the cover of

a notice dated **7.4.1985** followed by another notice dated **02.03.1987** under the Ordinance, LIV of 1965 after withdrawal of the first notice. The Plaintiff has given chronological detail of their continues occupation / possession of the suit premises through documentary evidence showing their possession for more than 50 years. In cross-examination the applicants' has reiterated his stand in the following words;

“I am the owner of the structure and tenant of the land”.

Therefore, the applicants have prayed that the notice dated **2.3.1987** (**Exh.P/28**) from the office of Respondent No.2 may be declared unlawful, illegal. He has pointed out that the issue of notice dated **7.3.1985** from Respondent No.2 to the applicant for vacating the suit premises has not been finally adjudicated nor there is any verdict of the Court that applicants were unauthorized occupants. In fact, at revisional stage, the respondents have withdrawn their earlier identical notice dated **7.4.1985** (**Ex.P/20**) for all particular purposes and they were not directed by the Court to invoke any provisions of Ordinance LIV, 1965 for seeking ejectment. Therefore, he contended that the respondent by sending notice in hardy 10 days i.e on **2.3.1987** (impugned in prayer clause-A) after withdrawal of earlier notice and disposal of litigations initiated on the said earlier notice was malafide since the contents of the two notices were same except that in first notice the provisions of Ordinance, LIV, 1965 were not mentioned. This conduct was a malafide on the part of the respondents as the applicants who were in lawful occupation from **1947** onwards cannot be declared unlawful occupation merely at the whims of Respondent No.2.

11. Learned counsel for the applicants has further contended that the burden was on the Respondent No.2 to prove bonafide in issuing notice

dated **2.3.1987** to the applicants and also that the applicants were encroacher/illegal occupants. The initial burden of applicants as Plaintiffs that they were and are in lawful possession of the demised premises has been discharged by them through a series of documents from **1921** till the date of recording of evidence. It was not shaken in cross-examination. The learned Appellate Court reversed the findings of the trial court merely on the premise that the findings of the trial court that the applicants were owner was contrary to record as if every occupants of an immovable property is supposed to be owner and if the occupant is not owner he would only be treated as trespasser and there is no other lawful basis for being in possession of an immovable property. The applicants' possession of the suit premises was not unlawful / illegal since the applicants have produced several documents showing legitimacy of their possession and there has been no dispute that the applicants have entered into the suit premises against the will of the owner. The documents produced by the applicants to show their lawful possession / occupation of the suit premises have gone unrebutted as not a single nor a single suggestion was made by the counsel for the respondent to doubt genuineness of the said documents. Learned counsel has further contended that in fact the witness of Respondent No.2 has conceded that the applicants were in possession since 1947 and also conceded that suit property before partition was owned by E.P. Bharucha and since 1948 till 1964 M/s. Hirjina & Co. was in existence and running business of sale of wine in the said premises. The respondent's witness has also conceded that the Plaintiffs were in possession of the suit premises since 1948 uptill now. He has lastly contended that even learned Appellate Court in the impugned judgment

has repeatedly mentioned that the applicants have never claimed to be the owner of the suit property and at the most applicants were occupier of the premises concerned as tenants as evident from the several rent receipts showing deposit of rent by the applicants / (Respondent in Civil Appeal).

12. In rebuttal no arguments were advanced by any of the counsel for the respondents. The record shows that several counsel on different dates represented the Respondents but they never pursued the case on merits. In the beginning Mr. Abid Zuberi, advocate was representing the Respondents as the Court diaries indicate. However, his last appearance was on **7.11.2005** when **CMA No.2581/2004** under **Order 1 rule 10 CPC** filed by Station Head Quarter Army, Karachi to be joined as Respondent No.3 was dismissed for non-prosecution. From November, 2005 onwards each and every diary shows that the Respondents never appeared and from **24.4.2009**, even court intimation notices to the respondents and their counsel were sent. However, on **19.10.2010** another application bearing **CMA No.4244/2010** under **Order 1 Rule 10 CPC** was filed on behalf of the same intervener whose earlier application (CMA No.2581/2004) had been dismissed on **07.11.2005**. This application was filed through another counsel, Ch. Muhammad Rafiq Rajveri, advocate. Even the new counsel never turned up and CMA No.4244/2010 continued to be listed for orders until the last date of hearing. Again after several intimation notices from 2010 onwards to **01.2.2016** when Deputy Director of Military Estate Office, (Respondent No.2) Mr. Ajaz Ahmed appeared for the first time and at his request the matter was adjourned to **22.2.2016**. Again on 22.2.2016 neither he appeared nor sent any counsel, therefore, cost was imposed on

