IN THE HIGH COURT OF SINDH, KARACHI

Suit No.889 of 1998

[Mirza Abdul Sattar Baig v. Pakistan Railway and others]

Plaintiff	**:**	**Mirza Abdul Sattar Baig, through Attorney Pervaiz Raees Siddiqui, represented by Mr. Iqbal Ahmed Dhudhi, Advocate.**
Defendants No.1	**:**	**Pakistan Railways, through Mr. Jaffar Hussain, Advocate and Mr. Masood Hussain Khan, Assistant Attorney General Pakistan.**
Defendant No.2	**:**	**Pakistan Railway Employees Cooperative Housing Society, through Mr. Ovais Ali Shah, Advocate.**
Defendants 3 & 6	**:**	**Mrs. Resham Jan and Karamat Ali Baig, in person.**
		Syed Aal-e-Maqbool Rizvi, Additional Advocate General Sindh along with Ms. Naheed Akhter, Advocate.

Suit No.1511 of 1999

[Pakistan Railways Employees Cooperative Housing Society Ltd. v. Mirza Abdul Sattar Baig & others]

Plaintiff No.1	**:**	**Pakistan Railway Employees Cooperative Housing Society Ltd., through Mr. Ovais Ali Shah, Advocate.**
Plaintiffs No.2&3	**:**	**Mrs. Resham Jan and Karamat Ali Baig, in person.**
Defendants No. 1	**:**	**Mirza Abdul Sattar Baigh, through Mr. Iqbal Ahmed Dhudhi, Advocate.**
Defendants No. 2	**:**	**Government of Sindh, through Syed Aal-e-Maqbool Rizvi, Additional Advocate General Sindh along with Ms. Naheed Akhter, Advocate.**
Defendant No. 3	**:**	**Pakistan Railways, through Mr. Jaffar Hussain, Advocate and Mr. Masood Hussain Khan, Assistant Attorney General Pakistan.**

Suit No.1059 of 2016
[Muhammad Ali v. Muhammad Saeed & others]

Plaintiff : Muhammad Ali.

Defendants 8 & 7 : Government of Sindh & another, through Syed Aal-e- Maqbool Rizvi, Additional Advocate General Sindh along with Ms. Naheed Akhter, Advocate.

Dates of hearing : 03.05.2017 and 26.05.2017

Date of Decision : 18.09.2017

Law under discussion:

(1) Civil Procedure Code, 1908.

(2) Colonization & Disposal of Government Land (Sindh) Act, 1912 (**"Colonization Law"**)

(3) West Pakistan Land Revenue Act, 1967 (**"Revenue Law"**).

(4) Specific Relief Act, 1877.

(5) Sindh Rented Premises Ordinance, 1979. (**"Rent Law"**)

(6) Qanoon-e-Shahadat Order, 1984 (**"Evidence Law"**).

J U D G E M E N T

***Muhammad Faisal Kamal Alam, J*:** The instant proceeding (Suit No.889 of 1998) has been filed by Plaintiff, who is claiming his ownership rights in respect of a land measuring 2-14 Acres, falling in Naclass No.236 (0-16 Acres), Naclass No.44 (01-13 Acres) and Naclass No.184 (00-25 Acres), in Deh Okewari, Tapo Drigh Road, Taluka and District Karachi (the **"Suit Land"**). Plaint contains the following prayer clause(s)_

A) Declaration that the Plaintiff is sole and absolute owner of 2-14 acres in Naclass Nos.236, 184 and 44, Deh Okewari District Karachi –East.

B) Restrain the Defendants jointly and severally from interfering in any manner whatsoever from encroaching / trespassing or dispossessing the Plaintiff from the suit land and further from harassing and

threatening the Plaintiff and creating any 3rd party rights or interest in respect thereof.

