

# HIGH COURT OF SINDH, KARACHI

SUIT NO. 939 OF 2010

**Present before**  
Mr. Justice Nazar Akbar

**Plaintiffs** : Through Ch. Atif, advocate  
**Defendants No.1&2** : Through Mr.Murtaza Wahab, advocate  
**Date of hearing** : October 09<sup>th</sup>, 2014  
**Date of Order** : \_\_\_\_\_

## **ORDER**

**NAZAR AKBAR, J.:** By this order I intend to dispose of an application under Order VII Rule 11 CPC filed by the Defendant Nos. 1 & 2 (CMA No.8902 of 2010).

2. The brief facts of the case are that the Plaintiffs are residents of Clifton Block-7 and they appears to have been aggrieved by commercialization of Khayaban-e-Roomi and consequent commercialization of Plot No.F-94/1 Block-7, Clifton, Khayaban-e-Roomi, Karachi (hereinafter the "suit plot") which has prompted them to file suit for Declaration and Injunction.

The Plaintiffs, amongst other, have sought the following relief(s):-

- i. Declare that commercialization of Khayaban-e-Roomi vide the City District Government Karachi's notification dated 06.10.2005 is contrary to law and void abinitio.
- ii. Declare that the change of land usage of the subject plot namely F-94/1, Block-7, Kehkeshan, Clifton, Karachi from residential to commercial vide the City District Government Karachi's letter dated 17.2.2006 is contrary to law and void abinitio.

- iii. Declare that the approvals and permissions granted to the Defendants Nos. 1 and 2 in relation to the construction and sale and advertisement of the subject building situated at F-94/1, Block-7, Kehkeshan, Clifton, Karachi are contrary to law and void abinitio.
- iv. Restrain the defendants No.1 and 2 from raising any construction upon the subject plot in excess of ground + one floor and from using or allowing the use of the sid plot for commercial purposes and from selling or otherwise creating any third party interests in the subject building.

3. The Defendants have claimed rejection of plaint on the ground of res judicata, limitation and lack of cause of action. On the question of res judicata, learned counsel for the Defendant submitted that prayer No.1 regarding Declaration of commercialization of Khayaban-e-Roomi through City District Government Karachi by resolution No.659 dated 6<sup>th</sup> October, 2005, has already been held by Division Bench of this Court in a number of Constitution Petitions to be a lawfully issued notification. The counsel for the Defendant has further contended that another Division Bench in a recent consolidated judgment in CP No.**D-1272/2010**, CP No.**D-1970/2010** & CP No.**D-3410/2010** has even approved the commercialization status of the suit plot of Defendants No.1 & 2 bearing **F-94/1** Block No.7 Clifton by observing that it be treated at par with plot **No.F-96** also on Khayaban-e-Roomi in presence of Plaintiff association as they were party in all the three petitions. In these petitions **Plaintiff No.1** herein (**Clifton Block-7 Residents Association**) was **Defendant No.8** both in CP No.D-1272/2010 in respect of **Plot No.F-96 Block-7 Clifton** and CP No.D-3410/2010 in respect of **plot No.F-94/1, Block-7 Clifton** (suit plot) which was filed by Defendants No.1 & 2, **Plaintiff No.2** was himself petitioner in CP No.D-1970/2010. The issues in these petitions, amongst other, included the commercialization and the approval of building plans of the two plots one of which is suit **Plot No.F-94/1 Block-7, Clifton**, KDA Scheme No.5. In the detailed judgment **dated 23.10.2013** reported in

**2014 CLD 222**, the Hon'ble Division Bench of my lords the Hon'ble **Mr. Justice Sajjad Ali Shah** and **Mr. Justice Aqeel Ahmed Abbasi**, on the basis of earlier reported judgment have found that commercialization of Khayaban-e-Roomi through resolution No.659 dated 27.6.2005 (impugned as prayer-1 of this plaint) had already been declared lawful. In this context the Hon'ble Division Bench had relied on the judgment reported as **2005 CLC 694** *Irfan and 7 others ..Vs.. Karachi Buildings Control Authority and 5 others* in the following terms at page 240 of **2014 CLD 222**;

