

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.436 of 1993

[Shahimah Sayeed vs. Base Commander and three others]

- Date of hearing : 27.10.2020 and 17.11.2020
- Plaintiff : Shahimah Sayeed, through
Mr. Muhammad Vawda, Advocate.
- Defendant No.1 : Base Commander PAF Base Masroor,
Mauripur, Karachi, through Mr. Mohammad
Asif Malik, Advocate.
- Defendant No.3 : Federation of Pakistan, through Ministry of
Defence Pak Secretariat II, Rawalpindi, through
Mr. Ghulam Mohiuddin, Assistant Attorney
General for Pakistan.
- Defendants No.2&4 : Deputy Commissioner West Estate Avenue
Road, Opposite Habib Bank Site, Karachi and
Province of Sindh, through Secretary Land
Utilization Department Board of Revenue,
through Ms. Saima Imdad Mangi, Assistant
Advocate General Sindh.

Case law cited by Learned counsel for Plaintiff.

1. AIR 2015 Chhattisgarh page-90
[Power Grid Corporation of India Ltd., Nagpur v. State of Madhya Pradesh & others].
2. AIR 1997 Delhi page-347
[Delhi Golf Club Limited, v. New Delhi Municipal Corporation]
3. AIR 1973 Madhya Pradesh page-274
[The State of Madhya Pradesh v. Jhankar Singh]

Case law relied upon by learned counsel for Defendant No.1.

1. PLD 1975 SC page-311
[Ahmed Khan vs. Rasul Shah and others]]
2. 1997 MLD page-732 [Karachi]
[Messrs Ainy Builders and Company Hyderabad and 2 others vs. Hyderabad Municipal Corporation, Hyderabad through Administrator/Mayor]
3. PLD 1971 SC page-550
[Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 heirs) vs. Messrs Ghulam Nabi Corporation Ltd., Lahore]
4. 2008 YLR page-206 [Karachi]
[Echo West International (Pvt.) Ltd vs. Pakland Cement Ltd.]
5. PLD 2008 Karachi page-540
[Pak American Commercial (Pvt.) Ltd., through Director vs. Humayoun Latif and 7 others]
6. 2000 SCMR page-1391
[Abdul Majid vs. Syed Muhammad Ali Shahim and 10 others].
7. PLD 2010 Karachi page-414
[Messrs Metalex (Private) Limited vs. Government of Sindh through Secretary, B.O.R.]-**Metalex case.**
8. SBLR 2009 Sindh page-333
[Sherry: CBE (Citizens for a better Environment) & another vs. Government of Sindh through Secretary, Land Utilization Department Board of Revenue, Karachi & others]- **Sherry: CBE case.**
9. PLD 1990 Lahore page-467
[Muhammad Saeed vs. Mst. Nahid Shagufta and 3 others]
10. PLD 2009 Karachi page-186
[Syed Muhammad Khalid vs. Province of Sindh through Secretary Land, Karachi and 2 others]
11. 1991 CLC page-1053 [Karachi]
[Ghulam Muhammad through Legal Heirs vs. Mst. Naheed Qureshi].
12. 2007 CLC page-288 [Karachi]
[Kabir Ahmed vs. Saudabad Trust through Administrator Deputy Commissioner Office, Karachi]
13. 2001 SCMR page-338
[Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others]
14. 2004 SCMR page-1530
[Muhammad Munir v. Muhammad Saleem and others]

Other Precedents:

- (1) 2008 SCMR page-1639
[Nazir Ahmad and another vs. M. Muzaffar Hussain]-Nazir case.
- (2) 2013 SCMR page-1600
[Abbas Ali vs. Liaqat Ali and another]-Abbas Ali case.
- (3) 2003 CLC page-719 Karachi
[The Commanding Officer National Logistic Cell and another vs. Raza Enterprises and others]-NLC case

Law under discussion:

- (1) Constitution of Pakistan, 1973-**[the Constitution]**.
- (2) Qanoon-e-Shahadat Order, 1984-**[Evidence Law]**.
- (3) The Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001-**[land Ordinance 2001]**.
- (4) Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965-**[Ordinance LIV of 1965]**.
- (5) Sindh Disposal of Plots Ordinance, 1980-**[Sindh Ordinance VII of 1980]**.
- (6) The Sindh Colonization and Disposal of Government Lands Rules, 2005-**[Disposal Rules 2005]**.
- (7) Karachi Port Trust Act, 1886-**KPT Act**.
- (8) Transfer of Property Act, 1882-**[Property Law]**.
- (9) The Civil Aviation Ordinance, 1960 (Ordinance XXXII)-**[CAA Law]**.
- (10) The Aircraft (Removal of Danger to Safety) Ordinance, 1965 (Ordinance XII)-**[Aircraft Safety Law]**.
- (11) The Colonization of Government Lands Act, 1912. **[Act 1912]**.
- (12) The Registration Act, 1908.
- (13) The Specific Relief Act, 1877 **[SRC]**

JUDGMENT

Muhammad Faisal Kamal Alam, J: Plaintiff has filed the present action at law in respect of an Immovable Property, seeking the following relief_

“The Plaintiff therefore prays for Judgment and Decree against the Defendants as follows: -

- A. A declaration that the Plaintiff being the lessee is legally entitled to the 20 acres under reference and that the Defendants have no right to the 20 acres or any part thereof of the land measuring 20 acres bearing Plot No.22 out of K-28, Trans Lyari Quarters, Hawks Bay Road, Karachi-West, Karachi as specifically shown in the photocopy of the Lay-out Sketch Plan being annexures “A” and “G” hereto;*
- B. A Permanent Injunction restraining the Defendants, their associates, employees, servants, agents, subordinates and/or anybody or person(s) claiming or acting through or under them from directly or indirectly disposing of and/or alienating and/or interfering with possession of the Plaintiff and/or from continuing trespass in regard to the Plaintiff’s possession of the land described above and duly specified in the Suit;*
- C. Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances of the case;*
- D. Costs of the Suit.”*

2. Upon issuance of Summons, the claim of Plaintiff was contested by Defendant No.1 (***Base Commander PAF Base Masroor***), and Defendant No.3-Federation of Pakistan, through Ministry of Defence; whereas, present Defendants No.2 and 4 (Deputy Commissioner and Province of Sindh through Secretary Land Utilization Department), in their Written Statements have acknowledged the fact that land in question was given to Plaintiff. The Written Statement filed by Province of Sindh (earlier impleaded as Defendant No.6 and later after the filing of amended title it became Defendant No.4) has stated that in the intervening period, the Suit land was cancelled but subsequently regularized in favour of Plaintiff. In paragraph-7 it is stated by the Sindh Government, that land in question belongs to the Province of Sindh-Defendant No.4 and has been rightly allotted and subsequently regularized in favour of Plaintiff upon receiving differential price (malkano). It is categorically stated in the Written Statement that there is no record in favour of Defendant-PAF.

