

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Justice Mrs. Kausar Sultana Hussain, J.

C.P. No. D-5890 of 2018

Rizwan Saeed & others
 Versus
 Federation of Pakistan & others

Date of Hearing: 09.10.2020

Petitioners: Through M/s Abdul Moiz Jaferii and Asad Anwer Alavi, advocates

Respondents No.1 & 2: Through Mr. Muhammad Zahid Khan, Assistant Attorney General.

Respondent No.3: Through Mr. Ashraf Ali Butt Advocate.

Respondent No.4: Through M/s Zia-ul-Haq Makhdoom, Abdullah Nizamani, Muhammad Azhar Mahmood, Hadd Abid and Faisal Aziz, advocates.

Respondent No.5: Through Ms. Rabia Khan, Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition is filed by residents of a residential colony titled as “Askari-IV”, within the jurisdiction of Faisal Cantonment Board, in respect of an area where respondents No.4 and 5 have undertaken a multistory/high-rise building, claimed to have been approved by the Cantonment Board.

2. At one point of time when this petition was filed there was a different set of petitioners, five in all, and while the notices were served upon respondents, some of them withdrew this petition and consequently a new set of petitioners moved applications praying to be joined in the proceedings, which was allowed on 15.10.2019 and petitioner No.3, the only survivor of the first set of petitioners, was

directed to file amended title arraying newly added petitioners, being other residents of the Colony.

3. Petitioners' case is based on the fact that master plan was proposed and approved in 1996 when the project was announced, construction commenced and allotment made. It is pleaded that when the construction was undertaken there were around 700 apartments and 50 houses which are now raised up to 1200 apartments and 260 houses at the cost of consumption/encroachment of some streets and blocks, which aggravated the logistic and administrative issues. There was extreme shortage of facilities and utilities and despite payment of huge taxes to the Cantonment Board Faisal, appropriate response was never made by the controlling authority, which is Cantonment Board Faisal.

4. The subject matter of this petition is an open space around the mosque as highlighted in the master plan of the subject housing colony. It is the case of the petitioner that this open space is in fact a parking area and is also used as extension of mosque during different occasions such as Eid-ul-Fitr and Eid-ul-Azha. It is case of the petitioners that with the passage of time these layout plans/master plans are being subjected to forced alteration and addition, which, per learned counsel, was/is unlawful.

5. First such unlawful consumption/use of land took place when an open space highlighted in light blue colour in the map available at page 435 at the east of mosque was consumed whereas a portion of open space, which is at north-west of the mosque of the plan available at page 435 was still an open space. The present controversy is in respect of an area at this north-west side of the mosque, which is claimed by the respondents to have been reserved for future construction in subsequent modified layout/master plan. It is asserted by the petitioners to be a tampered and manipulated layout plan and could not have been

amended/alterd unilaterally once the proposed master plan was approved and the allottees were also subjected to accept it as it was.

6. Learned counsel for petitioners submitted that these vacant spaces were within the jurisdiction of Cantonment Board and respondents No.4 and 5 are not authorized to alter the master plan by raising high-rise/multistory building, altering the master plan. They neither have authority as of now and at the time when the alleged construction over some of the open space was undertaken nor they had earlier since the Cantonment Board had started collecting taxes being handed over to them for this purpose. Counsel further submitted that in order to usurp the subject open space for their own monetary gains, the respondents in collusion with each other have also altered the entrance and exit gates of the colony which are adjacent to mosque and adjacent to ground/open space around the mosque.

7. Learned counsel for petitioners further submitted that in terms of provisions of Cantonment Laws, respondents No.4 and 5 lose their authority and power to assert any jurisdiction over the open spaces within the colony after it being handed over to Cantonment Board. Learned counsel for petitioners in this regard has relied upon Sections, 5, 13-A, 60, 108, 116, 179, 181, 183 and 183-A of the Cantonment Act, 1924. It is claimed that now it is within the jurisdiction of Cantonment Board to administer and take actions under the law i.e. Cantonment Act, 1924 and rules framed thereunder i.e. Cantonment Land Administration Rules, 1937. A number of notifications claimed to have been issued in this regard to determine/show the exclusive jurisdiction to regulate the administration and use of land to be with Cantonment Board. Learned counsel for petitioners further claimed that relevant law also allow participation of the residents/executive committee in any major decision making, which should have been consulted while taking such

major decisions as the interests of the residents was/is at stake. However, there were no public objections invited/called from the residents while altering the master plan of the colony. It is argued that respondent No.3 who was required to administer the subject issue, concerns with the consumption/use of land for high-rise building, was a silent spectator and it was outsiders who have initiated such actions without jurisdiction.

