

THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry.

Suit No. 1468 of 2021

[Zaheen Cooperative Housing Society v. Province of Sindh & Others]

- Plaintiff : Zaheen Cooperative Housing Society through M/s. Muhammad Haseeb Jamali, Ahmed Khan Khaskheli and Muzamil Hussain Jalbani, Advocates.
- Defendants 1, 3-14 : Province of Sindh through Chief Secretary through Mr. K.A. Vaswani, A.A.G.
- Defendant 2 : Sindh Industrial Trading Estate Limited through Mr. Umar Sikandar holds brief for Ms. Sofia Saeed Shah and Umar Sikandar, Advocates.
- Defendants 15-16 : Nemo.
- Defendants 17-18 : Muhammad Ishaque and Imran Ahmed Jagirani through M/s. Mohsin Shahwani and Azain Nadeem Memon, Advocates.
- Defendant 19 (i-v) : Ghulam Nabi Jugno & others through Mr. Malik Muhammad Ahmed Khan, Advocate.
- Defendants 20-21 : Karachi Development Authority and another through Mr. Muhammad Mehmood Sultan Khan Yousfi, Advocate.
- Dates of hearing : 31-08-2021, 01-09-2021, 13-09-2021 23-09-2021 & re-heard on 27-04-2022.
- Date of Decision : 29-04-2022

ORDER

Adnan Iqbal Chaudhry J. - The Plaintiff is a Cooperative Housing Society and claims to be the owner of (a) 46-19 acres falling in Sector No. 51-A and 52-A of Scheme 33, Karachi; and (b) 58 acres 36 ghuntas

in Sector No. 54-A/10, Scheme-33, Karachi. The suit is with regards to the latter part i.e 58 acres 36 ghuntas, hereinafter '**the Society's land**'. By CMA No. 9874/2021 under Order XXXIX Rules 1 and 2 CPC, the Plaintiff Society prays for restraining the Defendants from interfering in its possession of said land, from creating any third party interest therein and from carrying out any construction thereat. By CMA No. 9875/2021 under Order XL Rule 1 CPC, the Plaintiff Society prays for appointing a Receiver over 5 acres of said land over which the Defendants 17, 18 and 19 have allegedly constructed a boundary wall. CMA No. 9879/2021 by the Plaintiff and CMA No. 11098/2021 by the Defendant No. 19, which were for appointing a commissioner for local investigation are wrongly listed as both these applications were disposed of vide order dated 08-07-2021.

2. Heard the learned counsel and perused the record with their assistance.

3. In the 1980s a dispute had arisen between the Plaintiff Society and the SITE (Defendant No.2) when the lay-out of 300 acres granted to SITE in Scheme 33 for developing an industrial zone came to overlap 24 acres of the Society's land. That dispute is discussed in the letter dated 25-11-1985 addressed by the Deputy Commissioner Karachi (East) to the Commissioner Karachi with the proposal that the Society's land may be re-located to Sector 54-A of Scheme 33 so as to separate it from the industrial zone of SITE as follows:

"From the above details it appears that the society owned private land measuring 58-36 acres which is now being affected by the planning of industrial area in Scheme No.33. The society owned another private land measuring 46-19 acres which falls in Sector No.51-A and partly in Sector No. 52-A in Scheme No.33. It is, therefore, quite clear that both the pieces of land, are two separate places of land which are situated/located in two different places far from each other in Scheme No.33. As also pointed out/verified by the Master Plan Department, K.D.A. vide letter No.URP/33-125-MP&EC/80/57/363, dated 27-01-1983 in reply to the letter No. 4(2)/82-REV/13/83, dated 15-01-1983 from the Additional Commissioner, Karachi with its copies to Board of Revenue and to this office alongwith the others.

LAND BEING AFFECTED BY INDUSTRIAL AREA IN SCHEME No.33.

