

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD

**C.P No.D-2063 of 2012**

(Haji Dodo Khan & Ors versus Province of Sindh & Ors)

**C.P No.D-2198 of 2012**

(Asghar Builders & Constructions Company versus Province of Sindh & Ors)

***BEFORE:***

*Mr. Justice Muhammad Iqbal Kalhoro*  
Mr. Justice Adnan-ul-Karim Memon

None present for petitioners in C.P No.D-2063/2012

Mr. Muhammad Arshad Pathan, advocate for petitioner in C.P No.D-2198/2012 and for respondent No.14 in C.P No.D-2063/2012

Mr. Muhammad Sachal Awan, advocate for private respondents in C.P No.D-2198/2012

Mr. Allah Bachayo Soomro, Additional A.G Sindh

Date of hearing & decision: 14.12.2021

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** By this common judgment, we intend to dispose of both the captioned petitions, as both are based on the interconnected issue.

2. In C.P No. D- 2063 of 2012 the petitioners have challenged the agreement dated 06.08.2012 entered into between Additional Deputy Commissioner and M/s Asghar Builders & Constructions Company Larkana / respondent No.14 for construction of shops, hotel & rest house over the Government plot adjacent to Tapedar Dera & Old Office of defunct Deputy District Officer (Revenue), Sehwan as well as deplorable quarters of Revenue Department situated in Sehwan. Whereas, in C.P No. D- 2198 of 2012 the petitioner - M/s Asghar Builders & Constructions Company, who is respondent No.14 in the connected petition, has impugned the order dated 21.11.2012 issued by Deputy Commissioner Jamshoro in compliance with the letter dated 20.11.2012 issued by Senior Member Board of Revenue, whereby work order dated 18.09.2012 issued in pursuance of the aforesaid agreement was withdrawn/ cancelled.

3. Despite notice, no one is appearing on behalf of the petitioners in C.P No. D- 2063 of 2012. Principally, the said petition (**2063/2012**) has become infructuous, as the agreement and letters challenged therein had already been withdrawn/ canceled by Deputy Commissioner Jamshoro, perhaps this is the reason the petitioners are not pursuing this petition. Accordingly, this petition bearing No. D-2063 of 2012 stands disposed of having become infructuous. So far as connected petition bearing No. D- 2198 of 2012 is concerned; we have heard the counsel for the respective parties on the subject issue.

4. Mr. Muhammad Arshad S. Pathan, representing the petitioner, has argued that respondent / Additional Deputy Commissioner-II for Deputy Commissioner Jamshoro entered into an agreement dated 06.08.2012 with the petitioner concerning subject work, as discussed supra, after observing all the codal formalities and after issuance of work order dated 18.09.2012, petitioner was handed over possession of an area of 11000 square feet of dilapidated and deplorable Quarters as well as an open area of 2250 square feet for construction of shops, hotel, and rest house, as agreed upon in the aforesaid agreement. He next argued that soon after the issuance of work order the petitioner started construction work and incurred more than two million in the shape of material etc; however, suddenly the work order was canceled through impugned order dated 21.11.2012 issued by Deputy Commissioner Jamshoro, without assigning any reason or notice and without hearing the petitioner. He also argued that the petitioner was assigned the subject work with the approval of competent authority i.e. Commissioner; however, the same was canceled in response to the letter dated 20.11.2012 issued by Senior Member Board of Revenue, which is illegal, void-ab-initio, and without lawful authority. He further argued that the petitioner had already started the subject work and incurred a huge amount; hence the cancellation of the work order, without assigning any reason or issuing notice is against the basic principle of natural justice. He, therefore, prayed that petition may be allowed by declaring the letter dated 20.11.2012 and order dated 21.11.2012 as illegal, unlawful, and without lawful authority.

5. On the other hand, Mr. Muhammad Sachal R. Awan, representing the private respondents, vehemently opposed the petition and argued that the Deputy Commissioner/ Commissioner had no authority to agree with the private builder for construction of shops, hotels, and rest house over the Government property. He next argued

that respondent No.2 / Sr. Member Board of Revenue is the custodian of government property/land. He prayed that since the basic document viz. agreement dated 06.08.2012 was illegal, therefore, cancellation of work order issued based on that agreement was strictly under law, as such petition is not maintainable and the same is liable to be dismissed.

6. Learned Additional A.G adopted the arguments advanced by the counsel for private respondents and further added that as per Statement of Conditions, issued under Section 10(2) of Colonization of Government Lands Act, 1912 the authority /powers in respect of grant of land for construction and/or for any other purpose vests with Board of Revenue and Commissioner and/or Deputy Commissioner has no authority to enter into a contract with private party and if entered, that is in violation of law and Rules of Business of Sindh Government, 1986. He also added that any illegal order passed without authority does not confer any legal right in favor of the petitioner and such sort of acts has already been declared ultra vires to the provisions of the Constitution by the Hon'ble Supreme Court; in this regard, he placed reliance on (i) PLD 1975 SC 58, (ii) PLD 1975 SC 450, (iii) 2006 PLC CS 955 & (iv) PLD 2002 SC 452. He lastly prayed for dismissal of the petition with cost.