8. The counsel thus concluded that this is an unauthorized attempt of change in master plan and alteration/change in land use. Allowing of commercial use has been effected without any reliance upon the procedure and the approval of the building plan was without following the procedural requirement of Cantonment laws. Entire process reeks of mala fide, corrupt practice and maladministration, as alleged.

9. Notices of the petition were issued to respondents who filed their respective parawise comments.

10. Respondents No.1 and 2 i.e. Secretary Ministry of Defence, Federation of Pakistan, and Military Estate Office filed their joint parawise comments, which are available at page 507 of the file. They submitted that an area of measuring 28.571 Acres, 15.689 Acres and 0.126 Acres respectively, total measuring 44.386 Acres segregated out of total 77.65 Acres leased out to Housing Directorate, AG's Branch, GHQ Rawalpindi under CLA Rules 1937 for construction of houses under Armed Forces Officers Housing Scheme Survey No.45/5 Faisal Cantt. Karachi. They further wrote in the reply that an area of 49.079 Acres segregated from area measuring 77.65 Acres mentioned above (the segregated area is different in paragraph No.1 and 2) in Survey No.45/5-A reclassified from B-4 to Class 'C' and vesting its management to Cantonment Board Faisal for the purposes of road, mosque, shops, overhead and underground water tank, substation and green areas.

11. Respondents No.1 and 2 have also attached the plan of Askari-IV, the subject housing colony, which is attached with the “Amending Deed” when the land was segregated from total land of 77.65 Acres, which was originally classified as B-4. This Amending Deed, was registered on behalf of President of Islamic Republic of Pakistan through Military Estates Officer (lessor) and the Housing Directorate AG’s Branch, GHQ Rawalpindi, Government of Pakistan (Ministry of Defence) as a lessee.

12. Respondent No.3 Cantonment Board Faisal filed parawise comments twice. The first parawise comments of 01.02.2019 are available at page 253 of the file whereas a second attempt of filing parawise comments was made on 05.09.2019 which are available at page 407. In the first reply respondent No.3/Cantonment Board Faisal submitted that the contents of petition are vague and general and that the allegations are false and that the Cantonment Board has no concern with the “acquisition and disposal” of any land including the land in question.

13. It is further contended that the powers of granting lease or allotment, as the case may be, rests with respondent No.2. i.e. Military Estate Office and not with respondent No.3 Cantonment Board Faisal. It is submitted that though Colony falls within their limits i.e. respondent No.3 but neither it has been handed over nor any layout plan has been approved by it and that Cantonment Board is only asked to collect property tax from the said Colony and consequently they (respondent No.3) ceased to take any action to stop alleged illegal construction over the subject land.

14. In its second parawise comments, respondent No.3 has almost repeated the gist of defence as taken in earlier comments however it is submitted that the permission for erection and re-erection is not subject matter of respondent No.3 but it is the domain of General Headquarter

AG's Branch (Housing Dte) Rawalpindi. It is urged that launching of Army Housing Scheme Askari-IV is not domain of respondent No.3 and hence they cannot take action to stop alleged illegal construction, if any being carried out.

15. Respondent No.4 has also filed parawise comments and in fact took a similar defence as taken by respondent No.5. Even same set of documents are attached with the comments of respondent No.4.

