



TRANSPARENCY INTERNATIONAL-PAKISTAN

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15th July, 2016

Director General, Karachi
National Accountability Bureau,
Karachi

Sub: Allegations of illegal conversion of an Amenity Plot of 3,000 Syds. Sewerage Treatment Plant, No. 12-B, DHA Karachi, Phase VI in a Residential area , into Eight Commercial Plots (all corner plots) of Market value of Rs 2 Billion,@ Rs. 250 million/plot, for allotment at less than Rs. 1 Million each to Army Generals, and conversion of 1.5 Acres Park plot plus Road into Commercial Plot worth Rs 5 Billion, for cancelled Project Creek City Shopping Mall by Global Haly Investment Ltd, with new partners from UAE.

Dear Sir,

Transparency International Pakistan has received a complaint against DHA Karachi complaining of allegations of illegal conversion of 3,000 Syds Sewerage Plant Amenity Plot No. 12-B, DHA Karachi, Phase VI in a Residential area, into Eight Commercial Plots (all corner plots) of Market value of Rs 2 Billion,@ Rs. 250 million/plot, for allotment at less than Rs. 1 Million each to Army Generals and conversion of 1.5 Acres Park plot plus Road into Commercial Plot worth Rs 4 Billion, for cancelled Project Creek City Shopping Mall by Global Haly Investment Ltd, with new partners from UAE

The complainant has made the following allegations,

That

1. In DHA Phase-VIII, a Multistory Shopping Mall on about 4.8 acres, G plus 4 Story was tendered and awarded in 2006/7 to Global Haly Investment Ltd. **Annex-A.** The Company defaulted , and the project was under cancelation since 2008 and not physical work was executed on site.
2. Global Haly Investment Ltd has inducted a new investors from UAE and Mr. Khaild Masood who is the representative of the UAE investor in Pakistan.
3. After laps of nine years, all of sudden, in 2014/2015, DHA negotiated for allotment of 15.5 acres park and Road with the new management of Global Haly Investment Ltd , which included Mr. Masood Naqvi, the representative of a UAE citizen Naseer Abdullah Lotha. **Annex-B.**

The history of alleged irregularities in which was Mr. Khalid Masood Naqvi is involved are;

Mr. Masood Naqvi was arrested and is an accused in National Accountability Bureau Case No 20/2002 of illegal allotment in Malir River Bed, 341 Acres Land on 4.7.1996 by Tariq Agha Minister for M/s Marine City Development, which was cancelled in 11-7-1997, and illegally sold to Hashwani Group. NAB Reference is pending and he is reportedly on bail. **Annex-C.**



Mr. Khalid Masood is also involved in the illegal exchange land of disputed 2 Acres Plot from Gulsha e Johar in Gulshan Iqbal Karachi of the UAE Citizen Naseer Abdullah Lotha . This Plot was cancelled on 8.9.2015. But he is continuing building an illegal commercial Plaza for public sale with Mr. Riaz Razak . **Annex-D.**

Mr. Masood Naqvi is also involved in the disputed 5,222 acres land in Thatta allotted for 99 years for commercial purpose, and , cancelled by GoS, in September 2015. **Annex-E.**

Mr. Masood Naqvi is also involved in the illegally 1 acres land in Bed of Neher Khayam, Clifton Karachi, which is under NAB inquiry, and is a witness on illegal plot lease documents.

4. DHA and Global Haly Investment Ltd with new management from UAE investor has negotiated the Project defaults, and has signed a revised agreement to re start the project with additional benefit of Rs 4 billion given to Global Haly Investment Ltd of converting 1.5 Acres Park and Road into the Shopping Mall and Apartment of over 30 Story.

The Project was tendered on about 4.8 acres in 2005/6 and was awarded to the highest bidder . In case of cancellation following the original award process of 2006/7, the Project should have been re-tendered. .

The most alarming illegal act committed by DHA and Global Haly Investment Ltd is about 1.5 Acres land reserved for a Park and Road in the DHA Master Plan, has been illegally converted into Commercial Land, and also given to Global Haly Investment Ltd. The market value of th1,5 acres commercial land in Phase-VIII, DAH Karachi is **over Rs 4 Billion. Annex-F.**

5. A Sewerage Treatment Plant is to be Constructed by DHA on 3,000 syds. amenity plot No. SP 12-B, DHA Karachi, Phase VI.

The SP 12-B is located in the fully developed residential area of Phase VI, DHA Karachi on Main Roads Crossing of 100ft wide Khy e Shahbaz and 120 ft wide Commercial Avenue. **Annex-G.** This Sewerage Treatment Plant has not been constructed by DHA since more than last 20 years. **Annex-H.**

6. In Order to facilitate high ranking armed forces officers, DHA has illegally changed the 3,000 syds. Amenity Plot of Sewerage Plant into 8 Commercial Plots of 200 syds each. The Market value of these plots @ Rs 250 M/each is over Rs 2 Billion. **Annex-H.**

7. It is reported that 2 Plots No. 4-C and 8-C have been allotted to two 3 Generals at nominal prices of about Rs 1 million each.

The complaint has been examined by Transparency International Pakistan and it appears that DHA has illegally converted these two amenity plots into Commercial Plots. This change of land use is illegal and is against the Supreme Court of Pakistan Order, as the authority of conversion of the land use rests only with Cantonment Board under Section 184 and 185 of the Cantonment Act 1924. Quoted below are two Supreme Court Orders of illgal change of Amenity Area into Commercial Area.

. CIVIL APPEAL NO.1481 OF 2007, [On appeal against the Judgment dated 16.06.2007, passed by the High Court of Sindh, Karachi, in C.P.No.D-1549 of 2005 10.02.2015, allotted two kiosks Plot No.1 and Plot No.2 in Block



IV, each measuring 100 Sq. Yards, in Scheme No.5, Kehkashan, Clifton, Karachi
at the rate of Rs.505/- per Sq. Yard

Para 9. It may be observed that the residents of Karachi have over time been denied of amenity/land for public use by their illegal occupation/encroachments and also by public functionaries by making false allotments/transfers, which has clogged the city and denuded it from much needed open spaces for the residents as a breather and a space where they can walkout freely. This facility for the residents of the city of Karachi seems to have been totally vanished. In our view, CDGK so also Government of Sindh should take immediate steps for restoring of amenity/land for public use for which they were exclusively provided in the original master plan of city of Karachi.

