

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**  
C.P.No.D-3607 of 2017

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.  
For Katcha peshi.  
For hearing of M.A No.20275/16.

15-09-2017.

Mr. Riazat Ali Sahar, Advocate for Petitioner.  
Mr. Allah Bachayo Soomro, learned A.A.G, alongwith Assistant  
Commissioner Latifabad.

Through instant petition, petitioner has challenged order dated  
18.07.2014, which is reproduced herewith.

*“The Mukhtiarkar Taluka Latifabad through  
the Assistant Commissioner, Taluka latifabad  
stated that the Supervising Tapedar of the beat has  
reported that during scrutiny verification of the  
Revenue Record and found that an area of 229-12  
acres out of U.A No.01 of Deh Ganjo Takar Tapo  
Khatar Taluka Latifabad Hyderabad included in the  
original land hold by Zeal Pak Cement Factory  
illegally and unlawfully. The Said land viz: 229-12  
acres if Government Land and entered in VF-VII-B,  
vide entry No.12 & 13 dated 09.05.2014 of said Deh”.*

2. Case of the petitioner is that subject land was purchased by it  
(petitioner) after due compliance of all requisite formalities, including  
payment of necessary *challan* and in consequence whereof the GHAT-  
WADH form was issued and entries in favour of petitioner was made  
in Record of the Rights however the Mukhtiarkar, Latifabad  
(respondent no.4) through Assistant Commissioner approached to the  
respondent no.3 for cancellation of GHAT-WADH Form while

referring that Supervising Tapedar on *scrutiny* found same *illegal* which act was challenged before this Court by filing CP wherein notices were issued but respondent no.3 passed *exparte* order without hearing petitioner thereby canceling the GHAT WADH form, issued in favour of the petitioner which has been challenged in this petition.

3. The respondents, on service, filed their comments to petition which are also *part* of the proceedings.

4. Counsel for the petitioner has argued that respondent nos.3 and 4 have not denied the completion of formalities as well verification of record before issuance of GHAT-WADH form as well entries in Record of Rights in consequence of such process yet same was cancelled merely on words of the *supervising Tapedar*; the order was passed without providing an *opportunity* of hearing; the order was passed during pendency of the *petition*; Settlement Commissioner was not competent to deprive the petitioner from his legal and established right; hence instant petition being reached prohibitory issue is maintainable as respondent No.3 has acted without jurisdiction. He has also referred order dated 07.08.2017 passed by Secretary Land Utilization Department in another matter, whereby he has accepted appeal and has set-aside the order passed by Settlement Survey Land which is reproduced herewith:-

*“After perusal and detailed scrutiny of the related record in its entirety that the Ghat-Wadh Form cancelled by Director Settlement Survey & Land records Sindh Hyderabad **without giving opportunity of hearing to the applicant.** Therefore, the letter No.Reader/835/2014, dated 16.07.2014 of Additional Deputy Commissioner-I, Hyderabad and letter No.GM/1656 of 2014 dated 18.07.2014 of Director of Settlement Survey and Land Records Sindh Hyderabad are hereby withdrawn/ cancelled*

*and Survey Nos. 82, 83, 84 and others total admeasuring 198.30 acres **are hereby restored and 'Ghat Wadh' Form No.17 as well as entries in Record of Rights may be restored, subject to condition that the land is free from all encumbrances**".*

5. Learned A.A.G contends that all entries are bogus. Assistant Commissioner present alongwith learned A.A.G contends that petitioners are not entitled for this land, hence impugned order in accordance with law.

6. We have heard the respective sides and have carefully examined the available material.

7. At the very outset, the *peculiar* facts of the instant matter compel us to say that the *counsel* or the *government pleaders* are supposed to assist the Courts in reaching to a *just* conclusion. Such *duties* include bringing the *proper* factual positions as well *legal* positions into light without any hesitation. When it comes to *factual* positions or *record* none of them is obliged to say anything which is not backed by *facts* and *records* because *facts* and *records* are always provided by the *party* itself whether it be *private* or *government*.

