

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Irfan Saadat Khan, J.
Mr. Justice Zafar Ahmed Rajput, J.

C.P. No. D-3756 of 2013.

Petitioners: Abdul Rasheed & others, through Mr. Shamshad Ali Qureshi, Advocate.

Respondent: C.D.G.K., through Mr. Syed Sultan Ahmed, Advocate
No.1.

Respondents: Nemo
No.2 to 5:

Date of Hearing: 07.09.2015

Date of Judgment: 14.09.2015

JUDGMENT

Zafar Ahmed Rajput, J:- Through instant petition, the petitioners seek following reliefs:-

- a) *To direct the official respondents to handover the physical possession of 27 plots to the petitioners as per their approved part-plan on 20.03.2007 bearing Drawing No. K-992 dated 20.03.2007 for 27-plots of petitioners and duly approved with the consultation of all concerned officials, 1) Project Director, LARP, 2) District Officer (E&E) C.D.G.K, 3) Add. District Officer (AEC/S)-I CDGK, 4) DDO MPGO, thereafter another part-plan of Section 51-K for alternate plots through letter No. ADO/KD-I/WES/CDGK/2009/34 dated 14.11.2009, duly approved by EDO (MPGO) vide diary No. 4778/K-I under drawing No. K-1021, and same was duly verified and confirmed by the Additional Dist: Works and Services to the Nazir of this Hon'ble Court that 27 plots of petitioners has under consideration and with the pocket of respondents, same may be deliver up to the petitioners.*
- b) *To declare that, the cancellation of both part-plans mentioned in prayer clause (A) is ultra-virus, illegal and without lawful manner and same are liable to be restored from one of them or in the alternate handover physical possession Along with all necessary documents of 27 plots to petitioners immediately as per Survey sketch duly approved through letter No. ADO/KD.I/L.MAT/CDGK. 2010/619, dated 23.09.2010.*

- c) *To declare that the respondents did not obey the passed order from this Hon'ble Court as per direction given in C.P. No. 1435/03 through orders of different dates and have failed to perform their duties as per direction given by this Hon'ble Court while this Hon'ble Court clearly direct to the petitioners for appearance before the concerned official of respondents and thereafter, respondents issued allotment orders for 27 plots in favour of petitioners.*
- d) *To initiate contempt proceedings against the respondents in the light of passed order in C.P. No. 1435/03 by way calling them, who miserably failed to perform their duties.*
- e) *To restrain the respondents not to handover the possession of the 27 plots of petitioners as per approved part-plan mentioned in prayer clause A to any one by themselves, through their agents, sub-ordinates and/or through any other agency by granting injunction order till the disposal of the petition.*

2. The learned counsel for the petitioners has contended that the petitioners were the residents of the Lines Area/Jacob Lines and in 1992 the CDGK commenced Lines Area Re-development Project whereunder the persons who were in possession of houses/quarters etc. were issued Shifting Slips for allotment of plots in different KDA schemes; as such, the petitioners were issued Shifting Slips and they were allotted 27 plots of 60 Sq. Yards each in Sector 51-K, Korangi Township, KDA, Karachi; however, when the petitioners went to their allotted plots, the same were already occupied by some unknown persons. Thereafter the petitioners approached from pillar to post, for their resettlement but in vain; hence, they were compelled to file C.P. No. D-1435/2003 before this Court which was disposed of vide order dated 01.09.2004 with directions to the respondents that in case the petitioners appear alongwith their Shifting Slips, their entitlement would be considered by the concerned officials in accordance with law and matter will be decided within three months' time. The learned counsel has further contended that the petitioners; thereafter; approached the concerned authority/respondent for redressal of their grievances and on their refusal they filed various contempt applications in C.P. No. D-1435/2003, and finally the same

were dismissed on 09.09.2013, being not maintainable, leaving the petitioners at liberty to seek remedy available to them in accordance with law; thereafter, the petitioners have again maintained the instant petition on the ground that the respondents have failed to perform their statutory duties to accommodate the petitioners properly on the plots allotted to them in Sector 51-K, Korangi Township, KDA, Karachi.

3. On the other hand, the learned counsel for respondent No.1 has vehemently opposed this petition. He has contended that in compliance of order dated 21.05.2009, passed by this Court in C.P. No. D-1435/2003, the petitioners appeared before EDO Master plan and submitted their Shifting Slips and NICs which were considered and found to be fake, fictitious and fabricated, due to which their claims were rejected.

4. We have heard the learned counsel for the parties at length and have perused the material available on record.

5. It is an admitted position that prior to this petition the petitioners had maintained C.P. No. D-1435/2003, which was disposed of with the following directions:-

“We dispose of this petition in terms that in case the petitioners appear before the respondent, alongwith their original shifting slips, their entitlement will be considered by the concerned officials in accordance with law and matter will be decided within three months’ time.”

Thereafter, in compliance of the said order the petitioners produced their documents i.e. Shifting Slips and NICs which were examined by the respondents and the claim of the petitioners was rejected as the same were found by the respondents to be fake and fabricated; as such, contempt applications filed by the petitioners in C.P. No. D-1435/2003 were also dismissed by this Court holding the same to be not maintainable, leaving the petitioners to seek their remedy from competent Court of law.

6. It may be observed that the very claim of the petitioners with regard to their entitlement for the possession of substitute plots in Sector 51-K, Korangi Township, KDA, Karachi was based on Shifting Slips allegedly issued by the Assistant Director (Shifting), Directorate Estate & Enforcement, KDA, which is disputed as their Shifting Slips were found to be fake and fictitious by the respondent No.1. The Constitutional jurisdiction of this Court under Article 199 of the Constitution is an extra-ordinary jurisdiction, which can be exercised in such cases where the petitioners can show unquestionable title in the property. Possessory relief cannot be granted by way of mandamus when the title of the petitioner is open to inquiry. This Court cannot decide the factual controversies under its Constitutional jurisdiction asking the parties to lead evidence in support of their claims as it is the sole function of a court of plenary jurisdiction.

7. For the fore going facts and reasons, we dismiss this petition being devoid of merit, with no order as to costs. The petitioners, however, can approach the proper forum for redressal of their grievances in accordance with law, if so advised.

JUDGE

JUDGE