ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P. No.D-4896 of 2024

Date

Order with Signature(s) of Judge(s)

Priority:

- 1. For order on office objection.
- 2. For hearing of CMA No. 21752/2024.
- 3. For hearing of main case.

11.11.2024

Mr. Haroon Shah, Advocate for Petitioner.

Ms. Lubna Aijaz, Advocate for respondent No.2.

Mr. Parvez Ahmed Mastoi, AAG a/w SIP-Faqir Hussain P.S. SITE-B.

Mr. Gazain Zafar Magsi, Advocate files Vakalatnama on behalf of respondent No.3, which is taken on record. Learned counsel for the petitioner files through a statement certain documents, which are also taken on record.

Through instant constitution petition, petitioner seeks following reliefs:-

- a) That the Hon'ble Court may be pleased to direct/restrain the respondent No.2, not to enter the premises of the petitioner and carryout illegal act of demolition without any due process of law.
- b) To direct the respondents No.2, 4 and 5 not to play in the hands of the respondent No.3 and act in accordance with law.

Learned counsel for the petitioner contends that the petitioner is a private limited company and is the owner of Plot No. H/6, Estate Avenue, Sindh Industrial Trading Estate, Karachi; that earlier to this petition, the respondent No.3 filed C.P. No.D-5296/2020 against the petitioner alleging therein that it had carried out the construction over the drainage line/nala in the year 2020 causing damage to their infrastructure, raw material, etc., and on the direction of this Court respondent No.2/SITE removed the alleged construction; consequently,

said petition was disposed of vide order dated 13.11.2023; that on 04.09.2024, the respondent No.2 at the behest of respondent No.3, without any prior notice, entered the petitioner's premises with heavy machinery and police party illegally and demolished the structure; hence, this petition has been preferred by the petitioner.

Conversely, learned counsel appearing on behalf of respondent No.3 maintains that the subject matter of the instant petition has already been decided in Constitution Petition No.D-5296/2020, wherein the Nazir inspected the property and submitted a report, dated 04.11.2024, confirming the factum of carrying out illegal construction by the petitioner.

Heard and record perused.

It appears that the petitioner has not pleaded that the alleged demolished construction was raised by it with the requisite permission. It may be further observed that petitioner claims its right in respect of its plot by virtue of a registered Assignment Deed, dated 20.02.2025, executed by the respondent No.2 as a "Consenting Party", while the Privatization Commission acted as "Assignor". It is specifically mentioned in clause-13 of the alleged Assignment Deed that the Assignee (petitioner), without the previous written consent of the Assignor, shall not erect any new buildings or construct permanent roads or way on the said property or make any structural alteration or addition whatsoever, to the building construction in existence upon the said property and every erection alteration or addition, necessitated or made requisite or desirable, shall be according to such authoritatively approved plans, sections or elevation and specification submitted by the assignee, as the assignor may in writing previously approve of with or without such condition as it may think necessary or

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desirable to impose and without such previous approval in writing not

commence any erection alteration or addition.

It further appears that, on 29.08.2024, the respondent No.2/SITE

issued a notice for removal of encroachment over Nala adjacent to Plot

No. D-53. The alleged encroachment has been removed from the Nala,

and no demolition has been made over the leased land of the petitioner.

In terms of prayer clause, we are of the considered view that the

respondent No.2 being lessor of the subject plot is authorized in law to

visit the premises and land for inspection and take action as per its

mandate and law in case any construction is made in violation of terms

and conditions of alleged Assignment Deed or encroachment is made

over services, amenities, etc. Hence, this petition being devoid of any

merits is dismissed along with listed application.

JUDGE

JUDGE

Abrar