

IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

C. P. NO.D-1802/2011

PRESENT: MR. SYED HASSAN AZHAR RIZVI, &
MR. JUSTICE SALAHUDDIN PANHWAR

Petitioners : Allah Dino and others,
through Mr. M. M. Aqil Awan, advocate.

Respondents : Ali Muhammad and others,
through Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing : 17th and 18th February 2015.

ORDER

SALAHUDDIN PANHWAR, J. Petitioners through instant petition
have prayed as follows :-

- a) *That this Hon'able Court would be pleased to set aside and quash the impugned order dated 28.09.2011 passed in Civil Revision No.35/2011 and restore the order of the Trial Court dated 14.02.2011 with the direction to the Trial court to decide the claim of title of the petitioners in respect of the disputed property on merits after holding the full-fledged trial of the suit and conclude the same within shortest possible / reasonable time;*
- b) *To restrain the Respondents from interfering with the peaceful possession of the petitioners over the suit property viz survey No.113, 153, 157, 158, 166, 185, 353 situated at Deh / Tapo Gidu, Taluka Hyderabad, Survey No.190, 191 and 192 situated at Deh Seri, Tapo Gidu, Taluka Hyderabad through themselves, their subordinates, agents, attorneys, assignees, successors or anyone else who claims through them;*
- c) *To grant any other relief which is deemed fit and proper under the circumstances of the case;*
- d) *Cost of the petition be borne by the Respondents.*

2. Relevant facts, giving rise to instant petition, are that respondent No.4/plaintiff had filed an FC Suit No.126 of 1981 against the petitioners and government officials, claiming that "land bearing S.Nos.113, 153, 157, 158, 166, 185, 353 situated at Deh Tapo Giddu Taluka Hyderabad and land bearing S.No.190, 191, 192 situated at Deh Seri Tapo Giddu Taluka Hyderabad is the ancestral property belonging to Mohammad Siddiq s/o Mohammad Bachal Samoon and Basur Khan @ Ahmed Khan s/o Dino Khokhar, the predecessor-interests of the petitioners. It was also pleaded that the petitioners (private defendants) entered into sale agreement with plaintiff / respondent Mohammad Ramzan; delivery of possession was also claimed and thus he (Mohammad Rzman) sought following relief (s):-

- a) *To declare that the suit property survey numbers situated in deh Sari Tapo Gidu Taluka Hyderabad District Hyderabad is the ancestral and inheritance properties of Mohammad Siddique s/o Mohammad Bachal Samoon and Basur Urif Ahmed Khan s/o Dino Khokhar since 1914 according to the record of rights maintained and issued by the defendant no.13 to 13 even upto now according to the certificate issued by District Registrar registration Hyderabad and after the death of Mohammad Siddique Samoon and Basur Khan Khokhur, the defendant No.1 to 7 being the legal heirs are the owners of the said suit land in whose name Foti Khata is to be changed by the defendant No.12 to 13 as per provisions of Land Revenue Act and thereafter under the provisions of Land Revenue Act the name of the plaintiff and of defendant No.8 to II is to be enter in revenue record by the defendant No.12 to 13, as stated in the plaint;*
- b) *To direct the defendant No.1 to 7 to execute the final sale deed of the suit land in favour of the plaintiff before the Sub-Registrar Hyderabad after receiving remaining balance Rs.One thousand from the plaintiff or this Honourable court may authorize Nazir of the Court to perform the contract and execute the sale deed in favour of the plaintiff in*

respect of the suit land on behalf of defendant No.1 to 7 after receiving the balance Rs.One thousand;

- c) *To grant injunction restraining the defendant No.1 to 7 through the defendant No.1 and 5 from interfering with the peaceful possession and enjoyment of the suit land of the plaintiff or selling, transferring the same directly or indirectly themselves through their agents, servants, friends, relatives e.t.c in any manner whatsoever except as stated in the contents of the plaint;*

3. The defendants (including the present petitioners) filed their written statements in separately, in all three. However, the written statements from the official defendants, not came on record. On 25.3.1981 the plaintiff / respondent Mohammad Ramzan withdrew suit against official defendants and on same date i.e **25.03.1981** the parties i.e plaintiff and defendant Nos.1 to 11 (including the present petitioners) filed an application U/O 23 R 3 CPC seeking for a compromise decree in the suit on following terms:-