As far as the land measuring 58-36 Acres falls in Industrial area in Scheme No.33, concerned, it is submitted that the layout plan of the above land of the society comprising S.Nos. 49, 54, 57 & 60 in Deh Bitti Amri falling in the Industrial area of Scheme -33 was approved by the KDA vide No. Deh/C.34/68/3047, dated 7-7-1973 and exchange of the same land was also allowed on the same location, as S.No. 47/7-39 acres, S. No. 54/14-22 acres and part of S. No. 60/1-19 Acres making a total area of 24-0 Acres in lieu of Survey No. 61/18-13 Acres and S. No. 58/27-0 Acres, by the Board of Revenue Sind, Hyderabad, vide letter No. 1676/1070-G(K)I/ dated 6-10-1976. It has no concern with the land located in sector 51-A and partly in Sector 52-A in Scheme No.33 (Comprising S. Nos. 94(Full) & 98, 99, 100, 101 & 102 (500) measuring 40-19 Acres).

As far the planning of industrial area in Scheme No.33 is concerned the land area is included in Scheme No.33 sometime in 1980, whereas the planning/adjustment of Zaheen Coop. Housing Society Ltd., was already been approved in between the years 1973 and 1976. When KDA proposed the Industrial area and land measuring 300-0 acres was handed over to the S.I.T.E., at that time, it was appeared that the land of Zaheen Coop. Housing Society, Ltd., measuring 58-36 acres is also affecting in between the industrial area, which was already existing there in the possession of the society. The same thing was also pointed out by Master Plan Department, KDA vide letter No.URP/33-125-MP&EC/80-321/1540, dated 30-05-1983 that the area handed over to the S.I.T.E. is not in accordance with the planning of Scheme-33

In view of the facts mentioned above it may be suggested that the said land of Zaheen Coop. Housing Society Ltd., may be adjusted with Sector 54-A, in accordance with the KDA's road planning of Scheme No.33, leaving the Industrial area at one side of the Society, in order to move the society from pollution of Industries. The said proposal of adjustment has also been agreed by the Managing Director S.I.T.E., vide letter No. 9161 dated 25-12-1982, addressed to Member (L.U.) Board of Revenue Sind, Hyderabad with its copy to this office."

4. By letter dated 01-03-1987 (page 273), the Commissioner Karachi endorsed the above proposal and sought approval of the Land Utilization Department, Board of Revenue, Sindh, which was eventually granted vide letter dated 29-02-1992 by granting 24 acres of State land to the Society in Sector 54-A, Scheme 33 in exchange for the Society's kabuli land of same measurement in the same vicinity. The 24 acres granted in exchange, along with the Society's unaffected land, together 58-36 acres, was duly demarcated and possession was

delivered to the Society vide Possession Letter dated 27-10-1992 (page 401).

5. Notwithstanding the above, disputes/litigation continued to arise from time to time between the Society and the SITE and/or the allottees of the SITE over the boundaries of their respective lands with each party alleging that the other has occupied their land. To resolve such dispute, a meeting was held between the Society and the SITE on 22-05-2003 under the Chair of the Executive District Officer (Revenue), CDGK, where after, on 06-10-2003 the following settlement agreement was arrived and executed between the Society and the SITE:

“5. That finally the parties have settled their disputes amicably in the following terms:

a) That henceforth the Society shall be the lawful owner and in possession of the land measuring 58-36 acres situated in Sector 54-A/10, KDA Scheme No.33, Karachi granted to the Society in terms of the Order contained in the letter reference No. PS/MBR(LU)/606/92 dated 28-02-92 issued by the Government of Sindh, Land Utilization Department, as demarcated and delivered to the Society by the Surveyor, Scheme No.33, as per possession letter dated 27-10-92 and boundaries whereof have been shown in the plans annexed herewith and signed by all the concerned parties which shall be final and binding on the parties;

b) That henceforth the Society shall have no claim over the land measuring 24 acres surrendered by it in lieu of the exchange of land and the same shall belong and possessed by the SITE Limited;

