

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1014 of 2005

Date	Order with signature of Judge
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Present:

Mr. Justice Muhammad Ali Mazhar

Abdul Ghani & others.....Plaintiffs

Vs.

Province of Sindh & others.....Defendants

1. For hearing of CMA No.14434/2017.
2. For hearing of CMA No.8474/2017.
3. For Final Arguments.

Dates of hearing: 01.01.2019 & 02.01.2019.

M/s.Muhammad Nouman Jamali, Muhammad Ehsan and Abdul Razzaq Advocates for Plaintiffs.

Syed Aley Maqbool Rizvi, Addl.A.G., Mr. Ziauddin Junejo, A.A.G. and Ms.Nahid Akhtar, State Counsel.

Mr.Sameer Ghazanfar and Ms. Azra Muqeem Advocate for Defendant Nos.2 to 4 & 6.

Mr. Akhtar Ali Mastoi, Advocate for Board of Revenue.

JUDGMENT

Muhammad Ali Mazhar, J. This suit has been brought to entreat declaration that defendants have no right and authority to interfere in the rights of the plaintiffs to use and enjoy the suit property bearing Survey No.3, Sheet No.C.F.1-5, Scheme No.5, measuring 3131 sq. yards situated in Clifton, Karachi. The plaintiffs have further sought the declaration that the demolition action taken by the defendants without notice to the plaintiffs was illegal. The plaintiffs have also prayed for the permanent

injunction restraining the defendants from interfering with the possession of the plaintiffs.

2. It reflects from the record that sufficient time was provided to the defendant Nos.1 to 4 to file their written statement. The order dated 08.05.2006 shows that the counsel for the said defendants requested for one week's time to file written statement or the statement adopting the written statement filed by the defendant No.5. In the interest of justice three weeks' time was allowed by this court to file the written statement or a separate statement whereby they may opt or adopt the written statement of defendant No.5, however, on 15.01.2007, the court observed that despite providing ample opportunity no written statement has been filed by the defendant Nos.1 to 4 nor any statement was filed to adopt the written statement of defendant No.5. Ultimately, the court declared the defendant Nos.1 to 4 ex-parte and the interim orders passed on 22.08.2005 and 16.11.2005 were confirmed. After declaring the defendant Nos.1 to 4 ex-parte, the order dated 27.02.2006 reflects that Mr. Abbas Ali, learned Additional A.G. appeared and he adopted the written statement filed by the defendant No.5. Virtually, only one written statement of defendant No.5 is on record which was adopted by the Government of Sindh. On 15.01.2007, the following issues were settled by this court:

- “1. Whether the defendants have any right, title or interest in property bearing Survey No.3, Sheet No.C.F.1-5, Scheme No.5, Clifton, Karachi?”**
- 2. Whether the request for de-acquisition of the land acquisition proceedings were issued by the then KDA on 31.10.1996, if so, its effect?”**

3. **Whether the plaintiffs have suffered any loss or damage, if so, to what amount?**
4. **To what relief, if any, the plaintiff is entitled to?"**

3. The plaintiffs had filed an application for appointment of commissioner hence vide order dated 02.11.2015, Mr.Dilawar Hussain, Advocate was appointed commissioner for recording evidence. On behalf of the plaintiffs only one affidavit in evidence was filed by the plaintiff No.2 (Shahnawaz son of late Abdul Sattar) and he was cross-examined by the counsel for the defendant Nos.2, 3, 4 and 6. The learned counsel for the plaintiffs pointed out an order dated 17.11.2017 and argued that since there was some apprehension of construction activities on the land in question, therefore, an application under Order 1 Rule 10 CPC was also filed against the Bahria Town, however, their representative gave this statement that Bahria Town has nothing to do with any construction activities on the plot in question. The last paragraph of the order which is quite relevant is reproduced as under:-

“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.”

N.B. In compliance of the order dated 17.11.2017, the Nazir of this Court submitted the report dated 9.2.2017 (presented on 13.2.2017 and taken on record vide order dated 24.12.2018)

according to which the possession was taken over and construction of boundary wall was completed. He also deployed security guards.

