

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Constitutional Jurisdiction)

C. P. No. D – 1608 of 2005
alongwith

*C.P. No. D – 870/2000, 1609/2005, 3466/2010, 3900/2011,
361/2012, 1161/2012, 4515/2012, 1891/2012, 2576/2012,
4609/2014, 4610/2014, 4612/2014 to 4615/2014,
4617/2014 to 4619/2014, 5232/2014, 5640/2014,
3420/2015, 4585/2015, 513/2016, 7159/2016,
3917/2017, 4090/2017, 4148/2017, 8199/2019 & 5709/2020,*

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

24.11.2020:

Mr. Imran Ahmed, advocate
Mr. Naseer Ahmed Khan, advocate
Mr. Sikindar Khan, advocate
Mr. Khadim Hussain Soomro, advocate
Mr. Khurram Ghayasudin, advocate
Mr. Ahmed Pirzada advocate
Mr. Nauman Jamali, advocate
Mr. M. M. Aqil Awan, advocate
Mr. Abdul Razaq, advocate
Mr. Sarmad Ali, adv. holds brief for Mr. Kashif Hanif, adv.
Petitioner Haji Jafer Khan Rind Baloch present in person.
Petitioner Muhammad Ismail Shaheedi present in person.
Petitioner Abdul Rahim Barni petitioner in person.
Khawaja Muhammad Asghar, Intervener
Mr. Hassan Abidi, advocate for KMC

Mr. Muhammad Khalid Akhtar KDA a/w.
Shams Siddiqui Director E&E KDA

Mr. Saifullah, Assistant AAG
a/w. Habib Khan AIGP [Legal] on behalf of IGP, Sindh &
DSP Sarwar Ali Shah, East Zone, Karachi.

ORDER

1. **CMA No. 25238/2020 [C.P.No.D-3900/2011]:** Instant application has been filed under Section 12(2) CPC by applicant, namely, Haji Jafer Khan Rind Baloch, with the prayer to set-aside the judgment dated 23.03.2015 for being per-incuriam as according to the applicant, impugned judgment has been obtained through

misrepresentation and concealment of facts. The applicant present in person, states that the judgment in the instant case has been passed without hearing the applicant, whereas, in the case of *Sharif Haroon v. Province of Sindh through Secretary Land Utilization Department & another* [2003 PLD 237], it has been held that the subject land of 30 acres in Scheme 36, Gulistan-e-Johar, Karachi is not the property of KDA. According to the applicant, the applicant is one of the old occupants of a plot on the subject land, hence entitled to be issued of lease in accordance with law.

2. The above contention of the applicant is vehemently opposed by the learned counsel for the petitioners and the learned counsel for the official respondents, who have submitted that the present applicant has no locus standi, nor has any lawful title or claim over the subject land, whereas, in the above cited judgment, there has been no declaration in favour of the applicant. Per learned counsel, in the judgment passed by this Court in the instant petition, all the factual and legal aspect with regard to legal status of the subject land, its ownership and possession have been examined in detail with the assistance of the official record furnished by the KDA, KMC/CDGK as well as Government of Sindh (Land Utilization Department), particularly, in respect of 30 acres of land at Gulistan-e-Johar and it has been held that subject land belongs to KDA, therefore, possession of plots is to be handed over to its original allottees (petitioners). According to the learned counsel, similar false claim of several individuals, claiming possession over subject land was examined in detail by the Divisional Bench of this Court and the same has been rejected. It has been further contended that grant in favour of villagers also stood cancelled after promulgation of Ordinance III of 2001, whereas, the effectees were also compensated by the Provincial

Government accordingly. It has been further pointed out by the learned counsel for the petitioners and the official respondents that the present applicant has concealed material facts from this Court as the order passed in the instant petition was assailed by the present applicant as well before the Hon'ble Supreme Court in Civil Review Petition No. 16-K of 2017, whereas, the Hon'ble Supreme Court, vide order dated 17.01.2019 was pleased to dismiss the same, therefore, the applicant is not entitled to file any further proceedings, including present application under Section 12(2) CPC, which is liable to be dismissed with cost. Above factual position has not been disputed by the applicant.

3. We have heard the applicant and the learned counsel for the petitioner and the respondents, examined the relevant record and the orders passed by the Divisional Bench of this Court as well as by the Hon'ble Supreme Court as referred to hereinabove, which clearly reflect that the present applicant prima facie has no lawful title or possession in respect of any of the plot in the subject 30 acres land at Gulistan-e-Johar, whereas, the legal status, its title and possession stand decided through judgment passed by Divisional Bench of this Court in the instant petition, as well as by orders passed by the Hon'ble Supreme Court in C.P. No.2086/2015 vide judgment dated 03.11.2015, C.P.No.347-K/2015 vide order dated 19.08.2016 as well as the order dated 17.01.2019 in C.P.No.16-K/2017,, which was filed by the present applicant before the Hon'ble Supreme Court. It will be advantageous to reproduce the order of the Hon'ble Supreme passed in Civil Petition No. 16-K of 2017, which reads as follows:-

“ This petition is barred by 485 days. The only argument raised is that the judgment by itself is per incuriam because an earlier judgment has not been taken in account. We find that the earlier judgment to which

reference has been made would have no legal effect upon the judgment under question, therefore, the rule of per incuriam pensionary benefit of the Judges of Supreme Courts from the date of their respective retirements, irrespective of their length of service as Judges (PLD 2013 SC 829) is not attracted. No case for interference has been made out. Dismissed accordingly.”

4. In view of hereinabove factual and legal position as emerged in respect of subject land, we do not find any substance in the instant application filed by the present applicant, which besides being misconceived, contains false and disputed facts, whereas, applicant has miserably failed to point any misrepresentation or fraud played upon the Court in the instant petition, while passing the judgment dated 03.11.2015. Accordingly, listed instant application was dismissed vide our short order passed in the morning and the above are the reasons of such short order.

JUDGE

JUDGE

A.S.