

IN THE HIGH COURT OF SINDH, KARACHI

Date *Order with signature of Judge*

Before:- MR. JUSTICE SALAHUDDIN PANHWAR.

Criminal Misc. Applications No. 365 of 2014

Mst. Bilqees & others,
Applicants through: M/s. Khawaja Shamsul Islam and
Shahzad Mehmood advocates

The State,
Respondent through: Mr. Riaz Alam Spl. Prosecutor NAB &
Mr. Talib Ali Memon, APG

Criminal Misc. Applications No. 376 of 2014

Mr. Muhammal Ilyas Pariyani
& another, Applicants through: Mr. Aamir Mansoob Qureshi
advocate

The State,
Respondent through: Mr. Riaz Alam Spl. Prosecutor NAB

Criminal Revision Application No. 125 of 2016

Haji Abdul Majeed & others,
Applicants through: M/s. Khawaja Shamsul Islam and
Shahzad Mehmood advocates

The State,
Respondent through: Mr. Riaz Alam Spl. Prosecutor NAB &
Mr. Talib Ali Memon, APG

Date of hearing: 21.05.2021.
Date of Judgment: 01st July 2021

ORDER

SALAHUDDIN PANHWAR, J.-By this single order, I intend to dispose of captioned Criminal Misc. Applications as well as Criminal Revision Application.

2. Precisely the relevant facts as stated in the Cr. Misc. Application No.365 of 2014 are that the applicants are the legal heirs of one Haji Tar Muhammad, who

migrated from India to Pakistan at the time of partition while leaving his valuable properties in India and had verified claim bearing Registration No. 4653/V dated 05.10.1961 as well as U.R.V bearing Book No.283, Form No. 8475 dated 05.10.1961 for 58-1 acres of land under Schedule IV of the Registration of Claims Act 1956, thereby utilizing 1392 units out of 4108 units for urban property, leaving a balance of 2716 unutilized units. It is further stated that aforesaid claim of applicants' predecessor-in-interest was transferred to Karachi on 17.05.1962 in pursuance of which, their predecessor-in-interest was allotted agricultural urban land measuring 58.1 acres in Deh Gujro vide duly confirmed parchhi/ Khatoni No. P.K.488/8801/19 dated 23.05.1962 after payment of necessary Government dues prescribed under the law but later on the said allotment was cancelled by Additional Settlement & Rehabilitation Commissioner (Land) Karachi on 31.10.1964, which was challenged before this Court by preferring C.P.No. 301 of 1965, wherein vide order dated 15.03.1971, the impugned order was set aside and the matter was remanded back to the Additional Settlement Commissioner for consideration of claim. It is further asserted that after hectic efforts spread over more than three decades, the applicants were allotted land bearing Na-Class No.166, Survey No.328, Deh Safooran measuring 9-08 acres in Gulshan-e-Iqbal Town, Karachi vide letters dated 10.10.2003, 14.01.2004 and 11.03.2004 and possession of the said land was handed over to the applicants on 16.03.2004 in terms of Possession Letter duly signed by Tapedar as well as Attorney of the Applicants. After handing over the possession of said land, Ghatwadh form was issued and such entry was also made in Village Form-II. Thereafter, the said land was sub-divided into six plots bearing Nos.328/A to 328/F by the applicants and out of them two plots were sold to M/s Bismillah Housing Services, M/s Pioneer Builders and M/s Alpine Constructions after obtaining necessary layout plan as well as building plan according to law. It is further submitted that required fees/charges were paid and objections were also invited through newspapers and

thereafter construction work of multi-storied buildings consisting of flats and shops was started wherein hundred of peoples booked/purchased the units. It is further stated that suddenly Chief Minister's Inspection Team initiated an enquiry on the basis of an anonymous complaint and vide summary dated 11.03.2009 obtained approval of the Chief Minister Sindh to cancel entry in Form-II, to register Criminal case for committing fraud, to offer the builder to purchase the piece of land on which different peoples booked the apartments, to take possession of vacant land and to impose ban on sale/ purchase of apartments of Bismillah and Alpine Towers. **The applicants challenged the same before this Court by filing Civil Suit No.657/2010 against all concerned Government agencies including Anti-Corruption the operation of the said recommendations was suspended. During pendency of suit, in compliance of orders of this Court, the aforesaid land was regularized after payment of Rs.199,06,440/- being differential of malkano determined and assessed by the Committee appointed under Ordinance III of 2001.**

3. Thereafter a compromise application was filed by the parties duly signed by the Applicants' Attorney, Senior Member as well as Secretary Board of Revenue Sindh. After transfer of Secretary/ Member Board of Revenue, a new officer took the charge and moved an application for withdrawal of compromise application with prayer to decide the fate of the suit on merits in the light of written statement, which was contested by the applicants and vide order dated 01.11.2014, this Court dismissed the said application for withdrawal of compromise application, consequently, compromise application was allowed and suit was decreed accordingly. It is further submitted that Senior Member/ Secretary Board of Revenue in collusion with Director Anti Corruption as well as members of ACC-I registered FIR No.22/2014 against the applicants, hence the

applicants have prayed for quashment of said FIR by filing the captioned Criminal Misc. Application.

4. In Cr. Misc. Application No. 376 of 2014, the applicants have submitted that M/s Bismillah Housing Services is a partnership firm wherein the applicants and one Altaf Majeed are partners. Altaf Majeed was only formal partner for the limited and specific purpose of a guarantee and security. It is further submitted that applicants published sale of commercial-cum-residential project under the name and style 'Bismillah Towers' after obtaining requisite building permits and complying all the codal formalities. The project widely published and received tremendous response from the general public and out of 370 units, 352 units had been allotted to the public in the year 2006 and at present 290 units are in possession of the respective allottees. It is further stated that said project is situated on plot No.328/A and plot No. 328/D admeasuring 14084.40 sq. yards, in Survey No. 328, Block-10, Gulistan-e-Jauhar, Karachi. It is further stated that the said plots were owned by legal heirs of late Suleman Haji Tar Muhammad who initially appointed one Abdul Majeed as their lawful attorney through General Power of Attorney dated 02.03.1982 and 28.06.1984. It is further submitted that said Abdul Majeed for himself and as Attorney of the applicants entered into Agreement to Sale dated 07.04.2004 for the purchase of subject plots by the Firm through applicants from the legal heirs of late Haji Tar Muhammad through their Attorney Abdul Majeed, which includes the successor-in-interest. In pursuance of Sale Agreement, applicant paid sale consideration to the seller Abdul Majeed, who executed a General Power of Sub-Attorney dated 22.03.2005 on his behalf and as Attorney for others in favour of applicant No.2. It is further submitted that said Abdul Majeed who was only a formal partner for the limited and specific purpose of guarantee and security for implementation of aforesaid Sale Agreement as

stated above was son of the seller and both Haji Abdul Majeed and Altaf Majeed also executed an indemnity bond in the year 2008.

5. It is further stated that applicant had also filed civil Suit No. 237/2012 against Altaf Majeed and others for Declaration, Specific Performance, Perpetual and Mandatory Injection, Cancellation of Documents and Damages, which is still pending adjudication before this Court. It is further submitted that Chief Minister Inspection Team initiated an inquiry on the basis of an anonymous application and got approved misconceived and misleading Summary from the Chief Minister Sindh, against which applicants in connected Cr. Misc. Application filed Civil Suit No. 657/2010, wherein operation of the recommendations of Chief Minister Inquiry Team was suspended. It is further stated that during pendency the aforesaid land was regularized after payment of differential Malkano determined and assessed by the Committee appointed under the Ordinance III of 2001, thereafter, a compromise application was filed by the plaintiffs in the said suit, Senior Member Board of Revenue and Secretary Board of Revenue, which was allowed and suit was decreed against which no appeal has been preferred. It is further submitted that though Anti-Corruption Department was one of the party in the said proceedings but even then the Director Anti-Corruption Department filed FIR bearing Crime No. 22/2014 against the applicants and others, which is prayed to be quashed.

6. In Criminal Revision Application, the applicants submitted that after filing Criminal Misc. Application No. 365/2014, wherein this Court had restrained the Anti-Corruption Department as well as NAB from taking any coercive action against the applicants. The Board of Revenue, Anti-Corruption Department and Chairman Chief Minister Inspection Team filed an application under Section 12(2) CPC being J.M. No.02/2015, which was dismissed by this Court however, slight modifications were made in respect of clauses (a) to (iv),(v), (vii), (ix), (xi) and

(xiii). Thereafter Board of Revenue issued letter for mutation of property in favour of applicants, however, again Anti-Corruption Department and NAB filed another application under Section 12(2) CPC being J.M.No.39/2015, which was not pursued by them and even no stay had been passed therein. It is further submitted that in the year 2007, Muhammad Saad and Nooruddin had filed a Civil Suit No.374/2007 against applicants as well as against Government of Sindh and others before this Court together with stay application, however, this Court vide order dated 19.09.2007 dismissed the stay application and recalled status quo order. The said order was challenged by filing H.C.A.No.232/2007, which was also dismissed by Division Bench of this Court and had attained finality.

7. It is further stated that after registration of the FIR No. 22/2014 against the applicants by the Anti-Corruption Department, the applicants' counsel submitted before the concerned Special Judge, Anti-Corruption Court all the relevant facts, but the same were not considered and the Special Judge, who took cognizance of the case and started proceeding with the case. In the meanwhile, despite stay orders in connected Cr. Misc. Application No. 365/2014, the NAB Authorities moved application under Section 16(A) of NAO for transfer of FIR No.22/2014 to the Accountability Court, which application was allowed by learned Special Judge, Anti-Corruption and transferred the matter to the learned Administrative Judge, Accountability Courts, Karachi vide impugned order dated 25.08.2016, which order has been challenged by the applicants through the instant Criminal Revision Application.

08. Heard and perused record.

09. *Prima facie*, perusal of above makes it quite obvious that Crl. Misc. Application No.365 of 2014 can, *safely*, be said as leading one because the applicants in Crl. Misc. Appln.No.376 of 2014, claiming under the applicants of Cr. Misc. Application No.365 of 2014; in both these Crl. Misc. Applications the FIR, so

lodged by the ACE, Karachi and subsequent proceedings thereof are sought to be quashed while revision application challenges the order, passed by the Special Judge, Anti-Corruption Court, Karachi while entertaining proceedings of the same FIR.

