

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-5539 of 2017

Mst. Aysha Begum ...Vs... Province of Sindh and others

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

BEFORE: Justice Irfan Saadat Khan,
Justice Muhammad Faisal Kamal Alam

Petitioner: : through M/s. Badar Alam and
Kashif Badar, Advocates.

Respondent Nos.1, 8,
16 and 17 : through Mr. Mehran Khan, Assistant
Advocate General Sindh.

Respondent
Nos.2to7 and 14 : through Mr. Mubarak Ali Shah,
Advocate.

Respondent No.9 : through Ms. Riffat Bano, Advocate.

Respondents No.10 to 13 : through M/s. Zia ul Haq Makhdoom,
Muhammad Azhar Mahmood
and Abdullah Nizamani,
advocates.

Respondent No.15 : None present.

Dates of hearing : 20.09.2021, 07.10.2021 and 14.10.2021

JUDGEMENT

Irfan Saadat Khan,J. The instant petition has been filed with the prayer for restoration of the possession of a residential plot bearing No.B-210 measuring 400 sq. yds, Block-3, Scheme No.36, Gulistan-e-Jauher Karachi. It is the contention of the petitioner that the said plot was allotted to her late husband namely M. Omer Arabi, through computer ballot held by KDA in April 1983, by the allotment order No.0743/L&E/N8/473, dated 05.09.1984 and after the demise of her husband on 10.02.1986 the said plot was transferred in her name, vide Mutation Order No.KDA/L&E/NS/87/15 dated 05.01.1987. As per the petitioner

due to the illegal acts of the Respondents No.2 to 7 her plot was renumbered as B-209/1 and thereafter allotted to other persons. The petitioner, by way of filing the instant petition has prayed for issuance / directions by this Court that the action of the Respondents No.2 to 7 (hereinafter referred to as the KDA) may be declared as illegal, without legal & lawful authority, without jurisdiction, having no legal effect, to issue directions for conducting enquiry against the KDA officials for their illegal act, issue directions to the KDA to remove all the encroachments made upon the plot owned by the petitioner, to restrain Respondents No.9 to 13 from claiming ownership of the plot to raise any construction thereupon, sell, dispose of and to create any third party interest on the said plot.

2. Briefly stated the facts of the case are that a plot numbered B-210, was originally allotted by way of computer ballot to one M. Omer Arabi son of Ismail Arabi (now deceased; husband of the present petitioner) in the year 1983 vide Allotment Order dated 05.9.1984. M. Omer Arabi expired on 10.2.1986 and thereafter the above referred plot was mutated, by way of inheritance by the KDA, vide Mutation Order No.KDA/L&E/NS/87/15 dated 05.01.1987, in favour of the petitioner. Thereafter the KDA vide letter No.KDA/L&E/NS/89/216 dated 14.2.1989 confirmed full payment of the plot in petitioner's favour and thereafter issued a certificate bearing No. KDA/L&E/NS/89/217 dated 14.2.1989 confirming that the plot was originally allotted to M. Omer Arabi and was then transferred in the name of present petitioner. The petitioner applied for handing over possession of the plot to her. The KDA then prepared Site Plan on 21.9.1994, which shows the

boundary and description of the said Plot. Thereafter other necessary legal requirements, for example, issuance of Possession Order dated 22.9.1994 and demarcation order dated 15.10.1994 were made by the KDA authorities in favour of the petitioner. It was also confirmed by the KDA that the petitioner has taken over the possession of the plot. Since the petitioner did not have sufficient funds to raise construction upon the said plot and as she remained busy in looking after her children, after the death of her husband, hence she could not visit and look after her plot for quite some time. The petitioner in 2017 visited her plot and found a boundary wall on the plot. When she inquired about it, she came to know that her plot has been renumbered as Plot No.B-209/1, upon which construction was going on. The petitioner then made a number of complaints to the government officials, including KDA, that how construction was being raised on her property and as to how her property has been renumbered as Plot No.B-209/1 by the KDA authorities/officials. She also made requests to the Respondent/department to remove the encroachers from her plot (A number of documents regarding her complaints are available on the record). It may be noted that when the petitioner approached the KDA officials, she was informed since some encroachments were made on her plot hence the whole lane, on which petitioner's plot was located, was renumbered, rearranged and the plots on the lane were marked as Plots No.B-209, B-209/1 & 211. The KDA officials also informed the petitioner that the Plot No.B-209/1 has been allotted to some five persons in their joint names (present respondents No.9 to 13). The petitioner was not only astonished but was also surprised as to how her plot bearing No.B-210 has been marked, reallocated and renumbered as Plot No.B-209/1. The

petitioner then objected to the said reallocation, renumbering done by the KDA behind her back. The KDA officials then offered an alternate plot to her to which she did not agree and then, when she was left with no option, filed the instant petition.

