

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.48 of 1994**

Date	Order with Signature of Judge
Present: <b>Mr. Justice Nazar Akbar</b>	
Plaintiff	: National Insurance Company Limited through <u>Mr. Muhammad Arif Khan, Advocate</u>
<b><u>Versus</u></b>	
Defendant No.1	: Pakistan through the Ministry of Defence. Through <u>Mr. Muhammad Nadeem Khan, Assistant Attorney General.</u>
Defendant No.2	: The Director Military Lands & Cantonments.
Defendant No.3	: Karachi Cantonment Board, through <u>Mr. Zeeshan, Advocate, associate of Mr. Manzoor Ahmed, Advocate.</u>
Defendant No.4	: Military Estates Office, Karachi Circle.
Defendant No.5	: Army Welfare Trust, through <u>Mr. Khaliq-uz-Zaman Khan, Advocate.</u>
Date of hearing	: <b><u>06.04.2021</u></b>
Date of Decision	: <b><u>05.07.2021</u></b>

**JUDGMENT**

**NAZAR AKBAR, J.** The Plaintiff on **25.01.1994** has filed this suit against Defendants No.1 to 4 for Permanent Injunction and subsequently amended plaint was filed on **02.06.2017** and Army Welfare Trust was impleaded. This amendment was sought by the plaintiff pursuant to the disclosure of the defendant in evidence that during pendency of suit and status-quo orders subject land has been leased by the defendants to the Army Welfare Trust.

2. Brief facts of the case are that the Plaintiff is a statutory corporation, established under the law and its principal object and main function is to carry on general insurance business, particularly

public assets and properties in Pakistan. Defendant No.1 to 4 in their respective capacities developed a “commercial area” opposite 190 ft. wide road (previously called Korangi Road and now called Abbasi Shaheed Road) into commercial plots and after issuing public notice inviting objections and comments approved a layout plan strictly according to law. There was an undertaking in the said developed site plan that the layout will be in accordance with the said plan and if any change be made, it shall be after public notice inviting and meeting objections, if any, and placing the matter before the site plan approving authority. In the said site plan there was a corner plot bearing survey No.183/4, admeasuring 4011.11 sq. yds., bounded and butted by:

On the North	by vacant land of Aluminum Huts Area measuring 190 ft.
On the South	by vacant land for footpath and thereafter Road, measuring 190 ft. (should read 90 ft).
On the East	by Aluminum Huts, measuring 190 ft
On the West	by Karachi Korangi Road (Abbasi Shaheed Road,) measuring 190 ft.

The said plot had on its front i.e West, the main Abbasi Shaheed Road (190 ft wide) and on the south vacant land for footpath and thereafter 190 ft wide road. According to the site plan it had roads on two sides and it was described as a corner plot. The Plaintiffs wanted to construct a large multi-storey building for their own use as also for investment. Defendants No.1 to 4 in accordance with law and prescribed procedure allotted and then leased out the said plot to the plaintiff on consideration of a sum of Rs.88,24,000/- for a period of 90 years vide indenture of lease (Schedule X Modified), dated **25.6.1980**, registered with the District Registrar, Karachi, Registration No.163 at pp.9-10 on 28.6.1980. The Plaintiff intended

to construct multi-storey building on the said plot, therefore, they submitted building plan of ground plus 17 floors which was approved in accordance with law in **April, 1989**. The main entry of the building is on Abbasi Shaheed Road and two exit gates, one on Abbasi Shaheed Road, while the other gate is on the South Road. The footpath on the Southern Road carries and enters electric cables and telephone cables connections and also gas pipeline into the Plaintiff's premises. In the years 1988 Defendant No.4 attempted to carve out an independent 30 ft wide plot (contiguously adjacent to Plaintiff's plot No.183/4) as plot No.183/10 out of area on the South, which was against all express/ implied planning norms and clearly prejudicial to the Plaintiffs enjoyment and rights. The Plaintiff immediately protested for this unlawful attempt of Defendants No.3 and 4 for the breach of the terms of allotment/lease of the Plaintiff's plot No.183/4. It was further averred that the Defendants had no right to create the said plot No.183/10 on the South Road area and if they had such right, the strip of land falling out due to the said alignment of South Road became excessive land only to be merged/ amalgamated into the Plaintiff's adjoining plot No.183/4, for which express offer was made by the Plaintiff. Therefore, pursuant to plaintiff's objection in 1988 public auction of the plots in the area included upto plot No.183/9 only and the proposed plot No.183/10 was excluded from auction. Therefore, since 1988 there was no activity in the area for creation of plot No.183/10. The Plaintiff believed that due to their objections and protest, the Defendants and other authorities abandoned the creation of the said new strip/plot. It was further averred that the Plaintiff was surprised to find auction notice in daily DAWN dated **21.01.1994** for auction of eleven various plots by Defendant No.4. The Plaintiff secured revised site layout plan

