

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**PRESENT:**

**MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.**

**MR. JUSTICE GHULAM RABBANI**

**MR. JUSTICE JAWWAD S. KHAWAJA**

**Suo Moto Case No.14 of 2009**

(Action on press clipping the Daily News dated 5.9.2009 about allowing regularization of 50 acres land in Karachi at throw away prices)

On Court Notice:                      Mr. Abdul Fateh Malik, Addl. A.G. Sindh  
   Mr. Muhammad Ali Shah, Addl. Secy. Land Utilization, Sindh  
   Mr. Zahid Ali Abbasi, DCO, Ghotki,  
   (Ex.Addl. Secy. Finance, Govt. of Sindh)  
   Mr. Muhammad Hanif Solangi, Sessions Judge  
   (Ex. Solicitor Govt. of Sindh)  
   Mr. Ghulam Mustafa Memon s/o Haji Amjad Ali  
   (petitioner in Crl.P.36-K/99 etc.)

Date of hearing                      11.9.2009

**ORDER**

This matter originated from a report, compiled by an Editor Investigation, published in daily 'The News' under caption "Officials Do Not Care Two Hoots About SC Judgment", wherein facts were mentioned that in 1994 the Chief Minister of Sindh, made allotment in Karachi's Scheme 33 to Ghulam Mustafa Memon @ Rs.10 per square yard in two separate cases of 30 and 20 acres. One of these parcels of lands (20 acres) was carved out of an amenity land reserved for treatment plant for the entire scheme 33, spread over of thousands of acres and meant for millions of future population. In 1997, in the Ehtesab Bench of the High Court of Sindh, two Ehtesab References being No.20 and 22 were filed in both these cases under the Ehtesab Act, 1997 in which the former Chief Minister, the

Member (Secretary) Land Utilization and Ghulam Mustafa Memon, the beneficiary were accused of causing losses of Rs.141.67 millions and Rs.95.832 millions for 30 and 20 acres respectively (placing the value of the land to be Rs.1,000/- per square yard, the official rate notified for the area in the year 1990 as against Rs.10 charged for the land). The loss estimated for 50 acres comes out of Rs.237.5 million in terms of the prices of the land prevalent in 1994. The current price of land is reported to be not less than Rs.1.5 billion for 50 acres, the per acre price being around Rs.30 million per acre. During pendency of the references the accused Ghulam Mustafa Memon moved an application being M.A. No. 20 and 21 of 1999 before Ehtesab Bench, agreeing to voluntarily surrender illegal gains and to make good the losses caused to the Public Exchequer. These application were entertained by the Court under section 17 of the defunct Ehtesab Act, a provision of plea bargain, claiming a relief under which amounts to admission of the alleged Act. The Court rejected plea on 6<sup>th</sup> May, 1999. The court keeping in view the facts and circumstances ordered that lease in favour of the applicant/accused in respect of subject land shall stand cancelled and to this effect entry be made in the official record . It was further observed that the land shall be deemed to be available for further disposal according to law. Court further directed forfeiture of 50% of the deposited amount in one of the case being M.A.No.20/99 and in another case M.A No.21/99, the court directed forfeiture of 20% of the deposited amount and also passed an order for cancellation of land lease and record. Being aggrieved of the above order, Ghulam Mustafa Memon filed Crl.P.L.A No.36-K & 37-K of 1999 before appellate bench of the Supreme

Court comprising Hon'ble Mr. Justice Nasir Aslam Zahid and Mr. Justice Wajihuddin Ahmad, the then lordships at that time. This Court rejected the petition for leave to appeal observing that he acquired these lands by virtue of the said leases. After the rejection of the Petitions for Leave to Appeal that the Court also made another important observation that the petitioner obtained the land grants against all the rules, conditions of allotment under the law, existing ban and also rules of business. No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, which land or asset essentially belong to the People of Pakistan. It was patently malafide exercise of power. This Court further ordered that the grants of lands to the petitioner specially in the manner, the same was done are prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause) and Article 31 of the Constitution of Islamic Republic of Pakistan which requires the State to endeavor to promote observance of Islamic moral standards and Article 38 of the Constitution which inter alia requires the State to secure the well being of the people by preventing concentration of wealth in the hands of a few to the detriment of general interest. The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam.

