

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
Suit No.125 of 2021 a/w.
Suit Nos.1876 of 2017, 1265 of 2019 [-]2034 of 2020
1626 of 2020 and 1081 of 2021

Dated: _____ Order with signature of Judge(s)

Suit No.1876 of 2017

- 1.For orders as to non-prosecution of CMA No.12291/2020 & 12292/2020.
- 2.For hearing of CMA No.5107/2017.
- 3.For hearing of CMA No.6566/2017.
- 4.For hearing of CMA No.11134/2017.
- 5.For hearing of CMA No.3686/2018.
- 6.For hearing of CMA No.5355/2019.
- 7.For hearing of CMA No.8051/2020.
- 8.For orders on CMA No.12352/2023.

Plaintiff	:	Muhammad Owais through Mr. Ahmed Masood
Defendant No.1	:	Province of Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.2	:	Ali Hassan through
Defendant No.3	:	Mir Hassan through
Defendant No.4	:	Abdul Hamid through
Defendant No.5	:	Survey Superintendent through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.6	:	Assistant Commissioner Orangi Town through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.7	:	Station House Officer P.S. Surjani through Mr. Asad Iftikhar, AAG, Sindh.
Intervenor	:	Mst. Rukhsana Bano through Mr. Syed Ghulam Shabbir Shah.
Date of hearing	:	<u>13.10.2023 & 02.03.2024.</u>

Suit No.1265 of 2019

- 1.For hearing of CMA No.10372/2021.
- 2.For hearing of CMA No.8033/2021.
- 3.For hearing of CMA No.10608/2021.
- 4.For hearing of CMA No.7676/2023.
- 5.For hearing of CMA No.12286/2020.
- 6.For hearing of CMA No.12287/2020.

Plaintiff No.1	:	Wajid Hussain through Mr. Ahmed Masood.
Plaintiff No.2	:	Majid Hussain through Mr. Ahmed Masood.
Defendant No.1	:	Province of Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.2	:	Survey Superintendent through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.3	:	Deputy Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.4	:	Assistant Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.5	:	Mukhtiarkar Manghopir through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.6	:	Station House Officer P.S. Surjani through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.7	:	Ali Gohar through
Intervenor Ghulam Shabbir	:	Mst. Rukhsana Bano through Syed Shah.
Date of hearing	:	<u>13.10.2023 & 02.03.2024.</u>

Suit No.1626 of 2020

- 1.For hearing of CMA No.11469/2020.
- 2.For hearing of CMA No.1770/2021.
- 3.For hearing of CMA No.1771/2021.
- 4.For hearing of CMA No.3342/2021.
- 5.For hearing of CMA No.4430/2021.
- 6.For hearing of CMA No.8502/2021.
- 7.For hearing of CMA No.7677/2021.

Plaintiff No.1	:	Ejaz Ahmed through Mr. Ahmed Masood.
Defendant No.1	:	Province of Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.2	:	Board of Revenue through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.3	:	Deputy Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.4	:	Assistant Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.5	:	Karachi Development Authority through Nemo.
Defendant No.6	:	Mukhtiarkar Manghopir through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.7	:	Director General, KDA through Nemo.
Defendant No.8	:	Station House Officer Manghopir through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.9	:	Station House Officer Surjani Town through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.10 Ghulam Shabbir	:	Mst. Rukhsana Bano through Syed Shah
Defendant No.11	:	Survey Superintendent through Mr. Asad Iftikhar, AAG Sindh.
Date of hearing	:	<u>13.10.2023 & 02.03.2024.</u>

Suit No. Nil (-2034) of 2020

- 1.For orders as to non-prosecution of office objection at flag 'A'.
- 2.For hearing of CMA No.12281/2023.
- 3.For hearing of CMA No.13003/2020.

Plaintiff	:	Rukhsana Bano through Syed Ghulam Shabbir Shah.
Defendant No.1	:	Province of Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.2	:	Deputy Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.3	:	Mukhtiarkar Manghopir through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.4	:	Survey Superintendent through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.5	:	Station House Officer Manghopir through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.6	:	Muhammad Owais through Mr. Ahmed Masood.
Defendant No.7	:	Wajid Hussain through Mr. Ahmed Masood.

