

Present:

Mr. Justice Gulzar Ahmed
Mr. Justice Faisal Arab
Mr. Justice Sajjad Ali Shah

Constitution Petition No.9 of 2010 and Criminal Original Petitions No.7-K & 19-K of 2017 and Civil Misc. Applications No.6206 of 2013 & 1552-K of 2013, CMA, 1600-K/18 and CMAs, 22-K, 23-K, 59-K, 101-K, 311-K, 394-K, 423-K, 425-K, 459-K, 460-K/2019 and Criminal Misc. Application Nos. 121-K & 124-K, 132-K of 2017, 311-K, 3-K, 19-K, 20-K, 25-K, 32-K, 38-K, 44-K, 52-K, 55-K, 71-K, 72-K, 95-K, 199-K, 214-K and 229-K of 2013 and Cr.L.M.As. 01-K, 2-K, 26-K/2019.

IN ATTENDANCE

Mr. Kashif Sarwar Paracha, D.A.G
Mr. Salman Talibuddin, A.G Sindh
Mr. Iftikhar Shalwani, Commissioner of Karachi.
Mr. Waseem Akhter Mayor Karachi.
Dr. Saif-ur-Rehman, Municipal Commissioner
Mr. Saeed Ahmed Qureshi Focal Person Govt. of Sindh
Mr. Masood Alam, Director
Sh. Kamal Ahmed, Director Land
Mrs. Azra Muqem, Law Officer
Mr. Bashir Ahmed, Director Anti Encroachment
Mr. Sultan Sikandar Raja, Sec./Chairman Pak-Railways
Syed Mazhar Ali Shah, D.S Pak-Railways Karachi.
Mr. Abdul Malik, D.G-Technical Pak-Railways
Mr. Farid Ahmed, Joint Director Pak-Railways
Mr. Muzafar Ali Shaikh, Director (Sindh Katchi Abadi)
Mr. Jawaid Hussain, Dy. Director (Sindh Katchi Abadi)
Mr. Farooq Ali, Assist. Engineer (Sindh Katchi Abadi)
Mr. Zahid Bin Khalid, Director D.M.C (East)
Mr. Naeem Ahmed Mughal, D.G (SEPA)
Syed Jamil Ahmed, Law Officer (SBCA)
Mr. Zafar Abbas, D.G (SBCA)
Mr. Shah Muhammad, Petitioner in Person
Mr. Saleem Akhter Baig, Legal Advisor DMC (South)
Mr. Asadullah Khan, M.D (KWSB)
Mr. Chanzeb, Law Officer.
Mr. Ghulam Nabi Memon, Addl: I.G
Mr. Zulfiqar Mahar, A.I.G Legal
Mr. Muzhar Hussain Atwi, A.I.G.P Legal

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Karachi.

Mr. S.Asif Shah, petitioner in person
Lt. Akram-ul-Flag, Secretary Defence.
Mr. Adeel Rafiq, DMI, & I. Karachi.
Mr. Rana Kashif, C.E.O Clifton
Mr. Amir Masood, C.E.O Faisal
Ms. Samina, C.E.O Korangi.
Ms. Arfa, C.E.O Manhora
Rear Admi. Jamil Akhter, Chairman-KPT
Dr. A.D Sangrani, M.D (SSWMBK)
Mr. M. Saleh Farooqi, C.E.O (SIDCL)
Mr. Bilal Ahmed Memon, G.M (SIDCL)
Mr. Zakir Hussain Khaskheli, Legal Advisor MDA
Mr. Ghulam Rasool Mangi, AOR
Mr. K. A. Wahab, AOR
Mr. Asif Raza, ASC
Mr. Badar Jamil, D.G KDA
Raja Maqsit Nawaz, ASC
Mr. Abdul Qadir Khan, ASC
Mr. Abdul Rehman, ASC
Mr. Arshad M. Tayabaly, ASC
Mr. Faisal Siddiqui, ASC
Mr. Sanaullah Noor Ghor, ASC
Mr. Makhdoom Ali Khan, ASC
Mr. Muhammad Aqil Awan, ASC
Mr. Abrar Hassan, ASC
Mr. Badar Alam, ASC
Syed Jamil Ahmed, ASC
Syed Ashiq Raza, ASC
Mr. Tasawar Ali Hashmi, ASC

ORDER

Report No.33-K/2019

A Report has been submitted in respect of operation of Karachi Circular Railway and Local Train in Karachi. The report is signed by the Secretary/Chairman, Ministry of Railways, Islamabad being CMA No. 33-K of 2019. Such report has been examined by us and found it to be unsatisfactory. In any case, the same is kept on record and as requested by the Secretary, Pakistan Railways and learned Advocate General the hearing is

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Secretary, Ministry of Railways
Islamabad

furnished before the Court about the operation of these two trains plus other railway facilities that have been devised by the government of Sindh. Government of Sindh shall also submit a report before the Court about initiation and operation of tramway in Karachi as no report on such aspect is available. Adjourned to 09.03.2019.

