

**IN THE HIGH COURT OF SINDH AT KARACHI**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

**SUIT NO.1555/2005**

Plaintiff : M/s. Zafar Memorial Educational Society  
Karachi,  
through M/s. Irfan Memon and Jetendar,  
advocates.

Defendants : City District Government Karachi and another,  
through Mr. Muhammad Shaban Solangi  
advocate for defendants.

Date of hearing : 24.01.2017.

Date of announcement : 08.02.2017.

**JUDGMENT**

Plaintiff filed present suit for declaration and permanent injunction, with following prayer:-

- a. Be declared that the plaintiff is bonafide and lawful owner of the suit plot namely ST-12, Block 4, Clifton, Karachi, measuring 6,266 square yards.
- b. Declare that the letter No.23.11.2005 for cancellation of challan regarding suit plot (Annexure-M) is illegal, unauthorized, malafide, violative of fundamental rights and in violation of principles of natural justice and is of no legal effect/consequences.

- c. Declare that the challan in respect of suit plot was allotted by the competent authority & the fresh challan dated 28.10.2005 (annexure-K) was issued by the approval of the competent authority and in pursuant to the allotment of subject plot in the year 1994.
- d. Prohibitory injunction restraining the defendants and/or their employees servants, officers, successors, representatives, assigns and/or any other person(s) acting under their control or authority from allotting, conveying, transferring or in any manner creating third party interest in the suit property.
- e. Prohibitory injunction restraining both the defendants and/or their agents, servants, successors, representatives, attorneys, employees, officers or any other person acting under their control or guidance from executing, implementing in any manner or giving any effect to the letter No.DO/LM-II/REV/234/2005 dated 18.11.2005 (annexure-M) till the disposal of the suit.
- f. Any other or additional relief, as this hon'ble Court may deem fit and proper in the circumstances of the case
- g. Grant costs of the suit.

2. Precise facts of the case are that plaintiff society is lawful successor of Mumtaz Memorial Educational Society Karachi registered in 1983 under the Societies Registration Act, 1860 for establishing educational and literary institutions, to publish periodicals/magazines

for students, to grant scholarships to promote adult education, etc; that general body vide its meeting dated 24.05.1994 unanimously changed name of the Society to Zafar Memorial Educational Society. The then President of the Society vide letter dated 02.03.1994 requested to the then Administrator KMC for allotment of a piece of land for establishing and running a school on vacant plot bearing No.ST-12, Block 4, Kehkashan, Clifton, Karachi, the Society had also informed the fact of change of its name, to the Senior Director, Land & Estate, KMC vide letter dated 25.05.1994; that in response to above, the Senior Director, Land & Estate, KMC, vide his letter No.SDL/ADDL/7034/94 dated 06.06.1994 informed that Administrator KMC allowed/granted a portion of amenity plot No.ST-12, Block 4, Clifton, Karachi measuring 6266.66 square yards for education purposes; that the terms and conditions regarding said plot were accepted by the plaintiff Society vide letter dated 13.06.1994 however due to non-availability of the funds the Society could not deposit the amount of the challan within time as issued to the Society by KMC therefore the Society vide letters dated 25.06.1994 and 20.05.1995 made request to defendants for extension of time for payment, which letters were not replied nor any steps were taken by defendants prejudicial to the interest of plaintiff on said plot. That after arrangement of funds the society on 18.07.1996 and 22.08.1997 addressed letters to said Senior Director Land & Estate requesting revalidation of challan but defendants failed to do so on the ground that such file was not traceable; that finally vide letter dated

15.10.2005 the District Officer (Land Management-II) Rev. CDGK informed the plaintiff society that CDGK has accorded sanction to revalidate plaintiff's previous challan dated 09.06.1994 for occupancy value of subject amenity plot from Rs.20/- per square yards to prevailing Rs.700/- per square yards demanding total sum of Rs.43,92,928.66 being full occupancy value of above plot plus land rent etc. which challan was paid and informed the defendant about such payment requesting handing over of physical possession of the plot and issuance of 99 years lease however plaintiff was shocked to receive a letter dated 18.11.2005 from defendant No.2 intimating that challan has been cancelled as same was issued without approval of competent authority and was against spirit of section 124 of the SLGO 2001, hence this suit.

3. In W.S. defendants objected maintainability on the ground that there is no cause of action, that there exists no privity of contract between the parties, that relief claimed is barred by section 42 and 56 of Specific Relief Act and that as suit plot earmarked for park cannot/ is not permissible to be given to plaintiff for any other purpose. It was pleaded that Plot No.ST-12, Block 4, Clifton, Karachi is earmarked for park purpose according to the approved layout plan which cannot be allotted or leased out to any person hence letter No.SDL/ADDL/7034/14 being null and void cannot be considered as title document; it is denied that plaintiff ever signed terms and

conditions with the Sr. Director Land and Estate, KMC who otherwise is not competent to sign any such terms and conditions without approval from competent authority; that District Officer (Land Management-II) Rev. CDGK is not competent to accord sanction to revalidate a challan thus he exceeded his powers and without getting approval of the higher competent authority has granted approval to plaintiff as claimed; that payment of provisional challan as a result of invalid and unlawful process is not binding upon the defendants nor any right can be enforced on that basis against the defendant hence present suit is liable to be dismissed with cost.

