

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 706 of 2024

Date	Order with Signature of Judge
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For hearing of CMA No.9732/2024.

01.08.2024 :

Mr. Salman Hamid, Advocate for Plaintiff.
Mr. Irshad Ahmed Shaikh, AAG Sindh.
Mr. Muhammad Akhtar Mastoi, Advocate for BoR.

MOHAMMAD ABDUR RAHMAN J. The Plaintiff claims a right to an immovable property that was allotted to him by the Province of Sindh on 25 July 1991. He admits that the Plaintiffs right to the said Property has been cancelled under The Sindh Urban State Land (Cancellation) Of Allotments, Conversions And Exchanges) Ordinance, 2000 (hereinafter referred to as Ordinance III of 2001) but that he retains a right to regularize his allotment under the statute and which is a vested right. There is no cavil with the contention of the Plaintiff and which proposition has been upheld by a Division Bench of this Court in the decision reported as **Messrs Al Mheran Builders through Attorney vs. City District Government , Karachi through District Coordination Officer**¹. While such a case is clearly maintainable before this Court, a question as to whether this case should be heard or stayed under Section 10 of the Code of Civil Procedure, 1908 on account of the pendency of a *lis* before the Supreme Court of Pakistan needed to be considered and on which issue on that date Mr. Salman Hamid was given notice to address this court.

2. The Supreme Court of Pakistan in exercise of its jurisdiction under clause (3) of Article 184 of the Constitution of the Islamic Republic of Pakistan, 1973 had taken notice of illegal allotments of property in the Province of Sindh. The *lis* is entitled Suo Moto Case No. 16 of 2011 and in which the following orders were passed on 28 November 2012:

“ ... 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**

¹ 2006 CLC 373

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 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.

3. To the best of my knowledge the order passed by the Supreme Court of Pakistan, has to date not been recalled and still subsists. In fact, in the decision reported as **Syed Mehmood Akhtar Naqvi and others vs. Malik Israr, Senior Member, Board of Revenue Sindh and others**² reference has been made to the above-mentioned order to indicate that it still subsists and which reads as hereinunder:

“ ... 16. This Court anticipated all this when it passed the order on 28.11.2012 restraining the Sindh Government from dealing with the State land. The relevant part of the order is reproduced as under:

² PLD 2018 SC 468

"7. Under these circumstances, we are constrained to direct that the Deputy Commissioner/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Muthiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the office 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/forges 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 up to 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."

A statement was made by the learned Sr. ASC representing the Senior Member Board of Revenue and Ch. Aitzaz Ahsan, learned Sr. ASC representing the Bahria Town that the aforesaid restraining order was modified by a three-member bench of this Court but it sounds strange because a three-member bench could not modify an order passed by a five-member bench. Even otherwise, this contention was repelled by this Court in its order dated 01.08.2016 by observing as under:

"8. Today, the learned Counsel representing the Senior Member, Board of Revenue, and Ch. Aitzaz Ahsan, learned Sr. ASC, have submitted that the aforesaid restraining order was modified, by order dated 23.06.2014, passed by a threemember Bench, relevant portion of the said order is also reproduced hereunder:-

Learned Advocate General, Sindh, submits that the order of this Court regarding stay of allotments, mutations, transfer and conversion of any state land is being complied with in letter and spirit.

6. We may at this stage clarify that this order staying the allotment/grant of leases was meant to ensure that the land is not either leased out or allotted for reasons other than bona fide and to land grabbers and this would not prevent the competent authority in the Federal or Government of Sindh to allot or lease out land for a project approved by the concerned authority which is directed towards establishment of any industry or automotive plant or power generating plant or any other initiative in public interest and in accordance with law and the relevant rules.

The learned Advocate General, Sindh, shall convey this order to the Chief Secretary and all the provincial secretaries to ensure that the earlier order is not misconstrued and no such project is held up on that account.

9. We may clarify that the aforesaid order dated 23.06.2014 was obtained by misleading the Court on the pretext that re-writing/reconstruction of the record has been completed by the Sindh Government. Today, the Senior Member, Board of Revenue, concedes that the reconstruction and rewriting of the record has not been completed till date. We hold that the order dated 28.11.2012, passed by a five Member Bench of this Court, was never modified and holds the field

10. This Application is allowed, subject to all just exceptions.

11. Copy of this order be faxed to the Chief Secretary, Government of Sindh, D.G, MDA, the Prosecutor General, NAB, Ch. Aitzaz Ahsan, learned Sr. ASC and Mr. K.A Wahab, AOR (C.M. No. 502-K of 2016). To come up after two months."

