

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Const. Petition No.D-220 of 2023

Date	Order with signature of Judge
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Present
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Petitioners: Faqir Muhammad and another,
Through Mr. Ateeq-ur-Rehman
Soomro, Advocate

Respondent No.12: Amanullah, Through
Mr. Muhammad Hamzo Buriro,
Advocate

Respondents 1 to 11: Province of Sindh and others
Through Mehboob Ali Wassan
Assistant Advocate General

Date of hearing: **14-09-2023**

Date of Decision: **05-10-2023**

O R D E R

Arbab Ali Hakro, J: Through this petition, the petitioners have prayed as under: -

- a) It be declared that the Order dated 06.02.2023, passed by the Additional Commissioner-I Sukkur, is illegal, unlawful and void abinitio.
- b) It may also be declared that the Order of District Officer Revenue Sukkur dated 09.10.2006 has attained finality after lapse of 14 years, and the hierarchy of the Revenue Courts is over.
- c) It further be declared that Revenue Courts have no jurisdiction where the Property is transferred by way of registered document and further mortgaged as held by the Additional Commissioner-II Sukkur vide Order dated

06.4.2022 and if any party has grievance, the proper forum is of Civil Court.

- d) To issue strict direction to the Revenue Officials performing the function of Revenue Court to observe the principles of Natural Justice in true spirit.
- e) To issue proper directions to the Secretary Land Revenue impleaded as respondent No.1 to improve the mechanism of Summons, timing, filing and documentation.
- f) Direct respondent No.1 to initiate inquiry against the Revenue Officers involved like Member Board of Revenue Akhtar Qureshi, Additional Commissioner-I Sukkur Muhammad Amir Ansari and Shahnawaz Ujjan Reader to Additional Commissioner-I Sukkur and if found guilty, may be punished according to law.

2. Brief facts leading to filing of this petition are that the land bearing Survey Nos.42 (01-00) acres, 43 (04-39) acres and 44 (03-21) acres total admeasuring (9-20) acres, situated in Deh Machhi, Tapo Nirch, Taluka Pano Akil, District Sukkur was entered in the name of Ali Bux son of Daadlo (50 paisa) and Manghan son of Daadlo (50 paisa) by way of Khasra Gardwari of the year 1971-72, in village Form VII-A, vide entry No.72 dated 31.10.1985. However, after the death of Manghan, his foti khata badal was effected in favour of his legal heirs, Amanullah being his son (respondent No.12) and Mst. Manji Khatoon being widow vide entry No.103, dated 18.06.2001 (**“subject Foti Khata Badal”**).

3. The petitioners, both sons of Sajawal being aggrieved by the above mutation entry, filed an appeal u/s 161 of Sindh Land Revenue Act, 1967 (**“SLRA, 1967”**) before Assistant Collector/ Deputy District Officer (Revenue) Rohri, seeking cancellation of subject Foti Khata Badal on the

ground that the above survey numbers were their ancestors' Property since forefathers namely Paryo and others, based on Khasra Gardwari entry of the year 1965-66. Respondent No.9, vide Order dated 31.10.2001, reversed the subject Foti Khata Badal of deceased Manghan mutated in the name of his legal heirs.

4. Afterwards, Respondent No.12 filed an appeal u/s 164 of the Sindh Land Revenue Act, 1967, before the District Officer Revenue Sukkur against the above Order dated 31.10.2001, who dismissed the Appeal vide Order dated 09.10.2006. Again, respondent No.12, being dissatisfied with the Order dated 09.10.2006, filed R.O.R. Appeal before Additional Commissioner-II, Sukkur (Respondent No.6 herein), who disposed of the Appeal vide Order dated 06.04.2022 with the observations that Khasra Girdwari of the year 1965-66 and of the year 1971-72 are about fifty years old and Registered Sale Deed is also involved, therefore, respondent No.12 and others were advised to seek remedy from competent Court of law if they desire.

5. The Respondent No.12, being aggrieved, challenged the above Order dated 06.04.2022 by filing Revision Application u/s 164 of Sindh Land Revenue Act, 1967, before Member (Judicial-II) Board of Revenue, Sindh (Respondent No.3 herein), who vide Order dated 13.06.2022 remanded the matter to the Commissioner Sukkur Division (Respondent No.4 herein).