4. Following issues were framed:-

- 1) Whether the suit is barred under section 42 and 56 of the Specific Relief Act, 1877 ?
- 2) Whether the suit is without cause of action and liable to be dismissed?
- 3) Whether the letter dated 13.06.1994 (annexure F-1) and final terms and conditions (annexure F-2) issued by the respective authorities and duly signed by both the parties created any right in favour of plaintiff or any contractual obligation?
- 4) Whether after issuance of revalidated challan dated 29.10.2005 in respect of the suit property, the defendant can withdraw from their concluded and binding contract with the plaintiff?
- 5) Whether promissory estoppel runs against the defendants regarding allotment of suit land?
- 6) Whether the CDGK has lawfully cancelled the suit property in accordance with law?

- 7) Whether the plaintiff was condemned unheard? If so, its effect?
- 8) Whether the plaintiff is entitled to a decree for specific performance of the contract?
- 9) Whether plot in question is amenity plot reserved for park and the same cannot be converted or used for any other purpose?
- 10) Whether the plaintiff is in possession of any title documents in respect of the plot in question?
- 11) What should the decree be ?

5. From plaintiff side, Rehan Zafar, President of plaintiff Society filed his affidavit in evidence; was examined who produced his affidavit-in-evidence and number of other documents; was cross examined and then side was closed.

6. From defendants, Akram Ahmed, Deputy District Officer, Land Revenue Department, CDGK filed his affidavit in evidence; examined himself, produced his affidavit-in-evidence and other documents; who was also cross examined and then side was closed.

7. Having heard learned counsel for the parties, my findings are as follows:-

Issue No.1	Negative.
Issue No.2	Negative.
Issue No.3	Affirmative
Issue No.4	As discussed

Issue No.5	As discussed
Issue No.6	Negative
Issue No.7	Affirmative.
Issue No.8	Affirmative
Issue No.9	As discussed
Issue No.10	Affirmative.
Issue No.11	Suit is decreed.

### ISSUE NO.1 & 2

1. Whether the suit is barred under section 42 and 56 of the Specific Relief Act, 1877 ?

2. Whether the suit is without cause of action and liable to be dismissed?

8. Both these issues are strongly interlinked with each other hence it would be in all fairness to discuss the same *jointly*. Both these issues are legal one hence it would be in all fairness to first have a *direct* reference to provisions, involved in this issue. Section 42 reads as:-

‘42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:’

The above provision appears to be having *two* folds. *First* one appears to be in line with settled *maxim* that where there is always a remedy against every *wrong* whereby one is *legally* entitled to complain against

infringement / threat to his right or status while the *second* one speaks of *discretion* of the Courts to make declaration about the *controversy* involved.

Let me be more specific and clear that the *bare* reading of the above provision makes it clear that it entitles '**any person**' to file a suit against '**any person**' if such person denies or is interested in denying '**any**' legal character or '**any**' right to '**any**' property of such person. The deliberate and continuous use of the term '**any**' itself shows that legislature have attempted to provide a right to present a *lis* against any infringement *least* threat to '**any right**' in respect of '**any legal character**' or '**any right**' to '**any property**'. The term '**any**' means '**one, some or all**' hence it is not necessary to maintain a suit within meaning of Section 42 of the Act that '**legal character or right to a property**' should be denied as a *whole* but even a part thereof would be sufficient to bring a suit before court of law for '**legal determination**'. In short, a suit within meaning of Section 42 of the Specific Relief Act would be maintainable if one succeeds in establishing :

- i) '**any**' of his legal character;
- ii) '**any**' of his right to any '**property**'

have been denied by somebody or somebody is interested in denying the above. Since, mere sustaining of a *lis* shall not prejudice the competence or discretion of the Courts to determine the controversy therefore, it can safely be concluded that mere establishing above *however* would not necessarily earn a '*decree*' but he (plaintiff) shall be



required to prove his legal character or right to any property as per requirement of law.

9. Now, let's see whether any of legal character of plaintiff and right to subject matter is involved. It is not a matter of dispute that plaintiff was allotted the subject matter and it (plaintiff) did pay the challan, issued by the defendants, which *subsequently* was cancelled by the defendants. The position shall stand evident from a direct referral to "Exh. M" which reads as:

'M/S Zafar Memorial Educational Society,  
Karachi

Subject CANCELLATION OF CHALLAN REGARDING  
PLOTS NO.ST-2, BLOCK-4 CLIFTON KARACHI

It is to inform you that **challan in respect of Plot No.ST-2, Block-4, Clifton, Karachi, was issued** without the approval of competent Authority and it was also against the spirit of Sec. 124 of SLGO, 2001.