3. The dispute is about Plot No.22, measuring 20 acres, claimed to be owned by Plaintiff, carved out from K-28, Trans Lyari Quarters, Hawks Bay Road, District West, Karachi-***the Suit Land***.

4. Following Issues were framed by the Court vide order dated 16.04.1995 _

- “1. ***Whether the suit is maintainable against Defendants No.1, 2 and 3?***
2. ***Whether the Plaintiffs are lawful owners in possession of the plot of land as described in Suit?***
3. ***Whether the Suit land was granted to the Plaintiff by the Board of Revenue, Sindh?***

4. *Did the Plaintiff in terms of the allotment of lease effect requisite full payment of Rs.24,20,000/- for the aforementioned plot of land as described in Plaintiff?*
5. *Was possession of the Suit land duly handed over to the Plaintiff?*
6. *Did the Plaintiff with requisite approval effect sub-division of the aforementioned plot?*
7. *Does the P.A.F. Masroor Base (Defendant No.1) have any lawful right to the aforementioned Suit land?*
8. *To what relief(s) are the parties entitled?”*

5. Vide order dated 20.08.2009, the following Additional Issue was framed_

“9. *Whether the Suit has been filed unauthorizably?”*

6. Plaintiff and contesting Defendant-PAF led the evidence in respect of their claims. On behalf of Plaintiff, her husband [Ashraf Ali Saeed] as Attorney testified as P-1/1 and produced his Power of Attorney, P-1/29), *whereas*, Nizam-ud-din Shaikh [Officer Incharge Work and Revenue Squadron Base Headquarters PAF Base Masroor Karachi] deposed as authorised representative of Defendant-PAF.

7. Mr. Muhammad Vawda, Advocate, representing the Plaintiff, has argued that Plaintiff is a *bona fide* owner of the Suit land, which was granted to her by Defendants No.2 and 4, for the sake of reference be referred to as the ‘*Sindh Government*’. Contended that Defendant No.1 (PAF) has illegally encroached upon a portion of the Suit land and when Plaintiff was threatened by some of the representatives of Defendant No.1, it compelled the Plaintiff to file the present *lis* with the above Prayer Clause.

8. The above stance of Plaintiff was refuted by Mr. Mohammad Asif Malik, Advocate appearing for Defendant No.1 and supported by Mr. Ghulam Mohiuddin, learned Assistant Attorney General, who represents Defendant No.3 (*Federation of Pakistan*). One of the main arguments of Defendants No.1 and 3 is that present suit is not maintainable, because no Board Resolution is appended with the plaint or produced in the evidence, as mandatorily required by Order 29 of CPC, because the land in question (Suit Property) has been purportedly granted in the name of a Company-Supercon Private Limited by the Defendant-Sindh Government.

9. Arguments heard and record perused.

10. Learned counsel for Plaintiff has referred to the following orders of this Court and observations made therein are mentioned below_

- i. Order dated 20.08.2009; the relevant portion of this order is that “Nazir’s Report was taken on record and Plaintiff was allowed to complete the boundary wall all around the suit land measuring 20 acres under the supervision of Nazir and it is observed that this fencing would not *pre judice* the right and contention of either party”.
- ii. Order dated 12.04.2010; *inter alia*, learned Advocate for Plaintiff complained that the disputed area of 2.27 acres, which is claimed by Defendant-PAF in the 20 acres (of the suit land) regarding which effective fencing was raised by the Plaintiff, has been demolished by Defendant No.1 and its representatives and the said disputed area has been occupied in breach of undertaking given by them to this Court on 15.01.2009 and thus Defendants have committed contempt of Court. However, learned Advocate for Defendant-PAF argued that since at the relevant time land

was under occupation of Armed Forces for a joint operation exercise, which was likely to be called off on or before 13.05.2010 and thereafter Defendant-PAF would vacate the disputed land. Mr. Nizamuddin Shaikh, Officer Incharge Works and Revenue Squadron Base Headquarters PAF Base Masroor, Karachi, was also present on the above date and given his Statement in writing in this regard. Mr. Nizamuddin Shaikh is the officer of Defendant-PAF, who has also testified in the present proceeding.

- iii. Order dated 25.05.2010; it was brought to the notice of this Court that Defendant No.1 has vacated the disputed portion of suit land, that is, 2.27 acres and Plaintiff was directed to rebuild the demolished portion of the boundary wall.
- iv. Vide order dated 08.10.2020, official of Defendant-PAF, namely, Wing Commander Shahbaz Ashraf tendered an unconditional apology before this Court and stated that Air Headquarters was ready and willing to compensate for the damages caused at the Suit Land. It was directed that the cost of reconstruction of damage portion of boundary wall shall be assessed by the Nazir of this Court and be payable by Defendant-PAF to Plaintiff.

11. It is pertinent to mention that when the matter was finally heard although Karachi Port Trust (KPT) was not present but in the intervening period filed a Statement along with order of Hon'ble Supreme Court passed in Constitution Petition No.47 of 2011, Notification nil, dated 05.10.1991 and other decisions. This record furnished by KPT, cannot be considered, as earlier an Application for becoming a party in the present *Lis*, CMA No.13015 of 2010, filed by KPT, has already been dismissed on 08.09.2020 by this Court.

