

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

*Before: Nadeem Akhtar &  
Mohammad Abdur Rahman, JJ,*

**C. P. No. D – 6052 of 2021**

Abdul Rehman  
Vs.  
Province of Sindh & others

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1. For hearing of CMA No.22480/2023 (U/O I R. 10 CPC) :
2. For hearing of CMA No.26584/2021 (Contempt) :
3. For hearing of CMA No.30239/2021 (Appointment) :
4. For hearing of CMA No.25590/2021 (Stay) :
5. For hearing of main case :

Petitioner: Through Mr. Danial Shahikh, Advocate

Respondent  
Nos.1 to 5 : Through Mr. Jawwad Dero, Additional Advocate  
General

Respondent Nos.6 to : Through Mr. Khurram Ghayas, Advocate

Intervener : Through Mr. Ahmed Ali Ghumro, Advocate

Date of hearing: 13.11.2023  
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**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** Through this Petition the Petitioner has sought an order restraining, inter alia, the Karachi Development Authority from taking any action from dispossessing them from Plot No.FL-3, Block No.11, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi (hereinafter referred to as the 'Said Property').

2. The facts leading up to this Petition are protracted. It is admitted as between the Karachi Development Authority and the Province of Sindh that land which comprises the area known as KDA Scheme No. 36 Gulistan-e-Jauhar was acquired by the Karachi Development Authority through land acquisition proceedings in the 1970's/1980's. Thereafter the Karachi Development Authority through public auctions had allotted

nearly all the plots in the area known as KDA Scheme No. 36 Gulistan-e-Jauhar and had also registered leases in respect of some of those plots to those allottees.

**A. CMA No. 22480 of 2023**

3. In the early 1990's a dispute arose as between the Karachi Development Authority and the Province of Sindh as to whether the entire payment that was payable by the Karachi Development Authority to the Province of Sindh for the acquisition of the land that comprised KDA Scheme No. 36 Gulistan-e-Jauhar had in fact been paid by the Karachi Development Authority to the Province of Sindh. As the Karachi Development Authority and the Province of Sindh had divergent positions regarding the liability the Province of Sindh instead of maintaining a claim for recovery of the outstanding amount instead purported to resume the entire area known as Gulistan-e-Jauhar from the Karachi Development Authority and thereafter made allotments in favour of various persons on the assumption that having resumed the land it now has the authority to make allotments of the property within that area.

4. On this account, an anomalous situation had therefore occurred whereby private citizens, holding title from either the Karachi Development Authority or the Province of Sindh, had been allotted the same land and each of whom claimed ownership to the same property on the basis of their individual title documents. The issue came to be heard by this Court in the decision reported as **Ms. Talat Ejaz vs. City District Government through City Nazir and another**<sup>1</sup> wherein it was held that:

“ ... *In view of what has been discussed and held hereinabove, we would allow these petitions by directing Karachi Metropolitan Corporation successor of Karachi Development Authority to take over the possession of 30-00 acres of subject land for handing over its peaceful possession to its original allottees, who till date have not been provided substituted plots and the plots of those allottees, who were granted alternate plots, should be auctioned in a transparent manner by a Committee headed by none other than the Administrator himself. Inspector*

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<sup>1</sup> 2016 YLR 829

*General of Police as well as Additional Inspector General of Police Karachi, both are directed to provide all necessary might to the KMC for taking the possession of aforesaid land and to post at least four pickets comprising not less than five police officials in one picket till the process of delivering the possession to the original allottees is completed”*

5. Civil Petition No. 2086-K of 2015 and Civil Petition No.3470-K of 2015 were preferred before the Honourable Supreme Court of Pakistan against the decision in **Ms. Talat Ejaz vs. City District Government through City Nazir and another**<sup>2</sup> wherein the Honourable Supreme Court of Pakistan while refusing to grant leave to appeal in each of those petitions, both of which decisions are unreported, the Honourable Supreme Court of Pakistan was pleased to hold in Civil Petition No. 2086-K of 2015 entitled **Pir Masoom Jan Sarhandi vs. Mst. Talat Ejaz** that:

