

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-3186 of 2022

Dated: Order with signature of Judge(s)

1. For orders on CMA No. 15190 of 2023.
2. For orders on CMA No. 15190 of 2023.
3. For orders on CMA No. 15190 of 2023.
4. For hearing of Main Case.

- 1). Mr. Justice Yousuf Ali Sayeed
- 2). Mr. Justice Mohammad Abdur Rahman

Date of hearing : 27.06.2023:

Petitioner : Abdul Hakeem and others through Miss Syeda Sara
Kanwal, Advocate.

Respondents : Nemo

J U D G E M E N T

Mohammad Abdur Rahman, J. The Petitioners are maintaining this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning an approval dated 5 November 2021 that has been granted by the Sindh Building Control Authority to the Respondents Nos. 16 and 18 for the construction of a basement plus ground plus one storey building on Plot No. 283, Street No. 1, Quaidabad, District Malir Karachi admeasuring 1400 Square Yards (hereinafter referred to as the “Said Property”). While there are 32 Petitioners in number, it is to be noted that they are each represented by two of the Petitioners i.e. the Petitioner No. 31 and 32 who are purportedly holding a Power of Attorney on their behalf.

2. It seems that one Muhammad Zakir had maintained a Constitution Petition bearing CP No. D-2497 of 2001 seeking the regularization of a plot of land that was allotted to his predecessor in interest by the Artisan and

Craftsman Rehabilitation Committee in 1951. CP No. D-2497 of 2001 was instituted as against the:

- (i) Director Katchi Abadi, KMC,
- (ii) KMC/City Government
- (iii) Director General Katchi Abadi Authority, and
- (iv) Secretary Local Government, Province of Sindh

and was disposed of by this Court with the consent of all the parties by the following order:

“ ... In the circumstances we would, by consent allow this petition to the extent that the respondents are directed to survey the plot involved and pass allotment order/grant lease on regularizing according to entitlement of the Petitioner, if any, under the law.”

It is important to note that while the Province of Sindh had been sued through the Secretary Local Government; on 27 August 2002 i.e. the date when the Petition was disposed off they were not present and have not consented to this Order.

3. It seems that over the next year Muhammad Zakir approached the various respondents and had the Said Property leased into his name by either the Director Katchi Abadi, KMC or the KMC/City District Government Karachi. As there was a dispute as to the amount of rent to be paid by Muhammad Zakir to the government for obtaining the lease, various applications were moved in CP No. D-2497 of 2021 and which culminated in an order dated 28 August 2003 being passed by a Division Bench of this Court in CP No. D-2497 of 2021 directing that the lease of the plot should be regularized in the name of Muhammad Zakir at the rate applicable at the time when the application was made by him.

4. While a copy of the Allotment/Lease issued by the Director Katchi Abadi, KMC or the KMC/City District Government Karachi is not available on the record. It is apparent that by a Conveyance Deed dated 30

November 2018 the Said Property was conveyed into the name of the Respondent No. 16 and the Respondent No. 18 who while in possession seem to have entered into an Agreement of Sale to sell the Said Property to the Respondent No. 15 and the Respondent No. 17.

5. In or around 2018 a request was made to the Province of Sindh for the development of a Trauma Center/Hospital on a plot bearing NA Class No. 85, Deh Landhi, Taluka Ibrahim Hyderi admeasuring 8000 square yards (hereinafter referred to as the "Trauma Center Plot") by representatives of a political party.

6. It was at this point that the officials of the Province of Sindh discovered that a portion of the Trauma Center Plot purportedly overlapped with the Said Property. The Province of Sindh states that the Said Property has never been allotted to the KMC and therefore the allotment made by the KMC to Muhammad Zakir is illegal.

7. To this end and so as to secure the Said Property, various actions were taken by the Province of Sindh to resume the Said Property which culminated in the Respondent No. 15 and the Respondent No.17 in or around May 2021 instituting Suit No. 515 of 2021 before the Illrd Senior Civil Judge Malir, Karachi. In this Suit the Respondent No. 15 and the Respondent No. 17 claim that they were in possession of the Said Property and seeking further relief that they were entitled to get a Conveyance Deed registered in their name. An application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 that had been filed by the Respondent No. 15 and the Respondent No. 17 was dismissed on 26 May 2021 and Suit No.515 of 2021 was dismissed for non-prosecution on 12 January 2022.

