

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.D-1975 of 2022

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Date	Order with signature of Judge
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- 1.For order on CMA No.23887/2022
- 2.For hearing of CMA No.8948/2022
- 3.For hearing of main case.

08.02.2023

Mr. Maaz Waheed, Advocate for the petitioner.  
Mr. Sibtain Mehmood, AAG alongwith Ahsan Qureshi, Director (E&I),  
BOR, Karachi.

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This petition raises an unusual conundrum as to whether the revenue authority could place a BLOCKED status in respect of any entry made in Form-VII allegedly on the basis of the directions of the Hon'ble Supreme Court where the Respondent No.3 was directed to digitalize the land revenue records.

It raises in this way because as per petitioner he had remained co-owner in agricultural land bearing survey No.136, measuring 09 acres, situated in Deh Halkani, Taluka Manghopir, District West, Karachi where the respondent No.2 through Senior Member vide letter dated 10.03.2020 choses to make Revision under Section 164 of the Land Revenue Act, 1967 and issued decision with regards suspicious entries in the record of rights in the province of Sindh. Perusal of the said letter shows that upon the detailed presentation made by the Director (E&I), BOR who stated that at first attempts be made to verify entries viz-a-viz the chain of ownership from the

current record up to the record preserved in the Microfilming to ensure that there is no break in the chain of ownership. This red flag was apparently raised as the Board of Revenue in its meetings held on 01.10.2019 and 19.02.2020 reviewed the exercise of comparison and verification of record of rights and observed that about 25% of the total entries in the Province of Sindh were found to be suspicious as their mother entries is Village Form VII-A of the year 1985 or before were found either manipulated or fabricated. Per para-4 of the said letter, it appears that the Chairman of the Board observed that looming legal disaster was that such suspicious entries would also be translated in the computerized record, hence vulnerable for any further transactions, which may additionally complicate corrective action hence the Board decided to authorize Director Land Administration & Revenue Management Information System (LARMIS) to suspend said suspicious entries in its computerized records to avoid any further transactions. It turned out that the Board found that there were 2,37,597 entries falling in the above category which were ordered to be Blocked for any further transaction in computers as well as in the Record of Rights maintained by the Revenue Officer including provincial record cell, out of which 74,624 entries were in relation to Village Form VII which were Blocked, the said letter also suggested that such blockage may be removed upon the orders of the Commissioner in its judicial capacity during hearing of cases or after issuance of legal decisions. Para-13 of the said letter also suggested that in various jurisdictions, Director LARMIS was directed to Block such entries, which within the jurisdiction of Karachi were to the tune of 25,302 entries.

By way of background, learned counsel states that the property in question is privately inherited land where fotikhata has been effected in the record of rights where in the year 1985 the legal heirs/owners of the property sold out the said property to M/s. Shabistan Cooperative Housing Society, whereafter, in the year 1994 the said society sold the property to Ameer Riffat Siddiqui which entry was effected in the year 2007 vide Entry No.502, 517/857 as there remain some dispute between the parties in the intervening period. Learned counsel further stated that the said property was lateron mortgaged to UBL and some dispute arose between the parties, however, through deed of redemption in the year 2006, the said property was redeemed whereafter Mr. Ameer Riffat Siddiqui executed a Power of Attorney in favour of Syed Manzar Hussain which Power of Attorney was duly registered in the record of rights as entry No.857/2007 wherein the said property was sold to some private individual where through the NOC for sale having been received and the said transaction of sale was registered vide Entry No.10 dated 09.07.2020 which Entry has now been blocked per learned counsel without sending any notice to the petitioner as required under Section 164(4) of the Act. Per learned counsel number of other transactions also took place in relation to the said property thereafter, however, in pursuance of the Blocked/Suspended status of the entry No.10, such further entries are not made in the Register. Learned counsel states that the said Blockage was made without issuance of any notice to the petitioner, however, it transpires that the reasons of said Blockade originated from the directions issued by the Hon'ble Supreme Court in Crl. M.A. 7-K & 8-K and HRC No.3193-P/2009 which directed the respondent

