

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No. D-956 of 2022**

(Asad Ishaq Suri & Others v. Province of Sindh & Others)

DATE: **ORDER WITH SIGNATURE(s) OF JUDGE(s)**

1. For Orders on CMA No. 8036 / 2025 (Urgent App)
2. For Orders on CMA No. 11518 / 2024 (O 18 R. 18 CPC)
3. For Orders on CMA No. 11519 / 2024 (Sec. 12(2) CPC)

25-4-2025

Mr. Hanif Faisal Alam, Advocate for Applicants

1. **Sana Akram Minhas J:** The Applicants (who claim to be wife and son respectively (legal heirs) of late Colonel (Retd) Syed Shamimul Hasan) have, amongst others, preferred CMA No.11519/2024, being an application under Section 12(2) CPC ("**12(2) Application**") impugning the order dated 13.2.2023 ("**Impugned Order**"), by which the instant Petition was disposed of in the following terms:

13-2-.2023

Nazir of this Court has furnished his report dated 15.12.2022 in which he states that the subject land is open to sky and the plaintiff's plot was existing facing road side without any boundary wall and neither any poultry farm was found there nor any structure was available. Nazir has further pointed out that there were different industrial plots adjacent to the petitioner's plot. Counsel for respondents No.2 to 4 states that seemingly some litigation has been pending, therefore, the possession of the said plot could not be handed out to the petitioner though the title is admitted. Counsel for the petitioners submits that some litigation ensued in the matter from the owner of the land who was earlier granted poultry lease which order has been set aside by the hon'ble Supreme Court through its judgment. Counsel for respondents No.2 to 4 was unable to show that any stay has been operating in respect of the subject plot. In the circumstances, we reach to the conclusion that unless there is an order specifically restraining SITE from handing out possession of the subject plot to the petitioner, the petitioner be put into possession of the said plot without any further delay. Petition stands disposed of alongwith listed application.

2. Learned Counsel for Applicants avers that the land in question forms part of a 20-acre parcel originally allotted to the late Colonel (Retd) Syed Shamimul Hasan (i.e. Applicants' predecessor) under a 30-year agricultural-cum-poultry farming "*Ijazatnama*" / lease (**Court File Pg. 139 & 157**). He further claims that on 24.2.2012 (see paragraph 2 of 12(2) Application & **Court File Pg. 175**), the Chief Minister Sindh approved the conversion of this lease into

a 99-year tenure for the development of a “*Tourism Industry Park*”, and that this conversion preceded the Supreme Court’s order dated 28.11.2012 passed in Suo Motu Case No.16 of 2011, which expressly restrained the Government of Sindh and the Revenue Department from carrying out any mutation, allotment, transfer, and/or conversion of state land.

3. When asked how the Application falls within the ambit of Section 12(2) CPC¹ (under which only three grounds exist to impugn a final judgment, decree or order in the court that rendered, viz. (i) fraud; (ii) misrepresentation; and (iii) want of jurisdiction), Counsel contended that the Petitioners had concealed the existence of the suit filed by predecessor of the Applicants viz. Suit No.1146/2014 (*Syed Shamimul Hasan v. Sindh Industrial Trading Estate Ltd & Others*) (**Court File Pg. 213**) from the Division Bench.
4. We find this allegation entirely without merit. First, the Petitioners were not even parties to the said Suit No.1146/2014 – a fact conceded by the Counsel on query – and therefore could not have possibly made any disclosures regarding it. Second, even without citing the specific suit number, the Impugned Order, upon SITE’s (Respondents No.2 to 4’s) submission, expressly referred to the earlier litigation, noted that no stay was in force against the subject plot, and directed that, absent any specific restraining order, possession be delivered by SITE to the Petitioner forthwith. These observations conclusively demonstrate that the Division Bench was fully apprised of Suit No.1146/2014.
5. Counsel then leaned on the Supreme Court case referenced in the Impugned Order, asserting that no particulars of those proceedings were disclosed and that no such litigation had ever occurred. This contention is equally devoid of merit. The Impugned Order refers to Supreme Court proceedings only by way of recording the submission of the Petitioners’ Counsel, and it is clear that the Impugned Order neither rests upon nor is predicated on that reference.
6. Aside from the above, we harbour grave concerns regarding the legality of converting the Applicants’ original 30-year agricultural-cum-poultry farming lease into a 99-year “*Tourism Industry Park*” tenure. We are equally troubled by the timing and credibility of the documents relied upon in support of this alleged conversion, for the following compelling reasons:

¹ Section 12 CPC: Bar to further suit. (1) Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree and not by a separate suit.

