

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

C.Ps. No.D-1434, 1435, 1436, 1437, 1438 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

27.09.2023

M/s Allah Bachayo Soomro Addl. AG Sindh and Rafique Ahmed Dahri AAG Sindh for petitioners.

Mr. Bharat Kumar Suthar advocate for private respondents.

Mr. Abdul Salam Naich advocate for respondent No.3 in C.Ps. No.D-1435, 1436, 1437 and 1438 of 2022.

These five petitions are arising out of the orders of the appellate court and the trial court where the petitioners i.e. Government of Sindh through Secretary Board of Revenue, Deputy Commissioner Tharparkar, Assistant Commissioner / Land Acquisition Officer Taluka Islamkot and Mukhtiarkar Revenue Taluka Islamkot filed an application u/s 12(2) CPC that a suit was filed followed by collusively proceedings by one Laiqдино and others. It is petitioners' case that without affecting service upon them properly, a Tapedar namely Munshi Nhial Chand appeared and filed written statement on behalf of all the defendants i.e. petitioners. He also became a witness of the plaintiffs / respondents when he was summoned by the trial court. He conceded that the revenue entry as "*Hameshgi Yadasha*" ("ہمیشگی یاداشت") was entered in the revenue record and perhaps it was the Na-Qabooli land. The fact remains that in the revenue court Additional Deputy Commissioner-1 Tharparkar while deciding appeal of the plaintiffs / respondents u/s 161 CPC declared that this was a purely government Na-Qabooli land and there was no evidence whatsoever to prove the entitlement of the plaintiffs / respondents and the appeal was dismissed. It was exclusive jurisdiction of the revenue court and the order was passed on 15.11.2019. As a consequence whereof it appears that suits were filed somewhere 04.12.2019 subsequent to the orders of the revenue court without a challenge to the order of the Additional Deputy

Commissioner-1 Tharparkar referred above. That order of the revenue court has attained finality, yet the trial court and appellate court without having a recourse of such conclusion drawn by the revenue court and without realizing collusive written statement, decreed the suits to which no appeal was preferred as the petitioners were not on proper notice. It was admittedly a land of the Provincial Government and there is no provision under the revenue laws which could identify the "*Hameshgi Yadashat*". The trespassers of the land cannot be recognized as just being occupants of land, in the revenue record under the name and style of "*Hameshgi Yadashat*". It is apparently a fraud committed by the plaintiffs / respondents in collusion with Tapedar and against whom no action apparently was disclosed by learned AAG. When enquired from the respondents' counsel about the entitlement of these private respondents he submits that on the strength of some allotment order of the Assistant Commissioner the revenue entry under the name and style of "*Hameshgi Yadashat*" was made though he has not produced any title or lawful authority of the Assistant Commissioner / Deputy Commissioner to allot the valuable land in question against which the land acquiring authority i.e. Tharr Coal has already deposited the valuable amount and ultimately the plaintiffs could turn out to be the beneficiary unless an order of fair trial is passed. Learned counsel for respondents left it to the discretion of this Court if a fair trial be ordered after setting aside the judgment of the two courts below.

We have perused the record and are of the view that revenue entries of "*Hameshgi Yadashat*" have no lawful cause and cannot be matured as title.

We, therefore, deem it appropriate that the application u/s 12(2) CPC should not have been decided in such a manner summarily. It is apparently a case of a collusion and misrepresentation by one Tapedar representing Provincial Government. In some of the connected petitions

the suits were decreed on admission under Order 12 Rule 2 CPC which also amounts to conceding on behalf of the Provincial Government, which are also collusive proceedings and no admission within frame of Order 12 Rule 6 CPC is available. We, therefore, set aside the two orders impugned, remand the case back to the trial court for recording evidence in the matter (Application u/s 12(2) CPC) and give finding in this regard preferably in about 3 months' time. No amount of any compensation be released to the plaintiffs / respondents under any circumstances till the application u/s 12(2) CPC is decided afresh after recording evidence. R & Ps be sent back to the trial court. All five petitions are disposed of accordingly.

JUDGE

JUDGE