

# IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-5895 of 2017

*[Uzma Naz and others vs. The Director General Rangers Sindh and others]*

**Present:**

**Mr. Justice Zafar Ahmed Rajput and**

**Mr. Justice Muhammad Faisal Kamal Alam**

Dates of hearing : 26.10.2021, 30.11.2021 and  
16.12.2021.

Petitioners  
*[Uzma Naz and others]* : Represented by Mr. S. Wajahat  
Abbas, Advocate.

Respondent No.1  
*[The Director General Rangers]* : Represented by Mr. Qaim Ali  
Memon, Advocate,  
Mr. Khursheed Javed, learned  
DAG and Mr. Younus  
Muhammad, Law Officer.

Respondent No.3  
*[Province of Sindh]* : Represented by Mr. Miran  
Muhammad Shah, learned  
Additional A.G. Sindh.

Respondents No.5, 7 and 8  
*[Karachi Metropolitan Corporation,  
Karachi Development Authority and  
Land Acquisition Officer KDA,  
respectively]* : Represented by M/s. Mubarak Ali  
Shah, Iqbal Khurram and Naheed  
Akhtar, Advocates

Respondent No.9  
*[Home Department Province of Sindh]* : Represented by Mr. Ali  
Asghar Mahar, Focal Person.

Respondents No.2, 4 and 6  
*[Karachi Development Authority Officer  
 Co-Operative Housing Society Ltd.,  
 Malir Development Authority and  
 M.P.G.O (Master Plan), respectively]* : Nemo

: Mr. Dhani Bukhsh Lashari,  
 Advocate for SBCA

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** Petitioners [as claimed] are Officers of Respondent No.7-Karachi Development Authority (**KDA**), and Members of Respondent No.2, who were allotted various Plots as mentioned under Paragraph-2 of the Petition, which according to them have been encroached upon by Respondent No.1. Following is the Prayer Clause\_

“

- A. Declare that the Petitioners are the exclusive lawful and bona fide owners of their respective Plots in Block-B (Extension), situated at K.D.A Officers Co-Operative Housing Society Ltd., near National Stadium, Karachi allotted to her by the Respondent No.2 and entitled for its vacant and physical possession from Respondents, forthwith.*
- B. Direct the Respondent No.1, its officers, sepoy, personal agents, employees, representatives, successors or any agency to vacate the Petitioners land/plot in Block-B (Extension), situated at K.D.A Officers Co-Operative Housing Society Ltd near National Stadium, Karachi and to remove their illegal and un-constitutional possession and construction from the plots of the Petitioners without any delay.*

***C. Direct the Respondents No.2 and 3 to execute Deed of Sub-Lease in favour of the Petitioners, transferring all the rights in the plot in question to the Petitioners free from all encumbrances and charges.***

***D. Restraining the Respondents and their officers, sepoys, personal agents, employees, representatives, successors or any agency from creating any third party interest in the plot in petition pertaining to Petitioners in any manner whatsoever or raising any construction thereupon.***

***E. Cost of the Petition be borne by the Respondents.***

***F. Any other relief, which this Hon'ble Court may deem fit and proper under the circumstances of the case and be awarded."***

2. It is necessary to state that earlier a Constitution Petition No.D-4203 of 2013 (*earlier Petition*) was preferred by one Abida Tarranum, (who is present Petitioner No.2) claiming to be one of the Allottees of Respondent-KDA, seeking similar relief, which is sought in the present Constitution Petition, which was disposed of vide Order dated 08.11.2016, with directions to the Government of Sindh to decide *suo moto* proceeding-Suo Moto Case No.03 of 2015 in respect of the land in question.