“ ... *The above observation of the High Court in the impugned judgment amply demonstrate that the learned Division Bench of the High Court has taken into consideration all the material placed before it by the parties and also the law governing the same. The submission of the ASC that the land of 30 acres was resumed for non-payment of the dues by the KDA in the first place was not demonstrated before us from the record and even if that be the case, we agree with the impugned judgment that the said land could not have been resumed by the Government of Sindh more so for the reason that it was allotted to the KDA way back in the year 1971. The KDA has done its planning and development work and has allotted the plots to the general public for residential and commercial purposes through an open auction. The Government of Sindh in such circumstances could have claimed the unpaid use but could not resume the land which stood allotted to the general public.*

*Thus, for the foregoing reasons we find no perversity, impropriety or illegality in the impugned judgment, which is maintained. The petition has no merits, the same is dismissed and leave refused.”*

and in Civil Petition No.3470-K of 2015 entitled **Roshan Associates, Karachi and others v. Talat Ejaz** and others it was held that:

“ ... *The learned High Court on the basis of the record, rightly held that at no point of time, there was any village on the subject land which is now claimed by the builders. The learned High Court further rightly come to the conclusion that the order of resuming 30 acres of land was passed by the Government of Sindh on the*

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<sup>2</sup> Supra

*basis of declaratory judgment and decree in Suit No.1534 of 1992 asserting the existence of the goth which decree was set-aside through an application under Section 12(2) CPC and ultimately the plaint was rejected. The learned counsel for the petitioners has failed to draw our attention to any document on the basis of which we can hold that 30 acres of land, out of notified gazetted scheme No.36 was resumed by the Government of Sindh in accordance with law and that after notice to allottees of plots on the said price of land. We have noted that a three-Member Bench of the Court in the case titled Pir Masoom Jan Sarhandi vs. Mst. Talat Ejaz (in C.P. No.2086 of 2015 decided on 3.11.2015) had already declined to grant leave against the judgment impugned in this petition.*

*In view of the foregoing circumstances, the learned counsel for the petitioners has failed to point out any illegality calling for interference by this Court in exercise of its powers under Article 185(3) of the Constitution. Therefore, this petition being devoid of any force, is dismissed. Leave to appeal is declined.”*

An application for review bearing Civil Review Petition No. 64-K of 2016 entitled **Roshan Associates, Karachi & others vs. Talat Ejaz & others** was thereafter also maintained against the orders passed in Civil Petition No. 3470-K of 2015 and which also was dismissed. As can be seen, this Court had held that, in the circumstances as have been narrated above, the Province of Sindh had no right on account of a financial dispute with the Karachi Development Authority to cancel the entire acquisition made by the Karachi Development Authority of the land comprised in the area known as KDA Scheme No.36 Gulistan-e- Jauhar or to resume the land comprised in the area known as KDA Scheme No.36 Gulistan-e- Jauhar.

6. The same issue was heard in two unreported Petitions bearing CP No. D-3902 of 2014 entitled **Mst. Rukhsana Bano and Others vs. KMC and Others** and CP No. D-5546 of 2016 entitled **Muhammad Ahmar Siddiqui vs. The State and Others** and which petitions were allowed by a division bench of this Court by a common order and in which it was held that:

“ ... *Most significantly the issue of Scheme -36, Gulistan e Jauhar, Karachi has been finally laid to rest by an exhaustive judgment handed down by the learned Division Bench of this Court in number of constitutional petitions, C.P. No. D-1608 of 2005 filed by one Ms. Talat Ejaz being the leading petition. Finding of this Judgment for the sake of reference can be referred as “Talat Ejaz*

