

**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT HYDERABAD

C.P No. D- 151 of 2017

***Before:-***

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Sahoo	-----	Petitioner
VERSUS		
Province of Sindh and others	-----	Respondents

Mr. Ahsan Gul Dahri, Advocate for Petitioner

Mr. Hashim Bajeer, Advocate for private Respondents.

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing. : 16.09.2020  
& decision.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - The instant Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the Petitioner seeking direction to Mukhtiarkar / Revenue Officer concerned to demarcate his land bearing S.No.83, 107, 113 and 59 situated in Deh Makan Rohero Lanja, Deh Peeluri, Tapo and Taluka Diplo.

2. Mr. Ahsan Gul Dahri learned counsel for the petitioner has argued that Mukhtiarkar concerned has expressed his reluctance towards demarcation of his land on the premise that the demarcation could not be carried out due to certain objections ; that he has to exercise the powers for demarcation of the land, but has failed to perform his duty ; and, that the petitioner moved various applications to Director Settlement Survey & Land Records, Sindh and Mukhtiarkar concerned for demarcation under the relevant law and rules but all his efforts went in vain. Learned Counsel further stated that the official respondents turned deaf ear to the petitioner's grievances, compelling him to approach this Court. Learned counsel briefed us on the factual aspect of the case and argued that he owns agricultural land bearing survey Nos. 83, 107, 112 and 59 situated in Deh Makan Rohero Lanja, Deh Peeluri, Tapo and Taluka Diplo; that the private respondents are creating bottleneck in cultivating his land. Petitioner being aggrieved by and dissatisfied with the aforesaid actions of private respondents filed FC suit No. 103 of 2011 before

Senior Civil Judge Mithi for declaration and permanent injunction, the same was dismissed on the point of demarcation and Civil Appeal No. 05 of 2012 filed by the petitioner against the aforesaid order was also dismissed vide judgment dated 26.11.2012 on the same point of demarcation; that private respondents in collusion with respondent No.5 filed CP No. D- 2503 of 2016 before this court claiming the land of petitioner as Goucher / Government land and succeeded in obtaining order dated 2.11.2016 with direction to respondents 3 and 8 not to allow anyone to cultivate the government land; Against such act of respondent No.5 the petitioner party moved application to respondent No.3, Board of Revenue and higher authorities for demarcation of the subject land ; that the dispute can only be resolved through demarcation by respondents 6 and 7 on the basis of record available in the office of respondent No.6 therefore the petitioner moved application for demarcation to respondent No. 3 who forwarded the same to respondent No.5 with direction to visit the site and submit detailed report but till today the same is pending and respondent No. 5 has not taken any step this regard, hence he has filed the instant Petition.

3. Mr. Muhammad Hashim Bajeeer learned counsel for private respondents has referred to his objections to the maintainability of this petition and argued that instead of approaching the hierarchy of Revenue as provided under Land Revenue Act of 1967, the petitioner has filed instant Constitutional petition seeking order for demarcation of the subject land is illegal, unlawful and void ab initio; that this Court being the Court of Constitutional Jurisdiction does not step in where an adequate remedy to an aggrieved person is available by way of appeal and full-fledged machinery for redressal of his grievances is provided by the Act of 1967. In support of his contentions he relied upon the cases of Mumtaz Ahmed and another v. The Assistant Commissioner and another (PLD 1990 SC 1195) and argued that the petitioner should not have approached this court without exhausting the remedies provided to him in law in the hierarchy of the Revenue Forums and a Constitutional Petition being premature thus is liable to be dismissed. It is contended by him that the matter involved in the instant petition pertains to the question of fact, which requires recording of evidence and examining of record and this Court in exercise of its Constitutional jurisdiction cannot interfere in such-like matter as the law laid down by the Honorable Supreme Court in the cases of Muhammad Younas Khan v. Government of N.-W.F.P. through Secretary and others (1993 SCMR 618), Benedict F.D., Souza v. Karachi Building Control Authority and three others (1989 SCMR 918) .and Federation of Pakistan and 2 others v. Major (Rtd.) Muhammad Sabir Khan (PLD 1991 SC 476). Learned counsel referred to the order dated 26.11.2012

passed by this court in CP No. D- 2503 of 2016 and argued that the subject land is government land meant for Goucher land cannot be used for another purpose. He lastly prayed for dismissal of instant petition.

