

IN THE HIGH COURT OF SINDH AT KARACHI

Presents:

**Mr. Justice Muhammad Junaid Ghaffar.
Mr. Justice Muhammad Humayon Khan.**

C. P. No. D-1270 of 2017

M/s Kay Kay Developers ----- Petitioner

Versus

Federation of Pakistan and others ----- Respondents

C. P. No. D-3493 of 2013

Murtaza Mirza ----- Petitioner

Versus

**The Director Military Land &
Cantonments and others ----- Respondents**

Date of hearing: 19.04.2017.

Date of Judgment 25.04.2017.

**Petitioner: Through Mr. Haider Waheed alongwith
Shazeb Akhtar Advocates in C.P No.D-
1270/2017.**

**Through Mr. Muhammad Ali Lakhani
alongwith Mr. Mujtaba Raja Advocates in
C.P No. D-3493/2013.**

**Respondent No. 1 Through Mr. Shaikh Liaquat Hussain,
Assistant Attorney General.**

**Respondent No. 3 Through M/s. Junaid Farooqui and Naeem
Ahmed Rana, Advocates n C.P No. D-
1270/2017**

**Respondent No. 3 Through Mr. Rehman Aziz Malik Advocate
in C.P No.3493/2013.**

ORDER

Muhammad Junaid Ghaffar, J. These are two Petitions having more or less similar controversy. C.P. No. D-3493/2013 has been filed by an allottee of Respondent No.3 as the construction work in the project was not being proceeded further pursuant to some alleged hindrance created by Respondent No.2 (Faisal Cantonment Board). Whereas, C.P. No. D-1270/2017 has been filed by the Builder whereby, the delay in approval of the revised building plan for the project in question by Respondent No.3 (Faisal Cantonment Board) has been impugned.

2. Very precisely the fact are that a sister concern of the Petitioners acquired title of land measuring 9 Acres and 30 Ghuntas in GLR Survey No. 118, 9 A, B, C & D Block 18, KDA Scheme No. 36, Gulistan-e-Johar, Karachi (Subject Land) through Sale Deed dated 03.06.1998 from one Manzoor Ahmed and Zubeda Ahmed who acquired the said land through Deed of Exchange that was executed between the said previous owners and the Ministry of Defence. Thereafter, the Petitioner acquired a power of attorney from Kay Kay Builders (Pvt) Limited to develop and sell the said project through Power of Attorney dated 01.08.1998. Subsequently, the subject land was thereafter, subdivided into 13 plots bearing Plot No. 118/9/A-1 to A-VIII, 118-9/B, 118/C-1 to C-III and 118/9-D duly approved by the MEO whereupon the Petitioner intends to build a project which includes a mall and separate towers for residential apartments. (The Project / Subject Project).

3. Though the case has a chequered history wherein, various correspondence has taken effect between Petitioners and Respondents but all is not necessary to adjudicate the controversy in hand. The Petitioners grievance (after having been resolved by Respondents No. 2 & 4- Military Estate Office & Director Military Lands) is only to the extent of Respondent No.3 who has allegedly time and again created hindrance in the smooth completion of the project; more specifically being aggrieved by letter dated 24.11.2015 through which the new revised building plan of the Petitioners has been returned for various reasons.

4. Learned Counsel for the Petitioner(s) have contended that the land in question has been permitted to be converted from "A-1" category to "C" category and no more remains a military land, whereas, Respondent No.3 time and again has objected to the approval of the revised building plan on the ground that a proper NOC is to be issued by the Military Estate Office. Per learned Counsel the objections of Respondent No.3 in view of various letters issued by the Military

Estate Office as well as Director Military Lands and Cantonments are nothing more than harassment; causing delay and putting the Petitioner in great losses. Learned Counsel have submitted that the Military Estate Office is no more involved in this matter as the land is now a "C" category land, therefore, directions be issued to Respondent No. 3 to approve revised building plan.