1. That the defendants No.1 to 7 being the owners of the suit property after the death of their Mohammad Siddique and Basar Khan alias Ahmed Khan as legal heirs have received remaining consideration Rs.2000-00 (Rs.two thousands only) from the plaintiff is purchaser of the suit property hence the suit decreed by this court in terms of the prayers of the plaintiff with no orders to costs;
2. That the defendant No.1 to 7 have also received remaining consideration amount as stated in the contents of the plaint of the suit property from the defendants No.8 to 11 and the defendants No.1 to 7 as legal heirs of deceased Mohammad Siddique and Basar Khan alias Ahmed Khan have also agreed to execute final Sale deed in favour of defendants No.8 to 11 in respect of their sold land within the period of one month for which the plaintiff not raise any objection.

Accordingly, such application was allowed and on the same date the decree was prepared.

4. The record further spells out that the respondent Nos.5 to 10 (respondent Nos.6 to 10 were, originally, not parties in suit), through Deputy District Attorney, filed an application under Section 12(2) CPC whereby challenged the compromise decree on the specific plea that suit property is State/government Land and it (suit land) was claimed to be NAQABOOLI land. It was also pleaded in such application that S.No.113 and 192, Deh Sari were allotted by the Government of Sindh to Revenue Employees Cooperative Society Ltd. Hyderabad for 99 years lease for housing scheme. The objections were filed against such application, such application was dismissed as time barred but in review matter was remanded back for framing issues, thus, the learned trial court framed the following issues on the above application :-

1. *Whether the application U/s 12(2) CPC r/w Section 151 CPC filed in the month of March, 2005 is time barred?*
2. *Whether compromise decree dated 25.03.1981 in FCS No.126/81 was obtained by practicing fraud upon the Court and mis-representation of facts?*
3. *What should the order be?*

5. The applicant (Government) examined Qazi Mushtaque, Mukhtiarkar, Qasimabad and produced documents, showing land to be government land. From other side, the petitioner Allahdino was examined who also produced the document. The learned trial Court, while recording order dated 14.01.2011 set aside the order dated 25.8.1981 and decree dated 25.03.1981 and fixed the matter on 24.02.2011 for filing of the written statement by the remaining parties.

6. The said order of the trial court was challenged by the present petitioner by filing Civil Revision No.35 of 2011 before the District Judge, Hyderabad who, having heard the arguments, dismissed the same vide order dated 28.9.2011 which is challenged in the instant petition.

7. Learned counsel for the petitioners, *inter alia*, contended that order of the revisional court is against the law, facts, equity and natural justice as it committed material irregularity while commenting on merits of the case although matter was confined only in respect of an application U/s 12(2) CPC which revolves round '**fraud**' and '**mis-representation**'. Both inferior courts travelled beyond their jurisdiction. In support of his contention he relied upon.

8. Conversely, AAG, representing the official respondents, *inter alia*, contended that whole the structure, so raised by the petitioners, is / was based on fraud and misrepresentation and observation of the revisional court are strictly with reference to law and record therefore, same needs not be scored off, therefore, he prayed for dismissal of the instant revision petition, petitioners have no locus standi to challenge this order, even they failed to file suit for declaration, hence respondent No.4 was not competent to file the suit seeking declaration with regard to property of petitioners. He has relied upon 1993 PLD Supreme Court 147, 2007 PLD Karachi 392, 2010 SCMR 115, 1999 SCMR 146, 1999 SCMR 16 and 2001 SCMR 1822,

9. Heard learned counsel for the parties and perused the record.

10. What scanning of record has brought on record that the present petitioners through instant petition are asking for restoration of order of the trial court which was challenged before the Revisional court through revision petition which, undisputedly, was dismissed. The instant petition rather appears to be confined to seek scoring of the observation of the Revisional court which have been referred in the petition at paras-8 & 9 of the facts and referred as:

The learned District Judge passed strictures against the then City Mukhtiarkar Hyderabad and Mukhtiarkar Qasimabad in the words, ***“It means at least this fact was concealed (fact of withdrawal of suit) by the then City Mukhtiarkar and Mukhtiarkar Qasimabad that they were no more parties in the suit and they remained oblivion of the fact”***. The second conclusion of the Revisional court is ***“Whatever the case may be, I consider that the period of limitation not only starts from the time when the interveners came to know about the disposal of suit, but also from the very time, when they came to know that the suit was withdrawn against them”***.

