IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Saleem Jessar;
Mr. Justice Abdul Hamid Bhurgri.

C.P No.D-577 of 2024
[Muhammad Iqbal Khan V. Province of Sindh and others]

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Petitioner in both petitions	:	Through M/s. G.N. Qureshi, Osama Soomro, Abdul Ghani Dahri and Basit Abu Baker, Advocates, assisted by Mr. Afaque Ali.
Respondents 1, 2 & 4.	:	Through Mr. Muhammad Kamran Baloch, Assistant Advocate General Sindh along with Mr. Safdar Ali Bughio, Secretary, Land Utilization Department, Mr. Ghazanfar Ali Abbasi, Deputy Secretary, L.U. Department and Mr. Ghulam Ali Wassan, S.O (Litigation) L.U Department.
Respondent No.3 *[Pakistan Housing Authority]*	:	Through Ms. Shazia Hinjrah, D.A.G and Mr. Khadim Hussain Thahim, Advocate.
Respondent No.5 *[Muslim Commercial Bank]*	:	Nemo.
Dates of Hearing	:	***28.10.2026, 29.10.2026, 05.11.2026 and 11.11.2026.***
Date of Order	:	**11.11.2026**

J U D G M E N T

Muhammad Saleem Jessar, J.- By this common Judgment, we propose to dispose of above-captioned connected constitutional petitions, as both arise out of substantially similar facts, involve common questions of law and seek identical relief concerning the petitioner's entitlement to possession of the allotted land or, alternatively, adjustment against land of equivalent value.

2. Briefly stated, the petitioner's case is that he was lawfully allotted land measuring 9 acres and 18 ghuntas, situated in Survey No.306, carved out of Na-Class No.166, Deh Safooran, Sub-Division Gulshan-e-Iqbal, Gulistan-e-Jauhar, Block-10, District East, Karachi, on a 99-year lease, which forms the subject matter of C.P. No.D-577 of 2024. In the connected petition, the petitioner claims entitlement to another parcel measuring 3 acres and 6.5 ghuntas, situated in the same survey number and locality. According to the petitioner, the requisite differential malkano, amounting to

Rs.63,327,000/-, was deposited in the Government treasury in accordance with the applicable legal framework, including Ordinance III of 2001. The petitioner maintains that the allotments were duly recognized by the competent revenue authorities and that the corresponding rights created thereunder have neither been lawfully cancelled nor extinguished.

3. The petitioner further asserts that subject land was mortgaged in favour of Muslim Commercial Bank (MCB) as security for financial facilities amounting to Rs.150 million, extended to him and his partners on 12.02.1995. Upon default in repayment, the Bank instituted Suit No.739 of 1997 before this Court, which culminated in a consent decree dated 16.12.1997 for recovery of Rs.110,859,775/-, with a stipulation for sale of the mortgaged properties in the event of non-payment. Subsequently, on an application moved by the decree-holder under Section 152 CPC, the mortgaged property was stated to have been included in the decree, whereafter Execution Application No.59 of 1999 was instituted. According to the petitioner, the dispute with the Bank was eventually settled and, pursuant to an order dated 22.11.2023 passed by Banking Court No.II, Karachi, the original title documents were released in his favour. It is thus contended that no subsisting claim of the Bank stands in the way of the relief sought in these petitions.

4. The grievance giving rise to the present proceedings is that, during pendency of aforesaid litigation, respondent No.3, Pakistan Housing Authority (PHA), entered upon and occupied subject land without any lawful acquisition, transfer or extinguishment of the petitioner's existing rights. The petitioner maintains that the land originally belonged to the Government of Sindh and had already been allotted to him in accordance with law. Consequently, its subsequent utilization by PHA, without following procedure prescribed by the law, could not defeat his vested rights. It is further asserted that residential flats have since been constructed upon the land and are presently occupied by various persons, rendering restoration of physical possession practically difficult. The petitioner has, therefore, sought restoration of possession or, in the alternative, allotment or adjustment against land of equivalent market value, together with ancillary relief.

