

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 1598 of 2013
Suit No. 888 of 2014 a/w J.M.No.13 of 2019

Date	Order with signature of Judge
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Dates of hearings: 16.11.2021, 25.11.2021, 02.12.2021 &
10.12.2021

Date of decision: 14/03/2022

M/s Zia-ul-Haq Makhdoom and Muhammad Azhar Mahmood, advocates for he Plaintiff(s) in Suits No.1598 of 2013 and 888 of 2014
Mr. Abdullah Nizamani, advocate for the respondents No. 1 to 3 (in J.M. No. 13 of 2019)
M/s. Abdul Jabbar Lakho and Muhammad Atiq Qureshi, advocates for applicant/interveners (in Suit No. 1598 of 2013, Suit No. 888 of 2014) and for the applicant (in J.M. No. 13 of 2019)
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. In Suit No. 1598 of 2013, the relevant facts are that one Mst. Kalsoom filed C.P.No.D-2325/2010, for quashing of the FIRs registered against her husband as well as for saving land from encroachment already reserved for Graveyard, Girls College and Park. It is further submitted that vide order dated 29.09.2010, this Court attached the entire village with directions to stop further construction and deployed police force in order to avoid further encroachment. The Nazir was also appointed to inspect the site. Such order was assailed before Honourable Supreme Court and vide order dated 07.03.2011, the Honourable Supreme Court remanded back the matter to this Court to hear afresh after hearing learned counsel for the parties. On remand, this Court vide order dated 14.04.2011 disposed of the petition on the statement of petitioner while

directing the EDO Revenue to demarcate the land for the purpose of Girls College, Public Park and graveyard and to ensure that said land is used for such amenities. Plaintiffs filed an application under Section 12(2) CPC in the said petition, which was heard by Division Bench of this Court and disposed of the same inter-alia, while directing Secretary Land utilization Department to consider the case of village of the plaintiffs and if law permits its regularization, pass appropriate orders in accordance with law and rules. Thereafter, the case of the plaintiffs was proceeded and ultimately Chief Minister Sindh approved the summary moved for regularization of the village. However, according to the plaintiffs, defendants No.1 to 4 started raising construction over the land, hence the plaintiffs have filed Suit for the following reliefs:

- a) Declare that the Plaintiffs No. 2 to 80 and other villagers who are members of the plaintiff No.1 are owners/ lessees of their respective plots in Shaheed Shah Inayat Village measuring 20-00 acres piece of land of Shaheed Shah Inayat Village situated in Na-Class No.1, Scheme No.33, Deh Songal, Sector 24-A for 99 years.
- b) Declare that any encroachment on the land of Shaheed Shah Inayat Village by the Defendants No.1 to 4 and anybody else claiming through and under them is illegal and without lawful authority.
- c) Direct the Defendants No.5 to 8 to carryout demarcation of the Village Shaheed Shah Inayat and demolish/ remove the encroachment made on the Plaintiffs land. The Defendants No.5 to 8 may also be directed to handover possession of the encroached land of the Shaheed Shah Inayat Village to the Plaintiffs.
- d) Direct the Defendants No.1 to 4 to deliver up the documents, if any, in their favour, executed by the Defendants No. 5 to 7 in respect of 20-00 acres of piece of land of Shaheed Shah Inayat Village in this Honourable Court and same may be cancelled.
- e) Restrain the Defendant No.1 to 8 and any other person claiming through and under them to interfere in the Village of Shaheed Shah Inayat and to encroach upon it in any manners whatsoever.
- f) Any other relief/ reliefs, this Honourable Court may deem fit and proper under the circumstances of the case.

3. Suit No.888 of 2014 is also filed by Shaheed Shah Inayat Village Residents Welfare Association and two other residents of the village, wherein it is alleged that defendants No.1 and 2 encroached upon the land of the plaintiffs No.2 and 3 in contravention of order dated 02.11.2011 passed in C.P.No.D-2325/2010, in compliance thereof, the Chief Minister Sindh approved the summary regarding regularization of Village Shaheed Shah Inayat, measuring 20-00 acres, forwarded by Secretary, Land Utilization Department. Letter was issued to DC Malir informing about regularization of the village; demarcation plan was also prepared by Survey Superintendent Karachi and graveyard, Girls college, Mosque, Imam Bargah and public park were approved. However, it is averred that defendants No.1 and 2 occupied the land more than the land approved for Girls college. Against which the plaintiff No.1 filed C.P.No.D-446/2012 before this Court, wherein Nazir was appointed to carry out inspection. However, petition was disposed of with directions to seek remedy before Civil Court, hence plaintiffs filed instant suit with following prayers:

- a. **Declare that the plaintiff No.2 & 3 and other villages are owner of 2-10 acres piece of land of Shaheed Shah Inayat Village** situated in Na Class No.01, Scheme No.33, Deh Songal, Sector 24-A, Karachi and the same is illegal encroached upon the defendants No.1 & 2.
- b. Declare that an area of 1 acres 30 Ghuntas land as per annexure "M" to the plaint is allotted for construction of Girls College.
- c. Declare that the possession by the defendant No.1 & 2 in excess an area of more than 1 acre 30 Ghuntas is illegal and unlawful.
- d. Direct the defendant No.1 & 2 to handover peaceful possession of excess area of 2 Acre 10 Ghunas approximately of the land in Shaheed Shah Inayat Village as denoted in Green Colour in Annexure "M" to the plaint to the plaintiffs for onward possession to the villagers.
- e. Permanently restrain the Defendant No.1 & 2 from raising any construction on an area in excess of 1 acre 30 Ghuntas which is 2 acre 10 Ghuntas and colored in Green on Annexure M.
- f. Any other relief(s) which this Hon'ble Court deems fit and proper under the law.
- g. Grant cost of the suit.

