

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-6521 of 2017

Present:

Justice Zafar Ahmed Rajput

Justice Ms. Sana Akram Minhas

Petitioners : Mian Nisar Akhtar (*since deceased through his legal No. 1 to 5 heirs*); Mian Absar Akhtar, Mrs. Maryam Absar, Mrs. Ismat Vaqar and Mian Akhtar Vaqar Paggawala through Mr. Faiz Durrani, Advocate.

Respondents : Government of Sindh, through Secretary Board of No.1, 3 & 4 Revenue; Deputy Commissioner District Malir, and Mukhtiarkar (Revenue) Deh Boil & Kathore, District Malir, through Mr. Akhtar Ali Mastoi, Advocate.

Respondent : Secretary Land Utilization Department, Government of Sindh, through Mr. Pervaiz Ahmed Mastoi, Assistant Advocate General ("**AAG**").
No. 2

Respondent : Defence Housing Authority ("**DHA**"), through its Administrator, through Mr. Malik Waseem Iqbal, Advocate.
No. 5

Date of hearing : 21.11.2024
Date of order : 21.11.2024

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the Petitioner, *inter-alia*, seeks the following relief: -

- i. *Declare that the Respondent No. 1 to 4 have no jurisdiction / authority to allot the private agricultural land of Petitioners to Respondent No.5 in the presence of valid leases and applications for renewal of leases;*
- ii. *Declare that the allotment of land belonging to the Petitioners, to Respondent No.5 is illegal, ultra vires to law and void against the Article 24 & 25-A of the Constitution and the Petitioners have valid and lawful leasehold rights of these lands;*
- iii. *To Direct the Respondent No.1&2 to cancel the allotment of subject land in favour of Respondent No.5 and further direct the Respondent No.3&4 to process the renewal of the lands in favour of the Petitioners on priority basis as per the rules and procedures provided in the relevant laws;*
- iv. *Restrain the Respondents particularly the Respondent no.5 from interfering, encroaching, attempting to take over the lands mentioned this petition from the Petitioners till the final disposal of the instant petition.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioners and their forefathers have been cultivating for several decades agricultural lands comprising various survey numbers, located in Deh Boil and Deh Kathore, Karachi (**“subject property”**) being the lawful lessees and possessors of the subject property by virtue of the leases, granted or transferred in their favour by the competent authorities; that since the grant of the leases, the Petitioners have continuously exercised their respective leasehold rights without interference or obstruction from any quarter and they have paid the prescribed ground rent and other dues upto date to the concerned revenue authorities; that the villages situated in the said Dehs have existed for several decades, which were regularized by the competent authorities under the Sindh Village Abad Scheme and orders for regularization of villages were issued by the then Deputy Commissioner, Karachi, on 03.04.1974, and further regularization was undertaken in 1989 under the directions of the then Chief Minister of Sindh, which have entitled the lawful occupants of the villages to enjoy long-term leasehold rights for 99 years as per the applicable policy and law; that the Petitioners and other residents of the area have been residing there with their families for generations, maintaining their ancestral graveyards and age-old social and familial connections, and they are earning their livelihood through agriculture, livestock rearing, and other allied activities; that the official revenue maps depict the said Dehs as predominantly barren and hilly areas; however, in reality more than 15,000 people reside in over a dozen villages scattered throughout the area, which are more than 70 years old, and historically the lands have been leased to lawful occupants for agricultural and allied purposes; that the Petitioners expended huge amounts in developing the subject property and have established farmhouses, fruit orchards, vegetable gardens, livestock and dairy facilities, and have also planted thousands of trees so also developed pathways and water-supply systems to facilitate cultivation; that electricity and gas facilities have also been arranged and the amenities have been developed by the Petitioners through their own resources; that the Petitioners continued to enjoy their respective leasehold rights and peaceful possession until the end of August 2017, when they noticed suspicious activities on the part of the Respondents No. 4 & 5 on the subject property; upon making inquiries, they came to know vide letter, dated 07.01.2012, that a substantial area around 8,000 acres, including the subject property, had been allotted by the Respondents No. 1 & 2 in favour of the DHA at a nominal rate of Rs.0.1 million per acre in violation of the prescribed legal procedure, and without safeguarding the rights of the existing lawful lessees and occupants; that the Petitioners apprehending that the Respondents No. 4 & 5 would dispossess them forcibly in order to hand over the subject property to DHA, approached to the

