

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
SUIT No. 2339 / 2015

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DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 11415/2017.
- 2) For hearing of CMA No. 17379/2015.

**12.12.2017.**

Mr. Mohsin Qadir Shahwani Advocate for Plaintiff.  
Mr. Salahuddin Ahmed Advocate for Defendant  
No. 11(i) to 11(vi).  
Mr. Ziauddin Junejo AAG along with  
Rakhshinda Waheed State Counsel.  
Mr. Akhtar Ali Advocate for BOR.

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- 1) This is an application under Order VII Rule 11 CPC filed on behalf of the Province of Sindh through Advocate General Sindh.

The learned AAG submits that instant Suit is barred in law as in the proceedings before the Board of Revenue the Plaintiff has lost up to the level of revisional authority and therefore, there remains no cause of action which could be agitated through instant Suit. He further submits that in the Notification dated 21.9.2015 issued by the Board of Revenue, all lands stand cancelled pursuant to directions of the Hon'ble Supreme Court and therefore, the Suit is otherwise barred in law. Learned Counsel for the private Defendants supports the listed application and has contended that in terms of Section 16 and 36 of the Colonization of Land Act, 1912 jurisdiction of a Civil Court is barred whereas, the Plaintiff's case is not premised on any malafides or lack of jurisdiction, therefore, plaint be rejected.

On the other hand, learned Counsel for the Plaintiff submits that the Plaintiff was granted land in exchange and at the behest and complaint of private Defendants, the land was cancelled by order of Deputy Commissioner

which was challenged in Appeal and Review but remain unsuccessful hence left with no other remedy, the Plaintiff has filed instant Suit. He further submits that the Notification relied upon by the learned AAG does not disclose any directions of the Hon'ble Supreme Court as contended whereas, even that Notification is under challenge and further in terms of Section 53 of the Land Revenue Act, 1967 the Plaintiff can approach a Civil Court. In support he has relied upon *Muhammad Nawaz V. Altaf Hussain and 8 others (2014 YLR 2600)*.

I have heard all the learned Counsel and perused the record. Insofar as the ground that the Plaintiff has lost his case in the departmental hierarchy and therefore, the plaint be rejected is concerned, I am of the view that such contention is wholly misconceived inasmuch as the Plaintiff has impugned such orders before this Court and it will only be at the trial when the Court would be in a position to examine all such orders and pass appropriate orders. For the time being, I am of the view that on this ground alone, the Plaintiff cannot be non-suited. Insofar as the Notification of Board of Revenue is concerned, admittedly the said Notification is under challenge through various Suits which are pending and even otherwise, I had repeatedly asked the learned AAG to refer to any such orders of the Hon'ble Supreme Court which in a general manner directs them to cancel all allotments and exchange of lands / lease(s) including the Plaintiff's land as claimed, the learned AAG could not point out or refer or place on record any such order. Notwithstanding this, merely issuance of a Notification in this manner is of no ground to reject the plaint by saying that it is barred in law. Therefore, this contention is also hereby repelled. Other ground so urged to the effect that there are no malafides attributed and or lack of jurisdiction against the officials is concerned, I may observe that on the face of it, there appears to be at least some malafides as the first Appellate order dated 15.1.2014, passed on an appeal under Section 161 of the Land

Revenue Act, 1967, was heard and decided by the same officer (then acting as Commissioner) who thereafter, himself went on to pass order dated 12.5.2015 on review application of the Plaintiff as Senior Member, Board of Revenue, Government of Sindh. Resultantly, the first appellate order was maintained. What more malafides could be attributed to such officer who has himself upheld his order as a final authority under the departmental hierarchy. It may further be observed that very surprisingly in this matter the Order VII Rule 11 application has been filed on behalf of the Province and not by the private Defendants. At the very outset, I had confronted the learned AAG as to why such an application has been preferred by them to which a reply was given that in law the plaint is to be rejected. However, the conduct of the officials as discussed hereinabove does not reflect that any case for filing of such an application has been made out. Time and again, it has come before the Court that at the behest and instructions of officials of Board of Revenue lands are allotted and are cancelled or exchanged without going through due process of law. The Board of Revenue has never acted in land matters as diligently as it ought to, whereas, the mandate of law has not been followed in letter and spirit. Notwithstanding the above facts, for reasons best known to them in this matter they have come up with an application for rejection of plaint through learned A.G's. office and have pressed upon the same. The application for the aforesaid reasons appears to be wholly misconceived.

In view of such position, by means of a short order, I had dismissed this application by imposing cost of Rs. 10,000/- on 6.12.2017 and these are the reasons thereof.

**J U D G E**

ARSHAD/