8. In the interim, another Suit bearing Suit No. 20 of 2022 was instituted on 24 December 2021 by the Respondent No. 15, the Respondent No. 16, the Respondent No. 17 and the Respondent No. 18 before this Court for Declaration, Direction and Injunction seeking relief that no one should interfere in the construction being carried out by them on the Said Property. In this Suit an application is maintained *inter alia* by the Petitioner No. 31 and the Petitioner No. 32 (who are the attorneys of all the other Petitioners) under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908 for impleaded as a party.

9. The 32 Petitioners who all claim to be social workers in Landhi have now maintained this Petition through their duly constituted attorneys i.e. the Petitioner No. 31 and the Petitioner No. 32 (who are also amongst the persons who have made an application for intervening in Suit No. 20 of 2022) and are seeking relief against the Respondent No. 1,2, 5 and 12 (who are all officers of the Provincial Government) to take action as against the Respondents No. 15 to 18 and to develop the Trauma Center Plot. Relief is also sought as against the Sindh Building Control Authority to cancel the approval dated 5 November 2021 granted by the Sindh Building Control for construction on the Said Property . It is to be noted that neither the Karachi Metropolitan Corporation nor the Katchi Abadi Authority have been made a party to this Petition.

10. We have heard Miss. Syeda Sara Kanwal who appeared on behalf of the Petitioner and contended that the approval dated 5 November 2021 that has been granted by the Sindh Building Control Authority for construction on the Said Property in favour of the Respondents No. 16 and the Respondent No. 18 had been done without verifying the title of the Respondent No. 16 and the Respondent No. 18 to the Said Property. She further contended that in the absence of any title document to the Said Property no approved plan could have been issued by the Sindh Building

Control Authority. She referred us to Suit No. 515 of 2021 that had been instituted by the Respondent No. 15 and the Respondent No. 17 before the Illrd Senior Civil Judge Malir, Karachi and stated that the title that was being claimed was considered in this Suit and the application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 had been dismissed on 26 May 2021 and Suit No.515 of 2021 was dismissed for non-prosecution on 12 January 2022. She further contended that as per the report of various departments of the Province of Sindh there was no title to the Said Property and as such the Sindh Building Control Authority could not have issued the approval for constructing on the Said Property. Miss Kanwal did not rely on any case law during the course of her submissions.

11. We have heard the learned counsel for the Petitioner and perused the record and we regret to state that we find that the contentions of the counsel for the Petitioner do not correspond with the documents that have been attached to the Memo of Petition. It is apparent that while the Petitioner drew our attention to Suit No. 515 of 2021 that was filed before the Illrd Senior Civil Judge Malir, Karachi she regrettably did not draw our attention to Suit No. 20 of 2022, which while available on record and which Suit is currently pending adjudication before this Court. Neither was it pointed out that the Petitioner No. 31 and the Petitioner No. 32, who are the purported attorneys of the remaining Petitioners have maintained an application to intervene in that Suit.

12. In addition, we note with regret that various documents that apparently ought to be available with the Petitioners have deliberately been suppressed from the record. For instance, we have noted that various annexures that have been attached by the Plaintiffs in Suit No. 515 of 2021 and Suit No. 20 of 2022, including but not limited to the Lease Deed that has been issued by the Karachi Metropolitan Corporation in favour of

Muhammad Zakir and the Conveyance Deed registered in favour of the Respondent No. 16 and the Respondent No. 18, have been deliberately suppressed by the Petitioners who have not brought the same onto the record of this Petition.

