

**IN THE HIGH COURT OF SINDH AT  
KARACHI**

**Suit No. 1029 of 2016**

Plaintiff : Muhammad Younus Ayub,  
through Mr. Muhammad Haseeb  
Jamali, Advocate.

Defendants Nos.  
1 and 2 : Deputy Superintendent District  
Borstal Jail and others, through  
Mr. Shabbir Shah, AAG.

Defendants No.6 : Land Utilization Department,  
Province of Sindh, through Mr.  
Shabbir Ahmed Sheikh,  
Advocate.

Date of hearing : 19.04.2019

**ORDER**

**YOUSUF ALI SAYEED, J.** – The Plaintiff professes to be the owner in possession of 5 acres of land in Na Class No. 90, Deh Khanto, Tappo Landi, District Malir, main National Highway, Karachi, on the basis of title said to have been acquired through a registered Sale Deed dated 15.10.2005 from one Sardar Ahmed, son of Abdul Qadir, with his name having then been entered in the record of rights.

2. The land in question apparently borders the District Jail Malir on its southern side, and the Plaintiff's claim to title and right to possession have been impugned and resisted by functionaries of the Prisons Department (the "**Department**") on the basis that the land is a part of 100 acres that had earlier been allotted to the Department for establishment of a Borstal Institute in terms of a Letter dated 28.08.1958 issued by the Office of the Collector of Karachi, filed as Annexure "A" to the Written Statement of the Defendants Nos. 1 and 2, namely the Deputy Superintendent of the District Jail and the Inspector General Prisons respectively.

3. Ergo, the Plaintiff has been treated by the Department as an encroacher, with the ensuing interference to his possession on the basis of such stance at the hands of its functionaries giving rise to the instant Suit, whereby the Plaintiff has inter alia sought a declaration as to his title and a permanent injunction to restrain the Defendants from dispossessing him or demolishing the construction raised. Within such framework, vide CMA 7085/16, being the Application under consideration, the Plaintiff has sought interlocutory relief in like terms, along with a direction to the Defendant No.8 (i.e. the Station House Officer, P.S. Shah Latif Town, Malir) to provide protection so as to enable him and his allottees to undertake construction over the disputed land in accordance with law.
  
4. Whilst advancing his arguments in support of CMA 7085/16, learned counsel invited attention to the copy of the Sale Deed for the purpose of firstly demonstrating the Plaintiff's title and legal character and pointed out that prior to such transaction the land had been the subject of proceedings under the Sindh Government Lands (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001, and through the process prescribed in terms of that Ordinance, the title of the Plaintiff's above-named predecessor-in-interest had been formally regularized. He pointed out that copies of the Letter dated 10.10.2005 issued by the Government of Sindh, Land Utilization Department to that effect as well as the Challan reflecting due payment of the differential malkano amount had also been filed along with the Plaintiff.

5. With reference to the claim of the Department as to the allocation of 100 acres of land, learned counsel submitted that the Letter dated 28.08.1958 issued by the Office of the Collector of Karachi itself envisaged that the transfer of such land from Naiclass 90, Deh Khanto to the I.G. Prisons was for the purpose of two separate schemes, being the establishment of (i) a Borstal Jail, Remand Home and (ii) a Poor House. In this context, he invited attention to copies of subsequent correspondence on the matter, including a letter dated 01.05.1962 said to have been issued by the Superintendent Karachi Central Prisons and the letters dated 04.1.1963 and 30.09.1963 apparently emanating from the Office of the Deputy Commissioner Karachi, it being contended that it was apparent from a combined reading thereof that the aforementioned schemes had been separated, with administrative control of the "Poor House" then being placed under the District Magistrate, and only 40-36 acres remained in possession of the Department.
  
6. It was pointed out that the separation of these schemes and the course of allocation of land as then followed had also been traced out and delineated in a Report dated 06.03.2007 submitted by the Deputy District Officer (Revenue), Bin Qasim Town, City District Government, Karachi to the Senior Member, Board of Revenue, as well as a Report dated 29.01.2016 submitted by the Mukhtiarkar Taluka Ibrahim Hyderi District Malir Karachi to the Deputy Commissioner Malir with specific reference to Constitutional Petition No.S-1705/2014 that had earlier been filed by the Plaintiff, both of which had been placed filed along with the Plaintiff and also placed on record by the Land Utilization Department (i.e. the Defendant No.6) as annexures to its Written Statement. It was submitted that it was evident from such documents that the Department only had title to 40-36 acres.

