

# IN THE HIGH COURT OF SINDH, KARACHI

Suit No.750 of 2013

Dates of hearing : 13.11.2014

Plaintiff : Ghulam Farid Memon, through  
Mr. M.Anwer Shahid, Advocate.

Defendants : Province of Sindh & others  
Mr. Altaf Javed, Advocate for  
Defendants No.10 to 14.

## **JUDGMENT**

**NAZAR AKBAR, J.**, The Plaintiff by order dated 20.10.2014 was directed to satisfy the Court about the maintainability of the suit for declaration and injunction since he has not shown his present right in the suit property.

2. The Plaintiff has sought the following reliefs through this suit:

- (a) Decree for declaration that the plaintiff and co-villagers are entitled for the sanction/regularization of the Suit village under the name and style "Ghazi Goth", situated at Gulistan-e-Jauhar, Block-I, Scheme No.36, Gulshan-e-Iqbal, District East at Karachi under the Sindh Gothabad Scheme Rules 2008 against the requisite payment of challan.
- (b) Decree for permanent injunction restraining the defendants, their subordinates, successors-in-office, their men and agents either jointly or severally from interfering into the peaceful physical possession, use and enjoyment of the plaintiff and co-villagers in the Suit Village i.e. under the name and style "Ghazi Goth", situated at Gulistan-e-Jauhar, Block-I, Scheme No.36, Gulshan-e-Iqbal, District East at Karachi through themselves or any other source or mean in any manner whatsoever.
- (c) Decree for permanent injunction restraining the defendants, their subordinates, successors-in-office, their men and agents either jointly or severally from causing undue harassment and humiliation to the plaintiff and co-villagers without due course of law.

- (d) Granting cost of the suit to the plaintiff throughout.
- (e) Further relief may be granted to the plaintiff which this Hon'ble Court deems fit and proper in the circumstances of the case.

3. Five individuals namely Defendants No.10 to 14 moved separate applications under Order I Rule 10 CPC to be impleaded as necessary party in the suit claiming that they are owner and in possession of the suit properties. By order dated 24.3.2014, pending the question of maintainability of the suit since 20.1.2014, the application for impleading the said individuals was allowed and the Plaintiff was directed to file amended plaint. However, the Plaintiff filed only amended title and he has never filed amended plaint to seek any relief against the newly impleaded Defendants. Admittedly the newly added Defendants have filed ownership documents such as allotment orders and transfer/mutation order issued by the Defendants No.2 prior to filing of the suit and claiming that the suit property stand transferred in their name by virtue of said documents issued by the City District Government Karachi.

4. The Plaintiff, in the above circumstances, ought to have filed an amended plaint if he was aggrieved by the claim of Defendants No.10 to 15. The Plaintiff has not filed any amended plaint and has not even otherwise been able to satisfy that how the declaration of status of suit property as village can be granted at his request. In a suit for declaration, it is the settled principal of law that the Plaintiff is to claim declaration as to his personal right in the property if the same is denied by anyone. In the case in hand the Plaintiff is not aggrieved by denial of any existing right in his favour rather through the suit he wants that in future proprietary right may be conferred on him by regularization of land which he claims to be in his occupation. He has no propriety right nor such right is under any threat and therefore,

he is not entitled to seek declaration in terms of **section 42** of the Specific Relief Act, 1877. The Plaintiff himself in para-6 of plaint has alleged that Defendants No.2, 6, 7 & 8 i.e SSP, Anti-Encroachment Cell, Karachi, DSP and SHO Gulistan-e-Jouhar in the year 2001, 2002 and 2008 have treated the Plaintiff as encroacher. He had not taken any action against them in 2001, 2002 and 2008. However, he has filed this suit after the ownership rights in respect of suit land or part thereof have already been conferred by the official Defendants in favour of private Defendants through the auction of the government land as spelt out from the several documents filed by the Defendants No.10 to 14 and they are even in possession. Apparently, the Plaintiff by alleging a similar action in May 2013 on the part of Defendants No.2, 6, 7 & 8 as alleged in para-6 of the plaint without any specific date of cause of action has filed the present suit. The plaintiff in para 12 of plaint has failed to give any specific time/date of accrual of cause of action against the Defendants. It is not supposed to be year so and so. Even otherwise the so called claim of the Plaintiff stand demolished by the facts that the private Defendants are owner and in possession of the suit land and despite such knowledge and information, the Plaintiff since 11.12.2013 has not shown any grievance against them. The property in possession of private defendants as lawful owner having acquired the same from the Government cannot be declared Katchi Abadi. **Section 19(3)** of the Sindh Katchi Abidi Act, 1987 is legal bar even for Government to take any steps in the discretion of declaring any area as Katchi Abadi without consent of private owner. **Section 19(3)** is reproduced as under:-

“19(3) No area owned by a private person or a cooperative society shall be declared as Katchi Abadi except with the consent of such person or society and the

Katcha Abadi so declared shall be subject to such terms and conditions as may be agreed to between such person or, as the case may be, society and the Authority.”

5. In view of the above facts and circumstances the suit is dismissed for want of cause of action and *locus standi* of the Plaintiff to seek such declaration.

Karachi, dated  
February 03<sup>rd</sup>, 2015

**J U D G E**