

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 452 of 2007

Plaintiff : Pakistan Railways Cooperative Housing  
Society Limited, Karachi,  
through Mr. Faisal Siddiqui advocate.

Defendant No. 1 : Karachi Building Control Authority, Karachi  
through Ms. Saba Siddiqui advocate.

Defendant No. 2 : Nazim, City District Government, Karachi  
(Nemo)

Defendant No. 3 : City District Government, Karachi (Nemo)

Defendant No. 4 : Cantonment Board (Faisal Cantt.), Karachi.  
(Nemo)

Defendant No. 5 : Province of Sindh (Nemo)

Defendant No. 6 : Sui Southern Gas Company Limited, Karachi.  
(Nemo)

Defendant No. 7 : Abdul Razzak Khamosh, through Mr. Basil  
Nabi Malik advocate.

Defendant No. 8 : Karachi Water and Sewerage Board, Karachi,  
through Mr. Riaz Ahmed advocate.

Defendant No. 9 : Karachi Electric Supply Corporation, through  
Mr. Zulfiqare Ali Mirjat advocate.

Defendant No. 10 : Sub-Registrar, Gulshan-e-Iqbal, Karachi  
(Nemo)

Date of Hearing : -----  
29.10.2020.  
Date of order : 29.10.2020.  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:** - By this order I propose to dispose of C.M.A. No. 9947 of 2020 filed on behalf of defendant No. 7, under Order VII, rule 11, C.P.C. seeking rejection of the plaint in the above suit on the ground that it does not disclose any cause of action and the suit is barred by the law.

2. Learned counsel for defendant No. 7 has contended that the Honourable Supreme Court of Pakistan vide its judgment dated 21<sup>st</sup> February, 2020, reported as 2020 SCMR 622, has held that “*all the societies and encroachments on the railway land are illegal and the land cannot be used for any purpose other than used by the railway itself and that some interim orders passed by the High Court of Sindh in regard with railway land were obtained in Suit No. 540/1991 through misrepresentation by some unscrupulous persons, land grabbers and also by the Pakistan Railways Employees Cooperative Society Limited on the basis of un-registered agreement of lease and false and fictitious documents; and prima facie it appears that those interim orders are based on fabricated forged and illegal documents*”. Learned counsel has further contended that in view of aforesaid observations of the Apex Court, it can be concluded that the Pakistan Railways Employees Cooperative Society Limited, the plaintiff, is not entitled to call itself legally competent owner of the properties for that it claims to have *locus standi*, as the plaintiff’s title in respect thereof has now ceased to exist; hence, the plaintiff is not competent to maintain instant suit. Learned counsel has added that the plaintiff has no proprietary rights in the properties in question; hence, the plaint in the instant suit is liable to be rejected for the simple reason that it does not disclose any cause of action in favour of the plaintiff and since the plaintiff has no *locus standi*, it cannot initiate the instant proceedings against the defendants. Learned counsel while referring paragraph No. 18 of the plaint has also contended that even the plaintiff has no locus standi to maintain the suit against the defendant No.7 for violation of Rules / Regulations in construction of his project; moreover, the plaint is barred by section 42 of the Specific Relief Act, 1877, as the plaintiff is neither entitled to any legal character nor to any right on the suit property. Learned counsel in support of his contentions has relied upon following case-law:

(i) Moosa Bhunji (through Legal Heirs) v. Hashwani Sales & Services Ltd. and another (PLD 1982 Karachi 940), wherein this Court after recording evidence of the parties dismissed the civil suit for permanent injunction to

restrain the defendant from constructing more than ground floor and first floor building. The Court has observed *inter alia* that mere violation of a certain provision of law by any authority does not entitle an individual to file suit against it unless any personal interest or damage is proved.

(ii) *Vazir Ali and others v. Hanif* (1989 MLD 1966), wherein this Court dismissed an application under Order XXXIX, rule 1 & 2 read with section 151 C.P.C., by observing that mere violation of Rules/Regulations will not give a cause of action; only if injury to the plaintiff is established, on account of the violation of the rules, then he would have a cause of action. The Court; however, has specified that this order may be construed not to have decided the issue involved in the suit, which will finally be determined on full appraisal of evidence that may be adduced by the parties.

(iii) *Rana Imran and another v. Fahad Noor Khan and 2 others* (2011 YLR 1473). It has been held by a Division Bench of this Court that a suitor is required to show that not only a right has been infringed in a manner to entitle him to a relief but also that when he approached the Court the right to seek the relief was in existence.

(iv) *S.M. Sham Ahmed Zaidi, through Legal Heirs v. Malik Hassan Ali Khan (Moin) through Legal Heirs* (2002 SCMR 338). In this matter, the Apex Court by refusing leave to appeal dismissed the Civil Petition against the order of Division Bench of this Court passed in H.C.A. whereby the order passed by a Single Judge, rejecting the plaint in suit was maintained. The Apex Court has observed that since the title of the plaintiff ceased to exist before it became perfect and enforceable in law, suit for possession could not be filed unless the plaintiff has a clear title.

