

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

C.P. No. D- 283 of 2012

Khushi Muhammad Petitioner

Vs.

Govt of Sindh & others Respondents

C.P. No. D- 284 of 2012

Mian Tahir Mehmood Petitioner

Vs.

Govt of Sindh & others Respondents

Mr. Muhammad Arshad S. Pathan, advocate for the petitioners
Mr. Imam Bux Baloch, advocate for contemnors
Mr. Allah Bachayo Soomro, Addl.A.G.

Muhammad Bux TEO Tando Adam, Ubedullah Shah Ex. TEO, Mumtaz Ali Head Master Dr. Ziauddin School, Tando Adam, Khudad Mari, Ex. Inspector / City Survey, Hyderabad, Muhammad Ibrahim C.S. Tando Adam, Umer Farooq Tapedar Tando Adam and Bakht Ali C.S. Director Settlement Survey and land record are present in person.

Date of Hearing: 18.02.2019

Date of Announcement:

ORDER

ADNAN-UL-KARIM MEMON, J. - The captioned Petitions were disposed of vide order dated 26.11.2015 with the following observations:-

“Counsel for the petitioners has filed this petition with reference to their claim in relation to land bearing Revenue Survey No.547. Though the record shows that they have filed a suit in relation to the subject land where in inspection and measurement was also carried out in pursuance of the orders of the Court in F.C. Suit No.10 of 2008, however, after the inspection that was carried out, the suit was withdrawn and they have filed this petition. On question as to the maintainability of this petition Mr. Muhammad Arshad S. Pathan learned counsel for the petitioners has relied upon an application filed by them before the Revenue Officer for the inspection and measurement / demarcation of the subject land which has not been

carried out by the Revenue Authorities and hence they claim that since they are not performing their duties in accordance with law they have preferred this petition on that score alone. Without prejudice to the merits of the case he submits that at the most he is entitled for such measurement/demarcation of the land as the Director Survey and Land Records Sindh was not available at the time of inspection.

On the other hand Mr. Soomro learned A.A.G. submitted that despite the fact that this petition is not maintainable, it has been preferred after the withdrawal of the suit and the inspection that was carried out which inspection/demarcation shows that they are in excess of the land and could only be termed as trespasser. He submits that the lands of the petitioner is different and distinguished from the land of the respondents as it bears City Survey number and the land of the petitioners bears Revenue Survey number though the number is same. The City Survey number of the respondent is 547 Ward 'A' Tando Adam.

It seems that the controversy is of such technical nature it could only be resolved of the professional team of the Revenue Authority as well as Settlement Survey and Land Records Sindh Hyderabad who have already issued a notice to the petitioner for the demarcation to be carried out in presence of the parties. Hence in order to resolve the controversy which only relates to the measurement/demarcation of the land regarding which an application has already been preferred by the petitioners were dispose of this petition that the concerned officials of revenue Department as well as Director Settlement Survey and Land Records Sindh should carry out a joint inspection/demarcation in relation to the land of the petitioner as well as respondents. The demarcation be carried out under the law as it require fixation of stones that may be carried out.

In case the petitioner is found to be in excess of their entitlement, the Revenue and the Settlement Department shall resume the possession of the excess land forthwith and vice versa.

The petition is stands disposed of.”

2. On 11.9.2016 Petitioners filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (MA No. 127416/2016) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court, which was later on treated an application under section 151 CPC vide order dated 21.9.2016. On 1.6.2016 compliance report of order dated 26.11.2015 was filed by the Director of Settlements Survey and Land Records Sindh Hyderabad.

3. On 15.8.2017, 15.5.2018 and 8.11.2018 son of the Petitioner Khushi Muhammad filed various applications under Section 3 & 4 of Contempt of Court

Ordinance 2003 (MA No. 9999/2017, MA No. 7522/2018 and MA No. 13745/2018) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court. Counter Affidavits were filed by the respondents on the listed applications.

