

Mr. Obaid ur Rehman Khan, ASC
Mr. Naveed Ahmed Khan,
Joint Secretary, PECHS
Asma Batool, A.C. Ferozabad
Kelash Kumar, in person.
Mr. Sajeel Shehryar Swati, ASC
Dr. Raana Khan, AOR
Mr. Mazhar Ali B. Chohan, AOR/ASC
Mr. Kashif Sarwar Paracha, Addl. AGP
Mr. Khaliq Ahmed, DAG
Azra Mugeem, Legal Advisor
Afzal Zaidi, M/C
Barrister M. Omer Riaz, ASC
via video-link Lahore

Date of Hearing : 28.12.2021

ORDER

GULZAR AHMED, CJ.-

Gutter Baghicha
(Report No.128-K and 135-K of 2021)

The Chairman, K.M.C. Officers Housing Society, requests that the matter may be fixed at Islamabad as he is not fully prepared with the case. Adjourned to **11.01.2022**, at 1:00 p.m., at Islamabad.

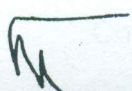
C.M.A. Nos.826-K of 2020, 773-K of 2021, Report No.138-K and 142-K of 2021, C.M.A. Nos.1251-K of 2021, Report No.150-K of 2021, C.M.A. Nos.1258-K, 1261-K and 1264-K of 2021

2. Mr. Rashid A. Rizvi, Senior ASC, requests for adjournment as he has not received some reports filed by the respective parties in the case and that he shall obtain the same from the office and prepare himself to argue the matter.

3. Adjourned to **04.01.2022**, to be taken up at Islamabad, at 1:00 p.m. The parties, who are unable to appear at Islamabad, may appear from Branch Registry Karachi through video-link.

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Judicial Assistant
Supreme Court of Pakistan
Karachi



Hill Park

(Cr.O.P. Nos.13-K & 14-K of 2021)

4. Mr. Anwar Mansoor Khan, Senior ASC for the petitioners contends that the petitioners' houses on the Hill Park land were demolished pursuant to the order of this Court dated 10.08.2020 and it was also noted in the order that the owners of the houses may seek whole or part of the compensation from PECHS in accordance with law. Learned counsel states that the petitioners have approached the PECHS for granting of compensation but the PECHS has denied their liability. If that being so, the petitioners may file a suit for recovery of compensation and if such suit is filed by the petitioners, it is excepted that the same will be decided, preferably within a period of one year. These criminal original petitions stand disposed of.

Kidney Hill Park

(C.M.A. No.714-K of 2020)

5. The applicant claims that there is a provision for Al-Fatah mosque on the land of Kidney Hill Park and in this respect the applicant has also referred to a license dated 25.04.1983 and the same apparently is signed by some KMC official, filed at page No.94 of the C.M.A. Learned counsel for the applicant states that this mosque is not built in the Kidney Hill Park rather on a separate plot of land. The Commissioner Karachi so also the Assistant Commissioner Ferozabad (East) state that a *Kacha Mosque*, in fact, was raised on the land of the Kidney Hill Park and such was removed pursuant to the order of this Court dated 08.04.2021.

6. The Commissioner Karachi so also the Assistant Commissioner state that there is no obstruction by anyone on Kidney Hill Park to make a prayer but construction of a mosque is not provided in the layout plan of the Kidney Hill Park and as per the order of this Court all other structures have been removed and the *Kacha* structure of the mosque was also removed. Learned counsel for the applicant states

