

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.995 of 2010
Suit No.288 of 2014

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| Date | Order with Signature of Judge |
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Present: **Mr. Justice Nazar Akbar**

1. Suit No.995 of 2010

Plaintiff : Tanzeem Ahmed Khan
Through Mr. Zahid Marghoob, Advocate.

Versus

Defendant No.1 : Province of Sindh
Defendant No.2 : The Executive Officer, Malir Cantonment Board, Malir, Karachi.
Defendant No.3 : The Registrar Co-operative Societies, Government of Sindh.
Defendant No.4 : Muhammad Azam
Defendant No.5 : Adeeluddin.
Defendant No.6 : Mr. Ghulam Haider.
Defendant No.7 : Muhammad Ashfaq
Through Mr. Majid Ali, Associate of Mr. Imtiaz Ali Shah, Advocate.
Defendant No.8 : The Senior Member Board of Revenue, Government of Sindh.
Defendant No.9 : the Sub-Registrar, Gulshan-e-Iqbal-II
Defendant No.10 : M/s Central Information Employees Co-operative Housing Society Ltd.

2. Suit No.288 of 2014

Plaintiff : Muhammad Ashfaq
Through Mr. Majid Ali, Associate of Mr. Imtiaz Ali Shah, Advocate.

Versus

Defendant No.1 : Tanzeem Ahmed Khan
Through Mr. Zahid Marghoob, Advocate.
Defendant No.2 : Province of Sindh.
Defendant No.3 : Executive Officer, Malir Cantonment Board, Malir, Karachi.
Defendant No.4 : The Registrar Co-operative Societies, Government of Sindh.
Defendant No.5 : Muhammad Azam
Defendant No.6 : Adeeluddin.
Defendant No.7 : Mr. Ghulam Haider.

Defendant No.8 : The Senior Member Board of Revenue,
Government of Sindh.
Defendant No.9 : The Mukhtiarkar, Scheme No.33 CDGK.
Defendant No.10 : Director KDA, Scheme No.33, Mehran Town,
Karachi.
Defendant No.11 : the Sub-Registrar, Gulshan-e-Iqbal-II
Defendant No.12 : M/s Central Information Employees Co-
operative Housing Society Ltd.
Date of hearing : **20.05.2021**
Date of Decision : **02.06.2021**

JUDGMENT

NAZAR AKBAR, J. By this common judgment, I intend to dispose of both the suit Nos.995/2010 and 288/2014, since the subject property in both the suits is same and the parties are also same. Suit No.995/2010 was filed by the plaintiff on **10.06.2010** against the Defendants for Declaration, Injunction, Cancellation of Document, Recovery of Possession and damages of Rs.20 Million as damages.

2. Brief facts of the case of suit No.995/2010 are that plot bearing No.B-22, admeasuring 400 sq. yards, situated at Sector 36-A, KDA Scheme No.33, Gulzar-e-Hijri, in Central Information Employees Cooperative Housing Society Ltd. (C.I.E.C. Society) Karachi, (the suit property) was allotted to the father of the plaintiff namely Laddan Khan founder Member of C.I.E.C. Society against receipt No.128 dated **09.08.1977**, vide allotment order Book No.1, at serial No.066. During his lifetime, father of the plaintiff on **09.02.1989** had authorized the plaintiff to deal with the affairs of the suit property including payments of all dues related to the costs of land etc. and it was requested to the Founder Chairman by letter dated **09.02.1989** that the plaintiff will make the payment of all 16 installments against cost of land and thereafter final allotment order, possession order and lease deed be issued in favour of the plaintiff. The said request

