

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P No.D-2598 of 2013

| Date | Order with signature of Judge |
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1. For order on office objection No.1.
 2. For hearing of Misc. No.19171/13
 3. For hearing of Misc. No.22324/13.
 4. For hearing of Main Case
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27.10.2015.

Mr. Abbas Ali advocate for the petitioners

Mr. Meeran Mohammad Shah, Addl. Advocate General Sindh for the respondents No.1 to 7.

Mr. Raja Jawwad Ali Saahar, advocate for respondent No.8.

Respondent No.9: None.

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The instant constitutional petition has been filed with the following prayers:

“It is, therefore, prayed that this Hon’ble Court may be pleased to restrain the Respondent Nos. 8&9 and /or any other person(s) from excavating surface minerals from the land of the petitioner, which the respondent Nos.8&9 are doing without any lawful authority and /or permit/license.

To declare that no action on the part of the respondent Nos. 2 to 7 on the complaint of petitioner is violative of constitutional guarantees and illegal.

To direct the Respondents 2 to 7 to take appropriate legal action against the respondent No.8&9 and to stop them physically from excavating surface minerals from the land of the petitioner which is more particularly described in the Memo of Petition alongwith registered documents and mutation entries in favour of the petitioner.

To restrain the Respondents Nos. 1 to 3 not to issue any permit/lease to the Respondent No.8&9 and /or any other person for lifting Raiti Bajri and other surface minerals from the land of the petitioner issuing/granting any permit/lease to anyone else on the lands of the petitioners and /or any other person claiming through or for private persons named

above for lifting Raiti Bajri and other surface minerals from the land of the petitioner.

That the Respondent Nos.5 to 7 may be directed to provide necessary safety and security to the petitioners to safeguard their rights as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Further police picket may also be deployed in the land to stop the illegal working.

Cost of this petition.

Any other relief(s), which this Hon'ble Court may deem fit and proper under the circumstances of this petition".

2. The petitioners claim to be the owners of agricultural land measuring 340-00 acres situated at Taluka Vehar, District Thatta and 9-12 acres in Deh Nae Baran, Tapo Tando Hafiz Shah, Taluka & District Thatta. That after the registration of the sale deed the petitioners applied for mutation to the concerned Mukhtiarkar and mutation entries were made in favour of the petitioners whereby 349-12 acres of land was transferred in their names. It is claimed that the respondents No.8 & 9 with connivance of the respondent No.2 & 3 and the area police started excavating /lifting Raiti and Bajri and other surface mineral from the land of the petitioners without having any grant or lease in their favour. The petitioners thereafter approached the official respondents for restraining the respondents No.8 & 9 from the said illegal activities but when no heed was paid thereafter the instant petition has been filed.

3. Mr. Abbas Ali advocate has appeared on behalf of the petitioners and submitted that the respondents No.8 & 9 have no authority to excavate/lift the Raiti and Bajri and other surface minerals from the private land of the petitioners, hence they may be restrained from their

illegal activities. He submitted that letters were addressed to the respondents No.1 to 7 by the petitioners and inquiries were conducted and in all those matters the assertion of the petitioners were accepted but since the respondents No.8 & 9 are highly influential persons, they do not stop their illegal activities. Learned counsel submitted that petition bearing C.P. No.D-379/2012 was also filed before Circuit Court Hyderabad which was decided in favour of the petitioners and in similar position in petition bearing No.C.P.No.D-2284/2012 a restraining order was passed by this Court but the respondents No.8 & 9 who have the backup of highly influential political persons did not stop from their illegal activities, thereafter, the petitioners have approached this Court for redressal of their grievances. Counsel has submitted that the respondent No.2 has also endorsed the views of the petitioners that the respondents No.8 & 9 are excavating/lifting Raiti and Bajri from the land of the petitioners, which is adversely effecting their land but no action whatsoever has been taken by the official respondents to restrain the respondents No.8 & 9 from their illegal activities. He has therefore prayed that the respondents No.8 & 9 may be restrained in this behalf.

4. Mr. Meeran Mohammad Shah, Addl. Advocate General Sindh has appeared on behalf of the respondents No.1 to 7 and has endorsed the views advanced by the learned counsel for the petitioners and states that whatever order would be passed by this Court that would be complied with in its letter and spirit.

5. Mr. Raja Jawwad Ali Saahar, advocate has appeared on behalf of respondents No.8 and has stated that the respondent No.8 has no concern with the land of the petitioners and he is not excavating their land. The statement of Mr. Saahar is taken on record.

6. Nobody has appeared for respondent No.9, though called.

7. We have heard all the learned counsel at considerable length and have perused the record.

8. It is an admitted fact that some illegal activities are being carried out by the respondent No.9 and some other persons on the private land belonging to the petitioners. It is also clear that no action has been taken by the official respondents to stop the respondent No.9 and other persons from carrying out their illegal activities. It is also seen that in the inquiry report furnished by the Secretary to Government of Sindh to the Chief Secretary Sindh the views expressed by the petitioners with regard to the illegal excavation made by the respondent No.9 and other persons has been admitted and it has been proposed that the illegal lifting of the Raiti and Bajri should be completely stopped. It was further recommended that the concerned District Police may be directed to place Police Picket to avoid any law and order situation. It is also a matter of record that in the note of Secretary, Mines & Mineral Development Department it has categorically been admitted that illegal and unauthorized mining is taking place in the land of the petitioners, which needs to stop immediately to protect the rights of the owner.

9. We in the circumstances are surprised to note that even after having knowledge that illegal excavation is being made on the private land

of the petitioners why no action was taken by the official respondents despite being complained. We therefore, in the circumstances, allow this petition by giving specific directions to the official respondents to perform their duties in accordance with law to make sure that no illegal activities are being carried out on the private land belonging to the petitioners. The official respondents are directed to make sure that order passed by this Court is complied with in letter and spirit.

Petition is disposed of along with the listed applications.

Above are the reasons of our short order of even date.

JUDGE

JUDGE