

Mrs. Abida Perveen Channar, ASC
 Mr. Zakir Hussain Khaskheli, ASC
 Mr. Khawaja Naveed Ahmed ASC
 Mr. Sattar Muhammad Awan, Special
 Prosecutor, NAB
 Mr. Zulfiqar Mahar, AIG Legal
 Mr. Mazhar Hassan, AIG Legal
 Mr. I.D. Mangi, AIG Legal
 Mr. Tahir, M.D. NESPAK
 Mr. Amanullah Zardari, Focal Person,
 Home Deptt:
 Mr. Roshan Ali Sheikh, Secy. Local Govt.

Date of hearing : 06.03.2020.

Gulzar Ahmed, C.J.:-

CMA No. 120-K of 2020.

Mr. Khaleeq Ahmed, learned counsel for the applicant, while arguing the matter has categorically admitted that ST Plot Nos. 1 & 2 are amenity plots. When we asked him to show us as to under what law these amenity plots can be sold, transferred or converted, he states that no such law is available and even then, the plots could not have been sold for that they have to be used and applied for amenity purpose. This being the very submission of learned counsel for the applicant himself, thus we find no reason to entertain this application which is accordingly dismissed. Let the Commissioner, Karachi complete the job of demolition of the structures on these plots and apply these plots for the amenity purpose that of garden and park with thick plantation and also securing it.

ATTESTED

Senior Counsel Associate
 Supreme Court of Pakistan
 Karachi.

CMA No. 101-K of 2019.

We have heard the applicant who has appeared in person. The Commissioner, Karachi will hear the applicant and will make all efforts to address her grievance. In this regard if any illegality is found by the Commissioner, he shall ensure that such illegality is removed. The Commissioner, Karachi shall give a report to this Court in the next session.

C.R.P.No. 7-K of 2020

We have heard Mr. Badar Alam, learned counsel for the Review Petitioner at length and have also gone through the relevant record filed with the Review Petition. No ground for review is made out. The Review Petition is therefore dismissed.

CMA Nos. 145-K & 147-K of 2020

It is stated by Ms. Ambar Alibhae of SHEHRI that they are conducting an investigation and survey of the land of Hill Park with all available technical and modern support, along with the original documents of the park, to see whether the houses which are the subject matter of the CMAs have been raised on the land of Hill Park or whether they are outside of the land of Hill Park. It is further stated that the Commissioner, Karachi is also co-operating in this exercise. She requests for a short adjournment in this regard to file a report. Mr. Salahuddin Ahmed, learned counsel for the interveners may also participate in such survey and investigation that is being made by the representative of SHEHRI. We have noted that these houses were constructed on the boundaries of hill park by literally cutting the hill of the park and carving out plots from them and such seem to be altogether in negation of the park plan and PECHS which claims to have leased out these plots as done so without any lawful authority and in contravention of the park plan and the amenities attached with it. Adjourned to 26.03.2020.

ATTESTED

Senior Counsel Associate
Supreme Court of Pakistan
for Karachi.

CMA No. 149-K/2020

It is stated by the learned counsel for the applicant that the demolished building debris will be lifted from the site by the applicant itself within one week. Such time is allowed. The Commissioner, Karachi will, however, shall ensure that the debris are removed by the applicant within the

above time positively and in case the applicant fails to do so, the Commissioner shall carry out such work at the cost of the applicant. In these terms, this CMA is disposed of.

CMA Nos. 521-K/2019, 84-K/2020 & 556-K/2019

Adjourned to 26.03.2020.

CMA Nos. 94-K & 121-K of 2020.

These are the two applications filed by the interveners/allottees, who claim that they have booked and made advance payment for the units in building by the name of Royal Park Luxury Residence, which was being built by M/S Quality Builders Ltd. on plot of land adjacent to Aladin Park on Rashid Minhas Road, Karachi.

