

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-6120 of 2024
(Suresh Kumar Manglani v Province of Sindh & others)
CP. No. D-6122 of 2024
(Tehseen Haroon v Province of Sindh & others)
CP. No. D-6123 of 2024
(Waqas Jawed v Province of Sindh & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 12.12.2024

Mr. Mukesh Kumar G Karara advocate for the Petitioners in C.P. No. D-6120,6122 and 6123 of 2024.

ORDER

Adnan-ul Karim Memon,J; Through these petitions, the petitioners have common cause of action and prayed as under:-

a. To seek declaration that the impugned order dated 07.11.2024 issued on 21.11.2024 passed by the Respondent No.2 in collusion with the respondent Nos. 3 to 5 is illegal, arbitrary, unconstitutional, and in violation of principles of Natural Justice and utter disregard of the order passed by the Member (LU) on 23.10.20203 and quash the same as a nullity in the eye of law.

2. Petitioners Suresh Kumar Manglani, claims that he purchased of land measuring 4.20 acre out of N-Class 213,(37.00 acre), situated Deh Kharkharo, Tuluka Murad Memon, district Malir, Karachi through registered conveyance deed dated 09.02.2022 from Abdul Ghafoor. Petitioner Tehseen Haroon, claims that he purchased of land measuring 3.00 acre out of N-Class 213,(37.00 acre), situated Deh Kharkharo, Tuluka Murad Memon, district Malir, Karachi through registered conveyance deed dated 09.02.2022 from Abdul Ghafoor. Petitioner Waqas Javed claims that he purchased of land measuring 2.00 acre out of N-Class 213,(37.00 acre), situated Deh Kharkharo, Tuluka Murad Memon, district Malir, Karachi through registered conveyance deed dated 09.02.2022 from Abdul Ghafoor and obtained necessary approvals. However, the Additional Commissioner initiated a suo moto proceeding, alleging illegal occupation and forgery. The order dated 07.11.2024 issued by Additional Commissioner –I Karachi Division canceled their land record entries and prohibited further transactions on the subject land. It directs the Deputy Commissioner to retrieve the land from illegal occupation and initiate an inquiry against officials involved in forgery. The Director Settlement & Survey is also directed to cancel related Ghat Wadh Forms in favor of the petitioners and initiate an inquiry against the department's officials. An excerpt of the order is reproduced as under:-

“ In the light of above and perusal of the Record of Rights, the reference moved by the Deputy Commissioner, Karachi merits

consideration. Therefore, entry No. 849 VF-VII in Deh Kharkharo was made in Record of Rights. Subsequently dated 17.10.1970 (Total area 82.00 Acres), entry No. 973 VF-VII 01.04.2022 (Area 04-20 acres) and entry No. 2771 dated 28.07.2009 (Total area 37-00 Acres out of 82.00 acres) and Ghat Wadh form No.81 are hereby canceled along with all the subsequent entries in the record of rights. The Deputy Commissioner, Karachi Malir is directed to implement this order and retrieve the precious Government Land from illegal occupation. The Deputy Commissioner, Karachi Malir is further directed to move a reference to Anti-Corruption against the officers/officials who were involved in this forgery of inserting/managing fake entry and initiating an illegal process of issuance of Ghat Wadh Form in year 2022 and making/managing the whole record missing from the office of Mukhtiarkar Murad Memon, within 15 days of receipt of this order. No further transaction in the record of right o or creation of any new survey numbers in respect of subject land shall be entertained if anyone involved in committing such fake entries shall be proceeded against them as per law and rules.

The Director Settlement & Survey shall cancel all Ghat Wadh Forms pertaining to canceled subject entries including Form No. 81 carving out a new Survey No. 473 (Total 04-07 Acres) from Na-Class No. 213. He shall also move reference to Anti-Corruption against the officers/officials of his Directorate for taking necessary action as per law and rules.”

