

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Nadeem Akhtar &  
Mohammad Abdur Rahman, JJ,

C.P. No.D –7142 of 2019

Mrs Shahnaz Hanif Merchant  
Vs.  
Province of Sindh & others

---

For orders as to maintainability of petition

---

Petitioner: Through Mr. Blosch Ahmed Junejo, Advocate  
Respondent Nos.1 to 5  
and 9 to 11 : Through Mr. Jawwad Dero, Additional  
Advocate General  
Respondent Nos.6 & 7 : Through Mr. Khurram Ghayasuddin, Advocate  
Respondent No.12 : Through Mr. Muhammad Ameen, Advocate  
Date of hearing: 28.11.2023  
-----

**ORDER**

**MOHAMMAD ABDUR RAHMAN,J:** This is a Petition that has been maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as against the Karachi Development Authority (hereinafter referred to as the “KDA”) seeking compensation for the cancellation of Plot No. Com-11/A, Block-3, KDA Scheme No.5, Karachi, admeasuring 1000 square yards (hereinafter referred to as the “Said Property”) and which was allotted by the KDA to the predecessor in interest of the Petitioners and which is located within the perimeters of an amenity plot bearing ST No. 15, Block 3, Karachi Development Authority Scheme No. 5, Karachi and designated for use as a Park known as ‘Bagh-e-Ibne Qasim’.

2. It is contended in the Petition, that by a notification dated 27 February 1973, the then Minister of Housing Town Planning and Local Government Department, Government of Sindh had called for the

amendment of the Master Plan that had been made for Karachi Development Authority Scheme No. 5, Karachi and which *inter alia* called for modification to be made to the layout of Bahg e Ibn Qasim.

3. It is common ground as between the KDA and the Petitioner that the KDA had on 29 March 1975, after such amendments had been made, allotted the said property to one Mrs. Nasim Mumtaz at a rate of Rs.100 (Rupee One Hundred) per square yards i.e. for total amount of Rs.100,000 (Rupees One Hundred Thousand only). The entire amount was paid and a possession order was issued by KDA in favour of Mrs. Nasim Mumtaz on 6 March 1976 and a registered Indenture of Lease was subsequently executed by KDA in favour of Mrs. Nasim Mumtaz on 18 February 1978.

4. Through a registered Deed of Conveyance, dated 8 March 1978, Mrs. Nasim Mumtaz has conveyed all her right, title and interest in the Said Property to one Haji Abdullah for a sum of Rs. 220,000 (Rupees Two Hundred and Twenty Thousand only) and which mutation was duly recorded in the record of the KDA on 10 August 1978. As Haji Abdullah had passed away, the Said Property was transmitted to his legal heirs and where after some of those legal heirs relinquished their share in the Said Property to three sons of Haji Abdullah namely Muhammad Ali, Muhammad Irfan and Nisar Ahmed. The said three sons, on 25 July 1995, executed a Power of Attorney in favour of two persons namely Saleem Farooque Khan and Iqbal Ahmed Bari. These Attorneys thereafter on 20 December 1995 executed a registered Conveyance Deed, on behalf of their principals, in favour of the Petitioner and who therefore came to own the Said Property and whose name stood recorded as owner of the Said Property in the record of the KDA.

5. Mrs. Shahnaz Hanif Merchant's title and occupation of the Said Property had, on account of the allotment being made within the perimeters of Bagh e Ibn Qasim ,caused some issues as the KDA sought to cancel her allotment to the Said Property and which had compelled her to file Suit No. 316 of 1996 against the erstwhile City District Government Karachi on account of various actions taken by it. The following prayers were made by her in Suit No. 316 of 1996:

“ ... (A) *It be declared that Defendants, their officials' threats to eject and demolish the Building structure of the Plaintiff over her plot of land bearing No.Com-11/A, Block No.3, Kehkashan, Clifton, Karachi under*

*the directions/instructions of Administrator of Defendant No.1 is unjust, illegal, malafide and against the principles of natural justice. The Defendant No.1 has no right to interfere with the Plaintiff's possession in respect of her property aforesaid.*

*(B) It be declared that Defendants have acted illegally and malafidely by demolishing the Plaintiffs property aforesaid and causing her financial losses to the tune of Rs.5,00,000.00 and mental suffering and torture.*

*(C) Perpetual injunction be issued restraining the Defendants, their officials, servants, agents previse, Attornies and all other persons claiming for them or under any one of the Defendants and/or under their authority direction from dispossessing the Plaintiff from her property aforesaid or disturbing her possession in any way or manner directly or disturbing her possession in any Way or manner directly or indirectly,*