10. Before attending to the *core* issue, involved in the instant matters, I would take no exception to the well settled principle of law as reaffirmed by honourable Apex Court in the case of *Muhammad Aslam v. State* (2017 SCMR 390) that:-

“6. The law is settled that there is no universal principle that whenever a civil suit a criminal case involve similar or identical subject matters the proceedings before the criminal court must necessarily be stayed and a reference in this respect may be made to the cases of *Syed Muhammad Ashmed v. The State* (1972 SCMR 85), *Muhammad Akbar v. State & another* (PLD 1968 SC 281), *Soofi Muhammad Anwar v. Mst. Badshah Begum and 6 others* (1999 SCMR 1475), *M. Aslam Zaheer v. Ch. Shah Muhammad and another* (2003 SCMR 1691), *Rafique Bibi v. Muhammad Sharif and others* (2006 SCMR 512), *Haji Sardar Khalid Saleem v. Muhammad Asharf and others* (2006 SCMR 1192), *Abdul Ahad v. Amjad Ai and others* (PLD 2006 SC 771), and *Seema Fareed and others v. The State and another* (2008 SCMR 839).”

but would respectfully add that running of simultaneous criminal and civil proceedings and that of *initiation* or *continuity* of criminal proceedings after *final decision* of the *civil litigation* shall materially change the above *answer*, particularly when the subject matter can be said to be controlling *subject* of the *criminal proceedings*. Guidance in this regard is taken from the case of *Abdul Ahad v. Amjad Ali and others* PLD 2006 SC 771 wherein it is held as:-

5. There is now consensus of opinion that there is no invariable rule that a criminal proceeding should be stayed pending the decision of civil suit but the matter is one of discretion entirely. While exercising discretion the guiding principle should be to see as to whether the accused is likely to be prejudiced if the criminal proceedings are not stayed **in case of dispute regarding title** where it is difficult to draw a line between a bona fide claim and the criminal action. All the Courts below had exercised discretion in favour of the respondent keeping in view the guiding principles laid down by the superior Courts. See....

11. Needless to add that *civil litigation* determines the rights; entitlement and *obligations* of the parties which always includes determination of *title*

regarding any property therefore, whenever it is difficult to draw a line between a bona fide claim and the criminal action, if solely arising from dislodgment of such title then it was always advisable to stay the *criminal proceedings* as same may prejudice the rights / liabilities of the accused which, *otherwise*, are dependent upon *civil litigation* and not that of *criminal proceedings*. I would also add that rights and liabilities, once *finally*, determined by competent court of *civil jurisdiction*, are to be given effect even by *executive* whenever need / assistance is asked for enforcement of such *determined* rights / liabilities. Worth adding that an affected person for the purposes of seeking redressal of his grievance against a wrong and / or for enforcing his rights under the law, including his fundamental rights as enshrined in the Constitution, comes forth to the judicature by knocking at its door. Guidance is taken from the case of *MFMY Industries Ltd. v. Federation of Pakistan (2015 SCMR 1549)* wherein it is held as:-

"3. A State, as understood today, constitutes three foundational organs i.e Legislature, Executive and Judicature. In ordinary parlance, these (*organs*) are also known to be the three pillars of the State. The political philosophers, jurists, constitutional experts and even judicial opinions pronounced all over the world (*specially in the countries having the democratic system / set up for governance*) are unanimous in their views that the entire structure of the State is founded, built upon, and secured only on account of the said pillars. And due to lack/absence or imbalance in respect of any of these organs / pillars, the very concept of State is periled and its existence is put at risk.

The main object and function of the legislative branch of the State is to make laws, which (*law*) obviously define and prescribe the rights and obligations of the citizens / persons and **the duties of the State**; these laws ordain the functions which the State can and has to perform vide various organs thereto. The legislative limb also enables a broader mechanism for State governance by drawing policies and issuing and passing resolutions on numerous important aspects expedient for the effective functioning of the State. It may also provide for a machinery through which laws and directives etc. are or **should be implemented and enforced. It (legislature) formulates and constitutes the positive law of the State.**

Whereas the object of executive is to not only carry out and run the affairs of the State in accordance with the laws made by the legislature and any policy / direction given to it, but also comply with law, follow the established rules, norms and standards expedient and necessary for the due administration of the State. Thus, it (executive) is responsible for the governance of the State and for carrying out its affairs in consonance with the Rule of Law.

“E” ..It is in the aforementioned circumstances that where the legislature or the executive branch has erred in the exercise of its jurisdiction or the executive branch has erred in the exercise of its jurisdiction and is responsible for any of the deviations indicated above, that an affected person for the purposes of seeking redressal of his grievance against such wrong and / or for enforcing his rights under the law, including his fundamental rights as enshrined in the Constitution, comes forth to the judicature by knocking at its door (note: in the contest of above, I am purposely not making reference to any private litigation between two individuals). This is the last resort for a beleaguered and aggrieved person. It is thus that the judicature is conceived, perceived and is meant to act as the final arbiter not only vis-à-vis the interpretation of the Constitution, the statutory law (s), but is to also ensure that **RULE OF LAW** is adhered to and the rights of the citizens / persons approaching the courts are determined and enforced against the Might of the State. It is commonly and jurisprudentially known all over the republican and democratic world that the courts are the guardians of the Constitution and are responsible for preserving and securing the rights of the aggrieved citizens / persons as against the State.

“F” ..

‘G’ ..I have no doubt in my mind that this ideal can only be achieved through an independent and capable judiciary, which is beyond the reach, control and influence of other branches of the State. The judicature has to act as a neutral umpire who keeps a check on the exercise of power by other organs of the State so as to ensure that the rights of citizens / persons are not affected and trampled contrarily to law.

5. Termination of a *lis* undoubtedly is through a verdict of a court which is a **decision** disposing of a matter in dispute before it (the Court) and in legal parlance, it is called a **JUDGMENT** . It is invariably known that a Judge finally speaks through his judgment. According to Black’s Law Dictionary, a judgment has been defined to mean *‘A court’s final determination of the rights and obligations of the parties in a case’* and per Henry Campbell Black, A Treatise on the Law of Judgment *‘An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is invoked.’* These definitions are adequately self-explanatory. In our procedural law (*civil*) , judgment as defined in Section 2(9) of Code of Civil Procedure means *“the statement given by the judge of the rounds of a decree or order’*. It should be emphasized here that a judgment should supply adequate reasons for the conclusion reached and arrived at and should be reflective of application of proper judicial mind by the Judge and it should not be a mechanical and not speaking judgment in nature.’

It may be reiterated that without a judgment, there is no concept of justice and / or fruitful outcome of litigation which without any fear of contradiction means that the State lacks and **effective justice system**. In such a situation, I would, rather, go to the extent of saying that **if the Judge/ the Court does not pronounce a judgment for resolving the legal and factual issues involved in a dispute before it at all, the very purpose of the judicial branch of the State will be frustrated and eroded.** If there is no judgment in terms of law, the entire judicial setup shall be rendered

farce and illusionary, which obviously shall in turn disturb the equilibrium between the pillars of the State upon which it rests, resulting into serious impairment of the functioning of the State.”

12. Having reaffirmed the above legal positions and while taking a *sigh* to form proper proposition, now it is the time to make a referral to the FIR, so lodged by the Anti-Corruption Establishment, so as to make it clear that *undisputed / unchallenged* civil litigation has a controlling effect upon such FIR No.22/2014. The FIR reads as:-

“This case is being registered with the permission of competent authority A.C.C.-I, Sindh, in the result of enquiry into complaint No.254/2007 of A.C.E, Karachi amalgamated in raid conducted by Mr. Ali Khan Bhayo, AD/ACE and respect of CMIT. The enquiry was finalized by Mr. Ayaz Ahmed Abbasi, AD/ACE, Karachi.

It is alleged that state that admeasuring 09-08 acres out of Naiclass No.166, Deh Safooran (Scheme 36, Gulistan-e-Jauhar) Karachi has been **illegally / fraudulently** mutated in favor of M/s. Abdul Majeed and 17 others (the legal heirs of one Suleman Haji Tar Muhammad) **without any lawful order**. The facts are that Abdul Majeed S/o. Suleman Tar Muhammad made an application on 17.06.2013 to Secretary, R.S& E.P, BOR claiming that according to High Court of Sindh order dated 09.05.1979 in CP No.254/1974 **they were entitled for grant of 25-00 acres of land** against settlement of claim, but only 15-32 acres was granted. He requested for grant of balance land 09-08 acres. The Secretary R.S & E.P forwarded the same to Secretary (L.U) BOR. The Secretary (L.U) BOR called report from District Officer (Rev.) Karachi on 10.10.2013 (letter signed by Mr. Ayooob Maree, Deputy Secretary (L.U). **Thereafter a fake letter was presented before D.O (Rev.) Karachi indicating mutation of 09-08 acres of land in record of rights to implement court orders (instead of report)**. The D.O Rev. (Mr.Arshad Jamali late) forwarded said fake letter to D.D.O / Mukhtiarkar, Gulshan-e-Iqbal. Such entry in record of right (village form-II) Deh Safooran, Gulshan-e-Iqbal Town, Karachi was kept vide entry NO.22 dated 30.03.2004 by Tapedar Abdul Aziz Qazi and attested by D.D.O Rasool Bux Solangi (instead of Mukhtiarkar). Lateron, D.O Rev. moved for demarcation form (Ghat - Wadh) was issued from Survey Superintendent, Karachi for new S. NO.328. Such entry was kept in record of rights (village form-II) entry No.29 on 24.04.2004.

Therefore, D.D O Rev. Allah Bachayo Chandio passed order for Sub-Division of land into 06 plots (ABCDEF) on 26.10.2004 (while such functions vests with DPULD). Thereafter, Mukhtiarkar, Gulshan-e-Iqbal Town issued NOC for sale of said plots on 19.12.2005. In the meantime, Abdul Majeed Suleman made sale agreements with M/s. Bismillah Housing Services, M/s. Alpine construction and M/s. Pioneer Builders (his son Altaf Majeed become partner with them). Then, construction multi - storied buildings and made booking. Thus got benefit of Billions of rupees.

From the facts and evidence, it established that accused persons Abdul Majeed Suleman (and 17 others heirs of Suleman Tar Muhammad) Revenue

Officers Arshad Jamali (Late), Ali Akbar Higo (D.O Rev.) Rasool Bux Solangi, DDO (Rev.) Allah Bachayo Chandio, DDO (Rev.) Khadim Hussain Kutrio Mukhtiarkar, Mukhtiar Ahmed Qureshi, Mukhtiarkar, Abdul Aziz Qazi Tapedar and Survey staff in connivance of each other and in collusion of co-accused Altaf Majeed, Musrat Mirza Chughtai, Muhammad Ilyas Paryani (M/s. Bismillah Builder) Syed Naveed Shah and others (Ms. Alpine construction) and owner / partners of M/s. Pioneer Builders, **have committed acts of fraud, cheating, preparation of fake / forged documents, Criminal breach of Trust**, offence punishable under the provision of law as mentioned above.”

