

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 3902 of 2014

[Mst. Rukhsana Bano and others *versus*
KMC (Karachi Municipal Corporation) and others]

and

C. P. No. D – 5456 of 2016

[Haji Jaffar Khan *versus* Government of Sindh and others]

Present:

Mr. Irfan Saadat Khan, J.

Mr. Muhammad Faisal Kamal Alam, J.

Date of hearing : 06.10.2021.

C. P. No. D – 3902 of 2014

Petitioners : Through M/s. Abdur Razzaq and
Asif Amin, Advocates

Respondents No.1, 2 & 3. : Through Mr. Altaf Ahmed Sahar,
Advocate.

Respondents No.4 to 15 : Through Mr. Meeran Muhammad
Shah, Additional Advocate
General Sindh.

Respondents No.16 and 17 : Nemo.

C. P. No. D – 5456 of 2016

Petitioner : Through Mr. Dildar M.S. Shaikh,
Advocate.

Respondents No.1 to 4 : Through Mr. Meeran Muhammad
Shah, Additional A.G. Sindh.

Respondents No.5 to 13 : Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J:- Due to commonality, both these titled petitions (“**Subject Petitions**”) are decided by this common decision. Subject Petitions contain the following prayers_

C. P. No. D – 3902 of 2014

“That the Petitioners respectfully pray that this Honourable Court be pleased to allow the title petition and:-

- i. Declare that amenity Plots including the subject parking plot located in Block 10, Scheme 36 Gulistan-e-Jauhar Karachi falls within the domain of KMC/KDA and therefore, the Respondents No.5 to 17 have no legal right and jurisdiction to enter into and raise construction thereon.*
- ii. Declare that the Defendants No.3 to 10 or the Chief Minister of Sindh as the case may be has no right, jurisdiction or authority to convert the declared urban scheme announced by KMC/KDA into the rural land under the garb of provisions of Sindh Gothabad (Housing Scheme) Act 1987 and the summary / decision / letter dated 19.07.13 is liable to be cancelled as void.*
- iii. Declare that the provisions of Sindh Gothabad (Housing Scheme) Act 1987 along with Rules 2008 are not applicable on the Suit property as well as on the land of Block 10 Scheme 36, Gulistan-e-Jauhar Karachi. Hence, any decision passed by the Respondents is without jurisdiction and void.*
- iv. Declare the lay out Map, Survey Register, allotments, payment challan, village form / Form II & Form VII issued by the Respondents No.5, 7 to 10 attempted to convert and declare the Block 10 of Scheme 36 into Chishti Nagar Goth are void and of no legal effect.*
- v. Permanently restrain the Respondents their agents, employees, cronies, officers, assignees, attorneys and any person acting for and on their behalf from raising any further construction on the subject amenity plot.*
- vi. Grant Mandatory Injunction directing the Respondents No.1 to 3 and 12 to 15 for immediate demolition / pulling down / removal of the encroachment on the subject amenity plot as well as illegal construction on all public land /*

amenity plots and restore the scheme in terms of Master Plan of Scheme 36.

- vii. *Take strict action against the Respondents No.5, 7 to 10 for directly/indirectly defying the orders passed by the Hon'ble Supreme Court in Suo Moto Case No.06 of 2011 as well as the orders passed by High Court in C. P. No.2003 of 2008.*
- viii. *Pass any other relief which this Honourable Court deem fit and just in the circumstances of the case.*
- ix. *Grant cost of the Petition."*

C. P. No. D – 5456 of 2016

"It is, therefore, prayed that this Hon'ble Court may graciously be pleased: -

- a) *To direct the respondents No.2, 3 & 4 to conduct re-survey of village Chishti Nagar, Scheme No.34, Block-10, Gulistan-e-Johar, Karachi, door to door in presence of petitioner.*
- b) *To direct the respondent No.4 to cancel the challans which have been issued in the name of persons who have been issued the challans illegally and unlawfully and after proper inquiry and verification, the fresh challans be issued in the name of person who is in lawful possession of respective plots.*
- c) *To direct the respondents No.1 to 3 to take strictly legal action with the help of Anti-Encroachment Cell and Area Police against the respondents No.7 to 11 and get remove the construction which has been illegally raised over the amenity plots.*
- d) *Any other relief which this Hon'ble Court grant in the circumstances of the above petitions."*