Respondent No. 4 and sought clarification regarding the proposed allotment of the subject property to DHA; however, with no satisfactory response, thereby giving rise to an apprehension that the Petitioners would be unlawfully deprived of their possession and subsisting leasehold rights; that the Respondents No. 1 & 2 cancelled the Petitioners' leases without due process of law; that the Petitioners submitted applications to the concerned authorities in August 2007 and October 2015, seeking extension of their leases, issuance of challans for payment of the lease money, and completion of the requisite formalities, but no response was received; that the DHA, in collusion with the other Respondents, attempted to forcibly dispossess the Petitioners from the subject property and subjected them to threats and abuse; that despite the Petitioners' complaint dated 18.08.2017 to the concerned police station, no action was taken; hence, they have maintained the instant Petition.

3. Learned counsel for the Petitioners has contended that the Petitioners' several leases are valid and subsisting as their terms have not yet expired, whereas applications for renewal of expired leases are pending before the Respondent No. 2; that the Petitioners are willing to pay the renewal fees and all other dues lawfully determined by the competent authority; that unless and until the Petitioners' subsisting leasehold rights and pending renewal applications are lawfully determined, the allotment of the subject property to DHA and any consequential attempt to dispossess them are illegal and without lawful authority; that the impugned allotment of land to DHA was made without ascertaining the existing occupation, use, and leasehold status of the subject property, or issuing notice to, and affording an opportunity of hearing to, the existing lessees and occupants regarding the proposed allotment or cancellation of their leases was therefore in violation of due process of law; that the allotment was made without inviting tenders, conducting a public auction, or publishing any notice in the newspapers, in an arbitrary, unfair, non-transparent, and discriminatory manner, with mala fide intent and in violation of the prescribed rules and procedure governing the allotment and disposal of State land, including the applicable provisions of the Colonization of Government Lands (Sindh) Act, 1912 ("**Act of 1912**"); that the impugned allotment is contrary to Section 24-A of the said Act and the applicable provisions of the Sindh Disposal of Urban Land Ordinance, 2002, and is therefore liable to be declared unlawful; that sufficient vacant Government land is available in the same vicinity which could have been considered for allotment to DHA instead of proceeding against the Petitioners' long-held subject property, apparently to facilitate its development and subsequent sale to private individuals, thereby jeopardizing their established leasehold interests and livelihoods; that the subject

property is agricultural in nature and has continuously been utilized by the Petitioners for the purpose for which it was originally leased, without violation of the terms and conditions of their respective leases, and cannot, in the absence of any lawful ground and compliance with the prescribed procedure, be arbitrarily resumed or diverted from agricultural to construction or commercial purposes; that the Petitioners' established possession, agricultural use of the subject property, substantial investments, and payment of Government dues cannot be disregarded or extinguished through an arbitrary administrative decision without due process of law; that, being existing lessees and long-standing occupants of the subject property and adjoining areas, the Petitioners claim a preferential right, including any right of first purchase available under the applicable legal framework, and are entitled to have their claims for renewal or allotment considered on a priority basis by the Respondent No. 1, being willing to acquire the subject property in accordance with the applicable legal provisions and prescribed terms; that the impugned actions of the Respondents disregard the Petitioners' leasehold interests, title, possession, legitimate expectations, and violate their fundamental rights guaranteed under Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), by seeking to deprive them of their lawful leasehold interests and possession without lawful authority and due process; that every public authority must act strictly in accordance with the law and follow the prescribed procedure, failing which its action is liable to be declared unlawful; and that, if allowed to stand, the impugned action would cause irreparable loss and injury to the Petitioners and other occupants by jeopardizing their agricultural establishments, homes, livestock, sources of income, and means of livelihood.

