

# THE HIGH COURT OF SINDH AT KARACHI

**Present:** Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Abdul Maalik Gaddi

**C.P. No.D-663 of 2007** Irshad Ahmed Siddiqui & 11 others  
vs. Karachi Municipal Corporation  
& 5 others.

**C.P. No.D-907 of 2007** Laiq Ahmed & 7 others vs. Karachi  
Municipal Corporation & 5 others.

**C.P. No.D-908 of 2007** Jamil Ahmed & 7 others vs.  
Karachi Municipal Corporation & 5  
others.

**C.P. No.D-982 of 2007** Imran Ahmed & 9 others vs.  
Karachi Municipal Corporation & 5  
others.

**For the Petitioner(s)** Mr. Muhammad Ali Jan, Advocate  
(in C.P. No.D-663 of 2007)

M/s. Akhtar Hussain & Muhammad  
Masood Ghani, Advocates  
(in C.P. No.D-907 & 908 of 2017)

M/s. Afsar Ali Abidi, Kunwar Majid  
Ali Khan & Awais Sarki, Advocates  
(in C.P. No.D-982 of 2007)

**For the Respondent(s)** M/s. Sameer Ghazanfar & Hassan  
Abidi, Advocates for KMC along  
with Mr. Muhammad Ismail Khan,  
Incharge Deputy Director (Urban  
Design-I), Master Plan Department,  
SBCA.

Mr. Kafeel Ahmed Abbasi, Deputy  
Attorney General.

Mr. Jawad Dero, Additional  
Advocate General, Sindh.

Mr. Saifuddin, Advocate for PECHS.

**Date of hearing** : 05.08.2019 & 07.03.2020

## **JUDGMENT**

**Abdul Maalik Gaddi, J.**—These connected constitutional petitions pertain to a common question of law and facts and shall be decided through the instant judgment.

2. The facts pertaining to C.P. No.D-663 of 2007 ("**Lead Petition**") are representative of the facts pertaining to the rest of the petitions, listed supra, and therefore, it may suffice to confine the factual discussion to the controversy cited in the Lead Petition.

3. The laconic but essential facts leading to these petitions are that the plot of land bearing No.Special-D (Survey Sheet No.35/P/1), Block-2, P.E.C.H.S., Karachi, admeasuring eight (8) acres (38720 square yards) was sub-divided into 106 plots and out of the said plots, the petitioners are owners and in physical possession of their respective plots (hereinafter to be referred as ("**Land in Question**") on the basis of registered sub-lease deeds. It is the case of the petitioners that initially, the Land in Question was reserved in the scheme of P.E.C.H.S. for an amusement park and to build/construct the said park, P.E.C.H.S. invited tenders through advertisement in newspapers. In response thereto, the tenders were received to P.E.C.H.S., who after meeting with its accounts and finance committee, handed over the Land in Question to M/s. Hussain D' Silva Enterprises Limited through registered Agreement of Lease dated 14.07.1969 for construction of the said park for ninety nine (99) years. In the light of said agreement, when construction of the amusement park started, serious objections raised not only the residents of the area over the amusement part, but also by Ministry of Works, Government of Pakistan, on which P.E.C.H.S. withdrew its proposal for amusement park and after cancellation of lease, when M/s. Hussain D' Silva Enterprises refused to handover the Land in Question to P.E.C.H.S., P.E.C.H.S. filed Civil Suit bearing No.347 of 1970 against M/s. Hussain D' Silva Enterprises Limited for declaration, permanent injunction and

