

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 2260 of 2017

Date	Order with signature of Judge
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- 1- For orders on maintainability of the suit vide order dated 16.11.2021
- 2- For orders on CMA No. 1907 of 2020
- 3- For non-prosecution of CMA No. 12835 of 2020
- 4- For non-prosecution against defendant No. 07
- 5- For exparte order against defendant No. 1,2,5& 6
For hearing of CMA Nos:-
- 6- 16527/2020.
- 7- 8683/2018.
- 8- 1418/2017.
- 9- 16240/2017.

Dates of hearings: 16.11.2021, 25.11.2021, 02.12.2021 & 10.12.2021

Date of decision: 14/03/2022

Malik Altaf Hussain, advocate for the plaintiff along with Moin Khan and Mehal, advocates

M/s Zia-ul-Haq Makhdoom and Muhammad Azhar Mahmood, advocates for Interveners

M/s. Abdul Jabbar Lakho and Muhammad Atiq Qureshi, advocates for applicant/interveners

Mr. Alay Maqbool Rizvi, Addl. A.G. Sindh.

Mr. Tauqeer Ahmed Seehar, advocate for KMC.

Salahuddin Panhwar, J.- Since the issues involved in all these matters are relating to one and same subject matter, therefore, same are being decided through this common judgment.

2. The relevant facts of the disposal of instant suit are that the Plaintiff claims that he is the owner and otherwise well and sufficiently entitled to all that piece and parcel of plot of land measuring 4+4 = 8 acres equivalent to 38,720 sq. yds in Sector No.24-A, Scheme 33, District Malir, Karachi having acquired the same from one Ghulam Akbar Gabol S/o (Late) Ghulam Mustafa Gabol and Ghulam Abbas Gabol, S/o (Late) Ghulam Mustafa Gabol respectively, hereinafter referred to as the suit property. The plaintiff acquired the suit property by way of two irrevocable General Power of Attorneys dated 23-08-1997

and 25-08-1997 respectively hereinafter referred to collectively as 'General Power of Attorneys' against sale consideration; that the plaintiff have further got the suit properties mutated in his name in the record of rights with the defendant No.3; that in the intervening period the suit property somehow or the other became the subject matter of Ehtesab Reference No.5 of 1997 and both the sellers of the Suit property were also implicated as accused in the aforementioned reference. Eventually, the said reference was disposed off by the Ehtesab bench of this Court by its judgment dated 10/09/1997, however prior to the judgment, the sellers along with other beneficiaries were dropped from the proceedings under the plea bargaining provision of NAB law, as they paid through by borrowing funds from the plaintiff to the NAB authority in respect of the estimated loss sustained by the public exchequer. The same fact is also mentioned in the aforesaid judgment. Since the sellers were short of funds and upon their request the plaintiff through his manager namely Saleem Akhtar provided the sellers sufficient funds to pay off the estimated loss to the NAB (National Accountability Bureau) authority; that while the plaintiff was preoccupied in other business activities, on or around 25/09/2005 much to the plaintiff's shock and dismay, he came to know about publication of a public notice in daily 'Jung' in its issue of 4/07/2005 got published by defendant no.9, whereby purportedly the said defendant had allegedly revoked the said general power of attorney in favor of the plaintiff. It is submitted that the said general power of attorney being inherently irrevocable in nature could not have been revoked in this manner, all the more by merely publishing a public notice; that recently the plaintiff came across a summary dated 12-01-2017 whereby the Defendant No. 5 had moved to the Chief Minister Sindh for establishing a park under the name of Shaheed Benazir Bhutto Family Park on the suit property; that furthermore when the plaintiff visited the suit property on 21-10-2017 it was then revealed to him that the defendants in connivance with each other had also constructed/installed a sign board with the title reading 'Shaheed Benazir Bhutto Family Park' at the Suit property perhaps on 23-09-2017. Further he has prayed that:

- A. Declare that the defendants have no authority to acquire the suit property for establishment of family park by way of moving summary dated 12-01-2017 and further installation of sign board dated 23-09-2017 which is liable to be removed, such acts on the part of defendants are unlawful and illegal.
- B. Permanently restrain the defendants, their agents, servants and/or any other person/s claiming through or under them from creating any third party interest by alienating or establishing and/or carrying on any sort of construction/erection/establishment of a family park on the suit property in any manner whatsoever and/or from acting in any manner that would be adverse and/or detrimental towards the plaintiff's rights and interests in the suit property.
- C. Permanent and mandatory injunction against the defendants, their agents, servants, and/or any other person/s claiming through or under them from taking any steps pursuant to the purported summary dated 12-01-2017 in respect of the suit property in any manner whatsoever which may adversely affect the right and interests of the plaintiff in the suit property.
- D. Cost of the suit.
- E. Any other relief which this Honorable Court deems fit and circumstances of the case.

3. Notices were issued to the defendants and the main contesting party i.e. Board of Revenue, filed written statement wherein, it is submitted that piece of state land measuring 08-00 situated in between Government Girls Degree College Shahnawaz Shar Goth and Gulzar-e-Erum Duplex Housing Scheme, in sector 24-A, Scheme-33, Gulzar-e-Hijri East Karachi had never been proposed and /or allotted in favour of Ghulam Abbas Gabol and Ghulam Akbar Gabol from whom the plaintiff has alleged to have purchased the said land through Power of Attorney, but the fact is that the said land was specifically proposed and demarcated for the construction of Shaheed Benazir Bhutto Family Park duly approved by Chief Minister Sindh hence expenditure/funds to the tune of Rs.90 Million were allocated in ADP 2017-2018. It is further stated that plaintiff tried three times to get mutation of the land in record of rights by pursuing the concerned officers but all three entries bearing No.155 & 156 dated 08/06/2017, 164 & 165 dated 20/09/2017 and 169& 170 dated 30/09/2017 have been cancelled in the relevant record of rights on the

premise that the plaintiff had not presented the verified Allotment Orders, Challan, proposed site Sketch of the land.