3. Relevant part of the Paragraph-2 of the Petition is reproduced herein under showing different Plots claim by Petitioners\_

<b>S.NO</b>	<b>PETITIONERS NAME</b>	<b>PLOT NO.</b>	<b>AREA</b>
1	Uzma Naz	Plot No.A-58, Block-B (Extension)	200 Sq Yards
2	Abida Tarannum	Plot No.A-27, Block-B (Extension)	200 Sq Yards

3	Rukhsana Qureshi	Plot No.A-42, Block-B (Extension)	200 Sq Yards
4	Nighat Jabeen	Plot No.A-08, Block-B (Extension)	260 Sq Yards
5	Nadeem Ahmed	Plot No.A-01, Block-B (Extension)	227 Sq Yards
6	Syed Nishat Ali Rizvi	Plot No.A-26, Block-B (Extension)	200 Sq Yards
7	Sana Waseem	Plot No.A-51, Block-B (Extension)	227 Sq Yards
8	Syed Jawaid Shamim	Plot No.A-44, Block-B (Extension)	200 Sq Yards
9	Asim Habib Khan	Plot No.A-72, Block-B (Extension)	208 Sq Yards
10	Ahrar Siddiqi	Plot No.A-48, Block-B (Extension)	202 Sq Yards
11	Kashif Hussain	Plot No.A-71, Block-B	216 Sq Yards
12	Syeda Raiz Fatima	Plot No.A-50, Block-B (Extension)	217 Sq Yards
13	Asif Hameed	Plot No.A-47, Block-B (Extension)	202 Sq Yards
14	Iftikhar Ali Kaimkhani	Plot No.B-02, Block-B (Extension)	300 Sq Yards
15	Kaleemullah Farooqi	Plot No.A-14, Block-B (Extension)	200 Sq Yards
16	Syed Abdul Matadir	Plot No.A-43, Block-B (Extension)	200 Sq Yards
17	Syed Azhar Imam	Plot No.A-65, Block-B (Extension)	210 Sq Yards
18	Amir Ahmed	Plot No.A-06, Block –B (Extension)	202 Sq Yards
19	Muhammad Shakoor Adil Muhammad Masood Adil	Plot No.A-03, Block-B (Extension)	303 Sq Yards
20	Muzaffar Ahmed Bhutto	Plot No.A-02, Block-B (Extension)	202 Sq Yards
21	Maria Naseer	Plot No.A-49, Block-B (Extension)	202 Sq Yards

4. In a nutshell, case of Petitioners is that they being Officers of Respondent No.7 (*Karachi Development Authority*)-**KDA** and Members of Respondent No.2–Karachi Development Authority Officer Co-Operative Housing Society Limited (**KDAOCHS**)-*Society*, were allotted the above Plots, which were carved out from an area of 6-08 Acres of an utilized/undeveloped land adjacent to the Inspection Bungalow at COD Hills and Western Side of Block-B of the Respondent No.2; this piece of land for the sake of reference be referred to as the '**Subject Land**'. It is stated, that this Subject Land was leased out to Respondent No.2 by

Respondent No.7–KDA through a Resolution passed by its Governing Body, where after, after following due process, including Rules and Regulations, Petitioners were formally allotted above plots, but physical possession whereof could not be handed over, despite repeated requests and reminders by Petitioners, as Respondent No.2 informed the Petitioners, that the above plots are in possession of Respondent No.1 (*Pakistan Rangers*), who has refused to vacate the same. Averred that in the year 2006, Respondent No.7 allowed the Respondent No.1 to reside in the Inspection Bungalow of COD Hills as temporary arrangement in order to perform their duties in the City, concerning law and order, but surprisingly the officials of Respondent No.1 in connivance with other official Respondents have illegally occupied the Subject Land/Plots owned by Petitioners and other allottees. Petitioners have complained that their fundamental rights as envisaged in the Constitution of Pakistan, particularly relating to the ownership/proprietary rights, have been grossly violated by the Respondents.

5. Para-wise Comments are filed on behalf of Respondent No.1– Director General Pakistan Rangers (Sindh) through its Deputy Superintendent Rangers [Assistant Deputy Assistant Judge Advocate General Pakistan Rangers (Sindh)]. Reliance is placed on the Decision given in the above-referred *Suo Moto* Proceeding, particularly the observation, that the KDA Administration has no authority to constitute a Co-Operative Housing Society (Respondent No.2) and allot Plots to various persons/officers/employees of KDA for residential purpose without prior approval of the Sindh Government.

