

**Order Sheet**  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Suit No.418, 703 & 727 of 2024**

Date	Order with signature of Judge
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1. For orders as to maintainability of suit vide Hon'ble Court order dated 28.9.2024.
2. For hearing of CMA No.6456/2024 in Suit No. 418 of 2024

**2.1.2025** :

M/s. Haider Waheed and Fahad Ali Hashmi, Advocates  
for the Plaintiff.  
Mr. Asadullah, Advocate for the Defendant No.8.  
Mr. Dhani Bux Lashari, Advocate for Defendant/SBCA.

**MOHAMMAD ABDUR RAHMAN, J.** This order will dispose of CMA No. 6456 of 2024 that has been maintained by the Plaintiff under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908, seeking the following relief:

" ... *In light of the facts and circumstances disclosed in the accompanying Affidavit, it is most respectfully prayed on behalf of the Plaintiff that this Hon'ble Court may be pleased to restrain the Defendants from causing any interference in the Plaintiff's possession of the Suit Property i.e. land measuring 1 Acre 27 Ghuntas (1.67 Acre), Sector 19-C, Deh Songal, Tapo Gujro, Scheme 33, Karachi, the construction being carried out thereon and from taking any other coercive action against the Plaintiff, until final disposal of the instant Suit.*

*Ad-interim orders are solicited in this regard."*

2. CMA No. 6456 of 2024 was listed in Suit No. 418 of 2024 along with CMA No. 9808 of 2024 in Suit No. 727 of 2024 on 28 September 2024 and on which date Counsel for the Plaintiff did not press CMA No. 9808 of 2024 in Suit No. 727 of 2024. It seems through inadvertence an order was passed in Suit No. 418 of 2024 and on account of which CMA No. 6456 of 2024 was also ordered to be dismissed as not pressed. This is factually incorrect as CMA No. 6456 of 2024 in Suit No. 418 of 2024 was pressed by Counsel for the Plaintiff and on which arguments had been continuing. I therefore exercising my inherent jurisdiction under Section 151 of the Code of Civil Procedure, 1908 recall the order dated 28

September 2024 passed in Suit No. 418 of 2024 and on account of which CMA No. 6456 of 2024 will be deemed to be pending before this Court.

3. The Plaintiff is the owner of 01 acres 27 ghuntas of land located at Sector 19-C, Deh Songal, Tapo Gujro, KDA Scheme No.33, Karachi, (hereinafter referred to as the Plaintiff's Property) and which they have acquired from a registered Conveyance Deed dated 17 September 2021.

4. The Defendant No. 8 is an authority known as Federal Government Employees Housing Authority which is constituted under a statute entitled the Federal Government Employees Housing Authority Act, 2020 (Act No .IV of 2020) and which has been allotted land admeasuring 6.088 acres in Sector 19-C, Deh Songal, KDA Scheme No.33, Karachi by the Government of Sindh vide an Agreement of Lease dated 28 July 1991. A demarcation plan is appended by the Defendant No.8 to the Written Statement showing that there is 100 feet wide road to the East of their property, a property owned by Gulistan Cooperative Housing Society to the North of their property, a 200 feet wide road to the West of their property and "adjusted" land to the South of their property. It is not disputed that the Plaintiffs' Property is located in the adjusted land.

5. Mr. Haider Waheed and Mr. Fahad Ali Hashmi entered appearance on behalf of the Plaintiff and have contended that the Plaintiffs property does not overlap with the land of the Defendant No.8 and as such the Defendant No.8 had no right to interfere with the possession or development of the said property. He contended that while under the provision of Section 23 of the Federal Government Employees Authority Act, 2020, the Defendant No.8 had a right to administer their own land, their jurisdiction could not go beyond such an area and which remained under the administrative control of Sindh Building Control Authority and Sindh Master Plan Authority (as exists).

6. Mr. Asadullah entered appearance on behalf of the Defendant No.8 and contended that under Section 23 of the Federal Government Employees Authority Act, 2020 it had absolute authority to regulate construction on their land owned by it and hence was permitted to issue notices and take action wherever an encroachment or illegality occurred on its Property. He contended that the Plaintiffs land was encroaching on the Defendant No. 8 Property and hence they were permitted to restrain the Plaintiff in this regard.