9. That the third conclusion reached at by the Revisional Court while relying upon section 79 CPC read with Article 174 of the Constitution, the learned District Judge held, ***‘Suit against Government ought to have been filed through Secretary of the respective department. Non impleadment of proper party was with unfair intention as it was not open to such party to raise a plea of knowledge and such plea would have some weight if proper and necessary authority being concerned Secretary was made party to the suit’***.

11. Let it be made clear that there is much difference between the terms ***‘observation’*** and ***‘adjudication’***. It is never the observation which determines the rights or titles of the parties for which an ***‘action’*** is brought before the court for ***‘adjudication’***. The Courts cannot be deprived to consider and decide a ***‘legal’*** or ***‘factual’*** question / plea, if raised, even before appellate authority. It is always the series of facts or circumstances which are used to infer a

'conclusion' which may either be in **'far'** or **'against'**. **While adding** a little to explain that the abstract terms such as **'fraud', 'malafide', 'bonafide', fraud' or even misrepresentation** e.t.c cannot be **'determined'** without considering the facts, circumstances and documents, so referred for proving or disproving the same, therefore, the plea of the learned counsel for the petitioners that the learned Revisional Court erred while commenting upon merits of the case cannot be stamped as valid more particularly when the same were raised before the learned Revisional Court by respective parties and the observations, if any, were not beyond the available material. An **'observation'** shall not equate the status of **'adjudication'** unless intention is otherwise. The moment the observation ends into determining any factual or legal issue it would attain the status of **'adjudication'**.

The structure, if any, against the Mukhtiarkar (Rev) regarding his conduct and attitude should not have been a cause of grievance for the present petitioners because it, no way, relates with petitioners or their case. Even otherwise, when the land was claimed to be the government / State land then in such eventuality every official, on acquiring the knowledge of rights, interests and claims of the Government, is expected to be on his toes to protect such rights, interests and claims being an official of the State regardless of his status. The duties of an official is not only to discharge his routine obligations / duties but also to react as a responsible public officer whenever a question of government interest comes before it else the belief of public official **'a trustee of public rights'** shall loose its value and substance. Thus, the Court, being ultimate guardian of the

public rights can competently pass appropriate observations and even directions with regard to attitude and conduct of public officials so also of the private parties and should never become a tool in letting the parties to achieve indirectly what they can not receive directly. If a court records such observation with reference to obligations and duties required to be performed by the officials, in particular, the same cannot be termed to be excessive on part of the Court which, otherwise, is; and should be believed to be a breathing one.

12. As regard the observation (s) of the learned Revisional court with reference to Section 79 CPC or that of Article 174 of the Constitution, cannot be termed to be an '**excess**' because the observations/opinions of the learned Revisional Court were with reference to the requirement of the law and procedure which has made it a mandatory requirement that proper representation of the Provincial government could only be through '**its Secretary**'. An affirmation to what the law insists can never be said to be illegal or incorrect.

13. Above all, the '**observation**' , in no way, was / is going to cause any harm to the present petitioners particularly, when the learned Revisional court while dismissing the revision of the petitioners, in all judicial senses, had endorsed the order of the learned trial Court whereby the '**trial**' was to be processed. The legal position, being so, leaves nothing to discuss about the maintainability of the instant petition, which, is *prima facie*, not maintainable. However, let me make things a little obvious for which

a reference to main prayer of the instant petition, being material, is reproduced hereunder:-

e) *That this Hon'able Court would be pleased to set aside and quash the impugned order dated 28.09.2011 passed in Civil Revision No.35/2011 **and restore the order of the Trial Court dated 14.02.2011 with the direction to the Trial court to decide the claim of title of the petitioners in respect of the disputed property on merits after holding the full-fledged trial of the suit and conclude the same within shortest possible / reasonable time;***

The above prayer is sufficient to show that the petitioners, themselves, not only acknowledging the legality and conclusion drawn by the trial court but also seeking enforcement of such order of trial court passed on **14.02.2011** . The concluding para thereof is reproduced hereunder:-

“Thus I am satisfied that the compromise **decree is obtained by misrepresentation of facts** as such I allow the application under section 12(2) CPC and set-aside the **order dated 25.8.1981 and decree dated 25.03.1981**. The matter is to be decided on merits. The matter is fixed for hearing on 24.02.11 for written statement by the remaining parties’

This means that the present petitioners themselves stamp such decree to have been obtained, as was opined by the learned trial Court Judge whose order (referred above) is being insisted to be restored in its letter and spirit.

