

THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-1590 of 2021

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

**Before: Salahuddin Panhwar &
Mohammad Abdur Rahman, JJ**

Priority:

1. For hearing of CMA No 6729 of 2021.
2. For hearing of main case.
3. For orders on MIT-II Report dated 21.3.2024.
(Order forwarded)

21st March 2024

Petitioner Shahab Usto is present in person.

Ms. Naushaba Solangi, AAG Sindh along with
Dr. Syed Hasan Ahmed, Technical Officer (Litigation)
on behalf of Secretary Health, Govt. of Sindh.

Mr. Ashraf Ali Mirani, Law Officer, CTA&A Department
a/w. Zahid Abbas Akhund, Director Culture, Focal Person.

Mr. Muhammad Mansoor Mir, Advocate for Respondent No.5.

Mr. Akhtar Hussain, Advocate for Respondent.

Salahuddin Panhwar, J:- Pursuant to order dated 12.03.2024, learned MIT-II has submitted a report of learned District & Sessions Judge, Shikarpur. Being relevant, the same is reproduced as under:-

"SUBJECT: CONSTITUTIONAL PETITION NO.D-1590/2021.

Reference: Letter No.479/MIT-II/CP.No.D-1590/2021 dated 19-03-2024.

R/Madam

In compliance to directions vide referred letter on subject noted above, it is respectfully submitted that, learned Judicial Magistrate, Khanpur with Revenue Officers and DHO Shikarpur visited the site and reported as under:

One Heera Nand had donated land measuring 15609.3 Square Yards, out of City Survey No 46/12 & 13 to Christians who in the year 1910 had constructed "Sir Hennery Holland Christian Eye Hospital Shikarpur" over it. At present said hospital is in dilapidated condition. Its operation theater is in possession of one Fareed Ahmed Brohi, who claims himself to be watchman of the hospital, whereas two rooms are in possession of one Mir Muhammad Lolai, allegedly caretaker of the hospital. There are eight old constructed shops towards eastern side of the hospital. Hospital is non-functional and is abandoned since decades.

There is officers residency of Sir Hennery Holland Christian Eye Hospital, spread upon 25068 Square Yards of City Survey No.44/11,12,13 & 14, entered in revenue record as "Mission Hospital Shikarpur". Reportedly, this property was also donated by said Heera Nand. Old structure of residency has been demolished. There appear signs of plotting over residency of the hospital and it appears that, some land grabbers after occupying residential area of the hospital, are going to sale it by making

it plots. A residential house measuring 6000 Sq: feet is constructed over the plot of hospital, which is in occupation of one Mehboob Ali Brohi, who claims himself to be watchman of the residency. (Copies of extract of property card issued by City Survey Office Shikarpur are enclosed)

Sir, so far as title of the property is concerned, in this regard three suits i.e. (i) F.C suit No.124/2014, Re. Mumtaz Ali Mungi Vs PO Sindh and others, (ii) F.C suit No.214/2020, Re. Mumtaz Ali Mangi Vs PO Sindh and others and (iii) F.C suit No. 112/2021, Re. Church Missionary Trust Vs PO Sindh and others, are pending before the court of learned Senior Civil Judge-II. Shikarpur.”

2. The above report is appended with entries No. 44/11, 44/12, 44/13 and 44/14 having entry of Revenue free grant in the name of **Mission Hospital Shikarpur** dated 21.9.65 with reference to the grant from Government of Sindh as per Resolution No. P-11326 dated 05.03.55 and the order of CSO dated 21.09.68; the entry pertains to 44/13 refers to the name of **Dr. R.W.B.Holland (Mission Eye Hospital)** transferred from settlement authority vide P.T.D. No. 3190 dated 29.1.66, CS Order dated 22.2.68.

3. Secretary, Health Department has also submitted a report, which speaks that a three members committee has been constituted under the Director General Health Services Sindh, Hyderabad as Chairman and two members Prof. Dr. Sajjad Ali Surhio, Executive Director, SIOVS, Hyderabad and Dr. Abdul Sattar Shaikh, Director Health Services, Larkana Division, to ascertain whether this old /historical hospital has received any contribution from the department and to look into feasibility of mechanisms/proposals to run this hospital by providing doctors and granting aid; taken on record.

