

ORDER SHEET  
**HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD**

***Before:-***

**Mr. Justice Nadeem Akhtar**

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

**C.P. No.D-1807 of 2012**

*[Mirza Fayyaz Ahmed versus Government of Sindh & Ors]*

**C.P.No.D-99 of 2013**

*[Ghulam Muhammad vs. Province of Sindh & Ors]*

**C.P No.D-1569 of 2014**

*[Mst. Hamida Begum & another vs. Government of Sindh & Ors]*

**C.P. No.D-666 of 2016**

*[Ghulam Murshid vs. Province of Sindh & Ors]*

**C.P. No.D-1706 of 2016**

*[Muhammad Aslam & Ors vs. Province of Sindh & Ors]*

**C.P. No.D-964 of 2017**

*[Maudood Ahmed Ansari vs. Province of Sindh & Ors]*

**C.P No.D-86 of 2020**

*[Ghulam Rasool Abbasi vs. Province of Sindh & Ors]*

**C.P No.D-292 of 2020**

*[Ghulam Rasool vs .Province of Sindh & Ors]*

**C.P. No.D-1235 of 2020**

*[Nisar Ahmed vs. Province of Sindh & Ors]*

**C.P No.D-1453 of 2020**

*[Mst. Bachu Bibi vs. Province of Sindh & Ors]*

**C.P No.D-14 of 2021**

*[Mst. Uzma Umar & Ors vs. Province of Sindh & Ors]*

**C.P No.D-518 of 2021**

*[Ghulam Murtaza & Ors. Province of Sindh & Ors]*

**C.P. No.D-629 of 2021**

*[Allah Bux & Ors vs. Province of Sindh & Ors]*

**C.P. No.D-951 of 2021**

*[Ghulam Shah Jamali vs. Province of Sindh & Ors]*

**C.P. No.D-1184 of 2021**

*[Siddique Khan vs. Province of Sindh & Ors]*

**C.P No.D-1466 of 2021**

*[Asghar Ali & Ors vs. Province of Sindh & Ors]*

**Date of hearing & Order:**

**17.11.2021**

None present for petitioners in C.Ps No.D-1807/2012, 99/2013, 666/2016, 1706/2016, 86/2020, 1235/2020, 1453/2020, 14/2021, 518/2021, 951/2021

Mr. Muhammad Ali advocate holds brief for petitioners' counsel in C.P No.D-1569/2014

Mr. Fida Hussain Mastoi advocate holds brief for petitioner's counsel in C.P No.D-964/2017

Petitioners present in person in C.P No.D-292/2020 & 1184/2021

Mr. Imdad Ali Dahri, advocate for petitioners in C.P No.D-629/2021

Mr. Waqar Memon advocate holds brief for petitioner's counsel in C.P No.D-1466/2021

Mr. Rafique Ahmed Dahri, Assistant A.G Sindh

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**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** The above-referred Constitutional Petitions are being disposed of by this common order as the issue raised therein is similar.

2. Petitioners in all the petitions have mainly prayed for a direction to Mukhtiarkar / Revenue Officer(s) concerned to demarcate their respective lands, mutate the revenue entries in their record of rights, issue sale certificate(s), and change the foti khata in their respective names.

3. At the very outset we asked the learned counsel for the parties to satisfy the Court about the maintainability of the captioned petitions, as the appropriate remedy, for the relief(s) sought by them through these petitions, is available to them before the revenue hierarchy under the Land Revenue Act, 1967, and the Rules framed there-under.

4. In reply to the aforesaid query, learned counsel for the petitioners, argued that though the petitioners have moved various applications to the competent authority of Revenue Department for redressal of their grievances, but all their efforts went in vein, as the official respondents/revenue authorities turned deaf ear to the petitioners'

grievances, which has compelled them to approach this Court directly and without waiting for the outcome of their respective applications.

5. Mr. Rafique Ahmed Dahri, learned Assistant A.G Sindh, argued that it is the prime duty of revenue hierarchy to ascertain the entitlement of the person seeking aforesaid relief(s) by verifying the legality and genuineness or otherwise of ownership documents, possession, etc., or dispute if any ; and, if the case of each of the petitioners is genuine only then the Mukhtiarkar concerned and/or Director Settlement Survey and Land Records, as the case may be, is required to exercise the powers under the Land Revenue Act and the Rules framed there-under. He emphasized that the parties have to first approach the revenue authorities for the aforesaid purpose and not this Court. However, he agreed for the disposal of these petitions on the premise that if the petitioners have already approached the Revenue Officers concerned as discussed supra, then concerned officer/official of Revenue Department may be directed to do the needful under the law within a reasonable time.