In the Supreme Court of Pakistan Order in the CP No. 668-K of 2011 filed by DHA Karachi, adjudicated by Justice Sarmad Jalal Osmany and Justice Gulzar Ahmed, following judgment was given on 6.9.2012.

“ After having briefly heard both the learned ASCs, we have reached the conclusion that the Petitioner (DHA Karachi) did not have any power to condone illegal construction in the concerned building i.e. conversion of the basement meant for car parking, as such power is only available to the Cantonment Board under Section 184 and 185 of the Cantonment Act 1924.”

The Director General NAB is requested to examine the complaint, and if found correct, take action under NAO 1999 Section 9 and 10 be taken against all those who are found responsible for mis-use of authority and loss to exchequer of over Rs 6 Billion.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,


Sohail Muzaffar
Chairman

Copies forwarded for the information with request to take action under their mandate to:

1. Secretary to Prime Minister, Islamabad.
2. COAS, Head Quarters, Rawlapindi. With humble request to stop such illegal acts of DHAs.
3. Chairiman, Prime Minister's Inspection Commission, Islamabad.
4. Registrar, Supreme Court of Pakistan, Islamabad

Creek City Shopping Mall

Shop Globally in Global Haly



Conceptual Photograph of Global Haly

A multi-storey Shopping Mall project, named Creek Shopping Mall, is underway, and shall be completed within the next three years. It is a Ground + 5 Storey Shopping Mall with 3 Level underground parking at 5.3 acres of land. Master Plan of the project was approved in April 2007 and the Developer has partially mobilized at the site.

The Creek Mall, the only of its kind in Karachi shall cater for retail as well as Office use in DHA Phase VIII, along the water front with highly conducive environment providing state-of-the-art facilities and attract local as well as international brand names.

The objective of the development is to create an international quality, unique, contemporary, and vibrant mall with fine retail and office space development and a commercially viable and profitable development that meets projected market demand to facilitate the residents.

The Mall has a covered area of 0.67 million square feet and a car parking facility for 215 vehicles. The total cost of the project is estimated at 8 billion rupees,

DHA Creek Mall shall encompass International standard, spacious with bright inflow of natural light. Quality Retail Area, high end office space and separate multiple entrances for Retail and Offices. Covered parking for 1600 cars, motor bikes, valet parking, delivery vehicles. Efficient vertical transportation will include 14 Guest

Elevators, 3 Service Elevators, 12 Escalators, 6 Travelators. Dedicated Covered Loading Dock for six (20 feet) vehicle at one time. Designated Taxi waiting areas for Mall and Offices, the retail, entertainment and dining mixed location for multinational brands.

In order to control the quality and operational activities in the Mall and operation as per International Standards Manual to monitor and control various facets has been developed which includes Tenant Fit-out Manual, Tenant Operational Guide, Metering Strategy, Signage Fit-out manual, Facilities Operation & Maintenance Management Brief. GHD /Royal has commissioned Specialist suppliers to provide expertise for supply and installation of systems for the Mall complex; façade Lighting and Interior specialist lighting, LED Billboard Displays, Audio/Visual System for hosting of product launching ceremonies in the Mall Atrium.

On completion, DHA Karachi shall have the best Shopping Mall analogous to any best Shopping Mall in the world.

Never miss a chance to keep your mouth shut. - Robert Newton Peck

Annex-B





**OFFICE OF THE MUKHTIARKAR KORANGI
DISTRICT KORANGI KARACHI.**

No. Mukh [Rev] Korangi/ 394 /2014, Karachi, dated 05-11-2014.

To,



The Assistant Commissioner,
Sub-Division Korangi,
District Korangi Karachi.

**COMPLAINT AGAINST MASSIVE CORRUPTION
UNEARTHED AT DHA KARACHI AND AGAINST SINDH
GOVERNMENT OF ILLEGAL ALLOTMENT OF 600-00
ACRES MANGROVE AREA-MEGA SCAM OF RS: 400
BILLION.**

Reference. Your marginal note dated 30-10-2014 on the letter No. 12-121-14/SO-I/567 dated 30-10-2014, issued by Section Officer-I Land Utilization Department.

It is submitted that the letter No. 5-2(262064-S) Prev/A&P/NAB(Sindh)/2014/910 dated 22-10-2014, issued by Additional Director (Staff) National Accountability Bureau Sindh received through above reference letter for detail report and submit relevant documents alongwith above subject land.

In this regard detailed report has been called from Supervising Tapedar of the beat who after verifying the relevant record, visit the site as well as concerned file of this office has reported that the piece of land admeasuring 341-23 acres bearing Nos. A & B situated at Delta of Malir River, adjoining Deh Dih do not fall within the Survey Nos. 445 to 475 total admeasuring 500-00 acres of land which is subject matter of this report. The Supervising Tapedar of the beat further detail reported that the matter pertains in two parts i.e. Part-I 341-23 Acres & Part-II 530-00 Acres of Deh Dih Sub-Division Korangi Karachi are as under:-

PART-I 341-23 ACRES

That Agha Tariq Ex-Minister Mineral Development Government of Sindh on 04-07-1996 managed excavation license for Mineral in respect of 341-23 acres of Government land for a period of 30 years in favor of his wife Mst. Gulnar

