

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

C.P. No.D- 730 of 2012

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

M/s. Muhammadi Builders (Pvt.) Ltd.

Petitioner

VERSUS

Province of Sindh
& others

Respondents

Dates of hearing: 07.03.2019

Date of decision: 21.03.2019

Mr. Muhammad Arshad S. Pathan, Advocate for petitioner.

Mr. Allah Bachayo Soomro, Addl. A.G along with
Mr. Ghulam Rasool Panhwar, Assistant Commissioner, Kotri.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant petition, the
Petitioner is seeking the following relief(s):-

- a. To issue writ declaring that the letter bearing No.PS/MBR/LU/321/12 Government of Sindh Land Utilization Department Karachi Sindh dated 03.04.2012 issued by Member (LU), Board of Revenue, Government of Sindh addressed to Director Settlement & Survey Department Hyderabad, is illegal, unlawful, bad in law and is in violation of mandatory rules and bylaws of Sindh Land Revenue Act 1967 and all subsequent letters issued by the lower revenue authorities towards the compliance of above order is also illegal, unlawful, bad in law are liable to be declared being illegal, unlawful, without force and all not binding upon the petitioner.
- b. To declare that the act of respondents No.13 and 14 directly approaching the Member (LU) without first adopting the mandatory legal procedure provided under the law and first proving their title, is illegal, unlawful and the title/allotment if any, with Respondents No.13 and 14 is illegal, unlawful, false, bogus and is not binding upon the petitioner.
- c. To declare that the issuance of notice by the Mukhtiarkar for demarcation to the private parties without observing legal formalities of Section 67-A of Land Revenue Rules 1968 and Section 117 of Land Revenue Act 1967 and are false, baseless, without force and are not binding upon the petitioner.

2. In brief, the case of the petitioner as per pleadings is that he is owner of Agricultural land admeasuring 150-00 acres from un-survey land situated at Deh Sonwalhar, Taluka Kotri, District Jamshoro. The said property was purchased by the petitioner from its previous owner through registered sale deed dated 26.09.1998 and such mutation was effected in the record of rights vide entry No.42 dated 17.10.1998 in Village Form- VII-B maintained by Mukhtiarkar Revenue Kotri; that after purchasing the land from its previous owner and after completion of all legal formalities the petitioner got the layout plan approved by Sehwan Development Authority (S.D.A). Mukhtiarkar vide letter dated 10.12.1998 addressed to Assistant Director, Land Management, Sehwan Development Authority has verified the entry bearing No.42 dated 17.10.1998 in favour of the petitioner, as well as, the Map showing the boundaries of the petitioner's land. The petitioner started work at the site, which was obstructed by the officials of Revenue Department, Govt. of Sindh and the petitioner was constrained to file F.C Suit No.77 of 1999 before the Senior Civil Judge Kotri. The said suit was contested by the official respondents and was decreed vide judgment and decree dated 22.08.2000. The Mukhtiarkar (Revenue) Kotri under the instructions of higher Revenue Authorities preferred an appeal before District Judge Jamshoro at Kotri, which too was dismissed by the appellate Court vide its judgment and decree dated 11.06.2005. The Government of Sindh filed Civil Revision Application No.157 of 2005 against concurrent judgments which suspended operation of the Courts below; that all of sudden without knowledge and notice of the petitioner, he came to know that an application has been filed by the private respondents before Member (Land Utilization), Board of Revenue Sindh seeking direction for demarcation of his land and the said application was forwarded to the Director Settlement Surveys & Land Records, with direction for necessary action. The Director Settlement Surveys & land Records issued a letter to the Deputy Commissioner Jamshoro, who fixed demarcation proceedings on 12.04.2012. The petitioner being aggrieved by and dissatisfied with the aforesaid actions of the official respondents, who directed for demarcation of the land admeasuring 128-00 acres out of Survey No.17 to 42, Makan Mangehgi and Survey No. 152 to 190 Makan Goth, Deh Sonwalhar, District Jamshoro filed the instant petition.