In Paragraph-7, Respondent No.1 has acknowledged the fact that Home Department Government of Sindh has allotted KDA Inspection

Bungalow COD Hills Karachi to Service and General Administration Department (S&GAD) Government of Sindh on 27.01.1999 for use as an official residence of the Director General Pakistan Rangers (Sindh). In Paragraph-25, it is stated that Petitioners have no right to enter in the land legally possessed by Respondent No.1.

6. Comments filed on behalf of Respondent No.2–Society has been perused. Overall, the Respondent No.2 has admitted the claim of Petitioners vis-à-vis respective Plots/Subject Land. It is also acknowledged that possession of the Subject Land was handed over to Respondent No.2 vide a Resolution of Respondent No.7-KDA [Karachi Development Authority]. In paragraph-6 of the Comments, the high handedness of Respondent No.1 has been accepted in respect of the entire dispute; whereas in Paragraph-7 it is stated that Respondent No.1 has encroached upon the land in question and Respondent No.2 has made efforts to recover the possession of the land from Respondent No.1. Averred that Respondent No.7–Karachi Development Authority-[**KDA**] wrote to Services, General Administration and Coordination Department (Government of Sindh) for vacation of the KDA Bungalow (allotted to Respondent No.1), vide Correspond dated 10.12.2001, Annexure R-2/14. It is stated in paragraph-20 that Respondent No.1 is in process of making illegal construction over the land belonging to Respondent No.2 without any permission from the concerned authorities.

7. Respondent No.4-Malir Development Authority [**MDA**], has filed a detailed Counter-Affidavit to the Petition. While opposing the maintainability of subject Constitutional Petition, it was stated that neither the Petitioners nor Respondent No.2–**Society** has produced any Master Plan or valid documents to show that the latter is the owner of the land in dispute, which can be conveyed / allotted to Petitioners. The said

Respondent No.4 has even questioned the entitlement of Respondent-KDA to the land in question, that is, 6–8 acres of land adjacent to the Inspection Bungalow at COD Hills, on its Western Side of Block-B. The stance of Respondent No.4 is that Government land can only be disposed of according to Law and Rules and in the present case it is not shown that the Government land was duly transferred to either Respondent-KDA or to Respondent No.4. Averred that the Engineering Department is not competent to hand over the land without title documents. The Possession Letter(s) purportedly issued in favour of Petitioners is also questioned, *inter alia*, as it does not contain specific plot numbers.

8. A Joint Para-wise Comments is filed on behalf of Respondents No.5, 7 and 8 (Karachi Metropolitan Corporation, KDA and Land Acquisition Officer KDA, respectively). It is categorically stated in paragraph-1, that the Petitioners are Officers of KDA, Members of Respondent No.2-Society and lawful allottees and *bona fide* owners of plots in question. In paragraph-2, the entire history of the land in question is given, starting from 1952 and in paragraph-3 it was stated, *inter alia*, that **Respondent No.1 have also covered the adjacent residential plots and existing lake in the name of Security and Petitioners are deprived of their right to make construction on their allotted plots.** It has been acknowledged in paragraph-6, that Respondents – KDA has allotted a piece of land falling in Survey Nos.19 and 21, Deh Okewari, measuring 29–86 acres to Respondent No.2, through its GB [Governing Body] Resolution No.190 dated 02.10.1990; subsequently Site Plan was duly prepared and verified by the then Master Plan Department from town planning point of view and the physical possession was handed over to the Respondent No.2–Society. Paragraph-8 of the Comments states that Respondent No.1 creating

hindrance for the allottees (Petitioners) of Respondent No.2–Society, on the ground of security risk as the land in question is adjacent to the residence of Director General Pakistan Rangers, viz. Respondent No.1. It is further **averred that the Respondent No.2 agreed to take steps for securing the residence of Respondent No.1 by constructing a boundary wall** with consultation of Respondent No.1. Respondent-KDA has questioned the entitlement of Respondent No.1 to the land in question, as with their Para-wise Comments, Respondent No.1 has not filed any title document.