C) **Permanent injunction restraining the Defendant, their servants, agents or any one working through or under them or any one working for and on their behalf from dispossessing the Plaintiff from 2-14 Acres of land in Naclass No.236, 184 and 44, Deh Okewari, District Karachi East.**

D) **Without prejudice to the above and as an alternative remedy mandatory injunction directing the Defendants jointly and / or severally not to interfere with the possession of the Plaintiff and remove any impediment from its free use and enjoyment by the Plaintiff.**

E) **Any other / further / additional relief / reliefs which this Hon'ble Court may deem fit and proper in the circumstances of the case.**

F) **Cost of the Suit.**

2. The defendants No.2, 3, 4 and 6; Pakistan Railway Cooperative Housing Society Limited (**"Society"**) and private defendants have filed their separate cross Suit No.1511 of 1999, laying their respective claims in respect of the same Suit Land. In the subsequent Suit No.1511 of 1999, the Plaintiff of Suit No.889 of 1998 is Defendant No.1, Government of Sindh is Defendant No.2 and Pakistan Railways is Defendant No.3. In this suit, the Plaintiff No.1 is the Pakistan Railways Cooperative Housing Society Ltd. (the aforementioned Society), to which a very large portion of the land was leased out by the President of Pakistan as per the claim of this Plaintiff No.1 (Society), approximately 100-38 Acres, whereas other Plaintiffs No.2, 3 and 4 are the members of Defendant-Society, who have been leased out various plots by the said Society (Plaintiff No.1). These subleases have been exhibited as D-18 and D-19 (of the Evidence File). The subsequent Suit No.1511 of 1999 seeks the following relief(s): -

"a. Declaring that the suit land is part of plaintiff's land of its scheme known as "Gulshan-e-Jamal" and it has been lawfully granted / leased

to the plaintiff vide agreement dated 23rd May, 1974, under the sanction of the President of Pakistan.

b. That the Plaintiff has lawfully allotted / subleased and transferred plots on the suit land to its members and such allotments, subleases and transfers by the Plaintiff to its members are legal, valid and subsisting.

c. To direct the defendant No.1 to deposit / hand over all documents in his possession, which are either void as against the plaintiff and its members or are harmful to their rights and interests and to declare them as illegal, unlawful and void and to cancel all such deeds and documents.

d. To direct defendant No.1 and his men to handover possession of suit land to the plaintiff.

e. To permanently restrain defendant No.1, his men, servants, attorneys and agents or any other person or persons acting for or on his behalf from raising any kind of construction on suit land or from selling, gifting, transferring or in any other manner disposing of or creating third party interests thereon.

f. To further restrain defendant No.1, his men, servants, attorneys and agents or any other person or persons acting for or on his behalf from either harassing the plaintiff or its members or in any way causing hindrance or interfering in construction of houses by the plaintiff's members on plots / land in Block-G of Gulshan-e-Jamal, Karachi.

g. Cost of the suit.

h. Any other relief, that may be deemed fit and proper under the circumstances of the case may also be granted."

3. The third Suit No.1059 of 2016 has been instituted by one Muhammad Ali, seeking protection of this Court regarding his tenancy right in respect of demised premises, in which he is manufacturing cement blocks. The Defendants of this last suit are all private parties except Defendant No.7; Station House Officer (Aziz Bhatti Police Station) and Province of Sindh; the Defendant No.8. In this last suit, till date no written statement has been filed by the Defendants and since it does not

relate to the determination of any proprietary rights, thus it is not necessary to reproduce its prayer clause(s) herein under.

4. Since rival ownership claim is raised by the parties in Suit No.889 of 1998 and subsequent Suit No.1511 of 1999, therefore, for the sake of reference and clarity, the Plaintiff Mirza Abdul Sattar Baig, who is Defendant No.1 in Suit No.1511 of 1999, will be referred to as the **"Claimant"**, whereas Defendants in Suit No.889 of 1998 and Plaintiff in Suit No.1511 of 1999, will be called as the **"Defendants"**. Both these ***lis*** were consolidated on 13.09.2004.