4. On 16.11.2021 this Court passed order, which is that:-

“Partly heard learned counsel for plaintiff. He has referred page 55 with regard to proposed summary to chief minister Sindh to establish a park on the subject matter land whereas plaintiff is claiming ownership through one Ghulam Abbas Gabol whereas summary states that Muhammad Ilyas Gabol has approached for park and road leading to the Girls' Degree College. Document at page 39 reflects that original owner, whereas plaintiff has not joined him as plaintiff or defendant.

Accordingly, learned counsel for plaintiff is put on notice to satisfy the maintainability of this suit whereas learned A.G. Sindh shall place on record recent status of summary as prepared to establish the Park and to construct road leading towards the college. Further, page 97 reflects funds allocated for the construction of 100' wide road and Shaheed Benazir Bhutto family park KDA scheme No.33, Gulzar e Hijri, Karachi. Reference can be made to order dated 22.09.2021 passed by Supreme Court of Pakistan in the case of *Naimatullah Khan advocate vs. Federation of Pakistan, etc.* (CP No.9/2010) and other connected cases.

Besides, Mr. Zia-ul-Haq Makhdoom contends that he has filed suit No.1598/2013 which is pending before this court. Office shall fix the same alongwith present suit. Under these circumstances, interim order is recalled and mater is fixed for hearing on maintainability of suit.”

5. Learned counsel for the plaintiff has contended that plaintiff is claiming ownership of subject matter property on the basis of a General Power of Attorney executed by Ghulam Akbar Gabol s/o Ghulam Mustafa Gabol; that the land in question was leased out in favour of Ghulam Abbas Gabol and from Ghulam Abbas Gabol, the plaintiff has purchased the land through a power of Attorney for valuable consideration paid, hence he acquired a right to property.

6. Learned A.A.G has contended that the land in question is a state Land and according to law an amenity cannot be changed or altered; that the land in question had never been proposed and/ or sold out to anyone

and in the record of rights it is still State land on which Girls College, Park and Graveyards are to be constructed.

7. Heard and perused the record.

8. The plaintiff is claiming owner of subject matter property on the basis of a General Power of Attorney executed by Ghulam Akbar Gabol s/o Ghulam Mustafa Gabol, whereas, Power of Attorney available at page No.13 reflects that same was executed by Ghulam Abbas Gabol in the year 1997. Besides, Revenue record reflects that subject matter property was state land and same was leased on 05.08.2016 in favour of Ghulam Abbas Gabol through attorney Muhammad Hassan Keerio (Plaintiff). It is strange that under what circumstances subject matter property was mutated in the name of Ghulam Abbas Gabol through attorney (plaintiff) whereas, plaintiff is claiming that he is owner through power of attorney of the land when admittedly that land was not owned by Ghulam Abbas Gabol who executed the General Power of Attorney in 1997 when the documents annexed by the plaintiff shows that land was transferred/leased out in the year of 2016 in favour of Ghulam Abbas Gabol through attorney Muhammad Hassan Keerio (Plaintiff). Furthermore it has come on record that subject matter property is a public park and state land plaintiff has no concern with that land as well as plaintiff's claim is that he acquired the land from one Ghulam Akbar Gabol though Ghulam Akbar Gabol was not owner of the subject matter property as well no mutation was effected in favour of Ghulam Akbar Gabol on any event.

9. At this juncture, it would be conducive to reproduce the order of apex Court dated 26.11.2021 passed in Const. Petition No. 9 of 2010 in CMA No. 522-K of 2020 produced by learned AAG Sindh, being relevant paragraph No. 3 of that order is that:

"3. It seems that two plots were specifically meant for amenity purpose, i.e., for use of school and public park but incidentally, the office bearers of Karachi Cooperative Housing Societies Union Limited have not only mismanaged the amenity plots but have tried to crate interests of individual persons through a fictitious Al-Riaz Cooperative Society. Apparently, in the master plan, a copy of which has been filed in CMA No. 773 of 2021, these two plots are shown to be as amenity plots. Plot No. SNP A-23 is specifically

shown as public park, a part of which at one corner is meant for Jinnah School and at the other corner, there is a Modern Club. Plot No. SNP A-21-B is shown as open amenity plot. This very original Layout Plan appears to be tampered with by the Karachi Cooperative Housing Societies Union Limited and such tampering by the Union, is illegal, for that, a Layout Plan once prepared, in which amenities are provided, such amenities cannot be removed or altered/converted into private buildings or used for commercial purpose, in that, the members of the society have acquired vested rights in the amenities, which are provided in the society and those cannot be taken away or allotted by the union for any purposes other than those shown in the original master plan. “

10. Perusal of above reflects that apex Court has directed that all plots reserved for amenity purpose shall be reiterated back and province of Sindh is required to execute the same.

11. In view of above discussion, it is categorical that plaintiff has failed to establish that he has a legal character over the subject matter property and in the records the said land is State Land reserved for Girls College, Graveyard and Family Park and under the law status of an amenity land cannot be changed or altered. The Plaintiff is seeking “*negative declaration*” to the extent that “*the Defendants have no authority to acquire the suit property for establishment of family park*”. Such kind of negative declaration falls beyond the scope of Section 42, of the Specific Relief Act, 1877, which has nothing to do with the legal character of the Plaintiff, or to any right of the Plaintiff as to the Suit Property. Thus, the Suit of the Plaintiff is barred under Section 42, of the Specific Relief Act, 1877. Hence, plaint in the instant suit is rejected. Accordingly, suit is disposed of along with listed applications.

J U D G E

SAJID