

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Faisal Arab
Mr. Justice Ijaz ul Ahsan

Constitution Petition No.9/2010, C.M.A.No.6206/2013, C.M.A.No.1552-K/2018 in Const.P.No.9, C.M.A.No.1600-K/2018 in Const.P.No.9, C.M.A.No.22-K/2019 in Const.P.No.9, C.M.A.No.23-K/2019 in Const.P.No.9, C.M.A.No.59-K/2019 in Const.P.No.9, C.M.A.No.101-K/2019 in Const.P.No.9, C.M.A.No.311-K/2019 in Const.P.No.9, C.M.A.No.349-K/2019 in C.P.No.815-K/2016, C.M.A.No.394-K/2019 in Const.P.No.9, C.M.A.No.423-K/2019 in Const.P.No.9, C.M.A.No.425-K/2019 in Const.P.No.9, C.M.A.No.459-K/2019 in Const.P.No.9, C.M.A.No.460-K/2019 in Const.P.No.9, C.M.A.No.521-K/2019 in Const.P.No.9, C.M.A.No.527-K/2019 in Const.P.No.9, C.M.A.No.556-K/2019 in Const.P.No.9, C.M.A.No.606-K/2019 in Const.P.No.9, C.M.A.No.617-K/2019 in Const.P.No.9, C.M.A.No.631-K/2019 in Const.P.No.9, C.M.A.No.796-K/2019 in Const.P.No.9, C.M.A.No.830-K/2019 in Const.P.No.9, C.M.A.No.831-K/2019 in Const.P.No.9, C.M.A.No.875-K/2019 in Const.P.No.9, C.M.A.No.889-K/2019 in Const.P.No.9, C.M.A.No.896-K/2019 in Const.P.No.9, C.M.Appel.No.116/2019 in C.M.A.Nil/2019 in Const.P.No.9, C.M.A.No.933-K/2019 in Const.P.No.9, C.M.A.No.964-K/2019 in Const.P.No.9, C.M.A.No.23-K/2020 in Const.P.No.9, C.M.A.No.74-K/2020 in Const.P.No.9, C.M.A.No.78-K/2020 in Const.P.No.9, C.M.A.No.82-K/2020 in Const.P.No.9, C.M.A.No.83-K/2020 in Const.P.No.9, C.M.A.No.162-K/2020 in Const.P.No.9, C.M.A.No.163-K/2020 in Const.P.No.9, C.M.A.No.165-K/2020 in Const.P.No.9, C.M.A.No.167-K/2020 in Const.P.No.9, C.M.A.No.177-K/2020 in Const.P.No.9, C.M.A.No.179-K/2020 in Const.P.No.9, C.M.A.No.193-K/2020 in Const.P.No.9, C.M.A.No.202-K/2020 in Const.P.No.9, C.M.A.No.281-K/2020 in Const.P.No.9, C.M.A.No.282-K/2020 in Const.P.No.9, C.M.A.No.300-K of 2020 in Const.P.No.9, C.M.A.No.318-K/2020, C.M.A.No.336-K/2020, C.M.A.No.346-K/2020, C.M.A.No.367-K/2020, C.M.A.No.391-K/2020 in Const.P.No.9, C.M.A.No.414-K/2020 in Const.P.No.9, C.M.A.No.442-K/2020 in Const.P.No.9, CrI.O.P.No.1-K/2020 in Const.P.No.9, CrI.Org.P.No.2-K/2020 in Const.P.No.9, CrI.Org.P.No.4-K/2020 in C.M.A.No.149-K/2020 in Const.P.No.9, CrI.Org.P.No.5-K/2020 in Const.P.No.9, C.R.P.No.12-K/2020 in Const.P.No.9, C.M.A.No.334-K/2020 in C.R.P.No.Nil-K/2020 in Const.P.No.9, C.P.No.422-K/2020, CrI.O.P.No.7-K/2017 in CrI.O.P.No.11-K/2016, CrI.O.P.No.19-K/2017 in CrI.O.P.No.7-K/2017, CrI.M.A.No.121-K/2017 in CrI.O.P.No.7-K/2017, CrI.M.A.No.124-K/2017 in CrI.O.P.No.7-K/2017, CrI.M.A.No.132-K/2017 in CrI.O.P.No.7-K/2017, CrI.M.A.No.111-K/2018 in CrI.M.A.No.132-K/2017 in CrI.O.P.No.7-K/2017, CrI.M.A.No.243-K/2018 in CrI.M.A.No.8-K/2018 in CrI.O.P.No.7, CrI.M.A.No.8-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.19-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.20-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.25-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.32-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.38-K/2018 in CrI.O.P.No.7-K, CrI.M.A.No.44-

