

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

C.P No.D-1468 of 2024

[Nilofer Iqbal Shajani and another v. Province of Sindh and 06 others]

Petitioners by : Mr. Sharik Raza, Advocate

Respondent No.2 by : Nemo.

Respondent No.3 by : Mr. Imdad Ali R. Unar, Advocate

Respondents No.1, 4 to7 by : Mr.Rafiq Ahmed Dahri, Assistant Advocate General, Sindh

Date of Hearing : **03.03.2026**

Date of Decision : **03.03.2026**

ORDER

ARBAB ALI HAKRO J:- The present Constitution Petition, instituted under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, calls into question the alleged interference, demolition, harassment and threatened dispossession of the Petitioners from a subject plot¹. The Petitioners assert that they are the lawful allottees and subsequent purchasers of the said property, whereas the official respondents, particularly the Hyderabad Municipal Corporation (HMC), dispute the very foundation of title and term the allotment documents as fabricated.

2. Petitioners' case emerging from the contents of the petition is that they are the lawful owners of the subject plot. They rely upon an allotment order dated 25.05.1986, challans of payments, a site plan, and a registered Sale Deed of 1985, asserting that vacant possession was handed over to them decades ago. They maintain that they erected a boundary wall around the subject plot and have continuously paid dues, including municipal taxes and no-dues certificates issued by relevant authorities. The Petitioners further

¹ Commercial Plot No.01, admeasuring 2926 Sq. Yds, situated at Unit No.12, Latifabad, Hyderabad

State that during the recent monsoon rains, a portion of the boundary wall collapsed. When their nominees commenced reconstruction on 25.09.2024, officers of Respondents No.2, 3 and 7 allegedly arrived at the site, questioned their title, threatened their nominees, and demolished the boundary wall without notice, authority or lawful justification. According to the Petitioners, repeated attempts were thereafter made to dispossess them, including alleged efforts to place illegal squatters on the land in connivance with local land grabbers. The Petitioners averred that, despite repeated demands, the Respondent officers failed to disclose any lawful authority or order permitting demolition or interference. They allege mala fides, colourable exercise of power, and violation of the Constitution. They seek declarations that the actions of Respondents No.2 to 7 are illegal, mala fide and void; that they be restrained from dispossessing the Petitioners; that the Respondents be directed to act strictly in accordance with law and that police protection be afforded to safeguard their possession.

3. Respondent No.3 in his para-wise comments raises preliminary objections, asserting that the petition is not maintainable and involves disputed questions of fact. It is alleged that the allotment order relied upon by the Petitioners is fake, manipulated, and non-existent, and that no such allotment appears in the manual register maintained since 1960. It is further asserted that the subject plot is not commercial but a residential open plot and that all commercial plots were historically disposed of through public auction. Respondent No.3 denies the Petitioners' possession and states that the Petitioners attempted to encroach upon HMC property by unlawfully erecting a boundary wall, which was removed in emergent circumstances to protect municipal land. A notice issued by HMC warns the Petitioners not to re-erect the wall and reiterates that the land belongs to HMC.

4. Respondent No.5 in his reply submits that no specific allegations have been levelled against the police authorities. Reports obtained from SDPO Latifabad and SHO A-Section indicate that no harassment was caused, nor

did the police interfere in the dispute. It is stated that the matter pertains to land rights and falls within the domain of municipal authorities.

5. Respondent No.6, in his comments, states that the allegations do not concern him and that his office took no adverse action. He submits that if the Petitioners approach the SDPO office, necessary assistance will be extended in accordance with the law.

6. Learned counsel for the Petitioners submits that the Petitioners' title is supported by a chain of documents, including the allotment order of 1986, registered Sale Deed of 1985, payment certificates, no dues certificates and municipal tax receipts, all of which demonstrate long-standing ownership and possession. It is argued that the unilateral demolition of the boundary wall without notice or hearing constitutes a blatant violation of Articles 4, 10-A, 23 and 24 of the Constitution. Counsel submits that even if the title is disputed, the State cannot take the law into its own hands and must approach a competent civil forum. The Petitioners, being in settled possession, are entitled to protection against illegal interference. In support of his contentions, he relied upon case law reported as **PLD 2020 Sindh 733, 2012 CLC 655, PLD 2021 Lahore 211, 2019 CLC 1141, 2006 PLC (C.S) 153 and 1999 YLR 247.**

7. Learned counsel for Respondent No.3-HMC reiterates that the allotment documents are fabricated and do not exist in official records. It is argued that the subject plot is municipal land and that the Petitioners attempted to encroach upon it by erecting a wall. Counsel submits that the demolition was carried out to prevent encroachment and protect public property. It is further argued that the petition involves intricate factual controversies unsuitable for adjudication in constitutional jurisdiction and that the Petitioners must seek a remedy before a civil Court.

8. Learned A.A.G. adopts the stance of the official respondents and submits that the matter involves a disputed title, requiring evidence and trial.

It is argued that constitutional jurisdiction cannot be invoked to resolve such controversies.

9. We have heard learned counsel for the parties at considerable length and have minutely examined the material available on record.

