

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. 1038 of 2013

1. Pakistan Institute of Labour  
Education & Research,  
Registered under the Voluntary Social  
Welfare Agencies, Ordinance, 1961,  
registered office at PILER Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi-75340
- X 2. Anis-ur-Rahman  
Son of, Ubaid-ur-Rehman,  
Muslim, Adult,  
Resident of A-243, Sector X, Sub-Sector VI,  
Gulshan-e-Maymar,  
Karachi *~~Potential~~ withdrawn.*
- X 3. Syed Jan Alam  
Son of Syed Qazi Abdul Quddus Ahmed,  
Muslim, Adult,  
Resident of A-181, Sector X, Sub-Sector VI,  
Gulshan-e-Maymar,  
Karachi *~~Potential~~ withdrawn.*
4. Mohammad Anjum Naseem  
Son of, Mohammad Naseem Ashrafi,  
Muslim, Adult,  
Resident of Plot No. B-021,  
Sector W, Sub-Sector III,  
Gulshan-e-Maymar,  
Karachi
- X 5. Laeeq Ahmed Pathan  
Son of Jamil Ahmed Pathan,  
Muslim, Adult,  
Resident of Plot No. C-011,  
Sector V, Sub-Sector I,  
Gulshan-e-Maymar,  
Karachi.....Petitioners *Withdrawn.*

Versus

1. Province of Sindh  
Through the Chief Secretary,  
Government of Sindh,  
Sindh Secretariat,  
Karachi
2. The Malir Development Authority  
Through the Director-General,  
G-4/B, Block-17, Gulshan-e-Iqbal,  
Karachi

3. Maymar Housing Services (Pvt.) Limited  
Through the Chairman,  
ST-001, Sector X, Sub-Sector I,  
Gulshan-e-Maymar,  
KDA Scheme 45, Karachi
4. Sindh Environmental Protection Agency  
Through its Director General,  
ST-2/1, Sector 23, Korangi Industrial Area,  
Karachi
5. Province of Sindh  
Through the Secretary,  
Ministry of Local Government,  
Government of Sindh,  
Sindh Secretariat,  
Karachi
6. Sindh Building Control Authority  
Through the Director General,  
Annexe to the Civic Centre Building,  
Hassan Square, Gulshan-e-Iqbal,  
Karachi.....Respondents

**CONSTITUTION PETITION UNDER ARTICLE 199 OF THE CONSTITUTION  
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed  
Petitioners as under:

1. That the subject-matter of this present Petition is the illegal change of the layout plan of Gulshan-e-Maymar, at Scheme No. 45, Taiser Town, Karachi, by the Respondent No.3 [Maymar Housing Services (Pvt.) Limited. Hereinafter referred to as "MHSL"], the acceptance of the illegal layout plan by the Respondent No.2, the illegal conversion of, inter-alia, amenity and public plots to other land uses, as part of the aforementioned change of layout plan and the failure of the Respondent No.3 ['MHSL'] to fulfil its obligations to the allottees of Gulshan-e-Maymar plots and the failure of the Official Respondents to act in this regard. It is submitted that the Petitioners, through this Petition seek the enforcement of the Respondents constitutional and legal obligations to the residents of Gulshan-e-Maymar.
2. That the Petitioner No. 1 ['PILER'] is a known organisation, which has undertaken dedicated efforts towards the betterment of the people of Pakistan

through various measures on a voluntary basis. It is submitted that the Petitioner No.1 also desires, and is working for, the enforcement of the rights of the workers and the people of Pakistan on various public interest issues, including housing and living conditions. It is further submitted that the registered office of the Respondent No. 1 is located in Gulshan-e-Maymar.

*A copy of the Allotment Certificate dated: 21-08-1997 and Board Resolution dated: 03-02-2013 are annexed and marked as **Annex 'A' & 'A-1'** respectively.*

3. That the Petitioners No.2 to No. 5 are all residents / allottees of plots in Gulshan-e-Maymar. It is submitted that the Petitioners No.2 to No.5 are also working towards the betterment of the lives of the people residing in Gulshan-e-Maymar.

