

THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D- 6359 of 2023

Present: **Mr. Justice Salahuddin Panhwar.**
Mr. Justice Amjad Ali Sahito.

Petitioner : Abdul Hameed Tunio.
Respondents : The Province of Sindh & others
Date of hearing : 12th September, 2024.
Date of Judgment : 21st October 2024

APPEARANCE:

M/s. Khalid Mehmood & Muhammad Jahangir Younus, Advocates for the Petitioner.

Mr. Abdul Jabbar Korai, Advocate for Respondent No. 11

M/s. Muhammad Akhtar Mastoi & Ghulam Shabbir Shaikh, Advocates for BoR

Mr. Mubarak Ali Shah, Advocate for K.D.A.

Mr. Shehryar Mehar, A.A.G.

Barkat Ali, Mukhtiarkar, Baldia Town, Karachi.

SDPPO. Saeedabad, Shahid Chaudhry, DSP Raza Mian & Addl. SHO/SIP Jafoor Khan, P. S. Saeedabad.

Salahuddin Panhwar, J. Through the instant petition the Petitioner has prayed for the following reliefs:

“a) To declare that act of the respondents No. 1, 2 & 3 for not issuing the regularization/allotment/NOC of the 10 Acres land from N.C No.1 situated in Deh Mowach, Tappo Gabopat (presently Sub-Division Baldia), Main Road along with RCD High Way, Near Inter City Bus Terminal, Karachi is illegal, unlawful, unwarranted and against the principles of the natural justice and Fundamental Rights of a citizen guaranteed by the Constitution of Islamic Republic of Pakistan-1973 in spite of the fact that the duly verified challan No.498 dated 22.03.2022 issued by the Secretary to Government of Sindh Land Utilization Department amounting to Rs.30 Million has been paid by the

brother of the petitioner namely Abdul Ghaffar and his partner (then) namely Muhammad Karim.

b) To declare that the "Tappo Gabopat" (presently Sub-Division Baldia) and the "Tappo Lal Bakhar" are two different Tappas of the Deh Mowach, as such, the 10 Acres land from N.C No.1 situated in Deh Mowach, Tappo Gabopat (presently Sub-Division Baldia), Main Road along with RCD High Way, Near Inter City Bus Terminal, Karachi of the brother of the petitioner Abdul Ghaffar and his partner (then) Muhammad Karim is situated in the "Tappo Gabopat" (presently Sub-Division Baldia), whereas the 25 Acres land of the respondent No.11 namely Syed Zulfiqar Rizvi is situated in the "Tappo Lal Bakhar".

c) To declare that the act of the respondent No.11 Syed Zulfiqar Rizvi to show and claim his 25 Acres land of "Tappo Lal Bakhar" on the land of 10 Acres of "Tappo Gabopat" (presently Sub-Division Baldia) in connivance and collusion of the land department is illegal, unlawful, unwarranted and against the law.

d) To direct the respondent No. 1, 2 & 3 to issue the regularization/allotment/NOC of the 10 Acres land from N.C No.1 situated in Deh Mowach, Tappo Gabopat, (presently Sub-Division Baldia), Main Road along with RCD High Way, Near Inter City Bus Terminal, Karachi.

e) To direct the respondent No.4, 6 & 7 to depute a focal person to execute the lease along with permission of boundary wall of the 10 Acres land from N.C No.1 situated in Deh Mowach, Tappo Gabopat, (presently Sub-Division Baldia), Main Road along with RCD High Way, Near Inter City Bus Terminal, Karachi.

f) To direct the respondent No.4, 6 & 7 (DC, AC & Mukhtiarkar concerned) to produce the Original Map of the District West and District Kamari before this Hon' able Court in order to ascertain the correct position and location of the lands and Tappos i.e. "Tappo Gabopat" (presently Sub-Division Baldia) and the "Tappo Lal Bakhar".

g) To direct the respondent No.5, 8 & 9 to give protection to the petitioner and his other family members and restrain the respondents and their sub-ordinates not to take any adverse action against the petitioner.

h) To restrain the respondents not to harass the petitioner and his brother Abdul Ghaffar and not to deprive them from their lawful possession of the land in question by any way or technique, physically or documentary.

i) Any other relief which this Hon' able Court may deem fit and proper under the circumstances of this case".

2. Precisely relevant facts are that the Petitioner has filed this petition under Article 199 of the Constitution of Pakistan, 1973, where he seeks an allotment order to be issued by respondents No.1, 2 and 3 pertaining to a land situated in Na-Class-I, Tapo Gabopat, Deh Mowach, Karachi, admeasuring 12-00 Acres (hereinafter referred to as the said land).

