

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. D-4841 of 2024

Present:

Justice Zafar Ahmed Rajput

Justice Ms. Sana Akram Minhas

Petitioners : Naheed Munawar Soharwardy &
Rehmat
No.1 & 2 Elahi, through Mr. Muneer Iqbal Advocate.

Respondent : Federation of Pakistan, through its
Secretary,
No.1 Ministry of Religious Affairs and Interfaith
Harmony, through Mr. Muhammad Qasim,
Deputy Attorney General ("**DAG**").

Respondents : Evacuee Trust Property Board,
through its
No.2 & 3 Chairman, & Deputy Administrator (R),
Evacuee Trust Board, through Mr.
Muhammad Akram Tariq, Advocate.

Date of hearing : 30.10.2024
Date of order : 30.10.2024

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the Petitioner *inter-alia* seeks the following relief: -

- i. *Declare that the sealing of the Subject Property by the Respondent No. 2 and 3 is illegal, unconstitutional, and without lawful authority, and declare that the Petitioner No. 1 and 2 are entitled to the peaceful and uninterrupted possession of the Subject Property.*
- ii. *Declare that the Impugned Notice is illegal and not applicable to the Petitioner No. 1 and 2.*
- iii. *Suspend the operation of the Impugned Notice and that it is void ab initio.*
- iv. *Direct the Respondent No. 2 and 3 to immediately unseal the Subject Property and restore the Petitioner No. 1 and 2 to their lawful possession.*
- v. *Restrain the Respondent No. 2 and 3 from taking any further illegal actions against the Petitioner No. 1 and 2, further coercive action, including but not limited to cancelling their tenancy and interfering with their lawful possession of the Subject Property without following the due process of law.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Respondent No. 2 is the government organization

responsible for the administration and management of evacuee trust properties under the Evacuee Trust Properties (Management and Disposal) Act, 1975 ("**Act of 1975**"), while the Respondent No. 3 is its Deputy Administrator in Karachi; that Bashir Ahmed Bhatti ("Transferee No. 1") and Muhammad Zahid ("Transferee No. 2") entered into an Agreement to Assign/Transfer Tenancy Rights dated 19.06.1996 in respect of the property bearing Survey No.178, Deh Gujro, University Road, Karachi, measuring 02-21 Acres ("**subject property**"), with the legal heirs of Nisar Ahmed, the predecessor-in-interest in respect of the subject property; that the Transferees No.1 and 2 applied for transfer of the tenancy rights in their names, which was approved vide Order dated 04.07.1996 passed by the Respondent No.2 and addressed to the Respondent No.3; that subsequently, Suit No.612 of 1996 and Suit No.1480 of 1999 were instituted before this Court, wherein a status quo order was passed in the latter suit; that in 2004, the Transferee No.1 agreed to transfer his 50% tenancy interest in the subject property to the Petitioner No.1, whereafter an Irrevocable General Power of Attorney dated 20.09.2004 was executed and registered; that the Petitioner No. 2 subsequently acquired the remaining 50% tenancy interest through an Irrevocable Power of Attorney dated 28.07.2017 and Memorandum of Understanding dated 15.07.2017; that the Petitioner No.1 has remained in possession of 50% of the subject property since 2004 and has regularly paid rent; that the Transferee No.1's application submitted before the Respondents No.2 & 3 for transfer of his tenancy rights in favour of the Petitioner No.1 could not be processed owing to the status quo order; that on 24.09.2024, the Respondents No. 2 & 3 sealed the subject property and dispossessed the Petitioners therefrom without issuing any prior notice or disclosing any lawful cause or authority for such action; that Respondent No.3 subsequently furnished a notice ("**impugned notice**"), relying upon the Order dated 31.03.2021 passed by the Apex Court in C.M.A. No. 1547; that the Petitioners, who were not parties to the said proceedings, contended before the Respondents No. 3 that the said order did not pertain to the subject property, and despite their repeated efforts to seek an explanation and request for reopening of the subject property, no lawful justification for the impugned action was furnished by the said respondent; hence, the instant Petition has been filed.

