

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.300 of 2015  
(*Mian Trust Vs. Lyari Expressway Resettlement Project & others*)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Muhammad Faisal Kamal Alam

Dates of hearing : 03.09.2021, 16.09.2021, 23.09.2021 and  
07.10.2021. \_\_\_\_\_

For the petitioner : Mr. Obaid-ur-Rahman Khan, Advocate.

For the respondent No.1 : Nemo.  
(*Lyari Expressway Resettlement Project*)

For the respondent No.2 : Ms. Naheed Akhter, Advocate.  
(*Karachi Municipal Corporation/KMC*)

For the respondent No.3 : Mr. Sartaj Malgani, Advocate.  
(*The Sindh Building Control Authority /SBCA*)

For the respondent No.4 : Mr. Miran Muhammad Shah, Additional  
Advocate General (AAG).  
(*Government of Sindh through Chief Secretary*)

### J U D G M E N T

**IRFAN SAADAT KHAN, J.** The instant petition has been filed with the prayer that adjacent to the amenity plot of the petitioner, which is a Trust being run under the name and style Mian Trust (hereinafter referred to as “Trust”), an area which also is amenity in nature and is earmarked as a park has illegally been occupied by some encroachers and the official respondents are not taking any action in this regard. It is further prayed that the illegal construction raised on the said amenity plot /park may also be removed. Notices thereafter were

issued to the respondents and in response thereto comments were filed by them, which are available on record.

2. Mr. Obaid-ur-Rahman Khan, Advocate, has appeared on behalf of the Trust and stated that the petitioner is a charitable trust imparting education to the underprivileged children on the amenity plot measuring 1.101 acre in between Sector 35 and 36, MDA Corridor, Taiser Town, scheme No.45, LERP, allotted to the said Trust in 2006 on lease for a period of 30 years further extendable for another 30 years. He stated that a land adjacent to the property of the Trust is also an amenity plot meant for park but some illegal construction has been raised upon the said plot /park, which is causing disturbance to the Trust and other persons, especially children, residing in the area. He stated that as per his information and belief the said amenity plot could be used only as a park but due to the slackness on the part of the official respondents illegal construction has been raised on it by some unscrupulous persons. He stated that several applications in this regard were given to the concerned authorities but when no heed was paid thereafter the instant petition has been filed.

3. Syed Mudasser Hussain Zaidi, Advocate, though has appeared on behalf of the respondent No.1 on 23.09.2021, but when the matter was fixed for final hearing today i.e. 07.10.2021 he is called absent.

4. The counsel appearing for the KMC and SBCA, respondents No.2 & 3 respectively, have stated that as per the provisional master and layout plan the plot adjacent to the amenity plot of the Trust has been marked as a park. They did not seriously dispute the submissions

of the counsel for the Trust that the plot under question is an amenity plot, which could be used for amenity purposes i.e. park only. They further stated that an amenity plot meant for a park cannot be used for residential or commercial purposes or for any other purpose other than amenity.

5. The learned Additional Advocate General Sindh on instructions has stated that the Layout Plan of the area, submitted by the Respondent No.1, is not a final layout plan but can be subject to further modification.

6. We have heard all the learned counsel at considerable length and have also perused the record.

7. The record reveals that the Trust was allotted a piece of land on 17.11.2006 measuring 1.101 acre in between Sector No.35 and 36, MDA Corridor, Taiser Town, Scheme No.45, LERP, which is an amenity plot reserved for technical institute and since 2007 the said plot is being used for the said purpose and a number of children residing in the vicinity are given technical education from the said Institute/Trust. In this regard, a BOT Agreement (**the Agreement**) dated 17.11.2006 was executed between Petitioner and Respondent No.1-LERP (Lyari Expressway Resettlement Project). This Agreement, *inter alia*, is a for period of 30 years, mutually extendable for further period of 30 years [as per Clause (1) (V)]. As per the Site plan appended with this Agreement, on the Western side of the subject land, a Park is shown.

8. The record further reveals that some illegal construction was carried out by some encroachers adjacent to the plot /park. It is beyond comprehension that why no action has been taken by the official respondents against those persons who have started raising illegal construction on the said park, though restraining orders in this behalf have been passed by this Court. In the Comments though it has been averred by the official respondents that no construction is being carried out on the said plot however the photographs attached by the Nazir through his Report dated 26.05.2015 clearly reveals that though at the time of inspection no construction was going on the said plot, but some construction was found at the site.

9. The main contesting Respondent No.1 (*LERP*) while admitting in its Comments that the land was an amenity Plot, but subsequently in the 'Layout Plan' of the area, the same was converted into residential for the purposes of "resettlement of affectees of the Lyari Expressway Resettlement Project". The prime factor which is to be considered in the instant petition is whether the said plot, earmarked as park, in above site plan could be used for residential or commercial purposes?

10. It may be noted that in view of the express statutory Bar, *inter alia*, as provided in Regulation 18-4.1 of the Karachi Building and Town Planning Regulations, 2002, a land reserved for amenity purpose cannot be converted and utilized for any other purpose. In this regard, a reported Judgment in the case of *Mansoor Sharif Hamid vs. Shafique Rehman-2015 SCMR 1172* handed down by Hon'ble

Supreme Court, cited by the learned counsel for Petitioner is relevant. *Secondly*, on the other hand, Respondents and particularly Respondent No.1 has not shown any statutory provision, in support of their arguments that whether a land reserved for Park can be utilized for residential purposes to compensate the alleged affectees. We are sanguine that the answer to the above question would be in an emphatic “No”. An amenity plot meant exclusively for park could neither be converted into residential nor commercial property nor could be used for any other purpose, even if it is presumed that a provisional master and layout plan has been prepared and the final master and layout plan is yet to be finalized.

11. Since in the instant matter it has come on the record that some illegal construction took place on the said property hence the official respondents are directed to restore the plot to its original position i.e. to a park within a period of one month's time from today and furnish a report in this behalf to this Court through MIT-II. It would not be out of place to mention that if the government officials want to change the nature of the amenity purpose i.e. from park to Mosque, Imambargah or hospital that could only be done after fulfilling the legal and codal formalities provided in this behalf under the relevant rules and regulations, but, as stated above, the property under question could neither be allowed nor could be used for residential or commercial purposes. Respondents shall ensure that in the meantime concrete steps should be taken for development of a Park for the betterment of residents of vicinity / locality. With these directions the instant

petition stands disposed of along with all the listed and pending applications.

JUDGE

JUDGE

Karachi:

Dated: .10.2021.