10. We have carefully considered the submissions advanced by learned counsel for the Petitioners, learned counsel representing the Hyderabad Municipal Corporation, and the learned Assistant Advocate General Sindh, and have also examined the entire documentary record placed before us, including the case law. The controversy, though presented with competing factual assertions, essentially revolves around two pivotal questions: first, whether the Petitioners have placed on record sufficient material to prima facie establish their lawful possession over the subject plot, and second, whether the actions complained of, demolition of the boundary wall and alleged interference, were undertaken in accordance with law.

11. The Petitioners have produced before this Court a chain of documents comprising an allotment order dated 25.05.1986, challans of payments, a registered Sale Deed of 1985, no dues certificates and municipal tax receipts. These documents, on their face, demonstrate that the Petitioners' claim is not a mere *ipse dixit* but is supported by material which, at the very least, warrants judicial consideration. Whether these documents ultimately withstand the rigors of evidentiary scrutiny is a matter for the competent civil forum; however, for the purposes of constitutional jurisdiction, the Court is not required to adjudicate title conclusively but only to ascertain whether the Petitioners' possession is prima facie lawful and whether the executive action complained of was undertaken with lawful authority.

12. The Respondent-HMC, on the other hand, has taken the position that the allotment order is fabricated and that no such entry exists in the manual register maintained since 1960. This assertion, though emphatic, is not accompanied by any forensic analysis, comparative record, or

contemporaneous documentation to demonstrate that the Petitioners' documents are forged. The mere allegation of fabrication, without more, cannot be treated as conclusive, particularly when the Petitioners have produced a registered Sale Deed. This document carries a statutory presumption of correctness unless rebutted through cogent evidence.

13. The judicial exposition of Article 199 of the Constitution over the decades has firmly entrenched the principle that where title is disputed, the High Court ordinarily refrains from entering into factual controversies. However, this self-imposed restraint does not extend to situations where the executive, without recourse to lawful procedure, undertakes coercive measures to dispossess a person who is in settled possession. The constitutional guarantee under Article 4 mandates that every person shall be dealt with in accordance with law, and Article 10-A fortifies this guarantee by ensuring that no adverse action may be taken without due process. Even if the Respondent-HMC genuinely believes that the land belongs to it, the law does not permit unilateral demolition or dispossession; the proper course is to approach a civil Court or invoke statutory mechanisms, not to resort to executive fiat.

14. The record reveals that the boundary wall was demolished without issuance of any prior notice, without affording the Petitioners an opportunity of hearing and without any speaking order or lawful authorization. The notice subsequently issued by HMC is not a substitute for the mandatory procedural safeguards that must precede any coercive action. The Respondent-HMC has attempted to justify its conduct by asserting that the wall constituted an encroachment; however, even if this assertion is correct, the law does not countenance self-help measures by public authorities. The jurisprudence of our superior courts has consistently held that no person, including the State, may take the law into its own hands.

15. The argument of the Respondent-HMC that the petition is not maintainable due to disputed questions of fact is not persuasive in the present context. The Petitioners do not seek a declaration of title; they seek protection from unlawful interference and dispossession. The Supreme Court has repeatedly held that where fundamental rights are threatened by executive overreach, the High Court may intervene notwithstanding the existence of disputed facts, provided the relief sought is confined to ensuring adherence to due process. The Petitioners' grievance is not merely civil in nature; it is constitutional, for it strikes at the heart of property rights and the right to be treated in accordance with the law.

16. The conduct of the Respondent-HMC, as reflected from the record, appears to be precipitous and bereft of procedural propriety. The demolition of the boundary wall, without notice or hearing, is a stark infraction of the principles of natural justice. Even if the Petitioners' documents are ultimately found to be invalid, the Respondent-HMC cannot arrogate to itself the role of judge, jury and executioner. The law provides ample remedies to challenge forged documents or recover public land; none of these remedies includes unilateral demolition.

17. In the circumstances, this Court is not required to pronounce upon the validity of the Petitioners' title. That question remains open for adjudication before the competent forum. What this Court is required to determine is whether the Respondents acted in accordance with the law. On this question, the answer is unequivocal: the demolition was undertaken without lawful authority, without notice and in violation of constitutional guarantees. Such action cannot be sustained.

18. For the reasons recorded above, this petition is **disposed of** in the following terms:

- i. The Respondents No.2 to 7 and all officers acting under them are hereby restrained from dispossessing the Petitioners from the Subject plot or from interfering with their possession, except in accordance with law and only after following due process,

including issuance of notice, opportunity of hearing, and a reasoned order, if so warranted.

- ii. The demolition of the boundary wall carried out without notice is declared to be without lawful authority and of no legal effect. The Petitioners shall, however, remain bound to maintain the status quo in respect of any further construction until the matter of title is adjudicated by a competent civil forum, should any party choose to approach such a forum.
- iii. Nothing in this judgment shall be construed as a declaration of title in favour of either party. All questions relating to ownership, allotment or validity of documents are left open to be agitated before the appropriate forum.

The petition stands disposed of in the above terms.

JUDGE

JUDGE

Sajjad Ali Jessar