

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-6504 of 2017

Present:

Justice Zafar Ahmed Rajput
Justice Ms. Sana Akram Minhas

Petitioners : Sikandar Ali, Mohammad Ali, Mohammad
Urs, No.1 to 7 Mst. Hameeda, Abdul Haleem,
Mohammad Ibrahim and Shahzad
Saleh Bhootani, through their Attorney
Waheed Sikandar, through
Mr. Muhammad Farooq, Advocate.

Respondents : Province of Sindh, through Secretary
Board of
No.1 & 4 Revenue and Revenue Mukhtiarkar, Gadap
Town, District Malir, through
Mr. Akhtar Ali Mastoi, Advocate.

Respondent : Defence Housing Authority, through
No.2 the Administrator, through
Mr. Malik Waseem Iqbal, Advocate.

Respondent : Secretary Land Utilization Department,
No.3 Government of Sindh, through Mr. Pervaiz
Ahmed Mastoi, Assistant Advocate General
(“AAG”)

Date of hearing : 21.11.2024
Date of order : 21.11.2024

ORDER

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

- i) *Declare that the powers used by the Respondents are without jurisdiction/authority.*
- ii) *Allotment of lease for 99 years and cancellation was an act of misuse of authority and power and declare the lease unlawful.*
- iii) *That cancellation of 30 years lease already granted to petitioner without giving notice is unwarranted by the law and the cancellation of the said leases may be reversed.*
- iv) *Declare that the powers exercised by the Respondent for allotting an agricultural land to the DHA were an act which is not authorized by the law and is an excess of authority.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioners hold leasehold rights in respect of agricultural land comprising various survey numbers situated in Na-Class No. 1, Deh Boil,

Tapo Kathore, Gadap Town, Karachi (**“subject property”**). The leases were granted in their favour by the Government of Sindh in 1995/1996 for a period of 30 years, for the purpose of cultivation under the Colonization of Government Lands (Sindh) Act, 1912 (**“Act of 1912”**), vide Notifications Nos. KB/1/1/30/72/1413/3238 and 3239, dated 27.03.1973. Since the grant of the leases, the Petitioners have remained in possession of, and have continuously cultivated, the subject property, thereby earning their livelihood through agricultural activities. On 06.05.2011, the Defence Housing Authority (**“DHA”**) addressed a letter to the Chief Minister, Sindh, seeking the allotment of additional land in Deh Boil for DHA City, Karachi. The request was forwarded to the Executive District Officer (Revenue), City District Government, Karachi. Thereafter, on 14.05.2011, the Deputy District Officer (Revenue), HQ-I, addressed a letter to the District Officer (Revenue), directing him to furnish a detailed report in the matter. Pursuant thereto, the Mukhtiarkar (Revenue), Gadap Town, submitted a report dated 09.07.2011, stating that the subject property had been leased for development purposes but had not been developed. On the basis of the said report, the Chief Minister, Sindh, ordered the cancellation of the leases granted in favour of the Petitioners, whereafter the District Officer (Revenue) allotted the subject property to DHA. The land comprising Deh Boil also includes Goth Abdur Rehman, a populated village inhabited by hundreds of families. The Respondents demolished houses in the village without issuing notices to the occupants or providing them with an opportunity of being heard; hence, the Petitioners have maintained this Petition.

3. Learned counsel for the Petitioners has contended that the leases granted in favour of the Petitioners had not expired at the time of their purported cancellation; that the subject property was leased out to the Petitioners for cultivation, who had been cultivating the same; thus, the grounds assigned for cancellation of the leases are factually unfounded and legally unsustainable; that the subject property, along with Goth Abdur Rehman, is situated within Deh Boil, whereas the said village has been regularized under the Sindh Goth Abad Scheme, 1987, pursuant to which the Government of Sindh issued Sanads in favour of the Petitioners and other residents of the village; therefore, the Respondents could not have ignored the existing status and rights of the residents while dealing with the subject property; that neither any notice was issued nor the Petitioners were afforded any opportunity of hearing before cancellation of their subsisting