12. Findings on the issues are as follows:

ISSUE NO.1	Affirmative
ISSUE NO.2	Affirmative.
ISSUE NO.3	Affirmative.
ISSUE NO.4	Affirmative.
ISSUE NO.5	Affirmative.
ISSUE NO.6	Accordingly.
ISSUE NO.7	Negative.
ISSUE NO.8	Suit decreed.
ISSUE NO.9	Negative

REASONS

ISSUES NO.1 AND 9.

13. Both these Issues relate to maintainability of the present suit and are thus decided first.

Gist of the case law relied upon by Plaintiff's counsel is that instrument of government grants is not required to be compulsorily registrable under Section 90 of the Registration Act.

14. Crux of the case law cited by the learned Advocate for Defendant-PAF is, that when a plaint is filed on behalf of a Company without a resolution of the Board of Directors, then it is an illegality and the proceeding/suit is not maintainable; even a Board Resolution authorizing a person to file a suit on behalf of a Company, should be passed by a duly convened meeting of Board of Directors; non-filing of either Articles of Association of a Company or resolution either with the plaint or in the evidence in a suit preferred by a corporate entity would be fatal and not a curable defect. A lessor in order to grant a lease or sub lease of 99 years

must have with him the authority and similar right to lease or vested with a perpetual ownership to transfer land to other; mere entry in the record of rights cannot be equated with ownership/title; non-registration of a document which requires compulsory registration under Section 17 of the Registration Act, 1908, carries no legal value and does not transfer any valid right and interest to a transferee/claimant under such document [instrument].

15. Learned Advocate for Plaintiff has referred to the original plaint in which the original Defendants were Base Commander (Defendant No1), Wing Commander-Malik Altaf (Defendant No.2) and Flight Lieutenant-Ayub (Defendant No.3). Subsequently vide order dated 15.01.2009, the erstwhile Defendants No.2 and 3 were dropped. Since main dispute is between Plaintiff and Pakistan Air Force, which is impleaded through its Base Commander, therefore, the present suit is maintainable against Defendant No.1. **Hence, Issue No.1 is answered in Affirmative.**

Adverting to Issue No.9. It is vehemently argued by learned Advocates for Defendant No.1 (PAF) and learned Assistant Attorney General for Pakistan, representing Defendant No.3 (*Federation of Pakistan*), that since land was allotted in the name of a Company, therefore, there should be a Board Resolution authorizing the present Plaintiff to proceed with the matter, failing which, the present suit is hit by Order XXIX Rule 1 of Civil Procedure Code (*CPC*), as compliance whereof is mandatory. Learned counsel for Plaintiff has refuted the above line of arguments and has referred to various documents produced in the Evidence. The Written Statement of Defendant-Sindh Government has stated that the suit plot was granted to **“Plaintiff Shahimah Sayeed”**, while disputing the claim of present Defendant-PAF over the Suit Property. Following

documents, which were produced in the evidence by Plaintiff witness are relevant for deciding this Issue_

- i. Allotment Order dated 29.09.1992-**Exhibit P-1/2**, wherein it is stated, *inter alia*, the Suit Property has been leased out on 99 years lease “in favour of Director, Supercon Private Limited”.
- ii. Agreement Deed is produced as **Exhibit P-1/3**. This document mentions the Plaintiff so also that she is Director of Supercon Private Limited. It is executed between the official of Sindh Government (Defendant No.4) and Plaintiff in her personal capacity.
- iii. Possession Order is produced by the Plaintiff as Exhibit P-1/4. It mentions the name of Plaintiff and Director of above Company. It is executed by Plaintiff in her personal capacity and City Surveyor (official of Defendant No.4), confirming the handing over of physical possession of suit land to Plaintiff.
- iv. Mutation Entry in the name of Plaintiff in the Record of Rights is produced as Exhibit P-1/5.
- v. Post regularisation extract of ownership was issued, viz. Form 2, showing the name of Plaintiff as Director of above Company. This document is exhibited as P-1/9(b). All the above documents are part of the official record and has not been questioned by the official Defendants No.2 and 4, rather acknowledged by them. In the above documents it is not

mentioned that the suit land belongs to the SUPERCON (Pvt.) Limited.

- vi. Record of Wealth Tax for the Assessment Year 1999-2000 has also been produced in the evidence. Order of the Deputy Commissioner of Income Tax and Wealth Tax has been exhibited as Exhibit P-1/24, in which the Suit Land is mentioned at serial No.2 as personal property of Plaintiff.
- vii. Wealth Tax Returns of subsequent years were also produced in the evidence, showing that the Suit Land has been mentioned as one of the personal assets of present Plaintiff. These Wealth Tax returns and order passed thereon by the competent authority are exhibited as P-1/25, P-1/27 and P-1/28.

16. In order to substantiate his arguments, learned counsel for the Plaintiff has also referred to the documents filed by the above named Company Supercon Private Limited with the competent Authority-The Security and Exchange Commission of Pakistan [SECP]. These documents are produced as part of Exhibit P-1/28 (as endorsed by the learned Commissioner before whom evidence was recorded). The Form 29 in which particulars of Directors and officers of a Company are mentioned has been exhibited as **P-1/30**, showing Plaintiff is/was a Director at the relevant time, (of Supercon), which had a Board of Directors comprising of three Directors, namely, (i) Ashraf Ali Sayeed, who is the husband of present Plaintiff and has also testified on her behalf; (ii) Shahimah Sayeed-the Plaintiff herself and (iii) Ms. Nadia Sayeed, the daughter of Plaintiff. Counter-affidavit of Defendant-PAF filed in the present *Lis* to one of the interlocutory applications of Plaintiff, has also been referred to by her counsel in support of his arguments and to highlight the contradictory

stance of Defendant-PAF This counter-affidavit has been exhibited as P1/33, wherein the Defendant-PAF has basically challenged the allotment of suit land in favour of Plaintiff and not the above named Company of which Plaintiff was one of the Directors.

