

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

C.P. No.D-2406 of 2014

Petitioners : Nazeer Ahmed & Gul Sher, through
Mr. Sarfraz A. Akhund, Advocate

Respondent No.1&2 : Province of Sindh through Secretary Revenue
and Assistant Commissioner PanoAkil, through
Mr. Ahmed Ali Shahani, Assistant Advocate
General

C.P. No.D-2507 of 2014

Petitioners : Asadullah and 5 others, through
Mr. Rafiq Ahmed Baloch, Advocate

Respondent No.1&2 : Province of Sindh through Secretary Revenue
and Assistant Commissioner PanoAkil, through
Mr. Ahmed Ali Shahani, Assistant Advocate
General

C.P. No.D-1766 of 2018

Petitioner : Lal Hussain Khan, through
Mr. Tariq G. Hanif Mangi, Advocate

Respondent No.1to 3: Province of Sindh through Secretary Revenue
And 2 others, through
Mr. Ahmed Ali Shahani, Assistant Advocate
General

Date of hearing : **19.03.2024**

Date of Decision : **24.04.2024**

ORDER

ARBAB ALI HAKRO, J.- Through this Common Order, our objective
is to adjudicate upon the captioned petitions collectively, as they

encompass analogous legal queries, present comparable factual circumstances, and seek identical relief(s). In each of these petitions, the petitioners have challenged the veracity and legality of the Order dated the 10th of July, 2014, which was passed by the Assistant Commissioner of PanoAkil. Said Order resulted in the cancellation of the petitioners' respective entries within the record of rights. The main prayers sought by the petitioners are reproduced below: -

C.P No.D-2406 of 2014

- a) *It be declared that the Order dated 10.7.2014, passed by respondent No.2 cancelling the revenue entry No.72 dated 16.3.2009 by misinterpreting the Judgment and Decree of Additional District Judge (H) Sukkur is without lawful authority, hence of no legal effect.*

C.P No.D-2507 of 2014

- a) *To declare that the Order dated 10.7.2014, passed by respondent No.2 cancelling the revenue entries No.16 dated 20.3.2000 and entry No.95 dated 26.3.1990, is without lawful authority, hence of no legal effect.*

C.P No.D-1766 of 2018

- a) *To declare that the respondent No.2 & 3 were endorsed the impugned entry dated 10.7.2014 in excess of jurisdiction and respondent No.3 cancelled the revenue entry No.152 (01-35) and S. No.153(01-09) total 02-19 acres situated in DehKotSadiq Shah TapoNourajaTalukaPanoAkil District Sukkur is without jurisdiction and lawful authority, hence of no legal effect.*
- b) *To direct the respondent No.3 to remove the endorsement entry dated 14.7.2014 and restore the entry No.118 dated 10.8.2004 in favour of petitioner.*

2. At the very outset, learned Advocates representing the petitioners submit that Assistant Commissioner PanoAkil committed illegality while cancelling the entries of the Petitioners based on

registered Sale Deeds. They also submit that the impugned Order dated 10.7.2014 is unreasonable and illegal based on the judgment dated 28.02.2005 and Decree dated 02.3.2005, passed in the Land Acquisition Suit by Referee Judge. They further submit that there are no directions in the above judgment and Decree for cancelling the entries of the Petitioners and the Assistant Commissioner by misinterpreting the said judgment, and the Decree cancelled the entries of the Petitioners. They finally contended that the impugned Order is illegal, unlawful, and void abinitio, and the Assistant Commissioner has exercised the jurisdiction in excess of his authority and is liable to be set aside.

3. Conversely, the learned Assistant Advocate General supported the impugned Order of the Assistant Commissioner by stating that this petition is not maintainable and that the petitioners did not exhaust the remedy available under the law. As such, the petition is not maintainable and liable to be dismissed.

4. We have heard Counsel for the Petitioners and learned Assistant Advocate General, and with their assistance, we have perused the record and case law.

5. Upon careful examination of the impugned Order/endorsement dated 10.7.2014, passed by the Assistant Commissioner, PanoAkil, it is evident that the entries of the Petitioners were cancelled based on the judgment dated 28.02.2005, passed in a Land Acquisition Suit by the Additional District Judge (H) Sukkur/Referee Judge. However, a closer look at said judgment reveals that the District Officer Agricultural Extension, Sukkur, was declared to be entitled to receive compensation from the Wapda Department, which acquired the land. Interestingly, the judgment does not mention cancellation of entries of the Petitioners, nor does it empower the Referee Judge to order cancellation of entries.

