

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1150 of 1991

*[M/s. Islamic Estate & Builder (Pvt.) Ltd. vs.
Haji Allah Dino Gabole and 28 others]*

Dates of hearing : 13.10.2020, 22.10.2020,
29.10.2020 and 12.11.2020.

Plaintiff : Islamic Estate & Builder (Pvt.) Ltd.,
through Syed Rafiq-un-Nabi, Advocate.

Defendant No.1 : Haji Allah Dino Gabole, through
Mr. Muhammad Azhar Faridi, Advocate.

Defendants No.3, 5 and 6 : (3). Government of Sindh, (5) Survey
Superintendent, Karachi Division and (6)
Mukhtiarkar, Karachi East, through
Ms. Saima Imdad Mangi, Assistant
Advocate General (Sindh) along with
Mr. Wazir Chand, Mukhtiarkar Gulshan-
e-Iqbal, Karachi.

Defendant No.4 : Director of Planning and Urban Design,
through Ms. Afsheen Aman, Advocate.

Defendant No.7 : Pakistan Railways, through Syed
Samiullah Shah, Advocate.

Defendant No.8 : Mr. Izhar Alam Farooqui, Advocate
(in person)

Defendant No.9 : Ilyas Ahmed Khan (in person)

Intervener
[CMA No.12238/2019] : Syed Shaoor Latif, through
Mr. Muhammad Kashif Siddiqui,
Advocate.

Nemo for Defendants No.2, 10 to 29.

JUDGMENT

Muhammad Faisal Kamal Alam, J: This suit has been filed against
Defendants, *inter alia*, in respect of land falling in Survey Nos.06, 196 and

229, Deh Safooran, Tapo Songal, Taluka and District Karachi-the “*Suit Property*”. Plaintiff contains the following Prayer Cause_

“The Plaintiff prays for judgment and decree as under : -

- a) *That it be declared that the plaintiff, by way of purchase under Deed of Conveyance dated 14.06.1973 being Registered No.3321 at pages 122 to 127, volume 436 of Book No.I-Addl, dated 26.06.1973 before sub-Registrar, T Division-I, Karachi and as per the entries in the revenue records (Deh Form VII) maintained by Mukhtiarkar Karachi (East) and survey record maintained by Survey Superintendent, Karachi are the absolute owner of the lands bearing Survey No.6 (10.04 acres) Survey No.229 (4.28 acres) and Survey No.196 (0.29 acres) Total 15.21 Acres, situated in Deh Safooran, Tapo Songal, Taluka and District Karachi (East) and are entitled to enjoy peaceful and undisturbed possession of the said lands and to carry out the development work for their project Alam Nagar Housing Colony and ultimate leasing out the plots to its allottees in the said project.*
- b) *That it be further declared that exparte decree in Suit No.1219/1989 of the Court of IVth Senior Civil Judge, Karachi (East) is illegal and void-ab-initio not binding upon the plaintiff and the Karachi Development Authority, not being parties thereto, and that defendants Nos. 1, 2 and 3 on the basis of the said decree are not entitled under the law to assert any claim to any part of the land bearing Survey Nos.6 (10.04 acres) 229 (4.28 acres) and 196 (0.29 acres), Deh Safooran, Tapo Songal, Taluka and District Karachi (East).*
- c) *For Perpetual Injunction restraining the defendants Nos.1, 2 and 3 their servants, subordinates and all persons working for and under them and/or all persons*

claiming themselves to be owners of the above said lands through defendant No.1 as their attorney and defendant No.2 as their sub-attorney, from interfering in the peaceful enjoyment, leasing out of plots in the project known as “Alam-Nagar Housing Colony” to various allottees and carrying out development work in the said project on the lands bearing survey Nos. 6, 229 and 196, Deh Safooran, Tapo Songal, Taluka and District Karachi (East).

d) Any other relief which, under the circumstances of the case this Hon’ble Court may deem fit and proper.

e) Cost of the suit be also awarded to the plaintiff.”

2. Upon service, Written Statements were filed and claim of Plaintiff was disputed.

3. On 02.04.1995, Issues Proposed by Plaintiff were settled with the addition of Issue proposed by learned Assistant Advocate General (Sindh) that whether the suit is maintainable against official Defendants. Hence, following Issues were settled_

“1. Whether the Plaintiff is the owner of land situated in Survey Nos.6, 229 & 196, Deh Safooran, Tapo Sogal, Taluka & District Karachi (East), measuring 15-21 Acres as stated in Para 4 of the Plaint?”

2. Whether the revised lay out Plan of Alam Nagar Housing Colony of the Plaintiff was approved by KDA on 14.11.1989? If so to what effect?

