

THE HIGH COURT OF SINDH, KARACHI

**Suit No. 1009 of 2014**

[Umair Shahab (*since deceased*) thr. his LRs Shahab Mazhar Bhalli & others  
versus Province of Sindh & others

Plaintiffs : Umair Shahab (*since deceased*)  
through his legal heirs Shahab Mazhar  
Bhali and others, through Khawaja  
Shams-ul-Islam, Advocate.

Defendants 1, 2, 4 & 5 : Province of Sindh & others, through  
Mr. K.A. Vaswani, Assistant Advocate  
General Sindh.

Defendant 3 : Karachi Metropolitan Corporation  
through Mr. M. Shaban Solangi,  
Advocate.

Alleged Contemnors 1 & 7 : Nemo.

Alleged Contemnor 2 : Through Mr. Obaid-ur-Rehman,  
Advocate.

Alleged Contemnors 4 & 5 : Through Mr. Muhammad Ahmed  
Pirzada, Advocate.

Alleged Contemnor 6 : Through Mr. Muhammad Shaban  
Solangi, Advocate.

Alleged Contemnors 3, 8-10: Through Mr. K.A. Vaswani, Assistant  
Advocate General Sindh.

Dates of hearing : 04-02-2020, 24-02-2020, 11-03-2020 &  
13-03-2020.

Date of decision : 25-06-2020.

**ORDER**

**Adnan Iqbal Chaudhry J.** - This order is to dispose of CMA No. 8198/2014 and CMA No. 2858/2015 pending in the captioned suit.

2. The suit was filed by Umair Shahab. Pending suit he passed away and his legal heirs are now Plaintiffs. Per the plaint, in the year 1973, the KMC had allotted to the Plaintiff's predecessor, namely Abdul Razzaq, four adjoining industrial plots in the Wool Washing Area, Cattle Colony, Landhi, Karachi, each plot measuring 4000 sq. yds., total 16,000 sq. yds. (hereinafter 'the suit land'); that Abdul Razzak was in continuous possession of the suit land; that in the year

2013, the Plaintiff purchased the suit land from Abdul Razzaq, and on 29-01-2013 the KMC executed registered lease deeds in favor of the Plaintiff, and since then, the Plaintiff was in possession of the suit land in a common boundary wall; that on 02-05-2014, certain unknown persons with fictitious documents accompanied by the police came to the suit land threatening to dispossess the Plaintiff, hence the suit praying *inter alia* for a permanent injunction against dispossession. The defendants in the suit are Province of Sindh, Board of Revenue, Karachi Municipal Corporation (KMC), SSP Malir and the SHO P.S. Sukhan.

3. The same land is also claimed by one Liaquat Ali who filed Suit No. 1181/2013 against the Province, the Board of Revenue and its officials, the KMC, and the police, praying *inter alia* for relief against dispossession from 4 acres in Naclass No.46, Deh Ghangiaro, Karachi. Per Liaquat Ali, the land subject matter of both suits is the same. He claims that the suit land had been leased on 02-06-1996 by the Revenue Department to Allah Dino and others for a period of 30 years for cattle farming; that by a transfer order and Ijazatnama dated 23-06-1996, the lease of the suit land was transferred to him by the Revenue Department and since then he was in possession; that in 2012, the KMC laid claim to the suit land, and on 29-08-2013, the KMC demolished part of the construction thereon in an unsuccessful attempt to take possession; hence Suit No. 1181/2013.

4. In the instant Suit No. 1009/2014, the Plaintiff (late Umair Shahab) prayed vide CMA No. 8198/2014 for a temporary injunction to restrain the Defendants from dispossessing him from the suit land. On 23-06-2014, an interim order was passed by this Court that "Till next date of hearing plaintiff, if in possession, shall not be dispossessed without due course of law". After some time, on 27-02-2015, the Plaintiff moved CMA No. 2858/2015 under Article 204 of the Constitution of Pakistan, read with Order XXXIX Rule 2(3) CPC, praying for contempt proceedings against Deputy Commissioners of Karachi West and Malir, the Mukhtiarkar Ibrahim Hyderi, certain officers of the KMC, certain police officers and against

Liaquat Ali (of Suit No. 1181/2013) on the ground that on 24-02-2015 Liaquat Ali with the connivance of the said officials had dispossessed the Plaintiff from the suit land in violation of the interim order dated 23-06-2014.

5. Since Suit No. 1181/2013 filed by Liaquat Ali had been tagged with the instant suit, I had asked Mr. Khawaja Shamsul Islam, learned counsel for the Plaintiffs, to argue pending applications in both suits together. However, learned counsel was of the view that the matter of contempt of court in the instant suit should be decided first. Therefore, at the hearing, learned counsel confined themselves to applications pending in this suit.

