

## IN THE HIGH COURT OF SINDH, KARACHI.

Suit No. 1376 of 1997

**PRESENT:****Mr. Justice Arshad Hussain Khan*****Syed Sajid Raza Vs. City District Government and Others***

Plaintiff: Syed Sajid Raza  
through Mr. Sikandar Khan, Advocate

Defendant No.3: Deceased Khuda Bukhsh through his 12 surviving legal heirs  
(widow, 8 sons and 3 daughters)  
through Mirza Adil Baig, Advocate.

Defendant No.6: Syed Riaz Ahmed through Ms. Shabana Ishaq, Advocate

Date of Hg: 07.11.2016

**JUDGMENT**

**ARSHAD HUSSAIN KHAN, J.** This suit was filed on 23.10.1997 against the defendants for Declaration, Cancellation, Damages, Mandatory / Permanent Injunction with the following prayer:-

- (a) *To declare that the plaintiff above named is bonafide transferee/lessee and has a valid, lawful existing and binding title upon the defendants in respect of the subject/suit property.*
- (b) *To declare that the act of withdrawal of the transfer order dated 13.9.1988 and cancellation of lease deed dated 29.8.1990 with regard to suit property bearing Plot No.A-376, Sector 11-B, North Karachi township, Karachi, entered into and executed between the plaintiff and the defendant No.1, duly registered with the Sub-Registrar of Properties, Karachi, is unauthoritative, illegal, unlawful, without jurisdiction and void ab initio.*
- (c) *To order and direct the defendants to re-call, withdraw and cancel their letter No.KDA/AD(T)/NK/97/48 dated 05.03.1997 and letter bearing No.KDA/L&E/A-376/11-B/97/946 dated 17.7.1997. with a further direction and order to defendant Nos.1 and 2 to restore the position and status of suit property as it was prior to 19.08.1996 when the defendant Nos.1 and 2 for the first time issued show cause notice to the plaintiff.*
- (d) *To restrain the defendant Nos.1, 2 and 3 collectively as well as individually from further changing the record of rights in respect of the suit property.*
- (e) *To grant the permanent injunction, restrain the defendant Nos.1, 2 and 3 individually and as well as collectively, from effecting any further change in their record of rights, effecting the nature, status and be*

*further pleased to restrain them from ejecting, dispossessing and raising construction according to the approved building plan by the plaintiff, is in exclusive physical/constructive possession of the subject plot/property i.e. a residential plot of land bearing No.A-376, Sector 11-B, measuring 240 square yards, situated in North Karachi Township, Karachi.*

- (f) *To award damages in the sum of Rs.5,00,000/- (Rupees six lacs) only as compensation for the losses, mental torture and physical agonies caused by the defendants to the plaintiff due to their unlawful without jurisdiction and unauthoritative acts and deeds.*
- (g) *To award cost of the suit and damages in terms of and for the reasons disclosed in the paragraph 18 of the plaint.*
- (h) *To grant any other/further and/or better relief which is deemed fit, proper and appropriate under the facts and circumstances of this case.*

2. Briefly the case of plaintiff is that the plaintiff is a lessee in respect of residential plot bearing No.A-376, Sector 11-B, measuring 240 sq. yds., situated in North Karachi township, Karachi, hereinafter referred to as the 'suit property'. It is also averred that the plaintiff had purchased suit property by way of agreement of sale dated 05.08.1985 from defendant No.5 namely, Muhammad Anis, transferee of the suit property by virtue of pre-lease transfer against the valuable consideration and thereafter by completing all the formalities as required under the rules including the publication, the same was transferred by way of pre-lease transfer vide Transfer Order bearing No.A-376/Sector 11-B/240 Sq. Yds./NKT/Resett-T-Br/258 dated 13.09.1988. Subsequently, a 99-years lease was executed in favour of the plaintiff vide Lease Deed Registered No.4455, Book No.I, dated 29.08.1990, M.F. Roll No.1286 dated 04.09.1990. Thereafter, plaintiff got construction plan approved from concerned authority/office, vide its letter No. KBCA/DCB-V/KDA/284/71/81/96 dated 15.02.1996 and raised construction over the suit property as per approved plan. It is further averred that the plaintiff was served with show cause notice dated 29.08.1996 issued by defendant No.2 for cancellation of transfer order and lease with regard to the suit property. The said show cause notice was subsequently, replied to by the plaintiff on 10.09.1996. Further averred that acts and deed of defendant No.3 claiming the title of the suit property by filing false and frivolous applications in the office of defendant Nos.1 and 2 and on other forums, were based on malafides with ulterior motives and for illegal gains. It is also averred that defendant No.3 in league and collusion with defendant Nos.1 and 2 is bent upon to deprive the plaintiff from his lawful and bonafide right and title in respect of the suit property.

The plaintiff apprehending foul play on the part of defendants, through his legal counsel, also served the defendants with a statutory notice under Article 131 of KDA Order No.V of 1957, which notice/letter was never replied by the defendants, however the legal counsel received a copy of the letter addressed to Mr. Khuda Bux by KDA advising him to approach the court of law for redressal of grievances and cancellation of lease of suit property. It is also averred that after service of statutory notice, the plaintiff received letter from defendant Nos.1 and 2, purporting to be a letter for cancellation of Transfer Order and lease of the suit property vide letter of KDA bearing No.KDA/AD(T)/NK/97/48 dated 05.03.1997. The plaintiff filed the present suit challenging the said letter of the defendant-authority being unlawful and uncalled as the defendants are not entitled and competent to cancel the registered lease.

3. Upon service of notice of this suit defendant Nos. 1, 3, 4, 5 and 6 filed their respective written statements.

4. The defendant No.1 (KDA) in its written statement denied the allegations of the plaintiff in the suit. It is stated that suit property was originally allotted to defendant No.3 who got transferred the suit property in the name of defendant No.4 who subsequently sold out the property to defendant No.5 and who further sold the suit property to the plaintiff in whose favour ultimately the lease was granted. Further stated that the pre-lease transfer effected in the name of defendant No.4 from defendant No.3 was in accordance of rules and regulation. It is alleged that first pre-lease transfer in favour of defendant No.4 was done through impersonation. Further averred that upon receiving the complaint of defendant No.3, a detailed enquiry was conducted through which it appeared that first pre-lease transfer was obtained through impersonation, hence the defendant cancelled the lease of the suit property. It is also averred that the transfer of the suit property was effected after completing the requisite formalities according to the rules. Further averred that grant of 99-years lease was forged and bogus documents as the same was based on forged transaction therefore, the said lease does not have any legal sanctity and it was rightly cancelled.

