

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**H.C.A. NO.177 OF 2019**

**a/w**

**H.C.A. Nos.180 to 185 of 2019**

**PRESENT:**

**MR.JUSTICE ADNAN IQBAL CHAUDHRY**

**MR. JUSTICE ABDUL MOBEEN LAKHO**

- (1) Nazar Mohammad Bozdar**  
**(Appellant in HCA No.177/2019)**
- (2) Rahim Buksh Baloch**  
**(Appellant in HCA No.180/2019)**
- (3) Abdul Rasheed Malano**  
**(Appellant in HCA No.181/2019)**
- (4) Zeeshan Alvi**  
**(Appellant in HCA No.182/2019)**
- (5) Lubna Ejaz**  
**(Appellant in HCA No.183/2019)**
- (6) Behzad Amir Memon**  
**(Appellant in HCA No.184/2019)**
- (7) Khair Muhammad**  
**(Appellant in HCA No.185/2019).....Appellants**

**Versus**

**Muhammad Ishrat & others ..... Respondents.**

**Date of hearing: 16-10-2024**

M/s.Mushtaq A. Memon, Shahid Ali Ansari and Waseem Ahmed, Advocates for the Appellant in HCA No.177/2019.

Mr.Samullah Soomro, Advocate for the Appellant in HCA No.181/2019

Mr.Umar Sikandar, Advocate for the Appellant(s) in HCA Nos.182 and 183 of 2019.

Mr.Muhammad Ahmed Pirzada, Advocate for the Appellant(s) in HCA No.184 & 185 of 2019.

None present for the Appellant in HCA No.180/2019.

M/s.Khawaja Shamsul Islam & Imran Taj, Advocates for the Respondent No.1 in all HCAs.

Mr.Naeem Akhtar Talpur, Additional Advocate General, Sindh.

**ORDER**

**Abdul Mobeen Lakho, J.** These appeals are directed against the same impugned order dated 21st March, 2019 passed by the learned Single Judge on a contempt application bearing CMA No.14277 of 2018 in Suit No.542 of 2015 and directing appearance of the Appellants/ alleged contemnors No.1 to 7 for framing charge against them with further direction to the Prosecutor General Sindh to nominate Law Officer for the prosecution of the Appellants as alleged contemnors.

2. At the outset, we had confronted learned counsel for the Appellants with the maintainability of these High Court Appeals under the Law Reforms Ordinance, 1972 when the impugned order seems to be appealable under section 19 of the Contempt of Court Ordinance, 2003. Mr. Mushtaq A. Memon, learned counsel for one the Appellants submitted that this Court can always convert one type of proceedings to another. Mr.Khawaja Shams-ul-Islam, learned counsel for the Respondent No.1 did not oppose suchconversion. Therefore, since the appeal under section 19 of the Contempt of Court Ordinance, 2003 from the order impugned would also lie to a Division Bench of this Court, and since limitation is not in issue here, we treat these appeals under the Ordinance of 2003.

3. The relevant facts of the case are that on 06.04.2015, the Respondent No.1 filed Suit No.542/2015 for declaration, direction, possession, injunction and recovery of damages and claimed that he is owner of Industrial Plot No.G-18, measuring 0.50 acres at SITE, Super Highway, Phase-II, Karachi (*hereinafter referred to as subject plot*). It was pleaded that the subject plot which was initially allotted to M/s. Rupani Cotton Industries vide allotment letter dated 05.07.2004, who sold it to the Respondent No.1 by an Assignment Agreement dated 30-09-2005 inasmuch as the SITE was delaying a

formal possession letter and permit to raise construction; that Rupani Cotton delivered constructive possession of the subject plot to the Respondent No.1; that even though SITE mutated the subject plot to the name of the Respondent No.1, but the SITE did not issue the formal possession letter, and permission to raise construction were being delayed on one pretext or the other. The suit was filed when the Respondent No.1 apprehended that the defendant No.4 (Appellant in HCA No. 177/2019), who had been appointed M.D. SITE, intends to cancel old allotments with malafides including the subject plot.