**OR**

*ALTERNATIVELY in case of forcible ejectment at any time hereafter and demolition of her Building, pending disposal of her suit, a decree possession of the said property be passed against the Defendants.*

*(D) A decree in the sum of Rs.15,00,000/ (Rupees Fifteen Lakhs) be passed against the Defendants jointly and/or severally by way of damages in respect of the loss which they have caused to the Plaintiff and her Building by their unauthorised, unjust and illegal malafide acts.*

*(E) Any other relief or reliefs which this Hon'ble Court may deem fit and proper under the circumstances of this case be granted."*

Suit No. 316 of 1996 was dismissed on 7 December 2017 and against which apparently no appeal has been preferred by the Petitioner.

6. During this period, various requests were made by the Petitioner for "shifting" the Said Property and which seems to have been granted by the erstwhile City District Government Karachi by letter no ADO/(P&H)/CDGK/1544/2005 dated 13 September 2005 and which having not being honoured has prompted the Petitioner to maintain this Petition with the following prayers:

" ... A. To Direct the respondents to comply with the letter no ADO/(P&H)/CDGK/1544/2005 dated 13-09-

*2005 and constitute allotment, site shifting, possession order of an Alternative Plot in favour of the Petitioner*

*B. To direct the Respondents no. 2, 10 and 11 to demarcate the Alternative Plot and issue a Site Plan in favour of the Petitioner*

*C. To direct the Respondents to hand over the possession of the Alternative Plot to the Petitioner with immediate effect.*

*D. To direct the respondents to provide the Petitioner with all bonafide information in relation to the whereabouts of the Alternative Plot in exchange of the property*

*E. To direct the Respondents to provide all bonafide information to the Petitioner in relation to any other plot which has been allotted to the Petitioner after the Respondents have unlawfully transferred handed over possession of the Alternative Plot to the Respondent no. 12.*

*F. To direct Respondent No. 12 to maintain status quo in terms of completing its project upon the Alternative Plot which is completely illegal/unlawful and unconstitutional.*

*G. To provide any ancillary or interlocutory relief to the petitioner during the pendency of this Suit.*

*H. To award any exemplary costs arising out of this Petition to the Petitioner.”*

As is apparent, the pleadings of the Petitioner do not press this Court to uphold the validity of the original allotment of the Said Property, the only questions that remains to be decided in this Petition, on the basis of the prayers as maintained, is as to whether the Petitioner is entitled to an “alternative plot” or in the alternative whether the KDA is liable to compensate the Petitioner for the illegal allotment of the Said Property and if so on what basis should such compensation be paid.

7. Mr. Blosch Ahmed Junejo appeared for the Petitioner and referred us to a similar issue that had arisen in respect of two plots for “Kiosks” bearing Plot No. 1 and Plot No. 2, Block 4, Karachi Development Authority Scheme No. 5, Kehakshan, Karachi each measuring 100 square yards and which on account of being located within the perimeters of an amenity plot were also cancelled. The matter was heard by this Court in CP No. D-1549 of 2005 and in which directions had been given to the erstwhile City District Government Karachi to execute a lease in respect of those two properties. In an appeal preferred by the Province of Sindh to the

Honourable Supreme Court of Pakistan in a decision reported as **Province of Sindh through Chief Secretary and 8 others vs. Syed Kabir Bokhari**<sup>1</sup> the Respondent, who had been allotted the two plots, had conceded to the cancellation of the plots and had agreed that he would be willing to be compensated in terms of loss suffered by him and in respect of which the Honourable Supreme Court of Pakistan held:

“ ... **5.** *On perusal of the record, we find that in the revised layout plan of Kehkashan, Scheme 5, Clifton, Karachi made in the year 1972, a copy of which is attached with CMA No. 4472/2011 filed by the counsel for respondent, does not anywhere reflect availability of any land or plots for the purpose of kiosks. There is land showing cross lining in front of which is an open land. In this open land perhaps the petitioner in his own hardwiring has shown to be having the deputed plots of two kiosks. Yet another copy of another revised layout plan of 1975 is attached with the same CMA, which also reflects that the similar position of land, which is shown in the revised plan of 1972 except that there is an insertion of two squares, which are shown to be located outside the cross lining area. The respondent in his letter dated 10.7.2003 addressed to the District Executive Officer, Master Plan Group of Office, CDGK has himself stated that due to error the KDA at the time of making the Master Plan of Kehkashan Clifton Scheme 5 Karachi two kiosks were not included in the master plan and requested for their incorporation in the master plan. This very letter of respondent lend support to the fact that in the master plan of Kehkashan, Scheme 5, Clifton, Karachi there was no existence of any plot for kiosks.*

