

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P. No. D-296 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khadim Hussain M. Shaikh

1. For katcha peshi.
2. For hearing of MA 1778/14.

17.10.2017.

Mr. Harish Chandar, Advocate for the petitioners.
Mr. Arbab Ali Hakro, Advocate for respondent No.3
Mr. Allah Bachayo Soomro, Additional A.G alongwith Mr.
Sajjad Ahmed, Mukhtiarkar Taluka Umerkot.
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ORDER:-

KHADIM HUSSAIN M.SHAIKH-J:- It is, inter-alia, contended by the learned counsel for the petitioners that respondent No.2/ Mukhtiarkar (Revenue) Umerkot has passed the impugned order dated 06.12.2013, although per him, the Mukhtiarkar was not competent to do so; and, that the impugned order passed by the Mukhtiarkar is illegal and without jurisdiction. He, therefore, prays that the impugned order may be set aside and the entries in record of rights in favour of the petitioners may be restored. Learned counsel for the petitioners has relied upon the case of FARZAND RAZA NAQVI and 5 others vs. MUHAMMAD DIN through Legal Heirs and others (2004 SCMR 400), FAQIR ABDUL MAJEED KHAN vs. DISTRICT RETURNING OFFICER and others (2006 SCMR 1713) and SYED JEHANGIR ALI and others vs DISTRICT COORDINATION OFFICER (2011 PLD (Karachi) 293).

2. Learned advocate for respondent No.3 has mainly contended that the Mukhtiarkar being Revenue Officer is bound to keep the revenue record update and to maintain sanctity thereof; and, that the petitioners instead of

exerting available remedies of appeal etc. have directly filed this petition, which, per him, is not maintainable.

3. Learned A.A.G adopting argument, of the learned counsel for respondent No.3 further submits that it is the sole function of the Revenue Officer to maintain the record and make corrections therein; and, that the petitioners had multiple remedies available to them once after other before the hierarchy of the Revenue Department. He, therefore, prays that the petition may be dismissed.

4. We have considered the submissions of the learned counsel for petitioners, learned advocate for respondent No.3 and learned A.A.G and have gone through the material placed on record.

5. From a perusal of record it would be seen that the Mukhtiarkar Revenue Umerkot has passed the impugned order intending to make correction in the revenue record by holding Jalsa-e-Aam as is reflected from the impugned order. On a query, learned counsel for petitioners submitted that the Mukhtiarkar being Assistant Collector Grade-II has passed the impugned order, which is appealable before the Assistant Collector Grade-I i.e. Assistant Commissioner concerned under the provisions of Section 161 of Land Revenue Act; and, that further remedy for an aggrieved person even after appeal is provided under the provisions of section 164 of Land Revenue Act, 1967 in revision before the Commissioner concerned, per him, order passed by the Mukhtiarkar is without jurisdiction and therefore, the petitioners have directly filed this petition before this court. We are not persuaded to agree with the learned counsel for petitioners and we cannot subscribe ourselves to such a contention of the learned counsel for the petitioners, for, the remedy under Article-199 of Constitution of Islamic Republic of Pakistan 1973, is conditional upon non-availability of any other adequate remedy. Admittedly, the petitioners have got remedy before the next forum in hierarchy of revenue

department, in appeal under the provisions of section 161 of Land Revenue Act, 1967 against the impugned order passed by the Mukhtiarkar with further remedy before the next higher forum for the party, aggrieved by the decision in appeal so on so, but the petitioners instead of exhausting the available remedies and going before the higher forums in the hierarchy of revenue department where all the questions being raised in this petition could be agitated and thoroughly examined, have hurdly directly approached this court, patently they were wrongly advised to-do-so. In such view of the matter, this petition is not maintainable. The case law cited at bar by the learned counsel for the petitioners is not attracted to the case one in hand, for, none of the cases cited by the learned counsel for petitioners involved the direct approach of the petitioners to the High Court against the order passed by the Mukhtiarkar and furthermore in case of *FARZAND RAZA NAQVI*, the petitioners losing the claim of ownership of house in question up-till the level of High Court and in the first round of litigation filed Civil Suit seeking the same relief which was decided by the Civil Court by granting exparte decree and ultimately the matter went to the Honourable Supreme Court. In case of *Faqir ABDUL MAJEED KHAN* supra, the election disputes involving recounting the result of Tehsil Nazim were involved and whereas in case of *Syed JEHANGIR ALI* supra, a notification enhancing the rent payable by the petitioners to the District Government by the petitioners being tenants of the District Government Hyderabad in shops situated in commercial shopping center known as District Council Shopping Center Hyderabad was called in question, and, thus none of the cases cited by the learned counsel for the petitioners is helpful for them.

6. In view of what has been discussed above, without going into the validity or otherwise of the impugned order passed by the Revenue Officer, we are of the considered view that the petition being not maintainable is liable

to be dismissed. Reliance can be placed on a case of MUMTAZ AHMED and another vs. ASSISTANT COMMISSIONER and another reported in PLD 1990 Supreme Court 1195, wherein the Honourable Supreme Court of Pakistan has held that:-

“Accordingly without going into the validity of the order passed by the Assistant Collector or the approach of the High Court, we considered it fit to dismiss this petition on the alternate ground that the petitioners should not have approach the High Court without exhausting other remedies provided in law in the hierarchy of the Revenue Forums. The Writ petition being premature could be dismissed on this ground alone.”

7. Above are the reasons of short order announced by us on 17.10.2017, whereby the petition was dismissed alongwith listed application, setting the petitioners at liberty to avail remedy before the proper forum in accordance with law.

JUDGE

JUDGE