3. Learned counsel for the petitioner contended, that the brother of the petitioner, namely Abdul Ghaffar, and one Muhammad Bakhsh jointly moved an application to the Chief Minister, Sindh, for the allotment of the said land for 99 years for the residential, commercial, and industrial purposes, which was forwarded to Respondent No. 3, the Senior Member Board of Revenue (BoR), and the Member Land Utilization Department(LU), Board of Revenue (BoR); that in pursuance to the directions of the worthy Chief Minister, Sindh, the Deputy Commissioner, West Karachi, was directed to furnish a detailed report regarding the availability of the land, prepare the sketch and furnish the market price of the said land with specific remarks/comments; the concerned Mukhtiarkar furnished a detailed report on 24.02.2012 of the said land, wherein it was mentioned that a report from the concerned Tapedar was called, who reported that the applicant Mr. Abdul Ghaffar S/o Haji Khan Mohammad pointed out a piece of state land measuring 12 Acres from N. C. 01 of Deh Mowach, within the boundary and along with R.C.D. Highway near Inter-City Bus Terminal, and LRP colony, and under possession of Abdul Ghaffar S/o Haji Khan Muhammad and one Muhammad Karim S/o Abdullah is the claimant; the said land was proposed to Pir Syed Asif Ali Shah and is falling in category "A-1" of the Deh Mowach; that the said report was forwarded with the entire record to the Secretary Land Utilization Department; that on 16th August 2012, a meeting of the high-powered scrutiny committee under the chairmanship of Senior Member BoR was held, and the request for the allotment of the said land in favour of Abdul Ghaffar S/o Haji Khan

Mohammad and Muhammad Karim S/o Abdullah was considered, and the earlier recommendations of the committee in favour of Pir Syed Asif Ali Shah S/o Pir Qutub Ali Shah were cancelled/withdrawn; that a summary was moved before the Chief Minister Sindh for approval, which was approved, but despite of that, the challan was not issued by the respondent No. 2 for making the payment of rent/lease money to Abdul Ghaffar and Muhammad Karim; thereafter, both Abdul Ghaffar and Muhammad Karim submitted written applications dated 05.02.2018, 06.03.2019 and 16.10.2020, through their attorney to respondent No.2 for the issuance of a relevant challan regarding the payment of said land; thereafter a Civil Suit No. 124 of 2021 was filed before the competent Court and thereafter challan No. 498 dated 22.03.2022, was issued by respondent No.2 amounting to Rs. 30 Million, which was duly paid; though huge amount was paid, but Respondents No. 1 to 4, 6 & 7, have failed to issue regularization/allotment/lease in favor of the above named applicants; the said Abdul Ghaffar, being the lawful co-owner of the said land, gifted his 5-00 acres of land to the petitioner by virtue of an oral Gift Deed dated 22.11.2023; and on 21.11.2023, the petitioner visited the said land and found security guards having been deployed; again on 24.11.2023 the petitioner visited the said land and found that the security guards deployed were inviting the general public for purchasing the plots in shape of cutting of 80, 120 & 1000 Sq. Yds., both residential and commercial; that petitioner had also moved a petition for protection, which was disposed by granting protection to him; as one Syed Zulfiqar Rizvi, the Respondent No. 11 is trying to convert his 25 Acres land of Deh Mowach, Tappo Lal Bakhar into the 10 Acres land from N.C No.1 situated in Deh Mowach, Tappo Gabopat (presently Sub-Division Baldia), Main Road along with RCD Highway, Near Inter City Bus Terminal, Karachi in connivance with official respondents.

4. Notices were issued to the respondents, who put their appearance through their counsel. However, comments have not been filed by the Board of Revenue.

5. Heard and perused the record.

6. It is claimed by the petitioner that the challan issued by the Secretary to Government of Sindh, Land Utilization (LU) Department, amounting to Rs. 30

Million, has been accordingly paid by the brother of the petitioner namely Abdul Ghaffar and his the then partner namely Muhammad Karim but still respondent No. 1, 2 & 3, have failed to issue the regularization/allotment/NOC of the subject 10 Acres land from N.C. No.1 situated in Deh Mowach, Tappo Gabopat, (presently Sub-Division Baldia), Main Road along with RCD High Way, Near Inter City Bus Terminal, Karachi. At this juncture, learned AAG and counsel for BoR have contended that the Government of Sindh has approved the Land Grant Policy 2024, which is in filed, whereby any land for commercial purposes is to be auctioned. However, with regard to the establishment of industry and residential purposes, the prerogative is with the worthy Chief Minister of Sindh and in the present case, the petitioner has sought allotment of land for residential and industrial purposes as well. It is pertinent to mention here, that executives cannot grant lands at their discretion without holding an open auction; thus, the policy with regard to residential purposes has no legal value in the eyes of the law and is in gross violation of the basic fundamental rights guaranteed under the Constitution of 1973. The Government has a mandate to reserve/allot the land in order to provide a better atmosphere only to the persons who are living beyond the poverty line, or under the Sindh Gothabad Scheme, Act 1987, or to establish the public amenities and parks, and while framing policy with regard to Cooperative Societies and the Gothabad Scheme, it has to be ensured that there shall not be any violation in any of the housing schemes, which can be granted free of cost and falls within the scope of welfare.