9. Whereas, Respondent No.6–Master Plan Department [MPD] in effect supported the version of Petitioners to the extent that a Layout Plan for Block-B extension situated in Respondent No.2 has been approved vide Letter No.CDGK / MPMGO / KDAOCHA / UD–54 / ANC / 2003 / 43 dated 03.04.2003. It is further stated in Paragraph-14 that Comments were earlier filed in the above referred Constitution Petition No. D-4203 of 2013; which are filed as Annexure P-11 (*Page-201 of the Court File*).

10. Arguments heard and record perused.

11. Mr. S. Wajahat Abbas, Advocate, for Petitioners argued at length and he has referred to various documents appended with the Petition, showing the entitlement of Petitioners to their respective Plots. He has referred to the correspondence of Respondent No.2, to show that Subject Land comprising of afore-referred plots of Petitioners, were taken over by Respondent No.1, without the consent of Respondent No.2.

12. Learned DAG Mr. Khursheed Javed and Mr. Younus Mohammad Law Officer of Respondent No.1, has opposed the Petition and argued in favour of its dismissal.



13. Order dated 08.11.2018 states that Mr. Shabbir Shaikh, Advocate has undertaken to file Vakalatnama for the Board of Revenue so also Para-wise Comments. Last chance was given to the Respondent No.4-the Board of Revenue to file Para-wise Comments within 15 (fifteen) days, but unfortunately no Reply was filed.

Vide Order dated 29.09.2017, the earlier Constitution Petition No.D-4203 of 2013 was directed to be tagged along with the present **Petition**. In the earlier Constitution Petition, Respondent-Karachi Municipal Corporation-**KMC [KDA Wing]** had filed a detailed Counter-Affidavit, contents whereof are quite similar to the afore-referred Joint Para-wise Comments of present Respondents No.5, 7 and 8. The perusal of these Para-wise Comments, show that the relevant Authority has supported the version and stance of Petitioners.

14. At the conclusion of hearing, Law Officer of Respondent No.1 has filed a Statement dated 16.12.2021 that the KDA Inspection Bungalow measuring 8.56 acres was allotted to Pakistan Rangers by the Government of Sindh and Respondent No.1-Pakistan Rangers is a law abiding and well-disciplined force and has not encroached any land in the surrounding area.

15. Stance of Respondent No.1-Pakistan Rangers is mainly dependent upon the decision of Suo Moto Case No.3 of 2015 (*supra*) and the said Respondent has not challenged the Allotment Orders filed in the present Petition by Petitioners relating to their respective plots, which are mentioned in the Table in the foregoing paragraphs of this Decision. This Suo Moto Case has been decided by the Member [**Land Utilization**] Board of Revenue Sindh by his Order dated 14<sup>th</sup> March 2017, *inter alia*, in view of the direction given by this Court in the aforementioned earlier Petition. The Order dated 14.03.2017 has been considered, which is now part of the

record and is available at page-337 (of the Court File). In the proceedings before the above Official present Parties of subject Constitution Petition had participated and represented the case along with the documentary evidence. While referring to the record of Mukhtiarkar Gulshan-e-Iqbal, Karachi (East), it is observed that the Entry No.73 dated 20.11.2011 of Village Form-II, Deh, Okewari in respect of Na-Class No.177, Survey Nos.19 and 21, total measuring 84-11 acres of Gulshan-e-Iqbal Town, District (East) Karachi has been kept on the record of rights and it is mentioned that the land has been acquired from the Government of Sindh Land Utilization Department on 99 years lease from 1978. Such Entry was kept as per letter dated 2<sup>nd</sup> May 2012 of the Administrator of Respondent No.2. The above Order has further observed that according to Mukhtiarkar, there is nothing on record showing that the land in question was granted/leased out by the Government of Sindh for the purpose of KDA Officers Housing Society, hence, the said Entry No.73 may be cancelled.

