

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

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

C.P. No.D – 1917 of 2013

Mst. Asma Hashmi

Vs.

Province of Sindh & others

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1. For hearing of Misc. No.10102/2023 (Stay) :
 2. For hearing of Main Case :

Petitioner : Through M/S Muhammad Ali Jan, Muhammad Aslam and Shamsa, Advocates.

Respondent No.1&2 : Through Mr. Jawwad Dero, Addl. A.G. Sindh.

Respondent No.3 : Through Mr. Muhammad Islam Leghari, Advocate.

Respondent No.4 : Through Mr. Khurram Ghayas holding brief for Mr. Baeerat Shafi, Advocate.

Date of hearing : 06.12.2023

ORDER

MOHAMMAD ABDUR RAHMAN, J.- Through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner impugns an order dated 1 March 2013 passed by the Minister of Law, Government of Sindh in Revision Application No.SO(T)6(11)/2008 (hereinafter referred to as the "Impugned Order") which had deprived the Petitioner of her entitlement to Plot No.1-A/A, Block-C, Sector-II, Gulshan-e-Mehran, Karachi, admeasuring 240 square yards (hereinafter referred to as the 'Said Property').

2. The Petitioner is a member of the Sindh Government Employees Cooperative Housing Society Limited (hereinafter referred to as the "Society"), holding Membership No. 8351/1328. The Society, being a Housing Society, the Petitioner against payment of Rs.59,665/- towards the cost of the land was issued a provisional order No.A-5003.F/8351/S-5841/78 dated 16 May 1979 for

a plot admeasuring 240 square yards plot in a Housing Scheme being developed by the Society to be known as "Gulshan-e-Mehran".

3. The Petitioner thereafter duly paid all demands made and which culminated in an Allotment Order No.002057 dated 17 June 1982 being issued in her favour and whereby she was allotted Plot No.135-A, Block-C, Sector-3, Gulshan-e-Mehran (hereinafter referred to as the "First Property")

4. Nearly nine (09) years later, the Society unilaterally informed her that her allotment to the First Property had been withdrawn/cancelled and that the Society was issuing her a fresh Allotment Order No.005337 on 15 June 1991 in lieu of her earlier allotment of the First Property and by which she was allotted the Said Property. The Society has thereafter admittedly executed a registered Indenture of Lease on 16 June 1999 for the Said Property in favour of the Petitioner and whereafter she was also issued a clearance certificate by the Society on 1 March 2005.

5. The Petitioner thereafter attempted to take possession of the Said Property and which time it was discovered that the Society had issued a parallel allotment to the Respondent No.4 for the Said Property.

6. The Petitioner maintained a complaint before the Respondent No.2 and who referred the matter to his Nominee and which was numbered as ABN Case No. 23 of 2007. At this stage, the Respondent No.4 disclosed that the Society had also executed and registered an Indenture of Lease on 12 May 1991 in his favour for the Said Property. The execution and registration of the Indenture of Lease dated 12 May 1991 in favour of the Respondent No. 4 is also not disputed by the Society.

7. The Petitioner pleaded her case before the nominee of the Respondent No. 2 on the basis of her seniority who after hearing all the parties, held that the Petitioner was the rightful allottee of the Said Property and in his Award dated 17 May 2007 directed that the Society should take all necessary steps to perfect the title of the Said Property in favour of the Petitioner.

8. An appeal was preferred by the Respondent No.4, under Section 56 of the Cooperative Societies Act, 1925, bearing Appeal No.29 of 2007 and which was dismissed on 6 February 2008. The Respondent No.4 thereafter filed Revision Application No.SO(T)6(11)/2008 before the Minister of Law, Government of Sindh and who had through the Impugned Order allowed the Revision Application directing that:

“ ... *The record and proceedings of the case were called and perused. It is noticed that the Respondent No.1 was earlier allotted Plot No.145-A, Bloc “C” vide Allotment Order dated 17.06.1982 which was replaced by allotment of Plot No.1-A/A, Block “C” vide Allotment order dated 15.06.1991 by the Respondent No.3 society. It is very surprising to note that the Plot No.1-A/A Block “C” had already been allotted to the Appellant vide Allotment Order dated 07/5/1991 and leased out in his favour by the Respondent No.3 society duly registered on 12.5.1991 as such on 15.6.1991 the Plot No.1-A/A Block “C” was not available for allotment to the Respondent No.1. On this sole ground the allotment of the said plot to Respondent No.1 by the Respondent No.3 has no credibility, validity and legality in the eyes of law so also the lease executed on 16.6.1991 in favour of the Respondent No.1 is also illegal from the part of the management of the Respondent No.3 society.”*

