

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.

Constitutional Petition No.D-1913 of 2019

Before:-

Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Adnan Iqbal Chaudhry.

Petitioner: The Sindh High Court Employees Co-Operative Housing Society Limited Hyderabad through its Joint Secretary Mr. Muhammad Farhan Arain through Mr. Tahseen H. Qureshi, Advocate.

Respondents 1,2&4: Through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh along with Mr. Yaar Muhammad Bozdar, Deputy Secretary, Land Utilization Board of Revenue, Sindh.

Date of hearing: 09.11.2021

Date of Decision: 07.12.2021

O R D E R

ADNAN-UL-KARIM MEMON, J.- The petitioner is a registered Housing Society titled “The Sindh High Court Employees Co-operative Housing Society Ltd. Hyderabad” (**‘Society’**). The Society through its Chairman made an application dated 17.08.2016 to the Chief Minister Sindh for a grant of land of 100-00 acres in Taluka Latifabad, District Hyderabad for residential purposes for its members. On the said application, the worthy Chief Minister directed respondent No.2 to process the grant. Respondent No.6 vide letter dated 05.09.2016 called report from Assistant Commissioner, Latifabad, Hyderabad, who vide letter dated 09.09.2016 called detailed report from respondent No.8. Respondent No.8 after visiting the site and perusal of revenue record as well report of concerned Tapedar reported availability of land viz. 100-00 acres in U.A No.01 situated at Deh Ganjo-Takar, Taluka Latifabad, Hyderabad. However, the Land Utilization Department, Sindh / respondent No.2, through letter dated 26.01.2017, informed the Society as follows:-

“Due to the imposing of a ban by the Honorable Supreme Court of Pakistan in Suo-Moto Case No.16 / 2011, dated 28.11.2012, this department is not in a legal position to take further steps regarding any matter of allotment of Government estate lands. Hence, it is, therefore, suggested that the request in respect of the subject matter may be considered on top priority basis after the relaxation of the ban according to the law/Rule/Policy”.

2. Petitioner-society being aggrieved by and dissatisfied with the aforesaid assertion of the department approached the Hon’ble Supreme Court of Pakistan by filing CMA No. 165-K / 2017 in S.M.C No.16 of 2011. The Hon’ble Supreme Court was pleased to pass the order dated 17.03.2017, which is reproduced as under:-

“The Case of the Applicant shall be processed in terms of para-10 of the petition and allotment orders shall be made in accordance with the rules. The order of this Court imposing ban will not come in the way of the Applicant. It is expected that the process of allotment shall be expedited by the Revenue Department. The CMA is disposed of in the above terms.”

3. Mr. Tahseen H.Qureshi learned counsel for the petitioner-society contended that despite orders of Hon’ble Supreme Court, the respondent Land Utilization Department has not implemented the directives of the Honourable Supreme Court in letter and spirit and kept the matter on dormant file even though respondent No.3 prepared the working paper and submitted it before the Scrutiny Committee in the year 2017 to state that the proposed land for the petitioner-Society falls in the “C” category. Learned counsel emphasized that the notified market price in deh Ganjo-Takar, Taluka Latifabad, District Hyderabad was fixed through Notification No.09-294-03/SO-I (i)/868 dated 05.07.2012 by the Land Utilization Department at Rs. 200,000/- per acre; that despite such notification the Mukhtiarkar opined that the market rate of such land was between Rs.550,000/- to Rs.600,000/- per acre, therefore, the petitioner-Society being aggrieved by and dissatisfied with the aforesaid illegal action of respondents filed the instant petition with the following prayers:-

A). Direct the respondents to implement the order dated 17.03.2017 passed in favour of the

petitioner Society in the CMA No.165-K / 2017 (Re: The Sindh High Court Employees Co-Operative Housing Society Limited Hyderabad v. The Province of Sindh through Chief Secretary Sindh & others) by the Honourable Apex Court, and further direct them to make / issue the allotment orders in respect of the land in question (i.e. U.A. No.01) admeasuring area = 100-00 acres, situated in Deh: Ganjo-Takar, Taluka Latifabad, District Hyderabad, to the petitioner Society, promptly / forthwith, without causing delay or wastage of further time, and in consequences thereof bank challan to be issued to the petitioner Society according to the notified market price in the installments basis under the Notification No: 09-294-03/SO-I (i)/868 dated 05.07.2012, for the above land under **“C” category**, issued by the Government of Sindh / respondent No.2 / Secretary, Land Utilization Department, Board of Revenue Sindh, Hyderabad; and further direct the respondents to deliver-up the physical possession of the land in question to the petitioner Society and further make necessary entries / mutation in respect of the land in question in favour of petitioner Society in the record of rights, under intimation of this Honourable High Court.