The **above Order 'concludes'** that KDA Administration has no authority to constitute a Co-operative Housing Society [that is, *the Respondent No.2-Society*] and issue Allotment Orders in respect of the land in question. Consequently, Suo Moto Reference was **'disposed of'** with the observation that Revenue Officer has no powers/authority to cancel the registered document; thus, the Deputy Commissioner, Karachi (East), was directed to file the matter before the competent Court of law to decide the title as well as cancellation of registered Sale Deeds executed by KDA to safeguard the Government interest.

Interestingly and intriguingly, no proceeding has been filed by the officials of the Sindh Government, in pursuance of the above directions. It means that the acquisition of the entire land including the Subject Land by

Respondent No.7-KDA is still intact, as highlighted in their Para-wise Comments (*ibid*); *secondly*, no ruling/‘conclusion’ could have been given in the above Order about the formation [‘constitution’] of Respondent No.2-Society, which is regulated by different Law(s), Rules and Bye-laws, relating to the Co-operative Societies; coupled with the fact that under the Disposal of Land and Estates Regulations, promulgated under Article-15 of the KDA Order No.5 of 1957, plots can be allotted to a housing society. It is needless to state that Respondent No.7-KDA, is established and performing functions under a special statute, viz. ‘PRESIDENT’S ORDER NO.5 OF 1957’– Karachi Development Authority Order, 1957.

In addition to the above, the other question, which is now to be considered is that what is the entitlement of Respondent No.1 to the Inspection Bungalow at COD Hills and the adjacent Subject Land, claimed by the Petitioners, situated in Respondent No.2, which is the heart of present controversy.

With the Para-wise Comments of Respondent No.2, a Document with the caption “SUMMARY FOR THE CHIEF MINISTER” has been appended, dated 17.07.1998. This SUMMARY was moved by Respondent No.9-the Home Department (Government of Sindh), stating that the Respondent No. 1 has requested for **permanent allotment** of the aforesaid Inspection Bungalow COD Hills, which is/was in the use of Respondent No.1, with its constructed “*structure and its earmarked land comes to 8.56 acres as per site plan provided by the Executive Engineer KDA*”. It is further stated that 6.08 acres of this Inspection Bungalow land has been allotted by Respondent-KDA to Respondent No.2-the Society, being a surplus, unutilized and undeveloped land. Further disclosure is made that earlier the said Inspection Bungalow was decided to be transferred by

Respondent No.7-KDA to the Revenue Department along with its surrounding land for shifting of the Office of Deputy Commissioner, Karachi (East), and the decision was taken in a high-level meeting held at President House, Islamabad on 23.09.1993. **In paragraph-5** [of this SUMMARY], it is mentioned that Housing and Town Planning Department has forwarded a Report/views of the Respondent No.7-KDA, that it is not prepared to allot Bungalow as well as adjacent land to Pakistan Rangers (Respondent No.1). It was proposed that since it was agreed to transfer the said Bungalow to the Board of Revenue, but it was later occupied by FIT and Respondent No.1 in 1992, thus, the said Bungalow may be allotted to Board of Revenue for utilisation of Respondent No.1.

The second relevant document is the Correspondence dated 27.01.1999, by Respondent No.9-Home Department, to the Secretary (G.A.) Government of Sindh, the Secretary Housing and Town Planning Department (Government of Sindh) and the Director General of Respondent No.7-KDA. In this Correspondence **it was requested that as per the Orders** of the Governor, action be taken for allotment/transfer of the Inspection Bungalow to Services and General Administration Department, Government of Sindh. It is further stated that they said Bungalow would continue to be in use as official residence of DG Pakistan Rangers/Respondent No.1.

