

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

CP No. D- 3143 of 2018

**Present:**

Mr. Justice Nadeem Akhtar  
Mr. Justice Adnan-ul-Karim Memon

Date of Hearing : 22.10.2019  
Date of Announcement : 05.11.2019  
Petitioners : Shafi Muhammad and others  
through M/s. Imdad Ali R. Unar &  
Ghulam Murtaza Shaikh, advocate  
Respondents : Province of Sindh and others  
through Mr. Allah Bachayo Soomro,  
Addl.A.G. along with Abid Hussain  
Rind DFO Shaheed Benazirabad

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J.-** Through this petition, the petitioners are seeking directions to the respondent No.2 to take disciplinary action against respondents 10 and 11 for their unlawful interference in their lawful business and cultivating possession of their lands with further directions to the official respondents to refer the allotment of their respective agricultural land to the competent authority of Government of Sindh for appropriate decision, in terms of Rule 14 of Sindh Government Rules of Business, 1986.

2. Mr. Imdad Ali R. Unar learned Counsel for the petitioners has contended that the subject land was granted to them by the respondent No.8 by virtue of Section 8 of Colonization Act, 1912; that the names of the petitioners have been entered in the record of rights; that the subject lands are situated in Deh Thatt Rio Kacho in Kacha area and the petitioners are in cultivating possession of the subject lands. He next added that forest department is claiming the subject land without their legal status and have attempted to dispossess the petitioners without any notice. Learned counsel

contends that under the law, they cannot interfere in the matter, which is duly allotted to them by the Revenue Department, Government of Sindh, thus the action of respondent / Forest Department is illegal, unlawful and without justification. He next submitted that Secretary Forest Department is required to take disciplinary action against the District Forest Officers or the matter may be referred to respondents 2 and 3 for onwards submission to the worthy Chief Minister Sindh for decision in this regard; that the proprietary rights of the petitioners cannot be curtailed as the same are protected under Article 24 of the Constitution of Islamic Republic of Pakistan; that the petitioners have not violated the terms and conditions of allotment of their respective lands since its possession. He lastly prayed for allowing the instant petition.

3. Conversely, learned Additional Advocate General, Sindh has raised the question of maintainability of instant petition and referred to the parawise comments filed on behalf of respondent No.4 and has argued that in pursuance of Secretary West Pakistan Land Commissioner Lahore's letter No.DSA-2/59/6652-LC, dated 14.10.1959, the possession of private resumed lands under Martial Regulation No.64 was to be delivered to the Forest Department. He next contended that the subject land was transferred by the Deputy Commissioner Nawabshah to Forest Department vide his office letter No.IR/1105, dated 05.10.1962 and in this regard the Forest Department had paid an amount of Rs.1,444,276 being the cost of the subject land vide cheque No.025001, dated 28.06.1971. Thereafter, the possession of subject land remained with Forest Department; that forest land of Thatt Jagir is well demarcated and the Forest Department is taking action against the encroachers on the direction of Honourable Supreme Court of Pakistan. In support of his contention, he relied upon the notification dated 17.10.1959 and letter dated 01.07.1971 and argued that Forest Department has purchased this land from Government of Sindh, through proper channel which is entered in the area under forest. He also relied upon the minutes of meetings regarding encroachment of forest land dated 30.08.2018. He lastly

referred to order dated 30.10.2018 passed by the Honourable Supreme Court of Pakistan in Civil Petition No.52 of 2018 and prayed for dismissal of instant petition.

4. While exercising right of rebuttal, learned counsel for the petitioners has argued that Mukhtiarkar has admitted their claims that the petitioners were granted lands in Deh Thatt Rio Kacho in Kacha area and not forest land in Thatt Jagir. Learned counsel took us through various provisions of Colonization Act, Revenue Laws and demonstrated that sanctioned lands were personal properties of individual land owners / petitioners, who were required to cultivate and maintain them from their own resources in terms of Section 10 of Colonization Act and no interference is required from the Forest Department. Be that as it may, no authority has been conferred upon all these persons to utilize reserved forest land more than their sanctioned lands if any, which the forest Department shall ensure to protect as per direction of Honourable Supreme Court of Pakistan. As per pleadings, Forest department is disputing the basic status / title of their respective lands, being their property and are in possession of subject lands.

5. We have heard learned counsel for the parties on the point of maintainability of instant petition and perused the material available on record.

6. Basically this petition has been filed against purported harassment / interference by Forest Department; we would not travel beyond the prayer clause and cannot declare that the subject lands belong to the petitioners.

7. Prima facie forest land is in illegal occupation of various encroachers, and the Honourable Supreme Court of Pakistan has taken cognizance in the matter and directed the Provincial Government to immediately take steps to retrieve possession of forest land from the illegal occupants. At this stage learned A.A.G has pointed out that Sindh Cabinet has already taken decision

to retrieve forest land and in this regard has allocated certain funds in the account of forest department.

8. We have seen the Notification dated 17.10.1959 and other documents attached with the comments of forest department, which prima facie, show title in favour of Forest Department.

9. Petitioners claim that they are enjoying title and possession of subject lands in their own right and the said lands do not fall within the forest land. On the other hand, it was vehemently asserted by learned A.A.G. that the subject lands are part and parcel of forest land. This factual controversy cannot be decided by this Court in the present proceedings.

10. In view of the foregoing and more particularly the fact that conflicting and inconsistent documents have been placed by the parties before this Court in relation to the controversy in hand, we find it appropriate that the controversy be left to be resolved by the forums having jurisdiction, for the simple reason that any determination regarding rights and title of the parties in respect of subject land under constitutional jurisdiction is not proper and such questions should be left for the said forums to decide after recording evidence if necessary. However subject to all just exceptions.

11. For the aforesaid conclusion, we do not find this petition maintainable under Article 199 of the Constitution of Islamic Republic of Pakistan which is accordingly disposed of along with pending application(s) for the reasons discussed in the preceding paragraph.

12. Before parting with this order, we deem it proper to direct the Respondents to act strictly in accordance with law and the directions given by the Honourable Supreme Court in the case of Qazi Ali Athar and others v. Province of Sindh and others.

JUDGE

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