

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

R.A. No. 76 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on C.M.A 510/2020
2. For orders on C.M.A 457/2014
3. For hearing of main case

26.10.2020

Mr. Ayatullah Khowaja along with Mr. Sartar Iqbal Panhwar,
Advocate for applicant.

Mr. Allah Bachayo Soomro, A.A.G.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J. This Revision Application is arising out of the conflicting findings of two courts below. Litigation commenced when the applicant filed a Suit bearing No.33/2006 against the officials of the Government of Sindh / Revenue Authorities. She sought declaration in respect of property arising out of Survey No.199 of Deh Bora Rayati, Taluka Latifabad, District Hyderabad and the consequential entry in pursuance of registered lease deed dated 13.09.1995.

Brief facts are that on a suo moto action, the Commissioner Hyderabad Division, Hyderabad u/s 164 of the Sindh Land Revenue Act issued notices to the alleged lessee Mst. Nagina, Moharram Shah, Haleem Noonari and Mst. Hasina in respect of the consequential entries in their names. The subject matter of these proceedings is an entry in respect of Survey No.199 Deh Bora Rayati, Taluka Latifabad, District Hyderabad. The proceedings before commissioner were initiated by issuing them notices and resultantly after scrutiny of revenue record and perusal of the correspondence of the land acquisition proceedings, statement of Moharram Shah denying ownership of the land in question and the spot inquiries led commissioner to believe that entry No.20 of Village Form-VII showing Moharram Shah as owner of S. Nos.199 and 121 of Deh Bora Rayati is false,

fabricated and manipulated. These findings were reached on the basis of the evidence that was available as instead of torned page / missing page, another page was inserted which is not inconsonance with the earlier entries. Consequently, the revenue record was rectified by deleting alleged unlawful entry No.20 of the Village Form-VII of respective deh. Consequently, the subsequent structure on the basis of that entry was also deleted from the revenue record. Survey Nos.199 and 121 Deh Bora Rayati were said to be Government Land / Naqabooli Land and the entry to the extent of the government entitlement was kept in the revenue record.

Aggrieved of this order of 14th October 1996 a suit was filed in the year 2006 for declaration as to applicant's entitlement. The suit was contested by the officials of the revenue department of the Province of Sindh and ultimately the suit was decreed. Aggrieved of it, the Respondents / Provincial Government filed an appeal bearing No.182/2011 and the judgment / order was reversed. The appellate court agreed with the views and reasoning of the commissioner as the order of the commissioner was reproduced in respect of the finding of Point No.3 i.e. whether the respondent (applicant) is genuine owner of the land in question.

It is a case of the applicant that the appellate court has not performed the statutory / legal obligation inasmuch as the points for determination were not framed like issues and that there are no independent findings of the appellate court since the findings were reversed. It is the case of applicant that since the findings of the trial court were being reversed it was the requirement of law that each and every issue should have been dealt with accordingly and an independent reasoning should have been assigned. Counsel has also taken me to the evidence recorded in the matter including that of the Mukhtiarkar which is available on record. Learned counsel for the applicant thus submits that there was enough evidence for the trial court as well as appellate court to have reached to the conclusion that the plaintiff is undisputed owner of the subject land acquired from Muharram Shah who has

claimed this property from his ancestors. Counsel submits that it was not the duty of the applicant to have summoned the record that is prior to the entry No.20 of revenue record which is purportedly in respect of the predecessors of Moharram Shah from whom the applicant acquired rights.

On the other hand Mr. Soomro learned A.A.G. submitted that the applicant is notorious land grabber as valuable government land / naqabooli land was trespassed after manipulation of revenue record as well as registration of the sale deed which is claimed to have been executed on behalf of one Muharram Shah, whose title is not ascertainable at all. There is no permission available in respect of the revenue officials as to the execution of the sale deed. It is only a document between two private parties and the officials have not performed any act while it being registered.

I have heard the learned counsel and perused the material available on record. While suo moto proceedings were initiated u/s 164 of the Sindh Land Revenue Act on a reference made by Additional Deputy Commissioner- I, Hyderabad vide his letter dated 29.09.1996, notices were issued to all interested parties including the present applicant as well as her vendor / predecessor Muharram Shah. Notices were also issued in respect of other land to other parties who were shown to have interest therein. After issuance of notices and service the commissioner came to the conclusion that the land which is subject matter of this revision application was at one point of time leased out for 10 years for 1986-87 to the lessees including Asadullah son of Abdul Rehman i.e. around 8 acres from U.A. No.199. There is no challenge to this execution of lease by applicant. I have also perused the entire order of the commissioner which is based on reasoning and documents, presented to it. The record of the predecessor of one Muharram Shah is not at all available on the record. A replacement of a torn page of the entry No.20 was considered by trial court and on the basis of which the title is being claimed. This is a disputed document in the sense it was claimed to have been inserted in the register without any previous entry available on record. It has

no pedigree tree of title in support. All these defects were highlighted in the order of the commissioner and based on that material available the entries were declared to be false, fabricated and fictitious and accordingly were removed from the register. This order of the revenue hierarchy passed by commissioner in fact attained finality when no appeal is preferred before the appellate forum of revenue hierarchy.

