

IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 1169 of 2013

Plaintiff : Zahidullah Khan s/o. Samiullah Khan, through M/s. Salahuddin Ahmed, Nadeem Ahmed and Muhammad Rizwan, Advocates.

Defendant No.1 : Pakistan Defence Officers Housing Authority, Karachi (DHA), through M/s. Abid S. Zuberi, Umair Nabi, Manzoor Hussain, Shariq Mushir and Ms. Sheeren Chughtai, Advocates.

Defendant No.2 : Creek Developers Pvt. Limited. (*Nemo*)

Defendant No. 3 : BF Property and Construction Pakistan (Pvt.) Ltd. (*Nemo*)

Defendant No.4 : AKD Capital Limited, through M/s. Jam Zeeshan, Sami-ur-Rehman Khan and Furqan Mushtaq, Advocates.

Date of hearing : 08.04.2023

Date of order : 06.10.2023

ORDER

ZAFAR AHMED RAJPUT, J:- By this order, I intend to dispose of C.M.A. No. 9983/2013, filed by the plaintiff under Order XXXIX, rule 1 & 2 read with Sections 94 & 151, C.P.C., seeking interim injunctive relief restraining the defendants No. 1 to 4 from launching, investing, advertising or commencing any construction upon the Project i.e. Creek Terraces & Creek View in Creek City, Phase VIII, DHA, Karachi (“**the Project**”) and from selling or creating any third party interest in any of the units/flats/shops therein during the pendency of the instant suit.

2. The facts germane for the disposal of the instant C.M.A. are that the plaintiff has filed the instant suit for declaration and permanent injunction alleging therein that being a concerned citizen, a member of the defendant No.1/ **DHA** and resident of DHA Karachi, he is directly affected by the development and management of the land vested in the DHA, which is a statutory body constituted under the President’s Order No. VII, Pakistan Defence Officers Housing Authority Order, 1980 (“**the Order, 1980**”) and is responsible for the development of the areas falling within its jurisdiction; that the obligation on the defendant No.1 is to ensure that all the buildings or projects being constructed within its jurisdiction comply with the

building regulations and other laws applicable to them and the same are conducted in a transparent manner; that it is also mandatory upon the defendant No.1 that the land allocated for a specific purpose should only be used for that purpose to ensure that master planning of the land vested in it is strictly complied with; that the DHA initiated a project by the name of Creek City wherein it aimed to launch different projects consisting of residential buildings with luxurious facilities; thereafter, in October 2004, the DHA in abuse of its powers issued Expression of Interest from the private developers for the Project consisting of residential unit buildings and a commercial area including shops on piece of land admeasuring 25 acres for Creek Terraces and 18 Acres for Creek View, total 43 acres, in Creek City without taking into consideration the purpose of amenity plots within the said area; that the original Master Plan issued by the defendant No.1 of the same land consists of amenity plots specifically allocated for a park, schools, sewerage treatment plant and a graveyard, which amenity plots were designed for the benefit and usage of general public as a necessity and, under the Main Lease issued to defendant No.1, the same cannot be used for any other purpose nor can be sold, allotted or transferred to any private person including the defendants No. 2 to 4; that the amenity plots cannot be converted into any residential flat-site or commercial property; that the usage of amenity plots for any purpose other than public purpose is contrary to the Master Lease; hence, the change of use of land by the defendant No.1 and further transfer of the same to any third person including the defendants No.2 to 3 is unlawful, arbitrary and without jurisdiction; that the officials of the defendant No.1 are in collusion with the defendant No.4 and are more concerned with the self-enrichment in complete deviation of their actual obligations given to them under the Order, 1980. Hence, cause of action accrued to plaintiff to file the suit with following prayers:

A. Declare that the Defendant No.1's initiation of project on amenity plots allocated for Park, Graveyard, Schools and Sewerage Treatment plant situated on Khayaban-e-Shaheen, Phase VIII, DHA, Karachi to a flat site and commercial usage is unlawful and that the same cannot be used for any other purpose;

