

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 1208 of 2019 : Syed Nasir Ali vs.
Province of Sindh & Others

For the Petitioner : Mr. Abdul Aziz Abro, Advocate
Mr. M. Ishaq Ali, Advocate

For the Respondents : Mr. Jawad Dero,
Additional Advocate General Sindh
Mr. Zubair Hashmi, Advocate

Dates of hearing : 11.03.2021 & 12.03.2021

Date of announcement : 12.03.2021

ORDER

Agha Faisal, J. The petitioner has impugned a notice dated 25.05.2019 (“Impugned Notice”), admittedly issued to a third party not impleaded herein, seeking removal of encroachment, upon land appurtenant to the Pakistan Security Printing Corporation Limited, under the provisions of the Sindh Public Property (Removal of Encroachment) Act 2010 (“Act”).

2. At the very onset, the petitioner’s counsel was confronted with the issue of maintainability¹; *inter alia* as the Impugned Notice was admittedly not issued to the petitioner, hence, the *locus standi* of the petitioner to prefer this petition remained questionable; there was no manifest record of the Impugned Notice having been assailed before the statutorily designated forum in the manner required and no rationale was set forth for this court to assume the jurisdiction of a statutorily designated forum in its writ jurisdiction.

3. The petitioner’s counsel was unable to articulate any grounds for this petition to be maintained and instead sought to seek recognition of the petitioner’s title in respect of the property under consideration; notwithstanding the manifest fact that the title of the asserted predecessor in interest of the petitioner, to whom the Impugned Notice was addressed, had been rejected by a court of competent jurisdiction, as denoted in the Impugned Order itself.

While this Court was in the process of rendering appropriate orders herein, the petitioner’s counsel sought permission to seek instructions from the

¹ Framed at the very first date of hearing herein; being 22.02.2019.

petitioner in order to enable him to withdraw this petition and seek appropriate remedy in accordance with the law. As an indulgence the request was acceded to and the matter was adjourned to today. However, in a complete departure from the previous date, another counsel appeared and sought to re argue the petition in its entirety. We were constrained to deny such permission as the adjournment sought was for a specific purpose and there was no cause to perpetuate this petition, pending with objections of maintainability and subsisting stay orders, since 2019.

4. The Impugned Notice was issued pursuant to the Act, which is a special law to deal with the issue of encroachments, and contains a specific mechanism² to dispute notices issued there under. No case was ever set forth before us to demonstrate whether the dispute resolution mechanism was availed by the person to whom the Impugned Notice was addressed.

5. The Act has also constituted a tribunal³ vested with exclusive jurisdiction to adjudicate upon a dispute that any property is not a public property or that any lease or license in respect of such public property has not been determined for the purpose of the Act. Petitioner's counsel was unable to articulate as to why the writ jurisdiction of this court had been invoked in the manifest presence of a tribunal vested with exclusive jurisdiction to determine disputes with respect to such property.

6. It is imperative to reiterate that the Impugned Notice was not issued to the petitioner and he merely claims to be a successor in interest, predicated upon unauthenticated documentation, of the person to whom the Impugned Notice was addressed. It is trite law that exercise of power, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person⁴. The petitioner's counsel failed to make any case before us to qualify the petitioner within the definition of an aggrieved person⁵. Even otherwise delving into the determination of title to immovable property is an endeavor requiring factual inquiry / evidence and such adjudication is unmerited in the writ jurisdiction of this Court.

² 4. (1) Any person dissatisfied by the order passed under sub-section (1) of section 3 may, within three days from the service thereof, prefer a review petition to Government or any authority or officer who has passed such order. (2) Government or, as the case may be, the authority or officer as aforesaid may, after perusing the review petition filed under sub-section(1) and giving an opportunity to the petitioner or his duly authorized agent of being heard, confirm, modify or vacate the order within fifteen days on receipt of petition.

³ 13. A Tribunal shall have exclusive jurisdiction to adjudicate upon a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined for the purpose of this Act.

⁴ Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

⁵ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.

7. In view of the reasoning and rationale herein contained, we are of the considered view that this petition is misconceived and the petitioner's counsel has failed to set forth a case for the exercise of extra ordinary writ jurisdiction by this Court, hence, this petition, along with pending application/s, is hereby dismissed.

JUDGE

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