

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C. P. No. D – 3544 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

31.01.2023

Syed Shahzad Ali Shah advocate for the petitioner.
Mr. Ayaz Ali Rajpar Assistant A.G Sindh.

NADEEM AKHTAR, J. : Through the instant petition, the petitioner is seeking a direction that the official respondents be directed to keep an entry of the subject land in his name in the record of rights. Objections dated 31.01.2023 have been filed by respondent No.5 which are taken on record. Perusal of the petition shows that the petitioner has already availed his remedy by filing an application in this behalf before the competent authority viz. respondent No.2 / Deputy Commissioner, Tando Allahyar, which is still pending. In view of this admitted position, the petition, on the face of it, is frivolous and not maintainable ; and, has been filed against the law laid down by a Division Bench of this Court in C.P. No.D-32/2018 vide order dated 27.11.2019 whereby such petitions filed before this Court without exhausting the remedy provided under the law were dismissed as being not maintainable ; and, the office was directed not to entertain such petitions in future. Therefore, the petition is liable to be dismissed with costs in view of the recent pronouncements by the Hon'ble Supreme Court briefly discussed below.

2. In Capital Development Authority, through Chairman, CDA, Islamabad V/S Ahmed Murtaza and another (2023 SCMR 61), it was held, *inter alia*, by the Hon'ble Supreme Court that the said case was a classic example of a litigant wasting time of the Court by filing frivolous litigation in respect of a matter already decided by the High Court ; despite such decision, the petitioner in the cited case chose to litigate the matter and burdened the courts with litigation which did not raise a question of law or fact ; the time consumed in hearing such matter could have actually been consumed hearing other cases ; court time can be well spent on handling genuine cases as opposed to pursuing cases which are vexatious and meritless on their face and which have already been decided ; such frivolous litigation overburdens the Court thereby delaying and thus denying the rightful claim of access to justice guaranteed under Article 9 of the Constitution ; such frivolous litigation also impairs expeditious justice and offends Article 37(d) of the Principles of Policy under the Constitution ; and, a display of such conduct by the

petitioner is in clear violation of the law and cannot be ignored. It was observed by the Hon'ble Supreme Court that to curb frivolous litigation costs were imposed by the Hon'ble Supreme Court in Syed Iqbal Haider V/S Federation of Pakistan (1998 SCMR 1318), Muhammad Akbar V/S Major Tajuddin (2007 SCMR 140) and Commissioner of Inland Revenue V/S Packages Limited (2002 SCMR 634) for prolonging the agony of the respondents therein and wasting time of the Court which could have been spent in resolving legitimate disputes. By observing and holding as above, the petition was dismissed by the Hon'ble Apex Court by imposing special costs of Rs.500,000.00 on the petitioner with direction to him to deposit the same in any approved charity and to place the deposit slip on record within one month, and with direction to the office to put up the case before the Court for necessary orders in case of his failure.

3. In another recent unreported case viz. C.P. No.3127/2020 (Qazi Naveed ul Islam V/S District Judge Gujrat etc.) decided on 12.01.2023, the Hon'ble Supreme Court was pleased to hold, *inter alia*, that frivolous, vexatious and speculative litigation unduly burdens the Courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes ; such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs ; the specter of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defense before the Court ; these costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the court fee, process fee and lawyer's fee paid in relation to the litigation ; imposition of costs in frivolous and vexatious cases meets the requirement of fair trial under Article 10-A of the Constitution, as it not only discourages frivolous claims or defenses brought to the court house, but also absence of such cases allows more court time for the adjudication of genuine claims ; it also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts ; costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims ; the purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which it has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defenses ; in a nutshell costs encourage alternative dispute resolution, settlements between the parties and reduces unnecessary burden of the Courts, so that they can attend to genuine claims ; and, costs are a weapon

of offence for the plaintiff with a just claim to present and a shield for the defendant who has been unfairly brought into Court. In the above-cited case, the Hon'ble Supreme Court was pleased to impose costs of Rs.100,000.00 upon the petitioner therein directing him to deposit the same in the trial court within three months for payment to respondent No.3 in the said case. It was further ordered that in case of failure by the petitioner to deposit the said costs within the prescribed time, they shall be recovered from him as a money decree with 10% monthly increase, and the costs of the execution proceedings shall also be recovered from him in addition thereto.

4. As noted above, the petition, on the face of it, is frivolous and not maintainable, and has been filed by the petitioner without first exhausting the remedy available to him under the law. The petitioner has abused the process of this Court resulting in wastage of court time which could have been utilized in hearing other legitimate and genuine cases pending adjudication before the Court. In such circumstances, the petition is **dismissed** with special costs of **Rs.10,000.00** (Rupees ten thousand only) to be deposited by the petitioner / his counsel in the account of the dispensary of this Court without fail **within thirty (30) days** failing which the matter shall be placed before the Court for further orders. The petitioner and his counsel are warned not to repeat such mistake in future otherwise appropriate action shall be taken against them for abusing the process of this Court.

5. Office is directed to submit a written explanation within fifteen (15) days as to why this petition was entertained in disregard of the direction given by this Court in C.P. No.D-32/2018 vide order dated 27.11.2019.