

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-587 of 2025

Order with signature of Judge

Before *Mr. Justice Adnan-ul-Karim Memon*
Mr. Justice Zulfiqar Ali Sangi

For orders as to maintainability of petition.

27.01.2026

Mr. Badar Alam Advocate assisted by Mr. Sarfraz Qadir, Advocate for the Petitioner.
Mr. Ahmed Ali Ghumro, Advocate along with Mr. Abdul Samee, Advocate for the Respondent No.2/SITE.
Mr. Abdul Jaleel Zubaidi, Assistant Advocate General Sindh.

JUDGMENT

Zulfiqar Ali Sangi J.- Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought the following reliefs:

- (i) *To declare that the petitioner is also entitled to get his industrial Plot No K-27-A, measuring 20 acres, SITE, Nooriabad, physically demarcated by M/s SITE (respondent No 2) as well as respondent No 3, jointly and or severally, by affixing and putting marks on its relevant points to enable him to construct a boundary wall thereon before taking further steps for establishing an industrial unit therein, in the similar manner in which M/S SITE (respondent No. 2) has demarcated various plots in compliance of court orders*
- ii) *Issue direction to the respondent No 2 as well as respondent No.3, jointly and or severally, to handover actual physical possession of said Plot No. K-27-A to the petitioner after its demarcation by affixing and putting marks on its relevant points to enable the petitioner to erect a boundary wall thereon and to do and cause to be done all other acts necessary for the aforesaid purpose, in the same manner in which the Honorable Division Bench of Honorable Sindh High Court in several other Const. Petitions directed M/s SITE to demarcate industrial plots of allottees.*
- (ii) *To further declare that till actual physical demarcation of subject Plot No.K-27-A before handing over its actual and effective physical possession to the petitioner, the respondent No. 2 (SITE) is not entitled and has no legal right to claim and recover alleged rent of said plot or penalty thereon and the amounts already recovered by the respondent No. 2 on account of alleged rent and penalty are liable to be refunded to the petitioner or the same may be adjusted in future rent or other charges from the Date of conducting actual physical*

demarcation and handing over actual physical possession of subject plot to the petitioner

- (iv) To further declare that the respondent No. 1 & 3. (Government of Sindh & Board of Revenue), jointly and or severally, having granted land in Nooriabad to the respondent No 2 (SITE) to established its "Industrial Estate" in Nooriabad, having handed over its possession and respondent No. 2 (SITE) having allotted/lease of industrial plots to industrialist against heavy consideration, as per its layout plan, all the then existing or previous grants/licenses/leases, pertaining to the same land. stood cancelled, having lost their legal right.*
- (v) Direct the respondent No. 2 & 3 (SITE & BOR), jointly and or severally, to remove any kind of encroachment from petitioner's industrial plot No. K-27-A. to do and cause to be done all acts. deeds and things for the execution of 99 years lease of the subject plot in favor of the petitioner in the same manner in which they have executed 99 years leases in favour of other allottees of the industrial plots*
- (vi) Direct the respondent No.2 (M/s SITE) to execute 99 years registered lease in favour of petitioner in respect of his industrial plot No. K-27-A, measuring 20 acres, SITE, Nooriabad as per representation and undertaking made in the Agreement to License in the same manner as they have executed 99 years leases in favour of other allottees of the industrial plots."*

2. The case of the petitioner, in brief, is that he was lawfully allotted Industrial Plot No. K-27-A, measuring 20 acres, for a period of ninety-nine (99) years by Respondent No.2, namely M/s SITE Limited, against valid and lawful consideration. It is asserted that all requisite codal, procedural and documentary formalities were duly fulfilled. Notwithstanding the same, despite repeated approaches and representations, neither physical possession of the subject plot was handed over to the petitioner nor was the plot demarcated on ground, thereby rendering the petitioner unable to raise a boundary wall or undertake any steps towards establishment of an industrial unit.

3. Upon issuance of notices, the respondents submitted their respective comments, wherein the allotment of the subject plot in favour of the petitioner was expressly admitted. However, it was categorically stated that Respondent No.2/SITE itself has not received possession of the land from the Revenue Department and, as such, is legally unable to demarcate the plot or hand over its physical possession to the petitioner.

