

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 312 of 2021

Date	Order with signature of Judge
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1. For hearing of CMA No. 2606/2021
2. For hearing of CMA No. 2611/2021.
3. For orders on C.M.A. No. 3843/2021.

05.03.2021

Mr. Muhammad Rafi Kamboh, Advocate for the plaintiffs.

Mr. Nisar Ahmed, Advocate for applicant/intervener.

Mr. Ziauddin Junejo, A.A.G. alongwith SIP Muhammad Saqlain
PS Nazimabad, Karachi.

M/s. Muhammad Mehmood Sultan Khan Yousfi and Ahsan Kazmi
Advocates file memos of appearance on behalf of defendant No. 2 (K.D.A.) and
defendant No. 5 (KW&SB), respectively, which are taken on record.

3. This is an application filed on behalf of the applicants/interveners,
namely, Khursheed Ahmed and Nighat Arif, under Order I, rule 10(2) read with
Section 151 C.P.C. seeking their addition as plaintiffs No. 16 & 17 in this suit.

Learned counsel for applicants/interveners after arguing this application at
some length does not press the same and states that the applicants/interveners
shall maintain their own suit for the redressal of their grievances. Accordingly,
this application stands dismissed as not pressed.

1&2. Despite directions and service of notice, defendant No. 6 (Senior Director,
Anti-Encroachment, K.M.C.) is called absent without any intimation.

Learned counsel for the plaintiffs while filing certified true copy of the
order dated 11th February, 2021 passed in *Suit No. 468 of 2021 (Farjan Khan v.
Province of Sindh and others)* states that in the said suit on the identical
controversy this Court has already granted ad-interim order restraining the

defendants from demolishing the house of the plaintiff of the said suit; therefore, he prays for the same injunctive relief in favour of the plaintiffs in the instant suit.

The operative part of the aforementioned order is reproduced herein below:-

4&5. Learned counsel points to the record to show that the property in the occupation of the Plaintiff is a residential house leased by the KDA in 1970. He submits that the Plaintiff has been threatened with demolition of the house by the Defendants on the ground that the Government requires to construct a road besides the Gujjar nulla pursuant to orders passed the Supreme Court to clear encroachment around the Gujjar nulla. Learned counsel submits that the Plaintiff's house does not encroach on land abutting the nulla, nor has the Plaintiff received any notice in writing with regards to acquisition or demolition.

The order dated 12.08.2020 passed by the Honorable Supreme Court in C.P. No. 9/2010 is that:

In the circumstances, we direct the NDMA to take over the work of cleaning of nullahs in Karachi City and ensure that such cleaning work of nullahs is completed and all encroachments in and around these nullahs are removed. The Sindh Government shall provide all necessary assistance and support to the NDMA for rehabilitation of the people dislocated on account of removal of the said encroachments. In rehabilitating the people, the Sindh Government shall ensure provision of all necessary facilities which is required for rehabilitation of a civilized society.

The underlined part of the order above shows that even if any residential construction is required to be demolished for the purposes of the nulla, the Government shall at the same time provide rehabilitation to the effectee. The suit property appears to be on a lease by the KDA since 1970. Issue notice to the Defendants for 26.02.2021. On the next date, the Assistant Commissioner, Central, Karachi shall submit a report as to the distance between the Plaintiff's house and the nulla, and clarify whether any notice has been given to the Plaintiffs. Till the next date, the Defendants shall not demolish House No. C-88, Block No. 11, Scheme No. 16, Federal B Area, Karachi.

Office is directed to repeat notice to the unserved defendants through first three modes and issue Show Cause Notice to defendant No. 6.

The matter is adjourned a date in office. Meanwhile the defendants are restrained from demolishing the houses of the plaintiffs, which are subject matter of this suit, till the next date of hearing.

Office is directed to fix this matter alongwith Suit No. 468 of 2021 on the same date before the same Bench.

Athar Zai

JUDGE