

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5828 of 2020
(Shiraz Mazhar & others v Defence Housing Authority & others)

Date	Order with signature of Judge(s)
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Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:-16.12.2024

Mr. Umair Usman advocate for the petitioners.
Mr. Rashid Mahar advocate and Mr. Talha Abbasi advocate for respondent No.1
Mr. Ahmed Ali Hussain advocate for respondents No.5 and 6
Mr. Noor Muhammad advocate for respondent No.7

ORDER

Adnan-ul Karim Memon, J; Petitioners seek the following declarations and orders:

Declare that Plot No. 12-B was and remains designated for residential use only.

Declare the reclassification of Plot No. 12-B to commercial use and subsequent allotments as illegal and void.

Declare any commercial development on Plot No. 12-B and any subdivisions as illegal and void.

Order the cancellation of all site plans, allotment orders, and registered documents related to Plot No. 12-B.

Grant damages to the petitioners.

2. Petitioners claim that they are residents of Khayaban-e-Hilal and Commercial Avenue in Defence Housing Authority (DHA) Phase VI, Karachi. They purchased their properties in the area believing it to be primarily residential. Plot No. 12-B, a corner plot on Commercial Avenue, was always shown as an open plot, however, respondents misrepresented the plot's purpose as a "Sewerage Pump" station on older maps. The DHA Master Plan designates the Plot as a residential plot. The petitioners submit that the reclassification of Plot No. 12-B to commercial use and subdivisions is illegal void and detrimental to their property values.

3. We questioned the petitioners' counsel on the maintainability of this petition under Article 199 of the Constitution on the premise that this Article is for clear-cut cases of unlawful government action, not complex disputes requiring extensive fact-finding/evidence and in such eventuality, petitioners should pursue alternative remedies, as this court's jurisdiction addresses clear illegalities, not intricate matters. Furthermore, prima facie, the DHA authorities are competent to determine the legality of reclassifying Plot No. 12-B for commercial use, subject to restrictions imposed by the rules and regulations of DHA on the subject issue, which may involve zoning approvals and environmental impact assessments, depending on the proposed commercial use.

4. Learned counsel for the petitioners submitted that this petition is maintainable under the law and argued that the petitioners are residents of DHA Phase VI whose properties are adversely affected by the actions of the DHA for the illegal conversion of residential Plot No. 12-B to commercial use. He emphasized that even with the order; the DHA cannot change the use of the amenity plot without public input and approval. He argued that when residents buy properties near a designated amenity, they and the public gain a vested right to its use, and this right is essential for the constitutional rights to life and leisure, and citizens have the right to ensure that public officials make decisions that affect them following the law, therefore this petition is maintainable and can be heard and decided on merits. He argued that the conversion was/is illegal as it violated the law and did not involve public consultation. He added that the Respondents illegally designated Plot No. 12-B as a commercial area and carved out eight plots by allotting to the private respondents. These plots were allotted to favorites without a transparent auction process, which is illegal; that the Petitioners have evidence that one plot was allotted to Lt. General Shahid Baig Mirza and then transferred to Nahid Rais. Learned counsel argued that the respondents secretly changed the designation of Plot No. 12-B from residential (blue) to commercial (red) without any public notice or legal justification. They introduced a new color code to facilitate this illegal change. He pointed out that the respondents secretly created eight new plots (1-C to 8-C) on Plot No. 12-B and proposed new roads and parking areas. Construction on a 40-foot road adjacent to Petitioner 1's property has already begun. He added that there are already designated commercial areas nearby. Learned counsel pointed out that the plot was historically intended for use as a pumping station during rainy seasons, but respondents have illegally used the main road for this purpose. He emphasized that later maps marked Plot 12-B as "S.P.", which was mistakenly understood as "Sewerage Pump". However, the plot was always intended for residential use. He argued that the Building Control & Town Planning Regulations define "special projects" as land allocated for specific purposes under an agreement approved by the DHA Executive Board. He added that respondents acted arbitrarily and beyond their legal mandate. Per learned counsel, the respondents failed to perform their official duties legally and legitimately and the petitioners have suffered significant losses due to the respondents' actions. He argued that the original site plan shows this plot as residential and its subsequent bifurcation and allotment for commercial purposes by DHA is unlawful. He added that the DHA authorities are not competent to reclassify Plot No. 12-B to commercial use as this involves zoning approvals and environmental impact assessments which have not been done. He lastly submitted that the respondents acted unfairly and unlawfully, violating good governance principles, and respecting the Petitioners' constitutional right to property. He next argued that the respondent DHA, as a

