

Order Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D - 1006 of 2022

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For orders on office objection at Flag-A
2. For orders on CMA No.5460/2022 (151 CPC)
3. For orders on CMA No.3848/2022 (I Rule 10)
4. For hearing of CMA No.3628/2022 (S/A)
5. For hearing of main case

21.12.2022

Mr. Israr Ahmed Shah, Advocate for the petitioner.

Mr. Khuda Bux Chohan, Advocate for respondent No.9 & 10.

Mr. Dareshani Ali Haider 'Ada', Advocate for the intervenor.

Mr. Noor Hassan Malik, Assistant Advocate General Sindh along with Waseem Mahar (*Assistant Commissioner, Rohri*), Farhan Ahmed Qureshi (*Deputy Director Technical, Mines & Minerals Department, Sukkur*) and Riaz Ali (*on behalf of Survey Superintendent, Khairpur*).

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In compliance of order dated 06.12.2022, report is submitted by respondents No.6, 7 & 8 along with demarcation, which are taken on record; copy whereof is supplied to learned Counsel for the petitioner and learned Counsel for the respondents, present in Court.

Through instant petition, the petitioner, *inter alia*, seeks declaration to the effect that the act of respondents No.5 to 14 to take material, plant, machinery and other equipment available at the site of the petitioner's business is null and void ab initio. It appears from the perusal of the compliance report jointly submitted by respondents No.6, 7 & 8 that:

- "1. At the site an area of 18-10 acres of leased out of by Mines and Mineral Department is in the possession of Sukkur Municipal Corporation, which is marked in the "**Red**" colour of boundary in the attached sketch.
2. At the an area having 48-00 square feet width leased out by Mines and Mineral Department is overlapping the land allotted for the Landfill Mines of SMC Sukkur, which is shaded in "**Blue**" colour of boundary in the attached sketch. The Crush Plant installed by the petitioner is also situated in the land admeasuring 04-00 acres which has been allotted for the Landfill Mines of SMC Sukkur, which is also marked in "**Pink**" colour.
3. The original land allotted for the Landfill Mines of SMC Sukkur is also colored in "**Green**" colour of boundary in the attached sketch.

4. *The old marks of land allotted for the Landfill Mines of SMC Sukkur are marked in “Yellow” colour of boundary in the attached sketch.*
5. *Land admeasuring 85-00 acres claimed to have been leased out by the Mines and Mineral Department is marked in “Brown” colour of boundary.*

*In view of above position, it is submitted that the Deputy Director Mines and Minerals Sukkur, could not produce any authentic Map showing exact boundaries of the land which has actually been leased-out to the petitioner, even the notification **dated 25-03-2021** issued in favour of petitioner by the Mines and Mineral Department, itself is unclear and is not mentioning the exact name of Deh or Survey Number which has been leased out to the petitioner. Even otherwise, before issuance of notification **dated 25-03-2021** in favour of petitioner, neither the Mines and Mineral Department consult with the offices of answering respondents nor was any intimation sent.”*

Learned Counsel appearing for the petitioner states that the petitioner is leased holder of four (04) acres land shown in compliance report as part of the land of Municipal Corporation, Sukkur.

We are of the view that this petition carries factual controversy with regard to the lease holding rights of the subject land, which cannot be resolved by this Court in its Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, as the same requires determination after recording pro and contra evidence of the parties with regard to their claim and counter-claim, which does not come within the domain of this Court under its Constitutional jurisdiction. Hence, this petition is **dismissed** along with listed applications, leaving the petitioner at liberty to approach the concerned forum under usual modes of proceedings, if so advised.

J U D G E

J U D G E

Abdul Basit