

## **IN THE HIGH COURT OF SINDH AT KARACHI**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

**SUIT NO.462/2021**

Plaintiffs : Hayat Muhammad Sher Pao and others,  
through Mr. Umair Bachani, advocate.

Defendants : Mukhtyarkar, Gulzar-e-Hijri Scheme 33, District  
East and others,  
through Mr. Ghulam Shabbir Shaikh advocate  
for Board of Revenue.

Mr. Salman J. Mirza advocate for Interveners  
namely Jameel Ahmed, Sher Zameen,  
Muhammad Usman and Syed Zahid Raza.

Date of hearing : 21.12.2021.

Date of announcement : 22.02.2022.

### **ORDER**

This order will dispose of application (CMA No.20164/2021) under Order I Rule 10(2) CPC filed by above named Interveners for their induction as defendants being necessary and proper parties to the *lis*.

2. Plaintiffs filed instant suit for declaration, permanent injunction and recovery of damages, pleading themselves to be lawful owners and in possession of 02-20 acres (12100 square yards) piece of land out of plot of land H-5-0 admeasuring 5 acres open commercial land situated in Sector 6-B, KDA Scheme No.33, Karachi, (*referred as suit property*) by virtue of registered sale deed dated 06.04.2015 followed by entry in *Deh* Form-II; suit property is a sub-

divided piece of land out of total plot of 12.20 acres in NC 63, Deh Songal owned/acquired by Mst. Khalida and other legal heirs of Saeedullah vide entry No.70 dated 25.06.2014 in *Foti Khata* of deceased Saeedullah who in turn had purchased the land from one Hassan Ali vide entry No.18 dated 05.05.1992 in VF-II *Deh Songal*; that plaintiffs entered into an agreement for purchase of suit property from aforesaid legal heirs of Saeedullah, NOC for sale was issued by Mukhtiarkar concerned on 08.09.2014, publication was effected in newspapers and conveyance deed was executed on 26.03.2015. It was pleaded that said 12-20 acres of land was transferred to said legal heirs to the extent of their shares jointly owned by them, land was undivided, however; co-owners of the land namely Rana Shamim and others applied for sub-division of said 12-20 acres, publication was effected and sub-division was approved by Assistant Commissioner concerned on 18.06.2014, one of the co-owners applied for approval of layout plan for 5 acres, Deputy Commissioner East furnished the report to the Senior Director, Master Plan Department, SBCA, Karachi on 24.10.2014 confirming the ownership of plot of land of 12-20 acres, required challan fee was paid on 30.01.2017 and master plan for plot No.H measuring 5-00 acres from total 12-20 acres was approved by Master Plan Department of SBCA. All of a sudden on 26.01.2021 Mukhtiarkar concerned with help of police started demolishing the boundary wall on land of plaintiffs without any notice and even failed to reason for such action, though said boundary wall was constructed around 5 acres of land consequent to permission granted on 12.09.2014 by the Mukhtiarkar. Later on it was learnt that said Mukhtiarkar after

receiving huge illegal gratification joined hands with Ruff Builders, demolished the wall on their behest, damaged heavy machinery marked therein and took away costly parts of that machinery, it was all to get the land vacated illegally, hence the plaintiffs filed present suit.

3. Interveners' attorney in his affidavit filed in support of application has pleaded that Secretary Land Utilization Department vide order dated 27.06.1994 allowed exchange of private land measuring 164-24 acres in survey Nos.266, 275 to 279, 104, 258, 283 and others of *Deh Narather*, District West, Karachi, originally belonging to the predecessors-in-interest of the Interveners namely A. Aziz and Allah Baksh, with state land admeasuring 134-24 acres in Sector Nos.6-B, 19 B. 20-B, 21-B, 30, 6-C and 32, Corridor Scheme No.33, Karachi subject to payment of differential *malkano*; *Deh Narather* lands were purchased by the Interveners from original *Khatedars* namely A. Aziz and Allah Baksh and such mutation was effected in favour of the Government while the available exchanged Corridor Scheme No.33 lands were duly mutated in favour of the Interveners, differential *malkano* was duly paid by the Interveners however at the time of handing over possession of the Corridor Scheme No.33 lands to the Interveners, only an area of 86-27 acres was found to be available as the remainder had already been allotted to other parties, as such; the Interveners were only given possession of 19-34 acres in Section 6-B, 26-10 acres in Sector 6-C, 19-06 acres in Sector 19-B, 20 acres in Sector 30 and 1-17 acres in Sector 32 (totaling 86-27 acres) while the remaining area was to be adjusted

