

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Nasir-ul-Mulk, CJ

Mr. Justice Gulzar Ahmed

Mr. Justice Mushir Alam

**CIVIL APPEAL NO.1481 OF 2007**

[On appeal against the Judgment dated 16.06.2007,  
passed by the High Court of Sindh, Karachi, in  
C.P.No.D-1549 of 2005]

Province of Sindh through its Chief Secretary ***Appellant(s)***  
& 8 others

**VERSUS**

Syed Kabir Bokhari

***Respondent(s)***

For the Appellant(s)

[Appellants No.1, 4, 6-9] : Mr. Qasim Mirjat Addl.A.G. Sindh  
Raja Abdul Ghafoor, AOR

[Appellants No.2, 3 & 5] : Syed Jamil Ahmed, ASC  
Raja Abdul Ghafoor, AOR

For the Respondent(s) : Dr. A. Basit, Sr. ASC

Date of Hearing : 10.02.2015

**JUDGMENT**

**GULZAR AHMED, J.**— The brief facts of the matter are that through two identical allotment orders dated 23.2.1976, Karachi Development Authority (KDA), on acceptance of highest bid of the respondent, had allotted two kiosks Plot No.1 and Plot No.2 in Block IV, each measuring 100 Sq.Yards, in Scheme No.5, Kehkashan, Clifton, Karachi at the rate of Rs.505/- per Sq.Yard (the disputed plots). Through possession orders both dated 24.2.1976 the KDA handed over the possession of disputed plots to the respondent. The possession order provided that 99 years lease will be granted on

payment of full occupancy value. It is further alleged that respondent has paid the full occupancy value of the disputed plots. Subsequently it transpired that in the master plan of KDA Scheme 5, Kehkashan Clifton, Karachi made by the KDA and notified on 06.10.1964 there was no land earmarked for the purpose of two kiosks and the allotment of the disputed plots to the respondent was illegal. Two show cause notices, both dated 14.7.2005, were issued by the CDGK, Land Management Department (Successor of KDA) for canceling the allotment of the disputed plots of kiosks Nos.1 & 2 on the ground that respondent has failed to raise construction on the disputed plots within stipulated period of two years from the date of possession and further the disputed plots were carved out from amenity plot without completing the codal formalities and thus the allotment order was *ab initio void* and illegal. Through two letters both dated 05.8.2005 the allotment of the disputed plots of kiosks Nos. 1 & 2 were cancelled. The respondent filed C.P.No.D-1549/2005 in the High Court of Sindh at Karachi challenging the cancellation orders. The learned Division Bench of High Court of Sindh at Karachi, through short order dated 30.5.2007, allowed the said petition and directed the respondents (the appellants in the present appeal) to execute lease deed in favour of the petitioner (respondent herein) of the disputed plots of kiosks No. 1 & 2 and also transfer the site in terms of the allotment orders. The detailed judgment was given on 16.6.2007. The appellant challenged the said judgment in this Court and vide order dated 09.8.2007 leave to appeal was granted to consider the following questions:

- i) *Whether, in the facts and circumstances of the case, the plots viz: kiosk Nos. 1 and 2 allotted to the respondent in the year 1976 through open auction could be*

*cancelled in the year 2005 on the ground that in revised plan prepared by Government the same were carved out from the land originally meant for amenity purposes particularly when after such cancellation the very kiosks have been advertised by City District Government for public auction as commercial plots?*

*ii) Whether the cancellation of allotment of plots in dispute after full payment received from respondent and possession handed over to him was validly and legally made after twenty nine years of the allotment?*