Taking up the second submission regarding commercialization of the subject plot **in consequent to City Council Resolution No.659**. It is suffice to observe that such objection has been dealt with and rejected by this Court in several cases, upholding the powers of the City District Government for reclassification, such as in the case of *Irfan vs. Karachi Buildings Control Authority (2005 CLC 694)* a Division Bench of this Court on conversion and commercialization of residential plots has held as follows:-

“As regards question of conversion of the questioned plots into commercial, this issue seems to be a closed chapter. In view of what has been stated in the instant petitions as also from the facts stated in Excel Builders' case **1999 SCMR 2089** which relate to Glass Towers, a building situated near the buildings / plot which are the subject matter of these petitions, the commercialization of plots on main Clifton Road was permitted by way of a resolution passed by the governing body of Karachi Development Authority and the process of commercialization of residential plots commenced from the year 1980 and onwards, as a result whereof a large number of plots in the vicinity on main Clifton Road stood commercialized. As observed by the Division Bench of this Court in Excell Builders' case and further reflected in para.21 of this judgment by now a number of multistoried structures have been raised on main Clifton Road. **Even from para,18 of aforesaid judgment of Hon'ble Supreme Court it is transpired that conversion of residential plot on main road into commercial plots were not found to be a questionable act. It was only observed that the Building Bye-Laws, Regulations etc. be not violated**”. (Emphasis provided).

Ultimately after a detailed discussion on each of the case law which has also been relied upon by the parties during course of their arguments

before me, the Hon'ble Division Bench has allowed **CP No.D-3410/2010** filed by Defendant No.1 & 2 herein and the operative part of the judgment which is binding on at least on **Plaintiff No.1** who were respondent No.8 in the said petition is reproduced below:-

In view of what has been discussed above, **we** while dismissing Const. Petition No.D-1970/2010, **allow Const. Petition No.D-1272/2010 by holding and declaring that the Order dated 26.4.2010 passed by the EDO/MPGO to the extent of withdrawing the commercial status of Plot No.F-96, Block-7, Khayaban-e-Roomi, Clifton, Karachi on the ground of being "security risk" to Jamat Khana is malafide and without jurisdiction and therefore, is set aside. Since Initial Environmental Examination (IEE) filed by the petitioner already stands approved and accepted by the Agency, therefore, the petitioner would be at liberty to start raising construction but strictly in accordance with the approved plan. Likewise, we while allowing Const. Petition No.D-3410/2010 strike down letter dated 10.10.2010 of the Agency directing the petitioners M/s.Zubair and Muhammad Ali to file IEA in respect of Plot No.F-94/1, (Block-7 Khayaban-e-Roomi Clifton) KDA Scheme No.5, Karachi being discriminatory and without lawful authority. Since these petitioners have also filed IEE which would be considered by the Agency in accordance with law and at par with proponents of Const. Petition No.D-1272/2010 at the most within fifteen (15) days, failing these petitioners would also be entitled to raise construction in accordance with the approved plan. (Emphasis provided).**

4. Learned counsel for the Plaintiff to rebut the claim of resjudicata has taken the stand that the Plaintiff in this suit was not party to the litigation referred by Defendants No.1 & 2 and particularly the Division Bench case in which commercialization of Khayaban-e-Roomi was declared a lawful act. and therefore, the principle of resjudicata will not apply in the present case. The claim of learned counsel for the Plaintiffs that they were not party to the cases on which Defendants No.1 & 2 have relied upon to press the principle of resjudicata, on the face of it, appears to be an statement contrary to the record. Prior to filing of this suit by