4. Learned counsel for the Petitioner, while exercising his right of rebuttal has argued that the cases cited by learned counsel for private Respondents are distinguishable from the facts of the present case; He next argued that the order passed by this Court in CP No. D- 2503 of 2016 was obtained by private respondents behind his back by misleading this court; that the present dispute can only be resolved through demarcation and not otherwise; that there is no harm if the demarcation of the subject land is carried out by Mukhtiarkar concerned. He lastly prayed for direction to the Revenue Officer concerned and Director Settlement Surveys & Land Records to carry out the demarcation of his land in accordance with law.

5. Mr. Allah Bachayo Soomro, learned Addl. A.G, argued that it is the prime duty of Mukhtiarkar concerned is to ascertain the entitlement of a person seeking demarcation of land by verifying the legality and genuineness of ownership documents, possession, etc., or dispute, if any; and, if the case of each of the petitioner is genuine only then the Mukhtiarkar concerned is required to exercise the powers for demarcation of the land under the revenue laws. Learned A.A.G. emphasized that the parties have to approach Revenue authorities and Director Settlement Surveys & Land Records for the aforesaid purpose and not this Court.

6. We have heard learned counsel for the parties on the point of maintainability of instant petition and so also perused the entire material available on record and the decisions relied upon by learned counsel for the private respondents.

7. First and foremost, we would address the issue of maintainability of the instant Petition under Article 199 of the Constitution; in our view there is complete mechanism of demarcation proceedings as laid down Rule 67-A of the Land Revenue Rules, 1968, which provides that (i) if an application under Section 177 of Land Revenue Act, 1967, is made to the concerned Mukhtiarkar (Revenue), he must take action on it provided it contains all the relevant particulars as provided in Rule 67-A of Land Revenue Rules, 1968 ; (ii) upon satisfaction of the above requirement, the Mukhtiarkar is required to issue notice to all concerned khatedars / owners followed by a speaking order accepting and / or refusing the same, as the case may be ; (iii) in case the application is accepted, the procedure laid down in Section 117 of the Land Revenue Act, 1967, and Rule 67-A of the Sindh Land Revenue Rules,

1968, must be followed by the Mukhtiarkar with the assistance of Settlement Surveys & Land Records; and, (iv) in case of rejection of the application, the procedure of appeal, revision or review is to be adopted, as provided in the above Act and Rules.

8. On the legal aspect of the case, we have noticed that the petitioner has (a) either availed the remedy by filing applications for demarcation of his respective lands but has not exhausted such remedy as he has approached this court without waiting for the outcome of his said applications, or (b) has not availed the remedy at all as provided in the Land Revenue Act and Rules framed thereunder. In case of refusal or rejection of the application by the Mukhtiarkar concerned on any ground, the procedure of appeal, revision or review is to be adopted first before approaching this Court. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "if it is satisfied that no other adequate remedy is provided by law". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court.

9. On the point of maintainability, we are of the view that earlier Petition filed by private respondents before this Court was allowed on merits vide order dated 26.11.2019 and the said order was not challenged before the Hon'ble Apex Court. Therefore, the order of this Court had attained finality in the earlier round of litigation between the parties. The law precludes the Petitioner to institute a fresh Petition in respect of the same subject matter on same cause of action by taking resort of demarcation point, and it is for him to approach the concerned Revenue Officer and if he fails to perform his duty, petitioner is at liberty to approach appellate forum as the remedy is still available to him under the law. For convenience sake, an excerpt of the order dated 26.11.2019 is reproduced as under:-

"through instant petition, petitioners are seeking implementation of notification issued by Government of Sindh through Commissioner Mirpurkhas Division and further seek direction that respondents shall not close their path as well they shall not be allowed to cultivate the Government Gouchar Waste Land near to tarai, Toba and Graveyard of Makan/Village Bhoreai and Village Sarah Khakhan, Deh Peeluri Taluka Diplo District Tharparkar at Mithi. Accordingly, Deputy Commissioner Tharparkar at Mithi is hereby directed to ensure that no one is allowed to cultivate the government land as well SSP Tharparkar shall also maintain the law and order situation and ensure that no affray happened. Accordingly, petition stands disposed of."

