

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1173/2014

Plaintiff : Muhammad Aslam Siddiqui,
proprietor of Maham Enterprises.

Defendants : Karachi Municipal Corporation and another

Date of hearing and order : 06.12.2021.

APPEARANCE:

Mr. Umair Bachani advocate for plaintiff.

Mr. Tauqir Ahmed advocate for KMC.

Mr. Akhtar Ali advocate for Board of Revenue.

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

JUDGMENT

SALAHUDDIN PANHWAR, J. Present Suit was preferred in 2014, for declaration, mandatory and prohibitory injunction. Case, as set out in plaint, is that plaintiff is a renowned/reputed businessman of Sindh and a registered income tax payer; that he decided with the other investors to enter into business of land development and housing schemes and for this purpose applied to defendants for grant of land measuring 150 acres or thereabout in May/June 2010; that the request of the Plaintiff was considered by defendants and all legal and codal formalities were completed pursuant to the Statement of Conditions dated 25thFebruary 2006 and finally sometime in the month of July/August 2011, it was agreed in principle by the defendants that a piece of land measuring 150 acres will be allotted to the plaintiff subject to deposit of Rs.75 million as 50% of total consideration. Accordingly, on 9thAugust 2011 a challan bearing No.189 for Rs.75 million was issued by defendants which was

accordingly paid by plaintiff on 25th August 2011 and was subsequently verified by defendant No. 2; that on 8th September 2011 a piece of land measuring 150 acres from NA Class No.90 of Deh Kotirero, Bin Qasim Town, District Malir was allotted to plaintiff against sale consideration of Rs.1 million per acre totaling Rs.150 million for the purpose of Incremental Housing Scheme(*the suit land*); that plaintiff deposited remaining 50% of the balance sale consideration i.e. Rs.75 million on 11thOctober 2011 and applied for issuance of the lease deed, that on 14thOctober 2011 the defendants directed the Executive District Officer (Revenue), City District Government Karachi, for completion of all legal formalities hence plaintiff on 4thNovember 2011 deposited an amount of Rs.726,000/- being annual ground rent for the year 2011-2012 despite the fact that on the said date the physical possession was not handed over to plaintiff. It was emphasized that after completion of all legal and codal formalities including receipt of total sale consideration and payment of ground rent, a lease Deed was executed by defendants in favour of plaintiff for 99 years w.e.f. 2011-2012 expiring in the year 2111 with the condition, amongst others, that the lessee shall start work / project within 6 months and complete within two years failing which the Provincial Government shall have the right to forfeit the land; the said Lease Deed was on the prescribed proforma of the Land Utilization Department which was executed without realizing other aspect for establishing an International Housing Scheme and development project; that after execution and registration of the lease deed, the same has become lease in perpetuity and irrevocable; on 16.12.2011 the suit land was mutated in the Record of Rights and accordingly Form-II was also issued showing the plaintiff as lawful, sole and absolute owner of the suit property; that till date all the title

documents of the suit land favouring plaintiff are intact and legally binding on the defendants, their officials and successors. That after execution and registration of the Lease Deed plaintiff applied for demarcation of suit land and issuance of new survey numbers for the suit land accordingly at the office of Mukhtiarkar Revenue, Bin Qasim, Malir, Karachi proceedings were conducted and Assistant Commissioner (Revenue) Bin Oasim, Malir forwarded the relevant record to the Survey Superintendent vide his letter dated 23rd January 2012 for survey and demarcation of the suit land; that in view of the afore-stated facts it was not possible for the plaintiff to begin with his proposed housing project on the subject land as such on 20.05.2014 plaintiff applied to the Board of Revenue, Government of Sindh, for extension of two years' time for completion of the proceedings but no reply has been made from the Defendant side; that plaintiff, from reliable sources, have come to know that the Defendants are bent upon to cancel / revoke the lease deed and for that purpose has already issued show cause notices to hundreds of allottees on baseless and frivolous grounds; that in relation to the present case the defendants are not entitled in law or equity to revoke/cancel the lease deed and therefore if they are allowed/ permitted to act upon such unlawful design it will cause irreparable loss and injury to plaintiff and the entire purpose of the housing scheme will be frustrated. Plaintiff further pleaded that cause of action was accrued on 08.09.2011 when allotment was made; on 26.11.2011 when the lease deed was executed and thereafter from time to time when plaintiff approached defendant for forwarding their layout plan to concerned authority and again on 20.05.2014 when plaintiff applied for extension of period for starting of housing project and finally when plaintiff was informed that defendants are bent upon to take adverse

action against plaintiff and the same still continues. Plaintiff prayed for judgment and decree in his favour and against defendants for :-

- A. A declaration that the Plaintiff is entitled for extension of the period for completion of the said housing project on the suit land in view of the facts and reasons stated in the plaint as well as pursuant to the provisions of Sindh Colonization of Government Lands Act, 1912
- B. A declaration that for the fact and reasons stated in the plaint, supporting documents and otherwise, the delay in commencement of work / project on the suit land squarely rest with the Defendants.
- C. A direction / mandatory injunction to the Defendants to provide outer development work in the suit land and to facilitate Plaintiff in acquiring utility services for the proposed housing scheme.
- D. A mandatory injunction to the Defendants to forward the layout plan to the Malir Development Authority / Sindh Building Control Authority, for necessary action.
- E. A declaration that the Plaintiff has not committed any willful default or breach of the terms and conditions of the Lease Deed and the same is not liable to be revoked/cancelled/forfeited under any circumstances.
- F. A prohibitory injunction restraining the Defendants, their representatives, agents, officers, nominees, successors, assign, or any other person acting on their behalf or under their guidance or control from rescinding, recalling, terminating, cancelling, revoking in any manner the Lease Deed dated 26.11.2011 (Annexure P-8).
- G. Any other or additional relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- H. Cost of the suit and proceedings.

2. Thereafter summons were issued. Order dated 20.08.2020 contains that by order dated 02.04.2018 defendant No.1 was declared exparte while direction was issued in respect of defendant No.2 that in case they fail to file written statement, that defendant too will stand exparte automatically, direction was issued to plaintiff to file affidavit in exparte proof; inspite of lapse of two

years defendant No.2 did not file written statement. Therefore said defendant was also declared *exparte* with further direction that plaintiff may 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 28.08.2020 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 that the land, granted to the plaintiff, is cancelled; further there is no denial to the grant of land couple with mutation thereof in favour 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.

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