2. In both petitions, rival claims have been made in respect of Scheme 36 of Gulistan-e-Jauhar. C. P. No. D – 3902 of 2014 ("**Earlier Petition**") is

prior in time, filed by those, who claim to be lawful owners of following properties, situated in Gulistan-e-Jauhar, Karachi_

Petitioner No.1 claims to be a lawful owner of immovable property comprising of Plot Nos.S.B-3, S.B-4, S.B-5 and S.B-6, situated in Block 10, Scheme No.36, Gulistan-e-Jouhar, Karachi, and the Petitioners No.2 to 10 are the residents of a multistorey building, namely, '*Sumaira Tower*' constructed at Plot No.SB-7, Scheme No.36, Block-10, Gulistan-e-Jauhar, Karachi.

3. **C. P. No. D – 5456 of 2016** (“**Subsequent Petition**”), subsequent in time, has been filed by a person claiming to be a Headman and old resident of Village Chishti Nagar, allegedly situated in Scheme-36, Block-10, Gulistan-e-Jauhar, Karachi, claiming relief as already reproduced hereinabove.

4. Haji Jaffar Khan Rind, the Petitioner of Subsequent Petition, is arrayed as Respondent No.16 in the previous petition (c. P. No. D – 3902 of 2014).

5. Mr. Abdul Razzak, Advocate for Petitioner (in C. P. No. D – 3902 of 2014), has argued that the entire area of Scheme-36 was earlier allotted to Karachi Development Authority (“**KDA**”) and Respondent No.2 (Director, Land Management, KDA Wing) is responsible to ensure that genuine allottees, such as Petitioners, are not deprived of their respective properties. Contended that despite passing of different orders in other litigation, Official Respondents have not taken appropriate action to protect the proprietary rights of Petitioners, who are the lawful allottees of their respective plots in Scheme 36. Learned Advocate has also referred to the order passed in another C. P. No. 2003 of 2008 preferred by *inter alia* private Respondents, which was dismissed by this Court; private Respondents and other land grabbers in collusion with Official Respondents have prepared a bogus housing scheme in Block 10, Gulistan-

e-Jauhar by the name of 'Chishti Nagar Goth'-*Subject Village*, by misinterpreting the provisions of Sindh Gothabad (Housing Scheme) Act, 1987; argued, by highlighting the role of Land Utilization Department-Respondent No.7, which earlier issued directions vide a correspondence of 19.07.2013, to Respondent No.9 (*Deputy Commissioner*) for grant of leasehold rights to the illegal occupants/inhabitants of the above Subject Village on an area comprising of 24-14 Acres, which was subsequently withdrawn but again official Respondents of Government of Sindh attempted to favour illegal occupants by issuing a subsequent letter of 01.07.2014.

6. Private Respondent No.16, (Haji Jafar Khan) has filed a Counter Affidavit to the main petition and has controverted the stance of Petitioners, *inter alia*, alleging that the above Subject Village (Goth) has been established on a State land and it has no concern with the KDA land; that under the garb of present petition, builder Mafia wants to usurp the land of Subject Village-Chishti Nagar; since KDA (Respondent No.2) did not pay any price to the Government for the said land, therefore, KDA could not have allotted plots to persons; on the contrary villagers of Chishti Nagar have deposited billions of rupees in favor of Government in order to protect their respective rights and interest. It is stated that land of Chishti Nagar was granted to its genuine inhabitants under the Policy of 2008 (a copy whereof is available in record) and not specifically under the Sindh Gothabad (Housing Scheme) Act, 1987 (stated in paragraph 4 of the Counter Affidavit); averred that it is a collusive proceeding between Petitioners and Respondent KDA; Village Chishti Nagar was sanctioned after completing all the legal requirements and villagers have filed application for regularization of this Village to Senior Member Board of Revenue, Sindh, and in this regard a topographical survey was also done under the supervision of concerned Officials. A reliance is placed on the

