

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

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

**C.P. No. D- 1578 of 2017**  
(Muhammad Uris V/S Province of Sindh and others)

**CP No. D- 3437 of 2017**  
(Syed Hussain Abbas V/S Province of Sindh and others)

**CP No. D- 3800 of 2017**  
(Muhammad Ayooob and another V/S Province of Sindh and others)

**CP No. D- 339 of 2018**  
(Ashfaque Ahmed V/S Province of Sindh and others)

**CP No. D- 494 of 2018**  
(Ali Mardan V/S Province of Sindh and others)

**CP No. D- 898 of 2018**  
(Shahbaz Ali and another V/S Mola Bux and another)

**CP No. D- 920 of 2018**  
(Shaikh Nabi Bux V/S Mukhtiarkar Revenue Nagarparkar and others)

**CP No. D- 2933 of 2018**  
(Dolat Khan V/S D.C. Tando Allahyar and others)

**CP No. D- 3216 of 2018**  
(Mir Hassan and others V/S Province of Sindh and others)

**CP No. D- 300 of 2019**  
(Hyder Bux V/S Province of Sindh and others)

**CP No. D- 521 of 2019**  
(Rights Now Pakistan and others V/S Province of Sindh and others)

**CP No. D- 538 of 2019**  
(Muhammad Arif and others V/S Province of Sindh and others)

**CP No. D- 635 of 2019**  
(Mst. Bibi Sakeena and others V/S Province of Sindh and others)

**CP No. D- 655 of 2019**  
(Hidayatullah V/S Province of Sindh and others)

**CP No. D- 1524 of 2019**  
(Noor Muhammad V/S Province of Sindh and others)

**CP No. D- 1544 of 2019**  
(Dilshad Khan and others V/S Province of Sindh and others)

**CP No. D- 1763 of 2019**  
( Noor Hassan V/S Province of Sindh and others)

**CP No. D- 1857 of 2019**  
(Sikandar Ali V/S Province of Sindh and others)

**CP No. D- 2035 of 2019**  
(Fateh Muhammad and another V/S Province of Sindh and others)

**CP No. D- 2320 of 2019**  
(Shah Muhammad and others V/S Province of Sindh and others)

Date of hearing & decision : **26.11.2019**

M/S. Manzoor Ahmed Panhwar, Omparkash H. Karmani, Nihal Khan Lashari.

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

### **ORDER**

**ADNAN-UL-KARIM MEMON J.** – The above referred Constitutional Petitions are being disposed of by this common order as the issue raised therein is similar in nature.

2. Petitioners in all the petitions have mainly prayed for direction to Mukhtiarkar / Revenue Officer concerned to demarcate their respective lands.

3. Learned Counsel for the petitioners, argued that the Mukhtiarkar concerned has expressed his reluctance towards demarcation of their respective lands on the premise that the demarcation could not be carried out due to certain objections ; that he has to exercise the powers for demarcation of the land, but has failed to perform his duty ; and, that the petitioners moved various applications to the Director Settlement Surveys & Stamp and Mukhtiarkar concerned for demarcation under the relevant law and rules but all their efforts went in vein. Learned Counsel further stated that the official respondents turned deaf ear to the petitioners' grievances, compelling them to approach this Court. They lastly prayed for direction to the Revenue Officer concerned and Director Settlement Surveys & Stamp to carry out the demarcation of their respective lands in accordance with law.

4. Mr. Allah Bachayo Soomro, learned Addl. A.G, argued that it is the prime duty of Mukhtiarkar concerned to ascertain the entitlement of the person seeking demarcation of land by verifying the legality and genuineness of ownership documents, possession, etc., or dispute, if any ; and, if the case of each of the petitioner is genuine only then the Mukhtiarkar concerned is required to exercise the powers for demarcation of the land under the revenue law. Learned A.A.G. emphasized that the parties have to approach Revenue authorities and Director Settlement Surveys & Stamp for the aforesaid purpose

and not this Court, however, he agreed for disposal of these petitions on the premise that if the petitioners have already approached the Revenue Officers as discussed supra and paid the requisite fee for demarcation of their respective land, he may be directed to do the needful in accordance with law within a reasonable time.

5. We have heard the learned Counsel / parties at length on the point of demarcation of land under the Revenue Law and perused the material available on record.

6. The main questions involved in the present proceedings are whether the official respondents are under legal obligation to demarcate the lands of the petitioners and whether such exercise can be carried out by this Court in these proceedings.

7. To appreciate the aforesaid proposition, we have noticed that there is complete mechanism of demarcation proceedings as laid down Rule 67-A of the Land Revenue Rules, 1968, which provides that (i) if an application under Section 177 of Land Revenue Act, 1967, is made to the concerned Mukhtiarkar (Revenue), he must take action on it provided it contains all the relevant particulars as provided in Rule 67-A of Land Revenue Rules, 1968 ; (ii) upon satisfaction of the above requirement, the Mukhtiarkar is required to issue notice to all the concerned khatedars / owners followed by a speaking order accepting and/or refusing the same, as the case may be ; (iii) in case the application is accepted, the procedure laid down in Section 117 of the Land Revenue Act, 1967, and Rule 67-A of the Sindh Land Revenue Rules, 1968, must be followed by the Mukhtiarkar with the assistance of Settlement Surveys & Stamps Department ; and, (iv) in case of rejection of the application, the procedure of appeal, revision or review is to be adopted, as provided in the above Act and Rules.

8. To resolve the controversy in hand, it is expedient to have a glance on the hierarchy of Revenue authorities, who are specially empowered for demarcation of land as provided under Rule 67-A and Section 117 *ibid* to define the boundaries, wherein an exhaustive procedure has been provided.

9. On the legal aspect of the case, we have noticed that the petitioners have (a) either availed the remedy by filling applications for demarcation of their respective lands but have not exhausted such remedy as they have approached this court without waiting for the outcome of their said applications, or (b) have not availed the remedy at all as provided in the Land Revenue Act and Rules framed thereunder. In case of refusal or rejection of the application

by the Mukhtiarkar concerned on any ground, the procedure of appeal, revision or review is to be adopted first before approaching this Court.

10. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "*if it is satisfied that no other adequate remedy is provided by law*". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court.

11. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court / forum exercises jurisdiction strictly in accordance with law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons / cases falling under the former category will certainly be jeopardized.

12. Another shocking yet unfortunately common example of petitions alleging harassment is allegations against Government officials, such as officials of Revenue Departments. The allegations in such cases inter alia are, at the instance of private party; demarcation of land is not being done or mutation is not being effected ; etc. Such frivolous and ill-advised petitions are filed directly before this Court despite the fact that the remedies of the acts complained of lie with the Revenue authorities. There is a misconception and trend that in any of the situations discussed above Article 199 of the Constitution can be invoked without availing and exhausting the remedy

provided by law, on the ground of violation of fundamental rights guaranteed by the Constitution. Thus, these types of petitions are one of the major causes of delay in the decision of cases and delivering judgments or recording reasons.

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

Senior Member Board of Revenue Sindh, Mukhtiarkars concerned and Director,  
Settlement Survey and Land Record for compliance.

JUDGE

JUDGE

Karar\_hussain/PS\*