

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D-8485 of 2018

Date Order with Signature(s) of Judge(s)

Fresh case

1. For order on Misc. No.37169 /2018.
2. For order on office objection no.1&18.
3. For order on Misc. No. 37170 /2018.
4. For order on Misc. No. 37171 /2018.
5. For order on Misc. No. 37172 /2018 (U/o 18, R.18)
6. For hearing of main case.

06.12.2018

Mr. Zia ul Haq Makhdum, advocate for the Petitioner.

1. Urgency granted.
2. Deferred for the time being.
3. Exemption application is granted subject to all just exceptions.

4to6. It is, *inter-alia*, contended by the learned counsel for the Petitioner that the Petitioner is owner of 04 acres of land from Naclass No.90 (now Survey No.220), situated in Deh Khanto, Taluka Ibrahim Hyderi, District Malir, Karachi, which was leased out to the Petitioner for 99 years by the Respondent-Department vide letter dated 02.11.2011. Learned counsel states that the Petitioner has paid all his dues for the aforesaid land and now he is enjoying the possession of the subject premises, which is protected under Articles 23 & 24 of the Constitution. He next added that he has established a Poultry Feed Factory on the subject land and since then he is enjoying the fruit of the same. He next contended that the Respondent issued impugned letter dated 07.11.2018 on the premise that subject land was allotted to the Petitioner for amenity purposes and not for any other purpose. He further states that the same allegations were refuted by the Petitioner by replying the letter of the Respondents. He next added that the Respondents cannot say that the subject land is for amenity purposes as per lease documents available on record, which *prima facie* show that the subject land was allotted for industrial purposes and not for amenity purposes.

At this stage, we queried the learned counsel for the Petitioner as to how the instant Petition is maintainable, in view of the orders passed by the Hon'ble Supreme court of Pakistan in Suo Motu Case No. 16 of 2011 vide order dated 28.11.2012 whereby restriction was imposed with regard to conversion of 30 years lease into 99 years lease. An excerpt of the paragraph 7 is reproduced as under:-

"7. Under these circumstances, we are constrained to direct that the Deputy Commissioners/District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Mukhtiarkar in terms of the directives contained in the aforesaid judgment of the High Court and shall not be removed from the office of the Mukhtiarkar to any other place. Moreover, mindful of rampant corruption and organized and organized crime of land grabbing, particularly, regarding prime

state land, and mismanagement /forgeries in the revenue record, we hereby, until further orders restrain the Government / Revenue Department from mutation, allotment, transfer and or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner/DCO of the relevant districts/dehs besides others to contempt proceedings.”

He in reply to the query has submitted that the Petitioner was originally allotted the subject land on the basis of 30 years lease, thereafter he applied to the Land Utilization Department for grant of 99 years of lease in respect of the subject land for industrial purposes; that the orders passed by the Hon’ble Supreme Court of Pakistan in the aforesaid matter are not attracted in the case of Petitioner. He attempted to justify the recommendations of the Scrutiny Committee for conversion /grant of the land to the Petitioner on 99 years for industrial purposes. Per learned counsel the Petitioner has complied with the terms and conditions of the lease as set forth in the lease documents. He further states that the Respondents have issued letter dated 07.11.2018 and sought progress report from the Petitioner on the following points:-

- a) If the allotment / lessee failed to use the land for the purpose for which allotted or leased out within the period of two years from the date of allotment or lease has expired, the allotment of lease of the land shall automatically stand cancelled and the amount deposited stand forfeited.
- b) The grantee shall start the work within a period of Six months from the date of allotment and complete within two years. In case of no-utilization of land or non-completion of the project within two years from the date grant, the land shall be forfeited to the Government without notice and without payment of any compensation for any constructed structure if raised thereon provided that in justifiable case, the completion period of project may be extended for another one years by the Government, as deemed appropriate, on payment of non-utilization fee i-e 10% of the price (occupancy value).

It is further contended that all the applications pending in the Hon’ble Supreme Court in the aforesaid matter were disposed of vide order dated 08.3.2016; therefore, Petitioner cannot be non-suited on the aforesaid plea. He lastly prays for notice.

To appreciate the aforesaid factum as to whether the case of Petitioner falls within the ambit of the orders passed by the Hon’ble Supreme Court as discussed supra or otherwise as agitated by the Petitioner. Subject to maintainability of the instant Petition, let pre-admission notice be issued to the Respondents as well as AAG for **19.12.2018**.

JUDGE

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