B. *Declare that the Defendant No.1 cannot transfer, allot or sell the said amenity plots i.e. Park, Graveyard, Schools and Sewerage Treatment plant situated on Khayaban-e-Shaheen, Phase VIII, DHA, Karachi to any person including Defendants No.2 to 4;*

Without prejudice to the foregoing:

C. *Declare that the project namely Creek Terraces and Creek View, Creek City, Phase VIII, DHA, Karachi has been unlawfully awarded to the Defendant No.4 in violation of the Expression of Interest, Letter of Intent and the agreement dated 10.07.2006 and therefore is liable to be cancelled;*

D. *Cancel the Addendum to the Agreement dated 12.05.2009 as the same is in violation of the Public Procurement Regulatory Authority Rules 2004 (“2004 Rules”) and is therefore unlawful and void;*

E. *Declare that the Defendant No.1 has failed to fulfill its statutory obligation to protect the interest of public at large and has acted unlawfully in awarding the contract to Defendant No.4;*

F. *Direct the Defendant No.4 to demolish any construction on the site and permanently restrain the Defendants No.1 to 4 to launch, invest, develop or commence any construction upon the said project namely Creek Terraces and Creek View, Creek City, Phase VIII, DHA, Karachi being constructed upon amenity plots;*

G. *Permanently restrain the Defendant Nos. 1 to 4 to advertise or sell or create any third party interest in any of the units in the said project namely Creek Terraces and Creek View, Creek City, Phase VIII, DHA, Karachi.*

3. Learned counsel for the plaintiff has contended that the plaintiff has filed the instant suit against the defendant No.1/DHA’s illegal conversion of amenity plots reserved for park, school, sewerage treatment plant and graveyard into a site for high-rise residential towers in DHA Phase VIII, Karachi and the illegal award of the Project and grant of construction permit to private developers/the defendants No. 2 to 4. He has further contended that the plaintiff has submitted a Master Layout Plan of a leading estate agency, namely VIP Estates, showing the Project site as earmarked for amenity purposes, besides, the plaintiff has also separately submitted aerial Google Maps showing history of the area dating back to 2004, which clearly show that at least up to 23 October 2010, the Project site was lying empty except for

a part being used as a sewerage treatment plant; however, the maps from 28 January 2012 onwards show that the sewerage treatment plant has been demolished and the whole area is now shown as being the site of the Project. He has also contended that the approved Master Layout Plan for DHA Phase VIII was attached to the GoP Master Lease, which clearly shows that the Project site was reserved for the purposes of graveyard, DHA Suffa University, DHA Office, Sewerage Treatment Plant and other amenity usage. He has also contended that even as per the purported Port Qasim Authority (PQA) Master Lease being relied upon by the DHA, the DHA was never permitted to convert amenity plots for commercial or residential usage. Rather, it was allowed to construct amenity buildings through the private sector if necessary but only for the speedy provisioning of amenities to the residents of the area. He has also contended that the conversion of the Project site from amenity usage to high-density residential usage and construction of buildings thereon is unlawful for the reason that generally a plot designated as amenity in a Master Plan cannot be converted to any other use. He has added that amenity plots create a right amongst the public and that right cannot be taken away by converting such amenity facility into commercial one. He has also added that even if it is assumed that the applicable lease was not the GoP Master Lease but actually the purported PQA Master Lease; clause 8 (e) of the same clearly requires designated amenity plots to be used only for amenity purposes. No other usage can be made without the PQA's consent. Moreover, even the Master Layout Plan attached to the PQA Master Lease clearly earmarks the Project site as being reserved for purposes of graveyard, proposed DHA Suffa University, proposed DHA Office, Sewerage Treatment Plant and Girls Cambridge School. He has also contended that the revision of the original Master Layout Plan, the conversion of amenity plots and the permission granted for construction of buildings thereon by DHA was patently unlawful as the said area falls within the regulatory jurisdiction of the Clifton Cantonment Board ("CBC"). As per the CBC website, vide Notification SRO No.207 (1)/(83) dated 27.2.1983, eight phases of DHA Karachi fall within the jurisdiction of CBC and as per Article 24 (8) read with Article 24 (2) of the Order, 1980, the rules and bye-laws applicable

