

**IN THE HIGH COURT OF SINDH
AT KARACHI**

Suit No. 2438 of 2018 : Haji Aminullah v. Province of Sindh & Others

Suit No. 357 of 2019 : Malir Development Authority v. Haji Ameenullah & Others

Haji Aminullah, through Mr. Khawaja Shams Ul-Islam, Advocate.

Province of Sindh, through Ms. Saima Imdad, AAG.

Malir Development Authority, through Mr. Iqbal Khurram, Advocate

Board of Revenue, Sindh, through Mr. Shabbir Ahmed Shaikh and Mr. Ghulam Abbas, Advocates

Dates of hearing : 04.11.2019, 18.11.2019,
09.12.2019 and 23.12.2019

ORDER

YOUSUF ALI SAYEED, J – The main protagonists in these Suits are the Plaintiff in Suit No. 2438/18, namely Haji Aminullah (the "**Plaintiff**"), who professes to be the owner in possession of land admeasuring 4-00 acres, bearing Survey No.181, Deh Khanto, National Highway Karachi (previously Naiclass No.89), and the Defendant No.3, being the Malir Development Authority (the "**MDA**"), which claims that land as its own on the assertion that it forms a part of MDA Scheme No. 25-A, Shah Latif Town, Malir, Karachi, hence could not have been allotted/leased to the Plaintiff, and has in turn filed Suit No. 2438/18 in advancement of such claim. For convenience, reference to these parties will hereinafter be vide the terms ascribed to them, as specified above.

2. Alleging interference by the functionaries of the MDA in his enjoyment of the aforementioned land, vide Suit No. 2438/18 the Plaintiff has accordingly prayed that this Court be pleased to pass judgment and decree so as to inter alia:-

- “a. Declare that the Plaintiff is the lawful, registered, genuine and bonafide owner and lease holder of the land bearing Survey No.181 (Old Naiclass No.89) admeasuring 4-00 acres, Deh Khanto, National Highway, Karachi by virtue of registered lease deed dated 26.02.2011 and Form-II, therefore, he has every right to run industry and do the business over there.
- b. Grant permanent injunction restrain the official Defendants specially Defendants No. 6, 7, 8 and 9, their servants, employees, representatives, attorneys, agents, contractors, or any one claiming on their behalf, including but not limited to any encroachers, land grabbers, beneficiary or beneficiaries, from interfering, dispossessing the Plaintiff from the plot in question i.e. land bearing Survey No.181 (Old Naiclass No.89) admeasuring 4-00 acres, Deh Khanto, National Highway, Karachi or interfering in the repairing work of the protective boundary wall of the Plaintiff which was demolished by the official Defendants.
- c. Direct the Defendant No.1 to initiate disciplinary proceedings for dismissal of service against SSP Malir Irfan Bahadur, SSP Anti-Encroachment Cell Faisal Bashir Memon, SHO Shah Latif Police Station namely Naik Muhammad Khoso and Wazeer Chan Mukhtiarkar Ibrahim Hyderi.
- d. Direct the official Defendants specially Defendant No.1 not to cancel the land of the Plaintiff bearing Survey No.181 (Old Naiclass No.89) admeasuring 4-00 acres, Deh Khanto, National Highway, Karachi.
- e. Pass money decree of Rs.100 Million against the official Defendants specially Defendants No. 6, 7, 8 and 9 on account of damages as duly mentioned in paragraph 10 of the plaint together with markup and interest accrued thereon.
- f. ...
- g. ...
- h. ...” [Sic]

3. On the other hand, vide Suit No. 357/19, the MDA has in turn sought that this Court be pleased to pass judgment and decree so as inter alia:-

“A. To declare that suit land i.e 04 acres situated in Sector 19-A NC No. 102, Deh Khanto, Scheme 25-A, Shah Latif Town is belong to plaintiff and a part of MDA Scheme 25-A, Shah Latif Town, Malir, Karachi.

B. To declare that registered lease agreement executed by defendant No.2 in the name of defendant No.1 and registered by the sub registrar, defendant No.6 and other revenue officials, the land measuring 04 acres situated in Sector 19-A NC No. 102, Deh Khanto, Scheme 25-A, Shah Latif Town, issued by defendant No.2 with collusion to each other and with malafide intention without prior notice to plaintiff are void, abinitio and liable to be cancelled.

C. To cancel the registered lease agreement deed registered vide registration No.710 Sub Registrar, Bin Qasim Town, Karachi in favour of defendant No.1 and other documents issued by the revenue authorities for suit land i.e 4 acres land situated which land allotment already allotted for KDA Scheme 25-A now MDA Scheme, Shah Latif Town, Malir, Karachi.

D. To direct the defendant No.1 to handover peaceful vacant possession of suit land measuring 04 acres situated in Sector 19-A NC No. 102, Deh Khanto, Scheme 25-A, Shah Latif Town to the plaintiff.

E. To permanently restrain the defendants not to create third party interest in suit land measuring 04 acres situated at in Sector 19-A NC No.102, Deh Khanto, Scheme 25-A, Shah Latif Town in any manner.