Learned counsel for the interveners/allottees has, at the very outset, conceded that the interveners/allottees of the units have no cavil to the order passed by this court on 06.02.2020 by which the under construction building of Royal Park Luxury Residence was ordered to be demolished. He, however, contends that there are large number of allottees who have booked units in the said building and it was also contended that some portion of the amount has been paid by the interveners/ allottees to the builder. Learned counsel contended that in order to save the project, the builder may be asked to pay value of the land prevailing today. Earlier before taking up these applications, we have heard the review petition C.R.P.No. 07-K of 2020 filed by the builder seeking review of our order dated 06.02.2020 and after hearing the learned counsel for the builder said Civil Review Petition was dismissed. Mr. Badar Alam, learned counsel for the builder who was present in Court made a statement that builder may be allowed to pay the prevailing price of the plot.

ATTESTED

Senior Counsel Associate
Supreme Court of Pakistan
for Karachi.

The submission of the learned counsel for interveners/allottees apparently is that the interveners/allottees have booked the unit in the project Royal Park Luxury Residence with due diligence and on representation made by the builder and that the interveners/allottees may be given some relief. We may note that the very ownership of builder of the plot of the land on which the builder was in the process of constructing Royal Park Luxury Residence building was found by us to be totally illegal, *ab initio void* and thus cancelled the same. Thus, apparently the argument of due diligence in such circumstances does not prevail. However, the question of depositing the prevailing market value of the plot of land is concerned though conceded by the learned counsel for the builder but what we make out from this is that it is a mutual submission of convenience which we cannot allow more so for perpetuating the illegality. Although the learned counsel for the applicant has referred to two instances of Bahria Town Karachi so also Grand Hyatt Building Islamabad but we find that such instances are altogether distinguishable from the facts and circumstances of the present case. There being no other submission made by the counsel, we find that both these applications have no merit and the same are, therefore, dismissed.

ATTESTED

Senior Counsel Associate
High Court of Pakistan
for Karachi.

Karachi Circular Railway.

This subject the matter was heard in open court. Learned Attorney General for Pakistan, learned Advocate General Sindh and the Secretary Pakistan Railways requested to make a presentation showing two options; one of completing the KCR as it existed and operated before its closure; and the other option being that of making KCR through a CPEC project with altogether new and modern infrastructure. The presentation accordingly was made in which Mr. Khalid Javed Khan, learned Attorney General for Pakistan,

Mr. Salman Talibuddin, learned Advocate General Sindh, Mr. Habib-ur-Rehman Gilhani, Secretary Pakistan Railways, Mr. Tarveer Bukhari Sr. Chief Ministry of Planning, Syed Mumtaz Ali, Chief Secretary, Government of Sindh, Mr. Ifikhar Shalwani, Commissioner Karachi, Mr. Ahmed Fawad Company Secretary SIDCL, Mr. Ghulam Abbas Secretary Transport, Mr. Kashif Sarwar Paracha, Acting Additional Attorney General for Pakistan, Mr. Akhtar Hussain Sr. ASC for Chairman Pakistan Railways, Mr. Salman Kazmi, Legal Adviser Pakistan Railways, Mr. Nisar Ahmed Memon Deputy Superintendent Pakistan Railways, Karachi participated.

Two options mentioned above for the revival of KCR have difference in them of cost as well as of required time to operate them. Both options were discussed. Ultimately this Court has come to the conclusion that the first option is best option in that the Secretary Pakistan Railways has assured the revival of KCR as it existed before its closure within the timeline as already given by this Court vide its order dated 21.02.2020 that is six months time. We were informed that railway will acquire finance and it will be a two track operation with making of railway stations providing of all amenities and fencing of railway tracks and of course installation of modern signalling. It was stated that this job will be done by the Pakistan Railways by incurring of cost of rupees about six billions and that railway shall accomplish the revival of KCR with these funds within the stipulated time as noted order dated 21.02.2020 of this Court. Secretary Finance Government of Pakistan who has to arrange the funding is directed to ensure that there is no obstruction in making the availability of fund to the Pakistan Railways for accomplishing the revival of KCR in terms as noted above. We may, however, note that Pakistan Railways may continue its deliberation of planning of upgrading the KCR