**Plaintiff No.1** i.e Clifton Block-7 **Residents Association**, seven other residents of Clifton Block-7 have filed a constitution **petition No.D-2295 of 2009** alongwith Mr. Ardeshir Cowasjee also resident of Clifton Block-7. It is pertinent to mention there that **CP No.D-2295/2009** which was filed by late Mr.Cowasjee and 7 other **residents of Clifton Block-7** Karachi was disposed of on **08.6.2010** and the Hon'ble Division Bench in it judgment in **CP No.D-3410/2010** has referred to the order in C.P No.D-2295/2009 which reference is available at page 229 of **2014 CLD 222** and I quote;

Briefly, late Ardeshir Cowasjee and others filed petition bearing **No.D-2295 of 2009** against Dr. Zubair and Muhammad Ali (petitioners in Constitutional Petition No.D-3410 of 2010) and (now Defendants No.1 & 2 in instant suit) challenging the variation of Town Planning conditions in respect of approved plan issued by the respondent No.4 for raising construction of a commercial-cum-residential building containing shops and flats on the subject property No.II. It was also the case of the petitioners that necessary infrastructure is to be provided prior to the conversion of the subject property, however, the petition was disposed through following consent order:--

“We have heard all the learned counsel. Consequently, this petition is disposed of by consent in the manner that Environmental Protection Agency, Sindh to hear the application of Respondents No.1 and 2 vis-à-vis the NOC for construction of their project and decide the same in accordance with law within one month from today after giving due notices to Mr. Ardsher Cowasjee and the Respondents Mr.Zubair Ahmed and Mr. Muhammad Ali, KBCA, CDGK, KESC, KW&SB, SSGC.

As soon as CP No.D-2295/2009 was allowed, the same residents of Block-7 Clifton, alongwith their registered Clifton Block-7 **residents association (Plaintiff No.1** herein) immediately filed another **CP No.D-2285/2010** on **28.7.2010** and from the said constitution petition I would reproduced **para, 2 & 6** and relevant **prayer** clauses wherein the petitioners have again challenged commercialization of Khayaban-e-Roomi carried out under resolution No.659 of CDGK.

**Para-2.** That the Respondent No.1 is the City District Government, Karachi operating under the provisions of the Sindh Local Government Ordinance, 2001 and is the authority **which has purported to commercialize a road known as Khayaban-e-Roomi** vide its Master Plan Change of Land Use Bye Laws 2003.

**Para-6.** That some of the Petitioners file a CP bearing **No.D-2295/2009** before this Hon'ble Court against the construction of a building on **Plot No.F-94/1**, Karachi Development Authority Scheme No.5, Block-7, Karachi. That the Petition was disposed of on **8 June 2010** with the directions to the Respondent No.2 that the application of the builders in respect of the environmental NOC should be obtained after hearing objections of all the parties to the Petition.

**PRAYER**

**A.Declare**

- (i) .....
- (ii) That the failure of the Respondent No.2 to direct the Respondent No.1 to file an EIA in respect of construction being carried out pursuant to the commercialization carried out under the resolution, is in violation of its statutory duty to follow the law and is evidence of mala fide on the part of the Respondent No.2.
- (iii) .....
- (iv) .....
- (v) .....

**A. Direct**

- (i) The Respondent No.1 to file an EIA in respect of the commercialization being perpetuated pursuant to the resolution.(Annexure A above) passed by the City District Government, Karachi.
- (ii) .....
- (iii) .....
- (iv) .....

**B. Restrain**

- (i) The Respondent No.1 commercializing any plot abutting any road in Karachi without first obtaining an EIA for such commercialization.
- (ii) .....
- (iii).....

