

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

C.P No. D- 787 of 2010

Before:-

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Muhammad Yousuf and others ----- Petitioners

VERSUS

Province of Sindh and others ----- Respondents

Mr. Jagdesh R. Mullani, Advocate for Petitioners

M/s. Rafiq Ahmed, Karim Bux and Abdul Majeed Khan, Advocate(s)
for private Respondents.

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing. : 15.09.2020
& decision.

ORDER

ADNAN-UL-KARIM MEMON, J:- The instant Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioners, seeking declaration to the effect that the order dated 21.4.2010 passed by District Officer (Revenue & Estate) Jamshoro is illegal, without lawful authority has no legal effect; they also sought direction to Respondent No.6 to pass appropriate Order / Award in accordance with law and compensation may be awarded to the petitioners.

2. Brief facts of the case in nutshell are that the petitioners are zamindars who own agricultural land in Deh Dabri, Kachho Girmani Taluka Majhand District Jamshoro. They filed F.C. Suit No. 01 of 2006 for Declaration, Cancellation of lease, Possession, mesne profits, Damages and Permanent Injunction, in the Court of Senior Civil Judge, Kotri, but the plaint was rejected under Order VII Rule 11 CPC vide order dated 17.1.2006 and Decree dated 21.1.2006. Being aggrieved by and dis-satisfied with the above Judgment and Decree the Petitioners filed Civil Appeal No. 02 of 2006 before Additional District Judge, Kotri who vide order dated 6.10.2008 also dismissed the Appeal with direction to approach District Officer (Revenue) Jamshoro / Land Acquisition Officer for compensation and initiating proceedings under Land Acquisition Act; subsequently the petitioners moved

Application to District Officer (Revenue) Jamshoro / Land Acquisition Officer for initiating land acquisition proceedings; that without affording opportunity of hearing the application of petitioners was rejected on 21.4.2010 hence the petitioners have filed the instant Petition. For convenience sake, an excerpt of the order dated 21.4.2010 is reproduced as under:

“I have heard the learned counsel for the parties and consider the material available on record the main dispute is whether the land in possession of the opponents belong to the applicants and they are owners thereof and entitle for any relief.

In order to determine the real controversy between the parties I have examined the documents placed on record by the parties applicants have filed photocopies of Deh Form VII B which shows that the said land claimed by them is situated at Deh Kastore tapo meeting Taluka Kotri although the entries in the Revenue record or not the conclusive proof of ownership in respect of the land claimed by them and on the other hand the opponent have filed photocopies of registered sale deed which shows that the land has been granted on lease by the government under Section 2 Pakistan Mining Concession Rules which is situated at Lakhra there is a considerable distance between the lands claimed by the applicants and the land in possession of the opponents whereas the documentary evidence placed on record also shows the boundaries and demarcation of the land granted on lease.

I have also visited the site on 30.03.2010, in presence of the applicant Muhammad Yousuf, Ghulam Mustafa, Tapedar from E.D.O Kotri Abdul Majeed Khan Advocate Haji Abdul Raizque Mr. Adnan Project Manager PMDC Lakhra Coal Mining Project, Project Manager PMDC called their surveyors, those identified their boundary pillars and stated that they are working within the area allotted to them by Government of Sindh for Coal Mining while Tapedar identified location of agricultural land of applicant Muhammad Yousuf in wrong direction and failed to provide any authentic document and stated that land of Muhammad Yousuf in absence of any identification mark he is unable to identify the exact location of applicants claim that Haji Abdul Raziq digging wells on their agricultural land remained unproved since disputed area mountainous where drinking water is supplied through water tanker hence applicants claim found baseless and non-maintainable it is noted that Lakhra is a mineral area from where near about 30 companies are extracting coal. Applicants claim remain unproved.

I am of the humble view for the foregoing reasons I do not find any merit in the instant application as the applicants have failed to sustain their claim and according the instant application stands dismissed.

3. We have queried from learned counsel for the petitioners whether the findings of District Officer (Revenue) Jamshoro have adversely affected their rights, or whether they possess any Title documents of the subject land. We also asked learned Counsel to satisfy this Court with regard to maintainability

of instant petition on the premise that identical petitions of similar nature have already been disposed of by learned Division Bench of this Court in C.P. No.D-1857/2019 vide common order dated 26.11.2019.

