IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SUIT NO.720/2018

Plaintiff(s) : Anwar Ali Shah
through Mr. Ahmed Ali Ghumro advocate

Defendants : Province of Sindh & others,
through Syed Hussain Shah,
Assistant Advocate General Sindh.

Date of hearing & order : 07.12.2023.

J U D G M E N T

Plaintiff pleaded that he was allotted 2-0 acres of land in Naclass No.105, Deh Thoming, Scheme No.33, Karachi and adjusted 2-0 acres of land in Survey No.57/1, Non-qabooli land in Form VI by order of Survey Superintendent and further order was entered in Form II by Mukhtiarkar Scheme No.33 in the record of rights, site plan was issued by City Surveyor; that prior to this Anwar Ali Shah and Moosa were allotted Kabuli land in Survey No.127 Deh Chumbar @ Rs.15,000 per acre by order dated 10.07.1993 and 19.03.1993, that area was adjusted as 5-0 acres in Sector 3-03, 30-08 in Sector 4-B out of Naclass No.105 of land in Deh Thoming, Karachi; land of previous owner was calculated on political basis below market value, subsequently regularized after payment of differential malkano of Rs.11,206,615/- vide challan No.1018 dated 19.07.2017; that land of plaintiff was cancelled under Order II of 2001 as land was allotted to previous owner on a throw-away price, plaintiff filed an application for regularization and matter was referred to Land Committee that fixed the differential *malkano* of Rs.11,206,615/- @ Rs.1,064,800/- per acre that is the rate fixed by Land Committee pursuant to section 4(2) of the Ordinance and loss caused to government under Rule 3(1)

of Sindh Government Land (Cancellation of Allotments, Conversions, Exchanges) Rules 2003 was offered for payment to above lessee Anwar Ali Shah and Moosa in respect of said land measuring 10-27 acres out of Survey No.101 and 105 Deh Thoming, they paid differential *malkano* and land was regularized, entered into Form II by concerned Mukhtiarkar and copy was provided to plaintiff; he applied for NOC for sale of his land however informed that his land has been cancelled under section 17 of Colonization of Government Lands Act 1912 and issued notifications dated 21.09.2015 and 29.09.2015 imposing ban on transfer, exchange and cancellation, hence cancelled the land of plaintiff without hearing him; hence this plaint with following prayer :-

a) To declare that plaintiff is owner of 2-0 acres of land in Naclass No.57/1, Deh Thoming.

b) To direct the defendant No.1 to withdraw the Notification No.09-294-03/SO-I/494 dated 21.09.2015, No.09-294-03/SO-I/493 dated 21.09.2015 and No.09-294-03/SO-I/503 dated 29.09.2015.

c) To direct defendants to hand over the peaceful possession of the land.

d) To direct the defendants his agents, servants, subordinates, legal heirs, representatives and any person or persons not to create third party interest in the suit property.

e) Any other relief or reliefs which this hon'ble Court may deem fit and proper under the circumstances of the case.

2. On 05.12.2023 defendants were declared exparte; plaintiff filed affidavit-in-exparte proof on 07.12.2023 reiterating the same contentions as pleaded in the plaint. Heard, perused the record.

3. In present Suit, all three defendants are official defendants; it is material to add that there would always be a difference between *'private defendant'* and *'official defendant'* because there always remains possibility of collusion with *'private defendant'*

while *'official defendant'* normally is custodian of record and is believed to act in *official capacity* therefore, acts and omission of the *'official defendant'* carry more weight. The official defendant, needless to add, is also treated differently as regard to filing of written statement etc from that of *private defendant.* In the instant matter the official defendants are parties and *proper service* upon them is also not a matter of dispute whereby they are believed to have acquired the knowledge and notice of the case and claim of the plaintiff yet they did not bother to cause their appearance so as to deny / dispute the entitlement of the plaintiff which could result in presumption that they don't have good grounds to deny / dispute the claim and cause of the plaintiff.