3. Notices thereafter were issued to the respondents, while vide order dated 12.9.2017 passed by this Court the respondents No.9 to 13 were restrained from raising any construction on the said plot.

4. Mr. Badar Alam, Advocate has appeared on behalf of the petitioner and submitted as under:-

5. He stated that the Plot bearing No.B-210 originally belonged to the late husband of the present petitioner. He stated that the said plot was allotted by the KDA through a computer ballot held in 1983 in favour of the late M. Omer Arabi (husband of the petitioner). He stated that the husband of the petitioner expired on 10.2.1986 and thereafter plot was transferred, by way of inheritance, in the name of the petitioner vide possession order dated 22.9.1994 and acknowledgment of the possession order dated 15.10.1994. He stated that since after the demise of the husband of the petitioner the petitioner had to look after her children she could not visit the plot for some time. However, when in the year 2017 she went to the site, she was astonished that construction was going on her plot. However when she enquired from the people engaged in construction who informed her that the plot belongs to one Manzar Masood and others. She thereafter contacted Manzar Masood, who informed her that this is his plot bearing No.B-209/1 upon which he is raising construction.

Thereafter dispute arose between the petitioner and the said persons with regard to the ownership / possession of the plot. Thereafter the petitioner moved a number of complaints / representations to the government officials including the concerned SHO but when the petitioner realized that it would be a futile exercise then the instant petition was filed and a restraining order was obtained.

6. Mr. Alam, further stated that at no point of time KDA officials have denied that the petitioner is not the owner of the plot No.B-210 but in order to cover up their illegal act have stated that Plots No.209/1 and B-210 are two different plots. According to the counsel it is in fact the plot No.B-210 which has illegally been termed and marked as Plot No.B-209/1 and thereafter initially allotted to one Mr. Markhani in an illegal manner. He stated that since the very allotment of the plot of the petitioner by rearranging / renumbering was illegal hence all the subsequent events with regard to the sale of the plot No.B-209/1 by Mr. Markhani or the subsequent purchasers was illegal. According to him even if it is assumed that the Respondents No.9 to 13 have purchased the plot bearing No.B-209/1, after fulfilling the legal and codal formalities, but since the very rearranging / renumbering of the plot of the petitioner bearing No.B-210 was illegal hence the entire chain of events through which the Plot No.B-209/1 was allotted to Mr. Markhani and then sold out to other persons was illegal and has to be declared as a void or sham transaction by the KDA officials done with the connivance of Mr. Markhani, or on the instructions of their superiors with malafide intention. According to him the KDA officials had no authority / jurisdiction to allot the

plot belonging to the petitioner bearing No.B-210 by rearranging / renumbering it as Plot No.B-209/1. He therefore vehemently stated that this action of the KDA officials may be declared as null and void.

7. Learned counsel next invited our attention to various letters issued by the KDA from time to time and stated that from all these letters it is evident that a serious prejudice has been caused to the petitioner by the illegal action of the KDA authorities by rearranging / renumbering the whole lane and thereafter allotting the plot belonging to the petitioner to Mr. Markhani, on whatever reason. He stated that the petitioner's claim is that possession of her plot bearing No.B-210 may be handed over to her as she has proved that she is the owner of the said plot which has illegally been allotted by terming it as Plot No.B-209/1 to others.

8. The learned counsel next stated that the offer of the KDA with regard to alternate plot appears to be a mockery with the petitioner as why should the petitioner accept alternate plot when she is the owner of plot No.B-210. He stated that the offer of alternate plot, if any, may be given to the Respondents No.9 to 13 and heavy cost may be imposed upon the KDA officials in this regard. He stated that since the respondents have already filed a Suit bearing No.1757/2017 against the KDA officials hence they may be directed to adopt the legal procedure as available to them under the law but the possession of the plot belonging to the petitioner has to be given to her.

