IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2322 of 2014

[Dr. Arifa Farid and others v. Mitha Khan and others]

Dates of hearing	:	26.02.2019, 20.03.2019, 22.03.2019 and 02.04.2019.
Date of Decision	:	24.04.2019.
Plaintiffs	:	Dr. Arifa and others through M/s. S. Hassan Imam, Zeeshan Iqbal, Abdur Rehman and Irfan Ahmed Qureshi, Advocates.
Defendant 1, 3 & 4	:	Mitha Khan, Qurban Sand and Fateh Muhammad Sand through M/s. Muhammad Yaseen Azad and Nasrullah Malik, Advocates.
Defendant No.2	:	Qadir Bux, through Mr. Taqdir Ali Khan, Advocate.
Official Defendants	:	Mr. Shahryar Qazi, Additional Advocate General Sindh along with Ms. Mehmooda Suleman, State Counsel.
Defendant No. 9	:	Sindh Building Control Authority, through Ms. Saba Siddiqui, Advocate.
Defendant No.14	:	Board of Revenue, Sindh, through M/s. Akhter Ali Mastoi and Noor Alam Khatri, Advocates.
Defendant No.15	:	Karachi Development Authority, through M/s. Usman Tufail Shaikh and Muhammad Khurram Ghayas, Advocate. M/s. Jameel Ahmed Baloch, Additional Director, Land Acquisition Cell, KDA, Irshad Ali Rind, Section Officer, L.U. Department and Muhammad Nawaz Kalwar, Mukhtiarkar, Gulshan-e-Iqbal Town, Karachi (East) are present.

Decisions relied upon by Plaintiffs' Counsel

1. C. P. No. D – 1608 of 2005 (and others)
   [***Ms. Talat Ejaz v. Province of Sindh and others***] – **"Ejaz Case"**

2. Civil Petition No.2086 of 2015
   [***Pir Masoom Jan Sarhandi v. Ms. Talat Ejaz***]

3. Civil Petition No.3470-K of 2015
   [***Roshan Associates, Karachi and others v. Talat Ejaz and others***]

Case law relied upon by Defendants' Counsel

1. P L D 2003 Karachi page-237
   [***Sharif Haroon v. Province of Sindh through the Secretary to the Government of Sindh, Land Utilization Department and another***]

Other precedents

1. 2004 P L C (C.S.) page-34
   [***Federation of Pakistan through Secretary, Ministry of Education, Government of Pakistan, Islamabad and others v. Qamar Hussain Bhatti and others***]

2. P L D 2010 Supreme Court page-483
   [***Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another***] – **"Bhinder Case"**

3. P L D 2009 Supreme Court page-879
   [***Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others***]

Law under discussion:

1. The Constitution of Islamic Republic of Pakistan, 1973 (the **"Constitution"**).
2. Specific Relief Act, 1877.
3. Civil Procedure Code, 1908 (**"CPC"**)
4. Qanun-e-Shahadat Order, 1984 (Evidence Act, 1872); Evidence Law.
5. The Sindh Gothabad Act, 1987.

JUDGMENT

Muhammad Faisal Kamal Alam, J: - This representative ***lis*** has been brought by the Plaintiffs for various plots, in Block – 11, Scheme 36, Karachi, regarding which the Plaintiffs claim their respective entitlement as owners, allottees and transferees. Plaint contains the following prayer clause_

> ***a) That this Hon'ble Court may graciously be pleased to direct KMC/KDA/KBCA to deliver the vacant possession of the respective plots to the plot owners and may further be directed to demarcate the plots as per layout plan to provide amenities so***

that approved plan may be submitted for raising construction over the plots.

b) To remove the illegal encroachment made by land grabbers from entire Block – 11, KDA Scheme-36, Gulistan-e-Jauhar, Karachi.

c) To take the suit proceedings as representative as per prayer made in the separate application accomplished herewith.

d) To award the mesne profit from the date of allotment till the final disposal of this suit to the plaintiffs / plot owners directing KMC/KDA/KBCA to make payment to allottees.

e) To demolish all illegal structures within the boundaries of Block – 11 of Scheme – 36.

f) ***Any other relief(s) this Hon'ble Court may deem fit and proper under the circumstances.***

2. Upon issuance of summons, the private and Official Defendants contested the matter by filing their respective Written Statements.