5. This is the post remand proceeding. Earlier this Court had passed a Judgment and Decree dated 25.02.2010, whereby Suit No.889 of 1998 of the aforereferred Claimant was dismissed and that of Defendants (Suit No.1511 of 1999) was decreed. Two High Court Appeals bearing H.C.A. Nos. 70 and 71 of 2010 were preferred by the Claimant and the afore-referred Judgment and Decree was set aside, *inter alia*, on the ground that it did not follow the provision of Order XX, Rule 5 of C.P.C. and separate findings were not given on the consolidated issues framed in both suits, consequently, the matter was remanded for deciding the same afresh.

6. Vide order of 10.09.2001, Defendant No.2 (Government of Sindh) in Suit No.1511 of 1999 was to be proceeded *ex parte*, as despite service of notice said Defendant-Government of Sindh did not enter appearance.

7. Undisputedly, the following consolidated Issues were framed, as also mentioned in the Judgment of 29-3-2016 passed in the afore referred High Court Appeals_

1. ***Whether the suit is not maintainable according law?***
2. ***Whether the suit land in part and parcel of plaintiff's land allotted for the purpose of Pakistan Railway Employees Cooperative***

Housing Society known as Gulshan-e-Jamal having been granted by the President of Pakistan in the year 1974?

3. ***Whether the Board of Revenue Sindh could grant the land in suit to the defendant No.1 in the year 1996 which already stood allotted to defendant No.1 by the President of Pakistan?***

4. ***Whether the defendant No.1 is in possession of the land in suit?***

5. ***What should the decree be?***

8. Parties in both the above two suits; Suit No.889 of 1998 and 1511 of 1999 led their evidence, whereas the latest Suit No.1059 of 2016 is still at its pre-evidence stage, though the record of proceeding shows that Plaintiff's side is not proceeding with the matter and it is obvious from the perusal of Nazir report dated 10.05.2016, that Plaintiff even left the site inspection proceeding, which shows his lack of interest. Also pertinent to mention that Defendant-Pakistan Railways in its Written Statement supported the pleadings of Defendant-Society as well of Defendants, who were granted ownership leases by Defendant-Society.

9. From the side of Claimant, his attorney Pervaiz Raees Siddiqui examined himself as P.W.-1 and produced documents in support of his claim, whereas on behalf of Defendants, three witnesses were examined, namely, Chaudhry Fazal Karim (D.W.-1), 2. Rehmat Ali (D.W.-2) and 3. Niaz Ahmed (D.W.-3). Similarly, though private Defendants filed their respective Affidavits-in-Evidence in support of their ownership claim and in support of Defendant-Society, but, the Report dated 04.12.2006 of the learned Commissioner, who was appointed to record evidence, states that these persons / private Defendants did not enter the witness box; hence, their Affidavits-in-Evidence cannot be considered.

10. The learned counsel representing Defendant Pakistan Railways and the Assistant Attorney General have supported the stance of Defendant No.2-the said Railways Housing Society, whereas, the learned Additional Advocate General questioned the entitlement of all the parties; Claimant and Defendants, both.

11. Mr. Iqbal Ahmed Dhudhi, learned counsel for the Claimant, strenuously argued by referring to depositions of the parties hereto that above referred Claimant has proved his case, primarily on the strength of documentary evidence. It was further argued that the Suit Land was allotted to the Claimant in compliance of the consent order dated 07.07.1997 passed by learned Division Bench of this Court in C.P.No.D-1315 of 1997 and, therefore, adverse claim of the Defendants with regard to the Suit Land is bogus. It has been further argued that the pleadings of the Claimant in both suits corroborated by the evidence given by P.W.-1, that the Suit Land of the Claimant falls in aforementioned Naclass No.236 (0-16 Acres), Naclass No.44 (01-13 Acres) and Naclass No.184 (00-25 Acres), in Deh Okewari, Tapo Drigh Road, Taluka and District Karachi, whereas the Defendants lay their claim in respect of land, which, according to the Defendants, falls in different survey numbers and has not nexus with Claimant's Suit Land. P.W.-1 on behalf of Claimant has produced Deh-Jo-Form-II, in which vide entry Nos.1075 and 206 dated 16.07.1997, the Suit Land from the afore-referred Naclass Numbers are shown to be allotted to the Claimant, besides Exhibit P-5/7 to 9 and the three possession letters, which have been issued in respect of the Suit Land by the concerned Tapedar in favour of the Claimant.

