

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

**Revision Application No. 28 of 2008**

Muhammad Naseer & another	-----	Applicants
VERSUS		
Hyderabad Municipal Corporation & others	-----	Respondents

**Date of hearing:** 7.09.2020  
**Date of Decision:** 9.10.2020

Attorney of applicant No.1 present in person.  
Mr. Abdul Rasheed Mughal, Advocate for applicant No.2 to 5  
Mr. Aqeel Ahmed Siddiqui, Advocate for Respondent No.5.  
Mr. Imran Qureshi, Advocate for Hyderabad Municipal Corporation.  
Mr. Allah Bachayo Soomro, A.A.G Sindh.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** In this Revision Application concurrent findings of two courts below are impugned i.e. Judgment dated 16.4.2008 and Decree dated 28.4.2008 passed by learned VII<sup>th</sup> Additional District Judge, Hyderabad in Civil Appeal No. 23/2004, whereby the Judgment dated 12.12.2003 and Decree dated 13.12.2003 passed by learned III<sup>rd</sup> Senior Civil Judge, Hyderabad was maintained.

2. I questioned the maintainability of the instant Revision Application. In reply attorney of legal heirs of Applicant No.1 submitted that his case is within the scope of revisional powers of this court; that the learned Appellate Court did not frame "points for determination" under Order XLI, Rule 31, C.P.C.; that the findings of both the courts below are based upon misreading and non-reading of material evidence on record; that Suit bearing No.235 of 1987 for Declaration, Possession, Mesne Profits and Permanent Injunction filed by Respondent No.5 (deceased) was decreed vide impugned Judgment and Decree dated 12.12.2003 and 13.12.2003 respectively; that dismissal of Appeal No.23 of 2004 preferred by the Applicants against the said judgment and decree by learned VII<sup>th</sup> Additional District Judge, Hyderabad is in utter disregard of mandatory provision of Order XLI, Rule 31 and Order XX, Rule 5 of Civil Procedure Code; that learned Appellate Court was required to give findings on each issue/point in the light of evidence adduced by the parties before the Trial Court; that the judgment and decree passed by both the courts below suffer from misreading and non-reading of facts and law; hence, prayed for grant of this Revision Application.

3. Conversely, learned counsel for Respondent No.5 supported the impugned judgment and decree passed by the respective courts below and argued that the Applicants are encroachers having no right or title over the suit plot bearing No.234/22, Block-C (89 Sq. yards), situated at Quaid-e Azam Colony, Unit No.11, Shah Latifabad, Hyderabad; that Respondent No.5 is *bona fide* purchaser of the suit plot in an auction conducted by Respondent No.1 / Hyderabad Municipal Corporation in the year 1972 and paid 50% cost of the plot; that the Allotment Order issued in favour of Respondent No.5 in the year 1978 is still intact; that due to encroachment over the suit plot by the Applicants, the possession has not been delivered to the legal heirs of Respondent No.5; that concurrent judgments of both the courts below are legal and require no interference by this Court. He lastly prayed for dismissal of this Revision Application being not maintainable.

4. Learned A.A.G. has supported the Notification dated 22.2.1988 whereby Quaid-e-Azam Colony was declared as Katchi Abadi. He further argued that the suit plot belongs to Provincial Government and falls within the ambit of Sindh Katchi Abadi Act, 1987; that the orders passed by the courts below are erroneous.

5. Mr. Imran Qureshi, learned counsel for Respondent No.1 (Hyderabad Municipal Corporation) has refuted the stance of Applicants as well as Respondent No.5 on the premise that after issuance of Notification dated 22.6.1988 the Applicants are not entitled to claim the subject plots because it belong to Katchi Abadi and falls within the ambit of Sindh Katchi Abadis' Act, 1987. At this stage, this Court inquired as to whether Hyderabad Municipal Corporation has any title documents in its favour? Learned counsel replied that at present there is nothing on record to suggest that HMC is/was title holder of the subject plots.

6. I have heard learned counsel for the parties and perused the material available on record.

7. The case and claim of Respondent No.5 is that Respondent No.1 (Hyderabad Municipal Corporation) auctioned the said plot to Respondent 5 as discussed in para No.2 supra, hence a right was created in his favour which could not be extinguished by the official respondents. This stance of the Respondents is refuted by learned counsel for Applicants 2 to 5 on the premise that if the successful bidder fails to comply with the terms and conditions including full payment in time, the competent authority is empowered to resume the said plot and refund the whole amount deposited. In other words, as per auction procedure, the title of the said plot could not be passed to the purchaser till the formalities are completed. He lastly submitted

that since Respondent No.5 did not comply with the said procedure, therefore, he does not have right over the suit land. Hence, Respondent No.5 may seek a refund of the amount from the official respondents.