6. After remand, the Additional Commissioner-I Sukkur (Respondent No.5 herein) allowed the Review petition and set aside the Order dated 31.10.2001 of respondent No.9 and restored the Foti Khata entry No.103 dated 18.06.2021 of deceased Manghan in favour of his legal heirs, vide Order dated 06.02.2023, which is impugned here in this constitution petition.

7. At the very outset, learned Counsel representing the petitioner submits that the revenue officials committed illegality while exercising the jurisdiction as questions regarding the old and longstanding entries in the revenue record are involved, even the petitioners' title is based on the registered sale deed. He also submits that the impugned Order dated 06.02.2023 is unreasonable. The dispute regarding the entries between the parties has been decided vide Order dated 31.10.2001 by the then Assistant Collector/D.D.O. (Revenue) Rohri and Order dated 09.10.2006, passed by Deputy District Officer (Revenue) Sukkur, which attained finality and such claim of respondent No.12, was hopelessly time-barred and respondent No.6, had no jurisdiction to entertain the Appeal of respondent No.12 for setting aside the Order dated 09.10.2006 without condoning the delay for filing the Appeal. He further submits that the impugned Order is illegal, unlawful, and void abinitio, and revenue officials have exercised the jurisdiction in excess of their authorities and are liable to be set aside.

8. Conversely, the Counsel for respondent No.12 contended that Survey No.43 and 44 belonged to his predecessor-in-interest and respondent No.5, after providing an opportunity for hearing to the parties and, considering the record, passed the Order. He further contended that the petitioners have not availed of legal remedy available under the law in terms of section 161 of Sindh Land Revenue Act, 1964, and the petition is not maintainable.

9. Learned Assistant Advocate General also supported the arguments of respondent No.12 by stating that this petition is not maintainable, revenue authority is empowered to hear the Appeal u/s 161 of SLRA, and the lis of parties has been decided in accordance with the law. The petitioners did not exhaust the remedy available under the law. As such, the petition is not maintainable and liable to be dismissed.

10. We have heard Counsel for the private parties, learned Assistant Advocate General, and perused the record and case law with their assistance.

11. It appears from the perusal of the material on record that the Tapedar entered the subject *Foti Khata* in the names of Ali Bux and Manghan, ancestors of Respondent No.12 in *Khasra Gardwari* of the year 1975-76. The Petitioners preferred an appeal under Section 161 of SLRA, 1967, before Assistant Collector/D.D.O. (Rev.) Rohri and the same was allowed on 31.10.2001. Then Respondent No.12 and another challenged the above Order by preferring an Appeal under Section 164 of SLRA, 1967 before District Officer (Rev.), which was dismissed on 09.10.2006. Afterwards, Respondent No.12 moved R.O.R. Appeal under Section 161 of SLRA, 1967 before Respondent No.6, who disposed of the same on 06.4.2022, directing Respondent No.12 to seek remedy from a competent Court of law. After that, Respondent No.12 preferred Revision under Section 164 of SLRA, 1967 before Respondent No.3, who vide Order dated 16.6.2022, remanded the matter to Respondent No.4.

12. But subsequently the case was withdrawn from Respondent No.4 and transferred to Respondent No.5, who allowed the Review Petition and set aside the Order dated 31.10.2001. Then next, if the Petitioners were dissatisfied with the Order of Respondent No.5 Additional Commissioner-I Sukkur, they should have filed a Revision under section 164 of SLRA, 1967, before the Member Board of Revenue. On the query of this Court, whether the impugned Order whereby Order dated 31.10.2001 was set aside, and subject *Foti Khata Badal* entry of deceased Manghan was restored in favour of his legal heir is appealable, learned Counsel representing the Petitioners contended that impugned Order is without jurisdiction and can be challenged in writ jurisdiction. But where the authority which passed the Order was conferred power by the Statute, which provides the right of Appeal and

Revision, the procedure prescribed by law is to be followed; otherwise, it may lead to opening a floodgate of cases in the High Court against all types the orders passed by the Government functionaries, tribunals or authorities, bypassing the remedies of Appeal, Revision and review provided by the relevant Statute. The Apex Court, in the case of **Ch. Muhammad Ismail v. Fazal Zada, Civil Judge, Lahore, and 20 others (PLD 1996 Supreme Court 246)** has observed in Paras 8 and 9 as under: -

