

IN THE HIGH COURT OF SINDH AT KARACHI

Suit NO. 574 of 2015

Plaintiff : Syed Abdul Ghani,
through: Mr. Muhammad Lakhani, Advocate.

Defendants : MDA & others
through Mr. Manzoor Ahmed, for Defendant No.1.

Intervenor : through Nazir Ahmed, Advocate.

Date of hearing: 13.11.2015.
Date of announcement: 26.11.2015.

ORDER

SALAHUDDIN PANHWAR, J. Through CMA No.5730/2015 (application under Order 39 Rules 1 & 2 CPC r/w Section 151 CPC) and CMA No.7058/2015 (application U/O XL R 1 CPC), the plaintiff, prays that:

(CMA NO.5730/2015) ‘....., pending adjudication of the cause agitated herein, grant a Temporary injunction, and to restrain the Defendants, and/ or any other person(s) acting under them, through them, and/or on their behalf, from taking any action (s) coercive and/or prejudicial to the rights of the Plaintiff insofar as Eight(08) Acres in Sector No.1, Four (04) Acres in Sector No.1, Three (03) Acres in Sector No.2-A, and One (01) Acre in Sector No.3 of Scheme 45, Taiser Town, Karachi, is concerned. Such action(s) may include (but would not limit itself to) the removal of the plaintiff’s possession; cancellation of the proprietary rights and all concerned entries; and creation of any third party interests as against the rights being exercised by the plaintiff.’

(CMA NO.7058/2015) ‘.....remove from possession or custody any person(s) other than the plaintiff insofar as Eight (08) Acres in Sector No.1, Four (04) Acres in Sector No.1. Three (03) Acres in Sector No.2-A, and One (01) acre in Sector No.3 of Scheme 45, Taiser Town, Karachi, is concerned. It is further that this Hon’ble Court may be pleased to appoint, if so, deemed necessary, a Receiver on, and against, the aforesaid property, subject matter of the present proceedings.’

2. Before proceeding further, the relevant facts are that plaintiff is absolute and exclusive owner of four (04) acres of land situated in Sector No.1 of Scheme 45, Taiser Town Karachi. The plaintiff pleaded that he (plaintiff) sought regularization

of sixteen (16) acres of land situated in *Naiclass* No.75 and 114, located in Deh Taiser Tappo Sangal, Karachi on grounds of *continued possessions* and *utilization thereof for a period exceeding fifteen (15) years*. To achieve such purpose, the plaintiff petitioned the office of the Chief Minister Sindh. It is further claim of plaintiff that vide letter dated 01.12.1992 he was called upon to make certain deposits as against occupancy of the land which he did; agreement deed was executed and he was granted possession and utilization of the land for a period Ninety Nine (99) years which period was still concurring on day of filing of present proceeding. Pending the currency of perpetual lease-hold rights supplied to plaintiff, the Govt. of Sindh was pleased to promulgate Ordinance III of 2001 whereby differential amounts as against lower rates of allotment were called for from a large number of allottees. Plaintiff was from amongst all concerned by the promulgation of Ordinance III of 2001. Plaintiff's claim was presented before Sindh Government Lands Committee, which was pleased to, after securing differential amount from plaintiff; regularize his allotment as against the land. To substantiate the plaintiff refers to '*issue no.18*' of the Minutes of concerning the meeting held on 13.4.2010. Such entries were also made in record of the rights. It is further pleaded that during currency of the lease-hold rights transferred to the plaintiff insofar as the land is concerned, MDA acted to procure ownership rights as against *i) Deh Mahki, ii) Deh Nanan, iii) Deh Bijaji-Buthi, and iv) Deh Taiser from the Board of Revenue. The procurement of over twenty thousand five Hundred and Seventy Acres of land was dubbed by MDA as 'Taiser Town' Scheme No.45*. It is the plaintiff's contention that *the land was, post-acquisition by MDA, transferred within its (MDA) territorial domain*, as such the plaintiff was compelled to seek adjustment of his lease hold rights (outstanding against the Land) as against the Scheme. The rationale behind seeking such adjustment was the announcement of a fresh 'Layout plan' by MDA insofar as the Scheme was concerned. It is submitted that re-designation of all landed properties falling within the Scheme involved removal possessory rights vesting in, and with, lessees thereof, inasmuch as the re-distribution of lands as per MDA's preferred layout plan involved location specific displacement, therefore in order to

secure his rights as against the land, the plaintiff applied to the MDA for purpose of seeing adjustment of the land as per MDA's preferred 'Layout plan'. The plaintiff further claims that adjustment was done with intervention of the Board of Revenue and following land was assigned to him:

- i) *Three acres and Twenty Ghuntas in Sector of the scheme;*
- ii) *Two acres in Sector no.1 of the scheme*
- iii) *Three acres in Sector No.2-A of the Scheme;*
- iv) *Four Acres and Twenty Ghumntas in Sector No.3 of the scheme*
- v) *Three acres in Sector no.28 of the Scheme;*

Per claim of the plaintiff possession was also handed over to the plaintiff. On 26.3.2015 certain persons alongwith defendant no.3 (Sindh Police), approached the property and ousted the plaintiff but on intervention of MDA the possession was restored. The plaintiff while claiming apprehension of dispossession by defendant no.3 filed the suit.