5. Defendant No.3 in his written statement has stated that plaintiff obtained the lease deed of the suit property though fraud and misrepresentation as defendant No.3 is original allottee of the same. Further

averred that he has neither sold his plot (suit property) nor transferred the same to any person(s) at any time, and that he (defendant No.3) is lawful allottee and in lawful possession of the suit property, therefore, the grant of lease in favour of the plaintiff is illegal as the same has been obtained by fraud and misrepresentation of facts on forged and fabricated documents. It is also stated that defendant No.4 namely, Shoukat Ali had managed to obtain transfer of the suit property in his name by fraud, misrepresentation as he arranged a person by the name of Khuda Bux resident of Landhi to impersonate as defendant No.3 (Khuda Bux). Thereafter, defendant No.4 transferred the suit property to one Mohammad Anis on 13.04.1985 and after a lapse of three years the suit plot was transferred in the name of the plaintiff by the said Mohammad Anis on 13.09.1988 and thereafter the lease was executed in favour of the plaintiff. It is also stated that defendant No.3 was allotted the suit property in 1975 and the plaintiff with the connivance and on the basis of forged documents occupied the suit property. Defendant No.3, upon knowledge of the fraud, immediately made complaint to KDA vide letter dated 31.07.1996 and to the Deputy Inspector General of Police, Karachi vide letter dated 19.08.1996 whereby informed them about the fraud committed upon him and in this regard a complaint was also lodged by defendant No.3 with Khawaja Ajmer Nagri police station, Karachi. Further averred that defendant No.1 after issuing show cause notice to the plaintiff and after appropriate enquiries cancelled the suit property, which was transferred illegally in the name of the plaintiff. The defendant No.3 also filed an application before the Provincial Ombudsman Sindh at Karachi regarding the fraud and impersonation and the learned Director General of Ombudsman was pleased to issue a letter dated 03.09.1997 to defendant No.2 regarding the position of the suit property and a copy was endorsed to defendant No.3. Learned counsel for defendant No.3 has contended that defendant No.3 as well as defendant No.2 clarified the position of the suit property vide letter dated 12.09.1997 and 31.10.1997 respectively. However, defendant No.2 has with malafide intention mentioned in the said letter that possession of the suit property is with plaintiff which in fact is with defendant No.3. Further, defendant No.3 is in lawful possession of the suit property as he is lawful allottee of the same vide Allotment Order dated 24.06.1975 and Acknowledgment of Possession was issued KDA dated 28.02.1976 on payment of all required

dues/amounts to KDA and KMC. The defendant No.3, after obtaining the approved Site Plan and permission from KBCA for ground and first floor, had made construction of boundary wall, two rooms with one bathroom and kitchen. It is also stated that all the original documents of the suit property are with defendant No.3, who has duly made construction thereon and the same is in his lawful possession and all the transfers of the suit property from one name to another were made fraudulently and on bogus documents. It is also stated that KDA had already cancelled the transfer order dated 13.09.1988 issued in favour of the plaintiff. The letter dated 17.07.1997 has been rightly issued by defendant Nos.1 and 2 after having learnt the fraud perpetrated upon defendant No.3. defendant No.3 also prayed for dismissal of this suit with special compensatory costs.

6. Defendant No.4 in his written statement while neither denying nor admitting the contents of the plaint for want of knowledge has stated that he was servant of one Haji Anwar Hassan Khan who was running business of Estate Agency, the said Anwarul Hasan Khan obtained the photo state copy of NIC and got his signature on blank performa. Further he has no knowledge about the number of plot and sale and purchase of the same.

7. Defendant No.5 in his written statement while supporting the claim of the plaintiff has stated that the plaintiff is the rightful owner of the suit property and defendants 1 to 2 have no authority to cancel the suit property. Further the claim of defendant No.3 is false, baseless and based on malafide intentions.

8. Defendant No.6 in his written statement while taking preliminary legal objections that: (A) suit as framed is not maintainable, (B) suit filed by the plaintiff without cause of action, (C) suit is not maintainable under section 42 & 56 of specific Relief Act 1877 and (D) plaintiff approached this court with malafide intentions and with unclean hands, has stated that plaintiff misguided this Court as well as defendant No.6 and he had agreed to sell the suit property (which was also cancelled by the concerned authority) through a sale agreement dated 19.11.2006 for a total sale consideration of Rs.15,00,000/-. It is also stated that at the time of execution of sale agreement the plaintiff received Rs.5,00,000/- in his wife`s name Mrs. Tanveer Sajid on 09.11.2006 through Pay Order

No.1582671, issued by Bank Al-Habib Ltd., Gulshan Chowranghi Branch, Karachi. It is also stated that defendant No.6 paid further part sale consideration amount of Rs.5,00,000/- through Cheque No.3668691 dated 15.01.2007 drawn on the same Bank, in the name of plaintiff, however the plaintiff refused to receive the cheque upon which defendant No.6 paid the plaintiff an amount of Rs.5,00,000/- in cash. Where after, defendant No.6 made several requests to the plaintiff to receive the remaining sale consideration of Rs.5,00,000/- and hand over the peaceful possession of the suit property but the plaintiff failed to fulfill his part of obligation under the above said sale agreement. It is also stated that Para-3 of the sale agreement indicates that the property in question is free from all sorts of lien, demands, claims, etc., and the title of the sale property is in full force and there is no litigation over the same, whereas true fact was different with what has been mentioned in the sale agreement. The plaintiff completely concealed the fact about the present litigation, which came into the knowledge of defendant No.6 in the month of March 2009, upon which he filed intervenor application and got impleaded himself in the present case as one of the defendants. He has prayed for direction for plaintiff to pay Rs.11,00,000/- with 10% markup of very year from payment till the disposal of the suit.