8. The legal aspect of the case is that under the Specific Relief Act, 1877, declaration can be sought either regarding the right to any legal character or property. In this case, Respondent No.5/Plaintiff sought declaration as to the ownership of the subject plot without a title document. Under the law, such declaration is barred for the simple reason that the subject plot belongs to Provincial Government and falls within the ambit of Sindh Katchi Abadi Act, 1987. Secondly, Respondent No.1 (auctioning authority / HMC) had no title to the auctioned property. Hence, it was not competent to pass the title to Respondent No.5. In this scenario, the Suit No. 235 of 1987 filed by Respondent No.5 in the absence of title of the subject land was held to be not maintainable by both the Courts below.

9. I have gone through the Notification dated 22.2.1988 whereby, Quaid-e-Azam Colony was declared as 'Katchi Abadi'. Therefore, it becomes clear that the suit plot was the property of Government of Sindh and not Respondent No.1/HMC. Hence, the purported auction conducted and subsequent acts done are not sustainable in law. However, it is for the Katchi Abadis Authorities to take decision on the subject plot(s) / land in accordance with law within a reasonable time. An excerpt of the Notification dated 22.6.1988 is reproduced as under:-

Karachi dated the 22<sup>nd</sup> June 1988

#### NOTIFICATION

NOT: SKAA/NOT/KAR-1/88 Whereas the land bearing the particulars mentioned in column 5 of the schedule and comprising the area mentioned in column 6 of the said schedule.

Whereas the said land is occupied unauthorisedly since before 23.3.1985. Whereas the said land has been transferred or finally agreed for surrender in favour of Sindh Katchi Abadis Authority on payment of price/lease money as and when fixed by the Government of Sindh.

Whereas the said Katchi Abadis Authority is satisfied that it is expedient to declare the said areas as Katchi Abadis in order to initiate regularization work.

Now, therefore, in pursuance of the provision of Section sub-section (1) of the Sindh Katchi Abadis Act, 1987, the Sindh Katchi Abadis Authority is pleased to declare the said areas as schedule given below as Katchi Abadis in Hyderabad Division.

#### SCHEDULE

S.No	District	Local Council	Name of Katchi Abadis	Location	Area / Boundaries of Land	Authority Owing Land
1	2	3	4	5	6	7
1-	Hyderabad	HMC	Mumtaz Colony	Part of Comm: site Unit No.11 Latifabad	6.20 Ac.	Satellite Town, Latifabad Hyderabad / Provincial Government
2-	-DO-	-DO-	Taj Colony	Part of converted site Unit No.VI	1.50 Ac.	-DO-

3-	-DO-	-DO-	Quaid-e-Azam	Commercial Area Unit No.XI	6.0 Ac.	-DO-
4-	-DO-	-DO-	Madina Colony	Converted Site Unit No.XI.	1.2 Ac.	-DO-
5-	-DO-	-DO-	Akberabad Colony	Part of Comm: site Unit No.XI	2.5 Ac.	-DO-
6-	-DO-	-DO-	Peoples Colony	Behind Mental Hospital and River Protection Bund in Unit No.IV, Latifabad	2.00 Ac.	-DO-

( Iftikhar Ahmed Alvi )  
Assistant Director (Engg.)  
Sindh Katchi Abadis Authority

10. That in my view, if the findings on a question of law arrived at by both the courts below are based on conjectures or fallacious appraisal of evidence on record then material irregularity/illegality is committed. Hence, interference by this Court in exercise of revisional jurisdiction is warranted under the law. Reference is made to the cases of Jan Muhammad Khan v. Shah Mir Hussain (1985 SCMR 2029), Jam Pari v. Muhammad Abdullah (1992 SCMR 786), Muhammad Sain v. Muhammad Din (1996 SCMR 1918) and Nazir Ahmad and another v. M. Muzaffar Hussain (2008 SCMR 1639).

11. In the light of the above discussion, I hereby allow this Revision Application under Section 115 Civil Procedure Code. Resultantly, the Judgment and Decree dated 16.4.2008 and 28.4.2008 respectively passed by learned VIIth Additional District Judge, Hyderabad in Civil Appeal No. 23/2004, and the Judgment and Decree dated 12.12.2003 and 13.12.2003 respectively passed by learned IIIrd Senior Civil Judge, Hyderabad are set-aside.

JUDGE