5. **Plaintiff No.1**, as is apparent from above reproduction of contents from **CP No.D-2285/2010**, has raised the same issue of commercialization of Khayaban-e-Roomi before the Division Bench which he has been raised in present suit and indirectly seeking restraining orders against

official respondents from issuing any approval of any building plan for the buildings on Khayaban-e-Roomi, amongst other, on **Plot No.F-94/1** Clifton Block-7 without even impleading Defendants No.1 & 2. In para-6 of the **petition No.D-2285/2010** they have directly mentioned the suit plot. Beside **CP No.D-2295/2009** and above mentioned **CP No.D-2285/2010** which is still pending, as stated in para-3 above, the Clifton Block-7 **Residents Association** and other residents of Block-7 were directly party as respondent No.8 and others **C.P No.D-3410/2010**. The Plaintiffs namely the association of residents of Clifton Block-7 could not obtain any favourable interim orders in their **CP No.2285/2010** after the disposal of their earlier **CP No.D-2295/2009** have successfully obtained injunction order in the present suit from a single bench to the extent that “**no third party interest be created in suit property bearing Plot No.F-94/1** and thereby nullified a Division Bench order dated **23.0.2013** in CP No.D-3410/2010 without preferring an appeal whereby Defendant No.1 & 2 were found entitle to raise construction on **Plot No.F-94/1**. The orders to restrain Defendant No.1 & 2 from creating third party interest in commercial building project on **Plot No.F-94/1** amounts to virtually restraining them from raising construction as all such commercial building are constructed from the money of prospective buyers. At the time of obtaining injunction orders in present suit the Plaintiffs suppressed all the previous litigations on suit **Plot No.F-94/1** and the issue of commercialization of Khayaban-e-Roomi and several reported judgments of the Division Benches of this Court which they have disclosed and discussed in detail and copies thereof have also been filed alongwith their written synopsis available at page 511 to 533 of Court file.

6. The narration of facts as stated above shows that the Plaintiff namely **residents of Block-7 Clifton Karachi** are aggrieved by two

judgments of two different Division Benches of this Court. One pronounced by the Hon'ble Division Bench on **23.10.2010** in **CP No.D-3410/2010** filed by Defendant No.1 & 2 and the other judgment in **CP No.D-2295/2009** filed by some of the other **residents of Block-7 Clifton** and instead of filing an appeal they have chosen a novel way of obtaining the desired orders from single Judge through another set/group of their friends of **Block-7 Clifton** Karachi to render the said judgment null and void. If we are to take the issue of resjudicata from the point of view that some of the parties were not before the Court in the said three petitions or that some of them were not party in CP No.**D-3410/2010** filed by the Defendants No.1 & 2, it will be too technical to say that the question of resjudicata is not applicable. Admittedly **Clifton Block-7 Residents' Association** was party in CP No.D-3410/2010 and therefore they could not have questioned the rights of Defendant No.1 & 2 to raise construction on suit plot in presence of the Division Bench judgment dated 23.10.2013 allowing them to raise construction on the suit plot.

7. There is no denial of the fact that the petitioners in CP No.D-2295/2009 followed by CP No.D-2285/2010 are all **residents of Block 7 Clifton** and they have not approached the Court in their personal interest alone rather their personal interest was coupled with the interest of all other residents of Block-7 Clifton and therefore, their petitions were dealing with the issue of "public importance" similarly when **Plaintiff No.1** alongwith several other **residents of Block-7 Clifton** at their request were allowed to become party in CP No.D-3410/2010, they were all motivated by the adverse effect on the lives of the residents of Block-7 Clifton Karachi in case construction of a multistory building on **Plot No.F-94/1** is allowed. All these petitions and even the instant suit are cases of "public importance" filed one after the other by similar or different groups of

**residents of Block-7 Clifton.** There has to be an end to the cases of “public importance” of identical nature. Therefore before arresting the mischief of the so called activity from the public in the name of public purpose or by the public spirited litigants, we are required to find out the definition of “public importance” for litigations in Court. The Hon’ble Supreme Court in the case of *Manzoor Elahi v. Federation of Pakistan* **PLD 1975 SC 66** has defined “public importance” in its following observation:-

"Now, what is meant by a question of public importance. The term `public' is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to the people, relating to a nation, State or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community. As observed by the Judicial Committee of the Privy Council in *Hamabai Framjee Petit v. Secretary for India in Council* (ILR 39 Bom 279) while construing the words `public purpose' such a phrase, `whatever else it' may mean---must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals is directly and vitally concerned'. This definition appears to me to be equally applicable to the phrase `public importance'."