9. Out of the pleadings of the parties the following issues were settled by this Court on 23.08.2004, which are as follows:-

- 1) *Whether the plaintiff is bonafide transferee/lessee/owner of plot/property No.A-376, Sector 11-B, measuring 240 Sq. Yds., North Karachi, by virtue of pre-lease transfer order and lease deed executed and registered vide Registration No.4455 Book No.I-Addl. dated 29.8.1990 and M.F. Roll No.1286 dated 4.9.1990 by the Defendants No.1 and 2 / KDA?*
- 2) *Whether the Defendant No.3 is the lawful allottee of the suit plot and in lawful possession of the same and made construction thereon? If so, what is the effect?*
- 3) *Whether the Defendant No.4 had obtained transfer of the suit plot in his name by fraud and misrepresentation and on forged documents by setting-up a person by the name of Khuda Bux to impersonate the Defendant No.3 for wrongful gain and to obtain pre-lease transfer?*
- 4) *Whether the lease dated 29.8.1990 executed in favour of the plaintiff by Defendant No.1 and 2 has been rightly, legally and lawfully cancelled?*
- 5) *Whether the plaintiff has raised construction to the extent of plinth/boundary wall including main gate, etc. after approval of proposed building plan approved vide letter*

*NO.KBCA/DCB-V/KDA/Prop/96/284/71/81/96 dated 15.2.1996?*

- 6) *Whether cause of action has accrued to the plaintiff for filing suit against the defendant KDA?*
- 7) *Whether the plaintiff was duly served with notice prior cancellation of documents. If so its effect?*
- 8) *Whether the plaintiff is entitled to the restitution of possession of subject property, which was validly in possession at the time of filing of the above suit on 23.10.1997?*
- 9) *Whether the plaintiff is entitled for damages to the tune of Rs.6,00,000/- as compensation for losses, mental torture and physical agony caused by the defendants severally and jointly i.e. subject to raise in cost of construction and value of adjoining property?*
- 10) *What should the decree be?*

10. The plaintiff in support of his claim examined himself and filed his affidavit in evidence as Ex.P/1. Thereafter, he was cross-examined by the counsel for the defendants. This witness during his evidence produced following documents:

<b><u>SR.#</u></b>	<b><u>DOCUMENTS</u></b>	<b><u>EXHIBITS</u></b>
01	Photocopy of Lease Deed dated 04.09.1990	P/2
02	Photocopy of Transfer Mutation dated 13.09.1988	P/3
03	Photocopy of proposed approved letter plan along with approval letter dated 15.02.1996	P/4 & P/5
04	Photocopy copy of Show Cause Notice dated 29.08.1996	P/6
06	Photocopy of reply of show cause notice dated 10.09.1996	P/7
07	Photocopy of transfer order dated 29.12.1984	P/8
08	Photocopy of mutation of Plot No.A/376	P/9
09	Photocopy of notice dated 30.10.1996 under Article 131 of KDA Order V of 1957.	P/10
10	Photocopy of letter dated 13.08.1997	P/11
11	Photocopy of letter dated 05.03.1997	P/12

11. Thereafter, defendant No.3 in support of his stance in the case has examined himself and filed his affidavit-in-evidence as Exhibit D/1, he was cross-examined by the counsel for plaintiff and CDGK. Defendant No.3 during his evidence produced the following documents:-

<u>SR.#</u>	<u>DOCUMENTS</u>	<u>EXHIBITS</u>
01	Photocopy of application dated 31.07.1996 addressed to the Director General, KDA	D/2
02	Photocopy of show cause notice for cancellation of transfer and lease of Plot No.A/376 (suit property)	D/3
03	Photocopy of letter dated 05.03.1997 addressed to plaintiff	D/4
04	Photocopy of letter dated 05.03.1997 addressed to Provincial Ombudsman (Mohtasib)	D/4-A
05	Photocopy of letter dated 17.07.1997 issued by KDA to defendant No.3	D/5
06	Photocopy of complaint dated 19.08.1996	D/6
07	Photocopy of letter dated 03.09.1997 issued by Provincial Ombudsman (Mohtasib) to Additional Director (R-1), Director of Land Management, KDA	D/7
08	Photocopy of letter dated 12.09.1997 addressed to the Provincial Ombudsman by defendant No.3	D/8
09	Photocopy of Allotment Order dated 24.06.1975	D/9
10	Photocopy of Challan dated 23.06.1975	D/10
11	Photocopies of Challans dated 14.01.1988 and 24.02.1988	D/11 & D/12
12	Photocopy of letter dated 02.05.1978	D/13
13	Photocopy of acknowledgment of possession dated 24.06.1975 issued by the KDA	D/14
14	Photocopy of Site Plan issued by KDA	D/15
15	Photocopy of booking for proposed suit plot dated 03.03.1988 addressed by KBCA	D/16
16	Photocopy of decision of Provincial Ombudsman dated 28.04.1999	D/17
17	Photocopy of electricity bill for the month of October 2003	D/18
18	Photocopy of SSGC bill for the month of October 2003	D/19
19	Photocopy of PTCL bill for the month of September 2005	D/20

12. Thereafter, defendants No.1 and 2 namely, CDGK/KMC filed affidavit-in-evidence of their witness namely, Syed Amir Ali, DDO, (CDGK) as Exhibit DW/1. The witness of these defendants was cross-examined by the learned counsel for the plaintiff and other defendants.

13. Thereafter Defendant No.6, in support of his stance in the case filed his affidavit-in-evidence as Exhibit D/6. He was cross-examined by the



learned counsel for the plaintiff and the counsel for the other defendants.

During the evidence, he produced following documents: -

<b><u>SR.#</u></b>	<b><u>DOCUMENTS</u></b>	<b><u>EXHIBITS</u></b>
01	Photocopy of agreement dated 09.11.2006	D/7
02	Photocopy of receipt of Rs.6,00,000/= in respect of the suit property	D/8
03	Photocopy of CNIC No.42101-6456777-3 of Syed Sajid Raza (Plaintiff)	D/9
04	Photocopy of Pay Order No.1582671 dated 08.11.2006 in the sum of Rs.500,000/= drawn on Bank Al-Habib Ltd. Gulshan Chowrangi Branch 1027, Plot No.FL-3, Block No.3, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi in favour of Sajid	D/10
05	Photocopy of Cheque No.3668691 dated 15.01.2007 in the sum of Rs.500,000/= drawn on Bank No.3, Gulshan-e-Iqbal, Karachi in favour of Syed Sajid Raza	D/11

14. Defendant No.4 though filed his affidavit in evidence but he did not come in the witness box for his evidence whereas defendant No.5 neither filed any affidavit in evidence nor came forward for evidence.

15. I have heard learned counsel appearing for the parties and with their assistances also perused the material/evidence available on record.

