

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-1004 of 2013

[Abdul Ghafur and others v. Federation of Pakistan and others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

Before:

*Mr. Justice Abdul Mobeen Lakho;
Mr. Justice Abdul Hamid Bhurgri.*

Date of hearing: 28.01.2026

Date of Decision: 03.02.2026

M/s. M. Sarmad Khan, Nasrullah Malik and Alizeh Azan, Advocates for the petitioner.

M/s Ayan Mustafa Memon, Hassan N. Qamar and Rania Adeel, Advocates for Port Qasim Authority/Respondent No.2.

Mr. Mehran Khan, Assistant Advocate General Sindh a/w M. Nawaz, Advocate.

.----.----.----.----.----.----.----.----.

JUDGMENT

Abdul Hamid Bhurgri, J.- Through this constitutional petition, the petitioners have sought the following reliefs:-

(a) *To declare that Village Bijar Khan Kalmati, situated in Na-Class No.113, Deh Khanto, Union Council Ghaghar, near Gandhara Nissan Factory, Bin Qasim Town, District Malir, Karachi, comprising land measuring 22-00 acres, is liable to be regularized in terms of notification dated 21.11.2008, and that the villagers are entitled to allotment orders and grant of lease for 99 years, subject to the conditions contained in the statement of conditions, as the petitioners are ready to pay all government dues, charges, and bank challans in accordance with the prevailing policy of the Government of Sindh;*

(b) *To restrain the respondents, their servants, agents, and any other persons acting on their behalf from interfering with the peaceful possession of the petitioners over the subject land, and from harassing the petitioners in any manner;*

(c) *Award of costs; and*

(d) *Any other relief deemed fit and proper by this Court.*

2. The case of the petitioners is that they are residents of Village Bijar Khan Kalmati, Na-Class No.113, Deh Khanto, Union Council Ghaghar, near Gandhara Nissan Factory, Bin Qasim Town, District Malir, Karachi, for the last about sixty years. It is contended that the petitioners and their forefathers have been in lawful and

uninterrupted possession of their houses in the said village, which is stated to be an old settlement, existing even prior to partition, and reflected in the Deh map.

It is further contended that the Government of Sindh, through the Secretary, Land Utilization Department, issued notification dated 21.11.2008 under sub-section (2) of Section 10 of the Colonization of Government Lands Act, 1912, whereby a statement of conditions was framed for grant of leasehold rights for 99 years to persons occupying built-up units in existing villages or habitations. According to the petitioners, in terms of the said policy, Respondent No.4 is competent to grant 99-year leases to the occupants.

It is further stated that one villager, namely Muhammad Hussain, filed an application dated 12.09.2011 before the Deputy District Officer (Revenue), Bin Qasim Town, seeking regularization of the village. According to the petitioners, a survey was conducted, demarcation was carried out, a list of occupants was prepared, and a sketch of the village was finalized, declaring the subject village comprising 22 acres in Na-Class No.113, Deh Khanto, Bin Qasim Town, after completion of all requisite formalities under the notification dated 21.11.2008. However, despite completion of the process, the Deputy Commissioner, Malir, allegedly avoided issuance of notification and lease/sanad, allegedly at the instigation of Respondent No.8.

The petitioners further contended that Respondent Nos.1 and 2 have no lawful interest in the subject land, yet they illegally allotted the same to builders and industrialists, who allegedly attacked the village and demolished some houses. It is contended that the Port Qasim Authority has no right over the subject land and any attempt to dispossess the petitioners is unlawful. Hence, the present petition.

3. Respondent No.2 filed comments stating that vide letter dated 23.06.1980, the Deputy Commissioner, Karachi East, directed Respondent No.2 to deposit the cost of acquiring 155-38 acres of land in Deh Khanto at the rate of Rs.25 per square yard. It is contended

that the subject land measuring 22 acres forms part of 122 acres acquired by Respondent No.2 out of the said total land.

It is further contended that an additional area of 700 acres was granted to Respondent No.2 in the year 1992, which does not form part of the subject land. According to Respondent No.2, out of 122 acres, an area of 100 acres is presently being utilized by industries, while the remaining 22 acres have been unlawfully encroached upon by the petitioners, who claim to be residents of a so-called village. It is asserted that the petitioners are trespassers having no title or lawful interest over the land, which has further been allotted to third parties.

It is further contended that the petitioners are habitual litigants and that previous suits and petitions relating to the subject land have been dismissed; therefore, the present petition is barred by the doctrine of res judicata and is liable to dismissal.