above referred letter of 19.07.2013 issued by Respondent No.7 – Secretary, Land Utilization Department, Government of Sindh, to fortify arguments that Village Chishti Nagar is located on an area of 28-14 Acres, in (Naiclass No. 166, Block 10, Deh Safoora, District East Karachi), comprising of 707 residential houses, 103 commercial plots, 50 commercial-cum-residential, and area of amenity 2.57 Acres. Further contended that this Goth is nearly 5 decades old. Respondents sought dismissal of Earlier Petition.

7. Respondents No.1, 2 and 3 (KMC, Director Land Management – KDA and Anti-Encroachment Cell – KMC/KDA, respectively) have filed their common Reply to the Petition, wherein, it is stated that Scheme 36 was announced by Respondent – KDA way back in the year 1978 over a land comprising of 2000 acres, allotted by Respondent No. 7 vide Letter No.LU-II/76-G (Key) – 1/20 dated 28.05.1977. That the development scheme was duly notified under Article 45 of the KDA Order, 1957. In their Parawise Comments, Official Respondents No.2 and 3 have not disputed the claim of the Petitioners (of Earlier Petition) in the Scheme 36 – Gulistan-e-Jauhar Housing Scheme. Further averred that till 1990, no village or Goth was in existence and various plots in this area have been leased out to various persons who have raised construction thereat. With this reply of the said Official Respondents, they have also produced a demarcation plan of Scheme 36, inclusive of notices issued by Officials Respondents, notifying / inviting public objections, to show that requisite formalities were fulfilled.

8. Respondent No.7 (Secretary, Land Utilization Department, Government of Sindh) Parawise Comments are also on record, wherein, the said Respondent has opposed the maintainability of the Earlier Petition. It is alleged that the land in question (of Scheme 36) belongs to the Province of Sindh and Respondent – KMC/KDA are not the owners of the land situated

in the Scheme 36. However, it is admitted that the subject land falls within the urban area of Karachi and is allotted to genuine inhabitants of the village under the Policy 2008 and not specifically under the Sindh Gothabad (Housing Scheme) Act, 1987.

9. The Subsequent Petition has been filed by Haji Jaffer Khan, who is Respondent No.16 in the Earlier Petition (**C. P. No. D – 3902 of 2014**). But in the Subsequent Petition the said Petitioner – Haji Jaffer Khan has not impleaded the Petitioners of Earlier Petition but has arrayed private Respondents No.5 to 13, against whom he has alleged that various plots in the subject Village (Chishti Nagar) have been illegally given to the said private Respondents, in violation of the Land Grant Policy. It is further averred that earlier same Petitioner (Haji Jaffer Khan) also filed a C. P. No. D – 262 of 2014 in this Court, wherein direction was issued to the official Respondents to decide the complaint of Petitioner; also complained that plot reserved for Hospital has been encroached upon by private Respondents No.7 and 8 (of Subsequent Petition) and the one reserved for Park was encroached upon by Respondents No.9 and 10 and that of the School was encroached by Respondent No.11; namely, Noor Mohammad, Bilawal, Ayub Magsi, Hussain Khoso and Nantho Mangi, *respectively*. It is claimed that official Respondents were required to do resurvey of the said village as directed in above C. P. No. D – 262 of 2014, but official Respondents have neither stopped the illegal construction nor done the resurvey, in defiance of the Court orders.

10. Neither Parawise Comments on behalf of Official Respondents, nor Counter-Affidavit by private Respondents, are filed in this Subsequent Petition.

