

THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-1421 of 2022

Date: Order with signature(s) of the Judge(s)

**Before: Salahuddin Panhwar &
Khadim Hussain Soomro, JJ**

For Orders as to Maintainability of petition.

Date of hearing: 15th May 2024.

Date of order: May 2024.

Petitioner Syed Muhammad Iqbal is present in person.
Mr. Iqbal Khurram advocate for MDA.
Mr. Tariq Ali advocate for SSGC.
Mr. Muhammad Ashraf Samoo advocate for Intervener.
Mr. Jawad Dero, Addl. A. G. Sindh.
Mr. Sohail Shahzad, DIR Sindh Ghotabad.
Mr. Zain ul Abidin, Focal Person BoR.

ORDER

SALAHUDDIN PANHWAR, J. Through instant petition the Petitioner has prayed that:

1- عدالت سے درخواست ہے کہ چونکہ ان قبضوں کو گرانے کیلئے سندھ ہائی کورٹ اور سپریم کورٹ آف پاکستان پہلے ہی احکامات دے چکے ہیں اسلئے اس DG پر طویل سماعت کی ضرورت نہیں بلکہ ان فیصلوں پر فوری عملدرآمد کیلئے، ضلع ملیر اور رینجرز کے ذمہ داران کو SSP ضلع ملیر، DC میر ڈپولپمنٹ اتھارٹی، ذاتی حیثیت میں بلا کر انہیں مناسب منصوبہ بندی کیساتھ ان تمام غیر قانونی قبضوں کو گرانے کا حکم دیا جائے۔

2 سندھ گورنمنٹ اور اسکے متعلقہ اداروں کے ذمہ دار عناصر کو ان غیر قانونی قبضوں کی سرپرستی کرنے اور سندھ ہائی کورٹ اور سپریم کورٹ کے احکامات پر جان بوجھ کر عمل نہ کروانے پر مناسب سزا دی جائے درخواست گزار آپکے لئے دعا گو و رہے گا۔

2. At the outset, Petitioner has referred order dated 06.04.2011 passed in CP No.D-2278 of 2010 whereby that petition was disposed of.

3. Further Petitioner has relied upon an Inquiry conducted pursuant to the above said order. Being relevant same is reproduced as under:

" SUBJECT: - INQUIRY REPORT IN COMPLIANCE WITH ORDER DATED 06.04.2011 PASSED BY THE HONORABLE HIGH COURT OF SINDH IN CP NO. 2469/2009 & D-2278 OF 2010 FILED BY DUR MUHAMMAD KHAROSE & QADIR BUX VS. MDA & OTHERS.

In compliance of Notification No. PS/SMBR/2011/421 (Annexure-A) the Committee constituted by Senior Member

Board of Revenue to examine the claim of land involved in the matter with reference to T.O.R contained in the said Notification, the Committee heard both the parties viz claimants of Malir Development Authority and villagers of Dur Muhammad Kharos Goth and verified their respective claims.

In this connection a detailed report was called from Deputy District Officer (Rev) who endorsed the report of Mukhtiarkar (Rev) Bin Qasim Town, Karachi vide letter No. Mukh/Rev/BQ/T/29/2011, Dated 20.09.2011. The report says: that an area of 2700-00 acres of land in Deh Khanto was granted by Government of Sindh Land Utilization Department in the year 1978-79 in favor of Karachi Development Authority (now Malir Development Authority) at the rate of Rs. 1-00 per Sq yard for Development of scheme No. 25-A known as Shah Latif Town Hand the Karachi Development Authority deposited the occupancy of entire land. Copy of challan deposited by the MDA was seen by the committee.

In the year 1988, joint Survey was conducted by the Survey Superintendent Karachi and Revenue staff and an area of 1784-12 acres out of 2700-00 acres viz sectors No. 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31 & 35 was found available on the site which was handed over to the Karachi Development Authority as per joint demarcation plan prepared at that time. As per demarcation plan the remaining area of 915-28 acres was under different villages, 30 years leases for poultry/dairy farming purpose and under railway etc which has been so mentioned in the demarcation plan and is self explanatory (Copy enclosed as Annexure "B").

The report further says that MDA is in possession of an excess area from 1784-12 acres which is beyond that area which was handed over to them. Mr. Abdul Qadir and others filled C.P No. D-2278 of 2010 in the Honorable High Court of Sindh, Karachi against MDA wherein they produced their allotment orders which were issued to them by the MDA, the details of allotment orders are given below:-

S.No.	Allotment Order/Date	Name of Allottee	Plot No. Area	Sector No.	Remarks.
01	C2868-M2/533 Dated 03.06.1982	Jamil ur Rehman S/o. Inayat ur Rehman	031 (80 Sq. Yds)	30-A	Photocopy enclosed as annexure '67' in copy of plaint of C.P No. 2278/2010
02	C1846-H3/345, Dated 04.07.1982	Razia Khanum D/o. Mehmood Hussain	135 (120 Sq. Yds)	30-A	Photocopy enclosed as annexure '111' in copy of plaint of C.P No. 2278/2010
03	C2022-H3/131 Dated 18.05.1982	Khursheed Ahmed S/o. Wali Muhammad	001 (120 Sq. Yds)	30-A	Photocopy enclosed as annexure '119' in copy of plaint of C.P No. 2278/2010
04	02356-HI/3055, Dated 01.12.1982	Farzana D/o.	043 (60 Sq. Yds)	30-A	Photocopy enclosed as annexure 135 in copy of plaint of C.P No. 2278/2010