14. The above, in all meaning and sense, makes it undisputed that compromise decree is not holding field as even through instant petition the order of trial court was not challenged which has brought the litigation to the stage of trial. Needless to say that **‘question of maintainability of the suit’** can be examined competently even by

appellate or revisional court because the object and scheme of **'administration of justice'** is not to keep things hanging but to make efforts to give due either after proper trial or to bury an incompetent lis at its inception. Such powers of the courts are not subject to an invitation by the parties but the law itself insists to exercise such power whenever the situation demands so. Reference can be made to the reported case (2007 SCMR 741), wherein honourable Supreme Court held that:

It is pertinent to mention here that in view of the Order VII rule 11 CPC it is the duty of the Court to reject the plaint if, on a perusal thereto, it appears that the suit is incompetent, the parties to the suit are at liberty to draw courts' attention to the same by way of an application. The Court can, and, in most cases hear counsel on the point involved in the application meaning thereby that court is not only empowered but under obligation to reject the plaint, even without any application from a party, if the same is hit by any of the clauses mentioned under rule 11 of Order VII CPC.

15. Let us insist that the courts while admitting the suit must go through the contents of the pleading (plaint) towards its maintainability though this should be *prima facie* without detailed inquiry towards the *factual controversy* but legal questions *at the same time* be not ignored. In short, the suit (s) be not admitted in a mechanical manner because admitting a lis brings subject matter i.e legal character or interest of one in property into **controversy/dispute**. Since the people and officials do have honour for the Court (s) proceedings hence admission of an incompetent suit may result in keeping legal and normal course into prejudice. Thus, an incompetent or legally unsustainable lis, appearing so from its very face, should not be **'admitted'** rather dismissal thereof or return

for presenting before proper court/forum or in proper shape was / is the demand from one who is believed to be having all laws on his sleeves. We are conscious that this has been the basic principles but the peculiar facts of instant case compelled us to reiterate in view of the principle, laid down by a larger Bench comprising of five learned Judges of the Honourable Supreme Court, in the case of Mansab Ali v. Amir & 3 others. (PLD 1971 SC 124) was pleased to hold that:

“it is an elementary principle that if a mandatory condition for the exercise of jurisdiction by a court, tribunal or authority is not fulfilled, then entire proceedings which follows become illegal and suffer from want of jurisdiction; and, any order passed in continuation of such proceedings, in appeal or revision, equally suffer from illegality and are without jurisdiction’

16. The above principle, allow us to say that it can neither be in the spirit of safe administration of justice or even equity that an incompetent suit be kept pending or be remanded to the lower courts where the maintainability on touchstone of legally established principles is barred. In to the case of Muhammad Iqbal v. Muhammad Ahmed Ramzani & 2 others (2014 CLC 1392), it was held that:

14. We are of the view that Article 203 of the Constitution of the Islamic Republic of Pakistan, 1973, has conferred the general power upon the High Court, without any limits, fetters or restrictions, to supervise and control all subordinate courts in all administrative as well as judicial matters, and has made the High Court the custodian of justice within the territorial limits of its jurisdiction. **There is no doubt in our minds that in cases where there is a total absence of jurisdiction or the manifest excess of jurisdiction, the High Court will not refrain in exercising its power under Article 203(ibid) by remedying the error , mistake, wrong or illegality committed by a subordinate court.** The error committed by the lower appellate court in the respondent’s Civil Appeal No.84 of 2004 was of

such a nature that it cannot be ignored by this Court. Due to the said error, multiple errors crept into all subsequent proceedings resulting into not only multiplicity of proceedings, but also grave miscarriage of justice. Since the judgment and order impugned in this petition are the outcome of the aforementioned illegal and *coram non iudice* judgment dated 31.3.2007 passed in the respondent's Civil Appeal No.84 of 2004, **the same cannot be allowed to remain in the field.**
(underlining is ours for emphasis)