4. On 07.04.2015, the first date of hearing, the learned Single Judge while issuing notice directed the defendants 3 and 4 (SITE and M.D. SITE, Nazar Mohammad Bozdar) to maintain status quo in respect of the subject plot (subsequently confirmed on 26.09.2018). Upon an order of inspection passed in the suit, the Nazir submitted a report dated 19.09.2018 that pursuant to orders in Execution Application No. 20/2012, the subject plot was in the possession of one Emaduddin Siddiqui after amalgamation with another plot to create plot No. G-209, and that the SITE had cancelled the previous allotment. On 10.10.2018, the Respondent No.1 filed contempt application (CMA No. 14277/2018) against officers of SITE and Emaduddin Siddiqui alleging that they had acted in collusion to violate the status quo order. By the impugned order the learned Single Judge absolved Emaduddin Siddiqui of the alleged contempt, however, as regards the officers of SITE (Appellants), the learned Single Judge held that they had played a trick to frustrate the status quo order, and therefore fixed the matter for framing charge against them.

5. The common submissions of learned counsel for the Appellants were that the learned Single Judge failed to notice that allotment of the subject plot had been cancelled prior to the institution of the suit, and therefore there was no contempt of the status quo

order passed in the suit; and that the cancellation was on the basis of terms of allotment which required utilization thereof within maximum period of two years. They further argued that the Sukkur Bench of this Court vide order dated 17.10.2011 passed in C.P.No.D-109 of 2005 directed the SITE to ensure within a reasonable period of time preferably 90 days that all allottees would take concrete steps to initiate the process of establishing industrial units on the plots allotted to them and any allottee found in violation of such term should be dealt with in accordance with law and as per amendment in the Colonization of Government (Lands) Act, 1912 the cancellation of the subject plot was not discriminatory at all and the cancellation of all the unutilized plots was notified evenly through publication in daily newspapers dated 15.3.2010. They further argued that the specific notice of cancellation of subject plot through TCS issued on 30.9.2014 and delivered at its given address being C/151 Block-A North Nazimabad Karachi. They argued that Respondent No.1/plaintiff had prayed for possession of the subject plot in his Suit No 542/2015, which proves that he did not have physical possession of the subject plot, therefore, the question of dispossession does not arise and he repeatedly kept on asking for possession of subject plot, whereas, the phraseology of holding of physical possession or constructive possession does not signify that the Respondent No.1 was ever in possession of the subject plot. Learned counsel argued that the learned Single Judge has failed to appreciate that there was judgment and decree dated 21.7.2009 passed in Suit No.531/2008 in favour of Emaduddin Siddiqui and another and in order to execute the decree it was found that no plot measuring 1.50 acres was available with SITE and to satisfy the decree. Learned counsel argued that the above narrated events took place before 7.4.2015 when order of status-quo was passed i.e. cancellation of newly created Plot No.G-209 and its restoration in April 2016 were not violative of the status-quo order relating to the suit property which had already been cancelled.

6. Mr. Mushtaq A. Memon, learned counsel for the appellant in HCA No.177 of 2019 (defendant No.4, Nazar Mohammad Bozdar, ex-M.D. SITE) further submitted that the impugned order dated 21.3.2019 is erroneous in law as the learned Single Judge erred in directing framing of charge without any substance and material and the record pertaining to the subject plot does not even remotely suggest any contravention or violation by Mr. Bozdar. He further argued that vide notification dated 24.04.2015 Mr. Bozdar was transferred and he handed over charge of office as Managing Director SITE on 27.4.2015, whereafter, he had no concern with SITE, therefore, no contravention or disregard of the status quo order dated 07.04.2015 can be attributed to him at any stage whatsoever. Learned counsel further argued that Mr. Bozdar was never served with the notice of CMA No.14277/2018 and was not provided any hearing before passing the impugned order. He argued that even the provision contained in Order 39 Rule 2(3) CPC does not postulate initiation of proceedings without notice and hearing and the right of hearing is implicit in all the proceedings where right or status of a person is likely to be affected. Learned counsel further argued that the Hon'ble Supreme Court of Pakistan has discouraged the initiation of proceedings for contempt against Government officials. He submitted that the present case is not a fit case for proceedings under the Contempt of Court Ordinance and/or framing charge thereunder. He further argued that the directions for appearance of Mr. Bozdar on 16.4.2019 for framing of charge against them is illegal and without jurisdiction as in the title of application for contempt proceedings, he is referred as former Managing Director, which description by itself was sufficient to put the Court on guard and to ascertain what specific violation of status-quo order is ascribed to him.