possession of the Land in Question before the High Court of Sindh & Balochistan at Karachi, however, during the pendency of the said Suit, correspondence initiated in between P.E.C.H.S. and Ministry of Works, Government of Pakistan and other relevant authorities regarding conversion of the Land in Question from amusement park to housing scheme. The said correspondence successfully concluded and resultantly, Ministry of Works, Government of Pakistan and other relevant authorities, issued no objections to the P.E.C.H.S. and approved its proposal to utilize the Land in Question for housing scheme instead of amusement park. In this backdrop, a Compromise Deed dated 10.08.1973 was taken place between P.E.C.H.S. and M/s. Hussain D' Silva Enterprises Limited, whereby P.E.C.H.S. was agreed to lease out the Land in Question to M/s. Hussain D' Silva Enterprises Limited for housing scheme. The said compromise deed was submitted before the Court and in consequence thereof, the Suit filed by the P.E.C.H.S. was disposed of by way of compromise and Compromise Decree was drawn on 24.08.1973 accordingly. Thereafter, the Land in Question was leased out to M/s. Hussain D' Silva Enterprises Limited, who sold out the same to M/s. Karim Housing Enterprises Limited through registered Sale Deed dated 28.07.1979. Having got the ownership of the Land in Question, M/s. Karim Housing Enterprises Limited submitted proposal for a housing scheme and same was approved on 29.04.1982 by KDA. However, after sometime, the conversion of the Land in Question from amusement park to a housing scheme was cancelled by KDA vide Letter dated 07.12.1983 and other Government Department vide Letter No.SOV/7-39/81/Karachi dated 29.10.1983 under MLO-89. The said letters were challenged by M/s. Karim Housing Enterprises Limited to this Court through

C.P. No.D-978 of 1983 and same was allowed by a Divisional Bench of this Court vide Judgment dated 21.11.1989, whereby the action of KDA was declared illegal. Thereafter, Land in Question was allotted/transferred to the petitioners by the said M/s. Karim Housing Enterprises Limited, through registered Sub-Lease Deeds, which was surrounded by a boundary wall and main gate was also affixed for the purpose of safety and security, however, according to the petitioners, all of sudden, in the month of March, 2007, the staff of the respondents No.1 to 3 with the help of heavy machinery entered in the Land in Question and started removing boundary walls and main gate without any prior notice or justification, hence, the petitioners have filed the present petitions with the prayers to declare that the petitioners are the lawful owners of the Land in Question and the action of the respondents No.1 to 3 for dispossessing them to be declared as illegal, unlawful and without lawful authority or jurisdiction.

4. The counter affidavit on behalf of CDGK (now KMC) in C.P. No.D-663 of 2007 is on record, wherein they have prayed for dismissal of these constitutional petitions on the ground that the petitioners have no cause of action for filing these petitions against the CDGK, as the CDGK was taking action strictly in accordance with law and rules and constructing park for the welfare of public of Karachi and no one is entitled to occupy the park, which is the public property.

5. Comments have been filed by Ministry of Works and Town Planning, Islamabad in C.P. No.D-908 of 2007, in which they have stated that the said Ministry issued No Objection Certificate (NOC)

to M/s. Karim Housing Enterprises for construction of houses on the Land in Question.

6. P.E.C.H.S. have also filed comments in C.P. No.D-907 of 2007, in which they have supported the case and claim of petitioners by stating therein that all actions regarding the housing scheme were taken with the approval of concerned government authorities and were also endorsed by the decision of this Court in C.P. No.D-978 of 1983, as such, there was no justification by the CDGK (now the KMC) to interfere in the said scheme.

7. No comments on behalf of Province of Sindh are available on record.

8. Mr. Akhtar Hussain, learned Counsel for the petitioners in C.Ps. No.D-907 and 908 of 2007 contended that the petitioners by virtue of registered sub-lease deeds are lawful owners of the Land in Question and they are in possession of the same since 1994; that the Land in Question was initially reserved for amusement park, but after getting approval of the concerned authorities, same was converted into a housing scheme in the year 1973; that issue of conversion of Land in Question pertains to year 1973 and respondents by their long silence have given acquiescence and now after more than thirty (30) years, it is a closed chapter; that sub-lease deeds in favour of the petitioners are still intact and action of respondents of demolition of boundary wall of the Land in Question and threats for dispossessing them without any prior notice is not only illegal and without jurisdiction, but also against the principle of natural justice; that the petitioners are bonafide purchasers of the Land in Question from M/s. Karim Housing Enterprises through the