2. In the year 2001, the Sindh Urban Land (Cancellation of Allotment, Conversions and Exchanges) Ordinance, 2001 was promulgated, the purpose of which was to provide for cancellation of certain allotments, conversions or exchanges of urban state land obtained or granted for residential, commercial or industrial purposes at rates lower than the market value, in violation of law or ban from 1<sup>st</sup> January 1985 and to provide for matters connected therewith are ancillary thereto. However, despite of the clear observation and the direction in the judgment of this Court referred herein before, the Board of Revenue in August, 2008 prepared a list for regularization of the land under the provision of above referred Ordinance, in which the name of Ghulam Mustafa Memon was also included without realizing that this Court had already cancelled the lease from his name being an allottee, which was not only contrary to the provision of Constitution referred hereinabove but for obtaining the same contrary to all rules and regulation during the period when there was a ban. It is informed that the committee considered the request of Ghulam Mustafa Memon to regularize all his 50 acres in its meetings, held on 15<sup>th</sup> October and 21<sup>st</sup> November, 2008. It is also reported that Mr. Justice (R) Wahid Bux Brohi, the then Chairman of the Committee refused to entertain the plea of Ghulam Mustafa Memon as well as his counsel and observed that in view of the orders of Ehtesab Bench in the High Court and the Supreme Court, the allotment did not exist; therefore, the Ordinance is not applicable but unfortunately the other Members of the Committee namely Muhammad Ali Shah who was officiating as Member Land Utilization in place of Abdul Subhan Memon; Zahid Ali Abbasi,

Additional Secretary Finance (presently posted as DCO Ghotki) represented Dr. Faizullah Pechuho, Finance Secretary and Muhammad Hanif Solangi, the then Solicitor of Law Department regularized the said land in favour of Ghulam Mustafa Memon.

3. On noting the above facts in the news papers it was treated as petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan and notices were issued to M/s Ghulam Mustafa Memon, Muhammad Ali Shah, Zahid Ali Abbasi and Muhammad Hanif Solangi. In response to the notice they appeared and have filed following replies:

*"I, Ghulam Mustafa Memon S/o Haji Ahmed Ali Memon do hereby beg to submit that I had applied for the regularization of land when I came to know that my name is also include in the list of allotments which were to be regularized under Ordinance III of 2001. I therefore applied for the regularization of my allotment, I have come to know that land in-question cannot be regularized under Ordinance as same was cancelled by the court, I therefore request for refund of amount deposited by me, instead of regularization of land in-question. I also place my self at the mercy of courts and I seek unconditional apology.*

*Sd/-  
(Ghulam Mustafa Memon)*

*"I, Muhammad Ali Shah Additional Secretary Land Utilization Department Government of Sindh beg to submit as under:-*

- 1. That land in-question was granted in the year 1994 to Mr. Ghulam Mustafa Memon on the price lower than the market value.*
- 2. This matter was scrutinized by Ehtesab Bureau and also by the Hon'ble Supreme Court and the orders for the cancellation of the grant, scrutinized and report be submitted 50% of the price deposited by the allottee be refunded to him.*
- 3. That in 2001 on ordinance No.III was promulgated whereby the grants made since 1985 were cancelled and fresh market price was to be recovered*
- 4. Mr. Ghulam Mustafa Memon also applied under the said ordinance.*
- 5. The Sindh Land Committee in which the under signed was also a member recommended for regularization of the preset land on the market*

*value. The land is in possession of the Government uptill now. This decision has been reviewed and recalled.*

6. *This was done through bonafide mistake and misinterpretation of the judgment of the Hon'ble Supreme Court.*
7. *We have great respect for the Hon'ble court and we throw ourselves at the mercy of the court and seek unconditional apology.*

*Sd/-*  
(Muhammad Ali Shah)

I, **Muhammad Hanif S/O Allah Bux**, the then Solicitor, law representative of law department/member Sindh Land Committee Do hereby beg to submit as under.

