

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No. D- 1181 of 2014

(Ms. Allah Bachai Soomro vs. Government of Pakistan & Ors)

Before:-

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

Petitioner : Through Mr. Muhammad Arshad S. Pathan,
Advocate

Respondents 2&3 : Through Mr. Rafiq Ahmed, Advocate
Mr. Muhammad Ismail Bhutto, Addl.A.G.

Date of hearing & Order: 16.12.2021

O R D E R

ADNAN-UL-KARIM MEMON, J: Through this petition, the petitioner has prayed as under:-

- a. To issue writ declaring that the notice bearing No.9/Svy-120/T.J/1803 Dated 03.06.2014 issued by respondent No.2 is illegal, unlawful, ultra vires, void ab-initio, without lawful authority, and is liable to be declared as such.
- b. To declare that respondent No.2 has no right, title, or interest to issue notice dated 3-6-2014 under Section 185 of Cantonment Act without fulfillment of its prerequisite condition where in the map according to their demand and desired already submitted for its approval along with required fee.
- c. To direct respondent No.2 to complete the process of Map/Plan and issue the final challan if any and approved map duly signed as all codal formalities have already been completed by the petitioner and also mutated the GLR and issue the same as the mutation already has been ordered.

2. The case of the petitioner is that plot No.4 formed out of Cantonment No.120, sub-divided No.120/2 admeasuring 1500 sq. feet situated at Tando Jahania, Cantonment Hyderabad was purchased by the petitioner on installments from quality builders in the year 1988 through sale deed dated 22.09.1993 being general attorney of its previous owner namely Syed Inayat Ali Shah; that after due permission from Cantonment Board the petitioner through approved plan for ground plus one got only the ground floor constructed and obtained water

connection and all other amenities and shifted the family and residing there since 1989-90; that the subordinates of respondent No.2 in the year 2004 approached them and asked for approved plan which the petitioner misplaced in shifting of their house, therefore, they again approached the Cantonment authorities, submitted plan for its approval along with fee challan dated 15.4.2004 which was not approved and a notice under Section 185 of the Cantonment Act was issued to the petitioner, which notice dated 03.06.2014 has been called in question through the instant petition.

3. At the outset we asked learned counsel for the petitioner as to how the instant petition is maintainable under Article 199 of the Constitution as the petitioner has a remedy of its outcome if it goes against him.

4. Mr. Muhammad Arshad S. Pathan learned counsel for the petitioner replied to the query and has submitted that the petitioner possesses the legal character and the respondents are attempting to demolish the subject property of the petitioner under the garb of Notice dated 03.06.2014 issued under section 185 of Cantonment Act 1924, which is illegal, unlawful and besides, the said notice is the outcome of misconceiving the legal aspect of the case; that the notice from the face of it bearing Survey No. 120 is false, as the correct Cantonment Survey No. 120/2 and not 120; that the said sub-division of Cantonment Survey was obtained/got subdivided by previous owner Syed Inayat Hussain Shah son of Syed Najaf Ali Shah and such GLR of subdivided number has been made as per Lay Out Plan approved vide CBR No.2 dated 06.02.1986 whereby the area of Cantonment Survey No.120/2 was divided into 05 Plots, such GLR has been issued and on the basis of that lease deed was registered in the name of petitioner vide RD No. 802 dated 30.12.1986 registered before Sub Registrar Hyderabad; however, the respondents purposely and intentionally has not placed a record of Cantonment Survey No.120/2.3; after getting the Plot from quality Builders, approved the building plan of ground plus one and also mutation order but the same was placed before the competent authority which is evident from the notice wherein detail of unauthorized construction given in the notice i.e. "Un-authorized addition / alteration of the first floor"; that this fact proves the approval of building plan and mutation order but the respondents with ulterior motive and with malafide intention purposely and intentionally failed to place the record and entire file of Cantonment Survey No 120/2; that prior to issuing notice under Section 185, no condition of the provision of Section 178(A) onwards Chapter 11 of Cantonment Act 1924 has been fulfilled as

petitioner also placed a plan upon demand and also paid fees vide challan dated 15.04.2014 and so also notice/application dated 10.06.2014 but neither the approved plan was placed before the competent authority nor the application as no any notice or order regarding deficiency/fulfillment towards the requirement in the approved plan has been intimated and direct notice under Section 185 has been given; that previous Section 181(6) provides the time for consideration of the Map and its time limit for approval but even after lapse of such time, the notice dated 03.06.2014 left at the residence of petitioner on 19.06.2014 which is the proof of malafide and non-submission / placement of true and correct record before this court. He lastly prayed that direction may be given to the concerned department quarter/ subordinate to place the file of Cantonment Survey No.120/2 and others wherein the LayOut Plan has been approved by the Cantonment Board in the name and style as "Civil Apartment" by Quality Builders.