4. Conversely, learned counsel for the Respondent No. 5/ DHA has maintained that the Petitioners have no valid or subsisting title in their favour in respect of the subject property, as their short-term leases stood terminated long before the property was allotted to DHA; as such, they do not enjoy any leasehold rights therein; that the subject property was allotted to DHA by the Revenue Department, Govt. of Sindh, in accordance with law by complying with all requisite formalities; that no provision of the Act of 1912 has been violated in the allotment of the subject property to DHA in 2012 with possession by the competent authority; however, the Petitioners have approached this Court after a delay of approximately five years, without offering any satisfactory explanation for such inordinate delay; hence, the instant Petition is barred by laches; that the subject property is presently in the possession of the DHA, which has carried out planning and launched its

project, namely DHA City Karachi; that the subject property has been allotted and earmarked for residential, commercial, and amenity purposes, while its development is in full swing; that the Petition is not maintainable in its present form, as it raises disputed questions of fact which cannot be adjudicated in the constitutional jurisdiction of this Court; therefore, the same is liable to be dismissed.

5. Learned counsel appearing on behalf of the Respondents No. 1, 3 & 4, as well as learned AAG appearing on behalf of the Respondent No. 2, while adopting the arguments advanced by the learned counsel for the Respondent No. 5, have further argued that the Petitioners are not lawful lessees possessing any vested or indefeasible right in the subject property, as the leases were granted or transferred in their favour for a specific purpose and a limited period; that the terms of some leases have already expired upon completion of the stipulated period of 30 years, while the applications for renewal of the respective leases can only be processed by the competent authority after the ban imposed by the Apex Court is lifted; that the Petitioners hold the subject property as tenants under the terms and conditions of their respective lease agreements, which provide for cancellation of the tenancy at any stage without payment of compensation, and that the cancellation of the leases was effected in accordance with the provisions of the Act of 1912 and the terms and conditions of the respective lease agreements; that the Government of Sindh, after observing due process of law, allotted an area measuring 8,000 acres, comprising 7,000 acres situated in Na-Class No. 1, Deh Boil, and 1,000 acres situated in Na-Class No. 153, Deh Kathore, to DHA, Karachi, on a 99-year lease, vide Order No. 01-544-03/50-1/05/12 dated 07.01.2012, issued by the Secretary, Land Utilization, Government of Sindh, subject to the terms, conditions and rates already prescribed and notified by the Government; that the subject property is owned by the Government of Sindh through its Land Utilization Department, whereas the Petitioners are neither owners nor holders of any ownership rights therein, the land having been allotted to them temporarily for a specific purpose and subject to the applicable terms and conditions; that a village comprising approximately 300 houses, inhabited by local residents for many years, exists in the area, and that old and regularized villages falling within the allotted area, including those regularized under the Sindh Goth Abad Scheme Act, 1987, have been excluded from the allotment and the rights of their residents duly safeguarded; that the Petitioners are not residing in the said villages and have been using the subject property for “Wahi Chahi” (*rain-fed agricultural cultivation*) purposes and have also constructed residential structures thereon; that the Petitioners were well aware of the temporary nature of the allotment, its specific purpose and its subsequent cancellation by the competent

authority; and that the Petition involves disputed questions of fact requiring proper evidence and factual determination, which cannot suitably be undertaken in constitutional jurisdiction; hence, the instant Petition is not maintainable in its present form and is liable to be dismissed.