was accepted by the Founder Chairman being competent authority as per **clause 15(1)** and **15(3)** of the Bye-Laws of C.I.E.C. Society. Then in **2009** the Government of Sindh superseded C.I.E.C. Society and has appointed defendant No.4 as its Administrator. The said order of superseding C.I.E.C. Society was challenged by several members of C.I.E.C. Society before this Court in C.P No.D-664/2010 and defendants were restrained to create third party interest in the property of the Society by order dated **07.4.2010**. It was further averred that C.I.E.C. Society from time to time issued bills for payments of various dues to the plaintiff in respect of the said plot and the payments were accordingly made by the plaintiff and received by the C.I.E.C. Society. It was averred that on **17.03.2010** the plaintiff was astonished to read an advertisement published in daily newspapers whereby some Wasif property center on behalf of defendant No.6 has invited objections in respect of completion of sale transaction of the suit property with defendant No.5. In the said advertisement defendant No.5 was shown as allottee/ owner of the suit property. The plaintiff immediately filed objection in writing in the office of defendant No.4, who was administrator of the society. He has refused to receive the same and in connivance with defendants No.1, 3, 5, 6, 7 and 9 committed forgery, fraud and by sheer misuse of his authority cancelled the plot of the plaintiff. The plaintiff has lodged complaints against defendant No.4 to defendants No.1 and 3 but no action was taken by them and the plaintiff also published public notice in daily Amn Karachi dated **23.3.2010** to bring the matter in notice of high ups but no heed was paid. It was further averred that defendant No.4 has illegally executed lease deed in the office of defendant No.9, therefore, the action of defendant No.4 in respect of cancellation of the suit property and execution of lease

deed on **07.4.2010** was in violation of the order dated **16.3.2010** by this Court in C.P No.D-664/2010 is illegal and liable to be set aside. It was further averred that private defendants with the connivance with the official defendants have started raising construction on the suit property without approval of building plan from the competent authority viz defendant No.2, therefore, the plaintiff by letter dated **19.5.2010** also intimated defendant No.2 with a request to demolish the illegal construction on the suit property and the said letter was also sent to KBCA but no response. The plaintiff having no other option, filed application before Ombudsman of Sindh on **18.03.2010**. The said application was admitted for investigation and was referred to Regional Director, Karachi Central, who by letter dated **26.3.2010** asked defendant No.3 to direct the concerned officer to submit report before **03.4.2010** but no response was made from the defendants. Thereafter the Ombudsman, Sindh summoned defendants No.3 and 4 to appear in person for hearing on **17.5.2010** along with all relevant documents but defendants No.3 and 4 did not appear before him. The plaintiff by letter dated **20.05.2010** to pass restraining order for execution of lease deed of the suit property and an application for urgent hearing was also filed by the plaintiff to decide the issue of ownership of the suit property but no action has been taken. It was further averred that since the official defendants have committed the offence of forgery, fraud and misuse of their official powers and flouted the order dated **16.3.2010** passed by this Court in C.P No.D-664/2010, therefore, the provisions of Section 54, 70 and 70-A of the Cooperative Societies Act, 1925 are not applicable in the case of the plaintiff and the plaintiff filed the instant suit and sought the following reliefs:-

- a) Declaration that the plaintiff is owner of Plot No.B-22, Central Information Employees Co-operative Housing Society Ltd.,

admeasuring 400 sq. yards, situated in Sector 36-A, Scheme 33, Gulzar-e-Hijri, Karachi.

