

- Ms. Sana Akram Minhas, ASC
- Ms. Amber Ali Bhai, in person
- 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:

**Date of Hearing : 10.08.2020.**

**C.R.P.No.11-K of 2020**

(Against the order dated 06.03.2020, passed in CMA No.120-K in Const.P.No.9/2010)

**GULZAR AHMED, CJ**:- We have heard the learned counsel for the review petitioner. No ground for review is made out. The review petition is, therefore, dismissed.

**KARACHI CIRCULAR RAILWAY**

The Secretary, Pakistan Railways has appeared before the Court and stated that a nine kilometer track for the Karachi Circular Railway has already been laid and that laying of further track has been stopped for the reason that the Sindh Government has not yet constructed underpasses which are required to be constructed by them for the smooth running of the Karachi Circular Railway. The Secretary, Transport, Government of Sindh is in attendance. He states that the Sindh Government has already approved five billion rupees for this project, out of

which three billion rupees, have already been released for construction of ten underpasses. The Secretary Transport further states that there are (14) fourteen locations where there is scant traffic movement and there is, apparently, no need for construction of underpasses at such cites. According to him, level crossing/overhead bridges etc. will be enough for the smooth running of the Karachi Circular Railway. He, however, states that in case such arrangements are inadequate, the Sindh Government shall arrange for construction of more underpasses to facilitate smooth functioning of Karachi Circular Railway.

The Sindh Government shall ensure that whatever traffic is coming to these places is diverted to the underpasses which it has proposed to construct. In view of urgency of the matter and the dire need to resolve the problem of overcrowding on roads and to grant some relief to the people of Karachi, it has been suggested that Frontier Works Organization ("**FWO**") be deputed to construct the underpasses in question owing to their experience and expertise in the field. We find that the suggestion is reasonable and in the public interest. Accordingly, we direct that FWO be commissioned to construct the underpasses within a period of six months from the date of the award of the contract formalities for which shall be completed as expeditiously as possible and not later than one month from the date of this order.

The Pakistan Railways shall continue its work regarding laying of tracks of the Karachi Circular Railway. Further, the Pakistan Railways shall coordinate with the Sindh Government Contractor in ensuring that whatever work is required to be done by the Sindh Government is done by it in accordance with the requirements and priorities of Pakistan Railways. Pakistan Railways shall ensure that all tracks on both sides are protected

by proper fencing from beginning to the end. The Sindh Government has already taken up fencing of both sides and it is stated by the Secretary, Transport that such fencing will be completed within three months.

### **ROYAL PARK**

As far as the Royal Park Building measuring 2 acres, Survey No. 333 out of NC No. 210 Dch Kiwari, Gulshan-e-Iqbal adjacent to Aladin Park on Rashid Minhas Road is concerned, it is stated by the Commissioner Karachi that out of five towers built by the builder, two have already been demolished. Three are under the process of demolition. He states that this demolition work shall be accomplished within a further period of three months.

Mr. Salahuddin Ahmed, learned counsel for the allottees of these towers states that the allottees have paid the amounts in excess of Rs. 141 crores to the builders. This amount is lying with the builders for the last six years. He submits that the builders may be directed to refund the same to the allottees with 10% interest as provided under the Karachi Building & Town Planning Regulations. The request seems to be reasonable. However before any order is passed, let notice be issued to the builders for appearance on the next date of hearing.

The Civil Review Petitions Nos. 9-K & 10-K of 2020 are disposed of in the above terms.

**KIDNEY HILL PARK**

It has been informed by the Commissioner, Karachi Municipal Corporation (KMC) that there is an old Mosque existing in the area of Kidney Hill Park, which is occupying 1700 Sq. Yds. There is also a school by the name of Foundation Public School, which is an incomplete structure and academic activities have not started. Ms. Sana Minhas, learned ASC states that a private school cannot be allowed to operate on an amenity plot. On the other hand, Mr. Salahuddin Ahmed, learned ASC, who is appearing on behalf of the private school contends that the plot was originally situated in the Kidney Hill Park but, subsequently, it was exchanged with a land from Faran Cooperative Housing Society and then Faran Education Society sold its land to the Foundation Public School. It is true that an amenity plot cannot be used for commercial purposes or for the use of a private school. Even, the plot that is said to have been sold by Faran Education Society was an amenity plot on which the Society was itself required to run a school. Such plot has not been sold or leased out to a private school. In any case, nothing has been shown to us on the basis of which the amenity plot could have been sold, either within the boundary of Kidney Hill Park or within the area of Faran Cooperative Housing Society. Hence, the very existence of the private school on an amenity plot is against the mandate of law. In the circumstances, we direct the school administration to remove the structure from the amenity plot and

handover the plot to the authorities of Kidney Hill Park or Faran Education Society for running a school by the Society itself. If any consideration has passed from the Foundation Public School to Faran Education Society, the Foundation Public School may recover the same from them with whatever additional amount is found due to it. We may note that both Faran Education Society and the administration of the Foundation Public School appear to have acted illegally in selling and purchasing/leasing out the plot. Both shall bear a proportionate loss among themselves. However, the school shall be removed from the land in question.