17. Since the peculiar facts of instant case, came to our notice during hearing of the instant petition, therefore, we feel it proper to give a brief reference thereof. Per, the record of the rights, the subject land happened to be either '**NAQABOOLI LAND**' or '**DARYA KHURDI**'. Such claim of the State / Government is well within active knowledge and notice of the private parties as allotment of S.Nos.113 and 192 by Govt. to Revenue Employees Co-operative Housing Society were challenged by the petitioners i.e Mst. Bachoo @ Bachal & others through CP No.D-49/1985 which was accepted by this Court, however, honourable Supreme Court of Pakistan, on appeal by government, while disposing of the Appeal No.782-K and 783-K of 1990 observed as:-

“The admitted position in these appeals is that all the documents on the basis of which the claim of the respondents has been accepted were not admitted by the appellants-Government functionaries. All the documents filed in the constitutional petition on the basis of which the declaration was granted to the respondents are **disputed and that they were said to be forged and fabricated.**”

“.....It might not be proper to express opinion about the admissibility, legality and authenticity of the documents produced by the respondents in support of their claim made in the constitutional petition by the respondents at this stage as **it might affect the case of the respondents at the subsequent stage before another forum,** but it could be said that the question of title in respect of land in question could not have been decided by the High Court in the constitutional jurisdiction in

view of the disputed questions of fact and the documents alleged to be forged and fabricated.”

In same, it was held that:-

In the instant case the disputed questions of fact as to title are based on the documents which are said to be forged and fabricated, which would require evidence to arrive at a correct conclusion, therefore, the High Court could not have decided the same in exercise of its constitutional jurisdiction. In the circumstances, the impugned judgment of the Division bench of the High Court is set aside and the appeals are allowed. **The respondents, if they desire, can seek their remedy before the competent forum in accordance with law.**

18. It is, however, a matter of record that petitioners i.e Mst. Bachoo & six others and even present private respondents, never challenged the claim of the government-State nor have challenged the record of the rights which *prima facie* deny or least make their claim disputed, as was observed by the Honourable Supreme Court in clear terms while leaving the given advise to seek necessary legal remedy, at their desire. At this juncture, it would be relevant to refer the relevant provision of the Specific Relief Act dealing with ‘*Declaratory Decree*’.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

The above provision through its plain language gives a right to a person to seek a ‘*Declaratory Decree*’ where his legal character or any right to any property is either denied or necessity arose to deny any such claim or interest, if raised by other person. The right to seek such a decree, the discretion is left upon the person by using the word ‘**may**’ but it does not change the legal position that omission towards such right will not be an excuse from escape of legal

consequences of such deliberate omission. The moment a right to seek a decree arises it becomes obligatory upon the person to avail such right else his / her deliberate omission will bring the legally known terms **'waiver', limitation, estoppel and laches** into play with their own legal consequences because every right to seek a decree is subject to **'limitation Act'** which, undeniably, is a law meant to have an early action from the person, whose legal character or right to a property is denied or under threat. In the instant matter the present petitioners never bothered to resort to such legal remedy and letting the claim of the State / Government continues which completely denies title document and even claims it as fraudulent. Having acquired such notice and knowledge, it was legal liability of the petitioners to get the same adjudged or least a declaration / adjudication of their claim over land in question but they have chosen otherwise, hence shall have to face the consequences of their such omission. Here, one more thing is required to be made clear that a **'declaratory decree'** is a decree which can be sought only by the person whose legal character or status is being denied, therefore, in such a lis the **'legal character'** of the person, seeking declaration, shall be of much importance and without establishing the same he cannot insist for a declaratory decree. The reliefs, sought in the instant case, *prima facie* show that it is in nature of **'declaration about status and right to a property'** which has not been sought by the respondent No.4 himself but claiming under an agreement, said to be executed by the petitioners. Although, as already discussed, such declaratory decree can not be sought by the plaintiff/respondent No.4 in respect of some other person's legal character or a right in some property because the rights of the

purchaser are defined by the law itself. At this juncture, a reference to Section 39 of the Specific Relief Act, being relevant, is made hereunder:-

‘39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled’

From the plain language of above provision, it is quite clear and obvious that any instrument, if left outstanding, may cause him serious injury, will require the person to seek such instrument adjudged void or voidable. An omission to have such adjudication *undeniably* shall bring its own consequences.

19. Since, it is *undisputed* that petitioners and even private respondents, the beneficiary of compromise decree have been in active knowledge and notice of claim of the government-State and the basis thereof which , *undeniably*, is the record of the rights i.e periodical entries, which, if does not prove the title yet is a record to prove claim, interest and title.

