

ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-6055 of 2021 a/w  
CP Nos. D-5717, 6059, 6716, 7348, 7480 and 7481 of 2021,  
CP Nos. 1619, 4672, 673, 533, 569, 5718, 88, 957 of 2022,  
CP No.D-1615 and 594 of 2023 & CP No.D-666 of 2024

-----  
Date: Order with signature(s) of the Judge(s)  
-----

Priority

1. For Orders as to non-prosecution on CMA No.1010/2024 & 1011/2024
2. For Hearing of CMA No.2159/2022
3. For Hearing of CMA No.26014/2021
4. For Hearing of Main Case

**07<sup>th</sup> May, 2024**

Mr. Badar Alam advocate for the Petitioner in CP Nos. D-6055, 6059, 6716, 7348 of 2021, CP No.D-569, 5718, 88 of 2022, CP No.D-1615 and 594 of 2023

Mr. Ejaz Ahmed advocate for the Petitioner in CP No.D-7480, 7481 of 2021, CP No.D-4672, 4673 and 533 of 2022

Mr. Muhammad Asadullah Shaikh advocate for the Petitioner in CP No.D-5717/2021, CP No.D-1619 and 957 of 2022 and CP No.D-666/2024

M/s. Hafeezullah, Fawad Hussain Chand and Ms. Lubna Ejaz advocates for SITE

Mr. Akhtar Ali Mastoi advocate for BoR

Mr. Zia ul Haq Makhdoom advocate for the Intervener

Mr. Talat A. Aslam advocate for the Intervener

Mr. Hanif Faisal advocate for the Intervener

Mr. Yahya Iqbal advocate for the Intervener

Mr. Jawad Dero, AAG

\*\*\*\*\*

Mr. Badar Alam advocate for the Petitioner does not press CP Nos. D-6055 and 6059 of 2021 as purpose has been served. Accordingly, CP No.D-6055 and 6059 of 2021 are dismissed as not pressed.

2. Mr. Talat A. Aslam advocate for the Intervener contends that issue is pending before the civil Court as such ad-interim orders are not binding upon them, therefore, they shall pursue the remedy before the civil Court. Needless to mention that this is simpliciter withdrawal, therefore, parties would be at liberty to pursue civil litigation.

3. Remaining sixteen [16] petitions pertain to land allotted to SITE on certain terms and conditions by the Government of Sindh, which was further allotted to individuals, possession whereof has not been completely resolved by the SITE, hence, some of the petitioners filed petitions claiming demarcation and possession of the subject land. Interveners, who are claiming title on the basis of Kabuli Land and leasehold rights, contends that 54 civil suits are pending for adjudication wherein ad-interim orders are operating.

4. Mr. Fawad Hussain Chand advocate for SITE contends that by direction of this Court in some petitions they have handed over the possession, however, due to orders passed by this in original jurisdiction they are unable to proceed further.

5. Mr. Hafeezullah learned counsel for the SITE contends that issue involved in the present petitions cannot be decided in writ jurisdiction and only the civil Court is competent to resolve the issue.

6. This Court while hearing an application under Order 1 Rule 10 CPC put the counsel for the petitioners on notice to satisfy this Court whether this court in these petitions, in the event of pendency of civil suits, can decide the questions that whether Government of Sindh allotted 1000 acres land however, they exceeded 1000 acre to 2000 acres land and allotted the same to individuals on terms and conditions as imposed by Government of Sindh; that whether the owners of said land falling within the area of Kabuli Land and leased out land shall be compensated and whether that plots are allotted after completing acquisition proceedings. He contends that various orders have been passed by this Court and by interim orders even possession has been handed over partially.

7. Learned AAG contends that these allotments to the SITE are disputed as they failed to comply with terms and conditions as provided in Notification in question. He further contends that admittedly 54 civil suits

are pending within the jurisdiction of original side of this Court where all questions are to be adjudicated. Learned AAG while referring Ordinance III of 2001 contends that Notification in favour of the SITE is hit by that Ordinance, therefore, that issue is to be adjudicated in original jurisdiction. Conversely, learned counsel for the Petitioner contends that this Ordinance pertains to urban land and is not applicable in the issue in hand. In reply, learned AAG contends that the said Ordinance also applies to the SITE's land.

8. At this juncture it is pertinent to mention that whether in writ jurisdiction points raised by learned AAG, as well as issue with regard to leased land or as to title of Kabuli Land, which is denied by the Petitioner, can be adjudicated while deciding *Writ of Mandamus* wherein scope is very limited and only directions can be issued and issue of possession cannot be decided.

9. Mr. Hanif Faisal learned counsel for Intervener while relying over the case law reported in PLD 1991 S.C 476 contends that this Court under Article 199 of the Constitution cannot decide the questions with regard to title of property and possession thereof which is admittedly a question of fact and it could only be resolved through proper trial after recording evidence, hence he submitted that instant petitions are not maintainable.

10. It is observed that the issues of title, demarcation, and possession involved in these Petitions constitute intricate questions of both law and fact. It is well settled principle of law that such questions cannot be adjudicated within the confines of writ jurisdiction absent the testimonial evidence of the involved parties. In the exercise of writ jurisdiction, the High Court is precluded from delving into questions related to the title of a property. The scope of Article 199 of the Constitution is contingent upon issues that lack factual controversy. The matters raised in the current petitions can only be resolved through the recording of evidence by the parties, a process that the law does not permit the High Court to undertake within its writ jurisdiction. Reliance can be placed on the dictum laid down by the Honorable Supreme Court of Pakistan in the case of *Amir Jamal and others v. Malik Zahoor-Ul-Haq and others (2011 SCMR 1023)*.

11. In light of the multifaceted legal and factual disputes presented, resolution through writ jurisdiction is untenable. Consequently, the petitions

enumerated as CP Nos. D-5717, 6716, 7348, 7480, and 7481 of 2021; CP Nos. 1619, 4672, 673, 533, 569, 5718, 88, and 957 of 2022; CP No. D-1615 and 594 of 2023; & CP No. D-666 of 2024 are hereby dismissed *in limine* being not maintainable. The litigants are hereby left with the prerogative to seek redress in a civil court of competent jurisdiction. The office is directed to annex a copy of this Order to all related petitions. Each party shall be responsible for its respective legal expenses. Accordingly, all listed applications are disposed of. Needless to mention that by interim order any relief granted would be subject to outcome of decision of the civil court.

JUDGE

JUDGE

M.Zeeshan