

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.D-301/2013

**PRESENT: MR. JUSTICE NADEEM AKHTAR, &
MR. JUSTICE MUHAMMAD IQBAL KALHORO,**

Petitioner : Muhammad Hussain Patel through
Mr. Miirza Shaharyar Khan and
Ms. Noor Naz Agha advocates.

Respondent /BOR : through Mr. Ahmed Pirzada advocate.

Respondent /State : through Mr. Abdul Jalil Zubedi, AAG.

Respondent No.6 : through Mr. Tariq Hussain advocate.

Date of hearing : 27.01.2015.

ORDER

MUHAMMAD IQBAL KALHORO, J: Through instant petition,
the petitioner has sought the following reliefs

1. Order / restrained the respondent No.6 Mr. S. Ali Mumtaz Zaidi and his accomplices, sub-ordinates, servants, attorneys, employees or any other Government functionary, person or persons to not to enter into the legally owned land of the petitioner bearing NA-Class No.103, Deh Shah-Chib, Tappo Gaddap Town, Taluka and District Malir, Karachi.
2. Order / restrained the respondent No.6 and other respondents, to not to use lhis / their official position to usurp the legally owned property of the petitioner land his sons.
3. Order the respondent NO.6, to not to issue any threat to the petitioner and his family members and for implementing his threats.
4. Order the respondent No.6, to pay compensation to the petitioner for demolition the structure from his legally owned fund.
5. To award cost of the case.

6. Any other relief or reliefs may be granted in the circumstances of the case which this Hon'ble Court think fit and proper in the circumstances of the case.

2. In the body of the petition, it is maintained that the petitioner obtained 25 Acres of land viz. NA-Class No. 103 Deh Shahi Chib on transfer basis from respondent No.7/Lt. Col. Ghulam Muhammad which was duly effected in the relevant record by the then Deputy Commissioner, Malir Karachi/ respondent No.3. On the said land, he would do business of Poultry Farm. Some time back the respondent No. 6/ Ali Mumtaz Zaidi came to above land along with police personnel who introduced himself as Special Secretary to Chief Minister Sindh and Project Director PMU-NPIW, Sindh. He claimed to have purchased the said land from Lt. Col. Mohiuddin. On 6.01.2013, when the petitioner was present at his Poultry Farm, he was informed that some people were pulling down his poultry farm shades situated at NA-Class No. 103 Deh Shahi Chib. The petitioner immediately reached the place where he found respondent No.6 along with police guards and labourers busy in dismantling his poultry shades. Respondent No.6 threatened him not to come on the said land as it belonged to him. The petitioner tried to report that matter to the police but in vain. The respondent No.6 was misusing his official position to usurp his land illegally. These alleged facts prompted the petitioner to file the present petition.

3. The official respondents in their objections resisted the claim of the petitioner. In his comments, the respondent No.6 also denied the allegations made against him in the petition.

4. We heard the leaned counsel for the parties and perused the entire record.

5. Mr. Meerza Shaharyar, advocate argued the case on behalf of the petitioner. In his arguments, he referred to various documents to establish the title of the petitioner to the property in question and emphasized that the respondent No.6 in his official capacity dispossessed the petitioner from his land. He lastly prayed for granting

relief to the petitioner by issuing directions to the respondent NO.6 to vacate his land.

6. Mr. Ahmed Pirzada, counsel for the respondents No. 2 to 4 in his arguments did not deny the title of the petitioner based on several documents submitted alongwith the petition. He, however, contended that the dispute between the parties involved factual controversy that could not be resolved in the constitutional petition. Learned counsel in his arguments also disputed the location of area identified by the petitioner in his petition and stated that at the most the petitioner should approach the authorities concerned to identify his land and hand him over its possession.

7. Mr. Tariq Hussain, advocate for respondent No.6 argued that the respondent No.6 had not occupied the land of the petitioner and he had no concern whatsoever with his land.

8. Mr. Abdul Jalil Zubedi, A.A.G. adopted the arguments advanced by the Mr. Ahmed Pirzada advocate.

9. The dispute, which emerges from the material available on the record and the submissions rendered by the respective counsel, relates to the possession of subject property viz. NA- Class 103, Deh Shahi Chip, Tappo Gaddap Town, Taluka and District Malir, Karachi. The emphasis laid down by the counsel for the petitioner in his arguments was that the respondent No.6 in his official capacity had dispossessed the petitioner of his land. During the arguments, we specifically asked the learned counsel as to how he had gathered that the alleged action of respondent No.6 could be bracketed as official one, when there was no document issued by any official authority suggesting so. He simply replied that the respondent No.6 had left a visiting card with the petitioner at the time of incident showing him as Special Secretary to CM / Project Director PMU-NPIW, Sindh (available at Page No.17 of the file). On our query regarding the remedy available to the petitioner under the Illegal Dispossession Act, 2005 (herein referred as the Act, 2005), he urged that since the respondent No.6 was acting under his official capacity, the complaint under the Act, 2005 was not competent. The said contentions of the learned counsel besides being misplaced legally are not borne out of the record. There is nothing to establish that

respondent No.6 is a Government Official or he acted in line of his official duty to dispossess the petitioner from his land as alleged. However, this is not to suggest that the alleged action of respondent No. 6 would not be amenable to any law, if the petitioner were to prove the same through reliable evidence before the proper forum. In our view, instead of invoking the jurisdiction of this Court under Article 199 of the Constitution, the petitioner ought to have availed the remedy under the Act, 2005 or under the relevant civil law for retrieving the possession of his land. The remedy available under the Act, 2005 is prompt, efficacious and adequate and it provides for the complete answer to the grievances expounded by the petitioner here in the present proceedings. In presence of such remedy, the constitution petition against the alleged wrong would not be competent. In addition to it, the material placed by the parties reveal that the stances taken by them are pro and contra to the controversy in respect of the possession of the subject land, the same being factual in nature require evidence to be placed by both the sides for their resolution.

10. Under the circumstances, we found the instant petition devoid of merits in terms of Article 199 of the Constitution and dismissed the same with no order as to costs. These are the reasons for our short order passed on 27.01.2015. The counsel representing the official respondents has not disputed the documents establishing the title of the petitioner over the subject land. We therefore before parting with this order like to observe that petitioner may resort to the remedy available to him under the proper law and the fate of this petition would not come in his way.

JUDGE

Karachi
Dated:

JUDGE