4. Learned counsel for the petitioner vehemently contended that the refusal to demarcate and hand over possession of the subject plot, despite admitted allotment, is arbitrary, discriminatory and violative of Articles 4, 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. It was further argued that Respondent No.2/SITE has demarcated and handed over possession of similarly situated plots in compliance with orders passed by this Court, and that denial of identical treatment to the petitioner amounts to unlawful discrimination. It was also contended that recovery of rent and penalty without lawful demarcation and delivery of possession is illegal, unjustified and without lawful authority.

5. Per contra, the learned Additional Advocate General, assisted by learned counsel for Respondent No.2/SITE, opposed the petition on the ground that the land comprising the petitioner's plot is the subject-matter of pending civil litigation, wherein an interim order dated 11.02.2008 is presently operative. It was argued that where questions of title and possession of immovable property are disputed and sub judice before a competent civil court, the extraordinary constitutional jurisdiction under Article 199 of the Constitution cannot be invoked.

6. We have heard the learned counsel for the parties at length and have perused the available record with their able assistance.

7. In compliance with the order dated 19.01.2026, a comprehensive report has been submitted on behalf of Respondent No.2/SITE, wherein it has been stated that the disputed area, including the petitioner's plot, forms part of *Suit No.247 of 2008 and HCA No.10 of 2018 (New No.3363 of 2025) titled Land Mark v. SITE Ltd.*, which are pending adjudication before the learned XI Senior Civil Judge, Karachi West. It has further been reported that an interim order dated 11.02.2008 is in field, restraining any alteration in the status of the land. Under these circumstances, Respondent No.2/SITE has maintained that it is legally precluded from demarcating or handing over possession of the subject plot until final adjudication of the said litigation. It is a settled proposition of law that the constitutional jurisdiction of the High Court under Article 199 of the Constitution is discretionary, equitable in nature, and is not intended to substitute ordinary civil remedies, particularly where disputed questions of fact, title or possession are involved. In the

case of *Mst. Kaniz Fatima through legal heirs v. Muhammad Salim and 27 others (2001 SCMR 1493)*, the Honourable Supreme Court has held as under:-

“Even otherwise such controversial questions could not be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution of Islamic Republic of Pakistan”.

8. Similarly, in *Anjuman Fruit Arhtian and others v. Deputy Commissioner, Faisalabad and others (2011 SCMR 279)*, it was held as under:-

“The upshot of the above discussion is that learned single judge in chambers has rightly declined to exercise his constitutional jurisdiction in view of various controversial questions of law and facts which can only be resolved on the basis of evidence which cannot be recorded in exercise of constitutional jurisdiction. The petition being devoid of merit is dismissed and leave refused”.

9. In the present case, although the allotment of the subject plot in favour of the petitioner stands admitted, it is equally undisputed that Respondent No.2/SITE has not received possession of the land from the Revenue authorities and that the title and possession thereof are sub judice before a competent civil court. The existence of an operative interim order further restrains any act of demarcation or delivery of possession. It is settled law that when a matter is pending before a civil court and interim orders are in force, parallel proceedings under constitutional jurisdiction are not permissible.

10. Furthermore, the reliefs sought by the petitioner relating to execution of lease deed, removal of alleged encroachments, and recovery or adjustment of rent and penalty are all consequential to the determination of lawful title and possession, matters which squarely fall within the exclusive jurisdiction of the civil court. In view of the foregoing discussion, this Court is of the considered view that the subject land, including the petitioner’s plot, is admittedly under litigation before a competent civil court and an interim order is presently operative. The determination of possession, demarcation and execution of lease involves disputed questions of fact and title, which cannot be adjudicated in exercise of constitutional jurisdiction under Article 199 of the Constitution. Accordingly, the instant constitutional petition is disposed of in the terms that the petitioner shall remain at liberty to approach Respondent No.2/SITE by moving

a fresh application for demarcation, handing over of possession and execution of lease in respect of the subject plot. However, that is subject to all just exceptions as provided under the law as well as when the title and possession of the disputed area are finally adjudicated by the competent Court.

JUDGE

JUDGE

Farooq PS/-