4. Mr. Jagdesh R. Mullani learned counsel for the petitioners has replied that the lands of petitioners were utilized without recourse to lawful procedure; that this act was not only illegal but highly immoral and reprehensible since the Provincial Government and its functionaries are supposed to protect the life, liberty and property of citizen rather than forcibly using it for its own benefits; that the instant petition has been filed by the petitioners to question the legality of order dated 21.04.2010 passed by District Officer Revenue Jamshoro; that for almost ten years the private respondents and other functionaries of the Province dragged their feet and did not implement the direction of the Court passed on 14.07.2010; that it is clear that all the concerned officials of Sindh Government have been guilty of non-compliance of order dated 14.07.2010 passed by this court; that the entire land of petitioners is in illegal possession of Government functionaries as well as private respondents; that the official respondents have committed not only an illegal, inequitable and immoral but a criminal act in forcibly utilizing the land of petitioners in order to please the private respondents for mining purpose; that Respondents 1 & 2 granted lease to Pakistan Mineral Development Corporation, Lakhra Coal Mines for excavating the minerals from the lands; that more than one hundred acres owned by the petitioners is included in the leased area which is unlawful. That his land has been occupied by private respondents without their consent and without issuing any notice to them; that they filed Civil Suit No.1 of 2006 for Declaration, Cancellation of lease, Possession, mesne profits, Damages and permanent Injunction against the respondents. The matter was contested by the parties and finally learned trial Court rejected the plaint under order VII Rule 11 C.P.C. thereafter he filed Appeal No. 2 of 2006 which too was dismissed vide judgment dated 6.10.2008 by learned Appellate court; that the petitioner approached learned District Officer Revenue, Kotri District Jamshoro by filling an application for Acquisition, Compensation, Damages, mesne profits which was dismissed vide order dated 21.04.2010 and then petitioner has approached this court; therefore, this petition is maintainable and can be heard and decided on merits. Learned Counsel for the petitioners pointed out that this court vide order dated 14.07.2010 directed revenue officials to demarcate the lands of petitioners and report be submitted but till date no demarcation has taken place, he pointed out various orders passed by this court but no compliance has been made; that Mukhtiarkar concerned has expressed his reluctance towards demarcation of land on the premise that

the demarcation could not be carried out due to certain objections. Learned Counsel further stated that the official respondents turned a deaf ear to the petitioners' grievances, compelling them to approach this Court. He prayed for allowing the instant petition. Learned counsel in support of his contention has relied upon the case of District Officer Revenue, Kasur v. Abdul Rehmat Shaukat (2006 SCMR 188).

5. Conversely, learned counsel for private respondents have filed statement dated 5.12.2019 along with copy of common judgment dated 22.5.2019 passed by learned Division Bench of this court in C.P. No. D-8125 of 2018, whereby 30 years lease of private respondents for mining purpose was not renewed by the Provincial Government. Per learned counsel since the main lease of private respondents has not been renewed as such the question of demarcation and compensation to the petitioners does not arise as the land belongs to Government of Sindh. He prayed for dismissal of instant petition.

6. Mr. Allah Bachayo Soomro learned Additional Advocate General Sindh has referred to parawise comments and argued that the subject land was not acquired by any department / company of Government of Sindh for which they would be entitled to claim for compensation under Land Acquisition Act; that digging of pits is carried out on Provincial lands. If the petitioners felt that there was any encroachment on the part of PMDC or contractors, the petitioners had remedy under the rent revenue law but they did not do so; that in Lakhra coal field, cultivation cannot be done as the water is being supplied to the lands through tankers; therefore, the question of encroachment on the lands of petitioners does not arise; that mining rights of Government are protected in terms of Presidential Orders No. 8 of 1961 and Sindh Mining Concession Rules 2002. That the petitioners have no case they are blackmailing to the coal mine lease holders to pay compensation; that they had filed Civil Suit before Senior Civil Judge, Kotri but the plaint was rejected under Order VII Rule 11 CPC vide order dated 17.1.2006 and Decree dated 21.1.2006. They filed Civil Appeal No. 02 of 2006 before Additional District Judge, Kotri who vide order dated 6.10.2008 dismissed their Appeal with direction to approach District Officer (Revenue) Jamshoro / Land Acquisition Officer for compensation and initiating proceedings under Land Acquisition Act; The petitioners moved Application to District Officer (Revenue) Jamshoro / Land Acquisition Officer for initiating land acquisition proceedings; their application was rejected on 21.4.2010, therefore on the similar cause of action, this petition is not maintainable under Section 11 CPC as well as under Section 42, 54, and 56 of Specific Relief Act; besides

other enabling provisions of law; that this court cannot decide the title of parties in constitutional jurisdiction. learned A.A.G. referred to Section 49 of West Pakistan Land Revenue Act, 1967, and argued that rights of Government in Mines and Minerals are protected; that all Mines and Minerals are the property of Government, and Government shall have all powers necessary for proper enjoyment of its rights thereto; that the national wealth/resources must be protected under the Constitution. He prayed for dismissal of the captioned petition.

7. We have heard learned Counsel for the parties at length on the point of demarcation of land as well as on other issues involved in the petition under Revenue Law and perused the material available on record.

