

**IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR**

Present : Yousuf Ali Sayeed &
Zulfiqar Ali Sangi, JJ

Constitutional Petition No. D-276 of 2023

Fakhrunisa Shahwani & others.....Petitioners

Versus

Province of Sindh and others.....Respondents

Constitutional Petition No. D-1500 of 2023

Ahsan Anwar.....Petitioner

Versus

Province of Sindh and others.....Respondents

Mohsin Qadir Shahwani, Advocate, for the Petitioners in C.P. No. D-276/23 and the Respondents No. 5 in C.P. No. D1500/23.
Ahmed Ali Ghumro, Advocate, for the Petitioner in C.P. No. D 1500/23 and the Respondents No.4 in C.P. No. D-276/23.
Shahriyar Imdad Awan, AAG

Date of hearing : 28.11.2023

ORDER

YOUSUF ALI SAYEED, J - These Petitions under Article 199 stem from an internecine conflict between the descendants of the late Arbab Khatoon, who espouse rival claims to certain parcels of agricultural land said to have been owned by her, including land admeasuring 39-09 acres, bearing Survey Nos. 17, 424 424/3, 425/1,2,3,4, 426/1,2,3,4, 9(a) located in Deh Khai-Qasim, Taluka Bhirya, District Naushehro Feroze the (“**Subject Property**”). The Petitioners in Constitutional Petitioner No. D-276/23 (“**CP D-276**”) are her children, whereas the Respondent No.4, who is the Petitioner in Constitutional Petition No. D-1500/23 (“**CP D-1500**”) is her grandson, being the son of a deceased sibling of the Petitioners, namely Anwar Ahmed Memon.

2. CP D-276 impugns an Order dated 09.02.2023 (the “**Impugned Order**”) passed by the Respondent No.2, being the Member Land Utilization, Board of Revenue, Sindh, in Revision No. SROR-266/2021 (the “**Revision**”) filed by the Respondent No.4 under Section 164 of Land Revenue Act, 1967 (the “**Act**”) in the matter of Entry No.78 made in respect of the Subject Property in the revenue record of the relevant area (the “**Entry**”) in the year 1984.
3. As for CP D-1500/23, the same has been instituted by the Respondent No.4 in CP D-276, essentially seeking that FIR No. 74/2023 registered on 22.09.2023 at P.S. Bhirya City under Section 447, 386, 147, 148, 149, 506/2, 337H2 of the Pakistan Penal Code read with Section 7 of the Anti-Terrorism Act, 1997 (the “**FIR**”) in connection with land under dispute between him and the Petitioners in CP-276 be quashed.
4. Per the Petitioners, the Entry had been fraudulently obtained by the father of the Respondent No.4 in the relevant revenue record with the connivance of the mukhtiarkar and other lower revenue officials, showing that Arbab Khatoon had made an oral gift of the Subject Property in his favour, which, according to the Petitioners, was forged, managed and bogus.
5. The course of proceedings under the Act, leading up to the Impugned Order, are that the Petitioners had challenged the Entry through an Appeal to the Additional Deputy Commissioner, Naushehro Feroze, under Section 161 of the Act, which was allowed by an Order dated 24.09.2013 with the Entry and subsequent entries made the basis thereof being cancelled. Revenue Appeal No.290 of 2020 preferred by the Respondent No.2 against that Order before the Commissioner, Shaheed Benazirabad Division culminated in dismissal in terms of an Order dated 23.11.2021 on the ground of limitation, however the Respondent No.4 nonetheless prevailed through the Revision, where the

aforementioned Orders dated 24.09.2013 and 23.11.2021 both came to be set aside vide the Impugned Order, the operative part of which reads as follows:

“I have heard both the parties at length and perused the record of the subject land provided by Mukhtiarkar which revealed that Entry No.78 of VF XV, mutated on the basis of gift statement before the Mukhtiarkar. However, Mukhtiarkar also provides pass book No. 44739 in favour of applicant father (Anwar Ahmed) which was prepared on 29.09.1999 and subject land was mortgaged in UBL Naushahro Feroze. In the present case respondents admitted that possession of suit land is with applicant since execution of gift. It is worth to mention that Additional Deputy Commissioner Naushahro Feroze passed order dated 24.09.2013 after passed 29 years which is void, ab initio, nullity in the eyes of law and the impugned order dated 23.11.2021 of Commissioner Shaheed Benazirabad is also illegal and non-speaking which is not according to law.