7. In this context, it is necessary to reproduce herewith the relevant provisions provided in the recently introduced Land Grant Policy 2024, however, it is also important for the purpose of understanding, to reproduce herewith the statement of conditions, as provided in the 2024 Land Grant Policy, which is made effective from 6th February, 2024, through gazette notification, issued in exercise of the powers conferred under sub-section (2) of Section 10 of the Colonization and Disposal of Government Lands Act, 1912, by the Government of Sindh, for grant of land for non-agricultural objectives of amenities, residential, commercial, residential-cum-commercial, industrial, flat site, incremental housing, diplomatic, judicial, large-scale investments, healthcare, educational, vocational training, charitable and religious purposes

in the public interest the **statement of conditions** for land grant policy 2024, is as follows:-

STATEMENT OF CONDITIONS

1. *Objective: In compliance of the orders and the principles enunciated by Hon'ble Supreme Court of Pakistan in Suo-Moto Case No. 16 of 2011 and Hon'ble Sindh High Court in C.P. No. S-878 of 2014 and Suit No. 562 of 2014, the process of allotment of land(s) shall be initiated from **wide publication** to ensure participation of the public at large along with **open auction**, as prescribed under this Statement of Conditions, for disposal of land to ensure transparency in process, openness in procedure, and value for money by setting base price on the basis of competitive market prices. These leases shall include grant of land for amenities, residential, commercial, residential-cum-commercial, industrial, flat site, incremental housing, diplomatic, judicial, large-scale investments, healthcare, educational, vocational training, charitable and religious purposes in the public interest on lease up to ninety-nine (99) years in the Province of Sindh.*

2. *This Statement of Conditions is issued subject to the provisions of the Colonization & Disposal of Government Lands Act, 1912 and the Colonization & Disposal of Government Lands (Sindh) Rules, 2024.*

8. From the above statement of conditions, it is clarified that, the land grant can only be made through an open auction and wide advertisement, inviting all interested parties to participate in a healthy and transparent bidding process to fetch the maximum market rates/prices. The 2024 policy provides the complete procedure as detailed in Section-10 of the Land Grant Policy 2024, regarding open auction. The provisions of Section-10 of 2024 policy are also reproduced herewith:-

10. PROCEDURE OF OPEN AUCTION. (1) *The auction shall be held after wide publicity and advertisement in at least three leading daily newspapers in English, Urdu and Sindhi languages, to be made not less than thirty (30) days before such auction.*

(2) *The auction shall be conducted by the Auction Committee authorized in this behalf by Government in the presence of independent observers.*

(3) *The intending lessee shall bid in person or through a duly authorized agent.*

(4) *The bidders shall deposit 10% of the base-price in advance as Security Deposit as prescribed.*

Step 1 - Bidding on Base Price

(5) *The highest bidder of the first bidding day shall provisionally be recorded and announced in open auction and shall be published on the website within twenty four hours of the proceedings.*

Step 2 - Competitive process for ensuring maximum Market Rates

(6) *In case of any person who intends to offer a higher price not less than twenty percent of highest bid of the first bidding day in step-1, he shall, in next seven days, present an advance pay-draft in the name of Government Treasury of the value offered as above to the Auction Committee, for consideration in final determination of the auction proceedings.*

(7) *Aner the expiry of seven days, the highest bid received through advance pay-drafts of full value as under sub-condition (6) above, the same shall be communicated to the highest bidder of the first bidding day (step-1) for exercising the first right of refusal, on similar terms including 100% advance payment in the form of pay-draft to be deposited in Government : Treasury, within next three days.*

Step 3- First Right of Refusal and ensuring Competitive Market Rates

(8) *Aner expiry of next three days of deadline given to the highest bidder of the first bidding day (cumulatively after ten days in total, after the first bidding day), the Auction Committee shall announce the final successful bidder on the basis of the highest price offered in Step-1 or Step-2 as the case may be, and shall also be published on the website:*

Provided that in the event that no offer is made during Step-2 process, the highest bidder in Step-1 shall be final and he shall be required to deposit 25% of the bid amount within next three days.

Step 4 - Ensuring timely Payments.

(9) *The bidder whose bid is accepted shall pay the balance of the price within next-sixty days of the acceptance of bid; Provided that the Board of Revenue may in suitable cases extend the period for one time only, which shall not in any case exceed ninety days from the date of acceptance of the bid.*

Step 5 - Ensuring penalties for defaulters.

