

# IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.222 of 1993  
[Delhi Mercantile Muslim Cooperative Housing Society Limited *versus*  
Muhammad Javed and others]

Dates of hearing : 29.02.2024, 25.03.2024 and 23.04.2024.  
Applicant : Delhi Mercantile Muslim Cooperative Housing Society Limited, through Mr. Muhammad Ali Ghanghro, Advocate.  
Respondents : Nemo.

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** The Applicant-Society has challenged the Judgment and Decree of the learned Trial Court handed down in Suit Number 2127 of 1980, filed by present Respondents Number 1 to 4 (the private Respondents) which is maintained by the learned Appellate Court. The subject matter of this proceeding is an amenity Plot No.SNPA-9, measuring 17146 Square Yards, in Block 3, of Karachi Cooperative Housing Societies Union-the Respondent No.5, viz. the “**Suit Land**”.

2. As per the averment of the present Revision Application, the Suit Land has been developed into a Park and a portion whereof is utilized to construct a Mosque; the Suit Land is known as “CHILDREN PARK”, which is being used by the residents of the locality for relaxation and recreation.

3. Mr. Muhammad Ali Ghanghro, learned counsel for the Applicant, has argued, that both Courts have erred in deciding the case in favour of Respondents, *inter alia*, by overlooking the provisions of law and the case law, in particular, relating to conversion of an amenity plot into a residential one. Narrated the history of the Suit Land that earlier it was

falling in the territorial jurisdiction of Respondent Number 5-Karachi Cooperative Housing Societies Union Ltd. Subsequently, it was allotted to Respondent Number 6-Al-Riaz Cooperative Housing Society Limited, which then allotted it to the Respondents No. 1 to 4 [Plaintiffs], the present **Private Respondents, vide Correspondence** Dated 4th February 1979, produced in the evidence as Exhibit 13 [ per Paragraph-3 of the Plaint of the above Respondents]. Contended that the allotment is void *ab initio* because on 13th October 1977, vide Martial Law Order [MLO] No. 34, allotment of the amenity plots were cancelled which were to be resumed by the Authority in which the plots initially vested; this has been mentioned in the Public Notice published in various Newspapers including daily Dawn dated 31.01.1978, which was exhibited in evidence as Exhibit-74. The private Respondents misrepresented before the Respondent No.7 [the Federal Government, Ministry of Housing and Works], when they sought permission for conversion of this plot from industrial to residential [this Letter is at page-207 of the File, produced by the Private Respondents in the evidence]. Surprisingly, the latter, that is, Respondent No.7 without any probe or inquiry, accorded approval dated 31.05.1979 [at page-211 of the File], whereby, change of use of the Suit Land from amenity to residential was granted, besides, subdivision into five plots was also permitted. Another development took place, when the **Respondent No.5-** Karachi Cooperative Housing Societies Union Limited, allotted the Suit Land and delivered its possession to the Applicant for developing and maintaining a public park, which was in conformity to its original land use, which is accordingly done by the Applicant. Argued that the permission to change the land use granted by Respondent No.7 was in sheer violation of KDA Order 1957, which is applicable to the present controversy; has traced out the statutory history of the amendments made in the KDA Order, in particular in Sections 52 and 52-A, imposing a bar for converting the land

use of an amenity plot; referred to the Site Inspection Report [available in the record], to confirm that the Suit Land is being used as a Park as stated above. In support of his arguments, learned counsel has cited the following Case Law\_

- i. **P L D 2021 Sindh 312**  
[*IRSHAD AHMED SIDDIQUI and others versus KARACHI MUNICIPAL CORPORATION (K.D.A. Wing), KARACHI and others*];
- ii. **P L D 1997 Karachi 450**  
[*SAMIT ALI KHAN versus Dr. Mrs. ZAINAB IRSHAD and 6 others*] – Samit Case;
- iii. **P L D 1994 Supreme Court 512**  
[*ABDUL RAZAK versus KARACHI BUILDING CONTROL AUTHORITY and others*];

4. Private Respondents have filed the Counter Affidavit to the Injunction Application [preferred by the Applicant], vehemently disputing the stance of the Applicant, while opposing this Revision Application and supporting the two impugned Decisions. However, they chose to remain absent during hearings.