Be that as it may, after a delay of 10 years a suit was filed as suit No.33/2006 in the year 2006 and the notices were issued perhaps on 12.05.2006. By that time the suit was apparently barred by time. Even the cause of action in the plaint is disclosed to have been accrued on 14.10.1996 when the alleged mutation / entry was cancelled by the commissioner. Hence the cause of action that triggered on the order of the commissioner though continued but that would not extend the limitation period within which the suit was required to be filed for setting aside of such order before a civil court. Even the revenue hierarchy was not consumed as legal process. There is no specific pleadings in the plaint that it was an ex parte proceedings or that the plaintiff was prevented for sufficient reasons to appear before commissioner. Thus for all intents and purposes it is presumed that the notices issued by the commissioner were served and they had the knowledge of the order passed by the commissioner. It was never claimed to be an ex-parte order in the suit. Moreover the defects pointed out in the commissioner's order were in knowledge of applicant and efforts should have been made to establish title of Muharram's predecessor. The finding of the appellate court thus on account of the suit being barred by limitation is not required to be interfered under the law. Similarly, insofar as the question of maintainability of the suit is concerned, the applicant has not challenged the order of the commissioner under the revenue hierarchy and has opted to file a suit directly before a civil court after a delay of ten years. There is no justified reason alleged as to whether the jurisdiction was exercised unlawfully by the commissioner. It is also not established that the commissioner acted under the influence of any land grabber in order to usurp the property of the applicant. Hence, in the

absence of such facts which may have taken away the jurisdiction and authority of the commissioner, the revenue hierarchy should have been approached to challenge the order of the commissioner instead of approaching a civil court.

Be that as it may, since this is a third forum of litigation, I would like to consider the merits of the case as well so that the questions and the dispute between the parties may come to an end once for all. The applicant is under the obligation to establish that Muharram Shah from whom the applicant has acquired rights has lawfully acquired the property from his predecessor. He had ample time and powers to summon the record as well as witnesses from the revenue department though Mukhtiarkar as well as tapedar, but he failed. Both Mukhtiarkar and Tapedar appeared but the applicant was unable to ask the relevant questions about the production of the documents / record of the previous entries of the predecessor of Muharram Shah. The applicant has not even placed the other related documents such as taxes and aabyana receipts paid by Muharram Shah or his predecessor to establish their earlier entitlement. Even summons were not issued to call Muharram Shah or any of his predecessor as witness. The burden of the issues as framed by the trial court rests upon the applicant and hence it was his obligation to establish without any doubt that Muharram Shah from whom the applicant acquired this property was an undisputed owner having acquired title from his predecessor.

There is no any iota of evidence that may lead even to conclude that the predecessor of Muharram Shah or even Muharram Shah were ever in possession of the land in question as nothing except registered sale deed without revenue entries and without the permission of the Mukhtiarkar were placed on record. The commissioner while passing an order only declared that the revenue entries i.e. entry No.20 was fake, fraudulent and fabricated and all superstructures rest upon entry No.20 or on the basis of the alleged sale deed were false, fictitious and liable to be ignored. However, the

commissioner has rightly not embarked upon the sale deed which question could only be decided by a civil court.

I may observe that there was enough material on record to conclude that a premium cannot be given to the applicant of an ill-gotten gain since he has not produced any iota of evidence that may establish the pedigree table of the title in favour of vender of applicant. It is till such time the applicant establishes a lawful pedigree table of the title, the entries would be presumed to be forged and fabricated. The Commissioner has directed to take strict legal action against those who played havoc with the revenue record and as a consequence whereof it was expected that the officials shall also file a suit for setting aside of the sale deed as the same is formally still in existence though has no value. I, therefore, in view of the above facts and circumstances came to the conclusion that though the appellate court has not given its own / independent reason but in view of facts and circumstances of case, since appellate court's order is based on the reasons of the commissioner, I would like to decide the controversy in view of the above reasons and grounds and further direct the official respondents to take action in accordance with law.

The Revision Application as such, merits no consideration and is accordingly dismissed.

Sd/- MUHAMMAD SHAFI SIDDIQUI

JUDGE.