4. The learned counsel for the plaintiffs argued that burden of proof with regard the Issue No.1 and 2 was on the defendants whether they have any right, title or interest in the property in question which they have failed to discharge. No written statement was filed by the defendant Nos.2 to 4 and 6. In the written statement filed by the defendant No.5 (Mukhtiarkar (Revenue), City Surveyor Office, Karachi), he admitted that FTO No.KYC/00/657 dated 31.07.1962 issued by the Settlement Department in favour of the plaintiffs. He further stated in the same written statement that mutation was made in the record of the office of answering defendant. He further stated in the written statement that the property falls within the KDA Scheme No.5 in view of the letter dated 08.04.1993. The defendant No.5 clearly stated in paragraph 12 of his written statement that he has been unnecessarily dragged in this litigation as he never visited the suit site nor taken any action in the alleged process of demolition. However in paragraph 13, he asserted that the plaintiffs are not entitled for any claim of damages and compensation from him and the suit is misconceived and is liable to be dismissed and finally in paragraph 15, the defendant No.5 stated that no cause of action arose to the plaintiff for filing this suit against him (answering defendant).

5. The learned counsel for the plaintiffs further contended that though the Mukhtiarkar filed his written statement but he never filed any affidavit in evidence nor any law officer from the Advocate General Sindh office appeared on behalf of the Government of Sindh before

the commissioner for cross-examining the plaintiffs' witness. The learned counsel for the plaintiffs referred to the judgment rendered by the hon'ble Supreme Court in the case of **Aziz Ullah Khan & others v/s Gul Muhammad Khan, (2000 SCMR 1647)**. In this judgment the hon'ble Supreme Court dilated upon the question of failure on the part of trial court not to consider each issue separately in terms of Rule 5 Order XX CPC. The apex court held that issue Nos.1 and 2 are inextricably linked with each other and their consideration together was not at all violative of the mandate contained in Rule 5 of Order XX CPC. However, as regards the remaining issues except issue No.7, the hon'ble Supreme Court observed that it is the case of the parties themselves that they did not lead any evidence on them with the result that the courts below were left with no other option but to decide them against the side which did not produce evidence on the issues, onus of proof which was on them respectively. The learned counsel averred that the burden of proof for issue No.2 was also on the defendants which they have failed to discharge. The CDGK/KDA could come and contest the matter by producing some documents or the witness to negate or to contest the letter of de-acquisition issued by KDA on 31.10.1996. He further argued that even in the cross-examination conducted by the counsel for the KMC they have given the suggestion which was accepted by the witness that 28 sq. yards land belongs to KMC, whereas 3130 sq. yards land belongs to the Government and the plaintiffs paid price to the KMC for 28 sq. yards land. He further argued that whatever the witness stated in the examination in chief was gone un-rebutted and nothing could come out from the cross-examination which may upset the authenticity

and validity of the documents. In the event of no denial, much sanctity and presumption attached to the genuineness of the documents and in support of this contention, the learned counsel referred to Article 126 and Article 100 of the Qanun-e-Shahadat Order, 1984. He further argued that P.T-O and PTD were issued in the year 1962 and both said documents are 30 years old. He referred to Exhibit P/5 which shows that the Deputy Secretary (E.P), Karachi written a letter to Illahi Bux Kehar, the then Deputy Settlement Commissioner for the verification of his signature on the PTD and Exhibit P/6 shows the statement of Illahi Bux Kehar who confirmed that he was performing the duties of Deputy Settlement Commissioner Karachi in the year 1962 and after seeing the register, he admitted his signature on the PTD dated 31.07.1962. The learned counsel argued that after this verification, much sanctity and presumption are attached to the PTD. The learned counsel further argued that the relevant documents which have been exhibited in evidence clearly demonstrate the de-acquisition by the KDA. He further pointed out that the counsel for the KMC himself suggested to the plaintiffs witness that the dispute between the plaintiffs and the defunct KDA was compromised in the year 1996 in C.P. No.D-3103/1993. In support of his contention, he referred to the case of **Chief Engineer, Irrigation Department & others vs. Mazhar Hussain & others (PLD 2004 S.C. 682)** in which while referring to Article 133 of the Qanun-e-Shahadat Order, 1984 the apex court observed in the judgment that the Local Commissioner has unambiguously stated that the plot in dispute is situated in Khasra No.11 and not in Khasra No.54, he was not cross-examined on the above vital points and

