

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Civil Revision No.S-06 of 2010
Civil Revision No.S-07 of 2010
Civil Revision No.S-08 of 2010
Civil Revision No.S-09 of 2010**

Date of Hearing: **11-02-2022**
Date of Decision: **11-02-2022**

None present on behalf of the Applicants in all matters.
Mr. Ahmed Ali Shahani, Assistant A.G-Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through these Civil Revisions, the applicants have impugned Judgment(s) dated 26.11.2000, passed by learned District Judge, Ghotki in Civil Appeals No. Nil of 2009, (though independent / separate; but identical) filed by the Applicants in all four matters, whereby, the Civil Appeals have been dismissed as time barred and Judgment(s) dated 24.06.2009, passed by Senior Civil Judge, Ghotki in F.C Suits No.13, 14, 15 and 16 of 2006, have been maintained, through which the Suits of the Applicants were dismissed.

2. None is in attendance on behalf of the Applicants; whereas, these are date by Court matters. On the last date of hearing, Counsel for the Applicants was in attendance, but today he is called absent without any intimation; whereas, these matters pertain to year 2010, therefore, same are being decided on the basis of available record and with the assistance of learned Assistant A.G.

3. I have heard learned Assistant A.G and perused the record.

4. It appears that the Applicants had filed Civil Suits for declaration and injunction in respect of the Suit lands and the precise arguments and contention of the Applicants were to the effect that they owned land pursuant to grant of the same by the Colonization Officer, Guddu Barrage; whereas, revenue entries were also entered in their names. Written statements were filed and the learned Trial Court settled the following issues:

“1. Whether the suit is maintainable?”

2. Whether the plaintiff was legally granted the land by a competent authority so is owner of the same?

3. Whether the plaintiff is entitled for any relief claimed?

4. What should the decree be?

5. Thereafter, the Trial Court came to the conclusion that Suits are liable to be dismissed as no case is made out. In Civil Appeals, the Appellate Court has dismissed the same on the ground of limitation as the Civil Appeals were time barred. However, it would be appropriate if the matters are decided by this Court on merits and for that it would be advantageous to refer to the findings of the learned Trial Court in respect of issue No.2, which reads as under:

“Issue No. 2.

This issue has been framed from the pleadings of the plaintiff and burden to prove this issue is lies upon the plaintiff. In this respect the plaintiff has produced certified copy of form VII-B of Deh Malhir, which shows the suit land was granted to the plaintiff on the orders of Colonization Officer, Gudu Barrage Sukkur and also T.O Form was issued in favour of plaintiff. The plaintiff has also produced the land revenue receipts in support his contention the plaintiff is in possession and his paying land revenue taxes to the Government being owner of the land. Learned Advocate for the plaintiff has argued that still revenue record is intact in favour of plaintiff and competent authority has not cancelled such entries from the revenue record. In this regard the defendant No: 1 has produced the photo copy of notification of Bombay Government Gazette April 28-1887 and prayed that the suit land is forest land and it is not estate land and its grant to the plaintiff on the Harap basis by Colonization officer Gudu Barrage Sukkur, without no objection on the forest Department is illegal. Learned DDA has argued that the than Commissioner Sukkur Mr. Nisar Ahmed Siddique has cancelled such entries from the record and declared such grant as illegal and Mukhtiarkar Estate Ghotki has produced such order in his evidence.

In this case the plaintiff has claimed that the suit land is estate land and was rightly granted to him by the competent authority. On the other hand the forest Department is claimed that the grant is illegal as the suit land is reserved for forest which is property of Forest department. In order resolve this controversy between the parties this court has examined the Mukhtiarkar Estate Ghotki as court witness and he produced revenue record and deposed that suit land is land is forest land and it is not estate land. The concerned para of deposition of Mukhtiarkar Estate Ghotki is reproduced as under:-

I have verified the record it reveals the suit land is not belongs to estate Department/ Revenue and said suit land is belongs to forest Department, which is graveyard. Our record shows the Colonization officer Guddu Barrage Sukkur sent a slip to the A.C.O Ghotki in which the names of applicants to whom land was granted under the policy 1989 under the orders of Chief Minister of Sindh, and on the basis of such slip of C.O-Sukkur the “A” form was issued. The then A.C.O Ghotki has places such note with Red Ink on the form “A”. I produced photo stat copy attested copy of form “A” at Exh: No: 57. Original produced in the court seen and return. On the basis of form “A” the plaintiff paid entire installments and T.O form was issued and on the basis of such T.O form the revenue record was maintained on the name of plaintiff.