3. At the outset we asked the petitioners' counsel to justify the maintainability of these petitions. We questioned how they could claim ownership of government land that was allegedly procured through fraudulent means, as there is no evidence of legal allotment to the previous owner. Besides the High Court's extraordinary jurisdiction under Article 199 is for clear-cut cases of unlawful or improper government action; that the alternative remedy must be equally effective as this court's jurisdiction is for correcting clear illegalities, not complex disputes requiring extensive fact-finding and evidence.

4. Learned counsel for the petitioners argued that the petitioners purchased the property legally through registered instrument and submitted that the respondents' order to cancel the property entries in favor of the petitioners is illegal and malicious as such these petitions are maintainable as they have not been heard before the impugned action was taken. They seek this court's order to annul the impugned order and protect their property rights. The petitioners' counsel relies on several case precedents to support his argument. The counsel for the petitioner also points out that the respondent's actions are barred by the law as the petitioners were not heard before the impugned action taken by the respondent in violation of the provision of Sindh Land Revenue Act 1967. Per learned counsel, right of due process is fundamental right of the petitioners who's land has been cancelled by the respondent without making them party in the suo moto proceeding as the law is very much clear on the subject issue as no order can be passed without an application of the parties effected by such an order; that petitioners proprietary rights

have never been challenged in as much as said right culminated from the judicial order passed by the member (LU) dated 23.10.2018, which was never challenge or assailed by the respondent; that the impugned action is illegal, malafide and contrary to the law and constitution as no notice has been issued to the petitioners before the impugned order was passed in respect of the properties in terms of section 24 of the Land Revenue Act 1967. The petitioners seek protection of their property rights. In support of his contention, he relied upon the cases of Mrs. Anisa Rehman v PIAC and another 1994 SCMR 2232, Ishtiaq Ahmed v Competent Authority through Rgisrar Supreme Court 2016 SCMR 943 and Ashique Ali Mari v Executive District Officer (Revenue Khairpur & others 2022 YLR 644. He lastly prayed for allowing the instant petitions.

5. We have heard the argument of the petitioners' counsel on the case's maintainability and reviewed the relevant documents.

6. The impugned order cancels certain land entries due to suspected forgery and illegal occupation. This requires a thorough inquiry, which is beyond the scope of this court and can only be done by a civil court. Section 53 of the Sindh Land Revenue Act, 1967, supports this view, an excerpt whereof is reproduced as under:-

"53. Suit for declaratory decree by persons aggrieved by an entry in a record. If any person considers himself aggrieved by an entry in a 'Record-of-Rights' or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877)."

7. In the case of Muhammad Faraz and others vs. Abdul Rashid Khan and others (1984 SCMR 724), the Apex Court has held as under: -

"It is true that a party aggrieved by an entry in a record-of-rights could move the Civil Court under section 53 of the and Revenue Act but there is nothing to prevent that party from seeking redress first in the Revenue hierarchy by way of Appeal and Revision. Under section 164(4), the Board of Revenue has the power to call for the record of any case pending or disposed of by any revenue officer subordinate to it and "to pass such orders as it thinks fit". The only limitation on this power is that no order shall be passed without giving the affected person an opportunity of being heard. It was not and cannot be denied that this jurisdiction was available even in matters relating to preparation of record-of-rights and that the orders passed by subordinate revenue officers merged in the Order of the Board of Revenue which became the final adjudication of the dispute between the parties in so far as the revenue authorities were concerned. At this stage if any party was aggrieved, it could invoke the provision of section 53 which was an adequate remedy and as such the constitutional jurisdiction of the High Court in terms of Article 199 of the Constitution was not available."

