

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-1195 of 2016

[Muhammad Younus Ahmed &Ors versus Province of Sindh & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:

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

Petitioners : Through Mr. Muhammad Arshad Pathan
advocate

Official respondents : Through Mr. Allah Bachayo Soomro, A.A.G

Private respondents : Nemo

Date of hearing : 10.11.2021

Date of decision : 10.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J, - By means of this petition, the petitioners have sought declaration to the effect that subject land acquired by the Government in the year 1982 for Sabzi & Fruit Mandi and its subsequent allotment to petitioners for shops through a sale deed, cannot be claimed by any individual and its encroachment is not tenable under the law.

2. The case of the petitioners is that Government through Market Committee Hyderabad had announced a new Sabzi Market and for that purpose, the lands from various survey numbers, including the subject land of 0-28 ghuntas in Survey No.186, were acquired vide notification dated 20.05.1982 and subsequently it was allotted by the Market Committee to various persons including the petitioners for their respective shops after due process of law; however, the respondent No.10 filed civil suit against the Market Committee to claim that he had purchased said land from its private owner and ultimately he obtained a decree from the civil court. Per the petitioners, such decree was fraudulent, and in any case since the decree was in respect of land acquired under the Land Acquisition Act, the same was nullity in the eyes of law. They submit that respondent No.10 is only an encroacher over the land of the sabzi mandi and should be removed.

On the other hand, documents filed with the reply of the respondent No.10 show that the decree of the civil court in respect of the subject land passed in favour of Respondent No.10 and against the Market Committee, still holds the field. The appeal of the Market Committee against such decree was dismissed as time-barred; and such order was maintained by the High Court in Civil Revision No. 21/2010 vide order dated 12-01-2010; and then by the Hon'ble Supreme Court of Pakistan vide judgment dated 28.02.2014 passed in Civil Petition No.76-K of 2014.

3. In view of the above decree of the civil court in respect of the subject land in favor of the respondent No.10 and against the Market Committee maintained uptill the Hon'ble Supreme Court of Pakistan, we asked learned counsel for the petitioners to satisfy this court concerning the maintainability of this petition, inasmuch as the petitioners claim plots in the same land through the Market Committee. Learned counsel for the petitioners replied that the decree was obtained by fraud, was without jurisdiction and the right had already been accrued in favor of the petitioners being lawful allottees of the subject shops, thus they could not be deprived of possession of the subject shops under the law.

4. We do not agree with the assertion of petitioners on the aforesaid proposition. The fact of the matter remains that a decree in respect of the subject land subsists in favor of the respondent No.10. The contention of the petitioners that said decree was obtained fraudulently or was without jurisdiction, cannot be examined by us under the garb of a petition brought against alleged encroachment, especially when said decree is not even assailed before us. It is clear that the writ sought in this petition is essentially to set at naught the aforesaid decree of the civil court.

5. In fact, the record filed by the respondent No.10 shows that after filing the instant petition, the petitioners have realized that their remedy is not by way of the instant petition, and in the year 2019/2020 some of the petitioners filed an application under section 12(2) CPC before the civil court which had passed said decree. Although such application was dismissed by the civil court by an order dated 21-03-2020, nonetheless, in our view, that was the prescribed legal course available. Those petitioners who had not taken the same course are free to do so subject to all just legal exceptions.

6. In view of the above discussed legal position, and since some of the petitioners have already availed the remedy prescribed by law against the decree in question, this petition is found to be entirely misconceived which is accordingly dismissed.

JUDGE

JUDGE

Sajjad Ali Jessar