

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, ACJ

Mr. Justice Abdul Mobeen Lakho, J

Constitution Petition No.D-2164 of 2021

<i>Date</i>	<i>Order with signature of Judge</i>
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Direction:

1. For order on Misc.No.8404/23
2. For order as to maintainability of petition

06.11.2023:

M/s. Abbas Rasheed Razvi and Shoaib Khatian, Advocates for Petitioner.

M/s. Iqbal M. Khurram and Junaid Alam Khan, Advocates for KMC.

Mr. Miran Muhammad Shah, Addl. A.G. Sindh a/w Mr. Saifullah AAG.

ORDER

1. Through instant Constitution Petition, following relief has been sought by the petitioner: -

a) *to declare that take-over of 'Liaquatabad Land' and its utilization as well as inclusion of subject land in City Park without following proper and due process of law is illegal, void and coram non-judice;*

b) *to direct the respondents to implement and act upon the Agreement dated 9.10.1991 and Tripartite Agreement dated 06.08.2007 read with KMC Council Resolution No.1489 dated 18.01.1992 and forthwith and hand over subject land measuring 8.8. acres as per the sketch attached to the Tripartite Agreement with development of proper approach road with proper demarcation and Layout Plan;*

c) *to direct the respondents, their employees, and anyone acting for or on their behalf to vacate and stop use/occupation of Liaquatabad Land and the subject land until handing over the subject land as per terms of the agreements and Council Resolutions referred hereinabove; Alternatively, the respondents, their subordinates, employees, etc. may be directed to pay cash*

compensation/according to commercial/ residential market value of the land alongwith usage charges/mesne profits for the period from agreement date until payment with markup at 2% above bank rate per annum;

d) to direct the respondents, their subordinates and/or any person holding the plot No.108/2 & 108/3, K-28 Trans Lyari, Manghopir Road, Karachi, or any part thereof be vacated and restored to the petitioners by declaring the purported exercise of takeover of land as illegal and contrary to the fundamental rights guaranteed under the Constitution;

e) to direct the respondents or their subordinates to vacate and restore the land which has not been utilized for National Park at the Sewer Farm;

f) to restrain the respondents, their subordinates or any one claiming through or under them from use of the subject land or/and Liaquatabad Land and/or interfering with the use and enjoyment of the subject land by the petitioners;

g) to grant costs of the proceedings; and,

h) to grant any other, better, additional relief or reliefs as may be considered appropriate in the circumstances of the case.

2. Notices were issued to respondents/KMC, who have filed their comments, wherein, KMC has denied the claim of the petitioner on the ground that since originally the land was not granted to the petitioner with whom there is no agreement, therefore, their request for alternate land or to compensate the petitioner cannot be acceded.

3. During course of hearing contention of both the sides were duly recorded in the orders dated 27.10.2022, 15.03.2023 and 05.04.2023 passed by the Court in the following terms:

27.10.2022:

Mr. Asif Ali Memon, advocate for the petitioners

Mr. Khurram Iqbal, advocate for KMC.

*Mr. Ziauddin Junejo, Assistant Advocate-General,
Sindh.*

Learned counsel for KMC present alongwith Mr. Najamuzzaman, Sr. Director Lands, KMC who submits that comments filed by Deputy Director Land KMC Haroonabad SITE Karachi in the instant case without seeking approval or authorization of Director Land, KMC, therefore, subsequently a statement dated 04.03.2022 has been filed on 11.03.2022 alongwith affidavit, which according to the Senior Director Land, KMC, may be treated as proper comments on behalf of KMC. Learned counsel for the KMC and learned A.A.G. have also raised objection with regard to maintainability of instant petition, as according to learned counsel, seriously disputed facts have been agitated through instant petition, whereas, declaration has been sought in the instant petition which can only be examined and decided at the evidence by proper court of Civil jurisdiction. It has been further contended that petitioners prima facie do not have any legal character, right or title over the subject land, nor there is any privity of contract between the appellant and KMC, whereas, reliance being placed by the appellant on a compromise decree between the appellant and the predecessor of the appellants in order to show their interest and title in the subject land is misconceived, as the KMC has never consented to such compromise decree. It has been further contended that relief being sought in the instant petition by the present petitioner on the basis of purported sale agreement regarding alternate land and possession in Gatar Bagheecha is otherwise cannot be granted in view of orders already passed by Hon'ble Supreme Court in C.P. No.09/2010, wherein, it has been declared that such land is meant for amenity purpose, therefore, cannot be used or sold out for any other purpose.

