

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-5314 of 2021

Date

Order with Signature(s) of Judge(s)

Priority:

- 1.For order on office objection.
- 2.For order on CMA No.22128/2021.
- 3.For hearing on CMA No.22124/2021.
- 4.For hearing of main case.

21.12.2021

Mr. Muhammad Mansoor Mir, Advocate for petitioners.
Mr. Mehran Khan, A.A.G., Sindh along with Mr. Asif Ali,
Mukhtiarkar Mirpur Sakro, District Thatta.

Learned A.A.G. files joint parawise comments of the respondents No.2 and 4 to the petition with supporting documents, which is taken on record; copies whereof is supplied to the learned counsel for the petitioners.

Through instant petition, the petitioners, inter alia, seek following reliefs:-

- i. Issue Writ of Mandamus, directing all the official respondents and/or any other public body concerned to immediately remove all of the encroachments erected or established upon the subject land by respondents No.6 to 27, their agents, employees and/or anyone acting on their behalf or claiming through them, or any other person for the time being in illegal possession of the subject land that legally belonging to the petitioners.*
- ii. Issue a Writ of perpetual injunction against the respondents No. to 27 and/or their employees, assignees, licensees and/or anyone acting on their behalf or claiming through them, jointly and severally, directing them not to encroach upon the subject land ever in future in any way from or method and never to permit any kind of encroachments to be established thereon by anyone.*

It is alleged that the land bearing Survey Nos.384, 385, 386, 406/1-2, 315, 316, 333, 334, 351, 352 and 366/1-2, admeasuring 106-26 acres, situated in Deh & Tapo Gujjo, Taluka Mirpur Sakro is owned by the petitioners jointly being successor in interest of their predecessor, namely, deceased Abdul Sattar, which is duly mutated and demarcated by the respondent No.4 [**Mukhtiarkar, (Revenue), Mirpur Sakro**] through verified mutation record (*Photocopy of the Deh Form-VII is available as annexure P/5, page 33-35 of MoP*). It is further alleged that the respondents No.6 to 27 are occupants of about 08 acres of land falling in Survey No.365/1&4, which land is located adjacent to the subject land of the petitioners; however, they have encroached upon the adjoining land/portions of the subject land of the petitioners. It is further case of the petitioners that they made number of applications to the officials respondents for the removal of the said encroachments; who have given reports in favour of the petitioners and against the private respondents. Besides, the respondent No.2 (**Assistant Commissioner, Mirpur Sakro**) initiated a series of hearings and the respondent No.4 issued vacation notices to respondents No.6 to 27 but none of the said respondents have yet vacated the land occupied by him/them illegally by constructing houses and carrying on cultivation thereon; hence, this petition has been maintained.

It appears from the perusal of the parawise comments submitted by the respondents No.2 and 4 and the documents annexed therewith that the petitioners are the lawful owners of the subject land and in respect thereof the respondent No.2 on 08.03.2021 submitted a report to Additional Deputy Commissioner, Thatta on the application of petitioner No.1 dated 14.11.2020 addressed to respondent No.3 (**Deputy Commissioner, Thatta**). The concluding paragraphs thereof being necessary for disposal of this petition are reproduced, as under:-

“From the perusal of documents adduced on record viz. Rubkari issued by the Mukhtiarkar Mirpur Sakro vide his letter No. Mukh/ 789/2020, dated 30.09.2020 to the applicant in which he has clearly mentioned that verification of relevant record shows that B. No.315, 316, 351, 352, 384, 385, 386 & others total area 165-20 acres of Deh Gujjo is entered in the name of Shaikh Naseem Ahmed S/o Abdul Sattar and others vide entry No.155 dated 15.02.2019 VF.VII-B. The Revenue team identified the boundaries by marking at the land and prepared sketch of the site that Mr. Ghulam Nabi Paliyo and others have illegally established village in B. No.386/3, 4 area 08-00 acres and illegally cultivated B. No.366/1,2(08-00) acres and issued direction to Tapedar to serve notice to the concerned with the direction to not cultivate the agricultural land B. No.366/1,2 without permission of land owner and seek permission of the owner for the illegal establishment village in B. No.386/3,4 area 08-00 acres.

Looking to the facts and arguments of the learned Advocate argued on the record and perused documents adduced on record, it transpires that applicant Shaikh Naseem Ahmed S/o Abdul Sattar & others hold agricultural land bearing B. No.315, 316, 333, 334, 351, 352, 384, 385, 386, 366/1,2, 406/1,2 & 407/1,2 total admeasuring 165-20 acres and the same mutated in the record of Rights vide entry No.155 dated 15.02.2019 of VF.VII-B Deh Gujjo and the same is intact in the Record of Rights, whereas the opponent party failed to produce any documentary proof in their favour and opposed the claim of applicant on the plea that their village is established since 100 years, but they failed to provide single documentary proof etc. regarding sanctioned of village through Sindh Goth Abad Scheme or any allotment order neither any sign of village available in the Deh Map”.

It reflects from the above, that the private respondents have illegally occupied a portion of subject land in Survey No.386/3,4 & 366/1,2 admeasuring 16 acres (in each 08.00 acres) and such proceedings for the eviction of the private respondents is pending adjudication before the Revenue Official(s).

It may be relevant to refer here sub-Section (2) of the Section 122 of the Sindh Land Revenue Act, 1967 which authorizes the Collector to evict any land owner who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims. Besides, Rule 67-B of the Sindh Land Revenue Rules, 1968 provides a procedure for the eviction of the unauthorized land owners which reads as under:-

- “(1) For the purpose of eviction of a land owner under Section 122, the Collector shall cause a notice to be served on the land owner in form XXXIII-C, in the manner provided in sub-rule-5 of rule 67-A to appear before him on the date mentioned in the notice.*
- (2) After hearing the parties as may be present and examining the record of the demarcation proceedings, the Collector may:-*
- (a) direct demarcation proceedings to be taken afresh under rule 67-A if he is satisfied that the land owner had no knowledge of the demarcation proceedings or there has been any material irregularity in the proceedings; or*
- (b) Unless the land owner offers to vacate the land within thirty days of the last hearing, order his eviction there from and issue a Warrant of eviction in Form XXXIII.D, to be executed by an Officer, of not below the rank of Supervising Tapedar, with or without police aid:*

Provided that where an intricate question of law or title is involved, the Collector shall not pass any order and leave the matter to be decided by the Civil Court of Competent Jurisdiction”.

Since the adequate remedy is available to the petitioners for redressal of their grievances in Revenue hierarchy and the respondent No.3 has already initiated proceedings upon the complaint/application

of petitioner No.1, dated 14.11.2020, and in respect whereof the respondent No.2 has submitted his report, dated 08.03.2021, we deem it appropriate to dispose of this petition, alongwith all pending applications, by directing to respondent No.3 to expedite the matter and decide the same in accordance with law within a period of 90 days hereof and submit such compliance report to this Court through MIT-II.

JUDGE

JUDGE

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