1. *That land in-question was granted in the year 1994 to Mr. Ghulam Mustafa Memon on the price lower than the market value.*
2. *This matter was scrutinized by Ehtesab Bureau and also by the Hon'ble Supreme Court and the orders for the cancellation of the grant, scrutinized all such grants and reports be submitted 50% of the price deposited by the allottee be refunded to him.*
3. *That in 2001 on ordinance No.III was promulgated whereby the grants made since 1985 were cancelled and fresh market price was to be recovered*
4. *Mr. Ghulam Mustafa Memon also applied under the said ordinance.*
5. *The Sindh Land Committee in which the under signed was also a member recommended for regularization of the present land on the misinterpretation the land is in question has not been regularized uptill now. As such no loss is caused to government.*
6. *This was done through bonafide mistake and misinterpretation of the judgment of the Hon'ble Supreme Court.*
7. *We have great respect for the Hon'ble court and we throw ourselves at the mercy of the court and seek unconditional apology.*

*Sd/-*  
(Muhammad Hanif)

I, **Zahid Ali Abbasi**, the then Additional Secretary Finance Department Government of Sindh beg to submit as under:-

1. *That land in-question was granted in the year 1994 to Mr. Ghulam Mustafa Memon on the price lower than the market value.*
2. *This matter was scrutinized by Ehtesab Bureau and also by the Hon'ble Supreme Court and the orders for the cancellation of the grant, scrutinized and report be submitted 50% of the price deposited by the allottee be refunded to him.*

3. *That in 2001 on ordinance No.III was promulgated whereby the grants made since 1985 were cancelled and fresh market price was to be recovered*
4. *Mr. Ghulam Mustafa Memon also applied under the said ordinance.*
5. *The Sindh Land Committee in which the under signed was also a member on behalf of Secretary Finance inadvertently recommended on my behalf for regularization of the preset land on the market value. The land is in possession of the Government uptill now. This decision has been reviewed and recalled.*
6. *This was done through bonafide mistake and misinterpretation of the judgment of the Hon'ble Supreme Court.*
7. *We have great respect for the Hon'ble court and we throw ourselves at the mercy of the court and seek unconditional apology.*

*Sd/-*  
*Zahid Ali Abbasi*

4. After filing of the above statement Mr. Zahid Ali Abbasi submitted another statement with the request that his this statement may kindly be considered and the earlier one may ordered to be withdrawn. His second statement is also reproduced herein below:

*"It is submitted that on 21.11.2008 the Secretary Finance Department had to attend the meeting but to his some other engagements at eleventh hour I was suddenly directed to attend the meeting. Hence I was not prepared, and I did not have the background of the matters. Hence I requested the committee that since I am not properly prepared so I will not to be in position to give opinion on the subject matter. Moreover, the parent dept. was land utilization and the representative of law department had to give legal opinion and the subject matter was debated on legal point. So in the meeting I did not give my opinion about the subject matter. Therefore, being representative of Finance Dept. I did not give the legal opinion.*

*Sir, I am a CSS officer belonging to DMG and after course from USA on Scholarship I joined the Finance Dept. in October and when this meeting was held, I was new in the dept. Therefore, lenient view in matter of my case may please be taken. I submitted my unconditional apology and beg pardon from Honourable Supreme Court. Submitted please.*

*Sd/-*  
*(Zahid Ali Abbasi)*

5. Mr. Muhammad Ali Shah, Additional Secretary has placed on record decision of the Sindh Government Land Committee dated 21<sup>st</sup> November, 2008 which contains the decision in favour of Ghulam Mustafa relating to regularization of 30 acre land situated in N.C 105 of deh Thoming, Scheme-33 and Karachi being CC No.107 No.01-126-02-SO-I and CC No.108 No.01.127-02-SO-I relating to regularization of 20 acres land situated at Sector-40, Scheme-33, Karachi. Contents of both the decision for reference are reproduced herein below:

**CC No.107      No.01-126-02-SO-I**

*Issue relating to the regularization of 30-00 acres land situated in N.C No.105 of deh Thoming, Scheme-33, and Karachi in favour of Mr. Ghulam Mustafa Memon.*

**Decision:**      *Syed Ghulam Nabi Shah Advocate appeared for the allottee. He was heard. He pointed out that the Ordinance No.III of 2001 would cancel all allotments rights from 1<sup>st</sup> January, 1985 and this Committee has to determine the market value and regularize such allotments after charging the differential amount. According to him, the effect of provisions of above Ordinance is that the allotment in favour of allottee stands cancelled and since this committee has long back determined the market value of the land in question and the same has been approved by the Cabinet as such after determination of the market value the allotment has to be regularized on charging the differential amount. He emphasized that in view of Non-obstinate clause in Section 3 of the Ordinance any subsequent judgment of a court shall not come in the way of regularization as the Ordinance overrides any agreement or judgment of the honorable court in following terms:-*

*“Notwithstanding anything contained in any law for the item being in forced or any agreement or judgment or order of a Court, but subject to other provisions of this Ordinance, the allotments, conversions or exchanges of Government Land obtained or granted for residential, commercial or industrial purposes at the rates lower than the market value in violation of law or ban from 1<sup>st</sup> January, 1985 shall stand cancelled.”*

*He further argued that in terms of order of Ehtesab Bench of High Court neither the amount was returned to the allottee nor was the entry cancelled in Revenue Record. He further pointed out that un-interrupted possession of the allottee continues right from the day of allotment. He also quoted instances of other*



*allotments in which differential amount was recovered by this Committee although some amount was recovered by Ehtesab /NAB Courts.*

*On consideration of all these allotments, the Chairmen pointed out that in view of the order of Ehtesab Bench of High Court and Supreme Court, the allotment did not exist, therefore, the Ordinance is not applicable. The members were of the view that on plain reading of the words employed in Section 3, the Ordinance is fully applicable and this committee has the jurisdiction in the matter as such the allotment may be regularized. Accordingly by majority view under Rule 7(3) of Sindh Govt. Lands (Cancellation of Allotments, Conversions & Exchanges) Rules, 2003 it was decided that the allotment may be regularized on charging differential amount according to law.*

**CC. NO.108 No.01-127-02-SO-I**

*Issue relating to the regularization of 20-00 acres land situated at Sector-40, Scheme-33, Karachi in favour of Mr. Ghulam Mustafa Memon.*

**Decision.** *Syed Ghulam Nabi Shah Advocate appeared for the allottee. He was heard. He pointed out that the Ordinance No.III of 2001 would cancel all allotments right from 1<sup>st</sup> January, 1985 and this Committee has to determine the market value and regularize such allotments after charging the differential amount. According to him, the effect of provisions of above Ordinance is that the allotment in favour of allottee stands cancelled and since this committee has long back determined the market value of the land in question and the same has been approved by the Cabinet as such after determination of the market value the allotment has to be regularized on charging the differential amount. He emphasized that in view of Non-obstinate clause in Section 3 of the Ordinance any subsequent judgment of a Court shall not come in the way of regularizing as the Ordinance overrides any agreement or judgment of the honorable court in following terms :-*

*“Notwithstanding anything contained in any law for the time being in forced or any agreement or judgment or order of a Court, but subject to other provisions of this Ordinance, the allotments, conversions or exchanges of Government land obtained or granted for residential, commercial or industrial purposes at the rates lower than the market value in violation of law or ban from 1<sup>st</sup> January, 1985 shall stand cancelled.”*

