

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No. D- 27 of 2015

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For orders on M.A- 1651 of 2015 (Contempt Application).
3. For hearing of main case.

01.10.2020

Mr. Muhammad Sachal R. Awan, Advocate for Petitioners.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh
alongwith Mumtaz Ali Majeedano, D.F.O Umerkot.

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ABDUL MAALIK GADDI, J.- Through this petition, the Petitioners have prayed for following relief(s):-

A. To declare that notices issued by the respondent No.4 under the Sindh Property (Removal of Encroachment) Act, 2010 is illegal vide null and without lawful authority and same is liable to be vacated.

B. To declare that the Petitioners are not encroacher but the Petitioners are residing in their houses being propriety right holders as granted by the competent authority under the Sindh Gothabad (Housing Scheme) Act, 1987 and are availing facilities provided by the government.

C. That direct the respondents No.3 & 4 not to remove the house of the Petitioners with the help of respondent No.5 as the Petitioners have not encroached upon as shown in the notices and restrained the respondents from removal of houses under the notice.

D. To direct the respondents not to create any type of harassment against the Petitioners and their family members and also direct the respondent No.5 to provide legal protection to the Petitioners and their family members whatsoever required under the law.

E. Cost to be born.

F. Any other relief(s), which this Honourable Court deems fit, just and proper in favour of the applicant."

2. The case and claim of the Petitioners is that they are residing in the subject premises / land since their ancestors and respondent No.2 through Mukhtiarkar Goth Abad Scheme, Taluka Umerkot issued such "Sanads" in their favour after verification and completing all codal formalities on the basis of their possession; that after issuance of aforementioned Sanads, Petitioners were provided electricity connections as well as other facilities by the concerned departments; but all of sudden they received notice from

respondent No.4 showing that the land in their possession is actually a Government forest land and they (Petitioners) have occupied it as encroachers, therefore, they were directed to vacate the same immediately; whereas in the record of rights the subject land is a revenue land and Forest Department has no concern whatsoever with the same; therefore, they have approached this Court that the act of official respondent No.4 is illegal and void.

3. The official respondents have resisted this petition and filed their comments by taking stance that the Petitioners are encroachers on the Forest Department's land and have no concern with the said land and they only intended to usurp the valuable land of Forest Department on the basis of fictitious and bogus documents.

4. Learned counsel for the Petitioners during course of arguments while reiterating the same facts and grounds which he has urged in the memo of petition, has taken the plea that since the Petitioners are in possession of the subject land on the basis of Sanads issued by the competent authority under Sindh Goth Abad (Housing Scheme) Act, 1987; therefore, he prays that the official respondents may be directed not to harass the Petitioners and if the Forest Department has any claim over said land it should have approached to the appropriate forum for its possession.

5. Learned A.A.G Sindh during the course of arguments, while referring the comments filed by the official respondents, has submitted that this petition is not maintainable, as the Petitioners are encroachers and they have encroached upon Forest Department's land on the basis of fictitious, bogus and forged documents, hence they are liable to vacate such land immediately. He has also referred the diary dated 09.04.2018, whereby the respondents were directed to take any legal and lawful action in terms of the directions of the Honourable Supreme Court of Pakistan in this regard. He further submits that the Honourable Supreme Court of Pakistan has already taken serious view with regard to cases of encroachment and appropriate orders have already been passed in some other similar type of matters; therefore, in view of the comments filed by official respondents / Forest Department in this behalf was of the view that this petition is liable to be dismissed.

6. Parties advocates have been heard and record has been perused.

7. It is noted that both parties are claiming the ownership of the subject land. The claim of the Petitioners is based upon their possession that the

subject land on the basis of Sanads issued by Mukhtiarkar, Goth Abad, Tharparkar; whereas the stance of the respondents is that the Petitioners have encroached upon the Forest Department's land and the documents which are in their possession in the shape of "Sanads" are fictitious, bogus and forged.

8. Since serious questions of facts, i.e. ownership of the subject land have been raised in this petition by both parties, which require evidence and this Court while exercising its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot examine the same at this stage. Further the constitutional jurisdiction of this Court cannot be involved in the matter where adequate and efficacious remedy has been provided under the law. Disputed claim of title cannot be decided without recording of evidence which exercise cannot be undertaken by this Court under constitutional jurisdiction. In this context we are fortified by the case of **Federation of Pakistan and others v. Major (Retd.) Muhammad Sabir Khan** (PLD 1991 SC 476), wherein the Honourable Supreme Court has held that writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be invoked where issue of ownership and possession is to be determined. Relevant portion of the said judgment is reproduced as under:-

" Thus after hearing both the learned counsel the final position that emerges is that the question of title is involved. Not only this the question of possession also cannot be resolved except through proper trial. With due respect to the High Court this case did not qualify for entertainment in the Writ jurisdiction and the Writ petitioner in his own interest should have been advised to approach the other proper forum. With these remarks this appeal is allowed, the impugned judgment is set aside and parties are left to seek and prove remedy in accordance with the law in the proper forum. No order as to costs."

9. Here the position is same. The matter involves disputed question of fact and law. Both parties are claiming possession as well as ownership of the subject land. Therefore, while relying upon the aforementioned case law as what has been discussed above, instant petition being not maintainable is dismissed alongwith pending application(s); however, the Petitioners may seek their remedy by approaching the appropriate forum, available to them under the law.

JUDGE