The original slip/order of C.O Sukkur is not available on record only photo copy of said slip is available on record. I produce photo copy of such slips C.O Sukkur at Exh: No: 58. We have verified our record minutely which clearly shows the suit land is not belongs to Revenue Department and it was illegally granted to the plaintiff by the then Revenue officers. The suit property is not comes within the schedule of Revenue record. The E.D.O (R) Ghotki at Mirpur Mathelo had cancelled the such grant of plaintiff and plaintiff challenge the order of E.D.O (Revenue) before Commissioner Sukkur, who set-a-side the suo motto order of E.D.O (R) Ghotki vide his order dated 03.06.1998. The order of Commissioner Sukkur is not available in our office. Prior to order dated 3.6.1998 of Commissioner Sukkur, another order dated 15.2.1994 was passed by the then Commissioner Sukkur Mr. Nisar Ahmed Siddiquei, in which he has held that the C.O has illegally without lawful authority granted land to the respondents, who are plaintiff in this case, and the Commissioner has cancelled such grant and installments which were accepted by the grantees was order to return to them. I produce photo copy of order dated: 15.2.1994, of Commissioner Sukkur at Exh: No: 59. The suit land is not estate land it is forest land and there is graveyard / Muqam in this suit land.

From the above evidence of Mukhtiarkar Estate Ghotki it reveals that the suit land is not estate land is it was illegally granted by C.O Gudu Barrage Sukkur to the plaintiff and such grant has been cancelled by the then Commissioner Sukkur Mr. Nisar Ahmed Siddiquei vide his order dated 15-02-1994. At this stage it is necessary to reproduce the operating para of order of Commissioner Sukkur dated 15-02-1994 which is as under:-

I have verified the revenue record. It is a fact that the land is shown in the record as 'Muqam/Grave Yard. I have also scrutinized the record of Assistant Colonization Officer, Ghotki and Colonization Officer, Guddu Barrage, Sukkur. There are no orders of the Chief Minister Sindh what-so-ever requiring the Colonization Officer to grant the land in question to the respondents and issue T.O. Form to them relaxing all the terms and conditions. According to the record, Colonization Officer, Guddu Barrage, issued a slip to the Assistant Colonization Officer, Ghotki. The slip is as under:-

Names of applicants to be granted land in relaxation of Land Grant Policy, 1989 order of Chief Minister of Sindh in Taluka Ghotki.

DEH MALHIR.

1. Amjad Ali S/O Nisar Ahmed.
2. Majid Ali S/O Nisar Ahmed.
3. Zubair Ahmed S/O Nisar Ahmed.
4. Zaid Ahmed S/O Nisar Ahmed.

The perusal of the above slip amply reveals that there is no order of the Chief Minister Sindh. The date and No. of the order has not been mentioned by the Colonization Officer. Simply a list has been forwarded by the Colonization Officer, to the Assistant Colonization Officer, Ghotki. This list does not specify which condition is to be relaxed. It is not known in which year the orders were made. Who was the Chief Minister.

The list forwarded by Colonization Officer, Gudu Barrage, is quite silent. So, it is quite clear that there were no orders of the Chief Minister. The list issued by Colonization Officer, Gudu Barrage, is totally result of malpractice in which the Colonization Officer, has indulged into.

Even if there were any orders issued by the Chief Minister Sindh, it was obligatory for the colonization Officer to have submitted a summary through proper channel to the chief Minister Sindh as required by the Chief Minister, Sindh Secretariat letter No. PS-Secretary/CMS/91/1686 dated 17-7-1991. It appears that the Colonization Officer, has not submitted any summary in these cases.

In view of the above discussion, I am of the firm opinion that these were absolutely no orders of the Chief Minister Sindh requiring the Colonization Officer, to grant land to the respondents in relaxation of the Land Grant Policy. No such order of the Chief Minister Sindh is available in the office of the Colonization Officer or Assistant Colonization Officer, Ghotki. The Colonization Officer while issuing A-Form and T.O. Form has failed to mention the No: and date of Chief Minister's order if any. The respondents have also failed to produce such order. The

land was not available for agricultural purposes. It is a 'Muqam/Grave Yard'. The Colonization Officer, has not observed procedure for grant of land prescribed under the rules. The respondents are not haris. Even their ages and residence are not shown in the A-Form. The Colonization Officer, has therefore acted illegally and without lawful authority in granting the land to the respondents. His order is null and void and is hereby cancelled. The installments accepted from the respondents may be refunded to them.