6. This Court has already settled the question involved in these petitions in C.P. No. D- 1578 of 2017 along with connected petitions vide common order dated 26.11.2019. The operative part of the order is reproduced as under:

“11. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court / forum exercises jurisdiction strictly in accordance with law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons / cases falling under the former category will certainly be jeopardized.

12. Another shocking yet unfortunately common example of petitions alleging harassment is allegations against Government officials, such as officials of Revenue Departments. The allegations in such cases inter alia are, at the instance of private party; demarcation of land is not being done or mutation is not being effected ; etc. Such frivolous and ill-advised petitions are filed directly before this Court despite the fact that the remedies of the acts complained of lie with the Revenue authorities. There is a misconception and trend that in any of the situations discussed above Article 199 of the Constitution can be invoked without availing and exhausting the remedy provided by law, on the ground of violation of fundamental rights guaranteed by the Constitution. Thus, these types of petitions are one of the major causes of delay in the decision of cases and delivering judgments or recording reasons.

13. Since applications for demarcation filed by some of the petitioners are admittedly pending before the competent authority and such authority has failed to exercise the jurisdiction vested in it by law, Senior Member Board of Revenue Sindh is directed to depute Mukhtiarkar / Revenue officer for the area concerned, who shall hold an inquiry regarding the legality and genuineness or otherwise of the petitioners' ownership documents, possession, etc., or dispute / litigation, if any, and then to complete the exercise of demarcation of their land subject to their entitlement strictly in accordance with Rule 67-A and Section 117 *ibid*, as amended up to date within thirty (30) days of receipt of their application. The above exercise shall be carried out by the Mukhtiarkar concerned with the assistance of Settlement Survey and Land Record Department. However, if the application for demarcation filed by any of the petitioners is rejected for any reason, the reasons of such rejection must be recorded in writing by the Mukhtiarkar concerned after providing opportunity of hearing to all concerned within a period of one month from the date of receipt of this order.

14. Petitioners who have not availed the remedy in accordance with law before approaching this Court, may avail their remedy by filing proper applications before the competent authority along with supporting documents, which shall be decided in terms of the direction contained in paragraph 13 *supra*. Regarding the cases wherein factual disputes are involved, needless to say that such parties may approach the competent civil court for redressal of their grievance in accordance with law.

15. As the petitioners have not been able to convince us that they have availed / exhausted their remedy in accordance with law before filing these petitions, office is directed not to entertain such petitions for measurement / demarcation / partition / mutation of land wherein (a) petitioner has not approached the competent forum in accordance with law ; (b) petitioner's application for such purpose is pending before the competent forum ; and/or (c) any factual controversy with regard to the subject land and/or khatedars is involved, or any litigation in respect thereof is sub judice before any forum.

16. All the captioned petitions stand disposed of in the above terms along with pending application(s) with no order as to costs. Let notice be issued to 6 Senior Member Board of Revenue Sindh, Mukhtiarkars concerned and Director, Settlement Survey and Land Record for compliance."

7. Before going ahead, we are surprised rather shocked when came to know that still the petitions of similar nature are being poured before this Court, although we passed strict order in the aforesaid proceedings by directing the competent authority of revenue department to redress the grievances of the petitioners at the first instance, however, they have completely failed and neglected the directives of this Court contained in the above order, leaving the petitioners to approach this Court. Primarily this is not the function of this Court to look into the matters of demarcation, mutation, foti khata Badal and issuance of sale certificate, which is the primary duty of the Revenue officer under the Land Revenue Act and Rules framed there-under.

8. In principle these petitions do not fall within the ambit of Article 199 of the Constitution; however, keeping in view their pendency since 2012, we are inclined accept the proposal of learned AAG, which seems to be reasonable. Resultantly, if the petitioners have already filed their respective applications and/or may file applications for the aforesaid relief(s) within two weeks, such applications shall be decided by the competent authority of the Revenue Department through speaking order, strictly under the law, by providing the opportunity of hearing to all concerned, within one month from the date of receipt of this order. However, it is made clear that if the competent authority of the Revenue Department fails to pass any order on the applications of petitioners, within the stipulated time, strict punitive action shall be taken against the delinquent officer/official.

9. All the captioned petitions stand disposed of in the above terms along with the pending application(s) with no order as to costs. Let notice be issued to Senior Member Board of Revenue Sindh, Mukhtiarkars concerned and Director, Settlement Survey and Land Record for compliance.

JUDGE

JUDGE

Sajjad Ali Jessar