**CMA's. No.66-K, 72-K and 87-K of 2020**

The afore-mentioned Civil Misc. Applications are disposed of.

**HILL PARK**

The Hill Park, Karachi comprises of 56 acres of land. It is stated that out of these 56 acres of land 0.89 acres of land has been encroached upon on which houses have been built on the slopes of the hills by excavation of the hill. Thirteen houses and one Masjid is stated to have been constructed on it. Khawaja Naveed Ahmed, learned ASC and Mr. Salahuddin Ahmed, learned ASC have appeared for the occupants of the houses and stated that these plots were purchased by the owners of the houses during the years 1996-98. We have asked the learned counsel to show us whether the land on which these houses have been built is shown to be within the boundaries of Hill Park. The learned

counsel stated that they were *bona fide* owners as the Pakistan Employees Cooperative Housing Society (PECHS) had allotted these plots [Bungalows 0.41 acres (38/G/1, 38/G/1-A, 38/G/1-B, 38/G/1-C, Plot No.39-G 0.38 acres and Raval Masjid 0.10 acres]. We have asked the learned counsel to show us these plots from the Approved Layout Plan of PECHS. He was unable to do so. It seems that these plots had been carved out from the hills of Hill Park. In these circumstances, the plot being within the land area of Hill Park could not have been allotted by PECHS. These plots did not belong to PECHS rather. Such plots were/are under the control of KMC. All encroachments in Hill Park as stated above are patently illegal and *void* and the same are liable to be removed. We direct the Commissioner, Karachi so also the Commissioner, KMC to take immediate action for removal of the encroachments and restore the land of Hill Park for the use and enjoyment of the people of Karachi. With regard to transactions, if any, entered into by the owners of the houses, they may take measures for recovery of their money in accordance with law. It seems that the seller has fraudulently sold these houses to them. The Commissioner, Karachi so also the Commissioner, KMC shall submit compliance reports to the Court within four weeks.

**CMA No.145-K and 147-K of 2020**

The aforesaid civil misc. applications of the purchasers of the houses are disposed of in the above terms. The owners of the houses may seek whole or part of the

Const.P.No.9 of 2010 etc

compensation from PECHS also if permissible and in accordance with law.

**CMA No.81-K of 2020**

The aforesaid civil misc. application filed by Mrs. Amber Ali Bhai on behalf of Shehri Citizen for a Better Environment is also disposed of.

**BAGH IBN-E-QASIM**

The debris from the Bagh Ibn-e-Qasim have still not been removed despite clear-cut Court orders for doing so and in this regard time was allowed to the builder to remove the debris which the builders have failed to do up-till now. The learned counsel for the builders states that they have not been allowed to remove the debris. This is controverted by the Commissioner, Karachi. In the circumstances, the Commissioner, Karachi is directed to have the debris removed from Bagh Ibn-e-Qasim and such exercise shall be completed within a period of one week. The cost of removing of debris shall be recovered from the builders namely, Cool Builders. If the builders do not pay the cost as claimed by the Commissioner, Karachi within the time allowed, the debris be sold and costs recovered.

**CIVIL AVIATION AUTHORITY**

All the unused land of the Civil Aviation Authority (the CAA) at Jinnah International Airport, Karachi including a plot of 130 Acres as stated by the Director General, CAA is being

developed into a forest and the work on it has already started. The Director General, CAA states that no part of the civil aviation land at the Jinnah International Airport is going to be utilized for commercial purposes nor any commercial structure will be allowed to be constructed on it except installations required for the airport. He states that the land available with the CAA, which is laying un-used shall be converted into a forest and park for the use and recreation of the people of Karachi. As regards the land in Clifton, the Director General, CAA states that an amount of Rs.150 million has already been allocated for developing the land into a park and a forest and experts in this regard have been engaged. A plan has been prepared, which is at the stage of execution. He states that execution was delayed on account of COVID-19. The work will be completed by undertaking fast track development within a period of six months. The Director General, CAA states that a detailed plan of the CAA land at the Jinnah International Airport will be submitted before us on the next date of hearing.