8. The learned AAG as well Assistant Commissioner though stated that *entries* in favour of the petitioner were *bogus* but the custodian of such *records* in their comments have stated *otherwise*. The *claims* of petitioner and respond thereto shall become *evident* from comparative referral thereof which is made hereunder:-

5. That originally the above factory was property of Government <u>which was subsequently purchased by the new administration alongwith its belonging including</u>	Mukhtiarkar ( <u>Respondent n.4</u> )  <b>Admitted.</b>	Respondent no.3) No comments
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<p>portion of un-surveyed land admeasuring 110-16 acres vide Revenue Entry No.31 dated 1/12/1984 and 118-38 acres vide entry no.60/A dated 9/2/1961 in Deh Ganjo Takar. Since then the <b><u>petitioner is in physical and peaceful possession of the aforesaid land.</u></b> (Copies of Revenue Entry alongwith sketch are annexed as annexure B, B(i), B(ii))</p>		
<p>That on 17<sup>th</sup> February 2014 the <b><u>petitioner moved an application to the Assistant Commissioner Latifabad , Hyderabad for issuance of "Ghat Wadh" form, said application was forwarded to the Director of Settlement Survey &amp; Land Record Sindh, Hyderabad</u></b> (RespondentNo.3) and Mukhtiarkar Latifabad (respondent no.4) for further process. (copy of the application is annexed as annexure C &amp; C(i))</p>	<b><u>Admitted</u></b>	No comments
<p>That in consequence to the above said application the <b><u>Mukhtiarkar Taluka Latifabad District Hyderabad (respondent no.4) after scrutinizing the record issued Bank Challan</u></b> sum of Rs.17250/0 for survey of land, the same was paid by the petitioner, thereafter <b><u>"Alaf" farm was issued by the Assistant Commissioner Latifabad Hyderabad</u></b> (copy of the Challan are annexure D &amp; D(i))</p>	Admitted	No comments
<p>That after completion of above said application the Mukhtiarkar Taluka Latifabad District Hyderabad ( respondent No.4) <b><u>send a letter along with attested copies of record of rights in respect of subject land on 18/2/2014 to the Director of Settlement Survey and</u></b></p>	<b><u>Admitted</u></b>	It is admitted that Mukhtiarkar Latifabad (Respondent No.4) and Assistant Commissioner Latifabad has forwarded the report vide his letter No.AM/166 dated 18.02.2014 and No.AC/LA/215 dated 18.2.2014 as well as sent copy of <i>alf</i> survey challan

<p><u>Land Record Sindh, Hyderabad ( respondent no.3) for issuance of "Ghat Wadh" ) form to the petitioner.</u> (copy of the letter dated 18/2/2014 is annexed as annexure-E)</p>		<p>and survey expenses challan to this office for taking further necessary action and issuance of Ghat Wadh form.</p>
<p>That on 29/4/2014 the Director of Settlement Survey &amp; land Record Sindh, Hyderabad <b>(respondent no.3) wrote a letter to the inspector of revenue and city survey Hyderabad ( Respondent no.5 )</b> for further process who in compliance of above said letter the revenue survey kotri barrage <b>prepared (i) detailed report (ii) Ghat Wadh Forms of the land (iii) Soorthhal / sketch).</b> (copy of the letter dated 29.4.2014 are submitted herewith as annexure F to F(ix)</p>	<p>Not relating to answering respondent</p>	<p>It is <u>admitted that same papers were forwarded to the Inspector Revenue and City Survey Hyderabad vide letter No.GM/1084 dated 29.4.2014 for further necessary action in the matter in accordance with law and procedure.</u> copy enclosed as annexure A.</p>
<p>That <u>on basis of above said detail report along with "Ghat Wadh" form through Inspector of Revenue &amp; City Surveys, Hyderabad the Director of Settlement Survey &amp; land Record Sindh, Hyderabad</u> wrote a letter dated 07/5/2014 to land record officer, Hyderabad for further process (copy of the letter dated 7/5/2014 is submitted herewith as annexure-G)</p>	<p>Not relating to answering respondent</p>	<p>It is <u>admitted that the Inspector Revenue and City surveys Hyderabad after verification of record, site and prepare survey papers i.e field book, survey boundaries , site sketch and Ghat Wadh form vide his vemaacular letter No.170 dated 07.5.2014 for further necessary action.</u></p>
<p>That in consequence to above said letter dated 7/5/2014 the land records officer, Hyderabad issued a memo dated 7/5/2014 for returning survey papers to <b>Mukhtiarkar Taluka Latifabad District Hyderabad.</b> (copy of the memo dated 7/5/2014 is submitted herewith as annexure-H)</p>	<p>Admitted.</p>	<p>It is <u>admitted that survey papers received from Inspector Revenue and City surveys Hyderabad were forwarded to the Land Records Officer Hyderabad office of the Director Settlement Survey and Land Records Sindh Hyderabad vide letter No.GM/1134 dated 07.5.2014 after completing all codal formalities and verification of new survey papers according to record carefully an then may be incorporated in record. The Land Record officer Hyderabad after</u></p>

