ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Date	Order with Signature of Judge

PRESENT:

MR. JUSTICE ADNAN-UL-KARIM MEMON, J.
MR. JUSTICE ZULFIQAR ALI SANGI, J.

C.P. No.D-2338 of 2010
(Mrs. Nusrat Khan v C.D.G.K. and another)
C.P. No.D-1957 of 2010
(Mrs. Shahnaz Enterprises v Karachi Development Authority)
C.P. No.D-1958 of 2010
(M/s. Datari International v Karachi Development Authority)

Date of hearing and order:- 06.04.2026

Mr. R.F. Virjee, Advocate for Petitioner.
Mr. Rehman Aziz Malik, Advocate for Petitioner.
Mr. Abdul Jalil Zubedi, AAG.
Mr. Khursheed Javed, Advocate for Respondent/KDA.

O R D E R

Zulfiqar Ali Sangi, J. – Through this common judgment, we intend to dispose of Constitutional Petition No. D-2338 of 2010, Constitutional Petition No. D-1957 of 2010 and Constitutional Petition No. D-1958 of 2010, as common questions of law and fact are involved therein. All the petitions arise out of similar notices/demands issued by the Respondents in relation to plots situated in KDA Scheme No.5, Clifton/Kehkashan, Karachi, whereby non-utilization fee ("NUF") and/or occupancy value was sought to be enhanced after allotment/transfer and after payment of the original occupancy value.

2. In C.P. No. D-2338 of 2010 the Petitioner claims to be the lawful transferee and owner of Plot No. F-27, Block-5, KDA Scheme No.5, Clifton, Karachi, measuring 2,000 square yards. The plot was originally allotted vide Allotment Order dated 11.05.1976 at the rate of Rs.60/- per square yard. Subsequently, on transfer in favour of earlier transferees and issuance of Possession Order dated 07.01.1984, the entire occupancy value amounting to Rs.12,00,000/- was paid. The possession order stipulated that construction was to be completed within ten years, failing which NUF at the rate of 9% per annum, for every six months or part thereof, would be chargeable on the total occupancy value. The Petitioner later acquired the plot through Transfer Order dated 30.06.1990 on the same terms and conditions as were applicable to the original allottee/transferees. Grievance of the

Petitioner is directed against demand notice dated 13.03.1999 whereby the Respondents demanded Rs.23,44,290/-, out of which Rs.23,43,750/- was claimed on account of NUF allegedly calculated on enhanced occupancy value, coupled with threat of cancellation in case of non-payment.

3. In C.P. No. D-1957 of 2010 the Petitioner claims to be the lawful owner/transferee of Plot No. FL-15, KDA Scheme No.5, Clifton/Kehkashan, Karachi, acquired through sanctioned pre-lease transfer dated 16.08.1995. The plot was originally allotted under the Karachi Development Authority Lands & Estates Regulations, 1965 ("1965 Regulations"), and the occupancy value thereof had already been fixed and fully paid by the predecessor-in-interest. It is the Petitioner's case that under Regulation 25 read with Clause 13 of Appendix "A", in case of delayed construction only 3% per annum was chargeable as NUF on the total occupancy value. Possession was delivered on 10.01.1987; however, construction could not be completed within time owing to non-provision of water, sewerage, roads and other civic amenities by the Respondents. Despite this, a public notice captioned "Final Notice for Cancellation" was published in daily *Dawn* on 19.11.1999 alleging default and claiming Rs.11,719,623/- without proper breakup, with threats of cancellation, resumption and dispossession. Earlier litigation ended in judgment dated 07.02.2002 in favour of the Petitioner, which was subsequently challenged before the Hon'ble Supreme Court of Pakistan. The present petition assails subsequent notifications, office orders and resolutions relied upon by the Respondents for enhancement of NUF and occupancy value.

4. In C.P. No. D-1958 of 2010 the Petitioner claims to be the lawful owner/transferee of Plot No. FL-05, KDA Scheme No.5, Clifton/Kehkashan, Karachi, measuring 4989.68 square yards, through sanctioned pre-lease transfer dated 09.04.1996. According to the Petitioner, the original occupancy value had already been fully paid by its predecessor-in-interest, part at Rs.90/- per square yard and part at Rs.150/- per square yard. Physical possession of the main portion had been delivered on 10.05.1978 and of excess land on 07.03.1987. The Petitioner asserts that in terms of Regulation 25 and Clause 13 of Appendix "A" of the 1965 Regulations, only 3% per annum was payable as NUF on total occupancy value, and that substantial payments already made far exceeded any lawful NUF liability. Notwithstanding the same, the Respondents published a

public notice dated 19.11.1999 alleging default of Rs.74,85,371/- and threatening cancellation, resumption and dispossession. The Petitioner had earlier succeeded before this Court in C.P. No. D-1869 of 1999, but after judgment of the Hon'ble Supreme Court dated 08.02.2010 in connected appeals, the present petition was filed challenging the notifications, office orders and resolutions through which enhanced NUF and revised occupancy value were sought to be enforced.

