

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**C. P. No. D –5543 of 2021 &
C.P. No. D –1100 of 2022**

Date	Order with Signature of Judge
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1. For orders on office objections :
2. For hearing of Misc. No.23219/2021 (Stay) :
3. For hearing of main case :

19.12.2023 :

Mr. Raham Ali Rind for the petitioner a/w Petitioner Mst. Aftab (CNIC No.41409-4983866-8.

Mr. Shabbir Ahmed Kumbhar, Advocate for the Respondent No.9.

Mr. Jawwad Dero, Additional Advocate General a/w Waqas Malook Assistant Commissioner Thatta and Shafqat Shaikh City Surveyor Thatta

MOHAMMAD ABDUR RAHMAN, J. This Petition, has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan in respect of her entitlement by way of inheritance to Plot No 3807 Ward B, Thatta admeasuring 242.66 square yards (hereinafter referred to as the “Said Property with the following prayers:

- “ ... a) *To direct the respondent.No.1 ,3 , 5 & 6 for do not change /modify the record of rights of the Plot.3807, admeasuring 242.66 square yards which is in the name of late husband of the petitioner Mistri Mureed Muhgal S/O Rasool Bux Mughal without legal justification.*
- b) *To direct the respondent .No.1, 2, 4 & 7 to provide the legal protection to the petitioner in accordance with law and to direct the respondent.No.8 & 9 for do not take law in their hands.*
- c) *Another relief/relieves fit and proper according to the circumstances of the case.”*

2. Earlier, a Petition bearing CP No. D-1100 of 2022 had also been maintained by the Petitioner and which was instituted after the institution of this Petition, seeking directions that an application that was pending before the Assistant Commissioner Thatta regarding the reconstitution of the record of the Said Property should be decided by that office and which prayer was granted by this Court on 18 May 2022.

3. The Assistant Commissioner, pursuant to the order dated 18 May 2022 passed in CP No. D-1100 of 2022, decided the application in favour of the Petitioner on 26 October 2022. It seems that thereafter the Respondent No. 9 had maintained objections as against the judicial order dated 26 October 2022 passed by the Assistant Commissioner on the basis that the Assistant Commissioner order dated 26 October 2022 violated the order passed by the Supreme Court of Pakistan dated 28 November 2012 passed in Suo-Moto Case No. 16 of 2011. The objection was unilaterally upheld by the Assistant Commissioner on 6 January 2023 who seems to have through an order of that date held the order dated 26 October 2022 in abeyance.

4. This Petition was listed before us on 14 November 2023 and we sought clarifications from the Assistant Commissioner as to how he had reviewed his earlier order dated 26 October 2022 by the order dated 6 January 2023 and held his own order in abeyance. The Assistant Commissioner has appeared before this Court today and has clarified that it had no jurisdiction to either review its own order or hold its own orders in abeyance and clearly the order dated 6 January 2023 was in excess of the jurisdiction of Assistant Commissioner.

5. Mr. Shabbir Ahmed Kumbhar, Advocate for Respondent No.9 has contended that the powers are available to the Assistant Commissioner to review his order under section 163 of the Sindh Land Revenue Act, 1967 and as such the order dated 6 January 2023 has been passed in consonance with jurisdiction by the Assistant Commissioner.

6. We have heard the parties and perused the record. It seems that the Said Property was being pursued for allotment by the late husband of the Petitioner i.e. *Mistri Mureed Muhgal son of Rasool Bux Mughal* from the mid 1970's and which was finally allotted to him by the Deputy Commissioner Karachi on 25 May 1988 and which allotment is being challenged by the Respondent No. 9 who is also claiming to be the owner of the Said Property on the basis of a Deed of Conveyance dated 10 August 1995 that was purportedly executed by the Governor of Sindh in his favour purportedly pursuant to statement of conditions issued pursuant to statement of conditions issued under Section 10 of the Colonization Act, 1912.

7. It is common ground that the record of rights pertaining to the area of Thatta that were maintained by the concerned Mukhtiarkar were burnt in 1984-1985 and had to be reconstituted and which had been done. We are

also aware that once again, pursuant to an order dated 28 November 2012 passed by the Honourable Supreme Court of Pakistan in Suo-Moto Case No. 16 of 2011, the record of land rights for the Province of Sindh has once again been directed to be reconstituted and which order to the best of our knowledge is still operative.