- "8. *In the case at hand, the question raised by the petitioner before the Lahore High Court was of a simple nature. Plaintiff in his suit was rejected for non-payment of the requisite court-fee. Order by which the plaintiff was rejected was passed on 11th July, 1994. By then it had been ruled by this Court in the case of Siddique Khan and 2 others that before rejecting the plaintiff for non-payment of requisite court-fee, an opportunity is to be afforded to the plaintiff to make good the deficiency in court fee. If this dictum had not been followed by the learned Civil Judge, the petitioner could easily assail his Order by means of an appeal. We wonder why he had rushed to the High Court with a writ petition instead of taking Appeal before the appropriate forum. The course adopted by him was not proper and we are not inclined to condone his lapse in this behalf by finding fault with the Order of the High Court for which there is no justification.*
9. *The High Courts are already huddled up with thousands of cases. If the litigant public is permitted to take all sorts of disputes to the High Courts without first availing of the other remedies available to them under law. it will not only necessarily increase the work load of the High Courts but would also defeat the provisions of law by which the said remedies have been made available. Such a spree on the part of the litigate public would , if we may say so, amount to abuse of the Constitutional jurisdiction which is to be exercised by the High Courts in exceptional cases to provide justice which cannot be otherwise obtained by the aggrieved parties."*

(emphasis supplied)

13. In view of the aforesaid dictum of the Apex Court, we are of the clear view that the petitioners have a remedy of Appeal against the impugned Order, which is not only adequate but efficacious also, inasmuch as both questions of fact and law can be looked into by the authorities prescribed under the provisions of Sections 161, 163 and 164 of SLRA, 1967. The Land Revenue Act is a Special Statute, and it provides for a remedy by way of an appeal against an order passed by the Assistant Collector/ Assistant Commissioner. A further remedy is also provided in the Statute by way of Revision against an order passed in Appeal. We, therefore, do not find ourselves convinced to invoke the jurisdiction of this Court under Article 199 of the Constitution without the Petitioners having exhausted the remedies available to them in law first.

14. Notwithstanding, in the present matter, questions of longstanding/old entries, registered Sale Deed and Possession are involved. Therefore, it would be conducive and appropriate to reproduce the operative part of the orders of the Assistant Collector/D.D.O. (Rev.) Rohri, District Officer (Rev.) Sukkur, Additional Commissioner-II Sukkur, Member (Judicial-II) Board of Revenue, Sindh and Additional Commissioner-I Sukkur to resolve the controversy between the parties as under: -

The operative part of the Order dated 31.10.2001

“I therefore direct the Mukhtiarkar Pano Akil to get the above mentioned disputed S.No.43 & 44 of Deh Machi, Tapa Nirch, Taluka Pano Akil, entered into the name of original khatedars Paryo and others showed in the Khisra Girdwari of the year 1965-66 forthwith, accordingly.”

The operative part of the Order dated 09.10.2006

"Heard the Appellant and Counsel for respondent and perused the Relevant Record as well as impugned Order. The impugned Order passed by the Deputy District Officer Revenue bearing No.308 dated 5.11.2001, is self-speaking. There is no need of interfering with it. Hence Appeal stands rejected.”

The operative part of Order dated 06.04.2022

“From the perusal of record, it has been observed that the record viz: Khasra Girdwari of the year 1965-66 and of the year 1971-72 is about 50 years old and Registered Sale Deed also involved. Therefore, the appellants are advised to seek remedy from competent Court of law if they desire. The Appeal of appellants is disposed of accordingly.”

The operative part of the Order dated 13.06.2022

“The defunct Deputy District Officer (Revenue) passed the Order on the basis of entries in the Khasra Girdwari Register while defunct District Officer (Revenue) Sukkur and Additional Commissioner-II, Sukkur Division did not consider the old existing entry No.72 of VF-VII-A belonging to the year 1984-85 in which name of the applicant Amanullah is available which supports his version.

Accordingly, I remand the case back to the Commissioner Sukkur Division , Sukkur to examine and consider all the relevant points and pass appropriate Order in accordance with law after due verification of Revenue Record and affording opportunity of hearing to the parties.”

The operative part of the Order dated 06.02.2023

“In view of above, the instant review petition is allowed and the impugned Order dated 31.10.2001, passed by the Assistant Commissioner/Deputy District Officer (Revenue), Rohri is set aside. T henry No.72 of VF VII-A of the year 1984-85 and foti khata badal entry No.103, dated 18.06.2001 of deceased Manghan in favour of his legal heirs is hereby restored in the relevant record of rights.”

