

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
C.P.NO.D-1189 OF 2011

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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FOR KATCHA PESHI.

03.10.2017

Mr. Muhammad Arshad S. Pathan, Advocate for petitioner.

Mr. Jagdish R. Mullani, Advocate for respondent No.11.

Mr. Irfan Ali Bughio, Advocate for respondents No.1&2.

Mr. Zaheeruddin Sahito, Advocate for respondent No.3/SBCA.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J:- This petition pertains to a piece of plot in Khalid Fareed Housing Scheme, Qasimabad, Hyderabad, which the petitioner claims to have been allotted. It is submitted that in the year 2009 the petitioner came to know that some construction is going on at his plot and subsequently it was discovered that respondent No.11 got a plan approved over a piece of land which include an encroached land covering and trespassing the alleged piece of petitioner's plot. Learned Counsel for the petitioner submits that respondent No.11 to whom a plan was approved as Sweet Homes / New Muslim Cottage Housing Scheme through its proprietor Muhammad Yameen for an extended and encroached area to the extent of 5,901 Sq.Ft which was originally 25 Ghuntas admeasuring 27,225 Sq.Ft, out of survey No.217/2, Deh Sari stands/entered in the name of New Muslim Cottage Housing Scheme. It appears that the construction was raised over 33,126 Sq.Ft, which tress passes an area of 5,901

Sq.Ft. It is the case of the petitioner as argued that this excess piece of land trespasses the plot of the petitioner.

2. When inquired from the Counsel appearing for respondent No.3/Director, Building Control Department, he concedes to the extent that in the plan approved there was originally no area mentioned. He is, however, of the view that the entitlement of respondent No.11 was only to the extent of 25 Ghuntas i.e. 27,225 Sq.Ft. and notices were issued with regard to the excess land occupied by respondent No.11. He has further relied upon certain notices issued by the Building Control Department, Hyderabad, which was separated from Hyderabad Development Authority (HDA) in the year 2011 in view of the promulgation of the Sindh Local Government Ordinance, 2011. The Counsel has further assisted us that despite injunctive / stay order against the respondent No.11 dated 03.01.2011 at Annexure "C/3" Page-47, the respondent No.11 continued to raise construction, however, he has not stated as to whether the officer concerned / delinquent officer have taken any action with regard to illegal and unlawful construction either over 25 Ghuntas for construction beyond approved plan or over land beyond 25 Ghuntas which is totally illegal as it trespassed excess land. The vigilance department apparently have not taken any action in this regard.

3. Mr. Jagdish R. Mullani, Counsel appearing for respondent No.11 vehemently denied the contention of the petitioner as well as of the Counsel appearing for respondent No.3 and submits that the construction was in accordance with law and has also relied upon certain material documents to emphasis that the construction was on a piece of land to which the respondent No.11 was entitled to in

accordance with law. The Counsel has also denied title and entitlement of the petitioner as there is no existence of plot No.1-A as claimed by the petitioner.

4. We have heard the learned Counsel and perused the material available on record.

5. The petitioner is primarily relying upon a Lease Deed available at Annexure "A/1" Page-33, which shows that plot No.1-A is carved out in Khalid Housing Colony, Hyderabad, and the schedule is also shown at the bottom of this document alongwith certain revenue record i.e. V.F-II Part-II. There is no cavil to this proposition that petitioner may have been allotted a plot as shown, however, as to whether the area is trespassed by respondent No.11, it requires detailed probe and investigation. The local investigation of the commissioner cannot be solely relied upon to confirm the alleged trespass of the land by respondent No.11. He has been pursuing his remedy under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, whereas, we are of the view that it requires detailed probe and investigation and the remedy lies in approaching Civil Court.

6. In so far as, the other part of this petition is concerned, which concerns the public interest litigation as it has been shown by the petitioner that respondent No.11 has encroached upon a piece of land more than that he was entitled to, we are inclined to proceed further in this regard. The Counsel appearing for respondent No.3 is not able to show or justify the approval of plan to the extent of 33,126 Sq.Ft as available at Page-269 as against the entitlement of 25 Ghuntas, which comes to 27,225 Sq.Ft. Learned Counsel for respondent No.3 while

proceeding has conceded that the only entitlement over which a plan could have been approved was 27,225 Sq.Ft and in consideration thereof a letter was issued to respondent No.11 regarding an excess area admeasuring 5,901 Sq.Ft, which was illegally occupied by respondent No.11 at site without having any ownership and entitlement. On this account the restraining order was passed by Building Control Department on 31.01.2011. This is also a painful fact to learn that despite this interim order or restraining order against respondent No.11 the vigilance department of Building Control Department, HDA has virtually allowed respondent No.11 to continue with the construction which resulted in the completion of construction over excess piece of land admeasuring 5,901 Sq.Ft. These delinquent officers of the vigilance department or of any other department responsible for such unlawful construction cannot be spared and they should be taken to task. In view of the above, we deem it appropriate as under: -

- (i) The petitioner may approach Civil Court for the redressal of their grievance in accordance with law as the intricate questions of fact cannot be ascertained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.
- (ii) In case such suit is preferred by the petitioner, the time consumed by the petitioner in this writ petition may be considered to be condoned in case the Limitation Act would run against the petitioner.
- (iii) The respondents No.1 to 5 may take strict action in accordance with law against the delinquent officer responsible for such negligence in allowing the respondent No.11 to raise construction beyond an area to which they are entitled for.

- (iv) In case, plan was approved beyond the law to which respondent No.11 or any of his predecessor was entitled to, the delinquent officers may be issued show-cause notice and appropriate order be passed against them.
- (v) Strict action be taken in respect of illegal and unauthorized construction beyond approved plan and beyond the land to which respondent No.11 was entitled to.
- (vi) That the compliance report after detailed probe be submitted to the Additional Registrar of this Court within 08(eight) weeks from today, failing whereof, the high officials of respondents No.1 to 5 shall be called to appear.

The petition stands disposed of.

JUDGE

JUDGE

Shahid