11. Arguments heard and record perused.

12. Order dated 31.01.2014 passed in C. P. No. D – 262 of 2014 (*ibid*) is filed with this Subsequent Petition. Perusal of the said order shows that the above petition filed by Haji Jaffer Khan was disposed of as not pressed, on directions given to Commissioner Karachi to decide the complaint of Petitioner within a period of one month. In the Order dated 07.08.2014 in the above disposed of petition, *inter alia*, a show cause notice was issued to Commissioner Karachi for not deciding the Complaint of Jaffer Khan / Petitioner and direction was issued to Deputy Commissioner (East) to produce the entire record in respect of allotments made in Village Chishti Nagar-**Subject Village**. Order dated 02.09.2014 mentions the fact that the Committee was constituted for carrying out door to door enquiry and to eliminate any double allotments in favour of individuals and Respondent Mukhtiarkar submitted a Report dated 24.10.2014, informing the Court that the survey of the village Chishti Nagar has commenced which would likely to take a month. In the order dated 27.10.2014, Advocate for Respondent – Board of Revenue apprised the Court that the criteria mentioned in the Land Grant Policy 2008, if is made applicable to the above Subject Village, then all allotments would be cancelled as most of the allotments are in respect of open plots or plots bounded without any occupancy. In this context, this Court issued directions that no fresh construction should take place. It was also highlighted by official Respondents in the above disposed of petition that challans for payments are issued without verifying the requirements under the aforereferred Policy. Order dated 09.06.2015 shows that counsel for Karachi Metropolitan Corporation (KMC) appeared and stated that KMC Officials though has partially removed encroachment but cannot take confrontation with encroachers, unless backed up by Police.

13. Although, Petitioner Jaffer Khan has placed on record the orders passed in above C .P. No. D – 262 of 2014, but surreptitiously suppressed

the fact about dismissal of his earlier cases, record whereof has been produced in the subject Earlier Petition; that is, C. P. No. D – 2003 of 2008 filed by the same Petitioner Haji Jaffer Khan was dismissed with a pertinent observation that petitioners (of C .P. No. D – 2003 of 2008), that is, present Petitioner Haji Jaffer Khan and three others, **were unable to establish any right to claim sanction of Subject Village – Chishti Nagar.** From the above Order it appears that a Suit No. 1341 of 2004 was also *sub judice* in this Court. Record of Earlier Petition further shows that Honourable Supreme Court in Civil Petition No. 255 – K of 1999, wherein dismissal order **passed in another C. P. No. D – 26 of 1999,** was challenged, also dismissed the same, in respect of Gulistan-e-Johar, Scheme-36, by observing and deciding in favour of the allottee of plot No.C-83, Block – 7, Gulistan-e-Jauhar, Karachi. It is observed in the above order of Honourable Supreme Court that Respondent KDA (herein) already sold various plots in the said Scheme to different persons and petitioners, who were claiming rights on the basis of a village in the same vicinity, **has been termed as unauthorised occupants.**

14. Most significantly the issue of Scheme – 36, Gulistan-e-Jauhar, Karachi, has been finally laid to rest by an exhaustive judgment handed down by the learned Division Bench of this Court in number of constitutional petitions, C. P. No. D – 1608 of 2005 filed by one Ms. Talat Ejaz, being the leading petition. Finding of this judgment for the sake of reference can be referred as ‘**Talat Ejaz Case**’, reported in **2016 YLR 829 [Sindh] (Ms. Talat Ejaz vs. City District Government through City Nazim and another)**. Findings given in favour of allottees of Respondent-KDA in this Talat Ejaz Case, has been maintained by the Honourable Supreme Court right up to the Review stage. Interestingly, in Civil Review Petition No.64 – K of 2016, decided by the Apex Court, same Petitioner-Haji Jaffer