6. On the contempt application (CMA No. 2858/2015), learned counsel for the Plaintiffs seeks an order for taking possession of the suit land from Liaquat Ali and delivering it to the Plaintiffs. Though the contempt application does not make such a prayer specifically, nor has Liaquat Ali been made a defendant, learned counsel cited *Bakhtawar v. Amin* (1980 SCMR 89) and *Muhammad Sabir v. Rahim Bakhsh* (PLD 2002 SC 303) to submit that while seized of a contempt application, this Court is empowered to pass orders for restoring *status quo ante*. To seek restoration of possession, learned counsel relied on documents whereby the suit land was allotted by the KMC to the Plaintiff's predecessor in 1973, and on the registered leases dated 29-01-2013 executed by the KMC in the Plaintiff's favor. He submitted that Liaquat Ali was a land grabber who was relying on a fabricated cattle farming lease of 30 years from the Board of Revenue when the suit land clearly vested in the KMC; and that in Suit No. 1181/2013, Liaquat Ali had admitted that the Plaintiff (Umair Shahab) was in possession of the suit land as on 17-06-2014.

7. Mr. Obaid-ur-Rehman, learned counsel for Liaquat Ali (alleged contemnor) submitted that Liaquat Ali was in possession of the suit land since 23-06-1996 when the 30-year lease for cattle farming was transferred to him by the Revenue Department; that the written statement of KMC in Suit No. 1181/2013 acknowledges that physical

possession of the suit land was never delivered by the KMC to Umair Shahab or his predecessor; and that the interim order passed in Suit No. 1181/2013 to protect Liaquat Ali's possession was prior in time. Learned counsel pointed to inspections carried out by the Nazir in Suit No. 1181/2013 to submit that Liaquat Ali was in prior possession of the suit land, and that the Plaintiff (Umair Shahab) took possession of the suit land by dispossessing Liaquat Ali just before filing the instant suit. He submitted that the interim order dated 23-06-2014 passed in the instant suit was conditional 'if the Plaintiff was in possession', and that such condition did not protect possession acquired by the Plaintiff by unlawful means. He cited *Rahimuddin Dewan v. Cherag Ali* (PLD 1969 Dacca 459) to submit that an injunction obtained by suppression of facts cannot be used to urge contempt of Court. He relied on *Stillmans Company (Pvt.) Ltd. v. S.M. Anees* (2019 YLR 815) and *Sharfuddin v. The Zonal Municipal Committee* (1994 MLD 1062) to submit that an interim order obtained by suppression of facts disentitles the applicant to equitable relief. However, Mr. Obaid-ur-Rehman could not explain by what means Liaquat Ali came back into possession of the suit land.

8. Mr. Muhammad Ahmed Pirzada, learned counsel for the alleged contemnors No. 4 and 5 (Deputy Commissioner West and Mukhtiarkar Ibrahim Hyderi), and the learned Assistant Advocate General Sindh representing the other officials arrayed as alleged contemnors, submitted that they were innocent of the alleged contempt, and that the record in fact reflects that the Plaintiff was never given possession of the suit land by the KMC.

9. Heard the learned counsel and perused the record.

10. Per the written statement of the KMC in Suit No.1181 of 2013, the suit land is part of an area of 265 acres granted to the KMC by the Collector, Karachi in 1960-1961 from Naiclass No. 46 and 76 in Deh Ghangiaro for the purposes of shifting Wool Washing Tanneries to said area from the city; that thereafter the KMC proceeded to allot plots in the said Scheme although the land of 265 acres was not

mutated to KMC/CDGK until 2011 when it paid the remaining price of the land to the Land Utilization Department, Government of Sindh. The said written statement of the KMC categorically states that *“The physical possession to lessees could not be handed over due to illegal act of issuing so called 30 year leases and Ijazatnamas from time to time in past from Revenue Department, Government of Sindh.”* The Possession Orders dated 23-4-1974 issued by the KMC to Abdul Razzak, the Plaintiff’s predecessor, also do not bear acknowledgment of receipt of possession. Therefore, there is force in the contention of the alleged contemnors that the KMC had never delivered physical possession of the suit land to the Plaintiff’s predecessor.

11. Learned counsel for the Plaintiffs was queried whether he could demonstrate the Plaintiff’s physical possession of the suit land or that of his predecessor prior to Suit No. 1181/2013, however, he conceded that he could not, but he submitted that the lease deeds dated 29-01-2013 executed by the KMC in the Plaintiff’s favor are sufficient to demonstrate his ‘legal possession’. But that argument could have been considered had the instant suit been one for possession. Here, possession, rather restoration of possession is being sought under Order XXXIX Rule 2(3) CPC and under the inherent jurisdiction.

12. The chronology of events emerging from the record is as follows.

(i) Liaquat Ali’s Suit No. 1181/2013 was prior in time, filed on 20-09-2013; and on 23-09-2013, the Court ordered that *“In the meantime, defendants are restrained to take any coercive action against the Plaintiff without due process of law and they are directed to act strictly in accordance with law in performance of their duties.”*

(ii) The Nazir’s inspection report dated 07-10-2013 in Suit No. 1181/2013 stated that an employee of Liaquat Ali was in possession of the suit land, who informed that the demolition visible on the suit land was done by the KMC when it attempted to dispossess him. Per

the Nazir's report, the location of the land had been verified by the Assistant Mukhtiarkar.

