

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 762 of 1995

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

For Final Arguments.

21.05.2019.

Mr. Abdul Kareem Khan, Advocate for the Plaintiffs.

Mr. Sohail Abdul Rahim, Advocate for Defendant No.7,
along with Defendant No.7-Muhammad Ismail Shaheedi.

M/s. Yawar Farooqui and Asad Ali, Advocates for Defendant
No.10.

Mr. Muhammad Yousuf Rahpoto, Assistant A.G. along with
Ms. Farkhunda Mangi, State Counsel.

Mr. Ahmed Ali Ghumro, Advocate for L.U. Department.

M/s. G. M. Bhutto and Syed Iftikhar-ul-Hassan, Advocates /
Law Officers of K.D.A.

Mr. Iftikhar Ahmed, Advocate, holds brief for Mr.
Muhammad Hanif, Advocate for the Plaintiff.

M/s. Yar Muhammad Bozdar, Deputy Secretary, L.U.
Department, Abdul Qadeer Mangi, D.G. K.D.A., Abdul
Haque Chawro, Mukhtiarkar, Gulshan-e-Iqbal, Sub-Division,
are present.

S.I. Muhammad Zubair, P.S. New Town, Karachi, is present.

1. Since Deputy Secretary, Land Utilization Department, is present today and has stated personal difficulty on medical ground for his absence in earlier hearings, therefore, bailable warrants of arrest issued against him on the last date of hearing stands discharged.

2. After hearing the matter at a considerable length, when the learned counsel for the parties and particularly Plaintiffs, are confronted with the decisions handed down by the learned Division Bench of this Court in number of constitutional petitions, C. P. No. D – 1608 of 2005 {filed by *Mst. Talat Ejaz*} being the leading one, which was subsequently

maintained by the Honourable Supreme Court in its two separate decisions; one in Civil Petition No.3470-K of 2015 and the other in Civil Petition No.2086 of 2015 [*Pir Masoom Jan Sarhandi v. Ms. Talat Ejaz*] (hereinafter referred to as “*Ejaz Case*”), which was subsequently followed by the single Bench of this Court in Suit No.2322 of 2014 [*Dr. Arifa Farid and others v. Mitha Khan and others*], all the learned counsel for the parties and the parties, who are today present, agree that the present *lis* may also be decided / disposed of in view of the operating paragraphs-22 of the above Suit No.2322 of 2014. For the sake of reference, paragraph-22 is reproduced hereunder_

“22. Since one of the basis of the decision in *Ejaz Case* is the Report of the then Chief Secretary of Sindh, therefore, it would be appropriate to pass the following directions:

- (i) *The Chief Secretary [Sindh] will constitute a Team, comprising of Senior Official(s) from the Board of Revenue, Land Utilization Department, City Surveyor and KDA, to undertake a Comprehensive Survey and if it is found that the above named two said Goths / Villages are located outside the territorial limits of Scheme – 36, then Defendant No.8 (Government of Sindh), subject to the final decision of the Honourable Supreme Court as mentioned in the ‘Comprehensive Report’ of the Deputy Commissioner or any other pending litigation, may take decision with regard to the occupants of the above named said Goths / Villages in accordance with Law and Rules and not otherwise;*
- (ii) *but, as already decided in the preceding paragraphs, that if either or both said Goths / Villages or any part thereof exists within the territorial limits of Scheme – 36, then the said area / part is an encroachment and is to be removed forthwith. Proprietary rights are the fundamental rights granted by the Constitution, thus, rights and interest of the Plaintiffs cannot be left unattended and the State has to provide adequate protection, failing which, the Official Defendants would be failing in their obligation and duty towards safeguarding the fundamental rights of citizens / Plaintiffs. The Chief Secretary, shall ensure that any encroached portion of Scheme – 36*

should be retrieved immediately either in favour of Plaintiffs and / or Defendant KDA, as the case may be;

- (iii) *the Official Defendants shall also identify the culprits and land grabbers, who will be dealt with strictly in accordance with law, both in civil and criminal jurisdiction.*
- (iv) *it is further directed that all the official Defendants have to co-operate with each other and if required, the Chief Secretary – Defendant No.8 will seek assistance of Pakistan Rangers as well.”*

3. It is necessary to give a brief background of the present dispute. Plaintiffs averred that Plaintiff No.1 (Shahbaz Goth Residents Welfare Society) is a registered society, whereas, Plaintiff No.2 (Al-Shahbaz Social Welfare Association) is a registered association for the residents of “Shahbaz Goth”. Undisputedly, the Plaintiffs have claimed that possession of various persons of Plaintiffs’ Association, should be regularised and Shahbaz Goth be given a legal recognition in terms of the Sindh Gothabad Act, 1987. But, simultaneously, it is also averred in paragraph-19 of the plaint, that houses of Plaintiffs were demolished by the private Defendants No.10 and 11. It is also a matter of record that the claim of Plaintiffs for the regularisation of the above named Shahbaz Goth relates to the area falling in Block – 6 of the Scheme 36 of KDA. Defendants and in particular the official Defendants, in their respective Written Statements, on the other hand, have controverted the claim of Plaintiffs and denied that any such Village/Goth exists.

