

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 1266 of 2024

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Petitioners, Dr. Shaila Ahmed : through M/s. Basim Raza
and others and Ehsan Ghulam Malik,
Advocates.

Official Respondents : through Ms. Shazia Hanjra,
DAG and Mr. Faizan Hussain
Memon, Addl. AG

Respondent SBCA : through Mr. Dhani Bux Lashari

Date of hearing : 07.05.2026

Date of Judgment : 14 .05.2026

JUDGMENT

Nisar Ahmed Bhanbhro, J.- Through this petition, petitioners have claimed following relief:-

“A. That the Respondent No.1 and 2 be restrained from interfering with the right of the petitioners to protect their property by constructing a boundary wall enclosing their factory and from harassing the petitioners in carrying out their lawful activities.

B. Grant such other relief as may be prayed.”

2. Learned counsel for the petitioners contended that the petitioners were the owners of land admeasuring 16 acres in Survey Nos. 78 to 81, Deh Gharo, District Thatta, which had been purchased by their ancestors from the previous owners through valid documents. The petitioners acquired rights in the property through inheritance. Pursuant to the orders dated 21.02.2022 passed by this Court in a Letters of Administration suit, the petitioners mortgaged the property with a bank and obtained a loan through a registered mortgage deed. The petitioners intended to construct a factory and, in this regard, obtained NOCs from the concerned authorities. It was further

contended that the officials of Pakistan Navy-Respondent No. 2, restrained the petitioners from constructing a boundary wall and factory on extraneous grounds. Learned counsel further submitted that the construction of the boundary wall was stopped through the illegal acts of Pakistan Navy-Respondent No. 2. He, therefore, prayed that the respondents be restrained from interfering with the petitioners' rights to construct the boundary wall.

3. Learned DAG and Addl. AG contended that the dispute between the parties pertained to the measurement and demarcation of the land, and that Pakistan Navy, Respondent No. 2, was claiming ownership thereof; therefore, disputed questions of fact had arisen which could not be adjudicated upon under the writ jurisdiction of this Court. It was further contended that an area measuring 3,009 acres had been surrendered in favour of Pakistan Navy, and out of the said area, 16,223 acres had been mutated in its favour. The land claimed by the petitioners allegedly falls within the land granted to Pakistan Navy, Respondent No. 2.

4. Heard arguments and perused the material available on record.

5. From perusal of the record it transpires that vide order dated 24.04.2024 Nazir of this Court was appointed to inspect the property and furnish his report. Nazir inspected the property and filed his report dated 15.05.2024 wherein it was stated that the possession of the land was lying with the petitioners and one factory namely Qadri Noori Enterprises was found functional over a land of 4-acres and the rest of the land was open to sky having bushes back side. For the sake of convenience Para Nos.3, 4, 5 & 6 of Nazir report are reproduced herein below:

“3. Subject land of measuring 16 Acres was found with the possession of plaintiff and their Security guards and chowkidars were present at the time of inspection. At subject land one factory namely Qadri Noori Enterprises (Oil and Ghee Factory) approximately consisting upon four (04) acres land covered with boundary walls was found functional and its besides one premises having Tin Shed roof with covered with boundary walls appears to be under construction was found and one plinth level construction was found on the subject land and same was also belongs to plaintiff. Rest of land was found open to sky having bushes on left side. Masonry blocks as well as construction material were lying on different places appears to be for construction of boundary walls.

4. Moreover, on subject land few small heaps of iron scrap was found lying on different places. Upon query the PAKISTAN NAVY officials claimed such heaps of iron scrap.

5. Photographs snapped at the time of inspection are annexed at P/1 to P/20.

6. Furthermore, Plaintiff provided copies of utility bills and related document of his entitlement of subject land which were supplied to Supervising Tapedar for verification annexed at Flag "A" and Pakistan Navy officials also submitted few documents to undersigned office which are annexed at Flag "B".

6. In comments filed by the Revenue Department, Government of Sindh the ownership rights of the petitioners have affirmed. It further transpires that at the request of petitioners the demarcation of the property was also undertaken and a separate sketch was prepared indicating the property owned by the petitioners. It further transpires from the record that about 16233-acres of the land have been mutated in favor of Pakistan Navy and in all they have been granted 3009-acres of land in the same area. It is the instance of official of Pakistan Navy-Respondent No.2 that the petitioners were erecting boundary wall within the land allocated to the Pakistan Navy; however no material available placed on record to evident that Survey Nos. 78 to 81 were also allotted to the Pakistan Navy.

