

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 702 of 2014

[Shabbir Ismail and others v. Al-Rashid Co-operative Housing Society Ltd. and others]

- Dates of hearing : 17-05-2018 and 24-05-2018.
- Date of Decision : 27-08-2018
- Plaintiffs : Shabbir Ismail and 09 others through M/s Muhammad Umer Lakhani and Ali Zaidi, Advocates.
- Defendant No. 1 : Al-Rashid Cooperative Housing Society, through Muhammad Shafiq, Advocate.
- Defendants 2,3 & 5-9: Province of Sindh and others through M/s. Pervez Ahmed Mastoi, Assistant Advocate General Sindh and Ms. Ascho Mirzia Begum, State Counsel.
- Defendants 10 to 12: Jai Ram Das, Radha Bai & another through Mr. Abdul Majeed Khoso, Advocate.
- Defendant No. 13 : Bait-ul-Ilm Trust through Mr. Muhammad Nazir, Advocate.
- Defendants 14,15&16: Munaf Attara and 02 others through Mr. Ravi R. Pinjani, Advocate.
- Defendant No. 17 : Board of Revenue through M/s. Shabbir Shaikh and Akhtar Ali Mastoi, Advocates.

ORDER

ADNAN IQBAL CHAUDHRY J. -

1. The plaintiffs claim to be owners of plots in Sindhi Momin Cooperative Housing Society, having being leased/transferred the same by the said Society, the defendant No.4, hereinafter 'the Sindhi Momin Society'.

2. Per the record, Sindhi Momin Society was allotted 33 acres land by the Government of Sindh under the Colonization & Disposal of Government Lands (Sindh) Act, 1912 in Sector No. 54-A, KDA Scheme No.33, Gulzar-e-Hijri, Karachi, vide Allotment Order dated

16-06-1980, Possession Letter dated 22-06-1980, followed by a Sale Agreement dated 28-01-1981 executed by the Governor Sindh through the Deputy Commissioner Karachi (East), and a Transfer Deed dated 06-05-2006 executed by the Governor Sindh through the District Officer (Revenue), City District Government Karachi. The layout plan of the Sindhi Momin Society appears to have been approved by the Master Plan and Environmental Control Department of the Karachi Development Authority (KDA) in 1983; thereafter apparently recalled, and then restored by the City District Government Karachi in 2006.

Case of the plaintiffs:

4. The plaintiffs, who claim to be owners of plots in Sindhi Momin Society, filed this suit for declaration and injunction when Al-Rashid Cooperative Housing Society Ltd., the defendant No.1 (hereinafter 'Al-Rashid Society'), allegedly in league with land grabbers and certain officials, trespassed on to the land of Sindhi Momin Society and started demolishing boundary walls of the plaintiffs and started raising its own boundary wall around the plots of the plaintiffs, claiming the underlying land to be the property of Al-Rashid Society.

Case of defendant No.1, Al-Rashid Society:

5. Al-Rashid Society claims to be the owner of land in Survey No.45, in Deh Bitti Amri, Scheme No.33, Karachi, which is adjacent to the land of Sindhi Momin Society, and it is the case of Al-Rashid Society that the plaintiffs and Sindhi Momin Society have encroached upon and unlawfully included a part of the adjoining land of Al-Rashid Society into the land of Sindhi Momin Society.

Earlier, Al-Rashid Society had filed Suit No.124/2014 before the Senior Civil Judge, Malir, against the office bearers of the Sindhi Momin Society for permanent injunction when the Sindhi Momin Society allegedly encroached on the land of Al-Rashid Society.

However, the said Suit No.124/2014 was dismissed as withdrawn on 07-08-2014.

Case of defendants 10 to 12, Jai Ram Das & others:

6. The defendants 10 and 11 (Jai Ram Das and Radha Bai) claim to be owners, by way of inheritance, of 24-18 acres in Survey No.45, Deh Bitti Amri, Scheme No.33, Karachi, and the defendant No.12 claims to have purchased the same from the defendants 10 and 11 vide a sale agreement. In their counter-affidavit, the defendants 10 to 12 state that after the Nazir was appointed Receiver by this Court of the land of Sindhi Momin Society, the Nazir proceeded to deploy security guards also over the adjoining 7.55 acres in Survey No.45 which is part of the land of the defendants 10 and 11. Therefore, the case of the defendants 10 and 11 is that the area of 7.55 acres encroached by the plaintiffs and Sindhi Momin Society in Survey No.45, is in fact part of the land of the defendants 10 and 11 and not part of the land of Al-Rashid Society. The defendants 10 to 12 were added to this suit on their own motion on 11-05-2017 and the plaintiffs were permitted to file an amended plaint to assail the claim of the defendants 10 to 12.