9. He next invited our attention to the counter affidavit filed by the KDA officials, which according to him supports his view rather

than that of the Respondents No.9 to 13. He also invited our attention to the comprehensive Inquiry Report of the KDA officials which according to him also supports him. In support of his above contention the learned counsel has placed reliance upon the decision given in the case of *Mustafa Lakhani ..Vs.. Pakistan ..Vs.. Pakistan Defence Officers Housing Authority, Karachi* (2008 SCMR 611), wherein it was held by the Hon'ble Supreme Court that if a lease was illegal the same would not have any legal effect and create a vested right. According to him since the very allocation of the plot bearing No.B-209/1 to Mr. Markhani was illegal hence even if the Respondents No.9 to 13 have purchased the plot after fulfilling the legal and codal formalities they cannot claim ownership rights on the plot No.B-210, which belongs to the petitioner and the petitioner is entitled to get the possession of the said plot in accordance with law. The learned counsel stated that why should the petitioner suffer on behalf of illegal acts done by the KDA officials and, as stated above, if the respondents have any grievance they should agitate their matter against the KDA officials in accordance with law. The learned counsel next relied upon on the decision given in the case of *Farkhanda Jabeen, Lab. Assistant, Govt. High School Thathi Kasguma, District Bhimber and 94 others ..Vs.. Azad Government of the State of Azad Jammu and Kashmir, through its Chief Secretary having its office at new Secretariat, Muzaffarabad and 57 others* (2016 PSC 120) that "illegal orders do not create any vested right". Learned counsel then placed reliance on the decision given in the case of *Senate through Chairman ..Vs.. Shahiq Ahmed Khan* (2016 SCMR 460) in support of his argument that illegal notifications / orders are not enforceable under the law. Learned counsel next placed reliance on the

decision given in the case of *Tahir Humayun and others ..Vs.. High Court of Balochistan through Registrar and others* (PLD 2016 Balochistan 56) that illegal acts cannot become legal due to efflux of time and in such cases neither estoppel nor limitation would apply. He next relied on the decision given in the case of *Mst. Ummatullah through Attorney ..Vs.. Province of Sindh through Secretary Ministry of Housing and Town Planning, Karachi and 6 others* (PLD 2010 Karachi 236), that if something is not permissible directly it cannot be done indirectly. He in the end stated that a writ of mandamus may be issued in favour of the petitioner as her fundamental rights, as enshrined under Articles 4, 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973, have been violated and this petition may be allowed as prayed.

10. Mr. Zia-ul-Haq Makhdoom, Advocate has appeared on behalf of Respondents No.10 to 13 and submitted that the Respondents are the owners of the plot bearing No.B-209/1, as before purchasing the same, they have fulfilled all the legal requirements and have taken all reasonable care and caution required for a prudent purchaser in this regard. He stated that before purchasing the plot due legal formalities, which included publication in newspapers and obtaining / getting verification from KDA authorities and other relevant and concerned departments, were fulfilled. He submitted that the KDA has endorsed that the documents, on the basis of which the plot No.B-209/1 was purchased by the said respondents, were genuine and have also endorsed that the transaction of purchase of the plot was in accordance with law. He further stated that the Respondents are the fifth owners of the plot, who have purchased the same after

verifying the record from the KDA authorities and therefore cannot be termed to be either usurpers or the persons who have purchased the plot without legal and lawful justification. The learned counsel then pointed out towards the chain through which the respondents have purchased the plot No.B-209/1. According to the learned counsel the plot No.B-209/1 originally belonged to one Shamsuddin Markhani (hereinbefore and after referred to as Mr. Markhani) from whom the plot was purchased by one Mst. Almana Fasih, from whom the plot was purchased by one Ch. Khalid Pervez Gondil, from whom the plot was purchased by one Muhammad Aslam Qureshi and others, and from Mr. Qureshi the plot was purchased by the present Respondents No.9 to 13. He stated that all the above referred purchasers have purchased the plot after fulfilling the legal and codal formalities and hence in his view the petitioner has no locus standi to claim possession / ownership of the plot No.B-209/1. According to him the petitioner may be allotted an alternative plot, as duly endorsed and confirmed by the KDA authorities, but under no circumstances the petitioner can be given the possession of the plot, owned by the Respondents.