12. Mr. Iqbal Dhudhi, learned counsel for the Claimant, has also referred to cross-examination of Defendants' witnesses to substantiate his claim that the land as claimed by the Defendants are in Survey numbers 2, 40 and 45

of Deh Okewari, and hence, geographically same are located at some other place and do not form part of the Suit Land. To a query, the Claimant's side did not dispute the entitlement of Pakistan Railways and Defendant No.1 (Pakistan Railways Cooperative Housing Society Ltd.) in respect of a large area of land admeasuring 217-756 Acres, falling in Survey No.2 at Drigh Road Cantonment. This land is mentioned as Pakistan Railways land in General Land Register (GLR), which has been exhibited as D/26, available at page 211. Various other lands of Defendant Pakistan Railways in different survey numbers are also mentioned in the Ghat Wadh Form No.16, which has been exhibited as D-27, (available at page-213 of the Evidence File); this document is also not disputed by the Claimant side.

13. The Claimant's stance has been seriously controverted by Defendants. Mr. Ovais Ali Shah, while representing, one of the Defendants-Society, has traced out the history of landholding that vests in favour of Defendant (Society) by virtue of a lease agreement between President of Pakistan and said Defendant-Society, which has been Exhibited as D-3, available at page-57 of the Evidence File. He has further referred to a report earlier submitted and brought on record by Nazir of this Court in which the Defendant No.2-Board of Revenue has categorically mentioned that claim of the Claimant is bogus and Board of Revenue has initiated criminal prosecution against its officials. This Report has never been challenged.

14. P.W.-1, Pervez Raees Siddiqui, the attorney of Plaintiff (Mirza Abdul Sattar Baig) is the sole witness from the Claimant's side. In his evidence he has produced a demarcation plan in respect of the Suit Land as well as Form-II (Deh-Jo-Form) besides, Sorat-e-Hal and three possession letters issued by Tapedar and attested by Mukhtiarkar. These possession letters are in respect of different portions of Suit Land falling in Naclass No.44, 184 and 236. All these documents have been exhibited at P-5/6,

P-5/3, P-5/4, P-5/5, P-5/7, P-5/8 and P-5/9 respectively. In his cross-examination, the said P.W.-1 has reiterated that Board of Revenue allotted the Suit Land in above un-surveyed numbers (Naclass) to Claimant in compliance of the order dated 07.07.1997, passed in aforereferred constitutional petition. However, it has been acknowledged in his cross-examination that Claimant's name is not mentioned on the site plan. However, about the actual location of the land, the evidence of said P.W.-1 not only lacks confidence, but is also contradictory. He has further admitted that a F.I.R. No.71 of 1998 was lodged in connection with the Suit Land against the Officers who had allotted the same to Claimant. Though he has denied the suggestion that the Claimant has not made any payment towards the Suit Land, but at the same time, undisputedly, no document has been produced to evidence the fact that an amount / occupancy price has been paid to Defendant-Government of Sindh, in respect of the land. It is also an admitted fact that no allotment order has been produced by the said P.W.-1 which is a mandatory requirement under Section 10 of the Colonization Law, for such type of allotments.