17. The authenticity of the above documents (except for Exhibit P-1/3), have not been challenged by the contesting Defendants, which clearly show that Plaintiff was/is a Director of a family owned Company. Stance of Defendant-PAF about the above referred document, Exhibit P-1/3 will be discussed in the paragraph to follow. **Secondly**, the above evidence also proves that Suit Land was allotted in the personal name of Plaintiff and not the Company, as also admitted in the Written Statements of Defendants No.2 and 4 {Deputy Commissioner and Sindh Government}, which allotted and subsequently regularised the Suit Land. **Thirdly**, if the allotment would have been made in the name of Company/the said SUPERCON (Pvt.) Limited, then the above documents relating to the suit land including the Allotment Order [exhibit P-1/2] should have mentioned the name of above Company only and not Plaintiff as Director of the said Company. **Fourthly**, the original and the amended Written Statements filed by Defendant-PAF have been examined. In both Written Statements, contesting Defendant-PAF has questioned the maintainability of present *lis* on the ground of applicability of Articles 173 and 274 of the Constitution and Section 56 (d) and (j) of Specific Relief Act, [applicability of these Articles and provisions will be discussed in the following paragraphs] but no plea with regard to applicability of Order XXIX Rule 1 of CPC is mentioned.

18. In view of the above, the arguments of legal team of contesting Defendant-PAF and Federal Government are misconceived in nature and cannot be accepted. Consequently, **Issue No.9 is answered in Negative**, that for filing the present *Lis*, no prior authorization was required by the

Board of Directors of Supercon Private Limited, as the official documents show that the allotment was made in favour of Plaintiff and not the said Company. However, it is clarified that this Issue is decided without *pre judice* to the findings on other Issues, particularly, that it is yet to be decided / determined that whether the claim of Defendant-PAF with regard to the Suit Land is genuine or of Plaintiff.

ISSUES NO.2 , 3 AND 7.

19. In the Written Statement, stance of Defendant-PAF is that suit land is part of the PAF Masroor Base, which is on an area of 5510 Acres. This entire Base land belongs to Ministry of Defence, Government of Pakistan-Defendant No.3 and was requisitioned by the erstwhile Government of India during World War-II for the efficient operational use of Air Force (the then Royal Air Force) and subsequently it is in present use of Defendant-PAF. It is further averred that Defendant-Sindh Government has no jurisdiction to allot the Suit Land to any private person as after its requisitioned it was permanently transferred vide Governor General Order No.15 of 23.07.1948 {Establishment of the Federal Capital} and subsequently by the Presidential Order No.9 of 1961 dated 29.06.1961, viz. West Pakistan Administration (Merger of the Federal Territory of Karachi). It is claimed that land which is situated between Survey Pillar Nos.46, 47 and 48 is part of the Masroor Base of Defendant-PAF, hence, part of suit land belongs to Defendant-PAF. Possession of the Plaintiff is also disputed. To augment the afore referred stance, the learned counsel for Defendant-PAF has cited the case law *Supra*; précis of which is that pleadings/Written Statement even containing an admission does not carry evidential value, without examining the concerned party; a suit if it is proceeded *ex-parte* against defendant, yet burden to prove is on plaintiff to succeed in his claim, specially when he is claiming title over a property; no statutory

presumption of correctness is attached to "khasara girdawari". Learned defence team has also cited the three judgments relating to K-28 Trans-Lyari, two of which are reported decisions already mentioned in the opening part of this decision, viz. *Metalex and Shehri: CBE cases* and third one is an unreported judgment of this Court given in Suit No.843 of 2004 – *Mohammed Zahir Shah versus Province of Sindh and others*, is enclosed with the written arguments of learned counsel for Defendant-PAF, available in the record. The last mention decision in which Karachi Port Trust (KPT) was also one of the defendants, was decreed by this Court, *inter alia*, while rejecting the claim of KPT in respect of K-28 Trans-Lyari (where the present suit land exists) and allotment of plaintiff given by Government of Sindh in Phase-2 of K- 28 was upheld; whereas, in *Metalex case (ibid)*, this Court has discussed the Article 172 of the Constitution and explained the concept of continental shelf and held that a dry land, reclaimed through receding sea should belong to the Province, while holding that in terms of Sections 3, 25, 26 and 27 of the KPT Act, *inter alia*, prescribing the territorial limits of KPT, does not confer proprietary rights of all that land which falls within the jurisdiction of KPT but such limits is a functional jurisdiction. It was held that Phase 1 of K 28 Trans Lyari Quarter Hawke's Bay Road, District West Karachi is not owned by KPT but by Government of Sindh [present Defendant No.4]; whereas the Sherri: **CBE** case handed down by the learned Division bench of this Court has dismissed the petition of the petitioner (Shehri:CBE) together with their claim in respect of KDA Scheme 42. Learned counsel has relied upon the recommendations of Chief Secretary which was incorporated in the above reported judgement, that the K-28 area is not feasible for industries; but on the other hand, the said recommendation of the Committee headed by Chief Secretary as mentioned in the above judgment, *inter alia*, states that Scheme 42 and K-28 are separately located, where factories, godowns,

warehouses and residential houses, exist. In this judgment learned Division Bench has dilated upon the issue of entitlement of a person in terms of Colonization Act. It is held that "*subsection (4) of Section 10 directs that no person shall be deemed to be a tenant or to have acquired any right, title or interest in the land allotted in his/its favour until such a written order has been passed by the Board of Revenue/Provincial Government and he/it has taken over possession of the land with permission of the collector...*".

Evidence evaluated. The geographical location of the suit land has not been disputed; which abuts on main Hawks Bay Road, on the opposite side of which is the PAF Masroor Base.

20. It appears that contesting Defendant-PAF has changed its stance in respect of area of the suit land, because in their Written Statement, they have questioned the entitlement of Plaintiff with regard to the suit land but in due course as the above Orders show, that they have limited their claim only to the extent of 2.27 Acres (of the Suit Land).