		<u>verification of record and incorporated survey papers</u> and Ghat Wadh form and sketch were forwarded to the Mukhtiarkar Latifabad (respondent n.4)( for further necessary action vide Memo No.ZB/22 dated 07-5-2014.
That <u>after completion of all above said codal formalities and legal requirements,</u> the Mukhtiarkar Taluka Latifabad ( respondent no.4) <u>made Entry No.12 regarding "Ghat Wadh" form on the record of rights</u> and prepared form VII-B which was scanned and passing through Micro Filing Vide Entry No.394221 dated 19.5.2014 as per land revenue laws . (copies of the Entry no1.2 dated 9/5/2014 consists of 5 levies are as annexure I)	That after receiving the letter dated 7/5/2014 issued by the Land Officer office of the Directorate Settlement Survey & Land Record Sindh Hyderabad the Ghat Wadh form issued by the Director Settlement Survey & Land Records Sindh Hyderabad the entry has been kept in V.F.VII-B vide entry No.12 and 13 dated 9/5/2014 formed out new survey number 32,33 and others admeasuring 229-12 acres bearing scanning entry no.394221/394222 dated 19/5/2014 <b>shown in the name of Zeal Pak Cement Factory Ltd.</b> Hyderabad.	No comments
That <u>on the basis of above said record entry bearing No.13 dated 9/5/2014 was made on record of rights by the Mukhtiarkar Taluka Latifabad and the same was scanned vide entry No.394222 dated 19/5/2014 through Micro Filing</u> consist of 2 levies are as annexure-J)	<b>As admitted in para No.12.</b>	No comments
That thereafter on the influences of a business traicone and Political persons belong to the ruling party, the Mukhtiarkar Taluka Latifabad District Hyderabad was directed by the Commissioner to arrange the land in Deh Ganjo Takar. In this regard Section Officer-I, Land Utilization Department wrote a letter to the Deputy Commissioner Hyderabad in order to arrange Government land admeasuring 18000acres,	That this office sent a proposal of an area of 18000 acres of Deh Ganjo Takar for launching a new Housing Scheme in Gulshan-e-Sarmast Zone Hyderabad vide letter No.SM/600 dated 6/6/2014.	No comments

consequently the Mukhtiarkar prepared feasibility report and proposed the land including the land of petitioner. (copies of the letter dated 9/5/2014 is an annexure k, letter dated 15/5/2014 k(i) letter dated 6/6/2014 k(ii))		
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9. The *comparative* analysis of above leaves nothing ambiguous that the respondent no.3 and respondent no.4 *categorically* admitted all the *claims* of the petitioner rather strengthened *claimed* documents by adding the *phrase(s)* “**after verification of record; after completion of all codal formalities as well in accordance with law and procedure**”. Since these *factual* positions with reference to *records* was categorical stand of the official respondents hence the *record* shall always prevail therefore, *representatives* are always hoped rather *believed* to speak through the *record* because legally any such evidence would be liable to *exclusion* which is against application of document to existing facts. Reference may be made to Article 104 of Qanun-e-Shahadat Order, 1984. Thus, we would say that *prima facie* the plea of entries of petitioner to be *bogus* appears to be not supported by the stand of the *official* respondents themselves.

