

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

C.P. No. D-1664 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE

*Mr. Muhammad Suleman Unar, advocate for the petitioners.
Mr. Ashfaque Ahmed Korejo, Advocate for respondent No.1.
Mr. Rafique Ahmed Dahri, Assistant Advocate General Sindh.*

Date of hearing: 11.01.2023

Date of decision: 11.01.2023

ORDER

KHADIM HUSSAIN TUNIO, J.- Through instant petition, the petitioners seek directions to the respondent No.1 to issue them title documents of plot bearing No.4 Block C admeasuring 400 sq. ft in new fruit and vegetable market/sabzi mandi bypass road Tando Allahyar so also declares order dated 24.03.2022 and 10.08.2021 passed by revenue hierarchy being void not sustainable under the law.

2. Precisely facts of the petition are that the father of petitioners namely Shabbir Ahmed during his life time allotted plot No.04 admeasuring 400 sq. ft at the rate of Rs.1333/- sq.ft total consideration of Rs.533200/- vide provisional allotment order bearing NO.Mc/F&V-M.P/TAR/371/2008 Tando Allahyar dated 24.12.2019 issued by the then Administrator Market Committee Tando Allahyar with condition that in case of default in payment of installments of costs of plots for consecutive three months shall render the remaining amount Rs.203,000/- was to be paid by him upto 24.12.2019, hence the notice was issued and sent through registered post therefore the ADC-I and Administrative Market Committee cancelled his allotment and informed to the petitioners' father through letter dated 14.02.2020 and publication was made in Daily Ibrat its issued dated 16.05.2020 and daily Kawish its issued dated 18.05.2020 whereby in all 16 allottees who committed default in payment of installments were invited to get their allotments restored by

payment of two times penalty of the original cost of the cancelled shops/plots plus defaulting amount. After cancellation of shops/plots the petitioners paid an amount of Rs.203,000/- through pay order dated 04.03.2020 with an application through TCS. With reference to his such application, he was intimated by ADC-I and Administrator Market Committee and advised him that the payment is made after cancellation of plot, therefore, he was advised to collect pay order and also collect Rs.3,30,000/- already paid by him but the petitioners filed Civil Suit in the Court of Senior Civil Judge-II Tando Allahyar which was later on withdrawn by them.

3. Learned counsel for the petitioners has contended that orders dated 24.03.2022 passed by Assistant Commissioner Revenue on behalf of Commissioner Hyderabad and order dated 10.08.2021 passed by Deputy Commissioner Tando Allahyar respectively are opposed to law and equity which are not sustainable under the law; that learned Assistant Commissioner Revenue has no power to pass any order on behalf of Commissioner and Deputy Commissioner Tando Allahyar passed order dated 10.08.2021 is without considering the factual and legal position involved in the matter; that Assistant Commissioner Revenue and Deputy Commissioner Tando Allahyar failed to consider the last payment was paid by petitioners to the respondent No.1 before the orders of cancellation of allotment, thus no default was on the party of petitioners and the orders of cancellation was liable to be recalled.

4. Learned Assistant Advocate General assisted by counsel for the respondent No.1 submitted that the petitioners has no right over the subject plot as they were defaulter in payment of cost in time; that the petitioners; that orders passed by revenue hierarchy are speaking one, as such, they pray that the instant petition may be dismissed.

5. We have heard the learned counsel for the respective parties and perused the record available before us.

6. From the perusal of the record, it is evident that petitioners failed to deposit due amount despite lapse of considerable time and the appeal preferred by them was rejected being barred by time was not maintainable for the reason that time prescribed to file appeal before Deputy Commissioner / Appellate Authority is 30 years as per rule 19 of Agricultural Produce Market Committee Act, 1939 but it was filed after the delay of ten (10) months without any justifiable cause; petitioners also failed to prove the factum that payment was made in due time consequently not only the petitioners' allotment was cancelled but fifteen others individual allotment too was cancelled.

7. For what has been discussed above, the captioned petition being misconceived and not maintainable is dismissed. However, the petitioner is left at the liberty to avail any other remedies available at law before a Court of competent jurisdiction.

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