

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.253 of 2023

along with

HCA No.01 of 2021

Date	Order with Signature of the Judge
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HCA No.253 of 2023

HCA No.01 of 2021

Hearing (Priority) Case

1. For order on Office Objection as at “A”.
2. For hearing of CMA No.1454 of 2024.
3. For hearing of CMA No.2697 of 2023.
4. For hearing of main case.
5. For hearing of CMA No.2688 of 2023.

22.01.2026

Mr. Ashiq Muhammad, Advocate for Appellant in both Appeals.

Mr. Arshad Jamal Siddiqui, Advocate for Respondents No.11 and 13 in HCA No.01 of 2021 and Respondents No.9 and 11 in HCA No.253 of 2023.

Syed Ishrat Hussain, Advocate for Respondents No.15 and 16 in HCA No.253 of 2023.

These two Appeals are filed by the Appellant (Siraj son of Nooruddin), who has a claim over three plots – bearing Plots No.105 (admeasuring 50.79), 106 (admeasuring 46.50) and 107 (admeasuring 41.95), all situated in Sector 36/E, Sheet No.(1), Area 5-D, Khairabad Landhi, Karachi – pursuant to three separate lease documents executed by Karachi Metropolitan Corporation (“KMC”) (at File Pages 89, 97 and 105 in HCA No.1 of 2021), at which he is / was running a Restaurant.

2. Mr. Ashiq Muhammad, learned Counsel for the Appellant, has argued that a Sale Certificate dated 24.10.2019 (at File Page 235 in HCA No.253 of 2023) was issued by the Nazir of the High Court in favour of the

Auction Purchaser (Raees Ahmed Arain, who is Respondent No.16 in HCA No.253 of 2023) whereby only a House Plot measuring 80 Square Yards was purchased by the Auction Purchaser. However, under the garb of the High Court's Sale Certificate, the Auction Purchaser has encroached an additional so-called extra area measuring 70 Square Yards, as confirmed by the Official Assignee's Report dated 11.05.2020 (at File Page 195 in HCA No.253 of 2023). The Appellant's Counsel in support of his arguments referred to various documents, including the aforesaid three Lease documents issued in Appellant's favour by KMC in respect of above three Plots. He also drew attention to the learned Official Assignee's Report dated 11.05.2020 and contended that the Auction Purchaser had falsely claimed that the adjacent / extra area of 70 Square Yards was handed over to the Auction Purchaser by the Nazir of High Court whereas the Nazir's Sale Certificate is categorically limited to only 80 Square Yards and makes no mention of any extra land at all (measuring 70 Square Yards) – which Sale Certificate was the subject matter of Suit No.359 of 1998, filed by Respondent No.1 (*Saeeda Begum vs. Abdul Sohail Ahmed Khan & Others*), for distribution of the House Property belonging to (late) Abdul Saeed Khan. The Counsel for Appellant also referred to the Sale Deed dated 09.08.2005 (at File Page 275 in HCA No.253 of 2023) executed by the Nazir wherein the size of the Subject House Plot is again expressly mentioned as 80 Square Yards. He further pointed out to the Hon'ble Supreme Court's Order dated 02.01.2015 passed in Civil Appeal No.155-K of 2011 (at File Page 45 in HCA No.1 of 2021) claiming this Order established the illegal actions and conduct of the parties concerned in an earlier round of litigation.

3. These Appeals are opposed by Syed Ishrat Hussain, learned Counsel for Auction Purchaser, who has purchased the House Property and holds a Sale Certificate measuring 80 Square Yards, issued by the learned Nazir of this Court, which is still intact. The Appeals are also opposed by Mr. Arshad Jamal Siddiqui, learned Counsel for Respondents No.9 and 11 (namely, Waseem Ahmed Khan and Shakeel Ahmed Khan, legal heirs of (late) Abdul Saeed Khan, who were impleaded as Defendants No.4 and 6 in the above Suit). Learned Counsel for Respondents argued that the Leases of KMC relied upon by the Appellant's Counsel are not registered, hence, have no validity. However, this is strongly denied by the Appellant's Advocate, who has referred to KMC's verification letters dated 31.5.2018 and 19.06.2017 (at File Pages 163 and 167 in HCA No.253 of 2023) issued in Appellant's favour.

4. The impugned Orders are perused and record considered.

5. **HCA No.01 of 2021:** In HCA No.01 of 2021, the impugned Order is of 23.12.2020, wherein it was directed that the amount of Rs.1,642,000/- (Rupees one million six hundred forty-two thousand only) deposited by Defendant No.6 / Respondent No.13 (Shakeel Ahmed Khan), along with accruals, should be released to him, as the House Property was purchased on a higher price of Rs.21,500,000/- (Rupees twenty-one million five hundred thousand only).

In view of the above, the impugned Order dated 23.12.2020 has merely accepted the application of one of the legal heirs, who was contesting the auction proceeding, in the light of the observations made by the Supreme Court in the Order dated 02.01.2015 handed down in Civil Appeal No.155-K of 2011. The above Order does not prejudice the interest

of any of the parties, including the present Appellant. Therefore, no interference is required and the HCA No.01 of 2021 being meritless is accordingly dismissed along with all pending applications, if any.

6. **HCA No.253 of 2023:** Adverting to the HCA No.253 of 2023, the Order dated 29.05.2023 has been challenged, wherein, besides giving directions that the legal heirs can withdraw their respective shares from the sale proceeds, the Intervener's Application of the present Appellant (CMA No.1454 of 2024) was declined with the observation that the Intervener can avail appropriate remedy under the law. During hearing, learned Counsel for the Appellant states that earlier he has also filed a Section 12(2) CPC application which was subject matter of J.M. No.29 of 2021 in this Court, but is now transferred to the learned District Court with a new number namely, J.M. No.61 of 2025. In addition to this, a Suit is also preferred by the same Appellant in respect of the above Restaurant.

7. In view of the above fact that the Appellant has already availed the remedy, no justification exists to interfere in this Order. However, this Appeal No.253 of 2023 is disposed of with the observations that the learned Court seized of the above Judicial Miscellaneous Application should decide the same expeditiously and within three months of this Order. It is further clarified that the Trial Court seized of the above case shall not be influenced by any observation made in this Order nor by the contents of the Sale Certificate dated 24.10.2019 issued by Nazir in respect of the House Property measuring 80 Square Yards. The crucial aspects which have to be, *inter alia*, decided by the learned Trial Court, are that:

- (i) whether the Sale Certificate executed by the learned Nazir of this Court is in respect of House Property measuring 80

Square Yards only, regarding which the present Appellant has no claim; or

- (ii) whether the Sale Certificate has included / added an extra land measuring 70 Square Yards as alleged by the Auction Purchaser and recorded by the Official Assignee in Report dated 11.05.2020 (at File Page 195 in HCA No.253 of 2023), or whether the Auction Purchaser has illegally encroached upon neighbouring/adjacent land and/or roads/lanes;
- (iii) and if so, whether or not such act was lawful and its effect.

If the learned Trial Court is of the view that the issues involved should be decided after a proper trial, then evidence shall be recorded. Once the evidence proceedings start, no adjournment should be given. If the witness is present and Opponent's Counsel is absent, then the cross-examination will be marked as “**Nil**” and if on the date witnesses are absent, then the side of such Party will be closed.

8. This Appeal (i.e. Appeal No.253 of 2023) is disposed of in the above terms along with all pending applications, if any.

JUDGE

JUDGE