

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. No. D-7659 of 2022

Petitioners	Asad Kareem Ansari and others through Ch.Muhammad Saeed-uz-Zaman, Advocate
Respondent Nos.1 & 2	through Mr.Dhani Bux Lashari, Advocate
Respondent No.4	through Mr. Miran Muhammad Shah, A.A.G.
Respondent No.5	through Ms. Nazia Siddiqui, Advocate
Respondent No.6	through Syed Sultan Ahmed, Advocate
Date of hearing	03.10.2023.
Date of order	03.10.2023.

ORDER

Abdul Mobeen Lakho, J. The grievance of the Petitioner is that the Private Respondent Nos.6 to 8 with the help of official Respondents are attempting to encroach upon the side lane / road / emergency exit / land lying on the corner of the Houses of all the Petitioners, in the project known as OWN HOMES situated in Block 21, Federal-B Area, Gulberg Town, Karachi [**“subject lane”**], by raising construction thereon and this act on the part of respondent Nos.6 to 8 shall cause serious prejudice and losses to Petitioners.

2. Syed Sultan Ahmed, learned counsel for the Respondent No.6, has contended that this petition is not maintainable as the petitioner Nos. 1, 2 and 4 had before filing this Petition, filed a Civil Suit No. 239 of 2013, with the same prayers / relief, which was dismissed for non-prosecution vide order dated 21.8.2017. Learned counsel for the Respondent No.6 submitted that the subject property bearing Plot No. LA-1/1-A/84, Block 21, Federal B. Area, exists in the layout plan of the

area, as per report of the Sindh Master Plan Authority {MPGO}. However, the subject plot was allotted by the Respondent No. 3 to the petitioner vide Allotment / Possession Letter No. 0874 dated 08.02.2012 and also issued the Site Plan accordingly. He averred that the Respondent No. 6 is the lawful owner by virtue of lease of the Plot No. LA-1/1-A/84, measuring 120 square yards, situated at Block 21 of KDA Scheme No. 16, Federal B. Area, Karachi, registered vide registration No. 4210 dated 18.09.2010 before Sub-Registrar, Gulberg Town, Karachi and M.F Roll No. U-71798/8099 dated 16.10.2012 before Registrar, Karachi. This Court has dismissed Suit No.239 of 2013 filed by Petitioner No.4 and other Petitioners for non-prosecution vide order dated 21.08.2017, thus, the instant petition is not maintainable and liable to be dismissed.

3. Respondent-SBCA filed its comments on 15.02.2023, wherein, stating that the site was inspected by the field staff and reported that no on-going construction was found at site, the alleged street is operative and lying open for the movement of petitioner/area residence. Since this is the matter of apprehension against illegal encroachment, which is the domain of Anti Encroachment & Enforcement Cell, KDA. The Petitioners should be advised seeking remedy before the competent forum.

4. Learned counsel for the KDA filed its comments 26.05.2023, wherein, opposing the stance of Petitioners and prayed for dismissal of the Petition and has contended that Nos. A-16, A-50, A-52, B-83, B-85 and C-18 all are not corner plots. Learned counsel further contended that the allegation made by the Petitioners, are fabricated and false and none of the official of K.D.A. acted illegally nor gave any favour to the private Respondents. While referring the Layout Plan appended with

the Comments filed by the KDA, contends that actual position is very clear in the said approved Layout Plan.

5. Learned A.A.G. has adopted the arguments advanced by the counsel for the Respondents.

6. Heard and perused the material available on record.

7. Indenture of Lease dated 18.09.2012 between CDGK and Respondent No.6/Mrs. Sabeen Tariq is available in the record {Annexure R/3 of the Counter-Affidavit filed by Respondent No.6}. There are also some other documents available on record for Plot Nos. LA-1/1-A, 17, 51, 84 and 109, Block-21, Federal 'B' Area, Karachi. Present petition seems to be afterthought as the Petitioners has approached this Court for the second time for such relief, as before he had requested for the same relief vide Suit No.239 of 2016 and Petitioners had failed to prove their case, resulting in dismissal of the aforesaid suit for non-prosecution on 21.08.2017, which reads as under:

“ Learned counsel for Defendants No.6, 7 and 8 pointed out the order of 22.05.2017, wherein, it was observed that Plaintiffs' side is not proceeding with the matter and is continuously absent. On the last date, the matter was adjourned with a note of caution that if on the next date of hearing. Plaintiffs' side does not appear, the matter shall be dismissed for non- prosecution.

Today, this cause (case) is fixed in the cause list at Serial No.26 and name of Plaintiffs' counsel Ms. Shazia Idrees and Javed Ahmed are appearing, but despite this, no intimation has been received from their side, justifying their absence. Accordingly, this suit is dismissed for non-prosecution. There is no order as to costs.”

It appears that same relief is being sought once again by filing instant Constitutional Petition after lapse of period of four years, for removal of illegal encroachment. The Petitioners ought to have approached the Anti-Encroachment Cell if at all, against any encroachment is taking

place in the subject areas. The Petitioners instead of pursuing the Suit No. 239 of 2016 vigorously filed the present Petition maintainability of which has seriously been challenged. Moreover, factual controversy cannot be resolved by filing constitution petition. It is worthwhile to mention here that the petitioners have failed to avail alternate adequate remedy available to them and instead of approaching the concerned department/ agencies for removal of the encroachment, which is the domain of Anti Encroachment under the Act. The State is fully empowered to take remedial measures if its land is being misappropriated including by recourse of the Sindh Public Property (Removal of Encroachment) Act, 2010.

8. In view of the above discussion, this Petition is dismissed along with listed application[s], leaving the Petitioner to avail remedy, if available in accordance with law. However, it is clarified that any observation made in this Order will not prejudice any proceeding either pending or that could be instituted in future, which will be decided on its own merits and record.

9. The above are the reasons of short order passed on 03.10.2023 in the instant matter.

Judge

Judge