21. To prove her claim, Plaintiff has produced the following documents relating to the suit land, which have been duly exhibited:

- i. Allotment Order dated 29.02.1992-**Exhibit P-1/1**, stating that an area of 20 acres from K-28, Trans Lyari Quarters, main Hawks Bay Road, Karachi-West, Karachi is allotted in favour of Director Supercon Private Limited for Industrial / Commercial purpose.
- ii. Agreement Deed-**Exhibit P-1/2**, executed between Mukhtiarkar West, Karachi, one of the officers of Defendant No.4-Sindh Government and the Plaintiff herself. Salient feature of this Agreement Deed is that it states about the occupancy value and 99 years lease. This document also contains a site sketch, which

shows that the suit land is abutting on 300 ft. wide Hawks Bay Road.

- iii. Possession Order-**Exhibit-P-1/3** (as already discussed above).
- iv. Extract of ownership with a caption '**PROPERTY REGISTER FOR THE CITY OF KARACHI**' containing the entry in respect of the suit land in favour of Plaintiff.
- v. A notice dated 06.06.2002-**Exhibit P-1/5** by Defendant No.4 (from the Land Utilization Department) informing the Plaintiff that her allotment has been cancelled in exercise of power under Section 3 of the said Ordinance III of 2001. Plaintiff was called upon to appear before the Committee.
- vi. Correspondence of 04.12.2003 from Defendant No.4 (Land Utilization Department)-**Exhibit-P-1/6**, addressed to Plaintiff, whereby she has been offered to pay a differential price as assessed by the Committee under the above Ordinance III of 2001, for regularization of allotment.
- vii. Document dated 10.12.2007-**Exhibit P-1/7**, issued by Defendant No.4 (Land Utilization Department), wherein it is mentioned that Government of Sindh (Defendant No.4 herein) has been pleased to regularize / restore the suit land on payment differential sale price (*differential malkano*) of Rs.10,580,000/- (*rupees ten million five hundred eighty thousand only*) paid by the Plaintiff.
- viii. Extract of ownership of subsequent date, that is, 23.05.2008, issued by Mukhtiarkar working under the supervision and control of Defendants No.2 and 4 (Deputy Commissioner and Government of Sindh) to Plaintiff on her application. These

documents-FORM NO.2 are exhibited as **P-1/9(a), (b), (c), (d)** and **(e)**. In the remarks column, it is stated by the official, that in pursuance of the order of the Government of Sindh Land Utilization Department dated 10.12.2007 (which is referred hereinabove), and on payment of annual ground rent from the period of 1991 to 2008, the mutation entry is hereby regularized / restored. In this FORM NO.2 in Column No.4, Plaintiff is mentioned as Owner and Column No.14 relating to period of lease, it is stated that “99 years from 29.02.1992”.

- ix. The document captioned ‘Pay Order Confirmation’ issued by the Royal Bank of Scotland (RBS), which has been exhibited as **P-1/20**, addressed to Plaintiff (in person) and is of 03.02.2009, wherein the RBS has confirmed that an amount of Rs.10,580,000/- (*rupees ten million five hundred eighty thousand only*) has been issued in the name of Board of Revenue Sindh dated 22.07.2006 from the Bank Account of Plaintiff.
- x. Plaintiff’s attorney has produced a Statement filed in the proceeding on behalf of Defendant-PAF, as **Exhibit-P-1/12**. With this Statement, various correspondences are enclosed showing that Defendant-**PAF** has called upon Defendant-Government of Sindh for allotment of land. These documents for the sake of reference be **referred to as second set of exhibits**, which are mentioned below_
 - a) Correspondence dated 23.06.2003 from Ministry of Defence (Defendant No.2) to the Chief Secretary of Defendant No.4-Province of Sindh. **Exhibit-P-1/12(a)**. In this missive, it has been stated that an area of 5915.10 acres of land, which is under occupation of Defendant-PAF **has not been transferred to**

- Federal Government** and thus the Defendant No.4 (Government of Sindh) transfer the said land (5915 acres) to Defendant No.2. (Federal Government, Ministry of Defence) for use of Defendant No.1; or if gratis transfer is not possible, the land be leased out to Defendants No.1 and 2 on 99 years basis but on nominal charges.
- b) Another correspondence from Defendant No.2 of 30.11.2004, exhibited as **P-1/12(b)** to Defendant No.4 again requesting the Government of Sindh to convey approval to the gratis transfer of land measuring 5915 acres to Defendant No.1 from a period of 99 years lease on nominal charges.
- c) Subsequent correspondence from Defendant No.2 to Defendant No.4 dated 03.01.2006, **Exhibit P-1/12(c)**, wherein the request has been reiterated.
- d) Letter by Defendant No.2 to the Chief Minister of Sindh dated 14.04.2007-**Exhibit P-1/12(d)**, *inter alia*, requesting that land measuring 6000 acres of PAF Base Masroor be transferred in favour of Ministry of Defence in the Revenue record on Gratis basis for defence purposes. In this letter, it is further stated that a Land Utilization Department of **Defendant No.4** had earlier **advised** the Defendant No.2 for allotment of land at **current** market price.
- e) A correspondence of 13.06.2006, that is, earlier in time of the afore-referred letter [Exhibit P-1/12(d)]. In this letter, which is exhibited as **P/1/12(e)**, Defendant No.4 has informed the Defendant No.2 that there is no provision of transfer of land on Gratis basis but the same can be acquired on market rate.

f) Letter dated 04.06.2006 to Defendant No.2, produced in the evidence as **Exhibit P-1/12(f)**, wherein Government of Sindh has informed Federal Government that there is no provision in the Sindh Government Laws/Rules and Statement of Conditions issued under Colonization of Government Act, 1912, to grant / allot land to Federal Government **free of cost / on Gratis basis.** This correspondence has further mentioned the procedure for transfer of land to Federal Government.