the respondents to be paid within two days. The cost was paid and Mr. Ashraf Ali Butt, advocate appeared on **29.2.2016** and undertook to file power on behalf of Respondent No.2. He attempted to get the case fixed before some other bench on the pretext that may be I had appeared in this case as Deputy Attorney General for Pakistan. Such statement was frivolous as throughout Mr. Abid Zuberi, Mr. Rafiq Rajveri and others have been representing the Respondents and I had never appeared in this case. **Mr. Ashraf Ali Butt**, advocate did file power on **01.3.2016** when counsel were directed to file written arguments. Nobody filed written arguments on behalf of either side therefore on **24.5.2016** it was ordered that this case be fixed for re-hearing on **27.5.2016** after intimation notice to the counsel for the parties. Then again on **27.5.2016** nobody appeared on behalf of the Respondents despite the facts their counsel were served through Secretary Sindh Bar Council. The counsel for the applicant filed written arguments. Then the case was adjourned to **02.6.2016**. Again on 2.6.2016 nobody appeared on behalf of the Respondents.

13. I have carefully examined the record after hearing counsel for the applicants. According to the record the first notice was issued by Respondent No.2 way back on **7.4.1985** claiming appellants were encroacher on Central Government Land but respondent did not press the said notice when in the Revision application No.331/1986 before High Court, they stated that they will not dispossess the respondents without due course of law. However, after 10 days they issued the impugned notice on **2.3.1987** under the Ordinance LIV of 1965. The impugned notice by judgment of first trial Court dated **17.11.1991** was declared illegal and of no legal consequence when the suit filed by the applicants was decreed.

However, on appeal the well-reasoned judgment was reversed by the appellate court without looking into the evidence of respondents only on the basis of the contents of plaint out of context. The perusal of record further shows that the respondents have attempted to develop their case by claiming to have acquired suit premises in **1979** and it was entered in the General Land Register in 1990, that is, even after the impugned notices to the applicants. The witness of respondent had admitted that the applicants were in possession of the suit premises since 1948. It was never case of the Respondent that applicants have forcibly entered into the suit premises against the will of the new owner i.e Respondents or even the will of the previous owner from whom they alleged to have acquired the suit property. It is averred by the respondent that the property has been acquired by them from the Enemy Property Custodian Board, Ministry of Communication in 1979. But the so called Enemy Property Custodian Board has never put the applicants in possession of the suit property. The applicant who were in lawful possession of the suit property much before 1979, cannot be declared illegal occupants or encroachers by the subsequent buyers who has never been put in possession of the suit premises by the seller whosoever it may be. In view of these clear factual realities on ground I believe the respondents never had a good case to argue in support of invoking the provision of Central Government Lands and Building (Recovery of Possession) Ordinance, 1965 against the old settlers / occupants of the suit premises, whose possession has been recognized by the previous owner as lawful. In this context, I feel it necessary to reproduce the evidence of Respondents, which seems to have totally been ignored by the learned Appellate Court while reversing the findings of the trial Court.

Respondents' witness Iqbal Ahmed Siddiqui (DW-1) Deputy Director MEO had made several admissions in his cross-examination. He admitted contents of para-4 of the plaint when he stated that:-

“It is correct to suggest that before partition the suit property was owned by Dr. E.P.Broucha. It is also correct to suggest that since 1948 till 1964 M/s. Hirjina & Co. was in existence and was dealing in sale of wine in the present premises / property. It is correct to suggest that Collector of Excise and Taxation has given a licence to run Virgo Bar in the premises in question in favour of Plaintiff No.1 in the year 1963 to 1976”.

14. He however, showed his ignorance or lack of knowledge about prohibition of alcohol, sealing of the property by the SDM and again desealing and handing over the same to the applicant as is proved by **Ex.P/9, P/10 & P/11**. All these documents were shown to the witness who did not deny or disputed contents of these documents but only stated that he does not know about these documents meaning thereby these documents were admitted documents, and sufficient proof of lawful possession of the applicants on the suit premises. The witness further admitted in cross-examination that no notice was served on the Plaintiff prior to the purchase of the suit property by the Defendant nor even after purchase and he again admitted possession of applicant in the following terms in his cross-examination.

“No notice was served to the Plaintiff prior to the purchased of the suit property by the Defendant. Neither after purchased. It is correct to suggest that the Plaintiffs are in possession of the suit property since 1948 uptill now. Again says Bhuracha was in possession till 1965 and thereafter in possession of present Plaintiff”.

Even after admission of Plaintiff's possession of the suit property the witness of the Respondent admitted that at the time of purchase of property they knew that the applicants were in possession of the suit property.

“It is correct that the Defendants never came in physical possession of the suit property. it is correct to suggest that the Defendants were in the knowledge at the time of their purchase Plaintiffs are in possession of the suit property”.

