

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No. D – 1032 of 2019

Date	Order with Signature of Judge
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For orders as to maintainability of petition.

19.02.2024:

Mr. Muhammad Ghazali holding brief for Mr. Shahab Sarki,
Advocate for the Petitioner.

Syed Sultan Ahmed, Advocate for Respondent No.1.

MOHAMMAD ABDUR RAHMAN, J. The Petitioner through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, have sought the following relief:

- “ ...
- (a) *Declare that, the petitioner society is owner of the above said land by virtue of sale agreement dated 31.10.2001 and full consideration has been paid by them 1/10th to the defunct National Development Finance Corporation and remaining amount paid to the respondent No.1 after amalgamation of defunct NDFC with NBP by severance scheme.*
 - (b) *Direct the respondent No.1 to transfer the above petition land to the petitioner society through registered sale deed.*
 - (c) *Direct the respondent No.3 to handover the original documents of land pertaining to petitioner society.*
 - (d) *To direct the respondent No.7 to give the protection to the Managing Committee and members of petitioner society and further he may be directed to take action against the land grabbers as per law.*
 - (e) *Restrain the private respondents (land grabbers) not sell the land of the petitioner society.*
 - (f) *Direct the Pak-Rangers and Police to remove the illegal encroachment from the land bearing Survey Nos.136, 137 & 138 admeasuring 40.11 Acres situated in Deh Manghopir and District West Karachi of the petitioner society.*
 - (g) *To award costs of this petition.*
 - (h) *Any other relief as this Hon'ble Court deems fit and property may be awarded to petitioner under the circumstances of this petition.”*

2. The Petitioner is a cooperative housing society subsisting under the Sindh Cooperative Societies Act, 2020, which was caused to be incorporated by the officers and staff of the erstwhile National Development Finance Corporation (hereinafter referred to as “NDFC”).

3. The Petitioner on 31 October 2001 entered into an Agreement of Sale with the NDFC for the purchase of Survey No.136, 137 and 138, Deh Manghopir, Taluka Manghopir, District Karachi West, admeasuring 40.11 acres (hereinafter referred to as the "Said Property") against a total sale consideration of Rs.14,086,000/-. The Agreement of Sale dated 31 October 2001 shows that a consideration of Rs.14,08,600/- being 10% of the sale consideration had been paid by the petitioner to the NDFC on that date.

4. NDFC was restructured through a Scheme of Arrangement and, on account of which restructuring, the undertaking of NDFC came to be vested in National Bank of Pakistan (hereinafter referred to as "NBP"). As is typical in such Schemes of Arrangements, the right, title and interest of NDFC to the Said Property and the obligations under the Agreement of Sale dated 31 October 2001, on the Scheme of Arrangement coming into force, came to vest in NBP.

5. It is apparent that thereafter the Petitioner has been attempting to compel NBP to honour the obligation made pursuant to the Agreement of Sale dated 31 October 2001 as between the Petitioner and NDFC but with little success. In the interim various private individuals i.e. the Respondents No.8, 9, 10, 11, 12 and 13 have also instituted Suit No. 1028 of 2011 before this Court claiming title to the Said Property and NBP has also instituted Suit No. 959 of 2011 seeking declaratory rights over the Said Property.

6. Mr. Muhammad Ghazali has entered appearance on behalf of the Petitioner and averred to the order dated 25 January 2024 and contended that as the obligations under the Agreement of Sale dated 31 1 October 2001, on account of the Scheme of Arrangement endure and are binding on NBP, such obligations can be enforced through a writ of mandamus being issued by this Court in it's jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Mr. Muhammad Ghazali did not rely on any caselaw in support of his contentions.

7. Mr. Syed Sultan Ahmed, has entered appearance on behalf of the Respondent No.11 and contended that the Petition is not maintainable as such obligations, involving disputed questions of fact, cannot be enforced in by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He contended that there are numerous suits pending this court, in its original jurisdiction, each maintaining competing claims as to the ownership of the Said Property and on account of which this Petition cannot be maintained before this Court. Mr. Syed Sultan Ahmed did not rely on any caselaw in support of his contentions.

