

**Order Sheet**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Constitutional Petition No.D-5547 of 2016

Date	Order with signature of Judge
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**PRESENT:**

**Mr. Justice Nadeem Akhtar**

**Mr. Justice Arshad Hussain Khan**

Date of hearing: 09.11.2016

Khawaja Muhammad Azeem, advocate for Petitioners.

Mr. Abdul Khalil, advocate for respondents 3 & 4

Mr. Iqbal Khurram, advocate for KMC

Mr. Miran Muhammad Shah Addl. A.G. Sindh,

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**ARSHAD HUSSAIN KHAN, J.** The petitioner through the instant petition has sought following reliefs:

- a. *Call the Respondents Nos. 2 to 6 and strictly restrain them from demolishing the community hall of the petitioner as the petitioner is lawful administrator of said hall and he is running the same after obtaining proper & lawful permission by virtue of letter dated 29.05.2014 (annexure D), issued by the office of the respondent No.4.*
- b. *To declare that the letter dated 29.05.2014 (annexure D) is lawful document issued by the respondent No.4 after due payment paid by the petitioner and further may be declared that the petitioner is lawfully running the community hall in pursuant of said permission.*
- c. *This Honorable Court may kindly declare that the act of the Respondents for attempting to demolish the hall without issuance of any notice/intimation or order of any authority is illegal and unlawful as the Petitioner is lawful administrator of the said community hall and invested huge amount and thereby legally enjoying the possession since last more than 06 years. As such valuable rights of the Petitioner in the suit property is involved.*
- d. *To restrain the Respondents, their agents, employees, servants, associates, workers, attorneys, contractors or any other persons from demolishing the community hall, constructed on the above plot which is legally running by the petitioner on nominal/cheaper rates by virtue of letter dated 29.05.2014.*
- e. *At the first instance to direct the Respondent No.7 to provide the legal protection to the to the valuable property of the Petitioner from any sort of harassment and demolish or otherwise.*
- f. *To order directing the Respondent No.2 to 4 to ensure that their subordinate in future not to visit, create any sort of harassment to the Petitioner in any manner whatsoever inasmuch as not to demolish the community of the petitioner by misusing their official*

*status and to deny the basic fundamental rights of the Petitioner as guaranteed under the Constitution of 1973.*

*g. Any other relief or reliefs as this Honourable Court may deem fit and proper in the peculiar circumstances.*

*h. Grant the cost of this petition.”*

2. The brief facts leading to the filing of instant petition as averred therein are that in the year 2010 the petitioner entered into tenancy agreement with respondent No.4 (Town Municipal Administrator, New-Karachi Town, DMC Central, Karachi) being caretaker, in respect of ‘Community Hall’ commonly known as ‘Shahid Bhai Shaheed Community Hall’ situated at plot No. ST-06, Sector 5-A/4, New Karachi, herein after referred to as the ‘said Community Hall’. The petitioner in this regard paid handsome amount to respondent No.4 towards security deposit, advance monthly rentals and other charges through challans. It is also averred that pursuant to the above said tenancy agreement and payments, respondent No.4, being caretaker of the said Community Hall, granted permission to the petitioner to run the said Community Hall as administrator on nominal charges. The petitioner after proper approval and sanction from respondent No.4, through investment put Nabigh Marriage Lawn at the said Community Hall in a running condition. The petitioner for the purposes of running marriage lawn at the said Community Hall has also obtained electricity connection in his name and regularly paying electricity charges. Besides this the petitioner is also regularly paying other utility charges installed at the said Community Hall. Further averred that the petitioner, as per the terms of the tenancy agreement, rendering valuable services to the community of the area by renting out Nabigh Marriage lawn on nominal and cheaper rates. It is also averred that respondent No.4 upon satisfactory performance of the petitioner revised the permission for three (3) years, in favour of the petitioner to continue the marriage lawn at the said Community Hall. Further averred that to the utter surprise of the petitioner, when on 06.10.2016 in the nighttime, respondents No. 3 to 6 without any prior notice and or intimation came with heavy machinery at the marriage lawn of the petitioner and started creating harassment on the pretext to demolish the marriage lawn. The petitioner had shown them all the documents

reflecting his legal and justified occupation of the said premises but fell in deaf ears, however due to the intervention by people in vicinity, the respondents left the site with extending threats to demolish the marriage lawn/Community Hall. It is also averred that petitioner after the said episode visited the camp office of respondent No.2 also showed them the documents and also explained the position but respondent No.2 demanded illegal gratification of Rs.10,00,000/- (rupees one million) for not demolishing the marriage lawn of the petitioner, said demand was not acceptable to the petitioner, hence it was declined. It is also averred that the petitioner is lawful administrator of the said Community Hall and invested huge amount hence legally enjoying the possession since last more than 6 years as such valuable rights of the petitioner are involved therefore he cannot be evicted through illegal manner. The respondents are bent upon to demolish the marriage lawn/Community Hall and as such causing sheer harassment. Hence the petitioner having no other efficacious remedy approached this court and filed the present petition.

