

Order dated 11.01.2022  
4/22 615

**SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan

**REPORT NO.128-K OF 2021**

[Report on behalf of Shehri-Citizens Vs. Federation of Pakistan  
and others]

AND

**REPORT NO.135-K OF 2021**

[Regarding KMC Officer Co-operative Housing Society land of  
abounded KMC Sewage Vs. Federation of Pakistan and others]

AND

**REPORT NO.146-K OF 2021**

[Chairman KMC Officer Co-operative Housing Society Owais  
Qarni Town at Abandoned KMC Sewage Farm Vs. Federation  
of Pakistan and others]

In attendance : Mr. Ayyaz Shaukat, DAG  
Mr. Fauzi Zafar,  
Addl. A.G., Sindh  
  
Mr. S.M. Saulat Rizvi,  
Addl. A.G., Sindh  
(via video link from Karachi)  
  
: Mr. Abrar Hasan, ASC  
Mazhar Khan, Chairman  
Qazi Mumtaz Iqbal,  
General Secretary  
(For KMC Officers Co-operative  
Housing Society)  
  
Mrs. Amber Alibhai, In person  
Muhammad Iqbal Memon,  
Commissioner, Karachi  
Muhammad Shahab Aslam,  
A.C. Revenue, Karachi  
Mrs. Azra Muqeem,  
Legal Advisor, KMC  
Dr. Saeed Ahmed Qureshi,  
Focal Person to Chief Secretary,  
Sindh  
(all via video link from Karachi)

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Islamabad

Date of Hearing : 11.01.2022

ORDER

GULZAR AHMED, CJ.- Since partition time, there exists in Karachi a plot of land measuring 1016 acres for Sewage Farm on Manghopir Road, Karachi, popularly known as Gutter Baghicha and the whole of the land is an amenity land and is meant for use of a park in the City of Karachi. This whole plot of land is now almost in the heart of the City of Karachi. The land of Gutter Baghicha belongs to Karachi Metropolitan Corporation (KMC) for developing it as a park and creating other amenities in it. With the passage of time, a certain portion of the land of Gutter Baghicha came to be occupied unauthorizely and it is alleged that some portion of it is occupied by *Kachi Abadis* while some part of it is occupied by factory or industry. Graveyards also exist on some portion of this land. On some portion of this land there is KDA Treatment Plant TP-I, Incinerator Plant and also Pumping Station.

2. KMC by law is mandated to establish and maintain parks in the City of Karachi and also to ensure that none of the lands meant for such purposes is occupied and encroached upon. KMC seems to have failed in securing the land of Gutter Baghicha measuring 1016 acres and allowed it to be encroached and there also seems to be some illegal allotments on portions of this Gutter Baghicha land. We, however, in the present case, are dealing with grant of 200 acres of land of Gutter Baghicha to KMC Officers' Co-operative Housing Society Limited (hereinafter called the Society). On 27.12.2021, while

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hearing matters relating to Civil Petition No.9 of 2010, which is a petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, it was brought to the notice of the Court that 200 acres of land of Gutter Baghicha, which land is meant for the park for the people of the City of Karachi has been allotted to the Society. On the said date, the Chairman of the Society, appeared before the Court and requested for time to engage a counsel. The Society has filed its Report bearing No.146-K of 2021.

3. We have heard the submissions of Mr. Abrar Hasan, learned ASC on behalf of the Society. We have also heard the submission of Mrs. Azra Muqem, Legal Advisor, KMC, and also Mrs. Amber Alibhai, who has appeared in person on behalf of Shehri-Citizens for a Better Environment.

4. In the report filed by the Society, referred to above, it has attached a photocopy of Society letter dated 03.01.1993, addressed to the Minister for Local Government, Sindh, Karachi, wherein the Society has requested for grant of 200 acres of KMC land in KMC Sewage Farm, Manghopir Road, Karachi i.e. Gutter Baghicha labelled as waste land. The letter is signed by one Abdul Hafeez, Chief Promotor of the Society. The Society has filed a copy of Minutes of Meeting held on 06.03.1993 in KMC building under the Chairmanship of the Minister, Local Government, Sindh. In these Minutes on the subject of grant of 200 acres of land to the Society, the Minister, Local Government, appears to have passed an order that 200 acres of waste KMC land at Sewage Form, Manghopir Road,