11. Mr. Makhdoom, further submitted that at no point of time the respondents have purchased the plot bearing No.B-210, as the respondents claim ownership of the plot bearing No.B-209/1. He stated that in his view these are two different plots and has invited our attention to the site/master plans available at pages 141, 151, 213, 555, 589 to show that the plots No.B-209/1 and B-210 are two different plots. He stated that even for arguments sake, if it is assumed that the Plots No.B-209/1 and B-210 are one of the same

plots, since the petitioner has not come forward to claim possession of the plot in a timely manner hence the petitioner is only entitled for an alternative plot, as suggested by the KDA authorities.

12. Mr. Makhdoom next submitted that the instant petition is also hit by latches as the deceased husband of the petitioner was allotted the plot in the year 1984 and after the death of the husband of the petitioner the plot was transferred in her name in the year 1987, whereas it was only as late as in the year 2017 when the petitioner woke up from a slumber and has started making efforts for possession of the plot by giving applications to different government departments and then has filed this petition, which in his view is badly hit by latches. Learned counsel in support of his contention has placed reliance on the decision given in the cases of *Syed Asif Majeed and 5 others ..Vs.. A.D.C.(C)/asc(L), Lahore and 15 others* (2000 SCMR 998) and *Muhammad Din ..Vs.. Abdul Ghani and another* (2012 SCMR 1004).

13. The learned counsel next submitted that the utilities bills, PT-1 Form etc. are in favour of the Respondents, hence provision of Sections 42, 54 and 55 of the Specific Relief Act, are fully attracted in the instant matter, therefore, the Respondents are to be considered as the bonafide owners of the plot. The learned counsel next submitted that the Respondents are the ostensible owners of the plot No.B-209/1 and the petitioner may be directed to approach the KDA for allotment of an alternate plot, if any, but the petitioner cannot claim ownership of the Plot No.B-209/1 which is owned by the respondents No.9 to 13. The learned counsel in this

regard has placed reliance on the decision given in the case of *Inayatullah Khan and others ..Vs.. Shabir Ahmed Khan* (2021 SCMR 686).

14. The learned counsel next submitted that the instant petition is not maintainable as the same involves disputed questions of law and facts hence the petitioner may be directed to approach Civil Court in this regard as according to him if the petitioner is having documents in her favour with regard to the ownership of the plot bearing Plot No.B-210, the respondents also possess proper legal authenticated documents in respect of the plot bearing Plot No.B-209/1 and if there is some factual dispute the same could only be resolved in a Civil suit. He stated that the respondents No.10 to 13 have already filed a suit bearing No.1757 of 2017 against the petitioner and the KDA for possession, in which vide order dated 13.7.2017 the parties have been directed to maintain status quo. In support of his contention the learned counsel has placed reliance on the decision given in the case of *Ali Gohar ..Vs.. Province of Sindh and others* (2018 CLC 1999) (comprising of a bench in which one of us namely Irfan Saadat Khan.J., was a member). He also relied upon the decision given in the case of *M/s.SF Engineering Services through Proprietor ..Vs.. Federation of Pakistan through Secretary, Water and Power, Islamabad and 4 others* (PLD 2014 Sindh 378). He in the end stated that in view of the facts and the case law, the instant petition may be dismissed.

15. Ms. Riffat Bano, Advocate has appeared on behalf of Respondent No.9 and has adopted the arguments of Mr. Zia-ul-Haq Makhdoom, Advocate. Mr. Mehran Khan, AAG has appeared on behalf of Respondents No.1, 8, 16 and 17 and has also adopted

the arguments of Mr. Zia-ul-Haq Makhdoom, Advocate. Nobody has appeared on behalf of Respondent No.15 SBCA on the dates of hearing. Mr. Mubarak Ali Shah, Advocate has appeared on behalf of Respondents No.2 to 7 and 14 the KDA and has also adopted the arguments of Mr. Zia-ul-Haq Makhdoom, Advocate and has further stated that due to the china cutting and encroachments made in area, the plot of the petitioner was rearranged and renumbered and then the plot No.B-210 was assigned Plot No.B-209/1 after fulfilling the legal formalities. He stated that the claim of the Respondents No.9 to 13 with regard to the ownership of the plot No.B-209/1 is correct. He however, stated that since a prejudice has been caused to the petitioner due to rearrangement and renumbering of the entire lane, the department is ready to offer an alternate plot of equal size to the petitioner.

