

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

High Court Appeal No. 304 of 2021**Karachi Development Authority & another Appellants**through M/s. R.B. Qureshi and Javed Sangi,
Advocates

vs.

Aijaz Ali Khan**..... Respondent**

through Mr Badar Alam, Advocate

Date of hearing : 28th February, 2024Date of judgment : 28th February, 2024**JUDGMENT**

OMAR SIAL, J: Aijaz Ali Khan filed Suit No. 293 of 2003 against the Karachi Development Authority (then known as the City District Government Karachi. He claimed he had bought a plot of land in an open auction from KDA on 14.09.1988. KDA did not, however, issue an Allotment Letter to him and, on the contrary, gave him a demand notice for further money. The dispute saw the parties before the Provincial Ombudsman, who, on 08.04.2000, ordered that an allotment letter be issued in Aijaz's name. On 22.08.2000, the order dated 08.04.2000 was recalled, and the Provincial Ombudsman ordered that an alternate plot be given to Aijaz Ali Khan. Aijaz Ali Khan, being aggrieved, then filed Suit No. 293 of 2003 seeking a declaration, specific performance and permanent injunction. On 18.11.2021, the Suit was disposed of in terms of the following order passed in the presence of the counsels from both sides, which is also impugned in these proceedings.

“Director General, KDA is present and has rendered valuable assistance and read out the relevant regulations with regard to the alternate plot. After lengthy deliberations, it has been concluded that plot No. ST-13, Block 11 Scheme 36, Gulshan-e-Iqbal, be handed out to the plaintiff as an alternate plot against this original plot. He stated that the plot mentioned above is vacant. However, there may be some disputes thereon.

Be that as it may, learned counsel for the plaintiff concedes that his client would be interested in acquiring the said alternate plot on an “as is where is” basis. The subject plot be handed out to the plaintiff on deposit of (any) remaining balance calculated by matching prices of both the plots in the year 1989 and then adjusting the sums of Rs. 660,000 for the value of ST-13 in the year 1989 and after that letting the plaintiff pay the remaining balance (if any) as per today's rate.”

2. Learned counsel for KDA has submitted that the appeal has been filed only to the extent that the learned Single Judge has not complied with Order XX C.P.C. as the requisites of a decree are lacking. How could KDA be aggrieved of it, we are not sure. Learned counsel for the respondent, Aijaz Ali Khan, submits that the learned Single Judge erred as far as the last line of the judgment/order is concerned, i.e. “the plaintiff pay the remaining balance (if any) as per today’s rate.” Mr Badar Alam, however, concedes that the judgment/order impugned was passed in his presence and that Aijaz Ali Khan did not prefer an appeal against the said order. He, however, argued that he may still be heard under Order 41 Rule 33. We are, however, not satisfied that for the event discussed above, any interference with the impugned order is required within the framework of order 41, rule 33.

3. We have heard the learned counsel and have perused the record necessary. Our observations and findings are as follows.

4. We agree with the learned counsels that a decree has not been drawn up as specific requirements have not been fulfilled, nor was it ordered by the learned Single Judge that a decree be drawn up. As regards the argument raised by the respondent's counsel, we deem it appropriate only to clarify as follows:

Value of the two plots shall be determined as it existed in the year 1989. The amount (Rs. 660,000) paid by the Appellant for the first plot shall be counted paid towards the alternate plot in terms of its percentage as it existed in 1989. If any amount of percentage is determined payable against the alternate plot, in terms of its value of 1989, it (percentage value) found unpaid, shall then be paid as per current value. This exercise is to be performed by the learned trial court so that an executable decree be passed.

5. The appeal is disposed of in the above terms.

JUDGE

JUDGE