5. The official respondents, particularly the Land Utilization Department, Government of Sindh, have filed comments which assume considerable significance. The Department has not disputed the petitioner's allotment or the payments made by him towards the subject land. The record also contains minutes of a meeting of a committee constituted by the Government of Sindh concerning the purchase of PHA flats, wherein the dispute relating to the land was expressly acknowledged. The minutes record that the land required by PHA had already been allotted to an individual, was mortgaged with a Bank and was also the subject matter of judicial proceedings. Significantly, despite having had the opportunity to contest the petitioner's claim, the competent provincial authorities have neither produced any order cancelling the allotment nor identified any lawful proceedings whereby the petitioner's rights were acquired, resumed or otherwise extinguished. The acknowledgment of these material facts by the Department responsible for the administration and utilization of Government land lends substantial support to the petitioner's claim.

6. Respondent No.3, PHA, has contested the petitions by asserting that the land originally formed part of a larger area utilized by Pakistan International Airlines (PIA) for its joint venture with a Canadian poultry breeding concern, commonly known as PIA Shaver Poultry Breeding Farm. According to PHA, approximately 60 acres of land at Gulistan-e-Jauhar and 20 acres at Landhi had been utilized for the said project. It is further asserted that, through correspondence dated 22.06.1999 and 24.06.1999, steps were taken for transfer of the land to the then Prime Minister's Housing Authority for development of a housing project, and the Deputy Commissioner, Karachi East, was requested to complete the necessary formalities. PHA maintains that residential flats have since been constructed and occupied by numerous persons.

7. Learned counsel for the petitioner, while reiterating the averments contained in the petitions, submitted that the subject land had been lawfully allotted to the petitioner by the competent provincial authorities on a 99-year lease upon payment of the requisite consideration. The petitioner thereafter mortgaged the land

in favour of MCB, which itself demonstrates that the property was treated as forming part of his legally recognized interest. The subsequent dispute with the Bank having been settled, the original title documents were released in favour of the petitioner pursuant to the order of the competent Banking Court. Learned counsel emphasized that the Government of Sindh, through its Land Utilization Department, has categorically acknowledged the allotment and receipt of the relevant payments. Neither the allotment has been cancelled nor has any lawful acquisition, resumption or extinguishment of the petitioner's rights been demonstrated. It was further argued that PHA has occupied the land without any lawful authority and that mere construction of residential flats cannot defeat the petitioner's pre-existing rights. Learned counsel, therefore, prayed for restoration of possession or, in the alternative, adjustment against land of equivalent market value, as specifically sought in the petitions.

8. Conversely, learned counsel appearing for PHA submitted that the land originally formed part of the area utilized by PIA for its poultry breeding project and was subsequently made available for the housing scheme undertaken by PHA. He referred to the correspondence exchanged between the concerned authorities in June 1999 and maintained that residential flats have since been constructed and allotted to various persons who are presently residing therein. However, upon a specific query by the Court, learned counsel fairly conceded that no document establishing the original ownership, allotment, lease or lawful acquisition of the subject land in favour of PIA had been produced on record. He further conceded that no registered conveyance, lawful transfer, allotment or other title document establishing PHA's entitlement to the subject land was available on record. Nor could he point to any proceedings whereby the land had been lawfully acquired for the purposes of PHA or the petitioner's existing rights had been extinguished.

9. However, when specifically questioned by the Court regarding the legal foundation of PHA's claim, learned counsel representing respondent No.3 fairly conceded that no document establishing a lawful grant or transfer of title in favour of PHA had

been produced on record. He further conceded that no proceedings for compulsory acquisition of the subject land had been undertaken. These concessions are material because the controversy is not merely one of physical possession but concerns legal authority under which land already claimed by the petitioner, and acknowledged as allotted by the provincial authorities, came to be occupied and utilized for a public housing project.

10. Learned Deputy Attorney General submitted that, irrespective of the competing claims concerning title, the subject land is presently in possession of PHA, which has constructed residential flats and created third-party interests therein. It was argued that the persons presently occupying those flats are not before this Court and that any order directing their eviction or disturbing their possession would adversely affect their rights without affording them an opportunity of hearing. Learned Deputy Attorney General, therefore, submitted that the matter requires consideration in the light of the existing factual position and the rights of such occupants.