16. Mr. Alam, learned counsel for the petitioner in his rebuttal stated that the principle of laches and disputed questions of fact and having utilities bills and PT-I Form in favour of the Respondents would not be of any help to the Respondents, as according to him when the petitioner visited the site in 2017 she came to know about the construction is being raised on her plot and thereafter in the same year, that is 2017, she has filed the instant petition, hence the principle of laches is not applicable in the instant matter. Moreover since the cause of action is a continuous one hence petition is not hit by laches. He next stated that this is not a case of disputed questions of fact as whatever has been argued by him is based upon the undisputed documents available on the record, veracity of which has not been questioned or challenged by the Respondents, therefore, in his view this

argument is not available to the Respondents. He further stated that having PT-1 form and utility bills in one's name is also not available to the Respondents as it is settled principle of law that the PT-1 form and the utilities bills do not confer ownership upon a person. He further stated that Plot No.B-209/1 is a fictitious plot, which has been overlapped /superimposed upon Plot No.B-210. According to the learned counsel since in the Inquiry Report it has been admitted by the KDA officials that the plot No.B-209/1 has illegally been fitted in the approved layout plan in place of regular plots, the same is required to be cancelled. It is also mentioned in the report that the first right of allotment is of the allottees who acquired the plots by way of computer balloting and not that of Minister Quota, if any. Hence according to him for all practical purposes it is to be admitted that the Plot No.B-210, belonging to the petitioner, has illegally been rearranged /renumbered as Plot No.B-209/1 and a serious prejudice has been caused to the petitioner by the KDA officials which has to be redressed by allowing the present petition. He next submitted that the provisions of Section 42, 54 and 55 of the Specific Relief Act have no bearing whatsoever upon the instant matter.

17. He next stated that if some goods are stolen and subsequently recovered it cannot be assumed that they would become the property of the person from whom these goods are recovered. He stated that since Plot No.B-209/1 is a fictitious plot, hence it is to be considered as if the Respondents No.9 to 13 are occupying the stolen property of the petitioner and hence are liable to return the same to her in accordance with law. He finally stated that in view of the above facts, circumstances, submissions and

the decisions relied upon by him the instant petition may be allowed with cost by giving specific directions to the KDA officials to cancel all the documents / allotment orders etc. pertaining to Plot No.B-209/1 and the respondents No.9 to 13 may be directed to hand over possession of the plot to the petitioner and to direct the SBCA authorities to cancel the building plan etc. issued by them in respect of the Plot No.B-209/1.

18. We have heard all the learned counsel at considerable length and have perused the record and the decisions relied upon by them.

19. In order to ascertain present matter in its entirety, we deem it appropriate to discuss the facts of the case in some detail.

20. The controversy mainly revolves around the following issue:

Whether the Plots No.B-209/1 and B-210 are separate and distinct plots, owned by the petitioner and the private respondents or these plots are one and the same?

21. In the above paragraphs detailed discussion with regard to the ownership of the plot bearing No.B-210, ownership of which has been claimed by the petitioner, has been discussed. We will now dilate upon the ownership of plot bearing No.B-209/1.

22. Record reveals that one Mr. Markhani was allotted Plot No.B-191 in the year 1990 on Minister's Quota, which subsequently was found to be encroached upon due to china cutting, as stated by the Respondent KDA. The KDA authorities then redesigned / renumbered the whole lane of plots starting from No.B-206 and ending at B-219 and thereafter carved out an entirely new Plot No.B-209/1 upon the instructions of their high-ups. How the said

plot was allotted by a Minister to Mr. Markhani in the year 1990 has remained an unsolved mystery. The KDA officials then prepared the documents of the plot bearing No.B-209/1 in favour of Mr. Markhani in the year 1993, as an alternate plot to Plot B-191.