Defendant No.8 : Majid Hussain through Mr. Ahmed Masood.

Defendant No.9 : Ali Muhammad Brohi through Mr. Owais Ali Shah.

Date of hearing : 13.10.2023 & 02.03.2024.

Suit No.125 of 2021

1.For orders on Nazir's Report dated 10.05.2023.
 2.For hearing of CMA No.6585/2023.
 3.For hearing of CMA No.8729/2020.

Plaintiff No.1 : Syed Muhammad Shakeel Hashmi through Mr. Khawaja Shamsul Islam.

Plaintiff No.2 : Aqeel Hashmi through Mr. Khawaja Shamsul Islam.

Plaintiff No.3 : Syed Ibn-ul-Hassan Hashmi through Mr. Khawaja Shamsul Islam.

Defendant No.1 : Board of Revenue Sindh through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.2 : Hamoodur Rehman Qazi through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.2(a) : Mukhtiarkar Manghopir through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.3 : Deputy Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.3(a) : Saleemullah Odho through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No. 4 : Assistant Commissioner District West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No. 4(a) : Mushtaq Ahmed Jatoy through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.5 : Inspector General of Police through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.6 : Deputy Inspector General of Police Karachi West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.7 : Senior Superintendent of Police Karachi West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.7(a) : Fida Hussain Janwari through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.8	:	Deputy Superintendent of Police Karachi West through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.8(a)	:	Jamil Akhtar Bangash through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.9	:	Station House Officer Manghopir through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.9(a)	:	Adnan Shah through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.10	:	Sindh Anti-Encroachment Establishment Department through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.11	:	Ali Hassan Zehri through Mr. Owais Ali Shah.
Defendant No.12	:	Chairman National Accountability Bureau through Nemo.
Defendant No.13	:	National Accountability Bureau through Nemo
Defendant No.14	:	Province of Sindh through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.15	:	Survey Superintendent through Mr. Asad Iftikhar, AAG Sindh.
Date of hearing	:	<u>13.10.2023 & 02.03.2024.</u>

Suit No.1081 of 2021

- 1.For hearing of CMA No.9964/2020.
- 2.For hearing of CMA No.1094/2020.
- 3.For hearing of CMA No.10357/2020.
- 4.For hearing of CMA No.3342/2021.
- 5.For hearing of CMA No.4430/2021.
- 6.For hearing of CMA No.8502/2021.
- 7.For hearing of CMA No.7677/2021.

Plaintiff No.1	:	Ali Muhammad Brohi through Mr. Owais Ali Shah.
Defendant No.1	:	Province of Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.2	:	Board of Revenue through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.3	:	Deputy Commissioner Karachi West through Mr. Asad Iftikhar, AAG, Sindh.

Defendant No.4	:	Hamoodur Rehman Qazi through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.4(a)	:	Mukhtiarkar Manghopir through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.5	:	Director General Anti-Encroachment Force Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.6	:	Director Anti-Encroachment Force Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.7	:	Station House Officer P.S. Anti-Encroachment Force Sindh through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.8	:	Deputy Inspector General of Police through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.9	:	Senior Superintendent of Police through Mr. Asad Iftikhar, AAG, Sindh.
Defendant No.10	:	Station House Officer Manghopir through Mr. Asad Iftikhar, AAG Sindh.
Defendant No.11	:	Syed Muhammad Shakeel Hashmi through Mr. Khawaja Shamsul Islam.
Defendant No.12	:	Aqeel Hashmi through Mr. Khawaja Shamsul Islam.
Defendant No.13	:	Syed Ibn-ul-Hassan Hashmi through Mr. Khawaja Shamsul Islam.
Defendant No.14	:	Survey Superintendent Karachi through Mr. Asad Iftikhar, AAG Sindh.
Date of hearing	:	<u>13.10.2023 & 02.03.2024.</u>

O R D E R

MOHAMMAD ABDUR RAHMAN, J. By this Order I will be deciding the following applications:

- (i) CMA No. 5355 of 2019 and CMA No. 6566 of 2017 each being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 maintained by the Plaintiff in Suit No.1876 of 2017 and CMA No. 12292 of 2021 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 maintained one by Mst. Rukshana Bano

seeking to modify the interim relief granted in favour of the Plaintiff;