(10) *If the bidder fails to make any payment in accordance with this Statement of Conditions, the security deposit shall be forfeited to Government and the land shall be re-auctioned at the risk of the bidder and all liabilities incurred, and losses, if any, sustained by Government by re-off the land shall be recovered from the bidder as arrears of land revenue. If any bidder defaults in more than one auction he shall be blacklisted from all future auctions.*

9. The scheme of the Land Grant Policy 2024 specifically provides for the framing of a mandatory schedule attached to the statement of conditions, and the assessment of market price, which is pivotal while granting state land, and the assessment of market base price is sought through the District Base Price Committee as provided under Section 8 and 9 of the 2024 policy, which are relevant in this context, in order to fetch the maximum highest possible price to benefit the Government in case of a grant of lease:-

“8. SCHEDULE. (1) *The Collector may identify and recommend the land to be auctioned to the Land Utilization Department, Board of Revenue which shall be placed in the Schedule of the Statement of the Conditions with the approval of Cabinet Committee:*

Provided that no disposal of land shall take place without the approval of the Government.

*(2) Except for the prohibited areas and the land reserved for amenity purpose, the Land Utilization Department, Board of Revenue may also include or exclude any land which is reserved for or being used by any department or organization of the Government, on its relinquishment by the concerned department or organization, for the purpose of disposal of land **subject to the rules or regulations of master planning, classification and zoning** of that area, **No-Objection Certificate** of such concerned Department or organization of Government and **Sindh Environmental Protection Agency** and/or regulations of any other relevant regulatory agency already determined under any law.*

9. ASSESSMENT. (1) *The **District Base Price Assessment** Committee shall seek the valuation report for determination of the base-price of the land in the Schedule from two valuers listed under the Pakistan Banks' Association considering following evaluation criteria of market price:-*

(a) Subject to the provisions of the Act, 2/3rd of open competitive market value of similar category private land in the adjoining areas in immediate vicinity of the land under consideration;

(b) Change in price of land during last one year and reflecting the same in terms of percentage ratio into market price considered under clause(a) above;

(c) Federal Board of Revenue (FBR) Property Valuation rates for such land(s):

Provided that such assessment shall be applicable for a period of 365 days from the date of notification of the base-price till finalization of auction proceedings. On expiry of such period before the finalization of auction proceedings, the base-price shall be re-assessed as prescribed under this Statement of Conditions.

(2) The Provincial Base Price Assessment Committee shall consider the proposal of the District Base Price Assessment Committee and place the proposal and its recommendations before the Government for approval.

(3) The Government may consider the recommendation so received and grant the approval to the base price for open auction."

10. Moreover, it is pertinent to mention here that, the Cooperative Societies Act, 2020 (*Act 2020*), specifically provides for the uplifting of the people/public, who are living below the poverty line. This court, while hearing M.A. No. 69 of 2022, extensively discussed the concept and wisdom behind the very purpose of establishment of **cooperative societies**, which is meant and primarily focused on the basic and foundational principles guaranteed under the constitutional mandate governing welfare and wellbeing of the people, especially those living below the poverty line. The cooperative movement traces its origins back to **Rochdale Principles of 1844**, which have since shaped the cooperative societies worldwide. These core principles include **voluntary and open membership, democratic member control, economic participation, autonomy and independence, education and training, cooperation among cooperatives, and the concern for the community**. The cooperative societies, as envisioned in the previous legislation, i.e. **The Cooperative Societies Act, 1925**, and the present legislation (*promulgated in 2020, the Sindh Cooperative Societies Act, 2020*), were not intended solely for housing schemes. Instead, their primary goal was to support **agriculture-based societies** and to help the **uplifting of the economically disadvantaged communities**, particularly those involved in agricultural farming, small-scale production, and credit services. This is clearly outlined in the amicus report, which emphasized, that the **purpose behind the establishment of cooperative societies was to empower individuals from low-income groups**, providing them access to essential resources like credit financing, agricultural inputs, and housing through collective efforts. Actually, cooperative societies were meant to support various sectors, including consumer cooperatives, producer cooperatives, and marketing cooperatives, thereby creating a **sustainable and inclusive economic system**. The last and the recent promulgation in this regard, is the **Sindh Cooperative Societies Act, 2020**, which carries forward the essence of the 1925 Act, further reinforces the idea that these societies must

focus on **thrift, self-help, and mutual aid**, primarily benefiting low-income small farmers, laborers, and individuals with common economic needs, rather than catering to limit itself to the affluent housing schemes. In conclusion, cooperative societies are designed to foster **economic empowerment, social equity, and community development** by pooling resources and efforts for the common good, with a strong focus on marginalized sectors of society. This understanding is vital to ensure that the cooperative societies serve their original purpose for which they were established, and to contribute to the **upliftment of economically vulnerable communities**.

