

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.828 of 2016

[Mrs. Hailey Vincent D'Abreo and others vs. Province of Sindh and another]

Date of hearing : 31.03.2022

Plaintiff

[Mrs. Hailey Vincent D'Abreo and others]

: Through Mr. Shahenshah Hussain, Advocate

Defendants

[Province of Sindh and another]

: Nemo

JUDGMENT

Muhammad Faisal Kamal Alam, J: Plaintiff has brought this action at law for Declaration and Permanent Injunction, *inter alia*, for possession of the Properties bearing No.325/1 and 356, situated in Garden East, Karachi-the “**Suit Property**”. In the intervening period when the Government of Sindh issued a Notification dated 29.01.2016, purportedly declaring the Suit Property as a Protected Heritage, then CMA No.1857 of 2017 was filed, which was allowed and then amended plaint challenging the above Notification with amended prayer was filed, which is as under_

- “i) Mandatory Injunction directing the defendants to hand over the management & possession of the School known as “Jufelhurst School” to the plaintiffs with all the existing articles and other items.***
- ii) Permanent injunction restraining the defendants from awarding the contract of renovation / repairs /***

reconstruction of the premises situated on Plots # 325/1 & 356. Garden East, Karachi, to anyone without the permission of the plaintiffs.

iii) Permanent injunction restraining the defendants from declaring/notifying the subject premises under the Sindh Culture Heritage & Preservation Act.

iii-a) Declaration that the Notification dated 29.01.2016 issued by the Government of Sindh, Cultural, Tourism and Antiquities Department (Defendant # 2) is illegal, void and mala fide.

iv) Cost of the Suit.

v) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. Relevant facts are that Plaintiffs are claiming to be the owners of properties bearing No.325/1 and 356, situated in Garden East, Karachi. In the portion of these properties, a School by the name of "**Jufelhurst School**" was running, which was taken over by the Government under its Nationalization Policy of 1972.

3. Learned counsel for Plaintiffs has concluded his arguments. No one is in attendance on behalf of Defendants. Although on last date of hearing, they were given a chance to prepare the matter. It is a date by Court case.

4. Since Defendants did not regularly pay the rent to present Plaintiffs so also a Denationalization of School Policy was announced, therefore, earlier present Plaintiffs preferred a Suit No.1151 of 2011, which was decreed in their favour, *inter alia*, directing the officials/Defendants to handover the possession of the above Suit Property so also pay the arrears of rent to Plaintiffs. Certified copy of the Decree is placed on record during the evidence.

5. Despite service of summons/notices, Defendants did not file Written Statement and finally they were debarred vide order dated 07.08.2019. Evidence was led only by Plaintiffs but learned AAG was given a chance to cross-examine the Plaintiffs' witnesses, which he did.

6. Mr. Shahenshah Hussain, learned counsel for Plaintiffs states that the School Building is in a dilapidated condition and in this regard, the then Karachi Building Control Authority ("**KBCA**"), now **SBCA-Sindh Building Control Authority**, has already issued a Letter dated 02.02.20211 declaring the structure as dangerous. This letter has been exhibited as **P-1/5**. His second contention is that the Notification issued by the Culture, Tourism and Antiquities Department, Government of Sindh (*ibid*) is void, *ab-initio* and no legal effect because it is issued in clear violation of Section 6 of the Sindh Cultural Heritage (Preservation) Act, 1994, which provides two basic conditions, viz. that a Notification of the nature should be Gazetted; *secondly*, it should be published in the Newspaper; whereas, both these conditions are not fulfilled in the present Notification under question. He has also cited case law-**PLD 2017 Sindh 690, Karachi** [*Karachi Property Investment Company (Private) Ltd. through Authorised Officer vs. Government of Sindh through Secretary and 3 others*] handed down by the learned Division Bench of this Court in which a procedure has been laid down for declaring a property as heritage and Notifications issued by the Government Department were set-aside.

7. Testimony has been considered. The sole witness of Plaintiffs-Sajjad Bashir has produced the following documents_

- i. Extract Form of ownership along with ancillary documents showing that the above properties are in the name of Plaintiffs-**Exhibit P-1/4**.

- ii. Letter dated 02.02.2011 issued by the Deputy Controller of Buildings-II, Jamshed Town, KBCA-**Exhibit P-1/5.**
- iii. Newspaper/Public Notice issued by SBCA enlisting the dangerous Buildings in which the present Suit Property and the School are also mentioned-**Exhibit P-1/6.**
- iv. Decree passed in earlier Suit No.1151 of 2011-**Exhibit P-1/7.**
- v. Letter issued by Deputy Secretary (A&T)-**Exhibit P-1/8.**
- vi. Report published in the Daily Dawn dated 18.02.2016-**Exhibit P-1/9.**
- vii. Impugned Notification dated 29.01.2016-**Exhibit P-1/10.**

8. Above witness testified that structure of the School Building is in a dilapidated condition and is not fit for use. The KBCA has already declared the entire building as dangerous vide Letter dated 02.02.2011. Earlier Family of Plaintiffs was operating the above School in a most efficient manner and the School had all the basics facilities like laboratories and libraries, which with the passage of time has become non-existent because of mis-management by the Defendants and their staff members. Number of students have decreased due to poor standard of education. In this context, it is prayed in the Suit so also testified by the Plaintiffs' witness that Management of the School be handed over to Plaintiffs so that the good name and goodwill of the above School can be restored.

9. In his cross-examination, Plaintiffs' witness cannot either be contradicted or his credibility was impeached. He has specifically denied the suggestion that the above Suit Property belongs to the Sindh Cultural

Heritage Department. Reiterated that KBCA (now SBCA) has already issued the above letter declaring the structure as dangerous. He has denied the suggestion that portion of the subject property is used for residential purpose.

10. In view of the above discussion, since the version of Plaintiffs could not be falsified / disproved in the evidence and Defendants despite availing several opportunities did not opt to contest the present Suit and lead the evidence, therefore, the claim of Plaintiff is accepted.

11. The impugned Notification is perused. It is neither gazetted nor published in the Newspaper as required under Section 6 of the Statute (*supra*), as learned AAG has failed to produce any document in this regard to rebut the stance of Plaintiff. It is also necessary to hold that the above Notification issued by the Government of Sindh Culture, Tourism and Antiquities Department dated 29.01.2016 (*ibid*) is issued in violation of Section 6 of the above Statute so also the rule laid down in the above reported decision and hence, cannot be given effect to and is declared to be void *ab-initio*. Consequently, Suit of Plaintiffs is decreed to the extent of amended Prayer Clause (i), (ii), (iii) and (iii-a).

12. However, parties are left to bear their respective costs.

JUDGE

Karachi,
Dated:31.03.2022.
M. Javaid. PA.