Thus the said challan issued on 28.10.2005 for the Amount of Rs.43,92,928.60 (Rupees forty three lacs ninety two thousands nine hundred twenty eight and sixty paise only) **is hereby cancelled.**

You are requested to kindly get the refund (if any) of the paid amounts immediately.

Sd/-Shariq Ilyas  
District Officer (LM-II)  
Revenue C.D.G.K'

From above, it should not be a question of *dispute* anymore that plaintiff's legal character and interest in subject matter was cancelled hence the plaintiff was within his rights to file a *lis* to

question the legality of such *denial* to his '**legal character & interest in subject matter**' within meaning, purpose and object of Section 42 of the Specific Relief Act or least to seek a declaration in that regard.

It would be pertinent to add that since the Section 56 of the Act is *titled* as "**an injunction cannot be granted**' hence it would not prejudice the maintainability of a *lis*, if same is established to be qualifying within meaning of other provisions of the Act. The position shall become clear and evident from a direct referral to Section 56(c) and (k) of the Act, in particular, which reads as:

“ (c) to restraint persons from applying to any legislative body;

(k) where the applicant has no personal interest in the matter “

The case of the plaintiff does not fall within *exceptions*, provided by the Section 56 of the Act as where a right is accrued the final determination thereof has to be adjudicated *properly* by the authority and if there is a failure on part of the authority or there is a departure from *normal* prescribed procedure then action of such authority can well be brought before the Courts of law for examination thereof. This is so for simple reason that the Civil courts are the Courts of ultimate jurisdiction. In the instant matter, it was not the case of the defendants that there was never been any allotment in favour of the plaintiff but *irregularity* and *illegality* were claimed therein. A claim of *irregularity* or

*illegality* even does not authorize the authority to depart from normal prescribed procedure, which shall always stand well with test of 'fairness' which seems to have been ignored in the instant matter. In short, heinous of an allegation *alone* shall never be sufficient to depart from prescribed procedure else whole structure of 'administration' shall fail.

Further, I have no hesitation in concluding that where one (plaintiff) by unfolding the necessary facts establishes his case within meaning of the Specific Relief Act then such *answer* shall also satisfy the question with regard to 'cause of action' because the term 'cause of action' is nothing but bundle of facts (pleading) thereby showing infringement of a legal character or right of a person (plaintiff) to any property. The direct referral of above document is sufficient to establish that plaintiff did have a cause of action.

In view of the above discussion, the issue Nos.1 & 2 are answered as 'negative'.

**ISSUE NO.3.**

'Whether the letter dated 13.06.1994 (annexure F-1) and final terms and conditions (annexure F-2) issued by the respective authorities and duly signed by both the parties created any right in favour of plaintiff or any contractual obligation?'

10. Before responding to the issue, I feel it necessary to say that it is not the 'heading or caption' of a document but the agreed terms and conditions which matters whenever a question of rights and

obligations arises with reference to some document. A contract, being a bilateral document, has to be reduced into writing by means of an agreement enforceable by laws whereby one party makes a *proposal* while other *accepts* the same against some consideration. Reference to operative part of case of 'Alleged corruption in Rental power Plants e.tc. 2012 SCMR 773, being relevant is made hereunder:-

“44..... Whereas, a contract being a bilateral document has to be reduced into writing by means of an agreement enforceable by laws between the person who had made the proposal and the one who had accepted the same, or those who had made an offer to do a particular thing and accepted the same. Reference in this behalf may be made to section 2(g) of the Contract act, 1872 which provides that an agreement enforceable by law is a contract. “

Besides, the conduct and attitude of the parties is also relevant and material so as to conclude whether the parties ever intended to create legal relations and had agreed upon terms which they regarded or the law requires as essential for the formation of legally binding relations. Reference in this regard may be made to the case of RTS Flexible Systems Ltd. v. Molkerei Alois Muller GmbH and Co. KG (Supreme Court of UK) 2012 SCMR 1027 wherein it is observed as:

“45. The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. **It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for**

**the formation of legally binding relations.** Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to concluded and legally binding agreement”  
(*emphasis supplied*)

Now, let's proceed further so as to examine whether parties from their conduct and attitude ever intended to create a legal contract. While going into material in search of answer, it is germane to state that in the instant matter the execution of the said document (s), involved in this issue, is not disputed because very letter of 'cancellation' is itself an admission of existence of thing, sought to be cancelled. It is also not disputed that on request of the plaintiff the defendant had issued a letter (Ex.C-3) which reads as :-

"The President,  
Zafar Memorial Educational Society,  
Karachi.

Subject : Grant of amenity plot No.ST-12, Block-4  
Clifton, Karachi for school purpose.

Reference : 1) your predecessor's application dated  
2.3.1994.  
2) your application dated 25.5.1994.