Mr. Abdul Majeed Khoso, learned counsel for the defendants 10 to 12, while attempting to dispute the title of Sindhi Momin Society through whom the plaintiffs claim, had argued that previously in Suit No.273/2004 (*Mehmood Rangoonwalla versus Province of Sindh*), which had been dismissed by this Court, a number of persons who now claim title through Sindhi Momin Society, had claimed rights to the same land as *Sanad* holders under the Sindh Gothabad (Housing Scheme) Ordinance, 1987, thereby implying that the land in question was not that of Sindhi Momin Society. However, a perusal of the plaint of Suit No.273/2004 reflects that the land subject matter of that suit was 16 acres in Saiful Choro Goth, Deh Bitti Amri, Scheme No. 33, Karachi, which was adjacent to Sindhi Momin Society, and none of the plaintiffs of this suit (Suit No.702/2014) were party to that suit, *albeit* the plaintiff of that suit claimed to be Attorney of a number of persons which incidentally also included the plaintiff No.5 of this Suit

No.702/2014. But that could only mean that the plaintiff No.5 herein also owned/claimed other land adjacent to Sindhi Momin Society. The plaint of Suit No.273/2004 reflects that it had been filed by one Mehmood Rangoonwalla (who seems to have held property also in Sindhi Momin Society), when the Sindh Industrial Trading Estates in attempting to bulldoze construction on Sindhi Momin Society, had also trespassed on the adjacent 16 acres claimed by the said Mehmood Rangoonwalla which was separate and distinct from Sindhi Momin Society.

Case of defendants 14 to 16:

7. The defendants 14 to 16 also claim to be owners of plots in Sindhi Momin Society under registered instruments. It is their case that the land being claimed by Al-Rashid Society is in fact the land of the defendants 14 to 16 in Sindhi Momin Society, and that after the Nazir had been appointed Receiver over the entire land of Sindhi Momin Society, the defendants 10 to 12 with the aid of land grabbers encroached upon the plots of the defendants 14 to 16 in Sindhi Momin Society. Thus the case of the defendants 14 to 16 is not adverse to the case of the plaintiffs. The defendants 14 to 16 were added as parties on their own motion pursuant to order dated 11-05-2017, and subsequently they instituted their own Suit No.1067/2018 before this Court.

8. None appeared to represent the Sindhi Momin Society (defendant No.4) in this suit. The order dated 18-12-2017 suggests that Sindhi Momin Society is presently being managed by an Administrator.

Demarcation Report dated 09-02-2015:

9. On 07-05-2014, on the application of the plaintiffs, this Court passed an interim order directing that "in the meantime no coercive action be taken against the plaintiff". By a subsequent order dated 17-09-2014, the parties were directed to maintain *status quo*.

On 16-10-2014 this Court ordered that: "The Mukhtiarkar, Defendant No.6, Board of Revenue, is directed to submit his reports whether Survey Nos.21 and 45 in Deh Bitti Amri, KDA Scheme No. 33, were allotted to defendant No.1 (Al-Rashid Society) have been cancelled or not. Meanwhile, the Nazir is directed to inspect the aforesaid survey numbers and submit his report with regard to status of the same, in consultation with Survey Superintendent, Government of Sindh, Scheme No. 33 and Mukhtiarkar of same area."

10. In furtherance of the aforesaid order dated 16-10-2014, the suit land was inspected and demarcated under the supervision of the Nazir with the assistance of the concerned Mukhtiarkar and Survey Superintendent Karachi. The relevant part of the Demarcation Report dated 09-02-2015 (submitted on 10-02-2015) reads as under:

"i) The demarcation of subject land was carried out on 16-10-2014 under the Supervision of Nazir Sindh High Court in Suit No. 702/2012.

ii) The cross marks of red color in the site plan is the land of Sindhi Momin Cooperative Society to which the land is sanctioned as per record is area 33-0 acres but due to incorrect of lay out plan the area of land is 40-1 acres in which the amenity plot for School having boundary wall is in possession of Factory.

iii) The cross marks in Black color in the Site plan is the area of Survey No.45, out of which 7.55 acres is the land of Sindhi Momin Cooperative Society as per lay out plan which is in possession of Al-Rashid Society.

iv) The shed marks of Pink color in the site plan is the area of Survey No.45 on which village is established.

v) The cross marks of black color tracing with pink color, (separately drawn) is the area of Survey No.21 which is in possession of Ali-Garh Society, Road and villagers.

vi) The detail is mentioned in the letter vide No. Mukhtiarkar/GH/Sch-33/530, Mukhtiarkar Scheme-33."