- b) Declaration that the plaintiff is responsible for the payment of dues in the sum of Rs.52,000/- and Rs.146,000/- KESC Charges totaling Rs.198,000/-.
- c) Permanent injunction restraining the defendants, their agents, servants, attorney, assignees and/or any person acting for and/or on their behalf from claiming any right title or interest in plot No.B-22, Central Information Employees Co-operative Housing Society Ltd., admeasuring 400 sq. yards, situated in Sector 36-A, Scheme 33, Gulzar-e-Hijri, Karachi, and from interfering into the right of the plaintiff as owner of the said plot.
- d) Cancellation of Lease Deed vide No.1608 dated 07.04.2010 before Sub-Registrar, Gulshan-e-Iqbal-II, Karachi computer No.14807 BOR-13, in favour of defendant No.7, Muhammad Ashfaq and all the registered and/or un-registered documents orders passed by the official defendants in favour of the private defendants No.5, 6 and 7 in respect of lot No.B-22, Central Information Employees Co-operative Housing Society Ltd., admeasuring 400 sq. yards, situated in Sector 36-A, Scheme 33, Gulzar-e-Hijri, Karachi.
- e) Direction to the official and non-official defendants to hand over the possession of the Plot No.B-22, Central Information Employees Co-operative Housing Society Ltd., admeasuring 400 sq. yards, situated in Sector 36-A, Scheme 33, Gulzar-e-Hijri, Karachi, to the plaintiff forthwith.
- f) Direction to the defendant No.4 and /or defendant No.10's secretary to execute Lease Deed in favour of plaintiff within 30 days on their failure to do so, Nazir of this Honourable Court may be authorized to execute Lease Deed on behalf of defendant Society before concerned Sub-Registrar in favour of the plaintiff the charges of execution of Lease Deed be borne by the plaintiff.
- g) Defendants may be directed to make the payment of Rs.20 million jointly and severally as damages to the plaintiff.
- h) Any other better relief (s) which this Honourable Court may be pleased to deem fit and proper under the circumstances of the case.
- i) Award Costs of the Suit.

3. Main contesting defendant No.7 has also filed counter suit No.288/2014 on **17.02.2014** for Declaration, Cancellation of Documents, Recovery of damages of Rs.2 Crores and Permanent injunction against the plaintiff of suit No.995/2010 and others. He has prayed for the following reliefs:-

- (a) To declare that the plaintiff is sole, exclusive and absolute owner of suit property by virtue of Lease Deed dated 07.04.2010.
- (b) To cancel the provisional allotment order of defendant No.1 for instant of subject property.
- (c) To direct the defendant No.3 to issue approval of lay-out plan in respect of subject property in favour of the plaintiff after completing the entire formalities according to law.
- (d) To direct the defendants to pay the damages of Rs. Two Crore jointly or severally on account of un-countable expenses born by the plaintiff in respect of subject property and also sustaining grate mental agony by facing the illegal act and proceedings of the defendants.
- (e) To restrain the defendants, their legal heir, legal representatives, agent, subordinate, servants, and any body claiming ownership of the subject property.
- (f) Cost of the suit.
- (g) Any other relief(s) as this Hon'ble Court may deem fit and proper under the circumstances of the case.

However, diary of Additional Registrar dated **27.05.2014** shows that summons were not issued to defendants No.1 to 12 as cost was not paid since **17.2.2014** and therefore, the plaint was struck off under **Rule 128** of **SCCR (O.S)**. Then after four years on **21.3.2018** defendant No7 in his suit No.288/2014 filed an application under **Section 151 CPC** for recalling of orders dated 27.5.2014 (CMA No.4508 of 2018). However, without any orders on the said application and disclosing that his suit No.288/2014 was struck off, he requested the Court for direction to the office to fix his suit No.288/2014 alongwith suit No.995 of 2010. He never pressed his CMA No.4508 of 2018 which is dismissed for non-prosecution and also for the reasons that the instant suit No.995 of 2010 is decreed today through this judgment.

4. Defendants No.2, 4 and 10 have filed their separate written statements and the main contesting defendant No.7 also filed his

written statement, wherein he contended that he is a bona fide purchaser of the suit property and he purchased the same from defendant No.5 and he is in possession of the suit property.

