

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 1014 / 2005

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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- 1) For orders on Nazir reports dated 2.11.2017 and 14.7.2017.
- 2) For hearing of CMA No. 14434/2017.
- 3) For hearing of CMA No. 10570/2017.
- 4) For hearing of CMA No. 8473/2017.
- 5) For hearing of CMA No. 8474/2017.

17.11.2017.

Mr. Muhammad Noman Jamali along with
Mr. Abdul Razzak Advocate for Plaintiffs.
Mr. Alay Maqbool Rizvi AAG.
Ms. Naheed Akhtar State Counsel.
Mr. Sharfuddin Mangi State Counsel.
Mr. Noor Alam Khatri Advocate for BOR.
Mr. Akhtar Hussain Advocate for Intervener.
Mr. Sameer Ghazanfar Advocate for KMC.
Mr. Athar Hussain Deputy Director KMC.
Mr. Qazi Amin Mukhtiarkar.
Mr. Muhammad Ashraf Deputy Administrator,
Evacuee Trust Property, Karachi a/w
Mr. Muhammad Ashraf, Muhammad Zareef
and Kazim Massod.

1 & 3) It appears that in this matter on 22.8.2005 status quo order was passed and thereafter, the injunction application bearing CMA No. 6503/2005 was disposed of on 15.1.2007 by confirming the status quo order. Thereafter, an application was moved by the Plaintiffs on 1.6.2017 on the ground that the Intervener is carrying out construction in defiance of the status quo order and has in fact encroached upon the Suit land with the connivance of officials. On such application Nazir was directed to inspect the property, and on 14.7.2017, Nazir furnished his report, wherein, the inspection was carried out with the assistance of concerned Superintendent and Mukhtiarkar. With his report a sketch was also annexed issued by the officer of the Survey Superintendent, Board of Revenue, Karachi, duly

signed by the City Surveyor and others showing the measurement/area of the Suit Plot and the encroachment upon such plot as well.

On 20.10.2017 the Plaintiff again approached this Court with CMA No. 14433/2017 alleging that the proposed Interveners whose application under Order 1 Rule 10 CPC is pending have started raising construction of a wall extending the ramp and are encroaching upon the Suit land as reflected in the report dated 14.7.2017. Thereafter, Nazir was again directed to carry out inspection and he has submitted his report dated 2.11.2017 which reads as under:-

“With profound respect I have the honour to submit that complying with the above order, the undersigned fixed the matter for 31.10.2017 for which notices were issued to all parties and department concerned especially M/s. Bahria Town Pvt. Limited. On such date, Mr. Nasir, associate for Advocate for the Plaintiff along with Plaintiff in person namely Mr. Shahnawaz Abdul Sattar, Mr. Deedar Ali, Mukhtiarkar Civil Lines, Mr. Chandan Kumar, City Surveyor from Survey Superintendent, Board of Revenue, Karachi were present. The undersigned deputed staff member who accompanied with above mentioned Plaintiff and associate for advocate for the Plaintiff reached at the site i.e. Survey No. 2, Sheet No. C.F.1-5, Scheme No. 5, measuring 3131 square yards situated in Clifton Karachi, where Mr. Chandan Kumar Surveyor from Survey Superintendent, Board of Revenue, Karachi, Mr. Deedar Ali Mukhtiarkar Civil Lines along with supervising Tapedar was present. At the site Law Officer of M/s. Bahria Town Pvt. Limited namely Muhammad Asif was also present.

The site inspection was carried out of the subject plot in question along with above mentioned parties and departments concerned and noted the present status vis-à-vis. with regard to or in comparison of undersigned earlier inspection report dated 14.07.2017. Firstly, it was noted that the wall situated at right hand side of the plot in question was found demolished, several demolition signs were noted and a temporary wall consisting of versatile rocks was found. Furthermore, partial shuttering was also found at the subject wall adjacent to Mosque. However, at this juncture, M/s Bahria Town Law Officer contended that the Bahria Town has no concern with such demolition and construction work and further stated that such demolition / construction work is the domain of Karachi Metropolitan Corporation. Secondly, a new ramp having width of 16 feet was found constructed from the Bahria Icon and ended at the plot in question. Some measurement was also taken such as from corner of internal road which was found at the plot in question, while old wall measurement was 53 feet. However, new measurement as found as 66 feet at such particular area.

