

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2983 / 2018

Date

Order with signature of Judge

PRIORITY

- 1) For hearing of CMA No. 6547/2019.
- 2) For hearing of CMA No. 21803/2019.
- 3) For hearing of CMA No. 21804/2019
- 4) For hearing of CMA No. 12934/2018.
- 5) For hearing of main case.

15.10.2020.

Mr. Azizullah Khawaja Advocate for Petitioner.
Mr. Abdul Jalil Zubedi Additional Advocate General Sindh.
Mr. Akram Tariq Advocate for Evacuee Trust Property.
Mr. Muhammad Khalid Akhtar Advocate for KDA.
Mr. Muhammad Mubeen Project Director Lines Area.
Mr. Waqaruddin Deputy Director.

Through this Petition the Petitioner has sought the following relief:-

- "A) Declaration that Petitioner holding the lawful possession over the plot in question under a lawful lease deed hence such lawfully earned title and possession cannot be snatched except without due course of law;
- B) Declaration that respondents (KDA) are not legally competent to interfere in to lawful possession of petitioner over plot in question nor can interfere in lawful construction over plot in question unless and until the KDA get its title over plot in question adjudicated clear from proper and competent forum;
- C) Declare that act of respondents (KDA) forcibly demolishing the lawfully raised construction was / is illegal, void, malafidely hence they are liable to be prosecuted for their such act;
- D) Direct the respondents, in particularly the respondent Nos. 2 to 5, not to cause any harassment, threats and action against petitioner towards his (petitioner's) lawful right to raise construction over plot in question, particularly when undeniably petitioner is bonafide lessee under a huge investment and lawful auction proceedings;
- E) Direct the respondent Nos. 12 and 13 to ensure proper protection and security to petition to raise construction over the plot;
- F) Cost of the petition be awarded to the petitioner.
- G) Any other relief, this honorable court deems fit and proper under these circumstances, may be awarded."

Learned Counsel for the Petitioner submits that the property in question i.e. B-69, Jacob Line, near Madina Masjid, Parking Plaza, Karachi was purchased by the Petitioner through auction from the Evacuee Trust Property Board (Respondent No. 6) and thereafter, a proper Lease was executed on 19.12.2017. According to him, the possession was handed over and construction was being raised when Letter dated 05.01.2018 was issued by Respondent No.2 (KDA) to Respondent No.12 requesting assistance and protection as well as security for demolition of the construction on the plot of the Petitioner. Per learned Counsel such act on the part of KDA is without lawful authority whereas, the property was never owned by KDA and in presence of a registered instrument of lease the ownership and possession of the property is well protected in law.

Comments have been filed by Evacuee Trust and the Petitioner's case is supported. On the other hand, KDA's stance is that the property belongs to them.

We have heard all the learned Counsel and perused the record. It is not in dispute that the property in question vested in the Evacuee Trust Board pursuant to order dated 22.09.1994 which as informed was never challenged before the Federal Government under Section 17 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. It further appears that one Syed Nasir Ali Shah who has also filed an application to be joined as an Intervener, approached the learned Lahore High Court in respect of the same property claimed to be in possession and impugned the order of the Evacuee Board; however, his Petition was dismissed and leave was also refused by the Hon'ble Supreme Court in Civil Petition No.1053/2020. It is not in dispute that the lease of the property still subsists and vests in the petitioner and no steps have been taken by anyone to get it cancelled.

In view of the above position, when a valid, legal and unchallenged instrument in the form of a registered Lease duly executed in favor of the Petitioner after auction in accordance with law still subsists; no occasion arises for KDA to interfere in the matter including possession, and therefore, the impugned letter / Notice dated 25.01.2018 is hereby set aside and the Petition is allowed as prayed to that extent of prayer clause A to C.

J U D G E

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Arshad/