15. Beside the above instance of non-reading of evidence the Appellate Court failed to examine the amended plaint filed on **27.5.1990** and **para-16, 16-A** and **16-B** wherein the applicant has referred to the correspondence between the applicant and Respondent No.1 regarding transfer of the suit property to the applicant according to the Land Grant Policy of the Respondents. The perusal of the amended written statement filed on **05.8.1990** shows that Respondent No.2 (Military Estate Officer) formally denied the contents of para-16, 16-A & 16-B of the plaint as incorrect, however annexure L-1, L-2, L-3 & L-4 which are documents showing the correspondence between the applicant and Respondent No.1 / Defendant No.1, the real owner of the suit property, have not been denied or disputed as forged and fabricated documents. These documents were produced in evidence by the applicant and even the witness of Defendant No.1 namely Iqbal Ahmed Siddqui, Deputy Military Estate Officer himself has produced original of the two out of these four documents as **Exh.D-13 & D-14** in his evidence. Both these documents confirm that since **1986** the request of applicant to transfer the suit property to the applicant under Land Grant Policy as old-tenant is under consideration and things were about to be concluded but (the M.E.O) Respondent No.2 with all malafide intention has issued notice of ejectment in **1987** at his own without even the express permission from Respondent No.1. It was admitted by witness of Respondents in his cross-examination.

“I cannot produce any notice issued by the defendant No.1 that he require the suit property for public purposes. It is correct to suggest that both notices Ex.D/9 & D/11 have been issued by

the Defendant No.2 personally and there is no consent or order of the Defendant No.1 to issue such notices”.

It may be mentioned here that Ex.D/9 is the same notice which is impugned in the present proceeding and Ex.D/11 was impugned in earlier litigation and withdrawn whereafter applicants have withdrawn C.R.331/1986 as not pressed.

In my humble view lack of permission to issue impugn notice was probably one of the reasons for not contesting this civil revision with seriousness. Respondent No.1 in accordance with Land Grant Policy of the Ministry of Defense has been converting containment land into 99 years lease in favour of the old grantees/occupants/tenant who were in possession of Cantonment Land for over 50 years. The applicant No.1 does fall in the category of such occupants. There have been several cases in which in terms of the Land Grant policies introduced by the Ministry of Defense from time to time the old occupants as found in possession of land for around 50 years, their possession have been regularized into regular leases on payment of charges as prescribed in the policy. Admittedly the case of the applicant for regularization of the disputed premises is pending before Respondent No.1 since 1986 and Respondent No.2 in his cross-examination has admitted this position in the following terms:-

“I see a letter dated 15.Nov, 1986 from Station Commander and I admitted its contents and I produce this letter as Ex.D/13. I do not know about the contents of the letter dated 3.3.1988 issued by the President Secretariate (Public) Islamabad. I produce this letter as Ex.D/14. It is (in) my knowledge there are negotiations between Plaintiff (and) the Defendant No.1 for purchase of the suit property and the Defendant No.2 is bound by the order of the Defendant No.1. all negotiations. It is correct that the Defendant No.1 is willing to sale out the property in question to the Plaintiff (and) the Defendant No.2 has no right or authority to interfering the in this sale transaction”.

I would like to reproduce Ex.D/14 as follow:-

PRESIDENT'S SECRETARIAT (PUBLIC)
Aiwan-e-Sadr
ISLAMABAD

Control No.69189

13 Rajabul Morajjab 1408 AH
03 March, 1988

OFFICE MEMORANDUM

Subject:- DISPOSAL OF PROPERTY AND EJECTION OF THE APPLICANT BY FORCE.

The undersigned is directed to forward herewith a petition from Mr. Dhanji Manocher Sethna, addressed to the President on the above noted subject.

2. The petitioner has stated that he is an old resident of house in Cantonment area. As the property is being disposed off by Ministry of Defence, the petitioner has stated that he is ready to pay 5% above the highest bid received. He has requested that he be allowed to buy the property.

3. The petition is sent for disposal on merits.

Sd/-
Group Capt
(Abdul Razak Yusuf)
Director PP&WC-II

Q.M.G. Branch,
GHQ, Rawalpindi.

Copy for information to Mr. Dhanji Mancher Sethna, 56, Parsi Colony, Karachi.

The perusal of above referred documents in continuation of **Ex.D-13** confirms that the applicants have applied for regularization of the suit property in their possession from pre-partition days. Respondent No.1 / Defendant No.1 has already regularized hundreds of such properties in favour of the old occupants. The case of the applicant in all probability is pending may be due to the pendency of this revision application.

16. In view of the above facts and the evidence which seems to have been ignored by the learned Appellate Court, the impugned judgment of the appellate court is set aside. Consequently judgment and decree of the trial court is restored and the original decree in view of the pleadings of the

applicants in para-16, 16-A & 16-B and prayer clause-IV whereby the applicants have prayed for the relief deem fit and proper in the circumstances of the case, the Respondent No.1 is directed to decide the pending request of the applicant No.1 for regularization of the suit plot in accordance with the relevant Land Grant Policy applicable in 1987 and decide the case of the applicants as early as possible. The applicant shall not be dispossessed from the suit premises by the respondents or anyone acting on their behalf as the applicants are not in unauthorized or illegal possession of the suit premises.

SM

JUDGE