

IN THE LAHORE HIGH COURT, LAHORE.

D# 37665
12/3/2022

Revision Petition No. 22118 / 2022

1. Gujranwala Development Authority through its Director Genral office situated at Trust Plaza GT road Gujranwala.
2. Director Town planning Gujranwala Development Authority office situated at Trust Plaza GT road Gujranwala.

...Petitioner

VERSUS

1. Judicial Employees Co-operatives Housing Society (registered) Umar Plaza, 1-Mozang Road, Lahore through its secretary.
2. The Province of Punjab through district collector/deputy commissioner, office district court, Gujranwala.
3. Water and Sanitatin agency (GDA) Trust Plaza, G.t.road, Gujranwala through its Managing Director.
4. Municipal Corporation Gujranwala, through Mayor Municipal corporation Gujranwala, G.T. road, Gujranwala.

REVISION PETITION AGAINST THE JUDGMENT AND DECREE DATED 22.12.2021 PASSED BY LEARNED ADDITIONAL DISTRICT JUDGE GUJRANWALA.

Respectfully Sheweth:-

1. That the brief facts leading to file the present revision petition are that the respondent No.2 filed a civil suit against the present petitioners on 28.02.2014. Copy of plaint is annexed herewith as Annexure "A".
2. That the petitioners appeared in the said case and filed the written statement. Copy of written statement is annexed herewith as Annexure "B".
3. That in the instant suit after submission of written statement by the present petitioner the following issues were framed by the learned trial court:
 - (1) Whether the plaintiff's society is developed under the requisite rules and regulations and allotments have been made by it in accordance with law? OPP
 - (2) Whether the publication in the daily Express dated 21-12-2013 is against law and facts and the same is liable to be declared as illegal, unlawful, unwarranted and published arbitrary? OPP
 - (3) If issues No. 1 & 2 are decided in affirmative, whether the plaintiff is entitled to decree for permanent injunction against defendants restraining them to implement the publication dated 21-12-2013 and to interfere into plaintiff's peaceful possession over the society, its construction or under construction premises, its management and members of residential colony and they are also liable to be restrained to issue any direction against the interest of the society? OPP.
 - (4) Whether the present suit is not maintainable in its present form? OPD.



The copy of the issues is annexed herewith as annexure C.

4. That both the parties to the suit led their evidences along-with exhibits and Hon'ble court decreed the suit vide judgment and decree dated 31-07-2021. The copy of the Judgment and decree dated 31-07-2021 is annexed herewith as annexure D.
5. That the petitioners filed an appeal against the said order which was entrusted to the court of respondent No.1 which met with the same fate and learned respondent No. 1 dismissed the same vide judgment and decree dated 22-12-2021.
The copy of the appeal and impugned judgment and decree is annexed herewith as annexure E and F respectively.
6. That both the learned courts below committed material irregularities, have exercised their jurisdictions not vested with them by law and acted in exercise of their jurisdiction illegally or with material irregularities while passing the impugned judgments & decrees dated 31-07-2021 passed by learned Civil Judge Gujranwala and judgment and decree dated 22.12.2021 passed by learned Additional District and Session Judge, Gujranwala, hence the same are not sustainable and liable to be set aside inter alia on the following amongst other grounds.

GROUND S

- (a) That both the impugned judgments & decrees have been passed against the law and facts on the file, hence the same are not sustainable and liable to be set-aside.

- (b) That both the courts below have passed the impugned judgments and decrees without perusing the record of the case and without considering the evidence adduced by the parties, hence both the judgments and decrees are not sustainable and liable to be set-aside.
- (c) That both the learned lower courts have ignored a very vital fact that one Mr. Abdul Salam has claimed that the Judicial colony located at bypass road along with upper Chenab canal Gujranwala, was established in the year 1985/86 and a lay out plan of the scheme was submitted vide diary No. 1564 dated 06-03-1985 in the office of ex-municipal corporation Gujranwala. Meanwhile, the society started the allotment of plots and development works in the colony. On the other hand an application for the approval of judicial colony was received in GDA on 01-04-2009 along-with an undertaking by Ch. Imtiaz Ahmad administrative officer of judicial society that "society has not submitted any application for approval of its residential scheme known as Judicial Colony Gujranwala in any other Government Department except the present application with GDA". The application for approval of subject housing scheme was received in GDA after the lapse of 24 years, when almost hundred percent development works and allotment of plots had been completed. It is pertinent to mention here that there is no any remedy to consider the application for its ex-post facto sanction.

R
Hase

Initially, GDA scrutinize the application under provisions of Punjab Private site development schemes (Regulations) Rules, 2005, but could not approved due to the following main objections.

1. The rules ibid are totally silent on the ex-post facto sanction of any housing scheme.
2. Old graveyard is located within the scheme area is not under the ownership of the society.

It is also pertinent to mention here that GDA repeatedly asked the respondent No 2 to fulfill the requirements vide so many letter but the respondents failed to do so.

- (d) That Municipal corporation handed over the society's file to GDA/petitioners without approval and when the request for approval of the society was made to GDA/petitioners, the same was refused on the ground that neither in the society any land was demarcated for graveyard nor as per law and rules any plots have been mortgaged with GDA/petitioners, hence the impugned judgments and decrees are not sustainable and liable to be set-aside.
- (e) That the both the learned lower courts have ignored the provisions of The Punjab Commission for regularization of irregular housing schemes ordinance, 2021, hence the impugned judgments and decrees are not sustainable and liable to be set-aside.


Lias

- (f) That both the Impugned judgments & decrees are based on surmises, conjectures and supposition, hence the same are not sustainable and liable to be set-aside.
- (g) That the Impugned Judgment & decree suffer from non-reading the material available on file.
- (h) That both the learned lower courts while ignoring the laws rules and regulations passed the impugned judgment and decree, hence both the impugned judgments and decrees are not sustainable and liable to be set-aside.
- (i) That the learned lower courts have passed both the impugned judgments and decrees without keeping in mind the facts and circumstances of the case and without application of mind, hence the same are based upon surmises and conjectures, not sustainable and liable to be set-aside.
- (j) That in addition to the grounds taken above, the following violations have also been committed by the management of the society as well as residents:
 place of dispensary shops is being constructed in place of 40' road is not exist on the site, existing graveyard is not the property of the colony, a private school building is being constructed in place of public building, mostly residential plots are converted into commercial plots

Under the Circumstances It is, therefore, respectfully prayed that the both impugned judgment & decree dated 31.07.2021 passed by Masood Ahmad Civil Judge Gujranwala and Judgment and Decree dated 22-12-2021 passed by

Petitioner Name

Petitioner No.

Through

Rana Qadeer Ashraf
Deputy Director Legal
Gujranwala Development
Author

Syed Ali Awais Nirmizi
Advocate High Court
Amir Alam Khan
& Associates
Bank Square, Lahore

Note

That as per the instructions of my client this is the first civil revision
against the judgment and decree being impugned herein this
petition.

