

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Salahuddin Panhwar
Mr. Justice Khadim Hussain Soomro

CP.No.D-6793 of 2021

Petitioner : Pakistan Post office Employees
Cooperative Housing Society

Respondents : Government of Sindh & others

Date of hearing : 07th May 2024

Date of announcement : 31st May 2024

APPEARANCE:

Mr. Khurram, advocate for the petitioner.
Mr. Jawad Dero, Addl. A.G. Sindh.
Mr. Obaidullah Abro, advocate for SBCA.
Mr. Qaim Ali Memon, advocate for DG Rangers.
Mr. Akhter Ali Mastoi, advocate for BoR.
Mr. Shahzad Fazal Abbasi, D.C. East.
Mr. Aziz Chandio, S.O. Litigation.
Mr. Zainul Abedin, S.O. Litigation-F/P-SMBR

J U D G E M E N T

Salahuddin Panhwar, J:- Petitioner is a Society registered under the Cooperative Societies Act 1925 purchased land on Form-VII Morosi Surveyed Land from two private persons in Scheme-33; that possession of the land was handed over to the Petitioner Society on 27-04-1993; that in the year 2012 land grabbers illegally and unlawfully encroached upon the said land in the name of Abdullah Shah Ghazi Goth Block-G in the surveyed land of Petitioner Society measuring 65-09 acres of Sector 25-A, Scheme 33, Gulzar-e-Hijri, Karachi; that former Managing Committee filed Illegal Dispossession Application bearing No. 34/2013 before the learned III- ADJ Malir Karachi in which a comprehensive Report filed by the concerned Police Station (Respondent No.08) dated 26-09-2013 wherein it was mentioned that Abdullah Shah Ghazi Goth Block-G illegally encroached upon on the land of petitioner society; that a report was also filed by PS Sachal Karachi in CP-D 5825/2016 wherein it was mentioned that Abdullah Shah Ghazi Goth Block-G illegally encroached upon the land of the petitioner society by constructing a boundary wall and armed guards were deployed on the said land; that several applications were addressed to the competent authority as well as

Governor Sindh by the former Managing Committee of the Society in the year of 2012 for removal of encroachment from the said land but unfortunately, encroachment is still existing on the said land; that even Government of Sindh enacted Sindh Public Property (Removal of Encroachment] Act 2010 to retrieve the possession of land from the land-grabbers and trespassers established an Anti-Encroachment Force who is fully empowered to lodge FIRs, investigate, and prosecute the land grabbers; that even several applications/complaints were filed to them for removal of encroachment from the Surveyed land of petitioner Society but unluckily, still no action was taken by the Respondents; that after taking the charge by newly elected Managing Committee recently several letters were addressed to the competent authorities to remove encroachment but the official Respondents are not paying any heed and have failed to perform their statutory duties; that C.P.No.D-3824 of 2017 of similar nature is pending before this Court for adjudication; that having no other efficacious remedy available, the petitioner society has prayed as under:

a. Direct the Respondents to take legal action in performance of duties under the Sindh Public Property (Removal of Encroachment Act 2010 for complete Removal of Encroachment on the Surveyed land 65-09 Acre of Petitioner Society in compliance of earlier Orders passed by this Honourable Court in CP-D 5825/16 with Assistance of all Law Enforcement Agencies including Rangers and Anti- Encroachment Cell.

b. Direct the all Law enforcement agency to stop immediately further construction/encroachment by encroacher of Goth Abdullah Shah Ghazi Block-G and submit the report of removal of encroachment fortnightly before this Honourable Court.

c. Any other or further order which this Honourable Court may be pleased to deem fit and proper under the circumstances of the case

2. In response to the notices issued, comments were filed by the official respondents contending that since the subject land is private land, therefore, the provisions of Sindh Public Property (Removal of Encroachment) Act 2010 are not applicable, however, removal of illegal occupations from private land comes within the purview of Illegal Dispossession Act 2005, which remedy the petitioner society already availed; that, as per the Mukhtiarkar Gulzar-r-Hijri, the entries in favour of the petitioner society have been blocked in view of the decision dated 24.06.2020 taken by the Full Board, Board of Revenue, Sindh as same are suspicious; that matter is also sub-judice before this Court in Suit No: 1322 of 2010 filed by the petitioner society for declaration, cancellation and mandatory injunction.