2. We have heard the learned counsel for the parties at length and have also gone through the record of the case.

3. There is no dispute between the parties on the factual controversy that is the allotment of disputed plots to the respondent, the payment of its price/occupancy value, delivery of possession, issuing of show cause notice and cancellation of disputed plots. The main argument revolved before us was on the question that disputed plots were part of an amenity plot. The fact that the disputed plots become part and parcel of parking lot for providing parking facility to the public is also not in dispute for that there is a inspection report of Deputy Nazir of High Court dated 15.12.2005 so also the report dated 18.10.2012 of the Office Incharge of the Supreme Court of Pakistan, Branch Registry Karachi, wherein the position reflected on the ground is that the disputed plots are shown to be part and parcel of parking lot made by the CDGK. It was proposed by the counsel for respondent that the respondent is prepared to accept the cancellation of the disputed plots for use as a parking space for public provided the respondent is paid appropriate compensation in that respondent has acquired proprietary right in the disputed plots and such right cannot be denied or taken away.

4. Both learned Additional Advocate General Sindh appearing for the appellant Nos. 1, 4, 6 and 9 and Syed Jameel Ahmed learned ASC appearing for the appellant Nos. 2, 3 & 5 have sought time to seek instructions from their respective parties on the point of payment of compensation but despite availing of ample time, no response has been made by the above named two counsel for the appellants. It therefore, transpires that the appellants are not willing to pay compensation to the respondent in respect of disputed plots.

5. On perusal of the record, we find that in the revised layout plan of Kehkashan, Scheme 5, Clifton, Karachi made in the year 1972, a copy of which is attached with CMA No. 4472/2011 filed by the counsel for respondent, does not anywhere reflect availability of any land or plots for the purpose of kiosks. There is land showing cross lining in front of which is an open land. In this open land perhaps the petitioner in his own hardwiring has shown to be having the deputed plots of two kiosks. Yet another copy of another revised layout plan of 1975 is attached with the same CMA, which also reflects that the similar position of land, which is shown in the revised plan of 1972 except that there is an insertion of two squares, which are shown to be located outside the cross lining area. The respondent in his letter dated 10.7.2003 addressed to the District Executive Officer, Master Plan Group of Office, CDGK has himself stated that due to error the KDA at the time of making the Master Plan of Kehkashan Clifton Scheme 5 Karachi two kiosks were not included in the master plan and requested for their incorporation in the master plan. This very letter of respondent lend support to the fact that in the master plan of Kehkashan, Scheme 5, Clifton, Karachi there was no existence of any plot for kiosks.

**6.** It is not the case of respondent before us that the disputed plots allotted to the respondent were the plots meant for commercial use and such also does not appear to be the position emerging on examining the two master plans as referred above. The master plan shows that the land having cross lines apparently is meant for amenity/land for public use and not a space/land meant for allotment for use in commercial venture. Depiction of two squares in the revised master plan of 1975 is outside the lined area does not appear to be factually correct as has become known from the two reports; one submitted by the Deputy Nazir of High Court of Sindh and the other of Office Incharge of this Court in which the disputed plots are shown to be part and parcel of parking lot of CDGK and not out side it. The land immediately outside the parking lot is a beach, which become submersible by sea water on high tide.

**7.** All these factors show that the disputed plots allotted to the respondent were carved out from amenity plot/land for public use and such allotment being admittedly made for commercial use was directly in conflict with the Article 52-A of the KDA Order, 1957 which specifically provided for procedure for seeking of conversion of amenity plot for other use. Admittedly, there is no order whereby use of plot from that of amenity to that of commercial was sanctioned by competent authority in respect of disputed plots.

**8.** It may further be noted that the allotment of disputed plots was made as back in the year 1976 but despite having possession, the respondent took no steps for raising construction and rather left the disputed plots as they were at the time of allotment and possession that is a bare site. The respondent has given an explanation for not

raising the construction that is the officials did not develop the area nor provided the utility. The fact however remains that for almost 29 years respondent remained inactive and did not use the disputed plots for the purpose for which they were allotted. This fact of non-use of disputed plots by the respondent reflects heavily against him and shows that very purpose of allotment of disputed plots was other-wise than use by the respondent as kiosks.