#### **YMCA**

File of Suit No.378 of 2008 from the High Court of Sindh is requisitioned to be attached along with present proceedings. The High Court shall not pass any order in any case with regard to YMCA and the order passed by this Court regarding YMCA shall be duly complied with by the Commissioner Karachi in letter and spirit. All further



proceedings before the High Court relating to YMCA shall stand stayed till further orders.

**KARACHI GYMKHANA**

CMA No.511-K of 2020 has been filed by the learned Advocate General Sindh through which the documents of Suit No.669 of 2020 pending in the High Court of Sindh Karachi (Karachi Gymkhana V/S Commissioner Karachi) have been placed before the Court. In the said suit orders dated 16.06.2010, 23.06.2020 and 01.07.2020 have been passed. It is stated by the learned Advocate General Sindh that Karachi Gymkhana is a heritage building and it has to be maintained in accordance with the Sindh Cultural Heritage (Preservation) Act, 1994 and the rules framed there-under. No construction is allowed within the boundaries of sites. It is stated that the Karachi Gymkhana has constructed a building within its premises in which underground parking plus residential accommodation has been provided. Such building abuts Club Road. Further, behind that building new construction has also been started, allegedly for the purpose of car parking. Both these constructions are contrary to the law i.e. Sindh Cultural Heritage (Preservation) Act, 1994 and constitutes violation of this Court's order dated 22.01.2019. It is further stated that with regard to both the said buildings no approval has been sought from the Sindh Building Control Authority or any other authority nor permission has been sought from the Commissioner, Karachi

and the Heritage Department. Let notice be issued to Karachi Gymkhana with the direction to file a report regarding construction activity it has carried out within the premises of Karachi Gymkhana. They shall show under what authority of law such construction has been made and further construction is being raised. Such report be filed by the Karachi Gymkhana within a period of two weeks in the meanwhile all construction activities shall remain stayed within Karachi Gymkhana.

#### **MUSLIM GYMKHANA**

A report along with photographs has been submitted by way of CMA No. 828-K of 2019 showing that the order of this Court with regard to installation of metal grills on the boundary wall has been complied with. Muslim Gymkhana Administration is directed to ensure proper maintenance of its premises including boundary wall and grills. Muslim Gymkhana Administration shall also ensure that such work shall be completed by it within a period of three months.

The CMA No. 828-K of 2019 stands disposed of.

#### **COM-3 BUILDING**

With regard to this building, one Ishaq Enterprise through its partner Muhammad Usman and through his attorney Muhammad Akhlaq has filed submissions/concise statements by way of C.M.A.No.86-K/2020. In the said CMA a copy of an unreported judgment of a Four Member Bench of this Court dated 14.09.1989, passed in C.A.No.104-K/1981, titled as

Karachi Development Authority, Karachi vs. M. Yousuf Iqbal and Nisar Ahmad Khan, has been filed regarding the plot in question. It is stated by the learned counsel that it is a commercial plot and the building constructed thereon was permissible and not in violation of any law.

Ms. Amber Ali Bhai, representing Shehri, however, contends that Com-1,2,3 and 4, which are plots shown on Boat Basin side, are not commercial plots but were exclusively meant for recreation and amenity purposes being part of the Benazir Shaheed Park. It is stated by her that these plots were to be used by the visitors of Benazir Shaheed Park for their food/drink/refreshment and souvenir shops and were not meant for raising of commercial buildings on them.

Let notice be issued to the Director General, KDA, who will file his report regarding the plots in question. He shall give complete history of this plot (COM 3) along with all necessary documents, including maps. This exercise shall be done by the Director General, KDA within a period of four weeks. The Director General, KDA shall himself appear before the Court on the next date of hearing.

#### **SHAHRAH-E-QUAIDEEN**

The Commissioner, Karachi states that working on Shahrah-e-Quaideen is going on. He states that planting of trees and green belt is being undertaken by him and the same will be achieved within one month's time. He states that with regard to

showrooms and shops, he is examining the matter and will take necessary steps for removing them if they are not found to be legally permissible.

Let a report in this respect be filed by the Commissioner, Karachi in four weeks.

Adjourned for tomorrow i.e. 11.08.2020.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

Karachi  
10.08.2020  
Approved for Reporting.  
Rabbani