and noticed that the entire southern area i.e footpath on the South Road had been shown as Plot No.183/9 and was shown in the auction notice for sale. This plot has literally closed the South Road entirely. It was further averred that the Defendants had no right or power to create the said disputed plot No.183/9 and convert the corner plot into an ordinary plot, as the Plaintiff had vested rights by virtue of their title documents and layout plan etc. Therefore, the plaintiff had firstly filed the instant suit only for Permanent Injunction against defendants No.1 to 4.

3. Notices of the instant suit were sent to Defendants No.1 to 4 and Defendants No.1, 2 and 4 filed their joint written statements wherein they admitted the claim of the Plaintiff to the extent that Plaintiff purchased plot No.183/4, however, they denied the other claim of the Plaintiff that the provisions of road on the southern side since the Plaintiff's plot was only a proposal which could be changed at any stage. They further contended that Defendant No.1 is the landlord of the said land and has the right to amend the proposed layout plan showing provision of road, footpath etc., on any side of the Plaintiff's plot. Defendant No.1 has provided alternate road on the eastern side of the Plaintiff's plot and if the Plaintiff is interested to merge the disputed land/plot with his plot, then he can purchase the said plot in open auction.

4. On **05.05.1996** from pleadings of the parties, followings issues were framed:-

1. Whether or not the revision of the layout Plan by doing away with the existing 90 ft road and carving out a Plot No.183/9 on Southern Side adjacent to the Plaintiff 's Building will amount to disturbance in the Easementary rights and character of the Plot enjoyed by the Plaintiffs for more than 15 years?

2. Whether the Defendants or any of them at any point of time had objected/ protested to laying down of Electric, telephones and sewerage lines on Southern Side of the Plaintiffs' Building? If not what is the effect?
3. Whether or not the plaintiffs are entitled to the relief claimed?
4. What should the order be?

5. The plaintiff examined their officer namely Ijaz Ahmad Shaikh, who was cross-examined by the learned counsel for the Defendants. Defendants No.1, 2 and 4 examined one Asmat Kamal, Deputy Military Estates Officer, Karchi Circle, who was also cross-examined by learned counsel for the Plaintiff.

6. In the year 2014 after the evidence of defendant the Plaintiff sought amendment in the plaint through an application (**CMA No.17122/2014**). The amendment was sought on the ground that the defendant's witness has disclosed sale of plot No.183/9 to the Army Welfare Trust by the defendant during his evidence. The application was allowed by order dated **24.05.2017** and the Plaintiff on **02.6.2017** filed amended plaint impleading the Army Welfare Trust as defendant No.5 and in the amended plaint sought the following relief(s):-

- a. A permanent injunction prohibiting and restraining the Defendants, jointly and severally together with their officers and sub-ordinates and representatives or person working/acting under or through them, from distributing the 90' wide South Road i.e. the road to the south of Plot No.183/4: Plaintiff's Plot and to direct to keep it open and to create the Plot No.183/9 or any other plot and/or disturb the original status of the 90 ft wide road in the area and not to sell or dispose of or auction the allegedly created said Plot No.183/9 by any means, directly or indirectly or assuming the said Road to be newly created plot;
- b. To grant costs of the suit to Plaintiffs; and
- c. To grant such other/further/additional relief or reliefs that this Hon'ble Court may deem fit, proper or appropriate in the facts and circumstances of the case.

- d. Declare lease deed dated 19.12.2002 as illegal and void ab initio.
- e. Cancellation of Lease Deed dated 19.12.2002 executed in favour of Army Welfare Trust.