8. Keeping in view the definition of “public importance” given by the Honourable Supreme Court, once registered Association of **residents of Block 7 Clifton** was present before the Court and an “issue” of public importance for and behalf of the residents was raised by them and the Court has decided the said “issue” the individual members or other residents of same locality (Block-7 Clifton) are bound by the decision of the Court on that particular “issue” in which they were very much interested and they cannot claim that said decision of the Court on the same “issue” is not binding on them because they were not individually party in the said judgment.. Therefore, since the **Plaintiffs** in the present suit are no other than the “community” of **residents of Block-7 Clifton**

and the issue re-agitated by them through this suit already stand answered by Division Bench of this Court is binding on them in terms of **Explanation VI** to the definition of resjudicata given in **Section 11 of CPC** and the Explanation VI reads as follows:-

*Explanation VI.* Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for purposes of this section, be deemed to claim under the persons so litigating.

9. In view of above legal position the suit is hit by the law of resjudicata irrespective of the fact that some of the Plaintiffs are new faces before the Court. In addition to the above reasoning, in support of my conclusion I also find strength from the law laid down by the Hon'ble Supreme Court in the case reported in **1971 SCMR 447 MUHAMMAD CHIRAGH-UD-DIN BHATTI ..VS..The PROVIINCE OF WEST PAKISTAN (Now Province of Punjab) through Collector, Bahalwpur** and relevant observation from the judgment is as under:-

“Even if section 11 of the Civil Procedure Code may not in terms apply in support of the plea of res judicata, it can hardly be disputed that the general principles of res judicata were clearly attracted to debar the petitioner from re-agitating the matter afresh by a civil suit, which had been put at rest by a judgment of the High Court passed in writ jurisdiction. The civil Court could not have by-passed or overridden the orders of the High Court competently made in another jurisdiction on the same subject between the same parties.”

And this principle has been reiterated by the Hon'ble Supreme Court in **PLD 1982 SC 146 ABDUL MAJID and others ..Vs.. ABDUL GHAFUOR KHAN and others** and relevant observation is as follows:

“The rule which is fully attracted to this case, as already mentioned, was laid down in *Muhammad Chiragh-ud-Din Bhatti* that even if section 11 of the Civil Procedure Code may not, in terms, apply in support of the plea o *res judicata*, it can hardly be disputed that the general principles of *res judicat* are clearly attracted to debar a party from re-agitating the matter afresh by a civil suit, which had been put at

rest by a judgment of the High Court passed in writ jurisdiction.”

10. The other equally important aspect of this case is that the learned counsel for the Plaintiffs has conceded that the Division Bench of this Court has already decided the issue of commercialization of Khayaban-e-Roomi. However, he claims that it was decided from a different prospective and therefore, he insists that I should entertain and adjudicate upon the “decided issue” of commercialization of Khayaban-e-Roomi through resolution No.659 dated 6.10.2005 passed by CDGK and declare it as contrary to law and void ab initio by ignoring the Division Bench judgments on this issue reported in **2005 CLC 694** referred in para-3 above and **PLD 2006 Karachi 63** (Ardeshir Cowasjee and 7 others ...Vs... Karachi Building Control Authority (KBCA) through Chief Controller of Buildings, Karachi and 3 others). He insisted that the single bench of this Court should declare the said resolution as illegal and void on the following ground and I quote only following relevant contentions from para-5 and 10 of his written synopsis:-

**Para 5-** That the City Resolution No.659 dated 6.10.2005 has been passed by the CDGK without adverting to the environmental laws requirements. It is pertinent to mention here that the said City Resolution No.659 dated 6.10.2005 has been subject matter of certain petitions but only in relation to the power of CDGK to change road status under the said laws. However this, question i.e. an approval under Environmental Protection Act 1997 prior to the conversion of road has not been dealt by any judgment and it is therefore respectfully submitted that this question is a case of first impression to be decided by this Hon'ble Court.