(v) *Diamond Rubber Mills v. Pakistan Television Corporation Ltd. and 2 others* (1989 CLC 1989). It has been observed by this Court that when at any given time, cause of action ceases to subsist or bar under any law comes into operation and that position is discernible from the plaint, recourse to Order VII, rule II, C.P.C. can be taken.

(vi) *Muhammad Ali Zubair v. Sabir Khatoon and another* (2017 YLR 138). In this matter the learned Single Judge of this Court has observed that the jurisdiction of civil court to exercise its authority to adjudicate

between the parties would co-exist with the “cause of action” to settle the grievance of plaintiff against the defendant on his denial to accept certain rights of the plaintiff and no suit can be filed without “cause of action” and if such suit has been filed, the plaint should be rejected for want of cause of action.

3. On the other hand, learned counsel for the plaintiff while referring the aforementioned judgment of the Apex Court has maintained that the Apex Court has passed the said judgment in a case which is primarily related to the revival and operation of Karachi Circular Railway (KCR) and by no means it has any adverse impact on the plaintiff’s claim in the instant suit and on plaintiff’s title is in respect of 53.634 Acres of land, located in Deh Okewari, Taluka and District Karachi-East, as the title of the plaintiff in respect of the said land is intact, valid and legal till date. Learned counsel has further maintained that the illegal construction on the building, namely, “Moon Gardens” has been raised by the defendant No.7 and the same will cause severe adverse consequences and serious damage to the plaintiff and its members in the form of devaluing the properties leased to the plaintiff and its members, nuisance of noise, pollution, traffic congestion etc. and severe strain on sewerage, water, electricity, infrastructure facilities and municipal facilities; hence, the plaintiff has locus standi to maintain this suit. Learned counsel has also maintained that the defendant earlier filed C.M.A. No. 4573 of 2016 for the rejection of the plaint under Order VII, rule 11 C.P.C. on the ground that the instant suit is barred under section 42 of the Specific Relief Act, 1877; however, the said application was dismissed by this Court as not pressed, vide Order dated 7<sup>th</sup> August, 2017. He has added that the interlocutory orders passed in this matter by this Court have gone up to the Hon’able Supreme Court for adjudication and finally the Apex Court passed an order on 07.01.2020 and the instant C.M.A. is in fact an attempt of defendant No.7 to frustrate said order; hence, the same being on incorrect grounds is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the material available on record with their assistance.

5. The plaintiff has maintained this suit for declaration to the effect that the building known as "Moon Gardens" purportedly built on Survey No.309, Deh-Okewari, Tapo Songal Taluka District, East, behind Aladdin Park, Block-10-A, KDA Scheme-24, Gulshan-e-Iqbal, Karachi, has been constructed in violation of the building laws; that the regularization building plan of the building "Moon Gardens" is illegal and cannot be approved under the law; and that the marriage lawn on S.T. Plot, PRECHS, Project 2-A, Faisal Cantt, Karachi, has been constructed in violation of the building laws and is illegal. The plaintiff has also sought permanent and mandatory injunction restraining the defendants No.1 to 4 from approving the regularization building plan of the building "Moon Gardens" and restraining the defendants No.6, 8 and 9 from providing any services or connections (i.e. gas, sewerage, electricity etc.) to the said building and restraining the defendant No. 10 from registering any conveyance or interest in relation to the said building and marriage lawn on S.T. Plot, PRECHS, Project 2-A, Faisal Cantt, Karachi. The plaintiff has also sought directions to the defendants No.1 to 4 to demolish the said building and marriage lawn.

6. It is claim of the plaintiff that it is the lessee in respect of 53.634 Acres of railway land situated in Deh Okewari, Taluka and District Karachi-East near University Circular Railway Station, Karachi by virtue of Lease Deed executed in its favour (*copies thereof are annexed with the plaint as annexures "D" to D-2*), while the defendant No. 7 is the builder of the building known as "Moon Gardens". It is case of the plaintiff that the defendant No. 7 is raising construction of the said building in gross violation of approved plan as well as building laws i.e. Cantonment law, Sindh Building Control Ordinance, 1979 and Karachi Building and Town Planning Regulations. This Court on 17<sup>th</sup> April, 2007 passed ad-interim

order restraining the defendant No. 7 from raising any further construction on the suit plot and parting with the possession of the building.

