

## **IN THE HIGH COURT OF SINDH AT KARACHI**

**SUIT NO.2110/2015**

Plaintiff : Messers Associated Builders (Pvt) Limited.

Defendants : Province of Sindh and two others,

Date of hearing and order : 06.12.2021.

### **APPEARANCE:**

Mr. Umair Bachani advocate for plaintiff.

Mr. Akhtar Ali advocate for Board of Revenue.

Mr. Shaharyar Qazi, Additional A.G. Sindh.

### **JUDGMENT**

**SALAHUDDIN PANHWAR, J.** Present Suit was preferred in 2015 for declaration and permanent injunction. Case as set out in plaint is that plaintiff is a private limited company incorporated under the Companies Ordinance 1984, involved in business of town planning and housing schemes and for this purpose applied to defendants for grant of land measuring 150 acres of land pursuant to Statement of Conditions dated 25.02.2006, request was proceeded, codal formalities were complied with, plaintiff deposited Rs.150 million on 09.02.2011, that on 11.02.2021 defendants asked the plaintiff to comply with other legal formalities and conveyed conditions of lease for grant of land measuring 150 acres from Na-class 90, DehKatirero, District Malir, Karachi, for 99 years (the suit land) for Incremental Housing Scheme; that on 03.05.2011 lease deed was executed by defendants for grant of suit land which was duly registered, such grant is still subsist and has not been revoked/cancelled; that thereafter survey of suit land was conducted on 15.09.2011 but no

effort was made to deliver its possession to plaintiff hence the suit land could not be utilized nor any hosing scheme was started; that on 16.05.2012 two persons Soomer Khan and Dost Ali filed Suit No.524/2012 before this court seeking declaration, cancellation and permanent injunction regarding 85 acres of land arising out of suit land; that on 05.06.2012 this court granted stay that continued till 16.08.2012 when suit was withdrawn after settlement thus for more than 3 months and 10 days plaintiff could not complete the paperwork of the project; that in order to save the land, plaintiff started raising boundary wall on suit land and once again Military Authorities stopped the plaintiffs from raising of boundary wall however after long deliberation Military authorities gave NOC for the construction of wall hence plaintiff as not able to use the land for more than 5 months; that some persons posing themselves from the Board of Revenue Sindh, stopped further condition of the boundary wall on the plea that the possession of the land was not been delivered to plaintiff; that on 27.01.2012 lay out plan was submitted by plaintiff to defendant No.3 to forward it to the SBCA for approval of town planning scheme however same was delayed on one pretext or the other and now BoR has raised objection that under the direction of the apex court defendants are restrained from forwarding any letters to any authority pending the referred proceedings; that on 03.05.2012 plaintiff filed application under article 187(1) of the Constitution, Order 33 rule 6 CPC praying for direction to the Board of Revenue Sindh to de-list the suit of plaintiff from that report, said application is still pending before the apex court; that vide clause 2 of lease dated 13.05.2011 project was required to begin within a period of six months from the date of allotment and was to be completed within two years, per same clause in case of on utilization of land or

non-completion of the project within that period, the land was to be forfeited to the Government without notice and without payment of compensation, such term of lease is harsh and in violation of guaranteed fundamental rights hence cannot be applied. It was pleaded that till date neither MDA nor Provincial Government have undertaken any effort for outer development of the area where suit land is situated, likewise no sanitary or drainage work has been initiated by concerned authority, thus due to lack of these amenities and other development work it was impossible for the plaintiff to establish Incremental Housing Scheme; that L.U. Department falsely alleged that plaintiff violated terms and conditions of lease by constructing boundary wall and using the land for agriculture purpose and on such basis ordered resumption of land by the Government without issuance of show cause notice or opportunity of hearing to the plaintiff hence letter dated 16.10.2015 is false, incorrect, baseless, without lawful reason and malicious. Plaintiff further pleaded that cause of action was accrued on 08.02.2011 when he was asked to deposit Rs.150 million, when allotment was made, lease deed was executed; boundary wall of plaintiff was raised, on 23.01.2010 when lay out plan was submitted and finally on 16.10.2015 when impugned cancellation order was issued and the same still continues. Plaintiff prayed for judgment and decree in his favour and against defendants for :-

- i. A declaration that the act of cancellation of the suit land by the defendants vide letters dated 16.10.2015 (Annexure P-22) and 19.10.2015 (Annexure P-23) are illegal, without lawful reason, in violation of principle of natural justice, void ab initio and with malafide, and liable to be set aside by this Hon'ble Court.
- ii. Further declaration that the grounds/reasons alleged in the cancellation order dated 16.10.2015 (Annexure P-22) are baseless, unfounded, false, incorrect, misleading and malicious hence liable to be set aside.

