

ORDER SHEET

**HIGH COURT OF SINDH, KARACHI**

**Suit No.27 of 2010**

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Order with signature of Judge

1. For hearing of CMA No.140/2010
2. For hearing of CMA No.141/2010
3. For hearing of CMA No.142/2010
4. For hearing of CMA No.143/2010
5. For hearing of CMA No.3072/2010
6. For hearing of CMA No.3792/2010
7. For hearing of CMA No.7552/2010
8. For hearing of CMA No.7553/2010
9. For hearing of CMA No.13012/2010
10. For hearing of CMA No.318/2011
11. Examination of parties/settlement of issues

Plaintiff: Delhi Mercantile Cooperative  
Housing Society Ltd.

Defendants: Province of Sindh and others.

Date of hearing: 12.09.2012

M/s. Abid S. Zuberi and Muhammad Haseeb Jamali, advocates for the plaintiff

Khawaja Shamsul Islam, advocate for defendants Nos.2 & 4 along with Noman Razzaq, Acting Managing Director of the defendant No.2.

Mr. Munir-ur-Rehman, advocate for MDA (defendant No.3) along with Muhammad Irfan, Law Officer MDA and Imran Sheikh, ADL/DIR-E&E, MDA

**Muhammad Ali Mazhar, J.:-** This is a suit for Declaration, Permanent & Mandatory Injunction, Appointment of Receiver/Administrator and Rendition of Accounts. The plaintiff has prayed as follows:-

A. Declare that the plaintiff society is the allottee of and entitle to 211.98 acres of land out of the 875 acres in scheme No.45, Taiser Town.

B. Grant mandatory injunction directing the MDA/defendant No.3 to issue allotment letter in respect of 211.98 acres of land in scheme No.45 Taiser Town and handover peaceful physical possession of the same to the plaintiff society.

C. Declare that the defendant No.4 is not entitled to run the affairs of the defendant No.2 society and has usurped the office of the Managing Director of Defendant No.2 and that the Defendant No.2 Board is no longer legally competent or authorized to continue as such having outlived its term of office and any actions taken by the said defendants is illegal, without jurisdiction contrary to law, arbitrary and void ab initio.

D. Grant permanent injunction restraining the Defendant No.4 from acting as Managing Director of KCHSU / Defendant No.2 and from doing any acts as such or even otherwise in the affairs of the society including but not limited to operating accounts and securities, dealing in the defendant No.2's affairs, dealing in the lands of the defendant No.2 and appoint an Administrator to run the affairs of the same.

E. Grant mandatory injunction and direct the defendant No.4 to give complete details of all of his personal bank accounts as well as bank accounts of the defendant No.2 society for the last five years in respect of all the monies/amounts received by the defendant No.2 including but not limited to the monies received in respect of scheme No.45 Taiser Town by the member societies of the defendant No.2 along with the complete records of the defendant No.2

F. Appoint a receiver of 875 acres of land in scheme No.45 Taiser Town including the 211.98 acres of land earmarked for the plaintiff.

G. Grant attachment before judgment in respect of the accounts of the defendant No.2 and defendant No.4 lists of which are already attached with this plaint, as well as all other accounts which are not mentioned therein.

H. Grant permanent injunction restraining the defendant No.3 from forfeiting the amount paid by the plaintiff society for allotment of 211.98 acres of land in scheme No.45 Taiser Town and or taking any other action prejudicial to the plaintiff vested propriety right therein including but not limited to the cancellation or withdrawal of the land reserved for KCHSU/defendant No.2 by MDA and or creation of third party interest therein.

I. Any other relief which this hon'ble court deems fit and proper under the circumstances.

J. Costs of the proceedings.

2. Though the plaintiff has filed this suit for the aforesaid relief(s) but the bone of contention presently between the parties is that through the counter affidavit filed by the defendants No.2 & 4, it came into knowledge of the plaintiff that there is some dispute regarding Outer Development Charges between the defendant No.2 (Union) and MDA.