The underlined portion of the referred FIR, *prima facie*, makes it quite clear and obvious that it rests on charge which *directly* affects upon title of applicants (Cr.M.A.No.365/2014) and those claiming under them. It (allegation) is:-

“admeasuring 09-08 acres out of Naiclass No.166, Deh Safooran (Scheme 36, Gulistan-e-Jauhar) Karachi has been **illegally / fraudulently** mutated in favor of M/s. Abdul Majeed and 17 others (the legal heirs of one Suleman Haji Tar Muhammad) **without any lawful order**

13. Now, what is to be seen is:

“Whether title / entitlement of M/s Abdul Majeed and others in respect of said **09-08 acres land** (out of Naiclass No.166, Deh Safooran (Scheme 36, Gulistan-e-Jauhar) Karachi) was / is ever determined by competent Civil Court as *legal* and *lawful*. If so, what shall be the effect thereof on said claimed *charge / allegation*?”

14. A bird *eye* view of the record, *prima facie*, shows that claim of the applicants (Cr.M.A.No.365/2014) rests on decision, passed in CP No.254 of 1974 which was disposed by his Lordship Mr. Justice Zahoorul Haq (as he then was) vide judgment dated 6th May 1979 as:-

“Their case has to be treated as a pending case as they were recommended for allotment of 25 acres of land in Karachi by order dated 21.9.1972 but that order has not so far been implemented without any fault of the plaintiffs, but on account of acquisition of land by K.D.A. or sale of the land by Chief Settlement Commissioner to Mr. Chandio. The plaintiffs have been held to be entitled to at least 25 acres in 1972 and **recommended for allotment and that order must be implemented** with this modification that the land which may be available, may be transferred to them and not necessarily only that land which was mentioned by the Additional Settlement Commissioner (L), Karachi in his order dated 21.9.1972.”

The above referral makes it quite clear and obvious that applicants (Cr.M.A.No.365/2014) were not only held *entitled* by this Court in *Constitutional*

Jurisdiction but it was directed by this Court for allotment of at least **25 acres land** which may be available with further rider to transfer the same in their favour. I would not hesitate that such order was passed in *Constitutional Jurisdiction* which was / is binding upon all organs of the State (*Province*). Reference may be made to the case of this Court, passed in matter of *Qaisar Ali Khan v. Province of Sindh through Chief Secretary (2010 PLC (CS) 542)* wherein such legal position is affirmed as:-

“.....The decision of the Court given in a lis are judicial determination of a case whereby parties’ rights and obligations are decided by the Court are binding on all the organs of the State including the Government and Government cannot take any steps contrary to judicial decision of the Court.”

15. In another case of *Shahnawaz Mallah v. Raza Muhammad Brohi (2013 CLC 792)* (authored by me), the binding effect of such decision was reaffirmed with reference to Article 201 of the Constitution, as:-

“13. Here we would like to endorse that the judgment of High Court and Supreme Court to the extent, it decides a legal position, question of law or is based upon principle of law or enunciate / interpret law, statutory rule etc, is not only binding upon subordinate Courts, tribunal but **is also binding on all public and statutory functionaries etc, unless off course, such decision is revisited by the Courts in review, revision, appeal or a larger bench has taken a different view.**”

Thus, it is quite safe to say that such *right* and *entitlement* of the applicants (Cr.M.A.No.365/2014) stood declared / determined therefore, it was obligatory upon the quarter concerned to ensure compliance / enforcement thereof. It is also worth adding that the *binding effect* of the above referred order was *categorically* acknowledged by the Senior Member, BoR, Karachi and Secretary to Government of Sindh, Land Utilization Department, Karachi, arrayed as defendant Nos.2(a) and (b) in the Suit No.657 of 2010, filed by the applicants (Cr.M.A.No.365/2014) whereby they had claimed allotment of subject land (09-08 acres) as legal, lawful and had also challenged the inquiry, initiated by CMIT. They in their written

statement stated about Paras-2 to 11 of the plaint (whereby allotment of land was claimed to be lawful and in compliance of lawful orders) as:-

“That those with regard to the contents of Paragraph Nos.2 to 11 of the plaint, under reply, in view of the order dated 6th May 1979, passed by this Honourable Court and in the light of facts, narrated hereinabove in line with the record available with the concerned office of the answering Defendants, the same being matter of record need no further comments.

It is respectfully submitted that in view of the facts as narrated hereinabove that the Claimant was declared as entitled for the claim of 11lease 25 acres, Urban Agriculture Land in Karachi vide Order dated 06-06-1979, passed by this Honourable Court in C.P.No.254/1974, and in pursuance thereof, the Legal Heirs of the Claimant were allotted 28.24 Acres instead of 25 Acres, resulting in the excess of 3.24 Acres Land being allotted to the Plaintiffs.”

16. They further acknowledged in para-8 of their written statement as:-

“8. That, those with regard to the contents of Paragraph No.29 of the Plaint, under reply, **the answering Defendants are bound to follow and abide with the orders passed by this Honourable Court in C.P.No.254/1974** particularly the order dated 06.6.1979, whereby the said matter was disposed-off with directions that the claim of the Plaintiffs be treated as **pending case**” and in the circumstances, the Plaintiffs were declared as entitled for at least 25-00 Acres of urban agriculture land, wherever it is available in Karachi, which was duly complied with by the answering Defendants. It is further submitted that the answering Defendants are bound to act in accordance with the prevailing Revenue Laws and any further orders and / or directions passed by this Honourable Court in the matter in hand for the larger interest of the province and the previous land thereto, and so as in the interest of justice.”

The above *categorical* admissions on the part of Senior Member, BoR, Karachi and Secretary to Government of Sindh, Land Utilization Department, Karachi was / is sufficient to safely conclude that :

- a) the applicants (Cr.M.A.No.365/2014) were declared by this Court by order recorded in referred petition be entitled for at least 25-00 acres land against their verified claim;
- b) the government was directed to allot 25-00 acres of **urban agricultural land** wherever is available in Karachi;
- c) the quarter concerned allotted the land, including subject land, *strictly* as compliance to such order of this Court;

Thus, the allotment of such land in favour of the applicants (Cr.M.A.No.365/2014), I shall insist, can't be said to be *illegal* because undeniably the order, so recorded in the referred petition, being unchallenged, *did* attained finality hence was left with no exception but compliance thereof, as was rightly done. It is also worth adding here that till date it has never been claimed or alleged that the allotment of the subject land was motivated by the applicants (Cr.M.A.No.365/2014) rather the Senior Member, Board of Revenue, Karachi and Secretary to Government of Sindh, Land Utilization Department, Karachi (defendant Nos.2(a) and (b) in Suit No.657 of 2010) categorically admitted in their written statement regarding entitlement and title of the applicants (Cr.M.A.No.365/2014) in respect of allotted land while responding to those paras of the plaint whereby initiation of inquiry as well inquiry report of defendant no.1(b) was referred, as:-

“5. **That** those with regard to the contents of Paragraph NOs.16 to 20 of the plaint, under reply, the same warrant no comments from the answering Defendants, being not directly related. It is stated that the outcome of the enquiry as narrated hereinabove paragraphs, held by the Anti-Corruption Department Karachi, did not fix any charge against, and / or any suggestions as regard to misappropriation and fraudulent transaction the answering Defendants. **In fact, no case of corruption or corrupt practice was made out against the answering Defendants, as no any loss had been caused to the Government, and there was no sufficient evidence available with the investigating authority, against the answering defendants to proceed further in the matter, hence the permission was sought to close the matter.”**

17. Here, it is also worth to add here that question of allotment of land in question (9-08 acres) as well *excessive* land of **“3.24 Acres Land”**, the matter was taken up by the *Sindh Government Lands Committee*, in its meeting held on 16th May 2014, as *item no.5*, whereby the entitlement of the applicants (Cr.M.A.No.365/2014) regarding 25-00 acres land was again **reaffirmed** and issue of excessive land of 3.24 acres was also decided. The decision of the Committee head by late Justice Retired Zahid Qurban Alivi, reads as:-

“THE CASE RELATES TO THE IMPLEMENTATION OF THE RECOMMENDATION OF THE CHAIRMAN, CHIEF MINISTER’S INSPECTION TEAM (CMIT) DULY APPROVED BY THE CHIEF MINISTER SINDH REGARDING REGULARIZATION OF ALLOTMENT OF STATE LAND ALLOTTED TO M/S. ABDUL MAJEED & 17 OTHERS LEGAL HEIRS OF CLAIMANT SULEMAN S/O HAJI TAR MUHAMMAD, IN EXCESS OF THEIR ENTITLEMENT. The detailed facts of the case are attached herewith at Appendix-I.

The facts of the case are that the claimant Suleman was allotted 58.1 acres of land out of S.Nos.168, 169 & 170 of Deh Gujhro Karachi vide Khatoon dated 23.05.1962. The Allotment was cancelled by the Settlement & Rehabilitation Commissioner Karachi on the pretext that the scheme / policy for the allotment of the land in Karachi (FORMER CAPITAL CITY) WAS NOT YET FRAMED. The cancellation order of Settlement Commissioner Karachi was set-aside by the High Court vide Judgment dated 29.01.1971 passed in C.P.No.301 of 1965 & the case was remanded to the Additional Settlement & Rehabilitation on Commissioner (land) Karachi for consideration of claimant’s claim. The additional Settlement Commissioner Karachi (land) Karachi reviewed the allotment earlier made to the claimant in Deh Gujhro provide the S.Nos.168, 169 & 170, which during the intervening period were declared “Building Sites” are excluded from the list of “Building Sites”. No action was taken and ultimately the claimant filed C.P.C.No.254 of 1974, which was disposed of vide Judgment dated 06.06.1979 wherein it was held that the case of the claimant is to be treated as “pending case” and he is entitled to claim at least 25 acres of urban agriculture land in Karachi. Pursuance to the orders of High Court, the legal heirs of the claimant were allotted the following in Karachi.