title documents in their favour against the value, as such, City District Government, Karachi Development Authority and other Government Departments have no authority to do with the Land in Question and in this respect, he has placed his much reliance on Section 41 of the Transfer of Property Act, 1882; according to him, the case and claim of the petitioners has also been supported by the P.E.C.H.S. authority, as such, the proposed action of the respondents is in violation of Articles 9 and 23 of the Constitution of Pakistan, 1973; that according to him, once approval was accorded for conversion of Land in Question from amusement park to a housing scheme, the same cannot be termed to be illegal or violative of any law and rules. He lastly prayed that directions be issued to the respondents not to interference with the peaceful possession of the petitioners and also directions may be issued to the concerned authorities to approve the building plan in accordance with law.

9. Mr. Muhammad Ali Jan and Mr. Afsar Ali Abidi, learned Counsel for the petitioners in C.Ps. D-No.663 and 982 of 2007, have adopted the arguments of Mr. Akhtar Hussain, Advocate appearing on behalf of petitioners in C.Ps. No.D-907 and 908 of 2007.

10. As against that, Mr. Sameer Ghazanfar, learned Counsel for the CDGK (now KMC) argued that the petitioners have no right or interest in the Land in Question; that the Land in Question was reserved for amusement park and same could not be converted for a housing scheme in any manner or circumstances whatsoever; that since P.E.C.H.S. had no right to transfer the amenity plot/Land in Question to M/s. Hussain D' Silva Enterprises Limited, therefore, any further transfer through sub-lease deeds could not confer any

rights to any third person; that Article 52A of the KDA Order, 1957 specifically prohibits the conversion of any amenity plot to residential or commercial purposes; that sub-lease deeds in favour of petitioners were executed by a person, who had no right to do so and in that sense, the claiming of right by the petitioners on the basis of said lease deeds is nothing, but misconceived; that the allotment of amenity plot for a purpose other than amenity plot would be sheer violation of the law and negation of the rights of all citizen and unfortunately, the precious amenity lands of Karachi have continuously been illegally converted for profitable business; that the conversion of Land in Question which was meant for amenity purposes is also a sheer violation of Rule 5-2.23 and 18-4.1 of Karachi Building and Town Planning Regulations, 2002; that P.E.C.H.S. and M/s. Hussain D' Silva Enterprises Limited under the garb of the legal proceedings (Civil Suit No.347 of 1970), fraudulently managed to obtain compromise decree without impleading KMC as party to the proceedings, which for all intent and purposes, was necessary party to the proceedings, but kept away purposely from such proceedings. However, in support of his arguments, he has relied upon the case laws reported as **(i)PLD 2006 SC 394 [Moulvi Iqbal Haider v. Capital Development Authority & others]**, **(ii) PLD 1994 SC 512 [Abdul Razak v. Karachi Building Control Authority & others]**, **(iii)1999 SCMR 2883 [Ardeshir Cowasjee & 10 others v. Karachi Building Control Authority& 4 others]**, and**(iv)2014 CLC 1158 [Mrs. Farah Hamayun Shehzad Baloch v. Federation of Pakistan through Secretary Ministry of Defence & 3 others]** and also placed on record the photocopy of master plan showing amusement

park at Jheel Park through a statement and prayed that these petitions are liable to be dismissed with costs.

11. Diary of this Court dated 31.03.2017 showing that Mr. Asim Mansoor, learned Deputy Attorney General, Pakistan, argued on behalf of federation that after permission from all the relevant quarters/authorities, the Land in Question was converted into a housing scheme and also in view of the judgment passed in C.P. No.D-978 of 1983, as such, according to him, there was no room for the respondents for taking objections, however, he supports the case of the petitioners.

12. As per record, no parawise comments is on record on behalf of Province of Sindh, as such, Mr. Jawad Dero, learned Additional Advocate General, Sindh submits that matter may be disposed of in accordance with law.

