

ORDER SHEET
 IN THE HIGH COURT OF SINDH, KARACHI
 C.P. No. D-4770 of 2021

Date	Order with Signature(s) of Judge(s)
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Fresh Case.

1. For order on Misc. No. 19550/2021 (*Exemption Application*).
2. For hearing of main case.

18.11.2021

 Mr. Suhail Hameed, Advocate for petitioner.

Through instant petition, the petitioner seeks declaration to the effect that the act of respondents No. 3 & 4 to cancel the subject plot i.e. Commercial Plot No. ST-38, measuring 836 square yards in Scheme No. 13-A (Kausar Hill Park) Karachi, without any cancellation notice and providing an opportunity of hearing to the petitioner, is in violation of fundamental right of due process of law under Article 10 of the Constitution of Pakistan. The petitioner also seeks direction to respondents No. 1 to 4 to allot an alternate plot in a developed area of approximately same value and size in lieu of the subject plot or to compensate him in accordance with the judgment of Honourable Supreme Court of Pakistan in a similar matter i.e. Civil Appeal No. 1481 of 2007.

It is alleged that in the year 1968, K.D.A. auctioned 43 plots including the subject plot and the petitioner after allotment paid the requisite dues of the K.D.A., which issued possession letter dated 26.08.1968. It is case of the petitioner that K.D.A. Scheme No. 13-A (Kausar Hill Park) Karachi has never been developed by the K.D.A. and when the petitioner approached to K.D.A., he was informed that the said scheme was transferred to K.M.C. and when K.M.C. was approached, he was informed that the K.M.C. did not receive the files of auctioned plots including the subject plot from K.D.A. and finally in 2011 he made complaint before Provincial Ombudsman, Sindh, who vide order dated 30th December, 2014 directed the Administrator K.M.C. to allot him alternate plot in a

developed area approximately of same value and size; however, the said order has not been implemented till today; hence, this petition has been maintained.

Learned counsel for the petitioner contends that no alternate efficacious remedy is available to the petitioner to get the aforementioned order of Provincial Ombudsman implemented; hence, he is compelled to maintain this petition. He also contends that where alternate remedy is not efficacious or speedy or where statutory functionary acts mala-fidely, or in a partial, unjust and oppressive manner, which on the face of it, is patently illegal or without lawful authority, or suffers from such legal infirmity which is patent on the fact of the impugned order/action, then High Court may, inspite of the existence of the alternate remedy, excise jurisdiction under Article 199 of the Constitution and grant relief to the aggrieved party. In support of his contentions, learned counsel has relied upon the case of *Shaikh Atif Zia v. Province of Sindh through Chief Secretary Government of Sindh and 3 others (2018 MLD 181)*.

Heard learned counsel for the petitioner and perused the material available on record.

Though the petitioner has not specifically prayed for the implementation of the order of Provincial Ombudsman dated 30th December, 2014 in the instant petition; however, it is an admitted position that the relief claimed by the petitioner through instant petition was already agitated by him before the Provincial Ombudsman, who adjudicated the same vide aforementioned order. We are not impressed with the arguments of learned counsel for the petitioner that no efficacious remedy is available to the petitioner for getting the order of Provincial Ombudsman implemented, in view of section 11(5) of The Establishment of the Office of Ombudsmen for the Province of Sindh Act, 1991, which provides that “*If the Agency concerned does not comply with the*

recommendations of the Ombudsman or does not give reasons to the satisfaction of the Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided". Section 12 (1) *ibid* provides that *"If there is a "Defiance of Recommendations" by the public servant in any Agency with regard to the implementation of a recommendation given by the Ombudsman, the Ombudsman may refer the matter to the Chief Minister who may, in his discretion, direct the Agency to implement the recommendation and inform the Ombudsman accordingly".* We are; therefore, of the view that the Provincial Ombudsman is duly empowered to get his order implemented under the aforesaid Act and the remedy which is equally efficacious lies before him in terms of Section 11(5) and 12(1) *ibid*.

We are also of the considered view that the instant petition is not maintainable in law as the same has been filed by a stranger, as it appears that the subject plot was allotted to one Syed Muhammad Tauheed (*S. M. Tauheed*) while the instant petition has been filed through one Parvaiz Arshad, claiming to be the Attorney of the petitioner. Copy of the General Power of Attorney (**GPA**) is available as annexure "P" at page 19 of the memo of petition. It appears from the perusal of the said GPA that it has not been executed by the petitioner but by one Muzammil Syed s/o S. M. Tauheed. No authority has been annexed with the memo of petition to establish that executor/principal of the said GPA, namely, Muzammil Syed has an authority to act on behalf of petitioner Syed Muhammad Tauheed and to appoint Parvaiz Arshad as his Attorney.

Moreover, the GPA is though attested by the Attache, Consulate General of Pakistan at Houston (U.S.A.) but the same is not duly charged with duty. Power of Attorney as defined by section 2(21) of the Stamps Act, 1899 is required under section 3 (*ibid*) to be charged with duty of the amount indicated in the Schedule-I. Under Article 27(c) of the Sindh Schedule Stamp-Duty on

Instrument GPA is to be charged with duty of five hundred rupees. Section 35 (*ibid*) imposes an absolute bar against acting upon the instrument not duly stamped. Hence, Parvaiz Arshad has no legal capacity to act on behalf of petitioner Syed Muhammad Tauheed and to file the instant petition.

For the foregoing facts and reasons, this petition being devoid of legal merit is accordingly dismissed in limine, alongwith listed application.

JUDGE

JUDGE

Athar Zai