

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- 3031 of 2018**

(Sajidullah Memon V/S Secretary Irrigation & others)

Petitioner : Sajidullah Memon through Mr. Aamir Ali Memon,  
Advocate.

Respondents 8-10 : through Mr. Wafa Nawaz Ali Shar, Advocate

Respondents 1-7 : through Mr. Allah Bachayo Soomro, Addl.A.G.  
along with Ghulam Mustafa Shar, Mukhtiarkar  
Matiari.

Date of hearing  
& decision: 18.12.2019

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through this petition, the petitioner is seeking direction to the Respondent No.2 to ensure removal of encroachment from the Government land in front of survey No.426 situated at Deh Sahib Sama Taluka and District Matiari.

2. The case of the petitioner is that he is owner of survey No.426 admeasuring 1-31 acres situated at Deh Sahib Sama Taluka and District Matiari and is also owner of land which is 133-00 acres of his family since 1981; that there is a piece of Government land in front of survey No.426, the said piece of land has been protected by the petitioner; that in the year 2015 respondent No. 8 illegally occupied the said piece of land and to protect his illegal possession filed F.C. Suit No. 91 of 2015 before Senior Civil Judge Matiari on the basis of false and manipulated documents. The said suit was dismissed vide judgment dated 18.9.2017; against the said judgment he filed appeal which was also dismissed by learned Additional Sessions Judge Matiari vide judgment dated 23.10.2017. Subsequently the respondent No.8 also occupied the ditch of water situated in survey No.426 and also dispossessed the petitioner from his 00-10 acres land, hence the petitioner filed Complaint No.08 of 2015 before Additional Sessions Judge Matiari which was dismissed and against the said order petitioner filed Criminal Acquittal Appeal No. 240 of 2017 before this Court. Subsequently the

petitioner approached the Irrigation Department to take legal action against respondent No.8, upon which respondent No.6 issued letter dated 2.11.2017 to SHO Police Station Matiari for taking action against respondents 8 to 10 but all in vain; that since the mohag-land was encroached by respondent No.8 and the petitioner was unable to reach his lands, he approached respondent No.2 through application dated 5.7.2018 for allotment of piece of government land. The said application was not replied hence the petitioner moved another application on 2.8.2018 but the same was also not replied by the Irrigation Department hence the petitioner has filed the instant petition with the above prayers.

3. Learned counsel for the petitioner, respondents 8, 9 and 10 and learned A.A.G have been heard at considerable length.

4. It appears that private respondents 8, 9 and 10 had filed a suit for declaration in respect of the subject land by claiming that the same has been purchased by them from Government of Sindh. It is an admitted position that the said suit filed by them was dismissed and the appeal filed by them against such dismissal was also dismissed. Despite the above, they are still in possession of the subject land. Record shows that the official respondents have approached the police on numerous occasions for restoration of possession of the subject land, but the SHO concerned did not take any action against the private respondents / encroachers nor did he register any FIR against them. The grievance of the petitioner is that the private respondents / encroachers are not allowing him to have access to his land, and unless the subject land is vacated by the encroachers, the petitioner will not be able to have access to his land. Private respondents 8, 9 and 10 have refuted the claim of the petitioner.

5. The petitioner and the official respondents claimed that the subject land is Government land and is in illegal occupation of private respondents 8, 9 and 10. Whereas, the said private respondents strongly asserted that the land in their occupation is not Government land, but is a village and they are residing in the said village since last more than 50 years. In order to ascertain the correct factual position, Mukhtiarkar concerned was directed to submit a report whether the land described in paragraph 3 of the petition is Government land or not, and whether the private respondents 8, 9 and 10 are in possession thereof, and the above exercise was to be completed by him in the supervision of learned Civil Judge / Judicial Magistrate concerned. The above order was passed on 6.11.2019 with the consent of learned counsel for the parties and learned A.A.G., whereby learned Civil Judge /

Judicial Magistrate and Mukhtiarkar concerned were also directed to submit their compliance reports.

6. In compliance of aforesaid order dated 06.11.2019, report dated 03.12.2019 has been submitted by learned Civil Judge / Judicial Magistrate wherein it has been confirmed that respondents 8 to 10 are in possession of Government land belonging to the Irrigation Department. The Mukhtiarkar has also submitted his report dated 03.12.2019, relevant portion whereof reads as under:

*“Para Nos. 3 of the petition. “That there is a piece of Government land in-front “Mohaga” of S.No.426 and the said piece of land has been protected by the petitioners since ownership which is originally belongs to Government of Sindh Irrigation Department”*

*Reply of respondent No.3. “It is submitted that the Technical Survey Team along with Tapedar of the beat has demarcated a Mohaga in front of S.No.426, the said piece of land belongs to Irrigation Department.*

*Question raised by Honourable High Court of Sindh*

*“ whether the private respondents No. 8, 9 and 10 are in possession thereof.*

*Para Nos. 4 of the petition. “ That in the year 2015 the respondent No.8 illegally occupied the said piece of Government land and to protect his illegal possession a Civil Suit being F.C. Suit No. 91 of 2015 (re-Photo Khoso V/S P/O Sindh and others) has been filed before the Honourable Senior Civil Judge Matiari on the basis of forged and manipulated document, and finally said F.C. Suit was dismissed on dated 18.09.2017 with the observation as under:-*

*“The plaintiff seems to have committed fabrication of record and on the basis whereof has malafidely file the belated present suit to defect that the actual owners enjoying the registered title document, evident from Revenue record”.*

*Reply of para Nos. 4. “ It is submitted that the disputed “Mohaga” of S.No.426 is occupied by Photo Khoso, Ashraf Khoso and Abbas Khoso (respondent No.8, 9 and 10). On the remaining area of water pond, Irrigation Bungalow, vacant plot and khata houses of above name persons since long are situated at the site which is shown in yellow colour in Dasti sketch.*

*It is further prayed before the Honourable Court that Survey Team found khata houses, a Government Primary School and Mosque at survey No.426, whose record is shown in Green colour in Dasti sketch. The S.No.426 area 1-31 acres is entered in the name of Sajidullah s/o Muhammad Bux Memon vide entry No.48 of V.F. VII-A Re-Writing of Deh Sahib Saman Taluka Matiari.*

*Such report of Supervising Tapedar, Tapedar of the beat and Inspector of Revenue of Settlement Department along with copy of Record of Rights and Dasti sketch submitted herewith for kind perusal of the Honorable Court.”*

7. In view of the above reports submitted by learned Civil Judge / Judicial Magistrate and Mukhtiarkar Matiari, this petition is allowed to the extent of removal of encroachment from the subject land by the Deputy Commissioner Matiari within three (03) months from the date of receipt of this order and submit compliance report to this Court through Additional Registrar. In case of non-compliance, the Deputy Commissioner concerned and all persons / respondents responsible for not complying with this order in letter and spirit shall expose themselves to contempt proceedings.

JUDGE

JUDGE

Karar\_hussain/PS\*