6. Nevertheless, the instant petition has been preferred against the Order passed by the Assistant Commissioner, PanoAkil, who

cancelled the entries of the Petitioners under the Sindh Land Revenue Act, 1967 ("the Act of 1967"). The Act of 1967 provides the remedy of appeal and revision against the orders passed under the Act of 1967 by the revenue officers. Therefore, the first and foremost question before us is the maintainability of this Constitutional petition. For the sake of convenience, Section 161 of the Act of 1967 is reproduced as follows: -

"161. Appeals.---(1) *Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely--*

(a) *to the Assistant Collector of the first grade when the Order is made by the Assistant Collector of the second grade; and*

(b) *to the Collector when the Order is made by an Assistant Collector of the first grade;*

(c) *to the Commissioner, when the Order is made by a Collector;*

(d) *to the Board of Revenue only on a point of law, when the Order is made by a Commissioner:*

Provided that---

(i) *when an original order is confirmed on first appeal, a further appeal shall not lie.*

(ii) *When any such order is modified or reversed on appeal by the Collector, the Order made by the Commissioner on further appeal, if any, to him shall be final.*

Explanation (1):- Omitted

(2) *An order shall not be confirmed, modified or reversed in appeal unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of or against the Order appealed from.*

(3) *No Revenue Officer other than the Board of Revenue shall have power to remand any case in appeal to a lower authority.*

7. A bare reading of the above-mentioned Section 161 of the Act of 1967 outlines the hierarchy and process for appeals in cases involving orders of Revenue Officers. Here's a detailed interpretation: -

Hierarchy of Appeals:

- An appeal against an order made by an Assistant Collector of the second grade lies with the Assistant Collector of the first grade.
- An appeal against an order made by an Assistant Collector of the first grade lies with the Collector.

- An appeal against an order made by a Collector lies with the Commissioner.
- An appeal against an order made by a Commissioner lies with the Board of Revenue. However, such an appeal to the Board of Revenue can only be on a point of law.

8. Section 161 of the Act of 1967 provides a clear path for appeals, ensuring that aggrieved parties can seek redress accordingly. It also places certain restrictions to prevent misuse of the appeal process and to ensure finality of decisions. However, instead of questioning the impugned Order within the hierarchy of the Act of 1967, the petitioners have filed instant Constitutional petitions. They seek a declaration that the impugned Order, passed by the Assistant Commissioner, PanoAkil, is illegal, unlawful, and void ab initio. While the impugned Order may strictly not be in accordance with the law or incorrect and void, it cannot be said that it has been passed without jurisdiction. The Revenue Courts have exclusive jurisdiction to determine matters about the making and maintenance of record-of-rights, the assessment and collection of land revenue, the survey and demarcation of boundaries of the land, the appointment and functions of Revenue Officers, and other matters connected with the Land Revenue Administration in the Province of Sindh under the Act of 1967. If the Petitioners were dissatisfied with the Order of Assistant Commissioner PanoAkil, they should have filed an appeal before the Commissioner. Where the authority which passed the Order was conferred power by the Statute, which provides the right of Appeal and Revision, the procedure prescribed by law is to be followed; otherwise, it may lead to opening of a floodgate of cases in the High Court against all types the orders passed by the Government functionaries, tribunals or authorities, bypassing the remedies of Appeal, Revision and review provided by the relevant Statute. The Apex Court, in the case of Ch. Muhammad Ismail v. Fazal Zada, Civil

Judge, Lahore, and 20 others (PLD 1996 Supreme Court 246)has

observed in Paras 8 and 9 as under: -

"8. *In the case at hand, the question raised by the petitioner before the Lahore High Court was of a simple nature. Plaintiff's suit was rejected for non-payment of the requisite court-fee. Order by which the plaintiff was rejected was passed on 11th July, 1994. By then it had been ruled by this Court in the case of Siddique Khan and 2 others that before rejecting the plaintiff for non-payment of requisite court-fee, an opportunity is to be afforded to the plaintiff to make good the deficiency in court fee. If this dictum had not been followed by the learned Civil Judge, the petitioner could easily assail his Order by means of an appeal. We wonder why he had rushed to the High Court with a writ petition instead of taking appeal before the appropriate forum. The course adopted by him was not proper and we are not inclined to condone his lapse in this behalf by finding fault with the Order of the High Court for which there is no justification.*

