

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-6194 of 2024

(Muhammad Anwar & others 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: 11.12.2024

Mr. Mustafa Azhar advocate for the Petitioners.

ORDER

Adnan-ul Karim Memon,J; Through this petition, the petitioners have prayed as under:-

- a. *To set aside the impugned order dated 07.11.2024 passed in case No. 04/2-023 & Case 05/2023 by the Additional Commissioner –I Division Karachi (Respondent No.3.*
- b. *To direct the official respondents to de-seal the land of the petitioners bearing Survey No. 320 Deh Tora Taluka Murad Memon District Malir within the jurisdiction of police Station Gadap with immediate effect in the interest of justice.*
- c. *To restrain the official respondents not to creating any hindrance at land bearing survey No. 320 Deh Tora Tluka Murad Memon District Malir with the jurisdiction of Police Station Gadap.*
- d. *To suspend the operation of the impugned order dated 07.11.2024 passed in case No. 04/2023 & case No. 05/2023 passed by respondent No. 3 till the final disposal of this petition in the interest of justice.*
- e. *Any other relief which this Hon'ble Court may deem fit and proper in the interest of justice.*

2. Brief facts of the case are that the petitioners are co-sharers in a 12.20-acre property in Karachi. The property was initially registered in the name of Bashir Ahmed. The petitioners obtained a No Objection Certificate (NOC) for the sale of the property from the Mukhtiarkar and Assistant Commissioner on July 21, 2022. The sub-registrar verified the NOC with the Mukhtiarkar and Assistant Commissioner, who confirmed its authenticity. It is further claimed that the petitioners purchased a 12.20-acre property from Bashir Ahmed on July 22, 2022, and the sale deed was registered. The property was then transferred to Sarang, who obtained a new survey number for it. Muhammad Mudasir Shaikh and Muhammad Anwar Shaikh applied for a new Ghat Wadh, which was created by the Survey Superintendent. A new survey number (320) was assigned to the 12.20-acre property. However in the intervening period Additioal Commissioner No.1 Division Karachi initiated suo moto proceedings No. 4/2023 (re-the State v Abdullah & others and passed the order dated 07.11.2024, cancelling certain entries in the land records, including those related to the subject property. It directs the Deputy Commissioner to retrieve the land from illegal occupation, stop any development activities,

and initiate an inquiry against officials involved in the forgery. The order also prohibits any further transactions or creation of new survey numbers for the land. An excerpt of the order is reproduced as under:-

***“ In the light of above and perusal of Record of Rights, the reference moved by the Deputy Commissioner, Karachi merits consideration. Therefore, entry No. 656 dated 10.02.1986 (Total area 25.00 Acres), entry No. 1116 dated 29.10.1991 (Area 25-00 acres), entry No. 349 VF-VII dated 26.08.2022 (Total area 12-20 Acres), entry No. 354 dated 19.10.2022 and Ghat wadh form No. 73 from Na-Class No. 119 are hereby cancelled along with all the subsequent entries in the record of rights. The Deputy Commissioner, Malir Karachi is directed to implement this order and retrieve the previous Government Land from illegal occupation. He is also required to get any activity stopped with regard to planning for a society at the subject land. The Deputy Commissioner, Karachi Malir is further directed to prove 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 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 or creation of any new survey numbers in respect of subject land shall be entertained, if any one involved in committing such fake entries shall be proceeded against as per law and rules. The Director Settlement And Survey & Land records shall cancel all Ghat Wadh Forms pertaining to cancel subject entries including Form No. 73 carving out a new Survey No. 320 (total 12-20 Acres) from Na-Class No. 119 in Tore. He shall move a 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 counsel to satisfy about the maintainability of the petition against the impugned order as the respondents have raised the question of fake/managed entries in the Record of Rights as the land in question has been claimed to be Na-Class (Government Land) without any allotment order by the Government.

4. Learned counsel for the petitioner argued that the petitioners purchased property after obtaining necessary NOCs and completing legal formalities. However, the respondents, including the Revenue Department and police, have initiated legal proceedings to cancel the property entries. The petitioners claim that these actions are malicious and without due process. They seek the court's intervention to quash the impugned order and protect their property rights. Learned counsel for the petitioners argue that the respondents, acting maliciously and without due process, have issued an order canceling the property entries. They claim that the respondents have ignored the relevant laws and regulations and have not provided a fair hearing. The petitioner's counsel argues that the respondent could not cancel the registered instrument. The counsel for the petitioner also points out that the respondent's actions are barred by the law. Learned counsel relied upon the order dated 05.12.2024 passed by this Court in C.P. No. D-6061 of 2024. The petitioners seek this court's

intervention to set aside the impugned order dated 07.11.2024 passed by Additional Commissioner I Division Karachi and protect their property rights.

5. We have heard learned counsel for the petitioners on the maintainability of the petition and have perused the material available on record with his assistance.

6. It appears from the record that the impugned order cancels certain land entries due to suspected forgery and illegal occupation, which factum need for a thorough inquiry and evidence, which can only be done by civil courts. The Section 53 of the Sindh Land Revenue Act, 1967, to support this analogy, 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 August 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 August 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 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 petitioner has presented a sale deed as evidence of ownership. The 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 cancelled 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 august 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. 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, the petition is found to be not maintainable and is dismissed along with the pending application(s), and the petitioners may seek remedies through the civil court process.

JUDGE

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