Defendant No.5 (the Army Welfare Trust) was duly served with notice/summons and M/s Ali Ahmed Minhas and Ghulam Murtaza LDC appeared on **13.02.2018** and requested for time. Then Mr. Khaliq-uz-Zaman, Advocate filed power on behalf of defendant No.5 and attended the Court on **16.8.2018** and thereafter but neither the defendants No.1 to 4 filed amended written statement nor defendant No.5 filed written statement till the last date of hearing on **05.4.2021**.

7. I have heard learned counsel for the parties and after hearing directed them to file written arguments as well. My findings with reasons on the issues are as follows:-

#### **ISSUE NO.1 & 2**

8. Both these issues are interconnected, therefore, the same are decided together. Learned counsel for the plaintiff has argued that according to the approved site plan (Ex:4) plot No.183/4 was duly transferred to the plaintiff through a registered indenture of lease (Ex:6) and the building plan was also approved by the competent authorities. He referred to the following passage from the indenture of lease:-

“NOW THIS INDENTURE WITNESSETH.....the Lessor doth hereby demise unto the LESSEES ALL THAT plot of land containing by admeasuring 4011 square yards situated at survey No.183/4 in the Cantonment of Karachi which said plot of land is more particularly described in the schedule hereunder written and with the boundaries thereof delineated on the plan annexed to these presents and thereon coloured red TOGETHER with all rights easements and appurtenances whatsoever to

the said plot of land, belonging or in any way appertaining....”

The above passage from indenture of lease shows that the plot No.183/4 was a corner plot. Learned counsel for the plaintiff further contended that the defendants unlawfully attempted to deprive the plaintiff of his rights and tried to convert plaintiff's corner plot into an ordinary plot by creating a plot No.183/9 on the southern side of the plot of plaintiff which is also evident from the revised site plan. He further contended that all this activity was in contravention of the Karachi Building and Town Planning Regulations, 2002. He has further contended that the proposed auction scheduled in terms of the auction notice dated **21.01.1994** published in daily DAWN (Ex:18) has been postponed as is evident from the order dated **27.01.1994** wherein a statement of the Deputy Military Estate Officer has been recorded that the auction in question has already been postponed and new date has not been fixed for the auction. Since then no auction has taken place as no fresh notice has ever appeared in the newspaper, therefore, subsequent transfer of the said lease to defendant No.5 was in violation of Cantonment Act, 1924 and the Cantonment Land Administration Rules, 1937, specifically Rules No.21 to 24 of the said Rules. Learned counsel for the plaintiff has drawn attention to the admissions of the sole witness of defendants in his cross-examination. Relevant cross-examination is reproduced below:-

“I see site plan annexed to Ex:21 and say it is correct that on southern side of the plot No.183/4 there is provision for footpath and thereafter road. It is correct that the site plan was revised in 1988. I see Ex.8 it is a copy of revised plan. It is correct that the said plan provides for roads on three sides of the plot bearing No.183/4. Voluntarily states that this was a proposed lay out plan. I see Ex.4, the site plan of Plot No.183/4 and say that it is correct that according to this plan Plot No.183/4 has roads on two sides. According to site plan the Plot No.183/4 is a

corner plot.....It is correct that the approved plan reveals gates to the west and south of the plot. I am not aware if the utilities as electricity, gas, telephone and sewerage are provided to the building from the southern side. It is correct that according to the proposed for revision of plan Ex:19, the plot in suit is no longer a corner plot.”

Defendant No.5 has not even filed a written statement nor he led any evidence to even remotely claim bonafide in acquiring the leasehold rights in plot No.183/9 on the southern side of the plaintiff's plot. It is also an admitted position that the only auction notice was published on **21.01.1994** (Ex:18) and it was not materialized since the auction has been postponed. Then as pointed out by learned counsel for the plaintiff, requirement auction of Military Estate land as provided in **Rule 21 to 24** of the Cantonment Land Administration Rules, 1937 has never been complied with. For convenience Rule 21 to 24 of the Cantonment Land Administration Rules, 1937 are reproduced below:-

**21. Notice of Auction.—** The Military Estates officer shall then publish a notice, in the form prescribed in Schedule VI stating the date on which, the time and place at which and the conditions under which the lease of the site applied for will be sold.

