

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 5406 OF 2016

PRESENT:

MR. JUSTICE NADEEM AKHTAR

MR. JUSTICE ARSHAD HUSSAIN KHAN

Petitioner Through Mr. Hakim Ali Mallah, Advocate

Respondents Through Mr. Miran Muhammad Shah, Addl. A.G.
1-6

Respondent Through Mr. Ravi R. Pinjani, Advocate
No.7:

Date of Hearing 23.11.2016

Date of judgment ____ .12.2016

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through the instant constitutional petition has prayed as follow:-

- i) *To direct the respondents No.1 to 3 to cancel illegal and unlawful grants of land made to respondent No.7 in accordance with law.*
- ii) *To direct the respondents No.1 to 3 to restore the fundamental rights of petitioner/villagers of District Thatta in connection of their villages grants / amenities in accordance with law.*
- iii) *To direct the respondents No.1 to 7 not to harass, humiliate, dispossess the petitioner / villagers from their legal and lawful houses, villages, schools, graveyards and grants without due process of law.*
- iv) *To direct the respondent No.8 to conduct inquiries regarding the illegal grants made to the respondent No.7 by the respondents No.1 to 3 by way of illegal manner and illegal facilitation.*
- v) *Any other relief or relieves which this Honourable Court deem fit and proper under the circumstances of the case.*

2. Brief facts leading to the filing of the present petition as averred therein are that the petitioner is the resident of Village Ishaque Jokhio, P.O. Gharo, Tehsil Mirpur Sakro, District Thatta, herein after referred to as the 'said village'. It is also averred that province of Sindh through a special notification has illegally granted the land of said village to

respondent No.7, at a throwaway price. Furthermore, respondents No.1 to 6, in order to facilitate Respondent No.7, illegally cancelled amenities of the petitioner and other residents of the said village without due course of law and subsequently, started extending threats to demolish graveyard, mosque school etc. of the said village. It is also averred that respondent No.7 has no right and legal status to enter into the petitioner's ancestors' old village 'Ishaque Jukhio'. It is also averred that petitioner as well as other resident of the said village are constantly facing harassment at the hands of respondents No.1 to 6 at the behest of respondent No.7. It is also averred that the residents of the village of petitioner, against illegal act of present respondents, had also filed a civil suit bearing F.C. Suit No.74 of 2012 before the Senior Civil Judge, Thatta. However, plaint of said suit was rejected by the learned trial Court on 25.04.2013. Against the said order, a Civil Appeal was preferred before the IInd Addl. District Judge, Thatta, and the said appeal was also dismissed. The petitioner having no alternate remedy available to him has filed the present petition.

3. Before issuance of notice, when the matter came up for hearing this Court directed the counsel for the petitioner to satisfy the Court about maintainability of the present petition as the reliefs claimed in the present petition are similar as that of reliefs sought by other villagers in civil Suit No.74 of 2012, plaint whereof was rejected for want of legal character as the villagers failed to produce any documentary proof, which could justify their claim over the land in dispute.

4. The counsel for the petitioner, on the next date i.e. 01.11.2016, made his submission, however, this Court was not satisfied with the submissions made by counsel for the petitioner as the entire land of the village in question including land claimed by the petitioner was not allotted or granted to the residents of the said village. This Court also observed that entire claim of the petitioner was based on possession of the land of the village and he has alleged violation of purported fundamental rights. Nevertheless, in the interest of justice, in order to provide last opportunity to the petitioner, notices were issued to the respondents as well as learned Advocate General Sindh with direction to the petitioner to satisfy the Court on the next date as to how the present petition is maintainable in view of the facts that the petitioner

and other villagers of the said village are not in possession of the title documents in respect of the subject land.

5. On 23.11.2016, we have heard counsel for the petitioner and the respondents as well as Additional Advocate General Sindh; with their assistance also perused the available record.

6. Learned counsel for the petitioner argued that the petitioner being old resident of village in question has the right over the property. However, he did not place on record any documentary evidence, which could substantiate title of the petitioner over the land in question. The record further reveals that other residents of the village earlier filed F.C. Suit No.74 of 2012 before the Senior Civil Judge, Thatta and the plaint of said Suit was rejected vide order dated 25.04.2013 by the learned Senior Civil Judge passed on application under Order VII Rule 11 read with Section 151 CPC. Operative part of the said order reads as follows:

"I have perused the copies of the documents annexed with the plaint, which reveal that the plaintiffs have neither annexed proper documents in the name of their ancestors, nor they annexed any authentic documents in their names. So also, they have not annexed any copy of the notification showing that the villages in question have been sanctioned by the concerned authorities, or not. The record clearly reveals that the plaintiffs have no legal character or Locus Standi to file the present suit against the defendants. Moreover, the plaint does not disclose a proper cause of action. Considering the copies of the documents annexed with the plaint, I am of the view that the present suit is not maintainable in law and barred by the provision of section 42 of the Specific Relief Act 1877. I, therefore, reject the plaint under order VII Rule 11 CPC. The present application stands allowed, with no order as to costs."

[Emphasis supplied]

7. It is also imperative to mention here that the petitioner with the memo of present petition annexed copy of order dated 26.04.2001 passed in civil appeal No.36 of 2000, which reflects that there were some earlier litigations in the year 2000 much prior to the present round of litigation in respect subject land, however, neither in the petition anything in this regard has been mentioned nor learned counsel for the petitioner disclosed about the same during the course of his arguments. Hence, non-disclosure of earlier litigation is concealment of facts and such conduct of petitioner disentitled him to the grant of any relief in exercise of extraordinary jurisdiction of this Court, which is discretionary in nature.

8. Besides above, it was incumbent upon the petitioner to show his locus standi and to establish his legal right over the land in question by placing on record title documents but despite clear directions the petitioner has placed no such document to strengthen his claim over the land and the allegations emphasized in instant petition. Furthermore, the petitioner raised disputed question of fact, which cannot be decided in the constitutional jurisdiction of this court.

9. The upshot of the above discussion, we are of the considered view that in absence of any legal right of the petitioner over the property in question, the position of the petitioner in the eyes of law is nothing but unauthorized occupant of the property in question, hence the petitioner does not have *locus standi* to maintain the present petition and as such the same is not maintainable. Consequently, the present petition being devoid of any legal substance is liable to be dismissed.

Foregoing are the reasons for our short order dated 23.11.2016, whereby the petition along with listed application was dismissed with no order as to cost.

JUDGE

JUDGE