- (ii) CMA No.10372 of 2019 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff in Suit No.1265 of 2019 and CMA No. 12287 of 20200 being an application under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 and CMA No. 7676 of 2023 being an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 that have each been maintained by the Defendant No.9 in Suit No.1265 of 2019;
- (iii) CMA No. 11469 of 2020 and CMA No. 1770 of 2020 each being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 maintained by the Plaintiff and CMA No.4430 of 2021 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 and CMA No.7677 of 2021 being an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 each maintained by one Rukhsana Bano who is an intervenor in Suit No.1626 of 2020;
- (iv) CMA No.12281 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff and CMA No.13003 of 2020 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 maintained by the Defendant No.9 in Suit No.2034 of 2020
- (v) CMA No. 8729 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff in Suit No.125 of 2021;
- (vi) CMA No. 9964 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff in Suit No.1081 of 2021;

A. The Suits and the Applications

2. Each of the suits are filed by persons would derive their title either from the Province of Sindh or through the Karachi Development Authority but the location of which land, according to each of them, overlays with some of the other Plaintiff's properties. I think it is necessary to indicate the nature of each of the Claims being made by each Plaintiff so as to understand the context in which these applications have been maintained.

(i) Suit No.1876 of 2017

3. This Suit has been maintained by the Plaintiff claiming declaratory and injunctive relief in respect of Plot No.11, Block-B, Surjani Poultry Estate, Karachi, admeasuring 4-00 acres. The Plaintiff is represented by Mr. Ahmed Masood, Advocate.

4. Plot No. C-16, Block C, Deh Surjani admeasuring 4-00 Acres was originally allotted by way of an Ijzatnama dated 6 June 1985 to a Syed Najmul Huda in 1990 pursuant to Board of Revenue Notification No.KB-1/1/30/73/1413/3236 dated 27 March 1973 and Notification No. KBI/1-21/81/1011 dated 30 April 1981 for a term commencing from 1984-1985. This Property was, vide a letter dated 24 September 1991 issued by the Member Land Utilisation, Board of Revenue, exchanged for Plot No.11, Block-B, Surjani Poultry Farms, Karachi, admeasuring 4-00 acres.

5. The Plaintiff's property was thereafter transferred on a few occasions. One such transfer was in favour of Mst. Shammim Khatoon and Tauheed Alam and who, despite the transfers being recorded as having been made subject to the original terms and conditions issued in favour of Mr. Syed Najmul Huda, were issued a new Ijzatnama for a term commencing from 1985-1986. The Plaintiff holds a registered Power of Attorney from the last transferee and on which basis he maintains this Suit

6. The Plaintiff thereafter made an application for conversion of the lease of the property **from a thirty year lease meant for poultry farming to a 99 years lease for Industrial use**. This was apparently allowed by the Land Utilisation Department vide an order dated 20 October 2011 and whereby a fresh grant of a lease for 99 years was granted for same property for industrial purposes and pursuant to which a registered Indenture of Lease dated 24 January 2012 was executed between the Government of Sindh and Plaintiff for an industrial plot pursuant to Condition No.4 (1) of the Statement of Condition notified under the Government of Sindh Land

Utilization Department's Notification No.09-294-03/SO-I/336 dated 25 February 2006, under Subsection (1) of Section 10 of the Colonization of Government Land Act, 1912.

7. Pursuant to the registered Indenture of Lease dated 24 January 2012, Plot No.11, Block-B, Deh Surjani, Karachi, admeasuring 4-0 acres was "found" to be located in Na Class No. 109 and which property has now been surveyed and assigned Survey No.119 in Na Class No.109, Deh Surjani. It is admittedly a condition of the allotment pursuant to the Statement of Condition notified under the Government of Sindh Land Utilization Department's Notification No.09-294-03/SO-I/336 dated 25 February 2006, under Subsection (1) of Section 10 of the Colonization of Government Land Act, 1912 **that the industrial undertaking that was to be established by the Plaintiff in Suit No. 1876 of 2017 was to be "initiated" within six months and "completed" within two years.**

8. A Written Statement has been filed by the Province of Sindh whereby aspersions are cast on the title of the Plaintiff in Suit No. 1876 of 2017 inter alia contending that it was not possible to convert a thirty year lease for Poultry Farming to a 99 year lease for Industrial Purposes.

