

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1695 of 2021

(National Highway Authority V/s P.O. Sindh and others)

Hearing of Case(Priority)

- 1.For orders on office objection
- 2.For hearing of CMA 8269/2021
- 3.For hearing of Main Case

Before:

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

Date of Hearing: **10-03-2022**

Date of Decision: **10-03-2022**

**Mr. Muhammad Junaid Akram, Advocate for the Petitioner.
Mr. Ali Raza Baloch, Assistant Advocate General-Sindh.**

ORDER

Muhammad Junaid Ghaffar, J. – None present on behalf of the Respondents No.7, 8 & 9, who were joined subsequently by way of an amended title and as per Bailiff's report, they stand duly served; hence, no further notice is required.

2. Through this Constitutional Petition, the Petitioner has impugned Notice dated 29.10.2021, issued by the Court of 1st Senior Civil Judge, Khairpur in Execution Application No.12 of 2013 against the petitioners seeking report and attendance in the said Execution Application.

3. Learned Counsel for the Petitioner as contended that insofar as the Judgment and decree, execution of which is being sought, was not against the present Petitioner, as the NHA was not party to such proceedings; whereas, even otherwise, the said decree has been passed under Order XII Rule 6 CPC pursuant to some admission in the written statement of the official Defendants. He has further argued that earlier in similar terms a notice was issued by the said Court and vide order dated 17.02.2018, the said notice was vacated on the ground that the Petitioner was never a party to such proceedings; hence no execution can be ordered against NHA; but once again a similar notice has been issued by the said Court; hence, this petition.

4. We have heard Petitioner's Counsel and perused the record; whereas, despite being served through concerned Court, the private Respondents have failed to assist us.

5. Record reflects that Respondents No.7 to 9 had filed Suit No.209 of 2010 against the Province of Sindh; Deputy District Officer (Revenue) / Land Acquisition Officer, Kingri; District Accounts Officer, Khairpur and certain private persons, which was decreed vide order dated 17.04.2012 on an Application under Order XII Rule 6 CPC, passed on some admissions in the written statement of the official Defendants. Thereafter, the execution proceedings were initiated and notices were issued to the Petitioner by the Executing Court and on representation, said notice was discharged vide order dated 17.02.2018 in the following terms:

“It is matter of record that chairman National Highway Authority was neither party in civil suit No.209/2010 and nor J.D in execution application. Execution application is pending for want of satisfaction. It is contention of Mr. Kalandar Bux Phulpoto, learned counsel for N.H.A that Chairman National Highway is not party but even then notices were issued to him for his personal appearance in civil execution application. It is settled principles of law that if any person is not a party then no notice can be issued against him, consequently if any notice is issued against Chairman National Highway authority, let such notice be vacated as such notice has nothing to do with the satisfaction of the execution application”.

6. Now once again impugned Notice has been issued. It further appears that concerned Deputy Commissioner in his letter dated 01.04.2016 addressed to the Senior Member Board of Revenue in respect of outstanding payment of certain Khatedars has given report, which reads as under:

“The payment of an area of 28-17 acres being approximately amounting to Rs.2,13,18,750/- has been paid in excess in Taluka Kingri due to reasons that different B-Forms were issued by the Survey Superintendent Khairpur / Director, Settlement Survey and Land Records Sindh, Hyderabad. The excess amount is to be recovered as arrears of land revenue from the defaulting Khatedars.

It is further submitted that the payment in respect of land 50-02 acres is approximately Rs.4,39,93,950/- are to be paid to the Khatedars so that the Zonal Land Officer (Sindh-South-Zone), National Highway Authority, Karachi may be requested to provide an additional amount of Rs.4,39,93,950/-, so that compensation may be awarded to the remaining Khatedars of Taluka Kingri and entries could be made in the record of rights in favor of National Highway Authority, Government of Pakistan, Islamabad”.

7. Perusal of the aforesaid report reflects that in fact certain excess amount has been paid due to issuance of various B-Forms by the Survey Superintendent, Khairpur / Director, Settlement Survey and Land Records Sindh, Hyderabad, which is to be recovered from them as arrears of land revenue. In view of such position, it appears that the Notice impugned has

been issued by the concerned Court perhaps due to some lack of assistance on behalf of the Decree Holder as once an order has been passed by the Court on 17.02.2018, whereby earlier notice stands discharged, the no further notice can be issued on the same cause until such order is in field. We have not been assisted as to whether the said order dated 17.2.2018 has been set-aside by any appellate forum. Notwithstanding, even otherwise in cases wherein there are compromise decrees or for that matter, decrees under Oder XII Rule 6 CPC, the execution of the same cannot be sought against those parties who were not present before the Court while passing of such decrees. It is settled law that a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the Court super-adding its seal to a contract and since the compromise even after it is super-added with the seal of the Court has almost all the ingredients of a contract, therefore, it can be set aside on any of the ground on which a contract could be attacked such as fraud, mistake or misrepresentation¹. A consent decree is a kind of agreement / contract between two parties with a superadded command of the court but it would not bind a third party who was not party to the said suit². Apparently, though not necessarily required in this matter; but as a passing remark we may observe the that same principle would apply in decrees obtained under Order XII Rule 6 CPC on admissions in the written statement of a defendant.

8. In view of hereinabove facts and circumstances of this case, it appears that impugned Notice dated 29.10.2021, of the Court of 1st Senior Civil Judge, Khairpur in Execution Application No.12 of 2013 has been unnecessarily issued to the Petitioner and may be for lack of assistance. Accordingly, said Notice is hereby quashed / set aside. The Petition stands **allowed** in the above terms.

J U D G E

J U D G E

Ahmad

¹ Abdul Hafeez v Pakistan Defence Housing Authority (PLD 2015 Sindh 336)

² Muhammad Iqbal v Khair Din (2014 SCMR 33)