

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Mr. Muhammad Faisal Kamal Alam, J.

C.P. No. D-321 of 2020

Petitioner : Khawaja Qadeer Ahmed ,
through Syed Arshad Ali Advocate.

Respondent : Sindh Industrial Trading Estate
No. 1. through Mr. Umer Sikandar Advocate and
Ms. Lubna Aijaz, Law Officer, S.I.T.E.

Respondent : Muhammad Zubair
No. 2. (Nemo)

Intervenor : Mrs. Razia Begum
Through Mr. Ahmed Ali Hussain Advocate

Date of hearing : 28.10.2021.
Date of order : 28.10.2021.

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant petition, the petitioner has impugned letter dated 7th November, 2018, whereby the respondent No. 1 (S.I.T.E.) while cancelling the plot bearing No. A-101, situated in S.I.T.E. Superhighway, Phase-I, Karachi (“**subject plot**”) allotted to the petitioner advised him to surrender the Lease, Agreement to Licence and Possession Order. He has also sought declaration that Civil Suit No. 918 of 2019, filed by the respondent No. 1 against him is malafide and with ulterior motives and is not maintainable.

2. It is alleged by the petitioner that vide letter dated 28th November, 2004 he was earlier allotted Plot No. G/185, admeasuring 0.50 Acres, situated in S.I.T.E. Superhighway, Phase-II, Karachi, in respect whereof he paid full price of Rs.750,000.00 so also advance rent and utility charges to

respondent No. 1; however, as the said plot was in litigation in Suit No. 484 of 2014, he moved an application dated 9th December, 2014 to respondent No. 1 requesting therein to provide any other suitable plot against the aforesaid plot, whereafter on 19th February, 2015 possession of the subject plot was handed over to him and such lease deed was executed in his favour on 2nd April, 2015. It is also alleged by the petitioner that the subject plot was previously allotted to respondent No. 2 but on account of his failure to pay its dues, his allotment was cancelled by the respondent No. 1 vide letter dated 17th February, 2015, which was challenged by him through Suit No. 84 of 2015 before the Court of learned 2nd Senior Civil Judge, Malir, Karachi, wherein petitioner was subsequently impleaded as defendant No. 7; however, later on the said suit was dismissed by the said Court as withdrawn vide order dated 15th September, 2018, whereafter, the respondent No. 1 issued impugned letter. Subsequently, on 16th October, 2019 respondent No. 1 filed Civil Suit No. 918 of 2019 before the aforesaid Court against the petitioner, respondent No. 2 and applicant/intervener Razia Begum for declaration and cancellation of lease documents seeking declaration that the aforesaid plot is overlapped of subject plot; therefore, the allotment is liable to be revoked/cancelled. It also sought direction to the petitioner to surrender original allotment, lease agreement to licence and possession order in respect of the subject plot and to cancel the same. It is case of the petitioner that Suit No. 918 of 2019 has been filed by the respondent No. 1 malafidely and without lawful authority and its proceedings are not legally maintainable.

3. We have heard learned counsel for the petitioner, respondent No. 1 as well as applicant/intervener and also perused the material available on record.

4. It is an admitted position that the impugned letter was issued by the respondent No. 1 on 7th November, 2018 and thereafter on 18th October, 2019 it maintained Suit No. 918 of 2019, which is being contested by the petitioner as defendant No. 1. The declaration sought by the petitioner in the instant petition with regard to aforesaid civil suit cannot legally be granted as it is the domain of the aforesaid civil Court to determine the question of maintainability of the said suit. Since the issue of overlapping of the aforesaid plot on subject plot is subjudice before the competent Court of law, which is likely to be decided by it after recording pro and contra evidence of the parties, such factual controversy cannot be entertained and decided by this Court in its constitutional jurisdiction under Article 199 of Constitution Islamic Republic of Pakistan, 1973; hence, this petition being devoid of any merit is dismissed accordingly alongwith listed applications.

5. Above are the reasons of our short order dated 28th October, 2021.

JUDGE

JUDGE

Athar Zai