

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P.No.D- 328 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For Katcha Peshi.
3. For hearing of MA 2513/2016.

06.12.2016.

Mr. Ayaz Hussain, Advocate for petitioners.

Mr. Jhamat Jethanad, Advocate for respondents No.6 to 9.

Mr. Ashfaqe Nabi Kazi, Assistant A.G. alongwith Syed Aamir Hussain on behalf of SSP Jamshoro, SIP Roshan Ali Tunio, on behalf of SHO Jamshoro.

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Learned A.A.G. files statement alongwith comments, taken on record.

Through instant petition, the petitioner has prayed as under:-

"a) That this Honourable Court may be pleased to direct the respondents No.6 to 9 not to cause any kind of harassment to the petitioners and their Haries through themselves their servants, assignees, subordinates, agents or through any agency in any manner nature.

b. That this Honourable Court may be pleased to declare that the act of the raising illegal constructions of wall over the properties/lands of petitioners by respondents No.6 to 9 thereby closing the path towards the houses of petitioners as illegal, unlawful, void, abinitio and without lawful jurisdiction.

c. That, this Honourable Court may be pleased to direct the respondents No.1, 3, 4 & 5 to carry out the demarcation of the lands bearing Survey Nos.1 to 11 & 13 admeasuring 84-Acres & 12 Ghuntas situated in Deh Sonwalhar Tappo Bolhari Taluka Kotri district Jamshoro to ascertain the actual boundaries of the lands of petitioners and area of Mehran University Jamshoro.

d) That this Honourable court may be pleased to direct the respondents No.10 & 11 to provide protection to the petitioners, their Haries and their above cited lands to avoid any eventuality and harm/losses to the petitioners, their Haries and properties."

It is further revealed that the Honourable Apex Court in Criminal Original Petition No.4-K of 2014 in Civil Appeal No.96-K of 2010 passed the order dated 18.03.2016. Relevant paragraph No.3 and 4 are reproduced hereunder:-

“3. The University of Sindh shall not in the intervening period dealt with or entering in any transaction in respect of the subject land in that manner. No construction work shall be raised on any portion of subject land by anyone in the Housing Society of the said University. However, it will be open to the University of Sindh to undertake any construction work for any Department of the University for educational purposes.

4. The Senior Member of Revenue has requested three months time to complete the aforesaid exercise, which is granted. In the intervening period, the parties against whom payment of compensation has been ordered by the Commissioner, Hyderabad may, if so desire, file objections before the next date of hearing. This issue of quantum of compensation would also be decided on the next date either way after hearing the parties. The Deputy Commissioner and DPO Jamshoro shall ensure that no encroachment is made by anyone including the Housing Society or Cooperative Society on the subject land.”

Whereas counsel for Mehran University / respondents No.6 to 9 contends that the subject matter property is owned by the University and he has appended record of mutation alongwith his comments while learned A.A.G. has taken stance that land, in fact, was granted to Sindh University. Mehran University and LUMHS are different entities hence construction of wall by the Mehran University is questionable.

Since the issue with regard to demarcation and survey of the land by University is sub-judice before the Apex Court and honourable Apex Court has categorically order that:

*‘No construction work **shall be raised** on **any portion** of subject land by **anyone** in the Housing Society of the said University”*

Needless to say that if a *matter* is directly subjudice before honourable Apex Court the same cannot be *adjudicated* by any Court including the High Court *even*

indirectly, else it shall frustrate the object and purpose of Section 10 of CPC and Articles 189 and 201 of the Constitution, as was held in the case of Nazar & Others v. Member (Judicial-II) BOR 2010 SCMR 1429 that:

“It is also settled proposition of law that Courts would not allow a judgment of the Supreme Court to be challenged even on a ground which was not taken before the Supreme Court. See State v. Mujibur Rehman Shami and 2 others PLD 1973 Lahore-1. The question of law as been settled down by this Court after considering provisions of Section 11 of CPC and Articles 189 and 201 of the Constitution that **civil Court or any other authority had no jurisdiction whatsoever to entertain any application or any civil suit qua the subject matter which had already been set at right by the Supreme Court** as per law in the following judgments:

- i) Abdul Majid’s case PLD 1992 SC 146
- ii) Murad Khan’s case PLD 1983 SC 82

Thus, proper course for the petitioners or any other person, aggrieved or claiming his rights and interest in subject land, is to approach the honourable Apex Court. Petitioner is at liberty to approach the apex Court for redressal of his grievance regarding construction. With regard to title of the petitioner, it would suffice to say that, it is disputed by the respondents No.6 to 9 with counter claim hence determination thereof would require resolving such factual controversy which, per law, cannot be done in writ jurisdiction. Accordingly, instant petition is dismissed alongwith listed application. However, petitioner would be at liberty to approach the Civil Court with regards to declaration of his property, if any. Needless to mention that any direction, if passed by the apex Court, after above referred order, same, be binding, shall prevail and any right, if allows to petitioners, shall be available which, *in no way*, shall be prejudiced with this order.

JUDGE

JUDGE

