

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 3704 of 2018 : Civil Aviation Authority vs.
Province of Sindh & Others

For the Petitioner : Mr. Khalid Mehmood Siddiqui, Advocate

For the Respondents : Mr. Jawad Dero,
Additional Advocate General
Barrister Mohsin Shahwani

Date of hearing : 25.02.2021

Date of announcement : 25.02.2021

JUDGMENT

Agha Faisal, J. The writ jurisdiction of this Court has been invoked *inter alia* to seek an in depth inquiry into alleged formation of survey numbers, allotments and leases of land; requiring a restraint in respect of construction upon ostensibly private property; and seeking resolution of *prima facie* disputed questions of title to land, in respect whereof a civil suit¹ remains pending. All this has been prayed for in a Constitutional Petition; admittedly² instituted and maintained devoid of any manifest authorization from the petitioner authority.

2. At the very outset, learned counsel was directed to satisfy this Court as to the maintainability hereof, *inter alia* as the petitioner is seeking recognition of contested rights in respect of immovable property; requiring this Court to commission an *in depth* inquiry into disputed questions of fact, requiring evidence, and then render orders predicated thereupon, notwithstanding the factum that a court of competent jurisdiction remains seized of the matter.

3. Petitioner's counsel remained unable to address the issue of maintainability and confined his arguments to assertion of title in respect of the immovable property under consideration. An allotment letter was pointed out; however, it was submitted that no revenue sketch, as denoted in the letter itself, has been placed on record. Furthermore, the conveyance of land to the respondent no. 6, a private party, was called into question; however, it was

¹ Suit 1081 of 2018 pending before the High Court of Sindh at Karachi.

² Petitioner's counsel unequivocally admitted, during rebuttal, that no requisite authorization was ever received or filed in respect of the present proceedings.

unequivocally submitted that the petitioner was unaware whether the said respondent's land was a constituent of the land claimed by the petitioner or otherwise.

4. Learned counsel for the respondent no. 6 painstakingly took this Court through the record, available on file, to denote that the said land was validly conveyed thereto by the revenue authority. It was demonstrated that the petitioner itself had issued several letters / NOCs denoting that the respondent's land was exclusive to that of the petitioner. Several letters / communiques of the revenue authority were also shown to similar effect. It was concluded that the petitioner had concealed material documentation³ from this Court in an effort to obtain *ad interim* relief, subsisting till date, and the entire effort was *prima facie* unauthorized⁴ in proceedings not maintainable.

5. Learned Additional Advocate General Sindh relied on the documentation placed on file by the revenue authorities and submitted that the record demonstrated that the petitioner had no nexus with the private land under consideration. It was added that even the land allotted to the petitioner remained under a cloud since the petitioner had not paid the requisite consideration to the revenue authorities. The learned law officer demonstrated from the department's record that the land of the petitioner was independent to that of the respondent no. 6 and the said factum is borne from the correspondence, on file, of the petitioner itself.

6. We have considered the arguments of the respective learned counsel and have also considered the law and documentation to which our attention was solicited. It is an admitted fact that the present petition is devoid of any initial or subsequent requisite authorization; the matter pertaining to the immovable property under consideration remains pending before the court of competent jurisdiction; no document has been placed on record by the petitioner, on record, to lend an iota of credence to its claim. In such a scenario we consider it appropriate to ring fence this determination to consider whether the disputed questions of fact, raised by the petitioner, merit determination before this Court, in place of the appropriate forum.

³ Placed on record by the respondents respectively.

⁴ As no requisite authorization of the petitioner authority, to institute or maintain the present proceedings, was ever brought on record.

7. The prayer clause of the petition *prima facie* demonstrates that the petition is not maintainable as conflicting claims of a factual nature cannot be entertained in the exercise of writ jurisdiction of this Court⁵.

8. Petitioner's counsel has been unable to demonstrate any nexus of the petitioner with the land conveyed to the private respondent herein. The petitioner's own documentation, attesting to the distinct and exclusive nature of the properties *inter se*, was never revealed before this Court and the same only came to light in the response filed by the respective respondents. It is considered pertinent to mention that the veracity of such documentation was never controverted by the petitioner's counsel.

9. It appears that the petitioner has a private grievance with the respondent no. 6 and has impleaded the official respondents in an effort to seek the adjudication of its grievance before this court, in the exercise of its writ jurisdiction. A Division Bench of this High Court, in *Muhammad Saddiq case*⁶, had deprecated the invocation of the writ jurisdiction in private disputes and had held that such action, merely to overcome objections of the branch with respect to maintainability, cannot but be disapproved. A subsequent Division Bench has also maintained⁷ that the masquerade of pleadings to invoke the Constitutional jurisdiction of this court is undesirable.

10. In view of the reasoning and rationale herein contained, we are of the considered view that the present petition is misconceived and even otherwise demonstrably devoid of merit, hence, this petition, along with pending application/s, was dismissed vide short order announced in Court earlier today. These are the reasons for our short order.

JUDGE

JUDGE

⁵ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

⁶ *Muhammad Saddiq & Another vs. Ruqaya Khanum & Others* reported as PLD 2001 Karachi 60.

⁷ *AKD Investment Management Limited & Others vs. JS Investments Limited & Others* reported as 2020 CLD 596.