

IN THE HIGH COURT OF SINDH, KARACHI

C. P. NO. D-2879 / 2017

(Muhammad Siddique & Others Vs. Government of Sindh & Others)

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

- 1) For orders on CMA No. 22957/2025.
- 2) For hearing of CMA No. 825/2024.
- 3) For hearing of CMA No. 24785/2020.
- 4) For hearing of CMA No. 24786/2020.
- 5) For hearing of CMA No. 1379/2018.
- 6) For hearing of CMA No. 24380/2017.
- 7) For hearing of main case.

17.08.2026.

Mr. Hafiz Abdul Karim, Advocate for Petitioner.
Ms. Wajiha Mehdi, Deputy Attorney General.
Mr. Ali Safdar Deepar, Assistant Advocate General.
Mr. Sued Samiullah Shah, Advocate for Respondent
(Pakistan Railways).
Mr. Umer Ilyas Khan, Advocate for Respondent No. 14.
Ms. Saeeda Khursheed, Special Prosecutor NAB.
Mr. Asif Deen Lakho, Muktiarkar, Ibrahim Haideri.

Adnan-ul-Karim Memon, J. The Petitioners have filed this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs: -

- “a. To direct the respondent No.1 interfere in the above matter and direct the respondent No.2, 3 & 4 to investigate the matter honestly and impartially through the respondent No.11, 12 & 13 and submitted inquiry / investigation report before this Court in stipulated time.
- b. In light of the aforementioned inquiry /investigation report the respondent No. 2, 3, 4, 8 & 9 are liable to be directed to handover the possession of the respective plots to the petitioners and other members / employees of Pakistan Post Office who already paid the payments / instalments of their respective allotted plots from their hard earning money.
- c. That the respondent No.4, 5, 6, 7 & 8 are liable to be directed by this Court for the removal of the encroachment with the help of respondent No. 11 & 12, and the encroachers are liable to be prosecuted and punished in accordance with law under Pakistan Penal Code.
- d. That if the respondent No.4, 5, 6, 7 & 8 failed to and remove the encroachment clear the area from the illegal and unlawful encroachers / land mafia, then this Court may graciously be pleased the respondents No. 1 to 10 for the arrangement of alternate plots for the Pakistan Railways Employees Cooperative Housing Society Ltd. and allot the same to them so that the each and every petitioner / employee of Pakistan

Railways who purchased / booked the said plots from their life saving earnings, can get their respective plots.

2. Learned counsel submits that the petitioners, retired employees of Pakistan Railways, were allotted plots in the Railway Society, but private persons, in collusion with the official respondents, trespassed upon and took possession of the subject land. He further submits that the petitioners approached the Senate Secretariat in 2012, which opined that the issue could be considered in light of the cost of the plots and the prevailing market value, while the question of other charges was to be resolved by the relevant authorities.

3. Learned counsel for the Pakistan Railways submitted that the lease of Railway land in favour of PRECHS for the subject Project had already been cancelled by the competent authority. In the meeting held at Railway Headquarters, Lahore on 22.12.2006, it was decided that the land be retrieved, reserved and secured for future terminal facilities for Karachi. He added that the cancellation documents were already placed on record through the compliance report dated 23.09.2025. It is further submitted that CP No. D-4040/2017, filed by PRECHS against the Federation of Pakistan and others concerning the said Project, is pending before this Court, with a status quo order operating. Similarly, Civil Suit No. 540/1991, concerning cancellation of the lease of Railway land for Project No.7, was transferred to the VIIIth Senior Civil Judge, Karachi East, where it has been renumbered as Suit No.518/2025/11891/2025, and a stay order is also operating therein. Relevant cancellation and stay orders are annexed as B, B-1 and B-2. In view of the above, the matter involves disputed questions of ownership, validity of the lease, cancellation and recovery of the amount deposited for purchase of the plot, which require recording of evidence and cannot appropriately be determined in constitutional jurisdiction. The parties may, therefore, be directed to avail the proper civil forum for adjudication of their respective claims and recovery of any deposited amount, and the instant petition may accordingly be disposed of.

4. Learned counsel for respondent No.14 / PRECHS submits that Petitioners are not an aggrieved party as contemplated under Article 199 of the Constitution of the Islamic Republic 1973 (the "Constitution") and as such cannot avail the remedy provided therein; that the Petitioners have failed to disclose to this Court that they have been in consistent default over the payment of necessary dues to the Society. In the circumstances, the rights of the Petitioners only crystalize once all dues and defaults are cleared as against their respective plots. Moreover the Respondent No.14 reserves its right to ascertain the authenticity/validity of documents of the Petitioners. It is added that the same is a factual dispute and