Advocate

IN THE COURT OF MASOOD AHMAD, CIVIL JUDGE 1st CLASS
GUJRANWALA

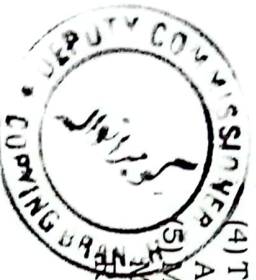
JUDICIAL EMPLOYEES CO-OPERATIVE HOUSING
SOCIETY (REGISTERED) UMAR PLAZA, 1-MOZANG ROAD
LAHORE THROUGH ITS SECRETARY

(Plaintiff)

.....Vs.....

- (1) THE PROVINCE OF THE PUNJAB THROUGH DISTRICT
COLLECTOR/DEPUTY COMMISSIONER, OFFICE DISTRICT
COURT, GUJRANWALA
- (2) GUJRANWALA DEVELOPMENT AUTHORITY, TRUST PLAZA,
G.T. ROAD, GUJRANWALA THROUGH ITS DIRECTOR
GENERAL.
- (3) WATER AND SANITATION AGENCY (GDA) TRUST PLAZA,
G.T. ROAD, GUJRANWALA THROUGH ITS MANAGING
DIRECTOR.
- (4) TOWN PLANNER, GUJRANWALA DEVELOPMENT
AUTHORITY, TRUST PLAZA, G.T. ROAD, GUJRANWALA
- (5) MUNICIPAL CORPORATION GUJRANWALA, THROUGH
MAYOR MUNICIPAL CORPORATION GUJRANWALA, G.T.
ROAD, GUJRANWALA

(Defendants)



Masood Ahmad

Civil Suit No..... 69 of 2014
Date of institution....28.02.2014
Date of decision... 31.07.2021

Masood Ahmad Fatyana
Civil Judge 1st Class
SUIT FOR DECLARATION, MANDATORY AND
PERMANENT INJUNCTION WITH CONSEQUENTIAL
RELIEF
31-07-2021/ndls

JUDGMENT

Through this judgment I intend to dispose of the
above titled suit. Briefly stated facts of the instant case are that
plaintiff is a registered society under the Co-operative Societies
Act, 1925, in the year 1985-86, the society developed a residential
colony at Gujranwala with the Co-operation of its members of
District Judiciary and its allied staff. That the plaintiff submitted
layout plan of the said colony for approval to Municipal

A
ATTESTED
COPIEST

corporation, Gujranwala defendant No.5 vide entry No.1564 dated 06.03.1985 in accordance with laws, deposited the requisite process fee and fulfilled all the codified requirements. The authorities of Municipal Corporation, Gujranwala were asked many a times to provide approved copy of layout plan. The plaintiff, under a bonafide belief that layout plan had been approved as assured by the defendant No.5 carved out plots after

development and allotted the same to the Hon'ble members of the society. Most of them, after having constructed houses upon the plots, are living there peacefully without any hindrance. Otherwise, also the layout plan was submitted with the defendant

No.5 on 06.03.1985, at serial No.1564 and no query/objection

was ever made by it therefore, under law, it would be presumed

that the layout plan had been sanctioned on expiry of statutory

period of 60 days. That the society is non-trading concern and is

running on no profit and no loss basis with the co-operation of its

members. The society neither got any benefit nor any fund from

the Government or any other agency including the defendants

departments. Plots of its members were also allotted by the

society on its actual price of land and charged incurred on its

development without gaining any profit. There are remarkable

distinguishing factor between a private owned colony and

residential colony established under co-operative societies Act.

That as precautionary measures in the year 2009, the society

submitted its revised layout plan to defendant No.2 and 3 and

also deposited the requisite fee of Rs.44,030/- and also published

proclamations in Daily Pakistan, The Post and Pakistan but no

A

ATTESTED

31-07-2021

objection was filed by anybody. That the defendant No.2 and 3 demanded the layout plan of water supply, sewerage/drainage system adopted by the society and the same was provided on 14.09.2012. Thus all the requirements of the defendants were fulfilled, the defendants were requested to sanction the layout plan of the society and provide its copy to the plaintiff. The GDA took up the matter regarding sanitation with WASA, Gujranwala but the WASA authorities did not pay any attention to it for a long



Though with delay, yet vide letter No.WASA/DDR/2367 dated 26.12.2013 the defendant No.3 claimed deposit of Rs. 37,300/- as supervision charges regarding sewerage system which were deposited by the plaintiff on 08.01.2014. That the

plaintiff vide letter No.921/JC/2010 dated 28.10.2010 had already requested GDA, the defendant No.2 grant ex-post facto approval for the scheme, ultimately, vide letter No.GDA/D(TP0194

dated 02.01.2014, the defendant No.2 feeling some procedural restraints, requested the secretary, Government of Punjab, HU& PHE department, Lahore to grant Ex-post facto permission for issuance of approval of the scheme. That it is pertinent to mention

here that defendant No.5 has approved building plan of plot No.1 block-A (commercial) Judicial Colony, Gujranwala owned by Malik Zaheer-ul-Haq on 16.07.2004. That if the layout plan of the society was not sanctioned by the Municipal Corporation, Gujranwala defendant No.5 then how and why defendant No.5 had sanctioned the commercial map of the shops of the above

named member of the society. The society had also paid huge amount to the sui gas department, infrastructure, i.e. roads,

ATTESTED

COPYIST

A

sewerage, water supply and electricity etc. That the defendants No.5 without perusing its record, issued a proclamation in Daily Express dated 21.12.2013 whereas it was published that the society of the plaintiff had been developed against the law of



Punjab Housing Scheme and Land Sub-Division Rules 2010 and declared that the colony of plaintiff developed at Gujranwala, was illegal, unlawful and was against the above mentioned law. The

plaintiff being aggrieved apprised defendant No.2 and 5 with documentary proof about factual position and requested them to delete the name of society from the said publication but in vain.

That the defendants without issuance of any notice to the plaintiff illegally and unlawfully published proclamation in newspaper.

asoud Ahmad Fatyana
Judge 1st Ct
31-07-2021
Gujranwala

That the society was developed in the year 1985-86 and was enacted in the year 2010 and thus, has no retrospective effect therefore, the publication in daily "Express" I dated 21.12.2013 is nullity in the eyes of law. That the defendant No.5 was requested time and again to delete the name of the Judicial Colony, Gujranwala through publication of a corrigendum in the said newspaper but they are putting off the matter under one pretext or the other and are bent upon to take illegal action against plaintiff society, hence, this suit.