CMA No. 590-K/2019

2. This matter pertains to huge buildings adjacent to Alladin Park on Rashid Minhas Road by the name of Royal Park in respect of which the instant CMA has been filed. The learned Advocate General Sindh states that Member Land Utilization is in attendance and he will obtain necessary instructions from him with complete record pertaining to the land in question. It may be noted that in the first place that the Revenue Department has no power whatsoever to grant lease of 99 years under any law and further the very grant of purported lease to the applicant by the Revenue Department is contrary to the order dated 28.11.2012 passed by five members bench of this Court in Suo Moto Case No. 16 of 2011, by which the Revenue Department was prohibited from making any mutation, allotment, transfer or conversion of State's land or keeping any transaction or entries in record of rights and it was further observed that any such mutation of the state land in record of rights would be deemed to be a nullity and expose the Deputy Commissioner/DCO of the relevant district/case to contempt proceedings. The official of Evacuee Trust Board is also in attendance. He states that Evacuee Trust Board shall also file a report concerning this land. Horticulture Society of Pakistan is not represented nor is anyone in attendance on its behalf. In the circumstances, let notice be issued to it for appearance in the meanwhile the Chairman and Secretary of the Horticulture Society to appear on next date with a report

ATTORNEY

Senior Counsel
Sindh High Court of Pakistan
Karachi.

concerning the land in question. Report be also called from the Chairman NAB about status of the land in question for that we understand that matter was dealt with by the NAB and at some stage no reason has been terminated. The Prosecutor representing the NAB shall be present on next date with report.

3. The matter with regard to Para No. 3 of the order dated 09.05.2019 of this court, the learned Advocate General Sindh requests for short time to obtain a report from the worthy Chief Minister of Sindh and place the same before the Court. He states that in this regard matter may be adjourned.

4. As regards occupation of footpaths, roads, parks, playgrounds occupied by the Sindh Police and Pakistan Rangers, the relevant officials of both these institutions have asked for time to ensure that all such occupation is cleared and a report in this regard will be submitted by them before this Court. Let such report be made available before the Court within a period of two weeks.

5. As regards the encroachment and illegal occupation of other amenities such as footpaths, roads, parks, playgrounds etc and the lands marked for hospitals, schools, colleges, car park and other amenities, learned Advocate General states that some foreign consulates have illegally occupied the footpath and roads in front of their offices/residences and though the Sindh government has warned them to vacate the same but on account of non-assistance from the foreign offices no further progress is being made. In the circumstance, let Attorney General for Pakistan appear on the next date with a report from the Foreign Secretary regarding this very aspect of the matter for

that we note that in Islamabad all such occupations by the embassies and residences have been removed by the CDA. To come up on a date after three weeks.

Kidney Hill

6. As regards 62 acres of land of Kidney Hill, Commissioner KMC states that whole of such land is retrieved and is in possession of KMC and KMC has PC-1 of Rs. 950 million for making of a modern park on such land. We note that CMAs have been filed with regard to the land of Kidney Hill Park by some of the parties.

CMA No. 592-K/2013.

7. We have heard Mr. Makhdoom Ali Khan, the learned Sr. ASC for the applicant. He has referred to a notification published in Gazette of West Pakistan dated 18th November, 1966 actual dated 07.11.1966 with the name of Kidney Hill, as KDA Scheme 32 "Falaknuma" and contended that though the 62 acres land was initially proposed to be used by KDA for the purpose of water reservoir site and recreation park scheme known as Kidney Hill covering an area of approximately 62 acres but states that in actual fact this land which originally belongs to the Crown of pre-partition time, was allotted to KMC and through this order such land was transferred and acquired by the Administrator of Karachi and is part of the 2053 acres of land shown in the schedule. A schedule appended to this order also give boundaries but incidentally we are unable to find that the land of Kidney Hill Park could be included for allotment in the said schedule. Mr. Makhdoom Ali Khan, Sr. ASC for the applicant has stated that this matter is to be examined after looking at all record but we have minutely examined whether the applicant has any legal interest in the land in question that is of Kidney Hill Park and what

6/08/2019
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ADVOCATE
of Counsel Associate
the Court of Pakistan
Karachi.

we have and as is referred to by learned Sr. ASC there is a gazette of West Pakistan of 18th November, 1966 containing gazette dated 07.11.1966 at page 39 of the application which is reproduced as follows:-

The Gazette of West Pakistan
November 18, 1966

KIDNEY HILL AS K.D.A. SCHEME NO. 32
FALAKNUMA
THE 7TH November, 1966

No. 1-5/66-Reg. 12863—In exercise of the powers conferred under Article 45 of the K.D.A Order 1957 (President's Order No. 5 of 1957), the Karachi Development Authority (Hereinafter referred to as the Authority) proposes to frame a water Reservoir Site and Recreation park scheme for the area known as Kidney Hill Scheme No. 32, "FALAKNUMA" covering an area of approximately 62.00 acres zoned as an open space in the Master plan of Karachi constituting the entire plateau surrounded by the area of Karachi -Co-operative Housing Societies Union, abutted and bounded as Follows:

In the North . . . Southern boundary of Faran Co-operative Housing Society of K.C.H.S Union

In the East Western boundary of Terrace Housing of Overseas Co-operative Housing Society of K.C.H.S. union

In the South . . . Northern boundary of Faran Co-operative Housing Society of K.C.H.S Union

In the West Eastern boundary of Faran Co-operative Housing Society of K.C.H.S Union

It is proposed to preserve and make use of the topographical features of this high location, surrounded by residential area of KDA Scheme No. 7 and Karachi Co-operative Housing Societies Union. It is proposed to develop it as a Recreational Scheme Providing a long space for the rapidly developing city and for providing space for water supply reservoirs to cater for the benefit of the surrounding population. It is proposed to stop unauthorised encroachments and quarrying and to take over the entire plateau.