<u>DEH</u>	SURVEY NUMBERS ALLOTTED	AREA ALLOTTED (IN ACRES)	DATE OF ALLOTMENT
<u>Okewari</u>	71 to 74	19-16	19.09.1979& 20.04.1980
<u>Safooran</u>	Out of N.C.No.166 after Survey , S.No.328	09-08	10.10.2003
<u>Total land allotted</u>		28-24 acres	

In the year 2009, on the allegation that excess land was fraudulently allotted to the claimant, the matter was inquired into by the Chief Minister’s Inspection Team (CMIT).

The CMIT, after inquiry, held that as per Judgment of the High Court the claimant was entitled to get at least 25 acres of land, instead his legal heirs have been allotted 28-24 acres, hence they have been allotted 03-24 acres in excess of the their entitlement of adjust at least 25 acres. The CMIT, Recommendations are duly approved by the Chief Minister Sindh, as under:-

- i) The possession of the one acre which is lying vacant & is in possession of M/s Pioneer Builders should be taken over by the Government in Revenue Department

- ii) The **"Land in question"** may be offered to the builders for purchase on a price to be determined by the Regularization Committee of the Board of Revenue.

The Inspection, Anti-Corruption Establishment Karachi to whom the matter, as per orders of the Chief Minister of Sindh was entrusted, in his inquiry report dated 18.06.2009 has held that allotment of land admeasuring 09-08 acres from Deh Safooran in favour of the legal heirs of claimant, is made by the Competent Authority viz: Member (Land Utilization Board of Revenue Sindh under the corrupt practice is made out. The inspector ACE has, therefore, recommended that the above case may be placed before ACC-II, Karachi for **seeking permission to close the matter.** The Inspector ACE, mentioned the loss to Government as **NIL."**

18. In said back-ground wherein the entitlement of the applicants (Cr.M.A.No.365/2014) to extent of 25-00 acres was *categorically* reaffirmed, so the Committee, concluded as:-

"The committee discussed the matter at the length and also gone through the findings & Recommendation made by the CMIT as well as the Inspector, ACE, Karachi very minutely and held the recommendation made by the Chairman CMIT, after having been duly approved by the Chief Minister of Sindh on Summary dated 11.03.2009 floated to him attained the status of the Order / directives issued by the Government of Sindh as envisaged in Rule-7 (iii) of the Sindh Government Rules of Business, 1686, and are to be complied with in letter & spirit as orders / directives issued by the Government of Sindh.

The committee observed that the Chief Minister Sindh, Government of Sindh has approved that the **"land in question"** may be offers to the Builders for purchase on a price to be determined by the regulation committee of the Board of Revenue Sindh.

In view of above factual & legal position, the committee finally held that the allotment land up to adjust at least 25 acres made in compliance of Judgment of the Honourable High Court of Sindh as per allotment order made by the Additional Settlement Commissioner (Law) Karachi duly upheld by the Honourable High court of Sindh @ Karachi was quite legal whereas the excess are **is 3-24 acres which area is to be regularized."**

19. The above leaves nothing to doubt that till such date the allotment of land was never held to be *'illegal'* least to extent of **25-00 acres** nor it was claimed so by the *ACE* (investigating agency) that there was caused any loss to government

exchequer. However, for excessive area of **3.24 acres** the regularization thereof was recommended. In short, there remained no question of *fraudulent* allotment of whole allotted land but only to extent of subject land i.e **9-08 acres** land, as was the allegation in *earlier* inquiry/investigation, so conducted by Inspector Khadim Hussain Mahar, ACE Karachi which ended as:-

"4. As for as allotment of last land out of Naiclass NO.166 admeasuring 9-08 acres is concerned same has been allotted by the competent authority Member LU, BOR Sindh in compliance of the orders of the High Court of Sindh according to available record and evidence the claimants have been allotted on 21-21 acres instead of at least 25-00 acres as per orders of the High Court of Sindh. According to initial Khatooni the claimant was entitled for 4108 Urban Units, in that order on 1392 Units were settled hence there is also balance units to be settled but in the light of orders of High Court at least 25-00 acres to be allotted however they got only 21-21 acres.

5. All the land whatsoever has been allotted is made out in the light of Judgment of Honourable Court of Sindh.

6. From the facts brought on record there is no any prima facie case is made out to prove any corruption of corrupt practice against the officials of Revenue. Sind there is not sufficient evidence to proceed further in the matter.

Recommendation:-

In the light of above facts and circumstance, it is therefore requested to kindly place matter before ACC-II Karachi for seeking permission to close the matter."

Even in above concluded inquiry, the allotment of land in question was not found as *fraudulent* or *illegal* but it was affirmed as:

"As for as allotment of last land out of Naiclass NO.166 admeasuring 9-08 acres is concerned same has been allotted by the competent authority Member LU, BOR Sindh in compliance of the orders of the High Court of Sindh"

Such admission was / is always sufficient to conclude that till such time it was, *even*, admitted by ACE, Karachi that:-

- i) Allotment of **9-08 acres** was made by the **competent authority i.e Member LU, BOR Sindh;**
- ii) which, too, not at its own but in **compliance of the orders of the High Court of Sindh;**

These have been the *undisputed* facts which had resulted in recommendation of the inquiry report for closing of the complaint No.254/2007.

20. Needless to mention that such report was also discussed in the decision of **Sindh Land Committee**. Here, it is worth adding that the decision of Sindh Land Committee took place during pendency of the suit, so filed by the applicants of Cr.M.A.No.365/2014 and it was after such decision of the *Committee* that Secretary to Government of Sindh Land Utilization Department issued a letter No.01-489-02/SO-1/439/14 dated 18.8.2014 thereby addressing to **‘Mr. Abdul Majeed Suleman’** as:-

Paras-5 and 7 thereof:

5. AND WHEREAS the allotment of above land in question was prima facie made much below the highest market price of Rs.53,24,000/- per acre prevailing at the time of allotment and in violation of law / rules/ policy of the Government and in relaxation of ban, and thus wrongful loss has been caused to the provincial exchequer.
7. NOW THEREFORE, in pursuance of Section-4(2), of the Ordinance **market price at the time of allotment has been worked out by the Committee appointed under Section 4(1) of the said Ordinance as Rs.53,24,000/- per acre**& thus the market price in respect of excess area of 03-24 acres (out of S.No.328, previously N.C.No.166) Deh Safooran Karachi has been worked out to be **Rs.1,99,66,400/- (Rupees One Crore Ninety Nine lac Sixty Six Thousand & Four Hundred only)** as such the differential / due amount is offered to you for payment. In case you are agreeable to pay the same, you are to submit such acceptance as indicated below to the under signed within 15 days of receiving this letter so that your above allotment may be regularized, as per provision of Section-5 of the said Ordinance after payment of differential malkano to recover **loss caused to the Government**

21. The offer was, *accordingly*, accepted and in consequence thereof the challan (No.435 dated 18.8.2014) was issued to the applicants (Cr.M.A.No.365/2014) of requisite amount which was accordingly paid by them hence thereby the question of *excessive* land area of **3-24 acres**, needful to add, stood **regularized**. None can

take an exception that things *regularized* shall, no-more, be available to be alleged/claimed as '*illegal or fraudulent*' but legality stands attached thereto.

22. The record further shows that it was only after completion of said process i.e payment of amount for regularization of the excessive area, the parties, finding no more dispute, entered into compromise application (s), by filing such application in the suit, so filed by the applicants (Cr.M.A.No.365/2014). It was moved on 06.9.2014 and was numbered as CMA No.11565/2014. The contents of the application, *even*, were affirming whole back-ground, as:-

“It is respectfully prayed on behalf of the Plaintiffs and Defendants NO.1 and 2 that in view of the proposal letter dated 18.8.2014, issued by the defendant NO.1 mentioning therein the decision of the Chief Minister, Sindh pursuant to the decision taken by the Regularization Committee of the Board of Revenue, constituted under the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000 has allotted / regularized the suit land to the Plaintiffs subject to the payment of additional Malkano of Rs.53,24,000/- per acre, total comes to Rs.1,99,66,000/-. However, in order to settle the matter, Plaintiffs without prejudice to their rights without admitting any liability are ready and willing to pay the same to the defendants No.1 and 2. In this regard, the Plaintiffs have already signed the proposal letter dated 18.8.2014 and accepted the same. The parties above named are hereby agreed that the suit be decreed on the basis of following terms and conditions:-“

23. Needful to add that without disputing / challenging the entitlement of the applicants (Cr.M.A.No.365/2014) with reference to order, passed in CP No.254 of 1974, an application was moved under section 24-A General Clauses Act, 1896 r/w section 151 CPC by Sr. Member Board of Revenue & Secretary, Land Utilization Department, Government of Sindh with request to allow them to withdraw the compromise application. The record shows that through one and same order dated 01.11.2014 the application for withdrawal from compromise was dismissed while the compromise was accepted while observing as:-

“I have heard the arguments I am of the considered view that the application under Order XXIII Rule 3 read with Section 151 CPC, being CMA No.11576/2014, which is being sought to be withdrawn through the resent application by Defendant NOs.2(a) & 2(b) was duly signed by the Plaintiff No.3 for himself and as attorney of the Plaintiff Nos.1,2,4 to 8 and 10 to 16, Advocate for the Plaintiffs, Advocate for the

Defendant Nos.1 & 2 as well as Secretary to Government of Sindh, Land Utilization Department and Member (Land Utilization) Board of Revenue, Sindh. Not only this, but the Secretary to Government of Sindh, Land Utilization Department, Government of Sindh and Member (Land Utilization) Board of Revenue, Sindh has also affixed the seal of his office on the said application which made the aforesaid application as complete and ready to be filed on 03.09.2014 and presented the same before this Court on 06.09.2014 , which is available at page-83 of the file of the suit. Learned counsel for the Defendant Nos.2(a) & 2(b) has candidly admitted the present position with regard to CMA No.11576/2014 and admits that the same has been executed and signed by the parties thereto including the Secretary to Government of Sindh, Land Utilization Department and Member (Land Utilization) Board of Revenue, Sindh by putting his signature and affixing the seal of his office thereon, who was the then incumbent of the said office. In my view it is a past and closed transaction made by the Government functionaries in his official capacity and the same is binding on all successive incumbents of that office.