7. Learned counsel also pointed out that when CMA 7085/16 had earlier come up for hearing on 26.05.2016, prior to the Written Statement of the Defendant No.6 being placed on record, a counter-affidavit to the said Application had been submitted on behalf of the Defendant No.1 in Court on that very date along with a demarcation plan of the alleged 100 acres. He submitted that on the basis of such plan and the mere assertion that the claim of the Plaintiff was fabricated, the Plaintiff had been regarded as an encroacher and the Assistant Commissioner had been directed to ensure that encroachment over the land of the District Jail was removed as per the demarcation. He submitted that such Order had then been assailed by the Plaintiff vide High Court Appeal Number 169 of 2016, which was disposed of by consent on 01.02.2016 in the following terms:

“After hearing the counsel for the appellant, counsel for the Board of Revenue and AAG, this appeal by consent is disposed of with the direction that without prejudice to the ownership rights of the parties Survey Superintendent would conduct a fresh demarcation in respect of the land of the parties. This exercise be completed within 30 days.

Appeal stands disposed of accordingly.”

8. It was stated that that a demarcation plan had then been prepared by the City Surveyor in compliance of the aforementioned Order in the HCA and placed on the file of that proceedings, with a copy then being submitted by the Plaintiff in this Suit on 19.10.2017, when the same was taken on record and was it *inter alia* Ordered as follows:

“In view of the above demarcation by City Surveyor, till the next date of hearing, Defendants are restrained from interfering with the possession of above land, that is, the land 05 Acres and 19 ghuntas in Naiclass No. 90, of Deh Khanto, Tappo Landhi, District Malir, on main National Highway, Karachi.”

9. Learned counsel emphasized that the demarcation plan in the HCA showed that the land within the boundary of the District Jail was 70-37 acres, and contended that this was far in excess of the land to which the Department was entitled. It was also mentioned that upon the dismissal of Constitutional Petition No. S-1705/2014, the Plaintiff had preferred Civil Petition No. 163 of 2016 before the Honourable Supreme Court seeking leave to appeal, which was dismissed with it being observed that the dispute as to possession of a specific piece of land could only be conclusively settled by recording of evidence and that an efficacious remedy was available to the Petitioner in the shape of a civil suit.
  
10. With reference to a sketch of the disputed land said to have been prepared at the time that possession thereof had been handed over after the initial allotment, it was submitted that the dimensions of the District Jail and the location of its boundaries had been different at the time, hence the same was not shown in the sketch as being in the immediate vicinity of the disputed land. However, further land had then been taken over by the Department from time to time without due process or legal sanction, to the point that the boundaries of the District Jail had been expanded so as to presently encompass 70-37 acres, with further designs of annexation openly being harboured in respect of the disputed land. It was argued that whilst the Department ostensibly espoused a claim to 100 acres, it was only the Plaintiff's land against which coercive measures had been taken on such basis, whereas no steps were being taken against the adjoining land that had been shown in the demarcation report as the site of the Kidney Centre Hospital or the open land under the control of the Land Utilization Department, albeit that the Department was also claiming title thereto, as reflected in its Written Statement.

11. It was submitted that the Plaintiff had established a prima face case of title and long standing possession of the land in dispute, whereas the Department was already in possession of land in excess of its entitlement, hence the balance of convenience clearly lay in the Plaintiff's favour and irreparable loss would inevitably be caused to him if an injunction were not to be granted as the functionaries of the Department would then forcibly dispossess him.
  
12. Conversely, the learned AAG submitted that the dispute underpinning the Suit was essentially that of the location of the 5 acres of land in respect of which the Plaintiff claimed title. He submitted that such land was not that which was in possession of the Plaintiff in the vicinity of the District Jail, it being submitted that the same formed part of the land that had already been allotted to the Department. He opposed the grant of injunction on three grounds, being:
  - (a) That the Plaintiff had approached the Court with unclean hands.
  - (b) No prima facie case for grant of an injunction had been made out.
  - (c) No irreparable loss would be caused to the Plaintiff.
  
13. Building on the first ground, it was emphasized by the learned AAG that whilst the Plaintiff had been granted a 30-year poultry lease, which had then apparently been converted into a 99-year industrial lease in the year 1993, it had been stated in the Plaint that the Plaintiff was undertaking a housing project thereon. Without prejudice to the contention that the land in possession of the Plaintiff in the vicinity of the District Jail was not the land that was the subject of the Sale Deed, it was submitted that the assertion as to a housing project and the rights of third party allottees

was even otherwise incongruous with such document, as the underlying lease conditions did not envisage the use of the land for a residential purpose and no change of land-use had been sanctioned. He submitted that under the circumstances, building permission for a residential project could not have been forthcoming from the Sindh Building Control Authority (the “**SBCA**”), which was the competent authority in that regard, and the Plaintiff had not even pleaded that the same had been obtained. He submitted that the same was a *sine qua non*, and in the absence of a building plan that had been approved by the SBCA the commencement of construction would constitute a violation of the Sindh Building Control Ordinance, 1979 (the “**SBCO**”) and the Karachi Building and Town Planning Regulations 2002 (the “**KBTPR**”) framed thereunder. It was contended that by portraying the land as being the subject of a housing scheme, where the interests of allottees were alleged, the Plaintiff had approached the Court with unclean hands, and equitable relief ought to accordingly be denied even if the ingredients for the grant thereof were otherwise met. Reliance was placed on a judgment of the Honourable Supreme Court in the case reported as *Irshad Hussain v. Province of Punjab and others* PLD 2003 SC 344, to show that in addition to existence of the ingredients for an injunction behavior, the conduct of the parties ought to also be seen by the Court.