public servant, failed to fulfill their legal obligations. He emphasized that the Supreme Court of Pakistan recognized the right of residents to challenge the conversion of a plot from its intended use that individuals with a real and substantial interest in a property, such as those who purchased a plot based on a sanctioned plan, can seek the High Court's constitutional jurisdiction to enforce their rights. Counsel in support of his contentions, relied on the cases of Salahuddin & 2 others v Frontier Sugar Mills & others **PLD 1975 SC 244**, Pakistan Defence Officers Housing Authorities v Mustafa Akhtar, **2006 SCMR 178**, Pakistan Defence Officers Housing Authorities & others v Lt. Col. Syed Jawaid Ahmed, **2013 SCMR 1707**, Pakistan Defence Officers Housing Authorities & others v Mrs. Itrat Sajjad Khan & others, **2017 SCMR 2010**, Government of Punjab & others Messrs Crescent Textile Mills Ltd., **PLD 2004 SC 108**, Maqbool Ahmed v Abdul Qayoum & others **2017 CLC Note 214**, Pakistan Defence Officers Housing Authorities v Shamim Khan and 5 others **2016 MLD 481**, Munikoe Corporation v Province of Punjab and others **1990 CLC 1791**, Muhammad Bashir v Abdul Karim **PLD 2004 SC 271** and Moulvi Iqbal Haider v Capital Development Authority **PLD 2006 SC 394**. East and West Steamship Co v Pakistan and others **PLD 1958 SC 41**, The Montgomery Flour & General Mills Ltd v. The Director, Food Purchases West Pakistan, **PLD 1957 (W.P) Lahore 914**, Hussain Baksh v Settlement Commissioner, Rawalpindi & others **PLD 1970 SC 1**, Amanullah Khan Etc v Member, Board of Revenue, **1981 SCMR 777**, Sardar Noor Hussain v Chief Settlement Commissioner & others **PLD 1983 SC 62**, Shahzad & another v IV th Additional District Judge, Karachi (East) & others, **PLD 2016 Sindh 26**, Farrukah Saeed Khan v Anis Ur-Rehman Bhatti, **2006 CLC 440**, Qamar Uddin v Muhammad Din **PLD 2001 SC 518**, Haji Bashir Ahmed Babbar v Executive Engineer Irrigation Northern Jamaro **2009 MLD 1368**, Ghulam Sarwar Khan v Chairman Punjab Board of Technical Education & others **2015 MLD 1386**. He also relied upon the statement along with documents. He lastly prayed for the instant petition to be allowed.

5. M/s. Rashid Mahar and Mr. Talha Abbasi advocates for respondent No.1 have opposed the submissions of the petitioners, contending that the change in Master Plan was by law. He explained that the Executive Board of DHA is competent to bring any change in the Master Plan keeping in view the requirements/convenience of the inhabitants/owners. He next contended that Petitioners lack the legal standing to file this petition as they have not suffered any direct harm to their property. Petitioners concealed material facts from the court, rendering them ineligible for relief. The impact on peace and tranquility requires evidence and cannot be determined in this proceeding. He next argued that Plot 12-B was reserved for a Sewerage Treatment Plant, not residential use. Relocation of the STP and commercial development does not infringe on any