under the Cantonment Act, 1924 (*“the Act of 1924”*) shall continue to apply until repealed, amended or modified under the said Act. As such, it is clear that the Order, 1980 itself affords regulatory primacy to the CBC and the Act of 1924 and the rules and bye-laws thereunder. It is, therefore, the actual responsibility remains that of the local body or agency concerned i.e. CBC. However, the CBC neither had any role or involvement at all when the DHA Executive Board decided unilaterally to revise the Master Layout Plan on 2.11.2007 nor the CBC ever approved the construction of the building/s on the Project site. This is a clear violation of sections 116, 178-A, 181 and 181 (4) and 186 of the Act of 1924 as well as Rule 124 of the CBC Building Bye-Laws 2007 which clearly states that *“no amenity plot reserved for the specific purpose shall be converted or utilized for any other purpose.”* Learned counsel has added that even if it were assumed that the subject area originally vested in the PQA (and not the GoP) and it was the PQA that leased it onwards to DHA; in such case, as per section 10 and section 11 (5) of the PQA Act 1973, DHA would be obliged to take the permission for revising the Master Layout Plan from both the PQA and the Federal Government, which has not been done. He has asserted that the plaintiff has, thus, made out a good prima facie case for the purposes of injunction. The instant suit has been brought in the public interest and the balance of convenience and irreparable harm are clearly in the plaintiff’s favour. Vide the ad-interim order of 20.9.2013 as modified on 9.10.2013, the private builders were allowed to construct the Project at their own risk and cost but were restrained from creating any third-party interests. Since they have used their own resources to raise construction, if the injunction application is dismissed and they are allowed to create third party interest and to hand over possession to allottees, the innocent third-party purchasers shall be placed at risk. In the event the suit is eventually decided in the plaintiff’s favour, it will be only the innocent third-party purchasers that shall be deprived of both their hard-earned money and a roof over their heads. In support of his contentions, learned counsel has relied upon the cases of *Moulvi Iqbal Haider v. Capital Development Authority and others (PLD 2006 SC 394)*, *Mst. Zahida Sultana v. Defence Housing Authority Lahore and others (PLD 2013 Lahore 663)*, *Mansoor*

Sharif Hamid and others v. Shafique Rehman and others (2015 SCMR 1172), Mst. Yawar Azhar Waheed (deceased) through L.Rs. v. Khalid Hussain and others (2018 SCMR 76), Bahadur Yar Jang Foundation (Pvt.) Ltd. through Chairman v. Government of Sindh through Minister for Cooperation and another (2009 CLC 119), Shehla Zia and others v. WAPDA (PLD 1994 SC 693), Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority (KMC) and 4 others (1999 SCMR 2883), Ardeshir Cowasjee and 11 others v. Sindh Province and others (2004 CLC 1353), Muhammad Tariq Abbasi and others v. Defence Housing Authority and others (2007 CLC 1358), Karachi Stock Exchange through Attorney and another v. Muhammad Ashaqeen and 6 others (2006 YLR 185), Dr. Zahir Ansari and others v. Karachi Development Authority and others (PLD 2000 Karachi 168), Navid Hussain and 5 others v. City District Government Karachi (CDGK) through District Coordination Officer, Karachi and 4 others (2007 CLC 912) Messrs Mirpurkhas Sugar Mills Ltd. v. Consolidated Sugar Mills Ltd. and 3 others (PLD 1987 Karachi 225), M/s H. A. Rahim & Sons (Pvt.) Ltd. v. Province of Sindh and another (SBLR 2002 Sindh 1324), Arif Majeed Malik and others v. Board of Governors Karachi Grammar School (2004 CLC 1029), Naseem-ul-Haq through Attorney and another v. Raees Aftab Ali Lashari through Guardian ad-litem and 5 others (2015 YLR 550), Muhammad Ilyas Hussain v. Cantonment Board, Rawalpindi (PLD 1976 SC 785), Mst. Arshan Bi through Mst. Fatima Bi and others v. Maula Bakhsh through Mst. Ghulam Safoor and others (2003 SCMR 318), Shah Mahmood v. Karachi Electric Supply Corporation Ltd. (1997 CLC 1936), Muhammad Hussain v. State Bank of Pakistan and another (2001 YLR 2259) and Pakistan Defence Officers Housing Authority v. Federation of Pakistan through Secretary Ministry of Environmental Protection and 6 others (PLD 2014 Sindh 511).

