

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

C.P. No.D-882 of 2020

Present:-

Mr. Justice Amjad Ali Sahito.

Mr. Justice Muhammad Osman Ali Hadi

Petitioners: **1.** Arif Pasha. **2.** Suhail Asim.
Through M/s. Ghulam Murtaza Shaikh &
Asfand Fahim Akhtar, Advocates.

Respondents: Through Mr. Allah Bachayo Soomro, Additional
Advocate General Sindh alongwith Ghulam
Hyder Arain, Additional Director Land
Management, P&DC, HDA and Anwar Khanzada,
Assistant Director, HDA.

Mr. Zaheeruddin Sahito, Advocate for
Respondents No.5 to 8.

Date of hearing: 04.06.2025.

Date of judgment: 12.06.2025.

J U D G M E N T

Muhammad Osman Ali Hadi, J:- The Petitioners have approached this Court in its Constitutional Jurisdiction challenging the actions of the Respondents, alleging that they (i.e. the Petitioners) had purchased, certain plots in a scheme titled *Kohsar Scheme-V, Gulshan-e-Quaid, Hosh Nagar, Kohsar Extension, Gulistan-e-Sarmast*, Taluka Latifabad, District Hyderabad (**“the Property”**) through auction proceedings. The same were subsequently cancelled without affording the Petitioners an opportunity of hearing, and the Respondents have issued a new public notice for re-auction of the Property.

2. Notices were duly issued to the Respondents, who entered appearance through their learned Counsel. The Respondents thereafter submitted their Written Statements/Comments along with supporting documents, which were taken on record.

3. Learned Counsel for the Petitioners submitted that in the year 2013, a notice for auction¹ of plots in the Property was issued by Respondents No. 6 – 9 under the title “*Government of Sindh, H.D.A. Auction of Plots*” in Hyderabad. Pursuant to the notice, the Petitioners submitted their auction forms, and were declared successful in obtaining plots in the Property. They paid the initial installment payment² of 25% pursuant to their respective successful bids, in March 2013. Whereafter the second installment was due in October 2013. The Petitioners contend they approached the Respondents to make the second payment, but the same was refused and no challan was issued by the Respondents. Learned Counsel states the Petitioners were informed by the Respondents that there were outstanding issues relating to land utilization and other such matters regarding the Property, and until the Respondents resolved those issues with the concerned authorities, no further challan would be issued. Learned Counsel next contended that without any prior notice, the Petitioners became aware through public notices published in Daily Dawn and Daily Jang in January and February 2020 respectively, that the Respondents were re-auctioning the Property. Counsel for the Petitioner states that being aggrieved and having no alternate remedy, they approached this Hon’ble Court.

4. The Petitioners allege that their allotment was cancelled without any notice or opportunity of hearing and the Respondents have published notice(s) for re-auction of the subject plots on the Property. Learned Counsel for the Petitioner averred that at the very least, a show-cause notice or hearing ought to have been granted prior to any decision on cancellation of their plots.

5. Conversely, learned Counsel for Respondents No.5 to 8 submitted that the Petitioners were repeatedly informed to pay the remaining installments, but they failed to comply. Reference was made by him to several notices and letters issued in the year 2013, seeking payment of outstanding amounts. Copies of courier

¹ Available at Page No.33 of Court file.

² Challans of payment are available at page Nos.41 to 45 of Court file.

receipts and notices, including notice dated 03.04.2013 requiring payment of the second installment of Rs.900,000/- by 31.10.2013, were available on record, and referred by Counsel for the Respondents. It was further argued that no hearing was conducted as the Petitioners willfully failed to appear despite repeated notices/reminders, and hence the said Respondents were unable to conduct a hearing without the presence of the Petitioners.

6. In rebuttal, learned Counsel for the Petitioners denied receiving any such notices or letters. When confronted about delay of nearly seven (7) years in filing this Petition, Counsel argued that the Petitioners only became aware of the cancellation through public notices (for re-auction) in the year 2020. He further submitted that the benefit of Section 14 of the Limitation Act 1908, may be extended to the Petitioners and that the Petition should not be dismissed on grounds of limitation.

7. We have heard the learned Counsels for the Parties, and have perused the material available on record with their able assistance.

8. Respondent No.6, the Hyderabad Development Authority (HDA), issued a public notice in the year 2013 inviting bids for the auction of plots under the title "Government of Sindh, HDA Auction Plots in Hyderabad, pertaining to various schemes including Kohsar Scheme-V, Gulshan-e-Quaid, Hosh Nagar, Kohsar Extension, and Gulistan-e-Sarmast. In response, the Petitioners duly submitted their auction application forms along with the requisite bid fee. The Petitioners participated in the auction proceedings and were declared successful bidders. Pursuant thereto, the official Respondents directed the Petitioners to deposit 25% of the bid amount through pay orders. The said amount was accordingly deposited by the Petitioners. Subsequently, the Petitioners were *inter alia* issued letters confirming their successful bids and payment of the initial amount. Additionally, the Petitioners paid the first installment amounting to around Rs. 900,000/- to the HDA.

9. It is not in dispute that the Petitioners were initially allotted subject plots and they paid the first installment. The controversy arises regarding the second and subsequent installments, which admittedly were not paid by the Petitioners. The Petitioners claim that since challans were not issued by the Respondents, further payments of installments were prevented. However, this assertion appears untenable in light of the extensive time lapse of nearly seven (7) years between the issue arising and filing of this Petition, without any substantive effort being shown by the Petitioners in pursuing the matter in the time between. It beggars belief that any person could be that callous about their property, that they would neither inquire nor investigate the status of their own property for a period of seven years, especially considering the complete transfer of property was not yet concluded. Prolonged inaction by the Petitioners undermines their claim of being ready and willing to fulfill their initial obligations.