**Para-10** That even otherwise it is respectfully submitted that the fact that the said resolution was upheld by the Hon'ble division bench on one ground can be challenged before this Hon'ble Court on a separate ground which has not been decided by any Court.

11. To press his above arguments, the counsel for the plaintiff has to cross the hurdle of **Article 189 and 201** of the Constitution of Pakistan, 1973. Merely because the Plaintiffs have taken a separate ground which

was not raised before the Division Bench while declaring that commercialization of Khayaban-e-Roomi as lawful is not enough for me to go against judgment of Division Bench by ignoring **Article 189 and 201** of the Constitution. I am unable to appreciate that the learned counsel in para-5 & 10 of his written arguments and oral argument before me has vehemently tried to persuade me to ignore judgments of Division Bench and declare that Khayaban-e-Roomi is unlawfully commercialized and at the same time, in para-12 of the same arguments available at page No.511 to 533 of Court file he has himself contended that even the conflicting judgments of the Division Bench are binding on me under **Article 189** of the constitution and I quote para-12 from his written arguments as follow:-

**Para-12.** It is humbly submitted that in this regard the CDGK did not have the power to convert the said plot into commercial use. **It may be respectfully pointed out that there are conflicting divisions bench judgments in field which are all equly binding upon this Hon'ble Court.** It is submitted that the conflict that exists between the judgments is in relation to whether which law i.e. Karachi Building Town Planning Regulations 2002 will be applicable for commercialization of plot or Master Planning Bye-Laws 2003. It may be pertinent to mention here that in the instant suit the CDGK has commercialized the said plot under Master Planning Bye-Laws 2003. There are in total five conflicting Division Bench Judgments due to which a full bench has been constituted in CP No.2460 of 2008. Copy of the Order dated 18.1.2011 in CP No.2460 of 2008 is attached herewith which is self-explanatory in relation to the conflicting views. **It is most respectfully submitted that all these division bench judgments have enunciated on the respective regulations** and bye-laws and thus will be binding upon this Hon'ble Court under Article 189.

That above mentioned argument of the learned counsel is contrary to his own earlier arguments in which he vehemently attempted to save the suit from the effect of resjudicata even after admission that there are Division Bench judgments on the issues raised by the Plaintiffs in this suit. The judgments of Division Bench on the "decided issue" between the

**residents' of Block-7, Clifton** (Plaintiffs herein) and the Defendants are binding on me as held by the Hon'ble Supreme Court in the case reported in **2010 SCMR 767** (*UNIVERSITY OF HEALTH SCIENCES and others ..Vs.. MUMTAZ AHMED and another*) in following terms.

It is settled proposition of law that judgment/order of the Division Bench of the same High Court is binding upon the Single Judge of the said Court as law laid down by this Court in all Pakistan Newspapers Society's case PLD 2004 SC 600 and Multiline Associates' case PLD 1995 SC 423.

In view of the above submission of the counsel for the Plaintiffs and the case law I cannot take the contrary view as it would be violation of **Article 201** of the Constitution. In my humble view original civil jurisdiction of this court by all means is sub-ordinate to the writ jurisdiction of this Court. Fresh litigation after the decision of superior Courts on the same issue at the level of civil court has been discouraged by the Hon'ble Supreme Court and for this proposition I again refer to the judgment of Supreme Court reported in **PLD 1982 SC 146** *ABDUL MAJID and others ..Vs.. ABDUL GHAFUOR KHAN and others* and relevant observation is as follows:

“Before closing the discussion on this question, it needs to be mentioned that **resort to fresh .litigation in lower forums wherein decisions by Supreme Courts are brought under challenge**, depending upon circumstances of each case, **might come in conflict with the provisions of the Constitution** where under certain decisions are binding on all Courts. It might also, again depending upon circumstances of each case, involve the criticism of a decision of one Bench of the same Superior Court, by another Bench. For example, in this very case, **if the arguments advanced before the learned Single Judge in the High Court, would have prevailed, it would have resulted in the criticism of a Division Bench judgment of the same- Court**, which decided the Letters Patent Appeal in an earlier round of litigation. **Such a course, it is obvious, might lead to, if not entirely illegal at least undesirable consequences.**” (Emphasis is provided)

If I accept the arguments of Plaintiffs' counsel and even, it will not be entirely illegal, it would definitely lead to undesirable consequences.