the aforesaid statement remained unchallenged, hence the facts given in examination in chief would be deemed to be admitted and accepted by the petitioners to be correct. He further referred to the case of **Evacuee Trust Property Board & others vs. Haji Ghulam Rasul Khokhar & others (1990 SCMR 725)** in which the apex court held that entries mentioned in the Revenue record regarding ownership are presumptive evidence of title, which shift the burden on the person who challenges their correctness to establish otherwise. The learned counsel concluded that the plaintiffs have not led any evidence with regard to any loss or damages, therefore, the learned counsel on instructions of the plaintiffs does not press the claim of damages, loses or compensation.

6. Mr. Sameer Ghazanfar, learned counsel for the defendant Nos.2 to 4 and 6 at the very outset pointed out paragraph 24 of the plaint which narrates cause of action for filing this suit. Admittedly, the alleged cause of action accrued to the plaintiffs on 16.08.2005 when the defendants and their staff appeared at the site and started demolition action. The learned counsel further referred to the prayer clauses jot down in the plaint that the plaintiffs are not asking for declaration to their title but asking for the declaration against the defendants that the demolition action initiated without notice was illegal and mala fide. He further argued that the second prayer clause is couched in a negative form of declaration that defendants have no right or authority to interfere in the rights of the plaintiffs to use and enjoy the suit property. Whereas the permanent injunction has also been prayed against the defendants not to evict the plaintiffs from the possession of the suit property.

7. The learned counsel argued that the pith and substance of this suit unequivocally conveys that it is only a suit for injunction and all prayer clauses are related to somehow or the other for the relief of injunction so it is an admitted fact that the declaration of ownership is not an issue. However he admits the ground reality that none of the Government departments have ever initiated any action or filed any proceedings for the cancellation of ownership documents issued in favour of the plaintiffs including PTD and the lease renewed by the KMC with regard to 28 sq. yards land. He further argued that this is only a suit for injunction which can be decided to the extent of injunction alone and not to the declaration of title/ownership of the plot in question. He very frankly contended that in case the KMC/KDA want to initiate any proceedings for acquisition of the land or want to challenge the PTD or other documents conferring any right to plaintiffs, they may take action in accordance with the law with regard to 28 sq. yards of land which has been shown from its beginning as the land of KMC in the PTD and in the extract of City Surveyor Department whereby the land was transferred in view of FTO No.KYC/00/657 dated 31.07.1962. He further submits that this suit was filed in the year 2005 when the KDA was part of CDGK, however, vide The Sindh (Repeal of Sindh Local Government Ordinance, 2001 and Revival of the Sindh Local Government Ordinance, 1979) Act, 2011, all departments were reverted under Sindh Government. He further argued that Issue No.2 was framed by this court which was specifically against the KDA, therefore, KDA should have been made party but this fact was not brought into the knowledge of this court by the plaintiffs. In the year 2012, the Sindh Peoples Local Government Act, 2012

was promulgated in which K.D.A. was under Sindh Government, however, when Sindh Local Government Act, 2013 was promulgated, the K.D.A. was given under the control of K.M.C. till 2016 when again K.D.A. Order 1957 was revived.

8. The learned Additional Advocate General Sindh invited my attention to the prayer clause and argued that the plaintiffs have not claimed any declaration with regard to the title which was allegedly conferred upon them through the permanent transfer deed. He further argued that without seeking declaration under Section 42 of the Specific Relief Act the suit is not maintainable. He further argued that PTD is a bogus document and the payment has been made through compensation books and not by the bidder. To a question raised by this court to the learned Additional Advocate General that on 27.02.2006 Mr. Abbas Ali, Additional Advocate General appeared and he adopted the written statement filed by the defendant No.5 (Mukhtiarkar) and the court specifically asked as to why the A.G. office failed to cross-examine the witness of the plaintiffs and also failed to lead their evidence before the commissioner? The learned Additional Advocate General could not answer. The court further asked the learned Additional Advocate General whether any proceedings have been initiated by the Sindh Government and or K.D.A. for the recovery of the land transferred to the plaintiffs through PTD? The learned Additional Advocate General responded that so far as the demolition action is concerned, the Sindh Government has nothing to do with which was the responsibility of the Sindh Building Control Authority, however, he admits that no proceedings have been initiated by the Government of

