

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 312 of 2018
HCA No. 316 of 2018

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

HCA No. 312 of 2018

Mr. Tayyab Khan	Appellant
	Versus	
Mrs. Basheera Begum and others	Respondents

HCA No. 316 of 2018

Ahmed Memon	Appellant
	Versus	
Mr. Tayyab Khan and others	Respondents

Date of Hearing: **28.08.2019**

Tayyab Khan, Appellant in HCA No. 312 of 2018 and Respondent No.1 in HCA No.316 of 2018 through Mr. Ovais Ali Shah, advocate.

Ahmed Memon, Appellant in HCA No. 316 of 2018 through Mr. Ahmed Pirzada, advocate.

Sohail Akhtar and Ahmed Sohail, the Respondents No.2 and 3 respectively in HCA No.312 of 2018 through Mr. Altamash Arab, advocate.

Mr. Meeran Muhammad Shah, Additional Advocate General

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- This single judgment will suffice to dispose of the aforementioned appeals, as they both are directed against one and the same order i.e. order dated 18-09-2018 passed by the learned Single Judge of this Court, directing to the high-ups of

Revenue Department to conduct an inquiry in compliance of an earlier dated 05-10-2016.

2. The aforementioned impugned order was passed in two connected suits being Suit No. 1508/2015 and Suit No. 765/2017 filed by the appellant and some of the respondents of Appeal No. 312/2018 against each other in respect of the suit property. The suit property is a plot of 2000 square yards regarding which both the parties are claiming the right of ownership based upon some registered documents. The veracity and genuineness of those documents are yet to be determined upon the touchstone of examination of witnesses under the provisions of Qanoon-e-Shahadat.

3. Mr. Ovais Ali Shah, the learned counsel for the appellant (Appeal No # 312/2018) prefers information at some length. His contention is that the order dated 05-10-2016 has already been complied with and after inquiry a detailed report has already been submitted by the concerned authorities, as such no fresh inquiry is needed and the impugned order is patently incorrect. He emphasises that the report has not only been taken on record but it was meticulously considered under a detailed order passed on 03-05-2018. According to him, under order dated 03-05-2018, the learned Single Judge has already dismissed the applications filed by respondents in the two suits for the appointment of Receiver, while the status-quo granted on an application of the appellant was confirmed. He points out that nothing is left as far as the report filed by the Secretary, Board of Revenue is concerned **while** in compliance of order dated 05.10.2016, as such no question of fresh enquiry arises. According to him, at the time of passing the impugned order, the learned Single Judge was not properly assisted regarding the compliance of the said order. He submits that passing of the impugned order amounts to sitting over the order dated 03-05-2018, which is not permissible under the law. He draws attention towards the fact that the respondents neither filed any objection to the report of the Secretary, Board of Revenue nor filed an appeal against the order dated 03-05-2018. In the end, he seeks setting aside of the impugned order.

4. Mr. Ahmed Pirzada, the learned counsel for the appellant (Appeal No # 316/2018), after adopting the arguments advanced by Mr. Ovais Ali Shah, prefers some additional submissions. His main contention is that the appellant was condemned unheard. Regarding maintainability, his

contention is that the appellant is personally prejudiced and aggrieved by the impugned order, as such the instant appeal is maintainable. He further submits that the authorities have earlier taken action against the appellant, being Mukhtirarkar concerned, and through the impugned order he is again suspended, which is against the law.

5. Mr. Altamash Arab, learned counsel for Respondents No.3 and 4 in Appeal # 312/2018, argues in support of the impugned order by submitting that the learned Single Judge has considered all the facts prior to the passing of the impugned order. He submits that it is incorrect to conceive that the order dated 05-10-2015 was properly complied with. After referring different portions of the order dated 03-05-2018, he contends that in view of the observations made by the learned Single Judge in the said order, there was no need to file an objection to the report or prefer an appeal regarding the order dated 03-05-2018. According to him, it is manifested from the order dated 03-05-2018 that the Court is not satisfied with the compliance report; therefore, there was no need to file an objection to the same. He submits that since compliance was not made; therefore, an inquiry against the appellant of Appeal No. 316/2018, if initiated, the same is in the light of the earlier order. According to him, both the appellants are not prejudiced from the impugned order; as such both the appeals are not maintainable.

