

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P No.D-131 of 1993

## BEFORE:

**Mr. Justice Nadeem Akhtar**  
**Mr. Justice Adnan-ul-Karim Memon**

Petitioners. : Muhammad Khan and others through  
Mr. Muhammad Rashid Nizam advocate.

Respondents 1 to 5 : Commissioner Hyderabad and others  
through Mr. Allah Bachayo Soomro, Addl.  
Advocate General, Sindh.

Respondent No.6. : Military Estate Officer through  
Mr. Muhammad Humayoon Khan, D.A.G.

Respondent No.7. : Cantonment Executive Officer Hyderabad  
through Mr. Rafique Ahmed, advocate  
along with Naseem-ul-Haque, Legal  
Assistant Cantonment Board, Hyderabad.

Date of Hearing. : 05.11.2019

Date of Judgment. : 05.11.2019

## J U D G M E N T

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, the petitioners have challenged the allotment of land to New Town Housing Society and grant of 10 / 30 years lease in favour of Khamiso Hajano vide entry No.130 dated 30.06.1991 in respect of the land situated in Deh Jamshoro.

2. Case of the petitioners is that they are in occupation of government land admeasuring 2 ½ acres adjacent to Peons Colony behind Shahbaz Building Hyderabad since 1965 on the basis of possessory rights and in the year 1982, the petitioners were orally informed that aforesaid land falls within the Cantonment area; hence, they have to vacate the same. However, the petitioners approached the Cantonment Officer, Hyderabad for legalizing of the land occupied by them; but no heed was paid to their request and they decided to evict the petitioners. In view of this, the petitioners through Mr. Zahid Ali Bhurgri, a social worker requested the Commissioner Hyderabad Division against decision of evicting them and it was unanimously decided that petitioners should identify some other government land, which would be granted to them. Accordingly, the petitioners identified the vacant piece of

government land admeasuring about 2½ acres, which was in command of Lower Sindh Barrage. Then the petitioners approached the Commissioner Hyderabad for grant / allotment of the said land, who directed them to approach the Chief Engineer Lower Sindh Barrage, Hyderabad for relinquishment of the aforesaid land for their settlement under Sindh Goth Abad Scheme. The petitioners contended that after hectic efforts, they could convince the Chief Engineer, Lower Sindh Barrage, Hyderabad for relinquishment of the said land for their rehabilitation and such information was conveyed to Additional Commissioner-I, Hyderabad vide letter dated 21.10.1989. However, on 31.05.1990, the petitioners were informed by the Assistant Commissioner (Revenue) acting for the Commissioner Hyderabad that their request could not be considered as the aforesaid land situated in Deh Jamshoro and had already been allotted to New Town Housing Society Hyderabad vide letter dated 31.05.1990. Thereafter, on 16.09.1991 City Mukhtiarkar Hyderabad informed the representatives of petitioners that land in dispute had been entered in the Village Form-VII in favour one Khamiso Hajano for 10 years grant vide entry No.130 dated 30.06.1991 and subsequent lease deed on certain terms and conditions as provided under the Colonization Act. Petitioners being aggrieved by and dissatisfied with the backtracking of the commitment made by the official respondents 1 to 5 filed the instant petition in the year 1993.

3. Mr. Rashid Nizam learned counsel for the petitioners contends that the petitioners are residing on the plot since long and has now acquired vested right to claim possessory right over the subject land or in lieu thereof any government land be allotted to them for their rehabilitation; that when the Katchi Abadi Act was passed in year 1987 and implemented, the petitioners applied to the Cantonment Board Hyderabad that the said plot of land may be treated as Katchi Abadi as other portion of land of the Cantonment Board. In this regard, an application was given on 27<sup>th</sup> September 1981 and subsequently applications were also addressed in the year 1983 to the Military Estates Officer, Cantonment Board and site was also examined by Dr. Zahid Hussain, Vice President Cantonment Board Hyderabad on 30.09.1986, who stated that the residents are of Katchi Abadi; that the application was also made to the Revenue Authorities that the occupants may be granted some suitable land; that the Chief Engineer Irrigation Department made commitment that Bhada Land in the locality of Survey No.12 in Deh Jamshoro could be granted to the occupants / petitioners and sketch was also prepared accordingly and he (Chief Engineer Irrigation, Hyderabad) was pleased to release these 02 and half acres of Bhada land situated in Deh Jamshoro specifically for the purpose of settlement of evictees behind Shahbaz Building

and the Commissioner Hyderabad was also pleased to order that this property be given to the petitioners for their settlement; that Assistant Commissioner Revenue informed that this Bhada Land in Deh Jamshoro cannot be granted at this stage as it had been allotted to New Town Housing Society. The City Mukhtiarkar Hyderabad stated that land had been granted for 10 years lease to one Mr. Khamiso Khan Hajano by the Barrage Department and as such, the land could not be granted to the petitioners; that the petitioners repeatedly requested and approached various competent authorities for the aforesaid purpose, but to no avail. He further contended that there are two mosques and two temples and these can not to be dismantled or demolished. He lastly prayed for allowing the instant petition.

4. Mr. Muhammad Humayoon Khan, D.A.G has raised the question of maintainability of instant petition and referred the comments filed on behalf of Respondent No.6 and extensively read and lastly prayed for dismissal of the captioned petition.