16. Learned counsel for the plaintiff during the course of arguments besides reiterating the contents of the plaint and the affidavit-in-evidence of the plaintiffs has urged that since the sufficient documentary evidence are available on record, which support the stance of the plaintiff in the present case. He further urged that the Plaintiff has filed original registered title documents and other relevant record in the present case, which amply demonstrates the ownership of the Plaintiff vis-à-vis the suit property. He further urged that after execution of the registered lease in favour of the plaintiff upon the pre-lease transfer order issued by Defendant No.1, the said transfer order subsequently cannot be cancelled. Furthermore, the presumption of truth is attached with the registered and original documents, unless the same are cancelled through competent legal proceedings, which in the present case is admittedly not done by Defendants hence, the registered title documents and other relevant documents issued by the authorities concerned, filed by the Plaintiff in

support of his plea in the case, have legal sanctity attached to said documents. In support of his stance in the case, the learned counsel also relied upon following case law:

**2004 MLD 888** (*Muhammad Iqbal and Others v. Fakhar-ul-Islam and 3 Others*).

**2004 MLD 963** (*Sabir Hussain and 6 others v. Eisa and 2 others*)

**1994 CLC 247** (*Moinuddin Paracha and 5 others v. Sirajuddin Paracha and 22 others*)

**2002 SCMR 1981** (*Muhammad Rafique alias Rafique Ahmad v. Abdul Hameed and 2 others*)

**2003 SCMR 549** (*Talib Hussain and others v. Member, Board of Revenue and others*)

**1993 SCMR 462** (*Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others*)

17. In rebuttal, the learned counsel for the Defendants besides reiterating contents of the written statement and affidavit-in-evidence filed on behalf of the Defendants have argued that the plaintiffs have failed to prove their case in the evidence. Mr. Mirza Adil Baig, learned counsel for defendant No.3 urged that the claim of the plaintiff is based on sham transaction hence untenable in law and the allotment and 99-years lease in favour of the plaintiff was rightly cancelled by defendant No.1. He further urged that it is the settled law that if the basic order is without jurisdiction and without lawful authority, entire superstructure of orders built thereupon suffers from the same legal defect and infirmity from which the original order suffers. By applying this principle, since the initial pre-lease transfer in favour of defendant No.4 was illegal, therefore, subsequent transfers are also illegal and sham hence not sustainable in law. The learned counsel further argued that the plaintiff in his evidence admitted certain facts regarding ownership of defendant No.3, hence the present case on this count alone is liable to be dismissed. Whereas Ms. Shabana Ishaque, learned counsel for defendant No.6, in support of her stance in the case during the course of her arguments while candidly admitted that defendant No.6 did not file any suit against the plaintiff for

specific performance of the sale agreement entered into between him and the plaintiff in respect of suit property, resisted the present suit on the ground the plaintiff committed fraud upon him. The learned counsel in support of her stance in the case also relied upon the following case law:

**2003 SCMR 549** (*Talib Hussain and others v. Member, Board of Revenue and others*)

18. I have given due consideration to the arguments advanced by the learned counsel for the parties, minutely perused the material/evidence available on record, the applicable laws on the subject and the case law cited at bar. My findings on the issues are as under:

19. Issue No.6: Since this issue is relating to the maintainability of the suit therefore, I will take up this issue first. The preliminary objection taken up by defendant No.1 in its written statement is that no cause of action has accrued to the plaintiff for filing the present Suit against defendant No.1 and further defendant No. 1 has unnecessarily been impleaded as party in the proceeding.

The Code of Civil Procedure, the procedural law relating to the civil suits, lays down the procedure under Order 1, Rule 9 to be followed in cases of non-joinder of parties. For convenience's sake the same is reproduced as under:

“ORDER 1: PARTIES TO SUIT

**Rule 9. Misjoinder and non-joinder.**--- No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”

20. The presence of opposing parties is one of the essential requirements of any civil suit. But all parties are not necessary for the suit to be adjudicated upon, therefore, ‘necessary’ and ‘non-necessary’ parties have to be distinguished between. ‘Necessary Parties’ are those parties from whom relief is claimed. Whereas ‘Non-necessary parties’ are those parties who may be party to the suit, but from whom no relief has been claimed. This aspect has also been defined in various judgments of this court as well as the Hon’ble Supreme Court that a necessary party is a

person who ought to have been joined as party and in whose absence no effective decree could be passed at all by the Court. If a ‘Necessary Party’ is not impleaded, the suit itself is liable to be dismissed. However, a ‘non-necessary’ but a ‘proper party’ is the party who though not a necessary party, yet is a person whose presence is a matter of convenience to enable the court to adjudicate effectively and completely. The absence of such party is *per se* not fatal to the suit and the Court will decide the suit in so far as the rights of the parties on record are concerned. In the present case the plaintiff challenged the letter dated 05.03.1995 [**Exh.P/12 available at Pg. 53 of evidence file**] issued by Defendant No.1 whereby the transfer order and lease of suit property in favour of the plaintiff was cancelled. The plaintiff sought cancellation of the said letter in the present proceedings.

21. Furthermore, since the present suit is filed by the plaintiff for declaration, cancellation, damages, mandatory/permanent injunction, on the basis of registered 99-years lease deed [**Exh.P/2 at Pg.19 of Evidence file**] and other documentary evidence, therefore, the Plaintiff’s present suit as framed is maintainable under the provisions of Section 42 of Specific Relief Act, which requires any person entitled to any legal character or to any right as to any property, may institute suit against any person denying or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled. It would thus be safely stated that the law authorizes a person to seek enforcement of his right to any property by instituting a suit against a person denying his right or title. Relevant judicial precedents are *Parveen Begum and another v. Shah Jehan and another* (PLD **1996 Karachi 210**) and *Abdul Razzak Khamosh v. Abbas Ali and others* (PLD **2004 Karachi 269**). For reference’s sake Section 42 of Specific Relief Act is reproduced as under:

**“42. Discretion of Court as to declaration of status or right.** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief”.

The upshot of the above discussion is that cause of action has been accrued in favour of the plaintiff against defendant No.1 and is rightly been impleaded in the present proceedings being necessary and proper party.