3. Whether the boundaries of Survey No Nos.6, 229 & 199, Deh Safooran was demarcated by Survey Superintendent Karachi Division, Karachi and confirmed by Mukhtiarkar Karachi (East) in the year 1985?

4. *Whether the revised lay out Plan of Alam Nagar Housing Colony is approved for the land owner and demarcated by Survey Department, Karachi Division in the year 1985?*
5. *Whether the Plaintiff has encroached upon land measuring 4-6 Acres, claimed by the defendants No.1 & 2 as originally reserved for Railways?*
6. *Whether the revised lay out Plan of Alam Nagar Housing Colony, as approved by the KDA, is not binding upon the defendants Nos.1 & 2?*
7. *Whether the Plaintiff has no cause of action against the defendants?*
8. *Whether the suit is maintainable against defendant Nos.5 & 6 as Government of Sindh has not been made a party and no cause of action has been shown against these defendants?*
9. *Whether the Plaintiff is entitled to decree for the relief of declaration & Injunction, as prayed?*
10. *What should the decree be?"*

4. Since litigation of this dispute has a chequered history, therefore, it is necessary to mention relevant facts.

5. Plaintiff (*of this Suit No.1150 of 1991*) has also filed subsequent Suit No.1402 of 2011 basically against official Defendants, seeking relief, *inter alia*, that the then City District Government Karachi (*CDGK*), now Karachi Development Authority (*KDA*) has wrongly cancelled the Revised Layout Plan of '**Alam Nagar Housing Colony**', which was proposed to be launched at the above suit property.

6. Similarly, Suit No.725 of 2002 has been filed by Mrs. Iqbal Begum wife of Abdul Jabbar Malik solely against present Plaintiff (*Islamic Estates*

& Builders [Pvt] Ltd), which may be referred to as “**Developer**” in order to avoid any confusion.

7. The main stance of above named Iqbal Begum (Plaintiff of Suit No.725 of 2002) is that the Developer (*Plaintiff in Suit No.1150 of 1991*) although leased out Plot No.38, Block “C” in the above ‘**Alam Nagar Housing Colony**’, but the Developer has not fulfilled other obligations and till date the above Plaintiff / lessee / allottee is unable to raise construction at the said plot. In the Written Statement, Developer has not disputed the lease hold rights of its allottees but has refuted the monetary claim.

8. During the course of arguments, file of Suit No.572 of 1990 along with evidence file was also called, which has been preferred by Defendant No.7 [Pakistan Railways] against private parties, Government of Sindh and its officials but the said Developer (present Plaintiff) has not been impleaded as Defendant.

9. Claim of Defendant No.7 (Pakistan Railways) is that some portion of land, viz. 4 Acres and 6 Guntas in Survey No.6 has been encroached by Developer and it belongs to Defendant No.7 (Pakistan Railways).

10. In the intervening period, the Defendants No.8 to 29 were impleaded being *bona fide* allottees in the above Housing Colony (at the suit property) by different orders of this Court dated 27.01.2015 and 01.11.2016. Defendant No.8 (Mr. Izhar Alam Farooqui) has filed his Written Statement and stated that present Plaintiff / Developer did not carry out development work as per commitment due to which said Defendant was unable to utilize his Plot No.D-3, measuring 1125 square yards. However, the said Defendant No.8 refuted the adverse claim of Defendants No.1 and 2 in respect of 04 and 06 Acres of land in Survey No.06, that is, part of the suit property.

11. In the intervening period two High Court Appeals being No.271 of 2017 and 300 of 2017 were filed by another set of interveners [Allah Bux and others] whose applications for becoming parties to the present *Lis* were disallowed. Both Appeals were dismissed with an observation that the appellants {the interveners who preferred the applications for becoming parties} were not in possession of any document to substantiate their claim in respect of the suit property and their purported dwelling there at. It is held, that these appellants have no locus standi in the matter.

12. Since the present suit was directed against the purported illegal action of private Defendants No.1 and 2, therefore, their Written Statement is also perused. It is the claim of these Defendants No.1 and 2 that present Plaintiff / Developer has encroached upon the land of Defendants No.1 and 2 in collusion with Defendant-KDA. While stating in their Written Statement that present Plaintiff (Developer) cannot allot land beyond the land owned by it, the said private Defendants acknowledged the claim of present Plaintiff in respect of 15-21 Acres of land. Further mentioned in the Written Statement (paragraph-4) that 04 Acres and 06 Ghuntas of land although reserved for Defendant No.7 (Pakistan Railways), but it was never utilized by the latter and the claim was abandoned and hence this piece of land (04 Acres and 06 Ghuntas) is the land of Defendants No.1 and 2.