3. The learned counsel for the defendant Nos.2 and 4 pointed out a letter dated 29.11.2007 available at Page-75, annexure P-2 of the court file, in which the Managing Director of the defendant No.2 intimated to the Secretary of the plaintiff regarding the cost of land plus outer development charges and request was made for the payment of cost of land in the sum of Rs.15,00,000/- plus Rs.5,00,000/- as Outer Development Charges. The total amount being first installment required to be paid was Rs.105,990,000/- for 211.98 acres of land. The plaintiff responded this letter on December 17, 2007 and paid five crores and also agreed to pay balance the amount of first installment in the first week of January, 2008.

4. On the last date of hearing, counsel for the plaintiff shown grave concern that according to his information, MDA has cancelled the entire land allotted to the defendant No.2. In order to confirm this fact, though MDA was debarred from filing written statement on 21.10.2010 but again a notice was issued to MDA and in its response, Mr. Munir-ur-Rehman appeared along with Law Officer and Imran Sheikh, ADL/DIR-E&E, MDA. The learned counsel for MDA and the Additional Director both have categorically stated that

the land is still intact and no cancellation order or letter was ever issued by MDA to the defendant No.2. They also confirmed the possession of defendant No.2 on the allotted land which fact is also confirmed through the final notice dated 9.3.2011 issued by MDA to the defendant No.2 for the payment of third installment. The learned counsel reiterated that 3<sup>rd</sup> and 4<sup>th</sup> installments are due against defendant No.2 and if the defendant No.2 will fail to pay the same, necessary action for cancellation of land will be taken in accordance with law. The Acting Managing Director of the defendant No.2 is also present in Court and he confirms that 3<sup>rd</sup> and 4<sup>th</sup> installments are to be paid by the defendant No.2 to the MDA.

5. In another suit No.545/2012, which has been filed by the defendant No.2 against the Government of Sindh and others, the defendant No.2 has impugned the Notifications dated 17.5.2012 issued by Government of Sindh whereby defendant No.2 (Society) was superseded and Administrator was appointed. After filing the above suit, as an interim measure, the learned judge of this court suspended the operation of above Notifications vide order dated 19.5.2012. However vide order dated 5.6.2012, the earlier interim order was modified only to the extent that the Nazir of this court was directed to keep on paying salaries of the staff of defendant No.2 and he was solely allowed to operate the bank accounts of the defendant No.2 and to meet day to day expenses. He was further allowed to look into all pending transfer and mutation matters of the member societies of the defendant No.2.

6. In view of the order passed by this court on 4.9.2012 in suit No.545/2012, the Acting Managing Director of the defendant No.2 has already handed over all cheque books of the different accounts of the defendant No.2 to the Nazir of this court which fact is confirmed by the Nazir endorsement/report dated 6.9.2012.

7. After arguing the matter at some length, the learned counsel appearing for the plaintiff and defendants No.2 and 4 have mutually agreed and given their consent to decree this suit in the following terms:-

i. According to the defendant No.2, the plaintiff has been allotted 211.98 acres of land in Sector 45, Taiser Town, Karachi and according to them a sum of Rs.15,89,85,000/- (Rupees Fifteen Crores Eighty Nine Lacs Eighty Five Thousand Only) is outstanding against cost of land and a sum of Rs.5,29,95,000/- (Rupees Five Crores Twenty Nine Lacs Ninety Five Thousand Only) is outstanding against Outer Development Charges. The learned counsel for the plaintiff and defendant No. 2 & 4 have agreed this amount which according to them is properly calculated and except this amount nothing is outstanding and liable to be paid by the plaintiff to the defendant No.2 on account of cost of land or outer development charges.



ii. The plaintiff will deposit this amount through two different cross cheques/Pay Orders with the Nazir of this Court, one is for the cost of land and other for outer development charges. The cross cheques/pay orders will be prepared in the name of defendant No.2 and the same will be handed over by the plaintiff to the Nazir of this court within two weeks from today.

iii. After receiving cross cheques/pay orders from plaintiff, the Nazir shall immediately deposit cross cheques/pay orders in any account of the defendant No.2 for which cheques books have already been handed over to the Nazir by the Acting Managing Director of the defendant No.2 on 6.9.2012. except Nazir nobody will operate the bank accounts of the defendant No.2 until and unless, the interim orders passed by this court in Suit No.545/2012 are recalled, vacated or modified.