14. Turning to the aspect of whether a prima facie case had been made out, it was contended that the Plaintiff had no tenable claim to title over the disputed land in the face of the prior allotment of 100 acres in favour of the Department and that no sketch/plan had been placed on record to demonstrate that possession of the very land in dispute had been delivered to the Plaintiff’s predecessor-in-interest. Attention was drawn to a Report dated 26.04.2017 on the subject of the

“Survey of Land of District Prison Malir Karachi” emanating from the Director of Settlements Survey & Land Records Sindh Hyderabad along with a Demarcation Plan, as filed along with the Written Statement of the Department at Pages 627 and 637 of the Court file, and it was submitted that this was the Report and Plan that had been submitted in compliance of the Order dated 01.02.2016 made in the HCA, which showed that an area of 5-18 acres which was under encroachment of the Plaintiff.

15. As to the aspect of irreparable loss and the contention that the prospect of the same being caused to the Plaintiff did not arise under the circumstances, as the Plaintiff had himself previously addressed the District Officer Revenue with a request for alternate land in recognition of the issues arising from the location of the disputed land. Attention was drawn to a letter dated 28.05.2007 at Page 213 of the Court file.
  
16. In reply, it was submitted by learned counsel for the Plaintiffs that no documents or facts had been concealed. It was contended that, on the contrary, it was the Department that had sought to rely on manipulated documents whilst attempting to pass the same off as being the official record submitted in the HCA in compliance of the Order dated 01.02.2016, whereas the actual Demarcation Plan submitted in the HCA was altogether different and did not categorize the Plaintiff's possession of the disputed land as an encroachment. It was also pointed out that the submissions made on behalf of the Department did not serve to impugn the Plaintiff's title or otherwise address the separation of the Borstal Scheme from that of the Poor House and the ensuing allocations addressed in the Reports filed along with the Written Statement of the Defendant No.6.

17. Turning firstly to the matter of whether the Plaintiff has approached the Court with unclean hands, there is no allegation of any suppression of material facts and the argument raised in this respect turns entirely on whether the Plaintiff is entitled to use the disputed land for a residential purpose. However, the issue of usage and whether proper sanction for construction has been obtained is not the essential point arising for consideration within the ambit and purview of the Suit, which relates to the question of title as well as the interference forthcoming from the side of the Department. The Plaintiff has not assailed any action on the part of the SBCA, and nothing done in this proceeding would impede the right of the SBCA to proceed as against the Plaintiff in the event that the construction undertaken or proposed to be raised is bereft of sanction or otherwise in violation of the SBCO and/or KBTPR.

18. As to the aspect of a prima facie case, it merits consideration that there has been no assertion on the part of the Defendant No.6, or for that matter even the Defendants Nos. 1 and 2, that the grant made in respect of the land to which the Plaintiff claims title has been cancelled or resumed. On the contrary, in its Written Statement, the Defendant No.6 has endorsed the stance of the Plaintiff as to the regularization of the land as well as its purchase, and has also placed on record the Reports of the Deputy District Officer (Revenue), Bin Qasim Town, City District Government, Karachi and the Mukhtiarkar Taluka Ibrahim Hyderi District Malir Karachi to the Deputy Commissioner Malir dated 06.03.2007 and 29.01.2016 respectively, which reflect the separation of the two schemes in respect of which the allotment of 100 acres claimed by the Department was to have been made, and which suggest that the actual allocation which followed was not to that extent. Needless to say, under the given

circumstances, triable issues arise for determination as to the rights of the contesting parties, which requires evidence. Suffice it to say that, at this stage, a prima facie case of title and possession has been made out, and the balance of convenience lies in favour of the Plaintiff and maintaining possession as has apparently remained with him over a protracted period, pending final determination of the matter.

19. The reliance placed on the letter of the Plaintiff addressed on the subject of a request for an alternate allotment to contend that such a request obviates the prospect of irreparable loss also appears disingenuous as such request dates back to the year 2007, with no alternate allotment evidently having been made to date or even a binding commitment having been forthcoming.

20. In view of the foregoing, CMA 7085/16 is allowed to the extent that the Defendants are restrained from dispossessing the Plaintiff from the disputed land or blocking his right of ingress and egress until final determination of the Suit.

**JUDGE**

TariqAli/PA