9. In this suit CMA No. 12291 of 2021 has been maintained by one Mst. Rukshana Bano, who is the Plaintiff in Suit No. Nil (-2034) of 2020 to be impleaded as a party in this Suit and who has also maintained CMA No. 12292 of 2021 being an application under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 seeking a modification of the interim order. Mst. Rukshana Bano is represented by Syed Ghulam Shabbir Shah, Advocate.

(ii) Suit No.1265 of 2019

10. Suit No.1265 of 2019 has been maintained by the Plaintiff seeking a declaration and injunction in respect of two immovable properties bearing Plot No.B-10/1, Surjani Town Poultry Estate, Deh Surjani, Karachi admeasuring 2-00 acres and B-10/2, Surjani Town Poultry Estate, Deh Surjani, Karachi admeasuring 2-00 acres. The Plaintiff is represented by Mr. Ahmed Masood, Advocate.

11. The Plaintiff claims title over these two immovable properties on the basis of an allotment made to their predecessor in interest on 17 June 1992 by the Secretary, Land Utilisation Department and at which time the property was apparently not sub-divided and was identified as Plot No.B-

10, Surjani Town Poultry Estate, Deh Surjani, Karachi admeasuring 4-00 acres. It is been disclosed that an Ijzatnama was issued in favour of the Plaintiff's predecessor in interest pursuant to Board of Revenue Notification No.KB-I/1/30/73/1413/3236 dated 27 March 1973 and Notification No. KBI/1-21/81/1011 dated 10 April 1981 an Deputy Commissioner Karachi West Order no. ACW/SCM/1460 dated 29 October 1992 and Board of Revenue Sindh No. PS/MBR/(LU)/ 1870 dated 17 June 1992 for a term commencing from 1992-1993 on a thirty year lease for poultry farming. Interestingly this Ijzatnama identifies the property as admeasuring 2-00 Acres. Contrastingly, in the demarcation of the property attached the same property is shown as having been sub-divided into two separate properties each admeasuring 2-00 Acres.

12. The Plaintiff contends that two additional properties bearing Plot No. FL-1, NA Class No. 90, Deh Surjani, Karachi and Plot No. FL-2, NA Class No. 90, Deh Surjani, Karachi together admeasuring 6 Acres 20 Ghuntas were allotted by the Province of Sindh to the predecessor in interest of the Defendant No. 7 and which property's location overlays with that of the Plaintiff's property. The Plaintiff maintains CMA No.1073 of 2019 being an application under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 seeking to restrain the Defendant from entering upon the Plaintiff's property.

13. Applications have been maintained one Mst. Rukhsana Bano bearing CMA No.12286 of 2020 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 and CMA No. 12287 of 2020 being an application under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 seeking to modify the injunctive relief that had been granted in favour the Plaintiff and CMA No. 7676 of under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the Plaint on the grounds that as the lease that had been issued for the Plaintiff's property had expired in 2012 and as that the conversion of a lease from 30 years to 99 years has been prohibited by the Supreme Court of Pakistan in Suo Moto Case No. 16 of 2011 the Plaintiff, after the expiry of the lease retained no character in the property to maintain Suit No. 1265 of 2019. Mst. Rukshana Bano is represented by Syed Ghulam Shabbir Shah.