For the reasons mentioned above. I hereby set aside both the orders dated 24.09.2013 passed by Additional Deputy Commissioner-I Naushahro Feroze and 23.11.2021 passed by Commissioner Shaheed Benazirabad, without considering 29 old Revenue Record as long standing entries in revenue record could not be cancelled in summary proceeding before the revenue authority, consequently entry No.78 is restored in its original position and further direct Deputy Commissioner Naushehro Feroze and Mukhtiarkar Taluka Bhiria to mutate the registry of the subject land measuring 39-09 Acres Deh Khahi Qasim in record rights in favour of applicant. The revision application is hereby allowed with no order as to costs.”

6. Furthermore, as things stand, various civil suits between the parties in relation to the Subject Property, as instituted by the Petitioners and other heirs, remain pending before the Senior Civil Judge Naushehro Feroze, being F.C. Suit Nos. 91/2014 and 220/2014 for Declaration and Permanent and Mandatory Injunction, and Suit No.96/2015 (new Suit No.155/2016) challenging a Sale Deed dated 25.07.2013 executed in favour of the Respondent No.4 by his late father on the basis of the gift said to have been made by Arbab Khatoon.
7. As for the FIR, as it transpires, it was registered at the behest of the Respondent No.5 in CP D-1500, namely Muhammad Umar, identifying himself as the manager of

some of the Petitioners in CP D-276. Its translation, as filed, reads as follows:

"I am the Manager of Mr. Nazeer Ahmed Memon and Ms. Fakhar-un-Nisa Shahwani, who have appointed me as their authorized Attorney. They own properties and lands with survey numbers as Survey numbers 359, 428/1-2, 4271/-2, 15 AB, and 430/1,2,3,4, totaling 30.00 acres and Survey numbers 17 AB, 425/1,2,3,4, 9A, and 426/1,2,3,4, totaling 39.09 acres. These properties belong to Mr. Nazeer Ahmed Memon and Ms. Fakhar-un-Nisa Shahwani, whose ownership has been confirmed by the court, and an order to this effect has been issued by the Honorable High Court. On these lands, individuals named Sarfaraz Ahmed Jamali, who resides in Bandhi, Ahsan Anwar Memon, currently living in Karachi, and Fayaz, Ahmed Memon from Nawabshah, along with their armed guards, including Riaz Qatiyar Muneer (alias Gullu Lanjiyaar), Mi Memon, Mubeen Korat, and others, have illegally taken possession. On September 9, 2023, I was present at Mr. Nazeer Ahmed's bungalow along with Mashooq, son of Khamiso Khan Lanjiyaar, and Paryal, son of Muhammad Yousuf Lanjiyaar. Sarfaraz Ahmed Jamali, accompanied by Riaz, son of Gul Bahar Lanjiyaar, and Mubeen Korai, approached us and demanded an extortion amount of 5 crore rupees from our employer/landowner. They threatened that unless this amount was paid, they would not release their illegal hold on the land. Immediately, I informed my landlord and handed over Rs. 20 lakhs as extortion money. The remaining amount was promised to be paid after the harvest of the crops. However, they left with the extortion money of Rs. 20 lakhs without giving us peaceful possession of the land. Today, around 10:15 p.m., I, along with the aforementioned witnesses, visited the land with the help of torchlight. We observed that; Mr. Shahnawaz Raho was armed with a rifle, Mr. Mubeen Korai was armed with a rifle, Mr. Riaz Lanjiyaar was armed with a rifle, Mr. Saeef (alias Gullu Lanjiyaar), Mr. Shahbaan Lanjiyaar had a short gun and five unidentified individuals were present with illegal occupation on the land. They confronted us, questioned the purpose of our visit, and demanded the remaining extortion money. Subsequently, they issued threats and demanded that we vacate the land after the receipt of extortion money. They warned that failure to comply would result in dire consequences for our lives and property as well as to the land owner. Due to their actions, including firing shots into the air, we decided to leave the land and immediately informed our landowner. They advised us to file a complaint with the relevant Police Station. Therefore, I am here to file a complaint against Mr. Sarfaraz Ahmed Jamali, Ahsan Anwar Memon, and others who have unlawfully occupied the mentioned survey numbers. They have received an extortion amount of Rs. 20 lakhs and are still demanding the outstanding extortion money while intimidating us during our visits to the land. They have engaged in acts of terrorism by firing shots and issuing threats to our lives and property. We were able to clearly identify the unidentified individuals, and should we encounter them

again, we can provide their identities. This is our formal complaint, seeking an investigation."