Sindh and or K.D.A. for the recovery or challenging the title documents issued in favour of the plaintiffs. The learned Additional Advocate General also stated that Mr. Abbas Ali, Additional A.G. had no authority to adopt the written statement of defendant No.5 nor the defendant No.5 (Mukhtiarkar) has any authority to sign any written statement under Order 27 Rule 1 CPC. However, the learned Additional Advocate General concluded that no action shall be taken against the plaintiffs without due process of law.

9. Mr. Akhtar Ali Mastoi, learned counsel for the Board of Revenue argued that the plaintiffs have only produced the PTD and no other title document has been produced. However he admits that no action has been taken by the Board of Revenue against the plaintiff for the recovery of plot in question. The learned counsel could not even respond as to why the Mukhtiarkar failed to appear for evidence before the commissioner.

10. In rebuttal the learned counsel for the plaintiffs pointed out the order dated 16.11.2005 in which Mr. Ahmed Pirzada, learned Additional Advocate General placed a letter dated 14.11.2005 addressed to Advocate General by Mukhtiarkar Revenue Saddar Zone Karachi stating that the land in question belongs to the plaintiffs. To the objection raised by the learned Additional Advocate General Sindh that AAG or the Mukhtiarkar had no authority to sign the written statement, the learned counsel invited my attention to page 163 which is the written statement filed by the Mukhtiarkar Saddar Town, Karachi which shows the written statement was also signed by the Additional Advocate General Mr. Ahmed Pirzada who identified the

Mukhtiarkar, so for all intents and purposes the written statement was vetted by the A.G. office and it was filed under the signature of Mukhtiarkar as well as the Additional Advocate General Sindh. However the learned counsel for the plaintiffs admits that the plaintiffs have not sought any declaration as to their title under Section 42 of the Specific Relief Act as according to the learned counsel for the plaintiffs it was never disputed.

11. In my considerate view, the Issue No.1 and 2 are inextricably linked with each other. My findings on both the issues are as under:-

i. On behalf of plaintiff Shahnawaz son of (late) Abdul Sattar (Plaintiff No.2) filed his affidavit in evidence and produced various documents which were exhibited by the learned commissioner. The Exhibit P/1 is an Extract from the Property Register of Karachi District and Taluka Karachi which shows the Plot No.CF1-5, Survey No.3 measuring 3103 sq. yards was Government land and only 28 sq. yards land was belonged to K.M.C. In this extract the name of Abdul Ghani, Shahnawaz, and Muhammad Rafique are mentioned with the period of lease for 99 years from 01.08.1962 and this extract was issued on 19.07.2004. In this very extract it is mentioned that 28 sq. yards of land granted as alignment land by Municipal Corporation vide Land Manager letter No.L.C. AL 35/36 dated 22.06.1937. It is further stated that the lease was renewed for a further period of 99 years vide A.C. South Karachi letter No.CTS/CS-1/139A/2001 dated 09.02.2001. The next Exhibit P/2 is the extract of the Register of Preliminary Survey of Immovable Evacuee Property whereby the property in question admeasuring 3131 sq. yards was