10. However, since we are conscious that this Court is not competent to *declare* status of the a *document* therefore, leaving things to be *adjudicated* before proper forum, but since this court is always competent to pass an *appropriate* matter while exercising jurisdiction in matters of ‘**writ of certiorari**’ and *writ of prohibition*; any *exercise* by an authority could well be challenged on ground of being ‘**without lawful authority and is of no legal effect**’.

11. The root of instant matter *undeniably* is the letter of the Mukhtiarkar (respondent no.4) hence it would be proper to refer the same which reads as:

To  
The Director Settlement Survey &  
Land Records Sindh, Hyderabad.

Through Assistant Commissioner, Latifabad.

Subject: CANCELLATION OF GHAT WADH FORM AN AREA OF 229-12 ACRES OUT OF UA NO.01 OF DEH GANJO TAKKAR TAPO KHATAR TALUKA LATIFABAD.

It is submitted that **the Supervising Tapedar of the beat has reported that during scrutiny / verifying** the revenue record and found that an area of 229-12 acres out of UA No.01 of Deh Ganjo Takkar Tapa Khatar Taluka Latifabad Hyderabad included in the original land hold by Zeal Pak Cement Factory illegally and unlawfully. **The said land viz. 229-12 acres is government land and entered in VF-VII-B vide entry no.12 & 13 dated 09.5.2014 of Deh Ganjo Takar Tapa Khatar Taljuka Latifabad.**

That the Ghat Wadh Form issued by your good office in favour of M/s Zeal Pak Cement Factory and area of 229-12 acres out of UA. No.1 Deh Ganjo Takar may kindly be cancelled and communicated to this office, so that the entry bearing No.12 & 13 dated 09.5.2014 of VF-VII B of Deh Ganjo Takkar , be cancelled included the previous entry in which the said area mentioned accordingly.

Sd/-Mukhtiarkar  
Taluka latifabad.

Copy submitted to the Deputy Commissioner, Hyderabad for kind information.

Sd/-Mukhtiarkar  
Taluka latifabad.

*Prima facie*, base of the above letter is the verification / scrutiny by the *Supervising Tapedar* which in *revenue laws* is not the *custodian* of the record even. There can be no denial to the legal position that an *illegality* or *fraud* should not be left unearthed but mere repeating words of '**fraud or illegality**' would never be sufficient to stamp it as *fraudulent* or *illegal* but it would require *legal* adjudication / determination by a *competent* forum.



12. The Mukhtiarkar (respondent no.4) though wrote a letter through Assistant Commissioner to respondent no.3, but did not attempt to *verify* such conclusion of *Supervising Tapedar* from the record *himself* which attitude is not appreciable in law because it is by now a settled principle of law that **'things should always be done in the manner as prescribed and not otherwise'** which always includes **'competence'**. The revenue authorities or any *official* is always duty bound to pin-point any *illegality* or *fraud* but this shall not absolve the *competent* person to blindly follow the same but would require much more than *mere* forwarding which *however* shall always include following the *procedure* and *rules*. Needless to add here that *law does not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, judge and executor*. Reference may be made to case of Malik Muhammad Mumtaz Qadri PLD 2016 SC 17 else the concept of *discipline* and *fairness* shall lose their objectives on which structure of *administration* of any office rests. This is because of which the procedural law has immense significance and the true purpose and object of such law is not a *mere* technicality but is to ensure *uniformity, discipline, parity and systemization*. Reference may be made to the case of Muhammad Asghar v. Hussain Ahmed PLD 2014 SC 89 wherein it is held as:

"4. .... It may also be relevant to mention here that in the developed judicial system of the present times, even the procedural law has immense significance and the true purpose and the object of such law, is not merely a technical aspect of the law which should be reckoned as a mere formality, rather the procedural law is meant to cause uniformity, discipline, parity and systemization in conducting the trial of the case, in the absence whereof, it shall not be possible for the courts of law to adjudicate the matter in accordance with law and

to do justice according to law which is the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. “

We would not hesitate that the law, *no where*, permits one to act as per his *liking* or *disliking* or with change of any *political* or other *influence* but discretion should always be exercised in *choosing one of two* legal things which *too* by giving reasons in choosing one of *two* available legal options. Reference may well be made to the case of Secretary, Govt. of Punjab v. Khalid Hussain Hamdani & 2 others 2013 SCMR 817 wherein it is held as:

“13. In the administrative law, the authority is vested with a certain amount of discretion and the said **discretion has to be exercised by applying independent mind uninfluenced by irrelevant or extraneous consideration.** In Messrs Godoon Textil Mills v. WAPDA (1997 SCMR 641), this Court was called upon to comment on the ambit of the discretionary power vested in an administrative authority. While analyzing the opinion, this Court observed as follows:--

42. *To make exercise of discretionary power valid it is necessary that apart from being legal it is also reasonable. While conferring **discretion on an authority the statute does not intend to arm such Authority with unfettered discretion which may be beyond the limits of reason, and comprehension of a man of ordinary intelligence.** Wade in Administrative Law has traced the principles of reasonableness which according to him is firmly established at least from 16<sup>th</sup> century and has quoted Roke's case (1598) 5 Co. Rep.99b where the Commissions of Sewers had levied charges for repairing a river bank on one adjacent owner instead of apportioning it among all the owners, who had benefited. Although the power to levy charge was there, it was disallowed as inequitable and unreasonable. Coke observed :--*

*.. and notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings out to e limited and bound with the rule of reason and law. **For discretion in a science or understanding to discern between falsity and truth, between wrong and right, between shadows and abstance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith, talis discretion discretio nem confundit.**”*

Thus, the revenue authorities, if believe the *entries* in favour of petitioner, to be *bogus* or result of some illegal *process* then were required to have followed the procedure, so dictated by Land Revenue Laws for dealing with a *wrong / illegal* entry which seems to have never been followed and that is the only way to proceed, regarding any illegality if claimed by them.

13. Be as it may, let have a direct look at the operative *part* of the challenged order which is:

“... The Mukhtiarkar Latifabad further stated that above mentioned Ghat Wadh Form may be cancelled so that entry no.12 & 13 dated 09.5.2014 may be cancelled in VF-VII-B. As such the subject matter was fixed for **hearing on 14.7.2014**, and the **Mukhtiarkar Taluka Latifabad was requested to issue notices to the parties** to be present on the above mentioned dates. **The parties were heard at length on 14.7.2014**, but they failed to produce sufficient evidence in support of their ownership, however, the Mukhtiarkar Taluka Latifabad alongwith Supervising Tapedar of the beat appeared and produced original record of the above mentioned deh which shows that tempering has been made to include the area. The matter was again fixed on 18.7.2014 but parties called absent though served upon notices.

Keeping in view the position narrated above and pursuing the record and after hearing the party, the Ghat Wadh Form No.16 deh Ganjo Takar Taluka Latifabad Hyderabad is hereby cancelled **on the recommendation of Assistant Commissioner, Taluka Latifabad** with immediate effect.”