5. On **29.02.2016** followings issues proposed by the plaintiff were adopted:-

1. Whether the suit of the plaintiff is not maintainable in law?
2. Whether no cause of action has accrued to the plaintiff against the defendants?
3. Whether the defendant No.7 is a bonafide purchaser and is asserting his right on the basis of forged documents in respect of suit property?
4. Whether the defendant No.7 has raised construction over suit property in accordance with the approved building plan granted or sanctioned by the Competent Authorities?
5. Whether the defendants No.1 to 6 were/are duty bound to assist plaintiff for conveying suit plot in respect whereof the plaintiff possesses the entire payment receipts and title documents, if yes, its effects?
6. Whether the plaintiff is entitled for demolition/removal of unauthorized/ un-permissive structure/ construction existing over suit plot?
7. Whether the plaintiff is entitled for execution of Lease Deed in his favour through defendants No.3 & 6 on clearance/payment of dues if any regarding the suit Plot?
8. Whether the Lease Deed No.1608 dated 07/04/2010 in favour of defendant No.7 is liable to be cancelled?
9. Whether the plaintiff is entitled for recovery of possession of Plot No.B-22, measuring 400 sq. yards, Central Information Employees Cooperative Housing Society Ltd, situated Sector 36-A, Gulzar-e-Hijri, Karachi?
10. Whether the plaintiff is entitled for the relief of damages as claimed, if yes, to what extent?
11. What should the decree be?

6. The evidence was ordered to be recorded through Commissioner for recording of evidence. The Plaintiff filed his affidavit-in-evidence and his examination-in-chief was recorded on

27.07.2016, however, he was not cross-examined by the learned counsel for the defendants, as no one appeared before the Commissioner to cross-examine him. Commissioner's report dated **11.04.2017** shows that after examination-in-chief of the plaintiff on **27.7.2016**, at the request of counsel for defendant No.7 the case was adjourned to **02.8.2016** but none appeared on behalf of defendants and the case was adjourned to **05.8.2016** on which date, counsel for defendant No.7 again requested for adjournment and again case was adjourned to **13.8.2016** when again counsel for defendant No.7 requested for adjournment and at his request the commission was adjourned to **29.8.2016** and on the said date, too, none appeared on behalf of defendants. Thereafter on the commissioner's report, by order dated **27.9.2016** three months' time was extended for concluding the commission and the court also empowered the commissioner either to close the side of defendants or impose a cost of Rs.16,000/- on the witness who fails to respond on two consecutive dates. Thereafter the case was again fixed before the commissioner for recording evidence on **18.11.2016**, **29.11.2016**, **20.12.2016** and **11.02.2017** and despite service through courier, learned counsel for defendant No.7 chose to remain absent from the proceedings before the Commissioner. Despite repeatedly remaining absent, he was given two more opportunities to appear on **15.02.2017** and **25.02.2017**, but none from defendants has appeared, therefore, side of defendants to cross-examine the plaintiff was closed on **25.2.2017** and commissioner has adjourned the proceedings to **04.3.2017** for filing affidavit-in-evidence by the defendants but none of the defendants has filed affidavit-in-evidence before the Commissioner for recording of evidence on **04.03.2017** and 11.03.2017, therefore, their side for evidence was also closed for

recording of evidence on **11.03.2017**. The record shows that the defendants have not even bothered to file an application for re-opening their side for evidence.

7. I have heard learned counsel for the plaintiff and perused the record. Defendant No.7 is present and his counsel is absent. My findings with reasons on the issues are as follows:-

ISSUE Nos.1 & 2.

8. Both these issues are interconnected; therefore, both the issues are to be decided together. The plaintiff has acquired vested right in the suit property by an allotment and payment of cost of the suit land much before the appointment of defendant No.4 as Administrator of defendant No.10. The suit plot was illegally cancelled and allotted to defendant No.7 without any justification. Therefore, the plaintiff's only remedy was the instant suit. The burden of these issues was on the defendants to prove that the suit was not maintainable under the law and no cause of action has accrued to the plaintiff against the defendants, however, since they have failed to adduce evidence despite several opportunities by the Commissioner for recording evidence, both the issues No.1 and 2 are answered in favour of the plaintiff and the suit is found to be maintainable in law.

ISSUE Nos.3, 4, 6 & 8.