9. *The High Courts are already huddled up with thousands of cases. If the litigant public is permitted to take all sorts of disputes to the High Courts without first availing of the other remedies available to them under law, it will not only necessarily increase the work load of the High Courts but would also defeat the provisions of law by which the said remedies have been made available. Such a spree on the part of the litigant public would, if we may say so, amount to abuse of the Constitutional jurisdiction which is to be exercised by the High Courts in exceptional cases to provide justice which cannot be otherwise obtained by the aggrieved parties."*
(emphasis supplied)

9. In light of the aforementioned dictum of the Supreme Court of Pakistan, it is our firm belief that the petitioners have an alternate remedy of appeal against the impugned Order. It seems that the petitioners have not availed themselves of the remedy provided under the pertinent law, which is not only sufficient but also effective, as it allows for both factual and legal questions to be examined by the authorities designated under the provisions of Sections 161, 163, and 164 of the Act of 1967. The Land Revenue Act, being a Special Statute, offers a remedy in the form of an appeal against an order issued by the Assistant Collector/ Assistant Commissioner. The Statute also provides an additional remedy in the form of a Revision against an

order passed in appeal. Consequently, we do not concur with invoking the jurisdiction of this Court under Article 199 of the Constitution without the Petitioners having exhausted the remedies available to them under the law. This aligns with the principle of exhaustion of remedies, a cornerstone of administrative law.

10. As a Court of Constitutional Jurisdiction, this Court does not intervene where an aggrieved person has an adequate remedy available by way of appeal, and a comprehensive mechanism for the redressal of his grievances is provided by the Act of 1967. The Supreme Court of Pakistan, in the case of Mumtaz Ahmed and another vs. The Assistant Commissioner and another(PLD 1990 SC 1195), has established that the petitioners should not have approached the High Court without first exhausting the other remedies provided in law in the hierarchy of the Revenue Forums. A Constitutional Petition filed prematurely could be dismissed on that ground alone. It is a well-established principle that the exercise of the constitutional jurisdiction of the High Court under Article 199 of the Constitution of Pakistan, 1973, when an efficacious remedy is available, is generally discretionary and is regulated by the principle that such jurisdiction should not be invoked if there is an alternative, adequate, and efficacious remedy before the revenue hierarchy is available to the aggrieved party. In the case of Jamil Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others (2023 SCMR 1919), it was held by the supreme court of Pakistan Court that:

“The writ jurisdiction of the High Court cannot be worn out as a solitary way out or remedy for aerating all sufferings and deprivations. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The underlying principle accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute. The extraordinary jurisdiction of the High

Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. It is a well-settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy".

11. Notwithstanding, it is also well-settled law that mutation proceedings are summary in character and do not provide ample opportunity to the litigants claiming title in the land. The Revenue Officer in summary proceedings has a limited scope in the matter, as it requires elaborate inquiry and evidence; it can only be adjudicated by the Civil Courts as provided under Section 53 of the Act of 1967. In the case of Muhammad Faraz and others vs Abdul Rashid Khan and others (1984 SCMR 724), the Supreme Court of Pakistan has held as under: -

"It is true that a party aggrieved by an entry in a record-of-rights could move the Civil Court under section 53 of the and Revenue Act but there is nothing to prevent that party from seeking redress first in the Revenue hierarchy by way of Appeal and Revision. Under section 164(4), the Board of Revenue has the power to call for the record of any case pending or disposed of by any revenue officer subordinate to it and "to pass such orders as it thinks fit". The only limitation on this power is that no order shall be passed without giving the affected person an opportunity of being heard. It was not and cannot be denied that this jurisdiction was available even in matters relating to preparation of record-of-rights and that the orders passed by subordinate revenue officers merged in the Order of the Board of Revenue which became the final adjudication of the dispute between the parties in so far as the revenue authorities were concerned. At this stage if any party was aggrieved, it could invoke the provision of section 53 which was an adequate remedy and as such the constitutional jurisdiction of the High Court in terms of Article 199 of the Constitution was not available. "

(Emphasissupplied)

12. Upon meticulous examination of the premises presented, and refraining from an inquiry into the substantive legitimacy of the challenged Order, we consider it judicious to adjudicate the dismissal of these petitions on the ancillary rationale that the petitioners prematurely sought the intervention of this Court. The petitioners were obliged to first undertake the available recourse delineated within the structured echelons of Revenue Forums as stipulated by the Act of 1967, a matter which has been expounded upon hereinabove. In light of these considerations, the petitions are hereby dismissed.

JUDGE

JUDGE