From above, it appears that Mukhtiarkar (respondent no.4) was directed to issue notices but he (respondent no.4) never claimed to have issued such *notices* nor the respondent no.3 produced the *written* reply of petitioner though referred in impugned order under title “READ”. At this  *juncture*, it would be material to refer the case of Messrs MFMY INDUSTRIES LTD. & ors v. Federation of Pakistan 2015 SCMR 1550 wherein at Rel. P-1567 the term *hearing* has been defined as :

“Besides, it may be mentioned here, that hearing means a **meaningful, purposeful and effective hearing** which enables a Judge to understand the legal and factual proposition involved in the matter **as opposed to an illusionary and cursory hearing conducted barely as a formality** and to bring on record mere compliance of the rule of hearing. If **effective hearing is not provided, it shall tantamount to non-hearing** of the party concerned and the legal **consequence of non-hearing of parties shall follows.**

Now, it can well be concluded that the authority not only should ensure a *meaningful* hearing but order thereof must also stand well with *reasoning*.

14. Let's examining it on this *touch-stone*. The petitioner *categorically* claimed to have not been heard which *plea* prima facie finds strength when served notices and submitted reply of petitioner not produced by respondent nos.3 and 4. Even *otherwise*, since no explanation from *reply / hearing* of petitioner is mentioned in the *challenged* order which also is sufficient that there had not been any *meaningful hearing* of petitioner. Be as it may, the order impugned shows that the *sole* reason for cancellation is *“recommendation of Assistant Commissioner”*. We would not *hesitate* that a recommendation can *at the most* be considered but never carries the status of **'binding effect'**. However, let's see what the recommendation of the Assistant Commissioner was?. For which a *direct* reference to his letter is made hereunder:

To

The Director Settlement Survey &  
Land Records Sindh, Hyderabad.

Subject:

CANCELLATION OF GHAT WADH FORM AN AREA OF  
229-12 ACRES OUT OF UA NO.01 OF DEH GANJO  
TAKKAR TAPO KHATAR TALUKA LATIFABAD.

It is submitted that the Mukhtiarkar Taluka Latifabad furnished the report regarding cancellation of Ghat Wadh Form issued in favour of M/s Zeal Pak Cement Factory, Hyderabad on the subject area of Deh Ganjo Takkar Taluka Latifabad vide his office letter No.AM/618 dated 17.6.2014, **which is enclosed herewith for taking further necessary action.**

Sd/-Assistant Commissioner,  
Taluka Latifabad, Hyderabad.

1. Copy submitted the Deputy Commissioner, Hyderabad
2. Copy forwarded to the Mukhtiarkar, Taluka Latifabad

The above referral is sufficient to conclude that there had not been any *independent* recommendation of the Assistant Commissioner hence the order *impugned* does not qualify both the *required* terms i.e 'meaningful hearing as well reasoning. As held in the case of Messrs MFMY INDUSTRIES LTD. & ors such order shall have to follow the legal consequences.

15. Though, it is by now a well settled principle of law that the Courts of law are not supposed to perpetuate what is *unjust* and *unfair* by exploring explanations for an *act* which otherwise is *prima facie* against the law, as held in case of Fazli Hakeem & another 2015 SCMR 795, we proceed further to examine the impugned order.

16. It is an *undeniable* position that per the respondent nos.3 and 4 *themselves* the entries in favour of petitioners were result of 'due process' hence cancellation thereof was always requiring 'due process' particularly when entries in favour of petitioner *did* create substantial rights in *it* (petitioner). The term *due process* stood defined by Apex Court in the case of Ishtiaq Ahmed v. Hon'ble Competent Authority (2016 SCMR 943) as:

"4. The right of due process is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of New Jubilee Insurance Company v. National Bank of Pakistan (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that the right of due process requires that a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to

convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction.

Since, *prima facie* initiation is based with reference to an *incompetent* person i.e Supervising Tapedar and even there had not been any *meaningful hearing* nor the order, *impugned*, gives any reasons to its conclusion hence the impugned order *legally* cannot stand particularly when at *later* stage i.e while filing comments both *respondent nos.3 and 4* have not denied legality of process through which petitioner *earned* certain rights.

17. In view of what has been discussed above, we are of the clear view that the impugned order has been passed without legal authority and even is *void* on count of its being not standing well with well established principles of law, hence the same is hereby set-aside and things are restored to positions as same were before initiation of process concluded in passing of *impugned* order.

JUDGE

JUDGE