*A copy of the various transfer/title documents of the Petitioners No.2 to 5 are annexed and marked as **Annex 'B' to 'B-3'** respectively.*

4. That the Respondent No.3 ['MHSL'] is the owner of the Gulshan-e-Maymar Project. It is submitted that the Respondent No.3 ['MHSL'] has leased out plots to the Petitioners in Gulshan-e-Maymar. It is further submitted that as per Clause 3 of the Terms and Conditions of the Agreements between the Petitioners and the Respondent No.3 ['MHSL'], the cost of the amenities has already been included in the payment made to the Respondent No.3 ['MHSL'] and therefore, the amenities listed in Clause 3 of the Agreements have already been paid for by the Petitioners.

*A copy of the Agreement is annexed and marked as **Annex 'C'**.*

5. That the Director Town Planning, of the Respondent No.2, through Public Notice dated: 13-06-2012, published in the Daily Express Newspaper, invited objections regarding the approval of a revised layout plan (GM-14) Taisar Town, in Scheme No.45 of Gulshan-e-Maymar, Karachi [hereinafter referred to as the "Impugned

Layout Plan"], through which the Respondent No.3 ['MHSL'] aimed to, inter-alia, amalgamate certain commercial plots, change the status of certain public building sites, amenity plots and residential sites to, inter-alia, flat sites and the conversion of a residential site for the creation of a K.E.S.C. Grid Station.

*A copy of the Public Notice dated: 13-06-2012 is annexed and marked as **Annex 'D'**.*

6. That, inter-alia, the Petitioners immediately responded to the Public Notice dated: 13-06-2012, through letters dated: 26-06-2012 and two further letters dated: 26-06-2012, addressed to the Respondents No.2, objected to, inter-alia, the illegal conversion of the plots proposed in the Impugned Layout Plan and the building of the KESC Grid Station. It is further submitted that the Petitioners objections were also sent to the Respondent No.6 ['SBCA'] as well as the Governor of Sindh through further letters.

*A copy of the letters dated: 26-06-2012, two further letters dated: 26-06-2012 and letters to SBCA and Governor of Sindh are annexed and marked as **Annex 'E' & 'E-4'** respectively.*

7. That the Respondent No.2, through letter dated: 03-07-2012, invited the complainants to attend a meeting with the Respondent No.2 to discuss their grievances.

*A copy of the letter dated: 03-07-2012 is annexed and marked as **Annex 'F'**.*

8. That pursuant to the meeting held on 09-07-2012, the Respondent No.2, through letter dated: 11-07-2012, invited the complainants to view the revised Impugned Layout Plan.

*A copy of the letter dated: 11-07-2012 is annexed and marked as **Annex 'G'**.*

9. That in the meeting held on 09-07-2012, it was agreed by the Respondent No.2 that instead of the KESC Grid Station, the site would be reserved for a graveyard and that the status of any plot within Scheme-45 would not be changed and neither would any plot be amalgamated. It is pertinent to note here that the Respondent No.2 did not show the Impugned Layout Plan in the meeting held on 09-07-2012. The Petitioners, through letter dated: July, 2012, sent the minutes of the meeting held on 09-07-2012 to the Respondent No.2. It is submitted that the Petitioner No.4 had also, through Letter dated: July, 2012, sent the Minutes of the Meeting held on 09-07-2012 to another officer of the Respondent No.2.

*A copy of the letters dated: July, 2012, are annexed and marked as **Annex 'H' & 'H-1'** respectively.*

10. That the Petitioner No.4 also sent a letter to the Respondent No.2 regarding the authenticity of the 'External Development Charges' demanded by the Respondent No.3 ['MHSL'], purportedly on behalf of the Respondent No.2, however, to date, no reply or explanation has been given.

*A copy of the letter dated: 13-07-2012 is annexed and marked as **Annex 'I'**.*

11. That pursuant to the Respondent No.2's letter dated: 11-07-2012, in which the Respondent No.2 invited the complainants to the Respondent No.2's office to view the amended Impugned Layout Plan, another meeting was held on 13-07-2012, however, to the shock and surprise of some of the Petitioners, who were, inter-alia, attendees in the meeting dated: 13-07-2012, the Respondent No.2, inter-alia, refused to acknowledge the objections of the complainants and simply stated that they had no legal right or basis to challenge the Impugned Layout Plan and that the Respondent No.3 ['MHSL'] had full authority to, inter-alia, convert public buildings into flat sites and other sites. The complainants sent a letter dated: July, 2012, to the Respondent No.2 which contained a summary of the meeting dated: 13-07-2012.

