

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## Civil Revision Application No.S-215 of 2022

[Syed Munawar Ali Shah Vs. Divisional Forest Officer Sanghar @ Khipro & others]

Applicant: Mr. Farhan Ahmed Bozdar, Advocate.

Respondents: Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh along-with Sanaullah Mukhtiarkar Khipro, Wajid Ali Solangi DEO Khipro, Israr Ahmed Incharge Litigation Director Settlement Survey and Land Records Sindh Hyderabad.

Dates of hearings: 17.10.2022, 24.10.2022 & 31.10.2022.

Date of Judgment: 18.11.2022.

### JUDGMENT

**ADNAN-UL-KARIM MEMON, J.** Through this revision application, the applicant has impugned the legality of the judgment and decree dated 14.09.2022 passed by learned Additional District Judge, Khipro in Civil Appeal No.15 of 2021, whereby the Judgment and Decree dated 19.03.2021 passed by learned Senior Civil Judge Khipro in F.C. Suit No. 86 of 2016 was reversed.

2. I have given due consideration to the arguments advanced by learned respective parties and have also gone through the record with their assistance.

3. The controversy involved in the matter is whether the subject land is Qabuli land or Forest land.

4. Mr. Farhan Ahmed Bozdar learned counsel for the applicant has briefed this court on the subject issue and submitted that the suit land is agricultural land admeasuring 49-09 acres, in Survey Nos. 562 (5-00 acres), 563 (5-00 acres), 564 (5-00 acres), 565 (4-1 acres), 566 (4-04 acres), 567 (5-22 acres), 568 (1-34 acres), 569 (5-09 acres), 570 (3-24 acres), 571 (2-36 acres), 572 (2-14 acres) and 573 (3-35 acres) situated in Deh Wadhah, Taluka Khipro; owned by the applicant based on Ghat Wadh Form issued by the revenue authorities and necessary revenue entries were made in revenue record i.e. Deh Form VII. Learned counsel submitted that cause of action accrued to the applicant on 10.11.2016 when respondent No.1 along-with staff came at the suit land for possession on the premise that it is forest land; since demand of respondent No.1 was illegal and without justification therefore applicant filed Suit for declaration, mandatory and permanent injunction. Learned counsel referred to the deposition of applicant and submitted that the applicant produced the original record before the Trial

Court and on appreciation the suit of the applicant was decreed and nothing could be brought on record in favour of the respondent Forest Department.

5. Upon service respondent No.1 filed written statement claiming that the suit land bearing Survey Nos.562 to 573 of Deh Wadhah Taluka Khipro is formed out of U.A. No. 308 & 309 and its entire area is property of Forest Department vide Gazette Notification No.10456-H(b)/44 dated 27.11.1947 and the said area had already been mutated in the name of Forest Department vide mutation entry No.81 dated 28.03.1976.

6. On the pleadings of the parties learned trial court framed eight issues, recorded evidence of the parties and after hearing the parties decreed the Suit vide Judgment and Decree dated 19.03.2021 which was appealed by respondent No.1 before Additional District Judge, Khipro who reversed the findings of trial court allowing Civil Appeal No.15 of 2021 vide impugned Judgment and Decree dated 14.09.2022.

7. Mr. Farhan Ahmed Bozdar learned counsel for the applicant has submitted that the land belongs to the applicant was revenue land and so far as the stance of respondents is concerned it is fictitious in this regard he relied upon various documents attached with the memo of revision application and prayed for allowing the instant revision application.

8. The Divisional Forest Officer Sanghar present in court has submitted that the claim of applicant is in respect of bhadda land mutated from certain survey numbers and not from the forest land is baseless and in this regard, he relied upon the statement dated 31.10.2022 supported by Deh Form-I and submitted that the land bearing survey numbers 308 and 309 as discussed supra is Government Forest Land and in this regard, he also relied upon Ghat Wadh Form as well as Sindh Government Gazette Notification dated 11.12.1947. he further submitted that The Indian Forest Act, 1878 was repealed by the Forest Act, 1927, however, notifications issued under the former continued to hold the field by virtue of section 6 of the General Clauses Act, 1897 as observed by the Honourable Supreme Court of Pakistan in an order dated 27-10-2008 passed in Civil Petition No. 172-K of 2006 (*Muhammad Waris v. Chief Conservator of Forest, Sindh*).

9. Mukhtiarkar Revenue Khipro present in court has filed his affidavit with the description of the subject land and referred to the Office order passed by Colonization Officer Sukkur Barrage Hyderabad, Qabooliat From of subject land, letter for survey dated 22.4.1980, Sketch/Soorathal of the subject land, letter of revised sanction dated 24.9.1998 issued by Colonization Officer Sukkur Barrage Hyderabad, letter dated 8.12.1979 for confirmation of grant, Application and recommendation dated 28.7.1976 of former Barrage Mukhtiarkar Sanghar, Form-

L, Form of terms and conditions regarding grant of land, Statement of Muhagadars, Form Zameema, Application of grantee for sanction of offer, TO Form dated 1.4.2004 & Form 'A' No.4465.

