

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A No.110 of 2005

R.A No.111 of 2005

R.A No.112 of 2005

R.A No.113 of 2005

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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16.03.2018.

Mr. Wali Muhammad Jamari, Assistant A.G for applicants

Mr. Arbab Ali Hakro, Advocate for respondents in R.A Nos.110 and 113 of 2005.

Mr. Muhammad Ishaque Khoso, Advocate for respondents in R.A Nos.111 and 112 of 2005.

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These matters were heard on 16.10.2017 and 13.11.2017. On 13.11.2017, the following order was passed:

“Learned Counsel for the respondents in R.A Nos.110 and 113 of 2005 has referred to the notification in question dated 26.04.1968 and the findings of issue No.10 as made by the learned Appellate Court. He has further brought forward the provisions of Forest Act, 1927 and specified that there are three types of declaration of forest and in this case the relevant declaration required the inquiry, which is found absent. He has relied upon Section 30(b) of the Forest Act, 1927, stating that a period of 30 years was limited to the life of the said notification and the said not being notified cannot be revived. He has relied upon a case reported as 2000 SCMR 548 and contended that it has been held that mere issuance of notification would not disentitle the real owners. It is further contended by the learned Counsel that the entry in the record of rights was not present when the rights of the private respondents were corrected through the land granting officer and in this respect after issuance of T.O Form all the required installments were paid and the said rights having been corrected require that the notification is not likely to be entertained. He has in this regard also relied upon provisions of Section 164 and contended that the concerned revenue official having

issued the order by way of T.O cannot recall the same. In support thereof, the learned Counsel has relied upon the cases reported as *1990 MLD 2412*, *PLD 1997 Karachi 299*, *PLD 1994 S.C 291* and *1980 SCMR 139*. It is further contended by the learned Counsel that in a revisional jurisdiction before this Court, the concurrent findings of fact cannot be disturbed and as to the un-reported cases relied upon by the learned A.A.G as discretion has been shown for issuance of T.O Form in the present case. The learned Counsel for the private respondents in R.A Nos.111 and 112 of 2005 has contended as to the distinction of land in survey numbers as specified in the subject notification, whereas the said private respondents were issued T.O Form by notification of block numbers. It is further contended by the learned Counsel for the said respondents that the said block numbers were never sent to the concerned officer and as such the land was made available for grant to the said Haris. It is also contended by the said learned Counsel that after cultivation by the Haris through much expenses and hard work, the land being found fertile, claims are being made in order to acquire the said land with malafide motives and that all the required installments having been paid on the relaxation of Board of Revenue, the payment cannot be said to be in violation of the policy earlier present. It is also contended by the learned Counsels for the private respondents that the T.O Form having issued by the concerned Government Department and the said respondents having made the payments, their rights cannot be disturbed as the same have been acquired through a due process of law. The learned A.A.G at the stage of rebuttal contends that all the material as brought up by the said respondents, who were plaintiffs in the proceedings, do not disturb the notification and that the proper jurisdiction required in the matter has not been exercised by the said respondents and in this regard he relies upon *2013 CLC 1155*.

Having heard the learned Counsels as above, the matter is reserved for orders.”

Whereafter, these matters were fixed for rehearing yesterday i.e. 15.03.2018.

The contestation between the parties raised around Notification of the applicants issued under the Forest Act, 1927. It may be observed that although

vehement contestation has been made by the learned counsel for the respondents the subject Notification considering the subject land reserved for forests is apparently not challenged in the proceedings. In the circumstances, where the subject Notification was present, the availability of the land to the respondents irrespective to the authorities relied upon and the contestation made, *prima facie*, is not available. The resistance on part of the respondents is based upon alleged malafide of the applicants / officials. The said malafide however has not been brought forward. In the present circumstances, where the entitlement was not available to the respondents the impugned orders in support thereof are not found to have legal force and authority. As such, these revision applications are allowed. The impugned orders as such are set aside. It may, however, be observed that in case the applicants i.e. Forest Department utilizes the land for any other purpose then as specified the respondents shall be entitled to a first refusal. I have restrained myself from granting any benefit to the respondents for the amounts said to have been paid in consideration of the said land as the respondents were in possession and enjoying the produce thereof during this period.

With the above observations, the matters stand disposed of alongwith the pending applications.

JUDGE