

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D- 1782 of 2021
(*Kamran Ali Rajput v. The Governor of Sindh & others*)

Present:

**Muhammad Iqbal Kalhoro &
Arbab Ali Hakro, JJ**

Petitioner : **Kamran Ali Rajput**
through Mr. Afaq A. Saeed,
Advocate.

Respondents : **Governor of Sindh & others**
: through Mr. Ali Raza Baloch,
Assistant Advocate General-
Sindh.

Date of Hearing : **17th August, 2023**
Date of Decision : **17th August, 2023**

ORDER

MUHAMMAD IQBAL KALHORO, J.: Petitioner claims to be a businessman and to have purchased an industrial plot bearing No.E-6 admeasuring about 2250 sq.ft. in Small Industries Estate (S.I.E), Sukkur from original allottee Muhammad Panah on 25.03.2015 after completing all due formalities and approval by the S.I.E, Sukkur. After depositing necessary dues and fees, the said plot was transferred to his name, where after, approval letter for promoting business on the said plot was also issued by S.I.E in his favour.

2. After all these formalities and taking possession, when the petitioner started construction work over the plot, respondent No.5/ Regional Director, Sindh Small Industries Corporation, Sukkur cancelled the allotment of the plot vide order dated 04.08.2015. Against such action, the petitioner filed a C.P.No.D-3161 of 2016 before this Court, but ultimately withdrew the same on 18.01.2017 stating that he would avail

a remedy before the proper forum. Thereafter, he filed a complaint before the Director/Regional Office Karachi-East Ombudsman Secretariat Sindh, who vide order dated 01.08.2018 decided the case in his favour and directed the Managing Director, Sindh Small Industries Corporation to restore the allotment of the said plot in favour of the petitioner. The Sindh Small Industries Corporation, however, filed a C.P.No.D-8285 of 2018 challenging such order, but realizing that the same was amenable to the Governor, Sindh, withdrew the same and filed a representation before the latter. The Governor, Sindh vide impugned order dated 19.11.2021, set aside the order of the Ombudsman and directed the Managing Director, Sindh Small Industries Corporation that amount deposited by the petitioner in lieu of transfer and amalgamation fee over the said plot, be refunded to him. Being aggrieved by said order, the petitioner has filed this petition.

3. Learned counsel for the petitioner has argued that the impugned order is against the facts and relevant law; that the petitioner has spent a huge amount over the construction of the said plot, besides, making payment of all he dues and fees; that the said plot was transferred to the petitioner after due verification and approval by relevant officers; that the petitioner had paid transfer fee as well as amalgamation fee at the time of approval of the plot; that the petitioner is a *bona fide* owner of the said plot having purchased the same from original allottee; that the impugned order is bad in law and has resulted in miscarriage of justice.

4. On the other hand, learned Assistant Advocate General has supported the impugned order and has drawn attention of the Court to the inspection report of the Sindh Small Industries Corporation's properties dated 09.12.2014, in which, in respect of subject plot, it is mentioned that it is a part of 60 feet wide road and the Regional Director had issued POA dated 30.12.2012, without completion of codal formalities, to the original allottee Muhammad Panah, the first owner.

5. We have heard learned counsel for the parties and perused material available on record including parawise comments filed by respondents No.3 to 6 viz. the Sindh Small Industries Corporation. It is stated in the comments that in the original layout plan, no such plot has been demarcated and the place is shown as open space for development of the parks, roads etc. Yet, the then Regional Director illegally and unlawfully allotted the said plot to one Muhammad Panah without seeking approval of the competent authority. He even did not intimate his higher-ups about his action of allotment and kept them in dark. When the higher-ups came to know of the illegal allotment, they took a serious view and suspended services of the then Regional Director and directed the sitting Regional Director to cancel the allotment. Ultimately, after a proper enquiry regarding allotment of the said plot, the then Regional Director, Sukkur was awarded a major punishment of removal from service.

6. The Governor, Sindh in the impugned order has observed that from available record, it is evident that the space between plot No.C-20 to C-21 has been reserved for road which comes under the amenity purposes, hence usage of said land for other purposes is illegal according to relevant rules and law. It has further been observed that the plot in question was created illegally by the then administration i.e the then Regional Director of the Sindh Small Industries Corporation, who after official enquiry was awarded a major punishment of removal from service. In his order, the Governor, Sindh has further alluded to absence such plot in layout plan and notwithstanding, the act of the petitioner to purchase the same. It has specifically been stated that when creation of said plot was illegal, the subsequent actions of transfer and amalgamation of said plot are also illegal having been premised on illegal foundation.

7. Against such factual findings, learned counsel for petitioner has not been able to offer any rebuttal in his arguments except that the

petitioner after transfer of plot had spent a lot of money over its construction etc. and transfer in his favour was approved by the then administration. Any illegal act of transfer or amalgamation of the plot executed in favour of the petitioner by the then delinquent Regional Director, in cahoot with his subordinate officials, who had been awarded a major penalty of removal from service, would not create an inalienable and unimpeachable right in favour of the petitioner. If the foundation of an action is illegal, subsequent developments based on such foundation are void and illegal, is a settled view of the Courts maintained since decades.

8. Therefore, we do not find any illegality or perversity in the impugned order justifying its reversal in the constitutional jurisdiction of this Court. The competent authority of the Sindh Small Industries Corporation after realizing the illegality committed by the then administration has rightly exercised its powers by cancelling the plot in favour of the petitioner. Petitioner's Counsel when confronted with these facts and circumstances has lastly prayed that in such case, the petitioner may be awarded some damages. We may observe that the Governor, Sindh in impugned order has already directed the Managing Director, Sindh Small Industries Corporation to refund the amount deposited in lieu of transfer and amalgamation of plot No.E-6 by the complainant/ petitioner. We do not find any reason to modify the same findings. The petitioner shall be entitled to refund of the foresaid amount. However, if he wishes to claim damages against the then delinquent officials and any one involved, he may approach a proper forum in this regard, independent of this order.

9. Petition is accordingly **dismissed** in the above terms and is disposed of.

JUDGE

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