No.2 to computerize revenue record and on the basis of the records submitted by the respondent No.3 i.e. Directorate of Evaluation & Inspection which highlighted suspicious transactions in the land records, whereupon the respondent No.2 instituted a process of comparison and yielded such Blokade. Learned counsel's grievance is that whilst through directions dated 10.03.2020 respondent No.3 was directed to prepare a reference on the basis of his record and submit the same to the Commission for adjudication of each and every transaction after giving notices to the concerned parties, but no show cause notice or even a simple notice was issued to the petitioner. Learned counsel grievance is further that if any changes are to be made in the Record of Rights, the respondents are mandated under Section 164(4) of the Act to issue notice to the petitioner prior to marking of such an entry a "Blocked" which were not issued and the petitioner has been condemned unheard hence through the petition, it is prayed that such Blockage/Suspension of the entry No.10 be declared as unlawful and violative of Section 164(6) and at the same time a prayer is also made to suspend the operation of the directions issued by the respondent No.2 vide letter dated 10.03.2020 in terms of which respondent No.3 & 7 was directed to suspend the computerized entries of revenue record.

Upon receiving the instant petition, notices were issued to the contesting parties and the respective respondents filed their replies. The respondent No.5 being the main contesting respondent in the instant petition as the subject land falls within its precinct, stated that the entries of the petitioners were blocked by the respondent No.2 and the same remained blocked hitherto, however, admitted

that the subject properly is in the possession of the petitioners so far.

Mr. Maaz Waheed, Advocate premised his case on the arguments that prescriptions of Section 164(4) of the Act, 1967 suggests that the revenue authorities will provide a right of hearing to the owner of the land before blocking any such entry, however, no such show cause was issued to the petitioners and the respondents passed such a decision which is against the spirit of Article 10A of the Constitution, 1973, therefore, the said decision be set aside and entry question be restored.

Mr. Sibtain Mehmood, learned AAG argued that the suspected entries of entire province was blocked temporarily upon the orders of the Supreme Court of Pakistan, therefore, the respondent No.2 having unanimous deliberation of Commissioners, mukhtiarkar and other authorities passed the decision which is impugned in this petition.

We have heard the respective learned counsel and have also considered the record to which our surveillance was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law in such regard.

The impugned decision of the respondent No.2 is available at page 599 (annexure "L") whereby the Respondent No.2 while exercising the mandate conferred under Section 164 of the Sindh Land Revenue Act, 1967 went on to Block certain entries of the province of Sindh including Karachi on account of which the petitioners' entry was also Blocked. Learned counsel for the

petitioner emphatically introduced on record that neither any show cause notice or right of personal hearing was provided to the petitioners, whose vested rights in the subject property are involved. Record reflects that though the respondent No.2/Board of Revenue (who passed the impugned decision through which the subject entry of the petitioners where the subject property situated) was in the knowledge about the prescriptions of Section 164 of the Act, 1967 yet it had not issued any notice to the petitioners for providing them an opportunity of hearing which, otherwise, is mandatory requirement under section 164 of the Act, 1967, and the same is reproduced as under:-

“164. Revision---(1) The Board of Revenue, may, at any time, on its own motion, or on application made to it with ninety days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer subordinate to it.

2) A Executive District Officer (Revenue) or Collector may, at any time of his own motion, or on an application made to him within ninety days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer under this control.

3) If in any case in which a Collector has called for a record he is of opinion that proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Executive District Officer (Revenue).

4) The Board of Revenue may, in any case called for under sub-section (1) and a Executive District Officer (Revenue) may in any case called for under sub-section (2) or reported to him under subsection (3) pass such orders as it or he thinks fit.