The scheme will provide for playgrounds, horse ride path, club, restaurants, preservation of the rock to be

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Senior Coun. Associate
Supreme Court of Pakistan
Karachi

known as Jabal Tariq as a land mark of the city, sites for water supply reservoirs, gardens, a lake, tennis courts, and sites for some cultural institutions like a science museum or an observatory, etc. the detained plans of the scheme will be got prepared by experts and landscape Architects.

A plan of boundaries of the Scheme may be seen during the office hours on any working day in the office of the Karachi Development Authority, K.D.A. Building, Shahrak Kamal Ataturk, Karachi, or a copy of the boundary plan of the scheme may be purchased for Rs.5.00 per copy, from the said office.

Objection to the scheme, if any, by individual or parties affected in any manner, having any interest in the land falling within the boundaries of the scheme may be forwarded to the land Acquisition officer, Karachi development Authority, Shahrak Kamal Ataturk, within 30 days from the date of publication of this notice.

8. The learned ASC for the applicant states that by this notification objections to the scheme were invited and thereafter no notification was issued for use of water reservoir and recreation park. We have asked the learned Sr. ASC to show any order or resolution of KDA, whereby it has given up the Scheme No. 32 as mentioned in the notification dated 07.11.1966, he could not refer to any such notification. He stated that there is an agreement of settlement dated 03.06.2006 made between the Overseas Cooperative Housing Society Ltd and Government of Sindh, CDGK, Karachi Cooperative Housing Society Union government of Pakistan and a copy of such agreement of settlement is attached at page 41 of the application. The very said agreement in its clause 1 contains as follows:

1. That the total area of Kidney Hill Area, which was 62 acres, has been physically resurveyed during the negotiations between the Parties and due to encroachment by rank outsiders the Kidney Hill

9. In the face of very such admission on the part of applicant in the agreement where Kidney Hill Park area of 62 acres has been recognized clearly shows that order dated 04.04.1951 did not contain the land of Kidney Hill Scheme 32 Falaknuma for that the very agreement of settlement mentions the status of land.

10. Furthermore from a bare reading of the above referred gazette notification it becomes quite apparent that it relates to a proposal for establishing water reservoir site and recreation park on an already existing scheme known as Kidney Hill Scheme No. 32 named as "Falaknuma" comprising of about 62 acres and zoned as an open space in the Master Plan of Karachi. Only the lands surrounding it fell within the area of Karachi Cooperative Housing Societies Union and KDA Scheme No. 7. Clearly the Scheme No. 32 "Falaknuma" was not created under the said notification as it already existed under the Master Plan. Only its utilization as water reservoir and recreation park was proposed thereunder. So irrespective of the fact whether the water reservoir or recreation park was created or not in terms of the said gazette notification the 62 acre land in question existed as Kidney Hill Scheme No. 32 "Falaknuma" zoned as open space in the Master Plan and could not have been utilized or allocated to any of the surrounding societies for use as residential or commercial plots. From the text of the notification it is also apparent that only the areas surrounding the Kidney Hill were part of Karachi Cooperative Housing Societies Union and Faran Co-operative Housing Society, how then any of these societies can subsequently claim that the land in question falls within the areas granted to them. Hence none of the allottees of any society can have any legitimate claim on any part of Kidney Hill Scheme No. 32 "Falaknuma" which as stated above was zoned as open

space in the Master Plan of Karachi and has to be entirely utilized for the proposed public park.

11. In this view of the matter we find that the application filed by the applicant is not entertainable for that no lawful interest of the applicant is shown to exist in the Kidney Hill Park Scheme 32 Falaknuma. Consequently, this application is dismissed. The status of Kidney Hill determined under this order be placed in the suit or other proceedings pending in the High Court of Sindh.

CMA Nos. 697-K TO 699-K/2019

12. In view of the order passed in CMA No. 592-K/2019, these CMAs are also dismissed.



Sd/= Gulzar Ahmed, J

Sd/= Faisal Arab, J

Sd/= Sajjad Ali Shah, J

CERTIFIED TO BE TRUE COPY

[Signature]
Associate
Supreme Court of Pakistan
Karachi.

Karachi

06.08.2019

Aamir/PS

[Signature]

Entl 9/2110
Date of receipt 8-08-2019
No. of copies 3
No. of pages 32
Regulation No. 50
Registered No. 1704
Case No. 2404
Court No. 10-D-2110
Date of filing 21-8-2019
Case No. 10-D-2110
Registrar Mr. Imran Memon