*A copy of the letter dated: 16-07-2012 is annexed and marked as Annex 'J'.*

12. That feeling aggrieved by the treatment meted out to them by the Respondent No.2, the complainants wrote to the Provincial Ombudsman, Sindh [hereinafter referred to as the "Ombudsman"] and requested the Ombudsman to look into, inter-alia, their objections regarding the Impugned Layout Plan.

*A copy of the letter dated: 19-07-2012 is annexed and marked as Annex 'K'.*

13. That the Petitioners and other residents of Gulshan-e-Maymar did not receive any reply or update regarding their objections, in view of which, a Legal Notice dated: 02-08-2012 was sent to, inter-alia, the Respondent Nos.1 and 6.

*A copy of the Legal Notice dated: 02-08-2012 is annexed and marked as Annex 'L'.*

14. That the Ombudsman, through letter dated: 19-09-2012, sent to one of the residents of Gulshan-e-Maymar, a purported letter dated: 17-09-2012 and a report of the Respondent No.2 which was addressed to the Ombudsman, and contained a Note Sheet dated: 17-07-2012, purportedly of the Legal Advisor of the Respondent No.2 ['MDA'].

*A copy of the letter dated: 19-09-2012, attached letter dated: 17-09-2012 and Note Sheet dated: 17-07-2012 are annexed and marked as Annex 'M' to 'M-2' respectively.*

15. That pursuant to the illegal acceptance of the Impugned Layout Plan, the Respondent No.3 ['MHSL'] has commenced work on the implementation of the Impugned Layout Plan and raising construction accordingly.

*A copy of recent pictures showing the illegal implementation of the Impugned Layout Plan are annexed and marked as Annex 'N' to 'N-2' respectively.*

16. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondents as being unconstitutional, without jurisdiction and illegal, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

### GROUNDS

- A. That it is most respectfully and most humbly submitted that the purported change of public building and other sites into flat sites and other land use and the purported approval of the Impugned Layout Plan is in complete violation of the applicable building laws of Sindh and is completely contrary to the settled law laid down by the Honourable High Courts and Supreme Court of Pakistan.
- B. That the Impugned Layout Plan is clearly illegal and malafide for the following further reasons. Firstly, it is violative of the Karachi Building and Town Planning Regulations, 2002, as the mandatory requirements and procedures laid down have not been followed. Secondly, as is obvious from the above that numerous complaints were pending against the Impugned Layout Plan by the residents of Gulshan-e-Maymar and the Petitioners but the Respondent No.2, as well as the relevant government officials, have purportedly approved the Impugned Layout Plan, without giving the aggrieved parties a proper hearing and without passing a reasoned order on their complaints, which is also a requirement under the Karachi Building and Town Planning Regulations, 2002. Therefore, the purported approval of the Impugned Layout Plan is clearly without jurisdiction, illegal, malafide and violative of the Petitioners constitutional rights under Articles 4, 9 and 25 of the Constitution.

- C. That in view of the abovementioned facts and grounds, it is most respectfully and most humbly submitted that the Letter dated: 17-09-2012, relied upon by the Respondents and the Ombudsman, is completely without jurisdiction and illegal for the following reasons. Firstly, a bare reading of the aforementioned letter dated: 17-09-2012 shows that it has made observations about the change of status of sites, without an application of mind and without an examination of the detailed facts and law and instead, focused on delineating some of the provisions of the Karachi Building and Town Planning Regulations, 2002. Secondly, the aforementioned letter dated: 17-09-2012 is clearly contrary to the mandatory requirements and procedures laid down in the Karachi Building and Town Planning Regulations, 2002, and the aforementioned letter dated: 17-09-2012 cannot override the mandatory provisions of law. Thirdly, the aforementioned letter dated: 17-09-2012 has been passed without hearing and considering the complaints of the residents of the area against the Impugned Layout Plan. Fourthly, the letter dated: 17-09-2012 has not addressed any of the complaints of the residents of Gulshan-e-Maymar, inter-alia, in relation to the KESC Grid Station, the issue regarding the External Development Charges, or the proposed amalgamation and conversion of certain plots. Fifthly, without prejudice to the aforementioned, the Note Sheet dated: 17-07-2012 has recommended that a detailed enquiry needs to be held in order to consider the objections raised and only then can the new Layout Plan be passed by the competent authority. Therefore, the approval of the Impugned Layout Plan is clearly without jurisdiction, illegal, malafide and violative of the Petitioners constitutional rights under Articles 4, 9 and 25 of the Constitution.
- D. That although the Respondent No.2 and No.3 were fully aware regarding the objections of the residents of Gulshan-e-Maymar, the Impugned Layout Plan has been approved without providing any justification and without any reasoned order in response to the various objections raised by the residents of Gulshan-e-Maymar. It is submitted that the Petitioners and other residents of Gulshan-e-Maymar have not been given a proper hearing and their written objections have not been acknowledged or responded to through a reasoned and speaking order.



