

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1131/2013
ALONGWITH SUIT NOS.1048/2013, 1762/2014 & 720/2014

Date

Order with signature of Judge

13.12.2021

Mr. Abdur-Rehman advocate for plaintiff in Suit No.1131/2013
Khawaja Shamsul Islam advocate for plaintiff in Suit No.1048/2013.
Mr. Usman Shaikh advocate for defendants No.3 to 57.
M/s. Masood Ali and Mehmood Khan Yousufi advocates for KDA.
M/s. Kamran Abdullah and Naheed Akhtar advocates for KMC.
Mr. Shaharyar Qazi, Additional A.G.

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SALAHUDDIN PANHWAR, J. By the dint of this order I intend to dispose of application under order VII rule 11 CPC (CMA No.19194/2021).

2. Prayer clause of the suit is that :-

“DECLARE

(i) That the Defendant No.1 having already allotted the land comprising of Plot No. ST-18/1, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards in favour of the Plaintiffs Predecessor in interest is restrained from further allotting the land to any other person.

(ii) That the Defendant No.1 having already allotted the land comprising of Plot No. ST-18/2, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards in favour of the Plaintiffs Predecessor in interest is restrained from further allotting the land to any other person.

(iii) That the Defendant No.3 is not the owner of Plot No. ST-18/1, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards and Plot No. ST-18/2, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards.

(iv) That the defendants No.4 to 57 are not the owners of the Plot No. ST-18/1, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards and Plot No. ST-18/2, Block 16, Karachi

Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards.

RESTRAIN

(i) That the Defendant No. 1 from allotting the land comprising of Plot No. ST-18/1, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards in favour of the Plaintiffs Predecessor in interest to any other person.

(ii) That the Defendant No.1 from allotting the land comprising of Plot No. ST-18/2, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi admeasuring 4840 square yards in favour of the Plaintiffs Predecessor in interest to any other person.

CANCEL

(i) All allotments and documents made by the Defendant No.1 in favour of the Defendant No. 2 in respect of Plot No. ST18/A, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi.

(ii) All allotments and documents made by the Province of Sindh in favour of Defendant No. 3 to 57 in respect of the Plot No. ST-18/1, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi and/or Plot No. ST-18/2, Block 16, Karachi Development Authority, Scheme 36, Gulistan-e-Jauhar, Karachi.

GRANT

(i) Costs.

(ii) Any other relief that this Honourable Court deems fit in the facts and circumstances”

3. Case of the plaintiff is that he received property by private persons thereafter pre-lease was issued in his favour. Whereas KDA alleged that the property is of defendant No.1. Defendants No.3 to 57 claiming title of this land through Board of Revenue and their claim is that the property is not pertaining to KDA, therefore plaint is liable to be rejected.

4. Learned counsel by referring written statement of KMC as well 2019 SCMR 974, 1997 MLD 173 and 2005 SCMR 1969 contends that the plaint is barred under the law.

5. In contra, learned counsel for defendant No.1 contends that land was properly allotted to the defendant and he is in possession, documents pertaining to Mukhtiarkar cannot be relied upon as claim was disputed by the KDA, hence KDA was only the custodian of record of rights.

6. Learned counsel for plaintiff contends that pre-lease is in his favour and matter pertains to KDA, written statements are on record.

7. It is pertinent to mention that while hearing application under order VII rule 11 CPC, plaint is to be deemed as true and correct, however admitted documents can be examined, whereas disputed documents cannot be relied upon. This *lis* is pending since 2013, written statement has come on record, hence veracity of the documents is to be decided, hence matter shall be decided on merits. Accordingly, application under order VII rule 11 CPC is dismissed.

8. CMA No.11713/2021: Learned counsel for KMC contends that they have no concern and matter pertains to KDA. Accordingly same is allowed. Amended title shall be filed.

Office to place copy of this order in connected suits.

J U D G E