3. On 05.12.2018, following Issues were settled_

1. ***Whether the Government of Sindh on the basis of non-payment of dues can resume the land allotted to KDA, in accordance with law?***
2. ***Whether the KDA is entitled to transfer proprietary rights of the subject land situated in Block – 11, Scheme No.36, Gulistan-e-Johar, Karachi?***
3. ***Whether the defendants No.1 to 7 have any right, title or interest in respect of the subject land?***
4. ***Whether the plaintiffs are entitled for the possession of their respective plots as per their allotment in subject land?***
5. ***Whether 'Bhingo Gabol Goth' is a legally constituted / sanctioned village?***
6. ***Whether the plaintiffs are entitled for the relief prayed for?***
7. ***What should the decree be?***

4. M/s. S. Hassan Imam, Irfan Ahmed Qureshi, Zeeshan Iqbal, Abdul Rehman, Advocates, representing different Plaintiffs have argued that it was observed in the order dated 05.12.2018 that the entire controversy can be decided on the basis of legal Issues and in the light of the Judgment passed by the learned Division Bench of this Court in number of constitutional petitions, C.P. No.D-1608 being the leading petition, which decision was maintained up to the Honourable Supreme Court. It is contended that the said decisions though primarily relate to Block – 6 of Scheme No.36, Gulistan-e-Jauhar, Karachi, but, material findings are also applicable to the present case and thus, the entire controversy in the present ***lis*** can be decided without leading any evidence as no triable Issue is involved.

5. Per learned counsel for the Plaintiffs, so also mentioned in the plaint, Plaintiffs No. 1 to 7 are direct allottees of plots by Defendant KDA, whereas, Plaintiffs No.8 to 44 are transferees of their respective plots by way of sale transactions. Later Plaintiffs No.53 to 58 joined the proceeding when their application (C.M.A. No.3271 of 2018) was allowed vide order dated 29.05.2018. These Plaintiffs have claimed to have subsequently purchased their respective plots from their predecessor-in-interest.

The record shows that subsequently, another application [C.M.A. No.5688 of 2018] for impleading the Plaintiffs as 59 to 63 was allowed by the Order dated 02.05.2018. These Plaintiffs also claimed their right and interest in respect of one of the plots being plot No.65, situated in Block – 11, as mentioned in the Allotment Order issued by Defendant KDA, appended with the said application. Interestingly, the application was granted by consent of all as mentioned in the order dated 02.05.2018. Eventually, vide an order dated 17.10.2018, one more application preferred on behalf of

present Plaintiff No.64 was granted and he was also impleaded being subsequent allottee of Defendant KDA.

6. M/s. Muhammad Yaseen Azad, Nasrullah Malik and Mr. Taqdir Ali Khan, Advocates, representing the set of private Defendants No.1, 2, 3 and 4, have argued that in the present case demarcation is necessary in order to ascertain entitlement of the Plaintiffs and the private Defendants, who are residents of the two Goths (villages), namely, 'Bhingo Gabol Goth' and 'Rustam Zigri Goth' (hereinafter referred to as the **"Said Goths"**). Per legal team of the private Defendants, the Said Goths exist at the site even before the Partition and hence entitlement of residents / villagers of these two Goths should be given due consideration. Mr. Muhammad Yaseen Azad (Senior Advocate), has cited a reported case of this Court in ***P L D 2003 Karachi page-237,*** to augment his arguments that the land in question does not belong to the Karachi Development Authority (**"KDA"**), but Government of Sindh. The learned Advocates further contended that this case should be decided after a full dress trial and not on the basis of legal issues.