11. In order to appreciate the aforementioned Demarcation Report dated 09-02-2015, a copy of the demarcation map annexed to the said report is appended to this order as **Appendix I**. From the Demarcation Report, in juxtaposition to the demarcation map, the following facts emerge:

- (a) that the area of land actually covered/included by Sindhi Momin Society within its boundary is 40-1 acres as against its sanctioned land of 33 acres; and that is said to be due to a defect in the lay-out plan of the area;
- (b) that the excess area of 7.55 acres that Sindhi Momin Society has covered/included within its boundary, is part of the adjoining Survey No.45, Deh Bitti Amri, Scheme No.33; and it is that area of 7.55 acres that is said to be in occupation of Al-Rashid Society and is apparently the bone of contention;
- (c) that Survey No.21 and Survey No.45 are not adjoining lands but are on the opposite sides of Sindhi Momin Society. Survey No.21 (22.45 acres) is in possession of Ali Garh Society and some villagers with a road passing in between, and this Survey No.21 is completely separate from the land that is in dispute in this suit.

However what is missing from the above mentioned Demarcation Report dated 09-02-2015 is that it does not show, include or discuss the approved lay-out plan of the area that has supposedly resulted in the excess area of 7.55 acres with Sindhi Momin Society. The said Demarcation Report also does not show which of the plots leased by Sindhi Momin Society fall in the excess area of 7.55 acres. Therefore, in my view, further evidence is required to answer the following questions: (a) which of the plaintiffs, if any, claim plots in the excess area of 7.55 acres ? (b) whether the defective lay-out plan that caused the excess area of 7.55 acres with Sindhi Momin Society, was the result of an error by the authority approving/making the lay-out plan, or was it a *malafide* act of Sindhi Momin Society ? (c) and if the fault lay with the latter, whether the real remedy of persons claiming plots in the excess area of 7.55 acres, is against Sindhi Momin Society under the Cooperatives Society Act, 1925 ?

12. As regards the query raised by this Court vide order dated 16-10-2014 with regards to the title of Al-Rashid Society, the

Demarcation Report dated 09-02-2015 incorporated the Mukhtiarkar's reply which states that:

"The Supervising Tapedar has reported that as per record maintained by this office there is no entry available in favor of Al-Rashid Cooperative Housing Society in Survey No.21 and 45, Deh Bitti Amri, but the Survey No.45/12.091 acres (0-50) entered in the name of Radha Bai daughter of Kaewal Ram vide entry No.45 and (0-50) 12-09 acres in the name of Jee Ram son of Neeto Mal as per entry No.46 through change of foti khata badal. Both the entries have been cancelled by the then Executive District Officer (Revenue) in suo moto case".

The aforesaid information provided by the Mukhtiarkar that no entry existing in the name of Al-Rashid Society, is also substantiated by the order dated 14-10-2016 passed by the Commissioner Karachi in Revenue Case No.349/2006 (discussed *infra*). However, as regards the information of cancellation of entries of the defendants 10 and 11 (Jai Ram Das and Radha Bai), such cancellation appears to have been reversed in the said Revenue Case No.349/2006.

13. By a subsequent order dated 04-02-2016, the learned Judge then seized of this suit ordered that: "the Anti-Encroachment Cell to ensure that encroachment if any on the land of Al-Rashid Cooperative Housing Society, Survey No.45 and 21, at Sector 54-A, Scheme No.33, Karachi (East) is removed and further he shall ensure that no one shall be allowed to encroach such property with compliance report". However, such order was suspended by a learned Division Bench of this Court in HCA No.59/2016. Learned counsel for the plaintiffs informed that the said suspension continues.

14. On the hearing of the Demarcation Report dated 09-02-2015, and on noticing that such report mentioned that no entry existed in the record of rights in favour of Al-Rashid Society, on 02-02-2017 the learned Judge then seized of this suit appointed a Receiver over the suit land as follows :

"In view of the above submissions, it would be just and proper to preserve for the time being the corpus of the suit and,

therefore, firstly all the parties to the suit are directed to maintain *status quo* till the next date of hearing and secondly, in the meantime, Nazir is appointed as Receiver to take over control of the land in question, which is mentioned in his report; the land of Defendant No.4, Sindhi Momin Cooperative Housing Society Limited while ensuring that if any land genuinely belongs to and owned by Defendant No.1, should not be taken over by the Nazir and thirdly, learned State Counsel is directed to furnish a comprehensive report along with written statement with regard to the above mentioned Transfer Deed executed between the Governor of Sindh and the Sindhi Momin Cooperative Housing Society Limited (defendant No.4). This is an interim arrangement and will be confirmed only in due course and after considering various aspect of the case.”