- i) Firstly, and crucially, the Applicants' predecessor (who was plaintiff in Suit No.1146/2014) – as late as 2014 – makes no claim in his **Plaint (Court File Pg. 213)** in said Suit that any approval had been granted by the Chief Minister for such a conversion. On the contrary, he expressly states (in paragraph 8) that upon his request for the extension/conversion of the existing lease period to 99 years, the Chief Minister merely directed the Revenue Department to provide its comments, whereafter the Mukhtiarkar recommended the matter for further consideration – not approval – to the Revenue Department. Thus, at that time (i.e. in 2014), the matter remained entirely “***under consideration***”.
- ii) Secondly, and even more significantly, the Land Utilization Department, in its Affidavit-in-Evidence dated 31.8.2021 (**Court File Pg. 257**) filed in Suit No.1146/2014, categorically denied (in paragraph 8) any claim by the Applicants' predecessor over the land. Moreover, the Department only acknowledges (in paragraph 3) that a request for conversion was received – it does not mention, let alone confirm, that any approval was ever granted by the Chief Minister. To the contrary, the Department explicitly reaffirms (in paragraph 5) the binding effect of the Supreme Court's unequivocal ban, vide order dated 28.11.2012 in Suo Motu Case No.16/2011, on all mutations, allotments, transfers, and conversions.
- iii) Thirdly, while the alleged “*Summary For The Chief Minister, Sindh*” (**Court File Pg. 175**) seeking conversion is dated 10.10.2006, the purported approval is claimed to have been granted only on 24.2.2012 (as per paragraph 2 of 12(2) Application) – a staggering delay of over 6 years, with no explanation whatsoever offered for this prolonged gap. More strikingly, the word “approved” appears neither adjacent to the Chief Minister's signature nor anywhere else on the page, undermining the credibility of the Applicants' claim regarding the alleged approval.
- iv) Fourthly, the purported challan evidencing payment of conversion fees was not issued until July 2023 (**Court File Pg. 179**) – nearly 12 years after alleged approval and again without any rationale for this hiatus.
- v) Fifthly, even otherwise, no law empowers the Chief Minister of Sindh to approve such a conversion.

- vi) Finally, the undated Allotment Order (**Court File Pg. 151**) refers in figures to “15-0 acres” of land but recites in words “Five Acres Only” further casting doubt on the authenticity of the instruments purportedly issued in the Applicants’ favour.
7. The foregoing documentary chronology compellingly indicates that the Applicants have deliberately orchestrated and procured fabricated back-dated documents in a calculated attempt to circumvent the Supreme Court’s unequivocal ban dated 28.11.2012 on conversions. The timing, content, and inconsistencies within these documents raise serious red flags and strongly suggest a concerted effort to manufacture a paper trail that would give the appearance of legitimacy to what is, in reality, an unlawful and impermissible conversion.
8. There is yet an additional aspect which we find just as deeply disconcerting and, therefore, cannot leave unaddressed. Upon being confronted why the 12(2) Application, though filed on 20.5.2024, had remained dormant for nearly a year without any notice being issued, Counsel responded that it was lodged solely to safeguard the limitation period, as no cause of action had yet arisen at that time. He claimed that the Applicants only became aggrieved – thus necessitating further steps – once SITE initiated the process of dispossession. Such reasoning is not only legally untenable but additionally reflects a blatant abuse of the process that seeks to misuse and manipulate judicial procedure by initiating proceedings without any real cause of action, only to revive them opportunistically at a later stage with the intent to cause maximum damage or prejudice to the beneficiary of the Impugned Order (i.e. Petitioners).
9. Given the above, we hold that the Section 12(2) Application is entirely without merit and devoid of any of the statutorily prescribed grounds (i.e. fraud, misrepresentation or lack of jurisdiction). Accordingly, CMA No.11519/2024 is **dismissed with costs of Rs.200,000/-** (*Rupees Two Lacs*). The costs must be deposited within twenty (20) days from today into the account of the High Court library, and the receipt shall be submitted to the Office.
10. We direct the MIT-II of this Court to immediately transmit the purported challan – allegedly issued in July 2023 (**Court File Pg. 179**), evidencing the payment of conversion fees amounting to Rs.25 million – to the *State Bank of Pakistan*, along with the Land Utilization Department’s alleged verification thereof (**Court File Pg. 181**). The MIT-II is further instructed to obtain a detailed confirmation report from the Bank within ten (10) days of the receipt of this Order by the latter. The report shall verify the authenticity of the

payment and provide comprehensive particulars, including the identity of the payer, the date and mode of the transaction, and any relevant reference or transaction numbers. The matter shall thereafter be placed before the Court without delay.

11. **CMA No.11518/2024 (application under Order 18 Rule 18 CPC)**: Since the Applicants' application under Section 12(2) CPC (CMA No.11519/2024) has been dismissed by us for the reasons stated above, no occasion arises for directing an inspection. Consequently, this application is also **dismissed**.

JUDGE

JUDGE