Learned counsel for the Defendant NOs.2(a) & 2(b) has not been able to satisfy this Court as to how and under what law the Successor incumbents in the office of Member (Land Utilization) Board of Revenue, Sindh can retract the compromise application signed and filed by his Predecessor in the office, which was further authenticated by him but putting the seal of office thereon. I am in fully agreement with the counsel of the Plaintiffs that **the instant application is nothing more than an arm twisting tactic of newly appointed incumbent in the office of Member (Land Utilization) Board of revenue, Sindh for ulterior motives and malafide intentions to pester the Plaintiff into submission of his demands.**

I note that in the concluding para in the decision, which is available as Annexure C to the Counter Affidavit at page # 189 of the case File, of Sindh Government Land Committee, held on 16.05.2014 headed by Justice (R) Zahid Qurban Alvi as Chairman, discussed the matter at length and also gone through the findings & Recommendation made by the CMIT as well as the Inspector, ACE Karachi, very minutely, and held the recommendation made by the Chairman CMIT, after having been duly approved by the Chief Minister of Sindh on Summary dated 11.03.2009 floated to him, have attained the status of the Order / directives issued by the Government of Sindh as envisaged in Rule-7 (iii) of the Sindh Government Rules of Business, 1686, and are to be complied with in letter & spirit as orders / directives issued by the Government of Sindh. The Committee also observed that the Chief Minister Sindh, Government of Sindh, has approved that the "land in question" may be offers to the Builders for purchase on a price to be determined by the regularization committee of the Board of Revenue Sindh. In view of above factual & legal position, the committee finally held that the allotment land up to adjust at least 25 acres made in compliance of Judgment of the Hon'ble High Court of Sindh and per allotment order made by the Additional Settlement Commissioner (law) Karachi duly upheld by the Hon'ble High Court of Sindh, Karachi was quite legal whereas the excess area is 03-24 acres which area is to be regularized.

In pursuance of the aforesaid decision the Plaintiff was issued challan dated 18.08.2014 by the Secretary to Government of Sindh, Land Utilization Department and Member (Land Utilization) Board of Revenue, Sindh of the differential amount Rs.1,99,66,400 (highest rate of rs.53,24,000/- per acre in respect of excess are of 03-24 acres land) situated in Deh Saforan, Gulshan-e-Iqbal Town Karachi, which was paid on 16.9.2014 by the Plaintiff, same is available as Annexure C/2 to the

Counter Affidavit of the plaintiff at page # 215 of the case File. I, therefore, see no merits in this application, which has been filed with ulterior motives and malafidely by the fresh incumbent of the office of Member (Land Utilization) Board of Revenue, Sindh and the same is hereby dismissed with no order as to cost."

In consequence to above order, the matter stood decreed, as follows:-

.....Accordingly it is hereby ordered that suit is decreed by way of a compromise in the following terms as under:-

- a). It is agreed by both the parties that the entire proceedings initiated by the Defendants No.1(b) and 2(b) on the basis of a pseudonymous complaint from Mohammad Obaid (Defendant No.4) without disclosing his proper identity and address, are nullity in the eyes of law as well as an extreme deviation and violation of the rules of business of the Government of Sindh, as well as the rules. of natural justice, hence the report submitted by the Defendant No.1(b) dated 11.3.2009 as well as the approval given thereto by the Chief Minister Sindh, and the subsequent public notice published in the newspapers on 24.4.2010 and 25.4.2010 by Defendant No.2(b), are of no legal effect and not binding upon the Plaintiffs or their predecessors or successors in interest, and the same is hereby declared as void ab-initio.
- 1) It is agreed that the defendant No.1(a)'s report dated 11.3.2009 submitted by the Defendant No.1(b) shall be declared illegal, void ab-initio and the same is hereby cancelled for all times to come with further directions to the remaining Defendants, their subordinates, attorneys, officials, not to take any adverse action pursuant to the aforesaid report dated 11.3.2009 including but not limited to lodging of any F.T.R. or any NAB reference or cancellation of the land measuring 9 acres 08 ghuntas allotted to Plaintiffs and now being occupied by the aforesaid purchasers/builders as Plots No.328/A, 328/B, 328/C, 328/D, 328/E and 328/F of Deh Safooran, who has already sold out the same to different' allottees according to their respective shares.
- 2) It is further agreed that the letters dated 14.10.2009 obtained .by the official Defendants under coercion from the aforesaid purchasers / builders, is nullity in the eyes of law' and of no legal effect and the same is hereby cancelled and it is declared that the Plaintiffs or the aforesaid purchasers/builders are not liable to pay any additional amounts towards the aforesaid suit land except an amount of Rs.1,99,66,000/-;
- 3) It is further agreed between both the parties that the Plaintiffs are the lawful, genuine allottees in possession of 9-08 acres of land in Naiclass No.166, Survey No.328 Deh Safooran, situated in Gulshan-e-Iqbal Town, Karachi, in consequence of the lawful

claim and in terms of the Order of the Hon'ble High Court dated 6.5.1979 passed in C.P. No.254/74, hence the Defendants or any other authority including but not limited to NAB has no lawful right or jurisdiction to question the legality of the title of the Plaintiffs over the aforesaid land or to take back the same from the Plaintiffs or their successors-in-interest.

- 4) It is declared that the so-called alleged suo moto proceedings u/s 164 of the Sindh Land Revenue Act, 1967 initiated by Defendant No.2(b) in respect of alleged "fraudulent insertion of entries" are also illegal, uncalled for and should be cancelled/withdrawn by declaring that the title of the Plaintiffs over the aforesaid land is lawful and genuine and cannot be questioned by any one including the Defendants.
- 5) It is further agreed that the Defendant No.5 Sub-Registrar Gulshan-e-Iqbal Town, Karachi, shall immediately execute the sub-lease deeds in favour of Abdul Majeed Suleman of the flats/shops constructed on Plots No.328/A, 328/B, 328/C, 328/D, 328/E and 328/F of Deh Safooran as and when submitted by the said Abdul Majeed Suleman for registration according to law and on the permissions already accorded by the competent authorities regarding the aforesaid two projects.
- 6) It is further agreed between the parties that the Defendants will allot and give possession of remaining balance land out of 29 acres and 17 ghuntas as ordered by the Hon'ble High Court vide order dated 6.5.1979 passed in C.P. No.254/74, as well as to further allot and give possession of at least 58.1 acres of urban land in Karachi due to be allotted to the predecessor-in-interest of the Plaintiffs namely Abdul Majeed Suleman in terms of verified claim bearing Registration No.4653/V dated 5.10.1961 under Schedule IV of the Registration of Claims Act, 1956 as well as U.R.V. bearing Book No.283, Form No.8475, dated 5.10.1961.
- 7) It is agreed between the parties that the Defendants will not take any adverse action with regard to the lawful ownership and possession of the Plaintiffs over the aforesaid land' on the basis of the report of Defendant No.1(b) dated 11.3.2009, as well as the Defendants will not take any other steps including registration of FIR, cancellation of the land and any other action detrimental to interests of the Plaintiffs as well as the allottees of the two projects of the aforesaid purchaser/builders, pursuant to the aforesaid report of Defendant No.1(b).
- 8) The High Court and its earlier judgment by using the word "At least" 25 Acres out of 58.1 Acres is not restricted or put any embargo on the allotment of land against the remaining unutilized total units 2716 equivalent to 22.63 acres.
- 9) The allotment made Land Utilization Department up to

25 Acre in Karachi is intact and undisputed and it will remain on the Khata of claimant.

- 10) Remaining P.I. Units 2716 units equivalent to 22.63 Acres may be allotted by the government to the claimant.
- 11) Fresh Form-II and NOC of sale shall be issued by the Board of Revenue in the name of Abdul Majeed Suleman.
- 12) Proceedings if any, inquiry, investigation initiated by the NAB Authorities on the basis of the report dated 11.3.2009 by Defendant No.1(b) shall be declared null and void and the NAB, is hereby restrained not to file any reference against the Plaintiffs as there is no loss to the public exchequer.
- 13) It is further agreed between the parties that in view of the payment of additional Malkano paid by the Plaintiff in favour of the Defendants there is no loss to the public exchequer, hence proceedings initiated either by the Provincial Anti-Corruption Department or by the NAB Authorities has no value in the eyes of law and shall be declared null and void."

The perusal of the above terms of the *compromise decree*, prima facie, shows that it not only affirmed the status of allotment in favour of applicants (Cr.M.A.No.365/2014) as '*legal*' but also included restraining *any action* by NAB and Anti-Corruption authorities. Needless to add that such decree, even being *compromise decree*, was a decree binding upon the parties.

24. It is pertinent to add here that Anti-Corruption Establishment as NAB Authorities were always in active knowledge and notice of the legal position that in existence of the '*decree*' the applicants (Cr.M.A.No.365/2014) or anybody claiming under them, *legally*, can't be prosecuted on charge involving *declared* entitlement / title except the same is got reversed / revisited by the Court which passed it, as reaffirmed in the case of *Javed Akhter Khan v. District Co-Ordination Officer, Sheikhupura* (2020 MLD 900) that:-

"5. The play of round on civil side, which finally culminated right upto the level of the court followed by its realization was an admitted fact that the decree was passed under section 8 of the Specific Relief Act, 1877 and the

declaration of the ownership was inbuilt relief granted to the decree-holder. Reliance can be placed upon judgment reported as *Hazratullah & Ors v. Rahim Gul & Ors* (PLD 2014 SC 380). **Moreover, the title such that allotment of the petitioner at the best could be disputed before the forum where judicial scrutiny proceeded for years and years;** but no such defence was introduced at the point of time and once it was finalized on judicial side; it was not permissible to re-open on administrative side. See Chuttan and others v. Sufaid Khan & Ors (1987 SCMR 503) and Commissioner of Income Tax East Pakistan v. Fazal-ur-Rehman (PLD 1964 SC 410). It was also a proven fact that in connected matters prior to the impugned order, the predecessors of the respondents had also pronounced a similar order to annul the allotments, but its superior authorities while exercising appellate jurisdiction on judicial side set-aside the decision of his subordinate **which having not been agitated any further became final and could not be reopened on executive side by the same authority as well whose order stood already quashed and such practice is not permissible.** In the case law referred hereinabove, **it was vividly held that administrative order may be set aside on judicial side, but there is no legal panorama of a reverse case.**

Therefore, applications were filed U/s 12(2) CPC Re-Province of Sindh & others vs. Bilquees and Others [JM. No. 02 of 2015] and [J.M. No.39 of 2015] Re-National Accountability Bureau Vs. Bilquees & others before this Court thereby challenging the order / judgment dated 01.11.2014 and decree dated 05.01.2014 passed in Suit No.657/2010 whereby compromise decree was passed.

