

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

Suit No. 02 of 2016

Plaintiffs : Ali Mushtaq & Others, through Mr. Sarmad Hani, Advocate.

Defendant No.1 : Federation of Pakistan, through Mr. Zahid F. Ibrahim, Addl. Attorney General of Pakistan

Defendant No.2 : Province of Sindh, through Mr. Aal-e-Maqbool, Addl. AG.

Defendant No.4 : Shafaat Ahmed Akhlaq, through Mr. Abbas Rashid Rizvi, Advocate.

Intervener : Federal Government Employees Housing Foundation, through Mr. Muhammad Vawda, Advocate.

Date of hearing : 28.02.19, 12.03.19, 02.04.19, 17.04.19, 07.05.19 & 21.05.19.

ORDER

YOUSUF ALI SAYEED, J. – The Plaintiffs profess to be the owners in possession of a piece of land being Plot No. CL-7-17/1-VC-64, Bonus Road, Karachi admeasuring 7,947 sq. yards (the “**Suit Property**”), which, per the Plaintiffs, had been purchased on 27.05.2000 from the Defendant No. 4 by their forbearer and predecessor-in-interest, the late Raja Mushtaq Ahmed (“**the Deceased**”), and held by the Deceased on the basis of an Irrevocable General Power of Attorney executed by the Defendant No.4 in his favour, as had been duly registered with the Office of Sub-Registrar T. Division, Karachi on 01.06.2000.

2. As per the case set up in the Plaint, the Defendant No. 4 is said to have acquired the Suit Property vide participation through a nominee, in an auction conducted on 17.10.1959 as part of settlement proceedings in respect of evacuee properties.

3. Apparently, the Defendant No.1. (i.e. the Federation of Pakistan) espoused a rival claim to the Suit Property on the basis that the same had initially been earmarked as the site of a Haji Camp for placement under the aegis of the Ministry of Religious Affairs, but was then subsequently transferred to the Ministry of Housing and Works.

4. Ergo, in the face such opposition, the Defendant No.4 had engaged in a protracted course of litigation in an endeavour to perfect his title to the Suit Property and preserve his possession thereof, culminating in the institution of Suit No.432 of 2009 before this Court, which remains pending and this Suit stands tagged therewith in terms of the Order made by consent on 13.10.2017 in that regard.

5. The Applications presently arising for consideration in this broad backdrop are (i) CMA 22/2016 filed by the Plaintiffs under Order 39, Rules 1 and 2 CPC, seeking to preserve their possession of the Suit Property to the extent of approximately 6947 square yards - the remaining area of around 1000 square yards said to have been unlawfully possessed and constructed upon by the Ministry of Housing and Works, and (ii) CMA 7042/19 filed by the Federal Government Employees Housing Foundation (the “**Intervener**”), seeking to be added as a defendant on the ground that the proprietary rights in the Suit Property had since been transferred by the Ministry of Housing and Works to the Intervener.

6. Proceeding on CMA 22/2016, learned counsel for the Plaintiff invited attention to the pleadings as to participation of the Defendant No.4 in the public auction said to have been conducted in relation to the Suit Property and to the documents filed along with the plaint in that regard, as well as to the legal proceedings that had been instituted from time to time, leading up to and including Suit No. 432 of 2009. It was pointed out that in the written statement submitted on behalf of the Ministry of Religious Affairs, the proceedings of such auction and resultant issuance of a Provisional Transfer Order in favour of the Defendant No.4 had been acknowledged, and it had also been conceded that albeit a notification having allegedly been issued in the year 1959 for acquisition of the Suit Property for purpose of a Haji Camp, no further action seemed to have been taken to acquire the same, whether in terms of payment of compensation or otherwise, and that alternate land for the Haji camp had been taken by the Ministry at Queens Road, Karachi. As regards the status of the Plaintiff, it was submitted that the Deceased had made full and final payment to the Defendant No. 4 in consideration of his rights/interest in the Suit Property and that the General Power of Attorney that had been issued by the Defendant No.4 was accordingly irrevocable and served to create an agency coupled with interest, all of which had been duly acknowledged by said Defendant. It was further pointed out that as far back as 14.03.2013, issues had been settled in Suit No. 432 of 2009, and that in terms of the Order of that date the interim Order of injunction made earlier in favour of the Defendant No.4 had also been confirmed by consent of learned counsel in attendance, including the Standing Counsel on behalf of the Federation.

7. It was submitted that in such backdrop, the Plaintiffs had established a prima face case of title and long standing part possession of the Suit Property, the balance of convenience lay in the Plaintiff's favour so as to facilitate adjudication of the matter on merit along with Suit No. 432 of 2009, wherein a number of the pivotal issues for such determination had already been settled, and irreparable loss would inevitably be caused to them if an injunction were not to be granted as the functionaries of the Ministry of Works and/or persons claiming through or under them would proceed towards their forcible dispossession.