P/g 1/6



Begum. Thereafter on 04-08-1996 he also succeeded to get converted 30 years lease for mining purposes into 99 years lease for Residential / Commercial purposes and on 29-09-1996 through registered conveyance deed sold the said land to M/S Marina City Development (a partnership of M/S Asif Baig Muhammad, Khalid Maqbool and Mrs. Seema Tressa Gill). Whereafter Secretary Land Utilization Department on 11-07-1997 served notice upon Mst. Gulnar Begum and on her non-appearance taking into account of gross violation of the condition of the policy cancelled the allotment / lease and directed Deputy Commissioner Malir to resume said land. Being aggrieved and dis-satisfied with the order of Secretary Land Utilization Department, M/S Marina City Developments filed a suit bearing No. 970/1997 in the Honorable High Court of Sindh at Karachi. In the year 2002 National Accountability Bureau filed reference No. 24/2002 in the Accountability Court Karachi against Agha Tariq Ex-Minister Mineral and two others namely Asif Baig Muhammad and Khalid Masood as they were also involved in the land scam to obtain pecuniary benefits. On 11-05-2006 M/S Marina City Developments withdrew the suit No. 970/1997 un-conditionally despite the fact that the allotment of land was cancelled on 11-07-1997 by Secretary Land Utilization Department through judicial order. Since nothing was happened after withdrawal of the suit therefore M/S Marina City Developments filed constitution petition No. D-2088/2006 seeking regularization of the land in question and issuance of challan for payment of differential amount. On 02-06-2007 during pendency of Reference cNo. 24 of 2002 Mst. Seema Tressa Gill entered in agreement for the sale of her share and executed a power of attorney in favor of other partner namely Asif Baig Muhammad who was accused in Reference No. 24/2002 and transferred her share, whereafter she filed two application before Accountability Court one for cancellation of all transaction in respect of land subject matter of the reference which had taken during pendency of the reference which was allowed by Accountability Court as petition No. D-2088/2006 was still pending in the High Court of Sindh Karachi which was also later on dismissed on 07-03-2008 and second application with the prayer that order dated 11-07-1997 of Secretary Land Utilization Department be declared to be in administrative order and directions to the Government of Sindh to issue challan for the differential amount, but second application was dismissed. On dismissal of second application the petitioners filed constitution petition No. 2601/2009 which was also dismissed. Whereafter allottee got succeeded to regularize the land on 08-03-2012 by taking benefits of ordinance-III of 2001 and got executed sale deed in her favor but the Honorable High Court of Sindh vide its order dated 28-03-2013 declared the regularization of the land to be unlawful in C.P No. 788/1999 M/S Pakistan Services Limited V/S Accountability Court No. II Sindh and others and held date grant / lease of land in question was cancelled on 11-07-1997 by Secretary Land Utilization Department while exercising power under section 164 of West Pakistan Land Revenue Act 1967 therefore there was neither any existing grant which could

have come to end by virtue of ordinance-III of 2001 or could have been regularized their under. Being aggrieved and dis-satisfied the order passed by Honorable High Court of Sindh the petitioners have filed appeal in the Honorable Supreme Court of Pakistan and in that case that the status quo order has been passed.

PART-II 530-00 ACRES



It is humbly submitted that as per entry No. 19 in joint register of No. 33, thereafter vide entry No. 23 dated 20-09-1936 the above land sold out on oral statement to purchaser Muhammad Ibrahim S/o Badoo, the book of VI-VII and oral statement register not available in any Revenue office in Karachi Division, thereafter in the year 2004 the foti khata badal of deceased Muhammad Ibrahim S/o Badoo in his legal heirs vide entry No. 368 Delh Dih Sub-Division Korangi Karachi.

The Defunct District Coordination Officer City District Government Karachi, has conduct detailed enquiry in the matter as per order of Honorable Chief Minister Sindh and issued his finding under letter No. PS/DO/CDGK/85/2005 dated 28-01-2005. (copies of the same are enclosed).

In spite of service of notices as per law that so called khatedars / were neither appeared nor had submitted any written reply in their defense, though they were provided sufficient opportunity of being heard. Hence the learned Executive District Officer Revenue City District Government Karachi, cancelled all the entries No. 08, 09 & others all the corresponding entries vide order dated 05-03-2005.

Thereafter disagreed with order of EDO Revenue filed separately two (2) suits i.e. 894/2006 & 1350/2006 in the Honorable High Court of Sindh Karachi against the order of EDO Revenue City District Government Karachi.

That the as per direction of enquiry committee the FIR lodged in Police Station ACE Karachi for the offences under section 161/420/468/471/54 PPC read with section 5(2) Act-II of 1947. The Honorable Court of Special Judge Anti-Corruption Provincial Karachi in Special Case No. 08/2005 of FIR No. 10/2005 in order dated 29-06-2010, the charges against accused or groundless and their does not appear any probability of convention of any accused for the alleged offence if case is tried.



No. SS/ KYC/ 447/ 2015
Government of Sindh
Board of Revenue
Survey Superintendent
(Karachi)

1932/15
14/10/15

99206353

Dated 08 -10-2015

To,

The Assistant Commissioner
Sub-Division Gulshan-E-Iqbal
District East, Karachi.

**SUBJECT: CANCELLATION OF ORDER/LETTER-REGARDING
EXCHANGE OF LAND UNDER SECTION 17 OF THE
COLONIZATION OF GOVERNMENT LANDS (SINDH)
ACT 1912.**

In compliance of letter No.09-294-03/SO-I/493 and Notification No. 09-294-03/SO-I/494 dated 21-09-2015, issued by Secretary to Government of Sindh Land Utilization Department, Ghat Wadh Form No.No.62 in respect of S.No.333 (02-00) acres out of NC.No.210 Deh Okewari is hereby cancelled and prepared Rad Ghat Wadh Form No.89 Deh Okewari by the field staff of this office which are sent herewith for taking further necessary action.

Mukhtarkar,
for wa on per
law / rules.

(Muhammad Younis Dahri)
Survey Superintendent
Karachi

Sau
16/10/15

Copy for information to :-

1. The Secretary to Government of Sindh Land Utilization Department with reference to his office letter No. No.01-154-02/SO-I/90 dated 21-06-2010 .
2. The Commissioner Karachi Division, Karachi.
3. The Director Settlement Survey & Land Record Sindh Hyderabad.
4. The Deputy Commissioner District East, Karachi.
5. The Mukhtarkar Taluka Gulshan-E-Iqbal, District East, Karachi.
6. The Inspector of Revenue & City Surveyor Karachi.