4. On 14.1.2019 another compliance report of order dated 26.11.2015 was filed by the focal person on behalf of Director of Settlements Survey and Land Records Sindh Hyderabad with the assertions that as per direction of this court demarcation of the subject property has been carried out which explain the following position:-

- “i) Demarcation of Revenue S.No.547 (2-36 acres) has been carried out with the help of field book and Deh Map and whereas the demarcation of City Survey No.547 (7-12 acres) has been carried out with the help of Sheet No.50 and 56 Ward-A Tando Adam.
- ii) Revenue Survey No.547 as per Field Book has been created in the year 1940 whereas the City Survey No.547 as per City Survey record created in the year 1926.
- iii). The reference permanent point where from demarcation was started is mentioned in the enclosed sketch.
- iv) The demarcation of Revenue Survey No.547 (2-36) shows that an area of 0-06 ghunta of Revenue Survey No.547 is under possession of Dr Ziauddin GPS Tando Adam which is shown in red colour in the enclosed Sketch also out of this S.No. An area 0-07 is under possession of Cotton Factory which shown in yellow colour. The remaining area 2-23 acres available at site.
- v) The demarcation of City Survey No.547 (7-12 acres) shows that as per boundary shown in sheet No.50 and 56 areas comes 6-37 acres and 0-15 ghunta is less, which requires to be corrected. Demarcation further shows that an area of 0-07 ghunta is under Temple (Ashram) which is shown in Ferozi colour, an area of 0-03 ghunta is under Cattle Farm (Waro) which is shown in blue colour, an area 0-12 ghunta is under possession of a Housing Scheme which is shown in green colour and remaining area i.e. 6-15 acres is available at site in possession of Dr.Ziauddin GPS Tando Adam. After verification of the site of Revenue Survey No.547 which reveals that an area 0-06 acres of City Survey No.547 in possession of School was to be in the boundary of City Survey Limit. Whereupon Temple and Darro are existing, which are seemed to be before of 1926 whereas the Revenue Survey No.547 is created in the year 1940. Hence the area 0-06 ghunta required to be included in survey Nos.547.”

5. Mr. Muhammad Arshad S. Pathan, learned counsel for the Applicants has argued that despite clear directions in the above said Order, the contemnors have not complied with the same; that Director of Settlements Survey and Land Records failed to fix stones as required under the law for the purpose of

demarcation of the property in question; that the controversy was of such technical nature and it could only be resolved by the professional team, therefore any other neutral team having requisite experience in the field may be appointed to carry out the demarcation afresh of the subject land of the parties in order to resolve the issue.

6. Mr. Allah Bachayo Soomro, Addl.A.G has refuted the claim of the Applicants on the listed applications and while referring to compliance report dated 14.1.2019 filed by the alleged contemnors submitted that the compliance has been made, therefore, no contempt is made out.

7. We have heard learned counsel for the parties on the listed application and perused the material available on the record and the compliance report relied upon by the learned A.A.G. The issue between the parties is with regard to the demarcation of land and it was for the petitioners to have established the dimensions of their property. The material on the record suggests that there may have been a piece and parcel of land, catering to an easement right either belonging to one or the other party or both of them which entails an inquiry to determine the actual extent of the petitioners land, if any, belonging to either or both of the parties and the attending rights. This court appointed the officials to visit the site and demarcate the petitioners' property as provided under Rule 67-A of the Land Revenue Rules, 1968. The Director Settlements Survey and Land Records Sindh Hyderabad has submitted the compliance report, which we have scrutinized.

8. Prima facie the explanation offered by the Respondents vide report dated 14.1.2019 is tenable as the demarcation has been done which would essentially mean that the compliance of this court's order has been made substantially. If the petitioner is aggrieved by the outcome of demarcations, he could challenge the same before the proper forum in accordance with law. At this stage we would not like to embark upon yet another inquiry to determine bounds of land of either party when they have an adequate remedy under Sindh Land Revenue Act before the revenue hierarchy. The Petitioner has failed to point out any malice on the part of alleged contemnor to take action against them under Article 204 of the Constitution.

9. In view of the facts and circumstances of the case and for the reasons alluded above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 26.11.2015 passed by this Court in the captioned petitions. Therefore, at this juncture, prima facie,

Petitioners have not made out a case for initiating contempt proceedings against the alleged contemnors. The listed applications bearing (MA No. 9999/ 2017, MA No. 7522/2018 and MA No. 13745/2018) are dismissed.

JUDGE

JUDGE

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