8. This court has already decided the issue of Demarcation of Land in C.P. No.D-1857/2019 vide common order dated 26.11.2019. An excerpt of the same is reproduced as under:

“13. Since applications for demarcation filed by some of the petitioners are admittedly pending before the competent authority and such authority has failed to exercise the jurisdiction vested in it by law, Senior Member Board of Revenue Sindh is directed to depute Mukhtiarkar / Revenue officer for the area concerned, who shall hold an inquiry regarding the legality and genuineness or otherwise of the petitioners’ ownership documents, possession, etc., or dispute / litigation, if any, and then to complete the exercise of demarcation of their land subject to their entitlement strictly in accordance with Rule 67-A and Section 117 *ibid*, as amended up to date within thirty (30) days of receipt of their application. The above exercise shall be carried out by the Mukhtiarkar concerned with the assistance of Settlement Survey and Land Record Department. However, if the application for demarcation filed by any of the petitioners is rejected for any reason, the reasons of such rejection must be recorded in writing by the Mukhtiarkar concerned after providing opportunity of hearing to all concerned within a period of one month from the date of receipt of this order.

14. Petitioners who have not availed the remedy in accordance with law before approaching this Court may avail their remedy by filing proper applications before the competent authority along with supporting documents, which shall be decided in terms of the direction contained in paragraph 13 *supra*. Regarding the cases wherein factual disputes are involved, needless to say that such parties may approach the competent civil court for redressal of their grievance in accordance with law.

15. As the petitioners have not been able to convince us that they have availed / exhausted their remedy in accordance with law before filing these petitions, office is directed not to entertain such petitions for measurement / demarcation / partition / mutation of land wherein (a) Petitioner has not approached the competent forum in accordance with law ;

(b) Petitioner’s application for such purpose is pending before the competent forum; and/or

(c) Any factual controversy with regard to the subject land and/or khatedars is involved, or any litigation in respect thereof is sub judice before any forum.

16. All the captioned petitions stand disposed of in the above terms along with pending application(s) with no order as to costs. Let notice be issued to 6 Senior Member Board of Revenue Sindh, Mukhtiarkars concerned and Director, Settlement Survey and Land Record for compliance.”

9. After discussing the above issue, the pivotal questions in the present proceedings are as under:-

i) Whether this Court can order for compensation to the petitioners under writ jurisdiction?

ii) Whether the findings of District Officer (Revenue) Jamshoro can be assailed before the hierarchy of revenue authorities having jurisdiction to entertain the matter of the petitioner in the circumstances? Or

iii) Whether Civil Court has jurisdiction to entertain the matter between the parties?

10. We have noticed that in compliance of order dated 15.04.2015 passed by this court; a compliance report has been submitted by Director Settlement Survey & Land Records Sindh. An excerpt of the report is as under:-

“After verification of the record of rights and land record of this office it has been transpired that there is difference in area of Survey Nos. 2, 8 and 9 of Makan Ghuram Waro, the details are as under

S. NO	TOTAL AREA AS PER REVENUE RECORD (VF-VII A&B) IN ACRES (Annexure- A & B)	TOTAL AREA AS PER SURVEY RECORD IN ACRES (Annexure- C)	DIFFERENCE
02	27-15	7-15	20-00
03	37-04	7-12	29-32
04	47-04	7-04	40-00
Total	111-23	21-31	89-32

The petitioner party also owned Survey No 110 (9-36 Acres) and 111 (9-26 Acres) Deh Kastore Taluka Manjhand, the verification of which shows that area of this Survey No's is same in both records.

Further verification of records of rights shows that the lease in respect of the coal authority Lakhra is not entered in the record of Rights.

After verification of record, survey team proceeded to site where petitioner party Muhammad Yusuf Son of Muhammad Haroon was present but no any officer or representative of Mines Department was present. But Manager of Haji Abdul Razzaque Lakhra Coal Mines was available at Camp, who informed that Officer of Mines Department visited the site in morning and left.

Due to absence of the officials of Mines Department and difference in area of Petitioners land, the joint demarcation could not be carried out.

In the light of above mentioned facts, it is prayed that the Deputy Commissioner, Jamshoro / Assistant Commissioner, Manjhand may be directed / ordered to enquire into the matter that how the area of Survey No. 2, 8 and 9 of Deh Makan Ghuram Waro of petitioners has been increased and correct the area as per survey record. So that the demarcation may be carried out in the later and sprit as ordered by the Honorable Court.”