5. Mr. Rafiq Ahmed, learned counsel for the respondent-cantonment Board has referred to the objection filed on behalf of respondents No.2 and 3 and argued that the name of the petitioner is not mutated in the GLR; that according to the record of Cantonment Board Land measuring 17-7 acres is bearing GLR No.120 and it is private land and no name of the owner is mentioned in GLR. The said land has been declared Bazar Area by notification No.385 dated 22-05-1937 and such notification was issued by Sindh Secretariat Karachi dated 04th February 1938; that City Mukhtiarkar Hyderabad issued certificate of ownership to certain persons regarding certain area of GLR No.120 and the persons who obtained certificate got their name mutated either in the Deh form of Revenue record or in the record of Cantonment Board, Hyderabad, one Syed Inayat Hussain Shah son of Syed Najaf Ali Shah also obtained the certificate of ownership No.671 dated 27-07-1986 from City Mukhtiarkar for an area measuring 11700 sq.ft and he divided the said area measuring 11700 sq. ft in five plots and an area measuring 3048 was left for the road. The said Inayat Hussain Shah executed Lease Deed in favor of the petitioner and the petitioner has not got his name mutated in the GLR. It is submitted that the ownership certificate issued by the City Mukhtiarkar, Hyderabad was illegal invalid without jurisdiction and the fact of issuance of ownership certificates by City Mukhtiarkar came in the knowledge of the then Commissioner Hyderabad Division who initiated Suo Moto proceedings and canceled all the certificates by passing order dated 05.11.1997 and on account of cancellation of the alleged ownership certificates, the entry effected in the GLR in favor of

the predecessor of the petitioner has become illegal and invalid. It is also submitted that M/s. Syed Widal Shah, Syed Anwar Ali Shah, and Javed Hussain Pathan filed Suit No. 123 of 1997 claiming ownership based on such certificate of GLR No.120 issued by City Mukhtiarkar and the learned 1st Senior Civil Judge Hyderabad dismissed his said suit by Judgment and Decree dated 26.05.2011 and Syed Widal Shah and one Fazlur Rehman who was party in the said case as defendant have filed Appeal Nos. 164 & 165 of 2011 which are pending in the court of Vth Additional District Judge, Hyderabad; further that no application for mutation of the name of petitioner was submitted in the office of respondents 2 & 3 and the respondents 2 & 3 have not granted any permission for construction of building to the petitioner, but the petitioner without any permission of Cantonment Board has constructed building consisting of the ground floor and first floor. The construction raised without permission is illegal and unauthorized; that the petitioner has submitted building construction plan for approval when he has already raised the ground and first floor and he was raising certain additional construction. On account of raising the building, there arises no question for approval of the building plan; that the petitioner is required to submit a plan for regularization and composition of the unauthorized ground floor and first-floor construction and it is the discretion of the Cantonment Board to either demolish the building or to accept the construction by way of composition on such sum as it thinks reasonable according to the official notification issued in the matter. It is also submitted that the title of the petitioner is not valid and hence the matter regarding the composition can only be considered subject to the verification of title; that the petitioner has not submitted any building construction plan in the year 1990. The petitioner did not submit any building construction plan and the construction raised by him is illegal and unauthorized and the remedy lies before the civil court. He lastly prayed for dismissal of the petition with costs.

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

7. The entire premise of the petitioner is based upon disputed questions of fact, already subjected to the detailed objections submitted by respondents 2 and 3, which the petitioner is required to be adjudged afresh on the issuance of notice if the petitioner approaches them, who in return provide him an opportunity of a meaningful hearing and set at naught the issue, within a reasonable time. However, it is settled law

that the adjudication of disputed questions of fact, requiring evidence, etc., is not amenable in exercise of writ jurisdiction.

8. It is settled law that where the fora having jurisdiction had exercised its discretion in one way and that discretion had been exercised on sound principles the supervisory forum would not interfere with that discretion unless same was contrary to law or usage having the force of law, for which no rational ground agitated to call in question the purported unreasonableness of respondent-cantonment Board. Primarily, the grounds raised by the petitioner have been satisfactorily answered by the respondent-Board and nothing is left on our part to adjudicate under Article 199 of the Constitution.

9. Besides the above, Article 199 of the Constitution contemplates the discretionary writ jurisdiction of this Court and the said discretion may be exercised in absence of an adequate remedy. In the present matter admittedly there existed an adequate remedy, however, the same has not been availed/exhausted and no case has been set forth before us for invocation of the writ jurisdiction.

10. In view hereof, we are constrained to observe that no case has been set forth for the invocation of the discretionary writ jurisdiction of this Court; hence, this petition is hereby dismissed along with pending application(s) with no order as to costs, leaving the petitioner to approach the competent authority of respondent-cantonment Board either for regularization and composition of the unauthorized ground floor and first-floor construction or approaching the court of plenary jurisdiction; however, that is subject to all just exceptions as provided under the law.

JUDGE

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