15. The perusal of aforesaid, operative parts of Orders of Member (Judicial-II) Board of Revenue Sindh and Additional Commissioner-I Sukkur Division Sukkur reveal that they did not consider the questions of longstanding/old entries; registered Sale Deed along with factor of possession and point of limitation. After the addition of Section 24-A in the General Clauses Act, it is the duty and obligation of the public functionaries to redress the grievances of the citizens with reasons. However, the impugned Order does not contain the reasons as they did not consider, as mentioned above, the ground taken by the Petitioners before them.

16. To the longstanding entries in the record of right, the presumption of truth is attached, which cannot be discarded unless proved otherwise by convincing and cogent evidence. It is an established law that longstanding entries in Revenue records should not be altered in summary. It is also well-settled law that mutation proceedings are summary in character and do not provide for an ample opportunity to the litigants claiming title in the land to contest the same. The Revenue Officer in summary proceedings has a limited scope in the matter, which otherwise requires elaborate inquiry and evidence, which can only be done by the Civil Courts as provided under Section 53 of SLRA, 1967. Thus, it is conducive to read Section 53 of SLRA, 1967 as under: -

"53. Suit for declaratory decree by persons aggrieved by an entry in a record. If any person considers himself aggrieved by an entry in a 'Record-of-Rights' or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877)."

17. In the case of **Muhammad Faraz and others vs. Abdul Rashid Khan and others (1984 SCMR 724)**, the Apex Court has held as under: -

"It is true that a party aggrieved by an entry in a record-of-rights could move the Civil Court under section 53 of the and Revenue Act but there is nothing to prevent that party from seeking redress first in the Revenue hierarchy by way of Appeal and Revision. Under section 164(4), the Board of Revenue has the power to call for the record of any case pending or disposed of by any revenue officer subordinate to it and "to pass such orders as it thinks fit". The only limitation on this power is that no order shall be passed without giving the affected person an opportunity of being heard. It was not and cannot be denied that this jurisdiction was available even in matters relating to preparation of record-of-rights and that the orders passed by subordinate revenue officers merged in the Order of the Board of Revenue which became the final adjudication of the dispute between the parties in so far as the revenue authorities were concerned. At this stage if any party

was aggrieved, it could invoke the provision of section 53 which was an adequate remedy and as such the constitutional jurisdiction of the High Court in terms of Article 199 of the Constitution was not available. "

(emphasis supplied)

18. Moreover, in a chain of judgments, the August court has pronounced that the revenue authorities can only resort to variation/correction of old standing entries in the revenue record if those which crept in due to some omission, inadvertence or clerical mistake. In this context, reference can conveniently be made to the cases of **Waris Khan and 18 others v. Col. Humayun Shah and 41 others (PLD 1994 SC 336)** and **Muhammad Yousaf and 3 others v. Khan Bahadur through L.R.s. (1992 SCMR 2334)**. In the case of Muhammad Yousaf (Supra), the August Court has drawn a line of distinction between the matters wherein the revenue authorities have the jurisdiction to effect any correction and those which are to be determined by the Civil Courts on the move of the aggrieved party. The relevant portion of the said judgment is reproduced herein under:--

"The learned Appellate Court while returning the plaint for want of jurisdiction has referred to section 41 read with section 172 of the West Pakistan Land Revenue Act and came to the conclusion that the grievance of the appellants can be redressed by the revenue officers under section 44 of the Act ibid. We have anxiously considered the relevant provisions of West Pakistan Land Revenue Act. Section 172 barred the jurisdiction of the Civil Courts in certain matters exclusively within the competence of the revenue officers which have been enumerated in subsection (2). Section 44 relates to the determination of disputes arising during the course of making, Revision or preparation of record or in the course of any inquiry under Chapter VI relating to record-of-rights and periodical record. But once the inquiry is made or the entries recorded in the Revenue Record, a presumption of truth is attached to it under section 52 of the Act ibid until the contrary is proved or the new entries are substituted therefor. To dislodge this presumption a remedy is provided under

section 53 of the said Act which provides that if any person considers himself aggrieved by an entry in a record-of-rights or in periodical record as to any right of which he is in possession, he may institute a suit for declaration of his rights under section 42 of the Specific Relief Act, 1877 Act (I of 1877). Apparently, the jurisdiction of the Civil Courts is not ousted to question the correctness of the entries of revenue record, or declaration of title under the Specific Relief Act, or claiming relief of possession of immovable Property, rather aggrieved party has been invested with a right to challenge the entries made in the Land Revenue Act through a suit for declaration in Civil Court "

