

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Justice Mrs. Kausar Sultana Hussain

C.P. No. D-2427 of 2010

Iftikhar Ahmed Soomro
Versus

City District Government, Karachi & others

Date of Hearing: 06.10.2020

Petitioner: Through Mr. Mushtaq A. Memon, Advocate.

Respondents No.1 to 3: Through Ms. Azra Muqueem Advocate.

Respondents No.4 to 6: Through Mr. Ijaz Ahmed Zahid Advocate.

Respondent No.7: Through Mr. Muhammad Jamshed Malik Advocate.

On Court notice: Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition involves a dispute in respect of a precious land situated within Railway Quarters.

2. Brief facts of the case in hand could be traced from a lease executed by defunct Municipality of Karachi in favour of one Gowindlal Sughan Chand Binani in respect of three plots bearing Survey No.1 to 3, Sheet RY-17, measuring 2512, 4316 and 6882 sq. yards (total area 13710 sq. yards) hereinafter said as “larger plot”. Status of these three plots in question prior to such execution of lease is not the subject matter of this petition, hence we would not comment on it.

3. The leasehold rights of this amalgamated piece of land in favour of one Gowindlal Sughan Chand Binani, as referred above, were transferred, conveyed by a sale deed of 03.09.1957 to one Ahmed Mian Soomro son of Moula Bux Soomro and M/s Pir Bhai Cotton Company of

Karachi in equal shares. As claimed, by an oral declaration of gift dated 07.12.1961 his (Ahmed Mian Soomro) rights were transferred to his father Haji Moula Bux Soomro.

4. The larger plot claimed to have been privately partitioned into two halves and the subject bifurcated (half) plot remained the property of Haji Moula Bux Soomro by virtue of above gift. However, by virtue of an agreement dated 10.03.1967 followed by a registered sale deed of 30.11.1968, Haji Moula Bux Soomro sold the subject plot (privately partitioned plot) in favour petitioner (Iftikhar Ahmed Soomro) and respondents No.4 to 7 (Mrs. Parveen Soomro, Zubyar Soomro, Nusair Soomro and Illahi Bux Soomro) and Mrs. Huzoor Begum Soomro, sister of petitioner and respondent No.7. It is claimed in the memo of petition that through a registered conveyance deed of 08.02.1979 Mrs. Huzoor Begum Soomro sold her 1/6th share in the subject bifurcated plot equally in favour of petitioner and respondent No.7. It is the case of petitioner that the said indenture executed by Huzoor Begum Soomro was in fact an understanding that the partitioned plot is equally shared by petitioner and respondent No.7 alone and that these two brothers i.e. Iftikhar Ahmed Soomro and Illahi Bux Soomro intended to have equal shares therein.

5. It is the case of the petitioner, as argued, that in order to give real effect to the said arrangement, respondents No.4 to 6 on 26.02.1999 voluntarily executed a surrender deed and thereby relinquished their respective shares in the subject bifurcated plot equally in favour of petitioner and respondent No.7 who thus became exclusive owners of the subject plot in equal shares, as claimed. Based and acting upon such surrender deed, and after the expiry of original lease tenure of 99 years, a deed of renewal dated 10.07.2007 was executed jointly in favour of petitioner and respondent No.7 by City

District Government Karachi (as it then was) a successor of lessor/defunct Municipality of Karachi, for a term of 99 years on account of expiry of the previous lease dated 02.09.1889 (copy of this expired deed is not available on record though tenure of it is admitted). The subject bifurcated plot on account of renewal of lease was assigned new number i.e. 2(prov) vide Deed of Renewal which bears signatures of petitioner as well as respondent No.7.

6. The relationship of respondents No.4 to 6 is very close as respondent No.4 is wife of respondent No.7 whereas respondents No.5 and 6 are sons of respondent No.7. It is case of the petitioner that since execution of Deed of Surrender, the two brothers i.e. petitioner and respondent No.7 were dealing with the subject matter/plot as being exclusive owners to the exclusion of respondents No.4 to 6 and to their knowledge as well. The subject property was also let out by petitioner and respondent No.7 on 20.08.2004 to one M/s Independent Newspapers Corporation (Pvt.) Limited.