7. It appears from the perusal of the record that this Court, vide order dated 25.02.2015, partly allowed plaintiff's application (CMA No. 4550 of 2011) filed under order XXXX, rule 1, read with Order XXXIX, Rules 2 (3) & 7 and section 94 & 151 of C.P.C., for attaching of the building "Moon Gardens" and appointment of Nazir as receiver of the said building, to the extent that the shops/units/premises/apartment which are built in the unauthorized constructed part of the building, and which are not in occupation/possession of anyone of the allottees shall be attached by the Nazir of this Court and the Nazir shall also put lock and seal on the doors of such shops/units/premises/apartments. The plaintiff preferred H.C.A No. 89 of 2015 against the said order which was allowed by the Division Bench of this Court; vide Order dated 29.09. 2015. The operative part thereof is reproduced, as under:

*"In the instant case, the project has been occupied in blatant violation and utter disobedience of the undertaking/direction of the Apex Court as well as of this Court and consequently we see no alternative but to direct its attachment and to further direct the Inspector General of Police as well as Additional Inspector General of Police, Karachi to ensure that the project is totally vacated within thirty days hereof, whereafter respondent No. 1 shall seal the subject project forthwith, which would remain attached/sealed till further order of this Court. We are further of the view that all construction raised by the respondent No. 7 after injunctive order dated 17.04.2007 has to be removed/dismantled. We, therefore, direct the Nazir of this Court to inspect the property and to point out all constructions including finishing work etc. which were raised after Nazir's report dated 30.04.2007 to the learned trial Court and the learned trial Court after being satisfied that the construction or work of finishing so pointed out does not appear in the first Nazir's report would direct its removal."*

The defendant No.7 and some occupants of the building preferred Civil Petitions No. 3178 and 3231 of 2015, respectively, against the said order of the

Division Bench of this Court, wherein leave to appeal was granted by the Apex Court vide its order dated 17.11.2015. Subsequently their Civil Appeals were disposed of by the Apex Court, vide order dated 07.01.2020. The relevant part thereof is reproduced, as under:

*“2. After arguing the case at some length, both the counsels agreed that they will get the premises vacated. Mr. Faisal Siddiqui, learned counsel for respondent No.1 concedes that one and half month time may be granted to get the premises vacated, however, looking at the circumstance, we would grant three months’ time to get the building vacated whereafter the entire building to be sealed and attached. No interference to be made by the respondents. We, however, direct the Director General Sindh Building Control Authority (SBCA) to ensure that the building is not re-occupied.*

*3. Suit No.452/2007 and Suit No.1334/2003 are pending adjudication before the High Court. It is expected that both the parties shall proceed expeditiously to get the suit decided and shall extend cooperation not to seek any adjournment in the matter.*

*4. Learned Branch seized of the matter is expected to decide the matter preferably within six months. Both counsels agreed that their respective parties will extend cooperation and will not seek undue adjournment and if Court considers, may appoint Commission to record evidence to decide the matter within the time frame as noted above. In the meantime, no demolition is to take place; however, the question of demolition shall remain subject to the final judgment in the matter. The amount deposited in this Court may be invested in some profitable scheme and be paid out or refunded subject to the outcome of the suits noted above. The above noted cases are disposed of in the above terms.*

It is, thereafter, the defendant No.7 has filed instant C.M.A on 06.10.2020, *prima facie*, to upset the above-mentioned observations of Division Bench of this Court and directions of the Apex Court.

**8.** So far the grounds raised by the defendant No. 7 for the rejection of the plaint are concerned, I have respectfully gone through the judgment of Honourable

Supreme Court of Pakistan referred to by the learned counsel for defendant No. 7 and of the view that the same does not affect at all the case and claim of the plaintiff in the instant suit. The plaintiff's title in respect of 53.634 Acres of Railway land situated in Deh Okewari, Taluka and District Karachi-East is intact till date by virtue of lease deed, registered at No. 4686 on 16.06.1988 with Sub-Registrar, T. Div. IV, Karachi and deeds of Rectification, registered at No. 7543 and 7546 on 05.12.1988 with said Sub-Registrar and by no stretch of imagination it can be concluded that the plaintiff has lost its title in view of the said judgment of the Apex Court. Even, in the instant suit, the plaintiff is not seeking any title in respect of said land. It is the case of the plaintiff that the defendant No.7 has raised construction of building "Moon Gardens" in violation of building laws. In my tentative assessment, the plaintiff has cause of action to maintain this suit against nuisance, severe strain on sewerage, water, electricity, infrastructure facilities and municipal facilities, which are likely to be jeopardized due to alleged illegal construction of "Moon Gardens" by the defendant No. 7, to the members of the plaintiff Society. The case-law cited by the learned counsel for the defendant No.7 being distinguishable on law and facts does not advance the case of the defendant No.7. Hence, C.M.A. No. 9947 of 2020 being devoid of any legal merit is dismissed accordingly.

9. Above are the reasons of my short order dated 29.10.2020.

Athar Zai

JUDGE