5. Learned counsel for the Petitioners argued that the allotment orders, possession orders, transfer orders and the 1965 Regulations together constituted a binding and concluded arrangement between the parties. It was contended that rights and obligations flowing therefrom, particularly with regard to occupancy value and NUF, attained finality once the plots were allotted/transferred and the occupancy value was fully paid. According to the learned counsel, the Respondents had no lawful authority to unilaterally enhance either the occupancy value or the rate/base of NUF through office orders, internal resolutions or subsequent notifications so as to reopen concluded transactions and impair vested rights. It was submitted that in C.P. No. D-2338 of 2010 the governing term prescribed NUF at 9% per annum on the total occupancy value of Rs.12,00,000/-, whereas in C.P. Nos. D-1957 and D-1958 of 2010 Regulation 25 and Clause 13 of Appendix "A" fixed NUF at 3% per annum on total occupancy value; hence, any demand calculated on enhanced occupancy value or at enhanced rate was ex facie illegal. It was further urged that even if any rule, regulation or policy was subsequently amended, such amendment could only operate prospectively and could not apply retrospectively to past and closed transactions. Learned counsel also questioned the legal efficacy of the impugned office orders, resolutions and notifications on the ground that an executive order or internal memorandum could not amend a duly gazetted regulation. It was further argued that the demands and cancellation notices were issued without notice and hearing and were therefore violative of natural justice. In addition, it was contended that the Respondents' own failure to provide civic amenities disentitled them from levying penal NUF for delayed construction.

6. On the other hand, learned counsel for the Respondents and learned AAG opposed the petitions and contended that the same were not maintainable, in one case owing to availability of departmental remedy and in another on account of lack of locus standi, particularly where the plot had already been transferred to a third party. It was

argued that at the time of transfer the Petitioners had executed indemnity bonds and undertakings agreeing to abide by all existing and future rules and regulations of KDA/CDGK/KMC, including revision in NUF and occupancy value; hence, they were estopped from challenging such revisions. It was further submitted that enhancement in NUF and occupancy value had been lawfully approved by the competent authority and notified by the Government of Sindh in the official Gazette from time to time. Reference was made to changes in NUF from 3% to 9%, then to 10%, then to 12.5%, and subsequently reduction to 6% with effect from 01.01.2001 under notification dated 30.01.2001. It was also submitted that the Petitioners were defaulters and had repeatedly been called upon to pay dues. In C.P. No. D-1957 of 2010, it was pointed out that the Petitioner herself had sought installment facility and had executed undertakings to pay dues/current NUF and to abide by the outcome of litigation pending before the Hon'ble Supreme Court. Lastly, it was urged that the earlier common judgment of this Court had been set aside by the Hon'ble Supreme Court; therefore, the Respondents' action stood protected.

7. We have heard learned counsel for the parties, including the learned A.A.G., and have gone through the material placed on record with their able assistance.

8. The preliminary objection raised by the respondents regarding alternate remedy does not impress us. The Petitioners have challenged not merely an arithmetical computation, but the very jurisdiction and lawful authority of the Respondents to enhance NUF and occupancy value retrospectively and to threaten cancellation/dispossession on that basis. Such challenge squarely falls within the constitutional jurisdiction of this Court. As regards locus standi, it is true that in one of the petitions the Respondents have pleaded that the Petitioner subsequently transferred the plot in favour of a third party. However, the impugned demand and threatened coercive action were admittedly directed against the Petitioner during the period when it held the plot. Therefore, it cannot be said that such Petitioner is wholly devoid of locus to question the legality of the impugned action taken during its tenure. Consequently, all these petitions are maintainable.

9. From the pleadings and arguments advanced at the bar we observe that there is hardly any dispute that the subject plots were originally allotted under the then prevailing KDA framework and were subsequently transferred to the Petitioners through sanctioned transfer orders. It is equally not disputed that the original occupancy

value in each case had been fully paid by the predecessors-in-interest or by the Petitioners, as the case may be. The record further shows that the possession orders and transfer orders preserved and carried forward the original terms and conditions. In C.P. No. D-2338 of 2010, the governing stipulation is explicit that after expiry of the prescribed construction period, NUF at 9% per annum was chargeable on the occupancy value. In C.P. Nos. D-1957 and D-1958 of 2010, Regulation 25 of the 1965 Regulations and Clause 13 of Appendix "A" specifically fixed the fee/penalty at 3% per annum of the total occupancy value. Such terms were not provisional or tentative; rather, they formed part of the concluded legal relationship between the parties. It is a settled principle of law that where rights and liabilities have crystallized under a statutory and contractual framework, the same cannot be altered unilaterally except in accordance with law. Once the occupancy value stood fully paid and the Petitioners acquired rights in the subject properties subject to specified obligations, the Respondents, being statutory functionaries, were bound by the framework under which the allotment/transfer had taken place.