c) That both the parties agree that within three days of the acceptance of the compromise by the Hon'ble High Court in Suit No. 1052/02 the Society will intimate in writing to SITE Limited whether the development work carried out by SITE Limited on the land can be utilized by them in their existing planning and in case the same can be utilized the society agrees to pay rupees one million to the SITE Limited towards compensation on account of development work carried out on the land and in case the Society informs the SITE Limited that same is of no use to them in their existing planning the SITE Limited shall not be entitled to claim any compensation on that account and whatever expenses incurred by SITE Limited on the account of development carried out on the land belonging to the society shall be stand waived and forgone. The society will be the sole judge in this behalf and the intimation in writing sent by the Society to the SITE shall be final and binding on the SITE limited;

d) That the allotments so far issued and the leases so far executed by the SITE Limited in respect of the plot located on the land belonging to the Society shall stand surrendered/cancelled to and in favor of the Society and

SITE Limited shall be responsible to compensate the said allottees/lessees and indemnify the Society in that behalf. Further the SITE Limited undertakes to get withdrawal of the cases of the Lessees / Allottees namely Fazal-ur-Rehman and others (Suit No. 47/02) and Mir Wali and others (Suit No. Nil/02) both pending in the Court of Senior Civil Judge, Malir, cases / claims of contempt proceedings pending in Constitution Petition No. 2905/92 and shall also arrange surrender / cancellation of their leases / over the land belonging to the SITE Limited and not of the Society;

e) However, both parties SITE Limited and Zaheen Co-operative Housing Society hereby formally agree that should any dispute arise in the matter the same decided between the parties themselves in a spirit of a reasonable compromise;

f) Zaheen Co-operative Housing Society will have no objection in case the Revenue authorities allocate additional land in lieu of adjustment of short area to SITE Limited as may be found necessary during the relocation.

g) That the above terms have been agreed by the authorized representatives of both the parties after due consultation and obtaining approval of their respective competent authority and it shall be binding on the parties and their respective successor-in-interest;

i) That the above arrangements shall be submitted to the Hon'ble High Court of Sindh at Karachi in Suit No. 1052 of 2020 for partial compromise of the Suit with the SITE Limited who are the Defendant No.1 in the said suit."

The above settlement agreement was filed in Suit No. 1052/2002, then pending between the Society and the SITE, and a compromise decree was accordingly passed on 28.02.2005.

6. On 27-01-2020, M/s Abidi (Pvt.) Ltd., acting through persons who are the Defendants 15 and 16 herein, filed Suit No. 139/2020 before this Court, seeking *inter alia* to restrain the Society from dispossessing them from 4 acres said to have been granted to them on 12-07-1981 by the Board of Revenue, Sindh in the industrial zone of Scheme 33. It was averred that the Society was unlawfully claiming such land to be its land. The Defendants 17 to 19 (herein) intervened in Suit No. 139/2020 and were added as defendants when they averred that the land being claimed by M/s Abidi was in fact part of Plot No. C-24 and C-25, the first belonging to the Defendants 17 and 18, and the latter to the Defendant No. 19. On 03-06-2021, Suit No. 139/2020 was withdrawn by M/s Abidi (through the Defendants 15 and 16 herein).

7. In view of the events of Suit No. 139/2020, where the Defendants 17 to 19 were claiming to be in possession of 5 acres of industrial plots allotted to them by the SITE and were raising construction on land that was claimed by the Society as its land, the Society filed the instant suit *inter alia* to retrieve possession of such 5 acres.

8. The Defendants 17 and 18 are partners and it is their case that industrial Plot No. C-24, measuring 1 acre, is situated at SITE Super Highway, Phase-I, Scheme 33, which is separate from the Society's land; that Plot No. C-24 had been originally allotted by the SITE to M/s. Iftikhar and Co. vide letter dated 11-11-1990; that pursuant to an agreement of assignment with Iftikhar & Co. in the year 2015, said plot was transferred *vide* mutation order dated 06-12-2019 in favor of the firm of Defendants 17 and 18; that it was demarcated *vide* letter dated 14-07-2020; that by letter dated 09-03-2021 additional land of 2 acre was regularized by SITE to add to Plot No. C-24 making it 3 acres, which was then sub-divided by the SITE into 5 plots measuring 0.25 acres each *vide* letter dated 30.03.2021; that possession orders were issued by SITE on 09-04-2021; and that approval for constructing a boundary wall was issued by the SITE on 21-05-2021. The Defendants 17 and 18 allege that the Society has in fact obtained a lay-out plan over 88-17 acres, far in excess of their 58-36 acres; and that the Society is unlawfully claiming ownership of extra land of 30 acres which includes industrial Plot No. C-24 belonging to the Defendants 17 and 18.