15. Defendant (Society) has examined three witnesses, namely, Chaudhry Fazal Karim (D.W.-1), who was the then Vice President of Defendant-Society; Rehmat Ali (D.W.-2), who was Field Officer of Defendant-Society and Niaz Ahmed (D.W.-3), who was working as Assistant Inspector of Works (Property and Land) in Pakistan Railways, Karachi Division-Defendant No.1. Assessment of testimonies of these three Defendant's witnesses leads to the conclusion that all the three witnesses with the support of documentary evidence have corroborated each other's version that the Suit Land in question is in fact a part of a large area of land, which was leased out by the President of Pakistan to Defendant-Society by the Agreement dated 23.09.1974, as referred above and has been exhibited

as **D-3.** The D.W.-1 has very specifically stated the location of the entire landholding of Defendants including a strip of 6000 Square Yards, which is part of a Housing Project of Defendant-Society by the name Gulshan-e-Jamal. It has been specifically deposed by the said D.W.-1 that on this 6000 Square Yards strip, 4 plots of 240 Square Yards and 7 plots of 120 Square Yards were allotted and subleased by the said Defendant-Society to its members. Three subleases have been produced in the evidence as Exhibit D-18 (page-141), D/18 (page 143); this sublease is in favour of Defendant No.3-Resham Jan and D/19 at page 173. These subleases, which are the title documents, are in favour of other private Defendants. Claimant's side has not cross-examined the Defendant's witnesses either on the genuineness of these documents produced by them in evidence, or, their entitlements under these Sub-leases. All witnesses of Defendants categorically stated in their depositions that the Suit Land in question was not owned by the Defendant-Government of Sindh, but reiterated that the entire chunk/area of land comprising 217.756 acres vested in the Defendant No.1-Pakistan Railways and out of which 100.38 acres was granted/leased out by the President of Pakistan through Divisional Superintendent Pakistan Railways to Defendant No.2-Society, for the period of 99 years; Exhibit D/3. In support of his testimony General Land Register has been produced, which confirms that a large area of land stands in the name of Defendant-Society.

16. It has been specifically deposed by D.W.-2 <u>that in fact</u> the Suit Land in question is where the Block-G of above named Housing Scheme (Gulshan-e-Jamal) of Defendant Society exists and it falls in Survey Numbers 2, 40 and 45 and not 236, 184 and 44, as claimed by Claimant. On this material aspect, that the disputed area of 02-14 Acres is part of Defendant's Housing Scheme, the said D.W.-2 was not cross-examined by

the Claimant's side which means the version of Defendant's witness has been accepted.

17. The aforereferred 99 years' ownership lease granted by the President of Pakistan is a vital document. Examination of this document shows that lease money of Rs.29,15,035/- (Rupees Twenty Nine Lacs Fifteen Thousand and Thirty Five only) was paid; tenure of Lease is 99 years, which was granted on 23.05.1974; the area of this grant is 100-38 Acres, for developing a Housing Scheme. It was a surplus railway quarry land. Its exact location is also mentioned under paragraph-3 whereof. In terms of sanction letter issued by Ministry of Political Affairs and Communication, Government of Pakistan dated 29.06.1973, which is part of this Lease Agreement (Exhibit D/3) as Annexure 'A', this land was granted for development of a Housing Scheme for the benefit of serving and retired employees of Pakistan Railways and particularly widows of Railways Employees. Paragraph-2 of this sanction letter is also of equal significance, which has mentioned that the scheme for grant of the above lease land to Defendant-Housing Society **was also approved by Sindh Government, vide their approval letter No. SOI(KDA)-10/1/73, dated 04.06.1973 and Karachi Development Authority (KDA) also conveyed its no objection to develop and utilize the area for the subject housing project.** Obviously, this is the reason that Sindh Government though was impleaded as Defendant but never filed its Written Statement nor contested the matter. Not only this, when on the directions of this Court, the learned Nazir sought report from Board of Revenue, the ***concerned Assistant Commissioner (Revenue), Karachi East, had submitted an adverse report dated 10.03.2000,*** which is available with the Reference of Nazir, by clearly mentioning the fact that the claim of the Claimant Abdul Sattar Baig is bogus and is a result of fraud and collusion between the said Claimant and

Revenue Staff, regarding which a F.I.R. No.71 of 1998 (as referred above) was already registered with Anti-Corruption Police. This Report is appended with the Nazir's Reference dated 16.03.2000, which was taken on record on 02.04.2001, against which no objections were preferred by the Claimant. Not only this, the P.W.-1 in his evidence has admitted the fact about the above F.I.R. against Revenue officials who were involved in allotting the suit land to the Claimant. Therefore, the above Nazir Reference becomes a conclusive evidence as no objection was preferred against it and the said Report, secondly, the factum of lodging F.I.R. No.71/1998 has been proven in the evidence by Defendants.