K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.52-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.59-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.71-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.72-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.95-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.199-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.214-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.229-K/2018 in Crl.O.P.No.7-K, Crl.M.A.No.1-K/2019 in Crl.O.P.No.7-K, Crl.M.A.No.2-K/2019 in Crl.O.P.No.7-K, Crl.M.A.No.34-K/2020 in Crl.Org.P.No.7-K, Const.P.No.47/2011, Crl.Org.P.No.1/2015 in Const.P.No.47/2011, Crl.Org.P.No.199/2016 in Const.P.No.47, H.R.C.No.22978-S/2014, HRMA No.87/2014, H.R.C.No.13058-S/2015, CMA No.512-K/2020, CMA No.517-K/2020 in C.R.P.No.7-K/2020, CMA Nos.522-K & 523-K/2020, H.R.C.No.20883/2018, CMA No.676-K/2018, CMA No.1547-K/2018

Niamatullah Khan Advocate etc.

...Petitioner(s)

Federation of Pakistan etc.

Versus

...Respondent(s)

IN ATTENDANCE

- : Mr. Khalid Javed Khan, Attorney General for Pakistan
- Mr. Salman Talibuddin, A.G Sindh
- Mr. Kashif Sarwar Paracha, DAG
- Mr. Shahid Jameel, Principal Law Officer, SBCA
- Mr. Umar Masoom Wazir, CEO, Korangi Creek
- Mr. Yawar Farooqui, ASC
- Syed Imtiaz Hussain, MIA, KPT
- Mr. Salahuddin Ahmed, ASC
- Mr. K.A. Wahab, AOR
- Dr. Raana Khan, AOR
- Syed Jameel Ahmed, ASC
- Mr. M. Umar Riaz, ASC
- Mr. Muhammad Aqil, ASC
- Mr. Sarfaraz Metlo, ASC
- Mr. Muhammad Ashraf Samoo, ASC
- Mr. Nazar Hussain Dhoon, ASC
- Syed Ashiq Raza, ASC
- Mr. Budur Alam, ASC
- Mr. Ifikhar Shadwani, Commissioner of Karachi.



Dr. Saif-ur-Rehman, Municipal
Commissioner, KMC

Khawaja Naveed Ahmed, ASC

Mr. Saeed Ahmed Qureshi Focal
Person Govt. of Sindh

Mr. Masood Alam, Director

Mrs. Azra Muqem, Law Officer

Mr. Munir A. Malik, Sr.ASC

Mr. Ghulam Rasool Mangi, AOR

Mr. Mazhar Hassan, AIG Legal

Syed Ali Zafar, ASC (via video link from
Lahore)

Admiral Javed Akhtar, Chairman, KPT

Agha Zafar Ahmed, ASC

Mr. Abdul Qadir Khan, ASC

Mr. Abdul Rehman, ASC

Mr. Arshad M. Tayebali, ASC

Mr. Mushtaq Memon, ASC

Mr. Anas Makhdoom, ASC

Mr. Farooq H. Naik, Sr.ASC

Date of Hearing : 12.08.2020.