The third relevant Document is the Letter dated 10<sup>th</sup> December, 2001 addressed by the Director General of Respondent-KDA to the Secretary (GA&C)–General Administration and Co-Ordination Department, Government of Sindh. In this correspondence, *inter alia*, it is mentioned that the ‘KDA Rest House’, that is, the aforesaid Bungalow, at the hilltop, ad-measuring 2.48 acres including built-up area of 10,44 5 ft.<sup>2</sup> is being used

as residence of Respondent No. 1 **since 1992 without the payment of any rent to date.** It is further stated, that in addition to the said KDA Rest House, **adjacent area of 6.08 acres has been occupied also for security reasons;** besides, a KDA work shop situated in Federal 'B' area is also under occupation since 1992. This Correspondence was in response to the letter dated 06.12.2001, by Services, General Administration and Co-ordination Department–Government of Sindh, to Respondent-KDA, for requisition of accommodation for Respondent No.1. With this Missive, a Working Paper was also appended regarding which a meeting was to be held of the high officials. The contents of this Working Paper show that, *inter alia*, problems faced by Respondent No.1 for acquiring office and residential accommodation.

16. With the Memo of the Petition, official documents are filed relating to the history of the area in dispute, as narrated in the present Petition as well as Para-wise Comments of Respondents No.2, 5, 6, 7 and 8 (*the said Society, Master Plan Department and KDA, respectively*). These documents include a Notification dated 16<sup>th</sup> December 1952, specifying a land to be utilised for Karachi Joint Water Board, acquisition of land for New Gravity Canal and other ancillary record.

A Document dated 25.10.1997, having caption 'ACKNOWLEDGEMENT OF POSSESSION ORDER' of Respondent KDA, which was in pursuance of its Governing Body Resolution No.42, dated 10.6.1996 [of Respondent–KDA], an area of 6.08 acres was handed over to Respondent No.2, which is earmarked as a Subject Land adjacent to the Inspection Bungalow at COD Hills. Besides, Extract of the Ownership–Deh Form-II, Deh Okewari, Tapo, Gulshan-e-Iqbal, mentions the Respondent No. 2 [the Society] as transferee of the land.

Most important document is the **Lease Deed dated 28<sup>th</sup> January 1978, executed by Respondent No.7–KDA as lessors in favour of the Respondent No.2-the Society**, as Lessee, granting/leasing out an area of 30 acres to the latter, earmarked as Blocks A and B [the present controversy is in respect of Block ‘B’], which area was further enhanced Vide an Addenda Deed dated 31.01.1983 to 36.96 acres. Both these are the registered documents. Under Clause-5 of the Lease Deed it is specifically mentioned that the leased land can be sub-divided by the Respondent No. 2 for further allotments to its members, according to its Bye-laws. It is pertinent to mention here, that the above Order dated 14<sup>th</sup> March 2017, passed by the Revenue Authority in Suo Moto proceeding, has not cancelled these last mentioned documents, rather, Officials were directed to file appropriate proceedings for cancellation of registered documents, which never happened {as already observed in the foregoing paragraphs}.

17. The above mentioned documents have not been controverted or challenged by the contesting Respondents No.1 and 4 [Pakistan Rangers and the Malir Development Authority-**MDA**] through some subsequent official acts or documents. The Respondent-MDA, has denied every fact in its Para-wise comments, but without substantiating it with the documentary evidence. Thus, **the conclusion is** that all the above documents, which in fact is the Official Record, presumption of genuineness and authenticity is attracted to them, inter alia, as envisaged in Articles-90, 92 and 93 of the Qanoon-e-Shahadat Order 1984; besides, Article 129(e) is also applicable to the above registered Lease Deed, Addenda Deed and the Acknowledgment of Possession Order in respect of the subject Land, that is, a presumption that official acts are performed regularly. Hence, Para-wise Comments of Respondent-MDA is an eye-wash and has not provided

any tangible information with undisputed record, contrary to what is stated by Petitioners and supported by Respondent-KDA.