16. Respondent No.5 filed comments on 26.06.2019 along with an alleged plan of the Colony and byelaws of Army Officers Housing Schemes. In the comments they have denied that any illegal construction is being undertaken by respondent No.5 over an amenity plot (subject plot). In paragraph 1 of the comments of respondent No.5 the subject property was claimed to be an "open plot" and was not reserved for parking but was an open space left to be used as per directions of the authorities controlling it. Respondent No.5 denied that any initial plan was ever finalized. They stated that they have playgrounds, parks etc. and that the management of respondent No.5 is working to overcome shortage of water and other amenities. It is urged that administration of respondent No.5 is following rules and regulations strictly, which benefit residents of the community/ Colony. In paragraph 6 of parawise comments they have again ensured that all construction that is or shall be undertaken in future will follow strict compliance of rules and byelaws whereas plot/open spaces that have been marked as spaces for development projects are being utilized lawfully. It is contended that it is the case of blackmailing respondents No.4 and 5 and no amenity plot was reserved for parking of the mosque. The allocated car parking is nowhere near subject open space.

17. Learned counsel for respondent No.5 denied the applicability of judgment reported as 2018 SCMR 76, referred in paragraph 10 of the

petition, and submitted that it is in relation to those matters where final master plans have been submitted in the Cantonment Board whereas in the instant case master plan was never submitted and consequently the Colony has not yet been handed over to the Cantonment Board and is still under the administration of Housing Directorate GHQ Rawalpindi.

18. We have heard the learned counsel and perused the material available on record.

19. Record shows that transfer of land took place on 06.06.2006 in terms of letter of Assistant Director General Land of Ministry of Defence (LM&C Department) when the concerned Assistant Director General took pleasure of conveying the sanction of the transfer of the subject land.

Text of the letter is reproduced as under:-

"I am directed to convey the sanction to the following measures in Faisal Cantonment:-

- i) Segregation of an area measuring 52.24 Acres and 25.41 Acres (total 77.65 acres) out of Survey No.45/3 and 2/1 thereby reducing their area from 88.605 acres to 36.365 acres and 34.00 acres to 8.59 acres respectively and allotment thereto Svy No.45/5 under Rule 3(2) of the CLA Rules 1937.*
- ii) Reclassification of above segregated area measuring 77.65 acres Svy No.45/5 from A-1 to B-4 for allotment to AG's Branch (Housing Dte) GHQ Rawalpindi under Rule 7 of the CLA Rules 1937.*
- iii) Further segregation of an area measuring 49.079 acres from area measuring 77.65 acres of Svy No.45/5 thereby reducing its area to 28.571 acres and allotment thereto subsidiary Svy No.45/5 under Rule 3(2) of the CLA Rules 1937.*
- iv) Leasing out an area measuring 28.571 Acres or 138283.64 Sq. Yds of subsidiary Svy No.45/5 in Schedule IX-A of the CLA Rules, 1937 to Housing Directorate, AG's Branch, GHQ Rawalpindi on payment of premium of Rs.6,91,417/- and annual rent of Rs.13,829/- per annum.*
- v) Reclassification of an area measuring 49.079 Acres of subsidiary Survey No.45/5-A segregated vide sub para (iii) above from B-4 to Class 'C' and vesting its management to the Cantonment Board Faisal for the*

purpose of Roads, Mosque, Shops, Overhead and underground water tanks, Sub-Stations and green areas as per detail given in ADH (Works) Karachi letter No.30/24/ADH/HD/Land/GJ dated 18.8.2001”

20. The additional letter of 14.12.2012 is also available along with comments of respondents No.1 and 2 regarding reclassification of 0.126 acres from A-1 to B-3 for additional construction of Block 162 in Askari-IV Karachi. There is yet another letter of 17.02.2010 whereby sanction of additional land was conveyed.

21. While this matter was proceeded there was no individual/independent master plan of the Colony submitted by respondents and consequently in terms of order dated 12.02.2020 a gentleman claiming to be representative of respondent No.5 filed Master Plans of 1996, 2014 and 2019. To this act of filing master plans, petitioners have filed a statement taking serious objections as against the person who filed these documents, apart from the fact that these are contrary to their own documents filed earlier and the maps have no endorsement with further claim that these plans are only verified by Askari Directorate Housing themselves, thus are a self-verified documents and does not carry approval of authority concerned.