13. In rebuttal of the aforesaid statement, learned Counsel for the petitioners filed objections to the compliance report submitted by the master plan development, SBCA, in which it has been stated as under:-

- (i) *Submitted one Drawings.  
PC 2/68 dated 08.51973 prepared by Town Planner of K.D.A. for preparing layout plans for different KDA schemes and societies. (KDA Scheme-1, 1A, 7 KCHS Society PECHS and others) which they may follow or not.*
- (ii) *Submitted co-ordinated plan of societies in Drigh Road Areas which is undated unsigned may have been prepared for different societies, it shows entire Jheel Park as Amusement Park.*
- (iii) *Both the plans have no relevance to the dispute in petitions.*
- (iv) *Plan already submitted by PECHS also shows Amusement Park as well as National Park commonly known as Jheel Park and this has been supported by*



*other documents annexed with petition and relevant to dispute in petition.”*

14. Arguments heard and record perused.

15. At the very outset, we have noticed that there is no controversy regarding location of Land in Question, its measurements and its chain of transfer from P.E.C.H.S. to present petitioners. The only legal question which needs to be addressed here as to whether concerned authorities were competent in the given circumstances of the case to convert the Land in Question from amenity plot to a housing scheme.

16. In order to ascertain the actual facts in respect of allotment of subject amenity plot/Land in Question, we have examined the record in depth and upon examination thereof, it appears that admittedly, the Land in Question initially was reserved in the scheme of P.E.C.H.S. for an amusement park. It further appears from the record that after observing all the codal formalities, the Land in Question was handed over to M/s. Hussain D' Silva Enterprises Limited through registered Agreement of Lease dated 14.07.1969 for construction of park, however, people of the vicinity, as well as Ministry of Works, Government of Pakistan objected to the construction of the park, upon which the matter was considered by the Managing Committee of the Society in its meeting held on 22.04.1970, wherein they decided to withdraw the proposal of construction of amusement park. On the recommendation of P.E.C.H.S., the Karachi Development Authority (KDA) also withdrew its no objection for construction of park vide Letter No.C-24/69/2768 dated 13.07.1970. It further appears that despite withdrawal of construction of amusement park, M/s. Hussain D'

Silva Enterprises Limited did not hand over the possession of the Land in Question to P.E.C.H.S., on which, P.E.C.H.S. filed Civil Suit bearing No.347 of 1970 against the M/s. Hussain D' Silva Enterprises Limited before High Court of Sindh and Balochistan at Karachi, for declaration, possession and permanent injunction. It is a matter of record that during pendency of the said suit, correspondence initiated between P.E.C.H.S. and concerned authorities regarding conversion of Land in Question from amusement park to a housing scheme. In this regard, record shows that Ministry of Presidential Affairs vide Letter No.MPA/TA-5(4)72 dated 24.05.1972 agreed to the conversion of Land in Question from amusement park to a housing scheme and forwarded the said letter to the Ministry of Works, Government of Pakistan for taking necessary action. For the sake of convenience, the said letter is reproduced as under:-

*"No.MPA/TA-5(4)72*

*Ministry of Presidential Affairs,  
Government of Pakistan,  
Islamabad.*

*24 May, 1972*

*To,*

*The Secretary,  
Local Government Department,  
Government of Sindh.*

*Subject:- AMUSEMENT PARK IN KARACHI.*

*Sir,*

*I am directed to forward letter No.F/8-A, dated 12 May, 1972 (in original) with enclosures, on the subject mentioned above for disposal, and to state that this Ministry has agreed to the conversion of the Amusement Park Scheme in the PECHS to a housing scheme. The relevant papers have already been forwarded to the Ministry of Works, Government of Pakistan. You are request to kindly take necessary action and intimate this Ministry.*

*Yours obedient servant,*

*-Sd/-  
(Wahid U. Wein) CSS  
Section Officer-1"*

In continuation of the above letter, KDA vide Letter No.PECHS/C-24/69/4321 dated 10.10.1972, also issued no objection from town planning point of view for the utilization of the Land in Question for a housing scheme. It would be appropriate to reproduce the said letter, which reads as under:-