It appears that the possession of land 1784-12 viz. Sectors No. 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30,

31 & 35 was handed over to the K.DA In the year 1988. The allotment orders of Sector No. 30.A were issued by the Karachi Development Authorities in the year 1982, which may be verified from concerned authorities (Copy of C.P No. 0-2278/2010 is enclosed as Annexure "C"). However in the demarcation plan possession of K.DA is not mentioned in respect of sector 30 A.

In order to ascertain the facts of disputed land of Goth Dur Muhammad Kharose, Survey Superintendent was requested by the enquiry committee to carry out the demarcation regarding identification of land on which there is a dispute between allottees of MDA & MDA.

Survey Superintendent vide letter No.S-S/Kyc/117/2011, dated 16.12.2011 has reported that village Dur Muhammad Kharose is situated in NC. No. 102 deh Khanto on state land. The site was visited by the Chairman of the Committee on 21.12.2011 where it was seen that masonry work was under way and around 100 & 150 newly structures were raised/built. This is encroachment on state land therefore it can be removed. The petitioners in CP No. D-2469/2009 are land grabbers and they apparently sell Government land by making plots of various sizes on the spot.

**Sd:
CHAIRMAN DIRECTOR (GOTHABAD)**

**Sd:
DIRECTOR (E&I)
BOARD OF REVENUE
MEMBER.**

**Sd:
DIRECTOR (E&E)
MDA, MEMBER**

**Sd:
DEPUTY COMMISSIONER
MALIR (EX-DISTRICT OFFICER REVENUE
CITY DISTRICT GOVERNMENT, KARACHI)
MEMBER.**

**Sd:
ASSISTANT COMMISSIONER
BIN QASIM TOWN. (EX-DEPUTY DISTRICT
OFFICER REVENUE) MEMBER'**

4. The Petitioner asserted that, notwithstanding this Court's directives, the authorities have failed to take possession of the property.

5. Per contra, the learned Additional Advocate General submits that the Inquiry Report evidences the proprietary interest of the Malir Development Authority (MDA) in the disputed land. The MDA's purported excess beyond its demarcated boundaries necessitates a delineation inquiry. The learned Additional Advocate General avers that the petitioner does not have locus standi to prefer the present constitutional Petition. Per the AAG's contention, the petitioner appears to be fighting the case on behalf of the MDA. The AAG proposes that the MDA ought to engage with

the governmental authorities i.e. BoR and seek demarcation of the boundaries through the competent forum. The learned Addl. AG submits that the MDA's possession of excess land is illegal and unauthorized. In summation, the learned Additional Advocate General prays for the dismissal of the Constitutional Petition on these bases. The contention advances the premise that stringent compliance with procedural due process and the meticulous aggregation of evidentiary documentation are imperative for the adjudication of this conflict. It is further contended that this procedural mandate falls under the purview of the Board of Revenue, which is tasked with determining the fate of the village in question pursuant to the Sindh Gothabad Housing Scheme Act, 1987. It is incumbent upon the Board of Revenue to delineate the property boundaries to scrutinize any excess land under the possession of the Malir Development Authority (MDA).

6. The learned counsel representing the MDA corroborates the Petitioner's claims.

7. The learned AAG contends that the dispute lies between the Board of Revenue and the MDA, which should be resolved either at the governmental level or, alternatively, by the Civil Court. He contends that the Petitioner does not possess the right to bring forth this petition, hence, this petition is not maintainable under the law.

8. Learned counsel for the Intervener(s) contends village Dur Muhammad and other villages are legally established, survey was conducted by the revenue department, they referred the same for regularization, hence, under Gothabad Scheme Act, 1987, they are entitled for regularization and sanads and issue is pending before the revenue authority for its regularization.

9. The record indicates that the petitioner lacks any legal rights in this Petition. The petitioner has neither furnished any documentary evidence indicative of title or ownership nor has the petitioner laid any claim to such effect. He is claiming that he is office bearer of real estate agent. Further he has asserted in his petition that he managed / arranged to file CP No.D-2278/2010. Admittedly, Petitioner[s] in that petition are not before us. It is thus adjudged that the petitioner's locus standi is non-

existent. According to the Board of Revenue (BoR), the village in question has undergone a comprehensive survey, and the matter remains pending with the BoR. Consequently, this case does not fall within the purview of the Sindh Public Property (Removal of Encroachment) Act, 2010.

10. It is also matter of record that the dispute between the Board of Revenue and Malir Development Authority (MDA) is existing over the area in excess, which is alleged to have been occupied by the MDA; therefore, besides the issue regarding boundaries and demarcation, it requires to be determined by recording evidence of the parties before the competent Civil Court.