10. The question is whether the Respondents could, by relying upon subsequent policy decisions, resolutions, office orders or notifications, enhance either the occupancy value itself or compute NUF on the basis of revised occupancy value in respect of plots already allotted/transferred in the past. In our view, the answer must be in the negative. A clear distinction has to be maintained between cases of fresh allotments made after revision of rates and cases where allotments/transfers had already been finalized under an existing regime. In the latter category, rights and liabilities crystallize on the basis of the terms prevailing at the relevant time. In absence of an express enabling provision in the parent statute authorizing retrospective variation of such liabilities, neither executive action nor subordinate legislation can impair vested rights or rewrite concluded contractual/regulatory obligations. It is a settled principle that unless a statute expressly or by necessary implication provides otherwise, subordinate legislation, executive instructions and policy decisions operate prospectively and not retrospectively. The Respondents have not been able to point out any provision in the Karachi Development Authority Order, 1957 or in the 1965 Regulations authorizing retrospective recalculation of NUF on the basis of enhanced occupancy value in respect of plots already allotted and fully paid for. The contemporaneous terms of allotment and Regulation 25 clearly

demonstrate that NUF was linked with the original agreed occupancy value.

11. Considerable emphasis was laid by the Petitioners upon the submission that the resolutions and office orders relied upon by the Respondents were either vague, not duly gazetted, or otherwise incapable of amending the governing regulations. While it is not necessary to pronounce separately upon the vires of each and every instrument referred to in the pleadings, one principle remains well settled: a duly framed and duly gazetted statutory regulation cannot be amended, modified or overridden by a mere internal office order or administrative resolution unless the parent law so permits and the prescribed procedure is strictly followed. The burden lay upon the Respondents to establish not only the existence of lawful instruments, but also their applicability to the Petitioners' cases in a manner consistent with the parent law and without trenching upon vested rights. Mere reference to approvals, resolutions and notifications does not suffice where the liability of the Petitioners had already crystallized under earlier allotment/transfer documents and statutory regulations. Even assuming some subsequent notifications to be valid, at best they could operate prospectively and could not burden earlier allotments/transfers in the manner sought to be done.

12. The Respondents strongly relied upon indemnity bonds and undertakings allegedly executed by the Petitioners at the time of transfer, whereby they had agreed to abide by present and future rules and regulations. In our considered view, such general undertakings cannot be construed so broadly as to authorize unilateral deprivation of vested rights or retrospective enhancement contrary to the governing allotment terms and regulations. It is a settled principle that there can be no estoppel against law. An undertaking to abide by lawful rules and regulations in force or to be enforced in future has to be read subject to law. It cannot validate that which is otherwise unauthorized, retrospective, arbitrary or contrary to the parent statute or regulations. Nor can a general undertaking be treated as consent to indefinite rewriting of a concluded bargain. As regards the specific undertakings in C.P. No. D-1957 of 2010 pertaining to installment payment and the outcome of litigation, at best they show that the Petitioner sought temporary indulgence in the face of coercive demands; such conduct would not cure an otherwise illegal demand.

13. The impugned demands were accompanied by threats of cancellation, resumption and dispossession. In two petitions, the

Respondents even resorted to publication in newspapers under the caption "Final Notice for Cancellation". Actions of such nature, affecting valuable proprietary rights, could not lawfully be taken without affording the affected party a fair opportunity of hearing and without disclosing the precise basis and calculation of the demand. The rule of *audi alteram partem* is one of the foundational limbs of natural justice. Even where the statute is silent, if an administrative action entails civil consequences, fair hearing is ordinarily required unless specifically excluded by law. The record does not satisfactorily show that before issuance of the impugned coercive notices the Petitioners were confronted with a proper show-cause notice, supported by lawful computation, and granted effective opportunity to contest the proposed action. On this ground alone, the impugned demands/notices are unsustainable.

14. The Petitioners have consistently pleaded that construction could not be completed within the stipulated period because of non-provision of roads, water, sewerage and other essential amenities by the Respondents. The Respondents have not squarely rebutted this aspect through any definite material. Where an authority seeks to levy non-utilization charges premised on failure to construct within time, it must also show that the site was development-ready and that the allottee's failure was not materially attributable to the authority's own default. A party cannot ordinarily be permitted to take benefit of its own wrong. We, however, refrain from returning a conclusive finding regarding total waiver of NUF on this score, as the core controversy before us is the legality of the enhanced demand itself. Nevertheless, while recalculating any lawful dues, the Respondents shall examine this aspect.