23. In the survey plan available at page-81 of the file, duly signed by Executives of the Respondent KDA, plots No.B-209, B-209/1 and B-211 have been shown whereas in the Site plan, available at page 43, of the file, shows the arrangement of the plots as B-209, B-210 and B-211. In the map also [available at page 49 of the file] plots No.B-209, B-210 and 211 can be seen. A clear distinction could be noted in both these documents furnished by the KDA, however it is strange to note that in the map survey furnished by the KDA somehow or the other the Plot No.B-210 had vanished without any plausible justification. After the allotment of the plot bearing No.B-209/1 to Mr. Markhani, in the year 1993, the said person sold out the same to one Mst. Almana Fasih in the year 2008, who sold out the same to one Ch. Khalid Pervez Gondal in the year 2009, who sold out the same to one Muhammad Aslam Qureshi and others in the year 2013, who then sold out the same to the Respondents No.9 to 13 in the year 2017. The manner in which the Respondents No.9 to 13 have purchased the plot seems that legal and codal formalities, as required under the law, were prima facie fulfilled but the questions are:

- i. Whether the chain through which the plot bearing No.B-209/1 was acquired / purchased by several persons and subsequently sold out by them was in accordance with law?*
- ii. Whether the KDA officials have acted in a bonafide manner by rearranging, renumbering the whole lane especially plot bearing No.B-210 as B-209/1?*

24. It may be noted that the record reveals divergent facts as in some of the survey plans / master plans and the reports furnished by the KDA they have termed the plots bearing No.B-209/1 and B-210 as two different plots (the number of those pages is given in above paragraph) but from the perusal of the documents, as available on pages-81, 669 and 703, **the Plot No.B-210 has been rearranged and renumbered as Plot No.B-209/1.** The record further reveals that when the petitioner made complaints to various quarters, the KDA authorities, in order to cover-up their illegal action, offered the Petitioner an alternate plot of equal size but the prime question involving in the instant petition as to how firstly they maneuvered and managed the matter by disclosing that Plots No.B-209/1 and B-210 are two different plots and thereafter came up with the submission that due to china cutting Plot No.B-209/1 has been carved out on the lane of the plots starting from Plot No.B-206 and ending at Plot No.B-219 by mentioning the plots as Plots as B-209, B-209/1 and B-211 onwards but where the plot No.B-210 had vanished had remained unanswered by the KDA officials except by saying that due to china cutting the whole lane was rearranged and redesigned and that they will give an alternate plot of equal size to the petitioner. No doubt KDA has the authority to rearrange and redesign the plots in accordance with law but the question is while doing so whether they could allot a plot belonging to some person to another person. We are sanguine that the answer to this question would be in Emphatic No. Even otherwise, the numbering of plots is ex-facie illogical, as the entire row of plots is numbered in sequence, except that of the

Petitioner, that is, plot in question-210; undisputedly this speaks of dishonesty and illegality on the part of KDA officials.

25. Record shows that a number of letters were written to the KDA officials by either the concerned SHO or other departmental agencies to clarify this aspect but on each occasion dubious and contradictory letters were issued by the KDA officials. As in a letter dated 25.7.2017 available at page-71 of the file, it is mentioned that Plot B-210 is in the name of the petitioner whereas in the letter dated 27.7.2017 available at page 79 of the file it is mentioned that due to illegal construction on the row the plot B-210 is not available at site.

26. It may further be noted that at no point of time the KDA officials have denied that the Petitioner is not the owner of the Plot No.B-210. They, however in order to cover up the matter, have submitted that since the matter has become highly disputed hence in order to resolve the same they are ready to give an alternate plot to the petitioner of equal size. In the Compliance Report dated 07.3.2019 filed by the Land Management of KDA it was categorically admitted that the Plot No.B-209/1 was illegally fitted in the approved plan in place of a regular plot and the same is required to be cancelled. In the said detailed report, prepared by Addl. Director (Scheme. 36), Addl. Director (IND. Sch-16), Addl. Director (Admin) and Director Land Management, KDA, dated 01.4.2019, available at page 697 to 701 of the file, it has been mentioned that the Committee has thoroughly examined the matter by noting that the Plot No.B-191 was allotted to Mr. Markhani upon the directions of some Minister on 08.3.1990. The said plot then subsequently was encroached upon, however,

the KDA officials instead of granting Mr. Markhani a plot in some unallocated area managed to rearrange, renumber the whole lane by re-allocating the Plot No.B-210 as Plot No.B-209/1. It was then the revised layout plan and survey were prepared by the KDA by erasing the plot No.B-210 out from the map. It may be noted that a report was called by the Committee from the then KDA officials but no satisfactory reply was furnished to the said Committee, rather divergent reports about the two plots, that is, B-209/1 and B-210 were furnished. In order to appreciate the controversy even demarcation and physical measurements were also carried out by the Committee and thereafter it was affirmed by the Committee that Plot No.B-210 did not exist on ground and plot No.B-209/1 was fitted upon Plot No.B-210 and that creation of the Plot No.B-209/1 was illegal. The Committee finally opined as under:-

“The Committee is of the view that the Plot No.B-209/1, super imposed actually is plot No.B-210 which as create with malafide intention.

