

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No. 58 of 2008

Applicant : Gul Zaman through Mr. Waqar Ali Leghari
Advocate.

Respondent No.1 : Mst. Rukhsana through Syed Sajjad Hussain Shah
Advocate.

Respondents No.2 to 5 : E.D.O. Revenue, Hyderabad, etc.
through Mr. Allah Bachayo Soomro, A.A.G.
and Mr. Mukhtar Ahmed Khanzada State Counsel.

Date of hearing : 20.03.2013.

J U D G M E N T

NADEEM AKHTAR, J.– Through this Civil Revision Application, the applicant has challenged the order passed on 8.5.2008 by respondent No.2 / Executive District Officer (Revenue) Hyderabad, whereby entry No.228 dated 26.05.2005 in favour of the applicant in respect of plot No.57, measuring 240 sq. yds, situated in Sehrish Nagar, Taluka Qasimabad, was cancelled, and entry No.37 dated 12.04.1993 in the name of respondent No.1 in respect of the said plot was ordered to be maintained.

2. The case of the applicant, as averred in this Revision Application, is that he was an affectee of the riots that took place in Hyderabad in the year 1990 ; all the affectees of the said riots formed a registered society in the name and style of ‘Sindhi Qaumi Sath’, headed by one Mst. Fahmeeda Qureshi ; the affectees, including the applicant, were granted allotment orders for 210 plots by the Government of Sindh along with cheques of Rs.100,000.00 each ; the affectees / allottees raised construction on their respective plots after fulfilling the conditions prescribed by the Government ; and, after completion of the construction, they occupied their respective houses. It is the case of the applicant that he was allotted plot No.B-57, Deh Seri, now Taluka Qasimabad, Hyderabad, hereinafter referred to as “**the property**”, and after completing construction on the property, he is in possession thereof. It is also the case of the applicant that respondent No.1, in collusion with respondent No.2 and some other influential persons, managed to obtain a fictitious allotment order in respect of the property in her name.

3. On the basis of the aforementioned alleged collusive and illegal act, respondent No.2 / Executive District Officer (Revenue) Hyderabad initiated suo moto revision under Section 164 of the Land Revenue Act, 1967, bearing Case No.36 of 2007, wherein the present respondent No.1 was cited as respondent No.1 and the present applicant was cited as respondent No.2. After hearing both the parties, it was held by the Executive District Officer (Revenue) Hyderabad that entry No.228 dated 26.05.2005 in favour of the applicant in respect of the property kept and maintained by the Mukhtiarkar (Revenue) Qasimabad, was illegal. In view of his above findings, the said entry in the name of the applicant was cancelled through the impugned order and the entry in the name of respondent No.1 in respect of the property was ordered to be maintained.

4. At the very outset, the learned counsel for respondent No.1 as well as the learned A.A.G. raised a preliminary objection regarding the maintainability of this Civil Revision Application against the impugned order. According to them, an appeal under Section 161 of the Land Revenue Act, 1967, was the proper remedy for the applicant against the impugned order passed under Section 164 of the said Act ; and, a Civil Revision under Section 115 of the Code of Civil Procedure, 1908, does not lie against an order passed under the said Act. They strongly asserted that this Revision is liable to be dismissed on this ground alone.

5. Chapter XIII of the Land Revenue Act, 1967, deals with appeal, review and revision, and Section 161 of the said Act provides appeals against original or appellate orders passed by Revenue Officers ; namely, the Assistant Collector, Collector and Commissioner. This Section specifically provides that an appeal shall lie to the Collector, the Commissioner and the Board of Revenue from an original or appellate order passed by an Assistant Collector of either grade, or a Collector or a Commissioner, respectively. Since the Land Revenue Act, 1967, is a special law, the provisions thereof shall prevail over the general law.

6. A Revision under Section 115 of the Code of Civil Procedure, 1908 (**“the Code”**), lies to the High Court against an order or judgment passed by any court subordinate to such High Court, and against which no appeal lies. The word “court” is not defined in the Code, but it includes the forum created by the Civil Courts Ordinance, 1962. Section 3 of the Code provides that the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court. It is to be noted that Section 5(2) of the Code provides that “Revenue Court” does not include a Civil Court having original

jurisdiction under the Code to try such suits or proceedings as being suits or proceedings of civil nature. Thus it is clear that the Executive District Officer (Revenue) is not a subordinate court within the meaning of Section 115 of the Code, and as such no revision shall lie before the High Court against the order passed by the Executive District Officer (Revenue). Since the order impugned in this Civil Revision Application was not passed by a court subordinate to the High Court, this Civil Revision Application is not maintainable and is liable to be dismissed.

Foregoing are the reasons of the short order announced by me on 20.03.2013, whereby this Civil Revision Application was dismissed.

J U D G E