

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

C.P No.D-800 of 2021

[Ghulam Hussain v. Province of Sindh & Others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioners: Ghulam Hussain (now expired)
through his legal heir Nadeem
Magrejo through Mr. Muhammad
Arshad S. Pathan, Advocate.

Respondents: Province of Sindh and others through
Mr. Muhammad Rafique Dahri,
A.A.G. Sindh.

Applicants/Interveners: Aijaz Ahmed and 12 others through
Mr. Mansoor Ali Jamali, Advocate.

Date of Hearing : **29.01.2026**

Date of Decision : **29.01.2026**

JUDGMENT

RIAZAT ALI SAHAR J: - Through this Judgment, we intend to dispose of the captioned petition filed by the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayers: -

(a) Issue writ, declaring that act of the respondents in the case of petitioner, delaying and avoidance of legal duties towards the demarcation of the survey number of the petitioner is persistent, illegal, unlawful, lathergic and is untenable under the law as the petitioner is legally constitutionally entitle for the demarcation and other legal benefits from the officials who were bound to act in accordance with law.

(b) To direct the respondent to conduct the demarcation of Survey No.35 Deh Hatri Taluka & District Hyderabad and separate the land as per the record of rights and also place proper air mark and stone and issue such certificate/form for separation of number in the record of rights in village Form-VII maintained by the

Mukhtiarkar Taluka Hyderabad to avoid the future multiplicity.

(c) To restrain the respondents from changing, interfering, disturbing the record of rights of petitioner and from disturbing the same in any manner whatsoever.

(d) Any other relief which this Honourable Court deems fit and proper may also graciously be granted to the petitioner.

2. In his petition, the petitioner has stated that he is lawful owner of land bearing Survey No.35, admeasuring 5-19 acres, situated in Deh Hatri, Taluka and District Hyderabad, transferred in his name through Entry No.380 dated 11.02.1955, as reflected in Village Form-VII. Out of the said land, the petitioner sold 4-30 acres to Muhammad Khalid, mutated vide Entry No.93 dated 20.03.1988, who subsequently sold 3-17 acres to Haji Muhammad Imran vide Entry No.45 dated 28.01.1991, retaining 1-13 acres, while the petitioner's remaining land measuring 29 ghuntas remained in his name. He stated that in the year 1988, a road was constructed through Survey No.35, however, the field book does not correctly reflect the sold portions or the petitioner's remaining area. The Director, Settlement Survey & Land Record, Hyderabad, has acknowledged that 1-12 acres from Survey No.35 were utilized for construction of the National Highway and that the petitioner's remaining 29 ghuntas were neither acquired nor used and remain vacant, though requires proper demarcation. According to petitioner, despite repeated applications, payment of requisite challans and representations before the revenue authorities, including the Deputy Commissioner and Assistant Commissioner, no physical demarcation has been carried out, which is mandatory for urban property to enable lawful construction and approval of building plans from the Sindh Building Control Authority. The continued inaction of the respondents for decades has deprived the petitioner of the use, enjoyment and lawful disposition of his property, hence, the petitioner invoked the constitutional jurisdiction of this Court.

3. Notices were issued to the respondents. This Court vide order dated 06.12.2022, also directed the respondents No.2 to 5 to coordinate inter-se and either disclose a definite date for carrying out demarcation or specify any outstanding requirement from the petitioner.

4. The respondent No.3 (Deputy Commissioner Hyderabad) filed a “statement of facts” wherein he has stated that the petition was filed by the deceased petitioner claiming ownership of Survey No.35 admeasuring 5-19 acres situated in Deh and Tappa Hatri, Taluka and District Hyderabad, alleging failure of the revenue authorities to demarcate his purported remaining area of 29 ghuntas; however, in compliance with the order of this Court dated 06.12.2022, a meeting was held on 19.12.2022 with officials of the Directorate of Settlement, Survey and Land Records Sindh and the Mukhtiarkar, Taluka Hyderabad, wherein relevant record was produced showing that an area of 29 ghuntas from Survey No.35 had already been utilized for Hyderabad-Hala Road (National Highway N-5) during the year 1944-45 through Ghat Wadh proceedings, while the remaining area measuring 4-30 acres was mutated in favour of the petitioner vide Entry No.114 during rewriting of record (VF-VIIA) in the year 1984-85 and was subsequently sold by him to Muhammad Khalid vide Entry No.93 dated 20.03.1988, leaving no balance land in his name. He further stated that upon extension of the National Highway during 1987-88, an additional area of 1-12 acres and 01 ghunta Kharaba was acquired from the land of Muhammad Khalid, who thereafter sold the remaining 3-17 acres to Haji Imran vide Entry No.45 dated 28.01.1991 and as such neither the petitioner nor his legal heirs hold any subsisting right or interest in Survey No.35 according to the record of rights, rendering the request for demarcation untenable and therefore the petition is liable to be dismissed.

5. In compliance of order dated 06.12.2022, Respondent No.4 (Assistant Commissioner) and Respondent No.5 (Mukhtiarkar, Taluka Hyderabad) submitted a report stating that upon

examination of the revenue record, 29 ghuntas from Survey No.35, admeasuring 5-19 acres situated in Deh Hatri, had already been utilized for Hyderabad–Hala Road (National Highway N-5) during 1944–45 under Ghat-Wadh proceedings, while the remaining 4-30 acres were mutated in the petitioner’s name vide Entry No.114 during rewriting of record (1984–85) and were subsequently sold by him to Muhammad Khalid vide Entry No.93 dated 20.03.1988, leaving no subsisting land in the petitioner’s or his legal heirs’ name for demarcation. They further reported that upon extension of the National Highway during 1987–88, additional land measuring 1-12 acres and 01 ghunta Kharaba was acquired from Muhammad Khalid’s holding, who thereafter sold the remaining 3-17 acres to Haji Imran vide Entry No.45 dated 28.01.1991.