7. Conversely, Mr. Khawaja Shams-ul-Islam, learned counsel for the Respondent No.1/plaintiff submitted that the alleged contemnors/appellants willfully violated the order of this Court. He submitted that the subject plot was purchased by the previous

owner in the auction and full payment was made; that the Respondent No.1 was in physical possession of the subject plot and only the formal letter of possession was not being issued by the SITE; that all the payments including non- utilization charges were regularly paid by the Respondent No.1 through banking documents, as such the same cannot be denied. He submitted that at the time the appellants had offered Emaduddin the alternate plot No.G-209, the status quo order was already in field. After referring different portions of Nazir Report, he submitted that from the Nazir Report, it appears that the Appellants (alleged contemnors) were dealing with the subject plot even after the status quo order and therefore they have willfully violated the order of this Court, therefore, prayed that the Appellants should be charged and directed to face trial for flouting the order of this Court.

8. We have heard the arguments in this case, which centers on the alleged violation of an order dated 07.04.2015 passed in the suit directing the defendants 3 and 4 (SITE and M.D. SITE, Nazar Mohammad Bozdar) to maintain the status quo on subject plot i.e. Plot No.G-18, 0.50-acre at S.I.T.E, Super Highway, Phase-II, Karachi. The point for determination is whether the order passed by the learned single Judge for framing charge against the Appellants requires interference.

9. From the record it appears that allotment of the subject plot had been cancelled by the SITE on 30.09.2014. Thereafter, the SITE amalgamated the subject plot (G-18) with Plot No. G-19 and numbered the amalgamated property as Plot No. G-209 measuring 1 acre. At that time, Execution Application No. 20/2012 by Emaduddin and Aitmaduddin against SITE was pending for enforcing a decree for possession of Plot No.H-25 of 1.5 acre. To satisfy that Execution, the SITE offered those decree holders alternate plots being Plot No. G-209 (1 acre) and Plot K-265 (0.5 acre), which was accepted by them. Therefore, by letter dated 07.11.2014, the SITE approved that

possession of Plot No. G-209 (which included the merged subject plot) be delivered to Premier Chemical Complex, the proprietorship of Emaduddin. Accordingly, a lease was presented for registration on 10-02-2015. All of this had taken place before the status quo order dated 07.04.2015 was passed in the subject suit. The acts which seem to have taken place after the status quo order was a letter of acknowledgment of handing over possession of Plot No. G-209 which was issued by the Estate Engineer SITE to Emaduddin on 12.07.2017 (pg. 417); and said arrangement was placed by the Law Officer of SITE in Execution No. 20/2012 on 23.04.2018 for disposal of that case. The learned single Judge was of the view that part of the acts of SITE that took place after the status quo order constituted contempt of court.

10. However, while fixing the matter for framing charge against all persons arrayed as alleged contemnors, the learned single Judge did not consider whether there was sufficient material to arraign each of them. Section 5(3) of the Contempt of Court Ordinance, 2003 also states that:

“In the case of a contempt having been committed, or alleged to have been committed, by a company, the responsibility thereof shall extend to the persons in the company, directly or indirectly, responsible for the same, who shall also be liable to be punished accordingly.”

Therefore, in our view, before the matter could be fixed for framing charge, there had to be some discussion as to which of the alleged contemnors was prima facie responsible. It is the case of some of the Appellants that they were posted to SITE for brief periods and could not be held responsible for acts committed before or after their posting, which aspect has not been considered in the impugned order.

11. Furthermore, as regards the Appellant of HCA No. 177/2018, who was the alleged contemnor No.5, it appears from the record that he was not served with notice of the contempt application sent to his previous office at SITE as he had been transferred

long ago. The impugned order also records that he was not represented. Therefore, he was not provided the opportunity to explain himself as required by section 17 of the Contempt of Court Ordinance, 2003.

12. Keeping in view the above, we allow these appeals by setting-aside the impugned order dated 21.03.2019 passed in Suit No.542 of 2015 and remand CMA No.14277 of 2018 for a hearing and decision afresh without being influenced with the said order.

The office shall place a copy of this order in all appeals listed above.

Judge

Judge

**Dated: 22 -11-2024**