vested rights of the petitioners. He argued that the petition cannot be entertained under Article 199 of the Constitution as it involves factual disputes. Counsel cited the cases of Anjuman Fruit Arhtian and Others v Deputy Commissioner **2011 SCMR 279**, Maqsood Ahmed Toor and others v Federation of Pakistan & others **2000 SCMR 928**, Noor Jehan Shah v Pakistan Defence Officers Housing Authority **1997 MLD 2261**, Salahuddin and Others v Frontier Sugar Mills & Distillery Ltd. **1975 SC 244**, Muhammad Yousad Khan and others v Pakistan Western Railway and others **1972 SCMR 1**, Sheharyar Waqas Malik v Province of Sindh & others **2013 CLC 507**, Mrs. Zaibun Nisa v Karachi Development Authority **PLD 1998 Karachi 348**, Pakistan WAPDA Employes Pegham Union v Member National Industrial Relations Commission **2014 SCMR 1676**, Lahore Cantonment Cooperative Housing Society Limited **PLD 2002 SC 1068**, Rao Imran Nasir v Defence Housing Authority **2021 YLR 1819**, Ardeshir Cowasjee v Karachi Building Control Authority. **2007 YLR 947**, Dr. Lt. Col. Muhammad Nasir Masood v Karachi Development Authority **1968 SCMR 145**, Messrs Shaheen Enterprises v Karachi Development Authority **1989 CLC 1253** and Dr. Shahzad Alam v Beacon Light Academy and others **2011 CLC 1866**. He lastly prayed for the dismissal of the instant petition.

6. We have heard the argument of the petitioners' counsel on the case's maintainability and reviewed the relevant documents and case law cited at the bar.

7. It has been emphasized that the 1994 Master Plan designated the subject plot for a Sewerage Treatment Plant (STP). The DHA Executive Board relocated the STP due to health and property value concerns, moving it near the Golf Club. The DHA Executive Board, under the 1980 Presidential Order, amended the Master Plan to allow commercial use of the original STP plot. The plot is planned for commercial development while minimizing disruption to nearby residents. The DHA Executive Board claims that they have the authority to amend the Master Plan and cancel allotments under the Presidential Order. Besides Article 17(h) of the Presidential Order, grants the Executive Board specific powers regarding allotments. The impact of the commercial development on the surrounding area needs to be assessed by adducing evidence carefully by the competent court having power of plenary jurisdiction, considering the proximity of the development to residential properties, in such a situation. Primarily, land use planning ensures that land is used responsibly. Land use conversion involves changing the designated use of land, such as from residential to commercial. This requires permission from the relevant authority to ensure compliance with concerned regulations set forth by the DHA and protect the environment and surrounding areas, therefore without touching the merits of the case, this Court sitting in the Constitutional jurisdiction is not ordinarily to undertake adjudication of a question of fact particularly when the

disputed questions cannot be resolved with the help of admitted documents. This petition would require a finding on the disputed documents and controversial questions of facts which according to settled law would need evidence. The nature of controversy particularly the legality and correctness of the documents showing the disputed plot as a commercial one would be a controversial fact of the parties needing evidence to arrive at a conclusive finding which cannot be given in the writ jurisdiction of this Court.

9. Article 199 of the Constitution allows this Court intervention only when: All other legal remedies have been exhausted, or, no alternative legal remedies exist. To invoke the jurisdiction of this Court, the petitioner must demonstrate a vested/legal right or interest that has been violated, which the petitioners failed to demonstrate by producing cogent material on record, merely saying that reclassifying Plot No. 12-B for commercial use is not sufficient until and unless it is proved in evidence that it is illegal as the Board of DHA has no power and authority to do so under the relevant regulations, which involve zoning approvals and environmental impact assessments, depending on the proposed commercial use. Besides it is yet to be determined that Plot No. 12-B, a corner plot on Commercial Avenue, was always shown as an open plot for residential purposes, however, respondents had shown the plot's purpose as a "Sewerage Pump" station on older maps and now relocated it somewhere else. These all facts require evidence and this court at this stage cannot give concrete findings on the subject issue. The Supreme Court of Pakistan in the case of *Pakistan WAPDA Employees Pegham Union v Member National Industrial Relations Commission*, **2014 SCMR 1676**, held that the factual controversies cannot be resolved by the High Court. The Supreme Court of Pakistan in the case of *Lahore Cantonment Cooperative Housing Society Limited*, **PLD 2002 SC 1068**, held that "disputed questions of fact about contractual liability could not be dealt with by the High Court in its Constitutional jurisdiction under Article 199 of the Constitution when other remedies are unavailable. The Supreme Court's judgment in *Dr. Abdul Nabi's* case (**2023 SCMR 1267**) supports this view.

10. This court concluded that the complex factual issues, including the subject issues as agitated by the petitioners, should be resolved in a civil court. Therefore, this petition is found to be not maintainable and is dismissed along with the pending application(s), and the petitioners may seek remedies through the civil court process.

JUDGE

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