declared as evacuee property. Exhibit P/3 is a provisional transfer order issued for the same land with the same measurement in the name of Abdul Sattar and Abdul Ghani on 05.04.1962. Exhibit P/4 is the copy of permanent transfer deed for the same plot with the same measurement that was issued by the Additional Settlement Commissioner, Karachi on 31.07.1962 in favour of Abdul Sattar and Abdul Ghani. Exhibit P/8 is Form P.T-I for the same plot issued by Excise and Taxation Department on 22.07.1992 but this very Form P.T-I shows that the property tax was initially assessed vide order dated 30.06.1968. Exhibit P/10 is the mutation letter issued on 11.04.1993 by the Assistant Director Land, KMC to the extent of only 28 sq. yards land of the KMC portion which was renewed after recovery of dues for 99 years from 01.08.1962. Exhibit P/11 is the challan issued by KMC for the KMC portion of 28 sq. yards land. In this challan separate charges for mutation fee, premium, land rent arrears from 1963-64 upto 1991-92 (29 years) and land rent 1992-93 are mentioned. This amount was paid by the plaintiffs on 11.04.1993 according to the Bank endorsement. Exhibit P/15 is the demolition permission issued by Karachi Building Control Authority on 03.02.1993.

ii. The learned counsel pointed out that at one point of time some land acquisition issues were raised. He referred to a letter dated 23.04.1993 (page 151) written by Deputy Commissioner South Karachi to the Land Acquisition Officer, KDA, Karachi. This Deputy Commissioner asked some clarification that the plot in question is situated in original KDA Scheme No.5, therefore, he called the information whether the plot has been acquired by the KDA or not. The plaintiffs were

also engaged with some correspondence with the KDA in this regard but finally on 10.10.1996 (Exhibit P/18) a letter was written to the plaintiffs by the Director (E&E), KDA, Directorate of Estates & Enforcement (Land Acquisition Cell) in which he communicated the approval of the competent authority for de-acquisition of the plot in question from Scheme No.5, Clifton on the condition i.e. withdrawal of the suit/petition pending in any Court in respect of the land in question and refund of the amount paid by the Authority for acquisition of the said land. On the basis of this letter, the plaintiffs withdrew C.P. No.D-3103/1993 (page 103) on 17.10.1996 and also refunded the amount. A copy of pay order dated 30.10.1996 in the sum of Rs.164,220/- is available as Exhibit P/21. Exhibit P/20 is the letter issued on 31.10.1996 by the Director KDA from the same department communicating that having fulfilled by the conditions in the KDA letter dated 10.10.1996 the Director had conveyed the approval of the competent authority for de-acquisition of the subject land from Scheme No.5, Clifton and mutation in the record of rights maintained by the concerned Revenue authorities in favour of the owner of the land. Thereafter vide letter dated 15.04.1998 (Exhibit P/22) the Additional Director land, KMC communicated to the Assistant Commissioner (Rev), Karachi for the survey and fixation of boundaries of plot in question. It is further stated in this letter that a joint demarcation of the plot was carried out by City Surveyor (South) Karachi, Land Surveyor, KMC & Overseer Clifton Scheme KDA on 21.07.1997. Alongwith this letter he had also attached a joint demarcation plan which is available at page 111. Vide Exhibit P/25 dated 09.02.2001, the Assistant Commissioner South, Karachi communicated to Abdul

Sattar, deceased father of plaintiff No.2 that on payment of the rent and revised assessment, the lease of plot in question was renewed for a further period of 99 years commencing from 01.08.1962. It is further stated that Sanad will be issued after the previous original Sanad is surrendered. The Exhibit P/26 shows that a letter was written by the Director Land, KMC to the plaintiff No.1 requiring to pay the land rent from 1993-94 upto 2001 within 10 days which was also paid by the plaintiffs through a pay order dated 21.04.2001 available at page 135. At page 137 the copy of extract from the Property Register of Karachi District South and Taluka Karachi is available which shows that on death of co-owner Abdul Sattar his share was transferred to the legal heirs of deceased Abdul Sattar. The names of legal heirs are mentioned as the owners.

iii. After recording the cross-examination of the plaintiffs' witness, the learned commissioner submitted his report on 02.03.2016 which was taken on record by this court on 22.12.2016 with the observation that the examination in chief and cross-examination of the plaintiffs' witness was recorded and as far as the defendants are concerned, per report of the commissioner, defendants have failed to lead any evidence. The relevant paragraphs of the commissioner's report dated 02.03.2016 are reproduced as under:

“That on 15.12.2015 the examination-in-chief of the plaintiff namely Shahnawaz son of Late Abdul Sattar was recorded by Mr.Muhammad Ehsan Advocate for the Plaintiff and during the evidence he produced the number of exhibits and articles and he was duly cross-examined by Syed Iftikharul Hassan Advocate for the K.M.C. on 29.12.2015. [Emphasis applied]

The learned counsel for the plaintiff filed the list of witnesses on behalf of the plaintiff and the undersigned sent notice to the official witnesses through registered

post and one Mr.Asif Ahmed, Administrative Officer appeared before the undersigned on 30.01.2016 and he has taken the time for filing the proper reply on behalf of the official witnesses, but he failed to file and appear before the undersigned, even I contact him personally on his cell phone # 0313-2257978 and he failed to reply the same and the undersigned fixed the above matter for filing the affidavit-in-evidence on behalf of the K.M.C/C.D.G.K. and the learned counsel for the K.M.C/C.D.G.K. stated to the undersigned that the K.M.C/C.D.G.K. has already been ex-parte and I am not filing the affidavit-in-evidence on behalf of the K.M.C/C.D.G.K.” [Emphasis applied]

iv. The report of the commissioner reveals that the learned counsel for the KMC/CDGK informed the commissioner that KMC/CDGK has already been declared ex-parte so he is not going to file affidavit in evidence on behalf of KMC/CDGK. Consequently vide order dated 10.04.2017, this court directed the office to fix the matter for final arguments.

v. The documents exhibited by the plaintiffs witness gone unrebutted in the evidence including the crucial documents such as PTO, PTD, mutation/transfer, renewal of lease, payment of money to the K.M.C for 28 Sq.Yds land, lease renewal letter and de-acquisition letter/proceedings of K.D.A. It is also an admitted fact that the defendants never initiated any proceedings for challenging the plaintiffs documents or recovery of land in question. According to Article 126 of the Qanun-e-Shahadat Order, 1984 when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. Whereas Article 100 of the Qanun-e-Shahadat Order, 1984 postulates that where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the

signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. The explanation attached to this Article further elucidates that for the purposes of this Article and Article 92, documents are said to be in proper custody if they are in place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

vi. A austere look to the substratum of the plaint unequivocally demonstrates and confirms that this is essentially a suit for mere injunction in which temporary as well as consequential relief is confined to the extent of permanent injunction. The gist of issue No.1, *“whether the defendants have any right, title or interest in property bearing Survey No.3, Sheet No.C.F.1-5, Scheme No.5, Clifton, Karachi?”* and issue No.2, *“whether the request for de-acquisition of the land acquisition proceedings were issued by the then KDA on 31.10.1996, if so, its effect?”* articulate and countenance that the plaintiffs have not approached or walked up to entreat a declaration of their ownership right or title but they have knocked the door to claim negative declaration that defendants have no rights or interest in the plot. I am sanguine that claim of negative declaration is not barred under the law but in order to reach on just conclusion, the pith and substance of the lawsuit matters. Here according to the plaintiffs' counsel, the defendants never

denied the ownership of the plaintiffs but they initiated some demolition action without notice so the plaintiffs only approached to this court for injunction and the backdrop and milieu of the averments made in the plaint are confined to the required relief. This may be the reason that the court only framed the issues with regard to the action taken by the defendants and not within the parlance of declaration but in my view this is a suit essentially for injunction alone which is maintainable without seeking declaration.

vii. In the case of **Naseem-ul-Haq versus Raes Aftab Ali Lashari**, reported in **2015 YLR 550 [Sindh]**, I have discussed Section 42 of Specific Relief Act 1877 and held that any man's legal character is generally taken as the same thing as a man's status. Words "right as to any property" are to be understood in a wider sense than "right to property" and words "interested to deny" denotes that defendant is interested in denying right of plaintiff or his legal character. Denial of right constitute a cause of action to maintain an action under Section 42 of Specific Relief Act, 1877. Relief of declaration is a discretionary relief that can be granted in the case where substantial injury is established and in absence of denial of right no relief of declaration can be granted. In the case of **Ilyas Ahmed versus Muhammad Munir**, reported in **PLD 2012 Sindh 92**, again I held the expression, legal character has been understood as synonymous with the expression status. Section 42 of the Specific Relief Act applies only to a case where a person files a suit claiming entitlement to any legal character or any right to property which entitlement is denied by the defendants or in denying which the defendants are interested. Section 42 would be attracted to a case in