11. Learned Assistant Advocate General Sindh, appearing along with the Secretary, Land Utilization Department, and other departmental officers, did not dispute the allotment of the subject land to the petitioner or the payments made by him. The official respondents also acknowledged that the land had subsequently been mortgaged with MCB and that proceedings concerning the mortgaged property had taken place before the competent Courts. The departmental record, including the minutes of the meeting placed before us, also acknowledges existence of petitioner's claim and the dispute arising from subsequent utilization of the land by PHA. Significantly, the provincial authorities have not produced any order cancelling the allotment or establishing that the petitioner's rights were otherwise lawfully extinguished.

12. We have heard learned counsel for the parties at considerable length and carefully examined the pleadings, departmental comments, relevant correspondence and other material available on record. The principal question requiring determination is whether the petitioner's acknowledged rights in the subject land can be rendered ineffective merely because the land has subsequently

been utilized for a housing project, without any demonstrated lawful acquisition or extinguishment of those rights; and, if not, what effective relief may appropriately be granted in the peculiar circumstances of the case.

13. At the outset, it is important to distinguish between the ownership of the land by the Government and the legally enforceable rights created in favour of an allottee or lessee. Where the competent authority has lawfully allotted land, accepted the prescribed consideration and recognized the resulting interest, such rights cannot be disregarded merely through subsequent administrative arrangements. Although the State may regulate, acquire or resume property in accordance with law, it cannot defeat an existing lawful interest by permitting another public authority to occupy or utilize the property without following the procedure prescribed by law. Administrative convenience; however, compelling, cannot substitute statutory authority.

14. In the present case, the Land Utilization Department, being the competent provincial department concerned with the subject land, has not denied the allotment or receipt of the relevant payments in his comments. For ease of convenience, the relevant paragraph of the comments filed by Respondent No.2 is reproduced below:-

> *"The brief facts of the case are that an area measuring 12-25 acres of the State land from Na-Class No.166 of Deh Safooran, Block 10, Gulistan-e-Jauhar, KDA Scheme No.36, District Karachi East was leased out for 99Years by the Secretary Land Utilization Department, Board of Revenue, Government of Sindh vide Letter No.PS/MBR/(L.U)/72/96 dated 14.01.1996, in favor of Mr. Muhammad Iqbal Khan at the rate of Rs.100/-per Square Yards for Residential/Commercial Purpose. Furthermore, the Challan bearing No.564 for Occupancy price (cost of land) amounting to Rs.61,10,500/- was issued by the Respondent No.02, and the same was deposited by the Petitioner within time in the National Bank of Pakistan, District Council Branch, Karachi on 16-01-1996."*

Equally significant is the absence of any demonstrated cancellation, resumption or acquisition proceedings affecting the petitioner's rights. The mere fact that the land was previously utilized by PIA, or that correspondence was subsequently exchanged concerning its proposed transfer to PHA, does not, by itself, establish

that the petitioner's existing rights were lawfully extinguished. An administrative letter, resolution or interdepartmental arrangement cannot confer a better title than that legally available to the transferring authority, nor can it override rights already created in favour of another person without due process of law.

15. In this context, Article 152 of the Constitution of the Islamic Republic of Pakistan, 1973, is of considerable relevance. The said Article provides a constitutional mechanism whereby the Federation, if it considers acquisition of land situated within a Province necessary for a federal purpose falling within Parliament's legislative competence, may require the Province to acquire such land on their behalf, and at the expense, of the Federation or, where the land belongs to the Province, to transfer it to the Federation upon agreed terms or terms determined through the constitutionally prescribed mechanism. The significance of this provision is that the Constitution itself recognizes a lawful process for acquisition or transfer of provincial land required for federal purposes. It does not contemplate that a federal agency or authority may acquire proprietary rights merely by taking possession or through administrative correspondence unsupported by a lawful acquisition or transfer. In the present case, no material has been produced to establish that any such constitutional or statutory process was undertaken for acquisition or transfer of the subject land in favour of the Federation, PIA or PHA.