The Administrator, KMC, vide his orders dated 02.6.1994, contained in relevant office file, has been pleased to **allow grant of a portion of Amenity Plot No.ST-12, Block-4, Clifton, measuring 6266.66 Sq.Yds.** out of total 21,488.88 Sq.yds. for school (Educational purpose) in favour of Zafar Memorial Educational Society, Karachi, **subject to the payment of Rs.1,26,587.00 (Rupees One Lac Twenty Six Thousands Five Hundred & Eighty Seven only)** being the full occupancy value Rs.20.00 per Sq Yd. for Amenity plots together with Land Rent @

paisas 20 per sq.yd per annum. This grant shall, however, be subject to the approval of KMC Council / Govt. On the Terms and Conditions to be decided later.

You are , as such, requested **to please give your consent in writing** for above grant within seven (7) days from the receipt hereof failing which this offer shall cease to exist.

Sd/Senior Director  
Land & Estate, K.MC.

From above, it is quite evident that there was a proposal which was accepted as is evident from Ex.F-1 which reads as:

“The Senior Director,  
Land & Estate, K.M.C.,  
Karachi.

Subject Grant of Amenity Plot No.ST-12, Block-4,  
Clifton, Karachi for School purpose.

Reference Your letter No.Sr.DLE/7220/94  
dated 12.06.1994

**As desired**, the Terms and Conditions on Rs.100/- stamp paper, duly vetted by KMC and approved & signed by us, are returned herewith for further necessary action please. The same may kindly be signed and an attested true copy thereof may please be delivered to us.

Sd/President  
Zafar Memorial Education  
Society, Karachi

The above is sufficient to indicate that there was an ‘*acceptance*’ of the ‘*proposal*’. In consequence thereof the terms and conditions were agreed and both parties executed a document thereby agreeing on following terms and conditions:

1. The plot shall not be used for the purpose other than *it is granted i.e for school purpose.*
2. The construction on above plot shall be carried out in accordance with the Building Plan, duly approved by K.B.C.A with prior N.O.C of K.M.C.
3. The plot shall not be sub-divided into two or more plots nor it shall be amalgamated with other plot without prior permission of K.M.C.
4. No Motor workshop, Garrage, Bank or like shall be made or allowed on above plot.
5. 99 years lease of above plot **shall be issued by K.M.C** in favour of above Society after payment of full occupancy value and Land Rent etc.
6. The Society shall not be authorized to sale above plot to any individual or welfare society. However, if Management of above society wishes to change hands, it shall hand over management to other like-wise society and surrender the Lease of above plot to K.M.C which shall be issued afresh to new Society by K.M.C.
7. **The society shall regularly pay annual Land Rent to K.M.C. against above plot.**
8. The Society **shall be bound to develop and maintain** remaining portion of above plot measuring 15,222.14 Sq.Yards **as 'PARK' through it own resources / expenses and be used as public park.**
9. The K.M.C shall be entitled to cancel Lease of above plot in case Society violates or breaches one or more of conditions cited above.
10. Prior to execution of Lease, and Agreement-to-Lease shall be signed by both parties viz. K.M.C and Zafar Memorial Educational Society Karachi.

It is also not disputed that the plaintiff also paid up an amount of Rs. 43,92,928.66 through challan with defendants hence it is quite evident that both parties continued in a *long* correspondence thereby arrived to

an agreement / contract through which the present plaintiff as '*consideration*' agreed not only to pay an amount of Rs.43,92,928.66 but also agreed to develop and maintain remaining portion of above plot measuring 15,222.14 Sq.Yards as 'PARK' through its own '**resources / expenses**' to be used as **public park** therefore, *legally* parties proved to be under *contractual obligations* towards each other and have been in active notice and knowledge of the '*consideration*'. Thus, the answer to the issue no.3 can be nothing but '**affirmation**' .

#### ISSUE NO.4 to 7

4. Whether after issuance of revalidated challan dated 29.10.2005 in respect of the suit property, the defendant can withdraw from their concluded and binding contract with the plaintiff?

5. Whether promissory estoppel runs against the defendants regarding allotment of suit land?

6. Whether the CDGK has lawfully cancelled the suit property in accordance with law?

7. Whether the plaintiff was condemned unheard? If so, its effect?

11. These all *issues* appear to be strongly interlinked with each other because all revolve round competence of defendants to withdraw/ cancel the agreement/ contract and procedure, to be followed for such exercise. Before going into any further details, I feel it quite proper to say that whole scanning of the *pleadings* and evidence of respective parties the defendants have never come with a specific



plea / stand that '**grant / allotment**' , in favour of the plaintiff, was ever cancelled nor it was ever claimed that defendants were not competent to make the allotment which shall stand evident from a referral to operative part of the letter of cancellation wherein cancellation was based for reason i.e:

'without the approval of competent Authority and it was also against the spirit of Sec. 124 of SLGO, 2001'

It was also not the case of the defendants that the defendants do not have competence to make grant / allotment therefore, *prima facie* , competence of the defendants to make the grant / allotment was not denied by the defendants *themselves*. In such eventuality, the irregularity, if any, being not on part of the plaintiffs but on part of the defendants *themselves* should not have been resulted in penalizing one (plaintiff) for no fault on his part because it is well established principle of law that one shall not suffer for the acts or omission of others. It has also never been the case of the defendants that the defendants did not have competence and control over the subject matter therefore, the question of subject matter to be '**unlawful**' was also not pleaded by the defendants so as to get the agreement '**void**'. In such eventuality, it was never within competence of the defendants to have taken the advantage of their *own* fault by departing from procedure to terminate or cancel an agreement / contract.