Learned counsel for the petitioner disputes contention of the learned counsel for KMC and learned A.A.G. and submits that petitioners are seeking right and title pursuant to sale deed from their predecessors and claiming alternate land in accordance with the terms of lease, whereas. respondents do recognize such right and entitlement of the predecessors from whom the petitioners have acquired such right and title after making payment of entire sale consideration.

Since seriously disputed facts have been agitated through instant petition, whereas, relief being sought through instant petition prima facie relates to title and entitlement of the petitioners, if any, pursuant to sale agreement/deed, the same falls within the domain of a Civil Court of competent jurisdiction. It further appears that the right and title being claimed by the petitioners depends upon the right and title, if any, of their predecessors, who have not come

forward to seek any relief with regard to alternate land, as according to learned counsel for the respondents, the predecessor-in-interest of the petitioners were never given the physical possession of the subject land, as there were restraining orders assed by the Court to this effect, whereas, the Hon'ble Supreme Court in Suo-Motu Case has been pleased to pass similar restraining orders.

To come up on 16.11.2022 at 12.00 noon, when the learned counsel for the petitioners shall come prepared to assist the Court, as to maintainability of instant petition.

15.03.2023

Mr. Abbas Rasheed Razvi, advocate for the petitioners

Mr. Iqbal Khurram, advocate for respondent/KMC

Mr. Miran Muhammad Shah, Addl. A. G Sindh

Learned counsel for the petitioners, in response to a query of this Court that as to maintainability of instant petition, as contained in order dated 27.10.2022, submits that the petitioners have acquired right and title from their predecessors pursuant to judgment dated 04.02.2021 and decree dated 24.02.2021 passed in Suit No. 1593/2020, whereas, they have now stepped into the shoes of previous owners, who were admittedly issued leases in their favour, however, the land in Liaquatabad was occupied by KMC and in lieu of such land, alternate land was allotted in Gutter Baghicha, however, in view of the order passed by the Hon'ble Supreme Court in Suo Moto Case, whereby, it has been declared that such land being an amenity land, therefore, could not be allotted or leased out, therefore, KMC is under legal obligation to allot alternate land/plots to the petitioners. Per learned counsel, claim of the petitioners is based on undisputed facts and the judgment & decree in petitioners favour, whereas, petitioners are not claiming beyond the claim, right and entitlement of previous owners, hence, objection by the KMC to this effect is misconceived. Learned counsel for the respondent/KMC requests for time to assist the Court and to seek instructions in this regard.

To come up on 05.04.2023

Dated; 5th April 2023

Mr. Abbas Rasheed Razvi alongwith Mr. Shoaib Khatian, Advocate for Petitioner. Mr. Iqbal M. Khurram, Advocate for KMC.

Mr. Abdul Jalil Zubedi, Asst. A. G. Sindh.

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After hearing the learned counsel for the parties at some length and from perusal of the record available in the shape of the (i) Agreement dated 09.10.1991, (ii) General Power of Attorney dated 25th August 2007, (iii) Sale Agreement dated 16.07.2019 and (iv) Decree passed by the learned Single Judge of this Court in Suit No. 1593/2020 dated 15.02.2021 as well as the comments by official respondents, it appears that the claim of the previous owners for alternate land has been duly acknowledged by the KMC, as the original land allotted to the previous owners in Liaquatabad by the KMC and was admittedly taken over by the KMC, in view of which, previous owners were entitled to alternate land, which was in fact duly allotted in their favour in respect of Plot No.108/2 measuring 35,625 square yards and Plot No.103/3 measuring 7253.33 square yards situated in Sheet No.K-28, Trans Lyari, Manghopir Road, Karachi as reflected in the General Power of Attorney dated 25th August 2007 available as Annexure P/24 at page 259 to 265 as well as in the tripartite agreement dated 25th August 2007 available as Annexure P/24 at pages 259 to 265 of instant petition, whereas, the only concern of the respondent as argued by learned counsel for KMC is that previous owners and their legal heirs are entitled to the alternate land and not the petitioners. However, in view of chronology of events as reflected in the above referred documents, including the General Power of Attorney coupled with interest and right to sell and the Sale Agreement executed between the petitioner and previous owners through Attorney, it appears that petitioners have acquired the same right through previous owners for allotment of alternate land by KMC.