iv. After encashment of cross cheques/pay orders, the Nazir shall pay amount of cost of land directly to MDA through cross cheque in the name of Malir Development Authority (MDA). The remaining amount i.e. the cost of outer development charges shall remain intact in the account of defendant No.2 for which the Nazir has been authorized to solely operate in view of the order passed in Suit No. 545/2012 on 5.6.2012 which order was merged in the earlier interim orders passed by this court in the same suit on 19.5.2012.

v. The Nazir shall provide copy of paid challan/receipt to Acting Managing Director of the defendant No.2 evidencing the payment of cost of land to MDA. Upon receiving the copy of paid challan/receipt issued by MDA, the Acting Managing Director of the defendant No.2 who is present in court undertakes to hand over peaceful and physical vacant possession of 211.98 acres of land to the duly authorized representative of the plaintiff within 10 days in presence and under the supervision of the Nazir of this court. As soon as

peaceful and physical vacant possession of land is handed over to the plaintiff, the plaintiff will be at liberty to make necessary arrangement for security by raising boundary wall and deployment of security guards or as it may deem fit.

vi. Mr. Munir-ur-Rehman appearing for MDA submits that this compromise is being effected between the plaintiff and defendant No.2 & 4. He reiterated that the allotment of land is still intact and no cancellation order or letter was ever issued by MDA to the defendant No.2 and possession of land is also with the defendant No.2. However, he argued that being a development authority, it is their responsibility to perform the task of Outer Development hence he argued that Outer Development Charges should be paid to MDA while Mr. Shams-ul-Islam, counsel for the defendant No.2 argued that Outer Development charges will be collected by the defendant No.2 because it is their responsibility to perform the job of Outer Development. The issue of outer development whether it will be performed by the defendant No.2 or the MDA is a matter between the MDA and defendant No.2 which will be

resolved between them as per the terms and conditions of grant of land and its allotment. However, it is clarified that the plaintiff shall not be liable to pay the amount over and above the amount of cost of land plus outer development charges agreed and being paid in pursuance of this consent decree. In this regard, the plaintiff shall remain indemnified by the defendant No.2 and in case of any dispute between MDA and the defendant No.2, the defendant No.2 will sort it out the matter with MDA and shall not claim any additional amount from the plaintiff either against the cost of land or the outer development charges. If at any point of time, it is resolved between the MDA and defendant No.2 that outer development charges will be paid to MDA, then the defendant No.2 will pass on/pay the amount to MDA which is being paid/deposited by the plaintiff in the defendant No.2 account through Nazir against the demand of outer development charges.

vii. The Acting Managing Director of the defendant No.2 undertakes that after handing over peaceful and physical

vacant possession of the land, the defendant No.2 shall also allocate proper sectors numbers to the plaintiff and as soon as master plans/layout plans will be finalized by MDA and the defendant No.2 with the consent of its members, the defendant No.2, shall also issue/handover copies of duly certified/verified blueprints to the plaintiff.

viii. The learned counsel for the plaintiff argued that though matter has been amicably resolved but his prayer clause (c) with other ancillary and incidental prayers is still intact in which declaration was sought that the defendant No.4 is not entitled to run the affairs of defendant No.2. Mr. Shams argued that Suit No.545/2012 is pending in this court in which the notifications superseding the defendant No.2 is under challenge and operation of both notifications has been suspended. Mr. Haseeb Jamali submits that in that suit, he has also filed application under Order 1 Rule 10 CPC on behalf of the plaintiff (Dehli Mercantile Co-operative Housing Society) for impleading them as party. Let the said application be decided in that suit on its own merits. However, keeping in

view the pendency of above application in Suit No. 545/2012, the learned counsel for the plaintiff does not press the prayer clauses in this suit which are related to the defendant No.4.

ix. The suit against the defendant No.1 & 5 is dismissed as withdrawn.

x. The Nazir fee is fixed at Rs.40,000/-. Fifty percent shall be paid by the plaintiff and remaining amount shall be paid by the defendant No.2.

8. The suit is decreed in the above terms with no order as to cost. All pending applications are also disposed of accordingly.

**Judge**