By order dated 11-05-2017 passed in this suit, the Nazir was given additional powers as Receiver of the suit land to ensure that Court orders are implemented and corpus of the suit remains intact. To that end, the Nazir was also authorized to post security guards at the suit property at the cost of the plaintiffs. In compliance, the Nazir reported vide his report dated 23-06-2017 (submitted on 03-07-2017) as follows: that there is no encroachment over the suit property; that a police mobile patrols the area to keep a check on any construction activity thereat; that initially security guards had been deployed at the suit land which included the area of 7.55 acres; that when counsels for the defendants 1 and 10 had objected to the deployment of guards at that area, the Nazir had asked the Mukhtiarkar and Surveyor to point out the boundaries of the 33 acres of Sindhi Momin Society, and security guards were then deployed thereat, i.e. only on 33 acres; that later, on the representation of the counsel for the defendants 14 to 16 that the order dated 02-02-2017 was to preserve the corpus of the suit which included the area of 7.55 acres as well, the Nazir posted two security guards at that portion of 7.55 acres where fresh construction was noticed. Vide his report dated 23-06-2017 the Nazir made a reference to this Court as follows:

“Since parties are agitating on the exact location of the subject property/corpus of suit, therefore, orders may be solicited that either

40.01 acres which includes 07 acres of Survey No.45 OR only 33 acres as pointed by the Supervising Tapedar and Mukhtiarkar may be preserved, hence this interim report for favour of guidance."

It appears that the aforesaid reference made by the Nazir has gone unattended.

CMA No.5654/2014; CMA No.4126/2016; CMA No.10952/2016; CMA No.12571/2016; CMA No.6896/2017; & CMA No.2271/2017 by the plaintiffs:

15. By CMA No.5654/2014 the plaintiffs pray for restraining Al-Rashid Society (defendant No.1), its servants, employees, agents and representatives from constructing, and demolishing on the plots of the plaintiffs in Sindhi Momin Society and from creating any third party interest in such plots.

By CMA No.4126/2016 the plaintiffs pray that in light of the Demarcation Report dated 09-02-2015 which shows that Al-Rashid Society has no title to the land that it claims to be in possession of, i.e., the area of 7.55 acres in Survey No.45, a Receiver be appointed over such land. By CMA No.10952/2016 the plaintiffs pray that Al-Rashid Society be restrained from raising any construction on the said area of 7.55 acres in Survey No.45.

By CMA No.12571/2016 the plaintiffs pray that Al-Rashid Society be restrained from encroaching, demolishing and constructing on the 33 acres of Sindhi Momin Society.

By CMA No.6896/2017 the plaintiffs seek a direction to the Nazir as Receiver to implement the order dated 02-02-2017 and to deploy security guards at the 33 acres of Sindhi Momin Society. This application is moved on the ground that despite the order dated 02-02-2017, Al-Rashid Society continues to raise construction at the said 33 acres.

CMA No.2271/2017 is a contempt application by the Plaintiffs against the Mukhtiarkar Scheme-33 and the SSP Anti-Encroachment Cell whereby the plaintiffs are essentially aggrieved of the fact that despite the Nazir being appointed as Receiver of the suit property,

the alleged contemnors trespassed on to the 33 acres of Sindhi Momin Society and demolished construction of the walls and gates constructed around the 33 acres of Sindhi Momin Society thereby allowing for encroachment on the said land.

Since all of the aforesaid applications by the plaintiffs essentially seek to restrain Al-Rashid Society from constructing, demolishing and creating third party interest in the area said to be covered by Sindhi Momin Society, and for safeguarding the plaintiffs' plots thereat, these applications are being addressed by a common order as follows.

16. To demonstrate ownership of their respective plots in Sindhi Momin Society, the plaintiffs have filed copies of registered leases, and in the case of the plaintiff No.3, copies of transfer letters, duly executed by the Sindhi Momin Society in favor of the respective plaintiffs. The title of Sindhi Momin Society to 33 acres land in Sector No. 54-A, KDA Scheme No.33, Gulzar-e-Hijri, Karachi, is discussed in para 2 above.