11. The inquiry report in compliance of the Order dated: 06-04-2011 passed by this Court clearly demonstrates that there is issue of boundaries and disputes between the allottees of the MDA and Government of Sindh for which the demarcation was also carried out. The issues of title, possession, and demarcation are central to this case, necessitating the recording of evidence. It is arguable that the High Court lacked the jurisdiction to resolve the title dispute concerning the land in question due to the contested factual matters and allegations of forgery and fabrication in the documentation. In the present case, the disputed factual questions regarding title are predicated upon documents that demand evidentiary scrutiny to reach an accurate determination. Consequently, this Court is not in a position to adjudicate these matters within its Constitutional jurisdiction, in accordance with the principles established by the Honourable Apex Court of Pakistan in the case of ***Revenue Employees Cooperative Housing Society Limited and 8 others v. Mst. Bachoo and others (2001 SCMR 155)***.

12. The actions of the Revenue and Anti-Encroachment authorities, as described, raise serious concerns regarding the potential misuse of power and the excess of their legally conferred authority. The allegations suggest a disregard for the due process of law and the rights of the citizens, particularly the underprivileged segments of society. In light of the aforesaid reasons, it is hereby ordered:

- i. **Initiation of Inquiry:** An inquiry shall be initiated to investigate the conduct of the Revenue authorities and Anti-Encroachment authorities concerning the anti-encroachment

drives in Abdullah Goth, Dur Muhammad Goth, and Lashari Goth.

- ii. **Scope of Inquiry:** The inquiry shall determine whether the actions taken were within the bounds of the Land Revenue Laws and the Sindh Public Property (Removal of Encroachment) Act, 2010, and its Rules.
- iii. It shall also be determined whether the Government of Sindh delegated its powers to remove the encroachment from public property to the Revenue and Anti-Encroachment authorities by publication of the Notification in the official gazette in accordance with the provisions of Section 9, read with Section 3(1), of the Sindh Public Property (Removal of Encroachment) Act, 2020.
- iv. It shall also scrutinize the regularization process of the Village Dur Muhammad Jatoi and the consideration of documents annexed by Intervenor Manhar Zonian by the revenue department.
- v. **Appointment of Inquiry Officer:** The Chairman, Provincial Anti-Corruption Establishment, is hereby appointed to conduct this inquiry, adhering to the principles of law and ensuring impartiality and thoroughness.
- vi. **Powers of Inquiry Officer/Committee:**
 - To summon and interrogate relevant officials from the Revenue Department and Anti-Encroachment authority who remained part of the Anti-Encroachment drives.
 - To review, verify and examine all pertinent documents and records, including those submitted by Intervenor Manhar Zonian.
 - To visit the **affected villages for assessment and evidence collection**, if deemed necessary.
- vii. **Timeframe for Inquiry:** The inquiry shall be completed, and a comprehensive report submitted to this Court within 90 days from the date of this order.
- viii. **Non-Interference:** Any interference with the inquiry process by any party will be met with stringent legal action, including but not limited to Contempt of Court proceedings.

13. Upon careful consideration of the report dated 30-01-2023 submitted by the Deputy Commissioner, Malir, Karachi, which details the existence of Abdullah Goth, Dur Muhammad Goth, and Lashari Goth, and the construction of pakka/cemented houses, a Masjid, and the residence of numerous families therein, it has been brought to the attention of this

Court that the Revenue Department and Anti-Encroachment authorities have conducted anti-encroachment drives resulting in the displacement of villagers/poor persons from their homes. Additionally, the Intervenor Manhar Zonian has submitted several documents regarding the regularization process of the Village Dur Muhammad Jatoi before the concerned revenue department. Although the issue was not covered by the Sindh Public Property (Removal of Encroachment) Act, 2010, the Revenue Department and Anti-Encroachment authorities misused their powers and exceeded the authority invested in them under the law. To determine the proper course of action, we must examine the relevant provisions of law. Section 3(1) of the Act of 2010 empowers the Government of Sindh, or any duly authorized officer, to issue an order directed at individuals responsible for encroaching on public property. This order compels the violator to remove the encroachment and any structures erected thereon. The statute mandates a minimum removal period of no less than two days, as specified in the order. Furthermore, Section 9 of the Act of 2010 authorizes the Government of Sindh to delegate its powers under this legislation. This delegation can be made to subordinate officials, councils, autonomous entities, or other authorities. The delegation of authority must be formalized by a Gazette Notification published in the official government gazette.

14. In light of the foregoing circumstances and the reasons delineated above, the instant petition is devoid of substantive merit and is hereby dismissed, along with any pending applications. Each party shall bear its own costs. A copy of the Order shall be communicated to the Chairman, Provincial Anti-Corruption Establishment for compliance and report within prescribed period through MIT-II of this Court.

JUDGE

JUDGE

Karachi
Dated: 31.05.2024
Approved for reporting
M.Zeeshan

JUDGE