

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-291 of 2010

[Ali Akbar v. The P.O Sindh and others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

1. For orders on Misc. No.5476/24.
2. For orders on Misc. No.10307/22.
3. For hearing of main case.

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Date of hearing:- 08.10.2025

Mr. Niaz Ahmed, son of the petitioner is present.

M/S Wasim Ahmed and Asadullah Soomro,

Advocates for the respondent No.3.

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Abdul Hamid Bhurgri, J.- Through this petition, the petitioner seeks following relief:-

- a) direct the respondents No.2 to 12, not to harass the Petitioner without lawful authority during the course of law and to perform the duties as necessary of demarcation, foti khatta badal, as required by relevant laws;
- b) further they should not take law into their hands and the Respondent No.2, may issue Departmental legal instructions to his staff to keep up with the laws of the land; so also the Respondent No.5 may also be directed to keep his subordinates Nos. 6 to 9, to discharge their duties in lawful manners and in no way they should harass the Petitioner and his Haries relatives, servants and the persons working at the field;
- c) the Respondent No.10 may be directed to comply with the letter of the Regional/Divisional Forest Officer to carry out the Demarcation to protect the rights of the Petitioner and to save the lives his men and himself from the bloodshed likely to be caused by the respondents and their men as spoken above;
- d) to issue permanent injunction against the Respondents No. 2 to 12, not to interfere in the peaceful possession for the last more than forty years, through them or their subordinates, and servants not to damage the crops of the Petitioner; as mentioned in Para No.7;
- e) any other relief(s) which this Hon'ble court fit and proper under the circumstances of the case.

2. The petitioner alleges that his ancestors were the lawful owners of agricultural land measuring 1,055 acres, situated in Deh

Peroz Shah, Nau Goth, and Shah Panjo, bearing Survey Nos. 308, 346, 347 and an un-assessed survey number (U.A.). Following the demise of his predecessor-in-interest, the petitioner approached Respondent No.10 seeking mutation of the Foti Khata in his name. It is alleged that Respondent No.10, under political influence from Respondents Nos.3 to 5, refused to carry out the mutation.

3. The petitioner further asserts that although he submitted an application for demarcation of the land, Respondent No.10 outrightly refused, thereby failing to discharge his official duties. The petitioner complains that despite approaching higher authorities, no redress was provided. He alleges that official respondents have interfered with his possession, caused damage to standing crops, and subjected him to harassment, allegedly with the intention of usurping his rights. The petitioner seeks a direction restraining the respondents from interfering in his possession and from further harassment.

4. In response, the official respondents have categorically denied the petitioner's title. A counter-affidavit filed by Respondent No.3, Divisional Forest Officer, Dadu (available at page 507 of the Court file), discloses that the petitioner previously instituted Suit No.49/2002 (renumbered as 28/2003) before the Court of the Senior Civil Judge, Mehar, seeking a declaration and injunction over the same property. The respondents were parties to that suit and filed written statements denying the petitioner's claim, asserting that the land forms part of forest land under the administrative control of the Forest Department.

5. The respondents rely upon Gazette Notifications dated 12.05.1883 and 03.07.1943, along with land records from the Land Record Officer, Hyderabad, and Form VII-B issued by the Mukhtiarkar, Mehar. It is further stated that the petitioner's aforementioned civil suit was dismissed for non-prosecution on 03.03.2005.

6. It is also brought to the Court's attention that the petitioner filed Constitutional Petition No.559/2011 before the Circuit Bench at Larkana seeking similar relief. Moreover, the Revenue Authorities have mutated the record of rights in favour of the Forest Department in compliance with the directions of the Hon'ble Supreme Court of Pakistan in C.P. No.52/2018 (Qazi Athar & others).

7. The instant petition has been pending over a protracted period without any real progress. On 12.09.2025, learned counsel for the Petitioners sought time for preparation, and the matter was adjourned to 06.10.2025. On the said date, a brief was held by Mr. Aamir Ali, Advocate, who informed that counsel was unwell; the matter was adjourned with a caution that failure to appear on the next date would entail dismissal for non-prosecution. Today, neither the Petitioners nor their counsel are in attendance; however, the son of the Petitioner appeared and sought adjournment without offering any justification for non-appearance of counsel. Learned counsel for the Respondents is present.

8. We have heard learned counsel for the Respondents and have examined the material available on record.

9. It is evident from the record that the petitioner seeks mutation of land entries dating back to 1920. The Forest Department disputes the petitioner's claim of ownership, relying on Gazette Notifications in which the disputed survey numbers are specifically reflected. The petitioner failed to disclose that he had previously instituted Suit No.49/2002, which was dismissed for non-prosecution, and further concealed that he had pursued similar relief in a prior constitutional petition.

10. Such suppression of material facts and non-disclosure of previous litigation clearly reflects that the petitioner has not approached this Court with clean hands, and has secured interim relief through concealment, which is highly deplorable and amounts to abuse of the judicial process.

11. In Civil Petition No.172-K/2006 (Muhammad Waris and others v. Chief Conservator of Forests, Sindh and others), the Supreme Court of Pakistan upheld the validity of Gazette Notifications published as far back as 1887, confirming that the subject land vests in the Forest Department. The Court held that entries in mutation records or mere possession do not confer title, particularly where the land in question is state-owned or forest land. This view was reiterated in Civil Appeal No.85-K of 2011 (Mst. Raj Bibi v. Divisional Forest Officer, Larkana and others).

12. It is well-settled law that disputed questions of fact or title cannot be adjudicated in constitutional (writ) jurisdiction. In the present case, the respondents have placed un-rebutted documentary

evidence, including Gazette Notifications, which carry a presumption of correctness under the law.

13. Furthermore, the petitioner has failed to produce any conclusive documentary evidence establishing a valid legal title to the land in question. His reliance on ancestral possession, without corroborating entries in the official revenue or forest records, is insufficient to sustain a claim in writ jurisdiction. In contrast, the respondents have furnished Gazette Notifications and official land records that clearly reflect the land as forest property. In such circumstances, no interference by this Court is warranted under Article 199 of the Constitution.

14. The writ jurisdiction of this Court is discretionary in nature and is intended to provide relief in cases involving clear violation of fundamental rights or manifest illegality in the exercise of public authority. In the present matter, no such case has been made out. The petitioner's conduct, coupled with the absence of a clear and undisputed legal right, disentitles him from any equitable relief. The petition is, therefore, liable to be dismissed on this ground alone, in addition to those already discussed above.

15. In view of the foregoing, the petition being misconceived and involving disputed questions of fact and title is hereby dismissed, along with all pending applications.

JUDGE JUDGE

Ayaz Gul