

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-5653 of 2024

Date Order with Signature(s) of Judge(s)

Priority:

1. For order on office objection.
2. For hearing of Misc. No.25093/2024.
3. For hearing of main case.

20.11.2024

Mr. Aurangzeb, Advocate for Petitioners.

Mr. Jawwad Dero, AAG.

Shahid Ali-Dy. Administrator, ETPB.

Mr. Muhammad Akram Tariq, Advocate files power on behalf of the Respondents No.2&3 (*Chairman Evacuee Trust Property Board & Deputy Administrator (Urban) Evacuee Trust Property, respectively*), which is taken on record.

Petitioner No.1 claims to be the sole owner of the property bearing open residential plot of property bearing portion "B", measuring 1440 Sq. ft. while, Petitioner No.2 claims ownership of Flat No.301, 3rd floor, Irfan Arcade, both properties are located at Plot No.GRE-467, Lasbela Chowk, Nishter Road, Garden East, Karachi (**the "Subject Property"**). They have filed instant Constitution petition, inter alia, with the following reliefs:-

- a) *To restrain the respondents No.2 to 4, their agents, representatives, colloquies, companions, servants & any other person, who are acting on their behalf from creating any types of hurdles, from dispossessing the petitioners and sealing the said properties situated at Plot No. GRE (measuring 5014 Sq. Yds.) situated at Lasbela Chowk at Nishter Road, Garden East, Karachi, whatsoever in nature without due course of law. Further to restrain the respondents thereby directing the respondents to de-seal the subject property respondents from dealing with the subject property.*
- b) *To declare the auction proceedings initiated by the Evacuee Trust Property Board (ETPB) for property bearing GRE-467, situated at Lasbela Chowk, Nishter Road, Garden East, Karachi respectively as*

illegal, unlawful and without jurisdiction and cancel the auction dated 6.11.2024, 13.11.2024, 20.11.2024 and 30.12.2024 by the ETPB.

- c) *Grant an immediate injunction/stay order restraining the respondents, including the ETPB, their agents, officers, or any third party acting on their behalf, from proceeding with the auction, sale, or transfer of the subject properties until the final disposal of this petition.*
- d) *Direct the respondents to cancel and nullify an orders, notices, or proceedings declaring the subject properties as evacuee trust properties. The classification is erroneous and arbitrary, as the properties were transferred through a valid PTD well before the cut-off date of June 1968 under the Evacuee Trust Properties (Management and Disposal) Act, 1975.*
- e) *To restrain the respondent, their officers, and agents from taking any further coercive or adverse actions against the petitioner or the occupants of the property, including eviction, dispossession, or interference in the peaceful possession and use of the subject property, until the conclusion of the pending litigation.*

Learned counsel for the Petitioners contends that the Petitioners earlier filed C.P. No.D-1592/2024 which was disposed of by this Court, vide order dated 02.09.2024, allowing them to challenge the fresh action on the subject property. He also contends that, on 20.11.2024, the petitioners received notices from the respondent No.3 alleging therein that they have illegally occupied the subject property. They approached the respondent No.3 but in vain and, thereafter, respondent No.3 started harassing and threatening them that he would seal the subject property; hence, they have maintained this petition.

On the other hand, learned counsel appearing on behalf of respondents No.2 & 3 maintains that, vide earlier order passed in C.P. No.D-1592/2024, the petitioners were provided an opportunity to participate in the auction proceedings but they failed to do so and now they have challenged the auction proceedings through instant petition, which is not maintainable in law.

Heard and record perused.

It is an admitted position that, vide order dated 02.09.2024, this Court disposed of C.P. No.1592/2024 by observing that the petitioners would be allowed to participate in the auction proceedings and preferential right will be given to them as per law. This Court also directed to respondents No.2 & 3 to reschedule the auction keeping the petitioner at liberty to challenge the fresh auction. It is also an admitted position that the petitioners did not take part in auction proceedings rescheduled by the respondents No.2 & 3 in compliance of aforesaid order of this Court. Hence, they are not entitled to challenge fresh auction on any ground including so called claim of being owner of the property.

Needless to mention here that under Section 8 of the Evacuee Trust Properties (Management & Disposal) Act, 1975, any claim regarding the status of a property whether the same is evacuee or not has to be adjudicated by the Chairman Evacuee Trust Properties Board. Hence, this petition being devoid of merit is dismissed along with pending application(s).

JUDGE

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