3. Learned counsel for the petitioner, *inter alia*, contended that the petitioner purchased more than 300 acres of land, received possession. However, one portion, which is the subject of this *lis*, was occupied by encroachers, therefore, petitioner filed a direct complaint under the Illegal Dispossession Act 2005, but same was not pursued. Petitioner society is entitled for possession and the respondents have no legal character over the property.

4. In contra, learned AAG and BoR contended that this is a private dispute between the petitioner and the private respondents; civil suit is pending for adjudication; hence this court is not competent to enter into the factual controversy with the regard to the claims of both parties. Besides, the subject matter land is under cloud, as per revenue authorities, by a Full Board meeting, they blocked the relevant entries, therefore, the petitioner has no legal character over the property, even the same has not been challenged.

5. Before proceeding any further, it would be pertinent to see whether in writ jurisdiction the points agitated by the learned counsel for the parties could be adjudicated while deciding *Writ of Mandamus*, the scope whereof is very limited, wherein only directions can be issued to act strictly in accordance with law, whereas the issue of title of property and possession thereof cannot be decided. It is observed that the issues involved herein constitute intricate questions of both law and fact. It is a well-settled principle of law that such questions cannot be adjudicated within the confines of writ jurisdiction without testimonial evidence from 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 petition 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 Supreme Court of Pakistan in the case of *Amir Jamal and others v. Malik Zahoor-Ul-Haq and others (2011 SCMR 1023)*.

6. The Applicants/Intervenors have submitted an application pursuant to Order I Rule 10, read in conjunction with Section 151 of the Civil Procedure Code (C.P.C.), seeking to be joined as parties to the proceedings. In their submission, they have averred that they have been residing in Abdullah Shah Ghazi Goth,

Block-G, Sector 25-A, Scheme 33, Gulzar-e-Hijri, Karachi. By virtue of the issuance of official Challans and Allotment Orders, they assert ownership over their respective accommodations. Furthermore, the Applicants/Intervenors, along with approximately three thousand other inhabitants, reside in the aforementioned locality, where they have erected buildings of multiple storeys.

7. Upon meticulous examination of the present Constitution Petition in juxtaposition of stance by official respondents and intervener(s) it becomes evident that the Petitioner asserts ownership of a surveyed parcel of land acquired from various private parties, as detailed in Paragraph No. 2 of the petition memo. Furthermore, the petitioner contends that the private land has been encroached upon under the illegal name of "Abdullah Shah Gazi Goth." This assertion primarily stems from the filing of Direct Complaint No. 34 of 2013 under the provisions of the Illegal Dispossession Act 2005. Notably, the petitioner relies on a Report dated 26.09.2013 submitted by the Police Station as evidence. Curiously, the ultimate decision of this complaint remains undisclosed. It is worth noting that an application filed under Section 265-K of the Criminal Procedure Code (Cr.P.C) was allowed, resulting in the acquittal of the alleged accused individuals, as per the Order dated 11.05.2015.

8. This Court further directed the Nazir to inspect the property in question, assisted by the concerned Mukhtiarkar and Survey Superintendent. Pursuant to this Court's directive, the Nazir examined the property and submitted a report on 26-09-2023, which detailed the following: the Petitioner/Society claims an area of 65.09 acres in the Petition; Ghazi Goth, G-Block, is found to occupy 71.12 acres of the Society; the Society's land, according to the approved layout plan, totals 90.75 acres; the on-ground measurement corresponding to the Society's approved layout plan is 92.20 acres; and the portion of the Society's land currently unencumbered by encroachments is 21.08 acres. The dispute surrounding these facts requires adjudication by a competent Civil Court, as it falls outside the purview of writ jurisdiction.

9. The report/reply to the Petition submitted by the Deputy Commissioner, Karachi-East is based on the following grounds:

1. Cause of Action and Land Ownership:

- The petitioner's claim lacks a valid cause of action to file the instant petition against the respondents.

- The subject land in question is **private land**, which means it falls outside the scope of the **Sindh Public Property (Removal of Encroachment) Act 2010**. Consequently, the subject matter cannot be adjudicated under the provisions of this Act of 2010.