5. On the other hand, learned Counsel for Respondent No. 3 has opposed this Petition on the ground that they require a proper NOC before approval of the revised building plan from Military Estate Office and therefore, directions be issued to the Petitioner to procure the required NOC in terms of Section 181 of the Cantonment Act, 1924. The learned Assistant Attorney General submits that though a letter was sent to the office of MEO, whereas, even notice also stands served upon them, however, none is in attendance.

6. We have heard all the learned Counsel and perused the record. The precise controversy which is now before us appears to be only to the extent of issuance of NOC by the Military Estate Office and Director Military Land and Cantonments and such objection is raised on behalf of Respondent No. 3 by relying upon Section 181 of the Cantonment Act, 1924. However, before we proceed further, it would be advantageous to refer to two letters specifically issued by Station Head Quarter Karachi to the Director Military Lands and Cantonments, one of June 2015 available at page 191 and another dated 14.9.2015 available at page 193 issued by Gar HQ Kci C/O HQ 5 Corps Karachi Cantt. Both these letters reads as under:-

"RESTD

Station Headquarters
Karachi Cantt
Tel: 34704
PC/2118/179/Manzoor/Q-2
June 2015

To The Director,
Military Lands & Cantonment Department
Karachi Region,

Info: Gar HQ Kci C/O HQ 5 Corps
RPMT Karachi
MEO, Karachi
CEO, CB Faisal Karachi

Mr. Munir Sultan, M/S Kay Kay Builder
Gulistan-e-Johar, Karachi.

Subj: **Reclassification of Land From A-1 to C**

Dir ML & C Itr No.1/472 / DKR / Vol:2/ B.C /58 dated 4 Jan 2012 MEO Kci Itr No.SIN / 116 / E-I / Vol: IV/38 dated 20 Jul 2011 and even Itr No.SIN / 116 /E-1 dated 12 Jun 2015 ref.

1. There is No Objection of re-classification of land in question from A-1 to C land for the provision of roads at Gulistan-e-Johar, Block 18, KDA Scheme – 36 in accordance with Govt of Pakistan Ministry of Defence, ML & C Deptt and GHQ approved Site Plan vide ML & C Itr no.42/76 / Lands / ML&C / 88 / 736 / DS / ML&C / 94 dated 27 Feb 1995, from military point of view as required under Rule 7 of the CLA Rules -- 1937.
2. Forwarded for necessary action, please.

Sd/-
Lieutenant Colonel
For Commander
(Wasim Uddin Ahmed)

RESTD”

“RESTD

IMMEDIATE
Gar HQ Kci C/O 5 Corps
Karachi Cantt
Tel: 32225
231/PC-1/Gar-7NJ1HU
14 Sep 2015

To: MEO Officer Karachi
CEO Cantt Board Faisal

Info: Qtg & Land-Coord
Qtg & Land-Land
Qtg & Land-LDC
RPMT Karachi
Sta HQ kci-CR Sec
ML&C
Mr. Munir Sultan M/S Kay Kay Builders Karachi.

ID: HQ 5 Corps-Col Adm
Office Copy

Subj: **Re-cl of Land A-1 to C for Development of Roads Svy No.118/9 Block No.18 Gulistan-e-Johar.**

Coord Conf at Sta HQ Kci dated 3 Jul 2015 ref.

1. In sequel to coord conference for the disposal of petition filed by Mr. Munir Sultan M/S. Kay Kay Builders Karachi, for continuation of construction work. The point was raised by MEO that building plans cannot be passed till reclassification of adjacent approved road land from A-1 to C Land.
2. The case was processed with GHQ as per procedure. **NOC for reclassification of 4.95 Acres of land from A-1 to C for roads has been issued by GHQ QMG’s Branch Qtg & Land Dte vide Itr No.5631/273/132/Land-1A-4FPL1U dated 10 Sep 2015 (encl).**
3. **Therefore, direct CB Faisal to process the building plans as per bylaws and the applicant to be allowed to resume the construction work with immediate effect under intimation to this HQ, please.** (Emphasis supplied)
4. Forward for necessary action, please.

