

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

Present:

Mr. Justice Adnan-ul-Karim Memon.

Mr. Justice Adnan Iqbal Chaudhry.

C.P. No. D - 1835 of 2019 Faraz Hussain Memon versus
Province of Sindh and others.

C.P. No. D - 1666 of 2019 Nanjo Mal and another versus
Province of Sindh and others.

C.P. No. D - 2350 of 2019 Mohan Lal versus Province of Sindh
and others.

For the Petitioners Mr. Faizan Hussain Memon,
Advocate, in C.P. No. D- 1835 of 2019.

Mr. Muhammad Arshad Pathan,
Advocate, in C.P. No. D- 1666 of 2019.

Mr. Noor-ul-Haq Qureshi, Advocate,
in C.P. No. D- 2350 of 2019.

For the Respondents Mr. Rafique Ahmed Dahri, A.A.G.
Sindh for Respondents 1 to 4 in C.P.
No. D - 1835 of 2019, Respondents 1 to
6 in C.P. No. D - 1666 of 2019 and for
Respondents 1 to 5 in C.P. No. D -
2350 of 2019.

Mr. Muhammad Arshad Pathan,
Advocate, for Respondents 5 and 6 in
C.P. No. D - 1835 of 2019.

Mr. Noor-ul-Haq Qureshi, Advocate,
for Respondent No.7 in C.P. No. D -
1835 of 2019.

Mr. Faizan Hussain Memon,
Advocate, for Respondent No. 7 in
C.P. No. D-1666/2019 and Respondent
No.6 in C.P. No. D - 2350 of 2019.

Date of hearing : 02-11-2021

JUDGMENT

Adnan Iqbal Chaudhry J. - These three petitions were heard together and are being decided together as the issues involved are overlapping.

Facts of C.P. No. D-1666/2019:

1. The petitioners, Nanjo Mal and Jumo Meghwar impugned notice dated 14-05-2019 issued by the Assistant Commissioner Diplo calling upon Jumo Meghwar to justify his possession of Government land. Since the impugned notice is not addressed to Nanjo Mal, he is not an aggrieved person. The petition is therefore entertained only for Jumo Meghwar. The impugned notice was issued on the complaint of one Faraz Hussain Memon, who is the petitioner in the connected C.P. No. D-1835/2019, and who was subsequently added as a respondent to this petition vide order dated 16-01-2020.

2. The petitioner contends that the impugned notice is harassment as the land under his occupation is part of land granted by the Deputy Commissioner Tharparkar by letter of grant dated 28-08-1978 for the dwellings of the Meghwar community. The Petitioner seeks a writ against his dispossession.

3. The aforesaid letter of grant dated 28-08-1978 reads that an area of 4-0 acres is sanctioned to Nanjo s/o Bijal and other Meghwars in the north of Diplo Town for pad purposes, and that the grantees would be liable to pay malkano. As per the statement dated 10-01-2020 filed by the Mukhtiarkar (Revenue) Diplo, said letter of grant is not part of the revenue record nor supported by any entry in the record of rights. However, the position on the ground as reported by the Mukhtiarkar is as follows:

"During the visit of the area, the field staff pointed out an area approximately admeasuring 05-00 acres, called as Nanjo Meghwar North Colony. As per the information taken by the field staff, it was known that the petitioners are residing and contend about the same colony. Nanjo Meghwar North Colony is a part of Junejo Muhalla, located in the Northern part of the Diplo Town. Nanjo Meghwar North Colony comprises upon approximately 50 to 60 houses. In the vicinity of that colony there also

exists a congested population living in houses without having any entitlement document. They have also settled there under the claim that the areas are part of Katchi Abadis in Diplo Town. Further, Department of Katchi Abadi (Director General) can through light if they have allotted or approved the land under some Katchi Abadi Scheme. As per record of Revenue these settlements are existing over Government /Estate Lands."

Facts of C.P. No. D-1835/2019:

4. The petition has been filed in the public interest by Faraz Hussain Memon. He claims to be owner of a commercial plot on Diplo-Mithi Road, Tharparkar and alleges that in his vicinity Jumo Meghwar, Bhooro Mal and Mohan Lal (respondents 5 to 7) have unlawfully occupied public land and have raised construction thereupon; that though notice dated 14-05-2019 was issued by the Assistant Commissioner to Jumo Meghwar (the notice impugned in C.P. No. D-1666/2019), but no further action was taken against him; and that since Bhooro Mal and Mohan Lal are public servants and are politically connected, the authorities are hesitant to retrieve public land from them. The petitioner therefore seeks a writ to the Deputy Commissioner Tharparkar and the Assistant Commissioner Diplo to evict Jumo Meghwar, Bhooro Mal and Mohan Lal from public property in exercise of powers under the Sindh Public Property (Removal of Encroachment) Act, 2010.

