

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition Nos. D – 703, 704 & 705 of 2017**

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Mohammad Abdur Rahman

- Petitioners : Abdul Qadeer & others, through  
Syed Fazal-ur-Rehman, Advocate.
- Respondents 2 to 4 : Karachi Development Authority, through  
Mr. Khurram Ghayasuddin, Advocate a/w  
Director General KDA, Tahir Ali Sangh,  
Director (DP&UD) KDA Rafiq Ahmed Khan,  
Director Land KDA Ashfaq Ahmed Mallah  
and Additional Director (Korangi) KDA Asif  
Ali Siddiq.
- Respondents 5 & 6 : Sindh Building Control Authority, through  
Mr. Ghulam Akbar Lashari, Advocate.
- Date of hearing : 26.10.2023.

**ORDER**

**NADEEM AKHTAR, J.** – Through these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have prayed for a declaration that they are the lawful co-owners of their respective plots (described in their petitions) and as such are legally entitled to enjoy their proprietary rights in respect thereof ; respondents 2 to 4 / KDA be restrained from depriving them from their said lawful rights ; and, respondent No.6 / Master Plan Department be directed to issue part plans in respect of their said plots. All the subject plots belonging to the petitioners are situated in Sector 51-M, Korangi Township, Karachi. Since common questions of law and fact are involved in all these petitions and the respondents therein are the same, these petitions have been heard together and are being disposed of through this common order.

2. On 17.10.2023, following order was passed in these cases :

*“Counsel for KDA states that an affidavit has been filed by one of the officers of KDA stating that the record of the subject plot is not available with KDA and the documents on which the petitioner is claiming title are forged and fabricated. This contention, prima facie, appears to be misconceived and baseless as Suit*

*No.1378/2009 filed by the present petitioner against KDA seeking declaration regarding his title in respect of the subject plot was decreed by the trial Court on 12.01.2015 which decree has attained finality as the same was never challenged by KDA. Record shows that comments have not been filed by KDA in response to the petition which is pending for the last about six and half years. Issue notice to the Director General KDA and Director Land KDA to appear before this Court in person on the next date along with their comments and a firm statement regarding the relief sought in the present petition. To be listed on 26.10.2023 at 11:00 a.m.”*

3. In compliance of the aforesaid order, Director General KDA Tahir Ali Sanghi, Director (DP&UD) KDA Rafiq Ahmed Khan, Director Land KDA Ashfaq Ahmed Mallah, and Additional Director (Korangi) KDA Asif Ali Siddiq are present. They have filed statements dated 26.10.2023 stating that an inquiry is being conducted against the officers of KDA who had filed written statements in the Suits filed by the petitioners against their vendors and KDA and had also led evidence in the said Suits on behalf of KDA, as the facts stated by them in the written statements and the evidence led by them on behalf of KDA was incorrect and misleading. The statements further state that the subject plots claimed by the petitioners do not exist in the approved layout plan dated 01.08.1985. KDA has requested in the said statements that time may be granted to it for proper investigation in the matter and to fix responsibility for not filing appeals against the decrees passed by the trial Court in the said Suits in the year 2015 in favour of the petitioners. The above named officers of KDA and their counsel reiterate the contents of the above statements and insist that the decrees passed by the trial Court in favour of the petitioners are un-executable because of the reason stated in the statements.

4. The above contention on behalf of the KDA, being misconceived, cannot be accepted in view of the admitted position that the decrees passed in favour of the petitioners attained finality in the year 2015 as the same were never challenged by KDA either by filing appeals or by filing applications for setting aside the same on the ground of fraud and/or misrepresentation. Record shows that comments were filed in these petitions by KDA in April 2017 along with a copy of letter dated 05.04.2017 addressed by the Assistant Director (T-II) Land Department KDA to the Law Officer, Law Department KDA. The same stance that the plots do not exist in the layout plan was taken in the above mentioned letter dated 05.04.2017. It is significant to note that admittedly no action whatsoever has been taken by KDA to investigate the alleged misrepresentation by their officers before the trial Court although the Suits were

decreed in favour of the petitioners in January 2015 and the alleged fact that the subject plots do not exist in the layout plan was in the knowledge of KDA when comments were filed. Despite this position, time is being sought by KDA at this stage after about six and half years of filing the comments to investigate the alleged misrepresentation. This clearly shows that KDA never had and still has no intention to investigate the alleged misrepresentation. In any event, the fact remains that the petitioners have decrees in their favour which have attained finality long ago.

5. Record also shows that separate Indentures of Lease were executed by KDA in favour of the lessees in respect of the subject plots which leases were duly registered with the Sub-Registrar concerned in the year 2018 ; whereafter the lessees executed separate Sale Deeds in favour of the petitioners which were also registered with the Sub-Registrar concerned in the year 2002. It is pertinent to note that till this date KDA has not initiated any proceedings for cancellation of the above registered Indentures of lease and/or registered Sale Deeds. Since the said registered instruments and decrees in favour of the petitioners are admittedly still in the field, KDA has no *locus standi* to question the title of the petitioners and/or to deny any of their proprietary rights in respect of the subject plots. Accordingly, we have no hesitation in granting these petitions which are accordingly allowed as prayed with no order as to costs and with direction to the KDA to submit a compliance report to this Court through the MIT-II within a period of one (01) month from the date of this order.

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*JUDGE*

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*JUDGE*

Shahbaz