

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6335 of 2018
(Zorlu Enerji Pakistan Ltd. v. Naseem Banu & others)

Date	Order with signature of Judge
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Present: **Muhammad Shafi Siddiqui, and**
Ms. Sana Akram Minhas, JJ.

1. For hearing of CMA No.2332/2019 (F/T)
2. For hearing of CMA No.27515/2018 (Stay)
3. For hearing of main case

24.4.2024

Mr. Ali Bin Moaz, Advocate for Petitioner

Mr. Aziz-ur-Rehman Akhund, Advocate for Respondents
No.1 to 7

Mr. Sarfraz Anthoni Khokhar, Advocate for Respondent
No.8

Mr. Muhammad Naqash, Advocate for Respondent No.12

Mr. Abdul Jaleel Zebedi, AAG

Ms. Wajiha Mehdi, DAG

Muhammad Shafi Siddiqui, J: We have heard learned Counsel for the parties.

2. It is Petitioner's case that a belated and time-barred suit was filed by the Respondents as being Plaintiffs, without disclosing a proper cause of action. It is on their application under Order VII Rule 11 CPC, that the impugned order was passed first by trial Court followed by dismissal of Civil Revision No.10/2018. Today, learned Counsel for Petitioner submits that the suit was barred in terms of Section 36 of the Colonization and Disposal of Government Land (Sindh) Act, 1912 read with relevant Articles of the Limitation Act and hence the two orders should not have been passed under the jurisdiction vested upon. Learned Counsel for Petitioner has taken us to some of the judgments in support of his arguments viz. (i) Mushtaq Ali Shah v. Bibi Gul Jan (2016 SCMR 910), (ii)

Muhammad Rafique v. Province of Punjab (2018 YLR 1950), (iii) Muhammad Ali v. Province of Punjab (2005 SCMR 1302) and (iv) Alam Sher v. Muhammad Sharif (1998 SCMR 468).

3. The primary object of arguments of the learned Counsel was that it is a mala fide attempt on the part of the Respondents to file a suit for possession and declaration in view of the application of the above law and the supported judgment. He is of the view that the Petitioners are occupying land which was originally allotted to Alternative Energy Development Board, Government of Pakistan (AEDB) [Now claims to have been merged and recognized as Private Power Infrastructure Board] in the year 2008, out of which the individual energy sector entities were granted land at Jhampir. They claimed such entitlement on the basis of a registered instrument dated 29.2.2012.

4. We have also seen the contents of the plaint which do not apparently dispute the land that was allegedly allotted to the Petitioners, however, in terms of their arguments it appears that they have made an attempt to demonstrate that the Petitioners have trespassed their land if at all, the Respondents were entitled to be in occupation, since their rights are also seriously disputed (be it in relation to other piece of land) on the count that it was only 10 years lease, which lapsed years before.

5. Learned AAG has given us the details of such understanding by demonstrating that originally an area of 60 acres of land was allotted to Jamaluddin son of Fazil on

Wahichahi/Barani basis for 10 years and after its expiry the land reverted back to the Revenue.

6. On such rival claims that Applicant under order 7 rule 11 CPC was dismissed and maintained by Revisional Court. The triggering point is registered instrument i.e. main lease which was not discussed in the order, although argued before two forums below. Most likely, because Respondent claims a trespass over their land and they do not seek cancellation of Petitioner's land.

7. Be that as it may, after hearing the Counsel at length all counsel reached a consensus that some of the issues as discussed are triable whereas the crucial issue being the demarcation of the land. The Senior Civil Judge should have taken the cognizance of the fact that the Plaintiffs, who disclosed themselves to be successor of Jamaluddin or anyone else through which they claim, were granted land on Wahi Chahi and Barani bases for 10 years; if at all the Plaintiffs/ Respondents could demonstrate and show their lawful title, they would be well within their rights to seek demarcation of land only then. We, therefore, do not find any reason to interfere in the two orders, however, since these are legal issues which cannot be decided summarily on an application under Order VII Rule 11 CPC, we, therefore, deem it appropriate to frame the following issues:-

- i) Whether the Respondents being Plaintiffs in the suit enjoy any title over the land which they claimed to have inherited through their predecessor and/or the suit land, after the expiry of 10 years, reverted back to Board of Revenue?

- ii) Whether the suit, as framed and filed, was barred by limitation?
- iii) Whether the jurisdiction of the Trial Court was ousted in terms of section 36 of the Colonization Act?
- iv) What should the relief be?

8. If however the Court feels appropriate, it may frame any additional issue(s).

9. With this understanding the Petition is disposed of along with all pending applications, if any, with expectation that the parties may, if they so deem fit and proper, record evidence and these legal issues be decided preferably in about four months' time.

JUDGE

JUDGE

Shakeel, PS.