4. It would be relevant to reproduced herein under the prayer clause of the plaint_

- “a) *To declare that possession of all the occupants of the Shabaz Goth, situated at Survey Nos.6, 7, 229, 231 & 232 (more than 24 Acres land), Deh Safooran, Scheme No.36, Karachi, is lawful.*

- b) *Mandatory injunction, thereby the defendant No.1 & b 2, may be directed to issue challans of the houses of all of the occupants, at Survey No.6, 7, 229, 231 & 232, Deh Safooran, Karachi, East, specifically in the names of all occupants of Shahbaz Goth have possession on Survey No.7, by virtue of order (Annex-F), issued on 11.07.1995, by the Land Utilization Department, Board of Revenue, Govt. of Sindh.*
- c) *Permanent injunction, whereby all of the defendants their attorneys, subordinates etc., or anybody else, acting on their behalf from dispossession the occupants of Shahbaz Goth, having houses at Survey No.6, 7, 229, 231 & 232, Deh Safooran, Scheme No.36, Karachi East, are demolishing their abodes / houses by the KDA, or by any other authority.*
- d) *Cost of the suit.*
- e) *Any other relief and relief(s) as this Hon'ble Court may be pleased to grant in the circumstances of the case."*

5. The private Defendants No.5 and 6 are the transferees, whereas, Defendants No.7, 8 and 9 are allottees of Defendant No.3 – Karachi Development Authority, who in their Written Statements have claimed their right and interest being direct allottees of Defendant No.3, through balloting. Defendant No.10 (Hadi Bux Memon), in his Written Statement has stated a different case, gist of which is that he was allotted a piece of land in Survey No.7, Deh Safoora, by the Land Utilization Department of Official Defendant No.1. Learned counsel representing Defendant No.10 has referred to the official documents appended with the Written Statement as well as in the evidence as Article D/2, Exhibit D/14 and D/17, that he has even paid a huge amount towards the differential Malkano to Defendant No.1.

6. Mr. Ahmed Ali Ghumro, Advocate, along with Mr. Yar Muhammad Bozdar, Deputy Secretary, has stated that land of Defendant No.10 has been cancelled and on the last date of hearing he had placed on record the

Cancellation Letter dated 31.08.2015, which is available in the main case file. However, Mr. Yawar Farooqui, Advocate, disputes this position. Be that as it may, at this stage, no finding is required on this particular aspect in the light of the above discussion and in view of the directions mentioned in the paragraphs to follow.

7. It is also pertinent to mention here that the above referred *Ejaz Case*, primarily, **relates to Block – 6 of Scheme 36, KDA**. More so, in recent decision given in the above Suit No.2322 of 2014, it is already held that the Judgments in the *Ejaz case*, earlier given by the learned Division Bench of this Court and subsequently upheld by the Honourable Supreme Court, are decisions **in rem and not personam**. Therefore, in any case, the present *lis* has to be decided in the light of above referred Decisions.

8. Since now it is an admitted legal and factual position that no Village/Goth can be allowed in area falling within the remit / territorial jurisdiction of Scheme-36 – KDA, Karachi, therefore, the Plaintiffs have no independent right for regularization of their subject Village, as both Plaintiffs lack the legal character for instituting the *lis* of the nature. Consequently, the suit is to be decided as follows:

- (i) The operative part reproduced herein-above in Suit No.2322 of 2014 [**Dr. Arifa Farid and others v. Mitha Khan and others**], is modified in the following manner_

That the Committee, which is to be or has already been constituted by the Chief Secretary, will also consider the case of Shahbaz Goth, which is being represented in the present suit by Shahbaz Goth Residents Welfare Society as Plaintiff No.1, and Al-Shahbaz Social Welfare Association as Plaintiff No.2, on the same terms and applying the same criteria as mentioned in the directions

of paragraph-22 of the Suit No.2322 of 2014 and is reproduced in the foregoing paragraphs;

