

# IN THE HIGH COURT OF SINDH AT KARACHI

## H.C.A. No.189 of 2020

---

Date

Order with signature of Judge

---

*Present:*

**Mr. Justice Aqeel Ahmed Abbasi**  
**Mr. Justice Mahmood A. Khan**

Hearing (Priority) Case:

1. For hearing of main case.
2. For hearing of CMA No.3033/2020.

**29<sup>th</sup> April 2021**

Mr. Saad Fayaz, Advocate for the Appellants along with Appellant No.1 Sabahat Ali Khan.

M/s. Nayyar Ziauddin & Khawaja Sajjad Ahmed, Advocates for Respondent No.1 along with Muhammad Naveed Alam Khan, Respondent No.1

Mr. Naveed Ahmed, Advocate for respondents No.2 to 6 along with Usman Ibrahim, Respondent No.2(b).

Mr. Ameeruddin, Advocate for respondent No.7(e) along with Noman Vali Khan, Respondent No.7(e).

### **ORDER**

Today, a joint statement has been filed on behalf of the appellants and respondent No.1 as well as respondents No.2 to 6 duly signed by their counsel, who have submitted that by consent, instant High Court Appeal may be disposed of in terms of the joint statement filed on behalf of the parties, as according to learned counsel for the parties, it is in consonance of the consent order passed by the learned Single Judge in Suit No.102/2007 dated 19.11.2008 as well as 31.05.2016 and the impugned order dated 05.10.2020 may be set-aside. Learned counsel for the respondent No.7 submits that his client has not consented to the aforesaid joint statement. However, while confronted as to whether the respondent No.7 ever filed any Written Statement in the Suit or any appeal against the aforesaid orders passed by the learned Single Judge in the Suit, he has candidly stated that neither any Written Statement nor any appeal against the aforesaid order has been filed by the respondent No.7. Learned counsel for the respondent No.7 also could not submit any reasonable explanation as to why respondent No.7 is not agreeable to the aforesaid arrangement.

Accordingly, instant High Court Appeal stands disposed of in the terms as stated in the joint statement, which read as follows:-

- (1) That property bearing Bungalow No.2-B, National Highway Defence Housing Authority, admeasuring 1772 square yards [hereinafter referred to as the 'Subject Property'] shall be sold privately as a whole under the supervision of the Nazir of this Honourable Court within a period of three (03) months. In case the parties fail to arrange a private buyer within a period of three (03) months, then the Nazir of this Honourable Court shall auction the property as a whole.
- (2) That the Appellants are entitled to 500 square yards of the Subject Property, whereas, the Respondents No.1 to 7 are entitled to the remaining 1272 square yards of the Subject Property.
- (3) That the fee of the Nazir of this Honourable Court shall be borne by the parties equally. In case the property is required to be auctioned by the Nazir of this Honourable Court then the parties shall also bear the cost of the auction.
- (4) That the sale proceeds from the sale or auction of the Subject Property shall be deposited with the Nazir of this Honourable Court and thereafter, shall be divided by the Nazir of this Honourable Court amongst the parties in the following manner:-
  - (i) Sale proceeds corresponding to 500 square yards of the Subject Property shall be given to the Appellants after deduction of the share of the Respondent No.1 in terms of the Consent Order dated 19.11.2008, passed Suit No.102 of 2007.
  - (ii) Sale proceeds corresponding to the remaining 1272 square yards of the Subject Property shall be divided amongst Respondents No.1 to 7.
- (5) That in terms of the Consent Order dated 19.11.2008, passed in Suit No.102 of 2007, the Appellants shall pay the share of the Respondent No.1 from the sale proceeds corresponding to 500 square yards of the Subject Property. It is important to mention here that the Respondent No.7 never filed a Written Statement in Suit No.102 of 2007 nor did the Respondent No.7 challenge any Order passed in Suit No.102 of 2007, including but not limited, to Order dated: 19.11.2008.
- (6) That in view of the above terms, the Impugned Order dated 05.10.2020, passed in Suit No.102 of 2007, shall be set aside.

Consequently, impugned order dated 05.10.2020 is hereby set-aside. It is clarified that the parties may bring buyers of their own choice, however, the auction will be completed in the supervision of the Nazir of this Court, in case the appellants failed to bring their buyers within two months from the date of this order, thereafter Nazir will carry out the auction proceeding in accordance with law within a period of one month thereafter.

Nazir's fee in the sum of Rs.50,000/-(Rupees fifty thousand only) shall be paid in advance by all the parties jointly.

Instant High Court Appeal stands disposed of in the above terms along with listed application.

**J U D G E**

**J U D G E**

Nadeem\*