

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

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

**C.P. No.D-2021 of 2011**

Tahir Muhammad                      versus                      Government of Sindh & others

Date of hearing  
& decision:                      12.12.2019

Mr. Mazhar Laghari, advocate for the petitioner.  
Mr. Allah Bachayo Soomro, Addl. Advocate General, Sindh

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, the petitioner has prayed for issuance of direction to the concerned authorities to grant lease or Malkana of survey No.271 and 388 admeasuring 8-20 acres.

2. At the very outset, learned Counsel for the Petitioner was confronted as to how the lease in question can be granted in favour of the Petitioner, as apparently the land in question is admittedly within the restriction imposed by Honourable Supreme Court in its various pronouncements regarding lease of government land at through away price. He replied that the petitioner along with his family members have been cultivating survey Nos.271 and 388 admeasuring 8-20 acres, Deh Jamshoro and was being possessed right from 1965 and then from 1975-76 the said land was being leased out by the Government / respondents for ten (10) years periodically and possession thereof was with him and necessary "Abeyana" (Dhall were being paid by the petitioner; that despite the fact that possession of land is with the petitioner and he is paying "Dhal" and last lease was granted to the petitioner in the year 2002 and further lease was being postponed on one and other pretext. However, the petitioner had been making applications / representations to the high ups but of no avail.

3. Prima facie the claim of the petitioner is with regard to grant lease in respect of survey No. 271 and 388 admeasuring an area of 8-20 acres on Malkana basis. Learned A.A.G. at the very outset, however, raised a preliminary objection vis-à-vis maintainability of the instant petition, inter alia, on the ground that none of the respondents is / or entitled to grant any such lease in respect of the aforesaid survey numbers in favour of the petitioner. He next submitted that Deputy Commissioner Hyderabad / Taluka

Mukhtiarkar Qasimabad have no authority to grant any concession to the petitioner.

4. We have heard the learned counsel for the parties and have perused the material available on record.

5. In the light of foregoing factual position of the case, it would be beneficial to refer the order dated 11.9.2009, passed by the honorable Supreme Court of Pakistan in Suo Moto case No.14 of 2009 wherein it is held that:

No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, which land or asset essentially belong to the People of Pakistan. It was patently mala fide exercise of power. This Court further ordered that the grants of lands to the petitioner specially in the manner, the same was done are prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause) and Article 31 of the Constitution of Islamic Republic of Pakistan which requires the State to endeavour to promote observance of Islamic moral standards and Article 38 of the Constitution which inter alia requires the State to secure the well-being of the people by preventing concentration of wealth in the hands of a few to the detriment of general interest. The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam.

6. In another case, reported as 2014 SCMR 1611, it was held with regard to manner of exercise of powers by an authority regardless of its status that:

13. Looking at the powers of the Chief Minister for allotment of public property, here a reference to the case of Iqbal Hussain v. Province of Sindh through Secretary, housing and Town Planning Karachi and others (2008 SCMR 105) will be useful wherein this court has observed as under:-

“3. We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in (i) Abdul Haq Indhar v. province of Sindh (2000 SCMR 907 and (ii) Taj Muhammad v. Town Committee (1994 CLC 2214)  
(Underlining has been provided for emphasis).

7. The Hon'ble Supreme Court in the case reported as Province of Sindh through Chief Secretary and 8 others v. Syed Kabir Bokhari (2016 SCMR 101), had the occasion to deal with somewhat similar facts.

8. In view of the above facts and circumstances of this case, since apparently the grant of lease in question comes within the restriction imposed by the Hon'ble Supreme Court regarding grant of lease for 99 years or conversion from 30 years lease to 99 and on other ancillary issues in Suo Moto case No. 16 of 2011 and since no satisfactory reply has been given for grant of lease in respect of the land in question, therefore, the instant Petition is dismissed along with pending applications.

**JUDGE**

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