9. These issues are also interconnected; therefore, the same are also to be decided together. Burden of proof of these issues was on defendant No.7 that whether he is a bonafide purchaser of the suit property and the Lease Deed in favour of defendant No.7 is not liable to be cancelled. Defendant No.7 has miserably failed to lead evidence in support of his claim despite several opportunities given by the Court and commissioner for recording of evidence as discussed in

paragraph-6 above. Even suit No.288 of 2014 filed by defendant No.7 was not pursued by him and after the order in his suit whereby the Additional Registrar (O.S) struck off his plaint under **Rule 128** of S.C.C.R. (O.S). Prayer clause (c) of suit No.288/2014 filed by defendant No.7 confirms that whatever construction has been raised by defendant No.7 is without approved plan and that is why he has prayed for directions to the relevant authorities to approve plan of constructions already have been raised. Therefore, it cannot be said that defendant No.7 is bona fide purchaser of the suit property and has raised construction according to the approved building plan. It is settled law that any building raised without approved building plan is liable to be demolished on account of violation of Building Control Laws. The administrator of C.I.E.C. Society (defendant No.4) namely Mohammad Azam from whom he claimed to have acquired title through registered lease of the suit property has been convicted by the NAB Court, Karachi on the charges, amongst others, for illegally cancelling plots of genuine owners and allottees including the plaintiff and others. Hence, the illegally executed lease deed by the convict has to be declared illegal and cancelled. Therefore, the issues No.3, 4, 6 and 8 are decided in negative against defendant No.7.

ISSUE Nos.5, 7 & 9

10. As far as issue No.5 is concerned, suffice it to say that amongst defendants No.1 to 6, defendant No.4 has already been convicted by NAB Court for issuing forged and illegal document in favour of defendants No.5 and 6 followed by execution of lease under his signature in respect of the suit property knowing well that it belongs to the plaintiff when the plaintiff has already filed objection to first ever notice published in newspaper on the question of transfer of suit property from defendants No.5 to 6. There is overwhelming evidence

on record that defendant No.4 who was appointed by defendant No.1 as Administrator of C.I.E.C. Society (defendant No.10) has executed an unlawful lease deed No.1608 on 07.4.2010 in favour of defendant No.7 and for his such conduct in respect of the suit property and several other properties, he was arrested and was challaned by the NAB authorities through Reference No.4-C of 2014, therefore, it is established that the defendants have failed to discharge their duties towards the plaintiff. The plaintiff's evidence in the suit regarding his status and entitlement of lease in respect of the suit property as well as his right to be put in possession of the same has gone un-rebutted before this Court. In his evidence, the plaintiff has produced the following documents as exhibits PW-1/2 to PW-1/40 which reflect his entitlement and proof of the allotment:-

1. Application dated 18.03.2010 by plaintiff.
2. Application dated 27.05.2010 by plaintiff.
3. Information letter dated 10.04.2010.
4. Letter dated 06.05.2010 by Ombudsman.
5. Letter dated 26.05.2010 by Administrator to PQA.
6. Letter dated 31.05.2010 by plaintiff to I.G. Police.
7. Complaint letter dated 19.05.2010
8. Rejoinder dated 20.04.2010 by plaintiff.
9. Minutes Meeting dated 25.03.1997.
10. Final Notice dated 11.06.2008 & 23.12.2008.
11. Information letter dated 10.04.2010.
12. Courier receipt dated 11.12.2009.
13. Dues Letter against plot NoB-22, dated 08.12.2009.
- 14(a) Central Information Employees Co-operative Housing Society Ltd., Receipt dated 20.04.1978.
 - (b) Receipt dated 07.09.1980.
 - (c) Receipt dated 24.04.1982.
 - (d) Receipt dated 13.08.1984.
 - (e) Receipt dated 12.11.1985.
 - (f) Receipt dated 03.02.1987.
 - (g) Receipt dated 12.05.1987.
 - (h) Receipt dated 25.10.1987.

- (i) Receipt dated 21.06.1989.
- (j) Receipt dated 16.04.1990.
- (k) Receipt dated 13.07.1993.
- 15. Pay Order dated 01.12.2009.
- 16. Payment Detail dated 01.12.2009.
- 17. Letter to Administrator C.I.E.C Society dated 14.12.2009.
- 18. Clearance Dues letter dated 05.01.2010.
- 19. Payment Detail dated 30.01.2010.
- 20. Letter to Administrator dated 29.01.2010.
- 21. Payment Detail dated 08.02.2010.
- 22. Letter to Administrator dated 04.02.2010.
- 23. Ombudsman letter dated 20.05.2010.
- 24. Ombudsman letter dated 25.05.2010.
- 25. Ombudsman letter dated 24.04.2010.

