

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D-1170 of 2021

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Petitioner : Moula Bux Maitlo in person

Respondents No.17, 18 : Ashfaque Ahmed and others
22 & 23 : Through Mr. Achar Khan Gabol,
Advocate

Respondents No.1 to 8 : Province of Sindh and others
through Mr. Ali Raza Balouch,
Assistant Advocate General

Date of hearing : **05.03.2024**

Date of Decision : **27.03.2024**

O R D E R

ARBAB ALI HAKRO, J.- The petitioner invokes the constitutional jurisdiction of this Court and seeks the following reliefs:-

- a) *That this Court may be pleased to direct the respondents No.1 to 6 to take necessary measures to stop the said illegal construction in the name and style of "Khairpur Green City Housing Scheme" situated at Luqman Taluka and District Khairpur and the respondent No.6 may be directed to hold the enquiry and to submit the detail report before this Court in respect of said M/S Khairpur Green City Housing Scheme (and how to pass partition order after the fotiKhata was change in the name of legal heirs of Wali Muhammad, Ashfaque Ahmed Jamali and others subsequently sale certificate No.Mukht,/ SC/14232 dated 16.02.2023 and No.AC/SC/14232 16.02.2023 other sale certificates were issued and showed no any civil litigation or any issue is pending up on this property vide entry No.846 dated 01.3.2022 and approve Map/layout plan residential colony with simple change Green City Housing Scheme Pir Jo Goth Road Luqman on same disputed property) besides so many cases are pending including court stay order and this C.P No.1170/2021 are pending.*
- b) *That this Court may be pleased to direct the respondent No.2 to 5 to inspect the site of "Khairpur Green City Housing Scheme"*

situated at Luqman, Taluka and District Khairpur and to size the Scheme being in violation of SBCO, 1979 and case Civil Regulation 2018.

- c) That this Court may be pleased to reverse above illegal acts initiated by revenue authorities as well as town planning and others during pendency of civil court stay order and other pending litigations, restrain the official respondents from any support to the illegal and unlawful acts of the private respondents No.11 to 13 and others regarding the Survey No.368 to 374, 410 to 415 and others situated at Deh Luqman, Taluka and District Khairpur.*
- d) That this Court may be pleased to direct the respondent No.14 and 15 to conduct the enquiry in respect of the fraud and cheating committed by private respondent No.11 to 13 and others and their companions with the public at large for collecting the millions of rupees upon the property of the petitioner party respondents.*
- e) That this Court may be pleased to direct the respondent No.9 and 10 to provide the protection to the petitioner and his family members in accordance with law from the cruel hands of private respondents and their companions.*
- f) Relief.*
- g) Costs.*

2. The facts as narrated in this petition are that an agricultural land bearing Survey Nos.368, 369, 370, 371, 372, 373, 374, 410, 411, 412, 413, 414, 415, 433, 434, totalling 16-00 Acres, is situated in Deh Luqman Taluka and District Khairpur ("**subject land**"). The petitioner and private respondents No.24 to 28 and 31 to 33 owned 07-00 Acres of this land, which was inherited and the *Foti Khata* was changed to their names in the record of rights. It is asserted that the deceased father of the petitioner and respondents No.24 to 28 and 31 to 33 purchased 08-00 Acres of land from Wali Muhammad, the deceased father of respondent No.16 to 23, through a Sale Agreement dated 01.11.1992. Thus, the Petitioner and respondents No.24 to 28 and 31 to 33 possessed 15-00 Acres of the subject land, while the remaining 01-00 Acres belong to Muhammad Mithal Maitlo. Wali Muhammad did not execute the Sale Deed in favour of the petitioner's father. After the death of the petitioner's father, the petitioner and respondents No.24 to 28 and 31 to 33 filed F.C Suit No.38 of 1995 before the Court of the learned 1st Senior Civil Judge, Hyderabad, for Specific Performance of Contract and Permanent Injunction. This