PRESENT
MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE UMAR ATA BANDIAL

H.R.C. NO. 16115-S OF 2015
(allotment of 5000 acres of land of Sindh Govt. to UAE businessman at rate of 15 million only)

In attendance: Nemo.
Date of Hearing: 05.10.2015

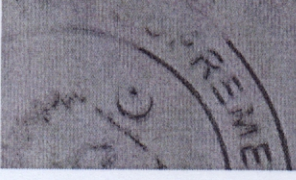
ORDER

Anwar Zaheer Jamali, CJ.— None present for the parties

On 16.09.2015, following order was passed in this Human Rights Case:

"Upon submission of report by the Chief Secretary, Government of Sindh, it seems that, prima facie, the issue has been settled inasmuch as the 99 years lease of the land admeasuring 5222 acres, has been cancelled. To this effect report of Senior Member Board of Revenue, Sindh is also available on record along with order of cancellation. However, the learned Advocate General Sindh requests for time to place on record some more documents on behalf of the Government of Sindh to clarify their position. Adjourned. Office to relist this case in the first week of October, 2015."

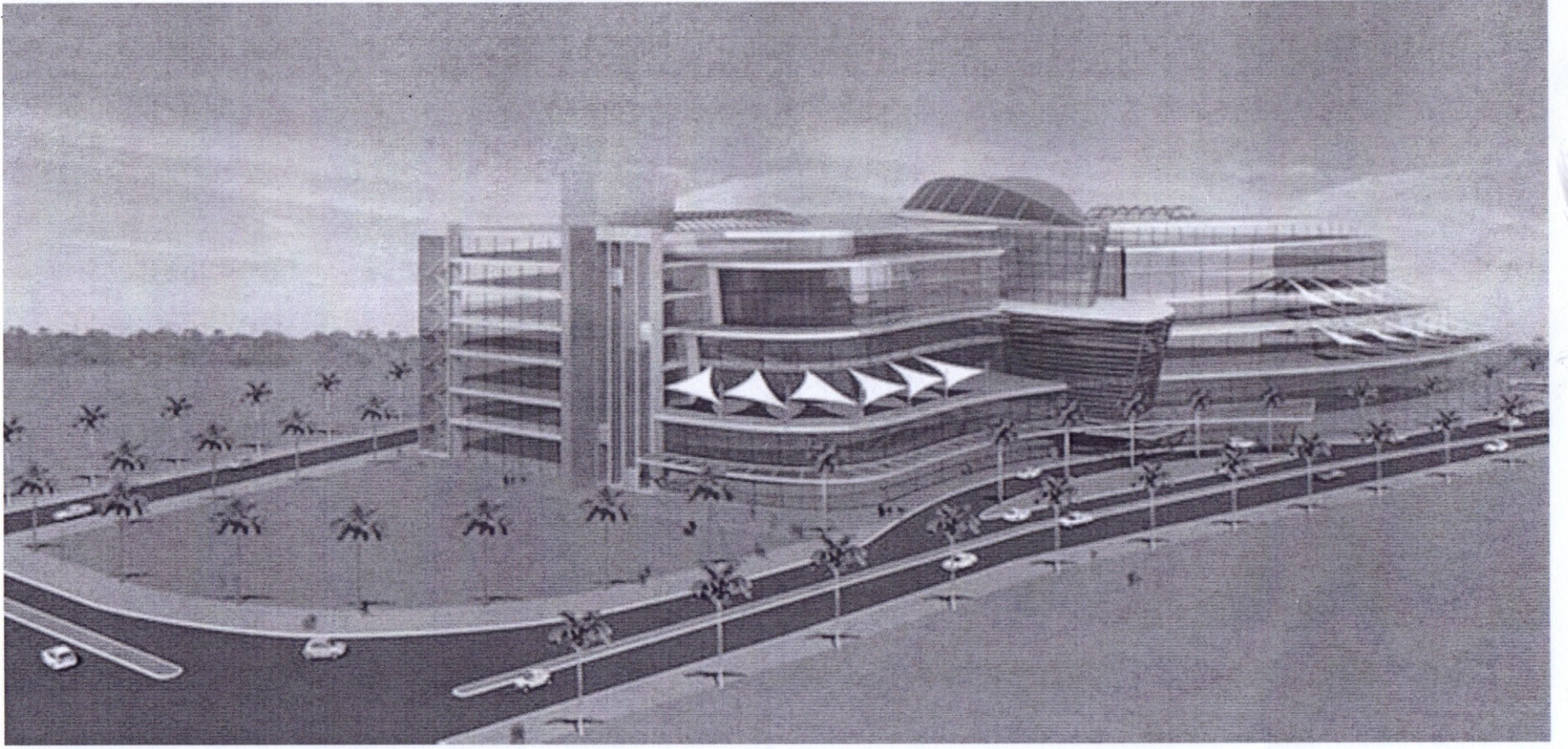
2. Today nobody is present from the office of Advocate General Sindh nor any documents have been placed on record. This being the position, this Human Rights Case is disposed off with the observation that in case any party is aggrieved with the order of cancellation, he may approach the appropriate forum for redressal of his grievance.