16. Article 172(1) of the Constitution further provides that property having no rightful owner shall vest in the Government of the Province in which it is situated and, in other cases, in the Federal Government. Although this provision does not mean that every property situated within a Province necessarily belongs to the Provincial Government, it recognizes the constitutional principle governing the vesting of ownerless property. In the present matter; however, the provincial character of the land is not being inferred merely from its geographical location. Rather, it is supported by the acknowledgment of the Land Utilization Department that the subject land was Government land allotted to the petitioner by the competent provincial authorities. In absence of any documentary evidence establishing an independent title in favour of PIA or PHA, their claim

cannot prevail merely on the basis of administrative correspondence or subsequent occupation.

17. The constitutional scheme is further reinforced by Article 173, which regulates the executive authority of the Federation and the Provinces concerning acquisition, grant, sale, disposition and transfer of property, subject to the applicable law. In particular, clause (5) expressly requires that transfer of land by the Federal Government or a Provincial Government shall be regulated by law. Thus, whether the subject land is viewed as provincial property or as land in which the petitioner had acquired enforceable leasehold rights, its subsequent transfer or acquisition could only be effected through lawful authority and the prescribed procedure. No such lawful transfer or acquisition has been established on the present record. The letters dated 22.06.1999 and 24.06.1999, relied upon by PHA, cannot by themselves constitute a valid conveyance of title or extinguish rights already created in favour of the petitioner.

18. The position must also be examined in the light of Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973. Article 23 recognizes the right of every citizen to acquire, hold and dispose of property, subject to the Constitution and reasonable restrictions imposed by law in the public interest. Article 24 provides constitutional protection against deprivation of property except in accordance with law and regulates compulsory acquisition for a public purpose. These provisions, read together, embody the principle that interference with a legally recognized proprietary interest must have lawful authority. Where property is required for a public purpose, the State must act through the procedure prescribed by law and comply with the applicable requirements concerning compensation. A public purpose may justify lawful acquisition, but it cannot retrospectively validate an otherwise unauthorized deprivation of property.

19. It is equally well settled that the State and its instrumentalities are bound to act fairly, reasonably and within the limits of the authority conferred upon them by law. Once the Government has created a lawful entitlement through its own competent department, it cannot permit that entitlement to become

illusory merely because another public body has subsequently undertaken construction upon the land. The consequences of administrative omissions or conflicting governmental arrangements cannot, without lawful justification, be transferred to an individual whose rights have been recognized by the competent authorities. To hold otherwise would allow the State to benefit from its own failure to follow the prescribed legal procedure, a result inconsistent with the rule of law and the constitutional protection afforded to property rights.

20. We are conscious that PHA has already developed the subject land and that residential units are presently occupied by a considerable number of persons. The rights and interests of such occupants, who are not before this Court, cannot be prejudicially determined in their absence. An order directing immediate demolition, eviction or restoration of physical possession would not only generate further litigation but could also adversely affect persons whose individual rights and circumstances have not been examined in these proceedings. Judicial relief must therefore be effective, lawful and proportionate to the circumstances in which it is granted. The existence of third-party occupation does not extinguish the petitioner's lawful entitlement; rather, it necessitates an appropriate alternative remedy which protects that entitlement without unnecessarily disturbing the settled possession of persons who are not parties to the litigation.

21. It is in this context that the alternative relief expressly sought by the petitioner assumes significance. The petitioner has specifically prayed that, if restoration of the original land is not feasible, the provincial authorities be directed to grant or adjust land of equivalent market value. Such relief is not foreign to the pleadings; it arises directly from the admitted factual position and falls within the scope of the controversy brought before this Court. In our considered view, where the competent provincial authorities acknowledged an existing allotment but the land has subsequently been utilized for a public project without any demonstrated lawful acquisition of the allottee's rights, the State cannot simply decline relief on the ground that restoration of possession has become impracticable. The obligation to provide a lawful and effective remedy

survives notwithstanding the subsequent development of the property. Reliance is placed on the case of ***Dr. Faisal Masaud and another V. Umer Rasool, Director General, Lahore Development Authority, Lahore and another (2017 SCMR 287)***.