When the order restraining the Sindh Government from dealing with the state land in any manner till the reconstruction of the entire revenue record was passed no property could be exchanged, adjusted or alienated but the Board, the MDA and Bahria Town having shown scant regard to the orders of the Court exchanged the land, took possession of a great deal of property and raised construction thereon. Anything thus done cannot be allowed to endure even for a while. It even on this score cannot be granted any legitimacy."

4. As an interim order exists seeking the allotment of land to be made by the Province of Sindh and which has subsisted for the last thirteen (13) years, the directions given therein by the Hon'ble Supreme Court of Pakistan were that no further entry in the record of right be maintained by the Province of Sindh until the entire record of the Province of Sindh is to be reconstituted.

5. In the interim, as per the minutes of the Sindh Government Lands Committee meeting held on 10 February 2016 a decision was taken which reads as hereinunder:

" ... 3..... *It was also decided that the orders passed by the the Hon'ble Supreme Court of Pakistan in Suo Moto Case No.16/2011 regarding ban on allotment of state land. Therefore, the above order. Therefore, the above orders are not applicable on regularization cases after payment of differential amount."*

I am unable to accept the decision of the Sindh Government Lands Committee as the regularisation of state land would amount to an "allotment" as the right to the property had previously been cancelled under Ordinance III of 2001. While a right of regularisation clearly subsists, the regularisation itself necessitates a fresh entry being made in the record of rights and which would violate the interim order passed by the Supreme Court of Pakistan in Suo Moto Case No. 16 of 2011.

6. The Plaintiff in this Suit has claimed declaratory relief in respect of his title to the Said Property which admittedly is cancelled under Ordinance III of 2001. He has as of yet not exercised his right to regularize the immovable property allotted to him and which he prima facie cannot do in light of the interim order passed by the Supreme Court of Pakistan. That being the case and this Court exercising concurrent jurisdiction to the jurisdiction being exercised by the Supreme Court of Pakistan, it would seem that as per the decision reported as **Water and Sanitation Agency, Lahore through M.D. vs. Lottee Akhtar Beverages (Pvt.) Ltd. Lahore and others (2019 SCMR 1146)** on the basis of

the principles of Judicial Propriety and Comity the relief claimed by the Plaintiff should have been claimed before the Supreme Court of Pakistan and not before this Court. In that decision it was held that:

“ ... The LDA notification dated 18.01.2019 levies a water tariff in the purported compliance of the directions contained in our order dated 06.12.2018. The private respondents are aggrieved by the tariff charged under the LDA notification. However, instead of bringing this objections before the Implementation Bench, the respondents chose to file a Writ Petitions before the learned Lahore High Court to express their misgivings. By the Impugned order dated 28.02.2019, the learned High Court suspended the LDA notification. We consider that any flaws or deficiencies in the steps taken by the Provincial Governments for the enforcement of this Court's directions are to be highlighted in the proceedings of SMC No. 26 of 2018 before the Implementation Bench of this Court. By entertaining and adjudicating such a challenge to the LDA notification, the learned High Court has surprisingly and to our disappointment assumed jurisdiction over a lis that is sub-judice before this Court. Such course of action clearly offends the settled norms of judicial propriety and comity which is disapproved.”

7. While this Court clearly has the “jurisdiction” to entertain such matters, however as the issues involved in this Suit are Sub-Judice before the Supreme Court of Pakistan I am of the opinion that the provisions of Section 10 of the Code of Civil Procedure, 1908 are attracted and each of these proceedings are liable to stayed under Section 10 of the Code of Civil Procedure, 1908 until the decision in those proceedings.

8. The question that remains is what is to happen to the interim applications that have been filed by the Plaintiff in this Suit. In matters where interim orders have already been passed by this Court I have consistently been holding that it would make better sense for this Court not to “second guess” the orders of the Supreme Court of Pakistan and to allow for each of the Plaintiffs to apply to obtain appropriate interim relief from the Supreme Court of Pakistan and having continued interim orders for a period of 30 days to allow the Plaintiff to approach the Supreme Court of Pakistan. I do not see any reason to deviate from that practice in this matter save that I take into account that at present the Supreme Court of Pakistan is observing its summer vacations. In the circumstances CMA No.9732/2024 is disposed of with directions that the Plaintiff and the Defendants will maintain status quo in respect of the Suit Property for a period of 60 days from the date of the passing of this order and with the further order that this Suit is stayed under Section 10 of the Code of Civil Procedure, 1908 until the decision in Suo Moto Case No. 16 of 2011 by the Supreme Court of Pakistan.

Order Accordingly.

Nasir P.S.

JUDGE