

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2020 of 2021

M/s Fortune Four LLP
Versus
Federation of Pakistan & others

Date	Order with signature of Judge
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CMA Nos.15030/2021

CMA Nos.15031/2021

Date of hearing: 14.09.2022, 23.09.2022, 01.02.2023, 03.02.2023, 10.02.2023, 20.02.2023, 27.02.2023 and 06.03.2023

M/s. Ayan Memon and Ali Zuberi for plaintiff.
Mr. Khurram Rasheed for defendant No.2.
Mr. Sandeep Malani, Assistant Advocate General.
Ms. Mahreen Ibrahim, Assistant Attorney General.

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Muhammad Shafi Siddiqui, J.- In compliance of a decree, the property was auctioned in execution proceedings¹. Initial attempt to auction the subject property was not materialized vide order dated 15.12.2004 passed in Execution Application No.151 of 2001 when, on raising of boundary wall by Civil Aviation Authority on the subject land, purportedly denying the right of way, from main Jinnah Avenue, it was suggested that either to get the wall removed or the money paid by the auction purchaser be returned as they were not prepared to purchase it without a right of way.

2. The auction purchaser again agitated his grievance as recorded in order dated 31.01.2005 in the aforesaid execution application when the Court was apprised of the fact that if the controversy is not resolved his (auction purchaser's) money be refunded. The auction amount was then

¹ Execution Application No.151 of 2001

returned vide order dated 07.02.2005 in the aforesaid execution application.

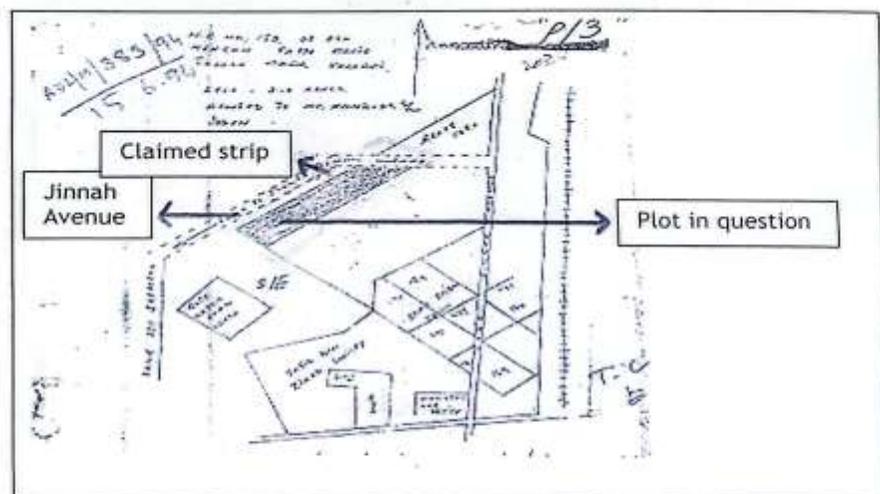
3. On 16.05.2005 the executing Court again passed an order that Civil Aviation Authority, since is not party in the execution proceedings, but were put on notice during hearing the controversy between decree holder and judgment debtor and previous auction purchaser, notice to it not necessary. It was observed that since the controversies as to the earlier auction purchaser were over, therefore, the Court felt that there was no need to issue notice to Civil Aviation Authority.

4. The Reference pertaining to the auction of the same property was then considered as one Mr. Ibraim Jafrani offered to purchase the property. Eventually, sale certificate were issued to Muhammad Ibrahim Jafrani along with possession letter for handing over peaceful vacant possession of the open land measuring 1-09 Acres out of Survey No.532 Naiclass No.153 situated at Deh Mehran Taluka & District Malir Karachi. This plot of land is described in the schedule of sale certificate, issued by this Court as under:-

<u>On the north by</u>	:	<u>Main road</u>
On the South by	:	Naiclass 153
On the East by	:	Naiclass 153
On the West by	:	Naiclass 153

5. Prior to this auction, the pedigree of title shows that by virtue of a registered sale deed the property was registered vide registration No.534, Book-I Page No.1 to 4, dated 22.04.1996 Volume 8, Sub-Registrar T. Division-III-B, Karachi, the property was mutated in the name of judgment debtor No.4 of the execution application, referred above and necessary entries were made as Entry No.260/273 Survey No.532 on 07.05.1996.