6. Applicants/Intervenors Aijaz Ahmed and others moved an application under Order I Rule 10 CPC, supported by affidavit, seeking their impleadment as Respondents No.6 to 18, contending that they are the lawful owners of Survey No.35, measuring 3-17 acres, situated in Deh Hatri, Taluka and District Hyderabad, by virtue of a registered sale deed of the year 1994 and that the said survey number constitutes the subject matter of the petition. They stated that no land remains in Survey No.35 in the name of the petitioner, that the petition has been filed with mala fide intention and without exhausting the remedies available under the Sindh Land Revenue Act, 1964 and that the applicants are necessary and proper parties whose non-impleadment would cause irreparable loss.

7. Learned counsel for the petitioner contended that the petitioner is the lawful owner of land bearing Survey No.35, Deh Hatri, Taluka and District Hyderabad, to the extent of his remaining share measuring 29 ghuntas, which has never been lawfully acquired or utilized. He contended that despite repeated applications, payment of demarcation fees and representations before the competent revenue authorities, the respondents persistently failed to perform their statutory duty of physical

demarcation. He contended that demarcation is a mandatory requirement under the law, particularly for urban property, without the same, petitioner cannot lawfully construct or seek approval from the Sindh Building Control Authority. Learned counsel contended that the respondents' prolonged inaction amounts to *mala fide* negligence and the petitioner is not seeking adjudication of title but only enforcement of a legal duty, which squarely falls within the constitutional jurisdiction of this Court. He also contended that the reports submitted by the respondents are self-serving and contrary to the record of rights. He, therefore, prayed that the petition may be allowed.

8. Learned A.A.G., representing the respondents, opposed the petition and contended that the same is misconceived and not maintainable under Article 199 of the Constitution. He contended that the revenue record clearly establishes that 29 ghuntas from Survey No.35 were utilized for the Hyderabad–Hala Road during 1944–45 through Ghat-Wadh proceedings, leaving no land in the petitioner's name. He also contended that the remaining land measuring 4-30 acres was mutated in the petitioner's name during rewriting of record and was subsequently sold by him, thereby extinguishing his rights. Learned A.A.G. contended that the matter involves disputed questions of fact requiring evidence and examination of revenue record, which cannot be undertaken in writ jurisdiction. He further contended that the petitioner has an alternate statutory remedy under the Sindh Land Revenue Act, 1964; hence, he prayed for dismissal of instant petition.

9. Learned counsel for the applicants/interveners contended that they are the *bona fide* purchasers and lawful owners of Survey No.35, measuring 3-17 acres, by virtue of a registered sale deed executed in the year 1994. He contended that the petitioner has no subsisting right, title, or interest in the said survey number and has deliberately suppressed material facts from the Court. He contended that the petition has been filed with *mala fide* intention to cloud the title of the applicants. Learned counsel contended that

the applicants are necessary and proper parties, as any order passed in the petition would directly affect their proprietary rights. He further contended that the petitioner has not exhausted the remedies available under the Sindh Land Revenue Act, 1964, rendering the petition premature and liable to dismissal.

10. Heard and perused.

11. It appears that the Petitioner has raised a claim that he is the owner of an area of 00-29 acres of land from Survey No.35 of Deh Hatri, Taluka and District Hyderabad and that the said area of land requires demarcation, which the revenue authorities are avoiding. This claim is vehemently opposed not only by the official respondents but also by the interveners, although they both do so on different versions. The official Respondents have consistently maintained that the area of 00-29 acres is already utilized in Hyderabad-Hala Road (National Highway N-5) since the year 1944-45 whereas the remaining area from the said survey number was already mutated in the name of the Petitioner and alienated by him to different people. It is very evident that the dispute between the parties is not merely relating to the performance of official duties but rather goes to the basic ownership and title of the property under dispute. Thus, we agree with the learned AAG's argument that there is a clear factual controversy in this petition.

12. The constitutional jurisdiction of this Court under Article 199 of the Constitution is meant to protect fundamental rights of the people, but it is not open for this Court in its extraordinary jurisdiction to sit as a court of factual appraisal and to look into the intricate factual controversies between the parties. This Court will only interfere in such matters where the facts are already established and un-denied and they clearly show a violation of fundamental rights and duties as per the Constitution and the law. This is an integral principle of constitutional jurisprudence and has been iterated multiple times in different cases, e.g. **Fareedullah Khan vs. Province of Balochistan** (2025 SCMR

2081) and Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar vs. Intizar Ali (2022 SCMR 472).

In this matter, we are afraid neither the Petitioner's ownership nor his claim for demarcation has come as established facts and so we cannot decide the same without indulging in factual controversy.

13. It is not acceptable for the Petitioner to make a prayer of demarcation for the same land whose ownership in favour of the Petitioner is doubtful and disputed. He is first required to establish his title and then to seek relief. And that, as we have already held, falls beyond the purview of Article 199 and thus beyond our jurisdiction under the Constitution.

14. For these reasons, this petition is not maintainable and is **dismissed** with no order as to costs. Since this petition itself is no longer pending, it follows that the interlocutory applications, including the one under Order I Rule 10 CPC, have become infructuous and are accordingly disposed of without commenting on them. The Petitioner is at liberty to invoke his legal remedies to agitate his grievance subject to law.

JUDGE

JUDGE