9. Though, it is contended by the respondent that these disputed plots and other plots were being offered for ten years lease by the CDGK for their commercial exploitation seems to be correct but such venture was scrapped for the reason that the disputed plots stood already allotted to the respondent. We do not know nor do we want to comment upon the venture of CDGK of giving plot on ten years lease for commercial exploitation. Had such venture been executed, the same on the basis that amenity plots cannot be used for commercial exploitation would have definitely been set aside. It may be observed that the residents of Karachi have over time been denied of amenity/land for public use by their illegal occupation/encroachments and also by public functionaries by making false allotments/transfers, which has clogged the city and denuded it from much needed open spaces for the residents as a breather and a space where they can walkout freely. This facility for the residents of the city of Karachi seems to have been totally vanished. In our view, CDGK so also Government of Sindh should take immediate steps for restoring of amenity/land for public use for which they were exclusively provided in the original master plan of city of Karachi. It is so strange to note that the whole of the beach of the city of Karachi totally looks barren devoid of any plantation or greenery except much

acclaimed Bagh-e-Ibne Qassim, which apparently is not being maintained in a way the park of such magnitude is required to be maintained.

**10.** Despite the above discussion, it is clear that it was the KDA who has offered the disputed plots to the respondent who through a bidding process has made the highest offer and on acceptance of such offer has got allotment of disputed plots in his favour. He has also paid whole of occupancy value/price of disputed plots and has obtained their possession, which possession letter represented giving of lease of 99 years of disputed plots on receipt of full occupancy value/price. The respondent cannot be squarely blamed for illegal conduct of officials of the KDA in making of allotment of amenity plot/land for public use to the respondent. The respondent admittedly has paid substantial amount in the shape of whole occupancy value/price of disputed plots and thus cannot be deprived of his funds so paid by him to the KDA now the CDGK. Although the respondent did not acquire any title to the disputed plots but the fact remains that he did pay for disputed plots and such was done by him on illegal and unlawful conduct of officials of then KDA. The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, same is appropriately be compensated. This is a fundamental rule and also principle of equity. The learned ASC for the respondent during the course of hearing of this appeal has contended that in case the respondent is found not entitled to the disputed plots of the two kiosks, the respondent be paid compensation at the prevailing market rate of the disputed plots and in this respect has

referred to the advertisement published in daily newspaper Dawn dated 16.11.2005 in which offer of public auction of plots by the CDGK on the Clifton Beach for setting up stalls etc on short lease of ten years with a bid price of Rs.15,00,000/- per year. Similar position has been taken by the respondent in his CMA No.581/2015. We have already noted above that the land, on which the disputed plots were allotted to the respondent, was an amenity plot/land for public use and thus not available for being allotted for commercial exploitation. No lease of 99 years was made in favour of the respondent. The respondent himself did not utilize the two plots for almost 29 years though in possession. Although, on the basis of fundamental rules so also principle of equity the respondent is entitled to be compensated but the compensation as is claimed by the respondent is not what in the facts and circumstances of the present case such principle will admit. The offer of plot by public auction by the CDGK in 2005 at the rate of Rs.15,00,000/- per year never materialized and thus it cannot form basis for granting of compensation. Yet the illegality committed by the officials of KDA in doling out the disputed plots out of the amenity plot/land for public use cannot give advantage to the respondent so as to enrich himself from such illegality. In all fairness, the respondent can well be compensated by directing refund of the amount received from him as the occupancy value/price of land by the appellant alongwith interest/markup at the rate of 18% per annum from the date of the receipt of occupancy value/price of land until it is actually refunded. Consequently, the appeal is partly allowed by setting aside the impugned judgment with directions to the appellants Government of Sindh/CDGK to refund to the respondent all the amount of occupancy value of disputed plots alongwith markup at the rate of 18% per annum from the date of



occupancy amount received till the amount is actually paid to the respondent.

*CJ.*

*J.*

Bench-I

ISLAMABAD

10.02.2015

NOT APPROVED FOR REPORTING

*Hashmi\**

*J.*

Announced in open Court on 11.08.2015

*J.*