

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

CP No. D- 2385 of 2019

**Present:-**  
**Mr. Justice Nadeem Akhtar**  
**Mr. Justice Adnan-ul-Karim Memon**

Date of hearing:  
& decision: 16.10.2019

Petitioner: Qamar Zaman through Mr. Bheemchand Kolhi,  
Advocate.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through the instant petition, the petitioner is seeking implementation of Notification No. SOJI/8-1(12)2016 (Gaucher Land) dated 17.07.2019, whereby the Government of Sindh, in exercise of powers conferred under Section 144(6) imposed complete ban on cultivation of Government/Gaucher Land in the desert area of District Tharparkar and Umerkot for a period of Ninety days.

2. Petitioner's claim is that he is cultivating land within the vicinity of Makan Heera Detha, Deh Heera Detha, Tapo Tigusar, Taluka Nagarparkar and is facing great difficulties at the hands of the private respondents, who have illegally possessed the Government land duly granted to him vide its Notification dated 17.07.2019; that they are involved in illegal occupation of Government land reserved for "Gaucher" in Makan Heera Detha, Deh Heera Detha, Tapo Tigusar, Taluka Nagarparkar as such the inhabitants of entire area have been seriously affected due to drought situation; that the domestic animals are striving for hunger if the private respondents remains in occupation of Government land reserved for "Gaucher which is the only source of survival of the cattle and other domestic animals; that the aforesaid acts of private respondents are in violation of Section 144 Cr.P.C.

3. We have asked from learned counsel representing the petitioner to satisfy this Court regarding maintainability of the instant petition in view of Notification No.SOJI/8-1(12)2016 (Gaucher Land) dated 17.07.2019, which prohibits cultivation of the said Government/Gaucher land and it is for the Government to enforce the law.

4. Mr. Bheem Chand Kolhi learned counsel representing the petitioner has replied that the act of the private respondents, who are in league with official respondents is illegal, unjustified and without any jurisdiction and abuse of process of law as such the petitioner finding no way has filed the instant petition to protect his valuable rights from the mafia for their illegal business; that there is great apprehension of damage to the life and properties of the petitioner at the hands of respondents. We posed another question to him to show how he claims proprietary rights in the instant petition as no documentary proof has been placed on record to substantiate his assertion. He in reply to the query has argued that respondents No.6 and 7 in spite of aforesaid notification are deliberately allowing unauthorized persons to cultivate the said Gaucher land illegally. He asserted that Revenue Department had reserved the Government land as "Gaucher" throughout District Tharparkar, and in this regard the Provincial Government, from time to time had issued notification by imposing ban for cultivation of such Gaucher land. However, the respondents No.8 & 9 have violated the said notification of the Provincial Government by cultivating the said Gaucher land and forcibly restrained the petitioner and other local persons from grazing their cattle, to which, the petitioner had moved an application to the respondents No.2 and 6 for the action to be taken against respondents No.8 and 9 however, no action has been taken so far. It is further stated that respondents No.8 and 9 have also filed Suit bearing No.130 of 2019 before learned Senior Civil Judge-I, Tharparkar @ Mithi for declaring the subject land as Mohaga land with the allegations that petitioner and official respondents are creating hindrances and not allowing them to cultivate their Mohaga land. It is further stated that the aforesaid Suit has already been dismissed as withdrawn vide order dated 17.11.2017 with permission to file afresh. In support of his contention, he has relied upon the Report of Mukhtiarkar (Revenue) Taluka Nagarparkar (page 49). We again asked him that all the points which he has raised in the present proceedings require evidence, besides that the statutory period of ninety days of the subject Notification

No.SOJI/8-1(12) 2016 (Gaucher Land) dated 17.07.2019 has already expired; he however emphasised that this is a hardship case and can be heard and decided on merits. He lastly prayed for allowing the captioned petition.

5. We have heard the learned counsel for the petitioner on the issue of maintainability and perused the material available on record.

6. The position thus summarized in the principle that no doubt, there is no absolute bar to the maintainability of writ petition, where there are disputed questions of facts, at the same time, discretion lies with this court which under certain circumstances, and it can refuse to exercise. However, considering the aforesaid factual position of the case, it is manifest that there are several disputed questions of facts involved in the present case and Civil Suit in the court of law is the only remedy to go through the relevant record and evidences of the parties and the dispute as agitated by the petitioner in the present proceedings cannot be resolved in writ jurisdiction as this Court has limited jurisdiction in like matters to dilate upon. Since, no right of the petitioner has been established on record, we are of the opinion that the petitioner has recourse under the law, and he is at liberty to avail the same in accordance with law.

7. Before parting with this order, we may observe that if the notification No.SOJI/8-1 (12) 2016 (Gaucher Land) dated 17.07.2019 is still in operation, then the official respondents are bound to implement the same in accordance with law.

8. In view of the aforesaid facts and circumstances, the Writ Petition stands disposed of accordingly.

Let a copy of this order be communicated to the official respondents for information and compliance.

JUDGE

JUDGE

*\*Fahad Memon\**