litigation between the parties is ongoing, and C.P No.2941/2021 is pending before the Supreme Court of Pakistan. The petitioner also purchased 00-20 Ghunta from Survey No.412, 413 and 414 from his brothers (respondents No.24 and 31) in the year 2015, and the record of rights was mutated in the name of the petitioner. About five years ago, private respondents No.11 to 13 launched a housing scheme named **“M/S KHAIRPUR GREEN CITY HOUSING SCHEME”** in Deh Luqman District Khairpur over the subject land. They started booking residential and commercial plots and sold them in instalments to different persons without getting approval from the Sindh Building Control Authority or getting an approved map/plan. It is also averred that a major portion of the subject land is not in the name of respondents No.11 to 13 but in the name of the petitioner and private respondents No.24 to 28 and 31, who have not converted the agricultural land into residential or commercial. The petitioner made several complaints before Revenue Authorities and Police, etc. Subsequently, respondent No.11 falsely signed the petitioner's name on an application before Director, Town Planning Department Hyderabad and deposited an amount of Rs.156,000/- through a challan in the concerned bank. Upon learning of this fact, the petitioner filed a written complaint with the Director of the Town Planning Department Hyderabad, which was admitted, and notices were issued to respondents No.11 to 13. The Town Planning Department responded to the petitioner through a letter dated 19.3.2019. The petitioner has also asserted that lengthy civil and criminal litigations are pending between them before different Courts. Private respondents No.28(a to g) and 31 to 33 have already filed Civil suits against respondents No.11 to 13 and others regarding their illegal and unlawful occupation of the subject land. Another F.C Suit No.45/2019 is also pending before the Court of the learned 3rd Senior Civil Judge, Khairpur, filed by respondents No.28(a to g) and 31 to 33. In this suit, the trial Court granted status-quo, despite

respondents No.11 to 13 and others violating the Court's Order. A contempt application was filed, which is pending against them. During the suit's pendency and despite passing the status-quo Order, the Assistant Commissioner and Mukhtiarkar (Rev.) Khairpur unlawfully and illegally issued a notice to the petitioner to partition the subject land. This Order was passed at the behest of respondents No.11 to 13. The petitioner challenged this Order before the Deputy Commissioner Khairpur, but the appeal was dismissed. Consequently, the petitioner impugned the Order by filing Civil Suit No.09/2023, pending before the Court of the 3rd Senior Civil Judge, Khairpur. It is also alleged that the revenue officials changed the *Khata* in the record of rights in favour of respondents No.16 to 23 and issued a Sale Certificate. Despite several written complaints lodged by the petitioner against respondents No.11 to 13, no action was taken. As a result, the petitioner filed the instant petition.

3. Petitioner, present in person, contended that Respondents No.11 to 13 and others had committed fraud with the public at large and illegally occupied the property of petitioner and other Respondents by launching a fake housing scheme, namely Khairpur Green City Housing Scheme, thereby selling the plots to innocent persons; that the said housing scheme is illegal and without an approved plan, which violates Section 6 of Sindh Building Control Authority, which provides that no any housing scheme/ society shall be launched without getting approval of plan; that conversion of agricultural land into residential or commercial is illegal and unlawful because as per Section 9 of SBCA, no developer shall engage in construction or transfer of plots except with the license granted by SBCA authorities; that there is no any No Objection Certificate about sale/ purchase of plots. In the last, he submits that an instant petition may be allowed, and respondents may be directed to take necessary measures to stop the illegal construction besides holding an inquiry into the matter.

4. Learned Counsel representing Respondents No.17, 18, 22 & 23, at the very outset, submits that multiple civil suits regarding aforesaid land are pending adjudication before a competent Court of law; that the petitioner is in the habit of making complaints and through this petition, he intends to harass the Respondents; that when disputed factual controversy is involved, this Court in its constitutional jurisdiction cannot resolve the same. Regarding the allegation made by the petitioner for conversion of agricultural land into residential or commercial units, besides not getting NOC from SBCA for constructing the housing scheme, learned Counsel submits that there is proper approval as well as NOC for constructing the housing scheme. In the last, he prayed that instant petition, being devoid of merits, may be dismissed accordingly.