2. The defendants were summoned. The defendants have filed contested written statement while raising some preliminary objections on cause of action and maintainability of suit with the contention that plaintiff has no cause of action and locus standi to file the instant suit and he has filed false, frivolous and vexatious suit just to harass and blackmail the defendant and

ATTESTED
COPIEST

A

finally requested the court for dismissal of the suit. Out of divergent pleadings of the parties following issues were framed by my learned predecessor court on 28.04.2017 as under:-

ISSUES

1. Whether the plaintiff's society is developed under the requisite rules and regulations and allotments have been made by it in accordance with law? OPP
2. Whether the publication in daily Express dated 21.12.2013 is against law and facts and the same is liable to be declared as illegal, unlawful, unwarranted and published arbitrarily? OPP
3. If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to a decree for mandatory injunction against defendants No.2 & 3 as prayed for? OPP
4. If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to decree for permanent injunction against defendants restraining them to implement the publication dated 21.12.2013 and to interfere into plaintiff's peaceful possession over the society, its construction or under construction premises, its management and members of residential colony and they are also liable to be restrained to issue any direction against the interest of the society? OPP
5. Whether present suit is not maintainable in its present form? OPD



Handwritten signature

36-07-2021

ATTESTED

Handwritten signature

Handwritten letter 'A'

6. Whether the plaintiff has not come to the court with clean hands? OPD

7. Whether the suit of the plaintiff is barred by law? OPD

8. Relief.

3. That After framing of issues, parties lead their evidence.

PLAINTIFF EVIDENCE



Oral Evidence

Documentary Evidence

1. PW-1/ Waseem Ullah Khan
2. PW-2/ Imran Hussain
3. PW-3/ Haji Zafar Ullah Arif
4. PW4/ Ghollan Murtaza
5. PW5/ Muhammad Akram

1. Special power of attorney as Ex.P1
2. Receipts of WAPDA as Ex.P2
3. Receipt of Sui Gas as Ex.P3 and Ex.P3/1
4. Dues paid to the Sui Gas as Ex.P4 to Ex.P5
5. Application for approval of scheme as Ex.P7
6. Voucher of payment as Ex.P8
7. Proclamation as Ex.P9 to P11
8. Letter for publication of proclamation in newspaper as Ex.P12
9. Letter of approval of map as Ex.P13
10. Letter issued by Director General GDA as Ex.P14
11. Again letter issued by society as Ex.P15
12. Publication of GDA in daily Express as Ex.P16 and Ex.P17
13. Letter issued by society to

Signature
 Deputy Commissioner
 Coping Branch
 31-07-2021

ATTESTED
COPIEST

A



- ODA for cancel the name of society in the list as Ex.P19'
14. Attested copy of reply from director Town Planning, Gujranwala Development Authority as Ex.P20
 15. Attested copy of Challan as Ex.P21
 16. Letter issued by WASA department as Ex.P22
 17. Copy of register of Corporation Plan as Ex.P23
 18. Forensic Audit as Ex.P24
 19. Copy of register of Record of Rights for the year 2010-11 as Mark-A
 20. Layout plan as Mark-B
 21. Registration certificate as Mark-C

Imad

DE 'ENDANTS' EVIDENCE

31-07-2021

Oral Evidence

Documentary Evidence

1. DW-1/Ehsan Ullah Cheema Senior Building Inspector GDA, Gujranwala	1. Letter dated 12.12.2019 Ex.D1
2. DW-2/Zulfiqar Ahmad	2. Letter dated 24.01.2014 as Ex.D2
	3. Letter No.68 dated 03.02.2014 received GDA as Ex.D3
	4. Decision of governing body as Ex.D4

4. I have heard arguments advanced by the learned counsel for the parties at considerable length and meticulously delved the entire record. My issue-wise findings are as under:-

A

ISSUES No.1

Whether the plaintiff's society is developed under the requisite rules and regulations and allotments have been made by it in accordance with law? OPP



Onus to prove this issue was upon the plaintiff.

Naseem Ullah Khan special attorney of the plaintiff appeared as PW1 and submitted special power attorney as Ex.P1. PW1 has deposed that the Judicial Employee Cooperative Society was registered under Cooperative Societies Act 1979, layout plan of the Judicial colony, Gujranwala for its approval was submitted in the year 1985, fees was also deposited. The corporation issued a diary number thereafter they started development work. He further deposed that at this time almost 70% area construction has been raised. He further deposed that in the year 1987, WAPDA was paid Rs.10,00,000/- from the society, he submitted the receipt and map as Ex.P2. He further deposed that the supply of the electricity is complete. He further deposed that in the year 2004, the sui gas department after conducting the survey issued demand notice whereupon the society deposited amount of Rs.35,73,000/- and in consequence thereof whole of the society was provided gas, receipt Ex.P3 and Ex.P3/1 are annexed. He further deposed that in the year 2014, the dues of WASA were deposited, receipt Ex.P4 is annexed. Letter of the WASA issued to

the GDA is annexed Ex.P5. He further deposed that in the year 1998 GDA was established whereupon GDA directed to get

A

ATTEST

...the plan whereupon application Ex.P7 was filed and fee under receipt Ex.13 was deposited. He again deposed that on the direction of the GDA...

...was informed about the publication of notices through receipt Ex.P12, after above said publication no department or person raised any objection. He further deposed that society again a letter for approval of the layout plan Ex.p13 was submitted to the GDA whereupon Director General GDA wrote a letter to Secretary JMO/PHE Government of Punjab for Expo-sanction...

Zaheer ul Haq v e Sr. No.3 was approved by the corporation which was approved in the general meeting. He further deposed that the GDA was directed to submit the layout plan and to restrain to interfere the matters of the society and also restrained

31-07-2021 from to stop the other departments and in the last prayed for the decree of the suit. In his cross-examination he stated that layout plan to the corporation was submitted but no final letter of approval was received. He further deposed that during the course of cross-examination society has left the place for graveyard near the graveyard of Moaza Bari Sansi. He again deposed that place for graveyard was specified in 1985.

Imran Hussain Record keeper of Judicial Employees Society

ATTESTED

COMPETENT

A

Ullah Amir junior clerk town planning appeared as PW3 and confirmed that the letter No1044/JC/2014 dated 16.01.2014 was received in the office of CDA which is part of their record. He also stated that letter issued by the Secretary Judicial Cooperative Housing Society No.F-1 was received and its reply was given vide letter No.Ex.P20.

Ghulam Murtaza Senior Clerk, Record Keeper of WASA appeared as PW4 and deposed that Judicial Employees Cooperative Housing Society was deposited amount Rs.11,37,300/- to WASA for sewerage and produced attested copy of the challan as Ex.P21. He further deposed that WASA department issued a letter Ex.P22 to Judicial Employees Cooperative Housing Society for providing detail of residents of the housing society.