5. Arguments heard and record perused.

6. From the pleadings of the parties, following issues were framed by the learned Trial Court\_

1. *Whether the suit as framed is maintainable?*
2. *Whether the suit is not undervalued?*
3. *Whether the suit is barred U/S 70, 70-A and 54 of the Cooperative Societies Act?*
4. *Whether the suit is barred under Articles 270-A of the Constitution of Islamic Republic of Pakistan?*
5. *Whether the provisions of MLO 34 [as amended by MLO 89] are applicable to the suit plots of the Plaintiffs? If so its effect?*
6. *Whether the suit plot has been legally converted by the competent authority into a residential plot by the order dated 31.5.1979?*

7. *Whether the orders dated 25.2.1989 passed by the defendant No.1 and all other subsequent orders in respect of Plot No. SNPA-9 are mala fide, without jurisdiction and lawful authority, illegal, null and void and no legal effect?*
8. *Whether the allotment of the subject plots by defendant No.3 in favour of plaintiffs is illegal and inoperative?*
9. *What should the decree be?*

7. The private Respondents as Plaintiffs have filed the above Suit, *inter alia*, challenging the Order dated 25.02.1980, passed by Respondent No. 5 [KCHSUL], for allotment of Suit Land to the Applicant-Society as an amenity plot, and for declaration that the same had been converted vide Order dated 31-05-1979 [to residential] by the Respondent No.7 .

The Suit was contested by the present Applicant and Respondent No.5-Karachi Cooperative Housing Societies Union Limited and Respondent No.6-Al-Riaz Cooperative Housing Society Limited, on whose behalf Written Statements were filed. Even the latter [Al-Riaz Cooperative Housing Society Limited], which had allotted the Suit Land to the private Respondents, opposed the Suit filed by them and admitted the fact that the Suit Land was an amenity plot, was later converted into residential [Paragraph-1 of the Written Statement at Page-113 of R&P of Suit No.2127 of 1980].

8. After framing of Issues, evidence was led.

9. Mr. Muhammad Shahid Ali, one of the private Respondents [present Respondent No.4] had led the evidence on behalf of Plaintiffs; whereas, Feroz Ahmed testified on behalf of present Applicant Society.

10. The learned counsel has referred to the admission made by the said Witness [present Respondent No.4] that it was in their knowledge that Suit Land is an amenity plot; admitted that they have not paid the development charges of the Suit Land, because it was never demanded from them. To a

question, has stated that he did not remember the price paid for each subdivided plot in 1979.

11. The Applicant Witness reiterated the stance as averred in the pleadings. Emphasized that after promulgation of MLO 34, the Suit Land was reverted to Respondent No.5-Karachi Cooperative Societies Union Limited, which after due process was allotted the same to the present Applicant, which has developed the same in accordance with allotment Terms and Conditions. Denied the suggestion that the Suit Land is wrongly allotted to the Applicant-Society. Nothing contradictory has surfaced in his cross-examination.

12. The Agreement between Respondent No.7 [Federal Government] and Respondent No.5, dated 14.01.1954, produced in the evidence as Exhibit-68, is an undisputed document, whereby, the former has transferred a large tract of land in the City of Karachi, *inter alia*, for development and allotment, including for the purpose of Parks and Playgrounds.

13. The Exhibit-74 and Exhibit 69 [*available at Pages-185 and 221*] are also undisputed documents; the first one is the Public Notice of 31.01.1978 [published in newspapers] informing that the amenity plots allotted to Al-Riaz Society-Respondent No.6, has been cancelled under Martial Law Order No.34; in this Public Notice, the Suit Land is at Serial No.1; *whereas*, the second document is the Gazette Notification of 30.09.1979, informing the Public at Large, *inter alia*, that the amenity plots cancelled in pursuance of the MLO 34, and the Governor of Sindh was pleased to confirm the order of cancellation. This cancellation of Suit Land in favour of Respondent No.6-Al-Riaz Society was never challenged, thus, there is force in the contention of the Applicant's Counsel that once the plot has been cancelled through MLO 34 [dated 30th September, 1977], it could not have been granted / allotted to the private Respondents, subsequently, that

is, on 04.02.1979 by Respondent No.6-Al-Riaz Cooperative Housing Society, which allotment is at *page-163* of R&P of the above Suit.

