

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-7400 of 2021

Date

Order with Signature(s) of Judge(s)

Fresh Case:

1. For order on Misc. No.32493/2021.
2. For order on office objection No.1.
3. For order on Misc. No.32494/2021.
4. For order on Misc. No.32495/2021.
5. For hearing of main case.

22.12.2021

Syed Sultan Ahmed, Advocate for petitioners.

Through instant petition, the petitioners seek following reliefs:-

- a.** *To set-aside the impugned notices dated 09.11.2021 being illegal, ultra-vires, void and in contravention of order passed by this Hon'ble Court as the houses of mostly petitioners are not falling under the alignment of proposed Millennium 2000 Road and therefore, the orders/directions passed by this Hon'ble Court in Constitution Petition No.D-2595/2019 are not binding and applicable on those petitioners.*
- b.** *It may further be declared that the impugned notices are constrains to the official statement/layout plan at respondents No.7, 8 and 9 submitted in Constitution Petition No. D-2595/2019 and as such amounts to misstatement/contempt of this Hon'ble Court.*
- c.** *To prohibit the respondents from disturbing the petitioners from their lease hold properties, before payment of adequate compensation to them or to rehabilitate at some other place or State Land.*
- d.** *To direct the official respondents to comply the order of this Hon'ble Court passed in Constitution Petition No. D-2595/2019 and earlier in Constitution Petition No. D-144/2006 for same purpose, in its letter and spirits.*
- e.** *To take action against the official respondents No.5, 7, 9 and 10, who have given mis-statement before this Hon'ble Court in Constitution Petition No.D-2595/2019.*

2. Learned counsel contends that the petitioners are the residents of Mustafabad and affectees of the impugned notices (*copies thereof are available as Annexures P/43 to P/55 at page 465 to 489 of MoP*) issued by the respondent No.9 (**The Senior Director Land, Anti-Encroachment, KMC**) in violation of their fundamental rights as envisaged in Article 10-A of the Constitution of Islamic Republic of Pakistan (**"the Constitution"**), as the said respondent has not received from the petitioners the title documents of their immovable properties and even it did not provide any opportunity to petitioners of personal hearing before issuing impugned notices. He further contends that the petitioners have right to enjoy their leased constructed properties as guaranteed by the Constitution under Article 24. He also contends that the official respondents have failed to comply with the directions/ order passed by this Court earlier in C.P. No.D-144/2006, as they did not pay the compensation to the petitioners/owners, whose houses are falling under the alignment of the road and even if the houses of the petitioners are coming in the alignment of the road, the KMC should pay the compensation to the petitioners as per current market value or otherwise rehabilitate them on some other place/ State land in compliance of the orders of this Court passed in Constitution Petitions No.D-144/2006 and D-2595/2019. In support of his contentions, learned counsel has relied upon the case of *Sultan & others v. Province of Sindh & others* (**SBLR 2003 Sindh 1650**).

3. Heard the learned counsel and perused the material available on record.

4. It appears that the respondent No.9 has issued the impugned notices under Sindh Public Property (Removal of Encroachment) Act, 2010 for the removal of encroachments/structure illegally built over land/site reserved for the construction of 150 feet wide road according

to approved lay out plan of the area, in compliance of the order, dated 17.04.2019, passed by this Court in C.P. No.D-2595/2019. In this regard, this Court has also passed an order on 16.11.2021 in said C.P., the operating part thereof being relevant is reproduced, as under:

“A Compliance Report was filed on behalf of Director (E&D) KDA-Respondent No.2 on 11.02.2021, primarily showing inability of respondent-KDA to clear the Road from encroachment on its own, on account of apprehended law and order situated. It is complained that other law enforcement agencies, including the Pakistan Rangers do not extend their support and assistance to the demolition squad of respondent-KDA for conducting a successful operation against encroachment. It is stated that notices for eviction have been given to squatters at the above locality and a joint operation against them shall be conducted in collaboration with police.

Record shows that earlier Petition being C.P. No.D-144 of 2006 involving same issues with regard to the subject Road, was decided by the learned Division Bench of this Court vide Order dated 11.10.2016 (available at page-71 of the Court file). Once the matter has been decided, stance of official respondents in this regard is of little significance. What is important is that official respondents should implement the order in letter and spirit, inter alia, because a public road cannot be either declared as Katchi Abadi or be used for any settlement.

As per counter affidavit of respondent No.2, only 24 Units would be affected; thus, occupants/persons can be properly rehabilitated by the official respondents in some other suitable place/State land. In this regard, Official Respondents shall work in co-ordination for restoring the above road and for the betterment of this City, within a period of three months hereof, without failed.”

5. Perusal of the above shows that directions have already been given for the rehabilitation of the occupants in some other suitable place/State land. So far the case of Sultan & others (Supra) cited by the learned counsel for the petitioners is concerned, it may be observed that number of petitions were filed against the demolition of

the properties of the petitioners of said petitions and utilization of their land/plots for construction of “Lyari Expressway” on both banks of River Lyari from Mauripur Bridge to Sohrab Goth and this Court while holding that once registered leases in favour of petitioners exist, they have to be given effect till such time as they are pronounced void by Courts of competent jurisdiction and observing that Lyari Expressway was a project of national importance which was being constructed in the larger public interest for which private property could always be acquired under the law, disposed of the petitions by directing the respondents to either resolve the dispute through private settlement or by appropriate compensation to the petitioners in accordance with law keeping in view the area leased out in their favour and the construction raised thereon. So far the instant case is concerned, the directions has already been given to official respondents in C.P. No. D-2595/2019, vide order dated 16.11.2021, for the rehabilitation of the affectees in some other suitable place/State land. Needless to mention here that in the cases where the lease hold rights have been granted to occupants of the plots by the KMC, KDA or any other Authority on the land/site reserved for road, parks, drainage lane/nala or for any other amenity, the concerned Corporation and Authority is responsible to resolve the dispute either through private settlement or by paying appropriate compensation to the lease holders in accordance with law.

6. This petition is therefore, dismissed in limine, alongwith pending applications, being devoid of any merit.

JUDGE

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