3. Learned counsel for the Petitioners has contended that the actions of the Respondents No. 2 & 3 are arbitrary, unlawful, without lawful authority, and unconstitutional; that the sealing of the subject property without issuance of any prior notice to, or affording any opportunity of hearing to, the Petitioners is in violation of the principles of natural justice and their constitutional right to due process and fair trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"); that the Petitioners have been unlawfully deprived of the use and enjoyment of the subject property without any lawful justification or authority, in violation of Articles 23 and 24 of the Constitution; that the impugned notice is *ex facie* unlawful and not in accordance with law, inasmuch as it merely mentions the name of the officer who allegedly sealed the subject property without disclosing his designation or authority to undertake such action; hence, the impugned action is without lawful basis; that the Respondents No.2 & 3 acted beyond the scope of their lawful authority and jurisdiction by sealing the subject property without initiating or following the procedure prescribed by law, and exceeded the powers conferred upon them under the Act of 1975; hence, the impugned action is illegal, without jurisdiction, and liable to be declared void; that the Order dated 31.03.2021 passed by the Apex Court pertains to illegal shops and unauthorized occupation/ construction and has no application to the subject property, which is open land and contains no such construction or shops; hence, reliance upon the said order does not furnish lawful justification for sealing the subject property; that the sealing of the subject property was carried out in collusion between the Respondents No. 2 & 3 with the ulterior object of dispossessing the Petitioners, who have remained in occupation and control thereof for more than two decades; therefore, the impugned action is mala fide, arbitrary, and actuated by an improper exercise of authority, amounting to an abuse of the powers vested in the Respondents.

4. Learned counsel for the Respondents No.2 & 3 has maintained that the subject property, being evacuee trust property, vests in and remains under the administration, management, and control of the Respondent No.2, whereas the Petitioners, at best, claim to be assignees/transferees of tenancy rights on the basis of successive private agreements and powers of attorney; that the Petitioners have neither been recognized nor recorded as tenants of the Respondent No. 2 in respect of

the subject property, and the application for transfer of tenancy rights in favour of the Petitioner No.1 allegedly moved by the Transferee No.1 remains pending and un-adjudicated, with no formal assignment having been sanctioned in favour of either Petitioner; as such, the Petitioners cannot claim any vested or enforceable tenancy or proprietary right in the subject property, and their occupation, if any, remains subject to regulation by the Respondent No.2 in accordance with law; that the tenancy rights in respect of the subject property have remained embroiled in litigation since 1996, including Suit No.612 of 1996, Suit No.1480 of 1999, in which a status quo order was obtained, and Suit No. Nil (-3491) of 2021, in which an interim order is stated to be operating in favour of the Petitioner No. 2; that such prolonged litigation demonstrates that the entitlement to the tenancy rights remains disputed and, therefore, the Respondent No.2, being the statutory custodian of evacuee trust property, was competent to take protective measures, including sealing of the property, pending resolution of the competing claims; that the Order dated 31.03.2021 passed by the Apex Court was issued in the context of large-scale encroachments, illegal occupation, and unauthorized construction upon evacuee trust properties and directed the concerned authorities, including the Respondent No.2, to take measures for their protection and de-encroachment; that the action in respect of the subject property was undertaken by the Respondent No.3 in furtherance of and compliance with the said directions and in discharge of statutory duties, and therefore cannot be characterized as arbitrary, mala fide, or without lawful authority merely because the Petitioners assert that the subject property constitutes open land; that whether the subject property falls within the scope of the said order is a matter requiring factual verification and may be raised before the Respondent No.2; that the successive private transfers and powers of attorney relied upon by the Petitioners, having not been formally sanctioned by the Respondent No.2, cannot create enforceable third-party interests in evacuee trust property contrary to the statutory framework governing the same; that the allegations of mala fide and collusion are general, vague, and unsubstantiated, no particulars or material having been brought on record to demonstrate any improper motive on the part of the Respondents; and that the questions regarding the nature, extent, and validity of the Petitioners' claimed tenancy rights, the effect of the pending civil litigation, and the applicability of the Order dated 31.03.2021 to the subject property are disputed questions of fact, which cannot appropriately

be determined in summary proceedings under the constitutional jurisdiction of this Court; hence, the instant Petition, being misconceived, premature, and founded upon disputed questions of fact, is not maintainable and is liable to be dismissed.