10. Learned A.A.G has submitted that survey Nos.562 to 573 Deh Wadhal were formed out of U.A No.308 and 309 vide Jiryan No.08 of Ghatwat Form; that declaration of the reserved forest had already been notified vide Gazette Notification dated 27.11.1947 and mutation relating thereto had been made vide entry No.81 dated 28.03.1976 village Form XV, Deh Wadhal; that U.A No.308 and 309 Deh Wadhal were/are mentioned as reserved forest land register. Per learned A.A.G the initial grant of 07-32 acres was made to the applicant's predecessor from Phittal Bhand; however, the applicant got surveyed the land from U.A No.308 and 309 Deh Wadhal; the grant, revised sanction, and survey in favor of applicant is illegal, forged and managed as suit land owned by the forest department and grant by CO was illegal; that possession of suit land is with the forest department and applicant has falsely claimed that he is in possession as they got the suit land vacated as there is the judgment of Hon'ble Supreme Court in Qazi Athar Ali's case whereby the forest land was directed to be retrieved from the illegal occupants. At this stage, learned counsel for the applicant has refused the stance of learned A.A.G and referred to the cross-examination of the Divisional Forest Officer Khipro who admitted that survey Nos.562 to 573 were not mentioned in entry No.81; he also admitted that Forest land was demarcated in compartments; he also admitted that he did not produce demarcation map of forest land in U.A. No.308 and 309 Deh Wadhal; he also admitted that forest department did not challenge the grant of land in favor of the applicant. He prayed for setting aside the judgment passed by the learned Appellate Court in Civil Appeal No.15 of 2021.

11. It appears from the record that Suit No.86 of 2016 filed by applicant was dismissed by the learned trial court vide Judgment dated 15.05.2018 and in appeal the matter was remanded to the trial court with directions to get the property surveyed and demarcated through Settlement Survey Department with the assistance of Mukhtiarkar Revenue Khipro vide judgment dated 24.09.2019.

12. Survey Superintendent Mirpurkhas submitted demarcation report dated 8.3.2021 before the court wherein the land in question was shown property of the forest department. The findings of trial court is based upon the factum that total area allotted to the applicant is 07-32 acres and he occupied an area of 41-17 acres, which falls within UA No.308 and 309 deh Wadahal; however not from phittal Band/Wah Kariya of deh Wadahal Taluka Khipro, while Survey Nos. 562-573 i.e. Suit land demarcated / measured & surveyed from U.A. No. 308 & 309

Deh Wadhal opposite to Phittal Band / Wah Karia in mohag of Survey Nos.488, 489, 493, 494 & 495 Deh Wadhal, Taluka Khipro.

13. Per learned AAG Suit land is part and parcel of reserved forest land and the entire area of 49-09 acres were taken out/carried out from UA No.308 & 309 deh Warihan Taluka Khipro and it was never available for disposal under Land Grant Policy in terms of Gazette Notification No.R-10456-h(b)-44 dated 27<sup>th</sup> November 1947 which is still in the field and same has not been rescinded under section 27 of the Forest Act, 1927, and in absence of its revocation/withdrawal, the land U.A Nos. 308 & 309 Deh Wadhal Taluka Khipro was/is not available for disposal to anyone; besides Colonization Officer was not authorized to sanction the land reserved for forest arising out of U.A. No. 308 & 309 deh Wadhal, Taluka Khipro as such alleged revised sanction No. GB/SGR/3/3574 of 1998 dated 24.9.1998 relating to 49-09 acres of suit land in favor of the father of the applicant was/is illegal and void.

14. The Forest Department claimed that the Gazette Notification No.R-10456-H(b) 44 dated 27.11.1947, under which the subject land had been declared Reserved Forest, had carried forward to the Forest Act, 1927 and is still intact, and for that learned AAG has placed reliance on an order dated 27.10.2008 passed by Hon'ble Supreme Court of Pakistan in **Civil Petition No. 172-K of 2006** titled *Muhammad Waris v. Chief Conservator of Forest, Sindh;*

15. The trial court had erred in not relying upon Forest Gazette Notification No.R-10456-H(b) 44 dated 27.11.1947, without justifiable cause and wrongly held that the suit was maintainable under the law; that the judgment and decree of the trial court relied upon by the applicant/plaintiff is not sustainable in terms of the ratio of judgment passed by Honourable Supreme Court in Civil Petition No. 172-K of 2006 for the simple reason that Survey Nos. 562 to 573 Deh Wadhal Taluka Khipro / suit land was carved out of U.A No.308 and 309, Deh Wadhal and entire area of U.A No.308 and 309 had been notified reserved forest vide Gazette Notification dated 27.11.1947 issued by Revenue Department in exercise of powers conferred by Section 20 of Indian Forest Act, 1927 besides in presence of Notification in which the aforesaid survey numbers were declared to be reserved forest land, as such, suit was not maintainable under Section 42 of Specific Relief Act, 1877; that mere possession does not acquire right title on the subject land as the applicant has failed to show from the record that he did not acquire the land from U.A. No.308 and 309 Deh Wadhal; that the revenue entries made in Revenue record in favor of father of applicant/ plaintiff , whereby increasing the area from original land was made in collusion with Revenue officials and such falsification had been set right by the appellate court, for the reason that Notification No.3409 dated 1.6.1887 published in Bombay Government Gazette

