

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No.26 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of main case

02.03.2020

Mr. Arbab Ali Hakro, advocate for applicants

Mr. Saleemuddin A. Patoli, advocate for respondent No.9 a/w
Muhammad Aatif, attorney of respondent No.9

Mr. Muhammad Humayoon Khan, DAG

Mr. Wali Muhammad Jamari, Assistant A.G Sindh a/w Sohail
Anwar, A.C Sanghar

Heard all the learned counsel for the Parties at some length.

On last date of hearing a question was framed. Relevant portion of the Order dated 24-2-2020 is reproduced as under_

“Matter is partly heard. Besides other issues a very important matter of public importance is involved in this Revision; on a specific query, learned counsel for Respondent No.9 states that he got the land in question after due process of law at the rate of Rs.300/- per acre. Respondent No.9 claims to have got the land under `Defence Quota` admeasuring 160-00 acres. On the next date of hearing, learned A.A.G. will assist the Court firstly on the parameters of this Defence Quota. A first question which comes to mind is that this Defence Quota must have been based on a criteria that a person or a beneficiary of this Defence Quota must have performed any act of gallantry or bravery for the State of Pakistan. Learned D.A.G. shall be in attendance along with the entire record about `Defence Quota` and this Court while hearing this Revision will also look into the criteria and basis of this Defence Quota. Learned A.A.G. is directed to call Deputy Commissioner concerned along with the record of land in question to ascertain whether the land when was purchased by the present Applicants from its previous owners, were in their names in the official record or not.”

2. Learned DAG in pursuance of the above Order has filed documents to show that the land in question – having Survey numbers 150/9 to 16 measuring 08 acres, 150/1 to 8 measuring 08 acres, 113/3 to 4 measuring 08-acres, 132/1 to 4 measuring 16 acres, 151/1 to 4 measuring 16 acres, 114/2, 3 measuring 08 acres, 113/1 measuring 04 acres, 152/1, 3 measuring 08 acres, 114/1, 4 measuring 08 acres, 113/1 to 16 measuring 16 acres, 131/1 to 16 measuring 16 acres and 134/1 to 16 measuring 16 acres - was allotted (as claimed) to Respondent No.9 way back on 28.02.1969 and final approval for T.O form was issued vide a correspondence of 25.08.2003. These documents are taken on record.

3. Mr. Arbab Hakro, Advocate, has stated that both the Orders of learned Trial Court and the Appellate Court are not within the parameters of law, *inter alia*, because question of title has to be ascertained by the Civil Court in terms of Section 53 of the Sindh Land Revenue Act, 1967, and the jurisdiction is not vested in the official Respondents / revenue hierarchy.

4. The above contention was controverted by the learned Counsel for Respondents. Main line of arguments adopted by learned DAG, who was on Court notice, and supported by counsel for private Respondent No.9 (purported beneficiary of the subject property) as well as learned Assistant A.G Sindh, is that after following codal formalities, Provincial Governments all over Pakistan allocate a large piece of land and transfer it to Federal Government, Ministry of Defence, for making allotments to eligible servicemen (armed forces personnel). Similarly, due process has been followed in the present case as well. This contention is vehemently opposed by learned counsel for the Applicants. However, this Civil Revision Application is disposed of by following consent order:

- (i) Both the impugned Decisions dated 27-3-2019 and 14-1-2020 of learned Trial Court as well as Appellate Court, respectively are set aside.
- (ii) In view of the above, the Report dated 19.02.2018, Annexure-F (available at page 95 of the Court file) submitted by Mukhtiarkar Sanghar/Respondent No.4 to Deputy Commissioner Sanghar/Respondent No.2, in which the entries of predecessor-in-interest of present Applicants were cancelled, is also set aside.
- (iii) It is pointed out that in the intervening period the above Deputy Commissioner has submitted a request to Commissioner, vide correspondence of 03.05.2018 for initiating Suo Moto action under Section 164 of Sindh Land Revenue Act, 1967, in respect of the subject property, but no decision in this Suo Moto proceeding has been handed down so far and it is stated at Bar by learned DAG as well as learned AAG that the proceeding is still pending; therefore, the Commissioner Nawabshah – Respondent No.10 will issue notice(s) to all the parties concerned, that is, present Applicants and Respondent No.9 and any other official(s) including MFRO (Military Family Rehabilitation Organisation), in order to adjudicate the dispute amongst the parties effectively and completely.

- (iv) To avoid any confusion the parties shall appear before the Commissioner/Respondent No.10 on 10.03.2020, who shall ensure that all the parties are heard and fair opportunity is given to them for presenting their case. Since a serious question of jurisdiction is raised, therefore, **Respondent No.10/Commissioner shall first decide the jurisdiction of the proceeding** before him.
- (v) The decision by the Commissioner preferably be given within six (06) weeks from today.
- (vi) Any party aggrieved of the order can avail the remedy in accordance with law.
- (vii) It is expected that the Commissioner while deciding the matter will minutely scrutinize the fact about allocation of subject property to Applicants as well as Respondent No.9 and the applicability of Defence Quota to the dispute in question.
- (viii) Till the decision is given by Respondent No.10/Commissioner, parties are directed to maintain the Status Quo and physical possession of the Applicants in respect of the subject property shall not be disturbed.
- (ix) In view of the above, suit proceeding in F.C. Suit No. 28 of 2018, instituted by present Applicants has become infructuous.

5. This Civil Revision Petition stands disposed of in the above terms.

JUDGE

Sajjad Ali Jessar