cannot be adjudicated within the writ jurisdiction of this Court; that determination of the present controversy is to be based on an appraisal of evidence and involves disputed questions of fact. It is submitted that the same is not amenable to the constitutional jurisdiction of this Court under Article 199 of the Constitution. Counsel further submits that the legislative background of the exercise which has culminated in the present lease/registered sub-leases in favor of the Society and its allottees was initiated in the year 1979 by the President of Pakistan, who proceeded to accord sanction to the insertion of Clause 813-A to the Railway Code vide and through S.R.O 170(1)/83 which was gazetted. He submits that it is a matter of fact that alienation was made in favor of the Society. Materially the same is evidenced by way of a Lease document executed inter-se the President of Pakistan, acting in exercise of powers under Article 173 of the Constitution, in favor of the Society for consideration and at market rates. Such consideration was paid from private monies i.e. money held by the members of the Society and was not a concession/grant. He submitted that the nomenclature of the grant, so also its substantive provisions, distinguish it from a mere "License". A Lease exists in favor of the Society which has proceeded to execute such necessary and valid sub-leases and allotments in favor of the allottees. The same it is averred are in consonance and conformity with all laws as extant within Pakistan. Counsel further added that consequent to taking over possession, the Society has developed the land, made improvements thereupon, has established a sewerage and electricity network, made provisions for utilities and has also had appropriate lay-out plans approved in terms of the Lease Deed. He submitted that the Society, in the past has also held ballots, consequently allotted and subsequently sub-leased portions of land to various members. In turn such members have either alienated their rights and/or the same have inured to the benefit of their successors-in-interests. It is argued that the entirety of the aforementioned is an act contemplated by the Lease Deeds and so also authorized under law. He added that the Society has faced resistance from all quarters concerning encroachment on the land so demised. At such juncture the official Respondents have not tendered any assistance and/or performed their official functions as required under law; that the Society has time and again been constrained to file appropriate proceedings inclusive of suits and constitutional petitions to (a) remove encroachments from the land demised (b) sought the cancellation of superimposed/unlawful and illegal allotments by the Government of Sindh and has submitted to the jurisdiction of this Court in all respects; that the validity of such a grant/allotment and/or lease it is averred is an already decided question of fact and law; that in the past, and as is evident from a perusal of (A) Suit No. 68/1981, (B) HCA No. 76/1987 and (C) CPLA 257-K/1991 it has been held that the title of the Society over the Subject Lands is valid and has been declared as

such. He further added that the Society has been vigilant as to its rights and has pursued all avenues of redressal as against the unlawful acts of the Government of Sindh and the Pakistan Railways; that all such state functionaries have consistently attempted to encroach upon, unauthorizedly occupy the leased and demised land of the Society; that the Society has moved appropriate applications before the (1) Chief Minister of the Province (2) the Governor (3) the Pakistan Railways (4) the Sindh Building Control Authority (5) the Revenue Functionaries i.e. the Senior Member Board of Revenue, the Member Land Utilisation and the Deputy Commissioner Concerned and so also security maintaining apparatus such as the (6) Sindh Rangers (7) the Provincial Police and (8) the Director Anti-Encroachment. Moreover the Society has even defended and/or contested the claims of various unknown persons, claiming entitlement under the Sindh Government, over the Subject Land demised for Project No.15; that the same forms the Subject Matter of CP-D No. 8075/2019 wherein appropriate interim Orders operate; that the Respondent No.14's entitlement over the Subject Land is separate and distinct from that of the Pakistan Railways and the same has been afforded appropriate protection by Orders passed by the Honorable Supreme Court of Pakistan vide and through Order Dated 21-02-2020. He, therefore, prayed to dismiss the petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. In view of the foregoing, the controversy raised in the instant petition is not confined to the enforcement of any admitted or undisputed legal right. Rather, it involves substantial and disputed questions of fact and law concerning the entitlement and allotment of plots to the petitioners, the validity and subsequent cancellation of the lease in favour of PRECHS, the status and possession of the subject land, the alleged encroachments, the validity of the respective claims over the property, and the amounts allegedly deposited by the petitioners towards the purchase/allotment of their plots. Primarily determination of these questions necessarily requires examination of the relevant documents, title instruments, allotment records, payment receipts and other evidence, which exercise falls within the domain of the competent civil forum and cannot appropriately be undertaken in constitutional jurisdiction under Article 199 of the Constitution.

7. It is also material that proceedings concerning the same subject matter are already pending before the competent civil courts and that orders of status quo/stay are operating therein. Any adjudication by this Court on the disputed questions relating to title, possession, validity or cancellation of the lease, allotment or recovery of the deposited amounts may result in parallel proceedings

and potentially conflicting findings. The proper course, therefore, is to leave the parties to seek appropriate relief before the courts already seized of the controversy, including any application for vacation, modification or lifting of the existing interim orders, in accordance with law.

8. Consequently, without expressing any opinion on the merits of the rival claims or the validity of the lease, allotments, alleged encroachments or the petitioners' entitlement to possession or refund/recovery of any amount, the constitutional petition is disposed of alongwith listed / pending applications. The petitioners and all other concerned parties shall remain at liberty to avail the remedies available to them before the competent forum, where their respective claims shall be determined independently, upon proper appraisal of the evidence and strictly in accordance with law. The competent Court shall not be influenced by any observation contained in the present order, as all questions relating to title, possession, allotment, lease, encroachment, payment, refund and the consequential rights and liabilities of the parties are left open for determination by the competent forum.

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