4. On the other hand, learned counsel for defendant No. 1 has maintained that the plaintiff has no right, title or interest in the Project. He is not an allottee of the Project or even a resident of Phase VIII, DHA area where the project is being constructed. He is neither an aggrieved person nor has he any *locus standi* to file the

instant Suit, which he has filed with malafide intentions in order to harass and cause prejudice to and interfere in the working of the defendants. One of the projects, i.e. Creek Vista, has already been constructed and handed over to its allottees with approximately 720 apartments. The Creek View and Creek Terrace's construction has also been completed; however, the bona fide purchasers have not been given possession due to the instant case. He has further maintained that the subject land has never been amenity in nature as per the Master Plan of the area approved by the DHA and Director Town Planning & Building Control in Year 2007 and the plaintiff's claim of conversion of land use of the Project is false and malicious. Under Article 12 of the Order, 1980, all schemes, projects and works undertaken by or on behalf of the defendant No.1 "shall" be deemed to be schemes, projects and works for public purposes. Furthermore, by virtue of Article 5 of the Order, 1980, the Governing Body's decision in respect of all policy matters pertaining to the defendant No.1, which inter alia include amendments in master plan of the area within the jurisdiction of the defendant No.1, are deemed to be for a public purpose and no challenge can be made to the same, more so, when the DHA has acted in accordance with the law. He has further maintained that defendant No.1, vide 23rd Annual Meeting of the Governing Body, held on 2.11.2007, deliberated on improvements in the master plan of Phase VIII and Phase VIII Extension and the revised master plan was thus approved for the purpose. The Master Plan submitted by the DHA, which was duly approved in 2007, confirms that the subject plot was never an amenity plot and the Project has been constructed according to the final approved Master plan of 2007. He has added that the Map produced by the plaintiff before this Court is merely a fake and unapproved document. He has also maintained that there was no surreptitious bidding for the award of the Project; the public at large was informed at all times of the Project; the Plaintiff admits in Paragraph 6 of the Plaint that the defendant No.1 being a public body short listed companies for the pre-qualification process as required under the Rules 2004; hence, the allegation of mala fide in awarding of the Project is baseless and frivolous. He has added that the Rules, 2004 were not applicable for the process of calling for the

proposals as it was a private contract and did not involve government or public funding. Moreover, as per the terms of Request for Proposals (“RFP”), the project was to be developed by a Developers Consortium. The said Consortium was formed vide Memorandum of Understanding dated 17.02.2005 between the defendants No. 3&4 and subsequently the Agreement dated 10.07.2006 was entered into and the defendant No.2 was incorporated. The Agreement dated 10.07.2006 was the defendant No.1’s vigilance over the manner in which the project was to be launched. The defendant No.1 performed its duties in accordance with the law and strictly in public welfare and for public purpose. The terms of the RFP were complied with by the defendants No.3 & 4 to the satisfaction of the defendant No.1; hence, the bidding procedure for the subject project was conducted in a fair and transparent manner and the award was granted as per the law; hence, the allegation leveled by the plaintiff is unsubstantiated and baseless. He has further maintained that so far the jurisdiction of CBC is concerned; the CBC has no concern with the Project and it has no role at all in the entire process of awarding contracts. He has further maintained that the plaintiff has failed to make out good arguable case for the grant of injunction; the balance of convenience also lies in favour of the defendants and it is the defendants who shall suffer a lot in case the injunction application is granted as the defendants have spent billions of rupees on the Project; hence he has prayed for the vacation of the ad-interim Order dated 09.10.2013. In support of his contentions, learned counsel has relied upon the cases of *Multiline Associates v. Ardeshir Cowasjee and 2 others* (PLD 1995 SC 423), *Mansoor Sharif Hamid and others v. Shafique Rehman and others* (2015 SCMR 1172), *Muhammad Iqbal s/o. Mehboob Alam* (2015 SCMR 21), *Binyameen and 3 others v. Chudhry Hakim and another* (1996 SCMR 336), *Abrar Ahmed and another v. Irshad Ahmed* (PLD 2014 Supreme Court 331), *Naseer Ahmed v. Hafiz Muhammad Ahmed and 17 others* (1984 CLC 340) and *Mst. Laila Qayyum v. Fawad Qayyum and others* (PLD 2019 SC 449).