(iii) Suit No.1626 of 2020

14. The Suit is maintained by the Plaintiff claiming to be the owner of Plot No.1, Sector-5, Scheme No.41, Surjani, admeasuring 4.0 acres Industrial

Plot, Surjani Town, Karachi. The Plaintiff in this suit represented by Mr. Ahmed Masood

15. The Plaintiff contends that he had previously filed C.P. No.D-898 of 1994 before this Court in that Petition claimed to be an allottee land of the Province of Sindh. The Plaintiff had received a notice seeking to acquire its land from the Karachi Development Authority. An inconsistent notice was also issued by the Deputy Commissioner regarding the status of the Plaintiff property and which led him to maintain a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Thereafter there was some communication as between the Commissioner office and the Karachi Development Authority and which culminated in the Petition being disposed of on 12 October 1997 in the following terms:

- “ ... (1) *That the respondent No.3 (KDA) undertakes to provide equal alternate land to the petitioner in Section 1 to 5 of Scheme-41, Deh Surjani, Karachi in lieu of the land presently in possession of the petitioner abovenamed.*
- (2) *That the allotment and possession of the land will be given to the petitioner within a month's time from the date of the order and the petitioner shall be allowed 3 months' time to shift their livestock and structure.*
- (3) *That after allotment and handing over physical possession the petitioner shall vacate the premises presently in their possession within 3 months from the date of delivery of the possession of alternate land. In case the petitioners do not vacate the premises within the time specified, the respondent KDA shall be competent to evict the petitioner forcibly, without any further notice.*
- (4) *That the amount of Rs.5,65,557/- on account of compensation as determined by the Governing Body under Resolution No.279 dated 15.11.1986 in respect of the petitioner's land shall be deposited in Court within a fortnight.”*

16. Pursuant to such orders the Karachi Development Authority had allotted to the Plaintiff, Plot No.1/5, Sector-5, Surjani Town, Karachi Development Authority Scheme No. 41 admeasuring 4-00 acres on the same terms and condition on which the land was allotted to the Plaintiff. The original allotment does not seem to be on the record but the Plaintiff contends that the allotment was made pursuant to Board of Revenue Notification No.KB-I/1/30/73/1413/3236 dated 27 March 1973 and Notification No. KBI/1-21/81/1011 dated 30 April 1981. The Karachi Development Authority had appeared before this Court and stated that the Plaintiff's property in this Suit does not fall within the jurisdiction of the Province of Sindh and which falls within the jurisdiction of the Karachi Development Authority.

17. The Plaintiff contends that while admittedly the term of the lease of the property has expired, he has in consonance with the terms of allotment has been writing to the Karachi Development Authority to renew the lease. In regard reliance is also placed on a notification issued under Section 10 of the Colonisation of Government Land (Sindh) Act, 1912 dated 18 October 2010 issued by the Province of Sindh that permits renewal of leases of such poultry farms.

18. It seems that one Mst. Rukhsana Bano, who in this case has been impleaded as the Defendant No. 10, is also claiming title to a portion of the land that is owned by the Plaintiff and who has maintained Suit No. Nil (-2034) of 2020 and in which she claims her entitlement to an allotment as to 16 Acres of land in Na Class No. 90. Deh Surjani, Tapo Mangopir, Karachi pursuant to Statements of Condition issued under Section 10 of the Colonisation of Government Land (Sindh) Act, 1912 notified by Notification No. KBI.1.30.72.7096 dated 12 May 1975. It is admitted that Mst. Rukhsana Bano allotment was cancelled pursuant to under Section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions & Exchanges) Ordinance III of 2001 and where after the property was regularised. It seems that a portion of Mst. Rukhsana Bano overlays the Plaintiff's land and the possession of which currently is within Mst. Rukhsana Bano. Mst. Rukhsana Bano is represented by Mr. Syed Ghulam Shabbir Shah.

(iv) Suit No. Nil (-2034)of 2020

19. Suit No.2034 of 2020 has been maintained by the Plaintiff claiming title to 16 acres of land situated in Na class No.90, Deh Surjani, Tappo Manghopir, Surjani West, Karachi, on the basis of an allotment letter dated 14 March 1996 issued by the Secretary to the Government of Sindh Land Utilization Department on lease for a period of 99 years and which was allotted pursuant to statement of condition in accordance with Notification No.KBI/1/30/72/7096 dated 12 May 1975 issued by the Government of Sindh in exercise of powers conferred under Subsection (1) of Section 10 of the Colonisation of Government Land (Sindh) Act, 1912. The land was cancelled under Section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions & Exchanges) Ordinance III of 2001, which was subsequently regularised by the Plaintiff on 1 April 2006.