Further, it has also come on record that one **‘Mohammad Siddique s/o Allauddin Samoon’** , from family of the present petitioners, while acknowledging the status of the S.No.190 (one of the survey numbers from land in question) to be government-state land, applied for allotment of 16-00 acres of the land which was allotted to him vide No.10-394-12/SO-1/-408 Karachi dated 11.9.2012. Such stand rather stamps the claim of the government-State.

20. The material brought on record by the official respondents also show that the government has resorted to a course for cancellation of such allotment as well has availed a course provided by the Sindh Public Property (Removal of Encroachment) Act, 2010. A reference to the Section 11 (2) of the Act is also relevant which is referred hereunder:

(2) All suits, appeals and applications relating to, encroachment and dispute that any property is not a public property or, that any lease or licence in respect of such property has been determined, for the purpose of this Act, **shall abate on coming into force of this Act.**

Provided that a party to such suit, appeal or application may; within seven days of the coming into force of this Act, file a suit before a Tribunal in case of a dispute that any property is not a public property or that any lease or licence in respect of such public property has not been determined.

Prima facie the petitioners have not filed any **'Suit'** before a **'Tribunal'** and even before any other court seeking **'adjudication'** of their legal character, title and claim in respect of land in question, therefore, a suit filed by the respondent No.4 shall be of no help to seek any exception.

21. Besides respondent No.4 claimed purchaser, cannot *legally* get such adjudication as exception, provided by illustration(b) of Section 39 of the Specific Relief Act is not available to them as petitioners, whose document is being denied, are alive. For ready reference the same is referred hereunder:-

(b) A conveys land to **B, who bequeaths it to C and dies.** Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

Such act of the respective parties is sufficient to show that they are not interested in getting such adjudication in respect of the claim of the State-Government which is with reference to Record of the Rights. Not only this, but the circumstances also make it quite clear that the present petitioners are also not interested in getting their status adjudicated though they are in the Courts since years together which *undeniably* has become doubtful or least *disputed* hence in absence of a **legal adjudication** it would continue with same i.e either ***doubtful or disputed***. Needless to add here that one carrying an imperfect or disputed title cannot become a **'competent person'** to make a legal contract.

22. It is pertinent to mention that private respondent No.4 filed the suit for **'Specific Performance of Contract'** which is governed by Section 12 of the Specific Relief Act, 1877. Let it be enlightened a little more that it is not mere acceptance of a promise which would create a binding contract but it is the competence of parties and **'legal consideration'** which turns consents of two or more into a **'legal contract'**. If the party was not competent for the agreed act or omission it would leave the other party with no option but to seek legal remedy, provided under Section 18 of the Specific Relief Act and right to seek enforcement shall not be available to him. Thus, it would be safe to conclude that a decree for specific performance could only be obtained against the competent person and not against the one who, either has no title, or has an imperfect or defective title, as is the object of Section 22 of the Specific Relief Act, which is:

“22. Discretion as to decreeing specific performance.— The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

A relief as to decreeing specific performance cannot be granted in a mechanical manner by the courts nor it could be claimed as a matter of right but it is always discretionary which is subject to application of judicial mind.

23. Since the legislature's every word is believed to be backed with a **'wisdom'**, **'object'** and **'purpose'** therefore, the Specific Relief Act, itself has also dealt with a situation where one, having no title or imperfect title, enters into a contract. The provision of Section 25 of the Act specifies *prima facie* makes it quite crystal that where the contract is by such a Vendor or lessor who has no title then enforcement of such a contract cannot be legally made. In short, where it is proved that Vendor or Lessor had no title then a suit for Specific Performance should not be continued as even hundred of rounds of such suit shall not change the legal position that enforcement of such a lis cannot be enforced.