(i) Plot No.B-209/1, is allotted through Minister Quota whereas Plot No.B-210, is allotted through public ballot and the first right is of balloted plot not Minister Quota.

(ii) The master Plan department may withdraw creation of plot No.B-209/1 and B-229/1 by restoring Plot No.B-210 to its original layout plan.

(iii) The allottees of who converted land use in violation of allotment order their allotment may be cancelled as per terms and conditions of the allotment order, as allotment does not any legal interest to the allottee.

(iv) The encroachment of the plot of ST-8, Block-3, (plot No.A-219/A and R-220/1) may be demolished after giving their hearing to proof their allotment if any.

Submitted in compliance of the Orders of the Honourable Court dated 07.03.2019.”

27. Though objections on the said report of the Committee were filed by the Respondents but the fact with regard to carving out plot No.B-209/1, rearranging, renumbering the same, fitting it upon B-210 and other factual aspects as noted by the Committee, had remained unanswered / unexplained.

28. In view of the afore stated facts, the issuance of PT-1 FORM [for levy of property tax] and payment of the utilities bills in respect of the Plot 209/1, is of no consequence. The case law cited by the learned counsel for private Respondents, in respect of non-maintainability of a constitution petition involving disputed questions of fact and the present Petition suffers from laches, are distinguishable and do not advance the case of private Respondents. Therefore, in our view petition is maintainable and a writ in this regard should be issued in favour of the Petitioner.

29. However, stance of private Respondents as argued during proceeding by referring to record of the case, which shows that Plot No.209/1, changed different hands, the recent decision of Hon'ble Supreme Court handed down in ***Inayatullah Khan and others vs. Shabbir Ahmed Khan-2021 SCMR-686, (Inayatullah case)*** is carefully considered, in which the Hon'ble Supreme Court has exhaustively discussed this '***rule of bona fide purchaser for value without notice***', from the perspective of Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act.

30. The present record, appended with the Counter-Affidavit of private Respondents show that Plot No.209/1 was mutated in the name of Mr. Markhani, then in the name

Mrs. Ilmana Fasih, vide a Transfer / Mutation Order dated 16.10.1995, issued by KDA. At page-393, a Regularization Order is available, dated 07.01.2008, issued by the then City District Government Karachi (**CDGK**) in favour of said Mrs. Ilmana Fasih, stating that though the above Plot No.209/1 was earlier cancelled under the Sindh Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance No.III of 2001, but subsequently as per the Order of the Committee constituted under the said law, above Plot 209/1 has been regularized. Thereafter the said Plot 209/1 was mutated in favour of one Choudhary Khalid Pervaiz Gondal by a Transfer Order dated 20.05.2009, issued by the then CDGK [at page-399 of the Court File], where after, the property-Plot No.209/1 was transferred in favour of Muhammad Aslam Qureshi and others, as reflected from Transfer Order dated 09.4.2013 (at page-407) issued by the then CDGK. Lastly, the plot-209/1 was transferred in the name of present private Respondents through a Transfer Order dated 28.04.2017, available at page-445 of the Court File. It is not refuted that present private Respondents are the fifth purchasers. A Site Inspection was carried out and Nazir's Report dated 11.10.2017 concludes that structure of ground floor is complete with partial plaster and electric wiring, whereas, Intervening walls for first floor were raised without rooftop. The Respondent SBCA in its counter affidavit has stated that the proposed building plan of present private Respondents were under scrutiny but the latter have started construction without final approval, therefore,

construction at the site [plot 209/1] was got stopped by the official Respondents.