12. Be as it may, I would also add here that the defendants do not claimed to have cancelled the allotment and execution of the '**terms**

**and conditions'** but letter of cancellation was focusing to '**challan'** alone which *otherwise* is the consequence of the *agreement* between parties. This shall stand evident from direct referral to a question, posed to defendants' witness and answer thereto which is:

Q: I put it to you that in para 8 of your affidavit in evidence you have stated that letter No.SDL/ADDL/7034/94 dated 06.06.1994 is null and void and can not be considered as title document, which is absolutely incorrect and wrong **since neither KMC nor CDGK has ever cancelled or recalled that letter?**

A: **The above letter (Ex. C-3) was never cancelled** but it was issued subject to condition of depositing cost of land and approval of competent authority.;

This means that said letters, remained in field and were never cancelled although same had created certain rights and obligations on either sides as both parties acted thereon. Said letter (grant / allotment) was made subject to:

- i) *payment of Rs.1,26,587.00 , being the full occupancy value.; and*
- ii) *approval of KMC Council / Govt. on the **Terms and Conditions to be decided later.***

Since, '**revalidation'** of the '**challan'** and subsequent payment of the challan after accepting the terms and conditions, as communicated by the defendants, are sufficient to indicate that requirements to which allotment/grant was made conditional stood complied therefore, mere cancellation of the '**challan'** was never enough to bring the executed documents and allotment to a '**legal end/termination'**. The failure to

perform liabilities, arising out of an agreement, may have their own independent consequences, as detailed in the Chapter-VI of the Contract Act, 1872 but it shall not be sufficient to consider or declare a contract / agreement as legally terminated.

13. Without prejudice to above position, I would proceed further to discuss these issues. Since, so far it stood clear that the plaintiff and defendants not only proved to have been in long correspondence with regard to allotment / grant of the subject matter but such correspondence ended in execution of a document whereby both parties agreed for doing certain *things* (consideration), therefore, it was always obligatory upon the defendants to have followed the '*due process*' while intending to cancel grant / allotment but perusal of the letter of cancellation shall speak for *itself* that how the defendants attempted to '*undo*' what they themselves had created not only by their conduct and attitude but by written documents. The letter of cancellation (Ex.M) reads as:-

M/S Zafar Memorial Educational Society,  
Karachi

Subject CANCELLATION OF CHALLAN REGARDING  
PLOTS NO.ST-2, BLOCK-4 CLIFTON KARACHI

It is to inform you that **challan in** respect of Plot No.ST-2, Block-4, Clifton, Karachi, was issued with-out the approval of competent Authority and it was also against the spirit of **Sec. 124 of SLGO, 2001.**

Thus the **said challan** issued on 28.10.2005 for the Amount of Rs.43,92,928.60 (Rupees forty three lacs ninety

two thousands nine hundred twenty eight and sixty paisa only) is hereby **cancelled**.

You are requested to kindly get the refund (if any) of the paid amounts immediately.

Sd/-Shariq Ilyas  
District Officer (LM-II)  
Revenue C.D.G.K

A *bare* look over said letter shall leave nothing ambiguous that it does not refer to any order but has been issued by the very authority i.e 'District Officer (LM-II), Revenue CDGk' who had issued first letter of grant / allotment. At this juncture, it would be relevant to have direct referral to Ex.7/5 i.e 'Note Sheet' , produced by defendants' witness. It shall make the procedure, followed from beginning till revalidation. The operative part whereof reads as:

*"All correspondence regarding approval from competent authority continued in Para-15 to 19 and a draft Resolution is submitted for approval and the same were approved by the then MC, KMC (Resolution attached). A challan for full occupancy value of above amenity / school plot was issued in favour of M/s. Zafar memorial Educational Society, Karachi amounting Rs.126,587/- @ Rs.20/- per Sq.Yds. for 6266.66 Sq.Yds. along with terms and conditions of grant. The challan was not paid within stippled period due to unavoidable circumstances."*

The above leaves nothing to doubt that certain procedure was followed, which included 'Resolution' even therefore, it was always obligatory to have followed the same procedure to 'undo' a right or obligation, created in result of such process. Further, I would add that it also to be kept in mind that 'revalidation' was done through due

process which shall stand evident from admission, made by witness of the defendants, whereby he admitted as:

“I have also gone through the noting of E.D.O. Revenue and D.C.O, CDGK on the file of the suit plot. It is correct that both the above officers had given approval to issue fresh challan. Thereafter the challan was issued. Voluntarily ads that it was done in the year 2005 by the then E.D.O and D.C.O.”