*“KARACHI DEVELOPMENT AUTHORITY*

*No.PECHS/C-24/69/4321.*

*Karachi 10<sup>th</sup> October, 1972*

*To: The Section Officer-1,  
Local Government Department,  
Government of Sind.*

*Subject: AMUSEMENT PARK IN KARACHI.*

*Reference your letter No.SO1 KDA-14-25/72 dated 18-9-72.*

*The position in this case has already been explained vide this office letter No.PECHS/C-24/69/3833 dated 5-9-1972.*

*In this particular case several meetings were held with the Minister of Presidential Affairs and Town Planning, Secretary of Ministry and the then Director General, Karachi Development Authority. In these meetings it was felt that legally it was not possible for the Society or the Government to withdraw the permission for the Amusement Park, particularly in view of the heavy investment made by the sponsors. Under the circumstances, a via media was suggested wherein the area could be utilized for housing purposes instead of amusement park. Orders to this effect were issued by the Ministry of Presidential Affairs and Town Planning vide their letter No.MPA/TA-5(4)72 dated 24 May, 1972.*

*Karachi Development Authority has, therefore, no objection from Town Planning point of view for the utilization of the area for housing purposes. In any case, detailed building plan will subsequently have to be got approved from KDA prior to execution.*

*-Sd/-  
(S.M. Hussain)  
Secretary.”*

Record transpires that having got the permission from the concerned authorities, P.E.C.H.S. agreed to lease out the Land in

Question to M/s. Hussain D' Silva Enterprises Limited through Compromise Deed dated 10.08.1973 and in view of the said compromise deed, the suit filed by P.E.C.H.S. against M/s. Hussain D' Silva Enterprises Limited was disposed of by way of compromise and Compromise Decree was drawn accordingly. Thereafter, P.E.C.H.S. leased out the Land in Question to M/s. Hussain D' Silva Enterprises Limited through registered Sub-Lease Deed dated 19.09.1973 for ninety (99) years for residential purposes.

17. In view of the above mentioned facts and circumstances, there remains no doubt that after getting approval from competent authorities, the Land in Question was converted into residential purposes and same was leased out to M/s. Hussain D' Silva Enterprises Limited.

18. During the course of arguments, learned Counsel for KDA did not deny the above-mentioned admitted factual position, but contended that though conversion of Land in Question was made after sanction from concerned authorities, but Section 52-A of the KDA Order, 1957 (President's Order No.5 of 1957) specifically prohibits the conversion of any amenity plot to residential or commercial purposes and in view of said prohibition, even concerned authorities had no right to do so and such act of authorities was unlawful. So far as, this contention is concerned, we have gone through the KDA Order, 1957 (hereinafter to be referred as "KDA Order"), which was promulgated on 13.12.1957, and needless to say that in original KDA Order, there was no prohibition on conversion of land/plot reserved for amenity purpose. However, in this regard, first amendment was made on 11.12.1974 through

the Sindh (Amending Law) Ordinance, 1974 by which Section 52-A was inserted in KDA Order, which is reproduced below:-

**“52-A.** (1) *The Authority shall, immediately after any housing scheme is sanctioned by, or altered with approval of, Government submit to the Commissioner the details including the survey numbers, area and location of each plot reserved for roads, hospitals, schools, colleges, libraries playgrounds, gardens, parks, community centres, mosques, grave yards or such other purpose and the Commissioner shall notify such details in the official gazette.*

(2) *The Authority or the Housing Society may at any time prior to utilization of any plot reserved for the purpose mentioned in sub-section (1), apply to the Commissioner for conversion of such plot to any other purpose.*

(3) *The Commissioner shall, on receipt of an application under sub-section (2), invite objections from the general public through a notice published in one English and vernacular leading local daily newspaper and the objections, if any, shall be submitted to the Commissioner within 30 days from the date of the publication of the notice.*

(4) *The Commissioner shall, after considering the objections received under sub-section (3) and hearing such persons as he may consider necessary forward his recommendations along with the application and other connected papers to Government for orders.”*

Having perused the above, it appears that though above amendment in Section 52-A of KDA Order did not impose ban on conversion of amenity plot/land, but provided a certain procedure for conversion of land/plot reserved for the purpose mentioned in sub-section (1) of 52-A of the KDA Order.