6. The said piece of land originally measured 3-0 Acres which was leased out by the Government of Sindh to one Manzoor son of Iddan on 12.06.1994 wherein a site plan of the land in question was also attached. This was then by virtue of a sale deed conveyed to Syed Nadeem Rizvi son of Syed Ali Abid Sagoon Rizvi, judgment debtor No.4 in the execution application (disclosed above), which has disclosed the schedule exactly as disclosed in the sale certificate issued by the Nazir of this Court in favour of Muhammad Ibrahim Jafarani, as referred above. Muhammad Ibrahim Jafarani sold the subject property to M/s ACM Properties (Pvt.) Limited vide registered sale deed dated 07.07.2017 from whom plaintiff herein purchased the same vide registered deed dated 30.12.2020. The point that requires consideration (as tentative assessment) is whether this plot has an access from northern side, being Jinnah Avenue, which is denied by Civil Aviation Authority, claiming the strip to be in their ownership, which divides subject plot and the main Jinnah Avenue. Civil Aviation Authority claimed this strip to be their land and hence an access from that strip was denied. When government of Sindh executed lease agreement in the year 1994 of the entire land, a layout/site plan was prepared, attached to the lease and reproduced below. It shows locations as under:-



7. In the above background instant suit is filed by the plaintiff seeking a declaration to the effect that this strip is a public right of

way/service lane and defendants have no right and title over it except that a road and service lane is to be maintained. Along with the suit, listed applications are filed one seeking interim injunction restraining the defendants from raising any construction and creating third party interest over the subject strip/lane pictured above, and the other for removing boundary wall and or any structure or impediments etc. thereon.

8. I have heard the learned counsel and perused material available on record.

9. This suit is for a declaration and mandatory and permanent injunction with prayer that the strip/piece of land located on the northern/front side of the plaintiff's plot, the subject matter of this suit, is actually carved out from plot i.e. Naclass No.153 situated at Deh Mehran, Taluke & District Malir and the strip is a public way and part and parcel of main Jinnah Avenue Road and the ingress and egress from this strip cannot be denied by Civil Aviation Authority.

10. Main contention of learned counsel for plaintiff is that plaintiff, being a subsequent buyer by virtue of title documents, a clear plot, with details of schedule of plot was pictured and is not aware of any impediment or restriction if caused by the Civil Aviation Authority and in fact there is none, as claimed. It is claimed that it acquired property on the strength of title documents referred above and one of them being a sale certificate issued by this Court, which does not restrict the ingress and egress through the Northern side i.e. main Jinnah Avenue adjacent to a strip, which is only a service lane and nothing else. It is claimed that Civil Aviation Authority has already leased out a portion of that strip to petrol pump (not exactly in front of their plot) and in case Civil Aviation Authority is permitted to create third party interest on the

northern side of the subject plot (in front of their plot), plaintiff's right of way shall be seriously prejudiced.

11. It is a matter of fact that at some point of time when auction proceedings were being conducted, the entrance from northern side was objected by Civil Aviation Authority but that objection alone is not enough to establish right over the land/strip. Civil Aviation Authority has not filed any layout plan of 80-0 acres of land, which was approved/granted, whereon Jinnah International Airport and adjacent roads have been carved out. More importantly the original leases of 1994 followed by the sale deed of 1996, *prim facie*, discloses the metes and bounds of the subject plot and these registered instruments were prior to the disputes in the execution, referred above.

12. Thus, while this suit is pending, Civil Aviation Authority cannot be permitted to create third party interest over the strip of land as it may prejudice rights of the plaintiff insofar as ingress and egress of the plaintiff over the plot through main Jinnah Avenue and its service lane (if so determined) is concerned. It requires evidence as to what the original plan of the Civil Aviation Authority was/is; whether this strip is included within the land that was granted to Civil Aviation Authority and if so for what purpose this strip is left for, as it is adjacent to a huge land and owner's access cannot be blocked; and whether subject plot as disclosed to have been bounded from the northern side by the Jinnah Avenue Road could still be objected as far as right of way is concerned, on the count of security etc.

13. Plaintiff has to demonstrate only an arguable case. In view of above facts, plaintiff has shown *prima facie* case. Buying property on "as is where is basis" does not conclude that it was purchased with this understanding that there is no right of way from the northern side (Jinnah Avenue). The right of way was only objected by Civil Aviation

Authority much later, but that has not been justified by the Civil Aviation Authority at this interlocutory stage and mere objection alone is not enough when the title of 1994 and 1996, prior to it being mortgaged with the Bank of Khyber identified the metes and bounds. Prima facie case has been made out and plaintiff would suffer irreparable loss in case defendant is allowed to create third party interest over the strip claimed by plaintiff to be a service lane. At this stage of the case, plaintiff is only required to present prima facie case and nothing beyond.

14. In view of above, application under order XXXIX Rule 1 and 2 CPC (CMA No.15030/2021) is allowed to the extent that defendant No.2 is restrained from creating third party interest over the strip of land that bifurcates the plot in question and Jinnah Avenue. Insofar as application under section 94 read with section 151 CPC (CMA No.15031/2021) is concerned, wherein plaintiff has prayed that defendant No.2 be directed to demolish the wall, I am afraid that this would constitute a mandatory injunction, if granted, which application at this interlocutory stage cannot be granted as no case for mandatory injunction at this interlocutory stage is made out. This application as such is dismissed with no orders as to costs.

CMA No.15030/2021 is allowed and CMA No.15031/2021 is dismissed.

Dated: .03.2023

J U D G E