M/ Anwar Zaheer Jamali, CJ
M/ Amir Hani Muslim

F

Annex-





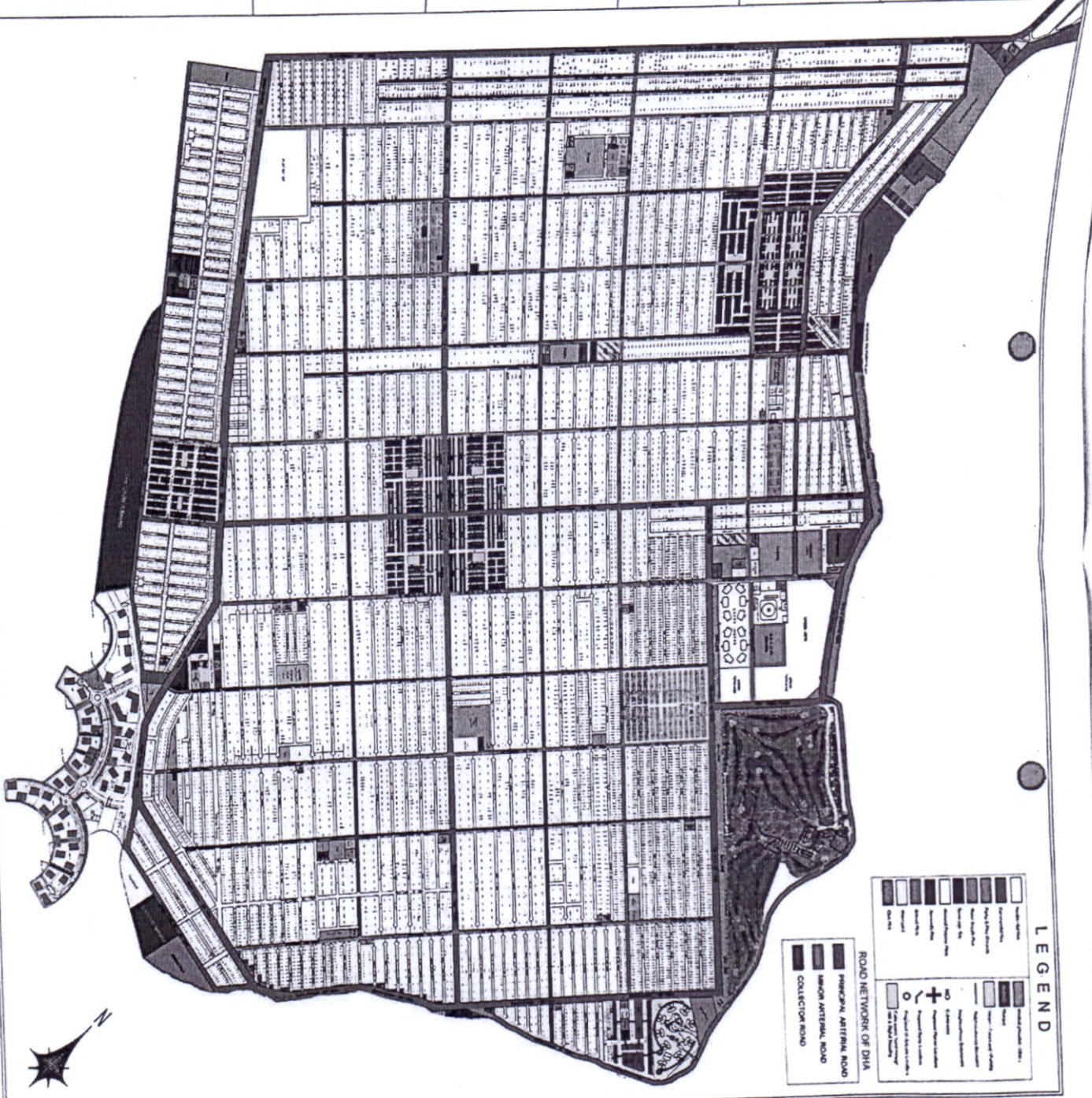
PAKISTAN DEFENCE OFFICERS
HOUSING AUTHORITY

PLANNING & DESIGN OF
DHA PHASE VIII

REVISED MASTER PLAN

Client: S. A	Scale: 1" = 430'
Prepared:	Drawing No: 1700-007-06-01-01
Checked:	Date: APRIL 2012

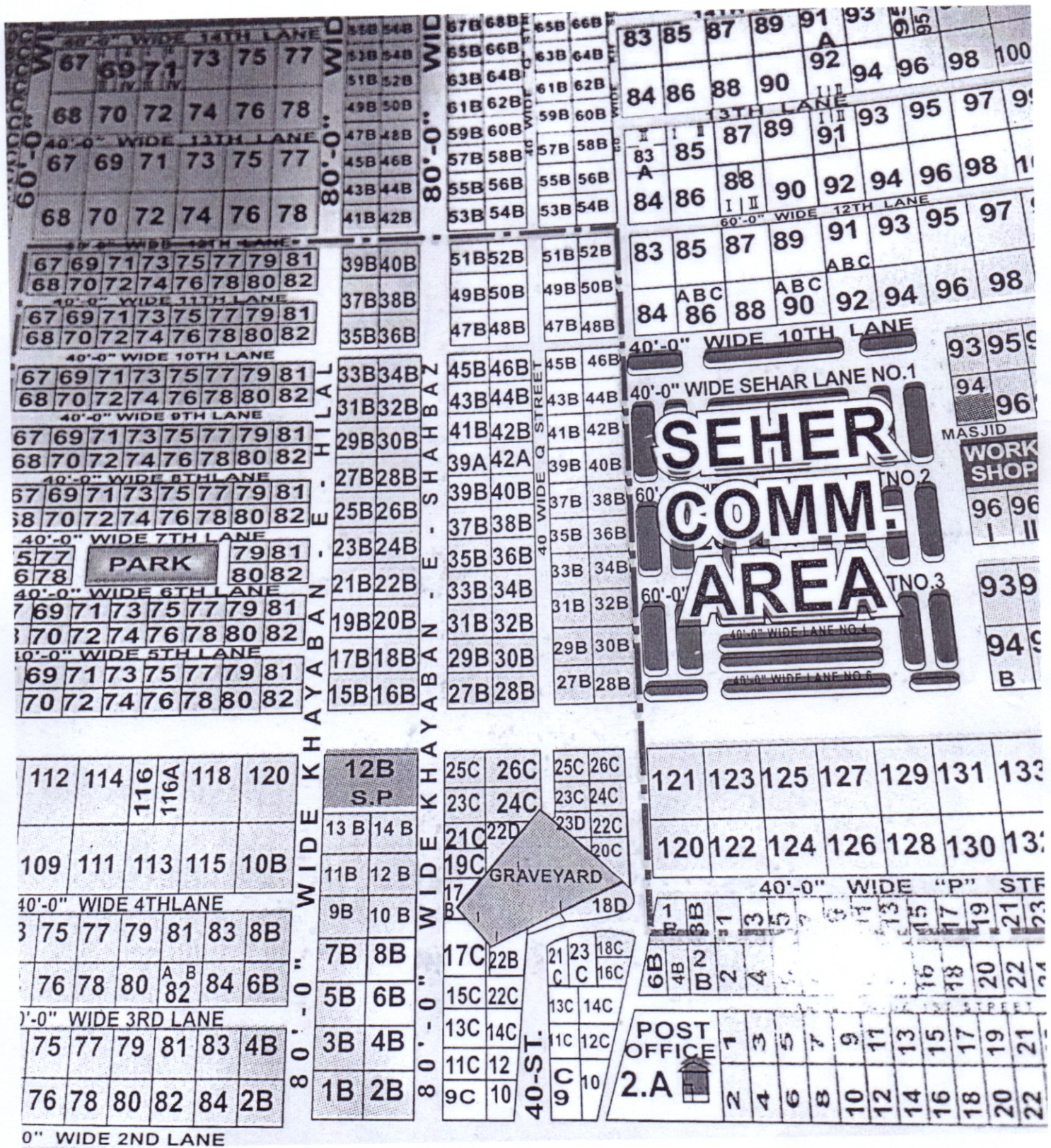
Design Consultant -
OSMANI
Engineering - Architecture - Planning - Mapping - Technology
OSMANI & COMPANY (PVT.) LTD.
CONSULTANTS ENGINEERS ARCHITECTS PLANNERS