7. As was apparent, as neither the Plaintiff nor the Defendant No. 8 claimed title to the others land, the main issue as between the Plaintiff and the Defendant No. 8 was as to the demarcation of each of their properties and a direction was therefore given by this Court on 04.11.2024 to the Nazir of this Court, as a commissioner of this Court, to engage a Surveyor and demarcate each in the following terms:

“ ... *In the circumstances, let Messers Josphe Lobo (Private) Limited are appointed as Surveyors to compare both the plans as available on record and to determine:*

(i) *As to whether a 30 feet road, as indicated in the layout plan dated 1 February 2006 and which is comprised in the property that belongs to the Defendant No.8, which is adjacent to the Plaintiffs property, exists within or outside the boundaries of the property that has been allotted to the Defendant No.8 by the Province of Sindh?*

(ii) *Whether the land comprised in the allotment made to the Plaintiff, as demarcated in the layout plan issued by the Master Plan Department to them overlaps in any manner with the property belonging to the Defendant No.8 as indicated in the layout plan dated 01 February 2006.*

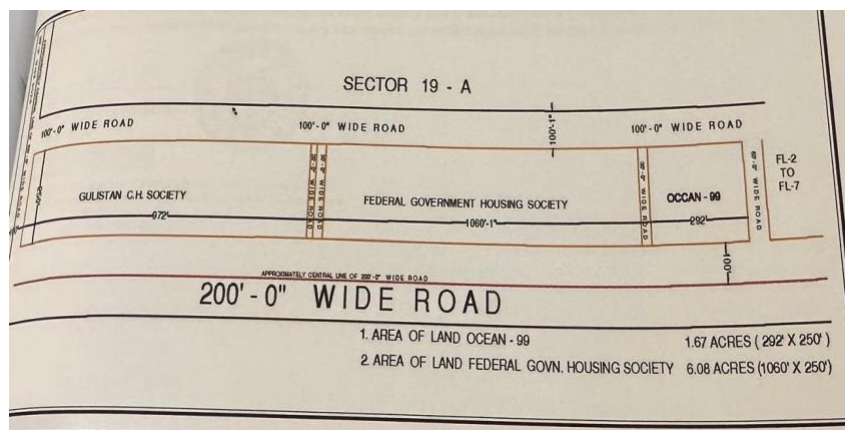
*Josphe Lobo (Private) Limited is at liberty to use theodolite instruments to assist in this demarcation and to submit its report before this Court by presenting a layout plan showing the exact location of the Plaintiff and the Defendant No.8 properties and which should be superimposed on a Google Earth/Map image. The exercise should be carried out under the supervision of Nazir of this Court. Nazir's fee is fixed Rs.50,000.00 and fee of Josphe Lobo (Private) Limited is fixed Rs.200,000.00 which will be paid by whichever party is found to be at fault. This exercise should be carried out within a period of three weeks.”*

8. Pursuant to such orders the Nazir has submitted his report before this Court on 21 December 2024 in the following terms and which reads as hereinunder:

“ ... Observations/ Findings

(i) A 30-ft wide (yet-to-be-paved) road, as shown on the layout plan dated 01 February 2006 is existing and running between the Defendant No.8 and Plaintiff property. However, this 30-ft wide road belongs to and is within the boundaries of Defendant No.8 and it is adjacent to Plaintiff's property. Please refer the layouts attached herewith, which is also superimposed on a Google Earth/Google Map/ Google Image. Located at Lat 24.97 1480, Lon 67.128891.

(ii) Plaintiff's land is existing on its location, as proven by the layout plan issued by the Master Plan Department dated 18 May 2022 as well as it is situated according to the demarcation plan issued by the Office of the Survey Superintendent dated 02 February 2023. Additionally, the Plaintiff's land does not overlap with the adjacent property which belongs to Defendant No.8 as shown on the layout plan dated 01 February 2006. Please refer the layouts attached herewith, which is also superimposed on a Google Earth/Google Map/ Google Image. Located at Lat 24.972798, Lon 67.127094.



...

Recommendations

During the survey, as the Defendant No.8 disagreed with the reference point and suggested that we use the Karachi-Hyderabad Motorway (M9) as a reference point which is approximately a kilometer away from Plaintiff's property. If we make the reference point from M9, there are other owners' land parcels/properties are situated in between and we cannot measure without their permissions, and is not within our scope of measurements as well.