13. Defendant No.4 (Director of Planning and Urban Design, KDA) in his Written Statement though generally disputed the claim of Plaintiff (Developer), but has admitted that the Governing Body of Defendant No.4-KDA upon representation of present Developer, considered its request that suit property may be excluded from Scheme No.36 Gulistan-e-Jauhar and has decided the following_

“With reference to your representation No.____ dated 3-1-79 and subsequent hearing held on 6-6-79, Sub-Committee appointed by the Governing Body, K.D.A., the undersigned is directed to append below the decision of the Governing Body, K.D.A.:-

“The Housing Scheme of the Society has been approved by the KDA. Exemption may be allowed under Article 102 of the KDA Order and Planning adjusted according to the Master Plan.””

14. The said official Defendant has admitted Annexure “C” of the plaint, which is about above decision communicated through correspondence dated 23.02.1980, to Managing Director of present Plaintiff/Developer, that its Housing Scheme has been approved by Defendant-KDA.

15. Defendant No.7 (Pakistan Railways) in its Written Statement has laid its claim over 04 Acres and 06 Ghuntas of land falling in Survey No.6. It is averred that Pakistan Railways and other private persons were already engaged in litigation including Suit No.572 of 1990 instituted by Defendant No.7-Pakistan Railways in this Court.

16. Syed Rafiq-un-Nabi, Advocate of Developer has argued the case at length and submitted that no tangible evidence is brought on record during evidence by any of the Defendants contrary to the claim of Plaintiff. He has referred to the testimonies of witnesses to substantiate his stance.

17. Learned Assistant Advocate General (Sindh) has argued on the basis of record. Other Advocates for official Defendants also addressed their arguments on the basis of record.

18. Arguments heard and record perused.

19. In order to prove his case, the Developer examined Managing Director, namely, Shaukat Hayat Chaudhry son of late A.G. Chaudhry as Exhibit-5. He was also cross-examined.

20. Sub-Attorney of Defendants No.1 and 2, namely, Syed Ali Shakir Hashmi son of Syed Muhammad Tahir Hashmi was also examined as

Exhibit-7, who also produced documents from Exhibits D/1 to D/3. He was cross-examined by learned counsel for Plaintiff.

21. Assistant District Officer, Master Plan Group of Offices-CDGK, namely, Muhammad Ismail Khan son of Muhammad Islam Khan was examined as Exhibit DW-2, who produced documents from Exhibit DW-2/1 to DW-2/3. He was cross-examined by learned counsel for Plaintiff. Mukhtiarkar, Gulshan-e-Iqbal, namely, Zulfiqar Ali Abbasi was also examined as D.W-3. Manzoor Hussain Shaikh son of Rahim Bux-DW-4 led evidence on behalf of Defendant No.7 (Pakistan Railways).

22. It appears that to resolve the controversy about claim of Defendant No.7 (*Pakistan Railways*), a site inspection besides other site inspections was done and the Survey Report of independent Surveyor Ishaque Khan Associate was taken on record on 30.10.2007 in connected Suit No.1402 of 2001 preferred by the said Developer. To a query, the learned counsel for Plaintiff has stated that since evidence in Suit No.1407 of 2001 has not commenced, thus the Report will be exhibited in due course.

23. The Conveyance Deed in respect of the Suit Property was produced as **Exhibit-D/2**. The Revised Layout Plan of above '**Alam Nagar Housing Colony**' was produced as DW-2/4 dated 14.11.1989 and its cancellation order is also exhibited as DW-2/3 dated 27.10.2001, which is a subject dispute of subsequent Suit No.1402 of 2001.

24. The cross-examination of above named Plaintiff's witness shows that his claim to the above suit property could not be contradicted and credibility of Plaintiff's witness was not impeached.

25. The other witness is Syed Ali Shakir Hashmi, who testified on behalf of private Defendants. Even in his examination-in-chief he has stated that

private Defendants have no concern with the land measuring 15.21 Acres as mentioned in the plaint, that is, the suit property. Witness denies the claim of Developer that private Defendants have encroached any land of said Developer (present Plaintiff).

26. The cross-examination of said witness by the learned Advocate for Developer also confirms that Defendants No.1 and 2 have not refuted the claim of Plaintiff about the suit property.