3. Mr. Muhammad Arshad S. Pathan, learned Counsel for the petitioner, argued that the Director Settlement Surveys & Land Record issued a letter to the Deputy Commissioner Jamshoro, whereby he expressed his reluctance

towards demarcation of the said land and clearly mentioned in his letter that the said demarcation could not be carried out. But, the private respondents, as well as, the revenue authorities on one hand were putting pressure on the Director Settlement Surveys & land Records and on the other hand were threatening the petitioner for demarcation through local Administration of Revenue Department without lawful authority under the garb of directions by Member (LU) and without complying with legal formalities; that respondents No.13 & 14 have no any title document in their favour and the land has been transferred legally and all the papers in respect of the said land relied upon by respondents No.13 and 14 were managed in collusion with the revenue staff and were not sustainable in law and the directions for demarcation were illegal; that the official respondents acted illegally in collusion with private respondents and at no stage the respondents No.2, 3 and 4 were apprised of the true facts of the case and pendency of Civil Revision Application pending before this Court, thus suppressed the facts; thus not only disturb petitioner's possession over his land, but to grab the same under the garb of false, frivolous act of demarcation, which is absolutely illegal act of the revenue authorities; that no any demarcation was done earlier in respect of the alleged land of respondents No.13 & 14 and there is no any such allotment of survey numbers and neither any such notice was issued or received by the petitioner, but all the demarcation proceedings based on manipulation and fake and forged documents were initiated and started secretly by the respondent No.3 without lawful authority; that the entries in the name of respondents No.13 and 14 have no sanctity in the eyes of law and are bogus and the proceedings of any kind on the basis of which could not be initiated and are liable to be declared as bogus. He lastly prayed for setting aside the impugned letter dated 03.04.2012 issued by Member (LU), Board of Revenue, Government of Sindh, for demarcation.

4. Mr. Allah Bachayo Soomro, Addl. A.G has argued that the basic revenue entry bearing No.42 dated 17.10.1998 in favor of the petitioner is bogus. In support of his contention he referred to the report regarding the subject land and argued that the petitioner is not entitled for any relief and this petition is liable to be dismissed on the basis of documentary evidence; that the petitioner cannot call in question the actions of the official respondents, who directed for demarcation of the land admeasuring 128-00 acres out of Survey No.17 to 42, Makan Mangehgi and Survey No. 152 to 190 Makan Goth, Deh Sonwalhar, District Jamshoro; that there are disputed questions of facts

involved in the present petition, therefore this petition cannot be entertained. The Learned AAG also took the plea that petitioner obtained ex-parte decision in the suit, which is collusive in nature, which was also barred under the law; that since subject land was cancelled through an order therefore; the petitioner is not entitled for any relief from this court. Learned AAG in support of his contention has relied upon the order dated 27.7.2011 issued by the Secretary, Revenue Department, Government of Sindh and section 3 of the Cancellation of Bogus Entries (in the record-of-rights) of Government Land Act, 2009 and argued that the enquiry report dated 13.8.1997 issued by enquiry officer in respect of the subject revenue entry is very clear in its terms therefore the Competent authority rightly cancelled the revenue entry bearing No.42 under the law. He lastly prayed for dismissal of the instant petition.

5. We have heard the parties at length, perused the record and case law cited at the bar.

6. The prime question involved in the present proceedings is whether the official respondents are under legal obligation to demarcate the subject land?

7. The procedure of demarcation as provided under Rule 67-A of the Land Revenue Rules, 1968. For convenience sake an excerpt of the same is as under:-

(i) The Mukhtiarkar upon satisfaction of all the requirements said to have been made by the applicant issue notices to all the concerned and adjacent khatedars / owners and pass order on the application for demarcation accepting and/or refusing the same and in case of accepting the procedure laid down in the Land Revenue Act and Rules to be adopted and the services of Director Settlement Surveys & Land Record are to be obtained and the survey of the agricultural land is always to be made by Director, Settlement Survey and Land Record in presence of local revenue authorities and in case of refusal the procedure of appeal, revision, review is to be adopted, as provided in the Land Revenue Act and Rules.