subsequently vide letter dated 02.10.2008 of Secretary, L.U. Department, interveners were informed that all exchanged land allotted to them in corridor Scheme No.33 stood cancelled under section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000 unless they pay a further differential amount of Rs.123,952,400/- to regularize the said allotment, which they agreed to pay and submitted an application seeking payment in four equal installments over the course of one year which was allowed vide letter dated 22.04.2009 and a Challan of Rs.30,507,912/- for first installment was issued and paid in respect of all the land in their possession, during this period the portion of the subject property was encroached upon by the encroachers and thereafter a NAB enquiry was initiated in various housing schemes in Scheme No.33 against several encroachers which included the Interveners' land; accordingly, District Commissioner Karachi East with the help of Rangers/Police removed all encroachments from subject land and since then the Interveners are enjoying peaceful possession of the entire suit property i.e. 14-34 acres in Sector 6-B. It was contended that plaintiffs have based their claim on the ground that they have purchased 02.20 acres situated at NC No.63, Sector No.6-B, *Deh Songal*, Scheme No.33, Karachi from legal heirs of Saeedullah who inherited their shares from Saedullah by way of *foti khata badal* and that Saeedullah had allegedly purchased the property from Hassan Ali who in turn bought it from Allah Dino; however, the fact is that entire sale of said property has been declared fake and entries thereof in record have been declared as bogus by the concerned Mukhtiarkar; the (defunct) Executive District

Officer (Revenue) CDGK in a Suo Moto Case No.14/2009 vide order dated 21.10.2009 cancelled the basic entry No.53 made in favour of Hassan Ali for purchase from Allah Dino and entry No.18 dated 05.05.1992 in favour of Saeedullah for purchase from Hasan Ali, however; the predecessor of plaintiffs claimed that the said order dated 21.10.2009 was set aside by Member Land Utilization, Board of Revenue Sindh vide order dated 06.03.2012 in SROA No.108/12. However vide Letter dated 03.09.2018 issued by the Reader (Member, LU) to the Deputy Director, NAB, it was clarified that no such order was passed as falsely claimed by the predecessor of plaintiffs and such fact is evident also from annexure M-3 to the plaint (Page No.199) wherein; the concerned Mukhtiarkar categorically states that Order dated 06.03.2012 was never passed by the learned Member L.U. accordingly NAB enquiry was initiated over this issue and call-up notices were issued to the concerned officers. In reply to the said call-up notices, the reader to the learned Member (Land Utilization) vide letter dated 03.09.2018 categorically affirmed that no such Order dated 06.03.2012 setting aside the Order dated 21.10.2009 was passed by the Member and as such Order dated 21.10.2009 cancelling the said entries in favour of plaintiff's predecessor still hold the field. Blatant fraud being committed by the predecessors of plaintiffs and the plaintiffs themselves is evident on the face of the record and as such the Interveners reserve their right to initiate appropriate criminal proceedings against them. In present proceedings all the documents relied upon by plaintiff in support of their claim are malafidely issued by the concerned department to the predecessors in interest of the plaintiffs, knowingly that various

litigations are pending on the same subject property between the predecessor of the Plaintiffs and the Interveners and the same were obtained with the connivance of the public functionaries to usurp the interveners' land and to deprive them from their lawful right over the subject property. Since any adverse order passed in the instant Suit may directly affect the rights of the Applicants/Interveners therefore, are necessary and proper party in the instant proceedings, even otherwise no prejudice to the plaintiffs would be caused by the induction of the applicants/interveners.

4. I have heard learned counsel for the Interveners, plaintiffs and the Board of Revenue.

5. The powers conferred upon the court under order 1 rule 10 CPC can be exercised by the court at any time and any stage of proceedings, if the presence of party is necessary to effectually and completely adjudicate upon and settle the questions involved. The application cannot be dismissed without examining the gist of right or claim compelled a party to move application for becoming a party to safeguard his right and interest. The claim of the interveners is based on that Secretary Land Utilization Department vide order dated 27.06.1994 allowed exchange of private land measuring 164-24 acres in mentioned survey numbers which originally belonging to their predecessors-in-interest namely A. Aziz and Allah Baksh, with state land admeasuring 134-24 acres, Corridor Scheme No.33, Karachi subject to payment of differential *malkano*; *Deh Narather* lands were purchased by them from original *Khatedars* namely A. Aziz and Allah Baksh and such mutation was effected in favour of the Government

while the available exchanged Corridor Scheme No.33 lands were duly mutated in their favour, differential *malkano* was duly paid by the Interveners however at the time of handing over possession of the Corridor Scheme No.33 lands to them, only an area of 86-27 acres was found to be available as the remainder had already been allotted to other parties, as such; they were only given possession of 19-34 acres in Section 6-B, 26-10 acres in Sector 6-C, 19-06 acres in Sector 19-B, 20 acres in Sector 30 and 1-17 acres in Sector 32 (totaling 86-27 acres). The interveners themselves have pleaded that the remaining area was to be adjusted, subsequently vide letter dated 02.10.2008 of Secretary, L.U. Department, they were informed that all exchanged land allotted to them in corridor Scheme No.33 stood cancelled under section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000 unless they pay a further differential amount of Rs.123,952,400/- to regularize the said allotment, which they agreed to pay and submitted an application seeking payment in four equal installments over the course of one year which was allowed vide letter dated 22.04.2009 and a Challan of Rs.30,507,912/- for first installment was issued and paid in respect of all the land in their possession. In such a situation the dispute does not arise between the plaintiffs and the interveners. From these pleadings, it has come on surface that;