4. In J.MNo.13/2019, applicant, who is Government Contractor has prayed that order dated 26.06.2018 passed in Suit No.888/2014 whereby, further construction was stopped may be set aside as it was obtained by fraud.

5. Notices were issued to the defendants. Board of Revenue, filed written statements in the captioned matters wherein it is claimed that the order dated 02.11.2011 passed on the application under Section 12(2) CPC filed by the Village Association and the villagers in C.P.No.D-2325/2010 was wrongly interpreted and the village was regularized by the Government of Sindh under statements of conditions 2008. However, when the construction of Girls College started by the concerned Department, the petitioner/ Association of the village, preferred C.P.No.D-446/2012, which was disposed of while observing that petitioner has no locus standi, as such, the village Association and two affectees filed captioned Suit. However, Board of Revenue made an application to the Chief Minister for holding inquiry into the regularization of the said land as it was clarified by this Court in C.P.No.D-446/2012, that the Court did not order for regularization of the village but specifically ordered that "if law permits". Therefore, the Board of Revenue moved an application for conducting inquiry into the regularization of the Village in question. The Chief Minister entrusted inquiry to CMIT, who after calling reports from the concerned Departments observed that Sindh Katchi Abadis Karachi vide letter dated 06.03.2012 confirmed that Shaheed Shah Inayat Village was not available/included in their Master List of villages and no regularization process was being undertaken. However, SUPARCO provided year-wise satellite images of the land wherein it was confirmed that encroachment on the land was started after 2010. Whereafter, Chief Minister Sindh, while endorsing the recommendations of CMIT issued directives for cancellation of regularization of the village. It is further submitted that Association obtained regularization of the village by fraud and on the basis of forged documents of Sindh Katchi Abadies Authority. It is further submitted that the land which is being claimed by the Association of the Village and its residents is purely an amenity land which includes Family Park, Girls College and Graveyard etc. hence the

status of the land cannot be converted under the law. Hence, it is prayed that suits may be dismissed with costs.

6. On 16.11.2021 this Court directed the counsel for the parties to address on the point of maintainability as under:

“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 along with present suit. Under these circumstances, interim order is recalled and mater is fixed for hearing on maintainability of suit.”

7. Mr. Zia-ul-Haq Makhdoom learned counsel for the plaintiffs while addressing on the point of maintainability contended that the village was regularized by the competent Authority i.e. Chief Minister Sindh after completing all the formalities wherein amenities were also approved, but the defendants started raising constructed over and above the land reserved for Girls College and when the villagers resisted and filed suit before this Court, the defendants in order to deprive the plaintiffs from their lands, floated a summary to the Chief Minister and succeeded in getting cancellation of the registration of the village without following procedure as enunciated under the law. It is further contended that cancellation of registration of the village is illegal and unlawful which was undertaken after due process, hence prayed

that plaintiffs/villagers may be declared as lawful owners of the said land and the defendants may be restrained from raising construction over and above the land reserved for Girls College.

8. Learned A.A.G has contended that the land in question is a state Land and under the law an amenity cannot be changed or altered; that in the record of rights, the subject land is still State land on which Girls College, Park and Graveyards are to be constructed.

9. Heard and perused the record.

10. Record reflects that Village was regularized by the Chief Minister Sindh on the summary floated by the Board of Revenue on the basis of orders passed by this Court while deciding an application under Section 12(2) CPC filed by the Villagers in C.P.No.D-2325/2010. However, later on, this Court clarified that said directions were subject to condition that "if law permits". An application was moved by the Board of Revenue to the Chief Minister Sindh, who ordered for inquiry and in inquiry it was concluded that regularization of the village was obtained by fraud and on the fictitious documents, hence the same was cancelled. In the records it has been categorically mentioned as Amenity Land. It is held in several authoritative pronouncements of the Honourable Supreme Court that amenity plots/lands cannot be altered/converted into private and /or commercial use.

11. 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.”

12. 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.

13. In view of above discussion, it is categorical that plaintiffs have failed to establish that they acquired any vested right in the subject land as the registration of the village has been cancelled by the competent Authority 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 Plaintiffs are seeking their ownership in the state land without having their legal character. Thus, the Suits are barred under Section 42, of the Specific Relief Act, 1877. Hence, present plaints are rejected. Consequently, J.M has become infructuous Accordingly, suits and J.M are **disposed of**.

J U D G E

SAJID

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