which the plaintiff approaches the court for the safeguard of his right to legal character or property but where right to his own legal character or property is not involved the suit is not maintainable. The learned A.A.G as well as the learned counsel for K.M.C have also argued robustly that this is not a suit for declaration and this question of law was also conceded by the learned counsel for the plaintiffs. Even the learned A.A.G and counsel for the CDGK/K.M.C both argued that no action will be taken against the plaintiffs without due process of law and if the K.M.C wants back its 28 Sq.Yds land they will initiate legal proceedings according to law. Similar statement was also given by the learned A.A.G.

viii. The ground reality cannot be ignored that despite availing numerous opportunities, the KMC/CDGK failed to file any written statement despite the fact that they were well represented by their counsel who also cross examined the plaintiffs witness. The Sindh Government through the appearance of A.A.G adopted the written statement of defendant No.5. Neither the advocate general office cross examined the plaintiffs witness nor call the defendant No.5 in evidence. Nothing brought on record through the cross examination conducted by the CDGK counsel to the plaintiffs witness which may shatter or smash the plaintiffs claim rather some such type of suggestions were given which were in favour of the plaintiffs hence replied in affirmative by the witness. Due to lack of serious concern and interest to this lawsuit from its inception, the defendants are not in a position to fight out the case by tooth and nail.

ix. The learned A.A.G tried to establish as if the written statement of the defendant No.5 was adopted by the then A.A.G without authority. On the contrary the

written statement of the defendant No.5 was filed through Advocate General Office and it was also signed and Additional Advocate General so at this belated stage no such plea can be accepted which is taken at the time of argument without any proof to establish that the Additional Advocate General has wrongly signed the written statement. If this plea is accepted it will reflect further bad on their part and it will mean to say a case of no written statement by the Government without going further as to why the defendant No.5 was not called for his evidence. However no justification was given by the learned A.A.G as to why the Government of Sindh could not file its separate written statement despite providing numerous opportunities by this court. The learned counsel for the CDGK/KMC tried to take shelter that during pendency of this suit some changes were made under the law due to which KDA remained within the administrative control of Sindh Government. This is also unacceptable argument. The counsel for the CDGK/KMC remained in touch throughout the proceedings even at the stage of arguments their learned counsel was present. He also cross examined the plaintiffs witness. Hence the effect of change in law if any with regard to the controlling authority could have been brought into the knowledge of this court but no efforts were made which otherwise in my view has no adverse effect on the lis as the said defendants were already declared ex parte on 15.1.2007 while change in the controlling authority came into effect in 2001 through which KDA went into administrative control of Sindh Government but subsequently in the year 2016 KDA Order 1957 was revived. Nothing was brought on record throughout the proceedings even at the argument stage that the plot measuring 3103 Sq.yds (Govt.land)

including the piece of 28 Sq.Yds (K.M.C land) transferred to the plaintiffs (total land 3131 Sq.Yds) through PTD in the year 1962 was ever earmarked for the public park by the Government or K.M.C/K.D.A. No justifiable reason was placed on record that despite appearance of their counsel as to why the written statement was not filed. The conduct of CDGK/KMC is highly reckless and negligent.

12. With regard to the Issue No.3, whether the plaintiffs have suffered any loss or damages, it is a matter of record that the plaintiffs have failed to substantiate any loss or damages in the evidence. The learned counsel for the plaintiffs have also not pressed this issue hence no findings are required for this issue.

13. So far as the issue 4 is concerned, to what relief the plaintiff is entitled? I have reached to the conclusion that the plaintiffs are entitled to decree for injunction in the terms that the defendants shall not interfere and disturb the possession of the plaintiffs without due process of law. The Nazir may detach the subject property and hand over its possession to the plaintiffs on proper verification and identification against written acknowledgment. The suit is decreed in the above terms. The parties will bear their own cost. The pending applications are also disposed of accordingly.

Judge

Karachi.

Dated: 02.01.2019.