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Karachi (Gutter Baghicha) may be granted to the Society for housing purposes at the rate of Rs.10/- per square yard as Occupancy Value and at the rate of Rs.15/- per square yard as Development Charges. These Minutes are contained in a document dated 09.03.1993 signed by Mohammad Irshad Ahmad, Minister for Local Government, Sindh. The Society again seems to have made an application to KMC Council Secretariat for grant of lease of 99 years, pursuant to the Minutes recorded in document dated 09.03.1993. Giving details for which the land is required i.e. for residential purposes of KMC employees requested that 200 acres of land may be allotted to the Society under Section 45(5)(i) of the Sindh Local Government Ordinance, 1979 (the Ordinance of 1979). The administrator, KMC passed a Resolution No.82 dated 11.03.1993, which is as follows:

قرارداد نمبر ۸۲

مورخہ ۱۱ مارچ ۱۹۹۳ء

بلدیہ عظمیٰ کراچی کے ایم سی آفیسر کو آپریٹو ہاؤسنگ سوسائٹی کو رہائشی قطعہ اراضی ۹۹ سالہ پیشہ پر دیئے جانے سے متعلق میونسپل کمشنر کی یادداشت نمبر ایس ڈی ایل ای / سینٹرل / ۹۳ مورخہ ۹ مارچ ۱۹۹۳ء میں درج سفارشات کے مطابق منظوری عطا کرتی ہے۔ جو حکومت سندھ کی منظوری کے تابع ہوگی۔

There is a letter dated 25.07.1993, signed by Muhammad Siddique Dar, Section Officer-VI, Government of Sindh, Local Government, Public Health Engineering and Rural Development Department, addressed to the Municipal Commissioner, Metropolitan Corporation, Karachi on the subject of Grant of 200 Acres of Waste KMC Land in Sewage Farm, Manghopir

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Road, Karachi (Gutter Baghicha) to the Society. The contents of the said letter are as follows:

"The Municipal Commissioner,  
Metropolitan Corporation,  
Karachi.

Subject: GRANT OF 200 ACRES OF WASTE KMC LAND IN SEWAGE FARM MANGHOPIR ROAD, KARACHI TO KMC OFFICER'S CO-OPERATIVE HOUSING SOCIETY.

Reference your letter No.SDLE/6335/93, dated 29-5-1993, on the subject noted above.

2. In exercise of powers conferred by section 45(5)(1) of the Sindh Local Government Ordinance, 1979, Government of Sindh are pleased to accord approval to the KMC Council Resolution No. 82, dated 11-3-1993, regarding allotment of 200 Acres of Waste KMC land in Sewage Farm Manghopir Road Karachi in favour of KMC Officer's Co-op. Housing Society for allotment to its registered members, at the rate of Rs.10/- per sq. yard occupancy value plus development charges at the rate of Rs.15/- per sq. yard, for residential purpose, on 99 years lease basis, on the terms and conditions specified in the above resolution.

SD/-  
(MUHAMMAD SIDDIQUI DAR)  
SECTION OFFICER-VI  
For Secretary to Government of  
Sindh"

5. The letter is signed by Section Officer for Secretary to Government of Sindh. The letter also does not mention that it is issued under the direction of the competent authority rather the Section Officer himself has accorded approval of Government of Sindh which is not legal as Section Officer is not shown to have power to accord approval of the Government of Sindh.

6. The said letter mentions that in exercise of powers conferred by Section 45(5)(i) of the Ordinance of 1979, the Government of Sindh is pleased to accord approval to KMC Council Resolution No.82 dated 11.03.1993 regarding allotment of 200 acres of waste KMC land in Sewage Farm, Manghopir Road, Karachi (Gutter Baghicha) to the Society for allotment to

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its registered members at the rate of Rs.10/- per square yard occupancy value plus development charges at the rate of Rs.15/- per square yard for residential purposes on 99 years lease basis. It seems that some payments in respect of the land were deposited. On 03.08.1993, an allotment letter seems to have been issued by KMC of the said 200 acres of land to the Society. On the same day i.e. 03.08.1993, handing and taking over of possession was also made. On 11.08.1993, lease of the land was also signed and executed by KMC in favour of the Society and it was also registered. The Society appears to have prepared a layout plan in which it has provided plots of land for residential and commercial purposes. The Society, apparently, has made allotment of the plots to its members i.e. the employees of KMC.