7. These facts also claimed to have been pleaded in J.M. No.39 of 2005 which was filed on 11.01.2005 under section 12(2) CPC in Suit No.702 of 2000 before this Court as they (petitioner and respondent No.7 in this petition) sought modification in the consent decree dated 23.12.2004 passed in the above referred suit where subject plot was shown as part of the estate left by late Ahmed Mian Soomro son of Moula Bux Soomro. It is contended that in the aforesaid proceedings the factum of gift having been executed by late Ahmed Mian Soomro in favour of his father Haji Moula Bux Soomro was concealed.

8. The petitioner claimed to have learnt in May 2010 that some unauthorized and exparte changes in the record pertaining to the said privately partitioned plot were carried out and consequently a letter dated 10.05.2010 was addressed to respondent No.2 by the petitioner's

counsel making a request for verification of mutation letter and Deed of Renewal. It is on this count when they learnt from the reply of respondent No.2 dated 12.05.2010 that an alleged Rectification Deed has been executed and registered on 25.02.2010 with Sub-Registrar-II Saddar Town Karachi to the effect that the petitioner and respondent No.7 are co-owners of the subject plot to the extent of one quarter each whereas respondents No.4 to 6 are included as co-owners to the extent of 1/6th share each. They received copy of Deed of Rectification, representation of respondents No.4 to 6 along with letter of 12.05.2010. Learned counsel for petitioner submitted that this exercise was materialized on account of an active influence of respondent since respondent No.7 received the subject letter at 7 p.m. personally. The reasoning assigned by the authority concerned is that the names of respondents No.4 to 6 were incorrectly omitted from the Deed of Renewal and therefore it has included their names in the rectification deed.

9. The representation by respondents No.4 to 6 contains the allegations that Surrender Deed of 26.02.1999 was forged and fabricated. Thus, learned counsel for petitioner argued that the Rectification Deed, modifying registered Deed of Renewal, which was based on Surrender Deed, has been executed mechanically without application of mind and without hearing the petitioner. It is arbitrary and unilateral exercise undertaken to the detriment of the petitioner and without notice, as argued. It is thus claimed that since fundamental rights of the petitioner were violated and the petitioner was condemned unheard, the Deed of Rectification, executed and registered on 25.02.2010 with Sub-Registrar-II Saddar Town Karachi be declared as null and void. Petitioner claimed to have been deprived of his right guaranteed under Article 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973.

10. It is finally argued that the act of rectification and modification of Deed of Renewal is beyond jurisdiction and authority of the official respondents. Learned counsel submitted that since the renewed lease dated 10.07.2007 is a registered instrument, it should not have been disturbed without invoking provisions of Section 39 of Specific Relief Act, which provides procedure and forum for cancellation of any registered instrument. Petitioner pleaded to have been deprived of his rights arising out of Renewed Deed.

11. On the other hand learned counsel appearing for respondents No.4 to 6 challenged the maintainability of petition on the count that petitioner has not approached the Court with clean hands. He himself has not done equity whereas he is before the Court to claim equity. Learned counsel submitted that respondents No.4 to 6 and Huzoor Begum were co-owners whereas respondents No.4 to 6 were deprived of rights by ill-design exercise of petitioner. They purchased 1/6th shares each in the subject property whereas Huzoor Begum sold her share to the petitioner and respondent No.7 in equal share vide conveyance deed dated 08.02.1979. Their shares as stood before renewed deed are as under:-

- | | | |
|------|---------------------|---------------------|
| i. | Iftikhar Soomro | - one quarter |
| ii. | Illahi Buksh Soomro | - one quarter |
| iii. | Mrs. Parveen Soomro | - 1/6 th |
| iv. | Zubyr Soomro | - 1/6 th |
| v. | Nusair Soomro | - 1/6 th |

12. It is argued that as a family member petitioner was managing the property and business affairs but he abused the trust reposed in him and fraudulently procured the renewal of lease in favour of himself and respondent No.7 to increase his share in the property to 50%. This fact only revealed when the negotiations for family settlement were being

undertaken. It is argued that this Deed of Surrender is a managed and procured one and the renewal of lease deed on 10.07.2007 based on the surrender deed is a void instrument, which purportedly obtained collusively to deprive the answering respondents i.e. respondents No.4 to 6. They (answering respondents) have neither consented to any transfer of their shares nor any Surrender Deed was executed by them. The Rectification Deed was claimed to be lawfully registered instrument since the Renewal Deed was executed on the basis of a forged Surrender Deed and the authority reserved their rights in this regard, while the letters were issued by them, that it shall always be the right of the official respondents to hold the powers and authority for any rectification or correction in the registered instrument.

