

ORDER SHEET

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

**C. P. No. D – 178 of 1996**

Date of hearing	Order with signature of Judge
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**For directions**

1. For hearing of CMA No.3254/2009 (S/A)
2. For hearing of CMA No.3288/2009 (C/A)

**09.10.2024**

Mr. Raj Kumar D. Rajput, Advocate for legal heirs of petitioners along with Bhagwan Das [Petitioner No.1(c)].  
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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Learned Counsel for the legal heirs of petitioners has filed a statement stating that the petitioners have chosen to withdraw the instant contempt application as respondent No.1 has executed two rent agreements in respect of property bearing City Survey No. D-1604, admeasuring 868 square feet, situated near Gurdwara, Hussaini Road, Sukkur in favour of Satur Gun S/o Ram Rashpal (petitioner No.1) and Dileep Kumar S/o Dhamodar Das (petitioner No.2) to the extent of 50% share each, and the petitioners are enjoying peaceful possession of the same on rental basis. Along with this statement, learned Counsel has annexed photo-stat copies of both the agreements and receipts of rent payments made by both the tenants. He has also filed an exemption application to produce the original / true copies of the said documents. The statement, exemption application and the photo-stat copies of the above-mentioned documents are taken on record.

2. Since the instant petition and the listed contempt application pertain to years 1996 and 2009 respectively, and a statement has been filed withdrawing the same, it is essential to recap the proceedings made before this Court. Initially, two brothers namely Ram Rashpal and Damodar Das, both sons of Hola Ram filed instant petition on 18.02.1996, claiming that they were in possession of an area of 868 square feet, out of City Survey No. D-1604, situated near Gurdwara, Hussaini Road, Sukkur (*from southern side of Gurdwara*) since before 1976 and that they used to pay for a *katcha* lease and had applied for a permanent lease for 99 years, and their case had been recommended to respondent No.2 (Secretary, Local Government, Public Health Engineering, Rural Development & Katchi Abadi Department, Karachi) by respondent No.1 (Administrator, Municipal Corporation, Sukkur) along with sketch and site

inspection report, and no objection certificate issued by Evacuee Trust Property, Sukkur, but suddenly, respondent No.1 brought machines to dismantle the petitioners' *katcha* construction (shops) without service of any notice upon them. Hence, petitioners prayed as under:

- (a) *That the act of the respondent No.1 for dismantling the construction, which is katcha construction over the suit area of 868 Sq. feet out of C.S. No. D-1604 situated near Gurdwara Hussaini Road, Sukkur, for which the recommendation for 99 years lease has been made for the respondent No.1, is quite illegal, unwarranted by law and exparte.*
- (b) *To grant permanent injunction restraining respondents or any other person working through or under them from dismantling the construction of the constructed shop.*
- (c) *Cost of the petition be awarded to the petitioners.*
- (d) *Any other relief that this Hon'ble Court deems fit under the circumstances of the case, be awarded to the petitioners.*

3. For granting such prayer, petitioners relied upon various documents including (i) their application addressed to the Minister of Local Bodies, Government of Sindh, (ii) a letter dated 24.04.1994 issued by Administrator, Municipal Corporation, Sukkur to Secretary, Local Government, Public Health Engineering & Rural Development Department, Government of Sindh, Karachi for lease of subject property for 99 years to the petitioners, (iii) a letter dated 21.07.1997 issued by Assistant Director, Town Planning, Khairpur to Director, Town Planning Department, Hyderabad along with sketch and site plan, (iv) a letter dated 08.11.1994 issued by Section Officer-IV, Local Government, Public Health Engineering, Rural Development & Katchi Abadi Department, Karachi to Deputy Commissioner, Sukkur and Director, Local Government, Sukkur for furnishing comments, (v) a letter dated 09.01.1995 issued by Deputy Commissioner, Sukkur to Mukhtiarkar, Sukkur for furnishing detailed report along with *malkano* of the plot, (vi) a letter dated 24.08.1995 issued by Deputy Commissioner, Sukkur to Section Officer-IV, Local Government Department, Karachi forwarding report of Mukhtiarkar along with site plan and fresh measurement, (vii) a letter dated 11.07.1989 issued by Assistant Administrator, Evacuee Trust Property, Sukkur Division regarding no objection of tenancy right in favour of the petitioners, (viii) a no objection certificate dated 27.04.1993 issued by the Chairman, Sri Guru Nanak Sat Sang Sabha Pakistan, and, (ix) a letter dated 15.01.1996 issued by Director, Local Government, Sukkur Division addressed to Section Officer-IV, Local Government, Public Health

Engineering, Rural Development & Katchi Abadi Department, Karachi forwarding the case of the petitioners for deciding on merits and as per policy in vogue.

4. After filing the petition on 18.02.1996, it was listed before this Court on the subsequent day i.e. 19.02.1996, and this Court while ordering that status quo to be maintained till the next date, issued notice to learned Additional AG and called comments from respondent No.1, and the matter was adjourned to 11.03.1996. Thereafter, the petition was continuously discharged and the petitioners availed the benefit of status quo.

5. Responding to the instant petition, Advocate for respondents-Sukkur Municipal Corporation filed a statement dated 11.11.1997, submitting para wise comments that the petitioners' apprehension is based upon surmises and conjectures, and the Corporation has no intention of demolishing the *katcha* structure.

