

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 277 of 2024

(Naeemuddin Mughul and others vs. Province of Sindh and others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Muhammad Saleem Jessar J;

Adnan-ul-Karim Memon, J;

Date of hearing and order: 12.02.2025

Mr. Shafique Ahmed Leghari, Advocate for Petitioners.

Mr. Zulifqar Ali Naich, Assistant Advocate General Sindh

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ORDER

Adnan-ul-Karim Memon J:- The Petitioners pray that this Court call for reports from Respondents 3, 4, 7, and 8 regarding the land acquired by Respondents 14 & 15 for the Sukkur Motor Works Association, as per the approved plan of January 24, 2006, and the notified land (20-05 acres) and Survey No. 242 (2-28 acres). They have also sought direction to Respondents 8 & 9 to conduct proper demarcation of the Association's land (20-05 acres and Survey No. 242) according to the approved plan dated February 24, 2006. They also seek direction to Respondents 3, 4, 6, & 8 to restore the usurped amenity plots to their original status, including the two mosques, drainage station, park, dispensary, tube well, and school, as per the approved plan.

2. At the outset we asked the petitioners' counsel to justify the maintainability of this petition against the private respondents for restoration of purported amenity plots if any, which could be resolved by the court of plenary jurisdiction. Besides the High Court's extraordinary jurisdiction under Article 199 of the Constitution 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. Learned counsel states that this petition is filed in the public interest on behalf of workers (Painters, and Motor Mechanics) in Sukkur as such this petition is maintainable as the amenity plots cannot be

utilized for any other purpose as held by the Supreme Court in its various pronouncements.

3. The petitioner's counsel further argued that Sukkur's traffic and nuisance problems, caused by workers operating from central locations, led the Sindh Government, in 1998, to acquire land (20 acres, 5 Ghuntas) at the New Bus Terminal with the Sukkur Motor Works Association's financial support. This land was intended to relocate Painters and mechanics. Respondents 3 & 4 oversaw this, comprising survey numbers 231, 235, 236/2, 237, 241, 388, 389, and 409 (20-05 acres), plus Survey No. 242 (2-28 acres), also purchased by the Association (Annexure A & A-1). Respondents 12 & 13 approved the site plan in 2006 (Annexure B & B-2), with the association covering development costs and the government providing roads and a boundary wall. The plan included amenity plots for mosques, a drainage station, a park, a dispensary, a tube well, and a school. Per learned counsel the Association's bylaws established a plot committee for distribution, limiting allocation to members. However, Respondents 14 & 16, acting in bad faith, amended the bylaws in 2015 (Annexure C & C-1), giving Respondent 14 veto power and enabling the misappropriation of member plots and amenities. Of the initial 355 members and 590 plots, many are now affected. He added that after the 2012 relocation, the association's requests for facilities from Respondents 3 & 4 were ignored. However, respondent 14 then began illegally subdividing ("china cutting") and selling land to outsiders, reducing road widths, and giving portions of Survey No. 337 (1-35 acres), including a rice mill and market, to land grabbers, also usurping amenities. He submitted that a private, unregistered school now operates on Association land, and Respondents 7 & 8, at Respondent 14's instigation, issued fraudulent documents to non-members (Annexure E), omitting the correct survey numbers. Respondents 14 & 16 then sold association plots to strangers, obstructing public access and compromising worker security. He emphasized that they also illegally allotted land to builders for commercial schemes, selling association plots and even re-selling plots already allotted to members. He argued that Respondent 14, a spare parts shop owner (not a mechanic or painter), illegitimately acted as Association President, usurping numerous plots and selling them to outsiders. However, the promised amenities remain unbuilt, and the reserved space has been taken over. He added that Association members complained to Respondent 4 about Respondent 14 & 15's actions (Annexures provided). Respondent 14 filed false FIRs and then, through private agreements, handed over Association plots to strangers (Annexures provided). Petitioners 1 & 2, Association members, received plots 391 and 390 via registered sale deeds (Annexures provided), while Petitioner 4's

plot allotment is incomplete. Respondents 14-16 have damaged and encroached upon Association land, a fact known to Respondents 3, 4, 6, 8, & 10, who have taken no action. Finally, Respondent 4, in collusion with Respondents 14 & 15, illegally de-notified and transferred Association land to strangers (Annexures provided). He prayed for allowing the petition.

4. We have heard the parties and perused the record with their assistance.

5. Article 199 of the Constitution allows this Court intervention only when: All other legal remedies have been exhausted, or, no alternative legal remedies exist. To invoke the jurisdiction of this Court, the petitioner must demonstrate a vested/legal right or interest that has been violated, which the petitioners failed to demonstrate by producing cogent material on record to substantiate that such amenities have been encroached upon are converted to another use, as such these all facts require evidence and this court at this stage cannot give concrete findings on the subject issue. The Supreme Court of Pakistan in the case of *Pakistan WAPDA Employees Pegham Union v Member National Industrial Relations Commission*, **2014 SCMR 1676**, held that the factual controversies cannot be resolved by the High Court. The Supreme Court of Pakistan in the case *Lahore Cantonment Cooperative Housing Society Limited*, **PLD 2002 SC 1068**, held that "disputed questions of fact about contractual liability could not be dealt with by the High Court in its Constitutional jurisdiction under Article 199 of the Constitution when other remedies are unavailable. The Supreme Court's judgment in *Dr. Abdul Nabi's case* (**2023 SCMR 1267**) supports this view.

6. 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, this 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 if the amenity plots have been converted into another use in violation of law.

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