

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

## **High Court Appeal No. 202 of 2024**

### **PRESENT:**

Mr. Justice Aqeel Ahmed Abbasi,  
Chief Justice &  
Mr. Justice Abdul Mobeen Lakho.

### **FRESH CASE:**

1. For orders on office objection a/w. reply at 'A'
2. For orders on CMA No. 1200/2024.
3. For hearing of Main Case.
4. For orders on CMA No. 1201/2024.
5. For orders on CMA No. 1202/2024.

### **23.05.2024:**

Khawaja Shams ul Islam, advocate for the appellants.

## **ORDER**

1. Through instant High Court Appeal, the appellants have impugned the order dated 02.05.2024 passed by the learned Single Judge of this Court in Suit No. 436 of 2024 [Re: *M/s. Titan Two Builders & Developers & others v. M/s. Zuleikhabai V. M. Gany Rangoonwala Trust & others*], whereby, according to learned counsel for the appellants, the appellants/plaintiffs in the Suit, are seeking declaration against an illegal order of refusal dated 04.01.2023 passed by the Sub-Registrar-II, Gulshan-e-Iqbal Town, Karachi in respect of appellants' land i.e. open Commercial Plot bearing No.173, admeasuring 6727 square yards out of land measuring 01 acre and 30 ghuntas, new Survey No. 173 (Formerly Naiclass No. 21), Deh Dozan, Tapo Songal, Sector 34-A & 35-A, KDA Scheme No. 33, Karachi [***the subject property***] for a total sale consideration of Rs. 1.16 Billion, which has admittedly been received by respondent No.1, whereas, the sale deed was duly accepted by the concerned Sub-Registrar for the purposes of Registration without any objection, however, the

same was adjourned for want of Town Tax Challan and Resolution, which requirement was also duly complied. However, subsequently, through letter dated 04.01.2023, the registration of the documents has been refused in purported exercise of Section 71 of the Registration Act without assigning any reason, whereas, it has been intimated that the NOC earlier issued in respect of the subject property by the Mukhtairkar, Gulzar-e-Hijri, Scheme 33, Karachi East vide letter dated 03.01.2023 has been cancelled. Per learned counsel, neither any notice was issued to the appellants before issuing cancellation of such NOC, nor at the time of passing of the refusal order by the Sub-Registrar-II, Gulshan-e-Iqbal, Karachi under Section 71 of the Registration Act, whereas, no reason whatsoever, has been assigned. However, on an inquiry made by the appellants, it has been informed that pursuant to some litigation in respect of the subject property, such NOC has been cancelled. Per learned counsel, neither number of any such proceedings has been given, nor any order passed by the competent Court of jurisdiction has been supplied or intimated while passing the impugned order under Section 71 of the Registration Act. According to learned counsel, the appellants, who have acquired right, title in respect of the subject property after having made payment of entire sale consideration, received original documents of title as well as possession of the subject property, could not have been denied such Registration, as the Sub-Registrar is duty bound to Register such documents unless, there is some legal impediment i.e. order from the competent Court of jurisdiction to this effect.

2. It has been further contended by the learned counsel for the appellants that the learned Single Judge instead of granting any interim relief or even issuing Notices to defendants required the appellants to file amended plaint "only to the extent not having

received any intimation/notice of alleged notice in relation to the subject property to be specifically included in the pleadings”, and also directed the appellant to approach the Registrar under Section 72 of the Registration Act against the order passed under Section 71 of the Registration Act, without prejudice to the present suit, which directions, according to the learned counsel for the appellants, under the facts and circumstances of the case, are unwarranted, whereas, provisions of Section 72 of the Registration Act are not attracted in the instant case, as no reason for refusing the Registration of the documents whatsoever has been given, therefore, the appellants can approach the competent Court of civil jurisdiction seeking a declaration under Section 77 of the Registration Act. According to learned counsel, in the suit filed by the appellant, interim relief for securing the possession of the appellants over the subject property was sought, however such request of the appellants has also been declined on the misconceived notion that appellants are not able to establish their possession or erection of any boundary wall thereon on the subject property which is an open plot/land.

3. It has also been contended by the learned counsel for the appellants that the above facts are already admitted and acknowledged in the sale deed, whereas, photographs were attached to show that boundary has been constructed on the subject property, and the appellants are in possession however, no interim relief to this effect has been passed and there is likelihood that some unscrupulous persons may encroach upon the subject property and the appellants will be deprived of their lawful right, title and possession in respect of the subject property, for which, the entire sale consideration has been paid and all codal formalities have been completed for registration of lease, which has been illegally denied in the instant case.

4. From perusal of the impugned order passed by the learned Single Judge, prima face, it appears that no adverse order has been passed against the appellants, who have been asked to file amended pleadings to the extent as mentioned hereinabove and also gave option to approach the Registrar by filing an appeal under Section 72 of the Registration Act against the Order passed under Section 71 of the Registration Act, however, without prejudice to the suit proceedings. As regards the request of the appellants seeking protection against encroachment or dispossession from the subject property, we are of the view that such request has to be examined after verification of such possession while directing the Nazir/Deputy Nazir of this Court to carry out the inspection of the subject property.

5. Accordingly, without commenting on the merits of the case, we would dispose of instant High Court Appeal with the directions to Nazir/Deputy Nazir of this Court to inspect the subject property i.e. open Commercial Plot bearing No.173, admeasuring 6727 square yards out of land measuring 01 acre and 30 ghuntas, new Survey No. 173 (Formerly Naiclass No. 21), Deh Dozan, Tapo Songal, Sector 34-A & 35-A, KDA Scheme No. 33, Karachi, after notice to all concerned, and verify the possession or otherwise of the appellants over the subject property, and to submit the report before the learned Single Judge, who may pass appropriate interim or final order on injunction application after hearing the learned counsel for the parties, in accordance with law. Such exercise may be undertaken within a period of seven (07) days from the date of receipt of this Order. For the purpose of inspection, Rs.50,000/- [Rupees Fifty Thousand only] is fixed as Nazir's Fee, which shall be paid by the appellants in advance, whereas, it is expected that as soon inspection is conducted, the appellants may approach the learned

Single Judge by filing urgent application to seek appropriate order, in accordance with law. However, till then, status quo shall be maintained in respect of possession, right and title of the subject property/plot, pursuant to acceptance of the aforesaid lease deed, whereas, no third party interest shall be created till next date in respect of the subject property i.e. Commercial Plot bearing No.173, admeasuring 6727 square yards out of land measuring 01 acre and 30 ghuntas, new Survey No. 173 (Formerly Naiclass No. 21), Deh Dozan, Tapo Songal, Sector 34-A & 35-A, KDA Scheme No. 33, Karachi. This is however, without prejudice to the right, interest, title if already determined by the order of any competent authority/Court in accordance with law, and/or any order as may be passed by the learned Single Judge in the subject suit.

6. Instant High Court Appeal stands disposed of in the above terms alongwith all listed applications.

**CHIEF JUSTICE**

**J U D G E**

A.S.