18. D.W.-1 (Chaudhry Fazal Karim), who was the Vice President, at that relevant time, of Defendant No.2 (Housing Society), besides producing above documents, had also produced the duly approved layout plan of the Housing Society of Pakistan Railways (Defendant) from Cantonment Board, as Exhibits D/4 & 5, but was never cross examined on these documents or about the authenticity of these documents. In his deposition, the said D.W.-1 has specifically stated about grant of land in survey Nos.245/1 and 40/2. The other witness, D.W.-2, who was a Field Officer of Defendant-Society has produced the extract of ownership as Exhibit D-26, the General Land Register (GLR), which under the law is maintained by concerned Military Estate Office (MEO) as custodian of lands situated in a Cantonment. All these lands come within the territorial jurisdiction of the Cantonment Board. He has specifically stated that the land in question falls in survey Nos. 2, 40 and 45 and it has no nexus with the Naclass numbers as claimed by the Claimant. As against this, if the site-plan produced by Claimant as Exhibit P-5/6 is scrutinized, glaring anomalies are very much floating on the surface. On the top, the title of this demarcation plan states that it relates to 'Survey Nos'.**184, 44 and 236 of Deh Okewari**, instead of

Naclass, as claimed by Claimant. At the bottom of this site plan, the remarks contain that in these purported 'survey numbers' there is an old Railway Line. This purported allotment is even otherwise against the law and Statement of Conditions issued by Land Utilization Department (Defendant-Government of Sindh) from time to time. As per Condition 4(2), the Railway Line is one of the prohibited areas and thus no land can be granted / allotted to any person in such area. This on the contrary proves the case of Defendant-Railways Society and its members, who are private Defendants.

19. There is a vast difference between Naclass land and the one having survey numbers. Sub-section (25) of Section 2 of the Revenue Law, 'survey' or 'khasra' number means, a portion of land having an indicative number, whereas, the Naclass land is a big chunk of land, which is un-surveyed. The latter category can comprise of various survey numbers. The documents produced by Claimant's witness, do not have authenticity. In addition to this, if the aforereferred report of Assistant Commissioner, which has been filed by the Nazir of this Court, is also examined, it will not be difficult to conclude and hold that the claim of the Claimant, is in fact a bogus one.

20. One of the main arguments of the Claimant's side is that the Suit Land in the aforementioned Naclass numbers was allotted to him in compliance of earlier order passed in C.P.No.D-1315 of 1997 by learned Division Bench of this Court. A copy of this order is at page-297 of the Court file of Suit No.889 of 1998. Site plan purportedly issued by the Official Defendants / Government of Sindh (Land Utilization Department) and Form-II (Exhibit P-5/3) issued by Board of Revenue also states the same in its Column No.11. Order dated 07.07.1997 is admittedly a consent order, in which the law Officer for Government of Sindh on the instructions

of Officials from Land Utilization Department had acceded to the implementation of earlier orders, which were never brought on record. This further shows that there was no independent determination by this Court in earlier round of litigation in respect of the entitlement, if any, of present Claimant. Secondly, it is an undisputed factual aspect that the Suit Land on which the present Claimant is laying his claim is a State Land and it had to be disposed of in terms of Section 10 of the Colonization Law; the foremost requirement of which is that there should be an order by the Competent Authority; the Deputy Commissioner. The time period to which present dispute relates, Statement of Conditions as notified from time to time by Defendant Sindh Government (Land Utilization Department) was in the field. Status of the Suit Land is mentioned under Form-II, which means that it is of residential nature, therefore, as envisaged in Conditions No.5 and 6 (of the statement of conditions), said plots/lands could have been granted / leased out either through negotiation or auction, but after receiving full occupancy price, as determined by the Deputy Commissioner based on market value. Admittedly, none of the above ingredients are available in the present case. A specific question was put to P.W.-1, attorney of the Claimant, about payment of price to which, though he answered in affirmative, but admittedly did not provide any documentary evidence. Obviously payment of occupancy price for such type of plots / land were to be made in the public exchequer through proper documentation. Onus was on Claimant to produce relevant documentary evidence in support of his assertion about payment of price of the lands in question, which he never did. Evidence of Claimant was further shattered when his witness admitted that he has no proof in support of his allegations against the Defendant Pakistan Railway.

