

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D – 2292 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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Present:-
Mr. Justice Salahuddin Panhwar.
Mr. Justice Khadim Hussain Soomro.

1. For hearing of CMA No.9280/2024.
2. For hearing of CMA No.13428/2023.
3. For hearing of CMA No. 1111/2023.
4. For hearing of CMA No. 1112/2023.
5. For hearing of main case.

15.05.2024

Mr. Muhammad Daud Narejo, Advocate for the petitioners a/w Muhammad Yousuf Narejo Advocate.
Mr. Rao Sarfaraz, Advocate for SBCA.
Mr. Barkat Ali Metlo, Advocate for Respondent No.13.
Mr. Jawad Dero, Additional Advocate General Sindh a/w SIP Shahnawaz P.S. Memon Goth, Karachi and SIP Shehzad Hussain P.S. Gadap City, Karachi.

ORDER

KHADIM HUSSAIN SOOMRO,J:- Through the instant Petition, the petitioners have prayed as under:-

1. *To direct the official respondents to remove the illegal and unauthorized encroachment/illegal construction including Cattle Farm known as Jameel Memon Cattle Farm situated at Dumba Goth Superhighway, Deh Konkar & Deh Kharkharo, District Malir Karachi and to issue directions to official respondents to take legal action against the private Respondent and to submit compliance report before this Hon'ble Court.*
2. *Restrain the private Respondent not to dump the dung of cattle farm at an unauthorized place including Dumba Goth Superhighway, Deh Konkar & Deh Kharkharo, District Malir Karachi and further to make proper arrangement of disposal of dirty water and dung from the land/cattle farm situated at Dumba Goth Superhighway, Deh Konkar & Deh Kharkharo, District Malir Karachi.*
3. *To direct the official Respondent and private respondents to act as per law and further to issue directions to the official respondents to restrain the private Respondent from running the above Cattle Farm till the final decision of this Petition.*

4. *To grant any other relief which this Honorable Court may deem fit and proper under the circumstances of the case, though not prayed for herein specifically but the Petitioner is found entitled thereto.*

Ad-interim relief to this effect is strongly solicited in view of facts of the case mentioned above.

2. The relevant facts of the case are that the petitioners filed this Petition in respect of the public interest for demolition/removal of the illegal and unauthorized Construction as well as the removal of encroachments, including Cattle Farms known as Jameel Memon Cattle / Dairy Farm situated at Dumba Goth Super Highway, Deh Konkar & Deh Kharkaro District Malir Karachi (hereinafter referred to as 'The land') on the ground the private Respondent and his companions were observed using the water source to clean the cattle, buffaloes, and other animals. This resulted in the water becoming contaminated with dung (Gobar) from the Cattle Farm. Consequently, this contaminated water entered the various sewerage lines of the Thado Nallah area. There is a water well issue causing a major blockage in the sewerage line from Super Highway to Malir Karachi. This poses a significant threat to the lives of the people in the area. Residents in the vicinity of the property are experiencing numerous challenges and health issues, including Malaria, Dengue, respiratory infections, asthma, and more. Children in the area, particularly minors, are greatly affected by cough and flu due to unclean and stagnant water. Therefore, the petitioners have submitted the present Petition with the above-mentioned requests.

3. Learned counsel for the Petitioners contends that Respondent No.13 was granted the land in question for the period of 30 years, which expired in the year 2022, and they are still enjoying the illegal possession of the land without any right title and legal character over it. He further submits that Respondent No.13, by misusing and, abusing the lease rights, has raised illegal Construction over the land in question without prior permission from the concerned authority. He further argued that Respondent No.13 is accused of spreading nuisance in the area, which caused the lives of inhabitants to become worthless. Therefore, he is liable to vacate the land.

4. Respondent No.13 admits that the period of the lease has been expired. Further, the answering Respondent has applied for the enhancement of the lease period from 30 years to 99 years, pending before the Chief Minister Sindh, for which he has already paid the requisite challan; therefore, the instant Petition is not maintainable and liable to be dismissed.

5. Learned AAG submits that as per their record, the lease of Respondent No.13 in respect of the land has already expired, and Respondent No.13 illegally occupied the land for which he is liable to be ejected from the land by allowing this Petition.

Learned counsel for SBCA contends that the structure exists at the site, which was erected without an approval plan, and the structure raised by Respondent No.13 is illegal and liable to be demolished.

6. Heard learned counsel for the parties and perused the material available on record.

7. According to the record, Respondent No.13 was granted land under the Land Grant Policy in various years, such as 1982 to 1985, for a 30-year period that ended in 2022. However, the lease has not been renewed yet. The Mukhtiarkar concerned has submitted office letter No.Mukh/M.M/Malir/K/407/2024 Karachi dated 10.05.2024, which demonstrates that as per entry No.023 dated 9-7-2011 of VF-VII Deh Konkar, there is a 176-acre area that has been leased for 30 years from Na-Class 152 of Deh Konka to the respondent no 13, such mutation is also carried out in his name in the relevant record of right in the name of Memon Dairy Cooperative Society, with Mr. Jamil Memon, the chairman, being the son of Abdul Karim. However, he currently has around 400 Acres of land that he has illegally occupied, and the Cattle Farms have been established on this land. The lease period for the 176-acre land is set to expire. The relevant part of the letter is reproduced as under:-

""It is submitted that the undersigned along with Supervising Tapedar of the beat in presence of concerned parties under your supervision visited the site of petition land in Deh Konkar on 9 May 2024.