10. The first legal hurdle faced by the Petitioners is the inordinate and unexplained delay in approaching this Court. A mere assertion of ignorance regarding cancellation is insufficient. The doctrine of *laches* is applicable to Constitutional Petitions in such circumstances.³ Constitutional Petitions filed after an unreasonable belated time period must be supported by a satisfactory explanation for such delay, which is lacking in the instant matter. While the Petitioners state they rely on the newspaper advertisements published in the year 2020, they have neither convincingly refuted the courier receipts for notices issued to them by the Respondents in the year 2013,⁴ nor have they provided any other plausible reason for not making any further payments or inquiry towards the plots over the years.

11. Secondly, factual controversies were raised by both parties, particularly regarding whether the initial notices for payment / cancellation were served or not on the Petitioners, which would require resolution through evidence. This would fall beyond the

³ Reliance is placed on 2005 SCMR 1380, 2012 SCMR 280 & 2020 PLC (CS) 1211

⁴ Placed on record by the Respondents

scope of this Court's jurisdiction under Article 199 of the Constitution. In such circumstances, the appropriate forum for adjudication would be either before the Respondents or through a Civil Court, where evidence can be led and contested. In the case of *PakCom Limited*⁵ the Hon'ble Supreme Court held:

"47. It seems proper here at this juncture to mention that the contractual rights, commitments, undertakings and obligations have to be enforced through courts of ordinary jurisdiction which should not be interfered with by the High Court while exercising its Constitutional jurisdiction especially in those matters arising out of a contractual obligations. (Millat Tractors E.T. v. Govt. of Pak (PLD 1992 Lah. 68), Ahmad Hassan v. Pakistan Machine Tools Factory (1990 CLC 2007)) Sufi Muhammad Ramzan v. Secretary, Local Government and Rural Development Department, Punjab, Lahore (PLD 1987' Lah. 262), Pakistan Mineral Development Corporation Ltd. v. Pak. WAPDA (PLD 1986 Quetta 181). In such like eventualities the normal remedy to law being a suit for enforcement of contractual rights and obligations would be availed instead of invocation of Article 199 of the Constitution merely for the purpose of enforcing contractual obligations.

48. It hardly needs any elaboration that violation of a contract or failure to abide by the terms and conditions mentioned therein or to honour obligations arising out of an agreement cannot be decided in exercise of Constitutional jurisdiction and such controversies should be resolved by approaching the appropriate forums provided by law. Abdul Rahim v. Town Committee (1985 CLC 2805), Haji Noor Din v. C.C.I. and E (NLR 1978 Civ. Lah. 1114), Ashraf Ali v. Abdul Awal (PLD 1968 Dacca 962), A.F.M. Abdul Fateh v. Province of East Pak (PLD 1966 Dacca 178). "The superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence. This can more appropriately be done in the ordinary civil procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by courts having plenary jurisdiction in matter and on such ground constitutional petition was incompetent."

12. Notwithstanding the above, it remains an admitted position that the Petitioners were initially granted allotment of the Plots on the Property, thereby creating at least an initial proprietary interest. The unilateral cancellation of this interest without

⁵ PLD 2011 SC 44. Further reliance is placed on PLD 2007 SC 642 & 2021 CLC 996

affording the Petitioners an opportunity of hearing⁶ does not seem just. Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan 1973, would come to the aid of the Petitioners in supporting their right towards protection of property. Even *laches* cannot stall enforcement of fundamental rights, as has been held by the Apex Court in *Pakistan Post Office v Settlement Commissioner* case.⁷

13. Further, Article 10-A of the Constitution guarantees the right to a fair hearing, and Section 24-A of the General Clauses Act also imposes a duty on public functionaries to act fairly and reasonably. Therefore, the principles of natural justice i.e. *audi alteram partem*, demand that a hearing ought to have been provided to the Petitioners before any adverse action against their allotment was taken. In the case of *Federal Govt. Employee Housing*,⁸ a 3 Member Bench of the Apex Court opined:

“14. Furthermore, Article 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard.²⁰ The principle of 'audi alteram partem' is one of the foundational principles of natural justice. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a notice and then be allowed a hearing.²¹ These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution. In this matter, it appears that the Impugned Judgment and Impugned Order have not given an opportunity of hearing to the concerned parties which includes the federal government and the affectees of the Revised Policy. This amounts to a violation of their basic right to be heard and suggests that the decision was made without following due process.”

14. While we find that the Petitioners' case is on fragile footing, however in the interest of justice, in line with constitutional guarantees and judicial precedents, we dispose of this Petition with the direction that the Respondents shall issue a fresh notice to provide the Petitioners an opportunity for a fair hearing. Upon receipt of such notice, the Petitioners shall be entitled to submit

⁶ It is clarified that this is not to imply that the Respondents did not try to give the petitioners a fair hearing, but simply that no such hearing ever took place.

⁷ 1987 SCMR 1119. Followed in 1991 SCMR 1592 and PLD 2012 Lahore 515

⁸ PLD 2025 Supreme Court 11

their grievances before the competent authority of the Respondents, who shall consider and decide the matter strictly in accordance with law and pass a speaking order. Accordingly, this Petition stands disposed of.

This Judgment shall *mutatis mutandis* apply to the connected C.P. No. D-146 of 2020.

J U D G E

J U D G E

Irfan Ali