4. Be that as it may, case diaries reflect that on many date of hearings, Assistant Advocate General Sindh was present but he, being representative of the official defendants, could not place anything on record thereby denying / disputing the cause and claim of the plaintiff; concerned officers have failed to cause their appearance. When there is no rebuttal on behalf of the defendants and plaintiff has filed affidavit-in-exparte-proof on 07.12.2023 while reiterating the contents of the plaint; that was verified by the office of this court; it is appended with certain documents with regard to subject matter land, there is no rebuttal by defendants and no challenge to the exparte proof as well as pleadings of the plaintiff. I am conscious of the legal position, as reiterated in the case of 'C.N. Ramappa Godwa v. C.C. Chandergowda & Ors (2013 SCMR 137 *Supreme Court of India)*' that:

> 5. 'As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not

> been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed the court should be a little cautious in proceeding under Order VIII Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff **without requiring him to prove any fact mentioned in the plaint.** It is a matter of the court's satisfaction and therefore, **only on being satisfied that there is no fact which need be proved on account of deemed admission**, **the court can conveniently pass a judgment against the defendant who has not filed the written statement**. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression " the court may, in its discretion, require any such fact to be proved' used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit' used in Rule 10 of Order VII"

5. *Prima facie,* there is nothing on record from the side of the defendants against the cause and claim of the plaintiff; further there is no denial to the grant of land coupled with entitlement of the plaintiff hence in such eventuality, *prima facie,* there is no denial to cause and claim of the plaintiff because it was / is the responsibility of the official defendants or their representatives to bring correct picture before the Courts of law coupled with their stands /defence. The absence thereof, needless to add, shall bring legal consequences, which *legally* include *ex-parte judgment.* Section 17, of the Colonization and Disposal of Government Lands (Sindh) Act, 1912 deals with the exchange of the land by the Executive District Officer (Revenue) (Now Deputy Commissioner). However, without having recourse to Section 24, of the Colonization and Disposal of Government Lands (Sindh) Act, 1912, no land shall be resumed, cancelled or withdrawn. It would be conducive to reproduce Section 24, of the Act, 1912 as under:-

> ***"24. Power of imposing penalties for breaches of conditions.--- When the Collector is satisfied that tenant in possession of land has committed a breach of the conditions of his tenancy, he may, after giving the tenant an opportunity to appear and state his objections---***
>
> ***(a) impose on the tenant a penalty not exceeding one hundred rupees; or***
>
> ***(b) order the resumption of the tenancy:***
>
> ***Provided that if the breach is capable of rectification, the Collector shall not impose any penalty or order the resumption of the tenancy unless he has issued a written notice requiring the tenant to rectify the breach within a reasonable time, not being less than one month, to be stated in the notice and the tenant has failed to comply with such notice."***

In Case of ***Malik Sohail Khan through his Lawful Attorney v. Province Of Sindh, Land Utilization Department through Secretary and 8 others (2012 CLC 1599)***, it was held by this Court that: *"The powers under section 24 being expropriatory in nature are to be strictly construed. The breach of condition (4) would occur if the poultry farm was not established within the stipulated period; non-continuance of the farm would not, as such, be a breach of this condition. But even if the non-continuance were such a breach, it was on the face of it something that could be rectified. Thus, it was incumbent on the concerned authority to apply its mind to this aspect and as required by the proviso (which is mandatory in nature) grant an opportunity to the plaintiff to rectify the breach. However, this was not done at all. The concerned authority straightaway proceeded to resume the land. Prima facie, this was contrary to law and hence the Impugned Order suffered from a material illegality".*

6. Under these circumstances, suit of the plaintiff stands decreed as prayed to the extent of prayer clauses (a) to (d),

respectively. Costs shall follow the events. Let such decree be prepared in accordance with law.

These are the reasons of short order dated 07.12.2023.

IK **J U D G E**