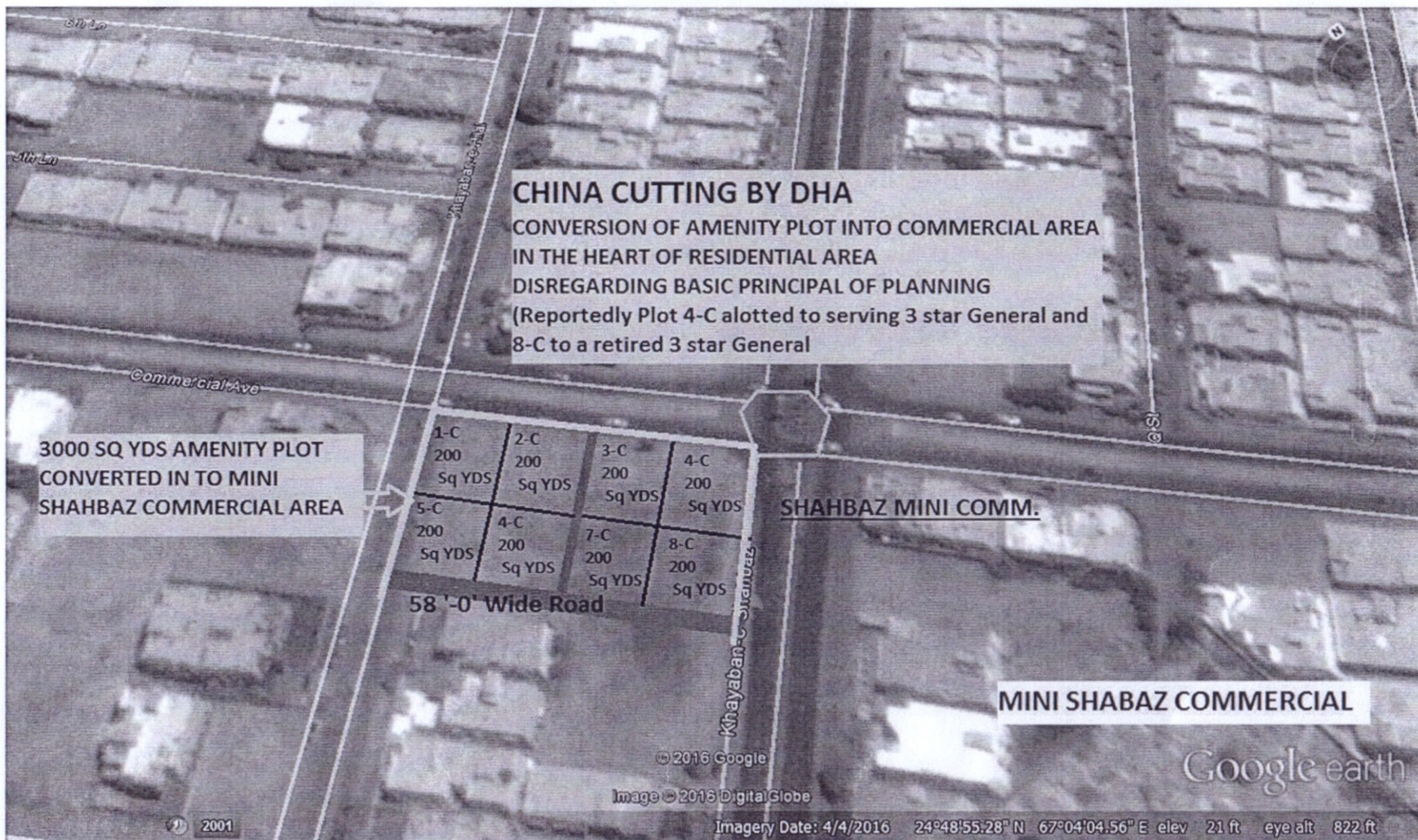
ROAD NETWORK OF DHA
PRIMARY ARTERIAL ROAD
ARTERIAL ROAD
COLLECTOR ROAD

LEGEND

[Symbol]	Public Buildings
[Symbol]	Water
[Symbol]	Sewer
[Symbol]	Gas
[Symbol]	Electricity
[Symbol]	Primary Arterial Road
[Symbol]	Arterial Road
[Symbol]	Collector Road
[Symbol]	Water
[Symbol]	Sewer
[Symbol]	Gas
[Symbol]	Electricity
[Symbol]	Public Buildings
[Symbol]	Schools
[Symbol]	Mosques
[Symbol]	Open Spaces
[Symbol]	Other