From the Demarcation Report dated 09-02-2015 discussed in paras 10 and 11 above, it is apparent that the dispute between the plaintiffs and Al-Rashid Society is in respect of an area of 7.55 acres that has been included within the boundary of Sindhi Momin Society. Mr. Muhammad Shafiq, learned counsel for Al-Rashid Society relied on the Demarcation Report dated 09-02-2015 to contend that it stands established that the plaintiffs and the Sindhi Momin Society have encroached upon and included 7.55 acres of Al-Rashid Society into Sindhi Momin Society. On the other hand, Mr. Umer Lakhani, learned counsel for the plaintiffs vehemently argued that since Al-Rashid Society has never been able to demonstrate any title to any land, therefore notwithstanding the question of the boundaries of Sindhi Momin Society and the location the plaintiffs' plots therein, Al-Rashid Society should be restrained from interfering in the land claimed by the plaintiffs. I am inclined to agree with Mr. Umer Lakhani Advocate so the reason that even assuming that the plots of the plaintiffs fall in

the excess area of 7.55 acres of the adjoining Survey No.45, Mr. Muhammad Shafiq Advocate was not able to show how Al-Rashid Society claims the said area of 7.55 acres to be its property. There is nothing on the record to suggest the title of Al-Rashid Society to any tract of land let in Survey No.45, Deh Bitti Amri, Scheme No.33, Karachi. The Demarcation Report dated 09-02-2015 discussed in para 12 above categorically states that: "*The Supervising Tapedar has reported that as per record maintained by this office there is no entry available in favor of Al-Rashid Cooperative Housing Society in Survey No.21 and 45, Deh Bitti Amri...*". This fact is also substantiated by the order dated 14-10-2016 passed by the Commissioner Karachi in Revenue Case No.349/2006. In fact, in para 12 of its written statement, Al-Rashid Society has stated that the land it claims and refers to be its own, is the land that vested in its erstwhile Chairman, as distinct and separate from Al-Rashid Society. In other words, it is admitted that Al-Rashid Society itself, separate from its Chairman, does not have title to the land it claims in Survey No.45, Deh Bitti Amri, Scheme No.33, Karachi. When confronted with the said para 12 of the written statement, Mr. Muhammad Shafiq, learned counsel for Al-Rashid Society conceded that no land was actually conveyed/transferred to Al-Rashid Society.

Therefore, since Al-Rashid Society admittedly does not hold any land in Survey No.45, Deh Bitti Amri, Scheme No.33, Karachi, it cannot assert any right to such land nor does it have any *locus standi* to agitate the alleged encroachment by the plaintiffs on the area of 7.55 acres in Survey No.45.

17. As regards the erstwhile Chairman of Al-Rashid Society, who is said to have owned the land to which Al-Rashid Society asserts rights, he was one Mr. Syed Riaz Ali. The entry in the record of rights in the name of Syed Riaz Ali was the subject of Revenue proceedings where Al-Rashid Society and the defendants 10 and 11 were making competing claims to land in Survey No.45, Deh Bitti Amri, Scheme No.33, Karachi. By order dated 04-06-2008, the Executive District

Officer (Revenue) CDGK had practically cancelled Entry No.21/8 that was claimed to be standing in the name of the ancestor of the defendants 10 and 11. Al-Rashid Society was party to such proceedings. The said order dated 04-06-2008 was appealed by the defendants 10 and 11 vide Appeal No.SROA-169/2003. Vide order dated 18-03-2009, the Member (RS&EP) BOR allowed the appeal and remanded the case. That remand order was assailed by the defendants 10 and 11 in Case No.349/2006 before the Revenue Court of Commissioner Karachi. The Commissioner Karachi observed that Al-Rashid Society was not able to produce any document to demonstrate its title. However, he appointed the Additional Commissioner-I Karachi to inquire into entries claimed by the defendants 10 and 11 and the entry in the name Syed Riaz Ali. After discussing the findings of the inquiry, the Commissioner Karachi, vide order dated 14-10-2016 found for the defendants 10 and 11 but concluded that the entry in the name of Syed Riaz Ali was bogus and ordered its cancellation. This discussion as to the title claimed by Syed Riaz Ali is only to give context to the claim made by Al-Rashid Society, and is not meant, nor should it be construed to prejudice the case or remedies of Syed Riaz Ali who is not party to this suit. Nor should this discussion be construed as endorsing the title of the defendants 10 and 11 to the land claimed by them as against Al-Rashid Society, which issue is beyond the scope of this suit.