13. Respondent No.7 has also acknowledged the contents of the reply of respondents No.4 to 6 and submitted that it was his younger brother who was entrusted to carry out the administration of the affairs of the subject plot including but not limited to execution of lease agreements. The execution of Renewal Deed is also considered to be a fraudulent act of petitioner. It is contended that the renewal fee was paid by respondents No.4 to 7 as well however mutation letter was issued and received at the address of petitioner alone. Petitioner thus breached the trust that answering respondents had on him, by engineering, fabricating and forging certain documents and then by using fabricated and forged Surrender Deed against the interests of the respondents.

14. We have heard the learned counsel and perused material available on record.

15. On the assumption/presumption that the land does not belong to Pakistan Railways or its predecessor and consequently without commenting on it, we proceed as under to resolve the dispute in hand between the parties only.

16. This land which is available in Railway Quarters, Old Queens Road, Karachi, consists of three plots measuring 2512, 4316 and 6882 sq. yards, together comes to a total area of 13710 sq. yards. Undisputedly it was leased out by the administrative authorities of Karachi/Municipality of Karachi or by its “predecessor” (since original lease is not available) in favour of one Gowindlal Sughan Chand Binani who by virtue of a sale deed on 03.09.1957 transferred and conveyed the same to Ahmed Mian Soomro son of Haji Moula Baksh and M/s Pir Bhai Cotton Company in equal shares whereas by virtue of an oral gift of 07.12.1961, which is not disputed by any of the parties, Ahmed Mian Soomro son of Haji Moula Baksh transferred his share in the above referred larger plot to his father Haji Moula Baksh Soomro. It is claimed that it was private partition however there is no such record available. We therefore proceed with the assumption that it was privately partitioned and consented by the authorities concerned. By virtue of agreement dated 10.03.1967 and by registered sale deed of 30.11.1968 Haji Moula Bux Soomro, to whom the property was gifted, sold the subject plot jointly in favour of petitioner, respondents No.4 to 7 and M/s Huzoor Begum Soomro i.e. sister of petitioner and respondent No.7, although later Mst. Huzoor Begum by virtue of conveyance deed of 08.02.1979 sold 1/6th share in the subject property equally in favour of petitioner and respondent No.7.

17. This execution of conveyance deed by Huzoor Begum itself does not in any way demonstrate the intention of other co-owners i.e. respondents No.4 to 6 for whom it is stated that the intention of this transfer of Huzoor Begum’s share reveals that the two brothers i.e. Iftikhar Ahmed Soomro and Illahi Baksh Soomro intended to have 50% equal share in the property and as a consequence whereof a Surrender Deed was executed by respondents No.4 to 6. If Mst. Huzoor Begum could execute a registered instrument to sell her share in favour of

petitioner and respondent No.7 then why can't respondents No.4, 5 and 6 execute and perform the same and instead would execute oral deed and unregistered deed to forgo their share. Every transfer of share in an immovable property has some consideration, be it love and affection or other monetary gains or other barter/trade/swap etc. The Surrender Deed, as disclosed by the petitioner, is though an unregistered instrument, but in fact it is without any such consideration, at least not demonstrated here by petitioner.

18. On the basis of this Surrender Deed the petitioner managed to obtain renewed lease of the land, disclosing three independent plots measuring 1030.25 sq. yards of Plot No.1 RY 17, land measuring 1925 sq. yards of Plot No.2 RY 17 and land measuring 2834 sq. yards of plot No.3 RY 17, of Railway Quarters, Karachi. However, not even once the City District Government Karachi or the Deputy District Officer Land, thought of issuing notices to these co-owners on whose behalf an unregistered Surrender Deed was presented whereby they were being ousted as co-owners of the property by respondents No.1 to 3. Although while issuing a covering letter of renewal of lease of 09.05.2005 the authority reserved their right to withdraw this lease at any stage if it is proved that the executant/lessee had obtained this renewed lease through misrepresentation/misconveying or by concealing the facts of the case, yet it has remained a matter of fact that no notice was issued to the co-owners whose shares were being transferred to other existing co-owners. This itself by design an act to deprive the co-owners from their lawful share and does not amount to a transaction that depict transparency.