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Senior Counsel Associate
Supreme Court of Pakistan
for Karachi.

through CEPEC and on approval and sanctioning of such upgradation, same can also be undertaken by the Pakistan Railways but without obstructing the already functioning KCR. The Learned Attorney General for Pakistan assured that Federal Government will ensure that no obstruction or delay whatsoever is caused by any department of Federal Government in revival of the KCR as it existed before its closure. Secretary Railways, however, pointed out that there will be some 24 level crossings, which will cause serious road traffic hazard and the road travellers will be inconvenienced. He stated that Sindh Government in consultation with Pakistan Railways to address this issue and make plans for making of underpasses and overhead bridges for the smooth flow of road traffic and also smooth running of the KCR. Learned Advocate General Sindh, Chief Secretary Government of Sindh and the Commissioner Karachi made a categorical statement that Sindh Government shall cooperate in every respect with Pakistan Railways in reviving of the KCR and it will provide its services to the Pakistan Railways wherever such is required and there will be no element of any delay in revival of the KCR by Pakistan Railways. Necessary infrastructure of underpasses and overhead bridges at the level crossings will immediately be made by Sindh Government and ensure that road traffic is not obstructed by the functioning of the KCR and KCR is also not obstructed from its operation because of the road traffic. All infrastructures in this regard shall be made available by Sindh Government and it shall also ensure that all the infrastructure is provided to the KCR and in order to make KCR operational in terms of order dated 21.02.2020. The Sindh Government is already undertaking the project of KIDCL by constructing new roads: green line, blue line, black line, brown line orange line and some other lines to integrate the road traffic network in city of Karachi and provide easy and more accessible transport facilities and facilitate motorists to have safe

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Senior Counsel Associate
Supreme Court of Pakistan
for Karachi

and easy access to the destinations on which special bus service shall also be introduced. This Court believes that such projects undertaken by the Sindh Government needs to be completed at an early date and in this regard timeline has already been given by this Court in order dated 21.02.2020. The Sindh Government shall not at all exceed this timeline and if it does so its consequences shall follow. The Secretary Pakistan Railways so also Chief Secretary Sindh shall give their respective reports on the revival of KCR and the achievements made on it on 26.03.2020. Both Secretary Pakistan Railways as well as Chief Secretary Government of Sindh, Commissioner Karachi so also learned Attorney General for Pakistan and learned Advocate General, Sindh shall appear before the Court.

Mr. Salahuddin Ahmed, Senior Counsel of Karachi is appointed as Amicus Curie to assist the Court in all the matters taken up by this Court in this case. Learned Amicus Curie shall also assist the court in all the matters dealt with by this court in order dated 06.02.2020 as well as 21.02.2020. Office is directed to provide to the learned Amicus Curie copies of this order alongwith all orders and related documents immediately.

Sd/- Mr. Justice Gulzar Ahmed, CJ

Sd/- Mr. Justice Faisal Arab

I have recorded my dissenting opinion to the extent of CRP 7K/2020, CMA 94 and 121-K of 2020 through a separate note annexed herewith.

Sd/- Hon'ble Mr. Justice Sajjad Ali Shah

The Karachi
06.03.2020
Amir

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Senior Advocate
Supreme Court of Pakistan
for Karachi

Sajjad Ali Shah, J. I have gone through the majority opinion rendered by the Hon'ble Chief Justice but could not persuade myself to concur with the opinion of my learned brothers to the extent of CRP No. 7-K/2020, CMAs No. 94-K and 121-K of 2020.