13. The existence of the Lease Deed in favour of Muhammad Zakir is also confirmed by a letter dated 27 November 2020 issued by the Land Utilisation Department of the Government of Sindh which was sent to the Deputy Commissioner Malir, Karachi and wherein it is stated that:

“ ... I am directed to inform you that Deputy Director, Katchi Abadis KMC has vide his letter No. Dy.Dir/B.Q.T/K.A./KMC/019/218 dated 05.12.2018 has already informed that the name of the owner is Muhammad Zakir S/o Fazl Hussain. The lease hold rights by the regularization of un-authorized possession in Katchi Abadis of Karachi and the Indenture of Lease was made at Karachi on 31st day of January Two Thousand Four between the City District Government Karachi and Muhammad Zakir (copy thereof enclosed) on the order of Honourable High Court of Sindh in CP No. 2497 dated 2001 (copy enclosed).

Further it is stated that Katchi Abadi Quaidabad was approved by Government of Sindh vide Notification NO.SOA/LG/4(37)/2011 dated 07.12.2011 and Notification No. SKAA. NOT/ KAR-I/91 on the recommendation of the Commissioner Karachi vide letter NO. DLG/CK/Asst/1(16)/2080 dated 29.06.1980 (copies enclosed). ***Joint Demarcation carried out by Deputy District Officer, Field Staff and Surveyor Katchi Abadies showing Plot No. 283 (copy enclosed) above subject land is not state land.*** This matter does not pertain to Land Utilization Department.”

This Letter appears to be in conflict with a Letter dated 19 January 2021 that was issued by the Respondent No. 6 which states that:

“ ... Please refer to your office Letter No. DC/Malir/K/Rev.Br/212/2021 dated 12-01-2021 on the subject noticed above.

In this regard, the report has been called from the Supervising Tapedar of this officer who after verifying the revenue record and visiting the saie has reported that a piece of land admeasuring 1500 square yards have been illegally occupied by various persons in NC_85 of Deh Landhi and said piece of land used for commercial activities. It is further submitted that no any acquisition/allotment if found in favour of KMC in this office record. However, the same is the property of Land Utilization Department, Board of Revenue Sindh, if any allotment or other activites made by KMC mady be treated as “Null and void”

The Report is submitted as desired.”

14. **Prima facie** five facts can be assumed from these two letters:

- (i) That the area within which the Said Property is located is within a declared Katchi Abadi known as Quaidabad and which has been approved by the Government of Sindh;
- (ii) That the Said Property according to the Respondent No. 2 is not state land;
- (iii) That the Respondent No. 6 is contradicting the statement of the Respondent No. 2 and is contending that in his record, the land is in fact state land;
- (iv) That a registered lease for the Said Property has been issued in favour Muhammad Zakir on 31 January 2004; and
- (v) That the registered lease for the Said Property was issued pursuant to orders passed by a Division Bench of this Court in C.P. No. D-2497 of 2001.

15. After examining the record that has been attached to this Petition and the record of Suit No. 20 of 2022 that is pending before this Court, we are of the opinion that:

- (i) the issues raised in this Petition regarding the allotment of the Said Property to Muhammad Zakir, would involve us sitting in appeal over the orders of this Court passed in Constitution Petition No. D-2497 of 2001 and which we cannot do in our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; and

- (ii) the dispute as to the authority of the erstwhile City District Government Karachi to register the lease in favour of Muhammad Zakir that has been created by the letter dated 19 January 2021 issued by the Respondent No. 6, where he considers the land comprising the Said Property to be “state land”, and which letter dated 19 January 2021 also appears to be in conflict with the letter dated 27 November 2020 of the Section Officer of the Respondent No. 2, raises issues pertaining to the verification of the title of the Respondent No 16 and the Respondent No. 18 and which cannot be ascertained without recording evidence and which is also in excess of our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

16. On the basis of the foregoing, we are of the opinion that this Petition is not maintainable as:

- (i) the Petitioner has deliberately suppressed material facts and has attempted to misguide this Court;
- (ii) the resolution of the issues in Petition involves us sitting in appeal over the orders passed in CP No. D-2947 of 2001; and
- (iii) the Petition involves determining the title of the Respondent No. 16 and the Respondent No. 18 to the Said Property.

In the given facts and circumstances we dismiss this Petition. The office is directed to ensure that a copy of this order is placed in the file of Suit No. 20 of 2022 that is currently pending before this Court with an endorsement for the attention of the Judge hearing those proceedings.

JUDGE

Karachi dated 27 June 2023

JUDGE