19. However, after the above amendment, in the year 1994, a complete ban was imposed on conversion of land/plot reserved for amenity purpose. The said prohibition was incorporated in KDA Order by means of Karachi Development Authority (Sindh Amendment) Act, 1994. For ready reference, the amending law is reproduced as under:-

**“2. Amendment of Article 52-A of KDA Order V of 1957.—**  
*In the Karachi Development Authority Order, 1957, in Article*

*52-A, for clauses (2), (3) and (4) and Explanation thereunder, the following shall be substituted:--*

*(2) No amenity plot reserved for the purpose mentioned in clause (1) shall be converted to or utilized for any other purpose.”*

20. The above provision under Section 52-A was introduced in the year 1994, whereas, Section 52-A itself was incorporated in KDA Order on 11.12.1974, while in the case in hand, the amenity plot/Land in Question was converted into housing scheme and leased out to M/s. Hussain D’ Silva Enterprises Limited in the year 1973, much prior to the above two amendments.

21. Now question arises here that as to whether amendments in Section 52 of KDA Order could be applied retrospectively.

22. It is no doubt in the domain of the legislature to promulgate legislation with retrospective effect. Yet there is strong presumption of prospective application attached to legislation, which can only be displaced if the text expressly states that statutes or provisions contained therein is intended to apply retrospectively or if necessary, implication to that effect is clearly spelt out from the words of the statutes. It is fairly well settled to rule of statutory interpretation that every statute including amendatory statute is prima facie prospective, unless it is given retrospective effect either expressly or by necessary implication. In other words, a statute/provision of statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the statute/provision of statute is to effect vested rights, past and closed transaction or facts or events that have already been occurred. In this regard, we are supported with the case law reported as **PLD 1963 SC 322 [Vaginal Silk Mill**

***Layallpur v. Income Tax Officer, A-Ward Layallpur & others], PLD 1970 SC 514 [Province of East Pakistan v. Sharafatullah & 87 others]and 1988 SCMR 715 [The Chief Land Commissioner Sindh & others v. Ghulam Haider Shah & others].***

23. Reverting to the case in hand, bare perusal of above mentioned two amendments in Section 52 of KDA Order clarify that both were operated from the date of their respective promulgation. If the legislator had any intention to take effect from a date prior to their promulgation, it would have said so explicitly.

24. In view of above, we can safely be held that both the amendment of Article 52 of KDA Order could not be applied in the case in hand, where conversion of amenity plot/Land in Question took place prior to the introduction of the said amendments. As far as the applicability of the provisions of Karachi Building and Town Planning Regulations, 2002 upon the case in hand is concerned, the same are also not helpful for the KMC/KDA as the said Regulations were promulgated much after the conversion of the Land in Question.

25. Having scrutinized the entire material available on record, we have come to the conclusion that when the Land in Question was converted from amusement park to a housing scheme, there was no prohibition under the law. Not only this, the Land in Question was converted into housing scheme after the approval of competent authorities, who were fully empowered to do so. Learned Counsel for KDA failed to bring on record anything which indicates that No Objection Certificates (NOCs) from concerned authorities were

obtained by playing fraud. Even otherwise, in absence of legal or valid material on record, legal presumption is that official acts have been regularly performed. In this connection, reference can be made to the case laws reported as **2001 SCMR 279 [Syed Ali Asghar & 3 others v. Creators (Builders) & 3 others]**, and **PLD 1994 SC 245 [Muhammad Ali & 25 others v. Hassan Muhammad & 6 others]**.