11. This Court in C. P. No. D-2604 of 2024, has directed the Chief Secretary Sindh to form a High-Level Committee to ensure implementation of Sindh Cooperative Societies Act, 2020, in letter and spirit. Several orders have been passed, with regard to the provision of the original records, pertaining to the allotment and the conversion of the land use, from the cooperative farming society to an industrial utilization, from the Member Board of Revenue, Master Plan Authority and concerned Deputy Commissioner. While dealing with the matter Senior Member of the Board of Revenue (BoR) was called who undertook to establish guidelines governing the conditions for land grants to housing societies in the light of earlier judgment of this Court handed down last year. The Court observed that the overarching goal of the legislation was to improve the quality of life, enhance business practices and introduce superior methods of production for agriculturists, small farmers, laborers and individuals and the same can be achieved by facilitating the formation and operation of Cooperative Societies, which were designed to serve as a means for the collective economic empowerment and social advancement and the authorities concerned were directed to formulate necessary policy in accordance with these guiding principles. Accordingly, it was ordered that there must be a complete policy regarding residential purposes under the Cooperative Societies Act, to be framed by BoR while the Court had also ordered the Chief Secretary in an identical matter to constitute a high-level committee comprising prominent economists, agriculturists, philanthropists, bankers and members from development sector to implement the 2020 Act, and amend the Rules in view of the Court's order to meet the actual objectives and purposes behind the promulgation of the cooperative law. In the said order it

was also directed that Secretary cooperative society shall submit report with regard to societies established for marginalized communities like scheduled castes/women, as well as whether the province of Sindh has taken any step to establish any economic society in order to uplift the areas falling within different sectors in the province of Sindh.

12. In any event, the Apex Court in the Suo Moto case No. 14 of 2009 vide order dated 11.9.2009 has also observed that “the petitioner obtained the land grants against all the rules, and against the settled conditions of allotment under the law, existing ban and also rules of business”, which shows that this was meant to make it clear that ‘grants’ were /are made by the ‘authority’ while departing from rules and procedure, therefore, in same order it was further held that no authority has any power to distribute any public property/asset on nominal consideration which land/asset essentially belong to the people of Pakistan. It would be worthwhile to mention, that the exercise of such power at the whims of the Authority is violative of the provisions of Articles 3, 25 and 31 of the Constitution of 1973. It would be conducive to reproduce the relevant paragraph of the judgment, which reads as under:

“No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, **which land or asset essentially belong to the People of Pakistan.** It was patently malafide exercise of power. This Court further ordered that the grants of lands to the petitioner specially in the manner, the same was done are **prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause) and Article 31 of the Constitution of Islamic Republic of Pakistan which requires the State to endeavour to promote observance of Islamic moral standards and Article 38 of the Constitution which *inter alia* requires the State to secure the well being of the people by preventing concentration of wealth in the hands of a few to the detriment of general interest.** The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam.”

13. Similarly, in another case, reported as 2014 SCMR 1611, the Apex Court has held that exercise of powers by an authority regardless of its status, can

only be undertaken with regard to the public property under a prescribed procedure within the parameters of law and not at their wishes. Relevant portion is reproduced as under:

“13. Looking at the powers of the Chief Minister for allotment of public property, here a reference to the case of Iqbal Hussain v. Province of Sindh through Secretary, housing and Town Planning Karachi and others (2008 SCMR 105) will be useful wherein this court has observed in the following manner:-

“3. We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in (i) Abdul Haq Indhar v. province of Sindh (2000 SCMR 907 and (ii) Taj Muhammad v. Town Committee (1994 CLC 2214).”

(Underlining has been supplied for emphasis)

14. Thus, it would be deduced from the above that:

- i) State land is the public property, which can't be disposed by Chief Executive of the province being custodian, at his wishes.
- ii) The authority is meant and believed to act to protect such property which includes disposal of such property at proper market rate/price;
- iii) An illegal order, regardless of status of person, passing / issuing it, shall not have binding effect upon subordinate.

15. The above proposition of law, clearly stipulates that the ‘**authority**’ is competent to create and generate ‘*revenue*’ through different modes, including disposal of the ‘**State land**’, as provided under the Law, but such competence

and jurisdiction should never be used nor should be allowed to be used or exercised in an arbitrary and surreptitious manner, and therefore must only be exercised *bona-fidely*, in its true sense, keeping the public interest at its place, which is nothing but *supreme to all other interests*. A disposal of the State land, shall not equate the term '*public interest*' unless a mechanism is resorted to, while creating a competition, so as to generate maximum possible '*revenue*' which, undoubtedly is expected from every owner (in case of State land, the citizens of Pakistan are always believed to be acquiring such '*status*'). The power of the disposal of the government land should remain with competent authority but subject to a mechanism ensuring guarantee to '*public interest*' and same should not be allowed to be preyed only on joining of hands by two.