8. The learned Counsel for the petitioner submitted that direct application for demarcation was received by Member (LU) and without its proper adjudication under rules and by laws mentioned supra, a direction for necessary action was made to the Director Settlement Surveys illegally and unlawfully and that the Member (LU) assumed the powers of Mukhtiarkar without any lawful authority. That otherwise it is the duty of the Mukhtiarkar to see legality and genuineness of the ownership documents, possession, etc.,

or dispute, if any. But, all the powers of Mukhtiarkar have been exercised/assumed i.e. taken away by Member (LU) in disregard of law and rules cited supra. The subordinate officers after receiving direction from the Member (LU) acted as their personal servants although neither the Constitution nor any law provides any encumbrance upon them to act and/or obey illegal and unlawful orders of superior authority. And that no notice for demarcation was issued to petitioner, however, when the Anti-Encroachment Cell headed by SHO and S.P Anticorruption tried to interfere in possession of the petitioner, he came to know about the illegal acts, including manipulation of documents. That, he moved an application to the Director Settlement Surveys & Land Record informing him about the pendency of Civil Revision Application and the ownership status of the land and that the private Respondents in collusion with the officials of revenue authorities under the garb of order for demarcation were trying to grab his land but to no avail. Further, all the demarcation proceedings are against the relevant law and rules and cannot be carried on.

9. Official respondents have contested the instant petition on the basis of the documents i.e. The enquiry report dated 13.8.1997 issued by enquiry officer, order dated 27.7.2011 issued by the Secretary, Revenue Department, and Government of Sindh and relevant cancellation of subject land of the petitioner vide entry of VF-VIIB, entry No.42 dated 17.10.1998. Needless to say that the Government of Sindh is competent to cancel the Bogus Revenue entries in the record of rights under section 3 of the Cancellation of Bogus Entries (in the record-of-rights) of Government Land Act, 2009. The aforesaid Act has retrospective effect from 1st January, 1985 and the competent authority can proceed to cancel any entry said to have been kept since if its being bogus is established. The official respondents have clarified the position that mother-entry in the revenue record in favour of the petitioner is bogus obtained by playing fraud. Before proceeding further, we will look at the definition of the word “Bogus Entry” which is defined under section 2 (b) of the aforesaid Act, means an entry made in the record-of-rights on the basis of forged documents. We have perused the order dated 27.7.2011 passed by the Secretary, Revenue Department, who has opined as under:-

“8. The Cancellation of Bogus Entries (in the record of rights), Government Lands Act, 2009 provides the powers for the cancellation of book entries made in the record of rights relating to the government land on the basis of forged documents or in violation of law in section 3 to undersigned under:-

“Notwithstanding anything contained in any law for the....being in force or any government or judgment or order of court, but subject to other provisions of this Act, the Secretary to Government of Sindh, Revenue Department specifically authorized by the Chief Minister Sindh in this behalf, if satisfied that an entry in the record of rights, made on or after January, 1985, is bogus, may without notice, cancel such and on such cancellation, the land shall stand reverted to Government.

Following the above position, I am satisfied that above all mutations entries are made in violation of law & based on fraud. Therefore, in exercise of powers vested in me under section -3 of the Cancellation of Bogus Entries (in the record-of rights), Government Land Act,2009, above all entries together with subsequent entries and other papers viz Ghat wadh form resulted there on, are hereby cancelled with immediate effect and the land question involving Government land in said entries and subsequent entries, reverted to the Government and the Mukhtiarkar (Rev), Kotri, is directed effect the entries in Red Ink in record of rights in favour of Government. He further directed to cause service of this order upon the person or persons likely to be affected or aggrieved in manner as laid down in rules-5 of above rules.

However, this order shall not apply to and affect the land involved in above entries against which, the litigations are if pending before the competent courts of law and the stay if any is operating for which Executive District Officer (Revenue) District Officer (Revenue) are directed to pursue the matter before concerned Courts to defend the Government interest on above grounds and keep the Board of Revenue reported without fail.

So also, this order shall not affect the entries which have if already been cancelled by EDO (Rev), Jamshoro/Defunct Additional Commissioner Hyderabad Division under section 164 of the land Revenue Act 1967 on Suo-Moto proceedings.”

