

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**R. A. No. S – 11 of 2015**

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For hearing of CMA No.76/2015 (R&Ps)
2. For hearing of main case

**14-12-2020**

Mr. Abdul Rasheed Kalwar, Advocate for the applicants.  
Mr. Dost Muhammad Bullo, Advocate for respondents No.1 to 6.  
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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This revision challenges the concurrent findings against the applicants initiated before the Civil Court by the present applicants tilted as declaration and permanent injunction against concurrent order of the Revenue hierarchy, wherein the allotment of present applicants was cancelled as the same was post allotment already declared by the Revenue authorities as 'Asaish'. The respondents also filed a suit and both the matters were consolidated and following issues were framed, which were accordingly decided as specified and dismissed both of them. The issues and findings of the learned trial Court are as under:

- 1) *Whether any or both of the suits are not maintainable? (In affirmative)*
- 2) *Whether any or both of the suits are barred by principle of waiver, estoppels and acquiescence? (Not pressed)*
- 3) *Whether any or both the suits are barred by section 9 CPC, 42 and 56 of Specific Relief Act, 172 of Land Revenue Act and 36 of Colonization of Government Land Act? (In affirmative)*
- 4) *Whether the plaintiffs in any or both of the suits have no cause of action to file the suits? (In affirmative)*
- 5) *Whether the suit land was excluded from schedule of disposal and reversed by the orders dated 15.12.1980 passed by Additional Commissioner Sukkur and since then it is being used for village Asaish? (In affirmative)*

- 6) *Whether the suit land was again put into schedule and disposed of. If yes, was its disposal and issuance of T.O form in accordance with law? (In negative)*
- 7) *Whether the order dated 20.9.1994, 13.02.1997 and 23.6.1997 are arbitrary, mala fide, illegal and ultravires? (In negative)*
- 8) *Whether the dispute over the suit land was resolved by late Sardar Alhaj Ghulam Muhammad Khan Mahar in 1981? If so, to what effect? (Not prove)*
- 9) *With whom the possession of suit land lies? (Accordingly)*
- 10) *What should the decree be? (Suit dismissed)*

Only the present applicants preferred appeal which was remanded with direction/s but the same was also dismissed again to which appeal was preferred which was also dismissed by framing the following point decided in negative:

*Whether suit land was granted to appellant No.1 by respondent No.15/Colonization Officer, Guddu Barrage, in accordance with law?*

2. Learned counsel for the applicants contends that the proceedings in respect of the subject land were initiated on part of the Land Revenue Authorities firstly in year 1980 where the same were treated *Asaish*, however, the applicants thereafter acquired the same through a valid process in year 1993. That this proceeding concluded on part of the present applicants in year 1997 when the whole price was paid, however, the said sale having been cancelled was agitated before the Revenue Authorities first and thereafter before the Civil Court. It is also contended that the private respondents have filed a suit contesting the case of the applicants but the same was dismissed, however, at trial despite the earlier appellate direction these two cases were considered on account of the contention of the private respondents. That the applicants have failed to receive a fair trial as the material of the case of the respondents have

been used against the present applicants. It is also contended that the Additional Commissioner's order dated 15-12-1980 was never available for consideration as the land was never granted by the open exercise of *katchery* by the Additional Commissioner in the first place. Learned counsel in this regard has also relied upon **1984 CLC 1724** and **2003 CLC Karachi 1670** along with **PLD 1988 (Revenue) 29**. Learned counsel concluded his arguments by contending that there is no provision in colonization laws enabling disentitlement to be determined and that the 20 chains in this case have been stretched too far in order to usurp the rights of the applicants.

3. Learned counsel for the private respondents, however, contends that land grant policy for allotment is controlled by powers of Section 161 of the Land Revenue Act and that the subject land was never available for colonization purpose. Learned counsel has referred to typed page 8 of impugned judgment, and it is also contended that where the basic order was not available, the superstructure thereon cannot be considerable. He has relied upon **2007 SCMR 818** and in respect of void order relied upon **PLD 2003 Karachi 691**. It is also contended that the Chief Minister was not empowered to affect a grant and reliance is made to the reported cases of **PLD 2000 Karachi 224** and its appellate order reported at **2000 SCMR 907**.

4. Learned AAG while supporting the impugned judgments contends that to the order of the Colonization Officer the appellate authority is the Additional Commissioner under Section 161 and that the hierarchy of the Board of Revenue requires the Mukhtiarkar to be subordinate to Assistant Commissioner, that the order of the Assistant Commissioner was rightly assailed before the Additional Commissioner.

5. In rebuttal, learned counsel for the applicants contends that the certificate on the grant order is present which enabled the said grant and that the two different land grant policies present in the matter had their own objectives. He has also relied upon **PLD 1988 (Revenue) 63** and contended that the private respondents not having applied for the grant cannot contest the grant of the applicants.

6. Having heard the learned counsels and gone through the record, on the last date of hearing i.e. 23-11-2020 for deciding the controversy between the parties, the following element was highlighted to be considered firstly whereafter rest of the contentions were required to be deliberated upon being “ *in these proceedings primarily the applicants have to show the legal status of their granting authority i.e. legality of the grant in their favour whereafter the other merits of the matter are liable to be considered* ”.

7. It is an admitted position that the first order relevant to the subject land was made by the Assistant Commissioner, wherein the subject land was treated as *Asaish* land, and as such the subject land was taken out of the schedule for purpose of allotment and exercise of jurisdiction by the Colonization Officer i.e. the order dated 15-12-1980. The said order was still intact when the matter was re-agitated by a report of the Mukhtiarkar, wherein strangely the already status present of the subject land was not disclosed or rather the findings and the status was wrongly represented. The same resulted in the order dated 24-08-1993 whereby the subject land was granted on *harap* condition for *Rabi* to the present applicants. The same is found on page 129 of the documents filed by the learned counsel for the applicants today. It is also observed that strangely no reason whatsoever for change in this status is found in the recommendation. It may be observed that the *Asaish* land basically for the

benefit of the locality cannot be changed without the requirement having been changed. In common thinking with the requirement / increase / decrease of population or any other aspect but the same has to be discussed for change of this nature of the subject land. No discussion in this regard having been found any order that affects the change of land for public benefit cannot be entertained as a valid order in the present circumstances.

8. With the backgrounds as present, the entitlement not available, the further elements as taken up in the matter are not liable to be discussed as the controversy was narrowed down on the earlier date. Accordingly, this revision application stands **disposed of** as not available having no merits with costs against the present officials throughout.

Abdul Basit

J U D G E