

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No.1167 of 2023**

Date	Order with signature of Judge
------	-------------------------------

1. For orders on maintainability of suit
2. For hearing of CMA No.10505/2023
3. For hearing of CMA No.18441/2024

**13.02.2025**

M/s. Abdul Razzaq and Aqib Hussain, Advocate for the plaintiff.  
M/s. Khalil Ahmed Siddiqui and Zulfiqar Ali, Advocates for defendant No.6.  
Mr. Obaidullah Abro, Advocate for SBCA.  
Mr. Pervaiz Ahmed Mastoi, AAG.

\*\*\*\*\*

**ARSHAD HUSSAIN KHAN, J.-** Through application [CMA No.18441/2024], the plaintiff seeks judgment in terms of the prayer clause a to c and prayer f on the basis of admission in the written statement. Learned counsel appearing on behalf of the plaintiff while referring to certain paras of the written statement, filed on behalf of defendants Nos.2 and 3, as well as other defendants submits that since the stance of the plaintiffs with regard to their ownership over the suit property has been admitted a decree may be passed upon the said admission.

2. From perusal of the record, it appears that the plaintiffs claiming to be the owners of the property bearing residential Flat site admeasuring 8005 Square yards, situated in Sector 51-A Khorasan Co-Operative Housing Society Limited, Khyaban-e-Shareef, under KDA Scheme 33, Gulzar-e-Hijri, Karachi [**“suit property”**] filed the present suit for Declaration, Permanent Injunction and Damages, with the following prayers:

- a. *Declare that the impugned notice dated 19.07.23 issued by the defendant No. 3 Mukhtiarkar in respect of suit property being Flat site admeasuring 8005 Square yards, situated in Sector 51-A Khorasan Co-Operative Housing Society Limited, Khyaban-e-Shareef, under KDA Scheme 33, Gulzar-e-Hijri, Karachi is mala fide without jurisdiction, unlawful, illegal and is liable to be set aside.*
- b. *Declare that the plaintiffs are the lawful owners in possession of the suit property i.e. Residential Flat site admeasuring 8005 Square yards, situated in Sector 51-A Khorasan Co-Operative Housing Society Limited, Khyaban-e-Shareef, under KDA Scheme 33, Gulzar-e-Hijri, Karachi and therefore, Defendant No.3 on the*

*basis of impugned letter cannot enter into the property and cause any coercive action against the Plaintiffs.*

- c. *Grant permanent injunction in favour of Plaintiffs and restrain the Defendants their partners, nominee, officers, employees or any person acting for and on their behalf directly or indirectly from taking any adverse/coercive action on the basis of impugned notice dated 19<sup>th</sup> July 2023 in respect of the suit property bearing Residential Flat site admeasuring 8005 Square yards, situated in Sector 51-A Khorasan Co-Operative Housing Society Limited, Khyaban-e-Shareef, under KDA Scheme 33, Gulzar-e-Hijri, Karachi by any means whatsoever.*
- d. *Grant injunction, while pendency of subject suit, by suspending the operation of impugned notice dated 19<sup>th</sup> July 2023 and further restrain the defendants not to enter into the property or take any adverse steps, or create any hindrance against the suit property in any manner to disturb the possession and its construction.*
- e. *Grant damages in the sum of Rs.80 Million to the Plaintiffs by the defendants in favour of Plaintiffs.*
- f. *Grant the Cost of the suit.*
- g. *Grant such other relief as this Hon'ble Court deems just and proper in the facts and circumstances of this case."*

3. The plaintiffs in support of their stand have filed alongwith the plaint the copies of registered sale deed and mutation letter [Annexure-A, A/1], verification letter of Mukhtiarkar Gulzar-e- Hijri, From-II, NOC for sale by defendant No.8-Society [Annexure-B, B/1 and B/2], registered indenture of lease dated 31.08.2006 and allotment order dated 6.1.2005 [Annexure C and D], letter of Survey of Pakistan dated 19.2.2021 and certificate of registration of firm [Annexue-E and E/1], NOC of Society to SBCA for approval of building plan as well as No Inquiry certificate [Annexure F and F/1], verification letter dated 21.04.2022, LOP and Master Plan of Scheme 33 Karachi [G, G/1 and G/2] and permission for construction issued by SBCA [Annexure- H].

4. Precisely, plea of the plaintiffs in the instant case is that they after obtaining all requisite NOCs and permissions from the concerned authorities/departments when started raising construction on the suit property, all of a sudden they received a notice/ letter dated 19.07.2023 (impugned herein) from defendant No.3-Mukhtiarkar Gulzar-e-Hijri, alleging that the subject plot is on green belt and construction on the suit property is illegal /unauthorized. The plaintiffs challenged the above said notice in the present suit.