- (ii) The case of Defendant No. 10 (Hadi Bux Memon), will also be considered by the same Committee while taking into the account that his case was earlier regularized by the Sindh Government Lands Committee established under the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000 (Sindh Ordinance No. III of 2001);
- (iii) *however, it is clarified*, rather reiterated that any allotment, transfer or restoration of any land in favour of any party including Defendant No.10, shall not adversely affect the entitlement, right and interest of Defendant No.3 – KDA and its *bona fide* genuine allottees / transferees in Scheme 36 and in particular, **Block-6**;
- (iv) it is further clarified that if the Committee comes to the conclusion that Defendant No.3 – KDA is in illegal occupation of additional land, then either the said excess land (if any) in excess of 2000 Acres comprising of Scheme – 36, shall be purchased by the KDA, after fulfilling the codal formalities and if it is not prohibited by any restraining order of the Hon'ble Supreme Court, particularly, in Suo Moto Case No. 16 of 2011, and any other *sub judice* matter; or, if there is no legal impediment to purchase or acquire an excess land, yet, Defendant KDA shows reluctance, then, the Defendant No.1 will be at liberty to take any action against Defendant KDA, but, subject to the mandatory guidelines laid down in the above Ejaz case;

- (v) All other Directions as contained in Paragraph-22 of the Suit No.2322 of 2014, reproduced herein-above shall be fully applicable to the present case.

9. To effectively decide the controversy and issues in the present *lis*, it is necessary to reproduce herein below some relevant paragraphs of Suit No.2322 of 2014_

“13. The said Decision (of *Ejaz Case*) has laid down the legal principle that Sindh Government (Defendant No.8) cannot cancel the 2000 Acres of land earlier allotted to the KDA way back in the year 1977, merely because the said KDA did not pay the entire price. It has been further held that since Scheme – 36 is a duly notified Scheme under the Karachi Development Authority Order, 1957, therefore, the Petitioners (of the said *Ejaz Case*) should not be made to suffer on account of dispute between the two Government Functionaries, viz. Sindh Government and KDA; both are also impleaded as Defendants in the present *lis*.

.....

Fifthly, it has been unequivocally held in the *Ejaz Case* by the learned Division Bench of this Court (and upheld by the Honourable Supreme Court) that when no village existed at the time of launching of Scheme – 36 as per the KDA Order 1957, way back in the year 1977, then there is no question of granting of land by Sindh Government and its other Departments, which are also Defendants in the present *lis*, to occupants of a Village, which this Court and the Honourable Supreme Court has termed as dummy village. This finding of fact given by the learned Division Bench of this Court fully covers the factual and legal aspect of the present case, because the learned Division Bench after considering various official documents produced by the Government Officials, who are also present Defendants in this *lis*, arrived at this conclusion. It is necessary to reproduce herein under the relevant portion of the judgment from *Ejaz case* (given by the learned Division Bench)_

“ Mr. Pirzada repeatedly argued that the land to the villagers were granted by the Government of Sindh in accordance with their existing Land Grant Policy made under Section 10 of the Colonization of Government Land Act, 1912 through Notification dated 12.01.1980 and the so-called Sanads of the villagers which are placed by the Intervenor M/s. Roshan Associates on record also reflects that Deputy Commissioner granted so-called Sanads on the terms and conditions as envisaged in Policy dated 12.01.1980 oblivious of the fact that Clause 5 of the Policy dated 12.01.1980 states that “no land lying within the limits of Karachi Development Authority, Hyderabad Development Authority and Municipal areas, shall be granted without prior approval of the Board” and there is nothing on record to show that the Board ever accorded such approval. Additionally Clause 11 of the Policy states that “land allotted under the Policy dated 12.01.1980 is to be used for the sole purpose of establishment of Village”, Clause 11 reads as follows:-

“The land shall be used for the sole purpose of establishment of village and extension of the existing village within such period as may be fixed by the Collector from the date of approval of the plan under condition 10.”

And Clause 2(g) defines a village as a settlement of habilitation of the people, but does not include a habilitation of less than ten houses. Likewise Clause 16 places a condition on the title of the grantee by stating that

“the grantee shall be entitled to the proprietary rights over the land only after the full price thereof and other dues payable under these conditions are paid by him and he has fully complied with these terms and conditions to the satisfaction of the Collectorate.”

It appears to be an admitted position that at no point of time there was any village on the subject land which is now claimed by the builders (Para 5 of the summary approved by the Chief Minister in the year 2006 reproduced above) nor the price has been paid. One more important aspect which we would like to dilate upon is that on the one hand Revenue Department has taken a stance that the village was regularized by the Deputy Commissioner East by regularizing the possession of 59 villagers whose Sanads have been placed on record by the intervenor Roshan Associates and the total area so granted to them in the

shape of various plots ranging from 800 to 2700 square yards, which according to our calculation, comes to around 80,000 square yards i.e, hardly 17½ acres and on the other hand they were regularizing the sale of 30-00 acres of land.