- (i) A period of at least 14 days should be allowed between the date of publication of the notice of auction and the actual date fixed for the auction.
- (ii) Where a plot of land to be auctioned for lease adjoins railway land or lies near a railway line, a copy of the notice of auction should be sent to the General Manager or the Agent and General Manager of the Railway concerned, according to whether the lien is State owned and State managed or State owned and Company managed, to enable him to consider the question of acquisition of that land for railway purposes, if necessary. A copy should also be sent, simultaneously, to the Divisional Superintendent or the District Officer of the Railway concerned.

**22. Auction.—** On the date and the time and place appointed, the Military Estates officer shall proceed to sell



the lease by auction to the person who agrees to pay the highest amount as premium; provide that in no case shall the lease be sold unless the reserve price fixed under rule 19 has been reached.

- (i) The auction of a lease of land for a building site must be held by the Military Estates officer in person. Each site applied for must be put up to auction separately; and it would be a breach of the rules to divide a valuable site into a number of small plots and put them up to auction together.
- (ii) Bidding at an Auction by a Cantonment Fund Servant. While there is no legal objections to an employee of the Cantonments Department or a Cantonment Fund servant bidding at an auction for the lease of land, such a practice should be discouraged. Where at such an auction the successful bidder is an employee of the cantonments department, the provisions of the Government Servants Conduct Rules must be complied with in so far as they are applicable to the particular employee concerned.

**23. Deposit by successful bidder.**—The successful bidder shall be required to deposit immediately 10 per cent of the amount of his bid and to sign an agreement consenting to forego the deposit in case the balance of the price is not paid within thirty days of the confirmation of the auction.

- (i) After signing the memorandum of agreement is Schedule VI and making a ten per cent deposit, the applicant has an assignable interest. The agreement in Schedule VI held by the lessee should be stamped before it is signed, vide section 17 of the Indian Stamp Act, 1899, but the copy to be held by Government does not require stamping, vide section 3(1) thereof.

**24. Confirmation of Auction.**—The Military Estates officer shall report the result of the auction and forward the proceedings to the Collector for his concurrence. Thereafter the proceedings shall be forwarded to the Officer Commanding-in-Chief, the Command, or to such other authority as the Central Government may appoint for the purpose, for his approval and if the Officer Commanding-in-Chief, the Command, or the appointed authority, approves, the sale shall be deemed to be duly confirmed.

Provided that, if the estimated market value of the site exceeds Rs.10,000, the approval of the Central Government shall also be required before the sale shall be deemed to be duly confirmed.

9. In rebuttal none of the counsel for defendants No.1 to 4 and defendant No.5, in whose favour a lease has been executed by defendants, were able to rebut any of the factual and legal pleas raised by the counsel for the plaintiff. This suit has been pending since 1994 and it has been repeatedly listed for arguments for several times during the last six years, therefore despite the fact that no convincing arguments have been advanced at the bar, learned counsel for the parties were given directions to file written arguments within three days, if any, however, even after more than a month I have been informed that except the plaintiff's counsel nobody has filed written arguments. Even in their written statements defendant No.1 to 4 have not been able to rebut the factual and legal objections raised by the plaintiff against creation of plot No.183/9 on the southern side of the plaintiff's plot. It was not only a creation of plot it has changed approved site plan without observing any legal formality for making any change in the site plan such as inviting objection of public at large or any individual who has acquired the property after satisfying him after going through the duly approved plan. In view of the above discussion, both the issues are answered in affirmative in favour of the plaintiff.

### **ISSUE NO.3**

10. In view of discussion on Issues No.1 and 2 and particularly with reference to the violation of the Cantonment Act, 1924 and the Cantonment Land Administration Rules, 1937 the very creation of plot No.183/9 in the revised layout plan was contrary to the law and therefore, when the very creation of plot No.183/9 was not in accordance with law, its lease cannot be sustained. Not only this even execution of lease deed being contrary to law cannot be held as

lawfully executed lease deed. Therefore, the plaintiff is entitled to the relief of cancellation of lease deed dated **19.12.2002** executed by defendants in favour of defendant No.5.

**ISSUE NO.4**

11. In view of the above discussion, the suit of the plaintiff is decreed as prayed with cost.

JUDGE

Karachi,  
Dated: 05.07.2021

Ayaz Gul