20. Mr. Syed Ghulam Shabbir Shah, has entered appearance on behalf of the Plaintiff and has maintained CMA No.12281 of 2020 seeking an interim order prohibiting the Defendants from interfering with the physical

possession and enjoyment of their property. CMA No.13003 of 2020 has also been maintained under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 calling for the withdrawal of the interim order that has been passed in the suit whereby possession of the plaintiff has been maintained and directions had been given that the Defendant should neither create any third party interest over 08 acres of land of the Defendant the overlays the Plaintiff's property or from interfering in the possession of the Plaintiff over its property.

(v) **Suit No. 125 of 2021**

21. Suit No.125 of 2021 has been maintained by the Plaintiff claiming declaratory and injunctive relief to Plot No.B-6, Surjani Poultry Estate, Deh Surjani, Karachi, admeasuring 4-00 acres and which was allotted to the Plaintiff on 21 July 1992 by the Section Officer-II for the Secretary to the Government of Sindh Land Utilization Department. An agreement of sale was thereafter executed by the allottee in favour of the Plaintiff in the subject suit and on the basis of which they claim their right and title over that property. Pursuant to such an agreement an Ijzatnama was executed by the Mukhtiarkar Karachi (West) on 27 December 1992 and which stated that the allotment was for a period of 30 years commencing from 1992-93 for poultry farming purposes on the following terms and conditions laid down in Board of Revenue Notification No.KB-I/1/30/73/1413/3236 dated 27 March 1973 and subsequent Notification No.KB-I/1-21/80/1011 dated 10 April 1981 and as per the Deputy Commissioner Karachi (West) Order No.ACW/SCM/1756/92 dated 24 December 1992. The Plaintiff is represented by Mr. Khawaja Shams ul Islam.

22. The Plaintiff has maintained an application for renewal of his lease in terms of the Statement of Condition on the basis of which the allotment had originally been made to them. They therefore maintained CMA No.8729 of 2020 being an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 seeking injunctive relief restraining their dispossession until the decision of the suit.

23. The Plaintiff in this suit contends that the Plaintiff in Suit No.1081 of 2021 is attempting to dispossess him and has therefore maintained CMA No. 5355 of 2019 and CMA No. 6566 of 2017 each being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 seeking directions that his possession should not be interfered with.

(vi) Suit 1081 of 2021

24. Suit No.1081 of 2021 has been maintained by the Plaintiff claiming ownership of 10-00 Acres of land located in Na Class No.90, Deh Surjani, Tappo Manghopir, District Karachi West admeasuring 10.0 acres and which the Plaintiff contends was allotted to them on 24 September 1995. The land was admittedly cancelled under Section 3 of the Sindh Government Lands (Cancellation of Allotments, Conversions & Exchanges) Ordinance III of 2001 and whereafter the same has been regularized in favour of the Plaintiff in that suit.

25. The location of the Plaintiff's property purportedly overlays with the land claimed by the Plaintiff in Suit No.125 of 2021 and each of them are arrayed as Defendants in their respective suits.

26. The Plaintiff in Suit No.1081 of 2021 maintains an application bearing CMA No.9964 of 2020 being an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 to maintain their possession over the their property.

B. Suo Moto Case No. 16 of 2011.

27. The Supreme Court of Pakistan in exercise of its jurisdiction under clause (3) of Article 184 of the Constitution of the Islamic Republic of Pakistan, 1973 had taken notice of illegal allotments of property in the Province of Sindh. The *lis* is entitled *Suo Moto Case No. 16 of 2011* and in which the following orders were passed on 28 November 2012:

“ ... 7. Under these circumstances, we are constrained to direct that the Deputy Commissioners/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Mukhtiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the officer of the Mukhtiarkar to any other place. Moreover, mindful of rampant corruption and organized crime of land grabbing, particularly, regarding prime state land, and mismanagement/forgeries in the revenue record, we hereby, until further orders restrain the Government/Revenue Department from mutation, allotment, transfer and/or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner/DCO of the relevant districts/dehs besides others to contempt proceedings.”

