

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-4419 of 2017

[Wasif Qavi Siddiqui V. Province of Sindh & others]

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

Date of hearing : 28.04.2025
Date of decision : 09.05.2025
Petitioner : Through Mr. Mohsin Qadir Shahwani, Advocate.
Respondents (Official) : Through Mr. Ms. Saima Imdad Mangi, A.A.G., Sindh.

JUDGMENT

Muhammad Osman Ali Hadi, J: Through this Constitutional Petition, the Petitioner challenges a Letter dated 16.06.2017 (“**the Impugned Letter**”) (at page 153 of the File) passed by Respondent No. 2 and Order dated 16.06.2017 (“**the Order**”) passed by Secretary Land Utilization Department, Government of Sindh (at page 157 of the File), whereby regularization of the Petitioner’s Property was cancelled.

2. The succinct facts of the matter are that the Petitioner is a land developer and claims to have been granted land measuring 5-00 acres, per Letter No. L4-11Misc-G(K)/1071 dated 06.03.1991 out of Naiclass No.187, Deh Okewari, Karachi East (“**the Property**”), for residential-cum-commercial purposes. The Petitioner claims entitlement to the Property vide allotment letter dated 06.03.1991 (at page 37 of the File), Agreement of Lease & Form-II¹. Learned Counsel for the Petitioner submitted that full payment of the lease money / occupancy price was also paid², and the Property was handed over to the Petitioner,³ citing section 10 of the (Sindh) Colonization of Government Land Act 1912.

3. Learned Counsel for the Petitioner has stated that he took over physical possession and built a boundary wall around the premises. He next submitted that he is aggrieved by the Impugned Letter and Order issued by Respondents No. 1 & 2 respectively, cancelling regularization of his Property, and states that Respondent No. 2 does not have jurisdiction to unilaterally cancel regularization of the

¹ Available at pages 47 – 55 of the File

² Available at pages 41 – 43 of the File

³ Acknowledgment of Possession is available at page 45 of the File

Property, as he has done vide the Impugned Letter. He further contended that Respondent No. 1 acted and passed the Order in light of the Impugned Letter issued by Respondent No. 2.

4. Learned Counsel next contended that he has followed all due process and has been in possession of the Property for many years, and has had it regularized, for which he drew attention to Respondent No. 1's letter dated 03.04.2017 (at page no. 119 of the File). He next averred that all requisite payments / challan were concluded by the Petitioner, and as such there should be no impediment regarding his possession and usage of the Property.

5. He then referred to certain documents filed in support of the Petitioner's claim, which have been attached with the Statement dated April 2019, filed by the Petitioner. The documents include a letter from the office of the Advocate General, a provisional regularization offer issued by Respondent No. 1, copy of challan payment and clarification of the same, and a letter from the office of Respondent No. 3. All the aforementioned documents appear to support the Petitioner's claim. He next referred to a Compliance Report of order dated 19.03.2019, issued by Respondent No. 1, in which they have stated that the Horticulture Society of Pakistan (i.e. Respondent No. 5), who were the prior owners, have not approached the Land Utilization Department to regain possession of the Property (and submits their temporary lease in any event expired back in the year 2011). The Compliance Report also states Respondent No. 5 has not ever paid any monies due for lease renewal of the Property.

6. Learned Counsel for the Petitioner emphasised that the Property has been regularized and possession is and has remained with him. He concluded by reiterating the Impugned Letter and Order are also barred under the relevant applicable land laws, and the Respondents No. 1 & 2 do not hold any power to issue such Letter / Order. Accordingly, he stated the Impugned Letter and Order are void and liable to be set aside / quashed.

7. The Respondents were represented by the Assistant Advocate General, Sindh, who controverted the allegations made by the Petitioner. She stated that the Petitioner has not complied with lease requirements and terms and conditions, that is why his Property has been cancelled. She next made general references to land policies in Sindh, and said the actions of the Respondents were in accordance with the same, and were to prevent land grabbing. She stated the Respondents No. 1 & 2 had correctly passed the Impugned Letter / Order.