19. Petitioner before us in terms of Article 199 of the Constitution claims equity whereas he himself has not performed equity while obtaining renewed lease. The relief being claimed under Article 199 of the Constitution is a discretionary relief and based on equity. We would

not like to comment on Surrender Deed in depth at this point of time since it may deprive parties from their consequential rights however what is clear from the aforesaid facts is that respondents No.1 to 3 as well as petitioner and respondent No.7 have not acted in a manner whereby an act of equity is said to have been performed by them for respondents No.4 to 6. Nothing could have been taken away from them, had a notice been issued to these private respondents since valuable rights on the basis of unregistered Surrender/Relinquishment Deed were being taken away and that too without consideration. We have taken very serious notice of the exercise undertaken by respondents No.1 to 3. They should have verified the record/documents including but not limited to Surrender Deed and then should have taken action. When the facts were revealed and the documents were verified, the Renewed Deed was rectified on behalf of other co-owners by virtue of letter dated 07.12.2009 and Deed of Rectification dated 25.02.2010, which is available on record, was surfaced.

20. It is not just a simple case of condemning the petitioner unheard; it is also not simply a case that a registered instrument was rectified without codel formalities. It is a case where the authorities have acted beyond their authority and jurisdiction while renewing the first lease in favour of the petitioner and respondent No.7. Petitioner intended to gain on the count of bleak and non-transparent actions which benefit may not be justified under the circumstances of the case. It is a case where petitioner is praying for the rescue of his ill-gotten gain. At this point of time we conclude it as ill-gotten gain as a non-transparent procedure was undertaken without which perhaps we would not have used the word "ill-gotten". It is the transaction alone, (as of now for dispute in question) as undertaken by petitioner which made the gain/the benefit as misbegotten. The doors are still open for the

petitioner as he may approach the Civil Court for performance of the Surrender Deed and may ask for issuance of fresh lease on establishing independently that respondents No.4 to 6 have actually surrendered their rights not only in favour of petitioner but respondent No.7 also.

21. Legal status of wealth is dependent upon the transparent procedure used to acquire it and that would name it as ill-gotten wealth or legitimate gain. Where granting a relief would amount to retention of ill-gotten gains or would otherwise leave the parties to injustice, the constitutional jurisdiction could be declined on the aforesaid touchstone leaving the parties and/or party aggrieved of any action, to approach a forum which could probe the entitlement of the petitioner and/or other parties through evidence that it was not an ill-gotten gain. Reliance is placed on the case of Muhammad Sharif v. Sultan reported in 2003 SCMR 1221.

22. It is settled law insofar as factual controversies are concerned that Article 199 of the Constitution could only embark upon questions which are devoid of factual controversies. Indeed a registered instrument could only be cancelled in terms of Section 39 of Specific Relief Act, provided a lawful procedure was followed to legitimize the gain. Before us is a question whether on account of erroneous approach of the authority, which smells malice, they were competent and empowered to rectify their own error which they committed while registering an instrument and the answer is 'yes'.

23. Keeping in mind the kind of gain petitioner is exposed to, we are conscious of the fact that for invoking constitutional jurisdiction of equity to establish a clear title, one has to demonstrate a case beyond any shadow of doubt and controversy. In view of challenged question as to whether title of the party could be relinquished or surrendered without a registered instrument, would certainly create serious doubts

and only on this count the errors were rectified by the authority and in this way we are of the view that the deep rooted question of title cannot be probed in these proceedings under article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

24. In the case of Captain Muhammad Iqbal v. Federation of Pakistan reported in 2009 MLD 810, the Division Bench of this Court ruled that, “foundation of allotment of the petitioner rested on misrepresentation, one could not be allowed to retain ill-gotten gain”. In the instant case also the procedure adopted to obtain the gain has made it all suspicious and hence allowing petition would amount to allowing party to enjoy suspicious process to retain ill-gotten gain.

