

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Constitution Petition No.D-685 of 2024
(*Muhammad Saleh Vs. G.O.S Sindh & others through Secretary Law & others*)

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Before
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Muhammad Saleh, petitioner in person.
Mr. Ayaz Ali Rajpar, A.A.G Sindh

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ORDER

Adnan-ul-Karim Memon, J. The petitioner is alleging that the office of Inspector of Stamps is prioritizing document registration for those who pay for urgent delivery. This preferential treatment is causing undue delay and prejudice to those who follow the ordinary course of registration. As per petitioner, there is no legal basis for such preferential treatment, and the practice should be stopped. In essence, the petitioner claims the office of the Revenue Department is engaging in discriminatory and unlawful behavior. The petitioner urges that charging for urgent delivery creates a two-tier system where those who can afford to pay receive preferential treatment. The petitioner submits that there is no legal provision supporting the practice of urgent delivery. The petitioner asserts that this practice is causing undue delay and harm to those who do not opt for urgent delivery, therefore the Revenue Department has no role in looking into the secret documents under the garb of checking the stamp duty under the Registration Act, 1908 for that Sub-Registrar is authorized under the law and no other department is liable to interfere in the affairs of the Sub-Registrar. He prayed for directions to the Inspector of Stamps, Board of Revenue, Sindh not to intervene in the affairs of the Sub-Registrar Office under the law.

2. The learned A.A.G is essentially arguing that there are legitimate reasons why individuals might need to urgently register documents; that there are specific procedures and fees in place for expedited registration; that the practice of urgent registration is not explicitly prohibited by law. He submitted that the concerned office of the Revenue Department is obligated to avoid unnecessary delays in

registering all documents, including those submitted under the ordinary course. He added that all registrations, regardless of urgency, must adhere to the provisions of the Registration Act. The Registrar cannot arbitrarily refuse to register documents, the respondent acknowledges the need for expedited services. They assert that proper procedures are in place for urgent registration. They rely on the principle that actions are legal unless specifically prohibited. The respondent confirms the Registrar's as well as the office of Stamp Inspectorate's duty to process all documents efficiently. They emphasize compliance with the Registration Act for all registrations. In essence, the AAG is defending the practice of urgent registration while also affirming the Registrar's as well as the office of Stamp Inspectorat's obligation to process all documents without undue delay.

3. The second grievance of the petitioner is that a Sale Certificate alone does not establish ownership of a property. However, in the specific context of a court-ordered public auction where the full purchase price is paid, the sale certificate can be considered equivalent to a public auction, and thus exempt from stamp duty. The certificate issued by the Collector for surplus land acquired under the Land Acquisition Act is sufficient to transfer ownership without registration. While not technically a conveyance, a sale certificate issued by a court, revenue officer, or collector evidences the transfer of a property right and should be registered. Sale certificates issued by other entities, like District Boards or Official Receivers, are not exempt from registration. As per the petitioner, the sale certificate is not a direct title document, it can serve as crucial evidence of ownership, especially in the context of court-ordered sales. The petitioner links sale certificates from court-ordered public auctions to the concept of public auctions, potentially aiming for tax exemptions associated with such sales. The petitioner acknowledges the general need for registering sale certificates to protect property rights but argues for exceptions in specific cases. Essentially, the petitioner is distinguishing between different types of sale certificates. He submitted that sale certificates issued in specific circumstances (court-ordered public auctions, surplus land acquisition) should be treated differently from those issued by other entities. He further submitted that the concerned Officers are bound to issue sale certificates on the categories as discussed supra. He prayed for such directions as disclosed in prayer clauses.

4. To address the first proposition, primarily, any practice can be adopted for the reasons that a person may need registration of a document urgently, a set of procedures has been provided when urgent fee is charged for expeditious registration of a document. Under Article 4 (2) (b) of the Constitution nothing is illegal unless prohibited by law. While registering a document, however, the Registrar shall ensure that there should not be any unnecessary delay in

registration and the documents which are submitted in ordinary course. Hence all documents submitted through ordinary course shall also be registered with necessary dispatch and all necessary provisions of the Registration Act shall be applied without delay. The Respondents shall not put any embargo on the registration of the documents which is not permissible under the law and no bottlenecks be created in such registration of the documents, subject to law.

5. We have noticed that there is complete mechanism of issuance of sale certificate as laid down under Rule 41 of the Land Revenue Rules, 1968, which provides that (i) if an application under of Land Revenue Act, 1967, is made to the concerned Mukhtiarkar (Revenue), he must take action on it provided it contains all the relevant particulars as provided under Land Revenue Rules, 1968; (ii) upon satisfaction of the above requirement, the Mukhtiarkar is required to issue notice to all the concerned khatedars / owners followed by a speaking order accepting and/or refusing the same, as the case may be in case of rejection of the application, the procedure of appeal, revision or review is to be adopted, as provided in the above Act and Rules.

6. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "if it is satisfied that no other adequate remedy is provided by law". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of the High Court, whether such remedy suits him or not.

7. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at the lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law.

8. Under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process.

Therefore, it follows that fair trial and due process are possible only when the Court/forum exercises jurisdiction strictly under the law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons/cases falling under the former category will certainly be jeopardized.

9. Another shocking yet unfortunately common example of petitions alleging harassment is allegations against Government officials, such as officials of Revenue Departments. The allegations in such cases inter alia are, at the instance of private party; Sale Certificate is not being issued, demarcation of land is not being done or mutation is not being effected; etc. Such petitions are filed before this Court even though the remedies of the acts complained of lie with the Revenue authorities, however, the Revenue authorities are reluctant to perform their duties and this is the reason the petitions are piling up before this court. Primarily, this practice should be curbed and Mukhtiarkar/Assistant Commissioner concerned shall strictly follow the law and guidelines issued by the Board of Revenue in this regard. However, it has been noticed that they are engaging in certain sort of affairs disturbing the public at large, who appear before them. Such practice must be stopped and if in future, the Mukhtiarkar concerned is found indulged in such illegal practices, the Chief Secretary, Sindh shall take prompt action against the concerned Mukhtiarkars and their matter shall be referred to the Provincial Anti-Corruption without delay. All the Mukhtiarkars of the Province of Sindh are directed to ensure their availability in their respective offices to sort out the matters of the public at large within their domain and take prompt action on the applications of the aggrieved persons; so far as their issues with regard to issuance of Sale Certificates, Demarcations, Foti Khata Badal and other ancillary issues. This direction shall not be ignored at all. In case of non-compliance, appropriate action in terms of Article-204 of the Constitution shall be taken against the delinquent Mukhtiarkars without further notice.

10. The Chief Secretary of Sindh is directed to coordinate with the Senior Members Board of Revenue to look into the conduct of Mukhtiarkars in Mirpurkhas Division and take prompt disciplinary action against them if they fail to perform their duties and create bottlenecks while dealing with the public on the subject issues, as discussed supra.

11. These petitions are disposed of with a direction to the competent authority of the respondents to hear the petitioner and if his grievances still subsist, the same shall be taken care of subject to the law and after providing meaningful hearing to him within a reasonable time.

JUDGE

JUDGE

"Ali Sher"