Thus, the aforesaid Documents/Official Record sufficiently proves that Respondent No.2-the Society is the owner of leasable area of 36.96 of land falling in Blocks-A and B, including the Subject Land. **Secondly**, and *significantly*, the Correspondences exchanged between Respondents [*supra*], also shows that the Inspection Bungalow is the property of Respondent No.7-KDA and that is why it has been called upon to transfer the same to the Board of Revenue and Services and General Administration Department for its onward allotment / transfer to Respondent No.1. The name of this Bungalow, viz. ‘KDA INSPECTION BUNGALOW’ itself suggests that it belongs to Respondent No.7-KDA and not to any other Respondents, including Respondent No.1, which is occupying the same under permission from the Respondent-KDA and Sindh Government. In paragraph-7 of its Para-wise Comments, Respondent No.1 has fairly accepted [which we appreciate] this fact as mentioned in the Petition, that the Home Department, Government of Sindh allotted “KDA Inspection Bungalow” to the Services and General Administration Department, Government of Sindh, on 27<sup>th</sup> January 1999 (that is, vide aforementioned Correspondence) for use, as official residence of Director General Pakistan Rangers [Sindh].

Therefore, the answer to the above Question is, that Respondent No.1–Pakistan Rangers has no independent entitlement to the said Inspection Bungalow, but it is being used as a residence of its Director General, by the permission of Respondent No.7 [KDA] and the Sindh Government. It is further concluded, that area of the said Inspection Bungalow as mentioned in the undisputed Official Record is 2.48 acres and

not 8.56 acres as mentioned in the above Statement dated 16.12.2021 filed on behalf of Respondent No.1. Regretfully the said Statement of the Law Officer of Respondent No.1 is contrary to record and is an attempt to mislead the Court.

18. On 30.11.2021, it was observed, *inter alia*, as follows\_

*“The Petitioners’ counsel states that the different Plots allotted to the Petitioners as mentioned in the table under paragraph-2 of the Petition, cannot be utilized as these Plots have been occupied by the Respondent No.1 (Pakistan Rangers), Although this contention is disputed by the Respondents, except Respondent-KDA but prima facie it appears that Petitioners are unable to utilize their respective Plots. In this regard, a reported Decision-Federation of Pakistan vs. Shaukat Ali Mian, PLD 1999 Supreme Court-1026 is of relevance, wherein, the Hon’ble Supreme Court is of the view, inter alia, that taking over of property may not necessarily include physical taking over but even if an act prevents its use or reduces its usefulness then the same can be considered as taking over of property.”*

19. Adverting to the ground of ‘security issue’. No doubt **Respondent No.1 has played a significant role in restoring law and order situation in the Province of Sindh**, but at the same time, Government functionaries, particularly those, who are saddled with the responsibility of looking after internal and external security of the Country, it is necessary that they adhere to the laws and should be mindful in formulating their policies, which should not violate fundamental rights, as envisaged in the Constitution of Pakistan, 1973. It is already held that from the perspective of human rights and fundamental rights, action based on the security concern “is not an



absolute defence”, but would be subject to judicial review, when it is *exfacie* apparent that such action is directly encroaching upon the fundamental rights of citizens. **No doubt internal and external security is the foremost priority** of every Government and State Institutions, but it is also to be seen and ensured by Courts that the security issue is not misused to the disadvantage of law abiding citizen(s) and the fundamental rights are not sacrificed at the altar of some subjective security issue.

Government functionaries including Respondent No.1, must realise that if their actions results in causing hardship and sufferings for citizens, as is seen in the present Case, then even sacrifices given by the Members of the Force would be undermined, besides, such actions would be counter productive. In the reported case of **Gulzar Ahmed vs. Province of Sindh through Chief Secretary and 19 others-[PLD 2019 Sindh page-697]**, the learned Division Bench of this Court has exhaustively dilated on the action taken on the basis of security issue and it is necessary to reproduce relevant portion of the said Judgment herein under: -

*“22. The good governance is directly related to the accountability and the foundation of which has been laid down many centuries back during the Caliphate. This has been explained in many decisions of superior Courts of our Country and recently in a Judgment handed down by the Hon’ble Supreme Court in the case of **Hamid Mir (2013 SCMR 1880)**;.....*

*“23. In a recent reported Judgment of this Court in the Sarwar case (ibid), the obligations of those in the authority has been highlighted in the following words\_*

.....