Annex - H



IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk, CJ
Mr. Justice Gulzar Ahmed
Mr. Justice Mushir Alam

CIVIL APPEAL NO.1481 OF 2007

[On appeal against the Judgment dated 16.06.2007,
passed by the High Court of Sindh, Karachi, in
C.P.No.D-1549 of 2005]

Province of Sindh through its Chief Secretary ***Appellant(s)***
& 8 others

VERSUS

Syed Kabir Bokhari

Respondent(s)

For the Appellant(s)

[Appellants No.1, 4, 6-9] : Mr. Qasim Mirjat Addl.A.G. Sindh
Raja Abdul Ghafoor, AOR

[Appellants No.2, 3 & 5] : Syed Jamil Ahmed, ASC
Raja Abdul Ghafoor, AOR

For the Respondent(s) : Dr. A. Basit, Sr. ASC

Date of Hearing : 10.02.2015

JUDGMENT

GULZAR AHMED, J.— The brief facts of the matter are that through two identical allotment orders dated 23.2.1976, Karachi Development Authority (KDA), on acceptance of highest bid of the respondent, had allotted two kiosks Plot No.1 and Plot No.2 in Block IV, each measuring 100 Sq.Yards, in Scheme No.5, Kehkashan, Clifton, Karachi at the rate of Rs.505/- per Sq.Yard (the disputed plots). Through possession orders both dated 24.2.1976 the KDA handed over the possession of disputed plots to the respondent. The possession order provided that 99 years lease will be granted on

payment of full occupancy value. It is further alleged that respondent has paid the full occupancy value of the disputed plots. Subsequently it transpired that in the master plan of KDA Scheme 5, Kehkashan Clifton, Karachi made by the KDA and notified on 06.10.1964 there was no land earmarked for the purpose of two kiosks and the allotment of the disputed plots to the respondent was illegal. Two show cause notices, both dated 14.7.2005, were issued by the CDGK, Land Management Department (Successor of KDA) for canceling the allotment of the disputed plots of kiosks Nos.1 & 2 on the ground that respondent has failed to raise construction on the disputed plots within stipulated period of two years from the date of possession and further the disputed plots were carved out from amenity plot without completing the codal formalities and thus the allotment order was *ab initio void* and illegal. Through two letters both dated 05.8.2005 the allotment of the disputed plots of kiosks Nos. 1 & 2 were cancelled. The respondent filed C.P.No.D-1549/2005 in the High Court of Sindh at Karachi challenging the cancellation orders. The learned Division Bench of High Court of Sindh at Karachi, through short order dated 30.5.2007, allowed the said petition and directed the respondents (the appellants in the present appeal) to execute lease deed in favour of the petitioner (respondent herein) of the disputed plots of kiosks No. 1 & 2 and also transfer the site in terms of the allotment orders. The detailed judgment was given on 16.6.2007. The appellant challenged the said judgment in this Court and vide order dated 09.8.2007 leave to appeal was granted to consider the following questions:

- i) *Whether, in the facts and circumstances of the case, the plots viz: kiosk Nos. 1 and 2 allotted to the respondent in the year 1976 through open auction could be*

cancelled in the year 2005 on the ground that in revised plan prepared by Government the same were carved out from the land originally meant for amenity purposes particularly when after such cancellation the very kiosks have been advertised by City District Government for public auction as commercial plots?

ii) Whether the cancellation of allotment of plots in dispute after full payment received from respondent and possession handed over to him was validly and legally made after twenty nine years of the allotment?

2. We have heard the learned counsel for the parties at length and have also gone through the record of the case.

3. There is no dispute between the parties on the factual controversy that is the allotment of disputed plots to the respondent, the payment of its price/occupancy value, delivery of possession, issuing of show cause notice and cancellation of disputed plots. The main argument revolved before us was on the question that disputed plots were part of an amenity plot. The fact that the disputed plots become part and parcel of parking lot for providing parking facility to the public is also not in dispute for that there is an inspection report of Deputy Nazir of High Court dated 15.12.2005 so also the report dated 18.10.2012 of the Office Incharge of the Supreme Court of Pakistan, Branch Registry Karachi, wherein the position reflected on the ground is that the disputed plots are shown to be part and parcel of parking lot made by the CDGK. It was proposed by the counsel for respondent that the respondent is prepared to accept the cancellation of the disputed plots for use as a parking space for public provided the respondent is paid appropriate compensation in that respondent has acquired proprietary right in the disputed plots and such right cannot be denied or taken away.

4. Both learned Additional Advocate General Sindh appearing for the appellant Nos. 1, 4, 6 and 9 and Syed Jameel Ahmed learned ASC appearing for the appellant Nos. 2, 3 & 5 have sought time to seek instructions from their respective parties on the point of payment of compensation but despite availing of ample time, no response has been made by the above named two counsel for the appellants. It therefore, transpires that the appellants are not willing to pay compensation to the respondent in respect of disputed plots.

5. On perusal of the record, we find that in the revised layout plan of Kehkashan, Scheme 5, Clifton, Karachi made in the year 1972, a copy of which is attached with CMA No. 4472/2011 filed by the counsel for respondent, does not anywhere reflect availability of any land or plots for the purpose of kiosks. There is land showing cross lining in front of which is an open land. In this open land perhaps the petitioner in his own hardwiring has shown to be having the deputed plots of two kiosks. Yet another copy of another revised layout plan of 1975 is attached with the same CMA, which also reflects that the similar position of land, which is shown in the revised plan of 1972 except that there is an insertion of two squares, which are shown to be located outside the cross lining area. The respondent in his letter dated 10.7.2003 addressed to the District Executive Officer, Master Plan Group of Office, CDGK has himself stated that due to error the KDA at the time of making the Master Plan of Kehkashan Clifton Scheme 5 Karachi two kiosks were not included in the master plan and requested for their incorporation in the master plan. This very letter of respondent lend support to the fact that in the master plan of Kehkashan, Scheme 5, Clifton, Karachi there was no existence of any plot for kiosks.

