

# HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

C.P. No.D-1724 of 2024

[*Mir Mazhar Talpur vs. Province of Sindh and others*]

**Present:** Mr. Justice Zulfiqar Ali Sangi  
Mr. Justice Arbab Ali Hakro

Petitioner by : Mr.Nazeer Hussain Jarwar, advocate  
Assisted by Mr. Maisum Hussain Sahar,  
advocate

Respondents by : Mr.Ayaz Ali Rajpar, Addl. A.G

Dates of Hearing : 15.01.2025

Date of Decision : 15.01.2025

## **ORDER**

**ARBAB ALI HAKRO, J:-** Through this Constitutional Petition, the petitioner challenges the veracity and legality of the Orders dated 24.6.2024 and 12.9.2024 (“**impugned orders**”), passed by the Member Judicial-II, Board of Revenue, Sindh (“**M.J-II, BoR Sindh**”)<sup>1</sup>. The aforementioned Orders resulted in the cancellation of the petitioner's predecessor entry No.135, dated 1.02.1995, concerning the subject land<sup>2</sup>, within the record of rights. The prayers sought by the petitioner are reproduced below: -

- (a) *Declare the Impugned Order dated 12.9.2024 as null, void, and ab initio, as the learned Member Judicial-II of the Board of Revenue, Hyderabad, lacked the jurisdiction to entertain such Suo-Moto proceedings.*
- (b) *Declare that the initial proceedings initiated by the learned Member Judicial-II, Board of Revenue, Hyderabad, and the Order dated 24.6.2024 are null, void, and ab initio, as the learned Member Judicial-II, Board of Revenue, Hyderabad, lacked the jurisdiction to entertain such Suo-Moto proceedings.*
- (c) *Direct Respondent No.3 to instruct Respondent No.4, 5 and 6 to remove the red ink 'suspicious' entry from the VF VII/B in the name of Mst.Jindo, who is the deceased sister of petitioner.*
- (d) *Declare that the subject land is rightfully and lawfully the property of the petitioner, as the chain of title on VF VII/A.*
- (e) *Grant any other further, better, or alternative relief deemed appropriate in the circumstances of this suit in the interest of justice.*

2. At the outset, learned counsel representing the petitioner submits that the impugned orders passed by the M.J-II, BoR Sindh are illegal, unlawful, and without jurisdiction. He further submits that the entry in red ink made by the Supervising Tapedar on VF VII-A, dated 01.06.2023, is also illegal, made

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<sup>1</sup> Passed in Suo-Moto No.928/2024 and Suo-Moto Review No.17/2024

<sup>2</sup> Bearing Survey Nos. 184, 18, 130, 124, 130, etc, situated in Deh Soonthi Taluka Samaro, District Umerkot

with malafide intent, and liable to be removed. Moreover, he submits that suo moto proceedings were initiated under Section 164(3) of the Sindh Land Revenue Act, 1967 ("SLRA, 1967"). However, this provision does not give the Board of Revenue the authority to initiate such proceedings. Instead, it confers power upon the Collector (Deputy Commissioner) to refer a case and recommendations to the Commissioner for appropriate orders. It is contended that the M.J-II, BoR Sindh, acted beyond lawful jurisdiction, rendering the proceedings *coram non-judice*. Additionally, it is contended that a mark of '**suspicious**' was placed on the VF VII-B record of the subject land because it was among those lands initially deemed inconsistent with VF VII-A. This action was taken following directives issued by the Full Board Meeting vide letter dated 10.03.2020, which states that only those entries failing to correspond with the mother entry of VF VII-A maintained in 1984-85 should be marked as "suspicious". However, the subject land does not fall within the purview of the above directives, as the entries in VF VII-A and VF VII-B correspond. Finally, he contends that the impugned orders are illegal, unlawful, and without jurisdiction; therefore, the same are liable to be set aside.

3. Conversely, the learned Additional Advocate General representing the respondents supports the impugned Orders by asserting that, on the basis of references made by the Mukhtiarkar (Rev.) Samaro vide letter dated 10.05.2024 and the letter dated 13.05.2024 of the Deputy Commissioner, Umerkot, for cognizance, the M.J-II, BoR Sindh, under Suo-Moto action, cancelled the entry in accordance with law. In concluding his submissions, he contended that the petition is not maintainable and is liable to be dismissed.