7. The learned counsel for the Society, in the first place, has contended that the plots have been allotted by the Society to KMC retired employees. We have asked the learned counsel to show whether the Society is for the retired employees of KMC, he admitted that the Society is not meant for the retired employees but of serving employees of KMC. The learned counsel further contended that in some cases the plots are in the name of widows of KMC employees. We have asked the learned counsel for the Society to show under what mandate of law KMC or the Sindh Government or the Minister of Local Government, Sindh, has granted the land to the Society. The learned counsel referred to provision of Section 45(5) clause (i) of the Ordinance of 1979. The learned counsel also contended

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that the Society has filed a Civil Suit in the High Court of Sindh in which it has obtained a stay order in respect of the land in question.

8. The legal Advisor, KMC has referred to Rule 10 of the Sind People's Local Council (Land) Rules, 1975 (the Rules of 1975) to contend that the land in question was rightfully leased out to the Society. On the other hand, Mrs. Amber Alibhai relying upon Report No.128-K of 2021 contended that the whole of the land of KMC Sewage Form, Manghopir Road, Karachi known Gutter Baghicha measuring 1016 acres is meant for a park for the City of Karachi and could not be allotted by KMC to its own employees for housing and commercial purposes and such grant/allotment/ lease is wholly illegal and prayed that the land allotted, granted and leased to the Society may be retrieved.

9. As noted above, the learned counsel for the Society has placed complete reliance on Section 45(5)(i) of the Ordinance of 1979 to support the grant/allotment/lease of 200 acres of land to the Society. Section 45 of the Ordinance of 1979 is as follows:

"45. **Contracts.**- (1) Every council shall, within the budget grant, be competent to enter and perform all such contracts as it may consider necessary or expedient in order to carry into effect the provisions and purposes of this Ordinance.

(2) All contracts made by or on behalf of a council shall be :-

- (a) in writing expressed to be made in the name of the council; and  
 (b) reported to the council by the Mayor or, as the case may be, Chairman, at the

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meeting next following the execution of the contract.

(3) All contracts shall, subject to the rules, be entered into after inviting competitive tenders or quotations:

Provided that tenders or quotations involving expenditure exceeding such amount as may be prescribed shall be invited by a notice in a newspaper;

Provided further that in case the lowest tender or quotation is not accepted, the authority competent to grant the contract, other than the council, shall lay down in writing, and if the council itself, shall express in the resolution approving the tender or quotation, the reasons for not accepting the lowest tender or quotation.

(4) All contracts for transfer by grant, sale, mortgage, lease or otherwise of immovable property or any interest and right thereto or disposal or sale of movable property or for leasing out rights to collect taxes shall, subject to the rules be entered into after inviting offers in an open auction :

Provided that if the highest bid is not accepted by the council, approval in writing of Government shall be obtained, and Government shall, in its order give reasons for not accepting the highest bid :

Provided further that a council may with the approval of Government enter into a contract without inviting offers in auction.

(5) Notwithstanding anything contained in sub-section (4) its council may grant, sell, or lease out land at rates to be fixed in consultation with Government, to :-

- (i) Associations, organisations, individuals or any department or institution of the Federal or a Provincial Government for establishing, maintaining or extending education, religious and charitable institutions or for such other purposes for the benefit of the public, subject to the condition that if the land is not used for the purpose it was granted, the council may, after affording such association, organization, individual or department or institution, as the case may be, an opportunity to show-cause against the proposed action, resume

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- such land alongwith structures, if any without any compensation;
- (ii) land holders for adding to their holdings, alignments or small plots of not more than forty square yards at the market price likely to be obtained in auction;
  - (iii) holders of lease for twenty years or more after the expiry of the lease, on the same terms and conditions.

(6) Government may subject to the other provisions of this ordinance, make rules laying down the procedure to regulate the making of contracts and the execution thereof.

(7) No contract executed otherwise than in conformity with the provisions of this Ordinance shall be binding on the council."