18. Adverting to the Demarcation Report dated 09-02-2015 that suggests that the area covered by Sindhi Momin Society is in excess by 7.55 acres, I have already concluded in para 11 above that such Demarcation Report by itself does not establish that it is the plaintiffs who hold plots in the excess area of 7.55 acres.

In view of the foregoing, the plaintiffs have in the very least made out a case for the grant of a temporary injunction against Al-Rashid Society. However, as regards the order dated 02-02-2017 passed by this Court appointing the Nazir as Receiver, that order categorically read that it was an interim arrangement that would be

reviewed after attending to other circumstances of the case. In the circumstances of the case, I am of the opinion that pending final determination of this suit, any further encroachment over the disputed area of 7.55 acres can be better and adequately addressed by orders that follow below, and therefore I am not inclined to continue with the interim order appointing the Nazir as Receiver.

19. For what has been discussed above, the following order is passed for the disposal of the CMAs listed in the heading of para 15 *supra*:

(i) Al-Rashid Society (defendant No.1), its representatives and employees, are restrained from constructing, demolishing and creating any third party interest in the 33 acres of Sindhi Momin Society, Sector 54-A, Gulzar-i-Hijri, Scheme No.33, Karachi, and so also in the adjoining area of 7.55 acres which is said to be land in excess with Sindhi Momin Society, both such areas being identified in **Appendix I** hereto.

(ii) The Board of Revenue (defendant No.17) is directed to depute a Revenue Officer to demarcate Survey No.45, Deh Bitti Amri, from the 33 acres of Sindhi Momin Society and to define the boundaries of the said 33 acres of Sindhi Momin Society under Section 117 of the Sindh Land Revenue Act, 1967 by erecting boundary marks. In doing so, the Revenue Officer shall prepare a map in juxtaposition to the lay-out plan of Sindhi Momin Society so as to identify which of the plots allotted by Sindhi Momin Society, if any, fall outside the 33 acres granted to Sindhi Momin Society. For such purpose the management or Administrator of Sindhi Momin Society, as the case may be, shall coordinate and cooperate with the Revenue Officer. The cost of the said demarcation shall be borne by the plaintiffs of the one part, the defendants 10 to 12 of the second part and the defendants 14 to 16 of the third part in equal shares. The said demarcation shall be undertaken uninfluenced by the earlier Demarcation Report dated 09-02-2015, and after notice to the counsels for the plaintiffs and defendants 10 to 16. A report of such demarcation should be

submitted to the Court within four weeks (with extra copies) for further orders of the Court.

(iii) Until further orders of this Court, none of the other parties to this suit shall raise any further construction or create any further third party interest in the area of 7.55 acres of Survey No.45 Deh Bitti Amri as identified in the earlier demarcation map that is Appendix I to this order. Should any such activity in the said area of 7.55 acres be brought to the notice of the Mukhtiarkar Scheme No.33 (defendant No.6) or the Member, Board of Revenue, Land Utilization Department (defendant No.17), they shall forthwith initiate, or cause to be initiated, action against such person(s) under Section 3 of the Sindh Public Property (Removal of Encroachment) Act, 2010.

(iv) This order supersedes all previous interim orders passed in this suit. The Nazir is no longer required to continue as Receiver and shall withdraw the security guards deployed by him at the suit property, if not already withdrawn, after communicating this order to the Mukhtiarkar Scheme No.33 (defendant No.6) and the Member, Board of Revenue, Land Utilization Department (defendant No.17) for compliance.

CMA No.5654/2014; CMA No.4126/2016; CMA No.10952/2016; CMA No.12571/2016; CMA No.6896/2017; & CMA No.2271/2017 moved by the plaintiffs stand disposed off in the above terms. All other reliefs sought by the said CMAs which are not specifically granted herein, stand disallowed.

Nazir's Report dated 21-04-2018

20. By this report the Nazir has sought a direction to the plaintiffs to pay the outstanding salary of security guards deployed by the Nazir at the suit property. The order dated 11-05-2017 shows that such Security Guards had been deployed at the instance and at the expense of the plaintiffs. In the circumstances, the plaintiffs are directed to deposit within 10 days the outstanding salary of the security guards as per the demand raised by the Nazir.

CMA No.7322/2014 by the plaintiffs:

21. This is a contempt application by the plaintiffs against Muhammad Rafiq, the General Secretary of Al-Rashid Society, for violating the interim order dated 07-05-2014. That order was that no coercive action should be taken against the plaintiffs. The plaintiffs were unable to show that the order dated 07-05-2014 was violated by the alleged contemnor. Therefore, CMA No.7322/2014 is dismissed.