In his cross-examination, the above witness-Syed Ali Shakir, to a question has replied that private Defendants No.1 and 2 purchased 4.6 acres in Survey No.6 from private persons, namely Mohammad Moosa and others, against which Defendant No.7 (Pakistan Railways) has filed a Suit No.572 of 1990, which is still *sub judice*. But to another question has deposed that Sale Deed [in support of claim of private Defendants] is not available "at this moment ". The said witness was unable to give details of alleged sale transaction between private Defendants No.1 and 2 (of this *lis*) and above named Mohammed Moosa; in his cross-examination he has admitted that private Defendants have no right to interfere in suit property owned by present Plaintiff. The said witness was not cross-examined by other Advocates representing different Defendants.

27. Mr. Muhammad Ismail Khan-DW-2, deposed on behalf of Defendant No.4-KDA. The said witness at the relevant time was Assistant District Officer Master Plan Group of Offices CDGK (City District Government Karachi). In his deposition, he has accepted the claim of Developer in respect of 15-21 Acre in Survey Nos.6, 196 and 229 of Deh Safooran, Karachi, apart from admitting that Defendant KDA issued a Revised Layout Plan Dated 14-11-1989 for the Suit Property, which he produced as Exhibit DW-2/4, which was subsequently cancelled vide Missive dated 27-10-2001,

exhibited as DW-2/3. However, in his examination-in-chief, he also stated that Developer has encroached some area beyond his entitlement as mentioned in the above Conveyance Deed [Exhibit D/2], as pointed out in the Report of learned Official Assignee, produced in evidence, subject to the objection of Plaintiff's counsel, as Exhibit DW-2/1.

In his cross-examination, the said Officer has admitted that Suit Property did not come within Scheme 36. He has accepted the fact that Defendant-KDA laid sewerage lines in Block-7, "but outside the limits of land owned by the Plaintiff". He has denied the suggestion that any land of Developer was taken over by KDA. However, there is an observation of the learned Court as well, about the demeanor of the above witness that he tried to conceal the facts from the Court. The Official Assignee Report dated 13.07.2002 {Exhibit DW-2/1} is perused; conclusion of which is that some extra land of 4.4 Acres was occupied by Plaintiff, which also includes 2-2 Acres of area of Circular Railway Line. However, this Report has been objected to by the Advocate of the Developer.

28. The witness from Defendant Sindh Government, namely, Zulfiqar Ali Abbasi, was at the relevant time, Mukhtiarkar, Gulshan-e-Iqbal, Karachi. In his cross-examination, he has accepted that after purchase of suit property, the mutation was effected on the basis of Statement and Form VII was accordingly issued. He produced the Form VII of 04.07.2002, which has been exhibited as **D-3/1**, showing present Plaintiff as owner/transferee of the suit property.

29. On behalf of Defendant No.7-Pakistan Railways, their witness Manzoor Hussain has deposed. He has testified that total area in Survey No.6 (one of the disputed Surveys in the present proceeding) is **20.11 Acres**, **wherein Railways is claiming 4.06 Acres** and a new Survey No.196 has also been created, that comprises of 0.29 Acres, which was separated by

land claimed by Pakistan Railways. He has questioned the entitlement of Plaintiff, to the extent that geographically their lands in the aforementioned Survey numbers have to be in separate blocks and not adjacent to each other. The above witness has denied the suggestion that the land in dispute between the said Defendant No.7 (Pakistan Railways) and Plaintiff admeasuring 2 Acres and 4 Ghuntas was utilized by Defendant-KDA for construction of 200 feet wide road; but to another question he did not deny that some land of Defendant No.7 was utilised by Defendant KDA. He reiterated his stance in cross-examination that Developer has encroached upon the land of Defendant-Pakistan Railways. However, in support of his claim, the **said witness of Defendant No.7 (Pakistan Railways) has not produced any document. At least he should have produced a lease or Grant (if any) in his evidence to substantiate the claim of 4.06 acres.**

30. In light of above discussion, the Issues framed are answered in the following manner_

ISSUE NO.1.

31. No contrary evidence was led against the entitlement/ownership of Plaintiff/ Developer, *inter alia*, in respect of the Sale Deed **{Exhibit D/2}**, which is a registered instrument and dates back to 14 June 1973. This Sale Deed bears presumption of genuineness being a registered instrument so also more than thirty years old document, in terms of Articles 92 and 100 of the Qanoon-e- Shahadat Order, 1984. By **virtue of the** undisputed Sale Deed, Plaintiff of Suit No.1150 of 1991 (Developer) is the owner of land situated in Survey Nos.6, 229 and 196, Deh Safooran, Tapo Songal, Taluka and District Karachi (East), measuring 15-21 Acres. Issue No.1 is answered in Affirmative. But at the same time, learned AAG has stated that even at present Developer is in possession of more area than what is mentioned in the above Sale Deed; which obviously is denied by the learned counsel for

Plaintiff. Even if it is correct then the Sindh Government, which is also Defendant in the proceeding, may take appropriate action **after following the due process of law** to retrieve any additional land, which is found in illegal possession of Developer to which it is not entitled to.