Plaintiff has appeared before the NAB authorities as one of the witnesses. The plaintiff before NAB Court has produced all the documents issued to him by the C.I.E.C. Society. Other witnesses have also appeared before the NAB Court. Consequently, defendant No.4 Muhammad Azam as Administrator of C.I.E.C. Society has been convicted for 14 years and fine of Rs.30 Million by judgment dated **30.08.2017**. All the above documents were also produced before the NAB Court as is reflected in the judgment of NAB Court passed in Reference No.4-C of 2014. For ready reference, the statement of the plaintiff before NAB Court is reproduced below:-

“PW-42 Tanzeem Ahmed Khan (Exh:45) deposed that:-

A plot bearing No.B-22 admeasuring 400 Sq. Yards was allotted to my father Ladan Khan by the Central Information Cooperative Housing Society on 03.04.1986, which was transferred in my name during the life time of my father. My father died in 1989. He was founder member of the Society. I paid cost of land and development charges in full to the Society. Only KESC chargers were outstanding against me. I was ready to pay KESC charges but other illegal charges were also demanded by the Society therefore I have not made payment of KESC chargers. I also filed a complaint before Provincial Ombudsman which was withdrawn by me as accused persons were not appearing before the

Ombudsman. Thereafter I filed a Civil Suit No.995/2010 before Hon'ble High Court which is still pending. A stay order has also been issued by the Hon'ble High Court in that suit in respect of my plot. Accused Muhammad Azam Brohi and his companions did cancel my plot illegally despite stay order of Hon'ble High Court. My plot was re-allotted to Adeeluddin at the first instants. A public notice was issued by Muhammad Ashfaq father of Ghulam Haider calling objections on the purchase of my plot which he was intended to purchase from Adeeluddin. I contacted him and asked him that I am owner of the plot and my plot has been illegally cancelled by Muhammad Azam Brohi and others but no heed was paid by him to my contention. I also filed objections against cancellation, re-allotment and further sale of my plot before the management of Society, Secretary, Cooperative Department and Registrar Cooperative Societies and Administrator. I also obtained a stay order from Hon'ble High Court in my suit, but the purchaser Muhammad Ashfaq completed construction in violation of the stay order. I have also filed a contempt application before Hon'ble High Court. Threats of dire consequences were also issued to me by Muhammad Ashfaq. I produce allotment letter alongwith other documents before this Court as Exh.45/1 which are same and correct (original seen and returned). My statement was recorded by Investigation Officer NAB.”

In view of the above, un-rebutted evidence, in this case and also in the NAB Court issue Nos.5, 7 and 9 are decided in affirmative.

ISSUE NO.10.

11. The plaintiff has claimed damages in prayer clause (g) of the plaint, however, the entire plant is silent about the circumstances and evidence to be considered as basis for grant of damages. Even in his examination-in-chief he has omitted to state on oath that he is entitled to the damages, therefore, issue No.10 is answered in negative.

ISSUE NO.11.

12. In view of the discussion on above issues, suit No.995/2010 filed by plaintiff Tanzeem Khan is decreed to the extent of prayer clause (a), (c), (d), (e) and (f). The official defendant No.10, C.I.E.C. Society should execute a proper lease in favour of the plaintiff in

respect of the suit property i.e plot No.B-22, admeasuring 400 sq. yards, situated at Sector 36-A, KDA Scheme No.33, Gulzar-e-Hijri, Karachi within 30 days and handover its peaceful possession to the plaintiff and in case of their failure, Nazir of this Court should complete transaction in accordance with law in next 30 days.

JUDGE

Karachi, Dated: 02.06.2021

Ayaz Gul