22. These master plans filed are also contradictory in the sense that they do not provide two gates, which were shown in the original master plan, as attached with the leases of the individuals. Certain streets were omitted in subsequently filed plan. Khateeb’s house, adjacent to the mosque is also invisible in the belated master plan submitted by respondents’ representative. These maps submitted in terms of order dated 12.02.2020 by one Lt. Cdr. (R) Anjum Malik, Administrative Officer Askari-IV who is a retired individual and perhaps on account of some issues was terminated by Army Directorate Housing w.e.f. 15.07.2019. Such state of affairs are confirmed by a letter of 22.07.2019 to all

residents of Askari-IV intimating that Lt. Cdr. (R) Anjum Malik was terminated from Housing Directorate GHQ w.e.f. 15.07.2019. The residents were requested to contact ADH (ACM) Askari-IV in Facilitation Center in case of any inquiry or complaint. Hence, the alleged master plan submitted by the said gentleman cannot be relied upon for the purposes of ascertaining the status of the master plan.

23. Thus, the only document is a master plan which could be relied upon is a document whereby the land was reclassified through an "Amending Deed". Though it is registered on 10.01.2013 but with it a master plan of Askari IV was attached as annexure to this Amending Deed. This does not show any space to have been "reserved" for any future planning. With this understanding of master plan the plots were allotted and some of the allottees have disposed of their respective plots/houses to other private individuals. It is thus for all practical purposes a master plan on the basis of which the construction of the Colony commenced and the interest of individuals developed. Even the comments on behalf of respondent No.5, the Army Housing Directorate suggest that these are only open spaces and not open plot.

24. The definition of delimitation of the cantonment is provided under section 3 of Cantonment Act, 1924 however the jurisdiction of cantonment authorities is not at issue. It is only as to whether the said authority of Cantonment Board Faisal is mature as being exclusive authority and jurisdiction to deal with the administration of Askari-IV or is it still with the Army Housing Directorate despite the housing colony being complete and fully in operation.

26. We thus on the basis of above documents conclude that the master plan of the Colony is none other than the one attached with the "Amending Deed" whereby land was reclassified by the concerned ministry for a housing project. On the basis of such master plans the

Cantonment Board started collecting taxes from the residents/owners and also started maintaining streets etc. under the Act 1924. The very act of collecting taxes and performing municipal functions mentioned in the provisions, referred in para above, suggest that for all intent and purposes the Colony was surrendered to the jurisdiction of Cantonment Board for all kind of administrative issues. Once the Cantonment came in authoritative control of properties, the open spaces etc. vests with them and hence all kind of developments, improvements, decisions etc. in respect thereto vests with the Board and none else.

27. It appears that the proposed plan of Askari-IV had already been made and approved and the construction commenced well before segregation and the Amending Deed since both of them are dated 10.02.2010 and 10.01.2013 respectively. The important part of these documents, more importantly the registered Amending Deed, is master plan of Askari-IV, which is attached with Amending Deed when it was registered before Sub-Registrar.

28. We now determine the functioning of Cantonment Board in terms of Act 1924. The constitution of the Board is provided under section 13-A of the Cantonment Act, 1924, which provides as under:-

13-A.—Constitution of Cantonment Boards.--(1) The Board for a Class 1 Cantonment shall consist of the following members, namely :-----

(a) the Officer Commanding the station or, if the Federal Government so directs in respect of any cantonment, such other military officer as may be nominated by the Competent Authority;

(b) twelve elected members;

(c) the Health Officer;

(d) the Maintenance Engineer ;

(e) a Magistrate of the first class nominated by the District Magistrate; and

(f) nine civil or military officers nominated by the Officer Commanding the station by order in writing.

(2) The Board for a Class II Cantonment shall consist

of the following members, namely.—

(a) the Officer Commanding the station or, if the Federal Government so directs in respect of any cantonment, such other civil or military officer as may be nominated by the Competent Authority;

(b) seven elected members;

(c) the Health Officer;

(d) the Maintenance Engineer ;

(e) a Magistrate of the first class nominated by the District Magistrate; and

(f) four civil or military officers nominated by the Officer Commanding the station by order in writing.

