

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 2316 of 2021

Order with signature of Judge(s)

1. For orders on CMA No.17039/2021
2. For orders on CMA No.17040/2021

22.10.2021

Khawaja Shamsul Islam, Advocate for the plaintiffs
Syed Zaeem, Advocate for defendant No.3
Mr. Ashraf Ali Butt, Advocate for defendant Nos.5, 15 and 33
Mr. Muhammad Imran, Director, Sindh Environmental Protection
Agency

As per Bailiff report notices have been returned served on defendant Nos.2, 3, 6 to 10, 14, 15, 16, 17, 18, 19, 21, 29, 34 to 38, 36. For un-served defendants, notices be repeated on them through first three modes for the next date of hearing.

1&2. Learned counsel for the plaintiffs submits that the plaintiffs are mostly residents of the Defence Housing Authority and have come to this Court under Whistleblower Protection and Vigilance Commission Ordinance, 2019 against a number of defendants, private as well as Government officials, to bring forward illegalities committed by these defendants in reclaiming seashore lands and use of the same and other public lands for gainful purposes in violation of the law as well as the Constitution of the Islamic Republic of Pakistan which acts must be halted immediately. Counsel has placed reliance on various publications, of which one is available at page 157 where in a matter, defendant No.2 (Defence Housing Authority) while facing an inquiry before NAB authorities, has been exposed as under:-

“NAB officials said that DHA was put to notice that not a single drop of untreated sewerage water should be drained into sea by restaurants on Sea view site.....”

They also stated that DHA had occupied 117 acres of land in Phase VIII illegally and it had reclaimed land over 300 acres.”

Learned counsel has also drawn Court's attention to Annexure A/22 (page 371) where KPT (defendant No.9) allegedly leased out an area of 881 acres of KPT land in the year 2007 at the throwaway prices of Rs.2.50 per square yards to the defendant No.2, which land as evident from first Recital of the said document was already in the possession of defendant No.2 as an occupant. Very obscene methodology and unfair practice, per learned counsel, is evident, whilst patent illegality is abhorrently floating at the face of that document.

He has also drawn Court's attention to a study made by Marvi Mazhar/Anushka Maqbool/Harmain Ahmer, published on 23 Aug 2020 titled "*Stealing the Sea (Samandar ki Chori)*" by Asif Farrukhi, where serious apprehensions have been shown against defendant No.2's reclamation of land in violation of Article 172(2) of the Constitution as well as without considering the ecological, social and environmental impact of such reclamation to the habitants, wild life, sea grass plants including coral reef and additional turbidity to the beach water. "Economic valuation of the Mangrove Ecosystem along the Karachi" study is also available on page 249. Attention of the Court is also drawn to newspaper report of daily Jang dated 08.04.2015 (available at page 361), where on account of illegal allotment/lease of land admeasuring 1,616 acres to the defendant No.2, legal action was instituted against two Sub-Registrars. Counsel next contends that no Environmental Impact Analysis of these unwarranted reclamation and urbanization initiatives has been made, which contention was affirmed by the officer present from Sindh Environmental Protection Agency in the Court. Also per learned counsel, on account of such a massive reclaiming exercise, serious danger to Karachi Ports is in the offing where underground sand is tilting towards the port, reducing water's depth requiring continuous dredging as no study on suspended sediments affects has ever been undertaken by defendant Nos.2, 7 and 9, which are in collusion with each other in this

“Grab as much as possible land” initiative. It is common knowledge that reclamation causes significant change in wave patterns, which in turn can alter the change in direction and magnitude along the coast resulting transportation of sediments, which usually leads to either massive erosion of shoreline at certain locations and could also cause siltation or deposition. If the reclamation site is near a marine reserve or marine habitat, the natural flow of sand transport combined with excess sand from the reclamation always shows adverse impacts on marine life, which may totally destroy habitats if these are in the close vicinity. Any development along the coast, particularly reclaimed land is always subject to inundation from sea level rise due to climate change. Sea level rise is ongoing for global warming and is to be kept as a critical design factor in any coastal development, which study is missing in the case at hand. Reclamation if done near the coastal lagoons, studies show can block the inlets between lagoons and ocean. This usually leads to increased flooding of urban areas. In addition, this results in lack or reduction of tidal flushing from the ocean; and that’s why serious and sober coastal studies are always required examining long term and short term wave studies and wave modelling; hydrodynamic and sediment transport modeling; design of reclamation based on design waves, currents, sea levels from numerical models; geotechnical studies; ecological studies and environmental impact studies for any such endeavours, none of which has been performed by the defendant No.2, allegedly.

Learned counsel states that the Hon’ble Supreme Court in a number of cases has restricted defendant No.2 from using public lands for commercial purposes and passed strict orders. Reference was made towards use of land at Korangi Road by the defendant No.2 for Shadi functions. Reliance is placed on the judgments of the Hon’ble Supreme Court rendered in the cases reported as 2010 SCMR 885 (*Re: Suo Motu*

Case No. 10 of 2009, complaint regarding establishment of Makro-Habib Store on playground), 2018 SCMR 76 (Mst. Yawar Azhar Waheed (deceased) through LRs. v. Khalid Hussain and others), 2020 SCMR 513 (Naimatullah Khan Advocate and others v. Federation of Pakistan) and PLD 2016 SC 808 (Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others).

Contentions raised by the learned counsel merit serious consideration as the danger posed by un-educated land reclamation without any scientific, oceanographic sediment and subsidence studies or other studies listed in the earlier part of this order is utterly irreversible. It is a well-known fact that even in developed countries despite having well thought of reclamation measures, more than 50% of coastal wetlands have been lost. Adverse impact of land reclamation on mudflats, mangroves, coral reef and sea grass can never be ruled out even in the presence of best practices having been adopted. Effects of global warming are already evident in the country and when the world is moving towards “Net-Zero” regime, haphazard and un-necessary land reclamation when a large mass of un-used land still exists, one questioning such activities, will always raise eyebrows.

In the given circumstances, in the first instance Official Assignee is appointed at the cost of Rs.100,000/- payable by the plaintiffs to inspect and furnish a detailed report with photographs and maps of the reclaimed lands by defendant No.2 and details of commercial places of defendant Nos.13 to 34 with regards their title, occupation and land-use within fifteen days while associating Karachi Urban Lab (www.karachiurbanlab.com) or any other similar institutions in this pursuit payable with an added fee of Rs.75,000/-. Assistance of the National Institute of Oceanography Pakistan (www.niopk.gov.pk) may also be sought.

However till the next date of hearing, the defendants are restrained from reclaiming any further land from any shores existing in the territorial jurisdiction of this Court, or granting any such land to anyone, or creating any third party interest on these lands or properties built thereon, or changing such lands' use, and the official defendants to ensure that lands and premises earlier sanctioned to them as public spaces, or for the purpose of parking or facilitating the public at large including parks and amenities should not be used for any commercial or gainful purposes, as well as for holding of any functions, including marriage or social gathering functions, generating any sort of revenue for the defendants, till the next date of hearing.

To come up on 16.11.2021.

JUDGE

Barkat Ali, PA