4. Learned counsel for respondent No. 4 has in his arguments chronologically submitted facts of the case that on 11.11.1975, A- Lease Deed was executed

between the defendant No.1/DHA as the lessee and the President of Pakistan as the lessor for 3520.77 acres of land in the Cantonment of Karachi situated on Korangi Road and in Gizri area, for a term of 99 years; thereafter, on 21.08.2003, A- Lease Deed was executed between the DHA as the lessee and PQA as the lessor of Phase-VIII Area admeasuring 600.94 acres for a term of 99 years; hence, the DHA is legally entitled to the land in question. In the year 2003, the DHA launched a project with the name of Creek City aiming to launch different residential and commercial projects in Phase VIII, then in October 2004, the DHA issued Expression of Interest for Creek Terraces and Creek View. These Projects were spread over 25 acres and 18 acres respectively. The defendant No.1 aimed at developing this land with construction of residential and commercial units/buildings. On 04.02.2005, an MOU was executed between defendant No.3 and Kashif Alam associates whereby the latter agreed to render technical services for the Project. On 17.02.2005, an MOU was executed between defendant No.3 and defendant No.4 to enter into a Joint Venture to form consortium to bid for the Project. In Clause- 2, thereof, it was agreed that equity would be borne equally and the project would be executed through a Special Purpose Vehicle (“SPV”). On 28.04.2005, a Letter of Intent was issued to defendant No. 3 for the Project then in January 2006, the defendant No.1 issued the RFP. On 10.07.2006, a Tripartite Agreement was executed between the defendant No.1, defendant No.3 and defendant No.4. The defendant No.3 wrote a letter to the defendant No.1 seeking its no objection to transfer its shareholding in favour of defendant No.4 pursuant to Clause 4.12 of the Tripartite Agreement. On 12.05.2009, an Addendum to the Tripartite Agreement was added and, on 06.01.2010, a Share Purchase Agreement was executed between defendant No.3 and defendant No.4. He while refuting the claim and the allegations of the plaintiff has argued that the plaintiff is not entitled to the relief sought; he is not a resident of DHA; he does not reside anywhere near the project site; he is a permanent resident of Dera Ismail Khan; he has neither asserted any legal character or right nor has he sought any declaration to his legal character or right to property in terms of Section 42 of the Specific Relief Act, 1877 (“**the Act, 1877**”); hence, he has no *locus standi*

to maintain this suit. He has also argued that a party can only seek a declaration in respect of his own legal character or right to property. In support of his contentions, learned counsel has relied upon the case of *Abdur Rahman Mobashir v Syed Amir Ali Shah Bokhari* (**PLD 1978 Lahore 113**), *Ilyas Ahmed v. Muhammad Munir* (**PLD 2012 Sindh 92**), *Bishop Ejaz Inayat v. Et. Rev. Alexander John Malik* (**PLD 2017 Sindh 528**), *Tahira Bano v. Muhammad Bilal* (**2019 MLD 1307**), *Farukh Afzal Muif v. Muhammad Afzal Munif* (**2019 CLC 431**), *Mst. Laila Qayyum v Fawad Qayyum and Others* (**PLD 2019 SC 449**), *Mehboob Ali v. The Director Katchi Abadi* (**1996 MLD 865**), *Roshan Ali Khan v Airport Manager, Jinnah International Airport Karachi and others* (**2015 MLD 87**), *Abdul Mannan Fakir v. Province of East Pakistan and Others* (**PLD 1965 Dacca 361**), *Datari Construction Co. (Pvt.) Ltd. v A. Razzak Adamjee & Others* (**1995 CLC 846**), *Mansoor Sharif Hamid and Others v. Shafique Rehman and Others* (**2015 SCMR 1172**).