lease rights; hence, the cancellation of the lease was in violation of the Petitioners' constitutional right to fair trial and due process guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"); that the report submitted by the Mukhtiarkar made no reference to Goth Abdur Rehman, its established status, or its substantial population; that the cancellation of the Petitioners' leases by an order of the Chief Minister and the subsequent allotment of the subject property to DHA on a ninety-nine year lease were undertaken in a manner that is neither transparent nor consistent with the legal framework; as such, the actions of the Respondents are illegal, arbitrary, capricious, without lawful authority, and of no legal effect, particularly as they failed to comply with the settled legal requirements governing the disposal and allotment of State land; that the allotment of the subject property in favour of DHA is contrary to the provisions of the Sindh Disposal of Urban Land Ordinance, 2002 ("**Ordinance of 2002**"), which has been made without lawful authority and in excess of the powers vested in the concerned Respondents; that the subject property is agricultural land, which was leased to the Petitioners for cultivation, whereas DHA proposes to utilize the same for residential and allied purposes; that the Petitioners, being lawful lessees and occupants of the subject property and having remained in possession and cultivation thereof for several years, have a legitimate and legally protected interest therein; therefore, they are entitled to have their rights considered in accordance with law and, where the applicable policy and legal framework so permits, to be given preference in any allotment or regularization of the subject property; that the Respondent No. 1 is under a corresponding obligation to consider the Petitioners' claim fairly, transparently and in accordance with law; that the impugned actions of the Respondents, whereby the Petitioners' lease rights have been cancelled and the subject property sought to be transferred to a third party without notice, hearing, compensation, or adherence to the applicable law, also violate the Petitioners' fundamental right to protection of property guaranteed under Article 24 of the Constitution.

4. Conversely, learned counsel for the Respondent No.2 has maintained that the documents annexed with the Petition demonstrate that the leases were granted for short terms and for a specific purpose, subject to the express condition that any breach of the terms of the grant could result in cancellation of the lease and resumption of the subject property; therefore,

such short-term lease confers upon the Petitioners/lessee only a limited right to use the subject property in accordance with the terms of the grant and in the event of a breach, the same may be resumed in accordance with the applicable terms and law; that the Petitioners were, at best, short-term lessees and they acquired no vested right in the subject property; therefore, they lack the requisite *locus standi* to maintain the instant Petition; that the Petitioners have failed to establish that they utilized the subject property in conformity with the conditions of the respective grants; that the majority of the leases were granted during 1987–1988 and 1992–1993 for a period of 30 years; however, the Petitioners neither developed the subject property nor utilized it for the purpose for which it had been granted; hence, in view of the limited remaining period, development or utilization of the subject property for the stipulated purpose was no longer financially viable; therefore, the Petitioners cannot claim any vested right in the subject property merely by virtue of the said leases; that, in the absence of any vested right in the subject property, the Petitioners cannot claim an indefeasible right to a hearing as a matter of course; therefore, their grievance is misconceived; that the Petitioners have placed no documentary evidence on record to establish that they were cultivating the subject property; that the subject property was never brought under cultivation by the Petitioners; hence, their prolonged inaction, as evidenced by the filing of the instant Petition more than five and a half years after cancellation of the leases and delivery of possession to DHA further undermines their assertion of actual cultivation and continuing possession; that, on the basis of the report submitted by the Mukhtiarkar and duly forwarded by the then District Officer (Revenue), the Chief Minister, Sindh, approved the allotment of the subject property to DHA and the cancellation of all short-term leases, with a further direction that the affected allottees be shifted to another suitable area in accordance with the applicable policy, whereas cancellation of the leases formed part of the same order through which the allotment in favour of DHA was made and since the Petitioners held no vested right to continue as short-term lessees, they cannot successfully challenge the said cancellation on that basis; that the subject property was owned by the Government of Sindh and was duly allotted to DHA by the competent authority in exercise of the powers conferred under the Act of 1912; as such, the allotment was made in accordance with law, which is not vitiated by any illegality warranting interference by this Court; that, under Presidential Order No. 7 of 1980 (**“Presidential Order”**), schemes undertaken by DHA are

deemed to be for a public purpose, whereas the subject property forms part of a scheme planned and developed by DHA for the said purpose; therefore, the Petitioners, having failed to establish any enforceable right in the subject property, have no lawful basis to challenge the allotment made in favour of DHA; that, as per report of the Mukhtiarkar, the area comprising Goth Abdur Rehman is not included in the land proposed for, or subsequently allotted to, DHA and the Petitioners have failed to produce any material establishing that the land occupied by the Goth was included in the said allotment; that the Petitioners have raised the issue of Goth Abdur Rehman to evoke sympathy and lend support to their case, although the plea appears to be an afterthought; that the Sanads allegedly relied upon by the Petitioners are of doubtful authenticity and appear to be questionable, particularly in view of the restrictions imposed under the Sindh Goth Abad Scheme Act, 1987, whereby allotment of land exceeding two ghuntas was not permissible; that the Ordinance of 2002 is not applicable to the subject property and, in any event, stands repealed; therefore, the Petitioners cannot derive any benefit from the provisions of the said Ordinance; that in the absence of any established proprietary or other enforceable right in the subject property, the Petitioners' claim of infringement of Article 24 of the Constitution is misconceived and untenable; that the impugned cancellation order was passed on 07.01.2012, whereas the instant Petition was filed after a delay of more than five and a half years; therefore, the instant Petition is barred by laches; that the Petition involves disputed questions of fact which cannot appropriately be adjudicated in the exercise of the extraordinary constitutional jurisdiction of this Court; that the instant Petition is neither maintainable in law nor sustainable on merits and is, therefore, liable to be dismissed.