Through above applications, the order / judgment, whereby withdrawal application from compromise application was dismissed and compromise application was allowed, was challenged while claiming the same as were obtained by *fraud* and *misrepresentation*. Such application (12(2) CPC) was entertained as JM NO.02 of 2015 “Re-Province of Sindh & Ors v. Bilquees & Others” which was disposed off by his lordship Mr. Muhammad Junaid Ghaffar, J, vide order dated 09.06.2016. The relevant portions thereof are reproduced hereunder:-

“11. Perusal of the aforesaid contents of the compromise application reflects that in nutshell there are two parts of the compromise application, one which pertains to ownership and allotment of the land in possession of the respondent, and the other, which relates to restraining the defendants from proceeding, further in respect of the criminal proceedings pending, as well as initiation of any fresh

criminal proceedings including but not limited to lodging of any FIR or a NAB reference to that extent. Insofar as the first part is concerned, the **same is based on certain meetings of the Land Committee as well as the concerned officers of the Land Utilization Department, whereby, the land in question and dispute was allowed to be regularized by payment of an amount of Rs.1,99,66,000/-** which appears to be lawful in manner as the same is within the competence of the concerned department. Moreover and insofar as the Board of Revenue is concerned, their learned Counsel has also not objected to this part of compromise and has conceded **that insofar as Board of Revenue is concerned, they have already acted upon such part of the compromise and are also willing to act on any further directions of the Court.**

The above para of the order makes it quite clear that:

“the land in question and dispute was allowed to be regularized by payment of an amount of Rs.1,99,66,000/- “

“the BOR already acted upon such part of compromise relating to whole allotted land including excessive land and even was willing to act on any further directions of the Court”

The order further continues as:-

17. Insofar as the stance of Board of Revenue is concerned, it is not that the entire compromise is based on fraud and misrepresentation, but only to the extent of restraining and compelling them to compromise criminal proceedings pending in respective Courts. **In fact, insofar as compromise in respect of land in question is concerned, Board of Revenue can even otherwise have no objection as they, after decision of the Land committee’s meeting, have already demanded substantial payment for regularizing the lease of the property in question, which amount has already been paid by the respondents.** The only objection which has been taken in this regard is to the effect that the then Member, Land Utilization, who had signed the compromise application on 3.9.2014, stood transferred w.e.f 24.8.2014, hence, not competent to sign and enter into any such compromise. **Even this objection appears to be misconceived and fallacious. It is not that the said Member Land Utilization had suddenly entered into any such compromise with respondents on his own, but in fact had done so on the basis of several meetings and the decision of the Land Committee dated 16.5.2014, who after a threadbare examination of the case in hand, had directed the respondents to pay the extra charges for regularization, of the land in question. The office of Government functionaries are not person specific, and their acts cannot in its entirety be undone by their successor in interest in this manner.** The Member , Land Utilization in instant matter had acted according to the directions and decision of the Special Land Committee constituted for such regularization and entering into compromise was not his personal decision.

20. **Moreover and without prejudice to the validity and or authority of the compromise in question vis-a- vis, the officer who had signed the same before the Court, there is another aspect of the matter which also requires consideration by this Court. Defendant No.2(a) and (b) i.e Senior Member and Secretary Land Utilization Department, Board of Revenue, had filed their written statements, wherein, it has not been seriously controverted that the dispute portion of land in question has been regularized** on the basis of minutes of the meeting dated 16.5.2014 of the Land Committee and by asking the respondents to pay Rs.53,24,000/- per acre as lease charges in lieu of alleged loss caused to the Government of Sindh vide its letter / order dated 18.8.2014. **In the entire written**

statement, more or less, the contention of the respondents in the Suit has not been controverted seriously as the written statement has been filed on behalf of the said defendants on 22.5.2014 when the said officer was very much incharge of the office. In response to the prayer clause the said defendants have stated in their written statement as follows:-

It is now, therefore, respectfully submitted that in the light of unanimous decision, as purported therein the minutes dated 17.04.2014, passed by the learned Land Committee, whereby it has been decided to regularize the area of 3.24 Acres (out of S.No.328, previously Naiclass No.166) in favour of Legal Heirs of the Claimant Suleman son of Haji Tar Muhammad (plaintiffs herein the Suit) at the rate of Rs.53,24,000 per acre, as loss caused to the Government of Sindh with the approval of the competent authority, the differential Challan thereto, will be issued in due course and in accordance with the law and procedure and / or any order or directions passed by this Honourable Court. **The allotment upto 25 acres is undisputed / intact.** After the payment of Challan, the final regularization order will be issued forthwith and thereby the area of 3-24 acres, said to have been allotted in excess of 25.00 acres shall also stand regularized. It is, therefore, prayed that this Honourable Court may be pleased to dispose of / dismiss the Suit in hand alongwith all interlocutory applications filed therewith accordingly." (Emphasis supplied)

The perusal of the aforesaid para of the written statement as well as other contents of the same reflects that **the claim of the respondents has been admitted and in the circumstances even otherwise the case falls within the provision of Order 12 Rule 6 CPC and the Court is competent to pass a judgment and decree on such admission on the part of the defendants.**

21. In view of herein above facts and circumstances of the case I am of the view that insofar as the plea of fraud and misrepresentation is concerned the same is not attracted in the instant case, whereas, the compromise was arrived at after decision of the Special Land Committee dated 16.5.2014, on the basis whereof the applicants issued **letter dated 18.8.2014 and demanded payment of the differential amount of Malkano which has been paid by the respondents, hence to that extent and on merits of the case, instant J.M is misconceived.** However, since it has come on record that there are certain clauses of the compromise agreement which do not seem to be lawful and void to the extent of Section 23 of the Contract Act, and are therefore, hit by the provision of Order 23 Rule 3 CPC, the same need to be modified. In the circumstances, the impugned order is modified, resultantly, the compromise judgment and decree could only be sustained in respect of clause (a), (2), (4); (5), (7) (except the words including registration of FIR), (9), (11), 13 (except "hence proceedings initiated either by the Provincial Anti-Corruption Department or by the NAB authorities has no value in the eyes of law and shall be declared null and void").

25. The above order, *prima facie*, leaves nothing ambiguous that *least* entitlement couple with allotment of the land as well regularization of excessive **3-24 acres** land (after acceptance of calculated amount) was not disturbed while appreciating the categorical admissions of the competent authorities because legally no one would like to make an admission against his own interest unless the

same is true, as held in the case of Muhammad Yaqoob through L.Rs v. Feroze

Khan & Ors (2003 SCMR 41) as:-

*"We are not persuaded to agree with Chaudhry Muhammad Tarique , learned Advocate Supreme Court that admission of Muhammad Yaqoob be treated as an innocent admission as it would be a new phenomenon having no legal foundation at all as **no one would like to make any admission against his own interest unless the same was true.**In this regard reference can also be made to Article 31 of the Qanun-e-Shahadat Order, 1984 and thus the principle that *no one would make any admission against his own interest has rightly been taken into consideration by the learned forums below.*"*

26. Therefore, while disposing off J.M No.02 of 2015 it was rightly found that claim of the applicants (Cr.M.A.No.365/2014), *otherwise*, was fitting within scope of **Order 12 Rule 6 C.P.C.** Decline to plea of *fraud* and *misrepresentation* to extent of entitlement of applicants (Cr.M.A.No.365/2014) as well allotment of whole land including excessive land, attached stamp to the cause and claim of the applicants (Cr.M.A.No.365/2014) to extent of their ownership in respect of the allotted land including subject land hence they earned status as *legal owners* which, *too*, by the competent Court(s). I am conscious that the terms, included in earlier **compromise decree**, regarding investigation / inquiry by Anti-Corruption or NAB, were excluded but without prejudice to :-

- a) legal entitlement of applicants (Cr.M.A.No.365/2014) regarding allotment of at-least 25-00 acres land;
- b) the allotment of **all the land** which, *does*, include land in question, in favour of applicants (Cr.M.A.No.365/2014) were held as '*legal & lawful*' which too with referral to categorical admission (s) of competent authorities;
- c) the allotment of excessive land was also **regularized** which, *too*, after due deliberation; decision of Sindh Land Committee and payment of assessed money thereby making all the allotment / title in favour of the applicants (Cr.M.A.No.365/2014) as legal and *lawful*;

The above factual position shall stand clear and evident from the *unchallenged* decree which, after modification through referred order, now stands as follows:-

- a). It is agreed by both the parties that the entire proceedings initiated by the Defendants No.1(b) and 2(b) on the basis of a pseudonymous complaint from Mohammad Obaid

(Defendant No.4) without disclosing his proper identity and address, are nullity in the eyes of law as well as an extreme deviation and violation of the rules of business of the Government of Sindh, as well as the rules of natural justice, hence the report submitted by the Defendant No.1(b) dated 11.3.2009 as well as the approval given thereto by the Chief Minister Sindh, and the subsequent public notice published in the newspapers on 24.4.2010 and 25.4.2010 by Defendant No.2(b), are of no legal effect and not binding upon the Plaintiffs or their predecessors or successors in interest, and the same is hereby declared as void ab-initio.

2) (earlier was term no.3 but after modification it is now term-2) It is further agreed that the letters dated 14.10.2009 obtained by the official Defendants under coercion from the aforesaid purchasers / builders, is nullity in the eyes of law' and of no legal effect and the same is hereby cancelled and it is declared that **the Plaintiffs or the aforesaid purchasers/builders are not liable to pay any additional amounts towards the aforesaid suit land except an amount of Rs.1,99,66,000/-;**

3) (earlier was term no.4 but after modification it is now term-3). It is declared that the so-called alleged suo moto proceedings u/s 164 of the Sindh Land Revenue Act, 1967 initiated by Defendant No.2(b) in respect of alleged "fraudulent insertion of entries" are also illegal, uncalled for and should be cancelled/withdrawn by declaring that **the title of the Plaintiffs over the aforesaid land is lawful and genuine and cannot be questioned by any one including the Defendants.**

4) (earlier was term no.5 but after modification it is now term-4). It is further agreed that the Defendant No.5 Sub-Registrar Gulshan-e-Iqbal Town, Karachi, shall immediately execute the sub-lease deeds in favour of Abdul Majeed Suleman of the flats/shops constructed on Plots No.328/A, 328/B, 328/C, 328/D, 328/E and 328/F of Deh Safooran as and when submitted by the said Abdul Majeed Suleman for registration according to law and on the permissions already accorded by the competent authorities regarding the aforesaid two projects.