5. I have heard the learned counsel for the parties and perused the material available on record with their assistance.

6. Record shows that, on 20.09.2013, this Court passed ad interim order restraining to the defendants to launch the Project maintaining *status quo*. The DHA asserted in its Written Statement and Counter Affidavit that the Project site was not amenity and had never been amenity; hence, this Court vide order dated 09.10.2013 modified the *ad-interim* injunctive order to the extent that “no third party interest will be created till the disposal of the injunction application” however, the defendants were allowed to raise construction on the subject property at their own risk and cost.

7. It may be observed that the injunction is a preventive remedy for the purpose of preserving the status quo of the matter of suit pending the determination of suit. For issuance or refusal of interim injunction what the Court has to see is that a good *prima facie* arguable case is made out in favour of the plaintiff and if the plaintiff succeeds in establishing a good *prima facie* arguable case then, other two

ingredients, irreparable loss and balance of convenience would be looked into. The term “*prima facie case*” is not specifically defined in the Code of Civil Procedure, 1908. The judge-made-law or the consensus is that in order to satisfy about the existence of *prima facie case*, the pleadings must contain facts constituting the existence of a right of the party and its infringement at the hands of the opposite party. The existence of a *prima facie case* is to be judged or made out on the basis of material on record at the time of hearing of injunction application, and such evidence or material should be of the nature that by considering the same Court should or ought to be of the view that the plaintiff applying for injunction is in all probabilities likely to succeed in the suit by having a decision in his favour. Where no *prima facie case* is made out by the plaintiff, no temporary injunction can be issued in his favour and, likewise, where *prima facie case* could not be established without recording evidence, the Court would refrain from granting such injunction. “Irreparable Loss” means simply such loss, which is incapable of being calculated on the yardstick of money. For grant of interim injunction the existence of a *prima facie case* is not by itself sufficient, the plaintiff should further show that irreparable loss will occur to him, if the injunction is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of the apprehended injury. “Balance of Convenience” as a requisite for grant of interim injunction in favour of plaintiff means if an injunction is not granted and the suit is ultimately decreed in favour of the plaintiff the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendant if an injunction is granted but the suit is ultimately dismissed. Although it is called “balance of convenience”, it is in fact the “balance of inconvenience”, and it is for the plaintiff to show that the inconvenience caused to him would be greater than that which may be caused to the defendant. The Court whilst granting temporary injunction weighs one party’s needs against other party’s needs and determine where the balance of convenience lies.

8. It reflects that the plaintiff is neither an allottee of the Project, nor even a resident of Phase VIII, DHA area where the Project is being constructed. As per his CNIC, the plaintiff is even not the resident of Karachi. No personal interest of the plaintiff is at stake and he will not suffer any loss or prejudice. Under Section 56(k) of the Act, 1877, an injunction can be refused where the applicant has no personal interest in the matter. In the case of *Abdul Mannan Fakir v Province of East Pakistan and Others (PLD 1965 Dacca 361)*, it has been observed by a Division Bench that *“in matters of temporary injunction one of the guiding principles as laid down in section 56(k) of the Specific Relief Act is that the applicant should have some personal interest in the matter. The learned Munsiff while issuing ad interim injunction has not indicated as to whether the plaintiff had any personal interest in the matter and if so whether such interest would suffer in the event of not issuing an order of ad interim injunction immediately. We do not feel so sure that while considering whether the object of granting injunction would be defeated by delay, if any, the principle underlying section 56 (k) of the Specific Relief Act or the rule of balance of convenience and inconvenience may, be ignored.”*