7. M/s. Usman Tufail Shaikh and Muhammad Khurram Ghayas, Advocates, representing Defendant No.15 (Karachi Development Authority-KDA), have supported the stance of the Plaintiffs and have also placed reliance upon the above two Judgments.

8. Mr. Shahryar Qazi, Learned Additional Advocate General Sindh along with M/s. Akhter Ali Mastoi and Noor Alam Khatri, Advocates, have mainly argued that Defendant No.15 – KDA besides being defaulter in payment of entire costs of the land allotted to them way back in the year 1977, has also encroached upon the additional state land of the Government of Sindh. Both learned counsel as well as Mr. Akhter Ali Mastoi, have also

supported the contentions of learned counsel for the private Defendants that demarcation be carried out in the subject matter. However, it has been acknowledged by Defendant No.14 (Board of Revenue) in their written statement that the land in Block-11, Scheme No.36 belongs to Defendant KDA and the above named 'Bingo Gabol Village' is an abandoned Goth. It is further admitted that neither any sanctioned nor any regularised Village exist in Block-11 in question.

9. Arguments heard and record perused.

10. First thing that should be decided is the applicability of the above decisions of this Court and of the Honourable Apex Court handed down in number of constitutional petitions, and C. P. No. D – 1608 of 2005 being the leading petition filed by one Ms. Talat Ejaz (***Ejaz Case***) versus City District Government Karachi (which was also the predecessor-in-interest of present KDA). It is a matter of record that the decision of this Court has been upheld by the Honourable Supreme Court in Civil Petition No.2086 of 2015 – ***Pir Masoom Jan Sarhandi v. Ms. Talat Ejaz***, whereas, a second Petition preferred by one of the Intervenors as Civil Petition No.3470-K of 2015 – ***Roshan Associates, Karachi and others v. Talat Ejaz and others,*** also met the same fate (was dismissed); collectively the above three decisions may be referred to as the **"said Decisions"**.

If the aforesaid Ejaz Case is decided only between the parties to the proceeding (of said Ejaz Case), then it is the Decision '*in personam';* and its effect and determination is confined only between inter parties or the parties of the above Cases (Ejaz Case) and eventually present ***lis*** should then be decided after conclusion of the evidence, as also argued by the legal team of private Defendants; but, if the said Decisions are 'in rem' then it is to be considered that how far it covers the issues involved in the present case.

11. This legal concept of judgment *in rem* and *in personam* is explained in many judicial pronouncements, some of which are mentioned in the opening paragraph of this decision. It has been summarized by the Honourable Supreme Court in the Bhatti Case (***ibid***). The crux of this concept is that when judgment is pronounced with regard to a legal principle then it is a judgment *in rem;* for instance, if a Notification issued by a Government Functionary, is set aside or a levy is held to be *ultra vires*, then the effect of that decision will also be extended to those persons, who were not even parties in the original proceeding but are affected by the impugned notification or levy. Similarly, if a judgment is pronounced in an action with regard to claim of ownership against all other persons and the finding is given in favour of claimant then the said Judgment and decree is to be considered as judgment *in rem*. In the same perspective, the Honourable Supreme in **Khursheed Bhinder Case** (***supra***) decided the various applications (for permission to file review petitions) preferred by the Petitioners (who were former Judges of the Superior Courts).

12. It would be advantageous to reproduce relevant portion of the judgment of the Honourable Supreme Court handed down in Bhatti Case, in which the legal principle about judgment *in rem* and *personam* has been explained_

> ***"Upon a consideration of what has been stated above, the formation on behalf of the appellants cannot be accepted as it stands. In a controversy raising a dispute inter parties, the thing adjudged is conclusive as between the parties both on questions of fact and law but as to what the Court decides generally is the ratio decidendi or rule of law for which it is the authority. It is this ratio decidendi which is applicable to subsequent cases presenting the same problem between third parties not involved in the original case nor will either of the original parties be bound in a subsequent dispute with a third party. It will be misnomer to say that this rule of law acts in rem, that is, as against the whole world as conceptually the applicability of the rule of law is either founded on the doctrine of precedent as under the English law or rule of stare decises, and none of the doctrines in its applications is inflexible for what has been recalled elsewhere in the judgment. Therefore, the judgment cannot act in rem as is sought to be argued..... The High Court in dislodging the appellants held that the judgment of the Supreme Court was not***