6. After more than two years of the last hearing, the petition was taken up by this Court on 17.03.1998 for the second time, when Counsel for respondent No.1 made a statement that the action, if any against the petitioner, will be taken after giving him proper notice and a chance of hearing, and in view of that statement, Counsel for the petitioners did not press this petition, and it was disposed of.

7. Subsequently, after more than 11 years, the petitioners again came before this Court with the listed applications (*contempt and stay*) on 05.11.2009 showing another document i.e. a letter dated 20.06.2006 issued by Taluka Officer (Regulation), Taluka Municipal Administration, Sukkur, whereby permission was granted to petitioner No.1 for construction of *Chhapra* over the subject property at his own risk and cost. This Court taking up the listed applications on the very first day i.e. 05.11.2009 issued notice to the respondents for 25.11.2009, and once again ordered that till that date the respondents will not take any coercive action against the petitioners' property. The matter was then presented before this Court various times in the year 2010, where bailable warrants were also issued against alleged contemnor Abdul Majeed Pathan. The petition was listed twice in the year 2011 on 23.02.2011 and 08.03.2011; thrice in the year 2012 on 25.01.2012, 08.02.2012 and 29.02.2012, and on the last date, it was stated by Counsel for respondent No.1 in his report that demolition operation was carried out under the general orders of the then DCO Abdul Majeed Pathan and according to record available with the Sukkur Municipal Corporation. Learned AAG submitted that the then DCO Abdul

Majeed Pathan is presently posted as Director General, Sindh Coal Authority, Karachi; hence, notice was issued to him on that fresh address through Secretary, Services and General Administration, Karachi. Afterwards, the application was listed once only in the year 2014 on 05.11.2014, and twice in the year 2015 on 24.03.2015 and 13.04.2015. After gap of almost five years, the matter was again presented before this Court on 24.09.2020 where legal heirs of petitioners sought time to engage a Counsel.

8. The above practice continued and after next four years on 27.08.2024, the petition was taken up on 27.08.2024, when the legal heir of the petitioner, present, made similar request to engage a Counsel, and this Court adjourned the matter on 12.09.2024, as a last opportunity, observed that this petition was filed against some action on the part of Sukkur Municipal Corporation, who moved to dismantle the *katcha* construction raised on the land described in Para No.1 of the petition, and since it has been 30 years, the facts and circumstances are completely changed. On 12.09.2024, the matter was taken up in the earlier part of the day, and due to non-appearance of the petitioner and non-receiving any intimation on his behalf, the listed applications were dismissed for non-prosecution, but before that order could be signed, the present petitioner showed up along with his Counsel, who filed his *vakalatnama* and an application under Order XXII Rule 3 read with Section 151 CPC, to bring the legal heirs of petitioners No.1 and 2 on the record; that application was allowed with direction to file amended title.

9. It is conclusively observed that till date the petitioners do not make any just case as they admittedly have no proprietary interests in the property in question and they are simply occupying it without any legal authority and now allegedly as a tenant. The matter was accordingly adjourned for today with direction to Counsel for the petitioners to assist this Court as to the bona fide of the petitioners in respect of the subject property.

10. If there is a textbook case of misuse of judicial process, this is the one, where under the cover of this Court's orders with regard to status quo and not taking any coercive action against the property, they have been enjoying possession of the subject property were sought for the last 28 years and the petitioners, but as and when the respondents tried to dismantle their *katcha* construction, they camouflaged the authorities under this Court's short orders. With regard to their lease for 99 years, no

granting order is available on the record. It is worthwhile to mention here that a document viz. letter dated 24.08.1995 issued by Deputy Commissioner, Sukkur, which has been submitted by the petitioners themselves, clearly reflects that **there is total ban on disposal of government land / plots imposed by the Government of Sindh.**

11. As the situation is unfavorable for the petitioners, Counsel for the petitioners, rather than assisting this Court regarding the bona fides of the petitioners concerning the subject property, as directed by this Court on the last date of hearing, attempted to withdraw the listed application based on two agreements for the renewal of tenancy, allegedly executed on 11.03.2022 between Sukkur Municipal Corporation and the petitioners. Consequently, various questions have arisen, as follows:

- (i) The aforementioned tenancy agreements executed on 11.03.2022 indicate that earlier tenancy agreements were executed on 11.06.2012. What was the position during the intervening period, and why were the agreements renewed after a gap of almost 10 years?
- (ii) If the petitioners have been in possession of aforementioned tenancy agreements since March 2022, what has prevented them from presenting these to this Court until October 2024?
- (iii) What evidence or documentary proof exists to establish that subject property belonged to Sukkur Municipal Corporation?
- (iv) Is Sukkur Municipal Corporation competent to execute such agreements? If so, under what provisions of law?

12. In light of the serious abuse of process of law committed by the petitioners for over 28 years, and in consideration of the queries raised above, Counsel for the petitioners is directed to assist the Court in detail on the next date of hearing. Let notice be also issued to Municipal Commissioner, Sukkur Municipal Corporation to appear in person on the next date of hearing, bringing the complete relevant records to address the questions raised by this Court, so also let records be called about the subject Gurdwara from the Evacuee Trust Property Board.

To come up on **31<sup>st</sup> October 2024.**

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