8. Muhammad Akram Record Keeper Metropolitan Corporation Gujranwala appeared as PW5, the said PW was wrongly marked as PW4 which is corrected and again marked as PW5. PW5/Record Keeper of Metropolitan Corporation, Gujranwala stated that the layout plan alongwith application for approval of the scheme of Judicial Employees Cooperative Housing Scheme G.T road Lahore, Gujranwala was deposited and entered at Sr. No.1564 dated 06.03.1985 and its fees of Rs.750/- was also received. He further stated that as per column No.5 of the register, date of the approval of the site plan was fixed as 06.05.1985 he submitted the copy of the same with his signature as per record.

ATTESTED

A

9. On the other hand, Ehsan ul Haq Cheema, Senior Building Inspector GDA, Gujranwala appeared as DW1 and stated that file of Judicial Employees Cooperative Housing Society, Gujranwala was received by them for approval on 01.04.2009 through diary No.368/DDP. He further deposed that



another application for ex post facto sanction was filed by the plaintiff. After scrutiny of the application it was found that department had not authority to sanction ex post facto approval

has authority to relax the rules whereupon the developer/administration of the society requested for taking opinion from the Government said request was forwarded through diary No.1 to Secretary Housing and in reply Secretary Housing directed to put it before the governing body of the department. He

further deposed that governing body decided that it had neither power to relax the rules nor to sanction ex post facto approval

Handwritten signature
Master

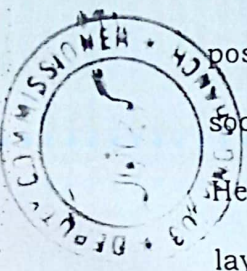
31-07-2021 rather the sanction should be made under Private Housing Scheme Land Sub-division Rules 2010. In his cross-examination admitted that in 2009 the plaintiff submitted revised layout plan in the office of GDA for approval. He also admitted that GDA before approval of the layout plan sought objections from the general public. He also admitted that the despite publication no one from general public raised objection about the owned property of the society. He also admitted that in publication in newspaper Pakistan Post Ex.P10 dated 19.09.2010 it was mentioned that the scheme was old and as per Judicial Employees Cooperative

ATTESTED
COMPTROLLER

Housing Society, Gujranwala at the spot the sale and purchase of the plot and development work were completed.

A

10. Zulfiqar Ahmad/Patwari Halqa Moaza Theri Sansi, Gujranwala appeared as DW2 and stated that Khewat No.158 and 159 total property measuring 361 Kanal 15 Marla was owned by Judicial Employees Cooperative Housing Scheme. DW2 during the course of cross-examination deposed that Judicial Employees Cooperative Housing Scheme is owner in possession since 1983-1984. He also deposed that when the society was established at that time the GDA was not constituted. He further deposed that before the constitution of the GDA all the layout plans were sanctioned by Municipal Corporation, Gujranwala. He also admitted that graveyard is also included in the property which was acquired by society. He also stated that on the property of the society the houses have been constructed.



Insand
Civil Judge 1st Class
Gujranwala
31-07-2021

11. From the perusal of the record and after scanning the evidence produced by the parties it is established fact that plaintiff/ Judicial Employees Cooperative Housing scheme is registered society under the Cooperative Societies Act 1925, the registration certificate is annexed with the file as Mark-C. It is also established fact that for the welfare of the members of the judiciary and its allied staff and in public interest plaintiff developed a residential colony at Gujranwala. From the perusal of the record it shows that plaintiff submitted a layout plan for its sanction before Municipal Corporation, under the Punjab Local Governments Ordinance 1979 and in accordance with By-laws framed thereunder, which was entered at Sr. No.1564 of the Register Ex.P23. Its fee was also deposited by the society and date

ATTESTED
COMPT

A

for its sanction was fixed as 06.05.1985 but the layout plan of the society was not sanctioned by the authority. Ex.P23 shows that on 06.03.1985, the applications from Sr. No.1561 to 1565 were submitted by many persons including the plaintiff for sanction of the site plan/building plan and in all the said applications the date for sanction was fixed as 06.05.1985. Ex.P23 shows that except the layout plan of the plaintiff mentioned at Sr.No.1564 all the site plans/building plans of other applicants were sanctioned and in the relevant column it is mentioned in Urdu language as (مکمل) whereas no entry was made against the said column of application of the society. Rather, relevant column was left blank.

Record further shows that no reason has been shown by the defendant that why the layout plan of the Society was not sanctioned. The local council was in power either to grant or refused sanction or reject it but the local council neither sanctioned the same nor rejected it. It is alleged by the plaintiff that authorities of the Municipal Corporation, Guwahati were asked many times to provide approved copy of layout plan. The plaintiff was assured that as soon as the plan was sanctioned its approved copy shall be provided thereafter, the plaintiff under bonafide belief that layout plan had been approved as assured by the defendant No.5 carved out plots after development and allotted the same to the Member-members of the society.

Record further shows that defendant No.5 was in power and all the facilities like electricity, water supply, etc. were provided to the society.

concerned departments of the Government. Plaintiff's society also deposited demand notices fee etc. for provision of the afore mentioned utilities which were provided by the concerned departments after receiving of fee/charges and dues. So, at the time of installation and provisions of the afore said facilities no objection was raised by any of the department about the sanction of layout plan rather all said facilities were provided by the departments without any hesitation and objection. All the departments are receiving the utility bills from the residents of the society against the services provided by them.

13.

It is pertinent to mention here that in the society

Mr. Arif

Justice Arif
Civil Judge
31-10-2021

a building plan of site bearing number of plot No.112 block-B was sanctioned by office of the Town Officer (Planning and Coordination) Town Municipal Administration, Khiali Shahpur, Gujranwala dated 27.11.2006. Similarly, an NOC dated

27.11.2006 for conversion of commercial use of the building plot No. 112 Block A N 5 Judicial Employees Cooperative Society was also issued by the Town Officer (Planning and Coordination) Town Municipal Administration, Khiali Shahpur, Gujranwala dated 27.11.2006. In view of the sanction of the afore mentioned conversion no objection was raised by any department regarding the above mentioned conversion.

It is further stated that the society has been

operating since long and all the rates have been consistently

paid by the society to the concerned departments.

above discussed evidence clearly shows that neither Municipal Corporation nor GDA before publication of the impugned notices in the newspaper raised any objection about the legal status of the society rather from their conduct its reflect that all the utilities were provided by all the departments and all the aforementioned activities were done considering the society as an approved society.



15.

Perusal of the record shows that forensic audit of

the colony was conducted. Ex.P24 forensic audit report for the year 2012-16 held under the direction of the August Supreme Court of Pakistan concluded that all the services were linked with the concerned departments. It was also observed that developments work of the housing society was complete including roads, sui gas, sewerage, electricity and water supply. It was further observed that all the development work was supervised by the management of the society.

2

Handwritten signature

31-07-2021

16.