a judgment in rem, but in personam. The terms `in rem' and ' in personam' are of Roman Law used in connect in with actio, that is actio in rem and action in personam to denote the nature of actions, and with the disappearance of the Roman forms of procedure, each of the two terms ' in rem' and ' in personam got tagged with the word judgments to donate the end-products of actions in rem and actions in personam. Thus, according to the civil law an action in which a claim of ownership was made against all other persons was an action in rem and the judgment pronounced in such action was a judgment in rem and binding upon all persons whom the Court was competent to bind, but if the claim was made against a particular person or persons, it was an action in personam and the decree was a decree in personam and binding only upon the particular person or persons against whom the claim was preferred or persons who were privies to them. "

Munir in his "Principles and Digest of the Law of Evidence" at page 563, gives the import of these terms as under:--

> ***"The point adjudicated upon in a judgment in 'fem is always as to the status of the res and is conclusive against the world as to that status, whereas in a judgment in personam the point, whatever it may be which is adjudicated upon, it not being as to the status of the res, is conclusive only ,between parties or privies. A decision in rem not merely declares the status of the person or thing, but ipso facto renders it, such as it is declared: thus, a decree of divorce not only annuls the marriage, but renders the wife female sole: adjudication in bankruptcy not only declares; but constitutes the debtor a bankrupt; a sentence in a prize Court not merely declares the vessel prize, but vests it in the captor.***
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> ***Section 41 of the Evidence Act does not use the terms 'judgment in rem', but it incorporates the law on the subject of judgments in rem, and makes them relevant not only against strangers but also conclusive of certain matters such as whether a person was entitled to a legal character or to any specific thing not as against any specified person but absolutely.***
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> . . . . . .
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> ***8. It may be observed that Black's Law Dictionary gives simple definition of the above two items by providing that `judgment in personam or inter' parties' is a judgment against a particular person as distinguished from 'a judgment against a thing or a right or status, whereas the term 'judgment in rem' has been defined as an adjudication pronounced upon the status of some particular things or subject-matter by a Tribunal having competent authority. Such a judgment is binding upon all persons insofar as their interests in the property are concerned.***"

13. The said Decision (of ***Ejaz Case***) has laid down the legal principle that Sindh Government (Defendant No.8) cannot cancel the 2000 Acres of land earlier allotted to the KDA way back in the year 1977, merely because the said KDA did not pay the entire price. It has been further held that since

Scheme – 36 is a duly notified Scheme under the Karachi Development Authority Order, 1957, therefore, the Petitioners (of the said Ejaz Case) should not be made to suffer on account of dispute between the two Government Functionaries, viz. Sindh Government and KDA; both are also impleaded as Defendants in the present ***lis***.

It has also been held as a legal principle that since Gabol Goth, which was the subject dispute in the above Ejaz Case, was established in violation of the Land Grant Policy, 1980 (Clause-11 of the Land Grant Policy, dated 12.01.1980), therefore, 'Mir Khan Gabol Goth' was declared to be illegal.

Similarly, if the table mentioned in the opening part of the Decision (in Ejaz Case) of this Court is seen, the **undisputed position that emerges is that it relates to Blocks – 4, 6, 7, 10 and 11**; whereas, the present dispute also pertains to Block – 11. The finding of the learned Division Bench in the Ejaz case (which has been maintained up to the Honourable Apex Court) that Government of Sindh (present Defendant No.8) could neither have resumed any portion of land, nor have allotted the same for any village, in terms of Land Grant Policy, 1980, is also directly relevant for deciding the present controversy.