16. In above background, it is pertinent to say that a grant / allotment of government land, if made for housing scheme(s), shall not equate the term '*public interest*' particularly, when it is being made without '*open auction*' because the use of such land for housing/commercial purposes, cannot equate the term '*public at large*', hence the interest of the '*public at large*' could only be protected, if the maximum possible '*revenue*' is generated which, undoubtedly, is believed to be used for interest and betterment of '*public at large*'. The developer of such state land may earn money but not at the cost of '*public interest*' i.e. getting the value of the government land fixed much less than its original due (as was the object of order of Suo Moto case No.14/2009, discussed supra). Thus, the process of allotment of the government land under no stretch of imagination should start by making an application by any person whatsoever, but rather it should start from advertisement in wide publications through largely circulated newspapers, as is rightly mentioned in the para-2 of condition-3, of grant of State Land for non-agricultural purpose, this was published vide Notification No.09-294-03/SO-I/336 Karachi 25th February, 2006 i.e:-

No land shall be disposed of –

(a) for commercial purpose except by open auction at a price not less than the market price;

17. Whereas, the requirement of **'open auction'** as provided in Act does not attached for disposal of the **State Land** for other purposes including the use for the purposes of *'housing'* or *'commercial'*, as defined in the above referred notification of **'statement of conditions'** which is completely in negation of dicta laid down by Hon'ble Supreme Court of Pakistan in Suo Moto Case No.14 of 2009, at para-2 with regard to the object of **'Sindh Urban Land (Cancellation of Allotment, Conversions and Exchanges) Ordinance, 2001'** as:

'In the year 2001, the Sindh Urban Land (Cancellation of Allotment, Conversions and Exchanges) Ordinance, 2001 was promulgated, the purpose of which was to provide for cancellation of certain allotments, conversions or exchanges of urban state land obtained or granted for residential, commercial or industrial purposes at Rates Lower Than The Market Value, in violation of law or ban from 1st January 1985 and to provide for matters connected therewith or ancillary thereto.'

18. It is germane to state that the requirement of **'open auction'** should have been in all cases of disposal of Government/State Land, else the directive(s) of Hon'ble Supreme Court, issued in the above referred case and relevant mandatory provisions of the Constitution of 1973, specifically dealing with rights of people and equal treatment, as envisaged and propounded in Chapter-1 Fundamental Rights of the Constitution of 1973, shall fail. It is not a disputed position, that **'ban'** over allotment of Government/State Land is continuation and the relaxation has been allowed by Supreme Court of Pakistan only for specific **'projects'** and a housing scheme does not, prima facie, appear to be one falling in such exception, therefore, the allotment in the name of **'housing/commercial scheme'**, in subsistence/existence of ban and against the clear directive(s) the Hon'ble Apex Court, seems to be a deliberate, pejorative and intentional attempt to deceive the purpose and objective of such **'ban'** and **'directives'**. Needless to add that any such attempt shall create no binding effect upon the subordinate officials who, being custodian of public rights and interests, are believed to resist the same or least make the position clear to such an **'authority'**. It is further pertinent to mention here, that **public land** is a national asset, and the government must ensure that, it is disposed of in a clear and transparent manner, always safeguarding the public interest,

should be the only prime consideration above all. This includes generating maximum possible revenue through fair and open competition, as directed by the Hon'ble **Supreme Court** through plethora of judgements.

19. Let we add a little more that the work of the '**leasing authority**' does not come to an end, by passing on '**lease or grant**' but since such grant / lease is always in shape of a '**contract**' hence the authority continues with full and complete responsibility to keep a continuous watch, in order to examine whether '**lease**' stands good well and accurate, with the purpose and object of its '**lease / grant**' or otherwise? This is so, for simple reason that a lease only creates those rights which the contract permits and, in no manner whatsoever, dress the '**lessee**' up with status of '**absolute owner**' who is entitled legally to enjoy property as per his wishes. It is not the status of the '**lessee**' which, as the case may be company, person or department even, but it is the **object** of the very lease/grant which actually matters. *The 'lessee', regardless of its status, may have a right to create a sub-title but cannot change the object and purpose for which the lease / grant was made, which is to be protected by the 'lessor' under all circumstances.* The '**lessor**' (government authority, being custodian of rights and interest of the public) is not supposed to be a silent spectator, but is believed to knit a blanket, assuring the subject (people), the guarantees of their rights, interests and claims, under it. This can never be achieved unless the officials start treating all the cases on one single scale of '**equity**' and start daring to resist an illegal order, even if, it is passed by the superiors. It is well settled that *illegality cannot pe perpetuated*, therefore, a breach or an illegality always continues to be a '**breach / illegality**' and a mere lapse of time shall, *under no stretch of imagination*, be sufficient to convert an '*illegality*' into a '*legality*' hence the Land Utilization Department was/is believed to make sure, that no breach or illegality of any grant or lease goes unchecked, particularly when the '**contract**' permits taking penal action, including cancellation of lease / grant, against the '**lessee**'. Further, the Government is to ensure that **industrial leases** are utilized for their intended purpose of generating employment and revenue. Any deviation, particularly converting industrial leases for commercial use, shall render the lease **void** and subject to immediate cancellation.