22. Issue No. 1: The claim of the Plaintiff in the present suit is that he purchased suit property by way of agreement of sale dated 05.08.1985 from defendant No.5 namely, Muhammad Anis, transferee of the suit property by virtue of pre-lease transfer against the valuable consideration and thereafter by completing all the formalities as required under the rules including the publication and the same was transferred by way of pre-lease transfer vide Transfer Order bearing No.A-376/Sector 11-B/240 Sq. Yds./NKT/Resett-T-Br/258 dated 13.09.1988 [**Exh.P/3 at Pg. 31 of evidence file**]. Subsequently, a 99-years lease was executed in favour of the plaintiff vide Lease Deed Registered No.4455, Book No.I, dated 29.08.1990, M.F. Roll No.1286 dated 04.09.1990 [**Exh.P/2 at Pg. 19 of evidence file**]. Thereafter, plaintiff got construction plan approved from concerned authority/office vide its letter No. KBCA/DCB-V/KDA/284/71/81/96 dated 15.02.1996 [**Exh.P/5 at Pg. 33 of evidence file**] and raised construction upto plinth level over the suit property as per approved plan. In the month of August 1996, the plaintiff received show cause notice No. KDA/AD(R-1/T.br./96/282/L dated 29.08.1996 [**Exh. P/6 at Pg.35 of evidence file**] issued by the defendant No.2 for cancellation of transfer order and lease with regard to the suit property. The said show cause notice was subsequently, replied to by the plaintiff on 10.09.1996 [**Exh.P/7 at Pg.39 of evidence file**]. Thereafter, on 20.10.1996, the plaintiff through his legal counsel, served defendant No.1 with a statutory notice under Article 131 of KDA Order No.V of 1957 [**Exh.P/10 at Pg.47 of evidence file**] which letter was never replied to by defendant No.1 and 2, however the legal counsel received a copy of the letter dated 13.08.1997 [**Exh.P/11 at Pg.51 of evidence file**] addressed to Mr. Khuda Bux (Defendant No.3) by KDA advising him to approach the court of law for redressal of his grievances and cancellation of lease of suit property. After service of above referred statutory notice, the plaintiff received letter from KDA bearing No.KDA/AD(T)/NK/97/48 dated 05.03.1997 [**Exh.P/12 at Pg.53 of evidence file**], whereby Transfer Order and lease of the suit property in favour of the plaintiff were cancelled. The plaintiff has impugned the said letter in the present proceedings and seeks cancellation thereof.

23. From the evidence available on record, it appears that initially the suit property was allotted to defendant No.3 through allotment

order dated 24.06.1965 [Exh. D/9 at Pg. 97 of evidence file] and thereafter it was pre-lease transferred in the name of defendant No.4 through transfer order dated 29.12.1984 [Exh.P/8 at Pg. 43 of evidence file] issued by Karachi Development Authority [KDA]. Thereafter, the suit property was transferred in the name of defendant No.5 through transfer order dated 13.04.1985 [Exh. P/9 at Pg.45 of evidence file] issued by KDA. The plaintiff purchased the suit property from defendant No.5 and it was pre-lease transferred in the name of the plaintiff on 13.09.1988 [Exh.P/3 at Pg. 31 of evidence file] where after a duly registered 99-years lease [Exh.P/2 at Pg. 19 of evidence file] was executed in favour of the plaintiff. Subsequently, the plaintiff got construction plan approved from concerned authority/office vide its letter No. KBCA/DCB-V/KDA/284/71/81/96 dated 15.02.1996 [Exh.P/5 at Pg. 33 of evidence file] and started raising construction at the suit property.

The record reveals that defendant No.3 came into the picture when he wrote letter dated 13.07.1996 to the Director General KDA [Exh.D/2 at Pg. 79 of evidence file] for removal of encroachment from the suit property. For the sake of ready reference the said letter is reproduced as under:

“To,  
The Director General,  
Karachi Development Authority,  
Civic Centre,  
Karachi

Subject: REQUEST FOR REMOVAL OF ENCROACHMENT  
ON PLOT NO.A-376, SECTOR 11-B, NORTH  
KARACHI, KARACHI.

R/Sir,

It is respectfully stated that I, Hafiz Khuda Bux son of Karim Bux, am the allottee of plot as mentioned is the subject noted, which was allotted to me by the K.D.A. in the year 1975. Few days ago I went to my plot as stated above, where I saw that somebody else are trying to construct a house illegally. Thereafter I went to office of K.D.A. where it came to my knowledge that one QABZA GROUP is selling plot to the peoples by making forged allotment documents and national identity card. My plot has also been transferred to three persons namely:-

1. Shaukat Ali son of Ahmed Ali, R/o L-642, Sector 5-M, North Karachi on 29.12.1984.
2. Muhammad Anis son of Muhammad Hanif, R/o 270/1, Liaquatabad on 13.4.1985.
3. Syed Sajid Raza son of Akber Raza, R/o R-392, Sector 11-C-3, North Karachi on 13.9.1988.

Sir, I am the first allottee of the aforesaid plot and the necessary allotment order, K.D.A's challan, Site Plan and approved plan has already been issued to me. I have not sold my said plot to any person or party nor I have executed general power of attorney in favour of any person or persons.

Sir, due to above mentioned reasons I could not construct my said plot therefore I request you to kindly cancel all the forged/illegal transfer orders and allotment orders of the said plot so I may be able to start construction over my said plot.

I further request and appeal that all the persons/groups, who are selling the plots in the same area by making forged documents should be arrested and punished so we the actual owners may be saved from the long hands of them.

I hop that my case will be considered at your earliest for which I shall be highly oblige to you and pray for your long life and prosperity.

Thanking you in anticipation.

Yours sincerely

Sd/- (HAFIZ KUDA BUX NAQSHBANDI)  
JAMA MASJID NOORANI, BLOCK-20,  
F.B. AREA, KARACHI.-38.

Karachi.  
Dated: 31.7.1996.”

[Underlining is to add emphasis]

Upon the said letter of defendant No.3, the KDA issued a show cause notice bearing No. KDA/AD(R-1/T.br./96/282/L dated 29.08.1996 **[Exh. P/6 at Pg.35 of evidence file]**. The plaintiff replied said show cause notice on 10.09.1996 **[Exh.P/7 at Pg.39 of evidence file]**. The record also shows that the plaintiff through his advocate also sent a statutory notice under Article 131 of KDA Order No.V of 1957 **[Exh.P/10 at Pg.47 of evidence file]**. **In response thereto** a copy of the letter dated 13.08.1997 **[Exh.P/11 at Pg.51 of evidence file]** received by advocate of the plaintiff, which was addressed to Mr. Khuda Bux (Defendant No.3) by KDA advising him to approach the court of law for redressal of his grievances and cancellation of lease of suit property. After service of above referred statutory notice, the plaintiff received letter from KDA bearing No.KDA/AD(T)/NK/97/48 dated 05.03.1997 **[Exh.P/12 at Pg.53 of evidence file]**. Relevant portion of the said letter, for the sake of ready reference is reproduced as under:

“Your reply dated 10.09.1996 to this office Show Cause No.KDA/AD (R)-I/T.Br./96/282/L dated 29.08.1996 was given due consideration and Competent Authority found that you have failed to justify your claim and held that in view of Indemnity Bond given by you

at the time of transfer and clauses 13 & 14 of the prescribed Terms and condition of Form No.1 and 5, the transfer of Plot No. A-376, Block 11-B, NKT in your name be cancelled after adopting legal procedure for cancellation of the lease as well granted to you. Accordingly the transfer Order of plot No. A-376, Block-11-B, North Karachi Township bearing No. A-376/Sector-11-B/240 SQ.YDS/NKT/Resett-T-Br/258 dated 13.09.88 is hereby cancelled.”