9. It is the claim of the plaintiff that the defendant No.1/ DHA is unlawfully initiating the Project consisting of residential unit buildings and a commercial area on amenity plots allocated for park, graveyard, schools and sewerage treatment plant in Phase VIII, DHA, Karachi. In support of his such claim, the plaintiff has submitted a Master Layout Plan of an estate agency, namely VIP Estate (*Annexure “B” of the memo of plaint*), which is not an official document and it shows that the Project site has been reserved for amenity purposes, besides, the plaintiff has also submitted Aerial Google Maps showing history of the area dating back to 2004, which show that up to 23.10.2010, the Project site was lying empty except for a part being used as a sewerage treatment plant and the maps from 28.01.2012 onwards show that the sewerage treatment plant has been demolished and the whole area is now shown as being the site of the Project. Conversely, the defendant No.1 denying the alleged claim of the plaintiff has asserted that the Master Layout Plan produced

by the plaintiff is a fake and unapproved document. There are three Master Plans of the Phase-VIII, DHA, which have been brought on record by the counsel of the DHA through Statement, dated 23.11.2013. In the Master Plan-1989, the site is tentatively marked for the future planning; the Master Plan-1992 is provisionally having the projects of Creek View and Creek Terrace and the Master Plan-2007 is the final Master Plan, which *prima facie* confirms that the subject plots were not amenity plots, and the Project is being constructed according to the said final approved Master plan of 2007. The authenticity of the Master Plan relied by the plaintiff being unsigned by the competent authority, is yet to be proved by the plaintiff through cogent evidence. Even the alleged Aerial Google Maps are not *prima facie* supportive to the plaintiff's claim as the same cannot be relied upon in absence of any approved Master Layout Plan showing the Project side as an amenity.

10. It is also claim of the plaintiff that the Project has unlawfully been awarded to the defendant No.4 in violation of the Expression of Interest, Letter of Intent and the Agreements dated 10.07.2006 and, therefore, he has sought cancellation of the said Agreement; so also, the Addendum to the Agreement dated 12.05.2009 being in violation of the Rules 2004. In this regard, it is yet to be seen if the Rules, 2004 are applicable for the process of calling for the proposals as the contract appears to be a private contract which does not involve Government or public funding. Even otherwise, it appears *prima facie* from the perusal of the record that the defendant No.1 short listed the companies for the pre-qualification process as required under the Rules 2004. As per the terms of RFP, the project was to be developed by a Developers Consortium, which Consortium was formed vide Memorandum of Understanding dated 17.02.2005 between the defendants No. 3&4 and subsequently the Agreement dated 10.07.2006 was entered into and the defendant No.2 was incorporated. Hence, it is yet to be established by the plaintiff through evidence if the bidding procedure for the subject project was conducted in an unfair and un-transparent manner.

11. So far jurisdiction of the CBC as per Article 24 (8) read with Article 24 (2) of the Order, 1980, the rules and bye-laws applicable under the Act, 1924 is concerned, it is matter of record that the CBC in its Counter Affidavit to the Application under Order 1, Rule 10, C.P.C., filed by the plaintiff has stated that the CBC is a municipal authority and does not approve the sanction of the building plans of the area and they have no concern with the Project, and affirmed that they have no role at all in the entire process of awarding contracts or otherwise between the plaintiff and the defendants. Moreover, the contention of the learned counsel for the plaintiff regarding jurisdiction of CBC is beyond pleadings.

12. Another aspect of the case is that the plaintiff has filed the suit after a significant delay. As per record, the Creek City project was launched in 2003-2004; the Creek Vista, which is part of the Creek City project, was planned more than eight years before the suit was filed. On 18.08.2007, objections were invited from the public; however, neither the plaintiff came forward to raise objections nor did anyone else, and at the time of filing of the suit, the Project has already reached advance stage.

13. For the foregoing facts, discussion and reasons, I am of the view that the plaintiff has failed to make out good prima facie arguable case in his favour; neither balance of convenience lies in his favour nor he will suffer any irreparable loss and injury in case of refusal of injunction. So far the case-law relied upon by the learned counsel for the plaintiff are concerned, it may be observed that there is no cavil to the principles propounded in this case but the same being on distinguishable facts and circumstances do not advance the case of the plaintiff. Hence, instant CMA being devoid of merit is dismissed accordingly, by recalling ad-interim order(s), dated 05.04.2021, with no order s to costs.

14. Above are the reasons of my short order dated 06.10.2023.

JUDGE

Athar Zai