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that there is one Bismillah Mosque in the Kidney Hill Park. The Assistant Commissioner also admits that such a mosque does exist in the Kidney Hill Park. The whole of the layout plan of Kidney Hill Park does not contain any provision for building of a mosque in the park but any person, who wants to make a prayer, is allowed to pray in whole of the park and there is no obstruction or impediment in the same. Once a plan did not make provision for construction of a mosque in the park, in our view, allowing such construction to be made is totally against the rule, law and the approved plan of the Kidney Hill Park. Such is also not permissible under Muslim jurisprudence for any mosque to be established and such has to be done by procuring the land and consideration for the said land has to be paid. Apparently, the KMC which is looking after the Kidney Hill Park itself had no authority in law to make allotment or to give license for construction of the mosque in the Kidney Hill Park and apparently the license issued by the KMC dated 25.4.1983 is, *ex facie*, illegal and does not create any right of any person in the land of the Kidney Hill Park. The license only gave a possessory right and such right also did not culminate into the ownership or giving any title to the licensee under a license and such is liable to be revoked for no *Pakka* construction at all in the Kidney Hill Park nor can it be allowed, while the prayer can be made in whole of the park. Consequently, while declaring the license dated 25.4.1983 to be illegal, same is also cancelled and the land mentioned in the license is restored

to the park.

7.

As regards, Bismillah mosque, same is the case with it and if any document in its favour has been executed by any person or authority, same is also illegal and cannot be sustained. The said Bismillah mosque is also to be removed and Commissioner Karachi is

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report before this Court. There was stated to be only one grave in Kidney Hill Park and now it is stated that there are some number of graves. Whether these graves were existing and who are buried in those graves, nothing is known nor anything is on the record regarding them. The Commissioner Karachi shall ensure that the land of the park is retrieved as a whole and if there is a genuine grave, the same should be protected but no one should be allowed to stay in/around the grave and no sort of construction should be allowed. The Commissioner Karachi shall also explore a possibility of shifting of the graves from Kidney Hill Park to the properly declared graveyard and take appropriate measures in this regard in accordance with law. The application is accordingly disposed of.

It is pointed out by the Assistant Commissioner that adjacent to the Kidney Hill Park, there are two plots bearing Nos.86 & 86-A on which houses have been constructed. In both these plots, gates have been opened towards Kidney Hill Park which are not permissible by law and because of the creation of these gates, the Kidney Hill Park is used as a passage for these houses and the gate of the park remains open 24 hours and anti social elements enter into the park land and do mischief. The Assistant Commissioner has requested that the gates of these two plots of land opening towards the Kidney Hill Park may be removed and permanent wall should be raised in order that no entrance from the plots is made in the Kidney Hill Park. We note that these houses and all other houses providing gates on the park land have no right to provide such gates or to treat the park as their backyard. They even do not have easementary right in the park land. Consequently, the Commissioner Karachi shall ensure that no gates of any house existing adjacent to the Kidney Hill land shall be allowed to open in the Kidney Hill Park and if there are any such gates including gates in plot Nos.86 & 86-A, the same

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shall be removed and in their place, proper wall should be erected. The Administrator K.M.C. shall ensure that proper gates are installed at all entry points of the Kidney Hill Park with security staff.

C.M.A. No.1123-K of 2021

8. This application be fixed along with CMA No.4821/2018 in S.M.C. No.1 of 2014 pending at the Principal Seat, at Islamabad regarding minorities and their religious places.

Report No.139-K of 2021 and C.M.A. No.1142-K of 2021.

9. There is a plot bearing No.AP-30 on **Main Tariq Road** stated to be 1095 square yards in the layout plan of PECHS. This plot has been shown as a park. It seems that the park land has been encroached upon and a mosque by the name of Madina Masjid has been constructed and whole of the park has been occupied by the Madina Masjid except a corner showing perhaps a sub-station of K-electric. The Administrator D.M.C. (East) is present and acknowledges that on the park land a big mosque has been constructed and that he will ensure that the land is restored to the park and all illegal construction raised on it is removed. A person claiming to be a committee member of Madina Masjid has appeared who has not given any assistance to the Court nor could justify existence of the *Masjid* on the park land. The Administrator shall with due diligence ensure that the park is restored. The report in this regard shall be submitted by the Administrator D.M.C. (East) in Court within one week.

Sd/-Gulzar Ahmed, CJ
Sd/-Qazi Muhammad Amin Ahmed, J

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Judicial Assistant
Supreme Court of Pakistan
Karachi

Bench-I
Karachi

28.12.2021