[Underlining is to add emphasis]

24. From the evidence it is manifest that the suit property was transferred by the KDA after completing codal formalities and subsequently a 99-lease was registered in favour of the plaintiff. The defendants 1 and 2, the principal lessor of the suit property, in their written statement while replying para-10 of the plaint stated as under:

“Para 10 of the plaint: Allegations contained under this para is vehemently denied. It is submitted that the transfer of the suit plot was effected after completing the required formalities according to the rules as such after enquiry the lease of the suit plot was cancelled by the answering defendant as the transaction was at the outset was illegal, void ab-initio.”

[Underling is to add emphasis]

In this regard the evidence of the witness of defendants No.1 and 2, namely Syed Amir Ali, DDO [CDGK], is very important, which for the sake of ready reference is reproduced as under:

“It is correct that whatever mentioned in para-3 of my affidavit-in-evidence is correct. It is correct that the transfer of suit plot was done in our office. It is correct that I have not produced any proof of impersonating. It is correct to suggest that the letter dated 13/8/1997 bearing No.KDA/AD (T) 1/97/274 was written by Assistant Director KDA to the defendant No.3 Khuda Bux. It is correct to suggest that the defendant No.3 after the above said letter, no suit for cancellation was filed in any court. It is correct that our office has not produced any inquiry proceedings in the Court. It is correct that whatever mentioned in Para-7 of my affidavit –in-evidence. It is incorrect to suggest that our office has cancelled the suit plot. Our office has cancelled the suit plot in the year 1997. It is correct to suggest that no rules and regulations have been mentioned in above-said letter. It is correct that it is not mentioned about the cancellation of suit plot in this letter dated 13/8/1997. It is correct to suggest that no criminal proceedings were initiated against anybody in any court. It is correct to suggest that no specifically of checking the impersonating in our office nor our office had sent the documents for verification before any Forensic Laboratory. It is correct to suggest that the name of S.M. Hussain appearing on the lease deed was the same. I am not aware of the signature of SM Hussain, Assistant Director. It is correct to suggest that the stamp of our Account Officer was put on the lease deed i.e. Ex.P/2. I can not say whether the Account Officer put the seal on the lease before its registration. It is correct to suggest that there is a register which is kept with the Account Department. It is correct to suggest that I have not produced any register from the Account Department. It is correct to suggest that one of officer



of our department went to the office of concerned Registrar and executed the lease deed i.e. Ex.P/2. It is correct to suggest that contents of para-10 of my affidavit-in-evidence are forged. It is correct to suggest that the court can only cancel the lease deed. It is incorrect to suggest that whatever done by KDA was on the instruction of defendant No.3. It is incorrect to suggest that I am deposing falsely.

[Underlining is to add emphasis]

25. The record does not show that defendant No.3 after allotment of the suit property in his favour in the year 1975 till June 1996 why he did not get a 99-years lease in his favour and further after getting building plan approved in the year 1988 why he did not construct the suit property. Conversely, the plaintiff soon after pre-lease transfer of the suit property in his favour in the year 1988, got the 99-years lease executed in his favour in the year 1990. Furthermore, the plaintiff purchased the property from the defendant No.5, whose name was existed in the record of KDA as allottee/owner by virtue of the pre-lease transfer in the year 1985. The record also does not reflect that the plaintiff committed any fraud in getting either pre-lease transfer and or a registered 99-years in his favour. In the circumstances, act of the plaintiff clearly reflects bonafide on his part, hence, issue No.1 is answered in affirmative.

26. Issues No.2, 5 and 8: These connected issues, which are interlinked, may conveniently be taken up together. The learned counsel during the course of arguments has vehemently urged that the plaintiff in his evidence admitted facts regarding ownership of defendant No.3, hence the present case is liable to be dismissed on the evidence of the plaintiff. It is imperative, for the sake of convenience, to reproduce the cross examination of the plaintiff as under:-

*“It is correct to suggest that the allotment order dated 24.06.1975 was issued by KDA in favour of the defendant No.3. It is correct to suggest that allottee Khuda Bux defendant No.3 had paid a sum of Rs.1214.40 vide Challan No.1680 dated 23.6.1975 and deposited UBL on 25.6.1975. It is correct to suggest that the physical possession of the plot in question was handed over to the defendant No.3 by KDA on 28.2.1976. It is correct to suggest that the defendant No.3 had paid challan issued by KDA and KMC. I do not know whether acknowledgment of possession dated 28.2.1976 by KDA in B-27 Sr. No.1341 with Registration No.CM-2129 dated 24.6.1975 in their record. Voluntarily says that it is correct whatever stated above. I do not know if the approval for proposed building plans on the plot in question was duly approved dated 3.3.1988 by KBCA Master Plan and Environmental and Master Plan KDA.”*

*“It is correct to suggest that complaint was made before the Provincial Ombudsman regarding the suit plot. I do not know whether the Ombudsman had cancelled the subsequent allotment/transferred of Khuda Bux plot. It is correct to suggest that one Shoukat Ali by fraud and misrepresentation has transferred the suit plot in his own name on 29.12.1984. I do not know whether Shoukat Ali has produced any other person by impersonating him as Khuda Bux and through this transferred the plot in his name. It is correct to suggest that Shoukat Ali has transferred the plot in question in the name of Muhammad Anis on 13.04.1985. It is correct to suggest that after 3 year i.e. 13.09.1998 the plot in question was transferred to the plaintiff. I do not know whether the plot in question was never sold to anybody. It is correct to suggest that the plot in question was transferred in the name of the plaintiff with the collusion and connivance of Shoukat Ali and Muhammad Anis. It is correct that I made Shoukat Ali, Muhammad Anis as defendant No.4 and 5 but they never appeared in Court. It is incorrect to suggest that KDA has also cancelled my plot so I advised by the KDA to file the civil case in the Court. It is correct to suggest that Khuda Bux is the real owner of the plot in question and the same is restored in his name. It is incorrect to suggest that the defendant No.1 has not broken the locks of the premises and occupied the same. It is incorrect to suggest that the entire construction was made by the defendant No.3. It is correct to suggest that I got approved plan from KBCA on 15.2.1996. I do not know whether the defendant No.3 has got approved plan from KBCA in the year 1988. It is incorrect to suggest that the documents produced by me are false and fabricated as I am the owner of plot in question and not the defendant No.3. The learned counsel for the defendant No.3 made objection for the production of the photocopies of the documents. It is incorrect to suggest that I have filed the false case against the defendant No.3 in the Court. It is incorrect to suggest that I am not entitled for damages and compensation against the defendant No.3. It is also incorrect to suggest that defendant No.3 is the owner of the plot.”*

From the above evidence, if seen in its entirety, does not reflect that the admission on the part of plaintiff was clear and unequivocal. The reply of the plaintiff as PW-1 to the questions of counsel for the defendants could at best be termed as innocent reply, which appears to be given without understanding the same. As at one place the plaintiff’s reply was in affirmative whereas in another place the reply/answer of the plaintiff to somewhat identical question was in negative. In the circumstances, the arguments of the learned counsel for defendant No.3, in not sustainable.