5) (earlier was term no.7 but after modification it is now term-5). It is agreed between the parties that the Defendants will not take any adverse action with regard to the lawful ownership and possession of the Plaintiffs over the aforesaid land' on the basis of the report of Defendant No.1(b) dated 11.3.2009, as well as the Defendants will not take any other steps, cancellation of the land and any other action detrimental to interests of the Plaintiffs as well as the allottees of the two projects of the aforesaid purchaser/builders, pursuant to the aforesaid report of Defendant No.1(b).

6) (earlier was term no.9 but after modification it is now term-6). The allotment made Land Utilization Department up to 25 Acre in Karachi is intact and undisputed and it will remain on the Khata of claimant.

7) (earlier was term no.11 but after modification it is now term-7). Fresh Form-II and NOC of sale shall be issued by the Board of Revenue in the name of Abdul Majeed Suleman.

8) (earlier was term no.13 but after modification it is now term-8). It is further agreed between the parties that **in view of the**

payment of additional Malkano paid by the Plaintiff in favour of the Defendants there is no loss to the public exchequer."

27. The above modified terms of the *decree* are never challenged / questioned by any of the applicant(s) of JM No.02 of 2015, including the Anti-Corruption Authorities which, *otherwise*, was one of the parties in proceedings of the above suit hence can never claimed to be '*ignorant*' of said facts including that order, so passed in favour of the applicants (Cr.M.A.No.365/2014) by this Court in CP No. 254 of 1974. The above, *prima facie*, makes it quite clear and obvious that the allotment of lands in favour of the applicants (Cr.M.A.No.365/2014) in record of the rights earned the title and status of '*legality*' which, *too*, under order of this Court hence the same, respectfully emphasized, can't be said as *fraudulent* or *illegal*, more particularly when to extent of *modified terms of compromise decree*, the same was not found to be consequence of any *fraud* or *misrepresentation* and even on being challenged have attained *finality*.

28. Needless to remind that such entitlement and holding all the allotted land in favour of the applicants (Cr.M.A.No.365/2014) were declared *legal* and *regularized* through *independent* and *competent* proceedings which, as already viewed, shall hold the field unless the same are either set-aside / reversed hence the same, in short, are not available to be questioned in instant proceedings which, *even*, are not challenged by respondents. Now, what remains to be examined is the effect of such order(s) of competent Court (s) of law whereby the applicants (Cr.M.A.No.365/2014) became lawful owners / allottees of all the allotted land, including the **subject land**.

29. The legal position with regard to binding effect(s) of orders / judgment(s) of this Court including that of *competent civil court* with regard to declared rights and liabilities, already stood discussed, which leaves no ambiguity but that every organ of the state shall have to honour the same as well shall have to help and

assist as for as true compliance thereof is asked for; no contrary view to such an *extent* legally can be taken by any of the State-functionaries, regardless of its authority and jurisdiction, as was held in case of Qasim Ali Khan (supra).

30. Without prejudice to above, it is worth adding that there may have been *procedural* illegalities / irregularities by lower staff, including DDO (as he then was), in giving *legal* effect to what the applicants (Cr.M.A.No.365/2014) earned through court of law, but such procedural irregularities / illegalities shall, in no way, can cause any prejudice to the earned and determined rights of the applicants (Cr.M.A.No.365/2014) as this was the function of the officials concerned, who, needless to add, were under legal duty to give *legal* effects to orders of Courts. Thus, mere referral to procedural irregularities by DDO (as he then was) in making mutation in favour of applicants (Cr.M.A.No.365/2014) in record of the rights can't be an excuse to prejudice any of the earned rights of the applicants (Cr.M.A.No.365/2014) because legally the '*mutation*' is not the proof of the *title* but '*root*' and *original transaction* (s), leading to such '*mutation*'. Guidance is taken from the case of Peer Baksh through LRs and others v. Mst. Khanzadi & ors.(2016 SCMR 1417), wherein it is held as:-

'5. It is settled law that limitation does not run against a void transaction nor efflux of time extinguishes the right of inherence. **Equally a mutation is not a proof of title and a beneficiary thereunder must prove the original transaction.** Reference is made to the cases of Muhammad Iqbal v. Mukhtar Ahmed (2008 SCMR 855), Hakim Khan v. Nazeer Ahmed Lughmani (1992 SCMR 1832. These requirements of law have not been met by the petitioner.

31. In the instant matter, the '*root*' / transactions in favour of the applicants (Cr.M.A.No.365/2014) from that of their *verified claim; order in their favour in CP No.254/1974*; and *acknowledged* binding effect thereof and compliance by quarter concerned, even is not claimed as '*illegal*' by resorting to legally available course, as was / is provided by the law for revisit of a *final order* or *decree*. Here, there is another interesting aspect which affirms that the Anti-Corruption Establishment

does not dispute the actions of the Senior Member, Board of Revenue, Karachi; Secretary to Government of Sindh, Land Utilization Department, Karachi and Sindh Land Committee who, otherwise, passed orders / directives; proposal couple with delivery of possession etc but ACC-I ordered on same complaint bearing No.254/2007 of ACE Karachi (which earlier was recommended for closing) did not implement those as '*accused*' who, otherwise, issued / passed orders / directives; proposal / offer letter; allotment of land was acknowledged to be consequence in compliance of order of this Court (CP No.254/1974) and even excessive land 3-24 acres were regularized, but *surprisingly* ordered to lodge FIR only against those officials whose duties were confined only to extent of giving effect to such orders / directives i.e '*effecting mutation*'.

This also makes it quite clear that even per Anti-Corruption Establishment there was no challenge to legal entitlement of the applicants (Cr.M.A.No.365/2014) but while referring to *illegalities / irregularities* in '**mutation**' only to the permission to lodge FIR was accorded which, *too*, without assigning any reason to earlier investigation / inquiry whereby permission was sought to close the case.

32. I would add that *guaranteed* fundamental rights of the applicants (Cr.M.A.No.365/2014) which includes holding; possessing and disposing of the same. Even otherwise, I shall insist, procedural irregularities in making mutation *alone* can never be a sufficient ground to hold the same as *fraudulent* or *illegal* thereby claiming a right to prosecute the *owner* because prosecution of person without distinction of *criminal* and *civil liability* in a transaction is nothing short of '*misuse of process of law*' as held in the case of *The State v. Idrees Ghauri (2008 SCMR 1118)* that:-

"14. The prosecution of a person without distinction of criminal and civil liability in a transaction is misuse of process of law and similarly stretching the law in favour of prosecution is unjust and unfair, therefore, the Courts without ascertaining the true character of the transaction and

drawing the distinction in the civil and criminal liability, must not proceed to raise a presumption of guilt in terms of section 14(d) of the NAB Ordinance. ...

It is material to add that the '*roots*' of the claim of the applicants (Cr.M.A.No.365/2014), at all material times, are admitted / acknowledged as *legal* and *binding* and even per modified terms of the **compromise decree**, it is an agreed legal position as:-

"the title of the Plaintiffs over the aforesaid land is lawful and genuine and cannot be questioned by any one including the Defendants"

33. Needless to add that procedural or technicalities can't prevail over the *earned legal rights* nor one can be deprived or *earned* legal rights / entitlement merely in name of technicalities or procedural requirements because the Court (s) are never supposed to perpetuate what is unjust and unfair by exploring explanations rather are to explore ways and means for undoing what is unjust and unfair. Reference is made to the case of *Muhammad Nawaz v. Member Judicial, Board of Revenue* (2014 SCMR914).

34. In another case of *Muhammad Ijaz & another v. Muhammad Shafi through L.Rs 2016 SCMR 834* the case of *Imtiaz Ahmed v. Ghulam Ali* (PLD 1963 SC 382) was reproduced to affirm that proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. The relevant portion reads as:-

"... the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy.... Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent."

In another case of *Sharif ul Hassan v. Muhammad Amin* (2012 SCMR 1258) it was insisted that procedural technicalities should never be allowed to prevail over substantial *justice*. Thus, mere irregularities or even *illegalities* in making mutation

of lawful orders regarding **declared entitlement** of the applicants (Cr.M.A.No.365/2014), can't prejudice their *guaranteed* rights of ownership in respect of the land in question. This was never appreciated while initiating criminal prosecution against the applicants (Cr.M.A.No.365/2014) or anybody, claiming under them.

35. Here, I would also add that an *earned right* in respect of any *property* through competent Court of law shall, in no way, allow any exception to guarantee, provided to every citizen (owner of property) by Article-23 of the Constitution, merely while referring that it was earned through the Court of law. Such guarantee speaks as:-

"23. Provision as to property.

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest."

36. The Anti-Corruption authorities, *undeniably*, never challenged the modified *compromise decree* as well legal effect (s) thereof yet they are seeking continuity of the applicants (Cr.M.A.No.365/2014) couple with those claiming under them which, *too*, while claiming the mutation of lands in favour of applicants (Cr.M.A.No.365/2014) as fraudulent but without challenge to *root* thereof which (mutation), per existing modified decree, holds the filed as it was included in modified decree as:-

"The allotment made Land Utilization Department up to 25 Acre in Karachi is intact and undisputed and it will remain on the Khata of claimant.

"...Fresh Form-II and NOC of sale shall be issued by the Board of Revenue in the name of Abdul Majeed Suleman.

"... in view of the payment of additional Malkano paid by the Plaintiff in favour of the Defendants there is no loss to the public exchequer."

37. This, I have to force, can't be allowed because criminal prosecution of the applicants (Cr.M.A.No.365/2014) and those, claiming under them, shall amount to

prejudicing the earned and declared rights of the applicants (Cr.M.A.No.365/2014) in respect of whole the land, including **subject land**. Not only this, but such criminal prosecution shall not only cause serious prejudice to the modified clause of the *compromise decree* but would also amount re-examination thereof by a court of *criminal jurisdiction* which, *legally*, can't examine the '*civil dispute*' what to talk about a declared and determined right or liability, by a competent court of *civil jurisdiction*.

38. It is again to refer (for reaffirmation, regardless of earlier production) that modified compromised decree includes:-

"It is further agreed that the Defendant No.5 Sub-Registrar Gulshan-e-Iqbal Town, Karachi, shall immediately execute the sub-lease deeds in favour of Abdul Majeed Suleman of the flats/shops constructed on Plots No.328/A, 328/B, 328/C, 328/D, 328/E and 328/F of Deh Safooran as and when submitted by the said Abdul Majeed Suleman for registration according to law and on the permissions already accorded by the competent authorities regarding the aforesaid two projects.