Docu ID:7NJ1HU APPROVED by APPLICANT/ACCUSED&QMG (Gar) Lt Col Farrukh Javed on 14 Sep 2015.

Note: Computer Generated Documents Do Not Require Signature.

“RESTD”

7. On perusal of the Petition, it appears that the Petitioner has referred to both these letters in Para 17 of the Petition to which the following reply has been given in Para wise comments by Respondent No. 3.

“That regarding the contents of Para 17 and 18 the petition, it is submitted that the revised building plan of the subset project was submitted by the petitioner vide letter No. 786/KKD/FCD/18838 dated 30.07.2012 showing existing / revised proposed construction of the following storeys:-

i.	Lower Ground Floor	Existing / Proposed
ii.	Ground Floor	Existing / Proposed
iii.	1 st and 2 nd Floor	Existing / Proposed
iv.	2 nd and 3 rd Floor	Existing / Proposed”

8. From Perusal of the aforesaid letters specially letter dated 14.9.2015, it appears that their remains no such controversy as is now being raised on behalf of Respondent No.3. The said letter very clearly provides that in sequel to *earlier correspondence the case was processed with GHQ as per procedure and NOC for reclassification of 4.95 Acres of land from A-1 to C for roads has been issued by GHQ QMG's Branch Qtg & Land Dte vide Itr No.5631/273/132/Land-1A-4FPL1U dated 10 Sep 2015 (encl). whereas, it further provides and directs the Respondent No. 3 to process the building plans as per bylaws and the applicant to be allowed to resume the construction work with immediate effect under intimation to this HQ.* In the comments Respondent No.3 has neither denied the factual position so stated in this letter; nor have they objected in any manner to such observation and the contents of the letter issued by Headquarter 5 Corps to the Military Estate Office Karachi and also to Respondent No. 3. In our view, now it only remains a procedural requirement which requires Respondent No. 3 to correct their record as the land stands classified and categorized from “A-1” land to “C” category land, and therefore, the objection for getting any further NOC from Military Estate Office in the given facts and circumstances of this case does not appear to be justified. Learned Counsel for Respondent No.3 has though made a feeble attempt to refer to various annexures of his comments; however, all such letters are prior to the aforesaid letter dated 14th September 2015 regarding which no objection has been raised by Respondent No. 3 in their comments.

9 The Cantonment Land Administration Rules, 1937 issued in exercised of the powers conferred by Section 280 of the Cantonment

Act, 1924 provides in Rule 4 & 5 the classification of land for the purpose of General Land Register prescribed in Rule 3 thereof. According to this rule Class "A" is the land which is required or reserved for specific military purpose and Class "B" land is defined as land which is not so required or reserved but which is retained in the Cantonment for the effective discharge of the duties of the Central Government in respect of military administration and the land which is vested in the Board under Section 108 of the Act is called or classified a "C" land. Rule 5 further bifurcates the Class "A" land into A(1) and A(2) whereas, Rule 9 provides for management of the land be it A(1), A(2), B(1), B(2) and B(3) or for that matter Class "C" land. However, sub rule (6) of rule 9 very clearly provides that the management of Class "C" land vests in the Board under Section 108 of the Act. Since in this matter the land in question has been permitted to be converted from A(1) land to "C" land, as depicted from the two aforesaid letters, we do not see any reason for Respondent No. 3 to object to the approval of the revised building plan once the land has been classified as "C" category land. There appears to be no justification for having any further NOC from the Military Estate Office or for that matter from the Director General Lands.

10. In view of hereinabove facts and circumstances of this case, we are of the view that the Petitioner has made out a case. The Petition(s) are allowed and Respondent No.3 is directed to approve the new revised building plan of the subject property forthwith in accordance with law.

Dated: 25.04.2017

J U D G E

J U D G E

ARSHAD/