5. Mr. Rafique Ahmed learned counsel representing respondent No.7 has also raised the question of maintainability of the instant petition and argued that the land in question comprises parts of Government Land Revenue (GLR) Survey No.134,135,137,138 & 139 located behind Shahbaz Building Complex adjacent to Peon Colony, Hyderabad Cantonment, which is owned by Government of Pakistan, Ministry of Defence as classified "B-4", the management whereof is entrusted to Military Estates Officer under Sub-rule (5) of Rule (9) of the Cantonments Land Administration Rules, 1937; that the Cantonment Executive Officer exercises control over all buildings, streets, boundaries etc. in a Cantonment area under Chapter XI of the Cantonments Act, 1924 (II of 1924); that the said land is defence land and is under illegal occupation of Petitioners, which is required to be vacated for futuristic requirements of armed forces. He lastly prayed for dismissal of instant petition.

6. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh argued that the main dispute is between the petitioners and respondents 6 and 7, and referred para-wise comments filed on their behalf, and endorsed their view point.

7. During course of the arguments we enquired from learned Counsel for the petitioners as to whether the petitioners had any title over the subject land, who candidly conceded that the petitioners had no title document. However, he submitted that the official respondents are required to adjust the petitioners from the subject land for which he, on behalf of the petitioners, made representation to the competent authority for allotment of alternate land, but

the necessary action is still awaited and that the petitioners are entitled to retain the existing possession till they are accommodated in alternate land.

8. We have heard learned Counsel for parties and perused the material available on record.

9. In our view, this is not a ground to occupy the government land by the petitioners. Record reflects that Military Estate Department claimed ownership on the subject land and apparently Chief Engineer Kotri Barrage vide letter dated 21.10.1999 endorsed contention of the concerned Department about the Bhada land under consideration, admeasuring 2 ½ acres situated in Deh Jamshoro for settlement of occupation of the petitioners. The Assistant Commissioner Revenue submitted that Bhada land cannot be considered as the land has already been allotted to New Town Housing Society, Hyderabad. The Mukhtiarkar Revenue also narrated the same position.

10. Adverting to the question of grant of state land for 10/30 years lease or its conversion for any purposes is restricted by the various pronouncements of the Honorable Supreme Court of Pakistan. In our view, no one has jurisdiction to distribute any public property or asset on nominal consideration, which land or asset essentially belong to the People of Pakistan. The object and purpose of granting lands by the State is to secure the wellbeing of the people.

11. Reverting to the next assertion of petitioners that they have occupied the subject land till they are accommodated in another location for their rehabilitation, suffice it to say, it is for the respondents-Revenue department to accommodate the petitioners, if they are at all entitled under the law on the basis of possessory rights since 1965. However, the subject land cannot be retained under the garb of providing alternate land. Prima-facie the subject land has already been allotted for defence purposes the same cannot be retained by any of the petitioners under the law. However we refrain ourselves to dilate upon the title of the subject land for the reasons discussed supra.

12. To elaborate further on the allotment of state land, Honorable Supreme Court in the case of Province of Punjab through Secretary Revenue and others v. District Bar Association, Khanewal (2014 SCMR 1611), has held with regard to manner of exercise of powers by the executive authority of the province regardless of its status that:

13. *Looking at the powers of the Chief Minister for allotment of public property, here a reference to the case of Iqbal Hussain v. Province of Sindh through Secretary, housing and Town Planning Karachi and others (2008 SCMR 105) will be useful wherein this court has observed as under:-*

“3. We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. **The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law.** Reference in this behalf may be made to decision of this Court in (i) *Abdul Haq Indhar v. province of Sindh* (2000 SCMR 907 and (ii) *Taj Muhammad v. Town Committee* (1994 CLC 2214) (Underlining has been provided for emphasis).

13. The Honorable Supreme Court of Pakistan in Suo-Moto case No.16 of 2011 has dealt with the issue in hand in the following manner:-

‘7. Under these circumstances, we hereby, until further orders restrain the Government / Revenue Department from mutation, allotment, transfer and or conversion of any state land and or keeping any transaction or entry in the record of the rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner / DCO of the relevant districts / Dehs besides others to contempt proceedings. (Underlining has been provided for emphasis).

14. In addition to above, since in the above referred judgment honorable Supreme Court ordered for immediate stopping of any conversion of lease for 30 years or of any term up to 99 years, as such the Respondents 1 to 5 have to abide by the decision in its letter and spirit in case of violation, consequences will follow.

15. In view of the aforesaid, the grant / allotment of State land on the ground of mere possession is not a right of an individual and, in fact, it is a grace. No person shall have any right or title in the State land until a written

order has been passed strictly in accordance with law and allottee / grantee has lawfully taken over the possession in pursuance of such order. In the instant case neither the subject land was allotted to the petitioners nor did they lawfully obtain possession thereof. The next limb of argument of learned counsel for the petitioners that since the Revenue officers had spared the Bhada land to the petitioners for their settlement is concerned, the move in this behalf to the competent authority to honor the aforesaid commitment for allotment of State land to them, needs to be vigorously pursued by the petitioners if they at all are entitled for alternate land. At this stage, learned counsel for the petitioner in his abortive attempt to convince this Court that they have been living on the subject land since 1965, therefore the respondents may be directed to consider their genuine request as discussed supra, in this regard, suffice it to say that the petitioners may continue their efforts for their settlement with revenue functionaries, who may consider their request and take a decision in accordance with law within a period of two months from the date of receipt of this judgment.

16. In view of such state of affairs, this petition is found to be meritless and is accordingly dismissed along with listed application(s).

**JUDGE**

**JUDGE**

*\*Fahad Memon\**