

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 High Court Appeal No.33 of 2023
 (Province of Sindh Vs. Inquilab Matri & 2 others)

Dated	Order with signature of Judge
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Present:
 Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing case (priority)

1. For order on office objection
2. For hearing of Main Case
3. For hearing of CMA No. 632/2023

Dated 18.01.2024

Barrister Sandeep Malani, A.A.G. for the Appellant
 Ms. Rizwana Ismail Advocate for the Respondent No.1
 Mr. Khursheed Jawed, Advocate for the Respondent No.3-KDA

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Muhammad Shafi Siddiqui, J.- This appeal is arising out of an order passed in Suit No. 802 of 2007. The matter was fixed for hearing of two misc. applications and settlement of issues before the learned Single Judge. On the strength of Nazir's Report dated 03.10.2022, which was taken on record "subject to all just legal exceptions" as it also provides that a boundary wall has been constructed and possession of Plot No. M-II, Civic Centre, Karachi measuring 3487.11 square yards was handed over to the Plaintiff being Respondent No.1, via his legal heirs i.e. 1(a) and 1(b), the impugned order was passed.

2. The record shows that though the land at some point of time was claimed to have been trespassed by Syed Umar Ahmed but claimed by Ms. Rizwana Ismail that land was surrendered to Government of Sindh by Syed Umar Ahmed. Syed Umar Ahmed, Respondent No.2(a) claimed land through the Government of Sindh and after all efforts made by him, the land was surrendered before NAB Authorities. It could have been given

only to Government of Sindh as it was claimed through Government of Sindh via title drawn.

3. Be that as it may, the record further suggests as claimed by Respondent 1(a) & 1(b) that KDA has allotted the subject piece of land to the Plaintiffs of suit i.e. Respondent No.1 now represented by Respondent No.1(a) and 1(b). Government of Sindh never approved the claim of the Plaintiff as being an allottee of KDA although they have not filed written statement till disposal of suit but were claiming. Government of Sindh attempted to implead an entity called Provincial Disaster Management Authority (PDMA) for whose benefit this plot was reserved for the construction of a building.

4. The matter was taken up by the learned Single Judge on 16.12.2022 but the learned A.A.G was then asked by Court to show if the entry of KDA has been cancelled in relation to the plot/land in question but it was not shown on the day when order was passed. Entry alone does not confer a title. The learned Single Judge thus despite such objections of Government of Sindh reached to the conclusion that no further issues are left to be decided between the Plaintiff and defendant No.1 and 1(a), since Syed Umar Ahmed 1(a) surrendered the property in favour of Government of Sindh with whom the Plaintiff/Respondent No.1(a) and 1(b) had some dispute. Learned Judge has not given any findings that dispute with Government of Sindh still exist and in terms of Order XV(2), a comprehensive decree against all defendants be passed.

5. Needless to repeat here that Syed Umar Ahmed claimed title from Government of Sindh and if at all Plaintiff of suit and Syed Umar Ahmed-Respondent No.2(a) were not at issue or if the Plaintiff/Respondent No.1(a) and 1(b) were not at issue with KDA then the suit could have been without

a cause and it ought to have been dismissed. The suit was in fact decreed in presence of objections of Government of Sindh that the plot does not belong to KDA, however, if those were oral arguments then there was no reason for passing a decree when the Court observed that no issues all left to be decided.

6. We are therefor of the view that it was a surreptitious conclusion drawn as the dispute of title is apparently a triable issue and it should not have been taken lightly. We therefore, deem it appropriate to set aside the decree passed in the suit and the suit is restored to a stage as it was on 16.12.2022 i.e., at the stage of settlement of issues and pendency of two applications and the proceedings may commence from there onwards. CMA No.14990/2022 is dismissed in view of above. Since apparently an injunction application (CMA No. 6013 of 2007) was also pending, therefore, till its disposal the parties shall maintain statusquo. Government of Sindh shall file written statement within four weeks' time.

JUDGE

JUDGE

Amjad PS