(emphasis supplied)

19. Apart from the aforementioned discussion as well as law, there is another important factor as the Petitioners produced a copy of a registered Sale Deed dated 23.02.2007 in respect of subject land executed in favour of Petitioner No.2(a), evidently much prior to the passing of Orders dated 13.6.2022 and 06.02.2023. Usually, the Revenue Courts are not supposed to adjudicate upon the complicated questions of law and facts, especially those that ultimately touch and determine the respective titles of the parties. In Case of **Amir Jamal and others v. Malik Zahoor-ul-Haq and others (2011 SCMR 1023)**, Apex Court has been pleased to observe in Paragraph No.7 as follows:-

"7. We have heard the learned counsel and have also perused the record. In exercise of writ jurisdiction, question of title of a property cannot be gone into by the High Court. The scope of Article 199 is dependent on the questions which are devoid of factual controversy. A registered instrument can only be cancelled by a civil court of competent jurisdiction on the ground of fraud or otherwise. Section 39 of the Specific Relief Act provides that a party which seeks cancellation of a registered instrument has to file a civil suit by approaching the civil court of competent jurisdiction and writ jurisdiction in such matters is barred".

The underlining is supplied.

20. In the Case of **Mst. Ghulam Sakina v. Member (J) Board of Revenue Hyderabad and 4 others (PLD 2004 Karachi 391)**, it has been observed by the division bench of the High Court of Sindh as under:-

“In this regard the provisions of section 39 of the Specific Relief Act are self speaking. Under section 39 of the said Act, a registered instrument cannot be cancelled without intervention of the Civil Court of competent jurisdiction. The respondent No.5 had already approached the Civil Court for cancellation of the registered instrument; the respondent No. 1 could not have passed the impugned orders in respect of the same issues pending before the Civil Court more so in view of the bar of section 39 of the Specific Relief Act”.

21. Furthermore, this Court enjoys ample jurisdiction to take care of the decision of the executive authorities/tribunals in the exercise of jurisdiction vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and the same cannot be abridged based on any technicalities. In this regard, the verdict of the august Supreme Court of Pakistan rendered in **Suo Motu Case No.24 of 2010 of CORRUPTION IN HAJJ ARRANGEMENTS IN 2010** reported as **(PLD 2011 SC 963)** can be referred, relevant portion whereof is reproduced hereunder: -

"The exercise of constitutional powers by the High Court and the Supreme Court is categorized as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of the Superior Courts and can be validly scrutinized on the touchstone of the Constitutional mandates....."

22. High Court, in exercise of power under Article 199, of the Constitution, does not ordinarily embark upon an exercise to determine an intricate, contested and complicated question of fact. Resolution of such controverted issues is ordinarily left to the ultimate jurisdiction of Civil Courts. Writ jurisdiction of the High Court under Article 199 is extraordinary jurisdiction, and the same can be invoked only to meet extraordinary situations. It is not an additional or another remedy provided by law. Pre-condition in every such case is the availability of having or not having any other adequate remedy to the person who resorts to the constitutional jurisdiction of the High Court. In Case of **Dr. Abdul Nabi, Professor, Department Of Chemistry, University Of Balochistan, Sariab Road, Quetta v. Executive Officer, Cantonment Board, Quetta (2023 SCMR 1267)**, it was held by the Apex Court that:

“The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy which should also be remedium juris, i.e. more convenient, beneficial and effective. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition. This extraordinary jurisdiction is provided as a remedy to cure an illegality which can be established without any elaborate enquiry into disputed facts”.

23. For the foregoing reasons, we are of the view that since the questions of old longstanding entries, title through registered Sale Deed and the factor of possession are involved in the present matter, such controversial questions involving factual controversy cannot be determined in constitutional jurisdiction without recording evidence of the parties,

therefore, it would be appropriate that either party may approach the Civil Court for redressal of their grievance under law. In the terms of the above, this petition stands disposed of.

JUDGE

JUDGE

Suleman Khan/PA