6. Heard, record perused.

7. The Petitioners' claim is founded upon short-term leases granted and/or transferred to them for specific purposes and for limited periods. According to the Petitioners' own case, the allotment of approximately 8,000 acres of land in favour of DHA, along with the consequent cancellation of their leases, was communicated through letter dated 07.01.2012, and DHA was placed in possession of the land in the same year; however, the Petitioners approached this Court after a lapse of approximately five years, without furnishing any satisfactory explanation for the delay. The exercise of constitutional jurisdiction by this Court is discretionary and equitable in nature, and relief may ordinarily be declined where a Petitioner fails to approach the Court with due diligence. The delay assumes particular significance in the present case, as DHA has, in the meantime, planned the area, launched DHA City Karachi, and earmarked the land for residential, commercial and amenity purposes, with development activities already in progress. Consequently, third-party interests have arisen, and it would be inequitable to unsettle an arrangement of such magnitude after the passage of considerable time.

8. The Petitioners have further asserted that certain leases remain valid and subsisting, that applications for renewal of expired leases are pending consideration, and that they have continuously cultivated the land while regularly paying ground rent and other dues. These assertions are disputed by the Respondents, who maintain that the short-term leases had expired or otherwise stood terminated before the allotment of the land to DHA, that the land is mountainous and barren, and that applications for renewal cannot be processed during the subsistence of the ban imposed by the Apex Court. The questions as to whether any lease remained valid and subsisting on the relevant date; whether the Petitioners complied with the terms and conditions of their respective leases; whether the land was actually under cultivation; whether the villages and their residents fall within the area allotted to DHA, and whether the allotment was made in accordance with the Act of 1912, including Section 24-A thereof, involve disputed questions of fact, determination thereof would require the recording of evidence and

examination of the relevant record, which is an exercise ordinarily not undertaken in proceedings under Article 199 of the Constitution.

9. As regards the nature of the Petitioners' rights, a lease granted by the Government for a specified purpose and subject to prescribed conditions, including a condition rendering it liable to cancellation, does not, by itself, confer an indefeasible right to the continued enjoyment of the leasehold or to renewal upon expiry. The subject property belongs to the Government of Sindh and was allotted to DHA through the competent authority under the Act of 1912. The Petitioners have not demonstrated any enforceable legal right entitling them to compel renewal of their leases or to claim preferential allotment of the land; nor have they identified any statutory provision conferring upon them a right of first purchase. Furthermore, under Presidential Order No. 7 of 1980, DHA schemes are treated as schemes for a public purpose. In these circumstances, and in the absence of a demonstrated infringement of any enforceable constitutional or legal right, the Petitioners have failed to establish a violation of Articles 23 and 24 of the Constitution.

10. The Petitioners' grievances regarding the allegedly inadequate consideration for the allotment, the absence of a tender or public auction, and the alleged loss to the public exchequer also do not warrant interference in the present proceedings. No sufficient factual or legal foundation has been laid to substantiate these allegations, and the Petitioners have not established an enforceable right in the subject property that would entitle them to seek the relief claimed, particularly after the unexplained delay in invoking this Court's jurisdiction.

11. With regard to the residents of the villages stated to have been regularized under the Goth Abad Scheme, the Respondents maintain that the regularized villages falling within the allotted area have been excluded from the allotment and that the rights of their residents have been safeguarded. No specific instance of dispossession has been established on the record. Any person aggrieved by an actual or threatened infringement of his or her lawful rights shall, however, be at liberty to seek appropriate relief before the competent forum in accordance with law.

12. For the foregoing facts and reasons, the instant Petition, being barred by laches, involving disputed questions of fact requiring evidence, and failing

to establish any vested or otherwise enforceable right warranting the exercise of constitutional jurisdiction, is devoid of merit and is accordingly dismissed, along with the listed application. The Petitioners shall, however, remain at liberty to avail themselves of any remedy available to them under the law before the forum of competent jurisdiction.

13. The above are the reasons for our short order dated 21.11.2024.

JUDGE

JUDGE

Athar Zai