*35. The Articles 2-A, 27 and the Principle of Policy in fact make our Constitution a unique and pragmatic social contract document of a Muslim Polity. The grundnorm is that*

*rulers and those who are in the authority and at the helm of affairs is saddled with an obligation to treat their subjects/citizens with benevolence and justice, but punishing the culprits simultaneously, in order to restore the confidence of a common man in the State Institutions. This follows that a despot or tyrant cannot be a ruler of a Muslim polity or State. {Underlined to add emphasis}.”*

**“24. The role of judiciary in a Muslim Polity is clothed with greater obligation. Even in turbulent times, Courts in Pakistan have given decisions to enforce the fundamental rights of citizens, which is an internationally recognized historical fact. In the above mentioned Book “Dias Jurisprudence” {5th Edition} this fact is acknowledged in the following words\_**

*“A Pakistani Judge who used the historical context to strike down a piece of legislation by the revolutionary government, and he was fearless enough to do so while that government was still firmly in power.”*

*“28. The most recent decisions are of **United States Supreme Court in the case of Trump v. Hawaii (ibid) and House of Lords (United Kingdom) in the case of A and others v. Secretary of State for the Home Department (supra).***

*29. The US Supreme Court in the case of Trump v Hawaii has approved the “Rational Basis Test” to scrutinize, Executive action or Parliamentary legislation, which purports to be based on the premise of national security. The “Rational Basis Test” requires the Government / Legislature to show that the action or law is rationally related to legitimate government interest. An instance where a statute failed the Rational Basis Test can be seen in the case of Cleburne v. Cleburne Living Centre, wherein it held that an amendment to a statute was “divorced from any factual*

*context from which we could discern a relationship to legitimate state interests”*

30. *The UKHL in the case of A v Secretary of State also viewed Legislation which was enacted on the basis of national security, in the after-math of 9th September, 2001, and which allowed for indefinite detention of foreign nationals who were suspected of terrorism, to be incompatible with the supra-legislation of the European Convention of Human Rights. The majority found the incompatibility on the ground that it was discriminatory and hence in contravention of Articles 5 and 14 of the European Convention of Human Rights. At this juncture it would be relevant to re-produce a few of the excerpts from the additional note of Lord Hoffman, who was a Member of the Bench:*

“86. ....

*This is one of the most important cases which the House has had to decide in recent years. It calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention.*

97. ....

*I said that the power of detention is at present confined to foreigners and I would not like to give the impression that all that was necessary was to extend the power to United Kingdom citizens as well. In my opinion, such a power in any form is not compatible with our constitution. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these”.*

**31. The précis of the above is that in the present case, and in all such cases, where a Government (including Defence related Organizations), Authority, Agency and/or any Institution defend(s) their actions on**

**the plea of national security, or seeks to draw a curtain over their actions on the basis of national security, then such a defence must come from a constitutionally valid legislation; otherwise there can be no circumstance where any Government, Authority, and/or Agency, be allowed to justify their actions or violate the law of the land, on the basis of an arbitrary plea of security.”**

20. In view of the above, it is held, that Petitioners have been deprived from using and enjoying their respective plots and thus, their fundamental rights to own, use and enjoy the property, as envisaged in the Articles 23 and 24 of the Constitution of Pakistan, 1973, has been violated.

Consequently, this subject Constitution Petition is partly accepted and disposed of in the following terms\_

- i. Petitioners are the lawful and *bona fide* allottees of their respective plots, as shown in the table reproduced in the above paragraph(s).
- ii. Respondent No.1 should immediately vacate the entire Subject Land adjacent to the said KDA Inspection Bungalow and hand over the possession of the same to Respondent No.2, which will give possession to the lawful and *bona fide* allottees/Petitioners, **after fulfilling the codal formalities.**
- iii. If the subject land is required by the Respondent No.1 or any other Government functionary, including other official Respondents, then the same should be acquired in accordance with law, *inter alia*, by paying market value to the Petitioners.

**JUDGE**

**JUDGE**

Karachi.

Dated : **09.05.2022**

M.Javid.P.A.