- iii. A declaration that the plaintiff's company is sole lawful and bona fide owner of the land measuring 15 acres from Na Class No.90 Deh Kotirero, Karachi, (the suit property).
- iv. A prohibitory injunction restraining the defendants, their agents, representatives, officers, successors or any other person(s) acting on their behalf or under their instructions from implementing/acting upon/executing in any manner the letters dated 16.10.2015 (Annexure P-22) and 19.10.2015 (Annexure P-23) and may be further restrained from re-allotting the suit property or creating any third party interest in the suit property.
- v. A prohibitory injunction restraining the defendants, their agents, representatives, officers, successors or any other person(s) acting on their behalf from evicting/ejecting/ dispossessing the plaintiff, its representatives, agents, servants from the suit land or from dismantling/demolishing the boundary wall.
- vi. Any other or additional relief which this honourable court may deem fit and proper in the circumstances of this case.
- vii. Cost of the suit.

2. Thereafter summons were issued. Defendants - Province of Sindh, Board of Revenue and Deputy Commissioner Malir were declared *exparte* by orders dated 07.03.2017 and 20.02.2017. Case diary dated 12.04.2018 reflects that interim order passed earlier on 10.11.2018 was confirmed and direction was issued to plaintiff to file affidavit in *exparte* proof and matter was listed for final disposal.

3. Here, it is material to add that there would always be a difference between '*private defendant*' and '*official defendant*' because there always remains possibility of collusion with '*private defendant*' while '*official defendant*' normally is custodian of record and is believed to act in *official capacity* therefore, acts and omission of the '*official defendant*' carries more weight. The official defendant, needless to add, is also treated differently as regard to filing of written statement etc from that of *private defendant*. In the instant matter the official defendants are parties and *proper service* upon them is

also not a matter of dispute whereby they are believed to have acquired the knowledge and notice of the case and claim of the plaintiff yet they did not bother to cause their appearance so as to deny / dispute the entitlement of the plaintiff which could result in presumption that they don't have good grounds to deny / dispute the claim and cause of the plaintiff.

4. Be that as it may, case diaries reflect that on many date of hearings, State Counsel/Additional A.G. Sindh, were present but he, being representative of the official defendants, could not place anything on record thereby denying / disputing the cause and claim of the plaintiff. Rather, learned Additional A.G. Sindh contends that they have repeatedly issued notices to the concerned officers followed by reminders, but those officers have failed to cause their appearance; even they are not cooperating to bring anything on record. When there is no rebuttal on behalf of the defendants and plaintiff has filed affidavit-in-exparte-proof on 12.05.2018 while reiterating the contents of the plaint; that was verified by the office of this court; it is appended with certain documents with regard to subject matter land, there is no rebuttal by defendants and no challenge to the exparte proof as well as pleadings of the plaintiff. The learned AAG and counsel for defendant-Board of Revenue contend that on different dates Board of Revenue has cancelled the lands however they are not aware with regard to subject matter property. I am conscious of the legal position, as reiterated in the case of 'C.N. Ramappa Godwa v. C.C. Chandergowda & Ors (2013 SCMR 137 *Supreme Court of India*)' that:

'As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written

statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed the court should be a little cautious in proceeding under Order VIII, Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff **without requiring him to prove any fact mentioned in the plaint.** It is a matter of the court's satisfaction and therefore, **only on being satisfied that there is no fact which need be proved on account of deemed admission,** the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order VII"

5. *Prima facie*, there is nothing on record from the side of the defendants as well their representatives to cause and claim of the plaintiff; further there is no denial to the grant of land couple with entitlement of the plaintiff hence in such eventuality, *prima facie*, there is no denial to cause and claim of the plaintiff because it was / is the responsibility of the official defendants or their representatives to bring correct picture before the Court (s) of law couple with their stands / defences. The absence thereof, needless to add, shall bring legal consequences, which *legally* include *ex-parte judgment*.

6. Having no other option this suit is decreed as *exparte*. Nazir shall ensure execution hereof.

**J U D G E**