From the perusal of record it also reveals that

when the layout plan of the plaintiff society was submitted and considered and rejected by the Municipal Corporation, GDA, the plaintiff submitted the application Ex.P7 dated 28.03.2009

with revised layout plan addressing to the Town Planner GDA for approval of scheme. Plaintiff also deposited the requisite fee of Rs.44,030/- vide voucher Ex.P8. The defendant No.2 and 3 after fulfillment of codified requirements got published proclamations

in newspapers Daily Pakistan Ex.P9 dated 19.09.2010, The Post Ex.P10 dated 19.09.2010, and Sar-Zameen Ex.P10 dated

ATTESTED
BY
CLERK

A

16. THE PLAINTIFFS AND DEFENDERS had no objection was filed by anyone in the District Court through letter No.P12 dated 10/06/2012. According to the District Town Planning CDA approved the sanction of proclamations in newspapers and also no objection was received from any corner thus, requested for an order for approval of the scheme. Record further shows that on demand of defendants No.2 and 3 the society through letter dated 14-06-2012 Ex.P13 provided layout plan of water supply, drainage/ drainage system adopted by the society. Record also

17. Defendant Government of Karnataka

Defence requested for an order that sanction of the scheme

Channarayana.

17. Perusal of the Ex.D3 shows that upon request of the plaintiff the society the matter of sanction of Judicial Colony, Channarayana was placed before the governing body of GDA for consideration. The governing body of

accordance with Punjab Private Housing Scheme/Land Sub-Division Rules, 2010 or as per direction of the Government if any commission or committee is formulated to examine such issues on case to case basis. In furtherance thereof the decision of the governing body GDA a letter Ex.D2 dated 04.01.2014 was forwarded by the DG GDA, Gujranwala addressing to the Secretary Government of Punjab HUD & PHE department Lahore requesting ex post facto sanction of Judicial Colony, Gujranwala. In said letter, besides ex post facto sanction of society relaxation of graveyard area requirement for the housing scheme due to availability of existing graveyard within the site was also sought.



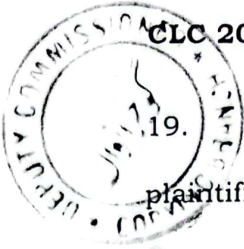
In. and

31-07-2021

18. Record also reveals that ex post facto sanction of judicial housing society has not been granted so far. Main hurdle in grant of ex post facto sanction as pointed out by the GDA, Gujranwala is the requirement of area of graveyard as provided in Land Sub-Division Rules, 2010. Admittedly, the graveyard is existing in the society but area specified for graveyard is less as compare to area required under the above said Rules. Except the area of graveyard the society fulfill all the requirements of rules, regulations and By-laws in force at present. Undeniably, society was developed in the year 1985-86 and at that time Punjab Local Government Ordinance 1979 was in force but neither the GDA By-laws and the Punjab Housing Scheme Act nor the Land Sub-Division Rules, 2010 were in field. So, as compare to By-laws, site development scheme framed under Punjab Local Government Ordinance 1979 being earlier in time would have preference over

A

By-laws framed thereafter. The above said GDA By-laws, Punjab Private Housing Scheme Act 2005 and Land Sub-Division Rules 2010 have no retrospective effect. **Reliance is placed on 1986 CLC 2088.**



From perusal of record it further transpires that plaintiff society fulfill all the requirements of the Punjab Local Government Ordinance, 1979 and By-laws framed at that time.

No objection has ever been raised by the Municipal Corporation Gujranwala on the layout plan/site plan of the society Mark-B.

Handwritten:
Masood Ahmad Farooqi
Civil Judge 1st Class
Gujranwala
31-07-2021

Even GDA has no objection, except the requirement of graveyard under the Land Sub-Division Rules 2010 which are not applicable. Therefore, there is no any technical hitch or, hindrance seems to be found in the proposed layout plan/site plan. The layout plan submitted by the society before Municipal Corporation on 06.03.1985 having not been sanctioned so far without any reason is violation of the Punjab Local Government Ordinance 1979 and Rules framed thereunder. It has been held in 2001 CLC 935 Lahore

a) Punjab Local Government Ordinance (VI of 1979)—

-----S.77(4)---Sanction of site plan—Authority under S.77(4) of Punjab Local Government Ordinance, 1979 was required to pass the order on the application filed for the sanction of site plan within sixty days from filing of the same—Where Authority even long after expiry of statutory period of sixty days had failed to

Handwritten signature

Handwritten letter A

decide application, proposed site plan would be deemed to have been sanctioned by the Authority.

It has also been held in 1986 CLC 2088 [Lahore]



(a) Administration of justice, principle of—

where a particular thing was done in accordance with permissibility, law, held, would not take note of remote considerations.

Pursuant to above discussion it is crystal clear that plaintiff's society is registered society under the cooperative societies Act 1925 and functioning under the supervision and control of registrar, cooperatives. The society is non trading concerned and is running on no profit and no loss basis with the cooperation of its members. It is also established that the society developed a residential colony in dispute in the year 1985-86 under the Punjab Local Government Ordinance 1979 and By-laws framed there under. The functionaries of Municipal Corporation, Gujranwala without raising the objection on the layout plan kept the plaintiff society to believe that the layout plan of the society shall be sanctioned. All the development work is completed. All the utility services are in operation. So, in the given circumstances, of the case the layout plan submitted by the plaintiff society on 06.03.1985 before the Municipal Corporation, Gujranwala is deemed to be sanctioned. Hence, issue is decided in favour of the plaintiff.

ISSUE NO.2

A

ATTESTED
COPIEST

Whether the publication in daily Express dated 21.12.2013 is against law and facts and the same is liable to be declared as illegal, unlawful, unwarranted and published arbitrarily? OPP



Onus to prove this issue was placed upon the plaintiff. Record shows that the defendants on 21.12.2013, published a list of illegal housing society Ex.P16 in shape of proclamation in Daily Express wherein the name of the plaintiff society was also included at Sr.90 of the list. In view of my findings of issue No.1 it has been discussed in detail that the plaintiff society left no leaf unturned to get sanction/ex post facto sanction of the society well before the publication of the impugned notice/list. In view of my findings on issue No.1 plaintiff has succeeded to prove the legal status of the society therefore, the impugned publication in Daily Express is against the law and facts therefore, the same is declared as illegal, unwarranted, published arbitrarily and in a fanciful manner without any legal basis. Hence, this issue is also decided in favour of the plaintiff.

ISSUE NO.3

If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to a decree for mandatory injunction against defendants No.2 & 3 as prayed for? OPP

21. Onus to prove this issue was placed upon the plaintiff. Issue No.1 and 2 have been decided in

A

ATTESTED
COPIEST

affirmative in favour of the plaintiff society. In view of my findings on issue No.1 it has been established that the layout plan of the plaintiff society was neither rejected nor sanctioned without any objection in stipulated period or even up till now. The layout plan is deemed to be sanctioned as per Punjab Local Government Ordinance, 1979 and By-laws framed thereunder. So, in the interest of justice and to save the plaintiff society from any technical hitch. The defendants are directed to sanction/ex post facto sanction of submitted layout plan of plaintiff society with Municipal Corporation Gujranwala in the year 1985 and then to GDA, Gujranwala. Hence this issue is also decided in favour of the plaintiff.