2. Occupants and Respondents:

- Interestingly, the occupants of the land have not been included as respondents in the petition. This omission may have implications for the legal proceedings.
- It's essential to address the rights and interests of the occupants when dealing with land-related matters.

3. Blocked Entries:

- The title or entries in favor of the society are currently **blocked** due to a decision made by the **Full Board, Board of Revenue, Sindh**.
- Specifically, on **June 24, 2020**, the Full Board took action related to these entries.
- The Mukhtiarkar of Gulzar-r-Hijri reported this development through a letter (No. MUKH/GH/SCI-1-33/424/2024) dated **March 11, 2024**.
- Additionally, the Assistant Commissioner of Gulzar-e-Hijri forwarded this information through another letter (No. AC/GH/SCH-33/459/2024) on the same date.

10. Upon examination of the Deputy Commissioner's report, it is evident that the Petitioner lacks a **cause of action** and **locus standi** to prefer the current Constitutional Petition. The record reflects that the disputed land is private property situated within the confines of Abdullah Shah Ghazi Goth, thereby rendering it outside the scope of the Sindh Public Property (Removal of Encroachment) Act, 2010. Furthermore, the current occupants of the aforementioned property, who have established longstanding possession, have not been lawfully joined as respondents in this Constitutional Petition. As a result, the current Petition is also not sustainable due to the absence of indispensable parties, whose presence would be crucial for adjudicating the present Petition in light of the principle established by the Apex Court of Pakistan in the case of *Akhtar Ali Khan v. Settlement Commissioner, Peshawar and 04 others (1989 SCMR 506)*.

11. Since in *writ of certiorari*, this Court can examine the legality of the judgment of the trial Courts, whereas, in *writ of mandamus*, authorities can be

directed to perform as per law; hence, this case is not falling within the purview as enshrined under Article **199 of Constitution of Pakistan**. However, relating to public property, efficacious remedy is already available by way of tribunals, while regarding private land, the remedy is to file civil suits, which is the ultimate court to decide the fate of rights of the parties. It is a well-established legal principle that superior courts should refrain from engaging in factual controversies. Matters related to factual disputes can only be effectively resolved through thorough inquiry and the recording of evidence in a civil court. This approach aligns with the dictum laid down by the Apex Court of Pakistan in the case of *Government Of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others* (2022 SCMR 472).

12. In view of above touchstone, it is pertinent to mention that the proprietary rights or title entries favoring the Petitioner/Society have been blocked pursuant to the decision of the Full Board, Board of Revenue, Sindh, as of 24-06-2020. This impediment has been documented by the Mukhtiarkar of Gulzar-e-Hijri through letter No.MUKH/GH/SCI-1-33/424/2024 dated 11-03-2024, which was subsequently corroborated by the Assistant Commissioner of Gulzar-e-Hijri via letter No. AC/GH/SCH-33/459/2024 on the same date. All these factors indicate that the purported ownership and title claimed by the Petitioner are subject to uncertainty. The resolution of this matter lies within the purview of the Civil Court, which, under its ultimate jurisdiction, must assess the evidence presented by the parties and thoroughly examine the documentary evidence, including the revenue records.

13. On the aforementioned basis, it is pertinent to note that in cases involving private disputes concerning kabuli land (private property), the appropriate jurisdiction lies with the Civil Court to ascertain the factual controversy. Upon examining the registered deeds asserted by the petitioner in their favor, it becomes evident that these documents do not establish whether the petitioner has obtained possession of the land. The issue of illegal and forcible dispossession falls within the purview of the Court under the Illegal Dispossession Act, 2005 along with other remedies provided by law. Although the petitioner availed of this remedy, he failed to pursue it further. Meanwhile, civil litigation regarding the subject land is currently pending adjudication in Civil Suit No. 1322 of 2010. Consequently, this Court cannot declare title or grant possession relief when the title of the land, as claimed by the revenue hierarchy,

remains clouded and the relevant entries have not been contested. Therefore, the petitioner lacks the necessary locus standi to file the present petition.

14. For the reasons delineated hereinabove, the present Constitutional Petition, lacking substantive merits, is hereby dismissed, accordingly pending applications are also disposed off. Each party shall bear its own costs.

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"Approved for reporting"