5. Learned counsel appearing on behalf of the Respondents No. 1 & 4 as well as learned AAG appearing on behalf of the Respondent No. 3, have adopted the arguments advanced by the learned counsel for the Respondent No. 2.

6. We have heard learned counsel for the Petitioners as well as learned counsel for Respondents and have perused the material available on record.

7. The impugned cancellation order was passed on 07.01.2012, whereas the instant Petition was instituted on 26.09.2017, after a lapse of more than five and a half years. The Petitioners have offered no plausible

explanation for this inordinate delay. It is settled law that the exercise of constitutional jurisdiction is discretionary and equitable in nature and that relief may be declined to a litigant who has remained indolent in asserting his rights. The delay assumes greater significance in the present case, as possession of the subject property was delivered to DHA pursuant to the allotment, whereafter DHA proceeded with the planning and development of a scheme thereon. Consequently, third-party interests have intervened. The Petitioners' prolonged inaction also casts doubt on their assertion of continuous possession and cultivation of the subject property.

8. The Petitioners' claim is founded entirely upon short-term leases granted for agricultural purposes. Such leases, being subject to the terms and conditions stipulated in the grants, confer only a limited right to use the land in accordance with the purpose for which it was leased and do not create any vested right of ownership or an indefeasible right to continued occupation. The documents annexed to the Petition indicate that the grants were conditional and that any breach of the stipulated terms could entail cancellation of the leases and resumption of the land. The Petitioners have not produced any reliable documentary evidence to establish that the subject property was actually under cultivation at the time the leases were cancelled. Whether the Petitioners complied with the terms and conditions of the leases and whether the land was actually under cultivation are disputed questions of fact that cannot appropriately be adjudicated without recording evidence and are, therefore, not amenable to determination in the exercise of constitutional jurisdiction under Article 199 of the Constitution.

9. As regards the plea of denial of a hearing in violation of Article 10-A of the Constitution, the Petitioners have failed to establish any vested or enforceable right in the subject property that would, in the circumstances of the present case, sustain their challenge to the cancellation of the short-term leases. In any event, the cancellation reportedly formed part of the same order whereby the allotment in favour of DHA was approved. It is also the Respondents' case that alternative land has been offered to the Petitioners. In these circumstances, the plea of procedural irregularity, raised after an unexplained delay of more than five years and in the absence of an established vested right, does not furnish sufficient ground to reopen and unsettle the concluded allotment.

10. The allotment in favour of DHA was made by the competent authority, namely, the Chief Minister, Sindh, in exercise of the powers conferred under the Act of 1912, in respect of land owned by the Government of Sindh. Under Presidential Order, schemes undertaken by DHA are deemed to be for a public purpose. In the absence of any established enforceable right in the subject property, the Petitioners have failed to demonstrate a sufficient legal basis to challenge the allotment made in favour of DHA. Their reliance on the Ordinance of 2002 is also misplaced, as they have neither established its applicability to the subject property nor overcome the objection that the Ordinance stands repealed. Likewise, the contention that agricultural land cannot be utilized for residential purposes has not been substantiated by reference to any specific statutory provision or other legal prohibition. In the circumstances, the Petitioners have failed to establish any legal ground warranting interference with the allotment.

11. With regard to Goth Abdur Rehman, the report submitted by the Mukhtiarkar states that the area comprising the Goth does not fall within the land proposed to be allotted to, or allotted in favour of, DHA. The Petitioners have produced no material to establish that the land on which the Goth is situated forms part of the subject allotment, nor have they furnished any evidence of demolition or other interference by DHA with the Goth. The authenticity and validity of the Sanads allegedly relied upon by the Petitioners are also in dispute, since no such Sanad has been produced by them with this Petition. Resolution of this controversy would necessarily require factual inquiry, which cannot appropriately be undertaken in the present constitutional proceedings. Moreover, the Petitioners have not demonstrated their authority to espouse the cause of the residents of the Goth, none of whom has approached this Court in a timely manner.

12. In substance, the Petitioners seek to enforce rights arising out of contractual lease arrangements, the enforcement of which, in the circumstances of the present case, does not warrant the exercise of constitutional jurisdiction. The Petitioners also had the remedy of approaching the competent revenue authorities under the relevant revenue hierarchy, but they have not shown that such remedy was availed of or that any exceptional circumstances existed to justify bypassing it.

13. For the foregoing reasons, the instant Petition is found to be barred by laches, to involve disputed questions of fact unsuitable for adjudication

in constitutional jurisdiction, and to be founded upon leasehold rights that do not establish an enforceable entitlement to the relief sought, particularly in view of the available remedies under the law. The Petition is, accordingly, dismissed, along with the pending application. The Petitioners shall, however, remain at liberty to avail themselves of any remedy available to them in accordance with law.

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

JUDGE

JUDGE

Athar Zai