Admittedly, the above decision was in respect of 2000 Acres of land which constitutes the whole of Scheme – 36 of Gulistan-e-Jauhar, Karachi, including present Block-11 in question. It is also a well recognised rule that 'greater includes the smaller'. Thus, Block-11 being a part of the Scheme 36, applicability of the said Decisions **{***of learned Division Bench, which was further upheld by the two separate decisions of the Honourable Apex Court***}**, are fully attracted and is applicable to the present ***lis***. *Secondly*, the *ratio decidendi* is not only applicable to the present ***lis*** on the basis of principle of *stare decisis* but also because the said Decisions of this Court and the Honourable Apex Court are judgment *in rem* and not *in personam*.

ISSUES NO.1, 2 and 4:

14. Learned counsel for the Plaintiffs have referred to the said Decisions (in Ejaz Case) in support of their arguments.

The Issues can be decided on the basis of afore-referred said Decision (of Ejaz case); wherein, it has been held, which finding has been maintained up to the Honourable Supreme Court, that the Defendants No.8 and 14 (Province of Sindh and Board of Revenue, respectively), have illegally cancelled the allotment in favour of KDA on account of non-payment of the entire price and dues, while resuming the land in respect of which *bona fide/*genuine third party interests have been created in due course of time. A careful examination of the above Ejaz Case shows that out of 43 petitions, there were many petitions related to Block – 11 of Scheme No.36, which Block is the subject matter of present ***lis***. But, at the same time, if (at all) Defendant No.15 (KDA) is a defaulter in payment of entire occupancy price to official Defendants NO. 8 and 15, as argued by the learned Additional Advocate General Sindh as well as learned counsel for Official Defendant No.14, then the latter (the said official Defendants No.8 and 15) are at liberty to take action under the law against the Defendant KDA, but the *bona fide* purchasers for value, including present Plaintiffs, who have been duly allotted plots by Defendant KDA, or, those who are subsequent transferees by virtue of valid sale transactions, in the said Scheme – 36, cannot be punished or penalized for the wrongful acts (**if any**) on the part of Defendant KDA. This Issue has already been finally decided in the said Decisions (of Ejaz case). Consequently, Issue No.1 is answered in Negative but in favour of present Plaintiffs and Issue No.2 is in Affirmative; that is to say, the Official Defendants and Government of Sindh cannot resume the subject land and Defendant No. 15 is entitled to transfer proprietary rights to the Plaintiffs in accordance with law and after fulfilling codal formalities.

Issue No.4 is also answered in affirmative and considering the finding contained in the said Ejaz decision, *inter alia*, about handing over of the possession, Plaintiffs are entitled for the possession of their respective plots as per their allotment orders or being lawful, *bona fide* transferees.

ISSUES NO.3 and 5:

15. Answer to Issue No.3 is directly related with Issue No.5, therefore, the latter is to be decided first. The main defence setup by the learned Advocates for the private Defendants is that the above Decision pertains to an area of 30 Acres only, which was earlier resumed by the Government of Sindh / Defendant No.8 and was given to the villagers of 'Mir Khan Gabol Goth' and in the entire Judgment right up to the Honourable Supreme Court, there is no mentioning of the Said two Goths (Villages) in question [which are the subject matter of the present ***lis***].

16. In order to ascertain the status of the Said Villages, vide order dated 26.02.2019, a Report was called from the concerned Deputy Commissioner, who submitted a Report dated 22.03.2019 with the caption "**Comprehensive Report**", against which no objection has been preferred. The gist of this 'Comprehensive Report' is that occupants of 'Rustam Zigri Goth' did not pay occupancy price, whereas, issue of 'Bhingo Gabol Goth' is also unresolved because of orders passed by the Honourable Supreme Court in Suo Moto Case No. 16 of 2012. On this particular aspect, the learned Counsel for Defendant – KDA assisted by the above named Officials, have opposed the contention of the legal team of the private Defendants, who are claiming to be the occupants of above named Goths / Villages. As per the averments of KDA, area of 'Rustam Zigri Goth' was earlier utilized as part of present Jinnah International Airport, whereas, the

other ‘Bhingo Gabol Goth’ is an attempt to encroach upon the subject land in Scheme – 36.