4. We have assiduously considered the submissions proffered by the learned counsel for the Petitioner and the learned Additional Advocate General. With the benefit of their assistance, we have meticulously scrutinized the entirety of the record.

5. Following an exhaustive review, the impugned orders were passed by the M.J-II, Board of Revenue Sindh, ostensibly under the auspices of his jurisdiction conferred by subsection (3) of Section 164 of the SLRA, 1967. Hence, it becomes paramount to meticulously scrutinize the language enshrined in Section 164, which states as follows:

*"164. **Revision.**- (1)The Board of Revenue, may, at any time, on its own motion, or on an application made to it within thirty days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer subordinate to it.*

(2) *A Commissioner or Collector may, at, any time, of his own motion or on an application made to him within thirty days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.*

(3) *If in any case in which a Collector has called for a record he is of opinion that proceedings taken or Order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner.*

(4) *The Board of Revenue may, in any case called for under section (1) and a Commissioner may, in any case called for under sub-section (2) or reported to him under subsection (3), pass such orders as it or he thinks fit:*

*Provided that no order shall be passed under this section reversing or modifying any proceedings or Order of a subordinate Revenue Officer affecting any person without giving such person an opportunity of being heard.*

*Provided further that any order passed in revision under this section shall not be called in question on an application of the party affected by such Order;*

*Provided also that no Revenue Officer other than the Board of Revenue shall have power to remand any case to a lower authority”*

6. A meticulous perusal of Section 164 of the Sindh Land Revenue Act, 1967, delineates the procedural framework for the revision of orders issued by subordinate Revenue Officers, underscoring supervision and procedural equity. Subsection (1) vests the Board of Revenue with the prerogative to re-examine any case, whether pending or concluded, either Suo-Moto or pursuant to an application submitted within thirty days of the issuance of the Order. This provision safeguards the Board's capacity to intervene in cases warranting rectification or reconsideration, fostering systemic accountability within the revenue hierarchy. Subsection (2) confers analogous powers upon Commissioners and Collectors, enabling them to requisition records of cases within their jurisdiction, either Suo-Moto or upon application within the same thirty-day timeframe. This empowerment facilitates vigilant oversight by these officials over subordinate officers' determinations, ensuring prompt redressal of errors or injustices. Subsection (3) mandates that if a Collector discerns the necessity for modification or reversal of an order upon examining the record, he must transmit the case accompanied by his opinion to the Commissioner. This stipulation introduces an additional tier of scrutiny, mitigating the potential for capricious decisions by Collectors and ensuring that consequential amendments to orders undergo further evaluation. Subsection (4) authorizes the Board of Revenue and the Commissioner to render orders as deemed appropriate post-review. However, it incorporates a pivotal provision stipulating that no order altering or annulling a decision affecting an individual shall be enacted without affording that individual an

opportunity for a hearing, thereby upholding the doctrine of natural justice. The second proviso stipulates that any order issued upon revision shall be immune from challenge by the aggrieved party, imparting finality to the decisions promulgated under this section and circumventing protracted litigation. Lastly, the third proviso circumscribes the power to remand cases exclusively to the Board of Revenue, precluding lower Revenue Officers from remitting cases to subordinate authorities, thus upholding an unambiguous administrative hierarchy and obviating potential misuse of authority. In its entirety, Section 164 harmonizes the imperatives of administrative expediency with safeguarding individual rights in land revenue adjudications.

7. Furthermore, Sections 44 and 45 of the Sindh Land Revenue Act, 1967 delineate a comprehensive framework for resolving disputes pertaining to land records and mutations, thereby ensuring procedural fairness and the sanctity of land records. Subsection (1) of Section 44 articulates that, in the event of a dispute materializing during the creation, revision, or preparation of any record or amidst an inquiry, a Revenue Officer is endowed with the authority to adjudicate the appropriate entry to be inscribed in the record or mutation register. This mandate can be exercised by Suo-Moto or upon an application from any aggrieved party. The Revenue Officer is obligated to conduct an inquiry as deemed necessary, and must meticulously document the reasoning underpinning his decision. This provision endows Revenue Officers with the decisiveness requisite for the expeditious resolution of disputes, thereby promoting administrative efficiency in land management. Subsection (2) of Section 44 addresses circumstances where the Revenue Officer cannot ascertain possession of the disputed property. If the officer is of a rank not inferior to that of an Assistant Collector of the first grade, he must conduct a thorough inquiry, allowing all concerned parties to submit their claims and evidence. The officer is then duty-bound to determine the rightful claimant to the property and issue a written directive to place that individual in possession, ensuring the corresponding entry is made in the record. This ensures the process is transparent, and all stakeholders are afforded an opportunity to be heard. Should the officer be below the rank of Assistant Collector of the first grade, he must escalate the matter to a superior authority (Assistant Collector of the first grade), who will then adhere to the same procedural protocol. This hierarchical structure ensures that disputes are adjudicated by suitably qualified officials, thereby maintaining the integrity of the decision-making process. Subsection (3) of Section 44 elucidates that any directive issued under subsection (2) is subordinate to any judgment or Order rendered by a competent court. This provision underscores the preeminence of judicial authority over administrative