9. Being aggrieved by the Impugned Order the Petitioner maintains this Petition alleging that the Impugned Order is incorrect inasmuch as the Respondent No.4 was never the employee of the Government of Sindh nor did the Respondent No.4 pay all the requisite dues to the Government of Sindh. In addition, it was contended that the allotment made to the Petitioner and Respondent No.4 is not identical as the Indenture of Lease did not refer to the same property and as such the Petitioner cannot be deprived of her right to Said Property.

10. Mr. Muhammad Ali Jan, entered appearance on behalf of the petitioner and after reiterating the facts contended that as admittedly parallel allotments have been made in favour of the Petitioner and the Respondent No. 4, the entitlement of the parties should be determined on the basis of their seniority in terms of their service with the Province of Sindh and as the Petitioner was senior to the Respondent No. 4 the Said Property should be allotted in her favour.

11. Mr. Khurram Ghayas advocate held on behalf of Mr. Baseerat Shafi, Advocate for the Respondent No.4 and contended that as the matter was over ten years old, the Respondent No. 4 had submitted written arguments and which would be the basis of his submissions before the Court. In his written arguments Mr. Baseerat Shafi has contended that as the title of the Respondent No. 4 is prior in time to the title of the Petitioner until their Indenture of Lease was cancelled no Indenture of Lease could have been registered by the Respondent No.3 for the Said Property. Reliance in this regard was placed on two Judgments of Learned Division Benches of this Honourable Court reported as **Mrs. Zaibun Nisa through Attorney vs. Karachi Development Authority**

and 5 others¹ and **Mst. Gahooran Bi vs. Abdul Hafeez and others**² and a judgment of a Learned Single Judge of this Court reported as **Mst. Sitara Bibi and 6 others vs. Samandar Khan and another**³ to support the contention that where a right has been created in favour of a person through a registered instrument, until that registered instrument is cancelled, no parallel right in a property vested on account of that registered instrument, could be created in respect of any other person.

12. We have heard the counsel for the Petitioner and Counsel for the Respondent No.4, considered their Written Arguments and have perused the record.

13. We have perused both Indentures of Lease that have been issued by the Society in favour of the Petitioner and the Respondent No. 4 and have concluded that there can be no doubt that the Society has issued and registered two Indentures of Leases for the Said Property to the Petitioner and the Respondent No. 4. The Indenture of Lease of the Respondent No.4 being prior in time to that of the Petitioner, as per the decisions of this Court reported as **Mrs. Zaibun Nisa through Attorney vs. Karachi Development Authority and 5 others**,⁴ **Mst. Gahooran Bi vs. Abdul Hafeez and others**⁵ and as **Mst. Sitara Bibi and 6 others vs. Samandar Khan and another**⁶ we have no doubt that once the Indenture of Lease creating a right in the Said Property had been registered in favour of the Respondent No. 4, the Society could not have caused, to be registered, any right in favour of the Petitioner in the Said Property.

14. We have no doubt that the conduct of the Society, in issuing parallel allotments over the Said Property, is to be deprecated and apparently through no fault of her own, the Petitioner is prejudiced. While being mindful that this Petition has been maintained seeking a writ of certiorari to quash the Impugned Order and in which we find no infirmity or illegality and rather find the Impugned Order to be consonance with the law and must be sustained.

15. For the foregoing reasons, there being no illegality or infirmity in the Impugned Order that order is sustained. However, as the Petitioner has a right to claim an allotment from the Society of a plot admeasuring 240 square yards and which right has not been disputed by the Society at any stage, in the facts and circumstances, we hereby direct the Society to allot the Petitioner an

¹ PLD 1998 Karachi 348

² PLD 1993 Karachi 668

³ 1986 CLC 677

⁴ *op cit.*

⁵ *op cit*

⁶ 1986 CLC 677

alternative plot, which should not be subject to any dispute, encroachment or other encumbrance within a period of one month and to file a report with the MIT-II confirming the compliance of this Order . The Petition stands disposed of in the above terms, along with all listed applications, with no order as to costs.

JUDGE

JUDGE

ANNOUNCED BY

JUDGE

JUDGE