

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Salahuddin Panhwar &
Mohammad Abdur Rahman, JJ,*

C.P. No.D-1177 of 2024

Noor Muhammad

Vs.

Province of Sindh & Another

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- 1.For orders on Misc. No.5570/2024.
 - 2.For orders on Misc. No.5571/2024.
 - 3.For hearing of main case.

Petitioner : Through Mr. G. N. Qureshi, Advocate.

Respondents : Nemo.

Date of hearing : 15.03.2024

ORDER

MOHAMMAD ABDUR RAHMAN, J. The Petitioner maintains this Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking directions that a “formal” allotment order be issued to him in respect of 16 acres of land in Survey No. 246, Deh Bund Murad, District West, Karachi (hereinafter referred to as the “Said Property”).

2. The Petitioner contends that a meeting of a Scrutiny Committee of the Respondent No. 2 was convened on 26 April 2012 and pursuant to which a request made by the Petitioner, for the conversion of the tenure of an immovable property held by him on a 30 years lease into a 99 years lease for industrial purpose at 25% of the market price Rs.1,800,000 (Rupees One Million Eight Hundred Thousand) per acre, was acceded to.

3. The Petitioner contends that the allotment was made on the basis of Clause (3) read with Sub clause (d) of Clause 4 of Statement of Conditions for allotment of properties that were issued under Sub-Section (2) of Section 10 of the Colonization of Government Lands Act, 1912 and which were notified by the Respondent No. 2 on 25 February 2006 and which read as under:

- “ ... 3. The land shall be disposed of by the Government in accordance with the provisions of the Act, to the Federal Government, a Provincial Government, autonomous and semi-autonomous bodies, and bonafide housing societies, authority, company, a person or a group of a persons at the market price for any purpose mentioned in this statement.
4. No land shall be disposed of ...
- d) For industrial purpose price not less than twenty five percent of the market prices...”

4. He contended that nearly 10 years later a challan dated 17 March 2022 was issued by the Respondent No. 2 and which was duly paid by the Petitioner. He further contended that despite such an amount being paid by the Petitioner, the Respondent No. 2 on 12 April 2022 has raised an objection to the allotment as hereinunder:

- “ ... With reference to your application dated 29.03.2022 on the subject noted above, you are hereby informed that we have processed your request for allotment of land admeasuring 10-00 acres from Block No.246 of Deh Bund Murad Karachi by forwarding the occupancy challan for Rs.7.2 Million (Rupees Seventy Two Lac Only) which is paid by you as verified by the Treasury Officer Karachi vide Challan No.434, dated 29.03.2022 in Category- A for one purpose only (i.e. Industrial purpose) for 99 years lease. Please be intimated that the Honorable Supreme Court of Pakistan has imposed a complete ban on all kinds of allotments and mutations in revenue record related to the state land in Suo-Moto Case No.16 of 2011 as per its interim order passed on 28.11.2012.
2. It is to inform you that this Department cannot therefore take any action at this stage. However, your request will be further processed for 99 years lease after receiving the final order of the Honorable Supreme Court of Pakistan.”

5. The Petitioner impugns this letter *inter alia* on the ground that despite having issued the Challan and received payment from the Petitioner of the entire requisite amount for the allotment of the Said Property, the Respondent No. 2 is not issuing a “formal” Allotment Letter in respect of the Said Property in favour of the Petitioner and hence he maintains this Petition.

6. We have perused the Statement of Conditions dated 25 February 2006 that has been issued by Government of Sindh, Land Utilization Department under subsection (2) of Section 10 of the Colonization of Government Lands Act, 1912 and note that the provisions of those statement of conditions do not permit for the conversion of a 30 years lease into 99 years lease. Such conditions were however amended by a Notification dated 24 November 2010 which purported to amend the Statements of Conditions dated 25 February 2006 and which under Clause 10 (a) (1) permitted such a conversion to be made.

7. The Honourable Supreme Court of Pakistan in Suo Moto Case No. 16 of 2011 had taken notice of such conversions and has passed an interim order on 28 November 2012 holding that:

“ ... 7. Under these circumstances, we are constrained to direct that the Deputy Commissioners/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Mukhtiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the officer of the Mukhtiarkar to any other place. Moreover, mindful of rampant corruption and organized crime of land grabbing, particularly, regarding prime state land, and mismanagement/forgeries in the revenue record, we hereby, until further orders restrain the Government/Revenue Department from mutation, allotment, transfer and/or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner/DCO of the relevant districts/dehs besides others to contempt proceedings.”

As is apparent the order passed by the Honourable Supreme Court of Pakistan *inter alia* clarifies that:

- (i) no further mutation, allotment, transfer or conversion of any state land was to be made until the entire revenue record of Sindh was reconstructed;
- (ii) without prejudice to the generality of the above-mentioned restriction on conversion, the conversion of a 30 year lease to an enhanced term shall be stopped as it was prohibited by the law;
- (iii) by clarifying that state land cannot be sold out “without participation of public at large”, it is apparently being suggested that direct allotments of land to persons without a process of public auction cannot be carried out even pursuant to Statements of Conditions issued under Section 10 of the Colonisation & Disposal of Government Lands (Sindh) Act, 1912; and
- (iv) any further conversions of lands that were done by the Province of Sindh after 28 November 2012 were to be treated as a nullity and would be treated a contempt of the order dated 28 November 2012.

To the best of our knowledge the order passed by the Supreme Court of Pakistan, has to date not been recalled by it and still subsists.

8. We have no doubt that this Petition is nothing more than an attempt that is being made by the Petitioner to bypass proceedings in *Suo Moto* Case No.16 of 2011. The Petitioner has therefore come to this Court with unclean hands and **in addition** his attempt to use this Court's jurisdiction to circumvent the orders passed by the Honourable Supreme Court of Pakistan is clearly an abuse of process. Notwithstanding our opinion that the Petition has been maintained with unclean hands and in abuse of process, even on merits we do not see any illegality in the letter dated 12 April 2022 that was issued by the Respondent No. 2 and who correctly averred in that letter that the Respondent No. 2 could not process the application of the Petitioner during the pendency of the interim order passed by the Honourable Supreme Court of Pakistan in *Suo Moto* Case No. 16 of 2011. **The only illegality that we see is the issuance of the challan dated 17 March 2022 by the Secretary of the Respondent No. 2 and which to our mind would amount to contempt of the order passed by the Honourable Supreme Court of Pakistan in *Suo Moto* Case No. 16 of 2011 and on the basis of which the entire Petition has in fact maintained.**

9. For the foregoing reasons we are of the opinion that this Petition cannot be sustained and which is therefore dismissed *in limine* along with listed applications with costs of Rs.50,000 to be deposited by the Petitioner with the High Court Clinic Fund within a period of two weeks from the date of this order. In the event that the amount is not deposited by the Petitioner, the MIT-II shall forthwith send a report to this Court and where after both the Petitioner's CNIC No.42401-5460330-3 and the Petitioner's Attorney's CNIC No. 42501-1486719-7 shall be blocked until compliance of this Court's order is made. Additionally, the MIT-II is directed to send a copy of the Challan dated 17 March 2022 issued by the Secretary of the Respondent No. 2 along with a copy of this order to the Registrar of Honourable Supreme Court of Pakistan to be placed before their Lordships who are hearing *Suo Moto* Case No. 16 of 2011 for their perusal.

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