It is respectfully submitted that from the above mentioned changed circumstances and comparing it to earlier inspection, it is contended that demolition of wall and construction of new ramp connecting to Bahria Icon has been taken place on the subject property. Furthermore, some snap shots were taken to witness the site in question which are enclosed and marked as P/1 o P/15.

Report is submitted for kind perusal and further orders.” **(Emphasis supplied)**

The aforesaid report of Nazir clearly reflects that subsequent construction has been carried out apparently in defiance of the Status Quo orders passed by this Court, whereas, today the learned Counsel for KMC present along with Mr. Athar Hussain Deputy Director KMC makes a categorical statement that KMC has got nothing to do with the said construction, nor the said land is owned by KMC, but falls under the domain of Board of Revenue. Similarly learned AAG while confronted submits that Government of Sindh or for that matter Board of Revenue has got nothing to do with such construction. This is quite surprising. From the Nazir report it further reflects that the concerned officer of the proposed Intervener, namely Muhammad Asif had also made a categorical statement that they have no concern with the construction work. Learned Counsel for the Intervener opposes passing of any order and submits that this property is not lawfully owned by the Plaintiff, whereas, no order has been violated and no construction is being carried out.

I have heard all present and perused the record. It appears to be an admitted position that despite restraining orders in field apparently further construction has been raised, and as of today none has come forward to accept such responsibility, rather all have denied. In the circumstances it is for this Court to see that its order is not violated any further and is required to pass appropriate orders as deemed fit. The contention of the learned Counsel for Intervener in the given facts cannot be accepted as it would create further complications and the property will not be preserved for its final benefit to the successful party. The Court is fully competent to pass any such orders. Reliance may be placed on the case of ***Bakhtawar etc. V. Amin Etc. (1980 SCMR 89)***, as relied upon by the learned Counsel for the plaintiff wherein the Hon'ble Supreme Court has held as under:-

“6. Coming to the merits of the present petition the learned counsel argued that the learned District Judge under the law had no jurisdiction to direct the plaintiffs/ petitioners to reconstruct or restore the khal which, we may observe, according to the concurrent factual findings of the two Courts below had been demolished by them by taking undue advantage of the order of "status quo" issued by the learned District Judge. It was argued that in such cases the only remedy of the respondents was to file a separate suit for that purpose or to sue for damages. The contention has no merit. **It is well settled that when by contravening an injunction order the party against whom the order is passed has done something for its own advantage to disadvantage of the other party, it is open to the Court under its inherent jurisdiction to bring back the party to a position where it originally stood, as if the order had not been contravened. The exercise of this inherent power is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court... ..**

In view of the fact that the Nazir report very clearly reflects that construction has been carried out after passing of the status quo order in this matter, let Nazir take over possession of the Suit plot immediately and attach the same and shall ensure that no further construction of whatsoever nature is carried out on the Suit Plot. He is fully authorized to seek assistance of any nature from the law enforcement agencies including any Government department(s) so concerned who shall provide such assistance without fail. He with the assistance and at the expenses of the Plaintiff and under his supervision shall raise a proper wall on the Suit land as per the sketch report available with his report dated 14.7.2017. Nazir's fee is tentatively settled at Rs. 50,000/- which shall be paid by the Plaintiff. Nazir reports dated 2.11.2017 and 14.7.2017 are taken on record. CMA No. 10570/2017 stands disposed of in the above terms.

2,4&5. Adjourned. Interim orders passed earlier to continue.

J U D G E

ARSHAD/