

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-475 of 2022

For hearing of M.A. No. 5249 of 2023

CP.No.S-721 of 2023

1. For orders on office objection
2. For orders on M.A. No. 1105 of 2023
3. For orders on M.A. No. 1106 of 2023
4. For hearing of main case

Date of hearing: 11th October 2023

Date of announcement : 03rd November 2023

APPEARANCE:

Mr. Abdul Ghaffar Kalwar, advocate for the Petitioner in CP.No.S-475 of 2022

Mr. Ahmed Masood advocate for the Petitioner in CP.No.S-721 of 2023

ORDER

SALAHUDDIN PANHWAR, J. Through CMA No. 5249/2023, applicant seeks review of order dated 27.05.2022 passed in C.P.No. S-475/2023, being relevant is reproduced hereunder:-

“Petitioner's case is that he purchased plot bearing No.B/242-A(1), admeasuring 2-00 Acres situated in SITE Area, Nooriabad. Initially a plot consisting 10-00 acres was allotted to one Ashok Kumar by the SITE vide allotment letter dated 19.07.2012 and out of said 10-00 acres Ashok Kumar sold 4-00 acres to one M/s. Naseem Malik S/o Malik Abdul Sattar from whom petitioner has purchased 2-00 acres plot as mentioned above and accordingly mutation was effected, NOCs by different institutions were obtained and building plan was approved. However, at this juncture, site officials with the collusion of respondent No.3 as well police officials are causing harassment and creating hurdles to petitioner regarding construction on said plot. According to learned Counsel, petitioner would be satisfied if respondents are directed that they shall not cause any hindrance and he shall not be dispossessed without due course of law and in case of any grievance, they may avail proper remedy including civil forum.

Learned Additional A.G Sindh present in Court in some other matters waives notice and submits that official respondents will act strictly in accordance with law and will avail the remedy as provided by law and will not take coercive measures against the petitioner.

Learned Counsel for the petitioner in view of above statement of learned Additional A.G Sindh is satisfied and therefore seeks disposal of this petition. Accordingly, instant petition is disposed of with the above terms.”

According to applicant that he is owner of subject matter property, however, possession is with the plaintiff and plaintiff by misrepresentation succeeded in obtaining interim order in his favour, which is liable to be recalled.

Whereas, in C.P.No.S-721/2023 it is prayed that;

1. Declare that the Petitioners are entitled to necessary protection under the law with respect to their entitlement over the subject property.
2. Direct the respondent to act in accordance with law and afford the petitioners' necessary protection under the law with respect to their entitlement over the subject property;
3. Grant any other relief that this Honourable Court may deem fit and proper;
4. Grant cost of these proceedings;

Since controversy is with regard to the plots owned by SITE and subsequently, they were allotted to petitioners in both the petitions, both parties are claiming title over subject matter property. This Court directed Nazir to carry out inspection and submit the report, which was submitted by the Nazir.

Admittedly, instant matters involved factual controversy with regard to title over the subject matter property and it is well settled that this Court cannot resolve the disputed question of facts in exercise of its constitutional jurisdiction under Article 199 of the Constitution. In the case of Fida Hussain v. Saiqa (2011 SCMR 1990), the Apex Court has held that:

"On examination of the material made available before us it becomes evident that the appellants had, in their replies (available at pages 23 and 45 of the paper book), specifically denied the allegations of respondent No.1 and in support had produced some documents noted above meaning thereby that matter involved disputed facts which for the purpose of determination required factual inquiry by recording evidence. It is well settled by way of plethora of case-law laid down by Superior courts that the High Court is not to resolve the disputed question of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution."

However, it reflects that in both petitions, petitioners sought protection against harassment. In C.P.No.S-475/2022 protection against harassment was ordered, whereas, petitioner in C.P.No.S-721/2023 is seeking same relief.

Under these circumstances, directions have already been issued by this Court that no action shall be taken without due course of law, hence this order is to be applied to all the parties in present *lis*. With regard to title and possession as agitated by the respective parties, they would be at liberty to approach the Civil Court having jurisdiction in accordance with law, for seeking such relief(s).

Accordingly, review application is dismissed and C.P.No.S-721/2023 is disposed of.

JUDGE

Sajid