12. The above facts and circumstances clearly demonstrate that the **residents of Block-7 Clifton** (the Plaintiffs) through this suit have attempted to innocently challenge two judgments of Division Benches of this Court. One in which commercialization of Khayaban-e-Roomi has been declared as lawful and proper by the competent authority and the other is judgment in **CP No.D-3410/2010** dated 23.10.2013 whereby Defendant No.1 and 2 have been allowed to raise construction on the suit plot. It is confirmed that the material prayers No.I to IV in this suit already stood rejected on merit by this Court in its writ, jurisdiction. Now for the same relief the Plaintiffs have changed their forum from writ jurisdiction to original civil jurisdiction of this Court. Therefore, it is not only resjudicata, the suit is also hit by provisions of **Article 201** of the Constitution as observed by Hon'ble Supreme Court in **2010 SCMR 767** (supra) that the decision of Division Bench of the same Hon'ble High Court has the status of law pronounced by the Court and have the binding effect on all Courts subordinate to it including single bench of this Court in terms of **Article 189 and 201** of the Constitution of Pakistan, 1973. Thus, the provision of **sub-section (d) of Order VII Rule 11 CPC** can also be attracted to hold that the suit is hit by the law laid down by the Division Benches of this Court.

13. The conduct of **Plaintiff No.1** who are registered custodian of the rights of the residents of Block-7 Clifton and other six individuals residents of block 7 Clifton indicates that the **residents of Block-7** are in the habit of abusing the process of Court to create unnecessarily hurdle in the smooth functioning of the official Defendants and business activity on Khayaban-e-Roomi to satisfy their ulterior motives. In the case in hand

defendant No.1 and 2 are facing various restraining orders in respect of their property bearing **Plot No.F-94/1, Block-7, Clifton**, Karachi. The first restraining order is dated **15.09.2009** when the **residents of Block-7 Clifton** filed first **C.P. No.D-2295/2009** and it continued until Petition **No.D-3410/2010** was filed by defendant No.1 and 2 against discrimination meted out to them by Sindh Environmental Protection Agency (SEPA) in grant of Initial Environmental Examination (IEE) to get the restraining order vacated which were obtained by the **residents of Block 7 Clifton** through CP No.D-2295/2009 curtailing their fundamental right to “dispose of their property” after raising construction thereon. The **residents of Block 7 Clifton** joined CP No.D-3410/2010 to resist issuance of IEE to them but failed when CP No.D-3410/2010 was allowed by Division Bench by order dated **23.10.2013**. Thereafter on **04.06.2014** the **residents of Block 7 Clifton** through this suit obtained another ad-interim orders restraining defendant No.1 and 2 from “disposing of their property” which is still in the field. One more case on the issues involved in this case also filed by the **residents of Block 7 Clifton** is pending as **CP No.D-2285/2010** in the constitutional jurisdiction of this Court. Precisely the **resident of Block-7 Clifton** have abused the process of Court in denying Defendants No.1 and 2 to freely exercise their fundamental right to require, hold and “dispose of property” guaranteed to them by **Article 23** of the Constitution of Pakistan 1973. The Plaintiffs have attempted to persuade the Court to pass orders against the mandate of **Article 201 and 189** of the constitution.

14. In view of the above discussion the suit is dismissed with cost of Rs.70,000/- to be borne by all the Plaintiffs jointly and severally. The cost is to be deposited by the Plaintiffs with the Nazir of this Court within 20 days and in case of their failure, the Nazir should take steps to recover the

cost in accordance with law. Consequently all pending applications also stand dismissed as infructuous.

**JUDGE**

Karachi  
Dated:\_\_\_\_\_