

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.D – 374 of 2011

Present :

1. Mr. Justice Nadeem Akhtar
2. Mr. Justice Shahnawaz Tariq

Petitioner : Miskeen Ahmed through Mr. Ali Akbar Lakho, Advocate.

Respondents : (1) Senior Member Board of Revenue, Sindh,
(2) District Co-ordinator Officer Badin,
(3) District Revenue Officer, Taluka Matli,
(4) Deputy District Officer, Taluka Matli,
(5) Mukhtiarkar and City Survey Officer Matli,
(6) Additional I.G. Police, Hyderabad,
(7) District Police Officer Operation, Badin,
(8) S.P.O. Operation Matli, and (9) S.H.O. Operation Matli,
through Mr. Allah Bachayo Soomro, Additional Advocate
General Sindh, Hyderabad.

J U D G M E N T

NADEEM AKHTAR, J. – Through this Constitutional petition, the petitioner has prayed that the respondents be directed not to cancel the entries in his name in the record of rights in respect of his plots ; to take over the possession of his plots from illegal occupants, and hand over the same to him ; and to provide protection to him.

2. The case of the petitioner, as averred in the petition, is that he purchased from one Muhammad Saleem four plots having total area of 20,000 sq. ft. ; namely, Plot Nos.01, 35, 44 and 45, each measuring 5,000 sq. ft., out of Revenue Survey No.176/3, situated in Saleem Colony Phase-II, Matli Town, District Badin, hereinafter referred to as “**the plots**”. As the said Muhammad Saleem had refused to complete the sale in his favour despite payment of the agreed sale consideration, the petitioner filed F.C. Suit No.74/1996 against him before the Senior Civil Judge, Matli, for specific performance, possession and permanent injunction. In the said Suit, the said Muhammad Saleem was duly served and his counsel filed power on his behalf, but he did not file his written statement. Accordingly, the Suit proceeded *ex-parte*, and was ultimately decreed on 04.10.1997 against the said Muhammad Saleem. The decree attained finality, as the same was never challenged. Thereafter, the plots were duly mutated in the name of the petitioner in Deh Form-II by the revenue

authorities on 25.04.1998 vide entry No.158 on the basis of the aforesaid decree passed in his favour. It is the case of the petitioner that he raised construction on the plots and started enjoying possession thereof. He has alleged that, while he was in Tando Allahyar, some unknown persons took over possession of the plots and the construction thereon, illegally and without his consent. It has been further alleged by him that the respondents are in collusion with the said illegal occupants, as they have not entertained his requests for taking action against them. The petitioner has also alleged that, instead of providing protection to him and taking action against the said illegal occupants, the respondents are in fact providing protection to them. He apprehends that the respondents may cancel or manipulate the entries in his name in order to usurp the plots.

3. On behalf of the respondents, comments were filed by respondent No.4 / Deputy District Officer (Revenue) Matli, wherein it was categorically admitted / confirmed that, as per the revenue record, the plots were mutated in the name of the petitioner in Deh Form-II by the revenue authorities on 25.04.1998 vide entry No.158 on the basis of the aforementioned decree passed in his favour. Despite admitting and confirming mutation of the plots in the petitioner's name, it was stated in the comments that Plot No.01 measuring 5,000 sq. yds. and Plot No.34 measuring 2,500 sq. ft., were mutated in Deh Form-II in the name of one Rajab Ali on 31.12.1986 vide entry No.214. In the letter addressed by the Mukhtiarkar (Revenue), Matli, to the Secretary (Revenue), Board of Revenue Sindh, Hyderabad, annexed to the comments of Respondent No.4, it is stated that Plot Nos.01 and 34 were mutated in the name of the said Rajab Ali on the basis of a registered sale deed dated 07.12.1986. It may be noted that the petitioner is not claiming any right, title or interest in Plot No.34, nor is the said plot the subject matter of this petition. Plot No.01, however, is one of the plots, and is the subject matter of the instant petition. Respondent No.4 has also disclosed in his comments that Plot No.01 is in possession Rajab Ali, Plot Nos.35 and 44 are in possession of one Bashir Ahmed, Plot No.45 is in possession of one Bahroo ; and, houses and shops are constructed on all plots. Respondent No.4 has stated that he is not empowered either to take over possession of the plots, or to hand them over to the petitioner.

4. We have heard the learned counsel for the petitioner as well as the learned AAG, and have also gone through the material available on record. It is an admitted position that a decree was passed by a competent civil court for specific performance of sale of the plots and the possession thereof in favour of the petitioner, and the said decree attained finality long ago. There was no occasion for the petitioner to file execution proceedings for execution of the said

decree as admittedly the plots were mutated in his favour on the basis of the said decree, and after obtaining possession of the plots, he raised construction thereon and started enjoying the same. Thus the decree stood fully satisfied. The events of his alleged illegal dispossession from the plots happened subsequently, which gave rise to a fresh cause of action to him against the alleged illegal occupants of the plots. It has come on record that one of the plots, that is, Plot No.01 stands in the names of two persons in Deh Form-II ; one is the petitioner, in whose name the said plot was mutated in pursuance of a decree ; and the other is Rajab Ali, in whose name the said plot was mutated in pursuance of a registered sale deed. The said registered sale deed can only be challenged before a civil court, which has the exclusive jurisdiction to cancel the same. Moreover, the alleged illegal occupants have not been joined as parties in this petition.

5. In view of the above, it is our considered opinion that the above disputed questions of fact cannot be looked into or decided in the Constitutional jurisdiction of this Court. The petitioner will be at liberty to seek his remedy before the competent forum, and in such an event, the matter shall be decided as expeditiously as possible strictly in accordance with law. However, since the petitioner has a decree in his favour in respect of the plots and the plots were admittedly mutated in his name in pursuance of the said decree, we are of the view that the valuable vested rights of the petitioner pertaining to the plots, require protection. Therefore, till the dispute is resolved by the competent forum, the respondents are directed, jointly and severally, not to effect transfer or mutation of any of Plot Nos. 01, 35, 44 and 45, each measuring 5,000 sq. ft., out of Revenue Survey No.176/3, situated in Saleem Colony Phase-II, Matli Town, District Badin, in favour of any third party ; and, to ensure that no change or alteration whatsoever takes place in the construction presently standing on the said plots.

This petition stands disposed of in the above terms.

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