7. On the contrary, record supports the contention of the learned counsel for the petitioners that it was a private/public land. It further transpires from the record that Pakistan Navy was allocated the land vide Notification dated 14.12.2002 issued by the Secretary to Government of Sindh, Land Utilization Department and for the sake of convenience, same is reproduced below:-

No.KB-III/L-145/1995/657
GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT
HYDERABAD, Dated : 14.11.2002

The Excise District Officer (Revenue)
District Government (THATTA)

SUBJECT: TRANSFER OF PROVINCIAL GOVERNMENT
LAND MEASURING 3009-25 ACRES AT TEHSIL

GHARO TALUKA MIRPUR SAKROTO MINISTRY
OF DEFENCE TO THE USE OF PAKISTAN NAVY.

In exercise of powers conferred under Section 10 (1) of Colonization of Government lands Act, 1912 read with Condition No. 15 (a) of the Statement of Conditions notified on 07.04.1999, the Government of Sindh in Land Utilization Department with the approval of Sindh Cabinet been pleased to accord sanction for leasing out an area of 281-00 acres at the rate of Rs: 85,000/- per acre and 1345-00 acres at the rate of Rs: 65,000/- per acre as shown in sketch part A-1 and part-9 enclosed respectively in Deh Gharo Taluka Mirpur Sakro for 99 years lease in favour of Ministry of Defence, Government of Pakistan for Operational purposes of Pakistan Navy on the following terms and conditions:-

- i) Existing Villages should not be disturbed.*
- ii) All the villages shown in the sketches should be demarcated and their boundaries be fixed and also ensure that villagers should not encroach upon excess land.*
- iii) A passage / approach road to the main road and from one Village to another Village should be provided for frequent movement of Villagers.*
- iv) The kabuli land if any falling within the sketch may be acquired if necessary under Land Acquisition Act and compensation will be paid by the Naval Authorities.*
- v) Any leased land falling within the sketch may be resumed under the Rules.*
- vi) The Naval Authorities will not utilize the land for any other purpose i.e. commercial or residential purposes.*
- vii) After payment of entire lease money, land may be demarcated/surveyed and in case if the land is found in excess, the Naval Authority should pay the lease money of excess area.*
- viii) Possession of the land should not be handed over and no mutation should be made in favour of Naval Authorities till the entire lease money is paid By them.*

You are requested to take further necessary action accordingly.

Sd/-

By: SECRETARY TO GOVERNMENT OF SINDH
LAND UTILIZATION DEPARTMENT"

8. From perusal of the allotment order it reveals that the Qaboli Land was also available within the area allotted to the Pakistan Navy. However, it was advised that if such land was required by the Pakistan Navy, same shall be acquired under the provisions of Land Acquisition Act and compensation will be paid by the naval authorities. Right to acquire property was permitted and granted under the Article 23 of the Constitution of Islamic Republic of Pakistan, 1973, which reads as under:-

23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

9. The said right, however, re-permitted under the Article 24 of Constitution of Islamic Republic of Pakistan, 1973 in the following manner:-

"24. (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) any law providing for the acquisition of any class of property for the purpose of—

(i) providing education and medical aid to all or any specified class of citizens; or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court."

10. Since the parties were claiming the rights of ownership on the basis of allotment orders and on registered documents which require evidence being a factual dispute as such the exercise of determination of ownership of the parties or the entitlement to particular area cannot be undertaken under the writ jurisdiction of this Court. For the particular purposes the legislation has been enacted under the Sindh Land Revenue Act, 1964 whereby the parties claiming ownership over the disputed area may apply to the Revenue Authorities for demarcation under Section 116 & 117 of the Sindh Land Revenue Act, 1964. The provisions of Section 172 of Sindh Revenue Land Act, 1964 have granted exclusive jurisdiction in the matters to the Revenue Authorities wherein Revenue Authorities are competent to record evidence and examine the revenue record in a better manner for the determination of the rights of the parties.

11. Since the jurisdiction of this Court is limited to remedies exceptional in nature where action of the authorities challenged which did not require recording of evidence and contrary to that the matter in hand involves factual controversy, therefore, cannot be adjudicated upon under the writ jurisdiction of this Court. Reliance placed in the case of **WAQAR AHMED and others Versus The FEDERATION OF PAKISTAN through Cabinet Secretariat, Establishment Division, Islamabad and others** reported as 2024 SCMR 1877 wherein it is held that:-

The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), is destined to dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of

evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy.

12. For the foregoing reasons, no case for indulgence of this Court is made out. This petition, therefore, being not maintainable is hereby dismissed with no order as to cost. Parties however may avail the remedy before the competent forum in accordance with law, if so advised.

J U D G E

J U D G E
HEAD OF CONST. BENCHES

Approved for reporting