Order Sheet

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

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

CP No. D- 32 of 2018
(Azizullah V/S Province of Sindh and others))

CP No. D- 102 of 2018
(Mst. Zulekhan V/S Province of Sindh and others)

CP No. D- 507 of 2018
(Mohsin Khan V/S Province of Sindh and others)

CP No. D- 899 of 2018
(Hameedullah and others V/S Province of Sindh and others)

CP No. D- 1151 of 2018
(Ali Gul V/S Province of Sindh and others)

CP No. D- 1224 of 2018
(Jan Muhammad V/S Province of Sindh and others)

CP No. D- 2261 of 2018
(Wagho V/S Province of Sindh and others)

CP No. D- 2784 of 2018
(Huzoor Bux and others V/S Province of Sindh and others)

CP No. D- 2928 of 2018
(Misri V/S Province of Sindh and others)

CP No. D- 144 of 2019
(Leemon V/S Province of Sindh and others)

CP No. D- 358 of 2019
(Mst. Noorunisa @ Fatima and others V/S Province of Sindh and others)

CP No. D- 495 of 2019
(Mashooque Ali V/S Province of Sindh and others)

CP No. D- 637 of 2019
(Manzoor Alam and others V/S Province of Sindh and others)

CP No. D- 1406 of 2019
(Mst. Ilamzadi V/S Province of Sindh and others)

CP No. D- 1690 of 2019
(Mst. Bano V/S Province of Sindh and others)

CP No. D- 1761 of 2019
(Muhammad Anwar Memon V/S Province of Sindh and others)

CP No. D- 1997 of 2019
(Imdad Ali V/S Province of Sindh and others)

CP No. D- 2011 of 2019
(Mst. Anwar and another V/S Province of Sindh and others)

CP No. D- 2114 of 2019
(Ghulam Rasool V/S Province of Sindh and others)

CP No. D- 2221 of 2019
(Rasool Bux V/S Province of Sindh and others)

CP No. D- 2295 of 2019
(Yasir Arfat and others V/S Province of Sindh and others)

CP No. D- 2378 of 2019
(Mst. Nazia V/S Province of Sindh and others)

Date of hearing & decision: 27.11.2019

M/S. Jagesh R. Mullani, Razia Ali Zaman, Mian Taj Muhammad Keerio, Bilawal Bajeer, Faisal Nadeem Abro, Fayaz Ahmed Leghari, Muhammad Hashim Bajeer & Ali Ahmed Palh, advocates for the petitioners.

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

O R D E R

***ADNAN-UL-KARIM MEMON J*, -** All the above referred Constitutional Petitions are being disposed of by this single order as common questions of law and facts are involved therein.

2. At the outset, learned counsel for the petitioners, inter alia, contend that petitioners are legal heirs of deceased persons and mutation in their names is required to be effected in the revenue record in accordance with law ; therefore, they seek direction to Mukhtiarkar / Revenue Officer concerned to hold an open Kachery and effect Foti Khata Badal in their respective names in Revenue Record as provided under Section 42 of Sindh Land Revenue Act, 1967.

3. Mr. Allah Bachayo Soomro learned Addl. A.G contends that the factual controversy cannot be resolved in writ jurisdiction ; hence instant petitions are not maintainable. He emphasized that the parties have to approach the Revenue authorities 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 authorities for the aforesaid purpose, such authorities may be directed to do the needful in accordance with law within a reasonable time subject to production of relevant documentary evidence by the petitioners in order to show that they are the real legal heirs of deceased owners, and subject to scrutiny thereof by the Mukhtiarkar concerned by calling the record from Tapedar of the beat as well as statements of nek-mards of the locality.

4. We have heard the parties at length on the point of Foti-Khta Badal / mutation under the prevailing Revenue Laws and perused the material available on record.

5. Section 42 of Sindh Land Revenue Act, 1967, provides a complete mechanism for substituting the legal heirs of a deceased khatedar / owner in his place in the revenue record. In case of refusal or rejection of the application for foti-khata badal by the Mukhtiarkar concerned on any ground, the procedure of appeal, revision and review provided in the above Act is to be adopted first before approaching this Court. We have noticed that the petitioners have (a) either availed the remedy by filling applications for change of Foti-Khata Badal in revenue record but have not exhausted such remedy as their applications are still pending before the competent authority(ies) and 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 addition to the above, we have also noticed that in some of the cases there are disputes with regard to the legal heirs of the deceased khatedar / owner or the ownership of the land claimed to have been owned by the deceased khatedar.

6. 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 remedies envisaged in Article 199 prevents unnecessary litigation before the High Court.

7. When a statutory forum is created by law for redressal of grievance in a revenue statute, writ jurisdiction cannot be invoked ignoring the statutory dispensation, as this Court is not a statutory forum of appeal in revenue hierarchy.

8. 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.

9. Cases of the petitioners appear to be wholly misconceived and the instant petitions are not maintainable on the grounds that prima-facie the petitioners have approached this Court for FOTI-KHATA BADAL in its writ jurisdiction without first exhausting the remedy provided to them by law, or in the presence of a dispute with regard to the legal heirs of deceased khatedar / owner or the land itself. Needless to say that Constitutional jurisdiction of this Court cannot be invoked if any adequate remedy is available and the same is not availed / exhausted by the petitioner. Moreover, while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court cannot enquire into any factual controversy. Though learned counsel for the petitioners have tried to explain that all the documents attached with the petitions are genuine and they are the real and only legal heirs of deceased persons, this could only be done after making extensive enquiry and investigation with regard to their assertions and the documents furnished by them. In view of the above, learned counsel have failed to satisfy that how the instant petitions are maintainable.

10. 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 ; Fouti Khata of land is not being changed or mutation is not being effected ; sale certificate of land is not being issued ; demarcation / partition of land is not being effected ; etc. Such frivolous and ill-advised petitions are filed directly before this Court despite the fact that remedies of the acts complained of lie with the Revenue authorities under the Revenue Laws. 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.

11. Before parting with these cases, we cannot resist ourselves in observing that because of cases like these, which on the face of it are not maintainable, precious time of this court is consumed which could have been conveniently utilized in hearing and deciding genuine cases / disputes pending disposal. These types of petitions are one of the major causes of delay in the decision of genuine disputes pending before this Court and delivering judgments or recording reasons therein. Therefore, office is directed not to entertain such petitions for Foti-Khata Badal / mutation / demarcation / partition / issuance of sale certificate 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, (c) any factual controversy with regard to the ownership or possession of the subject land and/or legal heirs is involved, or any litigation in respect thereof is sub judice before any forum.

12. These petitions thus are found to be misconceived and not maintainable and are accordingly dismissed along with the pending application(s) with no order as to costs. However, petitioners will be at liberty to avail and exhaust their remedy, if any, as provided under the law.

JUDGE

JUDGE

Karar_hussain/PS*