In the regard, the Record of Rights has been verified and found that as per entry No.023 dated 9-7-2011 of VF-VII Deh Konkar, an area of 176 acres being 30 years lease from Na-Class 152 of Deh Konkar stands entered in the name of Memon dairy Cooperative Society through its chairman Mr. Jamil Memon son of Abdul Karim (Copy enclosed. But he is in possession of approx 400 Acres illegally and the said Cattle Farms are established on the said land. The lease period of 176 Acres land stands expired. Besides, my predecessor has already furnished report to the kind Deputy Commissioner District Malir, Karachi through Assistant Commissioner Sub-Division Murad Memon vide letter No.Mukh/M.M/Malir/K/269/2024 dated 08-04-2024 (Copy enclosed)"".

8. During the pendency of the instant Petition, Nazir of this Court was appointed to visit the land and submit such a report. The report states that Respondent No.13 has established a Cattle Mandi in the name of Jamil Memon Colony, which is installed for the upcoming Eid-ul-Adha. The further relevant portions of the Nazir's report are reproduced as under:-

3. In view of the report submitted by the Mukhtiarkar, Murad Memon, respondent No.13 is in possession of excessive land. Furthermore, the lease of 30 years for 107 Acres out of 176 Acres

land commencing from 1992-93 has also expired in the year 2022. Whereas, Mr. Jamil Memon, stated that he had paid challan of Rs.53,000,000/- (Rupees Five Crore Thirty Lac only) for 99 years lease and summary of 99 years lease was approved by the then Chief Minister, however till date, lease has not been issued.....

9. Based on the reports submitted by the Mukhtiarkar and the Nazir of this court. It is evident that the lease period of Respondent no 13 has expired, thus, he no longer has the right, title, or legal standing to continue possessing the land.

10. We have perused the Statement of Conditions dated 25 February 2006 that was issued by the Government of Sindh, Land Utilization Department under subsection (2) of Section 10 of the Colonization of Government Lands Act, 1912 and note that the provisions of those statement of conditions do not permit for the conversion of a 30 years lease into 99 years lease. Such conditions were, however, amended by a Notification dated 24 November 2010, which purported to amend the Statements of Conditions dated 25 February 2006 and which, under Clause 10 (a) (1) permitted such a conversion to be made.

11. The Honourable Supreme Court of Pakistan in Suo Moto Case No. 16 of 2011 had taken notice of such conversions and has passed an interim order on 28 November 2012 holding that:

*".... 7. Under these circumstances, we are constrained to direct that the Deputy Commissioners/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Mukhtiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the officer of the Mukhtiarkar to any other place. Moreover, mindful of rampant corruption and organized crime of land grabbing, particularly, regarding prime state land, and mismanagement/forgeries in the revenue record, we hereby, until further orders restrain the Government/Revenue Department from mutation, allotment, transfer and/or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner/DCO of the relevant districts/dehs besides others to contempt proceedings."***[underlining for emphasis]**

12. We have no doubt that Respondent no 13 has made an attempt to bypass directions passed in Suo Moto Case No.16 of 2011 by depositing the challan issued by the authorities by illegal means, which carries no value in the presence of the Honourable Supreme Court order, which still exists in the filed.

13. In view of the above, the Petition, along with the listed application, stands disposed of with the following directions :

- a) The Chief Secretary Sindh is hereby directed to constitute a high power committee to conduct an enquiry against the delinquent official who issued challan in favour of respondent no 13 in violation of supreme court direction, and stern action be taken against them within 30 days after receipt of this order.
- b) No further mutation, allotment, transfer or conversion of any state land was to be made until the entire revenue record of Sindh was reconstructed as per the direction passed in Suo Moto Case No.16 of 2011 by the honourable apex court.
- c) The Deputy Commissioner concerned shall take over the possession of the subject land from the illegal occupants immediately.
- d) The conversion of a 30-year lease to an enhanced term shall be stopped as it was prohibited by the law as well as in Suo Moto Case No.16 of 2011.
- e) The Committee is further directed to demolish the unwarranted Construction existing on the estate land and this exercise shall be completed in 30 days.
- f) Respondent No 11 is directed to cancel the entries in the name of Respondent No.13 and others whose lease period has expired.
- g) The Committee further directed to conduct the enquiry against those officials in connivance and collusion with Respondent No.13, who had/has enjoyed the 400 Acres of excessive land. Stern action against those officials shall be taken as per law with a compliance report through MIT-II.

h) The Committee shall submit that compliance report within 30 days to this Court through MIT-II.

JUDGE

JUDGE

Dated: 18.05.2024.