

# IN THE HIGH COURT OF SINDH AT KARACHI

HCA 230 of 2018

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[Moula Bux V. Province of Sindh and others]

Date of hearing : 06.02.2025  
Date of decision : 06.02.2025  
Appellant : Through Ms. Farida Mangrio, Advocate.  
Respondent Nos.1 & 6 : Through Mr. Muhammad Hisham Mahar, Assistant Advocate General, Sindh.  
Respondent Nos.2 to 4 : Through M/s. Waleed Khanzada and Syed Ali Ahmed Zaidi, Advocates.

## **JUDGMENT**

**Muhammad Iqbal Kalhoro, J:** Appellant has filed a Suit No.441 of 2018 pending before the learned Single Bench for seeking following reliefs:-

- i. To declare that the Plaintiff is entitled to enjoy peaceful possession of the suit land viz; land comprising 05-Acres, 23-Ghuntha bearing Survey No.267, situated at Deh Allah Phai, Tappo Songal, Gadap Town, Karachi;
- ii. To declare that the Revised Layout Plan of K-IV Project issued by the Defendants being arbitrary, illegal, without lawful authority wherein the original plan has been revised to benefit the favorites of the Defendants which has drastically increased the length of the Pipeline causing huge loss to the Public exchequer on one had, as such the Revised Layout Plan and acts of initiating work of K-IV at the suit land are liable to be declared illegal and unlawful amounting to sheer abuse of powers vested in them;
- iii. To grant permanent injunction thereby restraining the Defendants, their sub-ordinates, agents, servants etc. from interfering and disturbing with the Plaintiff's possession, enjoyment and usage in respect of the suit land viz; land comprising 05-Acres, 23-Ghuntha bearing Survey No.267, situated at Deh Allah Phai, Tappo Songal, Gadap Town, Karachi;

iv. To grant / award damages in the sum of Rs.50 Million against the Defendants jointly and severally along with such further sum as may be determined finally at the time of disposal of this suit.

2. During pendency of the Suit, the Appellant filed an application under Order XXXIX Rules 1 & 2 CPC, 1908 for grant of stay order. This application was dismissed by the impugned order dated 13.07.2018. The learned Single Judge while dismissing the application has essentially held that any right of the Plaintiff to the subject land is subject to the Land Acquisition Act, 1894 and the same will be decided in the Suit in terms of final Judgment. The question raised in respect of change of the Layout Plan, purportedly including the land of the Appellant in the K-IV Project is yet to face the test of the trial and being only a factual controversy can only be determined after recording of evidence.

3. We find no illegality or error in the said observations. The Suit of the Plaintiff / Appellant is essentially for seeking declaration that he is entitled to enjoy possession of the suit land viz. 05-Acres, 23-Ghunta bearing Survey No.267, situated at Deh Allah Phai, Tappo Songal, Gadap Town, Karachi. It goes without saying that for the last six (6) years, the Suit is pending without much progress. On the other hand, because of stay order operating in the Appeal, the Project meant for public at large has been halted. Until and unless, the Plaintiff is declared to be the owner of the property and entitled to its possession by the Court, ad-interim relief of the nature the Plaintiff is seeking cannot be granted to him. Because, if ultimately, the Suit is dismissed, the cost of the delay of the Project would run in billions of rupees which, of course, the Plaintiff / Appellant would not be in a position to bear, but meanwhile public at large will suffer. Therefore, Appellant has no prima facie case in his favour and balance of convenience in the given circumstances does not lie in his favour either. We, therefore, are of the view that no case for granting ad-interim injunction is made out in favour of the Appellant, the impugned order does not suffer from any illegality or irregularity. As a consequence of above discussion, this Appeal, we find meritless and dismiss it accordingly.

This Appeal stands disposed of accordingly.

**JUDGE**

**JUDGE**