

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-7173 of 2019

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Muhammad Faisal Kamal Alam.

Dates of hearing: 10.09.2021 and 23.09.2021 .

Petitioner: Sheikh Imran Ahmed through Mr. Umar Farooq Khan, Advocate.

Res. No.1: The Director General, KDA, Karachi through Mr. Altaf Ahmed Sahar, Advocate .

Res. No.2: The Government of Sindh through its Secretary, Local Government through Mr. Miran Muhammad Shah, Addl. A. G. Sindh .

JUDGMENT

Irfan Saadat Khan, J: Through this petition, the petitioner has prayed that the respondents may be restrained from selling or auctioning the plot bearing No.ST-13/1, Sector 15-A/3, Buffer Zone, Karachi, since he claims ownership on the said plot. It has further been prayed, as an alternate ground, that if the above referred plot is not given to him then an alternate plot of equal market value may be allotted to him.

2. Briefly stated the facts of the case are that, it is the claim of the petitioner that he purchased the above referred plot from the respondent No.1 in 1982. Utility services were also obtained by the petitioner on the above referred plot in his name, which included water connection. On 24.4.1990 the petitioner received a notice from the respondent No.1 stating therein that since he is an encroacher, therefore he should vacate the said plot. Petitioner replied to the said notice but in the year 2011 the

said plot, upon which a house comprising of 4 rooms along with 11 shops were constructed, were demolished and taken over by the respondent No.1. The petitioner then came to know that the said plot is being auctioned by the KDA. Thereafter, the instant petition has been filed with the prayer, as mentioned above.

3. Mr. Umar Farooq Khan, advocate has appeared on behalf of the petitioner and stated that the petitioner has purchased the property in the year 1982 and when he approached the respondents they assured that his possession would be regularized and 99 years lease would be made in his favour. However, subsequently the respondent No.1 served a Notice under Section 3 of the Sindh Public Property (Removal of Encroachment Act 1975) dated 29.04.1990, which was duly challenged by the petitioner through a Civil Suit No.435/1990, in which stay was granted to him against the KDA by this Court vide order dated 23.12.1990. Subsequently the said suit, on the ground of pecuniary jurisdiction, was transferred to the VIth Senior Civil Judge Karachi East bearing Suit No.980/1996. He further stated that in the proceeding before the Senior Civil Judge, the respondent offered him an alternate piece of land, which offer was accepted by the petitioner, however as per the learned counsel, the respondent No.1 subsequently retracted from their offer. He further stated that the respondent No.1 also offered the petitioner to withdraw the suit on the promise that an alternate piece of land would be given to him but the petitioner insisted that the possession of the plot, originally allotted to him, may be handed over to him. He further stated that the said suit was decreed in favour of the petitioner in the year 1999, against which, KDA preferred an appeal bearing No.203/1999, which was decided in favour of the KDA vide Judgment dated 08.01.2001. Learned counsel further stated

that the plot allotted to the petitioner was not a ST amenity plot but it was a ST commercial plot. He further stated that the KDA may be restrained from selling/auctioning the said plot. He further stated that the petitioner has no other remedy except to approach this Court, hence this petition may be allowed.

4. Mr. Altaf Ahmed Sahar, advocate has appeared on behalf of the respondent No.1/KDA and stated that this petition is wholly misconceived and not maintainable as decisions up to the level of the Hon'ble Supreme Court of Pakistan have been given against the petitioner. He further stated that the Apex Court has categorically observed that ST type plots are meant for amenity purposes, hence according to him, the very allocation of the plot to the petitioner was illegal. He stated that the petitioner was an encroacher and the property is amenity in nature which cannot be allotted or given to the petitioner. He has further stated that when the original allocation of the plot of the petitioner was illegal hence there is no question of granting the said plot or an alternate plot to the petitioner or to restrain the KDA/respondents from auctioning the said plot meant for amenity purposes. He therefore stated that the claim of the petitioner raised in the instant petition is uncalled for, hence the instant petition may be dismissed by imposing cost upon the petitioner.

5. Mr. Miran Muhammad Shah, Addl. A.G. Sindh has appeared on behalf of the respondent No.2/Government of Sindh and has adopted the arguments as advanced by Mr. Altaf Ahmed Sahar, learned counsel for the KDA.

6. We have heard the arguments of all the learned counsel at considerable length and have perused the record.

7. At the very outset, we asked a question from the learned counsel for the petitioner that under what capacity the petitioner was occupying the above referred plot? To which he candidly replied that the petitioner was in occupation of the plot since many years, hence due to efflux of time he is entitled for its allotment. It is clarified that since Article 144 of the Limitation Act 1908, which deals with adverse possession already stands omitted by Act, II of 1995, thus the stance of the petitioner's counsel appears to be misconceived.

8. Perusal of the record reveals that the petitioner possessed a piece of land, which was ST in nature of which he admittedly was not an owner. It is quite strange to note that, how and under what circumstances the petitioner could purchase an amenity plot. As noted above, the counsel for the petitioner has conceded that the petitioner was an encroacher of the above referred plot and in our view an encroacher cannot claim either ownership or possession over any plot. The record also reveals that in order to claim ownership and possession over the property the petitioner started litigation with the respondent No.1/KDA. The Order of the VIth Senior Civil Judge Karachi East dated 10.11.1999, though was given in his favour, but all the subsequent Orders i.e. that of the IIInd Additional District Judge Karachi dated 08.01.2001 passed in Civil Appeal No.203 of 1999, Revision Application (R.A. No.12/2001), order dated 19.05.2016 passed by this Court and the order dated 06.02.2017 passed by the Hon'ble Supreme Court of Pakistan in C.P.No.430-K/2016 were against him. It is a settled proposition of law that an encroacher can neither claim any alternate land/plot nor is entitled for any compensation when admittedly the petitioner was an encroacher. It is also a settled proposition of law that simply on the basis of having utility bills in one's

name, ownership rights could neither be claimed nor could be conferred upon a person.

9. We, therefore, are of the candid view, that the prayer of the petitioner to restrain the respondents from selling out or auctioning the plot or allotment of an amenity plot or claiming compensation are nothing but misconceived notions and no lease in this regard could be granted to him. The matter, in our view, has been laid at rest and settled up to the level of the Hon'ble Supreme Court of Pakistan, hence simply on the ground that the petitioner was an old occupant of the plot would not entitle him to be granted allotment of the said plot even if he has made some Pakka construction upon it. Thus, in our view, the petitioner is neither entitled for allotment of plot nor is entitled for any alternate plot or compensation, whatsoever, as claimed by him. The petition thus is found to be bereft of any merit, the same therefore, stands dismissed along with the listed and pending application, if any. There shall however be no order as to cost.

JUDGE

JUDGE

Karachi,

September, 2021,