- a. The land allotted/granted to the interveners has been cancelled under section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2000;
- b. The interveners have not paid the entire amount and have paid only one installment of Rs.30,507,912/-;

From the above facts, it is an admitted position that after cancellation of the entire exchange land, the interveners have no right, title and interest in the subject land. They have not paid the amount for regularization of their allotment hence they have not fulfilled the condition of regularization of the land. The possession of the land being claimed by the plaintiffs is not with the interveners. The interveners have pleaded that;

***“at the time of inspection they temporarily placed their armed men at the site to pretend that they were somehow in possession of the Subject Property. Once again on 01.11.2021 Plaintiffs obtained ex-parte order for construction of boundary wall and the same was constructed by the Plaintiffs under supervision of the police officials and public functionaries on day night work basis.”***

In my opinion, the interveners have taken this plea regarding possession only to substantiate their claim of possession over the subject property, otherwise; such plea is an admission of the interveners regarding possession of the plaintiffs over the subject property. The pleadings of the interveners show that they are indirectly or remotely interested in the instant matter. Persons indirectly or remotely interested are not necessary or proper parties. Reliance is placed on Case of **Muhammad Sharif v. Dr. Khurshid Anwar Mian (1996 SCMR 781)**. From the pleadings of the interveners it also appears that they have champertous interest in the instant litigation. A person who has a champertous interest in litigation should not be added as party, as is held in Case of **Riaz Ahmed v. Dr. Amtul Hameed Koser and 8 others (1996 CLC 678)**. In above situation the question arises, whether the interveners are



the necessary or property party to the suit? Here I will take guideline from the Case of *The Bakkarmandi Union (Regd.), Lahore v. Metropolitan Corporation/LMC through Mayor and 4 others* (2000 SCMR 1716), wherein the property and necessary and proper party has been classified. In this case law it is held that:

***“We are conscious of the fact "that the parties can either be classified -as a necessary party or a proper party. A person who ought to have been joined, is a necessary party, and a person whose presence is necessary to effectually and completely adjudicate upon and settle all points involved in the suit is a proper party. (PLD 1975 SC 463 + 1995 CLC 1566 + 1984 CLC 286 + 1979 CLC: 891), but the petitioner does not fall either within the ambit of necessary or proper party and cannot be allowed to be impleaded at this belated stage. It is amazing that the learned counsel on behalf of petitioner could not show even the lease deed enabling this Court to examine the terms and conditions as enumerated therein which smacks of mala fides and a futile attempt seems to have been made on behalf of petitioner to frustrate the decree obtained by Syed Qaiser Hussain (late). It would be a mockery of law to get the trial afresh by impleading the petitioner as a party which would ultimately prove an exercise in futility. We are of the considered opinion that the petitioner has absolutely no locus standi to be impleaded as necessary party, that too at this belated stage. It is too late in the day to accept such baseless and unfounded request having no substance at all.”***

Further for answering above question, I would reproduce the Sub-Rule (2) of Rule 10 of Order I CPC, as under: -

***“Court may strike out or add parties.—(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be strike out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely, to adjudicate upon and settle all the question involved in the suit, be added.”***

The above provision of law clearly provides that only those persons shall be added as party whose presence before the Court may be necessary in order to enable the Court effectually and

completely, to adjudicate upon and settle all the questions involved in the suit, be added. In this case, from the facts (**as stated above**) which have come on surface from the pleadings of the interveners, it is clear that; the presence of the interveners before this Court is not necessary to enable the Court effectually and completely, to adjudicate upon and settle all the questions involved in the suit and without joining them as party because the interveners have failed to establish *locus standi* for impleading them as party in the instant suit especially when the cancellation of the land, non-payment of the amount for regularization of the land and the possession of the land with the plaintiffs is apparent of the record. Moreover, nothing has been brought on record by the interveners that they have challenged the order of the cancellation of the land, they have paid the remaining installments for regularization of the land or if the report of the Nazir was wrong the applicants have filed objections on such report.

6. Upshot of the above discussion, I am of the view that no right of the interveners is involved in the subject land, the application has been filed on the basis of documents which do not create any right and title in their favour, the interveners have nothing to do with the subject land; hence, the interveners are neither necessary, nor proper parties to the instant suit. Consequently, the instant application (CMA No.20164/2021) is dismissed with no order as to the costs.