2. The controversy, subject matter of these petitions, is a flat site by the name of Royal Park Luxury Residence built by the Quality Builders Ltd. on a piece of land measuring two acres in Gulshan-e-Iqbal Town adjacent to Allah Din Park on Rashid Minhas Road, Karachi. The land apparently was allotted to Naseer Abdullah Hussain Lootah vide allotment letter dated 4.5.1991 followed by execution of lease dated 07.07.2010 by the Board of Revenue of Government of Sindh. During hearing of this petition on 6th and 7th February, 2020, we after taking cognizance of such allotment and lease and after examining the title documents came to the conclusion that the Sindh Government, Revenue Department had illegally sold the subject land without fulfilling the codal formalities and for insufficient consideration, therefore, directed the cancellation of the title documents and further directed the Commissioner Karachi to take over the possession of the construction so raised and demolish the same within a period of two months.

Through CRP No. 7-K/2020, the lessee of subject land seek review of our order dated 6th and 7th of February, 2020 *inter alia*, on the ground that he is ready and willing to pay the loss caused to the revenue, whereas through CMAs No. 94-K and 121-K of 2020, the allottees of Royal Park Luxury Residence who claim to have paid a substantial amount against booking of their respective flats, seek review of our order whereby we directed demolition of construction and they also seek a direction against the Builder to pay them compensation, accordingly.

4. It is important to note that Government of Sindh has not challenged the title nor has laid any claim regarding the quantum of the lease money paid in respect of the subject land. However, we, on our own, had found that the lease money was

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Senior Counsel Associate
Supreme Court of Pakistan
for Karachi.

not commensurate to the subject land and the documents were flawed, therefore, directed the cancellation of lease. There is no doubt in my mind that the grant of such land on such price could not have taken place without connivance at certain level between the Government of Sindh and the allottee and for this reason recovery was made under Ordinance III of 2001 for so-called regularization.

5. It is very important to record that the only draw back in the grant of lease to my mind was manipulation to avoid payment of actual price of the subject land. This I say because neither the project is being constructed on an amenity land nor there is any legal impediment/statutory embargo on construction of flat site on the subject land or any claim regarding violation of building laws warranting demolition. In the circumstances, when the lessee has come forward to remove the only flaw by making good the loss sustained by the Government of Sindh then the demolition of the Project specially where there are more than 400 allottees in the flat site, in my opinion, could not be justified. The other important aspect is hundreds of allottees who claim to be *bona fide* purchasers for valuable consideration and had booked the subject plots after due diligence as there was lease in favour of the lessee and all necessary permissions were granted by the Sindh Building Control Authority and all concerned quarters for carrying on constructions, therefore, they could not be penalized on account of some underhand deal between the Government of Sindh and the lessee.

6. In the case of Syed Melnood Akhtar Nagvi vs. Malik Israr, Sr. Member BOR and others (2018 OSC 869 – commonly known as Bahria Foundation case), this Court in para 18 of the said judgment after having come to the conclusion that the land granted through exchange and other means to Bahria Town, was void *ab initio*, instead of directing demolition while taking into consideration 3rd party interest created in favour of hundreds of allottees, left it to the Board of Revenue to grant such land to Bahria Town afresh and for this purpose constituted an implementation Bench

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Senior Court Associate
Supreme Court of Pakistan
for Karachi

which after determination of the land price left a space for regularization of the land. Likewise, in the case *BNP (Pvt) Ltd. & others versus Capital Development Authority etc.* (Civil Appeals Nos. 1265 to 1282 of 2018 etc. - known as Grand Hyatt Tower residential apartments), the cancellation of the lease on the ground of violating its terms and conditions was condoned by this Court subject to payment of ascertained amount. Similarly, in Suo Motu Case No. 25 of 2018 (Regarding Consideration of the Ownership/Allotment of the Property and Encroachment Thereupon), illegal construction was regularized upon payment of ascertained amount.

7. In the circumstances, I am of the humble view that the instant case being similar requires regularization instead of demolition.

Sd/- Hon'ble Mr. Justice Sajjad Ali Shah

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Senior Justice
Supreme Court of Pakistan