17. On a specific query with regard to the reported decision relied upon by the legal team of the private Defendants and cited by Mr. Muhammad Yaseen Azad (Senior Advocate), in rebuttal, Mr. Abdur Rehman, learned counsel representing a set of the Plaintiffs, has relied upon the unreported decision of the Honourable Supreme Court in the above Ejaz Case.

Order of the Honourable Apex Court has been perused. The contention of the Plaintiffs’ legal team has substance. The Apex Court in its order dated 19.08.2016 has maintained decision of learned Division Bench of this Court in Ejaz Case, while considering the above reported case relied upon by the private Defendants.

Secondly, if the reported decision (cited by the Defendants) is read carefully, it would be apparent that the Official Respondents (in the said reported case) did not produce or bring on record that material and irrefutable official documents to assist the Court, which have been subsequently produced in the afore-referred Ejaz Case.

Thirdly, the cited decision as far as it concerns the present controversy, with utmost respect, does not have the same binding force as the said Decisions, viz. the exhaustive decision of Ejaz Case handed down **subsequently by another learned Division Bench** of this Court, which has been upheld by the two separate orders of the Hon’ble Supreme Court.

Fourthly, in view of above discussion and after going through the said Decisions (in Ejaz case), it is now a proven fact that the aforementioned two Goths / Villages, which are part of the present controversy, are not the established villages in terms of the Sindh Gothabad Act, 1987; admittedly, no housing scheme exists as provided under Section 4 (of the Sindh Gothabad Act, 1987) read with Rule 4 of the Sindh

Gothabad (Housing Scheme) Rules, 2008, and no 'Sanad' in terms of last mentioned Law and Rules has been brought on record. Even the private Defendants have admitted in their respective Written Statements (pleadings) that the regularization of the said two Villages is pending. In this regard the admission contained in the Written Statement of the Defendant Board of Revenue, as discussed in the foregoing paragraphs, which is the custodian of revenue record, cannot be ignored and should be given due weight. Even though it is a rule that pleadings do not themselves have evidentiary value, unless the Plaintiff and or Defendant, as the case may be, enter the witness box and lead the evidence in support or defence of their pleadings; but, an exception to this rule is, that pleadings or a Written Statement can be considered when there is an admission on the part of Defendant; because, depending upon the facts of each case, even on the basis of written statement a judgment as envisaged under Rule 6 of Order 12 of CPC, can be pronounced. On the other hand the private Defendants have not produced any tangible documentary evidence in support of their claim. **Thus** in order to decide the Issues involved, a full dress trial is not necessary, because, no triable issue has left to be answered in view of the discussion in preceding paragraphs. It follows that proceeding of the nature can be decided and relief (as the Court deems fit), can be granted in terms of the Specific Relief Act, 1877, without leading the evidence.

Fifthly, it has been unequivocally held in the Ejaz Case by the learned Division Bench of this Court (and upheld by the Honourable Supreme Court) that when no village existed at the time of launching of Scheme – 36 as per the KDA Order 1957, way back in the year 1977, then there is no question of granting of land by Sindh Government and its other Departments, which are also Defendants in the present ***lis***, to occupants of a Village, which this Court and the Honourable Supreme Court has termed as dummy village. This finding of fact given by the learned Division Bench of

this Court fully covers the factual and legal aspect of the present case, because the learned Division Bench after considering various official documents produced by the Government Officials, who are also present Defendants in this ***lis***, arrived at this conclusion. It is necessary to reproduce herein under the relevant portion of the judgment from Ejaz case (given by the learned Division Bench)_