4. Besides, notification of the Culture Department reflects certain properties declared as “Protected Heritage”. Being relevant, such details are reproduced herewith:-

SCHEDULE

SHIKARPUR UC-1

1. SHIWALA TEMPLE, BEGGARI WAH ROAD (OPPOSITE SHAHI BAGH).
2. AFSHAN CINEMA (DRAMATIC THEATRICAL HALL), ALIF SHAH ROAD/ OFF BEGGARI WAH ROAD.
3. TEMPLE SHIWALA, ALIF SHAH ROAD/ OFF BEGGARI WAH ROAD.
4. OLD MUNICIPAL BUILDING (SETH DUWARKADAS SILK MILL), PLOT NO.34 CIRCULAR ROAD (NEAR KARAN DAR).
5. PLOT NO.109 CIRCULAR ROAD (NEAR WAGNO DAR).
6. PLOT NO.742 AWAL SHAH LANE/ OFF CIRCULAR ROAD.
7. PLOT NO.422 SETH CHAMANSING RELUMAL LANE.
8. KASHANA IQBAL, PLOT NO. 432, 433, 434, 435 MENGHO QURWANI LANE.

9. PLOT NO.407 RAISI KHUHI LANE.
10. PLOT NO.412 RAISI KHUHI LANE.
11. PLOT NO.606 RAISI KHUHI LANE.
12. PLOT NO.605 RAISI KHUHI LANE
779. MANCHAR SHAH GHAZI GRAVEYARD, PLOT NO.19 ROAD TO KOT SULTAN (NEAR MUKHTIARKAR'S OFFICE).
780. TOMB RAKHAIL SHAH, ROAD TO KOT SULTAN (NEAR MUKHTIARKAR'S OFFICE).
781. MOSQUE, ROAD TO KOT SULTAN (NEAR MUKHTIARKAR'S OFFICE).
782. MANCHAR SHAH GHAZI TOMB, ROAD TO KOT SULTAN (NEAR MUKHTIARKAR'S OFFICE).
783. (SETH MOHNIDAS SETH KISHANDAS SETH DOLATRAM REWAKARI), ROAD TO KOT
784. TEMPLE IN SHAMSHAN GHAT, ROAD TO KOT SULTAN (NEAR MUKHTIARKAR'S OFFICE).
785. EUROPEAN CEMETRY, NOSHARO DARO ROAD, OFF STATION ROAD.

SHIKARPUR UC-5

786. INSPECTION BUNGALOW IRRIGATION (DEPUTY COLLECTOR'S BUNGALOW), ROAD TO KHANPUR/ ROAD TO ZARKHEL.
787. RAILWAY STATION, STATION ROAD.
788. PLOT NO.7 ROAD TO PHULPOTA.
789. PLOT NO.7 ROAD TO PHULPOTA.
790. CHELLASING & SITALDAS GOVERNMENT DEGREE COLLEGE , C & S COLLEGE ROAD/ ROAD TO ZARKHEL.
791. RESIDENCE NEAR FLYOVER, ROAD TO KHANPUR.
792. SIR HENRY HOLLAND MISSION EYE HOSPITAL, PLOT NO.12, 13 STATION ROAD / C & S COLLEGE ROAD.
793. SCOUT'S COMPLEX BUNGALOW, PLOT NO.9 C & S COLLEGE ROAD.
794. SESSIONS COURT (GARHO BUGALOW), C & S COLLEGE ROAD.
795. RAILWAY RESTHOUSE, PLOT NO.3 STATION ROAD / ROAD TO PHULPOTA.
1197. RESIDENCE NEXT TO DEWAN AUTOS (FATICHAND DHARAMSHALA), HAJI LATIF SHAH ROAD.
1198. RESIDENCE NEAR TO DEWAN AUTOS (FATICHAND DHARAMSHALA), HAJI LATIF SHAH ROAD.
1199. NEAR SUI SOUTHERN GAS ZONAL OFFICE, HAJI LATIF SHAH ROAD.
1200. RESIDENCE BEHIND ADBP OFFICE, NEW FAUJDARI ROAD/ OFF STATION ROAD.
1201. GOVERNMENT BOYS NATIONALIZED HIGH SCHOOL QAZI HABIBULLAH, CIRCULAR ROAD.