10. Besides above the case of the Petitioner is fully covered by the principle of "Res judicata" on the premise that petitioner has been non-suited

by learned Senior Civil Judge vide order dated 31.1.2012 as well as learned Appellate court vide order dated 26.12.2012 and secondly, this petition cannot be entertained by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for the simple reason that this Court has already decided the issue of Demarcation of land in C.P. No.D-1857/2019 vide common order dated 26.11.2019. An excerpt of the same is reproduced as under:

“13. Since applications for demarcation filed by some of the petitioners are admittedly pending before the competent authority and such authority has failed to exercise the jurisdiction vested in it by law, Senior Member Board of Revenue Sindh is directed to depute Mukhtiarkar / Revenue officer for the area concerned, who shall hold an inquiry regarding the legality and genuineness or otherwise of the petitioners' ownership documents, possession, etc., or dispute / litigation, if any, and then to complete the exercise of demarcation of their land subject to their entitlement strictly in accordance with Rule 67-A and Section 117 *ibid*, as amended up to date within thirty (30) days of receipt of their application. The above exercise shall be carried out by the Mukhtiarkar concerned with the assistance of Settlement Survey and Land Record Department. However, if the application for demarcation filed by any of the petitioner is rejected for any reason, the reasons of such rejection must be recorded in writing by the Mukhtiarkar concerned after providing opportunity of hearing to all concerned within a period of one month from the date of receipt of this order.

14. Petitioner who have not availed the remedy in accordance with law before approaching this Court may avail their remedy by filing proper applications before the competent authority along with supporting documents, which shall be decided in terms of the direction contained in paragraph 13 *supra*. Regarding the cases wherein factual disputes are involved, needless to say that such parties may approach the competent civil court for redressal of their grievance in accordance with law.

15. As the petitioners have not been able to convince us that they have availed / exhausted their remedy in accordance with law before filing these petitions, office is directed not to entertain such petitions for measurement / demarcation / partition / mutation of land wherein (a) Petitioner has not approached the competent forum in accordance with law ;

(b) Petitioner's application for such purpose is pending before the competent forum; and/or

(c) Any factual controversy with regard to the subject land and/or khatedars is involved, or any litigation in respect thereof is sub *judice* before any forum.

16. All the captioned petitions stand disposed of in the above terms along with pending application(s) with no order as to costs. Let notice be issued to 6 Senior Member Board of Revenue Sindh, Mukhtiarkars concerned and Director, Settlement Survey and Land Record for compliance.”

11. Before parting with this order, we may observe that this court vide order dated 2.11.2016 directed Deputy Commissioner, Tharparkar at Mithi to ensure that no one is allowed to cultivate the government land and in the meanwhile Senior Superintendent of Police Tharparkar at Mithi was directed to ensure that no affray happens. In view of the above, they are directed to comply with the direction of this court in its letter and spirit and submit compliance report accordingly and ensure that the government land, if any, is protected in accordance with law.

12. We have seen that the Petitioner's prayer, prima-facie seems to be not maintainable before this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for the simple reason that he has remedy under Revenue laws as discussed supra and it is for him to take resort. As per record the petitioner had already sought declaration for his ownership over the subject land which he has failed to seek and his Appeal too was dismissed, he failed to resort appropriate remedy and exhaust the remedy before the Appellate forum under the hierarchy of Revenue authority or any court of competent jurisdiction and directly approached this court. If this is the legal position of the case, prima-facie, this Petition is misconceived which is hereby dismissed leaving the petitioner at liberty to approach the proper forum for redressal of his grievances, if any.

**JUDGE**

**JUDGE**

*Karar\_hussain\**