> ***" Mr. Pirzada repeatedly argued that the land to the villagers were granted by the Government of Sindh in accordance with their existing Land Grant Policy made under Section 10 of the Colonization of Government Land Act, 1912 through Notification dated 12.01.1980 and the so-called Sanads of the villagers which are placed by the Intervenor M/s. Roshan Associates on record also reflects that Deputy Commissioner granted so-called Sanads on the terms and conditions as envisaged in Policy dated 12.01.1980 oblivious of the fact that Clause 5 of the Policy dated 12.01.1980 states that "no land lying within the limits of Karachi Development Authority, Hyderabad Development Authority and Municipal areas, shall be granted without prior approval of the Board" and there is nothing on record to show that the Board ever accorded such approval. Additionally Clause 11 of the Policy states that "land allotted under the Policy dated 12.01.1980 is to be used for the sole purpose of establishment of Village", Clause 11 reads as follows:-***
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> > **"The land shall be used for the sole purpose of establishment of village and extension of the existing village within such period as may be fixed by the Collector from the date of approval of the plan under condition 10."**
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> ***And Clause 2(g) defines a village as a settlement of habilitation of the people, but does not include a habilitation of less than ten houses. Likewise Clause 16 places a condition on the title of the grantee by stating that***
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> > **"the grantee shall be entitled to the proprietary rights over the land only after the full price thereof and other dues payable under these conditions are paid by him and he has fully complied with these terms and conditions to the satisfaction of the Collectorate."**
>
> ***It appears to be an admitted position that at no point of time there was any village on the subject land which is now claimed by the builders (Para 5 of the summary approved by the Chief***

Minister in the year 2006 reproduced above) nor the price has been paid. One more important aspect which we would like to dilate upon is that on the one hand Revenue Department has taken a stance that the village was regularized by the Deputy Commissioner East by regularizing the possession of 59 villagers whose Sanads have been placed on record by the intervenor Roshan Associates and the total area so granted to them in the shape of various plots ranging from 800 to 2700 square yards, which according to our calculation, comes to around 80,000 square yards i.e, hardly 17½ acres and on the other hand they were regularizing the sale of 30-00 acres of land.

Keeping in view the fact that no Goth ever existed on the subject land and this we say after going through all the summaries, the gist whereof has been reproduced hereinabove despite the orders from the Governor and the Chief Minister were obtained by stating that the villagers have obtained a declaratory judgment and decree dated 10.07.1994 in Suit No. 1543/1992 in respect of said Goth, however, said decree was set aside in Civil Appeal No. 151/1994 by the Vth Additional District Judge, Karachi East, and ultimately plaint of Suit No. 1543/1992 was rejected by VIIth Senior Civil Judge, Karachi East, vide its order dated 08.9.2010. Even letter dated 06.06.1996 whereby 30-00 acres of land was resumed and Mir Khan Gabole village was regularized was obtained by taking the shield of the said judgment and decree dated 10.07.1994 confirming possession of the said villagers and even this letter does not reflect that the Goth ever existed or the facts of the existence of Goth were ever verified. Resultantly, we have reached to the conclusion that there was never a village in terms of clause 2(g) of the Policy dated 12.01.1980, therefore, the entire exercise of getting land resumed and Goth declared from the Hon'ble Governor and the Chief Minister on the basis of misdirected and self-contradictory summaries by taking shield of a fraudulent judgment and decree declaring the existence of the Goth itself was totally unlawful and in gross violation of the Land Grant Policy made on 12.01.1980. Likewise the regularization of land in favour of builders so-called representative of 59 non-existing dummy villagers/sanads-holders was also violative of Clause 11 of the referred Policy which restricts the use of land granted under the Policy dated 12.01.1980 only for the purposes of establishment of a village and/or its extension. We, therefore, declare the entire process of declaring Goth vide letter dated 06.06.1996 as well as

***attempt to regularize land in favour of the builders through summary approved on 13.07.2006 as sham and without lawful authority and of no consequences at all.*"**

(Underlined to add emphasis)

18. The learned Advocates of private Defendants have argued anxiously, that site inspection is necessary because many persons would be displaced and adversely affected who are not parties to the proceeding.