5. By order dated 11-07-2019, the Deputy Commissioner Tharparkar was required to probe into the aforesaid allegation and to submit a report. The first report submitted by the Mukhtiarkar Diplo, the Deputy Commissioner Tharparkar and the Assistant Commissioner Diplo was that the respondents 5 to 7 had encroached and constructed upon Government land. There was however a second report narrated *infra*.

6. The reply submitted by Jumo Meghwar, Bhooro Mal and Mohan Lal (respondents 5 to 7) was that the land in their occupation was in a katchi abadi so declared by notification dated 02-12-1991 issued under the Sindh Katchi Abadis Act, 1987; and that such katchi abadi consists of dwellings of the Hindu community since long. In

response to that, the Mukhtiarkar Diplo, the Deputy Commissioner Tharparkar and the Assistant Commissioner Diplo filed a second report to state that they had verified that the notification dated 02-12-1991 had in fact been issued by the Sindh Katchi Abadis Authority as affirmed by letter dated 08-10-2019 issued by the Director of said Authority, which in turn stated that settlements declared as katchi abadis under said notification were in process of regularization.

Facts of C.P. No. D-2350/2019:

7. This petition is by Mohan Lal who claims to be Chairman Town Committee Diplo and who is the respondent No.7 in C.P. No. D-1835/2019 wherein, as narrated above, it is alleged that he is in unlawful possession of Government land. After perusing the first report submitted by revenue officers in C.P. No. D-1835/2019, this Court by order dated 17-09-2019 called upon revenue officers to explain why action had not been taken against encroachers. Thereafter the Assistant Commissioner Diplo proceeded to issue notice dated 23-09-2019 to Mohan Lal to remove unauthorized construction on Government land, which then formed the cause of action of the instant petition. The impugned notice dated 23-09-2019 was apparently issued before the revenue officers had verified the notification dated 02-12-1991 issued by the Sindh Katchi Abadis Authority discussed above.

8. In his petition, Mohan Lal contends that the greater part of Diplo Town is a katchi abadi which was declared as such by notification dated 02-12-1991 issued under the Sindh Katchi Abadis Act, 1987; that by office order dated 04-01-2010, the Sindh Katchi Abadi Authority had initiated the process for regularizing the katchi abadi which has still not concluded; and that his house too was in such katchi abadi and eligible for regularization under said Act. The petition prays for a declaration that pursuant to the notification dated 02-12-1991, an area of 96-37 acres under the domain of Town

Committee Diplo is a katchi abadi; that resultantly, the notice dated 23-09-2019 issued to him to vacate Government land be set-aside; and for a writ to the Sindh Katchi Abadis Authority to regularize the katchi abadi.

9. The comments of the Sindh Katchi Abadis Authority are to the effect that the notification dated 02-12-1991 had been duly issued under the Sindh Katchi Abadis Act, 1987; that survey plans of the katchi abadis had been sent to the Administrator Town Committee Diplo as far back as 1993; that though office order dated 04-01-2010 had been issued for regularizing the katchi abadis, but the same could not be implemented due to delay in the joint demarcation of the underlying land.

Submissions of learned counsel:

10. With regards to the question raised by earlier orders to the maintainability of C.P. No. D-1835/2019, Barrister Faizan Hussain Memon submitted that since public authorities responsible for removing the encroachment were facilitating the encroachers, a writ petition against such public authorities is maintainable. He submitted that the land occupied by Jumo Meghwar, Bhooro Mal and Mohan Lal was not part of any katchi abadi, rather separate from it; that they were merely encroachers of public property; and that in any case, said respondents had no document to show that the land in their possession was ever regularized under the Sindh Katchi Abadis Act, 1987.

11. Mr. Arshad Pathan and Mr. Noor-ul-Haq Qureshi, learned counsel for Jumo Meghwar, Bhooro Mal and Mohan Lal submitted that the land under their occupation was part of a declared katchi abadi vide notification dated 02-12-1991 *albeit* pending demarcation of such katchi abadi the process of regularization has yet to be completed. They submitted that by virtue of the Sindh Katchi Abadis Act, 1987 the land in question vested in the Sindh Katchi Abadis

Authority and thus revenue officers were not competent to issue any notice for vacating the land. The learned Additional Advocate General Sindh too submitted that the land in question was apparently a declared katchi abadi under the Sindh Katchi Abadis Act, 1987.

12. Heard the learned counsel and perused the record.

13. As discussed above, C.P. No. D-1666/2019 was filed to impugn a notice issued on the complaint of Faraz Hussain Memon, the petitioner of C.P. No. D-1835/2019; and C.P. No. D-2350/2019 was filed to impugn a notice issued while responding to an order passed in C.P. No. D-1835/2019. Therefore, we treat C.P. No. D-1835/2019 filed by Faraz Hussain Memon as the leading petition and take up that first.

