

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.225 of 2022

Junaid Akhtar Farooqui.....vs.....Province of Sindh & others

Date

Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi

Justice Mrs. Kausar Sultana Hussain

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of CMA No.2033/2022

07-09-2022

Mr.Asim Iqbal, Advocate for the Appellant.

Mr.Jawad Dero, A.A.G.

Mr.Khalid Jawed Khan, Advocate for Respondent
Nos.7 to 10.

ORDER

Instant High Court Appeal has been filed against the impugned order dated 22.06.2022, passed by learned Single Judge in Suit No.905/2022, whereby, according to learned counsel for the appellant the application (CMA No.9512/2022) filed by respondent Nos.7 to 10 has been disposed of with the directions to the Mutkhtiarkar to handover possession of the suit property bearing No.44 Sector 24-A, Gulzar-e-Hijri, Scheme-33, (2500 sq.yards) to the Nazir of this Court, who may appoint Chowkidar of the subject property, however, the respondent Nos.7 to 10 identified the plot No.35, which is owned and was in possession of the appellant. Per learned counsel the impugned order has been obtained through misrepresentation of facts, whereas, there was no exercise undertaken to get proper identification of the plot, nor the relevant documents, including the documents which were available on the record in the shape of Mukhtiarkar's report dated 17.06.2022 in the Suit, according to which, as per available revenue record the allottees/purchasers

of Plot Nos.1 to 30 have paid differential malkano at the rate fixed by the Committee, whereas, the allottees/purchasers of Plot Nos.31 to 40 have not yet paid differential malkano. Learned counsel for the appellant submits that in the said report, it has been further stated that there are only Plot Nos.1 to 40 and there is no mention of plot No.44, upon which the respondent is claiming ownership. It has been submitted by the learned counsel for the appellant that the appellant has been dispossessed from his plot at the pointation of respondent by Nazir of this Court without hearing the appellant or examining the relevant record. Learned counsel for the appellant further argued that the appellant has filed Suit No.1127/2022 in respect of subject plot i.e. plot No.35 (2500 sq.yards), Sector 24-A, Gulzar-e-Hijri, Scheme-33, wherein, restraining order was passed on 17.06.2022, directing the respondents not to take any coercive action, but inspite of such restraining order, the Nazir of this Court has dispossessed the appellant from his plot as mentioned above.

2. Conversely, learned counsel for the respondent Nos.7 to 10 submits that in his Suit No.905/2022, he has submitted all the relevant documents including registered sale deed in respect of the two plots Nos.44 and 45 admeasuring each 500 sq.yards, and one Plot No.46 admeasuring 1500 sq.yards, which were subsequently amalgamated into one plot No.44 (2500 sq.yards), whereas, differential malkano has been paid on 11.02.2006 under the Regularization Ordinance, 2001. It has been contended by the learned counsel for the respondent Nos.7 to 10 that the appellant has managed forged documents in respect of subject plot, and has no right or title in respect of plot of respondents, however,

the respondent Nos.7 to 10 were dispossessed from such plot on 03.06.2022 by Anti-Encroachment Cell on a false complaint by the Mukhtiarkar, who is acting in collusion with the appellant. It has been submitted that impugned order does not suffer from any factual error or legal infirmity, whereas, the possession of the plot has been preserved by the Court to avoid further litigation or creating third party interest.

3. Learned A.A.G. submits that there seems some confusion with regard to identification of plots as per two different inspection reports submitted by the Nazir in respect of subject plot, therefore, submits that it will be appropriate to carry out fresh inspection of the subject plot, with the directions to the Nazir to associate all the concerned parties including the revenue authorities and to conduct fresh inspection and submit compliance report before the learned counsel Single Judge, who may pass appropriate order in this regard.

4. Heard all the learned counsel for the parties and the learned A.A.G., and perused the record and the impugned order as well as report dated 17.06.2022 submitted by Mukhtiarkar, which suggest that the plot No.44 as claimed by the respondent Nos.7 to 10 does not find mention in the revenue record as per report of Mutkhtiarkar, whereas, the appellant and the respondent Nos.7 to 10 are claiming right, title and possession in respect of a plot of land admeasuring 2500 sq.yards situated in Deh Safoora, Sector 42-A, Scheme No.33, Gulzar-e-Hijri, Malir Karachi. However, there seems some dispute with regard to identification of the plot, which is being claimed by both the parties as plot No.35 and plot No.44 respectfully. This aspect of the matter appears to

have escaped the attention of the learned Single Judge, while passing the impugned order, as the inspection has not been conducted in the presence of all the concerned parties, whereas, there is no mention as to whether the revenue record or the site plan of the area was referred, while conducting such inspection, nor the learned Nazir of this Court has taken due care to atleast seek verification and identification of the land with the help of revenue record.

5. In view of the above facts and circumstances of the case, we will dispose of instant High Court Appeal with the directions to the appellant to file appropriate application, including application Order 1 Rule 10 CPC before the learned Single Judge in Suit No.905/2022 to become a party and to seek recalling or modification of the impugned order. Both the aforesaid suits between the same parties, shall be clubbed and proceeded together to avoid any conflicting orders/decisions.

6. Learned counsel for the respondent Nos.7 to 10 has no objections to this effect.

7. It is expected that learned Single Judge, within one week, may pass order for re-inspection through Nazir of this Court, who shall associate all the concerned parties, including officials of Board of Revenue, concerned Muktiarkar/Deputy Commissioner as well as Survey Superintendent, and to submit report, whereafter, appropriate order may be passed by the learned Single Judge at an early date, in accordance with law.

8. It has been clarified that this order will not come in the way of proceedings of aforesaid suits. In the meanwhile, parties are directed to maintain status quo in

respect of subject plots. The application (CMA No.9512/2022) shall be treated as pending.

9. Instant High Court Appeal along with pending application is disposed of.

Judge

Judge

nasir