Khan Rind was also one of the Applicants / Petitioners. In the subsequent two cases, which are reported as *PLD 2020 Sindh 451 (Dr. Arifa Farid and others vs. Mitha Khan and others)* and *2020 MLD 1239 (Shahbaz Goth Residents Welfare Society through President and another vs. Government of Sindh)*, it is held by this Court that the Talat Ajaz Case (*supra*) is a judgment in rem, *inter alia*, because in **Talat Ejaz Case**, it is held by the learned Division Bench of this Court that 2000 acres of land earlier allotted to KDA for development of Scheme-36 could not have been cancelled by Respondent – Government of Sindh, coupled with the fact that no Goth (Village) ever existed in this Scheme-36 comprising of various Blocks, including Block No.10. This finding was maintained by the Hon'ble Supreme Court when the above Judgment was challenged by one Pir Masoom Jan Sarhandi in Civil Petition No.2086 of 2015, and the Hon'ble Supreme observed that learned Division Bench of this Court in the Talat Eijaz Case (*supra*) has taken into consideration all the material placed before it and applied the law. It is further held by the Apex Court that Government of Sindh / Respondents No.4, 6 and 7 can claim the unpaid dues from Respondent/KDA but could not have resumed the land, which stood allotted to the general public. The finding in above **Talat Ejaz Case** about non-existence of Village (Goth) has been considered by the Apex Court and upheld.

Issue revolving around genuine and fake claims in respect of Scheme-36, Gulistan-e-Johar, Karachi, has been exhaustively settled by this Court and Hon'ble Supreme Court and there is no justification for the Petitioner of Subsequent Petition to file C.P No.D-5654 of 2016. It is also pertinent to mention that in Civil Petition No.3470-K of 2015, filed by Roshan Associates vs. Talat Ejaz, an attempt was made to distinguish the judgment of Talat Ejaz Case by another decision of this Court handed down in *Sharif Haroon vs. Province of Sindh-PLD 2003 Karachi 237*, which

was given in respect of a piece of land claimed by the petitioner (of the reported case) and disputed by official Respondents; it was held that since requisite formalities were not completed, therefore, claim of petitioner (of the above reported case) that he derives title from KDA, was rejected. The Petitioner of the Subsequent Petition has contended that since another learned Division Bench in the above reported case has expressed the view that part of the land now fallen in Scheme-36 continued to be vested in the Provincial Government, thus the entire Scheme-36 does not belong to the KDA and hence the Petitioner of the Earlier Petition have no right and interest. This line of argument has already been rejected by the Hon'ble Supreme Court while refusing to hold that subsequent Judgment in Talat Ejaz Case is *per incuriam* to the last mentioned Judgment, viz. ***Sharif Haroon vs. Province of Sindh-PLD 2003 Karachi 237.***

15. In the present subject Constitutional Petitions, the issues are directly related to the Scheme-36, wherein the Petitioners of Earlier Petition are claiming to be the lawful allottees, which fact has not been disputed in the Counter-Affidavit of Respondent-KMC and other two Official Respondents, whereas, **Respondent No.16**, who is the Petitioner in Subsequent Petition – Haji Jaffer Khan, is claiming entitlement in a purported Village-Chishti Nagar in Block-10, Gulistan-e-Jauhar, Karachi, therefore, the earlier decisions given on these matters / issues are relevant and rule laid therein applies to the facts of present cases.

16. Date of the Judgment in the Talat Ejaz Case is **23.07.2015**, whereas Subsequent Petition is filed thereafter on 06.10.2016, that is, after 15 months from the Talat Ejaz Case. Similarly, Hon'ble Supreme Court has upheld the said Talat Ejaz Case vide its Decisions on 03.11.2015 and 19.08.2016.

17. In view of the above undisputed facts, the conclusion is that Subsequent Petition has been filed by Haji Jafar Khan, by adopting deceptive tactics and concealment of facts and abusing the process of Court. The acts of said Petitioner are fraudulent and collusive with official Respondents (of Government of Sindh) of Subsequent Petition. After passing of five years, no Counter-Affidavits/Parawise Comments are filed by the official Respondents in Subsequent Petition, bringing on record the above facts. It clearly demonstrates that officials of Government of Sindh are in league with those, who bring false ownership claims in Courts with the aid and assistance of officials.

18. Consequently, Subsequent Petition No.5456 of 2016 being a classic example of abuse of process of Court is dismissed with a cost of Rs.100,000/- (*rupees one hundred thousand only*), payable by Petitioner and shall be deposited in the account of High Court Clinic within a period of two weeks hereof.