1202. HAJI LATIF SHAH DARGAH, 10 HAJI LATIF SHAH ROAD.

1203. SABEEL KI DARBAR, BARA STAND ROAD, OFF HAJI LATIF SHAH ROAD.”

5. At this juncture, order dated 20.02.2024 passed by this Court at Circuit Court, Larkana in CP.No.D-849 of 2024 along with CP.No.D-1119 of 2015 and CP.No.D-1018 of 2017 is placed on record. It would be conducive to refer paragraph No. 6 of the order which is that:-

“6. We have also gone through the order dated 30.11.2016 passed by this Court, whereby the then Deputy Commissioner, Shikarpur/ respondent No. 1 was specifically directed to ensure the protection of property in dispute which he has been maintaining, but the claim of the petitioner now is that some miscreants have again occupied the area and thereby are creating third party interest, which constrained them to place these documents before this Court today. Therefore the Deputy Commissioner (Respondent No 1) is directed to appoint a competent Police Officer to look after/protect/preserve the properties involved in these petitions. Further the learned District Judge, Shikarpur is directed to ensure compliance, as mentioned above including preparation and submission of the Report before the next date of hearing through the Additional Registrar.”

6. The counsel for respondent No. 5 has placed emphasis on the documents attached to his comments/objections. These documents indicate an entry in the City Survey Record in favor of **the Church Mission Society Quetta** (Hiranand Eye Hospital). However, the entry was made without providing the necessary details or availability of the records that would justify such an inclusion in the City Survey Record, suggesting that the entry may have been made surreptitiously. Besides, it is claimed that this society, earlier known as Christian Society of India registered in 1928 and registration certificate, which is available at page 137 of the file, and they have purchased this property. Counsel for respondent No.5 further contends that they have not sold out this land for any commercial purpose; however, they have allowed construction of houses for the Christians community in one piece of land which is at a distance from the eye hospital. Further, it is contended that the occupation as referred by the learned District & Sessions Judge is not with their permission and that it may be vacated.

7. Under the prevailing conditions, the learned District & Sessions Judge is hereby directed to ensure the restoration of possession of the Hiranand Eye Hospital building, including all areas within its boundaries, and to ensure the

eviction of the illegal occupants as named in his report. The current occupation of the Operation Theater, hospital rooms, and building compartments is unauthorized. The Deputy Commissioner and SSP Shikarpur are mandated to furnish the necessary force to facilitate the eviction of these illegal occupants within seven days. Should there be any lack of cooperation, such conduct will be deemed pejorative and subject to penal action.

8. *Prima facie*, the property registered under the name of Mission Hospital Shikarpur underwent an unauthorized conversion to the name of Church Mission Society Quetta in the 2019 records of the City Survey, Shikarpur. This change, lacking the sanction or order of the competent authority, seems to be marred by malice and collusion. Accordingly, Member Board of Revenue shall furnish explanation as to when the first entry was made in the name of **Mission Hospital Shikarpur** and under what circumstances, this has been mutated into the **Church Mission Society Quetta** (Hiranand Eyes Hospital) and shall also produce orders dated 05.03.55, 21.09.68, GR No. D-11326 dated 23.8.46 and shall personally examine the entries and submit the report with regard to their genuineness or otherwise.

9. Furthermore, respondent No. 5 is hereby prohibited from selling, alienating, or transferring the property in question, or from issuing any Power of Attorney concerning this property by any means, until further order.

10. The Member of the Board of Revenue and the Secretary of Land Utilization shall produce the entire original record pertaining to Mission Hospital Shikarpur, along with all pertinent materials that elucidate the basis for the abrupt and improper alteration of records in favor of Church Mission Society Quetta, whether such changes were authorized by the competent authority or not. The learned counsel for respondent No. 5 is directed to submit documentation establishing the connection between the Church Mission Society Quetta and Mission Hospital Shikarpur. It appears from the records that the land in question has never been allocated to any society.

11. Deputy Commissioner shall demarcate all numbers and ensure that such property is not occupied by any encroacher. He would be competent to take coercive measures to ensure that the property, which was/is reserved for eye hospital, shall be preserved as an eye hospital as well as the lands in the name of the hospital.

12. Secretary Culture Department shall personally visit all the sites as referred in paragraph No.4 alongwith Director Antiquity, Mr. Shahab Usto, counsel for the petitioner and Mr. Sohail Memon, advocate of Sukkur and submit a report alongwith photographs and video; that report shall clarify heritage properties relating to public and private properties separately

13. Chairman of the Committee as notified by the Health Department shall be in attendance alongwith report.

14. Partly heard learned counsel for the petitioner and respondent No.5.

To come up on 23.04.2024 at 11:00 a.m.

JUDGE

JUDGE

SAJID