20. There is always room for improvement in public policies, such as the present one, a better land grant policy for creating a welfare housing program for the homeless and underprivileged should prioritize social equity and sustainability. The government can allocate available state-owned land in urban and peri-urban areas specifically for low-cost housing projects. This could be done through community land trusts, ensuring the land is used exclusively for affordable housing and preventing future speculation or privatization.

21. A public land grant policy, should encourage a mix of housing, small businesses, and public spaces, providing residents not only with homes but also with opportunities for employment and communal growth. This reduces economic segregation and encourages an inclusive society. The policy could promote Public-Private Partnerships PPPs where private developers collaborate with the government, building low-cost housing with certain incentives like tax breaks or access to cheaper utilities. The government could impose regulations ensuring that a percentage of housing units are reserved for the homeless or low-income families. The policy can offer secure tenure to homeless individuals by converting leased or granted land into ownership over time. Affordable financing options should be integrated, such as micro-mortgages or long-term, low-interest loans for low-income individuals to own homes.

22. The housing developments should prioritize sustainability through the use of green building technologies (solar panels, rainwater harvesting, etc.) to minimize the environmental footprint and reduce the cost of living for residents. The housing policy should incorporate essential services like healthcare, education, and job training within the residential areas. These support structures will help the homeless and low-income residents not only find shelter but also improve their long-term well-being. Community Involvement in Planning Involve communities in the planning and design process to ensure that the housing projects meet the specific needs of the homeless population and reflect their input.

23. Introduce rent-to-own schemes for individuals who cannot afford to purchase homes outright. They can begin as tenants and eventually gain ownership, creating a pathway to stability for the underprivileged. It must therefore be ensure The policy should ensure priority housing access for women, children, the disabled, and marginalized communities, with additional support tailored to their specific needs. By focusing on these elements, such a policy can better address homelessness and housing inequality, while also promoting long-term social stability and inclusion.

24. The provincial government shall only grant the state land on a well chalked out policy, priority must, therefore, be given to promote the small farmers (HARIs) which shall be the prime and sole consideration. To ensure transparency and fairness in granting state land to small farmers, the proposed approach should integrate key mechanisms like open auctions and verification processes through NADRA. Here's how this policy can be effectively structured:-

i. Open Auction Process. Conducting land allotments through open auctions ensures a transparent process, allowing fair competition. Auctions should be well-advertised and accessible to all eligible farmers, ensuring that small farmers, in particular, have an opportunity to participate without being overshadowed by large landowners or corporations.

ii. Biometric Verification. Linking the land grant process to the National Database and Registration Authority (NADRA) for biometric verification can prevent fraud, multiple claims, and corruption. This would ensure that each applicant is verified in real-time, reducing the chance of ghost applicants or land grabbers exploiting the system. It would also streamline the registration of new landholders into official records.

iii. Eligibility Criteria for Small Farmers. The policy should clearly define the size limits for landholding that classify as "small farmer" status. This can prevent larger entities from benefiting from a program intended for small-scale agricultural development. Priority could be given to farmers with no previous land ownership or to those from marginalized communities.

iv. Support for Small Farmers. To ensure the success of small farmers after land allocation, the government could integrate agricultural support programs. This includes access to seeds, tools, irrigation systems, training, and financial services (such as micro-loans). This would help them effectively utilize the land and improve productivity.

v. Continuous Monitoring & Accountability. An oversight mechanism, potentially involving a third-party audit or periodic reviews, should be established. This ensures that land allocated for agricultural purposes is being used as intended. In case of violations or misuse, the land could be re-auctioned or reclaimed by the state.

vi. Empowering Local Communities. Encouraging local governance bodies and farmers' cooperatives to participate in monitoring and guiding the auction process can further enhance transparency and help maintain a focus on small farmers. Implementing these measures will make the land allocation process more equitable, transparent, and aligned with the welfare goals of providing land to genuine small farmers(HARI).

25. Learned Division Bench of this court, through its judgement reported as 2008 Y L R 2651, has categorically propounded that the violation of terms and conditions of a lease would render such lease cancelled. The crux of the referred judgement is reproduced:

“Land normally was granted under the Government Land Policy including the Colonization of Government Lands (Punjab) Act, 1912, for a specific purpose, like Poultry or on Wahi Chahi basis; and for a limited period extending from 10 years to 30 years etc., and that too on nominal charges. Such grant could be considered in the interest of public as well as country just to promote government policy and increase any kind of product and after completion of period said land reverted to the government. With such type of land certain terms and conditions remained attached and violation thereof could result in cancellation of grant. No ownership right was created in favour of the grantee in the granted land and grantee had no right to transfer the same to any person or to mortgage with any Authority or Bank etc. Even the leasehold right could not be transferred to anybody as the original lease was being granted on certain terms and conditions keeping in view the specific qualification of the original applicant and undertaking to use the land for specific purpose. If a grantee would fail to comply with the conditions of grant, then he should return the land and on his failure the government should itself invoke agreed conditions and cause reversion of said land and thereafter could grant same to new applicant, but transfer inter se between the individuals etc. should not be permitted otherwise the gist and very purpose of Scheme of grant would fail. Grantee having no right, he could not affect any mortgage or create charge over the land nor loan could be granted by the Bank etc., against such illegal mortgage; and if any such type of loan was granted, then it had no

validity and it would not be binding on the lesser i.e. government and would not create any right in favour of mortgagee; in such a situation, the auction purchaser could resort to the Bank or Banking Court for return of amount and the Bank could seek remedy available under the given circumstances. Grantee had no vested right to take unusual and unnecessary benefits by getting the lease extended or the nature of the land converted.”