*He further argued that in terms of order of Ehtesab Bench of High Court neither the amount was returned to the allottee nor was the entry cancelled in Revenue Record. He further pointed out that the un-interrupted possession of the allottee continues right from the day of allotment. He also quoted instances of other allotments in which differential amount was recovered by this Committee although some amount was recovered by Ehtesab/NAB Courts.*

*On consideration of all these allotments, the Chairman pointed out that in view of the order of Ehtesab Bench of High Court and Supreme Court, the allotment did not exist, therefore the Ordinance is not applicable. The members were of the view that on plain reading of the words employed in Section 3, the Ordinance is fully applicable and this committee has the jurisdiction in the matter as such the allotment may be regularized. Accordingly by majority view of members under Rule 7(3) of Sindh Govt. Lands (Cancellation of Allotments, Conversions & Exchanges) Rules, 2003 it was decided that the allotment may be regularized on charging differential amount according to law.*

6. Mr. Muhammad Ali Shah also placed on record decision of the Sindh Government Land Committee Special Meeting held on 10<sup>th</sup> September, 2009 at 11.00 a.m. In this meeting the decisions already taken in the cases of Ghulam Mustafa Memon on 21<sup>st</sup> November, 2008 were placed for review. Contents of the decision are reproduced herein below:

*"The application for review was received alongwith Press Clipping with the request that the matter may be placed before the Sindh Government Lands Committee for reviewing the decision dated 21.11.2008.*

*The Committee discussed the above issues at length and were of the unanimously views that since the Honourable Supreme Court of Pakistan has taken up the above cases in a petition U/A 184(3) of the Constitution through a Suo-Motu Case No.14/2009 and fixed before the Honourable Supreme Court of Pakistan, Islamabad on 11.9.2009, therefore, no further action is advisable by this Committee and the land Utilization Department should not take any further action in the process of regularization (which has not been issued) till any further directions of the Honourable Supreme Court of Pakistan."*

7. It is informed by the Additional Advocate General, Sindh that learned Advocate General is in disposed therefore, he could not attend the court today. He stated that some time be given to him so he may place on complete facts for the purpose of providing assistance.

8. After hearing Ghulam Mustafa Memon, Muhammad Ali Shah, Zahid Ali Abbasi and Muhammad Hanif Solangi, appearing on Court

notice as well as having gone through the judgment of this Court dated 09.09.1999 passed in Crl. P.36-K & 37-K of 1999, we are of the considered opinion that *prima-facie* all of them have violated the judgment and undermined the authority of this Court, therefore, we direct that notices for contempt of court be issued to them under Article 204 of the Constitution of Islamic Republic of Pakistan to explain as to why they should not be adequately punished for violating the judgment of this Court. They should submit their reply within seven days. Notice be also issued to the learned Attorney General for Pakistan in terms of order XXVII rule 7(2) of the Supreme Court Rule, 1980.

9. In the meanwhile, Sindh Government Lands Committee is directed to examine this case on 25<sup>th</sup> September, 2009 and take any decision in this regard and communicate the result of the same to the Registrar of this Court within three days. A certified copy of the judgment dated 9<sup>th</sup> September, 1999 be transmitted to the Chief Secretary and Secretary Lands Utilization Department, Government of Sindh who shall explain as to whether the judgment has been implemented or not? If so to what effect? Report in this regard be submitted within a period of two weeks, through A.G. Sindh.

10. Copy of this order be sent to the Chief Secretary as well as to the Chief Justice, High Court of Sindh because one of the Members of the Committee namely Muhammad Hanif Solangi, the then Solicitor has reported to the High Court of Sindh as Sessions Judge for his further posting. The Registrar of this Court is also directed to enquire as to why this case was not put up before the Court in view of the observation/order

dated 6<sup>th</sup> March, 2000 made by the then Chief Justice in note portion of the case file of CrI.P.36-K/99.

The case is adjourned for further proceedings to **6<sup>th</sup> October, 2009.**

Chief Justice

Judge

Judge

Islamabad

11<sup>th</sup> September, 2009

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