As regards the allotment in favour of defendant No.3 is concerned, there is no dispute that initially the suit property was allotted to him however, subsequent events, as mentioned in the preceding paras, disentitles him from claiming himself as owner of the suit property, specially when the KDA has executed a registered 99-Years ownership lease in favour of the plaintiff. Karachi Development Authority [KDA] through its letter dated 13.08.1997 [**Exh.P/11 at Pg.51 of evidence file**],

had clearly advised to defendant No.3 to approach court of law for cancellation of lease of suit property and redressal of his grievances. For the sake of ready reference [**Exh.P/11**] is reproduced as under:-

KARACHI DEVELOPMENT AUTHORITY  
DIRECTORATE OF LAND MANAGEMENT  
(TOWNSHIP BRANCH)

NO.KDA/AD(T)I/97/274

Karachi, the 13<sup>th</sup> August, 1997

Mr. Khuda Bux,  
R/o R-122/4, Sector 16-A,  
K.B.R. North Karachi,  
Karachi

SUBJECT:- PLOT NO.A-376 SECTOR 11-B, NORTH KARACHI TOWNSHIP

In continuation to this office letter No.KDA/L&E/A-376/11-B/NKT/97/946, dated 17<sup>th</sup> July, 1997 on the above subject, it is intimated that as per the opinion of the Law Officer, KDA, you are advised to approach the Court of Law for redressal of the grievance and cancellation of lease of Plot No.A-376 Sector 11-B, North Karachi Township, Karachi.

Sd/-13.8.1997  
ASSISTANT DIRECTOR (T)-I

NO.KDA/AD(T)I/97/403/L

Karachi, the 28<sup>th</sup> August, 1997

Copy to:-

Mr. Syed Jamil Ahmed Advocate, 3<sup>rd</sup> Floor, Court View Bank of India Building, M.A. Jinnah Road, Karachi for information with reference to his notice dated 20<sup>th</sup> October, 1996.

Sd- /28/8/97  
ASSISTANT DIRECTOR (T) I  
K.D.A.”

[Underlining is to add emphasis]

Defendant No.3 in his evidence clearly admitted the fact that he did not file any case for cancellation and or redressal of his grievances, pursuant to the advice of the KDA. Relevant portion of the cross-examination of the defendant No.3, for the sake of ready reference is reproduced as under:-

“It is correct that KDA had written the letter dated 13/8/1997 to the defendant No.3 and copy of this letter was forwarded to the advocate for the plaintiff that the defendant No.3 would approach the Court. (Note: leaned counsel for defendant No.3 has raised objection as the said letter is not exhibited in the case). It is correct to suggest that I have not filed any case for cancellation of the lease deed in respect of plot in question in any civil court.”

27. As regards the possession of the suit property is concerned, from the evidence it is established that plaintiff is in possession of the suit property, as the plaintiff upon getting approval started raising construction at the suit property upon which defendant No.3 wrote letter to the DG. KDA [Exh. D/2 at Pg. 79 of evidence file] as well as Deputy Inspector General of Police, Karachi dated 19.08.1996 [Exh. D/6 at Pg.89 of evidence file] wherein requests were made for removal of encroachment from the suit property. Relevant portions of both the above referred letters, which are identical, for the sake ready reference is reproduced as under:

“Subject: REQUEST FOR REMOVAL OF  
ENCROACHMENT ON PLOT NO.A-376,  
SECTOR 11-B, NORTH KARACHI, KARACHI.

R/Sir,

It is respectfully stated that I, Hafiz Khuda Bux son of Karim Bux, am the allottee of plot as mentioned is the subject noted, which was allotted to me by the K.D.A. in the year 1975. Few days ago I went to my plot as stated above, where I saw that somebody else are trying to construct a house illegally. Thereafter I went to office of K.D.A. where it came to my knowledge that one QABZA GROUP is selling plot to the peoples by making forged allotment documents and national identity card. My plot has also been transferred to three persons namely:-

1. Shaukat Ali son of Ahmed Ali, R/o L-642, Sector 5-M, North Karachi on 29.12.1984.
2. Muhammad Anis son of Muhammad Hanif, R/o 270/1, Liaquatabad on 13.4.1985.
3. Syed Sajid Raza son of Akber Raza, R/o R-392, Sector 11-C-3, North Karachi on 13.9.1988.

.....  
.....”

[Underlining is to add emphasis]

It may also be pointed out that during the proceeding of the present case, under the direction of this court Nazir carried out inspection and submitted a report dated 20.09.1999, however upon objection raised by the plaintiff, the Nazir of this court was again appointed to inspect the suit property. In compliance the Nazir of this court submitted his report on 20.05.2000. For the sake of ready reference, relevant portion of the report dated 20.05.2000 is reproduced as under:

“3. According to the inspection order dated 2.2.2000, the CMA which was granted it has to be ascertained whether the present existing foundation/plinth is according to the approved/proposed building plan of the plaintiff bearing No.KBCA/DCB-V/KDA/PROP/6284/71/81/96 dated 15.2.96.