21. Subsections 4 and 5 of Section 10 of the Colonization Law explicitly state that no title or right in respect of land accrues in favour of any person,

unless a written order from the Competent Authority has been passed and occupancy price within a stipulated period is paid. Claimant's witness evidence has been disproved about payment of price, therefore, it means that no price was ever paid to Defendant Sindh Government. Admittedly, there is no order in terms of Section 10 about the grant of suit land either, in favour of Claimant.

ISSUES NO.1 AND 2:

22. In view of the discussion contained in the preceding paragraphs and after appraisal of the evidence, it is not difficult to hold that the Claim of the Claimant in respect of Suit Land is not genuine, as in fact no Government land was allotted / granted to the said Claimant in accordance with law. Even the demarcation plan (Exhibit P-5/6) and the Possession Letters on which Claimant is relying, are bogus documents and devoid of any legal value. Secondly, a detailed Report from Defendant Sindh Government is already part of this judicial record in Suit No. 889 of 1998, containing, ***inter alia,*** copy of FIR 71/1998 and a List of bogus/fake allotments together with respective allotters and allottees, wherein, the name of present Claimant is mentioned at serial number 1. The latter was purportedly given 25 acres in District East, that is, the area where the actual lands of present Defendants, viz. Pakistan Railways, Railway Housing Society and private Defendants situate. When the Claimant does not have any right or interest in respect of the Suit Land, then he also does not have any legal character to file the present proceeding in terms of Section 42 of the Specific Relief Act, 1877. Consequently, Suit No.889 of 1998 instituted by Claimant (Mirza Abdul Sattar Baig) is not maintainable in law and is hereby dismissed.

23. The Defendants have not only put forth a consistent stance with regard to their claim but also setup a plausible defense, fully supported by

official documents, which are part of public record and corroborated by their witnesses that the Suit Land is part of an area of land comprising 100.38 Acres, which was granted to Defendant-Society for primarily developing a Housing Scheme, for its members as already discussed in the foregoing paragraphs.

It is also now proven that in fact the disputed area of 02 Acres and 14 Ghuntas is a part of the above large area of land of 100.38 Acres and the said disputed land comprising 2-14 Acres does not fall in any Naclass Nos.184, 44 and 236 as claimed by Claimants but falls in different survey numbers as deposed by witness of Defendants. The Defendants have produced and exhibited afore-mentioned documents including the said Sub-leases existing in favour of private Defendants who are members of Defendant Society. These documents are from the official record and therefore, carry presumption of genuineness as envisaged in Articles 89 and 90 of the Evidence Law. The specific testimonies of Defendants' witness about their claim of ownership on the strength of the afore-mentioned documents, including lease deed of 23.05.1974 (Exhibit D/3) have not been questioned in the evidence by the Claimant's side; thus, the stance of the Defendants has been accepted by the Claimant and stands proved. Therefore, Issue No.2 is answered accordingly, that Suit Land as claimed by the Claimant was not part and parcel of the land allotted / granted to the Defendant-Society, on which the latter (Defendant-Society) has also launched a Housing Scheme by the name of Gulshan-e-Jamal, as this entire area of land comprising 100-38 Acres is the land of Defendant Pakistan Railways and was allotted / granted / leased out by the President of Pakistan through Superintendence of Pakistan Railways-Defendant No.3 (in Suit No.1511 of 1999).