**6.** *It is not the case of respondent before us that the disputed plots allotted to the respondent were the plots meant for commercial use and such also does not appear to be the position emerging on examining the two master plans as referred above. The master plan shows that the land having cross lines apparently is meant for amenity/land for public use and not a space/land meant for allotment for use in commercial venture. Depiction of two squares in the revised master plan of 1975 is outside the lined area does not appear to be factually correct as has become known from the two reports; one submitted by the Deputy Nazir of High Court of Sindh and the other of Office Incharge of this Court in which the disputed plots are shown to be part and parcel of parking lot of CDGK and not out side it. The land immediately outside the parking lot is a beach, which become submersible by sea water on high tide.*

**7. All these factors show that the disputed plots allotted to the respondent were carved out from amenity plot/land for public use and such**

---

<sup>1</sup> 2016 SCMR 101

**allotment being admittedly made for commercial use was directly in conflict with the Article 52-A of the KDA Order, 1957 which specifically provided for procedure for seeking of conversion of amenity plot for other use. Admittedly, there is no order whereby use of plot from that of amenity to that of commercial was sanctioned by competent authority in respect of disputed plots...**

10. Despite the above discussion, it is clear that it was the KDA who has offered the disputed plots to the respondent who through a bidding process has made the highest offer and on acceptance of such offer has got allotment of disputed plots in his favour. He has also paid whole of occupancy value/price of disputed plots and has obtained their possession, which possession letter represented giving of lease of 99 years of disputed plots on receipt of full occupancy value/price. The respondent cannot be squarely blamed for illegal conduct of officials of the KDA in making of allotment of amenity plot/ land for public use to the respondent. The respondent admittedly has paid substantial amount in the shape of whole occupancy value/price of disputed plots and thus cannot be deprived of his funds so paid by him to the KDA now the CDGK. Although the respondent did not acquire any title to the disputed plots but the fact remains that he did pay for disputed plots and such was done by him on illegal and unlawful conduct of officials of then KDA. **The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, same is appropriately be compensated. This is a fundamental rule and also principle of equity. The learned ASC for the respondent during the course of hearing of this appeal has contended that in case the respondent is found not entitled to the disputed plots of the two kiosks, the respondent be paid compensation at the prevailing market rate of the disputed plots** and in this respect has referred to the advertisement published in daily newspaper Dawn dated 16.11.2005 in which offer of public auction of plots by the CDGK on the Clifton Beach for setting up stalls etc on short lease of ten years with a bid price of Rs.15,00,000/- per year. Similar position has been taken by the respondent in his CMA No.581/2015. **We have already noted above that the land, on which the disputed plots were allotted to the respondent, was an amenity plot/land for public use and thus not available for being allotted for commercial exploitation. No lease of 99 years was made in favour of the respondent. The respondent himself did not utilize the two plots for almost 29 years though in possession. Although, on the basis of fundamental rules so also principle of equity the respondent is entitled to be compensated but the compensation as is claimed by the respondent is not what in the facts and circumstances of the**

**present case such principle will admit. The offer of plot by public auction by the CDGK in 2005 at the rate of Rs.15,00,000/- per year never materialized and thus it cannot form basis for granting of compensation. Yet the illegality committed by the officials of KDA in dolling out the disputed plots out of the amenity plot/land for public use cannot give advantage to the respondent so as to enrich himself from such illegality. In all fairness, the respondent can well be compensated by directing refund of the amount received from him as the occupancy value/price of land by the appellant along with interest/markup at the rate of 18% per annum from the date of the receipt of occupancy value/price of land until it is actually refunded. Consequently, the appeal is partly allowed by setting aside the impugned judgment with directions to the appellants Government of Sindh/CDGK to refund to the respondent all the amount of occupancy value of disputed plots along with markup at the rate of 18% per annum from the date of occupancy amount received till the amount is actually paid to the respondent.**

(Emphasis is added)

He however contended that despite the judgement of the Honourable Supreme Court of Pakistan instead the Petitioner should be compensated on the basis of the current market value of the Said Property or in the alternative he should be allotted an alternate plot. He placed reliance on the decision reported as **Allied Bank of Pakistan vs. Habib ur Rehman**<sup>2</sup> to state that under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 were binding only to the extent that it decided a principle of law. He next relied on a decision of a Learned Division Bench of this Court entitled **Shahzad Ali vs. City District Government**<sup>3</sup> wherein it was held that where there was no illegality as to the allotment a persons right to allotment cannot be interfered with. He finally relied on a decision of the Learned High Court of Balochistan reported as **Deputy Commissioner (Revenue) Collector and another vs. Mehrullah Khan**<sup>4</sup> wherein in a case of land acquisition, it was held that compensation had to be paid on a “legal and equitable” basis.