22. The jurisdiction of this Court under Article 199 of the Constitution extends to requiring a public functionary to perform a legal duty which it has failed to discharge. The writ in the nature of mandamus is available where an enforceable legal right exists and a corresponding public duty remains unperformed. In Wala Khan v. Government of Balochistan through Chief Secretary and others (2006 SCMR 290), the Hon'ble Supreme Court explained the nature and essential requirements of mandamus, emphasizing the existence of a specified legal right and a corresponding public duty. The principle is particularly relevant where the relief sought is directed against public authorities responsible for giving effect to rights recognized under the law.

23. The availability of another remedy does not invariably exclude constitutional jurisdiction, particularly where the circumstances disclose a public-law controversy and the alternative remedy would not provide equally effective relief. Nevertheless, constitutional jurisdiction is not intended to replace ordinary proceedings for determination of seriously disputed questions of title requiring extensive evidence. In the present matter; however, the principal facts supporting the petitioner's allotment have not been controverted by the provincial authorities, while PHA has failed to demonstrate any lawful acquisition or transfer extinguishing the rights asserted by the petitioner. The controversy, therefore, substantially concerns the failure of public authorities to provide an effective remedy in respect of an acknowledged allotment, rather than a purely private dispute concerning competing titles. In these circumstances, relegating the petitioner to another round of litigation, without addressing the admitted administrative position, would serve little practical purpose.

24. At the same time, the grant of alternative land must conform to the applicable statutory and regulatory framework. This Court cannot direct the authorities to disregard the law governing

disposal or allotment of Government land, nor can the petitioner claim an unrestricted right to select any particular parcel. What the petitioner can legitimately insist upon is that the competent authorities address his acknowledged entitlement through a transparent, fair and legally permissible process, without diminishing its substantive value. The proposed adjustment must therefore be founded upon a proper assessment of the original land, its legally recognized interest, location, nature, permissible use, prevailing market value and other relevant characteristics. The value and legal status of the substitute land must also be assessed on comparable and objective criteria. Mere equivalence in area, without regard to value and legal utility, would not necessarily constitute an effective adjustment.

25. We are, therefore, of the considered view that the peculiar circumstances of the case warrant an effective direction to the competent provincial authorities. The Government of Sindh, having acknowledged the allotment and the relevant payments, is under an obligation to address the petitioner's claim in accordance with law. The fact that the original land has been developed and occupied cannot, by itself, constitute a lawful justification for leaving the petitioner's acknowledged rights without an effective remedy. Equally, the relief must be fashioned in a manner that does not prejudge the independent rights of third-party occupants or require the provincial authorities to act beyond their lawful powers.

26. Consequently, both Constitutional Petitions bearing Nos.D-577 and D-578 of 2024 are disposed of with the direction to respondents Nos.1, 2 and 4, particularly the Secretary/Member, Land Utilization Department, Government of Sindh, to examine and undertake the necessary exercise for adjustment of the petitioner's established entitlement against suitable alternative land of equivalent assessed market value, subject to verification of the relevant allotment record, extent of land, payments made and subsisting legal rights. For this purpose, preference shall be given to identifying suitable alternative land within District East, Karachi, where the originally allotted land is situated, or, if such land is not available, within an adjacent district, subject to availability and compliance with the applicable law. While determining equivalence, the

competent authority shall take into consideration the prevailing market value, location, nature, legal status, permissible use and other relevant characteristics of the respective parcels of land, rather than merely their measurement or acreage. The petitioner shall be afforded an opportunity of hearing and permitted to produce relevant documents in support of his claim. The competent authority shall thereafter pass a reasoned and speaking order and take such consequential steps as may be permissible under the law. The entire exercise shall be completed within three months from the date of receipt of this order. It is clarified that these directions shall neither confer an unconditional right to allotment of any particular parcel of Government land or prejudice the independent rights of third parties, including existing occupants. The respondents shall ensure that the petitioner's claim is considered fairly, transparently and in accordance with law, without allowing any administrative difficulty to result in its indefinite postponement. Both petitions stand disposed of in the above terms, along with all pending applications, if any.

27. Office shall transmit a copy of this order to the Chief Secretary, Government of Sindh, and the Secretary/Member, Land Utilization Department, for information and compliance. A copy shall also be placed in the connected petition.

Office to place a copy of this order in captioned connected petition.

JUDGE
HEAD OF CONST. BENCHES

JUDGE

Approved for Reporting

Ayaz Gul