8. Moreover, in a chain of judgments, the Supreme Court has pronounced that the revenue authorities can only resort to variation/correction of old standing entries in the revenue record if those which crept in due to some omission, inadvertence or clerical mistake. In this context, reference can conveniently be made to the cases of Waris Khan and 18 others v. Col. Humayun Shah and 41 others (PLD 1994 SC

336) and *Muhammad Yousaf and 3 others v. Khan Bahadur through L.R.s.* (1992 SCMR 2334). In the case of Muhammad Yousaf (Supra), the Supreme Court has drawn a line of distinction between the matters wherein the revenue authorities have the jurisdiction to effect any correction and those which are to be determined by the Civil Courts on the move of the aggrieved party. The relevant portion of the said judgment is reproduced herein under:--

"The learned Appellate Court while returning the plaint for want of jurisdiction has referred to section 41 read with section 172 of the West Pakistan Land Revenue Act and came to the conclusion that the grievance of the appellants can be redressed by the revenue officers under section 44 of the Act ibid. We have anxiously considered the relevant provisions of West Pakistan Land Revenue Act. Section 172 barred the jurisdiction of the Civil Courts in certain matters exclusively within the competence of the revenue officers which have been enumerated in subsection (2). Section 44 relates to the determination of disputes arising during the course of making, Revision or preparation of record or in the course of any inquiry under Chapter VI relating to record-of-rights and periodical record. But once the inquiry is made or the entries recorded in the Revenue Record, a presumption of truth is attached to it under section 52 of the Act ibid until the contrary is proved or the new entries are substituted therefor. To dislodge this presumption a remedy is provided under section 53 of the said Act which provides that if any person considers himself aggrieved by an entry in a record of rights or in a periodical record as to any right of which he is in possession, he may institute a suit for declaration of his rights under section 42 of the Specific Relief Act, 1877 Act (I of 1877). Apparently, the jurisdiction of the Civil Courts is not ousted to question the correctness of the entries of revenue record, or declaration of title under the Specific Relief Act, or claiming relief of possession of immovable Property, rather aggrieved party has been invested with a right to challenge the entries made in the Land Revenue Act through a suit for declaration in Civil Court "

9. The petitioners have presented a sale deeds as evidence of ownership. This Court has noted that revenue courts are not equipped to handle complex legal and factual disputes related to property titles. The Supreme Court's judgment in *Amir Jamal v. Malik Zahoor-ul-Haqs* (2011 SCMR 1023), supports this view. The relevant portion of the said judgment is reproduced herein under:--

"7. We have heard the learned counsel and have also perused the record. In exercise of writ jurisdiction, question of title of a property cannot be gone into by the High Court. The scope of Article 199 is dependent on the questions which are devoid of factual controversy. A registered instrument can only be canceled by a civil court of competent jurisdiction on the ground of fraud or otherwise. Section 39 of the Specific Relief Act provides that a party which seeks cancellation of a registered instrument has to file a civil suit by approaching the civil court of competent jurisdiction and writ jurisdiction in such matters is barred".

10. Furthermore, this Court enjoys ample jurisdiction to take care of the decision of the executive authorities/tribunals in the exercise of jurisdiction vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and the same cannot be abridged based on any

technicalities. In this regard, the verdict of the Supreme Court of Pakistan rendered in Suo Motu Case No.24 of 2010 of CORRUPTION IN HAJJ ARRANGEMENTS IN 2010 reported as (PLD 2011 SC 963) can be referred, relevant portion whereof is reproduced hereunder: -

"The exercise of constitutional powers by the High Court and the Supreme Court is categorized as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, if arbitrary, unreasonable, or contrary to law, is now amenable to the writ jurisdiction of the Superior Courts and can be validly scrutinized on the touchstone of the Constitutional mandates....."

11. However at the same time, the High Court is not meant to resolve complex factual disputes. Such matters are typically handled by civil courts. The High Court's constitutional jurisdiction is extraordinary and should only be used when other remedies are unavailable. The Supreme Court's judgment in Dr. Abdul Nabi's case (2023 SCMR 1267) supports this view.

"The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous, and expeditious remedy which should also be remedium juris, i.e. more convenient, beneficial, and effective. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition. This extraordinary jurisdiction is provided as a remedy to cure an illegality which can be established without any elaborate enquiry into disputed facts"

12. This court concluded that the complex factual issues, including the subject issues as agitated by the petitioners, should be resolved in a civil court. Therefore, these petitions are found to be not maintainable and are dismissed in limine along with pending application(s), and the petitioners may seek remedies through the civil court process.

JUDGE

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