25. In the case of Habibullah v. Election Tribunal reported in 1985 CLC 2925, it has been observed that the discretionary constitutional jurisdiction of the High Court would not extend in favour of petitioner to help him retain ill-gotten gain or allowed perpetuation of illegality even where order of Tribunal was not found strictly justifiable. Paragraph 12 of the judgment is reproduced as under:-

“12. The next question which then arises for consideration is whether the discretionary Constitutional jurisdiction of this Court ought to be exercised in favour of the petitioner to help him retain the ill-gotten gain or allow perpetuation of an illegality even where the order of the Election Tribunal is not found strictly justifiable. - The answer must be B in the negative. Reference may be made to the Supreme Court decision in the case of Wall Muhammad and others v. Sakhi Muhammad and others reported as P L D 1974 S C 106, wherein at page 109 it has been observed:-

“Grant of relief in writ jurisdiction being entirely discretionary with the High Court, the learned. Judge would have certainly acted in aid of justice in refusing relief to the respondents on the facts of the case, even if because of any technical reason, the order of Khan Saeed-ud-Din Khan was not strictly found justifiable. It is well-settled principle that the High Court writ jurisdiction can be invoked in aid of justice

and not to help retention of ill-gotten gains."

26. Similarly In the case of Muhammad Baran v. Member (Settlement and Rehabilitation) Board of Revenue Punjab reported in PLD 1991 SC 691, the Hon'ble Supreme Court has held as under:-

".....In somewhat more strong phraseology, this Court had held that "an order in the nature of certiorari or mandamus is a discretionary order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it causes a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked.

Where, therefore, the High Court, in its extraordinary jurisdiction under Article 98 of the Constitution of 1962, had come to the conclusion, that the orders of the Deputy Claims Commissioners verifying the claims of certain persons were illegal and without jurisdiction, it was held that "it could legitimately refuse to set aside the order of the Officer on Special Duty (Central Record Office), even though the latter was clearly without jurisdiction". Putting this observation in juxtaposition to the present case; if the allotments relied upon by the appellants made by the Settlement functionaries were illegal and without jurisdiction and indeed if they were also based on fraud and forgery, in that eventuality even if the Board of Revenue which exposed fraud and forgery and set aside illegal transfer of properties worth millions by its own order, the High Court would not in exercise of its discretionary (Writ) jurisdiction annul the order of the Board of Revenue, even though, to borrow the language used in the case of Raunaq Ali the latter "was clearly without jurisdiction."

Assuming for the sake of arguments advanced that the Board of Revenue passed an illegal order as no proceedings were then pending and even if such order would have been without jurisdiction, in the circumstances of this case, the High Court after correctly stating the legal position could withhold the relief in its entirety and could also dismiss the Writ Petitions filed by the appellants as they had soiled hands....."

27. The prime consideration of the petitioner is that he was condemned unheard and hence premier maxim i.e. audi alteram partem was violated. We have considered the admitted facts of the case and it

appears that petitioner tasted a dose of his own medicine. While obtaining a renewed lease he acted in a manner which is absolutely non-transparent i.e. they aided and colluded in process which has deprived respondents from their lawful entitlement without notice to them. They were part of that process which is unwarranted in law since on the basis of an unregistered surrender/relinquishment note, the rights were taken away. Now petitioner is praying for the restoration of same relief which was denied by him to the respondents. This fact of the matter cannot be ignored while judging the rights of the petitioner in relation to audi alteram partem. As said earlier this is only a discretionary relief and not a matter of right since forums of adjudication of the vested rights asserted by the petitioner are still available such as Civil Court and hence in view of above the question of audi alteram partem would not come in the way and that too to deprive the respondents from a status which they were enjoying prior to issuance/execution of renewed lease which in fact deprived the respondents from all rights arising out of the subject property. Reliance is placed on the case of Abdul Haque Indhar v. Province of Sindh reported in 2000 SCMR 907, relevant part of paragraph 10 and 11 of which is produced as under:-