7. We have heard learned counsel for parties and perused the material available on record and have gone through the case-law cited as the Bar.

8. The first and foremost question before us is whether the law authorizes the Additional Deputy Commissioner to enter into an agreement with private Builder for construction of shops, hotels, and rest house over the subject property?

9. During the arguments we enquired from learned Counsel for the petitioner as to whether the petitioner had any title over the subject land, who candidly conceded that the petitioner had no title document. However, he submitted that the petitioner is just performing his part of duty as per the contract entered into between the parties under the terms and conditions of the contract agreement dated 06.08.2012 and this is the reason clause-v explicitly show that the Government will remain the owner of the property involved in this scheme and the builder will perform the following acts/functions:-

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(i) That the builder will start construction work of the project as per approval plan as soon as possible.

(ii) That the Builder will not claim any construction cost of the project from the Revenue Department and the builder will also complete construction work at his own cost / expenditure on self finance basis.

(iii) That the Builder will complete the project within (12) months from the date of receiving the work order.

(iv) That the Builder will issue NOC to the particular tenant of the shop and the Revenue Department i.e Assistant Commissioner, Sehwan will issue formal allotment order on rental basis and execute necessary agreement with the tenant, the Builder will also sign on agreement as a witness.

(v) That the construction of the shops / project will be in RCC structure, the Electric Water & Sui Gas connection will born by the tenant himself as per his choice.

10. In our view, this is not a ground to occupy the government land by the petitioner by entering into a contract with the Additional Deputy Commissioner, who is not empowered under the law to sign a contract with the petitioner in respect of state land without permission of the competent authority. For convenience sake an excerpt of Rule 24 of the Sindh Government Rules of Business, 1986 is reproduced below:

“24. (i) Every executive action of Government shall be taken in the name of the Governor. (ii) Save in cases where an officer has been specially empowered to sign an order or instrument of Government, every such order or instrument shall be signed by the Secretary, the Additional Secretary, the Joint Secretary, the Deputy Secretary, the Section Officer to Government, or the Officer on Special Duty in the Department concerned; and such signature shall be deemed to be proper authentication of such order or instrument.”

11. In addition to above the Hon’ble Supreme Court in the case of Province of Punjab through Secretary Revenue and others v. District Bar Association, Khanewal (2014 SCMR 1611), has held with regard to manner of exercise of powers by the executive authority of the province 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:- Page 5 of 6 “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).”*

12. It is also observed that at the relevant point the Honorable Supreme Court of Pakistan in Suo-Moto case No.16 of 2011 has held as under:-

*“7. Under these circumstances, we hereby, until further orders restrain the Government / Revenue Department from mutation, allotment, transfer and or conversion of any state land and or keeping any transaction or entry in the record of the rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term upto 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner / DCO of the relevant districts / Dehs besides others to contempt proceedings”*

13. Since the above-referred judgment of Honorable Supreme Court is still in the field, as such the respondent Additional Deputy Commissioner ought not to have entered into the contract with the private party in respect of state land and should have abide by the decision of Hon’ble Supreme Court, reproduced above, in its letter and spirit. Prima facie the violation is apparent on the face of record, as such consequence shall follow against the delinquent officers/officials, including beneficiary; however, subject to all just exceptions, as provided under the law.

14. In view of the above, we are of the considered view that Additional Deputy Commissioner had no authority to enter into an agreement with private party for construction of hotel, shops and rest house, without permission from the competent authority, as discussed

supra. Even otherwise no person shall have any right or title in the State land until a written order has been passed strictly under the law and allottee/grantee has lawfully taken over the possession in pursuance of such order.

15. In the instant case, neither the subject land was allotted to the petitioner – builder nor did he lawfully obtained possession thereof. At this stage, learned counsel for the petitioner in his abortive attempt to convince this Court that he has been in occupation of the subject land since 2012, therefore the respondents may be directed to consider his genuine request to continue with the aforesaid contract, as he has invested huge amount. In this regard, suffice it to say that the Additional Deputy Commissioner had no power and authority to agree with the petitioner in respect of Government land for construction of shops, hotels, and rest houses. Further, since the basic instrument/ contract is nullity in the eyes of law, therefore, the same cannot be enforced under Article 199 of the Constitution. Even otherwise the said act of the Additional Deputy Commissioner amounts to disposing of the Government land in favor of the petitioner permanently, which too without lawful authority.

16. In view of the above discussion, this petition being meritless stands dismissed along with the listed application(s).

JUDGE

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