5. During pendency of the proceedings pursuant to a complaint filed by defendant No. 8 (Khorasan Co-operative Housing Society Ltd. Karachi) an enquiry was conducted by the Mukhtiarkar, who subsequently submitted its report dated 15.02.2024, relevant para of the report is reproduced as under:

*“The Tapedar concerned after conducting demarcation of the instant society has reported that M/s. Khuransan Cooperative Housing Society currently hold possession of the land measuring 19-04 acres and has no any excess beyond the land so allotted as informed by the then Mukhtiarkar of this office letter No. MUKH/GH/SCH-33/717/2023 dated 20.07.2023 (copy of such letter enclosed herewith as Anneuxre-D)*

*Hence this office has no objection if the layout Plan of the subject matter may kindly be restored in the interest of justice ”*

Thereafter, pursuant to the said report of Mukhtiarkar, the Sindh Master Plan Authority through its letter No.URP.33/Sec.51-A/MP&EC/79/Pt/2024/UD:-551/L dated 26.02.2024 restored the layout plan of Khurasan Co-operative Housing Society; relevant para of the letter is reproduced as follows:

*“ In view of the above and in the light of available record with this department/Authority, it is intimated that since the cancellation/withdrawal plan letter dated 01.08.2023 has already been withdrawn/declared devoid by this Authority, as result, the approved revised layout plan of Khoransan Cooperative Housing Society, Sector 51-A, Scheme -33, Karachi already stands restored”*

6. On 24.10.2024, this Court while taking note of the above facts directed the concerned officials to conclude the matter and in the event conclusion on the part of the officials is not available on the next date they were directed to attend the Court alongwith the record. On 14.11.2024 this Court passed the following order:

*“Learned counsel contends that response available on the part of the defendants i.e. Revenue Officials does not oppose the contention of the plaintiff. However, he concedes that for proceeding further with the matter, it is better to have the subject property inspected and position be presented before the Court by way of sketch. Accordingly, Nazir of this Court is directed to conduct an inspection at the site in respect of the plaintiffs’ claim on the subject plot, after notice to the parties, to which the Revenue Officials shall provide assistance for location and it is to be shown that existence of green belt, it any, at the cost of the plaintiff. Plaintiff in this regard shall be depositing a sum of Rs.40,000/- with the nazir of this Court.”*

In compliance of the above said order, the Nazir carried out inspection and submitted his Report dated 09.12.2024, which was taken on the record. Relevant portion of the Report is reproduced as under:

*“9. At the end of the inspection, Mr. Fayyaz Muhammad, Senior Planning Assistant, Sindh Master Plan Authority was enquired regarding subject property (i.e. 8005 Sq.Yards) and green belt, upon which he had confirmed that physically said society consisted upon 20 Acres and property in question was within the society and green belt located on the opposite side of the society, which was in front of Aligarh Co-operative Housing Society.”*

7. Record shows that upon notice of the case, defendants No. 2, 3, 8 and 9 filed their written statements. The defendants (revenue officials) in paras 1 & 9 of their written statement while admitting the ownership of the plaintiffs have relied upon the report of the Mukhtiarkar Gulzar - e-Hijri scheme 33, Karachi, dated 15.02.2024; relevant portion of the said report has been reproduced in the preceding para No.5. Whereas defendant No. 8 (Khorasan Co-operative Housing Society Ltd.) and defendant No.9 (SBCA) in their statements have supported the stance of the Plaintiffs.

8. In the instant case, the entire controversy is that whether the suit property situated on the green belt or not. From perusal of the inquiry report dated 15.02.2024 of the concerned Mukhtiarkar as well as the Nazir’s report dated 09.12.2024, it appears that the suit property is not abutted on the green belt. The said fact is also confirmed by the counsel of the Sindh Master Plan Authority (SMPA) in the order dated 17.01.2025 of this case. Record shows that neither any objection either to the Mukhtiarkar’s report or the Nazir’s report has been filed nor, despite notices, any counter affidavit/objection on the listed application under Order 12 Rule 6 has been filed.

9. The Divisional Bench of this Court in the case of Hussain Developers v. 1<sup>st</sup> Senior Civil Judge Karachi South & others [ PLD 2018 Sindh 274] while dilating upon the scope of Order 12 Rule 6 CPC, inter alia, has held as under:

*“9..... The rationale and object of Order 12 Rule 6 CPC is to enable a party to obtain a speedy judgment to the extent of admission of the defendant. The court cannot narrow down the meaning of this rule as the raison d’être is to enable a party to obtain a speedy judgment. The admission in the written statement could be in respect of the entire claim or even for a part of claim for which decree can be passed separately. This rule enables either party at any stage of the suit to obtain judgment or an appropriate order. This rule confers very wide discretion on the court and the court may, at any stage of the suit on application of any party without determination of any other question, make such order giving such judgment as it may think fit on the basis of admission of fact made in the pleadings or otherwise. However, it is*

*clarified that a judgment on admission is not a matter of right but is in the discretion of the court if a case involves questions which cannot be conveniently disposed of on a motion under this rule. The court may in the exercise of its discretion refuse the motion. The admission before a court under this rule must be clear, unambiguous, unconditional or unequivocal. There is no hard and fast rule but where the defendant admits part of the plaintiff's claim and denies the rest of the claim, the court should, if it gives judgment under this rule for the plaintiff as to the portion of the claim admitted by the defendant, refuse to allow the plaintiff to proceed with the suit as to the remainder of his claim. For the purposes of judgment on admission, the pleadings are not to be dissected but are to be read as a whole. The admissions are of many kinds, they may be considered as being on the record as actual if they are either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal, secondly, as between parties and by agreement or notice. Since it has been considered that admission for passing the judgment is based on pleadings itself, it is not necessary to examine as to what kind of admissions are covered by Order 12 Rule 6 CPC."*

10. In view of the above discussion and in absence of any objection or any counter affidavit to the listed application, there appears no impediment in allowing the listed application, which is accordingly allowed and the suit stands decreed to the extent of prayer clauses a, b and c of the plaint.

JUDGE

*Jamil\**