8. Proceeding with his submissions in CP D-276, learned counsel for the Petitioners invited attention to Grounds (a) to (d) raised through the Memo of Petition and argued with reference thereto that the Respondent No.2 had failed to appreciate that the Subject Property was the subject matter of the aforementioned Suits pending before the Senior Civil Judge Naushehro Feroze, between the same parties, entailing serious factual controversies and intricate questions of law, hence was beyond the competence/jurisdiction of a revenue forum, in as much as it was well settled that such jurisdiction was summary in nature. He argued that the rights of the parties cannot be determined through such summary proceedings, but can only be determined after recording evidence, hence whenever a person feels aggrieved that he has been deprived of his right through an entry in revenue record, he ought to approach the Civil Court, which was the competent forum to determine such right. Furthermore, it was argued that the Respondent No.2 had also failed to appreciate that the Respondent No.4's Appeal and Revision were barred by limitation, but simultaneously contended that the bar did not operate against the Petitioners in the matter of their Appeal against the Entry as limitation does not run in matters of fraud. Reliance was placed on the case of Khawaja Muhammad Akber and others vs. Khawaja Fateh Muhammad and others reported 1993 MLD 76, as well as the further judgments mentioned in Ground (e) onwards.
9. Contrarily, learned counsel for the Respondent No.4 argued that the Appeal that had been filed by the Petitioners before the Deputy Commissioner under Section 161 of the Act had itself not been maintainable as the allegation advanced was one of fraud said to have been committed by the father of the Respondent No.4, which was a matter requiring evidence and falling within the domain of the civil Court, hence the revenue authority had no power to decide the same in a summary proceeding, and had erred in exercising

the same, that too after almost 28 years after the gift and demise of the donor, Arbab Khatoon, who passed away in the year 1986. Reliance was placed on the judgment of the Supreme Court in the case reported as Sardar Muhammad and others v. Imam Bakhsh (Deceased) through LRs and others 2021 SCMR 391.

10. Both the learned counsel similarly contended that the actions of the revenue authorities taken contrary to the interest of the party/parties represented by them were driven by political influence exerted by the other side.
11. For his part, it was argued by the learned AAG that the Petitioners had raised pleas fraud and misrepresentation, which fell beyond the competence of the revenue hierarchy under Section 172 of the Act as such matters required evidence and could not be adjudicated summarily, hence fell within the domain of a civil court. He submitted that the Impugned Order was lawfully passed and paradoxically cited the very grounds raised on behalf of the Petitioners while submitting that the Order dated 24.09.2013 was an illegal and void order, hence not susceptible to the vagaries of limitation.
12. Turning to CP D-1500, it was argued on behalf of the Petitioner in that matter that the statement of the Respondent No.5 recorded in the FIR was false and fabricated in order to gain leverage for the Petitioners in CP-D-276 in the context of the ongoing dispute regarding the Subject Property. He submitted that what had been narrated by the Respondent No.5 was completely implausible, hence the FIR ought to be quashed. On the other hand, learned counsel for the Respondent No.5 maintained that the FIR accurately depicted what had transpired and submitted that CP D-1500 was misconceived and ought to be dismissed.
13. We have heard and considered the arguments advanced on behalf of the parties. In our view, the arguments advanced on behalf of the Petitioners in CP D-276, which essentially enunciate Grounds (a) to (d) of that Petition, are self-

destructive of the challenge to the Impugned Order in as much as they apply squarely to the interference made to the Entry vide the Order dated 24.09.2013, which lies at the root of the matter, and strike at his capacity to do so. The Impugned Order correctly proceeds on the basis that the allegation of fraud was beyond the competence of the revenue authorities to determine. Hence no interference is warranted.

14. As for CP D-1500, whilst the averments set out in the FIR may be somewhat implausible, the long-standing dispute regarding possession and title of the Subject Property is a double-edged sword, and that is not to say the allegations are to be outrightly and summarily discredited without meriting a probe, especially in view of the potentially incriminating recovery made from one of the persons nominated, as reflected in the Statements filed in the matter by the official Respondents Nos. 3 and 4. Be that as it may, the official respondents in the matter are directed to ensure a fair transparent investigation properly recording the statements of all relevant persons.

15. Both Petitions stand dismissed in the foregoing terms.

JUDGE

JUDGE

Sukkur.
Dated :