Therefore, the approval of the Impugned Layout Plan is contrary to the principles of natural justice, without jurisdiction, illegal, malafide and violative of the Petitioners constitutional rights under Articles 4, 9 and 25 of the Constitution.

E. That the illegal approval of the Impugned Layout Plan by the Respondents will cause severe adverse consequences, serious prejudice and serious damage to the Petitioners and the residents of the area. These adverse consequences, serious prejudice and serious damage has, is and will, be caused to the Petitioners are in the form of devaluing of their properties, nuisance i.e. noise, pollution, traffic congestion etc. and severe strain on sewerage, water, electricity, infrastructure facilities and municipal facilities. Therefore, the approval of the Impugned Layout Plan is clearly without jurisdiction, illegal, malafide and violative of the Petitioners constitutional rights under Articles 4, 9 and 25 of the Constitution.

F. That an Environmental Impact Assessment (EIA) is required before the conversion of any land use, including the conversions in the Impugned Layout Plan and such massive development as contemplated through the Impugned Layout Plan because such development will lead to adverse environmental impact. Therefore, the approval of the Impugned Layout Plan is clearly without jurisdiction, illegal, malafide and violative of the Petitioners constitutional rights under Articles 4, 9 and 25 of the Constitution.

G. That it is most respectfully and submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this present Petition and the accompanying Applications.

**PRAYER**

It is, therefore, most respectfully and most humbly prayed on behalf of the Petitioners that this Honourable Court may be pleased to pass Orders and Judgment in the following terms:

- (a) Declare that the approval of the Impugned Layout Plan (GM-14) in Scheme No. 45, Taisar Town, is unconstitutional, without jurisdiction, illegal, malafide and of no legal effect;
- (b) Declare that the Letter/Reply dated: 17-09-2012 (Annex 'M-1') is without jurisdiction, illegal, and of no legal effect;
- (c) Direct the Respondent No.2 ['MDA'] to authenticate and justify the 'External Development Charges', as demanded by the Respondent No.3 ['MHSL'];
- (d) Direct the Respondent No.3 ['MHSL'] to fulfil its obligation to the residents of Gulshan-e-Maymar by constructing the amenities and other facilities as listed in clause 3, and other clauses, of the Agreement before engaging in any further revision of the Layout Plans;
- (e) Direct the Respondents No.2 to hear the objections of the Petitioners and pass a detailed and reasoned order on their objections and complaints in relation to the Impugned Layout Plan;
- (f) Permanently restrain the Respondent No.3 ['MHSL'], or any persons or employees acting under them, from carrying out any conversion or commercial activity, or engaging in any conversion activity or commercial construction [on the basis of but not limited to the Impugned Layout Plan];
- (g) Permanently restrain the Respondent No.3 ['MHSL'], or any persons or employees acting under them, from creating any third party interest in pursuance of any construction [on the basis of but not limited to the Approved Impugned Layout Plan];
- (h) Declare that the Environmental Impact Assessment is a pre-requisite to any further revision of the Layout Plan and direct the Respondent No.4 ['SEPA'] to

conduct an Environmental Impact Assessment and comprehensive survey in relation to the proposed construction as shown in the Impugned Layout Plan.

- (i) Grant costs of the Petition;
- (a) Grant such further and/or other relief as this Honourable Court may deem just and equitable.

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: 13<sup>th</sup> March, 2013

DOCUMENTS FILED: As shown in the Petition

DOCUMENTS RELIED UPON: The abovementioned documents e.t.c.

ADDRESS OF PETITIONER: As per in title of the petition

ADDRESS OF PETITIONER COUNSEL: Faisal Siddiqi  
Advocate  
HC-8504/HC/KHI  
F-66/3, Park Lane,  
Block-5, Clifton,  
Karachi.

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ADVOCATE