- B). Direct the Respondents to deliver the allotment orders in respect of the land in question (i.e. U.A. No: 01) admeasuring area = 100-00 acres, situated in Deh: Ganjo-Takar, Taluka Latifabad, District Hyderabad, and other connecting documents / bank challan, possession, mutation / entry of revenue record of rights, to the petitioner Society, through Additional Registrar of this Honourable High Court, and for the purpose of implementation the Additional Registrar of this Honourable High Court may be appointed as Commission with all powers, till the finalization of all process.

4. In reply to the instant petition, respondent No.2 filed comments whereby it stated that the matter with regards to the price fixation of the land to be granted to the Petitioner Society was placed before the Scrutiny Committee in its meeting held on 15.09.2017, and after detailed discussion, the Scrutiny Committee decided that the respondent No.6 should reassess the market price of Government land in deh Ganjo-Takar Hyderabad, in as much as under Condition No. 8(4) of the Statement of Conditions dated 25-02-2006, the notified market price has to be reviewed after every three years and thus the notified market price relating to the year 2012 was not applicable. Per respondent No.2, after fixation of price by the

District Price Committee, the matter was forwarded to Scrutiny Committee for approval, but the Scrutiny Committee while considering the revised price of land, again sent back the matter to District Price Committee; and thereafter the revised market price was again placed before Scrutiny Committee; however, due to non-availability of Secretary Land Utilization Department, the matter remained pending.

5. Subsequently, the learned AAG Sindh placed on record the market price of Government land in District Hyderabad as determined by the District Price Committee, and the recommendation thereafter made by the Scrutiny Committee to the Government with regards to the price at which land may be granted to the petitioner Society. The learned AAG Sindh submitted that the market price so determined and recommended for grant of category 'C' land to the Petitioner Society in deh Ganjo-Takar was Rs. 35,00,000/- per acre, and in view of Condition No. 4(c) of the Statement of Conditions dated 25-02-2006 as amended on 29-11-2011, the Government could not grant land to the petitioner Society for less than 50% of the said market price. Learned counsel for the petitioner Society contended that in pursuance of the order dated 22.04.2021 passed by this Court, whereby the competent authority was directed to sympathetically consider the case of the petitioner-society and keep in mind realities that the delay was also caused by the official respondents themselves and the petitioner should not be forced to pay an excessive price and only comparable prices should be charged from the petitioner under the law; however, without taking into consideration directions of this Court, the respondent No.2 floated summary for the Chief Minister Sindh suggesting an excessive price for the land, which also amounts to defiance of the orders of this Court. He, therefore, prayed that the respondents may be directed to issue challan to the petitioner-society in respect of the land @ Rs. 200,000/- per acre.

6. We have heard the learned counsel for the parties and perused the available record with their assistance.

7. The procedure for determination of market price for grant of Government land is set out in Condition No. 8 of the Statement of Conditions dated 25-02-2006 read with the Statement of Conditions dated 29-11-2011 issued under section 10(2) of the Colonization & Disposal of Government Lands

(Sindh) Act, 1912, which involves a two-tier process. First, the District Price Committee assesses and recommends the market price to the Scrutiny Committee; and then the Scrutiny Committee, headed by the Senior Member Board of Revenue, makes a further inquiry and submits a recommendation to the Government.

8. From the minutes of the meeting of the District, Price Committee held on 9.10.2020, a copy whereof was filed by the learned AAG under cover of a statement dated 11-11-2020, it appears that the District Price Committee had last assessed the market price of Government land in District Hyderabad by letter dated 23-11-2017 whereby 'C' category land in deh Ganju Takar, Taluka Latifabad, was proposed at Rs. 15,00,000/- per acre. However, we have not been shown whether such price was also endorsed by the Scrutiny Committee and recommended to the Government for notification. Subsequently, in the meeting held on 9.10.2020 the District Price Committee revised the market price of Government land in District Hyderabad, and 'C' category land in deh Ganju Takar, Taluka Latifabad, was then proposed at Rs. 30,00,000/- per acre. The report filed by the Land Utilization Department shows that while considering the location of the specific 100 acres proposed for the petitioner in deh Ganju Takar, the Scrutiny Committee asked the District Price Committee for another assessment keeping in view the proximity of such land from the main road and other townships. Thus, another meeting was held by the District Price Committee on 18.3.2021 to assess specifically the market price of the 100 acres proposed for the petitioner in deh Ganju Takar. The District Price Committee proposed the market price of such land @ of Rs. 37,50,000/- per acre. However, the Scrutiny Committee recommended a price of Rs. 35,00,000/- per acre to the Government in moving a Summary dated 8.6.2021 to the Chief Minister. It was further recommended by the Board of Revenue that such land may be granted to the petitioner society for residential purposes @ 50% of said market price as permitted under Condition No. 4(c) of the Statement of Conditions dated 25.2.2006. The learned AAG Sindh submitted that the Government is willing to grant land to the petitioner on said terms.