“10. Learned counsel also contended that no notice was given to the petitioners before cancelling the lease vide order, dated 29th September, 1994 and the petitioners who have made huge investment to develop the land have been condemned unheard, as such on this score as well the action of official respondents deserves to be declared without lawful authority. There is no cavil with the proposition that the principle of natural justice enshrined in maxim "audi alteram partem" is always deemed to be embedded in the statute and even if there is no such specific or express provisions, it would be deemed to be one of the parts of the State because no adverse action can be taken against a person without providing right of hearing to him. But at the, same time this principle cannot be deemed to be of universal nature because before invoking/applying this principle one has to specify that the person against whom action is contemplated to be taken prima facie has a vested right to defend the action and in

those cases where the claimant has no basis or entitlement in his favour he would not be entitled for protection of the principle of natural justice. To support this argument reliance is placed on the case of Ghulam Mustafa Jatoi v. Additional District and Sessions Judge/Returning Officer, N.A. 158 Naushero Feroze and others (1994 SCMR 1299).....

11. *We are also inclined to observe that in view of the circumstances of the case learned Division Bench of High Court of Sindh at Sukkur had rightly declined to grant discretionary relief under Article 199 of the Constitution of Islamic Republic of Pakistan because jurisdiction conferred upon the Court under this Article of the Constitution cannot be exercised to perpetuate ill-gotten gains as it has been held in the PLD 1973 SC 230 (Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others), Market Committee, Multan through its Administrator and another v. Muhammad Sabir (1995 SCMR 305) and Khiali Khan v. Haji Nazir and 4 others (PLD 1997 SC 304)....”*

28. In the case of Rukhsana Soomro v. Board of Intermediate & Secondary Education reported in 2000 MLD 145 a Division Bench of this Court has held as under:-

“Besides this, in several cases referred below the Hon'ble Supreme Court of Pakistan has observed that under Article 199 of the Constitution, the jurisdiction of this Court is discretionary in nature and this Court will decline to exercise such jurisdiction in the cases where such exercise of jurisdiction will work in aid of injustice or will protect some ill-gotten gains of a party. Reference may be made to the following case law:--- .

(i) Zameer Ahmed and another v. Bashir Ahmed and others (1988 SCMR 516),

(ii) Export Promotion Bureau and others v. Qaiser Shafiullah, (1994 SCMR 859),

(iii) Province of the Punjab through Secretary, Health Department v. Dr. S. Muhammad Zafar Bukhari (PLD 1997 SC 351).”

29. Similarly in the case of (8) Wali Muhammad v. Sakhi Muhammad reported in PLD 1974 SC 106 it has been observed as under:-

“.....Grant of relief in writ jurisdiction being entirely discretionary with the High Court, the learned Judge would have certainly acted in aid of justice in refusing any relief to the respondents on the facts of the case, even if because of any A technical reason, the order of Khan Saeed-ud-Din Khan was not strictly found justifiable. It is

well settled principle that the High Court's writ jurisdiction can be invoked in aid of justice and not to help retention of ill-gotten gains."

30. Another landmark judgment is the case of Bismil Spinners v. Pakistan reported in PLD 1992 SC 96 on the question of failure of procedural performance on the part of the functionary. Hon'ble Supreme Court while keeping the Islamic dispensation of justice and jurisprudence observed that the case if analyzed and decided on the touchstone of the aforesaid command, the question of being heard to regain ill-gotten gain will not have any force. The arguments that even if the petitioner was in the wrong and made wrongful gain through some legal incident, he is not entitled to retain because of failure on the part of the functionary to perform procedural act, is obviously not permissible under the dictate of justice.

31. Mr. Mushtaq Memon, learned counsel for petitioner has relied upon a number of cases on the primary argument that petitioner was condemned unheard and hence it is a miscarriage of justice however out of all those we are discussing some of the judgments as under:-

(I) In the case of Qurban Ali Abbasi v. Province of Sindh & others reported in PLD 2009 Karachi 327 while relying on paragraph 57 and 58 Mr. Memon submitted that no adverse order could be passed without affording an opportunity of being heard.