(iii) By order dated 09-10-2013 in Suit No. 1181/2013, Liaquat Ali was permitted to reconstruct the boundary wall of the suit land under the Nazir's supervision, and the Nazir was asked to depute security guards threat. Per the Nazir's report dated 23-10-2013, he deputed security guards of Black Star Security at the suit land and filed photographs to show reconstruction of the boundary wall under his supervision.

(iv) Subsequently, Liaquat Ali moved miscellaneous applications in Suit No. 1181/2013 alleging that on 17-06-2014, the SHO P.S. Sukhan had forced out the Nazir's security guards from the suit land and allowed Umair Shahab and his accomplices to take possession thereof. The incident was reported by Liaquat Ali to the Nazir on 18-06-2014. The company whose security guards had been deputed by the Nazir, namely Black Star Security, also reported to the Nazir vide letter dated 18-06-2014 that on 17-06-2014 their security guards had been forced out of the suit land by persons aided by the police.

(v) On 21-06-2014, Umair Shahab filed the instant suit claiming that he was in possession of the suit land ever since he had purchased it from his predecessor on 29-01-2013. On 23-06-2014, an interim order was passed in the instant suit that "Till next date of hearing plaintiff, if in possession, shall not be dispossessed without due course of law".

(vi) In Suit No. 1181/2013, when the Nazir came to know that the security guards deployed by him at the suit land had been ousted, he issued a notice dated 24-06-2014 to the concerned SHO to get the suit land vacated and to deliver its possession to the Nazir, and that is when the Nazir was informed of the stay order dated 23-06-2014 passed in the instant suit.

(vii) On 14-07-2014, when the Court seized of Suit No. 1181/2013 was informed of the above events, it restrained construction on the suit land; directed the parties to maintain status quo; ordered the

Nazir to inspect the suit land again; and tagged Suit No. 1181/2013 with the instant suit. Per the Nazir's inspection report dated 24-07-2014, the suit land was in the occupation of Umair Shahab's employee; and that the security guards of Umair Shahab thereat stated that they had been deployed on 15-07-2014.

(viii) Apparently, some-time around 24-02-2015 Liaquat Ali took back possession of the suit land from Umair Shahab using his own devices; hence the subject contempt application (CMA No. 2858/2015) was moved by Umair Shahab in the instant suit on 27-02-2015. The Nazir's inspection dated 02-03-2015 in the instant suit states that chowkidars of Liaquat Ali were in possession of the suit land who stated that they had been appointed in the last 2/3 days.

13. The Nazir's inspection reports dated 07-10-2013 and 23-10-2013 in Suit No. 1181/2013 manifest that on the dates thereof, Liaquat Ali was in possession of the suit land along with security guards deployed by the Nazir pursuant to orders of the Court. The fact that on 17-06-2014 the Nazir's security guards were ousted from the suit land by force is borne from the report dated 18-06-2014 made by the security guard company to the Nazir. Therefore, it is apparent that when Umair Shahab filed the instant suit on 21-06-2014, he had come into possession of the suit land by dispossessing Liaquat Ali and the Nazir's security guards by use of force. Learned counsel for the Plaintiffs attempted to argue that the land shown by Liaquat Ali to the Nazir in Suit No. 1181/2013 was different, but that argument is set at naught by the Nazir's inspection report dated 24-07-2014 also submitted in Suit No. 1181/2013 where Umair Shahab's supervisor claimed to be in possession of the same land.

14. Thus, in setting-up the case that he was in possession of the suit land ever since he purchased it from his predecessor on 29-01-2013, which is belied by the record discussed above, the Plaintiff did not come with clean hands, and the interim order dated 23-06-2014 that he shall not be dispossessed, was obtained by suppression of facts. The fact that subsequently Liaquat Ali also dispossessed the Plaintiff

to get back into possession, would not absolve the Plaintiff of his own wrong. The principle in the maxim *nullus commodum capere potest de injuria sua propria*, that no man shall take advantage of his own wrong, is well settled. That is also the ratio of the case of *Bakhtawar v. Amin* (1980 SCMR 89).

15. Having seen that the Plaintiff had approached this Court with unclean hands, I am not inclined to exercise equitable jurisdiction to restore possession of the suit land to the Plaintiffs. The contention that Liaquat Ali is also in unlawful possession of the suit land and that his 30-year lease was cancelled by the Revenue Department, will be examined under Suit No. 1181/2013 wherein an interim injunction was already operating prior to the instant suit to regulate possession of the same land. Resultantly, both CMA No. 8198/2014 (already infructuous) and CMA No. 2858/2015 are dismissed.

**JUDGE**

Karachi:  
Dated: 25-06-2020