

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 2779 of 2012

Dr. Moin-ud-din Shaikh v. Federation of Pakistan and others

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **17-02-2022**

Date of decision: **17-02-2022**

Petitioner Dr. Moin-ud-din Shaikh, present in person.
Mr. Ghulam Abbas Akhtar, Advocate for Respondents-Pakistan Railways.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following relief(s):

- (a) *To declare that the Pakistan Railways Authorities/Government of Pakistan, Ministry of Railways have got no locus standi or any established legal rights to exercise its control and management over the property in dispute viz: Old Mal Godown & Bunder Station bearing C.S.No.B-3623, ad measuring 19444-8 Sq. Yds., situated at Bunder Road Sukkur, after its complete abandonment since year 1980 and onwards for the purposes originally it was handed over by the Government of Sindh, and now the Pakistan Railways Authorities/Government of Pakistan, Ministry of Railways action to lease out or rent out the said property to any person(s) or agency is illegal, unlawful and ab initio void. And, if in case Railway Authorities/Department by illegal and unlawful have leased out or rented or transferred or alienated the plot/property in dispute to any person(s) or agency or Company in excess of their status or authority that may be declared illegal, unlawful, without jurisdiction and ab initio void and of no legal affect.*
- (b) *To declare that after the property in dispute being completely abandoned by the Pakistan Railways Authorities/Government of Pakistan, Ministry of Railways since the year 1980 and onwards for the purpose for which it was originally handed over for establishing Mal Goodown/Bunder Station Sukkur has been permanently given up and abandoned, and the suit property is in no use by the Railway Department in any manner whatsoever, and consequently, the property in dispute stands reverted back to the Government of Sindh, and the concerned officials as contained in directives of Government of Sindh annexure – A with the petition be directed to*

submit their report and take over the physical possession control and management of the property in dispute.

- (c) *To direct the respondent Government of Sindh to reserve the property in dispute for purpose of establishing Public Park for the welfare of the people of Sukkur and enhancing the beatification of Sukkur City.*
- (d) *To restrain the Pakistan Railways Authorities/Government of Pakistan, Ministry of Railways and Government of Sindh from transferring or alienating the property/plot in dispute for any commercialization purpose except establishing Public Park.*
- (e) *To grant any other relief which this Hon'ble Court deems fit and proper keeping alive the circumstances under which this petition has been filed.*

2. In the first round of litigation, this Petition was decided vide order dated 09-12-2014, whereby the Petition was disposed with certain directions. The said order was then impugned by Respondents No.1, 2 and 3 before the Hon'ble Supreme Court in Civil Appeal No.1034 of 2015, and vide order dated 24-03-2016, the said order has been set aside in the following terms:

“ This appeal, by leave of the Court, is directed against the judgment dated 13.5.2015 passed by the High Court of Sindh, Bench at Sukkur whereby the learned High Court held that the plot in question is a public park and the Commissioner, Sukkur Division and the Deputy Commissioner, Sukkur were directed to make necessary arrangements and make sure that neither any encroachment is made on the said property nor the said property be used for any other purpose other than for a public park.

2. *We have heard the learned ASCs for the parties as also the respondent, present in person and carefully perused the record. From the perusal of record, it appears that the respondent No.1 filed a petition before the High Court to declare that the Pakistan Railways/Government of Pakistan, Ministry of Railways has got no locus standi or any established legal rights to exercise control over the property in question after completely abandoned since 1980 and onwards. The petition was disposed of on 9.12.2014 in terms that the Commissioner as well as Deputy Commissioner Sukkur city were directed to look into the matter and ascertain the true ownership of the property bearing C.S.No.B-3623 admeasuring 19444-8 Sq. yds, situated at Bunder Road, Sukkur. After disposal of petition on 9.12.2014, the Commissioner Sukkur, who was directed to look into the matter reported that “the land in question belongs to Provincial Government which was being used only by Railways Department but presently the same is not in their use except some old quarters and well over some small portion and the Major portion of the land is still lying vacant in the shape of Open Plot.” The contention of the learned counsel for the appellant is that the appellant right from the day first is disputing this aspect of the matter and claiming that the plot in question was allotted to the*

Pakistan Railways and the Pakistan Railways is managing and looking after the said property since pre-partition. The question about locus standi of the appellant has not been addressed by the learned High Court while exercising its constitutional jurisdiction as well as question whether under Article 199 of the Constitution, learned High Court can exercise its jurisdiction regarding disputed questions of fact and determine ownership of the property when in village Form VII and other documents land in question is shown as owned by Railway.

3. In this view of the matter, this appeal is allowed as a result whereof, the impugned order is set-aside and the matter is remanded to the learned High Court for deciding afresh, after affording opportunity of hearing to all concerned.”

3. Since in this matter, the very ownership of the property is in dispute between Pakistan Railways and Government of Sindh, therefore, this disputed question of facts cannot be resolved in this Constitutional jurisdiction. In that case any directions, if issued, could be against the interest of both the parties. Accordingly, the Petition is not maintainable and is hereby **dismissed** with pending application(s).

J U D G E

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Abdul Basit