6. Despite service of notices, nobody has appeared on behalf of respondent No. 2 in Appeal # 316/2018.

7. Mr. Miran Muhammad Shah, learned Additional Advocate General supports the impugned order to the extent of compliance report, which according to him was not exhaustively considered in the order dated 03.05.2018 as on that date the report was not listed for order. However, his contention is that the order may be altered up to the extent of Mukhtiarkar i.e. appellant of Appeal No. 316/2018.

8. We have pondered over the entire material in the light of valued submissions made before us. It is the case of the appellants that the order dated 05-10-2016 has been fully complied with and such compliance report is not only taken on record but the court is satisfied with the same; therefore, no further action can be taken as such impugned order is unwarranted. It is also the contention of appellant of Appeal No. 316/2018 that he was condemned unheard by the impugned order, as such he

should be given an opportunity to clarify his position before the learned Single Judge. It is also forcefully argued that the appellant is prejudiced from the impugned order and he was vexed twice as such the impugned order is contrary to law. As far as, the contention of appellant of Appeal No. 316/2018 is concerned, he has a right to raise these contentions before the competent authorities in departmental proceedings, for which we restrain ourselves to comment at this juncture. We expect that the authorities concerned shall provide full and proper opportunity of hearing to the appellant of Appeal No. 316/2018 and appreciate that the same should be carried out strictly in accordance with law without taking any influence from any observation made in any of the orders passed in the instant matter or the suits pending before this Court in original jurisdiction.

9. As far as the contentions of the appellant of Appeal No. 312/2018 is concerned, we are of the view that the same are unacceptable. From the contention of Mr. Ovais Ali Shah, it appears that purportedly compliance of order dated 05-10-2016 was done by submitting compliance report by the Secretary, Board of Revenue, as such the impugned order amounts to sitting over the order dated 03.05.2018, wherein the said report was entertained. In this respect, it is noteworthy that the mandate of order dated 05-10-2016 demands that the report should be submitted by the Senior Member, Board of Revenue after conducting an inquiry but the said report was submitted by the Secretary, Board of Revenue. It may be that the Secretary was holding charge of the Senior Member but the report does not indicate the same. Nevertheless, the learned Single Judge in his order dated 03-05-2018 has just discussed the said report and has shown his discontentment regarding the same by observing that the same is nothing but a reproduction of the contents of an earlier report of the Mukhtiarkar. It is also a fact that citing the said report in the order dated 03-05-2018 was in respect of disposal of the listed applications, while the said report was not even listed on that date for considering whether it amounts to the compliance of order dated 05.10.2016 or not. The purported compliance report does not bear any date but the office endorsement indicates that the same was filed on 06-03-2018. Nonetheless, the office did not list the same on any subsequent date of hearing including 21-03-2018 when the matter was heard and reserved for order by the learned Single Judge and on that date only CMA Nos. 11718/2015, 17136/2015, 918/2016, 3397/2016 & 13559/2017 in Suit No.1508/2015 and CMA No. 3160/2017 in Suit No. 765/2017 were listed; amongst them some CMAs were disposed of vide order dated

03.05.2018. It is noteworthy that none of the counsel appearing before the learned Single Judge on 21-03-2018 has mentioned anything about the said report in their arguments and the report was discussed by the learned AAG only indicating that the said report was submitted in pursuance of the order dated 05.10.2016. Perhaps it was the reason that while deliberating upon the CMAs, some annotations regarding the said report crept into the order dated 03-05-2018. In the said order, there is no unambiguous finding regarding compliance of order dated 05-10-2016, as such it cannot be said that the said report was ever taken on record or considered as satisfactory.

10. The ultimate outcome of the entire discussion is that both the appeals are lacking merits, as such the same are dismissed alongwith the listed and pending applications.

JUDGE

JUDGE

Dated:_____