3. This court while raising the issue of maintainability vis-à-vis locus standi of the petitioner in respect said Community Hall, issued notices to the respondents upon which except respondents No. 2 and 7, none other has filed comments.

4. The counsel for respondent No.2, on 1.11.2016 while requesting for time to file objections/comments has made very categorical statement before this court that the tenancy agreement on which the petitioner is relying has no legal effect as Town Municipal Administrator (TMA) had no power or authority to grant lease in respect of the community hall in question to the petitioner. As per the learned counsel only KMC has the authority to do so.

5. The respondent No.2 in its reply/para-wise comments while denying the allegations levelled in the petition has stated that the demolition action is being carried out in compliance of the order dated 21.10.2016 passed by this court in CP No.D-1989 of 2015. It is also stated that since there existed no camp of respondent No.2 to 6 therefore the question of petitioners' visit as alleged does not arise.

6. The respondent No.7 in its comments while denying the allegations levelled in the petition has stated that demolition action is being carried out by office of the director land (Anti Encroachment), KMC, against the illegally constructed Marriage Halls/lawns. Furthermore, the role of respondent No.7 being local police is only to control law and order situation in the territory of the Police Station.

7. We have heard learned counsel for the parties on issue of maintainability of the petition and with their assistance also perused the available record.

8. The stance of the petitioner in instant petition is that he is a lawful administrator in respect of said Community Hall by virtue of agreement dated 03.10.2011, executed between TMA, New Karachi Town and the petitioner in respect of said Community Hall [hereinafter referred to as the subject agreement]. And pursuant to the subject agreement the petitioner invested huge amount to put the said marriage lawn in the name of Nabigh Marriage Lawn at the said Community Hall in a running condition and as such the petitioner's substantial right is involved in the said Community Hall, hence, he has *Locus Standi* to file the present case. Whereas the stance of the KMC in the present case is that the property in question is belonged to the KMC and the TMA had no power and authority to lease out the same to the petitioner.

9. Bare perusal of the subject agreement dated 03.10.2011 filed by the petitioner as annexure-A to the petition, on the basis whereof the petitioner is claiming right over the said Community Hall, reflects that it was executed by TMA New Karachi Town as owner of property in question and not as a caretaker, as mentioned in the petition. Furthermore, there is nothing on record which could show the legal right of TMA, either as owner or caretaker, over the property in question empowering him to grant lease or license in favour of the petitioner. The subject agreement also does not reflect that the petitioner was appointed as administrator. Above all the said subject agreement was for five (5) years, effective from 03.10.2011, which period has been expired in September 2016. Furthermore, the claim of the petitioner that permission to run Nabigh Marriage Lawn at the

property in question was extended for another 3 years by DMC Karachi (Central) through its letter dated 29.05.2014 is not sustainable in law as firstly, the said letter of DMC does not reflect that under whose authority it has been addressed, secondly, it does not state that it is an extension of the subject agreement between TMA and petitioner and thirdly, it does not state that why this extension has been granted two (2) years prior to the expiry of earlier alleged period of subject agreement.

10. From the above, it appears that in the absence of any proof TMA, New Karachi Town, either as owner and/or caretaker, over the property in question, had no authority to grant lease and/or license in favour of the petitioner. Thus, germane to endorse that one can competently transfer a 'title' but he cannot transfer what he does not have. One cannot claim to have acquired a better title than the one transferor was capable of.

11. In the instant matter, the Petitioner is claiming right over the property in question by virtue of subject agreement executed by TMA who did not have power to grant lease and/or license, hence the validity of the said agreement is questionable. No doubt, the law protects bonfide transactions but this benefit/protection is not available to one who acquires a rights and title from an unauthorized and incompetent person. Furthermore, to make an agreement a 'contract' it should be made by parties 'competent to contract'. This term should always be given due weight because in absence of competency one cannot attach 'legality' thereto else the term competent to contract shall lose its value. Further, the Transfer of Property Act only permits such 'transfer' which is 'competently made' by 'legally authorized persons' hence within meaning of section 11 of the Contract Act the absence of legal authority always be taken as 'disqualification from contracting' which will make a contract 'void'. Needless to add here that no rights and liabilities can be attached to or arise out of a void contract. Reliance can be placed on the case of Abdul Ghani and others v. Mst. Yasmeen Khan and others (2011 SCMR 837).

12. The upshot of the above discussion, we are of the considered view that in absence of any legal right of TMA New Karachi Town,

either as owner and or caretaker, over the property in question, empowering TMA to grant lease or license and to enter into agreement with the petitioner, and furthermore, irrespective of the validity subject agreement, after expiry of lease period, in terms of subject agreement, the position of the petitioner in the eyes of law is nothing but unauthorized occupant of the property in question, hence the petitioner does not have *locus standi* to maintain the present petition and as such the same is not maintainable. Consequently, the present petition is liable to be dismissed.

13. Foregoing are the reasons for our short order dated 9.11.2016, whereby the petition along with listed application was dismissed with no order as to cost.

JUDGE

JUDGE

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