ISSUE NO.4

If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to decree for permanent injunction against defendants restraining them to implement the publication dated 21.12.2013 and to interfere into plaintiff's peaceful possession over the society, its construction or under construction premises, its management and members of residential colony and they are also liable to be restrained to issue any direction against the interest of the society?

OPP

22. Onus to prove this issue was placed upon the plaintiff. In view of my findings on issues No.1 to 3 the plaintiff was fully succeeded to prove his case so, plaintiff is entitled to get decree for perpetual injunction and

ATTESTED
COPIEST

A



Issued **ISSUE**
Judge 1st Cl
Gujranwala

31-07-2021

Onus to prove this issue was placed upon

ISSUE NO.6

24.

Onus to prove this issue was placed upon

ISSUE NO.7

ATTESTED
COPIES

A

25. Onus to prove this issue was placed upon the defendants. In view of my findings over issues No.1 to 4 the plaintiff has succeeded to prove this case. Hence, this issue is also decided against the defendants.

RELIEF

26. In view of my findings on afore discussed issues suit of the plaintiff is hereby decreed and it is declared that plaintiff has developed residential colony at Gujranwala as per rules and regulations and allotments have been made in accordance with the law. The impugned publication in Daily Express dated 21.12.2013 is against the law and facts therefore, the same is declared as illegal, unwarranted, published arbitrarily and in a fanciful manner without any legal basis. The defendants are also directed to sanction/ex post facto sanction of submitted layout plan of plaintiff society with Municipal Corporation Gujranwala in the year 1985 and then to GDA, Gujranwala. Defendants are also restrained permanently to implement the publication in press Daily Express dated 21.12.2013, to interfere into peaceful possession of plaintiff's society, demolish any construction or under construction premises, take coercive action against the management of the society, members of residential colony, disturb/interfere in the internal affairs of the society and residential colony or to issue any direction against the interest of the society to other agencies including sui gas, electricity, WASA authorities. There is no order as to cost. Decree sheet



In-And

31-07-2021

A

ATTESTED
COPIES

prepared. Ahlmad of this court is directed to consigned the file to the record room after its due completion and compilation.

Announced:-
31.07.2021

Masood Ahmad
Masood Ahmad,
Civil Judge 1st Class,
Magistrate Sec.30, Gujranwala

Certified that this judgment consists of 24-pages, each of which has been dictated, read over, corrected and duly signed by me.

Announced:-
31.07.2021

Masood Ahmad
Masood Ahmad,
Civil Judge 1st Class,
Magistrate Sec.30, Gujranwala



EXAMINED COPY
DIRECTOR GENERAL
GUJRANWALA
2/1/22

DECREE SHEET

IN THE COURT OF MASOOD AHMAD, CIVIL JUDGE 1st CLASS
GUJRANWALA

JUDICIAL EMPLOYEES CO-OPERATIVE HOUSING
SOCIETY (REGISTERED) UMAR PLAZA, 1-MOZANG ROAD
LAHORE THROUGH ITS SECRETARY

(Plaintiff)

.....Vs.....

- (1) THE PROVINCE OF THE PUNJAB THROUGH DISTRICT COLLECTOR/DEPUTY COMMISSIONER, OFFICE DISTRICT COURT, GUJRANWALA
- (2) GUJRANWALA DEVELOPMENT AUTHORITY, TRUST PLAZA, G.T. ROAD, GUJRANWALA THROUGH ITS DIRECTOR GENERAL.
- (3) WATER AND SANITATION AGENCY (GDA) TRUST PLAZA, G.T. ROAD, GUJRANWALA THROUGH ITS MANAGING DIRECTOR.
- (4) TOWN PLANNER, GUJRANWALA DEVELOPMENT AUTHORITY, TRUST PLAZA, G.T. ROAD, GUJRANWALA
- (5) MUNICIPAL CORPORATION GUJRANWALA, THROUGH MAYOR MUNICIPAL CORPORATION GUJRANWALA, G.T. ROAD, GUJRANWALA

(Defendants)

Civil Suit No..... 69 of 2014
Date of institution....28.02.2014
Date of decision... 31.07.2021

**SUIT FOR DECLARATION, MANDATORY AND PERMANENT
INJUNCTION WITH CONSEQUENTIAL RELIEF**

This suit coming on this 31st day of July, 2021 for its disposal before me in the presence of counsel for the parties.

It is ordered that the suit of the plaintiff is hereby decreed and it is declared that plaintiff has developed residential colony at Gujranwala as per rules and regulations and allotments have been made in accordance with the law. The impugned publication in Daily Express dated 21.12.2013 is against the law and facts therefore, the same is declared as illegal, unwarranted, published arbitrarily and in a fanciful manner without any legal basis. The defendants are also directed to sanction/ex post facto sanction of submitted layout plan of plaintiff society with Municipal Corporation Gujranwala in the year 1985 and then to GDA, Gujranwala. Defendants are also restrained permanently to implement the publication in press Daily Express dated 21.12.2013, to interfere into peaceful possession of plaintiff's society, demolish any construction or

ATTESTED
COPIES

A

referred to by the plaintiff, under the 1985

US-India Trade and Investment Agreement.

layout plan of the said colony, for the

Corporation, Gujainwala/defendant, 1985, 70-23

06-03-1985 in record were still prevailing.

1987 deposited, required, process, and

requirements. The complete detail of fact narrated in the plaint

reproduced by the learned judge in his

judgment and there is no need to repeat the same.

issued a proclamation in daily "the Express" dated 21/12/2013

and in dated 21/12/2013, dated 06/01/2014 on all the

illegal housing scheme. The plaintiff asserted that the

proclamation was issued in accordance with law.

allocations were made in accordance with law.

in daily "the Express" dated 21/12/2013, against the

the plaintiff prayed for a relief.

alongwith mandatory and permanent injunction as

relief.

relief.

5. The defendant No.1 and defendants No.2, 3 and

separate written statements, wherein V. G. G. G. G.

prayed for its dismissal. The defendant No. 4, 5, 6 and 7

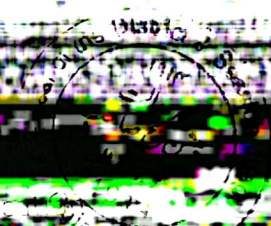
statement showing that they are not parties to the suit.

Rs. 11,27,300/- was subdivision charges as per

decide the suit on merits. The plaintiff is entitled to

against the parties.

against the parties.