Similarly, the Defendants 19(i) to 19(v), who are partner of Jugnu Enterprises, also contend that industrial Plot No. C-25, measuring 2 acres, allotted to them by the SITE, is separate from the Society's land; that such plot was allotment to them *vide* letter dated 10-06-1990 and was demarcated *vide* letter dated 14-07-2020.

9. The SITE (Defendant No.2) supports the case of the Defendants 17 to 19. In its counter-affidavit, it is contended by the SITE that the Society's land as identified in the settlement agreement dated

06-10-2003 was a composite block of land abutted by roads on all four sides, whereas the industrial plots allotted by the SITE to the Defendants 17 to 19 were on the other side of a 66-wide road which was the dividing line between the Society's land and the industrial area of SITE.

10. Learned counsel for the Defendants 17 to 19 had further argued that firstly, the 24 acres of State land given to the Society by the Board of Revenue in exchange of its kabuli land, was a violation of section 17 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912; and secondly, that such land stood cancelled on the promulgation of the Sindh Government Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001 [Sindh Ordinance No. III/2001] which extended retrospectively to transactions of State land w.e.f. 01-01-1985. However, as per the record, the 24 acres exchanged with the Society's kabuli land was done in the year 1992; whereas the proviso that State land shall not be exchangeable with private or kabuli land was added to section 17 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912 by the Colonization of Government Lands (Sindh Amendment) Act, 1995, published in the official gazette on 01-02-1996, which was *prima facie* applicable prospectively and not to the exchange already carried out. As regards the second argument, learned counsel for the Defendants did not demonstrate that any action was ever taken against said exchange under Sindh Ordinance No. III/2001, or that such action was even envisaged in circumstances where the exchange was for adjacent land essentially to re-locate the Society's land which had come under an industrial zone subsequently earmarked by the Government for the SITE, *prima facie* an instance not involving a price difference. Nonetheless, that latter question is a mixed question of law and fact and it would be open to the Defendants to prove the same at the stage of evidence.

11. The dispute between the Society and the Defendants 2, 15 to 19 is essentially on the location/boundaries of the Society's land of 58-36

acres in Sector 54-A/10, Scheme 33, Karachi *vis-a-vis* the land granted to the SITE in Scheme 33 for developing an industrial zone. It is not disputed by the SITE that out of 58-36 acres of the Society's land, 24 acres came to be overlapped by the industrial zone of SITE, and to address such overlap, the Government of Sindh, with the agreement of the Society and the SITE, had decided to relocate/shift the affected part of the Society's land behind the unaffected part of its land as proposed in the map at page 239. For facility of reference, that map of the proposed relocation is appended to this order as Appendix I.

12. After the aforesaid relocation, clause 5(a) of the settlement agreement between the Society and SITE dated 06-10-2003, which had subsequently culminated in a compromise decree dated 28-02-2005 in Suit No. 1052/2002, had identified the location and boundaries of the Society's land "as demarcated and delivered to the Society by the Surveyor, Scheme No.33, as per possession letter dated 27-10-92 and boundaries whereof have been shown in the plans annexed herewith and signed by all the concerned parties which shall be final and binding on the parties". For facility of reference, that demarcation plan dated 27-10-1992 is appended to this order as Appendix II. That demarcation plan is *prima facie* evidence of the location and boundaries of the Society's land measuring 58-36 acres.