As part of our inspection, we requested that Defendant No.8 provide us with the Demarcation Report/Plan issued by the Office of the Survey Superintendent, however, this document was not provided to us. A Demarcation Report/Plan is a vital document in order to identify land on the ground. Therefore, we believe that the entire Sector 19-C can be measured by the Survey Superintendent, Karachi.

The above survey was carefully carried out to the best of our ability and our responsibility is limited to an exercise of reasonable care. This report represents our findings on the date and at the place stated and is issued without prejudice to the rights of whomsoever concerned. It does not intend to relieve any party from its legal &/or contractual obligations. All relating documents that were provided to us will be preserved for 03 years from this day. Neither the whole nor any part of the report nor any reference thereto may be included in any published document or statement nor published in any way without our written approval of the form & context in which it will appear."

9. It is apparent that as per demarcation that has been made there is no overlap between the Plaintiff and Defendant No.8's property and each remain in possession of their respective land. Nor is there apparently any overlap as between the land owned by the Defendant No. 8 and the land owned by Gulistan Cooperative Housing Society Limited. Surprisingly, objections to this report have been filed by the Defendant No.8 stating that despite the fact that there is apparently no overlap as between each of the Plaintiffs and the Defendants No. 8's property, it is contended that the survey has been carried out incorrectly and that a further survey should be made in terms stated in the objections.

10. I have heard Mr. Haider Waheed. Mr. Fahad Ali Hashmi, Mr. Asadullah and Mr. Dhani Bux Lashari and have perused the record.

11. I must admit that I am surprised that when a demarcation has been carried out and which clearly states that there is no overlap as between the Plaintiff and the Defendant No. 8's property and which demarcation as such in no way prejudices the Defendant No. 8, as to why the Defendant No.8 would still feel obliged to file objections seeking a further demarcation and which may well prejudice him. From the Survey that has been conducted by the Nazir, it is apparent that the land owned by the Defendant No. 8 is found to be bounded by roads and therefore there is also no case to be made out by the Defendant No. 8 that their land is encroached by the Plaintiff or for that matter anyone else. More importantly, the survey also clarifies that the Plaintiff's property is well within its own boundaries and is not encroaching on any road whatsoever.

12. In light of such a report, one would have thought that the Defendant No. 8 would have been satisfied with the fact that their entire property had not been encroached on and also as to the fact that the Plaintiff had not encroached on any thoroughfare, but as the Defendant No. 8 is insisting on filing objections to

unsettle such a report to my mind can only indicate that it would “prefer” to find an encroachment rather than to be content with such a position and which one can only attribute to mala fide on their part to deliberately find a way to restrain the construction on Plaintiff's Property.

13. Prima facie the Plaintiffs have good title and have secured the requisite approvals for the development of their property and have committed to construct thereon in accordance with such approvals and while the Defendant No.8 has a right to administer his own land; as prima facie the Plaintiffs Property is not overlapping with the property owned by the Defendant No. 8 they have no right, Section 23 of the Federal Government Employees Authority Act, 2020, to regulate or interfere with that development. In terms of balance of convenience and irreparable loss the Plaintiff has demonstrated that he has valid title to the land and has secured the requisite approval for the development and construction and if such injunctive relief is not granted any interference by the Defendant No. 8 in their construction will prejudice their ability to develop and construct on their own property and with which contention I am in agreement.

14. I have also considered the reply filed by the Master Plan Department who is one of the authorities that is regulating the development of such properties and which report, while going out of its way to support the contentions of the Plaintiff, fails to disclose as to why it did not itself carry out a Survey of the area and which may well have resolved these issue as between the Plaintiff and the Defendant No. 8 instead of having compelled such litigation to be maintained before this Court. The reply therefore, is completely deficient and seems to be illogically biased in favour of the Plaintiff and hence has been discounted while adjudicating this Application.

15. In the circumstances, CMA No. 6456 of 2024 is granted in terms that the Plaintiff is allowed to continue with the construction on his property as per the approval granted by the Sindh Building Control Authority and the Sindh Master Plan Authority and the Defendant No.8 is restrained from interfering in the construction, development or allotment of units based thereon. This order shall however no way prejudice the Sindh Building Control Authority or Sindh Master Plan Authority from acting as against the Plaintiff in case of any deviation from the approvals granted by either authority.

Nasir/-

JUDGE