"...that the Defendants will not take any adverse action with regard to the lawful ownership and possession of the Plaintiffs over the aforesaid land' on the basis of the report of Defendant No.1(b) dated 11.3.2009, as well as the Defendants will not take any other steps, cancellation of the land and any other action detrimental to interests of the Plaintiffs as well as the allottees of the two projects of the aforesaid purchaser/builders, pursuant to the aforesaid report of Defendant No.1(b).

39. I would also reproduce the relevant portion of the case of Pir Imran Sajid & Ors V MD/GM Telephone & Ors 2015 SCMR 1257 whereby the *government* functionaries, while performing their functions / discretions, have been asked to ensure the '*rule of law*'. The same reads as:-

"12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice".

The '*rule of law*' shall always include giving the one what the law has allowed him to do, as in the instant case the applicants (Cr.M.A.No.365/2014) have been so held entitled for all the allotted land, including **subject land**. I would also add by disposal of *property* and *gaining* benefit from such disposal *alone* can't be a sufficient ground to *criminally* prosecute one by those agencies dealing with charge (s) of '*corruption*' '*corrupt practice*' as the same *absolute* falls in domain of other department(s) concerned dealing with *income or wealth* in consequence of doing a business or disposal of properties. The relevant portion of the case of Peer Imran Sajid (supra) reads as:-

"11. It hardly needs to be emphasized that the whole edifice of governance of the society has its genesis in the Constitution and laws aimed as to establish an order, inter alia, ensuring the provisions of socio-economic justice, so that the people may have guarantee and sense of being treated in accordance with law that they are not being deprived of their due rights. Provisions of Article 4 embodies the concept of equality before law and equal protection of law and save citizens from arbitrary / discriminatory law and actions by the Governmental authorities. Article 5(2) commands that everybody is bound to obey the command of the constitution¹. Every public functionary is supposed to function in good faith, honestly and within the precincts of the power so that persons concerned should be treated in accordance with law as guaranteed by Article 4 of the Constitution. It would include principles of natural justice, procedural fairness and procedural propriety². The action which is mala fide or colourable is not regarded as action in accordance with law. While discharging official functions, efforts should be made to ensure that no one is prevented from earning his livelihood because of unfair and discriminatory act on their part.

40. When all the applicants of said JM NO.02 of 2015, including the Anti-Corruption Establishment, never opted to get the order of the JM No.02 of 2015 revisited to extent whereby the applicants (Cr.M.A.No.365/2014) or anybody claiming under them, are *prima facie* owners and lawful then letting FIR in question as well subsequent effects thereof shall amount to prejudicing the **legally earned rights** of the applicants (Cr.M.A.No.365/2014) or anybody, claiming under them. It shall amount allowing the Anti-Corruption Establishment to *indirectly*

obtain what they are not entitled to *directly*. Such principle was reiterated in the case of Shahnawaz Mallah supra as:-

“12.The title of the respondent No.1, if any, is also hit by well settled proposition of law that what one cannot obtain directly he cannot get the same indirectly;”

41. I, however, shall take no exception that every charge /allegation of commission of an ‘**offence**’ needs to be investigated / inquired into nor such right of the Agency concerned can *legally* be compromised even by the *Agency* itself, as was rightly held by this Court while recording the order of *modifying* the **compromised decree**. Such legal position, however, can’t be used as a *tool* to do what *legally* can’t be done. Thus, the ‘*affirmative answer*’ to proposition leaves me with no option but a ‘**BIG NO**’ to criminal prosecution of the applicants (Cr.M.A.No.365/2014) or anybody claiming under them. This, however, was never appreciated by the Anti-Corruption Establishment or the *Special Court* which took cognizance on such charge while *completely* ignoring the above *undeniable* facts; record and determined rights and title of the applicants (Cr.M.A.No.365/2014).

42. Without prejudice to above, I would add that effect of *declared* title / entitlement of applicants couple with regularization of excessive land against payment would leave no room for the Anti-Corruption Establishment to dispute determined title of petitioners by the *Criminal Court (s)* because the same shall, in all ways, would amount prejudicing the:-

- i) the order, passed in favour of petitioners, in CP NO.254/1974;
- ii) the categorical admissions / acknowledgments by competent authorities, including but not limiting the Secretary, LU Board of Revenue Sindh, Karachi;
- iii) decision of Sindh Land Committee;
- iv) the directives issued for regularization of land on payment of assessed amount;

- v) the order / judgment and compromise decree, passed in FC Suit No.657/2010;
- vi) the order passed in JM No.02 of 2015;

43. Be that as it may, even the Anti-Corruption establishment while submitting charge sheet (*interim one*), submitted through the Assistant Director, ACE (HQ), Sindh Karachi before the **Special Judge Anti-Corruption Karachi** , did not dispute '*decree*' in favour of applicants (private accused persons), so is evident from relevant column of '**investigation**'. The same reads as:-

"INVESTIGATION:

"During course of investigation efforts were taken to arrest the accused persons nominated in FIR but it has been learnt that the owners of alleged Land (accused private persons in this FIR) had earlier filed Suit No.657/2010 before the Sindh High Court Karachi. During proceedings of said Suit the Plaintiffs filed Joint application with Defendants JNo.2(a)&(b) Secretary BOR vide CMA No.11576/2014 on 06.09.2014 as compromise application which was allowed by the Honourable Court on 30.10.2014 and passed such order on 01.11.2014 and Decreed the Suit. Annexure A.

In said application it was submitted before the Honourable Court vide Para No.1 to h that enquiry report dated; 11.03.2009 (issued by CMIT) shall be declared illegal, void, ab-initio and same cancelled. **The Plaintiffs are legal owners of alleged Land and no any FIR, prosecution under Anti-Corruption or NAB should be taken.** Copies of such orders and CMA mentioned above are enclosed as Annexure B.

Accordingly a note has been placed to Director Legal for further guidance. Recently a Notice from registrar of Honourable High Court of Sindh dated 06.12.2014 has been received in Cr.Misc. Application No.365/2014 for quashment of instant FIR. Date of hearing is fixed for 15.12.2014. Annexure C.

.. circumstances **further investigation of the case has been suspended till receipt of guidelines from Director Legal E&ACE Sindh.** The submitted before the Honourable Court with the request that trial of the case kindly be adjourned till final orders of the competent authority court in Cr.Misc. Application No.365/2014 for quashment of instant FIR. Hence this interim charge sheet may kindly be treated as....."

The above charge sheet also, *nowhere*, details as to what offence the applicants (Cr.M.A.No.365/2014) or those claiming under them committed rather it was categorically stated that *further investigation of the case has been suspended till receipt of guidelines from Director Legal E&ACE, Sindh*. I am surprised that when the investigation was never completed nor the *interim charge sheet* was / is ever

describing as to what offence has been committed by *declared owners* then how they can be prosecuted?; even after payment of assessed amount for allotment of land (without disputing allotment as was done in decision of Sindh Land Committee as well as offer letter for making payment of assessed amount) once an offer paid, *prima facie*, took away claim of loss the Government exchequer not only this but admittedly it (*interim charge sheet*) included the factum of *decree* of cause and claim of the applicants (Cr.M.A.No.365/2014) yet the cognizance was taken. I would not hesitate for a *single* moment that the report (charge sheet) as well opinion of the Investigating Agency are never binding upon the Court (s) but equally the Courts (authorized to take cognizance) are under legal duty to show that such order must be judicious and not arbitrary one without reasoning and justifications. Reference is made to case of *Syed Paryal Shah v Behram Ali & 3 others* 2012 P Cr. LJ 189 wherein it is held as:-

6. There is no cavil to this proposition that the report under section 173 Cr.PC is not binding upon the court which is well-settled now and the Hon'ble Supreme Court also held supra that the Magistrate can take cognizance even in case of negative report. Such report is not binding upon the court and the court can take the cognizance and summon the accused to face the trial. At the same time it is also indispensable and imperative that the order passed by the Magistrate should be judicious and not an arbitrary order without reasons and justifications. The Magistrate is required to consider the report under section 173 Cr.PC in the light of the material collected during investigation and then pass an order. In my view also the power conferred upon the Magistrate though administrative in nature yet that has to be just and judicious and while passing the order and showing disagreement to the report submitted by the I.O under section 173 Cr.PC entire material collected during the investigation should be considered with *raison d'être* as to why the learned Magistrate is not inclined to accept the report.

44. *Prima facie*, the learned Special Judge, Anti-Corruption did not bother to give any weight to the *decree* nor appreciated the fact that in existence of the *decree* the applicants (Cr.M.A.No.365/2014) or anybody claiming under them can't be *criminally* prosecuted for or on charge *directly* or *indirectly* relating to their title in respect of the land, detailed in *decree*. Thus, the act of taking cognizance by

the Special Judge, Anti-Corruption, Karachi, was / is not tenable hence was / is liable to be declared so. In the case of Dr. Waqar Saeed v. State (2020 PCr.LJ 902), the proceedings were quashed while finding that there was no , *prima facie*, cognizable offences. The relevant portion reads as:-

“15.From the appraisal of the material available before this court, it is manifest that while entertaining the complaint and passing an order for registration of the case for the criminal offence, the learned trial Court has not applied judicial mind to determine that whether the accused persons have committed any cognizable offence or otherwise. I am surprised of the fact that without there being any allegation for payment or receipt of the bribe within the ambit of Section 161, P.P.C and 5(A).P.C.A, 1947 the learned judge herself created a charge against accused persons for the said offence. Even there is no allegation leveled in the complaint for any cheating and falsification of the document within the mischief of Section 420 and 468, P.P.C, yet the learned trial court has applied the said section against the accused persons. The record reveals that no cognizable offence was even alleged against the accused persons, on the other hand the subject matter of the complaint is completely a dispute of civil nature between the private parties and the name of public servants have been included in the list of accused just to create a false jurisdiction of the court of Special Judge Anti-Corruption purposely which is if allowed to continue it may jeopardize the fundamental rights of the persons as guaranteed under the Constitution of Islamic Republic of Pakistan. Such nefarious practice can only be curbed by exercise of jurisdiction under section 561-A Cr.P.C in appropriate cases. The present matter is one of the bad example in which the learned trial court exercised the jurisdiction of the matter although nothing was alleged which could constitute the offence which were applied against the applicants and others innocent persons.”

45. The above discussion and legal positions, leave me with no option but to accept the Cr.M.A.No.365/2014 and 376/2014 and in consequence thereof the FIR No. 22/2014 by Anti-Corruption Department along with all subsequent proceedings thereof stands quashed

46. Since, the order, assailed in Revision application, also is in continuity of in question FIR therefore, the same also stands allowed.

JUDGE