

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SUIT NO.267/2018

Plaintiff(s) : Muhammad Ayob
through Mr. Ahmed Ali Ghumro advocate

Defendants : Province of Sindh & others,
through Syed Hussain Shah,
Assistant Advocate General Sindh.

Date of hearing & order : 07.12.2023.

J U D G M E N T

Plaintiff pleaded that he was allotted 19-00 acres of land in Deh Dih, Naiclass No.24, Bin Qasim Town, Karachi; he submitted an application to the Member, L.U. for exchange/adjustment/alternate land in lieu of 19-00 acres of land and after completion of all codal formalities in lieu of above he was allowed 19-00 acre of land from Naiclass No.24, Nai Malir Deh Din, Bin Qasim and 06-00 acres from Naiclass No.1 and 04-22 acres from Na-Qabooli No.9, Deh Thoming, Scheme 33; subject to approval/confirmation by Secretary to Government of Sindh, Land Utilization Department, Karachi for placing the same before supervisory committee under chairmanship of Senior Member BoR Sindh; that plaintiff submitted application for NOC for construction of boundary wall and rooms which was granted but Deputy Commissioner Malir vide letter dated 26.02.2013 cancelled the land as mentioned therein; that vide Notification No.09-294-03-SO-I/492 dated 21.09.2015 Government of Sindh, Land Utilization Department, with approval of Chief Minister Sindh, withdrew/cancelled all orders/letters of notification issued after promulgation of Sindh Government Land (Cancellation of Allotments,

Conversion & Exchange) Ordinance No.III of 2001 by defunct District Officer (Revenue)/Deputy Commissioners with or without approval of defunct EDO's/ Commissioners/ Committee headed by Senior Member BoR or even Chief Minister Sindh allowing exchange of state land in entire Province u/s 17 of Colonization of Government Lands Act 1912 and it was further directed that no exchange of state land in lieu of land of long term and sort term lease be sanctioned by any authority; that defendants cancelled the land allotted to plaintiff vide notifications dated 21.09.2015, 29.09.2015 and 10.11.2016 hence this plaint with following prayer :-

- a) To declare that impugned Letter Notification issued by Defendant No.1 bearing No.09-294-03/SO-1/493 dated 21.09.2015 and Letter No.09.294-03/SO-1/503 dated 29.09.2015 and Letter No.MUKH/ G.H./ Sch.33/ 728/ 2010 dated 10.11.2016 by Defendant No.4 thereby cancelling withdrawing and recalling all order, letters etc. issued by Member L.U. (Secretary) Govt. Mukhtiarkar Scheme No.33 ACSO with or without approval of Sindh allowing exchange of state land in entry Province Under Section 17 of Colonization of Government Lands Act, 1912 is Malafide, Arbitrary, Unlawful, illegal, unsustainable hence void and ab initio.
- b) Set-aside the impugned Notification and Letter Notification dated 21.09.2015, 29.09.2015 issued by Defendant No.1.
- c) To declare that order dated 28.11.2012 passed by learned Deputy Commissioner Malir Defendant No.2 has created a vested right in favour of the Plaintiff in respect of the suit property which cannot be cancelled and recalled in arbitrary manner.
- d) Permanently restraining Defendant, his servants, their subordinates, employees, agents, attorney or anyone else to acting on their behalf from disturbing or interfering in peaceful possession of Plaintiff's suit property.
- e) Permanently restrain the Defendant, their servants, their subordinates, employees, agents and attorneys not to create third party interest in the suit property.
- f) Costs of the suit.

- g) Any other additional, further and or alternative relief that this Honorable Court may deem fit and proper to grant in facts and circumstances.

2. On 05.12.2023 defendants were declared exparte; plaintiff filed affidavit-in-exparte proof on 07.12.2023 reiterating the same contentions as pleaded in the plaint. Heard, perused the record.