22. Plaintiff's sole witness was subject to a lengthy cross-examination on behalf of Defendant PAF and the same is minutely examined. Although questions are put to the witness to dent the authenticity of above documents produced in support of her ownership claim, starting from the Allotment Order (Exhibit-P-1/2) upto the Regularization Order dated 10.12.2007 (Exhibit P-1/8), but the authenticity of these official documents could not be disproved by the Defendants No.1 and 3. It is accepted in cross-examination by the Plaintiff's witness that the **Exhibit-P-1/3** (Agreement Deed, executed by Mukhtiarkar acting on behalf of Defendants 3 and 4 and Plaintiff) is not on Stamp Paper nor it is a registered document, and learned Advocate for Defendant PAF has argued that no right or interest in the Suit Land could be transferred to Plaintiff on the basis of such a document. This argument is misconceived in nature, because, the above Agreement Deed is an official document, as Mukhtiarkar acted on behalf of Defendants No.3 and 4 and the authenticity of the above Document [Exhibit P-1/3] has been accepted and admitted by both Defendants No.2 and 4 in their respective Written Statements, therefore, no adverse inference can be drawn with regard to the same. This Agreement Deed is covered by Article 129 (e) of the Evidence Law, that Official acts have been regularly performed. In addition to this, it is

argued by the learned counsel for Plaintiff that this document-Agreement Deed is covered under Section 90 of the Registration Act and does not require a compulsorily registration. In this regard, he has cited case law of Indian jurisdiction (*ibid*). Since Section 90 of the Indian Registration Act, is in pari materia to Section 90 of our Registration Act, thus, the interpretation of the above provision by the Indian Courts can be considered, particularly Decisions given in *Power Grid and Jhankar Singh (ibid)*. A relevant portion of Grid Power decision [AIR 2015 Chhattisgarh page-90] is reproduced herein under for a reference_

“ 18. *Thus, the legal effect is unambiguous and is not capable of deriving more than one meaning. For a documents to be covered within section 90 (1) (d), the only thing to be determined is whether such document evidence any grant or assignment by the Government.....*

19. *Although under Section 17 of the Registration Act, the registration of leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is registrable, yet Section 90 of the Registration Act, which exempts certain documents from compulsory registration commences with a non obstante clause and thus, the same has overriding effect.”*

Partly I agree with the above discussion, only to the extent that the non-registration of said Agreement Deed [Exhibit P-1/3] in the given circumstances cannot be a fatal defect and will not deprive the Plaintiff of her right and interest in the Suit Land. But, it is clarified that generally the above provision cannot be invoked to evade taxes and duties leviable on a document so also its registration.

23. The arguments of legal team of Defendants No.1 and 3 (PAF and Federal Government) about the evidential value of pleadings / Written Statement are not applicable, in view of the evidence brought on record and is discussed herein above. Written Statements of both Defendants No.2 and 4 have categorically acknowledged the ownership of Plaintiff in person and not of the Company-Supercon Private Limited in which the Plaintiff was one of the Directors. It is mentioned in the Written Statement of Defendant No.4-Government of Sindh that in the intervening period, the land was cancelled but subsequently it was regularized. The relevant documents relating to the regularization have been produced by the Plaintiff's attorney in his evidence and particularly **Exhibit-P-1/8** dated 10.12.2007, stating that an amount of Rs.10 Million approximately is paid towards regularization of the suit land, by Plaintiff. **Secondly**, since the case of the Plaintiff is based upon the official documents relating to Defendants No.2 and 4, who have accepted the claim of Plaintiff in their respective Written Statements, therefore, all these documents bear presumption of genuineness as envisaged in Article 90 of the Evidence Law read with afore referred Article 129 [that official acts are performed in a regular manner]; In the present case the reported decisions of Hon'ble Supreme Court handed down in the cases of **Nazir** and **Abbas Ali** (*supra*); 2008 SCMR page-1639 and 2013 SCMR page-1600, respectively, are relevant. In the latter reported decision, the Hon'ble Apex Court has held that when an agreement itself is not disputed and admitted in Written Statement, then provision of Article-81 of the Evidence Law will be applicable. Article 30 of the Evidence Law has been explained by the Honourable Supreme Court in the following words_

“8. It means that the execution of agreement is admitted not disputed and it is well settled proposition of law that the admitted facts need not to be proved. The admission has been

defined in Article 30 of the Qanun-e-Shahadat Order, 1984 which reads as under:--

“30. Admission defined. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.” ”

Thirdly, though in the intervening period Allotment of Plaintiff was canceled, but as the undisputed official record produced in the evidence shows and proves that subsequently the competent authority -Defendant No.4-Government of Sindh had regularized the suit land upon payment of above differential price (differential malkano). In this regard, the rule laid down in the reported decision of learned Division Bench of this Court in NLC case (*ibid*), 2003 CLC page-719 (Karachi) is applicable to the facts of present case, wherein the provisions of aforementioned Ordinance III of 2001 has been interpreted and *inter alia*, it is held, that if an allotment is cancelled then it does not mean that it is to be treated as *void ab initio* but an allottee can acquire the ownership rights after payment of an amount of loss caused to the Government within time specified by the Committee. This is what has been done in the present case that allotment of present Plaintiff has been regularised (as discussed in the foregoing paragraphs).

Fourthly, Exhibit-P-1/9(a) to (e) is the record of extract of ownership (as already mentioned herein-above) in which the Mutation Entry in the name of Plaintiff has been restored. The reported decision cited by learned counsel for Defendant-PAF, that Mutation Entry itself does not confer any title in favour of a person, although is a settled principle, but the same is not applicable to the present case, because here, admittedly, Plaintiff in support of her claim is not only relying upon the mutation entry in her favour but a complete chain of transaction has been produced / exhibited, which could not be shattered in the evidence. Possession of the suit land is with Plaintiff and the price of the land has also been paid by

Plaintiff to Defendants No.2 and 4. Conversely, the decision in Sheri:CBE case (*ibid*), SBLR 2009 Sindh 333 rather supports case of Plaintiff to the extent of interpretation of Sub-section 4 of Section 10 of the Colonization Act, because the three basic ingredients for a valid transfer of property, as mentioned in the Judgment, have been fulfilled by the Plaintiff, that is, there is written Allotment Order, Possession Order, Agreement Deed and finally the Regularization Order and most importantly payment of entire price in public exchequer by Plaintiff as evident from Regularization Order itself [Exhibit P-1/8] and **Exhibit P-1/32**, which is a Pay Order Confirmation Letter [of 3-2-2009] issued by the Bank, confirming that a Pay order for an amount of Rs.10,580,000/- [rupees one crore, five lacs and eighty thousand] was issued in the name of Board of Revenue Sindh from the Bank Account of Plaintiff.

