

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 209 of 2019

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Muhammad Alman and others ----- Petitioner

Versus

Secretary Revenue & others ----- Respondents

Date of Hearing : 14.02.2019

Date of Announcement : 14.02.2019

Mr. Muhammad Sachal R. Awan, Advocate for petitioner

ORDER

ADNAN-UL-KARIM MEMON, J. - Principally, the Petitioners have called into question the propriety and legality of the order dated 14.12.2012 passed by the Commissioner, Hyderabad Division, whereby he had cancelled the Revenue entry bearing No.57 dated 10.2.1970 and its subsequent entry No. 72 dated 4.6.1977, entry No. 56 dated 24.1.1983 and entry No. 20 dated 24.12.2010, by invoking powers under section 64 of Sindh Land Revenue Act, 1967.

2. Brief facts of the case as per memo of petition are that initially the land bearing Survey No.90 ad-measuring 0-23 acres and Survey No.91 ad-measuring 0-12 acres and so also from survey No.45 an area of 0-05 acres situated in Deh Gujjo Taluka City Hyderabad was entered in the name of Ghunshamdas son of Bhojomal vide entry No.41 of Dhakhal Kharij / mutation register V.F. VII-A. After partition the said land became Evacuee Property and was allotted to one Mst.Um-e-laila wife of Sardar Syed Muhammad, who sold out Survey No.90 ad-measuring 0-23 acres and Survey No.91 ad-measuring 0-12 acres to one Dr.Muneer Azhar son of Hafiz Atta Muhammad, who sold out the land to Haji

Muhammad Farooq son of Chaudhary Nabi Bux through registered sale deed No. 1260 dated 10.01.1983. After demise of said Haji Muhammad Farooq the land was devolved upon the petitioners being his legal heirs as such was entered in their names in the record of rights. Since the subject land was near Kali Mori College, therefore, the respondent No.7 being Principal of College had an evil eye upon the land, therefore, he in collusion with Respondent Nos. 4 to 6 did not allow the petitioners to get boundaries of their subject land; as such one of the petitioner namely Mst. Batool Begum wife of deceased Muhammad Farooq filed CP No. D- 38 of 2013 (Re-Mst. Batool Begum v. Director Settlement Survey and record Hyderabad and others) before this court, whereby vide order dated 14.1.2015 Respondent No.6 was directed to demarcate the land after verification of the ownership of petitioner with further direction to submit compliance report within 60 days. Subsequently, Respondent No.7 illegally build up boundary wall by encroaching some area of the petitioners; that the Respondent No.5 sent reference to Respondent No.2, who conveyed the same to Commissioner Hyderabad, the Commissioner Hyderabad sent the reference to Respondent No.3 who in order to oblige the Respondent No.7, without hearing the petitioners cancelled their aforesaid entry in the year 2012.petitioners being aggrieved by and dissatisfied with the aforesaid action of the official respondents have filed the instant petition.

3. Mr. Muhammad Sachal R. Awan Learned counsel for the petitioners has argued that the order of Respondent No.3 cancelling the entry of petitioners is against the law, facts and equity as the same has been passed without giving notice and hearing to the petitioners; that the land was transferred in the name of petitioners through registered sale deed, therefore, in such circumstances only civil court is competent to cancel the entry of petitioners, which too after recording of evidence; that occupying the land of the petitioners without any lawful authority comes within Illegal Dispossession Act; that petitioner Mst. Batool Begum had

filed CP No. D- 38 of 2013 before this court, hence the Respondent No.6 was required to verify the record; that since the land was Qaboli land, therefore, the jurisdiction was with civil court and once the entry kept on the basis of registered sale deed the same authority cannot cancel, even the jurisdiction of revenue authority is barred from cancelling the long standing entries of record of rights; that there was nothing on record to show that the land of the petitioners was ever gifted to any one; that since the land was in the name of petitioners then how the revenue authorities issued Sale Certificate; that Respondent No.7 is nothing but a land grabber. He prayed for intervention of this court and allowing the instant petition.

4. We asked from the learned counsel to satisfy this court with regard to maintainability of the instant petition on the ground that Petitioner No.3 had already filed Petition and on the same cause of action. He has submitted that the petitioners are owners of the subject land, therefore the property rights are protected under the constitution and this court has jurisdiction to entertain the grievances of the petitioners. We however asked him how the petitioners can call in question the order dated 14.12.2012 passed by the Commissioner, Hyderabad Division, after lapse of almost seven years. He replied that the revenue authorities cannot cancel the entry which is based on sale deed, thus the impugned order of the learned commissioner Hyderabad division is void and nullity in the eyes of law as such no limitation runs against the void order. We again asked him whether the relief which he is seeking from this court can be sought from the civil court. His submission proceeded on the assumption that when petitioners make out a case for invoking the extra ordinary jurisdiction under Article 199 of the Constitution, this Court would not relegate him to the alternative remedy of a civil court, merely because the matter involves an incidental examination of disputed questions of facts. The question that will ultimately weigh with this Court is whether the matter relates to a dispute having a public law element or violation of any fundamental

right or to any arbitrary and high-handed action, as such this court can look into that aspect of the matter, therefore this petition is maintainable and can be heard and decided on merit. In support of his contention, he relied upon the case of Syed Ghulam Ali Shah v. The Deputy Commissioner and others (1984 CLC 1789) and argued that remedy by way of appeal though provided under the law but this court has jurisdiction to entertain the constitutional petition.