19. Since it has already been determined / decided in the afore referred Judgments that the entire Scheme-36 comprising of 2000 acres, is a KDA land, which allotted the same to public at large, therefore, no adverse claim in respect of the said land, either by the Sindh Government or by any other person other than the genuine / *bona fide* allottee of the KDA, can be accepted. The other inescapable aspect of the case is that Earlier Subject Petition (C.P. No.3902 of 2014) relates to encroachment in Block-10, Gulistan-e-Johar, Karachi, regarding which already the Talat Ejaz Case (*ibid*) has decided the controversy, by *inter alia*, observing that no Goth exists. In this Petition also an honest and fair approach on the part of official Respondents of Sindh Government should have been to place on record the afore referred decisions in respect of Scheme-36, but these

officials kept quiet and attempted to drag the litigation so also the genuine grievances of Petitioners of Earlier Petition.

20. The Prayer Clause of the Earlier Petition under consideration, can be decided in view of the afore referred decision, particularly the *Talat Ejaz Case* and subsequent decision of Hon'ble Supreme Court, upholding the same. Accordingly, Earlier Petition No.D-3902 of 2014 is accepted and official Respondents are directed to ensure that no encroachment takes place in Scheme-36 either in the shape of some dummy village or fake adverse claim and all the official Respondents will coordinate with each other to retrieve the amenity plot and Parking Area in Block-10, Scheme-36 Gulistan-e-Johar, Karachi, as mentioned in its Layout Plan and Master Plan and Respondent-KDA shall ensure that the same is not misused by any persons, including Petitioners or other entity.

21. It is also relevant to mention that in Dr. Arifa Farid Case (*supra*) a mechanism was laid down to forestall future dispute, which is mentioned in paragraph-22 and for a ready reference is reproduced herein under, which should be followed expeditiously and strictly by all the official Respondents_

“22. Since one of the basis of the decision in Ejaz Case is the Report of the then Chief Secretary of Sindh, therefore, it would be appropriate to pass the following directions:

- (i) *The Chief Secretary [Sindh] will constitute a Team, comprising of Senior Official(s) from the Board of Revenue, Land Utilization Department, City Surveyor and KDA, to undertake a Comprehensive Survey and if it is found that the above named two said Goths/Villages are located outside the territorial limits of Scheme-36, then Defendant No.8 (Government of Sindh), subject to the final decision of the honourable Supreme Court as mentioned in the "Comprehensive Report" of the Deputy Commissioner or any other pending litigation, may take decision with regard to the*

occupants of the above named said Goths/ Villages in accordance with Law and Rules and not otherwise;

- (ii) *but, as already decided in the preceding paragraphs, that if either or both said Goths/Villages or any part thereof exists within the territorial limits of Scheme-36, then the said area/part is an encroachment and is to be removed forthwith. Proprietary rights are the fundamental rights granted by the Constitution, thus, rights and interest of the Plaintiffs cannot be left unattended and the State has to provide adequate protection, failing which, the Official Defendants would be failing in their obligation and duty towards safeguarding the fundamental rights of citizens/Plaintiffs. The Chief Secretary, shall ensure that any encroached portion of Scheme-36 should be retrieved immediately either in favour of Plaintiffs and/or Defendant KDA, as the case may be;*
- (iii) *the Official Defendants shall also identify the culprits and land grabbers, who will be dealt with strictly in accordance with law, both in civil and criminal jurisdiction.*
- (iv) *it is further directed that all the official Defendants have to co-operate with each other and if required, the Chief Secretary - Defendant No.8 will seek assistance of Pakistan Rangers as well”.*

22. Office / Branch of this Court is also directed **to mark a caution** against those litigants, who attempt to abuse the process of Court and file multiple litigation on identical issues and/or controversy already determined through judicial pronouncement. Learned Registrar of this Court should take concrete step in this regard.

23. Office is also directed to list all the cases relating to Scheme-36 before the Bench hearing such matters so that appropriate orders can be passed in those cases. Learned Registrar will file a Report about the

proposed mechanism for curtailing frivolous litigation within four weeks from today.

Judge

Judge

Karachi,

Dated: .12.2021.

M. Javaid PA