24. A contract, no where, binds a third party but the rights and obligations always remain against the executing parties alone. The rights of the purchaser have been defined by the legislature in respect of those Vendors or lessors who are not having perfect title. The provision of Section 18 of the Specific Relief Act, being material to the peculiar facts of the instant case, is referred hereunder:-

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provide by this Chapter) has the following rights:-

(a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

The subsections vests a right in the purchaser to compel the Vendor or Lessor, as the case may be, to make good the contract if he acquires interest subsequent to sale or lease; while the subsection (b) and (c) vests a right in the purchaser to compel the Vendor or lessor, as the case may be, where concurrence of other person is necessary to procure such a situation or to get the property redeem. However, such rights, no where, vests a right in the Vendee or lessee, as the case may be, to:

- i) seek an interest from other person in respect of subject matter of contract;*
- ii) seek concurrence of other person, necessary to validate the title of the Vendor or lessor, as the case may be;*

- iii) *seek redeeming the mortgaged property from other person which was mortgaged by Vendor or lessor, as the case may be;*

It is also a matter of record that the respondent No.4/plaintiff did not resort to such a course despite acquiring knowledge and notice of the specific claim of the Government – State with reference to record of the rights because validation of the claim of the petitioners cannot be without concurrence of the Government – State as it (State) claiming the suit property to be its (State's) property.

25. The above legal position concludes no other result but the legal position that the suit of the plaintiffs / respondents is barred not only by Section 42 of the Specific Relief Act but also by Section 24, 25 and 39 of the Specific Relief Act. The pending of the case to the trial Court shall, in no way, will help the present plaintiffs / respondents to make their suit maintainable because their rights are protected by subsection (d) of Section 18 of the Specific Relief Act. Their act of entering into a contract with present petitioners would not legalize their prayer for a declaratory decree which is in respect of legal character and right to property, if any, of defendants / petitioners. A lawful contract shall give a right to the Vendee or lessee, as the case may be, to seek enforcement and damages but a contract with one, having no title or imperfect title, shall confine the right of the Vendee or lessee to compel the Vendor or lessor to make his title perfect or to seek for damages alone. Thus, it is quite safe to conclude that in existence of above *undeniable* legal positions and facts the suit of the plaintiffs / respondents is not sustainable hence continuity thereof shall not be within meaning of '**Administration of Justice**' hence the same is hereby rejected.

26. While parting, it has also come into notice that the government – State claimed to have allotted number of State land (out of suit land) despite **'ban'** and pendency of Sua Moto Case No.16 of 2011 before Honourable Supreme Court of Pakistan which practice, whenever coming to notice, cannot be left unnoticed, therefore, the Commissioner, Hyderabad Division is directed to submit the details of all allotment (s) of State-land out of or near land in question within Taluka Qasimabad specifying therein that:

- i) *as to which of the allotment (s) were made during Ban and pendency of despite **'ban'** and pendency of Sua Moto Case No.16 of 2011;*
- ii) *whether the same have been within instructions / directives of honourable Supreme Court;*

Such report should reach within one month period from date of the order.

Further, having come across with the peculiar circumstances of the instant case, we are compelled to insist to endorse that though the court (s) have to confine to what is produced before it but the judicial propriety always expects the Court (s) to react as a breathing one with active judicial conscious. The judicial conscious always demands to properly respond to cryptic pleadings and should never let itself to be a tool to allow the parties achieve indirectly what they cannot achieve directly. The Court (s) should not grant a decree in a mechanical manner nor the Courts be deceived from subsequent steps of the parties whether it be in name of compromise or even *ex-parte* but the legal character, maintainability of the suit and entitlement of the parties are the requirement (s) which a Court shall always keep in mind while recording a **decree**. The terms **'legal**

character, **'maintainability of suit'** and **'entitlement for the relief (s)'** should always be given their due and judicial weight. The **'legal character'** is the most important aspect of a *lis* and in absence thereof one cannot maintain his / her *lis* though filed for a relief, recognized under **'Specific Relief Act or under any other law'** except matters, qualifying requirement of Section 91 of the C.P.C.

27. Then, comes **'maintainability'** of the *lis*. One bringing a *lis* though may have a legal character and the relief, sought, is recognized by law but the pleading for such a *lis* brings his / her case within exception of Rule-11 Order 7 of the Code then such a suit should, receive no other result, but a rejection.

28. The last, but not the least, is the question of the **'entitlement of relief'**. It should always be kept in mind that the **'relief'** cannot be granted / awarded in a mechanical manner but **'legal entitlement'** of the person, seeking such relief, has to be judged cautiously with active judicial mind. This is, for simple reason that a **'decree'** of competent court has **'binding effects'** and if passed without considering said legal requirements, one (Decree holder) shall attempt to get for which he / she, otherwise, is not entitled legally.

In view of above, the instant petition, is disposed of in terms stated above.

J U D G E

Imran/PA

J U D G E