6. It is not the case of respondent before us that the disputed plots allotted to the respondent were the plots meant for commercial use and such also does not appear to be the position emerging on examining the two master plans as referred above. The master plan shows that the land having cross lines apparently is meant for amenity/land for public use and not a space/land meant for allotment for use in commercial venture. Depiction of two squares in the revised master plan of 1975 is outside the lined area does not appear to be factually correct as has become known from the two reports; one submitted by the Deputy Nazir of High Court of Sindh and the other of Office Incharge of this Court in which the disputed plots are shown to be part and parcel of parking lot of CDGK and not out side it. The land immediately outside the parking lot is a beach, which become submersible by sea water on high tide.

7. All these factors show that the disputed plots allotted to the respondent were carved out from amenity plot/land for public use and such allotment being admittedly made for commercial use was directly in conflict with the Article 52-A of the KDA Order, 1957 which specifically provided for procedure for seeking of conversion of amenity plot for other use. Admittedly, there is no order whereby use of plot from that of amenity to that of commercial was sanctioned by competent authority in respect of disputed plots.

8. It may further be noted that the allotment of disputed plots was made as back in the year 1976 but despite having possession, the respondent took no steps for raising construction and rather left the disputed plots as they were at the time of allotment and possession that is a bare site. The respondent has given an explanation for not

raising the construction that is the officials did not develop the area nor provided the utility. The fact however remains that for almost 29 years respondent remained inactive and did not use the disputed plots for the purpose for which they were allotted. This fact of non-use of disputed plots by the respondent reflects heavily against him and shows that very purpose of allotment of disputed plots was other-wise than use by the respondent as kiosks.

9. Though, it is contended by the respondent that these disputed plots and other plots were being offered for ten years lease by the CDGK for their commercial exploitation seems to be correct but such venture was scrapped for the reason that the disputed plots stood already allotted to the respondent. We do not know nor do we want to comment upon the venture of CDGK of giving plot on ten years lease for commercial exploitation. Had such venture been executed, the same on the basis that amenity plots cannot be used for commercial exploitation would have definitely been set aside. It may be observed that the residents of Karachi have over time been denied of amenity/land for public use by their illegal occupation/encroachments and also by public functionaries by making false allotments/transfers, which has clogged the city and denuded it from much needed open spaces for the residents as a breather and a space where they can walkout freely. This facility for the residents of the city of Karachi seems to have been totally vanished. In our view, CDGK so also Government of Sindh should take immediate steps for restoring of amenity/land for public use for which they were exclusively provided in the original master plan of city of Karachi. It is so strange to note that the whole of the beach of the city of Karachi totally looks barren devoid of any plantation or greenery except much

acclaimed Bagh-e-Ibne Qassim, which apparently is not being maintained in a way the park of such magnitude is required to be maintained.

10. Despite the above discussion, it is clear that it was the KDA who has offered the disputed plots to the respondent who through a bidding process has made the highest offer and on acceptance of such offer has got allotment of disputed plots in his favour. He has also paid whole of occupancy value/price of disputed plots and has obtained their possession, which possession letter represented giving of lease of 99 years of disputed plots on receipt of full occupancy value/price. The respondent cannot be squarely blamed for illegal conduct of officials of the KDA in making of allotment of amenity plot/land for public use to the respondent. The respondent admittedly has paid substantial amount in the shape of whole occupancy value/price of disputed plots and thus cannot be deprived of his funds so paid by him to the KDA now the CDGK. Although the respondent did not acquire any title to the disputed plots but the fact remains that he did pay for disputed plots and such was done by him on illegal and unlawful conduct of officials of then KDA. The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, same is appropriately be compensated. This is a fundamental rule and also principle of equity. The learned ASC for the respondent during the course of hearing of this appeal has contended that in case the respondent is found not entitled to the disputed plots of the two kiosks, the respondent be paid compensation at the prevailing market rate of the disputed plots and in this respect has

referred to the advertisement published in daily newspaper Dawn dated 16.11.2005 in which offer of public auction of plots by the CDGK on the Clifton Beach for setting up stalls etc on short lease of ten years with a bid price of Rs.15,00,000/- per year. Similar position has been taken by the respondent in his CMA No.581/2015. We have already noted above that the land, on which the disputed plots were allotted to the respondent, was an amenity plot/land for public use and thus not available for being allotted for commercial exploitation. No lease of 99 years was made in favour of the respondent. The respondent himself did not utilize the two plots for almost 29 years though in possession. Although, on the basis of fundamental rules so also principle of equity the respondent is entitled to be compensated but the compensation as is claimed by the respondent is not what in the facts and circumstances of the present case such principle will admit. The offer of plot by public auction by the CDGK in 2005 at the rate of Rs.15,00,000/- per year never materialized and thus it cannot form basis for granting of compensation. Yet the illegality committed by the officials of KDA in doling out the disputed plots out of the amenity plot/land for public use cannot give advantage to the respondent so as to enrich himself from such illegality. In all fairness, the respondent can well be compensated by directing refund of the amount received from him as the occupancy value/price of land by the appellant alongwith interest/markup at the rate of 18% per annum from the date of the receipt of occupancy value/price of land until it is actually refunded. Consequently, the appeal is partly allowed by setting aside the impugned judgment with directions to the appellants Government of Sindh/CDGK to refund to the respondent all the amount of occupancy value of disputed plots alongwith markup at the rate of 18% per annum from the date of

occupancy amount received till the amount is actually paid to the respondent.

CJ.

J.

Bench-I
ISLAMABAD
10.02.2015
NOT APPROVED FOR REPORTING

J.

Hashmi

Announced in open Court on 11.08.2015

J.