CMA No.8214/2014; CMA No.5916/2015; CMA No.8606/2015; CMA No.6173/2016; CMA No.9224/2016; CMA No.16872/2016; CMA No.5959/2017; CMA No.6925/2017; CMA No.8841/2017; CMA No.8842/2017; & CMA No.12930/2017 moved by Al-Rashid Society (defendant No.1):

22. By CMA No.8214/2014 Al-Rashid Society prays that the plaintiffs be restrained from instituting legal proceedings against Al-Rashid Society.

By CMA No.5916/2015 Al-Rashid Society prays that in light of the Demarcation Report dated 09-02-2015, orders be passed for the removal of encroachment made by the Sindhi Momin Society on the land of Al-Rashid Society.

CMA No.8606/2015 is a contempt application by Al-Rashid Society against office bearers of Sindhi Momin Society and the plaintiff No.1 essentially on the ground that the Demarcation Report has revealed that Sindhi Momin Society was in occupation of an area in excess of the land sanctioned to it.

By CMA No.6173/2016 Al-Rashid Society prays for an injunction against certain public functionaries (the DC East, AC East and Tapedar) from harassing Al-Rashid Society. The grievance seems to be that the said public functionaries had stopped Al-Rashid Society from raising construction on the land it claims to own.

By CMA No.9224/2016 Al-Rashid Society prays for a direction to the Mukhtiarkar for the issue of a Form VII for the land claimed by Al-Rashid Society.

By CMA No.16872/2016 Al-Rashid Society prays for restraining the plaintiffs and Sindhi Momin Society from encroaching

on the land of Al-Rashid Society in Survey No.21 and 45 Deh Bitti Amri, Scheme No.33, Karachi.

By CMA No.5959/2017 Al-Rashid Society prays for removal of encroachment from its land.

By CMA No.6925/2017 Al-Rashid prays for contempt proceedings against officers of certain law enforcement agencies for not removing encroachment from the land claimed by Al-Rashid Society.

By CMA No.8841/2017 Al-Rashid Society essentially prays for removing the security guards deployed by the Nazir on a part of the 7.55 acres in Survey No.45 pursuant to the order dated 11-05-2017.

By CMA No.8842/2017 Al-Rashid Society prays for a direction to the Anti Encroachment Cell to remove the encroachment on its land in Survey No.45 and Survey No.21, Deh Bitti Amri.

By CMA No.12930/2017 Al-Rashid Society essentially prays to restrain the plaintiffs from encroaching on the land of Al-Rashid Society.

The reliefs prayed for by Al-Rashid Society by all of the aforesaid applications could only have been considered if it had a right, title or interest in the land claimed by it. But as detailed in paras 16 and 17 above, Al-Rashid Society admittedly does not hold any such right, title or interest. Therefore, none of these applications are maintainable and are hereby dismissed.

CMA No.2141/2016 by Al-Rashid (defendant No.1):

23. By this application under Section 152 CPC Al-Rashid Society prays for a correction in the order dated 04-02-2016. The application contends that the said order did not include the words "*as per prayed and further*" which was the prayer made by Al-Rashid Society. Suffice to say that if the order dated 04-02-2016 allowed only a part of the prayer of the applicant, then the part not allowed was declined, and that cannot be remedied under Section 152 CPC. CMA No.2141/2016 is dismissed as misconceived.

CMA No.4182/2016 and CMA No.9223/2016 by Al-Rashid Society (defendant No.1):

24. By both these applications under section 151 CPC, Al-Rashid Society prays for a direction to summon record pertaining to the suit land. The prayer being essentially under Order XIII Rule 2 CPC, it is premature at this stage. The said applications are dismissed with the observation that Al-Rashid Society will be at liberty to move such applications at the stage of evidence, which will then be considered on their own merits.

CMA No.4183/2016 and CMA No.5120/2016 by Al-Rashid Society (defendant No.1):

25. CMA No.4183/2016 is a contempt application against the personnel of the Anti Encroachment Cell for not complying with the order dated 04-02-2016 which directed them to remove encroachment from the land claimed by Al-Rashid Society. By a further CMA No.5120/2016, Al-Rashid Society seeks implementation of the aforesaid order dated 04-02-2016. However, since the order dated 04-02-2016 is subject matter before the Division Bench of this Court in HCA No.59/2016 where such order remains suspended, by way of deference to the learned Division Bench, these applications are deferred.