8. Mr. Khurram Ghayasuddin has appeared on behalf of the KDA and conceded that the allotment of the Said Property was illegal and that the KDA was ready and willing to compensate the Petitioner by refunding the entire amount received by the KDA at the time of the allotment along with mark up at the prevalent bank rate.

---

<sup>2</sup> 2023 SCMR 1232

<sup>3</sup> 2008 MLD 782

<sup>4</sup> 2021 YLR 110

9. We have heard Mr. Blosch Ahmed Junejo and Mr. Khurram Ghayasuddin and have perused the record.

10. The Petitioners claim for compensation is not regulated either by statute or by any rules and we therefore compelled to see whether the compensation to be paid to the Petitioner in such a situation could be secured against the threshold of fundamental rights as guaranteed to the Petitioner under Article 23 and Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973. That being said we are mindful that, as the Petitioners allotment to the Said Property was clearly illegally as the Said Property was carved out of an amenity plot, in these circumstances we are of the opinion that the Petitioner title to the Said Property being illegal she cannot be said to being deprived of any right to property as she has no legal right to the Said Property. The right guaranteed by Article 23 and 24 are legal rights to a property as to hold otherwise would mean to guarantee fundamental rights to anyone in possession and which would include a trespasser.

11. While we are clear that the Petitioner has no legal right, title and interest in the Said Property as it was carved out illegally from an amenity plot. We are equally clear that while she may have paid an amount against the execution of the Conveyance Deed to the Seller, any loss suffered by her on this account is clearly recoverable by her from the seller for breach of the covenant as to "good title" as contained in the Conveyance Deed dated 20 December 1995 and which, for reasons best known to her, she has elected not to do. Such a loss suffered by her to the seller can clearly not be recovered by her from the KDA.

12. The Petitioner having elected not to sue the seller for the amount paid under the Conveyance Deed dated 20 December 1995 is instead on the basis of having acquired the purported rights under the Indenture of Lease, by virtue of Conveyance Deed dated 20 December 1995, is now seeking to enforce the Covenant as to "good title" made by KDA under the purported Indenture of Lease and instead of claiming damages is contending that she should be awarded an alternative plot. While we acknowledge, as admitted by Mr. Khurram Ghayasuddin, that there is no dispute as between the Petitioner and the KDA that the Indenture of Lease was illegal, that being the case we are clear that the KDA has breached its covenant as to "good title" as contained in the Indenture of lease. We do



not see how for a breach of such a covenant, a claim for an alternative plot can be maintained. The remedy that would be available to the Petitioner **for the breach of that Covenant** would be to recover the amount that was paid to the KDA for the allotment of the Said Property along with mark up at the prevalent bank rate as was held by the Honourable Supreme Court of Pakistan in **Province of Sindh through Chief Secretary and 8 others vs. Syed Kabir Bokhari**.<sup>5</sup> The Petition must therefore be allowed to that limited extent.

13. For the foregoing reasons, and in terms of the decision of the Honourable Supreme Court of Pakistan reported as **Province of Sindh through Chief Secretary and 8 others vs. Syed Kabir Bokhari**.<sup>6</sup>we hereby direct the Petitioner, within a period of one week of the date of this Order, to deposit all the original title documents that are in her custody in respect of the Said Property with the Nazir of this Court and further direct the KDA to deposit with the Nazir of this Court, within a period of one month, an amount equivalent to the allotment charges along with mark up thereon at the prevailing bank rate. On the amount being so deposited with the Nazir, the original title documents should be released into the custody of the KDA and the amount deposited can be received by the Petitioner from the Nazir against proper identification. The Petition is partially allowed in the above terms, with no order as to costs.

JUDGE

JUDGE

ANNOUNCED BY

JUDGE

JUDGE

---

<sup>5</sup> *op cit.*

<sup>6</sup> *op cit.*