II) The next case relied upon is M/s. Ocean View (Pvt.) Ltd. v. City District Government Karachi reported in 2007 YLR 3203. In terms of sideline 'C' Division Bench of this Court observed that order passed by a judicial or administrative authority affecting a person or property could not be passed without affording an opportunity of hearing.

The above cases are distinguishable in several ways and one of the most significant way is that this would not apply to one who himself is guilty of disgracing the lawful procedure for a gain. Petitioner's own

hands are tainted with malice. Before adjudging him as victim, it may be seen whether petitioner was really victimized on account of *audi alteram partem*. The prerequisite to adjudge him as victim, his own conduct should be scrutinized and as a precondition his hands should not be tainted or soiled.

(III) In the case of *Amir Jamal v. Zahoor-ul-Haq* reported in 2011 SCMR 1023 a question of title of a property was the subject matter and the Hon'ble Supreme Court observed that the question of title of property could not be gone into by the High Court in constitutional jurisdiction. The issue raised in the constitutional petition could only be resolved by recording evidence. Such jurisdiction of High Court would extent to questions devoid of factual controversies.

The cited judgment provides a way out in respect of those questions which do not require factual analyses whereas in the case in hand title of a property was created in defiance of a settled principle of law for which the petitioner himself is now urging.

IV) The next case of *Anjuman Fruit Arhtian v. Deputy Commissioner Faisalabad* reported in 2011 SCMR 279 provides that disputed questions of fact cannot be decided in constitutional jurisdiction such as alleged forgery and fraud which made the entitlement a controversial one.

This is a case where High Court declined to exercise its jurisdiction in view of various questions of fact and law. It is not an absolute finality that where a petitioner has come forward under the umbrella of being victimized or deprived of any constitutional right, the ultimate unlawful gain could influence the act of dispensation of justice. The Hon'ble Supreme Court concluded that by declining a relief to the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan they have not done any injustice since there were controversial questions of law and facts. In this case as well the forum of Civil Court

for adjudication was not shut for the parties and the discretion is being exercised by this Bench on the touchstone of principles laid down in the cited judgment.

(V) In the case of *M/s Tri-Star Energy Ltd. v. Province of Sindh & others* reported in 2010 CLC 849 the Division Bench of this Court observed that once an offer was made and accepted by the petitioner then vested right was created in him for regularization of cancelled allotment on payment of differential amount for which the authority was obliged to issue challan for payment. The cancellation of such allotment of State land made in violation of law or during ban was thus declared unlawful.

(VI) The next case relied upon by Mr. Mushtaq Memon is of *Chairman NAB v. Manwar Masih* reported in PLD 2020 Balochistan 01. It relates to a situation where procedure has been provided for doing a thing in a particular manner should have been done in that manner alone and in no other way. Such course impliedly prohibits doing of a thing in any other manner. This in fact is against petitioner himself.

(VII) The next judgment is of *Shah Mardan Shah v. Chief Land Commissioner* reported in PLD 1974 Karachi 375 which provides assistance on well renowned principle that principle of natural justice should be read as part and parcel of every statute, whether or not it is provided in the Statute.

(VIII) The next judgment is of *Makhdoom Muhammad Mukhtar v. Province of Punjab* reported in PLD 2007 Lahore 61 on the principle of *locus poenitentiae*. The learned Single Judge of Lahore High Court relying on “Judicial Review of Public Actions” by Justice (Retd.) Fazal Karim Volume-1 Page-1365, observed that claimant’s right will only be found established when there is clear and unambiguous representation upon which it was reasonable for him to rely.

32. Everyone is subservient to law and you only reap what you sow. The later referred judgments relate to those facts where petitioner's own conduct was not debatable. Overall picture of the transaction led us to exercise this discretion whereby the alleged right, as claimed under the garb of audi alteram partem, is being denied. Before anyone could invoke the principles of fundamental right he has to establish beyond any doubt that his own hands are not tainted with malice or he himself is not guilty of some offence.

33. In view of the above facts and circumstances, we conclude that the petitioner is not entitled for the relief, as claimed, in view of fact that his own hands are tainted and soiled. Thus by short order we dated 06.10.2020 we have dismissed this petition by declining the relief to the petitioner and these are reasons for the same.

Dated:

Judge

Judge