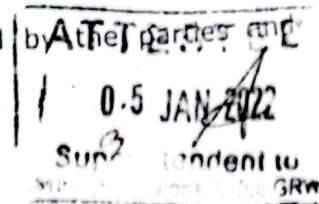
6. In order to resolve the controversy, learned Trial Court

had framed the following issues:-

ISSUES:

1. Whether the plaintiff's society is developed under the requisite rules and regulations and allotments have been made by it in accordance with law? OPP
2. Whether the publication in daily Express dated 21.12.2013 is against law and facts and the same is liable to be declared as illegal, unlawful, unwarranted and published arbitrarily? OPP
3. If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to a decree for mandatory injunction against defendants No.2 & 3 as prayed for? OPP
4. If issues No.1 & 2 are decided in affirmative, whether the plaintiff is entitled to decree for permanent injunction against defendants restraining them to implement the publication dated 21.12.2013 and to interfere into plaintiff's peaceful possession over the society, its construction or under construction premises, its management and members of residential colony and they are also liable to be restrained to issue any direction against the interest of the society? OPP
5. Whether present suit is not maintainable in its present form? OPD
6. Whether the plaintiff has not come to the Court with clean hands? OPD
7. Whether the suit of the plaintiff is barred by law? OPD
8. Relief.

The fate of the suit is dependent upon the outcome of issue No.1. The onus probandi of this issue was placed upon the plaintiff. The findings of learned Trial Court on this issue shall be evaluated in the light of evidence produced by the parties and



جانب
فرمائی
المرقوم

European General GBA etc. vs. Individual Employees in operations business Board

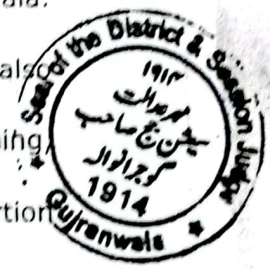
grounds taken by the appellants in appeal. The specific grounds
by the appellants in grounds of appeal is that the learned Trial Court
had over looked the fact that the layout plan submitted to the
Municipal Corporation Gujranwala for approval was not approved
and later on after constitution of Gujranwala Development Authority
the file was handed over to the appellants without approval of
was rejected by the Gujranwala Development Authority because
per rules Gujranwala Development Authority was not allowed to
approve the layout plan because the society had used the land for
place for graveyard nor mortgaged any plot with any bank or
Development Authority. The other specific stance in grounds of
appeal is that the learned Trial Court ignored the fact that the
plaintiff had option to avail remedy under the Punjab Regularization
Regularization of Irregular Housing Schemes Ordinance, 1975 under
which remedy was not availed. The other grounds are of general
nature that the learned Trial Court had not applied proper principles
that the impugned order was result of misreading and misapprehension
of evidence etc. etc. Muhammad Akram Record Keeper Metropolitan
Corporation Gujranwala appeared as PW-5 and produced copy of
register of building applications available on record as Exh. P-23
Exh. P-23, the Judicial Employees Co-operative Housing Society
Gujranwala had submitted application on 06.03.1985 vide file No.
3434/85 regarding No. and date of receipt it was received by
M.C. Gujranwala. The decision of the said application was made on
06.03.1985 and in date was mentioned in column No. 1 of the
file No. 3434/85 regarding abstract of orders of Metropolitan Corporation



ATTESTED

05 JAN 2022

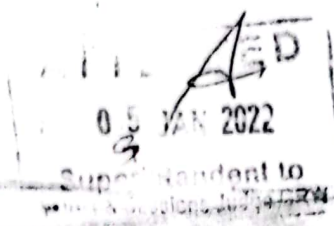
against the preceding and succeeding applications the word "No" was written in column No.6 but against application of Judicial Employees Co-operative Housing Society Gujranwala, the column was left blank meaning thereby, the competent authority had neither passed any order regarding its approval nor rejection and it was a clear cut lapse on part of the authority. Later on, Gujranwala Development Authority was constituted and task of Municipal Corporation Gujranwala regarding approval of societies was assigned to the Gujranwala Development Authority. Haji Zafarullah Arif, Junior Clerk, Gujranwala Development Authority Town Planning appeared as PW-3 and produced copy of application submitted by Judicial Employees Co-operative Housing Society regarding Ex-post Facto sanction of layout plan of the Judicial Colony Gujranwala. The said application is available on record as Exh.P-19. He also produced copy of reply made by the Directorate of Town Planning, Gujranwala Development Authority as Exh.P20. The relevant portion of the reply is produced as under:-



"It is submitted that Gujranwala Development Authority, Gujranwala has already been requested to the Secretary, Govt. of the Punjab HUD & PHE Department for relaxation of rules / regulations for approval of Ex. Post Facto sanction and the requirement of grave yard due to its existing availability at site.

Further action will be initiated according to the directions of the Government on the subject matter".

The above facts reveal that the plaintiff had submitted layout plan to the Municipal Corporation Gujranwala vide entry No.1564 dated 06.03.1985 and Municipal Corporation Gujranwala is bound to pass an order on the said application till 06.05.1985



but no order was passed thereon and when Gujranwala Development Authority was constituted and functions of Municipal Corporation Gujranwala were transferred to Gujranwala Development Authority, the plaintiff moved an application to Gujranwala Development Authority for Ex.post Facto sanction of the Director General Gujranwala Development Authority recommended to the Secretary Govt. of the Punjab HUD & PHD Department, 2-Lake Road, Lahore vide letter No.GDA/PHD dated 04.01.2014 available on record as Exh.D-2 for Ex.post facto approval of the scheme. The relevant portion of the letter is reproduced as under:-

"It is added that the secretary Judicial Employees Cooperative Housing Society, Gujranwala submitted an application dated 01.04.2007 in the GDA for Ex.post Facto sanction of the scheme. This application was received after a long time when almost 100 percent development work and allotments of plots have been completed. The Ex.post facto sanction remains the only remedy for approval of the scheme. The society and the plot owners of the scheme are suffering badly due to its non approval status. In view of above, it is requested to grant the Ex-post facto approval of the subject scheme and not to proceed further in the matter. The grave requirement for the subject housing scheme has been relaxed due to availability of existing graveyard within the site. However, any condition may be imposed on the Society to compensate this requirement".



9. The Government of Punjab had not declined the application and instead the Director General Gujranwala Development Authority, Gujranwala vide letter No.SO(H-II)01-2/2014 available on record as Exh.D-3 was required to examine the case at the Authority's level and place the same in the Government of Punjab. It is astonishing to note that both the Municipal Corporation and Gujranwala Development Authority have not done so.