dated 2.6.1887 under Section 19 of Indian Forest Act, 1878, the subject land along with other lands, had been declared 'Reserved Forest', Also, it has been observed by Hon'ble Supreme Court of Pakistan in the order dated 27.10.2008 that on the enactment of Forest Act, 1927, the notifications issued under Indian Forest Act, 1878 did not cease to hold the field under Section 6 of the General Clauses Act, 1897; therefore, the observation of trial court that the said Forest Notification did not carry any evidentiary value, was a misreading of record.

16. Adverting to the points raised by learned counsel for the applicant that the demarcation report was biased and one-sided, suffice it to say that the demarcation was carried out in terms of the Notification discussed supra in which the land was found to be reserved for forest thus the applicant cannot claim title over the forest land based on revenue entries as revenue authorities had no power to grant the land of Forest Department in the exercise of powers under Land Revenue Act. So far as the claim of the applicant that under the Land Grant Policy unsurveyed land in possession of the allottee could be increased by paying the cost for the increased area; I am not in agreement with the aforesaid assertions for the reason that the Revenue authority had no power to allot the land based on possession and payment of alleged costs for increase the area.

17. The support is given by Mukhtiarkar estate Sanghar in favor of the applicant to the effect that the subject grant was from Phittal Bhadda and not from U.A Nos.308 and 309, this support is without lawful authority thus it could not be said that the land under U.A 308 and 309 are overlapping the subject grant and the same was granted in favor of the applicant's father, for the reason that the area of 175 -00 Acres from U.A 308 and 80 Acres 309 from U.A 309 had already been entered in the record of rights vide entry No. 81 dated 28.3.1976, which is much before the purported grant in favor of the father of applicant. This important aspect of the case escaped consideration. At this stage learned Counsel for the applicant has contended that the subject land was granted to them by virtue of of Colonization Act, 1912; that the name of the petitioner has been entered in the record of rights; and the applicant is in cultivating possession of the subject land. He next added that the forest department is claiming the subject land without their legal status and have attempted to dispossess the applicant without any notice. Learned counsel contends that under the law, they cannot interfere in the matter, which is duly allotted to them by the Revenue Department, Government of Sindh, thus the action of the respondent / Forest Department is illegal, unlawful, and without justification. He next submitted that the proprietary rights of the applicant cannot be curtailed as the same is protected under Article 24 of the Constitution of the Islamic Republic of Pakistan; that the applicant has not violated the terms and conditions of allotment of his land since its possession. Learned counsel took us through various provisions of

Colonization Act, Revenue Laws and demonstrated that sanctioned land was the personal property of the applicant, in terms of Section 10 of Colonization Act and no interference is required from the Forest Department. Primarily no authority has been conferred upon the applicant to utilize reserved forest land more than his sanctioned land, if any, which the forest Department shall ensure to protect as per direction of the Honorable Supreme Court of Pakistan. As per pleadings, the Forest department is disputing the basic status/title of the land of the applicant, being their property and are in possession of subject lands.

18. Prima facie forest land is under illegal occupation by various encroachers, and the Honorable Supreme Court of Pakistan has taken cognizance of the matter and directed the Provincial Government to immediately take steps to retrieve possession of forest land from the illegal occupants, in terms of the ratio of the orders passed by the Honorable Supreme Court in the case of Qazi Ali Athar and others v. Province of Sindh and others and take disciplinary action against all delinquent officials who are indulged in disposing of the Forest land under the revenue hierarchy. The disciplinary action and its logical conclusion must be reported to this court through the Additional Registrar of this court, within one month, and in case of failure Senior Member Board of Revenue shall be personally liable to face the contempt proceedings in terms of Article 204 of the Constitution.

19. The upshot of the above discussion is that the judgment and decree dated 14.9.2022 passed by learned Additional District Judge, Khipro in Civil Appeal No.15 of 2021, does not call for any interference.

20. This Revision application is disposed of along with pending applications, with directions to the Forest Department and/or competent authority of the Board of Revenue to sit together to look into the status of the land of the applicant and if he is at all entitled to the subject land the same shall be taken care of by taking into consideration all aspect of the case, however, ensure that no land of the forest is to remain in the illegal occupation and the same shall be retrieved forthwith in terms of orders passed by the Honorable Supreme Court; and bifurcate the land of the applicant if any, and forest department within two weeks from today; and they are also directed to see the legality of the grant of the excess land in favor of the beneficiary; and take the prompt decision under the law within a reasonable time after providing meaningful hearing to all concerned.

JUDGE