3. At this juncture, it is worth to say that provision of Order XXXIX, R 1 (b) and XL r 1 CPC cannot *legally* stand together because object of former is to seek protection from being '*dispossessed*' while that of later is to '*seek removal/dispossession of some other person*'.

4. The moment the plaintiff moved the later application, his application to extent of seeking an interim order restraining his dispossession, came to an end. However, I am equally conscious that plaintiff also sought an *interim order* to extent of creation of third party interest for which it would suffice to refer operative parts of reports of Commissioner which are:-

- 04.) The officer on behalf of defendant no.5 has intimated that *a complaint was lodged before the Commissioner, Karachi pertaining to subject land, which is lying pending.* They further added that as per records, the said complaint seems baseless against the genuine owner i.e plaintiff;

SECOND REPORT OF COMMISSIONER

- 03) The learned counsel for the intervener has informed that the after of dispute on same land is *subjudice before the Honourable High Court vide Suit No.158 of 2011 as well as vide sou-moto case no.53 of 2009 before the learned*

Commissioner, Karachi, as filed by the intervener here named Mr. Bashbir Ahmed s/o Ghulam Muhammad.

Both matters are *prima facie* appearing to be prior in time and also appears to be result of direction of High Court of Sindh while deciding CP No. D-533 of 2011 therefore, it would not be proper to restrain such authority particularly when the plaintiff has not brought such thing in the pleading nor even has sought declaration in respect thereof by amendment of pleadings though notice thereof is *prima facie* at time of *first* inspection. The Commissioner, Karachi *however* shall give full and fair opportunity of hearing to plaintiff in such proceeding if he (plaintiff) chooses so, while claiming the land *in dispute in such proceeding* to be a part of his claim. In such *peculiar circumstances* I am of the clear view that the former application has lost its substance and is dismissed as such.

5. As regard, the later application (CMA No.7058/2015), it would suffice to say that course, provided by Order XL r 1 CPC, can well be taken by the Court but such course is always penal in nature therefore, strong reasons must co-exist and prime consideration is that of '*saving property from being waste*'. At this juncture, it would be relevant to refer the operative part of the order, passed by this Court in CP NO.D-533 of 2011 which is:-

*The petitioner, through the instant petition has challenged the show-cause notice issued to him in respect of his land measuring 4-20 acres out of Survey no.23 in Deh , Taiser Tapa Soongal, Gadap Town Karachi requiring him to satisfy EDO Revenue-I CDGK **as to why the entry in his favour in respect of the above land be not cancelled.** Learned counsel for the petitioner submits that the above notice was duly received. Where-after a report was called from the concerned Mukhtiarkar, who has declared such entry as suspicious and **the matter is now pending before Deputy Commissioner, West.** We would, by consent, dispose of this petition by directing the Deputy Commissioner, West **to decide the controversy in the matter after hearing the petitioner, strictly on merits and through a speaking and well reasoned order and furnish a copy of such order to MIT-II of this Court within two months from today.***

From the above, it is quite evident that the intervener Bashir claims specific ownership in respect of the said area under *some entry* hence it would not be proper to remove such a person from possession who has been pressing his title/claim much prior to instant suit. Let me add here that defendant no.5 *at time of first inspection*

had categorically stated that a complaint in respect of such land is pending before Commissioner. In such eventuality, it would not be just and proper to remove such claimant from possession of the land who *admittedly* is in possession of land in question. To succeed in an application U/O XL 4 1 CPC mere showing *prima facie case* is not sufficient to remove some other person unless it is shown that such person is *prima facie* unauthorized and his **remaining in possession shall result in waste/damage of property** which *prima facie* is not appearing on surface. Resultantly, the former application of the applicant also is not sustainable and is dismissed as such. However, while parting, the intervener Bashir Ahmed is directed not to change the existing status/position of the suit land.

6. Since, it is not a disputed position that the land in question originally belonged to the Government but other defendants except defendant no.1 are not properly served. Since per provision of Order XXVII the **'government pleader'** is the **'agent'** of government for the purpose of receiving processes against the **'government'** hence the **pleader (AAG?)** be also served with notice in this matter who shall accordingly **'act'** as agent by equipping himself with complete notes/comments so as to avoid any further delay on this count alone. Further, office shall ensure that in case, defendants are officials in any suit, they shall be served directly but also law provides that notice shall be issued to A.G. if matter relates to province of Sindh and D.A.G., if defendants relates to Federation.

7. While parting, the Commissioner, Karachi is required to complete the proceeding in respect of subject matter while allowing plaintiff an opportunity of hearing, if he chooses so, and to decide the same within a period of two months but strictly in accordance with law and copy thereof also be sent to this office. Since application U/O 1 r 10 CPC has also been allowed hence the plaintiff shall file amended plaint.