The District Officer, being subordinate was legally required to have followed the ‘*due process*’ even if he had found some illegalities by his *superiors* while approving issuance of ‘**fresh challan**’ because it is well-settled by now that ‘**things required to be done are to be done in the manner as required by law or not otherwise**’. Reference may be made to the case of *Govt. of Sindh through Secretary & DG Excise & Taxation & another v. Muhammad Shafi and others* (PLD 2015 SC 380) wherein it is held as:

“It is settled principle of law that where law requires an action to be done in a particular manner, it has to be done accordingly and not otherwise. At this point, we may also add that if an act is done in violation of law, the same shall have no legal value and sanctity, especially when the conditions / circumstances which may render such an act invalid have been expressly and positively specified in law”

The subordinates though are not required to obey an *illegal* order of superiors *even* but similarly are not expected to become *judges* of their own cause i.e to take authority of decision-maker rather are required to be courageous enough to return the same with reasoning to the *authority* for an appropriate order. The law *however* does not authorize

one (*Executive*) to exploit his powers and jurisdictions at his own *whims* and *wishes* but requires to act *fairly* as insisted in the case of Muhammad Amin Muhammad Bashir Ltd. (2015 SCMR 630), while interpreting Section 24A of General Clauses Act as:

“9. ... Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised ‘reasonably, fairly, justly and for the advancement of the purpose of the enactment’ and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible.”

To make things further clear, it is material to mention that it was the same ‘**District Officer/LM-II(Rev)**’ who *first* without any objection had intimated the plaintiff about revalidation of previous challan by District Coordination Officer/EDO(Revenue), City District Govt. Karachi, vide his letter No.DO/(LM-II)/2o08/05 dated 15.10.2005 (Ex.I-2) thereby asking the plaintiff to:

"You are requested to please intimate if you are **willing to accept this offer** and **if so** please make **arrangemnts to remit a sum of Rs.43,92,928.66 being the full occupancy value of** above plot plus land rent etc. ‘

which *prima facie* means that ‘**revalidation**’ was not done by him (**District Officer/LM-II(Rev)** ) so he also accepted the payment, made by the plaintiff, through challan under plaintiff’s letter dated 31.10.2005 (Ex.L) hence it was never within competence of the ‘**District Officer/LM-II(Rev)**’ to cancel the challan which was *revalidated* by his

superior. The record *however* shows that after eighteen (18) days the same 'District Officer/LM-II(Rev)' issued letter of cancellation of challan i.e Ex.M. Such exercise on part of the 'District Officer/LM-II(Rev)' legally cannot be stamped as *valid* as it is not in line of settled principle of law, referred hereinabove.

Here, I feel no hesitation in saying that the right of 'cancellation' always remains with the lessor which even was included as *separate* clause in the terms and conditions as:

'9. The K.M.C shall be entitled to cancel Lease of above plot in case Society violates or breaches one or more of conditions cited above.'

nor plea of *promissory estoppel* can be claimed for resorting to a legal course so as to 'undo' even an *illegality* but this *right* cannot be used *arbitrarily* or without following '*due process*' which (due process) stood defined by honourable Apex Court in the case of *Ishtiaq Ahmed v. Hon'ble Competent Authority* (2016 SCMR 943) as:

'4. The right of **due process** is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of *New Jubilee Insurance Company v. National Bank of Pakistan* (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that the right of due process requires that **a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction.**'  
(*emphasis supplied*).

Thus, the term '*due process*' shall not be satisfied unless it is shown that:

- i) *the person had a notice of proceedings which affect his rights;*
- ii) *the person was given a reasonable opportunity to defend himself(his rights);*
- iii) *the tribunal or forum was so constituted as to convey a reasonable assurance of its impartiality;*
- iv) *the tribunal or forum had competent jurisdiction;*

Now, let's see whether the defendants followed the requirements of '*due process*' while canceling the '**challan**'. It is not the claim of the defendants that before issuance of cancellation letter (Ex.M) . The legal and factual position shall stand crystal clear from admission, made by the defendants' witness as:

*"It is correct to suggest that before issuance of Ex."M" no departmental enquiry was conducted **nor any show-cause notice was issued.**"*

The admission of not serving any show cause notice before taking the complained *action* is sufficient to say that defendants never bothered to appraise the well settled principle of law that an action prejudicial to right of an individual cannot be *legally* taken unless he is provided a fair opportunity of explaining his position or defending his rights. Further, as already discussed the grant / allotment was made by '**Senior Director, Land & Estate**' (Ex.3-C) while revalidation was under approval of '**EDO Revenue and DCO**' while cancellation letter is issued by '**District Officer/LM-II(Rev)**'. It is not the claim of the



defendants that '**District Officer/LM-II(Rev)**' was ever authorized / constituted to enquire / process onto the matter of allotment / grant of subject matter nor the '**District Officer/LM-II(Rev)**' *legally* can claim to be superior / appellate authority of '**Senior Director; EDO or DCO**' hence it can *safely* be concluded that while issuing the letter of cancellation there was never observed the requirement of '*due process*' rather plaintiff was condemned unheard. Therefore, the issue Nos.4 and 5 are responded as '*discussed*'; the issue No.6 as '**negative**' while issue No. 7 is answered as '**affirmative**'.