5. We have heard the learned counsel for the petitioner on the issue of maintainability and perused the material available on record.

6. Perusal of record shows that this court in CP No. D- 38 of 2013 passed the order dated 14.1.2015 and the Mukhtiarkar had submitted his report. Much prior to filing of the above petition by petitioner Mst. Batool Begum, a reference was made by Principal Government College Kali Mori Hyderabad on 19.06.2012 to Senior Member Board of Revenue Sindh invoking revision proceedings on Suo Moto side under Section 164 of Sindh Land Revenue Act, 1967 for cancellation of forged, fake and manipulated entry No.57 dated 10.02.1977 of D.K. Book of Deh Gujjo and all other subsequent entries made on the basis of said in relevant record of right. In the reference the Principal Government College Kali Mori Road reported that S.No.40, 45, 83, 89, 90, 91 and others total ad-measuring 64-0 acres situated at Deh Gujjo Taluka Hyderabad City is the property of the College but some dishonest persons by way of manipulation and on the basis of bogus claim declared it as evacuee property and allotted to one Mst. Laila widow of Sardar Syed Muhammad despite of the fact that the college was established in 1917 by "Theosophical Society" and the land was donated to the college by late. Rai Partab Manghar, therefore, all the forged and bogus entries kept in the revenue record was required to be cancelled and the land be restored in favour of Kali Mori College. The reference was forwarded by Senior Member Board of Revenue to Additional Commissioner-II for initiating Suo Moto proceedings under Section 164 of Sindh Land Revenue Act 1967 for cancellation of Entry No.57 dated

10.02.1977 of Register D.K and all other entries made on the basis of letter dated 20.11.2012. The Additional Commissioner-I Hyderabad vide his letter dated 27.9.2012 clearly held that the mutations kept by the then City Mukhtiarkar Hyderabad in the record of rights through various entitlement document and registered deeds, but there was no record available in the defunct rehabilitation Branch as reported by Incharge Rehabilitation Branch, hence the matter with regard to cancellation of mutation was ordered to be placed before the competent authority. Accordingly the matter was taken up on Suo Moto side after approval of competent authority and the parties were issued show cause notice to appear along with authenticated documents and explain their position. However, except the officials of Mukhtiarkar none on behalf of beneficiary of the land was appeared before him to submit their reply, hence the Additional Commissioner-II, after going through the relevant and came to the conclusion that the above land was not allotted to anyone in the past and cancelled all the subsequent entries being fake and bogus.

7. In the light of forgoing, the position thus summarized in the principle that no doubt, there is no absolute bar to the maintainability of the writ petition, where there are disputed questions of facts, at the same time, discretion lies with this Court which under certain circumstances, and it can refuse to exercise.

8. Significantly, CP No. D- 38 of 2013 filed by Petitioner No.5 for same relief, was disposed of vide order 14.1.2015 with direction to Mukhtiarkar concerned that “after verifying the ownership of the petitioner over the subject land, he shall carry out demarcation of the said land in presence of all concerned and with the assistance of survey department”. It is worth to note that one of the petitioners in the aforesaid proceedings is petitioner No.5 here and is supporting her claim on the subject land. Thus, there is change in stance of that petitioner; her claim arises out of the same land.

9. We have noted that in compliance of the order passed by this Court in Constitution Petition No. D- 38 of 2013 (Mst. Batool Begum and others) Mukhtiarkar has submitted that the Petitioner Mst. Batool Begum is co-sharer in survey Nos. 90 and 91 area 00-35 ghuntas for the reasons that on the request of Principal, Government College Kali Mori, the enquiry was conducted which proved that private ownership recorded in respect of survey Nos.90 and 91 and others of Deh Gujjo Taluka City Hyderabad on the basis of bogus claim one Um-e-Laila wd/of Sardar S. Muhammad (claimed to be the original owner) is void and baseless and was made just to grab the Government land of Government College Kali Mori Hyderabad. Accordingly, the Assistant Commissioner Taluka City Hyderabad moved reference to the Additional Deputy Commissioner-I, Hyderabad vide his letter dated 29.06.2012. Subsequently the Commissioner Hyderabad in exercise of power conferred him under Section 164 of Sindh Land Revenue 1967, after detail proceeding passed an order dated 19.12.2012, whereby all the entries of Deh Gujjo in favour of petitioners were cancelled and land reverted to Government. Such cancellation note on entry had been kept. He opined that the claim of petitioner No.5 is/was baseless and based on mala fide intention.

10. Considering the aforesaid factual position of the case, it is manifest that there are several disputed question of facts involved in the present case and Civil Suit in the court of law is the only remedy to go through the relevant record and evidences of the parties and the dispute like this as agitated by the petitioners in the present proceedings cannot be resolved in writ jurisdiction as this court has limited jurisdiction in like matters to dilate upon. We are of the view that the aforesaid Petitioner approached this Court through Constitution Petition No. D- 38 of 2013 which was disposed of by consent vide order 14.1.2015. Therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within mischief of constructive res-judicata. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and

others (2012 SCMR 280). Hence this Petition is not tenable. Besides above, we do not concur with this assertion of the learned counsel for the Petitioner with his explanation of laches and we are of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of Jan 2019 whereas the alleged cause of action accrued to him in the month of December 2012, i.e. approximately 7 years prior to the filing of the instant Petition.

11. We are of the opinion that the petitioners have recourse under the law, and they are at liberty to avail the same in accordance with law.

12. In view of the aforesaid facts and circumstances, the Writ Petition stands disposed of.

JUDGE

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