15. We may also observe that the Respondents' repeated reliance upon the judgment of the Hon'ble Supreme Court in connected civil appeals is misconceived. The material before us shows that the earlier common judgment of this Court was set aside and the parties were permitted to challenge the notifications and resolutions afresh before this Court. Thus, the matters are to be decided on their own merits. The Respondents cannot derive automatic adjudication in their favour merely because the earlier petitions were reopened/remanded.

16. For the foregoing reasons, we hold that the terms and conditions contained in the allotment orders, possession orders, transfer orders and the 1965 Regulations constituted binding arrangements governing the Petitioners' liability in respect of NUF and occupancy value. The

Respondents had no lawful authority to retrospectively enhance the occupancy value of the subject plots or to calculate NUF on the basis of enhanced occupancy value in respect of concluded allotments/transfers where the original occupancy value had already been fully paid. In C.P. No. D-2338 of 2010, the Petitioner's liability, if any, could only be determined in accordance with the governing allotment/possession/transfer terms, i.e. NUF at 9% per annum on the original occupancy value of Rs.12,00,000/-, subject to lawful calculation and adjustment. In C.P. Nos. D-1957 and D-1958 of 2010, the Petitioners' liability, if any, could only be determined in accordance with Regulation 25 and Clause 13 of Appendix "A" of the 1965 Regulations, i.e. at 3% per annum on the original agreed occupancy value, subject to lawful calculation and adjustment. The impugned demands/notices, to the extent they are based upon enhanced occupancy value, enhanced NUF, or retrospective application of subsequent resolutions/office orders/notifications, are without lawful authority and of no legal effect. Any coercive action including cancellation, resumption, dispossession, or publication of default notices founded upon such unlawful demands is likewise unsustainable; and this judgment shall not preclude the Respondents from freshly determining, after notice and opportunity of hearing, the lawful amount of NUF, if any, strictly on the basis of the original governing terms applicable to each case, after giving due credit/adjustment for all payments already made and after considering the Petitioners' plea regarding absence of civic amenities.

17. Consequently, all these petitions are allowed in the terms that the demand notice dated 13.03.1999/challan demanding Rs.23,44,290/- in C.P. No. D-2338 of 2010 is declared to be without lawful authority and of no legal effect to the extent it seeks recovery of NUF on the basis of enhanced occupancy value or otherwise contrary to the original allotment/possession/transfer terms. The Respondents are restrained from taking coercive action on the basis of the impugned demand. However, the Respondents may re-determine the lawful NUF, if any, strictly at the contractual rate of 9% per annum on the original occupancy value of Rs.12,00,000/-, after issuing notice to the Petitioner, providing an opportunity of hearing, and adjusting all payments, if any, already made.

18. The impugned demand of Rs.1,17,19,623/- and the public notice/final notice for cancellation published in daily *Dawn* dated 19.11.1999, in C.P. No. D-1957 of 2010 are declared to be without

lawful authority and of no legal effect to the extent they are founded upon enhanced NUF and/or revised occupancy value contrary to the original governing regime. The Respondents are restrained from acting upon the same. The Respondents may, however, re-calculate the lawful dues, if any, strictly in accordance with Regulation 25 and Clause 13 of Appendix "A" of the 1965 Regulations on the basis of the original occupancy value, after providing notice and hearing to the Petitioner, adjusting the amounts already paid, and considering the plea regarding non-provision of amenities.

19. The impugned public notice/final notice for cancellation published in daily *Dawn* dated 19.11.1999 and the demand founded thereon in C.P. No. D-1958 of 2010 are also declared to be without lawful authority and of no legal effect to the extent they are based upon enhancement of NUF and/or occupancy value contrary to the original governing regime. The Respondents are restrained from acting upon the same. If any lawful determination of dues is to be undertaken, the same shall be made strictly in accordance with Regulation 25 and Clause 13 of Appendix "A" of the 1965 Regulations on the original occupancy value, after issuing notice to the persons presently affected/interested, adjusting prior payments, and keeping in view the subsequent transfer of the plot.

20. The Respondents shall complete the above exercise, if they choose to do so, within three months from the receipt of this judgment. Till such lawful re-determination, no coercive action shall be taken against the Petitioners and/or the subject plots on the basis of the impugned demands/notices.

21. These petitions stand *allowed* in the above terms; all pending application are also disposed of.

Judge

Judge