

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1095 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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| | <ol style="list-style-type: none"> 1. For hearing of CMA No.2358/15 (U/O 39 Rule 2(3)) 2. For hearing of CMA No.9210/13 U/R 76 SCCR. 3. For orders on CMA No.14016/17 U/R 110 SCCR (If granted) 4. For order on Nazir's Report dated 14.10.2017. |
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16.10.2017.

Ms. Rizwana Ismail, Advocate for Plaintiff.
 Mr. Iqbal Khurram, Advocate for Defendant No.9.
 Mr. Shahid Iqbal, Advocate for Defendant No.11.

This matter has been listed for orders on Nazir's Report dated 14.10.2017. It has been contended by the learned Counsel for the plaintiff that despite order(s) of this Court, the wall is not being allowed to be constructed at the behest of Defendant No.11, who has otherwise no locus standi in this matter. She further submits that it is in the interest of justice that Suit property be safeguarded from any encroachment. On the other hand Counsel for Defendant No.11 undertakes to file power and submits that he needs time to prepare his brief. Time allowed. However, the matter is fixed on Nazir's report only, and perusal thereof needs urgent directions from the Court to implement the earlier orders.

It appears that on 07.10.2013, an order was passed to seal the property in question. Thereafter CMA No.2267/2014 was filed on behalf of the Plaintiffs on the ground that despite sealing orders, the property is being encroached, and therefore Nazir be directed either to fix barbed wires and/or raise construction of boundary wall around the Suit Land at the cost of the Plaintiffs to preserve the

same. This application was contested by none and was accordingly allowed on 24.02.2014 *as prayed*. However, the Nazir had still not proceeded further and therefore on 21.08.2017 again directions were issued to comply with the aforesaid orders. Subsequently, Nazir has attempted to raise a wall around the Suit Land and firstly Defendant No.11 appeared and raised objections on the exact location of the land, whereafter, the Nazir took assistance of Survey Superintendent, who identified the exact location and construction work was started. However, on 12.10.2017 it was noticed by the Nazir that construction work has been stopped as one Lieutenant Muhammad Ali of Ammunition Depot Malir Cantt. Karachi appeared and stopped the work. He was thereafter approached by the Nazir, who has relied upon a Notification dated 08.07.2003, which requires their permission for any kind of construction, alteration and/or repairs. On such basis, the Nazir has placed this Reference for further orders.

On perusal of the record, it reflects that till date none has objected to the grant of CMA No.2267/2014 and the orders so passed have attained finality. This includes either fixing of barbed wire and / or raising a wall. Pursuant to such order(s), the plaintiffs on their own costs have taken measures to raise a wall and have placed on Site, masonry blocks, Raiti Bajri and Excavators as reported by the Nazir. Moreover, it is informed that all around walls have been raised by the owners of the property on their land, therefore, the objection raised on behalf of Ammunition Depot Malir Cantt., Karachi cannot be sustained. It further appears that the limit of the Safety Zone of Ammunition Depot Malir Cantt., is 1143 meters and it is yet to be ascertained as to whether this land falls within the Safety Zone or not. The wall is being raised to protect the Suit Land and to preserve

it from encroachment, therefore, it would be in the interest of justice and to secure the interest of the parties that wall should continue to be raised. Though the office of Ammunition Depot, Malir Cantt. Karachi vide letter date 12.10.2017 addressed to Nazir have given their No Objection for fixing of barbed wires, but since the plaintiffs have already incurred substantial expenditure for construction of wall on the orders of this Court, it would not be appropriate to ask them not to go for it. Even otherwise, the orders have been passed to protect the property and those orders have attained finality and it would be better if a wall is constructed instead of fixing barbed wires.

Accordingly Nazir is directed to raise the wall as already directed without further delay; however, the height of the wall shall not exceed 8 Feet from the ground level. It is observed that no hindrance or impediment be created by any one including Ammunition Depot Malir Cantt. Nazir may seek assistance from the Police authorities as well as Survey Superintendent and other agencies for his support and help. The exercise be completed as early as possible and report shall be placed on record for compliance.

The reference is taken on record.

J U D G E

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