4. Respondent No.3 also filed comments, denying that the petitioners have been residing in the alleged village for the last sixty years. It is stated that the map produced by the petitioners is not available in the office of the Mukhtiarkar. It is contended that the petitioners have encroached upon land allotted to the Port Qasim Authority in accordance with law. It is further stated that the land of the Port Qasim Authority was cancelled under Ordinance-III of 2001, subject to payment of differential amount (Malkana), to be determined by the Sindh Government Land Committee. According to Respondent No.3, the subject land cannot be regularized under the 2008 policy, and the petitioners are attempting to force the authorities to regularize encroached land. Dismissal of the petition is prayed.

5. Learned counsel for the petitioners argued that the petitioners are long-standing residents of the village and had duly approached the competent authorities for regularization, pursuant to which initial steps, including survey, were taken, but no final order was passed. It is contended that Respondent Nos.1 and 2 are now attempting to dispossess the petitioners. It is further argued that previous litigation was filed by persons who are not parties to the present petition; therefore, the doctrine of res judicata is not

attracted. He prayed that the official respondents be directed to initiate proceedings for regularization of the village.

6. Conversely, learned Assistant Advocate General submitted that the petitioners have no right, title, or lawful possession over the subject land, and their occupation is illegal. It is contended that under the statement of conditions framed under the Colonization of Government Lands Act, 1912, the land cannot be granted as it was already allotted to the Port Qasim Authority. It is further contended that the allotment stood cancelled under Ordinance-III of 2001 due to non-payment of requisite amount. According to him, neither the petitioners nor Respondent No.2 have title over the subject land, and the same vests in the Province of Sindh. Dismissal of the petition is prayed.

7. Learned counsel for Respondent No.2/Port Qasim Authority submits that the land in question was duly acquired by Respondent No.2 after compliance with the provisions of the Land Acquisition Act, 1894, as is evident from the official record. He contends that the petitioners are mere encroachers and do not possess any legal character, right, or title over the subject property.

He further submits that the stance of the official respondents that the land stood cancelled by operation of law under Ordinance-III of 2001 is misconceived and contrary to law, as no notice was ever issued to Respondent No.2 and, in any event, the said Ordinance does not have retrospective application. According to him, the subject land cannot be allotted or regularized in favour of the petitioners, as it has already been lawfully acquired by Respondent No.2. He further contends that even otherwise, the official respondents are not competent to grant the land under the prevailing conditions framed under the Colonization of Government Lands Act, 1912.

Learned counsel also submits that the petitioners have filed a number of litigations in respect of the same subject property; therefore, the present petition is barred by the principle of res judicata. In the end, he prays for dismissal of the petition.

8. Heard the learned counsel for the parties and perused the record.

9. From perusal of the record, it is evident that the present petition involves seriously disputed and contentious questions of fact, including but not limited to ownership of the subject land, legality of possession, existence of the alleged village, applicability of the 2008 policy, and competing claims of different respondents. The petitioners, Respondent Nos.1 and 2, and even the Province of Sindh have taken divergent factual stands, which cannot be resolved without recording evidence.

10. It is a well-settled principle of constitutional jurisprudence that disputed questions of fact, particularly those requiring evidence, examination of documents, and determination of title or possession, cannot be adjudicated in constitutional jurisdiction under Article 199 of the Constitution. The constitutional court does not function as a trial court to resolve factual controversies or conduct roving inquiries. Reliance is placed upon the case of ***Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and others (2001 SCMR 1493)***, has held as under:-

“Even otherwise such controversial question could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.

Similarly in case of ***Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others reported in 2011 SCMR 279*** following observation were made:-

“The upshot of the above discussion is that learned single Judge in chambers as rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction.”

11. Moreover, the relief sought by the petitioners, namely declaration of entitlement, regularization of land, and issuance of lease, involves exercise of statutory and administrative functions by the competent authorities, which cannot be substituted by a writ court in the absence of a clear violation of law or mala fide exercise of power established on admitted facts.

12. In view of the above, this Court refrains from expressing any opinion on the merits of the claims of either party, so as not to prejudice their rights before the appropriate forum.

13. Accordingly, this constitutional petition is dismissed as not maintainable along with all pending applications, if any. However, the petitioners are at liberty to avail any remedy available to them under the law before the competent forum. It is clarified that any observations made herein shall not prejudice the case of any party, and the competent authority or forum shall decide the matter independently, strictly in accordance with law.

JUDGE

JUDGE

Ayaz Gul