The reading of this provision shows that it deals with the matters relating to the Contracts. Sub-section (5)(i) of the above Section provides that notwithstanding anything contained in sub-section (4) its council may grant, sell, or lease out land at rates to be fixed in consultation with the Government, to associations, organisations, individuals or any department or institution of the Federal or a Provincial Government for establishing, maintaining or extending education, religious and charitable institutions or for such other purposes for the benefit of the public, subject to the condition that if the land is not used for the purpose it was granted, the council may, after affording such association, organization, individual or department or institution, as the case may be, an opportunity to show-cause against the proposed action, resume such land alongwith structures, if any without any compensation. It is apparent from the reading of this provision that it speaks of grant/sell/lease of the land to associations, organizations, individuals or any department or institution of the Federal or a

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Provincial Government and the purpose is also given that is for establishing, maintaining or extending educational, religious and charitable institutions.

10. The learned counsel for the Society has contended that this provision also contains that the land could be used for such other purpose also. We note that though "for such other purpose" is mentioned in the provision but it is also written that such other purposes for the benefit of the public. It was also noted that the words for such other purposes can only be read in *ejusdem generis*, in that, it has meaning confined to its earlier words that are educational, religious and charitable purposes. The land of 200 acres have been granted/allotted/leased by KMC to the Society for use of housing purposes of its own employees and also as the layout plan shows for commercial purposes. This provision of law does not at all provide that the Council could grant, sell or lease the land of KMC to its own employees for housing and commercial purposes. The land which is allowed to be granted, sold or leased, in the first place is to associations, organizations, individuals or any department or institution of the Federal or a Provincial Government and that too for establishing, maintaining or extending educational, religious and charitable institutions and for such other purposes for the benefit of the public. Obviously, the allotment of land for housing and commercial purposes to the employees of KMC will not be that for the benefit of the public. Thus, reading of the provision of Section 45(5)(i) *ibid* did not at all provide for

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grant/allotment/lease of a land to the Society for allotment to the employees of KMC.

11. The Legal Advisor of KMC has referred to Rule 10 of the Rules of 1975, which reads as follows:

10. *Leasehold right to Co-operative Housing Societies.*—(1) A Council shall prepare a general lay out of the areas to be granted to Co-operative Housing Societies dividing the area in blocks and the blocks in plots.

(2) Such lay out shall specify the purpose for which the plots shall be used, the class of buildings to be constructed on such plots and the order in which the construction of such buildings on different plots in each block shall commence.

(3) The Council shall, with the approval of Government, prepare a schedule showing the occupancy value per square yard for each block and for each plot in such block except the plots, if any, reserved for providing amenities for the residents of the block.

(4) Subject to these rules such blocks shall be leased to the Co-operative Housing Societies on payment of a deposit equal to twenty per cent. of the occupancy value and ground rent for one year in advance for such blocks.

(5) The balance of the occupancy value and rent shall be paid by the Society in the manner as may be specified by the Council.

(6) The lease shall be for a period of ninety-nine years, commencing from the date of the payment of full occupancy value of the plot.

(7) Where the Co-operative Housing Society has completed the buildings on all the residential plots in a block in accordance with the rules, terms and conditions of the lease and bye-laws, it shall, be entitled to a lease for the same period of the plots reserved, if any, for providing amenities for the residents of the block free of ground rent but where the Society has failed to commence or complete buildings as aforesaid the plots reserved for providing amenities shall not be lease out to the Society and the same shall be disposed of in any manner as the Council may deem fit.

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(8) Where more than one and Society applies for any particular block or blocks, such block or blocks shall be leased by drawing lots.

(9) Where the Society fails to fulfill the terms and conditions of the lease or fails to carry out development of the land, the Council shall be competent to carry out the development and grant direct leases to the allottees/members of the Society; provided that such allottees/members have paid full occupancy value and development charges incurred by the Council."

So far Rule 10 of the Rules of 1975 is concerned, we note that Rule 3 thereof provides that the lands shall vest in a Council. Clause (b) thereof provides that all lands shall include open spaces, playgrounds, gardens, parks and other places of public resort belonging to the Council or transferred to it by Government or reserved or acquired by it, by gift, purchase or otherwise. Under Rule 7 of the Rules of 1975, the Council has been given power to lease out land for constructing buildings for residential and commercial purposes. Rule 8 of the Rules of 1975, provides that sale of the Council land shall be made by public auction on payment of full occupancy value. Rule 10 of the Rules of 1975 provides a Council to prepare a general lay out of the areas to be granted to Co-operative Housing Societies dividing the area in blocks and the blocks in plots and also to lease the blocks to the Co-operative Housing Society.