ANNOUNCED.

Sd/- 15-02-1994

(NISAR AHMED SIDDIQUI)

COMMISSIONER SUKKUR DIVISION.

From the bear reading of said order it reveals that the alleged grant order of land was already cancelled by the Commissioner Sukkur vide order dated 15-02-1994, by declaring that the suit land is grave yard/Muqam and also declared that Colonization Officer acted illegally and without lawful authority in granting the land to the respondents and his order is null and void and the grant of land was cancelled by directing the installments accepted from the respondents may be refunded to them.

The production of copy of notification of Bombay Government Gazette April 28-1887, by the defendant NO: 1 also shows that suit land is forest land and it was reserved for forest. It is admitted fact that without consent of forest department the forest land was granted to the plaintiff under Land grant policy 1989 by violating the mandatory requirement of law which makes the grant of land as illegal.

Regarding the question whether the Chief Minister has granted suit land to plaintiff under Land grant policy 1989 is concerned, the evidence of Mukhtiarkar estate and order dated 15-02-1994 of Commissioner Sukkur Division is very much clear that no any order of Chief Minister Sindh is received by the Colonization Officer Gudu Barrage Sukkur regarding the grant of state land from schedule to the plaintiff nor any summary through proper channel to the chief Minister Sindh as required by the Chief Minister, Sindh Secretariat letter No. PS-Secretary/CMS/91/1686 dated 17-7-1991 has been moved. According to section 10(1) of Colonization of Government Lands Act, "the allotment shall be made after taking into consideration objection if any raised in respect of the applicant" and sub-section 2 of said section says that application received on the day of Kachery shall be entertained and disposed of in the Kachery after observing the prescribed formalities". But in case in hand neither the plaintiff applied for the grant of land to competent authority in Kachery as required by law nor he produced the alleged grant order of the Chief Minister Sindh which proves that the alleged grant was granted illegally by violating the mandatory requirement of law.

Learned DDA submitted order dated 28-11-2000 passed in CP-D 171 of 2000, Re Muhammad Aslam VS Qadir Bux by Honourable High Court of Sindh bench at Sukkur, wherein it is held as under:-

The record reveals that initially the grant was granted to petitioner under the orders of the then Chief Minister, in relation to the land grant policy on Harap rights in disregard of statutes and deprived the actual Haries of their legitimate rights of their grant of land. The Chief Minister was neither competent nor empowered to pass such order.

The upshot of the above discussion is that the petition merits no consideration. Dismissed with no order as to costs along with listed application.

SD/-

Muhammad Roshan Essani

Judge

SD/-
Muhammad Ashraf Leghari
Judge

In view of above discussion, it is proved that the Chief Minister was neither competent nor empowered to pass such order for grant of land under Land grant policy 1989 by relaxation the rules. And also in this case it is proved the suit land is grave yard/Muqam and said land is forest land and grant of land to the plaintiff is illegal, void, and said grant was already cancelled by the Commissioner Sukkur Division vide order dated 15-02-1994. So it is proved that plaintiff was not legally granted the land by the competent authority and he is not owner of suit land being his Qabuli Land. Therefore, result of under discussion point is not proved.”

6. Perusal of aforesaid findings of learned Trial Court reflects that the Applicants had failed to establish the very grant of the land, as they had claimed that the said land was granted pursuant to directions of the then Chief Minister. Besides the fact that they miserably failed to prove such grant by the then Chief Minister, even otherwise, in law the Chief Minister has no authority to grant land to anyone¹, which according to Colonization Act has to be granted in accordance with the procedure laid down in Section 10 *ibid*. It further appears that the said grant had already been cancelled by the then Commissioner, Sukkur, wherein it has come on record that even there is no record available as to the very grant of the land by the Chief Minister. The Applicants have miserably failed to establish their case and therefore, learned Trial Court has correctly dismissed the Civil Suits of the Applicants.

7. In view of hereinabove facts and circumstances of the case, notwithstanding that the Civil Appeals filed by the Applicants were time barred, but even on merits they do not have any case. Hence, these Civil Revisions are hereby dismissed. ***Office to place a signed copy of this order in captioned connected matters.***

J U D G E

Ahmad

¹ American International School System v Mian Muhammad Ramzan (2015 SCMR 1449)