

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

PRESENT:

**Mr. Justice Aqeel Ahmed Abbasi**  
**Mr. Justice Mahmood A. Khan**

## **C. P. No.D-4427 of 2020**

Muhammad Naseem.....PETITIONER

Versus

Province of Sindh & 6 others.....RESPONDENTS

PETITIONER : Through Mr. Badar Alam, Advocate.  
RESPONDENT NO.1 : Through Mr. Sibtain Mahmud, Asst.  
A.G. Sindh.  
RESPONDENT NO.2-4 : Through Ms. Nazia Siddiqui, Advocate.  
RESPONDENT NO.5 : Through Mr. Ghulam Akbar Lashari,  
Advocate.  
RESPONDENT NO.6 : Through Mr. Khurram Ghayasuddin,  
Advocate.  
RESPONDENT NO.7 : Through Syed Sultan Ahmed, Advocate.  
Date of Hearing : 24.02.2023.  
Date of Short Order : 24.02.2023.  
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## **ORDER**

**Aqeel Ahmed Abbasi, J** : - Through instant Constitutional Petition, the petitioner, who claims to be the owner of a residential Plot No.C-37 admeasuring 600 square yards situated at Block No.1, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi, has expressed his grievance against respondent No.7, who according to petitioner, with the connivance of the official respondents has damaged hill slope at the bottom and top of the hill on the southern side of the petitioner's plot, which located at the top of the hill, and has extended area of his house bearing Plot No.R-5, Block-1, Gulistan-e-Jauhar, Karachi located at 50 feet down the hill in

violation of law, whereas, according to petitioner, such construction activity is likely to cause land sliding and damage to the plot of the petitioner, which is located on the top of such hill. It has been prayed that the respondent No.7 may be restrained from continuing such construction activity, whereas, the official respondents (SBCA) may be directed to take appropriate action against the respondent No.7 in accordance with law and to ensure that original layout plan of the area shall be maintained.

2. Learned counsel for the petitioner has argued that the respondent No.7 has already started to raise construction of a house on his plot, whereas, in order to usurp the additional land, he is also cutting down the hill slope and making some additions to his property, whereas, the petitioner has been deprived his right to protect his plot from being affected from land sliding. According to learned counsel for the petitioner, hill slope is a public land and cannot be utilized by any individual, including respondent No.7 for his personal benefits while depriving the public from its use. During the course of hearing, learned counsel for the petitioner requested for inspection of the site by the officials of SBCA and KDA to verify such contention of the petitioner, whereas, this Court vide order dated 22.09.2020 was pleased to issue Notices to the respondents, and the official respondents (SBCA & KDA) i.e. were directed to carry out inspection of the site jointly while associating the petitioner and the respondent No.7 and to submit compliance report.

3. Pursuant to Court's Notices, counter-affidavits/comments have been filed on behalf of official respondents No.2, 3 and 4, whereas, statement/comments has also been filed on behalf of the respondent No.6/Sindh Master Plan Authority, wherein, it has been stated that both the subject plots, are owned by petitioner and respondent No.7, are existing as per layout plan of the area, whereas, in order to prevent the land sliding the entire hilltop has been stone-pitched by the petitioner for

protecting his plot from possible land sliding. It has been further stated in the comments that however, there is no evidence of encroachment or usurping the public land by the respondent No.7, as alleged in the petition.

4. Learned counsel for the respondent No.7 has also vehemently denied the allegations of usurp the public land and/or cutting down the hill slope to make the way to his house while endangering the plot of the petitioner, whereas, it has been stated that instant petition is based on malice and contains false and frivolous allegations, whereas, no material or evidence whatsoever, has been produced by the petitioner to support such allegations. From the perusal of inspection report submitted by the official respondents as per Court's order, it has transpired that the respondent No.7 has raised construction of a house on his plot in accordance with law and as per approved building plan and has never caused any damage or change in the master lay out plan of the area while cutting down the hill slope, which could possibly cause damage to the petitioner's plot situated at the hilltop of the area. It has been further contended by the learned counsel for respondent No.7 that instant petition is misconceived, which otherwise is based on malice and involved disputed questions of facts, therefore, same is liable to be dismissed with costs.

5. We have heard the learned counsel for the parties, perused the record with their assistance and have also examined inspection report of the subject area, which reflects that prima facie, the construction of house by the respondent No.7 on his plot has been raised as per approved building plan, whereas, the petitioner has not been able to point out any violation by the respondent No.7, however, the allegation of the petitioner with regard to usurping the public land by the respondent No.7 while cutting down the hill slope and carving out the way to his property appears

to be incorrect, as in view of the comments filed by the respondents No.2-4/KDA as well as inspection report submitted by the Nazir of this Court.

6. In view of hereinabove facts and circumstances of the case, we are of the opinion that the grievance expressed by the petitioner based on apprehension of land sliding because of the construction being raised by the respondent No.7 on his plot while cutting down the hill slope has not been supported by any evidence or the material produced by the petitioner, on the contrary, in view of the comments filed on behalf of the official respondents including Registrar and the inspection report submitted pursuant to the Court's order, it appears that the stone-pitching has already been constructed by the petitioner in order to prevent the land sliding, whereas, the respondent No.7, prima facie, has not usurped the public land in addition to his plot, therefore, instant petition, being misconceived and not maintainable, was dismissed by our short order dated 24.02.2023 and above are the reasons of the said short order. However, before parting with this order, we may observe that in case any of the public land owned by the KDA, including (Hill slope) subject matter of instant petition, is illegally occupied or any construction is raised thereon without any approved building plan and acquiring the right and title, if any, from the KDA, the official respondents shall be at liberty to proceed against such violation(s) after providing opportunity of being heard, in accordance with law.

***JUDGE***

***JUDGE***

\*Farhan/PS (Nadeem)\*