

THE HIGH COURT OF SINDH, KARACHI

HCA No.151 of 2024 along with
HCA Nos.123, 146, 147, 148, 150, 130 and 226 of 2024

Before:

Justice Muhammad Iqbal Kalhoro
Justice Muhammad Osman Ali Hadi

Mr. Ahmed Masood, Advocate for the Appellant in HCA No.151 of 2024, for respondent No.6 in HCA No.146 of 2024, for respondents 2 and 3 in HCA No.147 of 2024, for respondent No.1 in HCA No.148 of 2024 and for the Appellant in HCA No.150 of 2024.

Mr. Ovais Ali Shah, Advocate for the Appellant in HCA No.123 of 2024.

Mr. S. Ghulam Shabbir Shah, Advocate for the Appellants in HCA No.146, 147 and 148 of 2024.

Khawaja Shamsul Islam, Advocate for the Appellants in HCA No. 226 of 2024 and for the Respondent Nos. 11 to 13 in HCA No.123 of 2024.

Mr. Naseer Ahmed, Advocate for KDA.
Mr. Perwaiz Mastoi, AAG Sindh.

Date of hearing: 09.05.2025
Date of order 09.05.2025.

ORDER

Muhammad Osman Ali Hadi, J: This is a collective order for disposing of all the Appeals in the above-titled HCA's, stemming from a common order dated 09.03.2024 passed in the various suits ("**Impugned Order**") by the learned Single Judge. The succinct considerations before us are that various suits are pending before the Trial Court relating to plots/land measuring a total of approximately 16 acres in Deh Surjani - Karachi¹ ("**Subject Property**"), by several claimants (who are all before us in one capacity or another). The claimants approached the Trial Court in civil suits, *inter alia*, claiming ownership / possession of the Subject Property, or some part thereof, as well as conversion of lease agreements (from 30 years to 99 years). Several applications were filed in the suits before the Trial Court, majority of them being applications under Order 39 Rules 1 and 2 CPC 1908, in which the respective parties sought various injunctive reliefs. The Appellant in HCA Nos. 146 of 2024 also filed two

¹ Specifics of the property locations are provided in the various Memos of Appeal

applications under Order VII Rule 11 CPC 1908, of which one was dismissed and the second was converted to an application under section 10 CPC and the suits were stayed, which forms the basic crux of disgruntlement in the Impugned Order by the parties, and the reason as to why all these instant Appeals have been filed.

It appears that none of the main contesting parties before the Trial Court were satisfied with the Impugned Order, and they have all agitated their grievances herein. Learned Counsel for the Appellant in HCA No. 146 of 2024 opened arguments, and stated that the Subject Property belonged to her, for which she has a valid 99 years lease. Counsel further stated that she (i.e. the said Appellant) was aggrieved by the Impugned Order as she is not able to properly utilize the land currently in her possession measuring approximately 8 acres, being a part of the Subject Property. Furthermore, Counsel for the Appellant submitted that he filed an application under Order 7 Rule 11 CPC 1908, which was dismissed vide the Impugned Order, which he states was wrongly done. Counsel contended that under order dated 07.08.2019 passed by the Honorable Supreme Court in CMA No. 3235 of 2023, there is a clear direction that there can be no conversion of lease. Counsel stated the other Plaintiffs/Appellants (in the attached Appeals) have premised their suits for conversion of lease, which in light of the Supreme Court order cannot be granted, and as such he submitted that the suits of those other Plaintiffs/Appellants are barred under the law, and their complaints ought to have been rejected. He further urged that if the Honorable Supreme Court has passed any directions/observations in their judgments, the same has to be treated as law, and anything contrary to such directions/observations should be considered as being barred under the law. In support of his assertions, he has provided a paper book containing several case-law, orders and other documents. He further referred to the *Azhar Baloch* judgment, in which he submitted the Honorable Supreme Court has held that any decision given by them is binding on all other Courts and cannot be adjudicated by any Court below, and therefore the matters pending in the suits (apart from the Counsel's own) could not be heard by the Trial Court. Counsels appearing in the other HCA's (noted below) strongly opposed the contentions raised by the Appellant in HCA 146 of 2024.

