

# IN THE HIGH COURT OF SINDH AT KARACHI

## Constitutional Petition No.D-3804 of 2013

Before:

**Mr. Justice Irfan Saadat Khan &  
Mr. Justice Hassan Feroze**

Date of hearing : 03.08.2015.  
Date of decision : 05.08.2015.  
Petitioner, Hafiz Abd-ur-Rehman, through : Mr. Mansoor-ul-Haq Solangi,  
Advocate.  
Respondent No.1, Province of Sindh, through: Mr. Abdul Jabbar Qureshi,  
Assistant Advocate General.  
Respondents No.2, 3 & 4, namely, Director  
Katchi Abadi Lease & others, through : Syed Sultan Ahmed, Advocate

### **ORDER**

**IRFAN SAADAT KHAN, J:-** This petition has been filed with the following prayers:

a- to direct the respondent No.2 to allot the equivalent land /plots measuring 115 square yards to the petitioner in exchange to any other place.

or

b- to direct the respondent No.2 and 3 to compensate the petitioner for amounting to Rs.35,00,000/- as compensation of being demolished with the above said plots without any reason and justification.

c- to cancel the order the respondent No.3 for withdrawing the amount of Rs.11202/- of challan.

d- to pass any other order which this Honorable Court may deem fit and proper, in the circumstances.

e- Cost of the petition.

2. Briefly stated, the facts of the case are that the petitioner claims himself to be owner of plots bearing No.683, measuring 50 square yards,

and 684, measuring 65 square yards, situated at Nishtar Basti, Old Sabzi Mandi, Karachi, purchased by virtue of two challans of Rs.4,938/- and Rs.6,264/-, dated 28<sup>th</sup> December, 1998, and were allotted to him. It is alleged that subsequently the construction made on these plots was demolished by the respondent No.2 on 15.10.2003.

3. Mr. Mansoor-ul-Haq Solangi, Advocate, has appeared on behalf of the petitioner and submitted that the petitioner is the legal and lawful owner of the abovementioned plots, which he obtained after payment of stipulated amounts, however, the respondent No.2, without any legal and lawful authority, has demolished the construction raised upon the said plots, without giving any show cause notice. The learned counsel submits that against the said demolition the petitioner moved an application to the Provincial Ombudsman, who after hearing the petitioner has passed the following order:

**Recommendations**

6. *In view of the above facts, the complaint is hereby rejected and disposed of with the directives to the District Co-ordination Officer and District Officer Revenue, Katchi Abadies, City District Government Karachi to refund Rs.11,202/- to the complainant within 30 days hereof, under intimation to me.*

Mr. Solangi states that neither the said amount has been paid to the petitioner nor he was compensated for the damages made. Hence, the learned counsel has prayed that equivalent land /plots may be allotted to the petitioner and he may be compensated for an amount of Rs.35,00,000/- in this behalf.

4. Syed Sultan Ahmed, Advocate, has appeared on behalf of respondents No.2, 3 & 4 and submitted that the petitioner has approached the Court with unclean hands, as firstly challans of the said plots are bogus and self-created and secondly time and again the petitioner was apprised by

the respondents to collect the amount of Rs.11,202/- but the petitioner has refused to accept the said amount. He submits that the respondents are ready to pay the amount to the petitioner even today. He further submitted that the department is ready to make compliance of the order made by the Provincial Ombudsman but the petitioner, for the reasons best known to him, has refused to receive the said payment with some mala fide intention. He, therefore, submits that in view of these facts the present petition, being bereft of any merit, is liable to be dismissed with costs.

5. Mr. Abdul Jabbar Qureshi, Assistant Advocate General, has adopted the arguments of Mr. Sultan.

6. We have heard all the learned counsel for the parties and have also perused the record.

7. We are of the view that the matter that whether the challans are bogus and that the last plot bears the number 682 and thereafter a road is present on the site and there are no plots as 683 and 684, requires evidence which matter could not be decided in a writ jurisdiction. It is also an admitted position that no working or assessment has been furnished by the learned counsel for the petitioner as to from where he has determined an amount of Rs.35,00,000/- being the compensation for the loss suffered by him. A question was duly raised by the bench as to from where the said amount has been worked out to which Mr. Solangi replied that the said amount is based upon general presumption and he does not have any evidence in this behalf to substantiate the said claim. He, however, states that any amount which the Court considers to be reasonable may be given to the petitioner. Here again we tend to disagree with the submissions made by Mr. Solangi, that if the petitioner has claimed an amount the same has to be backed with some substantial evidence, which in the present case is not

available. Moreover, the quantum of determination of compensation requires evidence, which could only be decided after evidence. Hence on this score also, we do not find any merit in this petition.

8. We were able to lay our hands on the decision given in the case of Malik Gul Muhammad Awan Vs. Federation of Pakistan (PLD 2011 Karachi 578), wherein one of us, namely, Irfan Saadat Khan J., observed as under:

*“12. It is a trite proposition of law that if some damages have been caused to a person the same are to be assessed in the exact amount and proved to this extent. Scanty and the claims based on no evidence should hardly entertainable. The courts do not decree those types of damages the exact amount of which cannot be proved. Though damages to be awarded by the rule of thumb and exact amount is not determinable but person making the claim is legally obliged under the law to claim a sum of money as early as possible to the amount of damages suffered by him”.*

The said decision was subsequently challenged before the Hon’ble Supreme Court of Pakistan in the case of Malik Gul Muhammad Awan Vs. Federation of Pakistan (2013 SCMR 507), wherein also the Hon’ble Supreme Court of Pakistan has observed as under:

*“However, awarding of damages is discretionary and the said discretion has to be exercised in the light of the evidence led qua the extent of damages suffered by a party”.*

9. Now coming to the facts of the case it is an undeniable position that the claim of compensation of Rs.35,00,000/- made by the petitioner is based on no evidence rather the learned counsel for the petitioner, while arguing the matter, has conceded the fact that he has no evidence or back up in respect of the said claim and has rather prayed the Court to grant the compensation as the Court deems fit and necessary. We are afraid that without there being any proper evidence with regard to the claim the Court cannot grant the same as has been observed in the above referred judgments.

10. We, however, agree with the learned counsel for the petitioner that the amount of Rs.11,202/- is payable to the petitioner. We, therefore, in the circumstances direct the respondent No.2 to deposit the said amount with the Nazir of this Court within seven (07) days of the receipt of the present order and the Nazir is directed that if the said amount is deposited within the stipulated time, he would in turn hand over the same to the petitioner, after due verification and identification.

With the above observations the present petition is disposed of.

JUDGE

JUDGE