

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 832 of 2021

Date	Order with signature of Judge
------	-------------------------------

1. For orders on Nazir report dated 04.10.2021.
2. For orders on CMA No. 17537 of 2021.
3. For hearing of CMA No. 5678 of 2021.
4. For hearing of CMA No. 11692 of 2021
5. For orders on CMA No. 20898/2021

03rd December 2021

Mr. Salman Hamid, advocate for the plaintiff.
Mr. Akhtar Ali, advocate BoR.
Mr. Muhammad Shafi Rajput, advocate for interveners.

.....

Through listed application [CMA No. 20898 of 2021] plaintiff seeks disposal of this suit on the grounds taken in supported affidavit.

At the outset, learned counsel for the plaintiff has referred letter dated 10.09.2014, available at page 27 of the Court file. Being relevant, para-4 of the above letter is that:-

“NOW THEREFORE, in pursuance of Section-4(2), of the Ordinance, market price at the time of allotment has been worked out by the Committee appointed under Section-4(1) of the said Ordinance is Rs.10,64,800/- per acre & thus the market price in respect of 08-00 acres land from N.K Survey Nos.145 & 132 situated in Deh Doozan Karachi has been worked out to be Rs.85,18,400/- (Rupees Eighty Five Lac Eighteen Thousand & Four Hundred Only) as such the differential/ due amount is offered to you for payment. In case you are agreeable to pay the same, you are to submit such acceptance as indicated below to the undersigned within 15 days of receiving this letter, so that your above allotment may be regularized as per provision of Section-5 of the said Ordinance after payment of differential *malkano* to recover loss caused to the Government. In case of failure to pay the differential amount or any breach of the rules laid down in the rules notified on 01.07.2003, land shall be resumed by the Collector, on the directions of the Committee”

He has also referred para-7 of written statement filed by the defendant No.3, which speaks that:-

“Paragraph No. 07 of the plaint is disputed to the extent that one Mr. Shah kept pursuing the case of the suit land. Upon revalidation and payment of the challan the Plaintiff and / or the Defendant No. 01 is at liberty to have the suit land possessed and demarcated. Assertion of the

Plaintiff that the suit land is “unavailable and /or utilized” is without substance and even if such is the case, the Plaintiff is always entitled to the suit land or another land in same Deh.

As well as para-06 of written statement of defendant No.1 which is that:-

“Paragraph 7 is matter of record but is denied that the Defendant No.1 made delay. The Defendant No.1 is ready and willing to perform the Agreement and if require the Defendant No.1 shall get the land from the official Defendants if the Suit Land is not available which is in the same Deh and are with same value for the Plaintiff and the Defendant No.1.

According to instant application parties have agreed for revalidation of suit land in terms of above referred letter issued by Land Utilization Department. In present suit inspection by Nazir was carried out, report of which dated 04.10.2021 is available on record. It would be conducive to refer relevant paras No. 3 and 4 of that report, which are that:-

“3. At first, the Officials of Mukhtiarkar office were asked to verify the location of subject plot, who identified the Plaintiff’s pointed land as subject land i.e. land measuring 8.00 Acres, Deh Dozan, Tappo Songal, Taluka Gulzar-e-Hijri, Scheme 33, District East, Naiclass No. 21, Karachi.

4. At site, it was noted that the entire subject land was open to sky with no construction, unlevelled land, covered with bushes, however, some temporary tents (Juggies) were found, where, Chowkidar along with their families were living. It was further noted that subject land of about 08 acres was having boundary wall from front/main road side, whereas, from rest of the three sides, it was surrounded with the boundary walls of adjoining plots. One main entrance gate was fixed on front side, where, Chowkidar namely Hidayatullah s/o Abdul Karim, holding CNIC No. 42501-9276502-5 and Imam dad holding CNIC No. 5302-8941433-7 were posted, who, on enquiry, stated that they have been posted there on behalf of Mr. Irfan Ahmed, Plaintiff for about 10 to 15 years.”

Letter dated 10.09.2014 reflects that entitlement of the private parties is not denied by the quarter concerned but the grievance of the quarter concerned, if any, is confined to payment of the ‘*differential Malkano*’ , worked out by the Committee, appointed under Section-4(1) of the said Ordinance is Rs.10,64,800/- per acre; the letter further shows that the differential/due amount offered to be paid within 15 days of receiving that letter with categorical stand that on payment thereof allotment may be regularized as per provision of Section-5 of the said Ordinance. Further, it is also matter of record that defendant No.3 admitted grant of land in question or another land in same Deh subject to entitlement. Such categorical stand

leaves nothing ambiguous that matter, *prima facie*, appears to be pending decision by the quarter concerned, hence the same needs to be decided there. It is pertinent to mention here that private defendants are not at dispute. Defendant No.1 is present and he, while supporting the contents of application, has endorsed his signature as well as that of his counsel thereon (original CNIC seen and returned). The above admissions and factual position leave nothing ambiguous that issue pertains to the Land Utilization Government of Sindh hence it shall be in all fairness to let the quarter concerned decide the issue as per law, procedure and policy while keeping in view the admissions, made by it. Accordingly, they shall proceed within the spirit of letter as referred above after completing all requisite and codal formalities preferably within one month.

The suit stands disposed. All the listed applications, including that of the interveners, having become infructuous, also stand disposed of.

JUDGE