ORDER

Const.P.No.9 of 2010, etc: We are informed that National Disaster Management Authority ("NDMA") has taken up the work of cleaning three (03) major nullahs in Karachi City with which the Provincial Government is quite happy. It has been pointed out to us that there are more 38 big and 540 small nullahs. The learned Advocate General, Sindh states that if the NDMA undertakes the cleaning of these nullahs also, the Provincial Government will have no objection to the same. In the circumstances, we direct the NDMA to take

over the work of cleaning of *nullahs* in Karachi City and ensure that such cleaning work of *nullahs* is completed and all encroachments in and around these *nullahs* are removed. The Sindh Government shall provide all necessary assistance and support to the NDMA for rehabilitation of the people dislocated on account of removal of the said encroachments. In rehabilitating the people, the Sindh Government shall ensure provision of all necessary facilities which is required for rehabilitation of a civilized society. The NDMA shall put up its report before the Court on undertaking of this exercise and ensure that such cleaning work of *nullahs* is done at an earliest possible time and preferably within a period of three months. In addition to removing encroachments and cleaning the *Nullahs*, NDMA is also authorized to undertake all other related and ancillary activities including but not limited to disposal and transportation of silt, slush, etc removed from such *Nullahs*.

2. A specific mention has been made regarding encroachment of Haji Leemo Goth *nullah*. The Sindh Government through the Advocate General, Sindh has given an undertaking assuring removal of encroachments from the *nullahs* with proper rehabilitation of the people.

3. CRP No.12-K of 2020. We have heard the learned counsel for the review petitioner. No ground for

review has been made out. The review petition is therefore dismissed.


4. CMA's No.442-K, 282-K, 163-K & 346-K of 2020. Mr. Munir A. Malik, learned Sr.ASC refers to paragraph 49 of our order dated 07.02.2020 regarding Karachi Port Trust ("**KPT**") land. He contends that actually KPT allotted the land to KPT Employees Society and the Society paid consideration to the KPT after collecting the same from its members, who are employees of the KPT. He further contends that the employees to whom the plots were allotted have sold and transferred the same to third parties and the ultimate assignee on the date of the order is the person to whom the compensation is to be paid. Apparently, the argument seems to be well founded but in any case we leave such matter to be decided by the proper Courts where the ultimate assignee may put up his claim.

5. In the meantime, the KPT shall not pay any amount to any of its officers or servants until the issue between the officers and servants is decided with the ultimate buyers of the plots regarding payment of compensation. Disposed of accordingly.

6. Const.P.No.47 of 2011, etc. These constitutional petitions are filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973. We have already passed an order dated 07.02.2020

regarding KPT land. The office is directed to place copies of that order in the files of these constitutional petitions. Let all these petitions be separated and fixed for hearing before the Court at principal seat Islamabad.

7. CMA No.391-K of 2020. Abu Turab has filed this application in which it is alleged that after this Court passed orders dated 09.05.2019 and 06.08.2019 fresh construction in the Kidney Hill Park ("*KHP*") has started and further encroachment has taken place. Photographs of raising of systematic construction with steel and concrete are also attached with the application. This position has not been disputed by the Commissioner KMC present in Court. The Commissioner admits that such construction activity had started but states that he has taken steps to stop the same. We may however observe that all sorts of construction in KHP by any person whosoever is declared to be altogether illegal, void *ab initio* and if any such construction is found the Commissioner ^{in Karachi} shall take immediate steps to remove the same and restore it to its original position.

8. A mosque which statedly already exists shall  be measured and demarcated by the Commissioner Karachi and a report in this regard accompanied by necessary photographs will be filed to the Court latest by tomorrow i.e. 13.08.2020.

9. CMA No.165-K of 2020. This is an application moved on behalf of Karachi Port Trust Officers Cooperative Housing Society Limited wherein it has been prayed that the applicant may be impleaded as a party/intervener in Constitution Petition No.9 of 2010 and orders dated 06&07.02.2020 passed by this Court may be recalled and it be declared that sub leases granted to the applicant by KPT Board of Trustees are valid and be upheld.

10. Learned ASC for the applicant submits that 99 years lease granted to the applicant Society in respect of 130 acres of land was approved by the Federal Government. Further, over a period of time KPT leased hundreds of acres of land by way of 99 years lease to different entities which had no nexus or connection with the object and purpose of KPT and such lands have been converted and used for residential, industrial and commercial purposes by the entities in whose favour such leases were granted. He maintains that the applicant and its members have close nexus with the Port functions and activities and it is only just and proper that the lease in favour of the applicant Society be declared valid and all transfers made on the basis of such leases be legitimized and upheld. He further maintains that the impression that by virtue of the land in question being leased to the applicant to be utilized

towards setting up of a Housing Society would destroy the mangroves and natural ecology of the area is not correct in view of the fact that on account of various steps taken for various reasons in the past, the ecology has already suffered damage which is beyond repair and cannot be undone.