determinations regarding land disputes, guaranteeing that parties retain the right to judicial recourse if necessary.

8. Section 45 of the SLRA, 1967, enunciates stringent stipulations pertaining to the modification of entries within the record-of-rights in successive records. It delineates that alterations may only be effectuated under two rigorously defined circumstances. Clause (a) authorizes modifications predicated upon incontrovertible facts substantiated or conceded. This provision ensures that any amendments to land records are firmly grounded in verifiable evidence, thereby preserving the precision and integrity of said records. Clause (b) sanctions alterations when there exists a consensus among all interested parties or when such changes are sustained by a decree or Order that possesses binding authority upon those parties. This clause underscores the necessity of consensus and juridical authority in effecting modifications to land records, thus precluding unilateral changes that may precipitate disputes or inequities.

9. Sections 44 and 45 of the Sindh Land Revenue Act, 1967, coalesce to delineate an exhaustive framework for adjudicating disputes pertaining to land records, ensuring any alterations thereto are predicated upon established facts or mutual concurrence. Section 44 endows Revenue Officers with the prerogative to adjudicate disputes, mandates adherence to equitable inquiry processes, and acknowledges the primacy of judicial decrees. Conversely, Section 45 upholds the sanctity and integrity of land records by circumscribing modifications to those substantiated by evidence or sanctioned by unanimous agreement. This statutory framework endeavours to reconcile administrative expediency with safeguarding individual rights and the supremacy of the rule of law in matters germane to land revenue administration.

10. In the instant matter, the impugned Order dated 26.6.2024 discloses that the M.J-II, BoR Sindh, pursuant to the reference/letter dated 10.5.2024 under Section 164 of the SLRA, 1967, concerning the subject entry related to the subject land, which was flagged as suspicious by the office of the Deputy Commissioner, Umerkot, for initiating Suo-Moto proceedings under subsection (3) of Section 164 of the SLRA, 1967, has cancelled the subject entry by concisely adjudicating as follows: -

*“5. I have heard the Deputy District Attorney for state and the Respondent as well. I have also perused file and the record. Following points emerges;*

**A- The entry No.135 of VF-VII-B of Deh Soonthi, Taluka Samaro, District Umerkot has been declared suspicious.**

**B- As per Land Register the land belongs to Government. The Respondent claimed that land was granted to them from Land Commission Nara Valley. However, he failed to produce any document of allotment.**

6. *In view of foregoing it is concluded that entry No.135 dated 01.02.1995 of VF-VII-B of Deh Soonthi, Taluka Samaro, District Umerkot is managed, therefore, cancelled.....”*

[Emphasis supplied]

11. To scrutinize the legitimacy of the aforementioned Order passed by the M.J-II, BoR Sindh, dated 26.06.2024, in light of Sections 164, 44, and 45 of the SLRA, 1967, we must meticulously examine the jurisdictional authority of the M.J-II, BoR Sindh, the procedural prerequisites for cancelling entries, and the resultant implications of the facts presented. Section 164 of the SLRA, 1967, authorizes the Board of Revenue to revise orders issued by subordinate Revenue Officers. Within this purview, the M.J-II, BoR Sindh, as an integral entity of the Board, possesses the authority to scrutinize cases and render determinations concerning entries in land records. Nonetheless, this power is circumscribed by the statutory provisions of the Act, which necessitate allowing the affected parties to be heard. Section 44 elucidates the procedure for resolving disputes pertaining to land records. It mandates that if a Revenue Officer (or, in this context, a Member of the Board) cannot conclusively determine possession or rights, he is obliged to conduct an inquiry, permitting all parties to present their claims and evidence. The impugned Order does not demonstrate that a proper inquiry was undertaken in concordance with this provision, particularly vis-à-vis the Respondent's assertions of the land being allocated by the Land Commission Nara Valley. Section 45 restricts amendments in entries to those predicated on corroborated facts or mutual consensus. The cancellation of the entry in contention must be substantiated by unequivocal evidence or a consensual agreement among the involved parties. The impugned Order appears deficient in providing robust justification for the annulment, as it relies on the assertion that the entry is "managed" without furnishing a detailed foundation for this conclusion.

