

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 249 of 2021

Date	Order with signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Mahmood A. Khan

02.02.2022 :

Mr. Iqbal Khurram, advocate for the appellants.

Mr. Adnan Ahmed, advocate for respondents 1 to 25.

Ms. Leela @ Kalpana Devi, Additional Advocate General Sindh, for
official respondents 27 to 35.

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NADEEM AKHTAR, J. – Respondents 1 to 26 (**‘the plaintiffs’**) filed Suit No.875/2018 at the original side of this Court for declaration, damages and mandatory and permanent injunction against the appellants and respondents 27 to 35. The case of the plaintiffs, as averred in their plaint, was that they were the residents of Village Muhammad Hussain / Muhammad Hussain Goth situated in Na-Class 30, Deh Nagan, Scheme 45, Tapo Songal, Taisar Town, Karachi West ; *Sanads* in respect of their respective lands were issued by the Government of Sindh under the Sindh Gothabad Housing Scheme Act, 1987 ; and, on 19.03.2018, the present appellants along with other officials of the Malir Development Authority (**‘MDA’**) came at the site of the village along with heavy machinery and demolished their houses. In this background, they sought the declarations in their aforesaid Suit that the subject village be declared as an old village established in accordance with law and be regularized ; the residents of the said village are lawful occupants thereof ; and, the impugned action of MDA was illegal and without lawful authority as the ownership of the land of the said village vests with the Government of Sindh and not with MDA. Damages to the tune of Rs.300.000 million were also sought by them against the appellants / MDA and the SHO concerned ; mandatory injunction was sought by them for the completion of the process of regularization of the said village ; and, permanent injunction was sought by them in relation to their possession and that of other residents of the village.

2. The appellants filed their written statement in the aforesaid Suit wherein several preliminary legal objections were raised regarding the maintainability of the Suit, and the claim of the plaintiffs and the allegations made by them in their plaint were vehemently denied. It was pleaded by them that the subject land

was transferred to MDA in accordance with law. The appellants also filed their counter affidavit in response to the injunction application filed by the plaintiffs, wherein the contents of their written statement were reiterated. The Mukhtiarkar Gothabad Karachi / defendant No.10, respondent No.34 herein, also filed his written statement stating, *inter alia*, that the record of the *Sanads* filed and relied upon by the plaintiffs was not available in his office. It was also stated by him that the Government of Sindh is the owner of the subject land.

3. During the pendency of their Suit and injunction application, the plaintiffs filed an application bearing CMA No.11460/2018 under Section 151 CPC praying that they and other residents of the village be allowed to reconstruct their demolished houses. Through the impugned order passed on the aforesaid application, they were allowed to reconstruct their houses at their own risk and cost. It is contended, *inter alia*, on behalf of the appellants that the impugned order is vague as no reasons whatsoever have been assigned therein for allowing the plaintiffs to reconstruct their houses ; the appellants have been condemned unheard as the impugned order has been passed without considering or appreciating their stance and the contents of their written statement, and without allowing them to file their counter affidavit or objections in response to the aforesaid application ; there was sufficient material available on record to show that MDA is the owner of the subject land ; admittedly, the plaintiffs did not have any document to show that they had acquired title from MDA ; and, the action of removal of encroachment and illegal construction taken by MDA was fully justified as the same was taken in pursuance of the order of the Hon'ble Supreme Court.

4. On the other hand, it was contended by learned counsel for the plaintiffs that the impugned order is fully justified as the Government of Sindh had admitted the claim of the plaintiffs before the learned Single Judge. In support of this contention, the written statement of the Mukhtiarkar concerned was referred to by the learned counsel.

5. We have heard learned counsel for the parties and learned AAG and have also examined the material available on record, particularly the pleadings of the parties and the impugned order. It is an admitted position that the Suit was filed by the plaintiffs only on the basis of *Sanads* purportedly issued in their names by the Mukhtiarkar concerned. It is surprising to note that the said *Sanads* do not bear any date. Thus, their authenticity and genuineness is yet to be decided in the Suit for the purpose of determining the legal character and right of the plaintiffs in terms of Section 42 of the Specific Relief Act, 1877. It is also an admitted position that the ownership of the subject land is being claimed

both by the Government of Sindh and MDA, and the plaintiffs have prayed for a declaration that the land of the village belongs to the Government of Sindh. This fundamental issue, which goes to the root of the case, is also yet to be decided in the Suit. It appears that the main official respondents viz. the Province of Sindh, Senior Member Board of Revenue Sindh, Member Land Utilization Board of Revenue Sindh, Mukhtiarkar Revenue and the Project Director Gothabad Scheme, had not filed their written statements till the date of passing of the impugned order. We are of the view that the plaintiffs cannot be allowed to reconstruct their houses unless they succeed in establishing their legal character, right and title in relation to the subject land through evidence.

6. Perusal of the impugned order shows that time was sought on behalf of MDA on the date when the impugned order was passed, however, the plaintiffs were allowed to reconstruct their houses on the sole ground that their application seeking such relief was pending since the year 2018. No other reason was recorded in the impugned order for granting the above relief to the plaintiffs. In the above circumstances, the appeal is allowed and the impugned order is hereby set aside. The listed applications stand disposed of accordingly. It is expected that the Suit filed by the plaintiffs is decided expeditiously in accordance with law after recording evidence. Needless to say the observations made herein are tentative in nature which shall not prejudice the case of any of the parties.

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