12. In the first place, we note that the land of Gutter Baghicha is not a building site on which construction of building of residential and commercial purposes can be made, for that, the whole land of Gutter Baghicha is an amenity land and can only be used for amenity purpose that of park. The

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leasehold right of amenity plot cannot be granted to a Society nor any such thing is provided in Rule 10 of the Rules of 1975, cited before us.

13. Thus, Rule 10 of the Rules of 1975, as relied upon by the Legal Advisor of KMC, has no application to the case in hand and cannot protect the grant/allotment/lease of land under the provision of Section 45(5)(i) of the Ordinance of 1979 and once the Ordinance of 1979 itself cannot support such grant/allotment/lease, the same could not be saved by the Rules, as the Rules have to be consistent with the law under which the Rules are made.

14. An overall examination of the case and the law referred to by the learned counsel for the parties, we note that KMC or the Council or the Government of Sindh or the Minister of Local Government, Sindh were not empowered to grant 200 acres of land of Sewage Form, Manghopir Road, Karachi (Gutter Baghicha) to the Society, as neither the law allowed such grant or allotment or sale of the land to the Society for the purpose of KMC employees housing and commercial use; as such, land as noted in the very provision is to be used for establishing, maintaining or extending educational, religious and charitable organizations and for the benefit of public. Thus, from inception the Society has wrongly claimed the land granted to it under the provision of Section 45(5)(i) of the Ordinance of 1979 and the very grant made under this very provision by the Administrator/Council or the Government of Sindh is totally

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against the law and could only be considered as illegal but void exercise.

15. During the course of hearing of this matter, the Secretary of the Society has admitted that though allotment has been made to the employees of KMC but no housing or any commercial building has been constructed on the land up till now. During the course of hearing, learned counsel for the Society has admitted that the terms and conditions of KMC employees does not mention that they would be entitled to grant of land by KMC for their houses.

16. We are of the considered view that the grant/ allotment/lease of 200 acres of land at Sewage Farm, Manghopir Road, Karachi (Gutter Baghicha) to the Society was altogether illegal and not supportable by law and void *ab initio*.

17. We, therefore, hold and declare that the grant of 200 acres of land by the Minister, Local Government, Sindh contained in the Minutes of Meeting dated 06.03.1993 mentioned in document dated 09.03.1993, the approval of the Government of Sindh vide letter dated 25.07.1993, the letter of allotment dated 03.08.1993, the letter of possession dated 03.08.1993 and the lease deed dated 11.08.1993, are all contrary to law, illegal and thus, set aside, resultantly, all consequential allotments made by the Society to its members are also declared to be contrary to law and illegal and the same are also set aside and cancelled.

18. The Administrator, KMC is directed to resume the land immediately and to utilize it for the amenity purposes that

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of park for which it is meant. The Administrator shall submit its report to the Court of showing compliance of the Court order within two weeks.

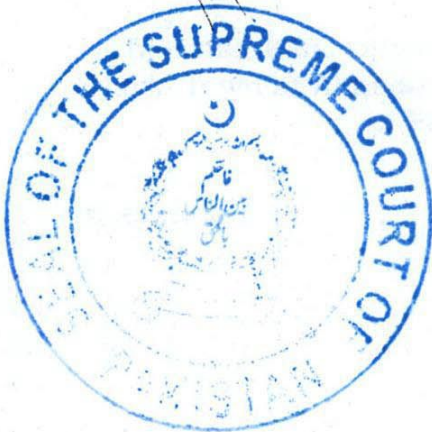
19. All the reports are disposed of.

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**Senior Court Associate  
Supreme Court of Pakistan  
Islamabad**

Special Bench-I  
Islamabad  
11.01.2022  
'APPROVED FOR REPORTING'  
Mahtab/\*

13/1/22



CR No. 198/22 Civil/Criminal

Date of Presentation: 12-1-22

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Received by: M. Sarwar Khan