Keeping in view the fact that no Goth ever existed on the subject land and this we say after going through all the summaries, the gist whereof has been reproduced hereinabove despite the orders from the Governor and the Chief Minister were obtained by stating that the villagers have obtained a declaratory judgment and decree dated 10.07.1994 in Suit No. 1543/1992 in respect of said Goth, however, said decree was set aside in Civil Appeal No. 151/1994 by the Vth Additional District Judge, Karachi East, and ultimately plaint of Suit No. 1543/1992 was rejected by VIIth Senior Civil Judge, Karachi East, vide its order dated 08.9.2010. Even letter dated 06.06.1996 whereby 30-00 acres of land was resumed and Mir Khan Gabole village was regularized was obtained by taking the shield of the said judgment and decree dated 10.07.1994 confirming possession of the said villagers and even this letter does not reflect that the Goth ever existed or the facts of the existence of Goth were ever verified. Resultantly, we have reached to the conclusion that there was never a village in terms of clause 2(g) of the Policy dated 12.01.1980, therefore, the entire exercise of getting land resumed and Goth declared from the Hon'ble Governor and the Chief Minister on the basis of misdirected and self-contradictory summaries by taking shield of a fraudulent judgment and decree declaring the existence of the Goth itself was totally unlawful and in gross violation of the Land Grant Policy made on 12.01.1980. Likewise the regularization of land in favour of builders so-called representative of 59 non-existing dummy villagers/sanads-holders was also violative of Clause 11 of the referred Policy which restricts the use of land granted under the Policy dated 12.01.1980 only for the purposes of establishment of a village and/or its extension. We, therefore, declare the entire process of declaring Goth vide letter dated 06.06.1996 as well as attempt to regularize land in favour of the builders through summary approved on 13.07.2006 as sham and without lawful authority and of no consequences at all.

(Underlined to add emphasis)

10. Now advertent to the Issues framed on 24.04.2000, which are for reference reproduced hereunder_

1. *Whether cause of action has accrued to the Plaintiff for filing suit against the Defendant KDA?*
2. *Whether land in survey No.6, 7, 229, 231 and 232 Deh Safooran falls within notified boundary of KDA Scheme No.36 Gulistan-e-Jauhar?*
3. *Whether survey No.6 and 229 are private land and land under survey No.7, 231 and 232 is govt. land being a part of land measuring 2000 sq. yds. acquired by Defendant KDA through Board of Revenue Govt. of Sindh for Scheme 36?*
4. *Whether D.C. (E) has categorically stated that there are 15 jhuggies exist in an open space in Block-6 of KDA Scheme-36 and the land is transferred to KDA?*
5. *Whether encroachment by Plaintiff is warranted under law for any relief? If not whether illegal and unauthorized possession be removed?*
6. *Whether Plaintiff has title documents in respect of suit land? If not how he is in unauthorized possession upon KDA acquired land in Scheme-36 known as Gulistan-e-Jauhar?*
7. *Whether KDA has allotted plots to the respective allottees and all allottees are suffering due to the case filed by Plaintiff i.e. encroachers without having right / title?*
8. *Whether suit without notice under Article 131 KDA order V is incompetent and bad in law?*
9. *What should the decree be?*

ISSUE NO.1:

11. In view of the discussion in the foregoing paragraphs, Issue No.1 is answered in Negative and against the present Plaintiffs.

ISSUES No.2, 3 AND 4:

12. These issues have become redundant in view of the findings mentioned in the foregoing paragraphs.

ISSUES NO.5 AND 6:

13. Undisputedly, the Plaintiffs do not have ownership / title documents in respect of the lands claimed by them falling in Survey Nos. 6, 7, 229, 231 and 232, measuring 24 Acres, in Deh Safooran and, through present

proceeding Plaintiffs are merely seeking that an area falling in Block – 6, Scheme – 36, in possession of Plaintiffs be regularized as Village. In view of the discussion, this plea obviously has no legal grounds and thus Issue No.5 is replied accordingly and Issue No.6 in Affirmative, that the Plaintiffs should be removed by official Defendants forthwith.

ISSUE NO.7:

14. After the decision of *Ejaz Case* (as referred herein above), the learned Division Bench of this Court and later the Honourable Apex Court have held that the entire Scheme – 36 belongs to Defendant – KDA, which has allotted plots of different categories to its various allottees, some of whom further sold the plots to third parties. Therefore, the Defendant – KDA and its other bona fide / genuine allottees and other transferees, who have acquired or purchased various plots through valid sale transaction(s), have entitlement in respect of Scheme – 36, KDA.

ISSUE NO.8:

15. This Issue has become redundant in view of the directions mentioned herein above.

ISSUE NO.9:

16. The relief as claimed by Plaintiffs is rejected, but this suit stands decreed in the above terms. There will be no order as to costs.