14. Above referred MLO 34 has been perused and is reproduced herein under for a ready reference\_

***“MARTIAL LAW ORDER No.34.***

*In pursuance of the Proclamation of the fifth day of July 1977, and in exercise of the powers conferred by Martial Law Order No.3 issued by the Chief Martial Law Administrator, the Martial Law Administrator, Zone ‘C’ is pleaded to make the following Martial Law Order :-*

*All allotments of the plots which were reserved for roads, hospitals, schools, colleges, libraries, playgrounds, gardens, parks, community centers, mosques, graveyards or for such other amenity / community purposes but were subsequently unauthorizedly or by political maneuvers converted into residential or commercial plots and on which no construction has been made are hereby cancelled and the plots so cancelled shall be resumed by the authority in which the plots initially vested and the amounts, if any, paid by the allottees shall be refunded under the normal rules.”*

15. It is explicitly mentioned in the above MLO No.34, that all plots reserved for amenity purposes, such as, Playgrounds, Gardens, Parks, Community Centers, if unauthorizedly or by political maneuvers converted into residential or commercial and on which no construction has been made, was cancelled, and shall be resumed by the Authority in which the plot initially vested.

16. Both the Decisions have been considered.

17. Issues Nos.5 to 8 are significant [re-produced in the preceding paragraphs]. The learned Trial Court has held that since the Suit Land was allotted to private Respondents after the promulgation of MLO 34, therefore, the allotment is not hit by the said Martial Law Order. The Trial Court is of the opinion that since the private Respondents paid the charges as mentioned in the Complaint of the of the above Suit, therefore, no illegality is found in the allotment of Suit Land to private Respondents. However, this finding is contrary to record, because in his cross-examination, the above

named witness of private Respondents, has admitted that no development charges at the rate of Rs.25 per square yard were paid, in terms of Exhibit 13-the Allotment Letter of 13.02.1979 issued by Respondent No.6 – Al-Riaz Society to the private Respondents, available at page-163 of R&P of the Suit. It means that the private Respondents did not even comply the basic Terms of the allotment, which they should have, and thus, it is fatal to their claim. **Secondly**, both the Courts have grossly failed to consider a very basic fact, that the effect of above MLO 34 was not only for the past transactions but, an embargo for future change of land use as well, from amenity to residential or commercial. This is further fortified by the above Exhibits 69 and 74, inter alia, that the Governor of Sindh confirmed the cancellation of the unauthorized conversion of the amenity plots. **Thirdly**, at the relevant time, **Section 52-A of the KDA Order** was also violated, while allowing the purported conversion (of land use) and sub-division of the Suit Land into residential plots, hence, the purported Permission / Approval granted by the Respondent Number 7–Ministry of Housing and Works, vide its Missive dated 31.05.1979 (*ibid*) was illegal and without jurisdiction. **Fourthly**, another crucial fact of the case has been negligently overlooked by the learned Courts, while handing down the two impugned Decisions, which is, Correspondence/ Representation of the private Respondents to the Respondent Number 7–Ministry of Housing and Works, seeking permission to change the land use and sub-division is based on misrepresentation of facts. The said Representation dated 08.05.1979 is at Page-183 of R&P and at Page-207 of the present *Lis* record. It is mentioned by the private Respondents, in their Representation that the Suit Land is for use of Small Industrial Homes, which cannot be utilized as such, because in the surrounding there are residential plots, hence, permission was sought to change the Suit Land into residential subdivided plots, which was approved, as stated above.

18. The unreported Judgment produced by the private Respondents, handed down by the learned Division Bench of this Court in C. P. No. D – 615 of 1978, is distinguishable, due to the reason that it is mentioned in the said Judgment that since petitioner [of the cited Case Law] fulfilled the allotment conditions, when it was later cancelled by MLO 34; secondly, the KDA Order [*ibid*] was not considered in the above cited Decision; however, at the same time it is observed that the above Decision would not prejudice the PECHS Society.

