

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
HCA No.176 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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Hearing of case

For hearing of main case

28.06.2021

Mr. Salim Salam Ansari, advocate for the Appellant

Mr. Asif Arshad, advocate for DHA

Mr. Fahim Ahmed, Deputy Nazir of this Court.

Though this Appeal, the Appellant has impugned order dated 24.08.2020, whereby, the application bearing CMA No.6049 of 2020, filed by the Appellant was dismissed.

Learned counsel for the Appellant submits that the application in question was filed on the ground that after purchase of the property in auction through Nazir of this Court, though sale deed and mutation has been effected; but insofar as Car Garage is concerned, the office of the Nazir had failed to act upon the letter issued by DHA on 16.07.2020. Learned counsel submits that though the Car Garage was not part of the original sale deed of the judgment debtor; but was admittedly allotted to the judgment debtor and was always a part and parcel of the auctioned property, whereas, its possession has never been disputed by anyone including DHA. Notices were also issued to DHA and the office of the Nazir and today learned counsel for DHA submits that DHA has no objection, if the Nazir executes the sale deed and mutation in respect of the Car Garage, which in the vicinity (Darakshan Villas) of the auctioned property is always treated as part of the property. Mr. Faheem Ahmed, Deputy Nazir of this Court is also in attendance and submits that Court may pass appropriate orders.

We have heard both the learned counsel as well as Deputy Nazir and perused the record. It is not in dispute that insofar as the Car Garage is concerned, it was though not part of the sale deed of the judgment debtor; which fact has also prevailed upon the learned Single in dismissal of the application as above; however, allotment letter dated 25.04.1988 was issued by the DHA, whereby, Garage No.15/1 was allotted against the property in question i.e. C-68, Darakshan Villas, Beach Avenue, Phase-VI, DHA, Karachi. Thereafter, on 06.02.1991 once again the Administrator DHA passed an order in respect of the said area of Garage.

Since the Garage was allotted by DHA, whereas, DHA has no claim or objection nor any third party has challenged the ownership of the Garage, therefore, we are of the view that merely for the fact that it was not part of the sale deed of the judgment debtor, the Appellant who has purchased the property from Court auction must not be non-suited on technical grounds. If anyone else including DHA had any reservations, then perhaps the matter could have been dealt with accordingly. Since none has objected, whereas, the Garage has always been in the ownership and possession of the original owner / allottee and now with the Appellant, we do not see as to how the Appellant can be deprived of the claim on the Garage. In our view this Appeal merits consideration and accordingly the same is allowed. The order impugned to the extent of dismissal of CMA No.6049 of 2020 is *set-aside*. Nazir's office is directed to act accordingly and execute sale deed and or mutation in collaboration with DHA of the Garage in question.

Appeal stands allowed in the above terms.

JUDGE

JUDGE

Qurban/PA*