31. In the above cited ***Inayatullah case***, brief facts were, that petitioner No.1 himself and on behalf of his sister, sold a piece of land to respondent and thereafter to petitioners No.3, 4 and 5 (of the reported case). Decree for specific performance in favour of respondent was set aside by the Apex Court, ***inter alia***, by applying the above Rule in favour of subsequent purchasers / petitioners No.3, 4 and 5. The crucial facts on which the above rule was applied, is mentioned in paragraph-6 of the cited Judgment, that petitioners No.3, 4 and 5 purchased the land from the ostensible owners, as per the Revenue Record and at the relevant time there was no pending litigation. In the present Petition also, record produced by private Respondents in support of their stance, is mostly the official record; private Respondents after fulfilling requisite formalities, including publishing Public Notice in the Newspaper, entered into a transaction with their predecessors-in-interest in respect of Plot No.209/1. It is held in the above cited ***Inayatullah*** case, that ***bona fide*** purchasers cannot be penalized for any fraud or misrepresentation by their predecessors in title unless ***“they are pari delicto”*** [equally at fault] with their Vendors. The record of present case shows that Plot No.209/1 although illegally created by erasing actual Plot in question-**210**, belonging to Petitioner, but the change of ownership in respect of Plot No.209/1 has spread over many years and undisputedly the said Plot did not change hands in quick successions, which can be seen as ‘undue haste’ in changing ownerships tainted with dishonest intention to defraud the actual owner, for which it can

be held that the entire chain of sale transaction upto private Respondents, is bogus, sham and fraudulent. Illegality, fraud and dishonesty in the present case, cannot be attributed to subsequent purchasers after allotment of the plot to Mr. Markhani. Since the above discussed basic factors are not present in the present case, which if present, would surely have excluded the applicability of above rule of bona fide purchaser for value without notice, hence the latter rule is applicable and supports the stance of private Respondents. Hence, this age-old legal principle of *bona fide* purchaser for value without notice will also help the private Respondents in present Petition; consequently, the rule laid down in the cited case of **Mustafa Lakhani-2008 SCMR 611** [*supra*, relied upon by Petitioner's Advocate] in our view is not applicable.

32. The up-shot of the above discussion is that, Plot number B-209/1 and Plot No.B-210 are one and the same Plots, belonging to the present Petitioner. Plot No. 209/1 which was illegally created by the officials of Respondent KDA, *inter alia*, by grossly misusing their official power and authority and for apparent "extraneous motives". The very action of the KDA officials thus in rearranging, renumbering the whole lane was found to be illegal. If the plot B-191 of Mr. Markhani, allotted under Minister Quota was encroached upon, there was no justification available with the KDA officials to rearrange, re-fix and reallocate, fit in or to devise a method to cause prejudice to the petitioner, who is the owner of the plot bearing No.B-210, by way of marking it as Plot No.B-209/1. The Committee headed by high officials of the KDA itself was of the view that the very action of allocation, renumbering of Plot No.B-210 as Plot No.B-209/1 was illegal and

in fact the plot No.B-209/1 was fitted in Plot No.B-210. The action of the KDA officials in rearranging/renumbering the plot No.B-210 as Plot No.B-209/1, in view of the above, cannot be approved.

33. The instant petition, therefore, under the facts and circumstances is allowed and stands disposed of alongwith all the listed and pending applications, in the above terms. The Respondent KDA is directed to allot and handover peaceful, vacant and physical possession of an alternate plot, having same value and utility to the Petitioner forthwith and shall complete other requisite formalities in this regard.

34. Undisputedly, due to acts and abuse of the authority by the Officials of Respondent-KDA, Petitioner has suffered a lot. This is not the only case but there are numerous cases like this in which blatant illegalities committed on the part of officials have surfaced. It is about time that those officials, who are responsible for such illegalities should be dealt with strictly in accordance with law, as due to their corrupt practice, citizens, like Petitioner, have suffered and are continuously suffering.

35. The Director General KDA therefore will hold an Inquiry and fix the responsibilities on those officials who were involved in committing the above illegalities and fraud due to which a genuine Plot No.210, belonging to Petitioner, was erased out from the approved Layout Plan. It is clarified that all those Officers whether in service or retired, alive or dead, should be mentioned in the Inquiry Report, which will be filed in this Court within a month's time. A cost of Rs.1,00,000/- is also imposed upon the KDA, payable to the petitioner within 15 days' time from the date of

receipt of this Judgement. A compliance report in respect of the directions given above should be furnished by the D.G. KDA to the MIT-II of this Court within a period of one month from the date of receipt of this judgment.

JUDGE

JUDGE

Karachi:
Dated: .11.2021.
Tahseen/PA