**Provided that no order shall be passed under this section reversing or modifying any proceedings or order of a subordinate Revenue Officer affecting any person without giving such person an opportunity of being heard.”**

[Emphasis supplied]

There is no cavil to the truth that an affected person can't be condemned unheard and has to be allowed an opportunity of hearing in case any order is passed against him/her. Prima facie, the law

itself requires the authority/respondents to ensure proper and fair opportunity of hearing to one whose rights or interests are likely to be prejudiced, thus the authority/respondents are left with no option but to follow the commandment of law. Any deviation therein amounts to 'violation of law/procedure' hence renders the decision/order (passed by the respondent No2/Board of Revenue in this case) as illegal. Guidance is taken from the case of Said Zaman Khan and others v. Federation of Pakistan through Secretary Ministry of Defence and others (2017 SCMR 1249), wherein at Rel. P-1279, it is held as:-

“80. Muhammad Haleem, J., as he then was, in the case reported as Haji Hashmatullah and 9 others v. Karachi Municipal Corporation and 3 others (PLD 1971 Karachi 514), observed as follows:-

“.An order in violation of law is mala fide in law, though actual malice may not be present in the mind of the authority passing the order.”

Another learned Division Bench of this Court has held the similar principle in a like matter where entries of the petitioner were cancelled by the revenue authorities and held that such action of the revenue authorities was against the spirit of Article 10A of the Constitution, 1973<sup>1</sup>.

Admittedly, the prescriptions of Section 164(4) of the Act, 1967 were in the knowledge of the respondent No.2/BOR, yet the petitioners were not afforded any opportunity of hearing, but through the impugned decision issued by the respondent No.2/BOR whereby the entries were Blocked, but the later totally ignored the

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<sup>1</sup> Per our reverend brothers Mr. Justice Muhammad Junaid Ghaffar & Mr. Justice Zulfiqar Ali Sangi in the case of Ashique Ali Mari v. Executive District Officer (Revenue) Khairpur & others (2022 YLR 644).

dictates of law and passed the impugned decision, which in our humble view is a clear violation of the doctrine of “*audi alteram partem*”. The maxim, “*Audi Alteram Partem*” means “hear the other side”, or “no man should be condemned unheard” or “both the sides must be heard before passing any order”.

We shall in conclusion would not hesitate in adding that any order passed without giving notice is against the principles of natural justice and violative of “due process”, hence becomes *void ab initio*. If the order is passed by the authority/respondents without providing a reasonable opportunity of hearing to the person affected by it adversely, it has to be an invalid order and must be set aside as right to fair trial is a fundamental right.

The respondent No.5 under whose precinct the subject land situates admitted that per record of rights, the petitioners are current owners of the subject property and they are in possession *hitherto*. It is considered expedient to reproduce the relevant paras of the parawise comments of respondent No.5 which are delineated hereunder:-

**“According to Entry No.056 dated 21.01.2019 of VF-VII-B Deh Halkani, khatedar Syed Noor Alam Shah s/o Syed Ameer Muhammad Shah, has sold out his share land measuring 1-10 acres out of survey No.163 (09-36 acres), which is entered in record of rights in favour of Shakeel Munawar s/o Ghous Munawar.**

**The land of above mentioned survey No.163 is Qabooli (private alnd) and possession of the land is under the aforesaid khatedar’s.**

[Emphasis supplied]

It is gleaned from appraisal of the foregoing that the respondent No.5 who is custodian of Record of Rights through his



reply introduced on record that per his record Shakeel Munawar (petitioner No.3 herein) was owner of the subject property as well as is in possession thereof.

Sanguine to the set of circumstances and ramification as well as connotation of statues, instant petition is allowed and entry of the petitioners is directed to be un-Blocked, but if there is ample evidence available for keeping such a Blockade, appropriate Show Cause notice be issued under law and proceedings be conducted thereon strictly in accordance with law.

JUDGE

JUDGE

Aadil Arab