CMA No.6893/2016 by the defendant No.10:

26. This is an application for exemption from producing original documents moved on behalf of the defendant No.10. The application having served its purpose is now infructuous and is disposed off as such.

CMA No.10953/2016 and CMA No.12572/2016 by the plaintiffs:

27. These applications are under Order 18 Rule 18 CPC for inspection of the suit land. Learned counsel for the plaintiffs submitted that these applications have become infructuous and he

did not press the same. Consequently, these applications are dismissed as withdrawn.

CMA No.8747/2017 by the defendant No.13

28. By this application the defendant No.13 (Bait-ul-Ilm Trust) prays for a modification of the orders dated 02-02-2017 and 11-05-2017. The defendant No.13 was added as a party to this suit on 11-05-2017 on its own motion. They submit that they had been leased an amenity plot bearing No.AM-06 measuring 1750 sq. yds. by the Sindhi Momin Society for constructing a mosque, but due to the *status quo* and Receivership orders dated 02-02-2017 and 11-05-2017 passed in this suit, the remaining construction of the mosque was halted; hence the application for a modification of the said orders to allow the defendant No.13 to complete the remaining construction. Learned counsel for the defendant No.13 could not point to the lease said to have been given to the defendant No.13 by the Sindhi Momin Society so as to demonstrate its title to the said amenity plot. In any case, the defendant No.13 has not been able to demonstrate that it is constructing the mosque within the 33 acres of Sindhi Momin Society. In these circumstances, until the fresh demarcation report as ordered under para 19 above comes forth, this application by the defendant No.13 is deferred. Till such time the defendant No.13 shall adhere to the order passed under para 19 above.

CMA No.10492/2017 by the defendants 10 & 11:

29. By this application the defendants 10 and 11 pray for a demarcation of their land situated in Survey No.45, Deh Bitti Amri, from the 33 acres of Sindhi Momin Society. This application too stands addressed by the order passed in para 19 above and is therefore disposed off in the same terms.

CMA No.4504/2018 by the plaintiffs:

30. By this application the plaintiffs pray for a suspension of the letter dated 16-03-2018 issued by the Mukhtiarkar Scheme-33

apparently on the application of the defendants 10 and 11 for conducting a survey and demarcation of the land claimed by the defendants 10 and 11 in Survey No. 45, Deh Bitti Amri, Scheme No.33, Karachi. It is contended by the plaintiffs that after the Demarcation Report dated 09-02-2015, a further demarcation to benefit the defendants 10 and 11 is malafide and is being done to frustrate the order dated 02-02-2017 passed by this Court. Suffice to say that after the order passed in para 19 above, this application has become infructuous and is dismissed as such.

CMA No.10493/2017 by the defendants 10 & 11:

31. By this application under Order I Rule 10(4) CPC, the defendants 10 and 11 pray for a direction to the plaintiffs to amend the plaint after the defendants 10 to 12 were joined as parties to the suit by order dated 11-05-2017. However, the plaintiffs have already filed an amended plaint on 04-05-2018 to challenge the claim of the defendants 10 to 12. Therefore this application has become infructuous and is dismissed as such.

CMA No.15201/2017 by Al-Rashid Society (defendant No.1):

32. This is a contempt application by Al-Rashid Society against the representatives of the defendant No.13 (Bait-ul-Ilm Trust) for raising construction of a mosque despite the *status quo* order of this Court. However, there is nothing on record to demonstrate that the defendant No.13 violated the said *status quo* order. In fact, by CMA No.8747/2017 the defendant No.13 is before this Court seeking a lifting of the *status quo* order to enable them to complete their construction. In these circumstances, CMA No.15201/2017 is without substance and is dismissed.

CMA No.2520/2018 by Al-Rashid Society (defendant No.1):

33. This is a contempt application by Al-Rashid Society against officers of the Anti-Encroachment Force, other Police Officials, the Assistant Commissioner and the Mukhtiarkar. It is alleged by the Al-

Rashid Society that despite the Nazir being appointed as Receiver, the alleged contemnors demolished the construction raised by Al-Rashid Society on Survey No. 45, Deh Bitti Amri. This was allegedly done on 02-02-2018. However, the letter of the Assistant Commissioner dated 02-02-2018 addressed to the Anti-Encroachment Force shows that such action was taken in furtherance of this Court order's dated 02-02-2018. Consequently, the question of contempt of Court does not arise and the application is dismissed.

A copy of this order be sent to the Nazir for information and compliance of pars 19 and 20 above.

JUDGE

Encl: Appendix I