26. As far as the establishment of industries are concerned, it is pertinent to add here that industries are required to provide employment and earn revenue, therefore, any lease in favour of industry, which is subject to proper assessment, cannot be converted in any sense or manner for its use for commercial purposes. Consequently, the Government of Sindh shall also frame such terms, conditions and policy and thereafter proper regular visits shall be mandated to conform that such scheme is in field and as per available market value. However, in case of violation, such lease shall stand cancelled, and Government shall retrieve the land forthwith.

27. As to the maintainability of the instant petition, it appears that admittedly an amount of Rs. 30 Million were paid by Abdul Ghaffar, and Muhammad Bakhsh and the petitioner is not the allottee, however, he claims that said Abdul Ghaffar has orally gifted his 50% share to the petitioner, but even oral gift made by Abdul Ghaffar, which would not make him entitled to file the instant petition. Thus, we have no hesitation to hold that instant petition is also not maintainable under the law.

28. For the sake of convenience, and compliances it would be conducive to reproduce, operative parts and findings as under:

- i. That Chief Executive (Chief Minister) is not competent to finally grant land at the only recommendation of revenue and land utilization department for the use of residential/commercial purposes while bypassing open auction competition, however with regard to industrial purposes in industrial zones defined/ declared through a policy, would be competent for only leasing out for the period of 30 years , and such lease would not be converted in 99 years;
- ii. That lease granted for farming and industrial purposes use, shall be used only for such purpose, wherefrom such purpose can be achieved, in case of violation thereof such lease would be considered cancelled/void even without any declaration;

- iii. That Chief Executive would be competent to approve / allot land for Cooperative societies and farming for the persons living below the poverty line and for the uplifting of the marginalized communities like scheduled castes/women/haris/labourers, for the establishment of their economical societies funded by the Government .
- iv. That Government would be competent to introduce schemes for amenities, including play-ground even in remote areas.
- v. That the **Cooperative Societies Act, 2020** and relevant orders mandate the upliftment of individuals living below the poverty line. Therefore, the Government is directed to ensure strict compliance of the Act, in its true sence by forming high-level committees to monitor its implementation, especially for the marginalized communities.
- vi. That **any disposal of public or state land** for commercial purposes must be conducted through an **open auction**, at least at the base price market value or above such market value. Any grant made outside this procedure would be considered **illegal** and **void**.
- vii. That the **Apex Court's rulings** in Suo Moto Case No.14 of 2009 and other relevant cases emphasize that public authorities, regardless of their status, cannot dispose of public property without following due process and protecting public interest. Any such actions violate the **Articles 3, 25, and 31** of the Constitution, which mandate the elimination of exploitation and equality before the law.
- viii. That any lease or grant must serve the intended public purpose, and the **leasing authority** must continuously monitor compliance with the lease terms. In cases of deviation or breach, the authorities must cancel the lease and retrieve the land forthwith.
- ix. Board of Revenue shall continue grant of land on harap basis in agricultural areas through open auction and such process shall be linked with NADRA verification to ensure transparency.
- x. Statement of conditions issued by Land Utilization Department, shall issue fresh statement of conditions for grant of land in view of Land Grant Policy 2024, and also in consonance with the judgement passed by this Court in land grant proceedings within two months.
- xi. That the Government is further directed to ensure that **industrial leases** are utilized for their intended purpose of generating employment and revenue. Any deviation, particularly converting industrial leases for commercial use, shall render the lease **void** and subject to immediate cancellation.
- xii. That **public land** is a national asset, and the government, as its custodian, must ensure that it is disposed of in a transparent manner, safeguarding the **public interest** at all times. This includes

generating maximum revenue through fair and open competition, as directed by the **Supreme Court** in multiple ruling.

29. For the above stated reasons, the instant petition stands disposed of.

Office:- Learned Registrar shall communicate this judgment to the Chief Secretary Sindh, Senior Member Board of Revenue, Member Gothabad Scheme, Board of Revenue, Secretary Cooperative Department, Secretary Revenue Department, Government of Sindh and all judges of district judiciary for guidelines and compliance. Office shall ensure translation in Sindhi and Urdu by language authorities.

JUDGE

JUDGE

Sajid