

THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

R.A. No. 139 of 2009

[Government of Sindh & another versus Amjad Saeed and others]

Applicants : Government of Sindh through  
Secretary Housing & Town Planning  
Department and another through Mr.  
Wali Muhammad Jamari, Assistant  
Advocate General Sindh.

Respondents 1-3 : Nemo.

Date of hearing : 04-11-2021.

**ORDER**

**Adnan Iqbal Chaudhry J.**- F.C. Suit No. 22/2002 filed by Amjad Saeed (Plaintiff/Respondent No.1) was decreed by the I-Senior Civil Judge Mirpurkhas by judgment and decree dated 20-07-2007. Against that, Civil Appeal No.49/2007 was preferred by the Taluka Municipal Administration and Taluka Council Mirpurkhas, which was dismissed by the II-Additional District Judge, Mirpurkhas by judgment dated 30-05-2009. The instant revision application is by the Government of Sindh and the Director Town Planning Hyderabad, who were Defendants 3 and 4 in the suit and who never filed an appeal against the decree passed in the suit. Though that can be a ground to dismiss the revision application, however, since the Government of Sindh alleges that both the courts below have declared an amenity plot vesting in a Municipal Council to be the property of the Plaintiff, I am inclined to examine said judgments while exercising revisional jurisdiction.

2. The suit plot, being Plot No. B-86 measuring 1847 square feet, is situated in Gulshan-e-Umair Housing Scheme, Mirpurkhas, which is a private housing scheme, developed on private land by its owners pursuant to a sanction accorded by the Municipal Committee Mirpurkhas by way of an agreement dated 22-07-1985 (Exhibit 77/A). It was not the case of the Municipal Committee that such housing

scheme was situated in a local area of which a master plan had been drawn up under clause 32, Part II, Schedule-II of the Sindh Local Government Ordinance, 1979, and thus clause 33 of said Schedule was not attracted. The suit plot was then sold by the private owners/sponsors of the housing scheme to one Muhammad Yousif by a registered sale deed dated 17-08-1994 (Exhibit 41/D), who sold the same to the Plaintiff by a registered sale deed dated 13-05-1998 (Exhibit 53/H-4). These facts were not disputed.

3. The suit was filed when the Engineer, Municipal Committee Mirpurkhas issued notice dated 23-04-2001 to restrain the Plaintiff from raising construction on the suit plot contending that the same had been reserved in the housing scheme as an amenity plot and vested in the Municipal Council. Such contention of the Municipal Committee was based on letter dated 14-09-1985 issued by the Town Planning Department, Hyderabad (Exhibit 41/G) which read that the layout plan of said housing scheme was approved with two modifications, the second one being that since the suit plot was not suitable for residential purposes, it should be reserved for play space, presumably because the suit plot was triangular in shape as apparent from the layout plan of the housing scheme (Exhibit 41/I). The second document relied upon by the Municipal Committee was the agreement dated 22-07-1985 whereby it had sanctioned the housing scheme, clause 6 whereof provided that the sponsor of the housing scheme shall transfer the land reserved for public purposes to the Municipal Committee.

4. As stated above, that letter dated 14-09-1985 issued by the Town Planning Department read that the layout plan of the housing scheme was approved with two modifications. But then, on the face of the layout plan itself, only the first modification appears to have been made by hand by the Municipal Committee with its seal. The second modification relating to the suit plot was not made by the Municipal Committee in the layout plan.

5. Apparently, the layout plan of the housing scheme was submitted by the private owners to the Municipal Committee, Mirpurkhas, who then submitted it to the Town Planning Department, Government of Sindh for approval from the standpoint of town planning. The approval letter dated 14-09-1985 that followed was also addressed by the Town Planning Department to the Deputy Commissioner for necessary action, not to the sponsors/owners of the housing scheme. It was for the Municipal Committee to make both said modifications/revisions in the layout plan, which it did not do. There is nothing to show that the approval letter dated 14-09-1985 was communicated to the owners of the housing scheme. Thus, the layout plan of the housing scheme ultimately approved by the Municipal Committee and produced as Exhibit 41/I, did not show the suit plot as an amenity plot, whereas the plots/spaces designated in the layout plan as amenities were clearly earmarked, which included a park of 21,703 square feet separate from the suit plot. No 'revised' layout plan was ever issued by the Municipal Committee to reflect that the suit plot had been changed to an amenity plot or that the area of the existing park had been adjusted in lieu of the suit plot.

6. Thus, the evidence was that the sale of the suit plot to Muhammad Yousif in 1994 and then to the Plaintiff in 1998 in a private housing scheme had proceeded on the basis of a layout plan approved by the Municipal Committee which did not show the suit plot to be an amenity plot; that the record of rights too did not show it to be an amenity plot; and it was not disputed that the amenity plots actually earmarked in the layout plan were intact and available for development by the Municipal Committee. These facts were also acknowledged by the Mukhtiarkar to the District Officer Revenue, Mirpurkhas by letter dated 13-11-2002 (Exhibit-41/F).

7. Therefore, the finding of both the courts below that the Plaintiff was a *bonafide* purchaser of a plot that was never earmarked in the layout plan for any amenity, is duly supported by the evidence. Consequently, the argument that the suit plot came to vest in the

Municipal Committee has no force, especially when there is nothing to show that pursuant to clause 6 of the agreement dated 22-07-1985 the suit plot in a private housing scheme was ever transferred to or acquired by the Municipal Committee for public purposes. However, as regards the amenity plots/spaces that are clearly earmarked in the layout plan, the Municipal Committee is duty bound to ensure that those are not misused and remain intact for the benefit of the residents of the housing scheme as so observed by the Supreme Court in *Human Rights Case No.56878-P of 2010* (PLD 2011 SC 163). With that observation, the revision application is dismissed.

**JUDGE**

Dated: 04-08-2022