*Case” reported in 2016 YLR 829 [Sind] (Ms. Talak Ejaz vs. City District Government through City Nazim and another). Findings given in favour of allottees of Respondent -KDA in this Talat Ejaz Case, has been maintained by the Honourable Supreme Court right up to the Review stage. Interestingly, in Civil Review Petition NO. 64-K of 2016, decided by the Apex Court, same Petitioner Haji Jaffer Khan Rind was also one of the Applicants/Petitioners. In the subsequent two cases, which are reported as PLD 2020 Sindh 451 (Dr. Arifa Farid and others vs. Mitha Khan and others) and 2020 MLD 1239 (Shahbaz Goth Residents Welfare Society through President and another vs. Government of Sindh), it is held by this Court that the Talat Ajaz Case (supra) is a judgment In rem, inter alia because in Talat Ejaz Case, it is held by the learned Division Bench of this Court that 2000 acres of land earlier allotted to KDA for development of Scheme-36 could not have been cancelled by the Respondent – Government of Sindh **coupled with the fact that no Goth (Village) ever existed in this Scheme – 36, comprising of various Blocks, including Block No. 10.** This finding was maintained by the Hon’ble Supreme Court when the above Judgment was challenged by one Pir Masoom Jan Sarhandi in Civil Petition No. 2086 of 2015, and the Hon’ble Supreme observed that learned Division Bench of this Court in the Talat Ejaz Case (Supra) has taken into consideration **all the material Placed before and applied the law.** It is further held by the Apex Court that Government of Sindh / Respondents No. 4,6, and 7 can claim the unpaid dues from Respondent/KDA but could not have resumed the land, which stood allotted to the general public. The finding in above Talat Ejaz Case about non-existence of village (Goth) has been considered by the Apex Court and upheld.”*

7. The Petitioner in this Petition claims title to the Said Property through an allotment made to him by the Karachi Development Authority. An intervener has maintained CMA No. 22480 of 2023 seeking to be impleaded as party in the subject Petition stating therein that he had acquired title to his property vide an allotment order dated 31 October 1991, by the Province of Sindh and which overlaps with the property of the Petitioner. It is noted that the said allotment order stood cancelled on account of the provisions of Section 3 of The Sindh Urban State Land (Cancellation) Of Allotments, Conversions And Exchanges) Ordinance, 2000 and as a consequence of which the Petitioner at present would at best hold a right to have the Said Property regularised under that Statute.<sup>3</sup> Be that as it may, the issue of the validity of the allotments made by the Province of Sindh, in Gulistan e Jauhar, Karachi Development Authority Scheme No. 36, having been settled by the Honourable

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<sup>3</sup> See **The Commanding Officer, National Logistic Cell and another vs. Raza Enterprises** 2003 CLC 719

Supreme Court of Pakistan and by this Court and in which it has been held that the allotments made by the Province of Sindh in the area known as Gulistan-e-Jauhar, Karachi Development Authority Scheme No. 36 by the Province of Sindh are illegal, we are of the opinion that no proper title could vest in the intervener for the property allotted to him and his remedy, if any, would be against the Province of Sindh, after applying for regularisation, to seek an alternative allotment of land or for damages. On this basis we are of the opinion that the intervenor cannot be considered to have proper title to the Said Property and which would render CMA No. 22480 of 2023 as not being maintainable and which is dismissed.

**B. C. P. No. D – 6052 of 2021**

8. The Subject Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against various letters issued by the Karachi Development Authority attempting to dispossess him from the Said Property. The Karachi Development Authority has in its Counter Affidavit to the Petition, inter alia, claimed that the allotment made by them in favour of the Petitioner's predecessor in interest was canceled by them and which cancellation subsists to date. The Petitioner conversely contends that the Karachi Development Authority has issued various documents to it which contradicts the position taken by the Karachi Development Authority in its Counter Affidavit to the Petition.

9. From the pleadings, we are clear that there is a dispute as between the Karachi Development Authority and the Petitioner with regard to:

- (i) the cancellation of the allotment to the Said Property made to the predecessor in interest of the Petitioner; and
- (ii) as to whether the Said Property could have been transferred to the Petitioner notwithstanding such cancellation.

Such a dispute clearly would require us to decide numerous disputed questions of fact and which we are unable to do in our jurisdiction under Article 199 of the Constitution of

the Islamic Republic of Pakistan, 1973. In the circumstances, we are constrained to dismiss this Petition, along with all listed applications, with the observation that the Petitioner is at liberty to avail any alternative remedy available to him under the law to address his grievance as has been agitated by him in this Petition.

JUDGE

JUDGE

Nasir