

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1073 of 2017

(Muhammad Kamil Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before:-

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 23-05-2024.

Mr. Tarique Hanif G.Mangi, advocate for the petitioner.

Mr. Ghulam Mustafa G.Abro, Additional Advocate General, Sindh along with Rafique Ahmed Narejo Estate Mukhtiarkar Khairpur.

ORDER.

Adnan-ul-Karim Memon J:- Petitioner Muhammad Kamil seeks a declaration to the effect that the order dated 18.1.2017 passed by the Member Judicial-II Board of Revenue Sindh whereby the grant of 11 acres of land, situated in Deh Pir Bux Aradin, made in favor of the petitioner was canceled, on the ground that the subject land was Nakabuli Land, which was neither fixed in the schedule for disposal of Survey No.239/5,240/3,2 situated in Deh Pir Bux Aradin nor published nor open Katchery was held by defunct Colonization officer Sukkur Barrage in the Estate/ Taluka; and, that purported grant order was not available on the revenue record.

2. Learned counsel for the petitioner submits that the subject land was legally granted to the petitioner and such Form-A was issued in favor of the petitioner in the year 1998. Therefore, the respondents-revenue department had no jurisdiction to cancel the grant vide order dated 18.1.2017, in which an ex-partee order was passed that needs to be set aside and the matter is required to be remitted to the Member Judicial-II Board of Revenue Sindh for

decision on merit after providing opportunity of hearing to the petitioner. As per learned counsel the revenue officer in the first instance was mandated to grant reasonable time to the petitioner to appear to attend the revenue proceedings. In the event of the petitioner's inability to appear within time, he was required to independently apply his mind, however, he failed to perform the statutory obligations and proceeded to act under dictation from the private respondent and passed the ex-parte order on erroneous premises. Even the elementary principles of natural justice were denied to the petitioner.

3. Learned A.A.G. for the official respondents, while refuting the above contentions, argued that this petition against the findings of the revenue officer is not maintainable under the law. He averred that the ground of the ex-parte decision is no ground to allow him to take advantage to revive such a grant which was canceled in the year 2017; even otherwise, he has a remedy to sue by filing a Suit if the law so permits. He also urged that it will be suitable for the petitioner to avail remedy for a fresh grant if any under the law. Finally, the instant petition being devoid of merits is liable to be dismissed, he urged.

4. The arguments have been heard at length, and the available record has been carefully evaluated with the assistance of the learned counsel for the parties.

5. It appears from the record that parties litigated on the subject land in revenue hierarchy, finally the decision went in favor of private respondent No. 8. On the subject issue, the petitioner filed Civil Suit No.130 of 2017, for Declaration and Permanent Injunction, before learned Senior Civil Judge Khairpur-III, which is stated to be dismissed as withdrawn; be that as it may, it is further stated that parties compromised the matter outside the court and filed such compromise application before this Court which was dismissed vide order dated 19.1.2021 with the following observation:-

“We have heard the Counsel on this application. The same seeks a compromise between two private parties, and at the same time, also seeks setting aside of the orders passed by the officials of the Revenue Department. It is settled proposition of law that any compromise reached between the parties is only applicable amongst the parties who have done so and is not binding upon those who were never party to the said compromise judgment and decree. It is settled law that a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the Court super-adding its seal to a contract and since the compromise even after it is super-added with the seal of the Court has almost all the ingredients of a contract, therefore, it can be set aside on any of the ground on which a contract could be attacked such as fraud, mistake or misrepresentation¹. A consent decree is a kind of agreement / contract between two parties with a superadded command of the court but it would not bind a third party who was not party to the said suit. Para-5 of the application seeks relief for setting aside of order passed by the Revenue Department, which is an attempt to seek relief against officials who have not consented to the application. The application is misconceived and is dismissed with cost of Rs. 5,000/- (Rupees five thousand), to be deposited in the account of Sindh High Court Clinic”

6. Mukhtiarkar has submitted a report that the subject grant in favor of the petitioner was canceled by the Member Judicial-II Board of Revenue Sindh in the year 2017 as such no further action is required on the part of this Court as the subject land was Na Qabooli land.

4. In our view the parties may avail jurisdiction of the Civil Court of plenary jurisdiction, which shall examine the validity of an order of Revenue authority as the petitioner has pleaded that the principles of natural justice were/are violated as such he was condemned unheard, for the reason that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or Order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court despite a provision in the statute barring the jurisdiction of

Civil Court. Primarily all the aspects of the case can be looked into by the Civil Court, if approached or the remedy is not earlier availed.

7. For the preceding reasons, we conclude that the findings of the revenue officer need to be challenged by the aggrieved party by availing the remedy under the law. Therefore, this petition is disposed of accordingly as this court cannot dilate upon the issue which requires evidence as the parties have leveled allegations and counter allegations against each other on the subject issue of grant of land.

Judge

Judge

Nasim/P.A