Opinion and decision in C.P. No. D-1835/2019:

14. As against the allegation that Jumo Meghwar, Bhooro Mal and Mohan Lal (respondents 5 to 7) are in unlawful possession of Government land, their stance in C.P. No. D-1835/2019 and C.P. No. D-2350/2019 is that such land is in an area that was declared a katchi abadi vide notification dated 02-12-1991 issued under section 19(1) of the Sindh Katchi Abadis Act, 1987.

15. The authenticity of the notification dated 02-12-1991, distinct from its validity, does not appear to be questionable. That notification had been verified by the Mukhtiarkar Diplo, the Deputy Commissioner Tharparkar and the Assistant Commissioner Diplo while submitting their second report/statement in C.P. No. D-1835/2019. The comments filed by the Sindh Katchi Abadis Authority in C.P. No. D-2350/2019 also affirms that such notification had been duly issued. Here, we may clarify that since the validity of the said notification is not under challenge in this petition, nothing herein shall be construed as endorsing its validity should it be found contrary to the provisions of the Sindh Katchi Abadis Act, 1987.

16. The notification dated 02-12-1991 issued under section 19(1) of the Sindh Katchi Abadis Act, 1987 had declared the following settlements in Town Committee Diplo, Tharparkar as katchi abadis:

- (i) Bajir and Junejo Mohalla spread over 30-00 acres;
- (ii) Menghwar and Chachhi Para spread over 31-00 acres
- (iii) Loher and Parha Para spread over 9-12 acres

It is a different matter that the regularization process of the aforesaid katchi abadis is still in limbo. As per the comments of the Sindh Katchi Abadis Authority, the process has been delayed pending demarcation of the declared area of the katchi abadi.

17. As per the comments of the Mukhtiarkar in C.P. No. D-1666/2019 (reproduced first above), the land in possession of Jumo Meghwar is situated in Nanjo Meghwar North Colony which is part of Junejo Mohalla. As per the notification dated 02-12-1991, Junejo Mohalla, to the extent of 30-00 acres, is a declared katchi abadi. Therefore, the contention of the respondents 5 to 7 that they are situated in a katchi abadi cannot be brushed aside and requires consideration. The significance of the stance of the respondents 5 to 7 is that, if they are found in possession of land in a katchi abadi declared under section 19(1) of the Sindh Katchi Abadis Act, 1987, it is then for the Sindh Katchi Abadis Authority to first determine whether such possession is eligible for regularization under said Act or not, and if so, to what extent. If they are mere encroachers in the katchi abadi, again their removal/eviction has to be undertaken by or through the Sindh Katchi Abadis Authority as envisaged under section 21(6) of the Sindh Katchi Abadis Act. Given that section 21(6) further stipulates that the Sindh Katchi Abadis Authority has the power to remove encroachments from katchi abadis "in accordance with the law for the time being in force", we are not presently inclined to rule that the provisions of the Sindh Public Property (Removal of Encroachment) Act, 2010 do not apply to a katchi abadi, or that those are overridden by Regulation 32 of the Sindh Katchi Abadis Authority (Regularization, Improvement and Development)

Regulations, 1993. We leave such question of law to be examined in a case where the same is directly relevant.

18. As discussed, the central question emerging in this petition is whether the land in the occupation of Jumo Meghwar, Bhooro Mal and Mohan Lal falls within the boundaries of an area which is a declared katchi abadi vide notification dated 02-12-1991. That is a pure question of fact. To address that question, the record placed before us is scanty. None of the parties have placed before us a list of the occupants of the katchi abadis of Town Committee Diplo required by Regulation 3 of the Sindh Katchi Abadis Authority (Regularization, Improvement and Development) Regulations, 1993. It seems that the Scheme of regularization required by section 21 of the Sindh Katchi Abadis Act, 1987 has yet to be finalized. In the absence of a finding by the Sindh Katchi Abadis Authority that the respondents 5 to 7 are not occupants of a declared katchi abadi, C.P. No. D-1835/2019 which has been brought for their eviction is premature. Therefore, the same is dismissed. Pending applications stand disposed of accordingly.

Decision in C.P. No. D-1666/2019 and C.P. No. D-2350/2019:

19. In view of the foregoing, the question raised by C.P. No. D-1666/2019 viz. whether the underlying land, or any part thereof, had been originally granted in 1978 by the Deputy Commissioner for the dwellings of the Meghwar community, becomes irrelevant. Regards the prayer sought in C.P. No. D-2350/2019 for a direction to the Sindh Katchi Abadis Authority to regularize the katchi abadis, we are not inclined to issue such a writ at this stage when it has yet to be seen whether the possession of the petitioner is even eligible for regularization. Therefore, C.P. No. D-1666/2019 and C.P. No. D-2350/2019 are allowed only to the extent that in the absence of a finding that Jumo Meghwar and Mohan Lal are not residing in a declared katchi abadi, no action shall be taken by revenue officers to

evict them from their respective residence. Pending applications stand disposed of accordingly.

JUDGE

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