13. From the counter-affidavit of the SITE, the site-plans relied upon by the Defendants 15 to 19, and from the Nazir's inspection report dated 05-08-2021, it is manifest that the area in which the Defendants 17 to 19 claim possession of industrial Plot No. C-24 and Plot No.C-25, is at the right-end v-shaped part of the Society's land as demarcated in Appendix II hereto. To defend such possession, the contention of said Defendants and the SITE is essentially that the Society's land as demarcated in Appendix II is actually more than the Society's entitlement of 58-36 acres; that Appendix II wrongly includes extra land belonging to SITE which is where industrial Plot No. C-24 and Plot No. C-25 are situated. To support such contention the said Defendants rely on the letter of the Survey Superintendent

dated 18-11-2019 addressed to the Assistant Commissioner, Gulzar-i-Hijri, Scheme 33, wherein he stated that the Society has obtained a lay-out plan over an area of 88-17 acres instead of 58-36 acres; and on the Nazir's report dated 05-08-2021 which mentions a similar statement made by the Surveyor at the inspection that the land demarcated in Appendix II was actually 65.24 acres.

14. The above mentioned statement of the Survey Superintendent and that of the Surveyor that the Society's land in Appendix II is in excess of 58-36 acres, are thus far unsubstantiated. The Nazir's inspection report dated 05-08-2021 is of no help to the Defendants as it does not state that the land under Appendix II was resurveyed. Thus far, neither the SITE nor the Defendants 17 to 19 have produced any other land survey report to rebut Appendix II which recorded the location, measurement and boundary of the Society's land agreed between the SITE and the Society as far back as 1992. Consequently, until Appendix II is rebutted, the same holds good also against the Defendants 15 to 19 who claim land through the SITE. It is to be noted that as per clause 5(d) of the settlement agreement dated 06-10-2003 between the SITE and the Society, and subsequently the consent decree dated 28-02-2005 in Suit No. 1052/2002, the SITE had agreed to relocate all and any allotments made by it in land that was demarcated for the Society as per Appendix II, leaving such allotments such as the Defendants 17 to 19 to remedies against the SITE and not the Society.

15. It will be seen that at the time of Appendix II, there was no 66-foot wide road running through the right-end v-shaped part of the Society's land. Along with its rejoinder, the Plaintiff Society has filed a map of the present lay-out of the Society's land, said to have been prepared with the technical applications of a global positioning system (GPS) and Google Earth, appended to this order as Appendix III. A comparison between Appendix II and Appendix III shows that the area highlighted in Appendix III as 'Land 2', where the Defendants 17 to 19 claim Plot No. C-24 and Plot C-25, is part of the

Society's land as demarcated in Appendix II. Therefore, *prima facie*, the Plaintiff Society has a case for a temporary injunction in its favor.

16. As regards the application for appointing a Receiver, till such time it is conclusively established by way of formal evidence that the actual measurement of the Society's land as per Appendix II is around 58-36 acres and not substantially in excess as alleged by the Defendants, and that the area highlighted as 'Land 2' in Appendix III falls within the same land, I am not inclined to dispossess the Defendants 17 to 19 from Plot No.C-24 and Plot No. C-25 by way of a Receiver. However, in the event the said Defendants violate the order of temporary injunction granted hereby, the Plaintiff Society would be free to move a fresh application for a Receiver.

17. For the foregoing reasons, CMA No. 9874/2021 under Order XXXIX Rules 1 and 2 CPC is allowed by restraining the Defendants 2, 15 to 19, and persons claiming through them, from interfering with, from creating any third party interest, and from constructing at the land claimed by the Society in Sector 54-A/10, Scheme 33, Karachi as demarcated per Appendix II hereto, including the area highlighted as 'Land 2' in Appendix III hereto which includes the 3 acres of Plot No. C-24 (subsequently sub-divided) and the 2 acres of Plot No. C-25 thereat. CMA No. 9875/2021 under Order XL Rule 1 CPC is dismissed with the observation noted in para 16 above.

JUDGE

Karachi
Dated: 29-04-2022