2. Learned Counsel appearing in HCA No. 226 of 2024 next addressed the Court. He submitted that the Impugned Order is erroneous as his application under Order 39 Rules 1 and 2 CPC 1908 was not properly heard, nor was it adjudicated on merits. He further submitted that the findings in the Impugned Order whereby the application under Order 7 Rule 11 CPC 1908 (filed by the appellant in HCA No.146 of 2024, arguments cited above) was converted to an application under Section 10 CPC 1908 (in which the suits were stayed), was completely unjust and contrary to law. He further stated he was not given a chance to present any argument before the Trial Court in this regard. He also placed reliance on certain Supreme Court judgments dated 07.08.2019, 20.04.2010 & 23.06.2014², and contended that there was no bar on legal conversion in his case, and the learned Trial Court ought to have properly heard the matter before passing the Impugned Order. He has further relied upon the judgment passed by the Supreme Court in CMA No.16 of 2011, as well as Notifications issued by the Sindh Government³, vide which he submitted that the issue pertaining to conversion of lease etc. has even otherwise been resolved, as a new Notification dated 06.02.2024 has taken effect.

3. Learned Counsel for the Appellant in HCA Nos.130, 150 and 151 of 2024 next addressed the Court and while also adopting arguments of the learned Counsel for the Appellant in HCA No. 226 of 2024, he further stated that conversion is possible, and stopping the same would be contrary to the Appellants' legal rights as well as the provisions of Colonization of Government Lands Act 1912, particularly Section 10. He next submitted that his claim would fall under the ambit of the Karachi Development Authority, and therefore the observations made in the Impugned Order would not even otherwise be applicable to him. He lastly contended that he is only seeking renewal of lease for a short period of 5 to 10 years, and in any event does not fall within the legal arguments between the other Appellants, who are disputing the legality in conversion of lease deeds from 30 years to 99 years.

4. We have heard the learned counsels for the parties and have gone through the Impugned Order and other documents with their assistance. We have found that at this juncture, sitting as an Appellate Court, we cannot deep-

² Photocopies of the judgements provided

³ Available at pages 733 to 747 of the File in HCA 226 / 2024

dive into the merits and factual controversies of the claims, which are yet to be decided by the Trial Court. In so far these Appeals are concerned, we find that the Impugned Order was passed without giving a proper and fair chance of hearing to the parties. When the application under Order 7 Rule 11 CPC 1908 was converted into an application under Section 10 of the CPC by the learned Single Judge, which stayed the suits, the same was done without letting the parties conclude arguments on this point. Hastily staying the suit in such manner created an unfair situation for many of the litigants, as they would not have had the time to properly prepare and rebut the same, despite holding legal rights to do so. The principles of natural justice, as well as rights guaranteed under the provisions of the Constitution of Pakistan 1973,⁴ appear to have been deprived. In light of the foregoing, we deem it appropriate to refer the matter back to the Trial Court to hear all the applications filed by the parties in all pending suits (from which these instant Appeals arose) afresh, particularly relating to any/all applications filed under Order 39 Rules 1 and 2 CPC 1908 and Order 7 Rule 11 CPC 1908, which applications shall be decided within a period of forty-five (45) days from the date of this Judgement.

As an interim measure, we direct that until the said applications are heard and finally disposed by the Trial Court, *status quo* is to be maintained between the parties. However, any party currently being in possession of any part of the Subject Property, shall be at liberty to utilize their part of the Property in any manner permissible under law. Such party is even permitted to raise construction on their part of the Property, subject to the following conditions:

- i. The party in person (not through an attorney) shall appear before the learned Judge in the Trial Court and submit an affidavit that if it is held by the Trial Court they are not entitled to any injunctive relief regarding the Subject Property, and /or are in unlawful possession of the Subject Property (or any part thereof), then they shall immediately demolish any construction raised by them, solely at their own cost; AND
- ii. The said party shall furnish original title documents (e.g. allotment letter) and original lease deed of the Property with the

⁴ Under Articles 4, 10-A & 25 Constitution of Pakistan, 1973

Trial Court before commencing any construction. The said original documents and lease deed shall be used to ensure compliance of the affidavit (as above stated in clause 'i'). Once such demolition of construction is completed (in the event the Trial Court denied injunctive relief and/or holds the said party is in unlawful possession on the Subject Property) then the original documents / lease deed shall be returned to the party which furnished the same.

- iii. In the event the Trial Court grants the said party injunctive relief, and / or holds that they are legally entitled to the Subject Property (or any part thereof), the Trial Court shall return the original documents and lease deed to the party which has furnished them.

Furthermore, we also direct the Trial Court to conclude the entire suit proceedings between the parties regarding the Subject Property within a period of six (6) months from the date of this Judgement. These Appeals are accordingly disposed of.

J U D G E

J U D G E

Farooq/PS