8. In the circumstances, pursuant to the an order dated 28 November 2012 passed in Suo-Moto Case No. 16 of 2011 by the Honourable Supreme Court of Pakistan it was clearly incumbent on the Assistant Commissioner to reconstitute the record of the area of Thatta pursuant to the order dated 28 November 2012 passed in Suo-Moto Case No. 16 of 2011 by the Supreme Court of Pakistan and which has also been ordered by this Court on 18 May 2022 in CP No. D-1100 of 2022.

9. The order having been complied with by the Assistant Commissioner Thatta by the passing of the order dated 26 October 2022, the sole question before this Court is as to whether the Assistant Commissioner Thatta having passed the order had the requisite jurisdiction to keep that order in abeyance. While the Assistant Commissioner Thatta and the Advocate General Sindh have both contended that the Assistant Commissioner Thatta did not have the requisite power under the provisions of the Sindh Land Revenue Act, 1967, the Counsel for the Respondent No. 9 has relied on Section 163 of the Sindh Land Revenue Act, 1967 which he contended gave the relevant officer the right to review an order. It seems that Section 163 of the Sindh Land Revenue Act, 1967 was omitted by virtue of Section 13 of the Sindh Land Revenue (Amendment) Ordinance, 1980 (Sindh Ordinance XI of 1980) and such right therefore does not exist for any revenue officer of the Province of Sindh. It is now well settled that a right of review by a Court is a substantive right and is not a matter of procedure and must specifically be conferred by statute before it can be exercised.¹ As the right of review no longer existed within the provisions of the Sindh Land Revenue Act, 1967, to this extent, the order dated 6 January 2023, passed by the Assistant Commissioner Thatta, was clearly in excess of his jurisdiction. To our mind, on the passing of the order dated 26 October 2022 the Assistant Commissioner was rendered *functus officio* for the purpose and thereafter had no jurisdiction to entertain an application to review that order, let alone to hold it in abeyance. The order dated order dated 6

¹ See **Hussain Bakhsh vs. Settlement Commissioners Rawalpindi and other** PLD 1970 SC 1 at pg. 5; **Muzzafar Ali vs Muhamamd Shafi** PLD 1981 SC 94 at pg. 96 and pg. 98, ; **National Bank of Pakistan vs Islamic Republic of Pakistan** 1992 SCMR 1705 at pg.1711; **Muhammad Sharif vs Sultan Hamayun** 2003 SCMR 1221 at pg. 1228; **Capital Development Authority vs. Raja Muhammad Zaman Khan** PLD 2007 SC 121 at pg. 127-128;

January 2023 holding the order dated 26 October 2022 in abeyance was clearly in excess of the jurisdiction of the Assistant Commissioner as has been correctly conceded by the Assistant Commissioner, Thatta and the Assistant Advocate General, Sindh.

10. In the circumstances we are hereby minded to direct that:

- (i) the Assistant Commissioner Thatta was pursuant to the order dated 18 May 2022 passed by this Court in CP No. D-1100 of 2022 and by the order dated 28 November 2012 passed by the Honourable Supreme Court of Pakistan in Suo-Moto Case No. 16 of 2011 mandated to reconstitute the record of the Said Property and which had been done by the Assistant Commissioner by its order dated 26 October 2022;
- (ii) that the order dated 6 January 2023 passed by the Assistant Commissioner Thatta to hold the order dated 26 October 2022 in abeyance was clearly in excess of the jurisdiction of the Assistant Commissioner Thatta and as such is hereby set aside;
- (iii) Once reconstituted, the Assistant Commissioner was obligated as per the order dated 28 November 2012 passed by the Honourable Supreme Court of Pakistan in Suo-Moto Case No. 16 of 2011 to submit a report to the Honourable Supreme Court of Pakistan and until such date as order dated 28 November 2012 was not recalled, no transaction should place on that order; and
- (iv) the Respondent No.9 is at liberty to take whatever actions he deems appropriate to enforce his purported right to the Said Property before a Court of competent jurisdiction.

The Petition is therefore disposed of in the above terms, along with all listed applications, with no order as to costs

JUDGE

JUDGE