19. Analyzing the present controversy from the law point, that is, applicability and non-applicability of KDA Order. A brief statutory history of The KDA Order is, that it was promulgated and gazetted as Order 5 of 1957 dated 13.12.1957 and is available in PLD 1958 Central Statutes Page-159.

20. KDA Order was amended on 11.12.1974 through the Sindh [Amendment] Law Ordinance, 1974, inserting Section 52-A, which for convenience is reproduced below\_

***“52-A. (1) The Authority shall, immediately after any housing scheme is sanctioned by, or altered with approval of, Government submit to the Commissioner the details including the survey numbers, area and location of each plot reserved for roads, hospitals, schools, colleges, libraries, playgrounds, gardens, parks, community centres, mosques, grave yards or such other purpose and the Commissioner shall notify such details in the Official Gazette.***

***(2) The Authority or the Housing Society may at any time prior to utilization of any plot reserved for the purpose mentioned in subsection (1), apply to the Commissioner for conversion of such plot to any other purpose.***

***(3) The Commissioner shall, on receipt of an application under subsection (2), invite objections from the general public through a notice published in one English and one vernacular leading local daily newspaper and the objections, if any, shall be submitted to the Commissioner within 30 days from the date of the publication of the notice.***

***(4) The Commissioner shall, after considering the objections received under subsection (3) and hearing such persons as he may consider necessary forward his recommendations along with the application and other connected papers to Government for orders.”***



21. Whereafter, in the year 1994, Article 52-A was made more stringent and a complete ban was enforced on conversion of lands / plots reserved for amenity purpose. This was done vide Karachi Development Authority [Sindh Amendment] Act, 1994, reproduced herein under for reference\_

*“2. Amendment of Article 52-A of KDA order V of 1957.....In the Karachi Development Authority Order, 1957, in Article 52-A, for clauses (2), (3) and (4) and Explanation thereunder, the following shall be substituted:--*

*(2) No amenity plot reserved for the purpose mentioned in clause (1) shall be converted to or utilized for any other purpose.”*

22. The above legislative history has been discussed in the reported Judgment of this Court in Irshad Case [*ibid*]. However, the learned Division Bench is of the view that said amendments were / are not applicable to the controversy before them relating to a vast piece of land situated in PECHS, because the conversion was made before the promulgation of the above Statutes, but, to the present **Lis, the above amendments are applicable,** because admittedly the conversion permission granted by the Respondent No.7-Ministry of Housing and Works, is of subsequent date, that is, 31-5-1979 [Exhibit 27, Page 193 of the R&P]. Therefore, even this purported conversion and sub-division of the Suit Land is illegal from its inception.

23. The other reported Judgement handed down in Samit case [*ibid*] is also relevant, where in, *inter alia*, the learned Division Bench of this Court has interpreted the MLO 34, and subsequent Martial Law Orders about the same subject. It is held that the adverse effect of MLO 34 would be applicable, if amenity nature is illegally converted to some other land use, and absence of construction on the plot, resulting in its automatic cancellation and reversion to the authority in which it was earlier vested; amount if paid can be refunded to the allottee, as per rules. In the present Case both these last mentioned conditions **exist**, that is, illegal conversion of land use, from

amenity to residential (as discussed in the foregoing Paragraphs), coupled with the fact that no construction was ever raised at the Suit Land by the private Respondents. By operation of law when it was reverted to the Respondent No.5- KCHSUL, it was subsequently allotted to the Applicant Society, which has restored its original amenity purpose and the Suit Land is now being utilised as a family park for the residents of the vicinity. It means when the above Suit was filed by the private Respondents, it was not maintainable, due to the reasons, mentioned in the preceding paragraphs.

24. In view of the above discussion, in particular, the two reported Judgments [*supra*] of this Court, both the impugned Decisions cannot be sustained; consequently, they are set aside and Suit No. 2127 of 1980 filed by the private Respondents is dismissed. Decree to be modified accordingly.

**Judge**

**Karachi.**

**Dated: 30.05.2024.**

Riaz / P.S.