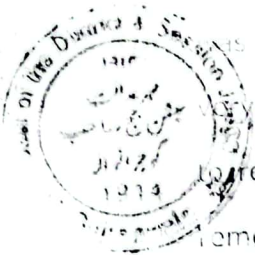
ATTEST
05 JAN 2022
Superintendent
Gujranwala Development Authority

granting approval to the layout plan of the Society and wherever the matter was put up at individual level they granted sanction without any hesitation and this fact was narrated by PW-1 in his examination-in-chief that when a private individual of the society had moved an application for approval of commercial site plan of plot No.1, block-A, the same was approved. As far as the ground of not reserving any place for graveyard is concerned, the defendants witness Zulfiqar Ali Halqa Patwari while appearing as DW-2 during cross examination admitted that on the property purchased by the society there is a graveyard. The relevant portion of his cross examination is reproduced as under:-

"یہ درست ہے کہ سوسائٹی نے جو رقبہ حاصل کیا ہے اس میں ایک قبرستان ہے"

موجود ہے۔"

10. As far as the stance for the appellants that the society had not mortgaged any plot with the Gujranwala Development Authority is concerned, it is an admitted fact that when society was established, Gujranwala Development Authority (GDA) was not in existence and GDA also admitted vide Exh.D-2 that till the year 2007, almost 100 percent development work and allotment of plots was completed. Exh.D-2 further reveals that the appellants were well aware about the sufferings of the plot owners but instead to resolve the matter at their own level they are advising to avail remedy under the Punjab Commission of Regulation of Irregular Housing Schemes, Ordinance, 2021 whereas the plaintiff's society was not an irregular housing scheme and plaintiff's society had fulfilled all the legal formalities and if there was any lapse that was not on part of the society but on part of the Administrative



ATTE
0.5 JAN 2022
Superintendent to
District & Sessions Judge GRW

Director General GDA etc. Vs. Judicial Employees Cooperative Housing

departments i.e. Municipal Corporation Gujranwala and Gujranwala Development Authority.

11. The above facts reveal that neither the Municipal Corporation, Gujranwala nor Gujranwala Development Authority raised any objection on the layout plan submitted by the plaintiff. Instead the Gujranwala Development Authority recommended the case of plaintiff to the Government of Punjab for Ex-post facto approval and this fact also depicts that the officers of the administrative departments are working under atmosphere of fear and nobody is ready to take a bold step in order to resolve the matter. If the rules are silent regarding powers of Gujranwala Development Authority to grant Ex-post facto approval, there is no specific bar on authority of the Gujranwala Development Authority on this score but from the Director General, Secretary Govt. of Punjab HUD & PHE Department, no one is ready to take responsibility and everyone is trying to shift the burden to the other side and due to this reason the layout plan of the society could not be sanctioned otherwise all the legal formalities had been fulfilled on part of the plaintiff and plaintiff through brochure as well as documentary evidence proved its case and learned Trial Court had rightly decided this issue in favour of the plaintiff. No legal infirmity is found in the findings of learned Trial Court on this issue which are maintained.

12. Issue No.2 was regarding publication made in "Daily Express" dated 21.12.2013 wherein the Judicial Colony was declared as illegal housing scheme. The learned Trial Court on this issue held that it was discussed in detail with the plaintiff No.1 that plaintiff's society had left no legal objection.

ATTESTED
05 JAN 2022
Superintendent to
District & Sessions Judge GRW.

sanction/Ex-post facto sanction of the society well before publication of the impugned notice/list and impugned publication was against the law and facts, therefore, the same is declared as illegal, unwarranted, published arbitrarily and in a fanciful manner without any legal basis. As discussed in detail while deciding issue No.1 that the plaintiff had admittedly submitted layout plan to the Municipal Corporation, Gujranwala and later on, on establishment of GDA, the plaintiff moved an application for Ex-post facto sanction and Director General, GDA recommended the matter to the Govt. of the Punjab for approval and in this scenario the defendants were not justified to publish the name of the society in a daily newspaper by showing it illegal society. The act of the defendants was against the law. The findings of learned Trial Court on issue No.2 do not call for any interference and are maintained.

13 Issue No.3 was dependent upon the outcome of issues No.1 and 2. The learned Trial Court while deciding this issue observed that in view of findings on issue No.1 it has been established that the layout plan of the plaintiff society was neither rejected nor sanctioned without any objection in stipulated period, thus the layout plan is deemed to be sanctioned as per Punjab Local Government Ordinance, 1979 and By-laws framed there under. The learned Trial Court directed the defendants to grant Ex-post facto sanction of submitted layout plan of plaintiff society with Municipal Corporation Gujranwala in the year 1985 and then to GDA, which was done in year 1986 and decided this issue in favour of plaintiff. No legal infirmity is found in the findings of learned Trial Court on this issue, which are maintained.

ATTESTED
05 JAN 2022
Superintendent to
District & Sessions Judge GRW.

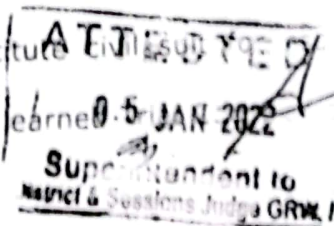
Director General GDA etc. Vs. Judicial Employees Co-operative Bank Ltd.

14. Issue No.4 was also dependent upon the outcome of issues No.1 & 2, which were decided in favour of plaintiff. In the present scenario, the learned Trial Court decided this issue in favour of plaintiff. The findings of learned Trial Court on this issue are well reasoned and are upheld.

15. Issue No.5 was regarding maintainability of suit in its present form. The learned Trial Court in the light of his findings upon issues No.1 to 4 decided this issue against the defendant. Even otherwise, the suit was in proper form and defendants did not point out that in what format the plaintiff's suit should be. The findings of learned Trial Court on this issue are maintained.

16. Onus probandi of issue No.6 was upon the defendant. As the plaintiff successfully proved its case and all the issues of onus probandi of which was placed upon the plaintiff were decided in favour of plaintiff, thus, it cannot be said that the plaintiff has not come to the court with clean hands and thus, the learned Trial Court had rightly decided this issue against the defendants. The findings of learned Trial Court on this issue are maintained.


Onus probandi of issue No.7 was placed upon the defendant and the learned Trial Court in view of its findings on issues No.1 to 4 decided this issue against the defendant. Defendants miserably failed to point out the law on the basis of which the suit was barred. The Civil Court is Court of original jurisdiction and if no other efficacious remedy is available to an aggrieved person, he may institute a civil suit for redress of his grievance. Thus, the findings of learned Trial Court on this issue are maintained.



MEHARUN NISAR
Advocate & Solicitor
Karachi


As a sequel of above discussion, no legal infirmity being found in the impugned judgment and decree which are maintained and instant appeal, being devoid of any force, is hereby dismissed. Cause sheet be prepared. Copy of this judgment be sent to the learned Trial Court for information. Record of learned Trial Court be sent back. File of appeal be consigned to the record room after its due compilation.

pronounced
12/12/2021.


(Muhammad Usman),
Addl. District Judge,
Gujranwala.

Certified that this order is consists of eleven pages, which has been dictated, read, corrected and signed by me.

dated:
12/12/2021.


Addl. District Judge,
Gujranwala.



CERTIFIED TO BE TRUE

Deputy District
Judge, Gujranwala