5. Learned A.A.G., in his arguments, contends that the petition is not maintainable as the petitioner has not availed himself of an efficacious, adequate remedy available under the law; disputed facts are involved, requiring detailed enquiry that cannot be determined under constitutional jurisdiction.

6. We have heard the petitioner in person, learned Advocate for respondent Nos. 17, 18, 22, and 23, and Assistant Advocate General for official respondents, and have perused the record with their assistance.

7. Upon a thorough examination of the record, it is evident that a number of civil matters concerning the disputed property are presently pending adjudication in the Civil Courts. The petitioner has conceded in his Petition that he, along with other parties, have instituted a suit for Specific Performance of Contract and Permanent Injunction. Concurrently, an appellate proceeding concerning the aforementioned suit is awaiting adjudication by the Supreme Court of Pakistan, as denoted by C.P No.2941/2021. Moreover, additional civil and criminal proceedings related to the disputed property are in progress between the involved parties. Consequently, any observation

proffered within the ambit of this petition may potentially prejudice the ongoing cases. It is an axiom of jurisprudence that this Court is precluded from invoking its constitutional authority in matters where the factual landscape is under judicial consideration elsewhere. In addition, the Petitioner has imputed that the private respondents have initiated a Housing Scheme on the land in question without procuring the requisite authorization to convert the agricultural land for residential and commercial purposes. In rebuttal to this assertion, respondent No.17 has furnished a communiqué dated 07.02.2023, evidencing that the Town Planning Department has sanctioned the conversion of the said land from agricultural to commercial usage. Furthermore, a letter dated 23.01.2023 has been submitted, endorsing the proposed master plan for the "KHAIRPUR GREEN CITY HOUSING SCHEME" on the specified land, contingent upon the stipulations delineated therein.

8. In addition to the aforementioned disputes, the parties are entangled in civil litigation that encompasses intricate issues of title and possession, which fall outside the scope of this Court's constitutional mandate. It is recognized that there is ongoing civil litigation between the parties. Under these conditions, the authority to adjudicate rests with the civil courts. The civil courts are duly empowered to address such matters, and their jurisdiction is neither abrogated nor supplanted. The intricacies of title and possession necessitate detailed scrutiny of facts and evidence, a task for which the civil courts' procedural mechanisms are particularly well-adapted. In the case of **Government Of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others (2022 SCMR 472)**, it was held by the Supreme Court of Pakistan that:

“So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior courts could not engage in factual controversies as the matters pertaining to

factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on Fateh Yarn Pvt Ltd. v. Commissioner Inland Revenue (2021 SCMR 1133). Admittedly, the learned High Court while passing the impugned judgments had went into the domain of factual controversy, which was not permissible under the law". The underlining is supplied.

9. In the case of Haji Muhammad Ashraf vs The District Magistrate; Quetta, and 3 others (2000 SCMR 238), the Supreme Court of Pakistan has held as under: -

"It is apparent that in the present case at the time the constitution petition was filed in the High Court, the petitioner's suit was already pending and on his own admission an interim order had been issued by the Civil Court, as such, even if the petitioner had been forcibly dispossessed from the plot, as alleged, he could have conveniently approached the Civil Court for appropriate action. In the counter-affidavit filed in the High Court, the official respondent No.3 specifically denied petitioner's claim of being in possession of the plot, as such, the relief of restoration of possession, claimed in the petition could not even otherwise be granted by the High Court without the determination of the factual controversy of petitioner's possession of the plot. The cases referred to by the learned counsel are of no help to him. The first case pertained to election matter involving a measure of urgency and there the illegalities appeared on the face of record. In the second case the parties had been litigating before various forums and functionaries for years and the controversy did not involve any such question of facts as could be resolved only on evidence. In the above circumstances, no ground for interference with the findings of the learned Judges of the High Court is made out. The petition is accordingly dismissed and leave is refused."

10. In consideration of the aforementioned discussion and the existence of ongoing civil litigation, this petition is determined to be non-maintainable and is thus **dismissed**, together with the listed applications.

JUDGE

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