8. Turning to CMA 7042/19, learned counsel pointed out that on 28.02.2019, during the course of hearing of CMA 22/2016, an objection had been raised as to the ability of private counsel to represent the Federation in view of the Judgment of the Honourable Supreme Court of Pakistan in the case reported at PLD 2017 Supreme Court 121, especially when the Assistant Attorney General was also in attendance before the Court. It was pointed out that adjournments had then been sought over the next several dates (i.e. 12.03.2019, 02.04.2019 and 17.04.2019) on the ground of preoccupation of counsel, eventually culminating in the filing of CMA 7042/19 in Court on 07.05.2019 through the same private counsel for purpose of impleading the Intervener as a defendant, and a statement was made on that very date by the Assistant Attorney General, upon his being called upon to address the Court, that the learned Additional Attorney General of Pakistan would be appearing in the matter on behalf of the Defendant No.1. It was submitted that CMA 7042/19 was bereft of substance and was a merely a device intended to serve as a platform to enable private counsel to circumvent the Judgment of the Apex Court.

9. Conversely, the learned Additional Attorney General as well as learned counsel for the Intervener pointed out that the Defendant No.4 had previously filed a Petition before this Court under Article 199 of the Constitution, being C.P. No. D-894 of 2004, and that whilst dismissing the said Petition on 31.10.2006, the learned Division Bench seized of the matter had observed in terms of its Order of the same date that the Suit Property stood transferred to and vested in the Federal Government through the Ministry of Religious Affairs prior to the repeal of the Evacuee Laws in 1975. They submitted that no prima facie case for grant of an injunction stood made out as a consequence. Learned counsel for the Intervener also drew attention to certain documents filed in support of CMA 7042/19 in an endeavor to demonstrate that the proprietary rights of the Federation stood vested in the Intervener - a stance that was in turn endorsed by the learned Additional Attorney General.

10. For his part, the learned Addl. Advocate General sought to introduce a different dimension to the dispute, contending that neither the Plaintiff nor the Federation or Intervener had title to the Suit Property, submitting that it vested instead in the Province. However, on being called upon, he was unable to point to a foundational pleading in that regard.

11. Having considered the arguments advanced at the bar, it merits consideration that as regards the contention advanced as to dismissal of C.P. No. D-894 of 2004 and observations contained in the Order made therein by the learned Division Bench on 31.10.2006, suffice it to say that consent has subsequently been accorded on behalf of the Federation on 14.03.2013 as regards confirmation of the interim injunction in Suit No. 432 of 2009 filed by the Defendant No.4 so as to facilitate

adjudication of the matter following recording of evidence in relation to the issues settled in the matter on that date, and the outcome of this Suit is itself essentially predicated to a large extent on a determination of those very issues as to the status of the Defendant No.4 vis-à-vis the Suit Property.

12. Even otherwise, from a reading of the Order of 31.10.2006 in C.P. No. D-894 of 2004, it appears that the learned Division Bench had been given to believe that the Suit Property had been “acquired” for the purpose of a Haji camp which had “since been constructed” and “despite construction” the Defendant No.4 had “not challenged the acquisition proceedings nor construction”, whereas it is apparent from the written statement filed in the suit on behalf of the Ministry of Religious Affairs that acquisition of the Suit Property and construction thereon for such purpose ostensibly did not ensue. Furthermore, the learned Division Bench had itself proceeded to leave the Defendant No.4/Petitioner at liberty to file a civil proceeding to establish his right, if any.

13. Under the given circumstances and in light of the proceedings as have consensually ensued in Suit No. 432 of 2009, as well as the written statement that has come to be submitted in this Suit by the Ministry of Religious Affairs, triable issues apparently arise for determination as to the rights of the contesting parties, which require evidence. Suffice it to say that, at this stage, a prima facie case appears to have been made out, and the balance of convenience lies in favour of the Plaintiff in terms of maintaining part possession as has apparently remained with the Defendant No.4 and subsequently with the Plaintiffs over a protracted period, pending final determination of the matter on merit.

14. As such, the interim Order made on 01.01.2016 is hereby confirmed and CMA 22/2016 stands allowed in such terms. Consequently, CMA No.12892/2016 filed on behalf of the Defendant No.1 under Order 39, Rule 4 CPC stands dismissed.
15. As to CMA 7042/19, since the Intervener has apparently assumed the mantle of the Ministry of Housing and Works - such contention being supported by the learned Additional Attorney General for Pakistan, it appears that the Intervener is a proper if not necessary party to the Suit, hence such Application is allowed with the result that the Intervener stands added to the array of defendants. Let an Amended Title be filed reflecting the Intervener as the Defendant No.5. accordingly.

JUDGE