As is apparent the order passed by the Supreme Court of Pakistan *inter alia* clarifies that:

- (i) no further mutation, allotment, transfer or conversion of any state land was to be made until the entire revenue record of Sindh was reconstructed;
- (ii) without prejudice to the generality of the above mentioned restriction on conversion, the conversion of a 30 year lease to an enhanced term shall be stopped as it was prohibited by the law;
- (iii) by clarifying that state land can not be sold out “without participation of public at large”, it is apparently being suggested that direct allotments of land to persons without a process of public auction cannot be carried out even pursuant to Statements of Conditions issued under Section 10 of the Colonisation & Disposal of Government Lands (Sindh) Act, 1912; and
- (iv) any further conversions of lands that were done by the Province of Sindh after 28 November 2012 were to be treated as a nullity and would be treated a contempt of the order dated 28 November 2012.

28. To the best of my knowledge the order passed by the Supreme Court of Pakistan, has to date not been recalled by it and still subsists. In the decision reported as **Syed Mehmood Akhtar Naqvi and others vs. Malik Israr, Senior Member, Board of Revenue Sindh and others**¹ reference has been made to the above mentioned order to indicate that it still subsisted.

29. It is therefore clear that in those proceeding, *inter alia* the Supreme Court of Pakistan is exercising its jurisdiction over issues pertaining to:

- (i) the allotment of lands directly by the Land Utilisation Department under Statements of Conditions issued under Section 10 of the Colonisation & Disposal of Government Lands (Sindh) Act, 1912 which have been carried out without a public auction; and

¹ PLD 2018 SC 468

- (ii) the conversion of land allotted for a term of 30 years for a particular use to an enhanced term whether or not for a different purpose;

C. Section 10 of the Code of Civil Procedure, 1908

30. The Principles of Res Sub-Judice have been codified in Section 10 of the Code of Civil Procedure 1908 as hereinunder:

“ ... 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Pakistan having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation. The pendency of a suit in a foreign Court does not preclude the Courts in Pakistan from trying a suit founded on the same cause of action.”

31. Each of the suits listed hereinabove, have been maintained before this Court under Section 9 of the Code of Civil Procedure, 1908 and would therefore be subject to Section 10 which prescribes that inter alia wherever a *lis* is subject to the concurrent jurisdiction of two courts, the court in which the proceedings are subsequently instituted shall not ‘proceed with the trial’ of the Suit before it where the “**issue is also directly and substantially in issue in a previously instituted suit.**” Now, the issues in each of these Suits, in so far as the title of each of the Plaintiffs are concerned, either fall within the conversion of a thirty year lease into a 99 year lease or fall into the category of the allotment of plots “without participation of public at large” and each of which issues are apparently being considered by the Supreme Court of Pakistan in *Suo Moto Case No. 16 of 2011*. While apparently none of the Plaintiffs are litigating as against each other before the Supreme Court of Pakistan, the rights that each of the Plaintiffs have in each of their properties admittedly derive from the Province of Sindh, including but not limited to the Plaintiff in Suit No. 1626 of 2020 whose title while originally was from the Province of Sindh but now apparently vests in it through the Karachi Development Authority. That being the case each of the Plaintiffs are therefore persons claiming their rights from the Province of Sindh and would as such fall within the meaning of person maintaining their “*claim*” from a person “*litigating under the same title*” and whose authority to

alienate such property is being adjudicated on by the Supreme Court of Pakistan.

32. In a decision reported as **Ali Mushtaq and others v. Federation of Pakistan and others**² a learned single Judge of this Court while considering the scope of Section 10 of the Code of Civil Procedure, 1908 has held that:

“ ... 20. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue and thus the insertion of section 10 is to avoid two parallel trials on the same issues. Even if the cause of action and some consequential relief prayed for is added and/or some of the issues in a former and subsequent suits may differ, that will not be a ground for non-application of Section 10 *ibid*, if it is being observed that the final decision in the earlier suit may either operate as *res judicata* or would materially affect the proceedings and trial of subsequent suit, which effect could be seen in the instant case. Reliance is placed on the case of *Shri Ram Tiwari v. Bholi Devi* reported in AIR 1994 Patna 76.