10. Learned AAG has urged emphatically that as the basic Revenue Entry No.42 in favor of the petitioner is bogus and cancelled by the competent authority no right accrues to him to challenge the impugned order. Regarding filing of civil suit and getting it decreed in their favour, he stated that it was an exparte judgment and decree, and which has been suspended by this Court in Revision Application preferred by the Government of Sindh. Be that as it may, before us relevant documents have been referred which proves that previous owner namely Raza Muhammad was never granted land in his favour by the government and he managed to get an entry kept in the record without any supporting document justifying the same. And this leads to an irresistible conclusion that through a fraud the government land was got transferred in his favour. It may be pointed out, without any fear of denial, that fraud vitiates every solemn transaction and Court of law shall, in no eventuality, endorse and perpetuate a fraud once it is proved to have been committed. Any transaction, which is the result of misrepresentation, is not protected on any ground of whatsoever. In such a situation, it is necessary to seek guidance from the various orders passed by the Honorable Supreme Court in suo-moto

cases on the issue of state land. It may be stated that the Honorable Supreme Court of Pakistan has imposed complete ban on further transactions in Suo-Moto Case No.16 of 2011 passed on 28.11.2012. And another order dated 23.6.2014 in the aforesaid proceedings.

11. In above back-ground, the Government of Sindh issued Notification No.09-294-03/SO-I/336 Karachi 25th February, 2006, which provides that no state land shall be disposed of for commercial purpose except by open auction at a price not less than the market price. Whereas, the requirement of 'open auction' is not attached for disposal of the State Land for other purposes including 'incremental housing' or 'project', so defined in above referred notification of 'statement of conditions' which is completely in negation of dictum laid down by honorable Supreme Court of Pakistan in Suo Moto Case No.14 of 2009 in para-2 with regard to the object of 'Sindh Urban Land (Cancellation of Allotment, conversions and Exchanges) Ordinance, 2001' as:

'In the year 2001, the Sindh Urban Land (Cancellation of Allotment, Conversions and Exchanges) Ordinance, 2001 was promulgated, the purpose of which was to provide for cancellation of certain allotments, conversions or exchanges of urban state land obtained or granted for residential, commercial or industrial purposes at rates lower than the market value, in violation of law or ban from 1st January 1985 and to provide for matters connected therewith are ancillary thereto.'

12. Once basic entry in the revenue records whereby the petitioner claims to have purchased the land from private person had been cancelled vide order dated 22.12.1998 on the ground of being bogus, the subsequent transaction will have no importance and would not be held lawful.

13. We have gone through the record and perused the inquiry report of the Additional District Magistrate and Inquiry Officer Kotri on reconstitution of record of rights of Deh Sonwalhar Kotri. The findings of the Inquiry Officer explicitly show that mutation entries relating to about 31000 acres of precious state land are bogus and the inquiry report concludes as under:-

"I have made an effort to probe into the available record of rights as deeply as possible and to find out facts with respect to the genuineness or otherwise of different entries available on the record. I have also made efforts to verify and ascertain the factual position regarding the claim of each khatedar. The enquiry proceedings were widely publicized on all the esse.....occasions so that nobody is left behind with the assertion that he was condemned unheard. The spirit of the enquiry for reconstitution of Record of Rights was upheld at all occasions and all humanly possible efforts were made to collect any kind of evidence which could have helped in the reconstruction proceedings."

But with this, the interest of state in its bonafide and genuine ownership in the Deh was also compromised. The net result of the cancellation of bogus and fraudulent entries has been that about 31,000.00 acres of precious land has been restored to the estate which was malafidely converted into private Qabuli land through fraud and forgery in the revenue record.

This enquiry report alongwith the newly reconstructed Deh for VII-A 1997 is being submitted for the kind perusal of the worthy Senior Member Board of Revenue.”

14. The Additional Commissioner Hyderabad in Suo Moto proceedings “Province of Sindh vs. Raza Muhammad and others” vide order dated 22.12.1998 cancelled the subject land granted in favour of Raza Muhammad vide Mukhtiarkar Kotri’s endorsement dated 29.12.1998 which although has been challenged but only the exparte decree against which was obtained and which exparte decree has been suspended by this court. No case for interference under Article 199 of the Constitution is made out. The relief under said article of the Constitution is discretionary which will not be exercised in favour of a person whose own title is dubious and does not convey him any right to hold government land.

15. In the light of above facts and circumstances of the case and for the reason alluded in the preceding paragraphs, we do not find any merit in this petition which is accordingly dismissed along with pending applications.

JUDGE

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