To address this contention reference may be made to the exhaustive judgment given by the Honourable Supreme Court in the Bhinder Case (***supra***), where, the Hon'ble Apex Court has dismissed all the applications of former Judges of the Superior Courts, who have approached the Apex Court with different factual and legal pleas, particularly, relating to '*audi alteram partem*' (means hear the other side), because, one of the main grievances (of the applicants) were that they were condemned unheard and removed from the high office after the pronouncement of the historic judgment of 31st July 2009, reported in **P L D 2009 Supreme Court 879** (***supra***).

19. The above legal maxim is also considered as one of the principles of natural justice. However, in various judicial pronouncements and particularly in the said ***Bhinder Case***, it has been held, that it is not a rule of universal application and there are many instances and exceptions, where this rule does not apply; for instance, the '*audi alteram partem'* rule would be excluded where the purpose of it is to paralyze the administrative process; where the facts leading to the impugned action were incontrovertible and where despite prior hearing, **the results could and would not have been any different.** These instances and exceptions as contained in the above judgment of Bhinder case, which are laid down as a legal principle, are fully applicable to the facts of present ***lis***, as, *inter alia*,

the present private Defendants and other occupants (if any) have no independent right, interest and / or entitlement in respect of the said two Goths and the insistence on site inspection cannot serve any useful purpose; rather this plea does not appear to be *bona fide*, hence, refused.

20. In view of the above discussion, I am afraid that the defence setup by the learned counsel for the Defendants, is erroneous on the factual plane as well as misconceived in nature.

The conclusion is that if the said two Goths are in any way occupying any portion of Scheme – 36, then the occupants of said Goths / Villages including Defendants No.1 to 7 should be evicted forthwith. The official Defendants including KDA shall take immediate steps for the eviction of these private Defendants as they do not have any right, interest or entitlement in respect of any land falling within the subject Scheme – 36, Gulistan-e-Jauhar, Karachi.

21. Consequently, from the above discussion, answer to Issues No.3 and 5 is in Negative and against the private Defendants.

ISSUES NO.6 AND 7:

22. Since one of the basis of the decision in Ejaz Case is the Report of the then Chief Secretary of Sindh, therefore, it would be appropriate to pass the following directions:

(i) The Chief Secretary [Sindh] will constitute a Team, comprising of Senior Official(s) from the Board of Revenue, Land Utilization Department, City Surveyor and KDA, to undertake a Comprehensive Survey and if it is found that the above named two said Goths / Villages are located outside the territorial limits of Scheme – 36, then Defendant No.8 (Government of Sindh), subject to the final decision of the Honourable Supreme Court as mentioned in the 'Comprehensive Report' of the Deputy Commissioner or any other pending litigation, may take decision with regard to the occupants of the above named said Goths / Villages in accordance with Law and Rules and not otherwise;

(ii) but, as already decided in the preceding paragraphs, that if either or both said Goths / Villages or any part thereof exists within the territorial limits of Scheme – 36, then the said area / part is an encroachment and is to be removed forthwith. Proprietary rights are the fundamental rights granted by the Constitution, thus, rights and interest of the Plaintiffs cannot be left unattended and the State has to provide adequate protection, failing which, the Official Defendants would be failing in their obligation and duty towards safeguarding the fundamental rights of citizens / Plaintiffs. The Chief Secretary, shall ensure that any encroached portion of Scheme – 36 should be retrieved immediately either in favour of Plaintiffs and / or Defendant KDA, as the case may be;

(iii) the Official Defendants shall also identify the culprits and land grabbers, who will be dealt with strictly in accordance with law, both in civil and criminal jurisdiction.

(iv) it is further directed that all the official Defendants have to co-operate with each other and if required, the Chief Secretary – Defendant No.8 will seek assistance of Pakistan Rangers as well.

23. Accordingly, all the pending applications are disposed of having become infructuous. The suit stands decreed in terms of prayer clauses 1, 2, 3 and 5. Since no enquiry as envisaged under Order XX, Rule 12 of C.P.C., was done, therefore, the relief as claimed in prayer clause ‘4’ about mesne profit, is rejected.

24. Parties to bear their respective costs.

Judge

Karachi Dated: 24.04.2019.

Riaz / P.S.