(3) The Board for a Class III Cantonment shall consist of the following members, namely.—

(a) the Officer Commanding the station or, if the Federal Government so directs in respect of any cantonment, such other military officer as may be nominated by the Competent Authority;

(b) two elected members;

Provided that the Federal Government may, by notification in the official Gazette, increase the number of elected members to such extent not exceeding five as it deems fit;

(c) the Health Officer; and

(d) One military officer nominated by the Officer Commanding the station by order in writing.

Provided that, if the number of elected members is increased under clause (b), the number of members so nominated be one less than the number of elected members so increased.

(4) The Federal Government may, by notification in the official Gazette, reserve a number of seats for women, peasants, workers and minority communities in the Board of a particular cantonment:

Provided that nothing contained in this Act or the rules made thereunder shall be construed as making a woman, peasant or worker ineligible for election to a general seat in any Board.

(5) The name of every elected or nominated member of the Board shall forthwith be reported to the Federal Government which shall notify in the official Gazette the name of the person so nominated or elected.

(6) The Officer Commanding the station may, with the sanction of the Competent Authority, nominate, in place of a military officer whom he is empowered to

nominate under clause (f) of subsection (1), clause (f) of subsection (2) or clause (d) of subsection (3), any person who is ordinarily resident in the cantonment or in the vicinity thereof.”

29. Class I, II and III of Cantonment is separately defined under Section 13 of *ibid* Act. Thus, in all kinds of Board be it of class 1, class 2 or class 3 there is a room of elected members of the Colony forming the Board under the said provision. It is the Board where the authority lies to collect taxes in terms of Section 60 of the Cantonment Act, 1924 with the previous sanction of the federal government. Section 3 thus gives power to the federal government to declare any place or places in which any part of the regular forces is quartered or which being in the vicinity of any such place or places, is or are required for the service of such forces, be a cantonment for the purpose this Act. Section 108 provides that subject to any special reservation made by the federal government all properties of the nature, as disclosed in the said provision, which have been acquired or provided or maintained by the Board shall vest in and belong to that Board and shall under its direction, manage and control. It is important to specify all those properties whose management and control vest with the board are subjected to Section 108 of Cantonment Act. For the purpose of present controversy (f) of Section 108 is relevant which specifies “all land or other property transferred to the Board by the Federal or a Provincial Government, or by gift, purchase or otherwise for local public purposes.

30. Respondents No.1 and 2 i.e. federal government has very conveniently enclosed the plan of Askari-IV and without any prayer with reference to the main petition prayed for their deletion/striking of as being party in the proceedings. The Cantonment Board cannot act on its own to recover taxes unless they were authorized in this regard hence for the purposes best known to these respondents, related documents

authorizing the Cantonments and entrusted them with all the management and control is being withheld/hided. However, respondents No.1 and 2 i.e. Federation of Pakistan and M.E.O. have categorically stated in their comments that management of reclassified land rests with Cantonment Board.

31. Once the Cantonment Board took active control of entire Colony, the control in terms of Section 108 vests with them and nothing could be altered without considering/consulting the Board. The duties of the Board are provided under section 116 of the Cantonment Act 1924 whereas discretionary functions of the Board are under 117 of the ibid Act. With reference to the open space or plots in terms of subsection (f) of Section 108 while Colony was handed over, the power vests with the Cantonment Board in terms of section 179 for erecting and re-erecting new building, the powers of the Board to sanction or revise the same is available under section 181 of the ibid Act.

32. The bone of contention in this matter is whether the master plan of the Colony was prepared and acted upon to the benefit and advantage of the lessees, allottees, residents etc. We have come to the conclusion that the master plan is the one that is attached with the Amending Deed when the land was segregated and reclassified for housing scheme and insofar its effect is concerned we deal it as under.