Today, the learned counsel for the petitioners has called one of the legal heirs of Syed Muhammad Iqbal Hussain general attorney of the previous owners, who has acknowledged the claim of the petitioners pursuant to hereinabove documents and the decree passed in the above referred suit and submits that they have no objection, if the petitioners are allotted alternate land in their favour. Moreover, after execution of the aforesaid documents and the decree passed by the learned Single Judge of this Court in favour of petitioners in respect of land which was allotted to previous owners right to get alternate land in lieu of the land which has been taken over by the KMC, the previous owners and their legal heirs cannot come forward to claim any right or entitlement, which has already been relinquished pursuant to the Sale Agreement and the

execution of General Power of Attorney in favour of Syed Muhammad Iqbal Hussain.

*While confronted with hereinabove factual and legal positions, learned counsel for the KMC and learned Asst. A.G. Sindh could not dispute the same, however, the learned counsel for the KMC submits that KMC is under legal obligation to allot alternate land/plot in lieu of the land acquired by KMC to the previous owners, as they have no privity of contract with the petitioners. Admittedly, the land acquired by KMC from the previous owners, who had entered into an agreement for alternate land with the KMC, creates right in favour of previous owners, to whom petitioners are claiming the same right and entitlement of alternate land, whereas, previous owner or his legal heirs are not coming forward for such claim, rather have acknowledged the right and claim of the petitioners. Accordingly, we would direct Director Land, KMC to be present in Court on the next date of hearing, and to explain as to there is any other legal impediment, if alternate land of the same sizes and of equal value can be allotted lease in favour of petitioners. For such purpose, to come up on **27.04.2023**, to be taken up at **11:00 A.M.** when the availability of alternate land shall also be intimated.*

Let the acknowledgment of right and entitlement of the petitioners to claim the alternate land instead of legal heirs of previous owners, may be placed on record through a statement by S.M. Wasiq Iqbal present in Court today which may be duly signed by other legal heirs of Syed Muhammad Iqbal Hussain.

4. After hearing the learned counsel for the parties at some length and keeping in view the dispute being raised by the respondents with regard to right and entitlement of the petitioners seeking alternate land and/or compensation in respect of land, which was leased/allotted to previous owner(s) by KMC, it appears that KMC though not disputed above facts, however, do not recognize the petitioner for the purposes of granting any of the relief sought through instant petition, as according to learned counsel for the respondents, neither there has been any agreement or contract nor the subject land was ever leased / allotted to present petitioners' names. Whereas, the compromise judgment and decree obtained by the petitioners against the private respondents otherwise has no effect on the KMC, as no relief against the respondent

(KMC) was sought or pressed by the petitioners in such proceedings. It appears that the original lessee / allottee of the land or their legal heirs have not come forward to seek such declaration or relief through instant petition, however, the petitioners are claiming right and their entitlement of alternate land/compensation on behalf of previous owners through their legal heirs, in view of agreement dated 06.08.2007 executed between Syed Muhammad Iqbal Hussain attorney of the legal heirs of Khawaja Muhammad Yousuf original lessee / allottee of the land and the KMC Co-operative Housing Society as well with CDGK. Whereas, the petitioners have acquired a judgment and decree against the legal heirs of Syed Muhammad Iqbal Hussain, who was the attorney of previous owner(s), therefore, claim to have entered into the shoes of the original owner / allottee pursuant to a registered General Power of Attorney coupled with interest, as huge amount has been paid towards sale consideration in respect of subject land, as well as the judgment and decree passed by the Court in Suit No.1593 of 2020, in which KMC/CDGK was also a party and did not raise any objection to claim of previous owner(s) / allottee(s) of the land, which was admittedly acquired by KMC, whereas, alternate land given subsequently was cancelled pursuant to judgment of Hon'ble Supreme Court. Prima facie, KMC cannot deviate from their admitted stance in respect of acquiring the land and to give alternate land or to compensate the owner / allottee. However, in order to ascertain the claim of present petitioners vis-à-vis original owner / allottee, it will be appropriate that petitioners may approach the Mayor KMC and Director Land KMC alongwith all the relevant documents for the purpose of establishing their rights and entitlement / interest in the subject land/claim for alternate land or compensation, which shall be considered in accordance with law, and thereafter, appropriate order may be passed, preferably, within a period of two (2) months from the date when the petitioners may approach the aforesaid authority. Thereafter, in case of any further grievance the

petitioners will be at liberty to file appropriate proceedings for enforcement of their right, title and claim, if any, before the appropriate forums/ Court of civil jurisdiction, as may be available to the petitioner in accordance with law.

5. Instant Constitution Petition stands disposed of in the above terms alongwith listed applications.

ACTING CHIEF JUSTICE

JUDGE

Farhan/PS
Imran