26. As far as, the contention of the learned Counsel for the KDA/KMC that P.E.C.H.S. and M/s. Hussain D' Silva Enterprises Limited had fraudulently obtained compromise decree in Civil Suit No.347 of 1970 without impleading KDA/KMC as party in the said proceedings is concerned, needless to say that during pendency of the said Suit in between P.E.C.H.S. and M/s. Hussain D' Silva Enterprises Limited, a correspondence was initiated between P.E.C.H.S. and other relevant authorities for conversion of Land in Question from amusement park to a housing scheme and during said correspondence, KDA itself issued No Objection vide its letter *No.PECHS/C-24/69/4321*, dated 10.10.1972 on town planning point of view, meaning thereby, KDA was well aware about the pendency of the Suit as well as conversion of the Land in Question. Not only this, when M/s. Karim Housing Enterprises filed C.P. No.D-978 of 1983 against KDA for its action on conversion of Land in Question, the KDA did not raise any objection regarding non-impleading it as party in the Suit. Be that as it may, almost more than forty eight (48) years have been passed, but till today, KDA has not filed any application under Section 12(2) of the Civil Procedure Code, 1908, in the said Suit challenging the decree passed in the



said Suit. In this scenario, the contentions of Law Officer of KDA/KMC are not only untenable, but also an afterthoughts.

27. On further scrutiny of the record, it reveals that M/s. Hussain D' Silva Enterprises Limited had sold out the Land in Question to M/s. Karim Housing Enterprises Limited through registered Sale Deed dated 28.07.1979 and in pursuance thereof, mutation was also effected. Record also reflects that after getting the ownership rights of the Land in Question, M/s. Karim Housing Enterprises Limited submitted proposal for construction of residential houses on the Land in Question before KDA, who approved the said proposal under Letter dated 29.04.1982. Not only this, Ministry of Works Division, Government of Pakistan vide Letter dated 27.12.1982, also issued No Objection Certificate (NOC) on the construction of residential houses upon the Land in Question. For ease, the said letter is reproduced as under:-

*"F.No.1(333)/69-DEM  
GOVERNMENT OF PAKISTAN  
WORKS DIVISION*

*ISLAMABAD THE 27<sup>TH</sup> DECEMBER, 1982.*

To,

*M/s. Karim Housing Enterprises,  
Second Floor,  
Karim Centre, Zaibunnisa Street,  
Karachi.*

*Sub: CONSTRUCTION OF RESIDENTIAL HOUSES ON PLOT  
NO.SPECIAL D-2, PECHS LTD.KARACHI.*

.....

*I am directed to refer to your letter No.107 dated 16.06.1982, on the above subject and to say that this Division have no objection to the construction of residential houses by you on plot No.Special D-2, PECH Society Karachi, subject to the following conditions:-*

- 1. All the terms and conditions, as laid down in KDA's letter No.PECHS/C-24/69/UD-123/1210 dated 29.04.1982 which contains their NOC for the purpose of constructions, are adhere to.*

2. *Payment of ground rent for the plot as due upto June, 1983, is cleared.*
3. *The liability of the transferer,/transferee under the lease deed shall continue until a written notice in the manner, as provided in clause 8 of the lease deed is served by him on the lessor and the society.*

-Sd/-  
S.A.R.Kazim  
Section Officer.”

After the above approval, abruptly on 29.10.1983, Government of Sindh, House Town Planning, Rural Department vide Letter No.SOV/7-39/81, dated 29.10.1983, objected on construction of Land in Question from amusement park to housing scheme and further directed to the KDA to take action against the conversion. In response, KDA vide Letter dated 07.12.1983, issued directions to M/s. Karim Housing Enterprises to submit proposal for construction of amusement park on Land in Question and further directed that in case of failure, the Land in Question will be handed over to KMC, who is responsible for parks in P.E.C.H.S. For the sake of convenience, it would be proper to reproduce the said letter which reads as under:-

*“KARACHI DEVELOPMENT AUTHORITY  
Shahrah-e-Kamal Ataturk  
Karachi-1.*

*No.PECHS/C-24/68/3930                      Dated the 7<sup>th</sup> December 1983*