ISSUE NO.2.

32. It is an admitted fact that the Revised Layout Plan for ‘**Alam Nagar Housing Scheme**’ was approved by Defendant KDA, produced in the evidence as Exhibit DW 2/4. The answer is in affirmative.

ISSUES NO.3 AND 4.

33. These Issues have become redundant in view of above discussion and findings on other Issues.

ISSUE NO.5

34. In order to appreciate the controversy, vide order dated 22.10.2020, the entire record of Suit No.572 of 1990 was also called and is considered. This Suit (*Suit No.572 of 1990*) has been filed by present Defendant No.7- [*Pakistan Railways*] against private Parties. Coincidentally in Suit No.572 of 1990 evidence was led by the same officer/witness, who has testified in the present *lis* (*Suit No.1150 of 1991*) so also the case of private Defendants; Syed Ali Shakir Hashmi, who is the witness of private Defendants No.1 and 2 in the present *lis*, has deposed on behalf of private Defendants in Suit No.572 of 1990. Apparently, lands in dispute in both suits do not appear to be overlapping. In this regard, the above witness-Syed Ali Shakir Hashmi in his cross-examination in Suit No.572 of 1990 has denied the suggestion that the land involved in the Suit No.572 of 1990 is the same, which is a subject matter of present *lis*, that is, Suit No.1150 of 1991.

Evaluation of testimonies conclude that there is a great degree of probability that the land claimed by Defendant No.7 [Pakistan Railways] in Survey No.6 is different and separate from the part of the Suit Property of present Plaintiff/Developer, falling in Survey number 6.

However, this finding is given without prejudice to the *sub judice* proceeding of Suit No.572 of 1990 filed by said Defendant No.7 (Pakistan Railways), which is to be decided independently.

35. From the evidence that has brought on record it is proven that Plaintiff has not encroached any land claimed by Defendants No.1 and 2, *inter alia*, who themselves in their testimony has admitted the claim of Plaintiff / Developer. Issue No.5 is answered accordingly.

ISSUE No.6

36. Since subsequently the Revised Layout Plan of 'Alam Nagar Housing Colony' was cancelled and the Issue is *sub judice in Suit No.1402 of 2001*, thus no finding can be given at this stage. However, it is clarified that if that proceeding culminates in favour of present Developer, then the revised plan, which is an official document has its own legal sanctity and binding effect.

ISSUE NO.7

37. This Issue is answered in negative in view of the above discussion, that the present Plaintiff had/has the cause of action against contesting Defendants.

ISSUE NO.8.

38. Suit is maintainable including against official Defendants, because *inter alia*, nature of relief claimed and intricate questions or issues involved in the proceeding. *Secondly*, official Defendants in such land matters should be impleaded as parties to forestall any collusive proceeding between the private parties and the disastrous results that can follow, including, depriving a lawful owner of his/her ownership and multiplicity of

proceeding; *thirdly*, Official Defendants No.3, 5 and 6 are also custodian of record and they are in the best position to assist the Court and deposed about the veracity of claim of the parties including the present Plaintiff / Developer; *fourthly*, impleading Defendants No.5 and 6, Survey Superintendent and Mukhtiarkar, respectively, who are officials of Government of Sindh-**Defendant No.3**, points towards *bona fide* of Plaintiff/Developer. Issue No.8 is replied in Affirmative.

ISSUES NO.9 AND 10.

39. The undisputed record of the proceeding also shows that different Interveners were made parties by different orders, whose claims were not disputed by Developer, being genuine allottees of Developer. Interest of such category of bona fide allottees/lessees has been protected by the orders passed in the present *Lis*.

40. Summation of the above is that Suit No.1150 of 1991 is decreed to the extent that Plaintiff is the owner of 15 Acres 21 ghuntas, falling in Survey Nos.06, 196 and 229 by virtue of Sale Deed (Exhibit-D/2) and Defendants are permanently restrained from encroaching any area, which is validly purchased by Plaintiff. Issues No.9 and 10 are answered accordingly.

41. Since suit has been decreed, therefore, pending applications have become infructuous, which are though disposed of but in view of the above observation and direction about genuine allottees/lessees of Plaintiff, that grievances of these allottees/lessees should be redressed forthwith.

42. Parties are left to bear their own costs.

JUDGE

Dated: 12.11.2020
M.Javaid.PA