#### **ISSUE NO.9**

'Whether plot in question is amenity plot reserved for park and the same cannot be converted or used for any other purpose?'

14. The above issue appears to be redundant because not only the status of plot in question to be '**amenity / park**' was / is later denied or disputed by plaintiff nor any exercise and jugglery with words can change a legally established principle of law i.e an '*amenity plot*' legally cannot be converted or used for any other purpose but as '*amenity*' which *too* for what it was reserved. However, since this issue was struck with reference to such *plea*, raised by the defendants therefore, it was obligatory upon the defendants to have established their *bonafide* while taking such plea because a settled law is not meant to be used as *double edged* weapon i.e one to bless and other to cut but every person, regardless of his character and status is always expected

to act fairly while keeping the principle of 'equity' at its due place. The record however establishes *otherwise* because there was no denial to the documents, produced by the plaintiff, showing allotment of amenity plots to different persons but conversion thereof for 'commercial and residential purposes' *even* which shall stand evident from following operative parts of cross-examination of the defendants' witness which are:

*"Q: I put it to you that in an identical matter bearing Plot No.ST-22, K.D.A Scheme No.13-A, Kohsar (Hill Park), an allotment pertaining to year 1968 was regularized by the caretaker Nazim/D.C.O. Mr. Fazlur Rehman vide order dated 20.8.2005?*

*A: It is not in my knowledge."*

(In the instant matter, the allotment and approval is done by number of officials, including DCO).

*"It is correct to suggest that in a park near North Nazimabad Bridge, a commercial enterprise namely Pizza Hut has been constructed. Voluntarily says that I am not aware of its process of allotment."*

(This speaks an admission of conversion of amenity (Park) for commercial purpose which is not challenged / questioned by defendants before raising such plea).

*"I see Ex.7/2 and say that I am not aware that in Plot ST-15 permission for constructing **Revolving Restaurant** has been granted."*

*"I see Ex.O-1 and say that Master Plan Environmental Control Department of former K.D.A has granted NOC in respect of conversion of amenity plot in a residential plot. I see Ex.O-3 and admit the contents thereof."*

(This is an admission of conversion of amenity into residential, which is not challenged / questioned by defendants before raising such plea).

From above, it is evident that the defendants (*authorities*) themselves have been acting against their own stand although the defendants *normally* cannot exploit a settled principle of law only to harm one but such actions should always stand appear to be *fair* and *bonafide* which seems to be lacking in the instant matter because the defendants at no material times claimed to have initiated any process against earlier allotment and conversion of *amenity* plots.

Be as it may, let's examine the instant issue that an '*amenity plot*' legally cannot be converted or used for any other purpose but as '*amenity*' which *too* for what it was reserved. Here, I feel it quite necessary to add here that as I have already discussed that the defendants did not come with a plea that it was not within their competence to grant the subject matter else they (defendants) would have mentioned this in letter of cancellation; it is also not the case of the defendants that plaintiff had requested for allotment / grant of portion of '**park**' area but the plaintiff had requested for certain area i.e 6266.66 Sq.Yds. for *amenity* (school purpose) as *whole* therefore, it could be the competence of the defendants to have appreciated / considered the request for *fitness* thereof; availability of piece of land for such '**amenity**' purpose *or* otherwise. The defendants while accepting a

request of the plaintiff for allotment of a piece of land which the plaintiff never claimed to be *necessarily* as 'park' but it was the defendants themselves who had granted a piece of land which *even* per first grant / allotment (offer letter) was not shown to be 'amenity/park' as it will be evident from a referral to *first* letter of grant / allotment which reads as:-

The President,  
Zafar Memorial Educational Society,  
Karachi.

Subject : Grant of amenity plot No.ST-12, Block-4 Clifton,  
Karachi for school purpose.

Reference : 1) your predecessor's application dated 2.3.1994.  
2) your application dated 25.5.1994.

The Administrator, KMC, vide his orders dated 02.6.1994, contained in relevant office file, has been pleased **to allow grant of a portion of Amenity Plot No.ST-12, Block-4, Clifton, measuring 6266.66 Sq.Yds.** out of total 21,488.88 Sq.yds. for school (Educational purpose) in favour of Zafar Memorial Educational Society, Karachi, subject to the payment of Rs.1,26,587.00 (Rupees One Lac Twenty Six Thousands Five Hundred & Eighty Seven only) being the full occupancy value Rs.20.00 per Sq Yd. For Amenity plots together with Land Rent @ paisas 20 per sq.yd per annum. This grant shall, however, be subject to the approval of KMC Council / Govt. On the Terms and Conditions to be decided later.

