

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
C.P.No.D- 690 of 2020
C.P.No.D- 1267 of 2019 (Disposed of)

Date of hearing	Order with signature of Judge.
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Hearing of Case (Priority)

- 1.For orders on office objection
- 2.For hearing of CMA 3153/2020
- 3.For hearing of Main Case

05-10-2021

Mr. Mukesh Kumar G. Karara Advocate for Petitioners in both petitions.

Mr. Ghulam Abbas Akhtar Advocate for Pakistan Railways.

Mr. Muhammad Hamzo Buriro, D.A.G.

Mr. Mehboob Ali Wassan, Assistant A.G.

Through this petition the petitioner has impugned notice dated 22.5.2020 issued by Railways department. On 14.7.2020 when this petition was taken up for pre-admission notice, learned Counsel for the petitioner was confronted as to maintainability of this petition in view of order dated 5.12.2019 passed in CP No.D-1267 of 2019, whereby the said petition was dismissed. Today we have confronted the learned Counsel on this and he submits that in this petition a fresh notice dated 22.5.2020 has been impugned, whereas, despite dismissal order, certain directions were given for demarcation which now stands completed and the petitioners stance as to the land in question has been affirmed. We, after briefly hearing the learned Counsel had given an option to withdraw this petition, as if ultimately we come to the conclusion that it is not maintainable, costs may be imposed; and he has not taken that option. Per learned Counsel the property in question was purchased by the petitioner after a long litigation by the predecessor in interest against Railways department culminating in dismissal of their Civil Revision by this Court; resultantly, the judgment and decree stood affirmed, therefore, there was no occasion

for the Railways department to once again agitate the same issue through impugned notice. He submits that it would be unfair to ask the petitioner to once again go through the rigors of a Civil Suit; hence, this petition is competent and the relief being sought can be granted by this Court.

We have heard the learned Counsel and perused the record. It appears that earlier petition of the petitioner bearing CP No.D-1267 of 2019 was dismissed by this Court vide judgment dated 5.12.2019, operative part thereof reads as under;

2. We have heard learned counsel for the parties and perused the entire material available on record.

3. Perusal of record as well as comments filed by the respondents contemplates that the Divisional Superintendent, Pakistan Railways, Sukkur (respondent No.3) has taken a stance in his comments that the petitioner is raising construction illegally and un-authorizedly over the railway property within 100 feet near the railway track which is not allowed as per railway engineering rules and policy. It is further claimed by the respondents that no doubt, the petitioner has obtained NOC from Sukkur Municipal Corporation regarding Municipal plot No.12 C.S No.550 Regent Colony Sukkur for construction purpose, but the railway track is adjacent to C.S No.550, as such the petitioner has illegally encroached over the railway property on the ground that petitioner has failed to produce any municipal allotment order showing the location of property and proper address. Admittedly, as per comments of respondents i.e. Pakistan Railways and Mukhtiar / City Survey Officer, Sukkur, the City Survey No. 550 is having a large area i.e. Islamia College, Regent Colony, Sessions Court, Sukkur and other surrounding areas, as such the petitioner cannot get benefit of the decisions of the learned three Courts, decided in favour of his predecessor-in-interest, namely, late Muhammad Farooq Mirani, on the ground that the Civil Suit filed by the predecessor-in-interest was in respect of plot bearing C.S.No.550/C, whereas, as per Ruled card (Ward-C) C.S.No. 550/A, admeasuring 304-5 sq.yds was in the name of Muhammad Farooq Mirani and thereafter the same was transferred in the name of the petitioner. Ruled Card (Ward-C) further contemplates that other two City Survey Nos. 550/94 and 550/46 admeasuring 205-8 and 510-4 sq.yds respectively, were also amalgamated with C.S.No.550/A, which is the subject matter of instant petition, therefore, without demarcation of the property in question, it cannot be ascertained through this writ petition as to whether the property in-question is the same property, which was decreed in favour of the predecessor-in-interest of the petitioner, namely, Muhammad Farooq Mirani by the learned three Courts. Furthermore, the learned counsel for the respondents through statement dated 05.12.2019 has placed on record Photostat copies of Notices issued by the Pakistan Railways to various persons under illegal possession / occupation of the railway property for removal / retrieval of the Pakistan Railway Lands in terms of Judgment dated 27.12.2011, passed by Hon'ble Supreme Court of Pakistan in SUO MOTO case No. 18 HRC 4193.

4. In such a situation, we are of the considered view that such disputed question of facts and factual determination cannot be adjudicated upon by this

Court under its Writ jurisdiction, as it requires factual ascertainment of rights of the parties, as the claim of the petitioner is being disputed by the respondents, for which the appropriate remedy lies through a Suit before a Civil Court of competent jurisdiction.

5. In view of hereinabove facts and circumstances of the instant case, we dismiss the instant petition being misconceived in facts and law and not maintainable under Article 199 of the Constitution of Pakistan, 1973. However, in order to resolve the factual controversy with regard to City Survey Numbers, mentioned in the Civil Suit and in the instant petition, as referred to above, it is ordered that the Survey Superintendent, Khairpur shall carry out the demarcation of above City Survey Numbers with the technical assistance of Pakistan Railways and Sukkur Municipal Corporation in order to ascertain the actual area of the Pakistan Railways and late Muhammad Farooq Mirani, predecessor-in-interest of the petitioner, as shown in the Civil Suit and furnish such compliance report to this Court through Additional Registrar within one month and thereafter if the petitioner still has any grievance, he would be at liberty to avail the remedy by other usual modes of proceedings, permissible under the law, if he is so advised.

Perusal of the aforesaid observations of this Court reflect that the matter is not so simple as contended. Allegedly, the property is not the same as claimed by the predecessor in interest and now by the petitioner. There is a difference in Survey numbers, besides the fact, that the land falls within 100 feet of the Railway Line; hence, cannot be used for any commercial or other purpose. The Court after examining the entire material came to the conclusion that serious disputed facts are involved which cannot be resolved in writ jurisdiction and ultimately dismissed the said petition; however, while doing so, issued certain directions for demarcation; which as claimed, affirms the stance of the petitioner. Be that as it may, even if some subsequent action and or directions have resulted in favor of the petitioner; this would not by itself confer any jurisdiction on this Court as it has already been held that due to disputed facts, writ jurisdiction cannot be exercised in this case. Moreover, it was also categorically held that “and thereafter if the petitioner still has any grievance, he would be **at liberty to avail the remedy by other usual modes of proceedings**, permissible under the law, if he is so advised”. This observation very clearly says that even if any remedy has to be

availed, it ought to be any other remedy except a petition. Despite such categorical finding, which has not been challenged any further and has attained finality, once again an attempt has been made to invoke writ jurisdiction to obtain favourable orders, which in the given facts and circumstances, ought not to have been done. As noted, we had asked the petitioners counsel to withdraw this petition, which he had refused and it is only after we had announced the short order of dismissal of this petition with costs, he requested withdrawal, which naturally, in the facts as above was not granted. Therefore, by means of a short order we had dismissed this petition in the earlier part of the day by imposing cost of Rs 50,000/- to be deposited in the account of High Court Clinic Fund as well as Library, High Court bar, Sukkur in equal share and these are the reasons thereof.

JUDGE

JUDGE

Ahmad