21. The legislature has purposely carved out the language of Section 10 to include all those issues which are directly and substantially in issue in previously instituted suit and does not talk about identical and similar nature of issues and reliefs. It is enough if the relief claimed in the subsequent suit is somehow directly and substantially linked with the earlier one. Any formal or informal addition of a party having no substantial effect to the proceedings and the relief claimed, will not materially affect the operation of Section 10 CPC. Reliance is placed on the case of *S.K. Rangta & Co. v. Nawal Kishore Debi Prasad* reported in AIR 1964 Calcutta 373.”

33. The Supreme Court of Pakistan has in the decision reported as **Ali Azhar Khan Baloch and others vs. Province of Sindh and others**³ clarified that this Court could not act in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 or under Section 9 of the Code of Civil Procedure, 1908 in respect of which matters over which jurisdiction is being exercised by the Supreme Court of Pakistan and has deprecated the practice that has developed to frustrate the orders of the Supreme Court of Pakistan by invoking this Court's original or constitutional jurisdiction and obtaining interim relief.

34. The Plaintiffs and each of them have argued on the merits of each of the applications. However, as each of their rights to their properties are currently sub-judice in *Suo Moto* Case No. 16 of 2011, I am of the opinion that the provisions of Section 10 of the Code of Civil Procedure, 1908 are attracted and each of these proceedings are liable to be stayed under Section

² 2024 CLC 18

³ 2015 SCMR 456

10 of the Code of Civil Procedure, 1908 until the decision in those proceedings.

35. The question that remains is what is to happen to the interim applications that have been filed by each of the Plaintiff's in each of their suits in the interim. I must admit that in the presence of the orders passed by the Supreme Court of Pakistan regarding the issue of conversion of a land to a different tenure or the very rights of allotment of a property without public participation, and which still have to be clarified by the Supreme Court of Pakistan, it would make better sense for this Court not to "second guess" the orders of the Supreme Court of Pakistan and to allow for each of the Plaintiffs to apply to obtain appropriate interim relief from the Supreme Court of Pakistan.

36. In the circumstances and for the foregoing reasons it is hereby directed that:

- (i) CMA No. 8729 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff in Suit No.125 of 2021, CMA No. 9964 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff in Suit No.1081 of 2021; CMA No.10372 of 2019 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff, each in Suit No.1265 of 2019, CMA No. 5355 of 2019 and CMA No. 6566 of 2017 each being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 filed by the Plaintiff in Suit No.1876 of 2017, CMA No. 11469 of 2020 and CMA No. 1770 of 2020 each being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 filed by the Plaintiff and CMA No.4430 of 2021 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 and CMA No.12281 of 2020 being an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 that has been maintained by the Plaintiff and CMA No.13003 of 2020 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 maintained by the Defendant No.9 in Suit No.2034 of 2020 are each disposed of in terms that the interim order that had been passed in each of these suits directing the parties to maintain status quo shall continue for

a period of 30 days from the date of this Order to allow each of the parties to approach the Supreme Court of Pakistan to press for their relief in Suo Moto Case No. 16 of 2011;

- (ii) CMA No. 12292 of 2021 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 maintained by the Applicant Rukhsana Bano who is an intervenor in Suit No. 1876 of 2017, CMA No.4430 of 2021 being an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 and CMA No.7677 of 2021 being an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 each maintained by the Applicant Rukhsana Bano who is an intervenor in Suit No.1626 of 2020 and who is as of yet not a party in each of those proceedings is dismissed as not being maintainable at this stage;
- (iii) CMA No. 7676 of 2023, being an application that is maintained by the Defendant No.9 in Suit No.1265 of 2019 under Order VII Rule 11 of the Code of Civil Procedure, 1908, is treated as an application under Section 10 of the Code of Civil Procedure, 1908 and is allowed with the following directions which are also issued by this Court, under Section 10 of the Code of Civil Procedure, 1908, that Suit No.1876 of 2017, Suit No.1265 of 2019 Suit No. Nil (-2034) of 2020, Suit No.1626 of 2020 and Suit No.125 of 2021, Suit No.1081 of 2021 are stayed until the decision in Suo Moto Case No. 16 of 2011 by the Supreme Court of Pakistan.

Order Accordingly.

JUDGE

Karachi dated 9 March 2024