5. Learned DAG, appearing on behalf of the Federation of Pakistan, adopted the arguments advanced by the learned counsel for the Respondents No. 2 & 3.

6. We have heard learned counsel for the Petitioners, learned counsel for the Respondents No. 2 & 3 as well as learned DAG and also perused the material available on record.

7. At the very outset, it is necessary to examine the nature of the right claimed by the Petitioners No.1 & 2 in respect of the subject property. It is an admitted position that the subject property is evacuee trust property, vesting in and administered by the Respondent No.2 under the Act of 1975. It is equally undisputed that the Petitioners are not the recorded tenants of the Respondent No.2; rather, their claim rests entirely upon a chain of private agreements, powers of attorney, and a memorandum of understanding executed between them and the Transferees No.1 & 2, respectively, none of which has been formally sanctioned or approved by the Respondent No.2. Indeed, it is an admitted position that the application submitted by the Transferee No.1 for transfer of tenancy rights in favour of the Petitioner No.1 is pending and undecided before the Respondents No.2 & 3 to date. In these circumstances, the Petitioners, at best, can be regarded as asserting an inchoate and unsanctioned interest in the subject property and cannot, at this stage, be said to possess a vested or indefeasible tenancy right enforceable as of right against the Respondent No.2 in constitutional jurisdiction.

8. It is further evident from the record that the tenancy rights in respect of the subject property have remained the subject of protracted litigation since 1996, including Suit No. 612 of 1996, Suit No. 1480 of 1999, in which an order of status quo was obtained, and, more recently, Suit No. Nil (-3491) of 2021, wherein the Petitioner No.2 is contesting the claim of the legal heirs of the Transferee No.2. The existence of such long-standing and overlapping civil litigation demonstrates that the entitlement to the tenancy rights in respect of the subject property is seriously disputed. The questions as to which of the Petitioners, the legal heirs of the transferees,

or any other claimant possesses a valid and superior right in the subject property are essentially questions of fact and title, requiring determination on the basis of evidence. Such disputed questions cannot appropriately be adjudicated in the summary and discretionary constitutional jurisdiction of this Court under Article 199 of the Constitution.

9. As regards the sealing of the subject property and the reliance placed upon the order dated 31.03.2021 passed by the Apex Court, the said order was admittedly passed in the context of the protection and de-encroachment of evacuee trust properties, and the Respondent No.3 states that the impugned action was taken in furtherance thereof and in discharge of its statutory functions. Whether the subject property, being open land, in fact falls within the scope and purview of the said order is a matter requiring factual verification. Such factual determination may appropriately be undertaken by the competent authority in the first instance, particularly having regard to the special statutory character of evacuee trust property and the corresponding obligation of the Respondent No.2 to prevent unauthorized dealings, occupation, or the creation of unsanctioned third-party interests therein.

10. As regards the allegations of mala fide and collusion levelled against the Respondents No.2 & 3, we find that the same are general and unparticularized and are not supported by any material demonstrating personal malice, ulterior motive, or consideration of any extraneous factor on the part of any particular officer. It is settled law that mala fide is a serious allegation which must be established through cogent and specific material and cannot be inferred merely from the fact that an action has been taken adverse to the interest of a party.

11. In view of the above discussion, we are of the considered opinion that the matters raised by the Petitioners, namely, the nature and validity of their claimed tenancy rights, the effect of the pending civil litigation upon such rights, and the applicability of the order dated 31.03.2021 passed by the Apex Court to the subject property, involve disputed questions of fact and entitlement. These matters, particularly in view of the statutory framework governing evacuee trust property and the pending proceedings between the competing claimants, do not warrant determination in the constitutional jurisdiction of this Court under Article 199 of the Constitution.

12. For the foregoing reasons, we find no merit in the instant Petition. The same is accordingly dismissed, along with the pending application, if any.

13. The above are the reasons for our short order dated 30.10.2024.

JUDGE

JUDGE

Athar Zai