

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 1731 of 2013

Date	Order with signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Fahim Ahmed Siddiqui

For hearing of CMA No.32389/2016 :

13.03.2017 : Mr. Ayaz Ali Chandio, advocate for the petitioner.
Mr. Naeem Ahmed Rana, advocate for respondent No.1.
Mr. Muhammad Anwar Tariq, advocate for respondents 2 & 3.

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NADEEM AKHTAR, J. – Through this application, respondents 2 and 3 have prayed that the order passed by this Court in the present petition on 23.11.2016 be reviewed / rescinded. Relevant portion of the said order dated 23.11.2016 reads as under :

“ Counsel for the petitioner has drawn our attention to the order passed on 16.09.2014, whereby the officers of Cantonment Board and SSP of the area were directed to seal the subject marriage hall. He complains that the said order has not been complied with till date although three weeks’ time was granted to respondents 2 and 3 vide order dated 29.09.2014 for curing the irregularity. He submits that no report has been filed by respondents 2 and 3 in terms of the order dated 29.09.2014 nor have the Cantonment Board and SSP concerned filed their respective compliance reports.

In the above circumstances, respondent No.1 / Cantonment Board Faisal and SSP concerned are once again directed to seal the subject marriage hall immediately and to submit compliance report before this Court on the next date. Counsel for respondent No.1 undertakes to ensure compliance of this order by 03.12.2016. ”.

2. Learned counsel for respondents 2 and 3 contends that the said respondents had filed Suit No.445/2009 (Muhammad Imran Anwar & another V/S Latifi Cooperative Housing Society & others) seeking declaration / conversion of the subject property from residential to commercial and amalgamation of residential Plot Nos.B-59 and B-62, Latifi Cooperative Housing Society, Block-B, Gulistan-e-Jauhar, Block-17, Karachi, which was decreed as prayed. He further contends that Civil Appeal No.336/2010 filed by the above named Society against the said decree was dismissed by the learned appellate Court vide judgment dated 26.09.2012. He submits that in view of the above decree, respondents 2 and 3 are entitled to use the subject plots as commercial / marriage hall and as such the order passed on 23.11.2016 for sealing the marriage hall be reviewed by ordering its de-sealing.

3. Counter affidavit has been filed on behalf of respondent No.1 / Cantonment Board Faisal, which is taken on record. Mr. Naeem Ahmed Rana, learned counsel for respondent No.1 / Cantonment Board Faisal, states that the Society has filed a Civil Revision against the judgment of the appellate Court which is subjudice before this Court. According to him, the decree passed in favour of respondents 2 and 3 has not yet attained finality as there is a possibility that the same may be set aside in the Revision pending before this Court. He submits that in any event the formalities required to be fulfilled by respondents 2 and 3 under the law and as per the prescribed rules and procedure for amalgamation of plots and conversion of the subject property from residential to commercial, have not yet been completed by them. According to him, the status of the property is still residential for all legal intent and purposes, and as such it cannot be allowed to be used for any commercial activity.

4. Exercising his right of rebuttal, learned counsel for respondents 2 and 3 submits that in case the decree is set aside or the requisite formalities are not fulfilled, the subject plots will not be commercialized and amalgamated by the Society and Cantonment Board Faisal, and in such an event respondents 2 and 3 will not be entitled to use the said plots for any commercial purpose, however, till such time respondents 2 and 3 are entitled to use their property for residential purposes and such right cannot be denied to them. It is conceded by learned counsel for respondents 2 and 3 that the requisite formalities for amalgamation of plots and their conversion from residential to commercial have not yet been completed and the status thereof is that of residential at present. He further concedes that the present structure of marriage hall standing on the subject land cannot be used for residential purposes.

5. Record shows that the order for sealing the marriage hall was passed on 16.09.2014, whereafter respondent No.2 appeared before this Court on 29.09.2014 when three (03) weeks' time was granted to respondents 2 and 3 at their request for curing the irregularity. Relevant portion of the order passed on 29.09.2014 reads as under :

“ Cantonment Officer and SSP East present in Court state that they intend to seal the subject property today. On the other hand, counsel for the respondents Nos.2 and 3 submits that the respondents Nos. 2 and 3 are ready and willing to deposit conversion charges with the Cantonment Board in terms of demand, however, the Society is yet to execute the lease in favour of respondent No.3 and once the lease is executed in favour of respondent Nos.2 and 3 then their case for conversion could be processed. Respondent No.2 present in person also states that he would apply for lease in a day or two and once the lease is granted then he would apply to the Cantonment Board for conversion of the status of the plot. As regards sealing of marriage lawn, counsel says that number of

marriage lawns exist in the same line, therefore, the violation if any is curable and for that propose three weeks' time be granted.

In the interest of justice we grant three weeks' time to the respondents Nos.2 and 3 for curing the irregularity.....”

6. On 23.11.2016, when it was brought to the notice of the Court that Cantonment Board and SSP concerned have not complied with the above mentioned order dated 16.09.2014 for sealing the marriage hall despite passage of three (03) weeks' time granted on 29.09.2014 to respondents 2 and 3 for curing the irregularity, Cantonment Board and SSP concerned were once again directed to seal the marriage hall. Thus, on 23.11.2016 an order was passed only for implementation of the order passed earlier for sealing the marriage hall. It may be noted that the actual order for sealing the marriage hall was passed on 16.09.2014 against which no appeal was filed by respondents 2 and 3, and review thereof has not been prayed for in the present review application. In any event, the application does not meet the requirement contemplated in Rule 1 of Order XLVII CPC and is beyond the scope of the said Rule as no mistake or error apparent on the face of the record, or in the order under review, has been pointed out. In our humble opinion, this application is not maintainable in view of the above.

7. It is an admitted position that the present status of the land in question is that of residential, and the present structure of marriage hall standing thereon cannot be used for residential purposes. In this view of the matter, contention of the learned counsel for respondents 2 and 3 that the said respondents may be allowed to use the subject land / premises for residential purposes, is untenable.

8. In view of the above discussion, the application is dismissed with no order as to costs.

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