9. From the representation made to us above by the learned AAG Sindh, it appears that while the District Price Committee and the Scrutiny Committee revise the market price of

Government land in the District every three years, such price is set as a general market price for each deh in each taluka, and while granting specific land in the deh, the general market price may be enhanced taking into consideration the location of that specific land or any other advantage it has over other lands in the same deh.

10. Apparently, the market price of Rs. 200,000/- per acre for the grant of Government land relied upon by the petitioner society was fixed in the year 2012, much before the petitioner had even applied for the grant of land. Under Condition No. 8(4) of the Statement of Conditions dated 25-02-2006, the market price of Government land is to be reviewed after every three years. Therefore, the contention of the petitioner that it should be granted the land @ Rs. 200,000/- per acre, is not tenable, to begin with. Secondly, the determination of the market price of land being a question of fact, we are in no position to adjudge in writ jurisdiction whether the market price fixed for the grant of land to the petitioner in deh Ganju Takar is on the higher side, or for that matter whether it is on the lower side, especially when no material has been placed before us to make such determination. Such price fixation is primarily the function of the District Price Committee and the Scrutiny Committee constituted under the Statement of Conditions dated 25-02-2006 read with the Statement of Conditions dated 29-11-2011 issued under section 10(2) of the Colonization & Disposal of Government Lands (Sindh) Act, 1912. Suffice to observe that the order dated 17.03.2017 passed by the Hon'ble Supreme Court in CMA No.165-K of 2017 in SMC No.16 of 2011 was that the process of grant of State land to petitioner-society should be made as per "Rules", ie. the Statement of Conditions issued under the Colonization & Disposal of Government Lands (Sindh) Act, 1912.

11. At this juncture, we may observe that the days of the grant of Government land in relaxation of rules are long gone. We would like to refer to the order dated 11.9.2009, passed by the honorable Supreme Court of Pakistan in **Suo Moto case No.14 of 2009** wherein it is held that:

"No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, which land or asset essentially belong to the

People of Pakistan. It was patently mala fide exercise of power. This Court further ordered that the grants of lands to the petitioner especially in the manner, the same was done are prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause), and Article 31 of the Constitution of the Islamic Republic of Pakistan which requires the State to endeavor to promote observance of Islamic moral standards and Article 38 of the Constitution which inter alia requires the State to secure the well-being of the people by preventing concentration of wealth in the hands of a few to the detriment of general interest. The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam.”(**Emphasis added**)

In another case, reported as **2014 SCMR 1611**, it was held with regard to the manner of exercise of powers by an authority regardless of its status that:

“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 HaqIndhar v. province of Sindh (2000 SCMR 907 and (ii) Taj Muhammad v. Town Committee (1994 CLC 2214)” (**Emphasis added**).

12. In view of the foregoing, the only submission worthy of consideration is that the petitioner-society should not be prejudiced by the delay caused by the Government itself in fixing the market price for the grant of land to the petitioner. It is noteworthy that though the instant petition was brought in July 2019, the market price of land being quoted to the petitioner-society is one that is determined by the Government in June 2021. The comments filed on behalf of respondent No.2 acknowledge that the delay occurred due to the absence of the Secretary Land Utilization Department. With that aspect in

mind, we dispose of this petition by directing the competent authority of respondents to process the application of the petitioner-society for grant of land for residential purposes at the market price that prevailed in the year 2019 for that specific land and location. Strictly, as already directed by the Honorable Supreme Court, as discussed in the preceding paragraphs, the process shall be expedited and the grant shall be made strictly under law.

JUDGE

JUDGE

Karar_Hussain/PS*