3. In present Suit, all three defendants are official defendants; it is material to add that there would always be a difference between '*private defendant*' and '*official defendant*' because there always remains possibility of collusion with '*private defendant*' while '*official defendant*' normally is custodian of record and is believed to act in *official capacity* therefore, acts and omission of the '*official defendant*' carry more weight. The official defendant, needless to add, is also treated differently as regard to filing of written statement etc from that of *private defendant*. In the instant matter the official defendants are parties and *proper service* upon them is also not a matter of dispute whereby they are believed to have acquired the knowledge and notice of the case and claim of the plaintiff yet they did not bother to cause their appearance so as to deny / dispute the entitlement of the plaintiff which could result in presumption that they don't have good grounds to deny / dispute the claim and cause of the plaintiff.

4. Be that as it may, case diaries reflect that on many date of hearings, Assistant Advocate General Sindh was present but he, being representative of the official defendants, could not place anything on record thereby denying / disputing the cause and claim of the plaintiff; concerned officers have failed to cause their

appearance. When there is no rebuttal on behalf of the defendants and plaintiff has filed affidavit-in-exparte-proof on 07.12.2023 while reiterating the contents of the plaint; that was verified by the office of this court; it is appended with certain documents with regard to subject matter land, there is no rebuttal by defendants and no challenge to the exparte proof as well as pleadings of the plaintiff. I am conscious of the legal position, as reiterated in the case of 'C.N. Ramappa Godwa v. C.C. Chandergowda & Ors (2013 SCMR 137 *Supreme Court of India*)' that:

'As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed the court should be a little cautious in proceeding under Order VIII Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff **without requiring him to prove any fact mentioned in the plaint.** It is a matter of the court's satisfaction and therefore, **only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement.** But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order VII"

5. *Prima facie*, there is nothing on record from the side of the defendants against the cause and claim of the plaintiff; further there is no denial to the grant of land coupled with entitlement of the

plaintiff hence in such eventuality, *prima facie*, there is no denial to cause and claim of the plaintiff because it was / is the responsibility of the official defendants or their representatives to bring correct picture before the Courts of law coupled with their stands / defence. The absence thereof, needless to add, shall bring legal consequences, which *legally* include *ex-parte judgment*. Section 17 of the Colonization and Disposal of Government Lands (Sindh) Act, 1912 deals with the exchange of the land as per Order of the Collector (Now Deputy Commissioner) on special conditions or on the same conditions. However, without having recourse to Section 24, of the Colonization and Disposal of Government Lands (Sindh) Act, 1912, no land shall be resumed, cancelled or withdrawn. It would be conducive to reproduce Section 24 of the Act, 1912 as under:-

“24. Power of imposing penalties for breaches of conditions--- When the Collector is satisfied that tenant in possession of land has committed a breach of the conditions of his tenancy, he may, after giving the tenant an opportunity to appear and state his objections---

(a) impose on the tenant a penalty not exceeding one hundred rupees; or

(b) order the resumption of the tenancy:

Provided that if the breach is capable of rectification, the Collector shall not impose any penalty or order the resumption of the tenancy unless he has issued a written notice requiring the tenant to rectify the breach within a reasonable time, not being less than one month, to be stated in the notice and the tenant has failed to comply with such notice.”

In Case of ***Malik Sohail Khan through his Lawful Attorney v. Province Of Sindh, Land Utilization Department through Secretary and 8 others (2012 CLC 1599)***, it was held by this Court that: *“The powers under section 24 being expropriatory in*

nature are to be strictly construed. The breach of condition (4) would occur if the poultry farm was not established within the stipulated period; non-continuance of the farm would not, as such, be a breach of this condition. But even if the non-continuance were such a breach, it was on the face of it something that could be rectified. Thus, it was incumbent on the concerned authority to apply its mind to this aspect and as required by the proviso (which is mandatory in nature) grant an opportunity to the plaintiff to rectify the breach. However, this was not done at all. The concerned authority straightaway proceeded to resume the land. Prima facie, this was contrary to law and hence the Impugned Order suffered from a material illegality”.

6. Under these circumstances, suit of the plaintiff stands decreed as prayed to the extent of prayer clauses (a) to (e), respectively. Costs shall follow the events. Let such decree be prepared in accordance with law.

These are the reasons of short order dated 07.12.2023.

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