11. We have noticed that the petitioners filed F.C. Suit No. 01 of 2006 for Declaration, Cancellation of lease, Possession, mesne profits, Damages and Permanent Injunction, in the Court of Senior Civil Judge, Kotri with the following prayers:-

- a. That this Honorable court may be pleased to declare that the plaintiffs are exclusive owners of said land Viz Survey No. 110 (9-36 acres) Survey No.111 (9-26 Acres) of Deh Kastor, Taluka Kotri (presently Manjhand) and Survey No.2 (27-15 acres) Survey No.8 (37-04 acres) and Survey No.9 (47-04 acres) of Deh Dabri Katcho Girmani, Total area 131-05 Acres Taluka Kotri (presently Manjhand) District Jamshoro.
- b. To declare the lease/contract commencing from 2004/2005 in favour of defendant No.5 by defendant No.2 of suit land owned by plaintiffs is illegal, void, malafide, exparte, without consent, knowledge, acquiring compensation for infringement of rights, so also against the mandatory provision of land Revenue Act and Land Acquisition Act 1894 as amended up to 2002 is liable to be cancelled.
- c. That the defendants may be directed to have over the vacant possession of suit land as mentioned in Para No.4 of the plaint to the plaintiffs.
- d. To direct the defendant No.5 and 6 to pay Rs.10,00,000/- (Rupees Ten lacs) on account of damages caused to plaintiffs due to the illegal and unauthorized acts of defendants No.5 and 6 in collusion of defendant Nos.3 and 4 in digging the suit land.
- e. To direct the defendant No.5 and 6 to pay Rs.2,00,000/- (Rupees two lacs) per month from March 2005 as mense profits with interest at bank rate to the plaintiff till the vacant possession of suit land handed over by them to plaintiff.

12. The aforesaid Suit was dismissed on the point of maintainability, and against the said dismissal Civil Appeal was also dismissed with direction to approach District Officer (Revenue) Jamshoro / Land Acquisition Officer for compensation and initiating proceedings under Land Acquisition Act; subsequently the petitioners moved Application to District Officer (Revenue) Jamshoro / Land Acquisition Officer for initiating land acquisition proceedings. The application of petitioners was rejected on 21.4.2010.

13. Prima-facie, the claim of petitioners cannot be adjudicated without recording evidence of the parties for the simple reason that the subject land which is apparently in occupation of private respondents on thirty years lease duly granted by Provincial Government of Sindh which was subsequently not renewed and Petition bearing No.D-8125 of 2018 was preferred before this Court which was disposed of with the following directions:-

- a. Having found no reason to interfere in the discretion exercised by the Respondent No.2 vide the impugned Notifications dated 20.09.2017 and in the impugned decision of the Appellate authority dated 08.11.2018 to not renew the mining leases of the petitioner, the petitions are dismissed for prayer clauses 1 and 2 with the observation that the respondent No.2 is free to take action against the petitioner for possession of the subject area;
- b. The petitions succeed for prayer clause 3 in terms that the impugned notifications dated 09.07.2018 granting mining permits to SLCMC (respondent No.3) having been granted in contravention of Rule 8 of the SMC Rules, the same are without lawful authority and are therefore set aside with no observation that for granting any mining concession in the subject area with proven mining reserves, the respondent No.2 shall invite competitive bids by making public the terms and conditions for the mining concession offered.

14. During the course of arguments, we have been informed that the aggrieved party has assailed the aforesaid findings of this Court before the Honorable Supreme Court by filing C.P.2795/2019 M/s Sindh Lakhra Coal Mining Company (Pvt) Ltd v. Pakistan Mineral Development Corporation thr. its Project Director & others, C.P.443-K/2019 Province of Sindh thr. Secy: Energy Department, Govt. of Sindh and another v. Pakistan Mineral Development Corporation and another, C.A.1539/2019 M/s Sindh Lakhra Coal Mining Company (Pvt) Ltd v. Pakistan Mineral Development Corporation thr. its Project Director & others and the matter is reported to be pending adjudication.

15. We have seen that Petitioner's prayer to quash the order dated 21.4.2010 passed by District Officer (Revenue & Estate) whereby their application was rejected, prima-facie seems to be not maintainable before this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for the simple reason that they have remedy under Revenue laws as discussed supra and it is for them to take resort; besides above and pendency of the case before Honorable Supreme Court, at this stage no conclusive findings can be given by this Court on the issues involved in this matter. As per record the petitioners had already sought declaration for their ownership over the subject land which they have failed to seek and their Appeal too was dismissed, their Application before revenue authority was

also dismissed and thereafter they failed to resort appropriate remedy and exhaust the remedy before the Appellate forum under the hierarchy of Revenue authority or any court of competent jurisdiction and directly approached this court. If this is the legal position of the case, prima-facie, this Petition is misconceived which is hereby dismissed leaving the petitioners to approach the proper forum for such declaration of their title over the subject property, if any.

JUDGE

JUDGE

*Karar_Hussain**