4. The plot is 36'x60'. The main entrance iron gate 3 ½' x 6' approx: is fixed on the place on northern side in accordance of the proposed/approved plan. On northern side with main entrance gate a underground tank is built and the space over it about 15'-8" is left. The plinth of lounge 14'x14', kitchen 8'-6"x8'-6", stair case space on the northern side is in accordance with the approved/proposed plan. Two bedrooms on back side which are 12'x11'' out of it one room's plinth is not accordance with approved/proposed plan it is 14'x14'. This room is situated on southern side on back of the plot. Attach bathes plinth with these two bed rooms are approx: are in accordance with the approved/proposed plan. According to proposed plan/approved plan on back side open space is 12' whereas only 8' feets have been left. On the northern side gali/open space is almost left in accordance with approved/proposed plan. On the front side on southern portion according to plan 10' has to be left whereas plinth is built only leaving 4' space. Therefore, the drawing/dining plinth is not in accordance with the proposed/approved plan. In the plan it is 23'x11' but the plinth of this portion is extended by covering 6' more on southern portion and only leaving 4' instead of 10' "

[Underlining is to add emphasis]

From the above it clearly transpires that the construction raised at the suit property either according to approved plan, however, in any circumstances, it cannot be presumed that such construction could be raised without occupying the plot, hence the claim of the plaintiff that he had raised the construction at the suit property is correct. Furthermore, the initial letters [Exh.D/2 and D/6] written by defendant No.3 clearly reflect that the possession of the suit property was not with the defendant No.3 when the plaintiff started raising construction, however subsequently it was taken from him. This fact is also substantiated from the letter No. KDA/AD(T)I/97/496 dated 31.10.1997 addressed by the defendant-authority to the Director General Provincial Ombudsman wherein in para 2 of the said it was clearly stated that 'Mr. Khuda Bux has not been able to take the physical possession of the said plot from Syed Sajid Raza'. The said letter though not produced in the evidence, however since the said letter was filed by defendant No.3 along with his written statement therefore the said letter is taken into consideration. The record also does not show that the defendant No.3, who claims to be in valid possession of the suit property in the above discussed position specially, after the above letters [Exh. D/2 and D/6], how he got again the possession of suit property. In view of the above the plaintiff is entitled to the restitution of possession of the suit property. In the circumstances, these issues are answered accordingly.

28. Issue No.3: In the present case, it is alleged by defendant No.3 that defendant No.4 had obtained pre-lease transfer of the suit property in his name through fraud and impersonation. There is no documentary evidence available on record, which could substantiate the stance of the defendants No. 1, 2 and 3 in respect thereof. Whereas interestingly all formalities of transfer of suit property in the name of defendant No.4 from the defendant No.3 was done before the defendant-authority (KDA) and the witness of KDA very candidly admitted that neither any documentary evidence has been produced in the present nor any proceedings have been initiated by KDA either against its staff members and/or against the defendant No.4 who were allegedly involved in the purported fraud. The cross examination of the witness of defendant No.1 and 2, reproduced in the preceding para, is self-explanatory. It may be noted that mere assertion of the Defendants No. 1 to 3 regarding alleged fraud without a positive attempt on their part to substantiate the same, is of no consequence. Needless, to add that it is very easy to assert fraud but it is difficult to prove the same. Reliance in this respect is placed upon the judgment of the Hon'ble Supreme Court of Pakistan reported in **2009 SCMR 70** titled as *Ghulam Ghous v. Muhammad Yasin and another*. In the circumstances, in absence of any material evidence, which could substantiate the alleged fraud attributed towards the plaintiff, this issue is answered in negative.

29. Issues No.4 and 7: Since these issues are interconnected, therefore, the same can be decided together. From the evidence available on record, it transpires that the plaintiff purchased suit property from defendant No.5, namely, Muhammad Anis, transferee of the suit property by virtue of pre-lease transfer, and thereafter the same was transferred by way of pre-lease transfer vide Transfer Order bearing No.A-376/Sector 11-B/240 Sq. Yds./NKT/Resett-T-Br/258 dated 13.09.1988 [**Exh.P/3**]. Subsequently, KDA executed a 99-years in favour of the plaintiff vide Lease Deed Registered No.4455, Book No.I, dated 29.08.1990, M.F. Roll No.1286 dated 04.09.1990 [**Exh.P/2**]. This fact has not been disputed by any of the defendants in the present case. The pre-lease transfer in the name and favour of plaintiff upon execution of 99-years lease registered lease has been merged into the registered lease, hence the transfer order let alone was not available to defendants 1 and 2 for cancellation. Since the defendant-authority have not denied the prelease transfer of plot in favour

of the petitioner, receipt of the lease money and execution of 99-years registered lease deed in favour of the plaintiff, therefore, these admitted facts shall lead to only one result that the transaction in respect of the suit property which commenced with the pre-lease transfer of suit property in favour of the plaintiff was complete in all respects on the execution and registration of the lease deed and nothing remained to be done by the defendant-authority. This being so, all the decisive steps having been taken, no power was left with the defendant/authority to undo the completed transaction as the same had taken legal effect, clothing the plaintiff with the rights of a lessee. Reliance is placed in the case of Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) wherein it is held that on the basis of principle of locus poenitentiae, the Government or other relevant authorities which are competent to pass an order are also competent to undo that order. However, the order passed and the action taken cannot be withdrawn or rescinded once it has taken legal effect and certain rights created in favour of any individual.

In the light of the dictum laid down in the afore stated judgment of the Hon'ble Supreme Court, the alleged cancellation of Transfer Order could not have been ordered through the impugned letter, as aforesaid decisive steps had been taken pursuant to the pre-lease transfer and transaction had attained finality. Furthermore, since, the 99-year lease is in favour of the plaintiff is registered by the concerned authority, hence presumption of truth is attached to them, until and unless they are rebutted through strong and cogent evidence and the Defendants have failed to bring any such evidence on the record. Therefore, no reason, cause or justification to hold the said documents otherwise. In this regard, reliance can be made to the cases of Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others (1993 SCMR 462) and 'Abbas Ali Shah and 5 others v. Ghulam Ali and another(2004 SCMR 1342).

Besides above, it is also a well-established principle of law that a registered instrument can only be cancelled through in terms of Section 39 of the Specific Relief Act, , which in the present case has admittedly not been done by any of the defendants who have challenged the same being obtained through fraud. Suffice it to observe that public functionaries and

Departments of the Government are expected to act in such manner that their actions and conduct should reflect fairness and reasonableness. To deprive someone of his property except by following due process of law is not contemplated by the Constitution and the law. In the circumstances, the impugned cancellation of pre-lease transfer is illegal and an encroachment on the rights of the plaintiff and hence the same is declared to be without lawful authority and of no legal effect. In view of this settled rule, even for the argument's sake, the contention of the learned counsel for private Defendant No.3 about the evidence of Plaintiff is not repelled, even then such a concession [as alleged] by PW-1 cannot alter the above discussed legal principle, as it is also an established rule that concession of a party or his counsel against a legal principle is of no value. Accordingly these issues are answered in negative in favour of the plaintiff.

30. Issue No.9: Since the plaintiff has failed to lead any evidence to substantiate his stance in respect damages he suffered, and further the counsel of the plaintiff argued on this issue, hence this issue is answered in negative:

31. Issue No.10: In view of the findings on the above issues, the suit is decreed to the extent of afore mentioned prayer clauses (a), (b), (c), (d) and (e) with costs.

Karachi;  
Dated: 31.01.2017.

Judge