ISSUES NO.3 AND 4:

24. The Defendant-Government of Sindh neither filed any Written Statement in Suit No.1511 of 1999, filed by Railways Society and Private Defendants, nor led any evidence to refute and disproof the claim of said Railways Society and other Plaintiffs of Suit No.1511 of 1999, except they (Sindh Government) opted to file aforementioned Report dated 10.03.2000 through the Nazir of this Court, stating that the claim of the Claimant is bogus.

With regard to the possession, it is also an undisputed position that under Court orders, Nazir took over the possession of Suit Land in order to preserve the same during litigation as there were serious complaints by the parties about encroachment at the Suit Land. Accordingly, I answer Issue No.3, that the Suit Land since not vested in Board of Revenue Sindh, therefore, same could not have been allotted to the Claimant; rather it was never allotted to the Claimant as mentioned in the foregoing paragraphs and specifically stated by the Board of Revenue in its afore-mentioned Report submitted to this Court through Nazir Office. In view of the above discussion, appraisal of evidence and undisputed documentary evidence, it is obvious that the land in question (Suit Land) did not vest in Sindh Government (Defendant No.2 in Suit No.1511 of 1999) hence, the same cannot and could not have been granted to the Claimant. Possession in these circumstances is not a deciding factor. However, now the same is liable to be restored to the Defendant-Society or if the same has been allotted to any of its genuine members, to such members.

25. I must record my displeasure about cavalier attitude of Revenue Officials, who with a calculated motive did not file pleadings. Being officials it was / is their foremost obligation to assist the Courts. If these Officials provide a timely and dutiful assistance to the Courts, then it will help in reducing the litigation considerably. It is a matter of common

knowledge that these type of land matters result in multiplicity of litigation, primarily, because Revenue Officials' assistance is seldom forthcoming. Miseries of a common litigant cannot be lessened unless these officials realize their obligation towards public at large and the Courts. Thus, in my considered view, non-filing of written statement or deliberately abstaining to file pleadings is not only a misconduct but a deliberate attempt to mislead the Court and obstruct the course of justice.

26. Before adverting to the last Issue about the decree, since another ***lis*** being Suit No.1059 of 2016 is also part of present cases, therefore, for deciding this matter also one more Issue is required to be framed, which is as follows: -

5(a) Whether Suit No.1059 of 2016 as framed is maintainable?

ISSUES NO.5 AND 5(a)

27. Plaintiff Muhammad Ali in Suit No.1059 of 2016 has not claimed any ownership right, but merely seeking protection of his tenancy, that too against private Defendants, who, according to him, are the owners of a piece of land where he is carrying out his block manufacturing unit. The tenancy rights are already protected in terms of Section 13 of the **Rent Law**, *if at all*, the claim of this Plaintiff (Muhammad Ali) is genuine and bona fide and not contradictory to the findings mentioned herein above. Hence, this newly added Issue No. 5(a) is answered to the extent that the said Plaintiff of Suit No.1059 of 2016 can only be evicted from his portion of premises through due process of law. Consequently, in the above terms, Suit No.1059 of 2016 stands disposed of.

28. Now adverting to the Issue No.5; the upshot of the above is that_

i) Suit No.889 of 1998 is hereby dismissed with costs of rupees ten thousand.

ii) Suit No.1059 of 2016 is disposed of in terms that if the claim of Plaintiff Muhammad Ali as a tenant is genuine then he can be evicted from the demised premises through due process of law.

iii) Suit No.1511 of 1999 is accordingly decreed.

29. MIT-II shall call for the record and proceeding of the afore mentioned F.I.R. No.71 of 1998 from the Board of Revenue (Defendant No.2) in Suit No.1511 of 1999 and place the same before this Court in order to ascertain that how seriously Senior Officials of Revenue Department have pursued the matter against delinquent officials.

30. In view of the peculiar circumstances of the case, the Defendants No.889 of 1998 and Plaintiff in Suit No.1511 of 1999 are granted costs of these proceedings.

JUDGE

Dated: 18.09.2017.

Riaz Ahmed/P.S*