Fifthly, the present entitlement of Plaintiff in respect of the suit land, is not adversely affected by the Sindh Disposal of Plots Ordinance, 1980, as argued by the learned Advocate for Defendant-PAF, because the said Law, primarily relates to allotment of residential and flat side Plots. Although in Sections 12 and 13, whereof the Commercial and Industrial Plots are also mentioned but those are of that category, which are owned by District Housing Committees/Development Authorities, such as Karachi Development Authority. These Plots have to be disposed of by public auction. However, the present plot does not vest in some development authority but it has been directly allotted by the Government of Sindh. Similarly, Ordinance LIV of 1965 concerns those buildings and lands which vest in Central / Federal Government and not to Provincial Government. More so, this Ordinance primarily deals with the unauthorized occupants and where lease or license granted by the Federal Government has expired / lapsed. Similarly, right and interest of the Plaintiff in the suit land is neither adversely affected by Transfer of the Property Act, as

contended by learned defence counsel nor any of the provisions of Civil Aviation law and Aircraft Safety law (*supra*), primarily dealing with certain business as in a specified area; *inter alia*, tannery, refuse dump, which attracts birds; this argument is also contradicted by the Report of the Committee formed under the Chairmanship of the Chief Secretary of Sindh (already discussed in the preceding paragraphs) which is part of the above-cited reported decision of SHEHRI: CBE.

24. Adverting to the second set of documents produced by the Plaintiff's witness, Exhibits-P-1/12 (a) to (f), gist of these documents is that Defendants No.1 and 3 have requested Defendant No.4 for the transfer of land measuring 5915 acres and later 6000 acres to Defendant No.1-PAF either free of cost or on 99 years lease but on nominal charges. These documents, which are letters/correspondences exchanged between official Defendants, belies and disproves the entire claim of Defendant-PAF, as, the latter (Defendant-PAF) itself has requested the Defendant No.4 for grant of land under the occupation of Defendant No.1 (PAF), which means that the ownership of the entire area whereat the suit land of Plaintiff is situated so also that of PAF Base Masroor, belong to and vest in the Defendant No.4-Government of Sindh.

25. The sole defence witness of Defendant-PAF, in his Affidavit-in-Evidence/examination-in-chief has though categorically refuted the testimony of Plaintiff, particularly, relating to the status of land in question, that it was wrongly allotted by Defendants No.2 and 4 to Plaintiff because it belongs to Defendant-PAF and Defendant No.3-Federal Government (Ministry of Defence), but in his cross examination the said witness is unable to disprove the claim of Plaintiff and prove the claim of Defendant-PAF. **Exhibit D-1/8** produced by above official witness of Defendant No.1, is Missive dated 15.02.2007 bearing reference No.AHQ/76363/RR-III,

from Defendant No.1 to Defendant No.4, mentioning the background of the lands and their possession by Defendant-PAF since pre-partition. However conclusion is that except for 7.62 acres, which was purchased in 1964 from Karachi Municipal Corporation, the entire area under occupation of Defendant-PAF is not on permanent basis. The undisputed evidence is that Defendant No.4-Government of Sindh vide their correspondence of 13.06.2006 [Exhibit P – 1/12 (e)] has refused to transfer the land of 5915 acres to Defendant No.1 on gratis basis.

26. The stance of Defendants No.1 and 3, that the suit land and a vast area under occupation of Defendant-PAF belongs to Federal Government/Defendant No.2 and not Provincial Government, by virtue of Governor General's Order No.15 of 1948 and Presidential Order No.9 of 1961, in view of the evidence led and official documents produced, has no force. The correspondences of Defendant No.1 itself disprove its case with regard to the Suit Land, which is claimed by Plaintiff. Although the vast area of land was given to the then Royal Air Force (RAF) and later the Defendant No.1, but the basic document relating to this fact, which is of 11.05.1943, produced by the defence witness as Exhibit-D-1/3, clearly states that such requisition was made for the duration of Second World War and permanent acquisition may become necessary at a later date, therefore, the stance of Defendant No.1 and the testimony led in support thereof that Survey Pillar Nos.46, 47 and 48 is part of the Masroor Air Base of Defendant No.1, which includes a portion of the Suit Land, even if it is assumed to be correct, **the same was never transferred on ownership basis to Defendant No.1-PAF but** it was on temporary basis for meeting exigency at the time of the Second World War. The aforementioned reported decisions relied upon by the defence team (as mentioned in the foregoing paragraphs) relating to K-28 Trans Lyari, does not lend any support to the case of Defendant No.1 but to Defendant No.4, that is, the

area belongs to Government of Sindh. **Secondly**, here it is not a dispute between the Plaintiff and Defendant No.1 that some portion of land claimed by Plaintiff is adjacent to the above Air Base of Defendant No.1 and hence, some over lapping is mistakenly created between different lands, but, present geographical and physical position at the site has not been disputed, which is, that in between Masroor Base of Defendant-PAF and the suit land there is a 300 feet wide Hawksbay Road.

27. Learned counsel for Defendant No.1 has referred to a correspondence of 13th January 2009 (Exhibit **D-1/15**), which is a letter from Military Estate Officer to Director General Military Lands and Cantonments Department Ministry of Defence, communicating that Masroor Airbase and its surroundings is declared as Cantonment vide a draft Notification. The draft Notification is also enclosed and is produced in the evidence, wherein at serial 46 and 47 pillars 46 to 48 are mentioned, which comprises of an area of approximately 2000 feet. This document has no legal value as it is merely a draft. **Secondly**, a subsequent correspondence of 14.01.2009 addressed by Defendant No.3 to Defendant No.4, exhibited as D – 1/16, the former has asked the latter to confirm whether the land measuring 6000 acres under “possession/occupation” of Defendant No.1 has been mutated in relevant record of rights. This vital Document again belies the claim of Defendants No.1 and 3 about the status and ownership of not only land in dispute but also that vast area of land, which is used by Defendants No.1 and 3 for Masroor Air Base. If Federal Government (Defendant No.3) is the owner, it certainly would not have requested the Defendant 4 [Sindh Government] for mutation of entire land under occupation of Defendant No.1 in favour of the latter, which includes the portion of the Suit Land and the Defendants No.1 and 3 would have

produced in the evidence, the relevant entry in the General Land Register [GLR].