8 We have heard Mr. Muhammad Ghazali as well as Mr. Syed Sultan Ahmed and have perused the record.

9. It is apparent that the Petitioner had entered into an Agreement of Sale with the NDFC and the obligations under which agreement, on account of the Scheme of Arrangement, came to vest in NBP. We are however not able to satisfy ourselves that in the facts and circumstances as exist herein, that at such obligations can be a enforced through a writ of mandamus under Article 199 of the Constitution of Pakistan, 1973. The scope of this Court's jurisdiction under that provision has been clarified by the Honourable Supreme Court of Pakistan in the decision reported as **Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa vs Tanveer Ahmed**¹ wherein it was held that:

“ ... 10. Forcing an institution to act as per the whims and wishes of certain employees is not only burdensome, but is also a transgression of the powers vested with the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, it is settled law that contractual terms and conditions can neither be enforced, nor a contract be extended or renewed under Article 199 of the Constitution.”

The exception to that rule has been clarified by the Honourable Supreme Court of Pakistan in the decision reported **The State of Pakistan vs. Mehrajuddin**²has wherein it was held that:³

“ ... A right founded purely on private contract, however clear it might be, is not enforceable by mandamus. These statements regarding the nature of the writ of mandamus have been borrowed from a valuable monograph on the subject, entitled "Extraordinary Legal Remedies" by Ferris. (Thomas Law Book Company, U. S.) In Halsbury's Laws of England (Volume 11, Third Edition), the following statements of the relevant law are found. If public officials or a public body fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out. In accordance with this principle a mandamus will issue to Government officials in their capacity as public officers exercising public duties which affect the rights of private persons. Such a mandamus might even issue to the Lords of the Treasury in their capacity as public officers invested by statute with public duties affecting the rights of private persons. An applicant for a mandamus must show that he has a legal right to the performance of a legal duty by the party against whom a mandamus is sought. The prosecutor must be clothed with a clear legal and equitable right to something which is properly the subject of a writ, as a legal right by virtue of a Act of Parliament. The order is only granted to compel the performance of a duty of a public nature.”

Similarly in **The Chandpur Mills Limited vs. The District Magistrate Tippera and another**³ it was held that:

¹ 2021 SCMR 1995

² PLD 1959 SC (Pak.) 147

“ ... *We cannot conceive that a writ of mandamus to carry out the requirement of such an enactment as section 7-B of the Act in question can possibly be issued on the basis of an interpretation of several documents such as that which Mr. Fazal-ur-Rehman has attempted to place before us. A contract may sometimes be construed out of a number of documents in the manner suggested, but a writ of mandamus does not issue for the enforcement of contracts. What should be established on the record in order to obtain a writ in this case is a clear agreement to which the Provincial Government should be a party on the Government side as against the private claimant, as to what the compensation for the requisition should be, stating a specified sum.*”

10. In the presence of multiple suits, pending on the original side of this Court and which have been maintained by both NBP and the private respondents, we cannot see how we are able to treat the obligations as between NBP and the Petitioner of the nature so as to constitute a “*clear agreement*” as only between each of them so as to be enforceable. In their comments NBP is in fact denying the claim of the Petitioner and which, to our mind, would in itself prevent a writ of mandamus being issued as necessarily an adjudication on such a denial would require evidence to be recorded. In addition, the private respondents are maintaining their individual claim to the Said Property and which would also require an adjudication as to their title and which also cannot be achieved without recording evidence. Clearly, in such circumstances exercising our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would be misplaced.

11. For the foregoing reasons, this Petition requiring us to delve into a dispute as to title to the Said Property as is being contested as between the Petitioner, NBP and various private respondents and in respect of which suits are pending on the original side of this Court, we are of the opinion that the relief being sought by the Petitioner could not be granted and on account of which we had by a short order dismissed this Petition on 19 February 2024 and these are the reasons for that order.

JUDGE

JUDGE

Karachi dated 19 February 2024.