You are , as such, requested to please give your consent in writing for above grant within seven (7) days from the receipt hereof failing which this offer shall cease to exist.

Sd/Senior Director  
Land & Estate, K.MC.

I have no hesitation in saying that if the portion of allotted / granted portion would have been part of plot , reserved for school, then grant / allotment thereof would not have been open for any objection as such

grant / allotment would neither prejudice the term '*amenity*' nor the purpose thereof. However, it was the defendants who at the time of chalking out terms and conditions described it (portion of plot) as '**Park**'. This further affirms that there had not been any malafide by on part of the plaintiff (a society) to make a request for an amenity plot for amenity purpose (schooling), therefore, legally bonafide of one should not be prejudiced by changed stances or for an illegality with which the person, being penalized, has no nexus.

Be as it may, as per available record it appears that there has been deliberation on part of the defendants while allotting / granting a '**portion**' of amenity only while keeping the remaining *major* portion of amenity (PARK) for its purpose, therefore, per my understanding the grant / allotment of subject matter (a portion of amenity plot for amenity purpose with certain benefits for amenity) had *peculiar* purpose, which will discuss later. I would *first* examine whether grant / allotment of such portion for '**school**' caused any prejudice to status of '*amenity*' or otherwise?. The answer to this part needs no much debate because a '*school*' does fall within meaning of '*amenity*' because the purpose of '*amenity*' is to '**make life easier or more pleasant**'. The answer will become rather easy by referring to an admission of the defendants' witness whereby he admits as:

“..It is correct to suggest that the schools fall within the scope of amenity plot.”

This means that such grant / allotment of portion of *amenity* for *schooling* does not change the status of such portion from '*amenity*', however, since the law also requires that an *amenity* cannot be changed to other *amenity*. I, without a slightest hesitation, shall add that the '*amenity*' shall never achieve its true *spirit* only by leaving a portion of land (plot) but shall require developing thereof (plot) the burden thereof shall remain upon the government (developer in case it is a private project). Since, it is not disputed that subject matter is under direct control of defendants therefore, it was obligatory upon them to develop the plot as '**Park**' ; open it to public and then to keep it maintain which was never done and the *amenity* plot was / is lying undeveloped thereby leaving rooms for unauthorized occupation. The defendants while chalking out terms and conditions for grant / allotment of the portion of the *amenity* to plaintiff for *schooling* purpose seems to have achieved two *benefits* i.e:

- i) *leasing for a purpose, falling within scope of amenity; &*
- ii) *putting plaintiff under an obligation to develop and maintain remaining portion of amenity i.e 15,222.14 Sq.Yd as **PARK**' which too at resources / expenses of plaintiff's.*

This is evident from clause-8 of the terms and conditions which reads as:

8. The Society **shall be bound to develop and maintain** remaining portion of above plot measuring 15,222.14 Sq.Yards **as 'PARK' through its own resources / expenses** and **be used as public park.**

From this, it becomes quit obvious that the defendants while granting/allotting a portion for '**schooling**' not only attempted to keep the status of '*amenity*' survived but also attempted to make the undeveloped *amenity* (PARK) developed and maintained without spending anything from its own *funds*. Since, the plaintiff did accept such term hence it *prima facie* appears that it is not a mere case of allotment / grant of a portion for commercial or residential activity but defendants deliberated to achieve ultimate object i.e '**developing and maintaining a public park at cost / expenses of other**' without prejudicing the scope of *amenity* which *deliberation* cannot be said to be '**unintentional**'. However, as I already admitted that issue, being requiring determination of an already declared settled principle of law, cannot be opened by this Court.

#### ISSUE NO.8 & 10

"8. Whether the plaintiff is entitled to a decree for specific performance of the contract?

"9. Whether the plaintiff is in possession of any title documents in respect of the plot in question?

15. Both these issues are inter-linked with each other because specific performance would always require title or entitlement. Since, it stood established from discussions, made in respect of the issues-*supra*, that there was an *offer* from defendants which *accepted* by plaintiff and

in consequence thereof both the parties executed a document hence the plaintiff did possess documents of *entitlement* whereby a document of *lease* and *agreement-to-lease* were to be signed / executed between the parties as is evident from the clause-10 of the agreed terms and conditions i.e:

*“10. Prior to execution of lease, and Agreement-to-Lease shall be signed by both parties viz: K.M.C & Zafar Memorial Educational Society, Karachi.”*

Since, the plaintiff has established his entitlement and fact that grant / allotment of subject matter was deliberate one therefore, the parties, as were agreed, are to execute required documents. Accordingly, these issues are answered as *'affirmative'*.

**ISSUE NO.11**

16. In view of what has been discussed above, the suit of the plaintiff is decreed without any order as to costs. The defendants shall proceed in pursuance of allotment and memo of understanding/agreement, strictly in accordance with law, equity, and within meaning of due process.

IK

**J U D G E**