11. We have heard the learned counsel for the applicant. It may be noted that when this matter was heard on 06&07.02.2020 detailed arguments were addressed on behalf of counsel for KPT, the learned Attorney General for Pakistan and a number of others. We had examined the matter from all angles including environmental and ecological and with reference to legality of the lease and the powers available to the Board of Trustees of KPT. After examining and analyzing various Sections of KPT Act and a threadbare and detailed analysis of various provisions of the KPT Act as well as other related laws, we came to the conclusion that no where in the Act the Board of Trustees of KPT were given power or authority to lease out, transfer or sell KPT property / land for residential purposes to its employees i.e. officers and servants. We further concluded that the Federal Government had by statutory instrument created and vested powers in the Board of Trustees to run the affairs of the management of Port. The Board of Trustees of the KPT was supposed to act as Trustees on behalf of


the Federal Government in respect of the management of the affairs of the Port. However, the power of managing the affairs of the Port did not confer power or authority on the Board of Trustees to arrogate to themselves or to any officer of KPT the power to dole out land on lease for residential purposes to its own employees.

12. We also notice that grounds raised in the instant application were also raised and argued in great detail on behalf of KPT including the ground that sanction of the Federal Government had been obtained for leasing, transferring or selling out KPT property for Housing Societies to its officers and servants. However, we did not find any substance in this argument for the reason that even the Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment in which future generations of the people of Pakistan have an overriding and inherent interest. As far as the argument that other lands have been leased out by KPT in the past, suffice it to say, the said transactions are not before us and in any event, one alleged illegality does not furnish justification to repeat yet another illegality and in any event two wrongs do not make one right.

13. After hearing all concerned and dealing with all possible grounds raised by KPT and others we came to the conclusion that the Board of Trustees were not authorized by law to create Housing Societies for its officers and servants and such transfer or sale of property/land of the Port to its own officers and servants was illegal and all actions of the Board of Trustees were contrary from the mandate of the KPT Act and were thus declared to be wholly illegal being void *ab initio*. As a consequence, we directed that all leases, transfers or sales of property/land of the Port to its officers and servants being illegal, such leases, transfers and sales were cancelled. We further directed that if any amount had been received by KPT from any of its officers, servants or workers in respect of leases, transfers or sales of land in question the Board of Trustees shall immediately refund such amounts to the officers, servants and workers and it shall also pay as compensation the difference between the value of the money received at that time and the value of money currently prevailing meaning thereby that in order to offset the depreciation of money by inflation, the KPT Board of Trustees was directed to pay mark up at the bank rates for the number of years it had held the money in question. It has also been pointed out to us that after allotment of plots of land to officers/employees in the

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Society they have sold leasehold rights to third parties, multiple transfers have taken place and that the last buyer who appears in the records of KPT should be entitled to receive the refund/compensation as above. We have already passed an order in this regard having found substance in the argument. However, for avoidance of doubt it is clarified that KPT would not be obliged to pay the differential between the value at which the land was allotted and current market value of the land. The allottees shall only be entitled to receive the amount initially received by KPT together with up-to-date mark up by initiating proceedings before the competent *fora*. Further, the differential in the market value may be recovered by the claimant/current owner of leasehold rights from the party from which it had purchased the plots in question through appropriate proceedings before the competent forum.

14. Having found that all grounds agitated in this application have already been exhaustively discussed and dealt with in our order dated 06&07.02.2020 and having  heard the learned counsel again in the interest of not condemning the applicant unheard, we find no basis, reason or justification to recall, revise or modify the orders in question.

15. For reasons recorded above, this application (CMA No.165-K of 2020) is found to be without merit. It is accordingly dismissed.

16. The matter is adjourned for tomorrow i.e.

13.08.2020.

Sd/ Gulzar Ahmed,
Sd/ Faisal Arshad,
Sd/ Ijaz ul Hassan, J

Karachi
12.08.2020
Approved for Reporting.
Rabbani