33. The first judgment touching this issue in this regard came when the Hon'ble Supreme Court proceeded with the case of one Abdul Razzak reported as PLD 1994 SC 512. They have highlighted concept of modern city planning and took a serious view to alter master planning of the city. Paragraph 21 of the judgment, which is relevant in the facts and circumstances of the present case, is reproduced as under:-

“21. It may be mentioned that framing of a housing scheme does not mean simpliciter, levelling of land and carving out of plots, but it also involves working out

approximate requirements of water, electricity, gas, sewerage lines, streets and roads etc. If a housing scheme is framed on the assumption that it will have residential units 1 + 1. But factually the allottees of the plots are allowed to raise multi-storeyed buildings having flats, the above public utility services will fall short of requirements, with the result that everyone living in the aforesaid scheme will suffer. This is what has happened in Karachi. Without any planning and without expanding the provisions of the above items of public utility services, the people were allowed to erect multi-storeyed buildings having shops and flats. In consequence thereof everyone living in Karachi is suffering. There is scarcity of water, some people even do not get drinking water. The above other items of the public utility services are short of demand. Roads and streets are normally flooded with filthy and stinking water on account of choking and overflowing of sewerage lines. To reduce the miseries of most of the Karachiites, it is imperative on the public functionaries like the Authority to ensure the adherence to the Regulations. However, it may be clarified that it may not be understood that once a scheme is framed, no alterations can be made. Alterations in a scheme can be made for the good of the people at large, but not for the benefit of an individual for favouring him at the cost of other people. It may be stated that under Article 30 of the Order, the KDA has been empowered to execute the following types of schemes:--

- (a) a general improvement scheme;*
- (b) a re-building scheme;*
- (c) a re-housing scheme;*
- (d) a street scheme;*
- (e) a deferred street scheme;*
- (f) .a development scheme;*
- (g) a housing accommodation scheme;*
- (h) a town-expansion scheme; ,*
- (i) a zonal plans scheme;*
- (j) a transport scheme;*
- (k) a drainage and sewage disposal scheme;*
- (l) a scheme for the re-distribution of sites; and*
- (m) health and welfare scheme;*

The above scheme includes re-framing of schemes.”

34. Issue of alteration in master plan again came into consideration of Hon’ble Supreme Court in the case of Mansoor Sharif v. Shafiq-ur-Rehman reported in 2015 SCMR 1172 when Hon’ble Supreme Court while considering the above judgment came to the conclusion that there is

perhaps a distinction in a case where the relocation (as against elimination or curtailment) of an amenity plot in a scheme has taken place prior to or during the stage of implementation of its infrastructural provisions or before representation to or use by the public. The changes made in the layout plan thus should not injure public interest because such proposed changes could anticipate and deter any increased requirements resulting from the relocation by making adjustments in the design and planning of the infrastructural provisions of the scheme.

35. Although the findings of Abdul Razzak and Mansoor Sharif's case (Supra), would squarely apply as the master plan was prepared in the year 1996 when the scheme was launched though apparently without sanction and segregation of land and its re-classification, yet for all intent and purposes for the public at large the master plan was made available for the benefits of the allottees, lessees and/or occupants of the Colony, therefore, no room for its alteration is available for the Army Housing Directorate AG's Branch Rawalpindi/respondents No.4 and 5 in terms of the above judgments of the Hon'ble Supreme Court.

36. In view of the above we are of the view that the respondents have failed to justify their action of amending the master plan and consequently petition is allowed as prayed. If at all any alteration is inevitable or the open spaces that vests with the Cantonment Board now is required, the powers and jurisdictions vests with the Board with whose consultation the desired object could be materialized and not otherwise.

37. While reserving this judgment a short order was passed with reference to an issue recorded in the order of 09.10.2020. A gentleman was found taking snaps and videos in the Court room while the case was being argued by the counsels. The Court staff caught hold of him and took his mobile phone from which he was taking snaps and videos, as

informed by the staff. The Bench has taken a serious note of the issue and directed the Registrar as well as Nazir of this Court to initiate proceedings under the relevant law. The matter was also referred to I.T. Department of this Court so that before recording in the camera could be deleted through i-cloud by the user, the necessary record of that particular day be obtained and preserved. This was apparently a contemptuous act of the person who was sitting in Court room and recording the Court proceedings and sending messages to his masters. The Registrar and Nazir as well as I.T. Department of this Court are directed to submit details, obtained in pursuance of the earlier directions within a week's time of this announcement, so that further proceedings including contempt proceedings be initiated against the user by issuing show-cause notices. The mobile phone shall remain in safe custody of the Nazir till further orders. This part of the order is in continuation of short order recorded on 09.10.2020.

Dated:

Judge

Judge