F. To restrain the defendant No.1 to not raise any kind of construction on suit land measuring 04 acres situated at in Sector 19-A NC No. 102, Deh Khanto, Scheme 25-A, Shah Latif Town in any manner till final decision of the suit.

G. ...

H. ...” [Sic]

4. In this backdrop, the Applications presently arising for consideration are as follows:
- (a) CMA No. 118683/18, filed by the Plaintiff under Order 39, Rules 1 and 2 CPC in Suit 2438/18, seeking an injunction against his dispossession at the hands of the Defendants, with an interim Order having been made on 28.12.2018 restraining the MDA and other defendants from taking any such coercive measure without due process;
 - (b) CMA No. 3121/19, subsequently filed by the Plaintiff in Suit 2438/18 under Section 94 read with Section 151 CPC, seeking permission to reconstruct the boundary wall allegedly demolished by the Defendants Nos. 6 to 9 (i.e. the concerned Mukhtiarkar and specified police functionaries) in violation of the aforementioned Order. It is pertinent to mention that a separate Application under Order 39, Rule 2(3) read with Sections 3 to 6 of the Contempt of Court Ordinance 2003 (i.e. CMA No.3120/19) has also been made on account of such alleged demolition, but is not presently the subject of determination;
 - (c) CMA No. 3051/19, which has been filed by the MDA in Suit No. 357/19, with it being sought in terms thereof that the Defendants Nos.1 and 2 (i.e. the Plaintiff in Suit 2438/18 and the Province of Sindh respectively) be restrained from raising construction or creating any third party interest until the disposal of that Suit.

5. Proceeding on these Applications, learned counsel for the Plaintiff referred to the title documents on which the Plaintiff placed reliance, including but not limited to the registered Lease Agreement Deed executed between him and the Province of Sindh, Land Utilization Department, and the entry made in Form II bearing computerized/barcode No.0030722, and also pointed out that the subsistence of such documentation as well as the factum of possession of the land in dispute being with the Plaintiff was admitted from the pleadings of the MDA and the very prayers made in Suit No. 357/19. He submitted that a presumption arose in favour of the Plaintiff by virtue of the registered instrument and entries in the Revenue Record and submitted that, under the given circumstances, the Plaintiff had made out a prima face case for the grant of an injunction. He submitted that in view of the Plaintiff's case as to title and possession, the balance of convenience lay in his favour and it was apparent that irreparable loss would be occasioned in the event that the injunction were not confirmed pending final adjudication of the dispute as the Plaintiff would be dispossessed to his detriment. To reinforce this point, attention was drawn to CMA No. 3121/19, and it was submitted that despite the interim Order made in Suit 2438/18 on 28.12.2018, the functionaries of the Defendants Nos. 6 to 9, acting at the behest of official of the MDA, had nonetheless proceeded to demolish the boundary wall around the disputed land, as reflected vide the Nazir's Report dated 16.01.2019, it being prayed that the interim injunction in favour of the Plaintiff be confirmed pending final determination of the Suit and that the Plaintiff be permitted to reconstruct the boundary wall so as to safeguard the disputed land from encroachment.

6. Conversely, in the written arguments submitted on behalf of the MDA, it was contended that the Plaintiff was an encroacher and the annexures filed along with the plaint in Suit 2438/18 were all 'managed documents' which had been procured by the Plaintiff and his predecessors with the collusion of Revenue officials as the land in question had already been allotted and subsequently transferred to the MDA for KDA Scheme No.25-A, Shah Latif Town, hence no government department was authorized to further transact in that regard and it was contended that the documents relied upon by the Plaintiff were devoid of legal effect and were liable to be cancelled, with possession of the land being handed over to the MDA.

7. Having considered the arguments advanced at the bar, it merits consideration that the competing claims of the Plaintiff's and MDA as to title is a matter that would be decided at the final stage, on the basis of the evidence that may be brought on record. Suffice it to say that at this stage, in the face of the documents underpinning the chain of title espoused by the Plaintiff, as well as the entries in his favour in the Revenue Record, coupled with the factum of possession, a prima facie case appears to have been made out, and the balance of convenience lies in favour of maintaining such possession pending final adjudication of the Suits on merit, when the questions raised by the MDA for impugning the Plaintiff's title and possession, and the prayers advanced for cancellation and possession could properly be determined.

8. In the meanwhile, the interests of the Plaintiff as well as the MDA can best be preserved by directing the parties to maintain status quo as to the title and possession of the disputed land, subject to the construction of a boundary wall by the Plaintiff at his own cost, under the supervision of the Nazir, who may seek the assistance of the concerned officials of the Revenue and Survey departments, if required, and which exercise would be at the Plaintiff's risk and without prejudice to the rights and contentions of the parties in relation to either the subject of CMA No.3120/19 or the final adjudication of the Suits. CMA Nos. 118683/18 and 3121/19 in Suit No. 2438/18 and CMA No. 3051/19 in Suit No. 357/19 accordingly stand disposed of on such terms. The Office is directed to place a copy of this Order in the file of Suit No. 357/19.

JUDGE

Karachi
Dated _____