28. In his cross-examination the defence witness to a question has **accepted that area and location is not mentioned in exhibit D – 1/3**, that is the aforesaid basic document of 11-5-1943, from which the Defendant No.1 is tracing its history about the land under its use and possession. He has admitted that none of the documents produced by the said witness contain any reference to K-28 Trans Lyari, Karachi. Although the said witness has stated that from survey pillars Nos.1 to 70 the entire area was transferred to erstwhile Royal Air Force, before partition but failed to show the same from the documents and particularly Exhibit D – 1/7 that such survey pillars include the suit land in question. The said Witness has admitted in his cross-examination that *“hawksbay road passes in between the boundary line of the base and the disputed land ”*. To a question he has stated that he cannot explain about the physical presence of the pillars referred in the exhibit D-1/15 {that is, the aforementioned Draft Notification}. Admitted that no document was produced showing the pillar position designating the boundaries of the Air Force Base.

29. The afore referred provisions of the Constitution and the Specific Relief Act as relied upon by legal team of Defendant PAF in the light of above discussion is considered.

Article 173 of the Constitution, *inter alia*, empowers the Federal and Provincial Governments to grant, sale, dispose of or mortgage any property vested in either the Federal Government or Provincial Government, whereas, Article 274 of the Constitution states that all properties and assets, which were vested in the President or the Federal Government at the time when the Constitution came into force on

14.08.1973 (mentioned in Article 265 of the Constitution as the commencing day) shall vest in the Federal Government or subject to certain conditions as mentioned in the Article itself, vest in the Government of a Province. **Similarly**, Sub-Sections (d) and (j) of Section 56 of the Specific Relief Act, enjoins that injunction be refused when it would interfere with the public duties of a department of Government or with the sovereign act of the foreign Government, besides the conduct of the applicant or his agent as such which disentitled them for such a relief. The above provisions in view of the appraisal of the evidence, cannot adversely affect the claim of Plaintiff and even otherwise are not applicable to the facts of present case. **Consequently, Issues No.2 and 3 are answered in Affirmative; whereas, Issue No.7 in Negative.**

ISSUES NO.4, 5 AND 6.

30. The conclusion of the above is that the Plaintiff has not only paid the requisite full amount of Rs.2,420,000/- (*rupees two million four hundred twenty thousand only*) but has also paid differential malkano of approximately Rs.10,000,000/- (*rupees ten million*), where after, the land was regularized in her name by Defendant No.4. **Hence, Issue No.4 is answered in Affirmative and in favour of Plaintiff.**

31. Considering the undisputed document, viz. Possession Order, which is Exhibit P-1/4, bearing signature of the Plaintiff and the official, City Surveyor, on behalf of Defendant No.4, besides the aforementioned orders of this Court (in the foregoing paragraphs) concludes that possession of the suit land was duly handed over to Plaintiff. **Hence, Issue No.5 is also answered in Affirmative.**

32. Different orders passed in the present *lis* show that boundary wall was built all around the suit land including 2.27 acres of the disputed land,

which was, in the intervening period, was occupied by Defendant No.1 on the pretext of yearly military exercise, which was later vacated by the said Defendant No.1. **Hence, Issue No.6 is answered accordingly.**

ISSUE NO.8.

33. Record of the entire proceeding and various orders passed on different occasions on the multiple applications for initiating contempt proceedings against Defendant No.1 and its officers, justify certain observations. **Exhibit P-1/33** is the Counter Affidavit of the Defendant No.1, which was filed to one of the applications preferred by Plaintiff, *inter alia*, for construction of boundary wall at the suit land; while raising objections Defendant No.1 has stated that the latter (Defendant No.1) opposed the construction of boundary wall by taking a defence of national security in the following words_

“That this land measuring 2.72 acres, is intended to be used for air defence during war for deploying surface to air Missiles for the protection of main base.”

34. The evidence led in the present *lis* concludes that at present 5915.10 acres of land is under occupation of Defendant-PAF for which it has approached the Defendant No.4-Sindh Government for transferring the same either free of charge or on lease (against nominal charges). This particular defense of Defendant No.1 about 2.27 acres of land, which is part of the suit land, that the same will be used by the Defendant No.1 for deployment of missiles, appears to be naïve. It does not appeal to common sense that a small area of 2.27 acres of land will be utilized to defend a huge area of 5915.10 acres (of PAF Base Masroor). Undoubtedly, defence and security interest of a country is the foremost priority, particularly, considering the geostrategic location of our Country; but at the same time, the ownership rights, which are guaranteed as fundamental rights in the Constitution, cannot be sacrificed merely on a vague plea of National

Security. In a constitutional dispensation, ownership / proprietary rights of a genuine owner, cannot be sacrificed at the altar of some vague plea of security issue. The authorities or the officials, taking the ground of national security in defense for their actions, have to make out a tangible case. A balance is to be struck in such cases, between the material aspect of National Security and fundamental rights of a citizen.

35. Upshot of the above discussion is that the Plaintiff is the owner of suit land, viz. Plot No.22, measuring 20 acres, K-28 Trans Lyari Quarter Hawksbay Road, District West, Karachi and she is entitled to use and enjoy the same.

The suit is decreed in favour of Plaintiff.

At the same time, it is necessary to make an observation that Defendant No.4 to take concrete measures upon the request of Defendant No.1 with regard to the land upon which PAF Masroor Base is at present being operated, because it is a very significant matter relating to the defence of Pakistan.

36. Parties to bear their respective costs.

JUDGE

Karachi.
Dated : 26.02.2021.
M.Javaid PA