

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

***Civil Revision Application No. S-54 of 2019***

Applicants: Atta-ur-Rehman and others through M/s Sajjad Muhammad Zangejo and Farman Ali, Advocates.

Respondents: The State through P.O Sindh through Secretary Revenue Sindh, Sindh Secretariat Karachi and others through Mr. Mehboob Ali Wassan, AAG Sindh.

Date of hearing: 11.11.2022

Date of decision: 18.11.2022

**ORDER**

**KHADIM HUSSAIN TUNIO, J.**- Through instant revision application, the applicants have impugned the order dated 14.01.2019 in Civil Appeal No. Nil of 2018 Re- Atta-ur-Rehman and others vs. P.O Sindh and others, passed by the learned District Judge Sukkur, whereby the learned Judge upheld the order dated 19.11.2018 passed by the learned Senior Civil Judge-III Sukkur in F.C Suit No.389/2017 whereby the suit of the respondents/plaintiffs was dismissed.

2. Precisely, facts involved in the matter are that the father of the applicants was allotted plot No.109-A measuring 400 sq. yards in Gulshan-e-Iqbal Housing Scheme Sukkur, but the same was later on found out to have been encroached upon, as such on application he was instead allotted plot No. 10-A. On his death in October 2009, his sons filed application for execution of fresh lease deeds, but they were repeatedly ignored and as such filed FC Suit No. 21/2014 (old number). The plaint, however, was rejected on the point of jurisdiction and on appeal, the same decision followed and the applicants were advised to approach the Encroachment Tribunal.

3. Learned counsel for the applicants primarily argued that the learned Appellate Court has not adjudged the merit of the case and

instead handed down an order that is not maintainable at law; that the observations of the learned two Courts below on the point of jurisdiction are contrary to the facts and circumstances of the case; that the learned trial Court has wrongly held that the matter is of encroachment; that the allotment of the said plot to the father of the applicants has not been denied which is still intact, as such they have prayed that the impugned order be set aside and the suit of the applicants be decreed as prayed.

4. Learned AAG on the other hand has supported the impugned orders.

5. I have heard the learned counsel for the parties and perused the material available on the record.

6. Since the question of jurisdiction is concerned, it would be pertinent to discuss the same. At the very outset, it is observed that the issue at hand revolved around the renewal/reissuance of the lease deed between the allottee and the applicants since the initial allotment was in their father's name and after his death, they had to get the same moved to their names. The controversy at hand was never whether the concerned land was leased to begin with or whether the same was public property which is what Sindh Public Property (Removal of Encroachment) Act 2010 (*hereinafter referred to as "The Act"*) revolves around. Needless to say that the bar on jurisdiction of Civil Courts placed by S. 11(1) of the Act is only construed to the purpose of the act itself, which is to determine whether a property is public or not and whether any lease or license in respect to that property is to be determined; it is not an complete and explicit bar. Even sub-section (2) of S. 11 calling for abatement of any suits or appeals calls for the same to be "for the purpose of this Act" In this respect, reliance is placed on the case of *Syed Weedhal Shah and 8 others v. Province of Sindh and Alsoraa (PLD 1978 Karachi 464)* wherein this Court observed that:-

"It is a well-settled rule that the ouster of jurisdiction of a civil Court in respect of a civil suit is not to be readily inferred and unless the jurisdiction has been either expressly or impliedly, taken away, it will continue to vest in the civil Court. Subsection (1) of section 11 of the Act bars the jurisdiction of civil Courts from making any order in relation to a dispute that any property is not a public property but the

Important words that follow thereafter are "for the purpose of this Act or anything done or intended to be done under this Act," which would go to show that the bar was not an all-purpose bar but only in relation to purpose of the Act or anything done or Intended to be don thereunder. It is also significant that in subsection (2) or section 11 of the Act which provides for abatement of all suits, appeals, relating to encroachment and dispute that any property is not a public property is also followed by the limiting words "for the purpose of this Act". It will be noticed that under the Ordinance the bar to the civil Courts' jurisdiction did not extend to adjudication by the civil Courts upon the dispute that property is not public property and to my mind subsection (2) of section 11 was intended to abate such suits allowed by the Ordinance following the proceedings for removal of encroachment or eviction under the Ordinance. Again, under section 13 of the Act the Tribunal has been given exclusive jurisdiction adjudicate upon a dispute that any property is not a public property "for the purpose of the Act" In other words the exclusive jurisdiction of th p Tribunal to determine this question would be when such a question arise in the proceedings contemplated by the Act and not independently of it. The bar to the jurisdiction of the Courts even if we were to assume that i was broadly worded must in its application be limited to the object in view before the Legislature and the subject-matter of the enactment."

7. The learned trial Court simply decided the case, bereft of any merit which seriously prejudiced the plaintiffs in their case especially when their valuable right was involved involving the land left behind by their father, therefore mere technicalities cannot be allowed to defeat such valuable interests. Resultantly, impugned judgment passed by the learned Appellate Court is not legal and is set aside. The matter is remanded back to the Appellate Court for decision afresh after framing proper factual as well as legal issues including one on the point of jurisdiction and then decide the applicability of S. 11(1) of the Act. This exercise shall be done fully in accordance with law under intimation to this Court.

*JUDGE*