- 1) *M/s. Karim Housing Enterprises,  
Karim Centre,  
Zaibunnisa Street, Saddar,  
Karachi.*
- 2) *M/s. Kwick Konstruction Company,  
52-7 & 7-A, Feroz Square,  
Bahadurabad,  
Karachi.*
- 3) *M/s. Misbah Najmi Associates,  
Rawal Masjid Annexe  
Hill Park, Block 7 & 8,  
P.E.C.H. Society,  
Karachi.*

*SUB: CONVERSION OF AMUSEMENT PARK PLOT NO.SPECIAL D-2, P.E.C.H.SOCIETY KARACHI INTO HOUSING ESTATE (M/S. KARIM HOUSING ENTERPRISES).*

*Reference to subject matter cited above, I am directed to intimate you that the plot in question will not be allowed for housing estate in any circumstances. You are hereby advised to submit the plans for the development of amusement park within one month. If you fail to do so, within time limit, the plot in question will be resumed by the competent authority under MLO-89 and handed over to K.M.C. which is responsible for park in P.E.C.H.Society. Any N.O.C. issued on the said project by any agency/authority is null and void.*

*-Sd/-  
(AQEEL AHMED SIDDIQUI)  
SECRETARY,  
KARACHI DEVELOPMENT AUTHORITY.”*

Record reflects that M/s. Karim Housing Enterprises had challenged both letters before this Court through C.P. No.D-978 of 1983, which was allowed vide Judgment dated 21.11.1989, and struck down both the letters by declaring the same having no legal effect and without lawful authority. It would be conducive to reproduce the operative paragraph of the said judgment, which reads as under:-

*“In the present case, it is an admitted position that plot in dispute was allotted to M/s. Hussain D’ Silva Enterprises Limited by PECHS on 29.10.1968 and a registered agreement of lease between M/s. Hussain D’ Silva Enterprises Limited and PECHS was executed on 14.07.1969. It is, therefore, quite clear that the allotment of the disputed site did not fall within the ambit of MLO-89. Since the allotment could not be cancelled under the provision of MLO-89, the order of respondent No.1 dated 07.12.1983, which in turn is based on the order of respondent No.3 dated 29.10.1983 is declared as an order without lawful authority and of no legal effect. The parties will bear their own costs.”*

It may be mentioned here that in the above judgment of this Court, the question of conversion of the Land in Question was not only raised, but also considered and decided in favour of M/s. Karim Housing Enterprises, which was neither challenged by KDA/KMC, nor any other concerned authorities before the Hon’ble Supreme

Court of Pakistan and, therefore, the same had attained finality. It would not be out of place to mention here that the only difference in the said petition and in the instant petitions is that in the former one, the petitioner was M/s. Karim Housing Enterprises, whereas, in the instant petitions, the petitioners, who have purchased the Land in Question from M/s. Karim Housing Enterprises by way of registered sub-lease deeds against the value of consideration amount and it is the matter of record that till today, neither KDA/KMC or any other authority has not challenged the said registered sub-lease deed at any forum, meaning thereby the same are still intact and on that basis, rights have been acquired by the petitioners in the Land in Question, which cannot be denied or stretched at the whim and wish of any department. Since the Sub-Lease Deeds in favour of petitioners are registered documents, as such, the same could only be cancelled by declaration of Court of competent jurisdiction and not unilaterally by the respondents/authorities by condemning the petitioners unheard. Reliance in this respect is placed in the case laws reported as **PLD 1998 Karachi 348 [Mrs. Zaibun Nisa through Attorney v. Karachi Development Authority and 5 others]** and **2003 CLC 1196 [M/s. Ahmed Clinic v. Government of Sindh & others]**.

28. In view of the above, it can safely be ascertained that all actions regarding the housing scheme were with the approval of the concerned authorities and were also endorsed by the decision of this Court referred in the above paragraphs. The aforesaid Petitions are disposed of with the directions to the respondents not to initiate any demolition action and further no coercive action shall be taken

against the petitioners. Pending application(s), if any, are also disposed of accordingly.

JUDGE

Karachi.  
Dated: 22.06.2020  
*Faizan A. Rathore/PA\**

JUDGE