12. The impugned Orders articulate that the entry has been designated as suspicious and that the Respondent (Petitioner herein) failed to furnish documentation of allotment. However, the letter dated 10.05.2024 from

Mukhtiarkar does not explicitly advocate for the cancellation of the entry; rather, it suggests that the suspicious note may be expunged if the entry conforms to the pertinent records. The declaration rendered by the M.J-II, Board of Revenue Sindh, marking the entry as "suspicious" is not supported by adequate material or evidence. As a result, it appears to be null and void ab initio, lacking any legal effect. This discrepancy engenders doubt concerning the authority and rationale underpinning the cancellation. Furthermore, the impugned Orders reference that the Deputy District Attorney and the Respondent (the petitioner herein) were heard, yet it fails to elucidate the nature of the inquiry or whether all pertinent evidence was duly considered. Given the paramount importance of affording a fair hearing, the absence of a comprehensive inquiry renders the impugned Orders procedurally deficient. The impugned orders, relying solely on a mere allegation that the entry is "managed," without substantial evidence or a clear legal foundation, are rendered ultra vires to the material available on record. Consequently, it is evident that the M.J-II, BoR Sindh, in issuing the impugned orders, acted beyond the powers conferred upon him by law and failed to comply with the procedural mandates prescribed under the Act of 1967.

13. In summation, the impugned Order dated 26.06.2024 appears to transgress the jurisdictional bounds of the Member Judicial-II due to the absence of a proper inquiry as enjoined by Section 44, inadequate evidence to support the annulment as necessitated by Section 45, and failure to comply with the procedural safeguards enshrined in Section 164. While assuming such jurisdiction, the M.J-II, BoR Sindh passed the impugned Order without adhering to the procedural safeguards mandated by the SLRA, 1967, thereby acting ultra vires and failing to conduct a proper inquiry, rendering the Order void ab initio. The M.J-II, BoR Sindh not only assumed jurisdiction illegally but also acted with material irregularity in promulgating the impugned Order, which exceeded his scope and authority. Any deviation from the established procedural and statutory provisions constitutes a violation of law and procedure, consequently rendering the Order illegal and mala fide. Reliance is placed on the precedent set in the case of **Said Zaman Khan and others**<sup>3</sup>, wherein it is held as follows: -

*"80. Muhammad Haleem, J., as he then was, in the case reported as Haji Hashmatullah and 9 others v. Karachi Municipal Corporation and 3 others (PLD 1971 Karachi 514), observed as follows:-*

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<sup>3</sup> Zaman Khan and others vs Federation of Pakistan through Secretary Ministry of Defence and others (2017 SCMR 1249)

*".... An order in violation of law is mala fide in law, though actual malice may not be present in the mind of the authority passing the order."*

[Emphasis is supplied]

14. It is a well-recognized principle of law that the Board of Revenue, at the top of the revenue hierarchy, has a statutory duty to interpret the law, apply it to individual cases that come before it, and establish legal precedents for its subordinates to follow. Any errors in its understanding or application of the law, or in setting legal precedents, can and must be corrected within the constitutional jurisdiction. Failure to address these errors could undermine the rule of law. This principle is underscored by the authoritative decision of the Apex Court in the case of ***Haji Noorwar Jan***<sup>4</sup>.

15. For the reasons outlined above, we allow this petition and declare that the impugned orders issued by the M.J-II, BoR Sindh, were passed without lawful authority and hold no legal effect. These constitute the detailed reasons for our short order dated 15.01.2025.

JUDGE

JUDGE

"Saleem"

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<sup>4</sup> Haji Noorwar Jan v. Senior Member, Board of Revenue, N.W.F.P. Peshawar and others (PLD 1991 Supreme Court 531)