8. We have heard all learned Counsels, and have perused all documents / records available on the file.

9. We firstly observe that the Respondents were unable to provide any cogent defence at the time of oral arguments, but instead went down a different path altogether, which we feel had no relevance to the matter-at-hand.

10. We find that the Impugned Letter was issued by Respondent No. 2 pursuant to a Judgment dated 24.03.2005 passed in C.P. No. D-520/1991 (at page 87 of the File). In the said C.P. No. D-520/1991, the Horticulture Society of Pakistan (Respondent No. 5 herein) were petitioners. They challenged unlawful cancellation of land being 30 acres which had been allotted to them. The Property (being five acres) claimed by the Petitioner in the instant Petition, was encompassed within the 30 acres being claimed by Respondent No. 5 in that C.P. No. D-520/1991. In the concluding Para No. 11 of the judgement (at page 97), Respondent No. 5's cancellation of land by Respondent No. 1 was held to be without lawful authority, which would automatically revive Respondent No. 5's ownership of the 30 acres of land (including the 5 acres of Property being claimed herein by the Petitioner).

11. The Impugned Letter was issued with the justification that since the judgement was passed restoring Respondent No. 5's allotment of land (in previous CP No. D-520/1991), the Property (being part of the revived land), could not have been regularized in favour of the Petitioner.

12. Learned Counsel for the Petitioner has stated the opinion of Respondent No. 2 in the Impugned Letter, cancelling his regularization was a misreading of the Judgment passed in C.P. No. D-520/1991, but we have failed to see how? A simple perusal of the Judgment would clearly show the 30 acres of land (which includes the Property) reverting in ownership / to Respondent No. 5. The judgement held Respondent No. 5's land was unlawfully cancelled. Therefore, by default, there can be no cavil that the allotment in favour of Respondent No. 5 would stand resurrected, and any subsequent allotment (such as that of the instant Petitioner) would automatically be cancelled.

13. However, since much time has passed, the matter has become more complexed. As per the Para-Wise Reply filed by the Respondents, along with the Compliance Report of Respondent No. 1, it appears that Respondent No. 5 has not in any manner pursued interest in their land, including the Property. Nor have they come forth to defend themselves in the instant proceedings.

14. It appears Respondent No. 5 has not paid any dues or lease payment to the Respondents in respect of the land / Property. It would therefore be open for Respondent No. 1 to decide how to next dispense / lease the Property. The Property cannot be left in abeyance because of inactions of Respondent No. 5. If Respondent No. 5 have not renewed their lease term (which as per the Petitioner and Respondent No. 1 expired in the year 2011), they would be deemed to have forfeited rights on the land.

15. Respondent No. 1 is to investigate and peruse all relevant land records pertaining to the Property, and see whether due process was followed by the parties, and if the Petitioner had transparently fulfilled all conditions and made all payments in accordance with law, when obtaining the Property? If the same is affirmative, then Respondent No. 1 is at liberty to endorse the Petitioner's possession / lease and regularization of the said Property, and in such case the Impugned Letter and Order would stand as being set-aside. In such event, Respondent No. 1 shall publish the Petitioner's ownership endorsement in two national daily newspapers of good repute, one in English and one in Urdu, in case Respondent No. 5 and/or any other persons hold any claim / objection on the Property.

16. In the event any irregularity is found by Respondent No. 1 regarding the Petitioner's obtainment of the Property, including his possession / ownership, Respondent No. 1 shall initiate proper action against the Petitioner in this regard, in accordance with law and process.

17. It is hereby clarified this is not a declaratory decree / order, and this Judgement shall not have any impact or effect on any other proceeding regarding the Petitioner and/or the Property, including but not limited to previously instituted Suit No. 1273 of 1998, which was initially filed by the current Petitioner against Respondent No. 1 in the High Court of Sindh at Karachi (Original Civil Jurisdiction)⁴ and still remains pending, in which the Petitioner is seeking a declaration and injunction on the Property.

This Petition is accordingly disposed of.

JUDGE

JUDGE

M. Khan

⁴ Order Sheet available at pg. 57 of the File