

**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT MIRPURKHAS**

Constitutional Petition No.D-1053 of 2024  
(*Muhammad Naeem vs. P.O Sindh and others*)

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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*Before*

Adnan-ul-Karim Memon, J

Amjad Ali Bohio, J

**Date of hearing and order 09-09-2024**

Mr. Rao Faisal Ali advocate for the petitioner.

Mr. Muhammad Sharif Solangi, Assistant A.G a/w *Mukhtiarkar* (Revenue)  
Taluka Shujjabad.

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**ORDER**

Adnan-ul-Karim Memon, J. Through the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner Muhammad Naeem seeks directions to the Mukhtiarkar concerned to issue him Sale Certificate in respect of Agricultural Land admeasuring 23-04 acres situated at Tapa Daulatpur, Taluka Shujjaabad, and District Mirpurkhas, which is inherited by him.

2. *Mukhtiarkar* (Revenue) Taluka Shujjabad is present in Court and filed para-wise comments, with the narration that the subject property was mortgaged by original owner Muhammad Niaz in favor of Zarai Tarqiati Bank Ltd Mirpurkhas and for removal of such mortgage, a footnote is available in the record of rights; however same is not attested by Supervising Tapedar and Mukhtiarkar; he added that Revenue entry No.14 dated 30.03.1999 for joint holding of the area 0.22 ghuntas out of survey No.64/2 is joint shareholding of the father of petitioner and Pak Asian which is still un-partitioned therefore, he is unable to issue Sale Certificate in respect of subject property, which is under the mortgage.

3. We have heard learned counsel for the parties and perused the record with their assistance.

4. We have noticed that there is a complete mechanism of issuance of sale certificate as laid down under Rule 41 of the Land Revenue Rules,

1968, which provides that (i) if an application under of Land Revenue Act, 1967, is made to the concerned Mukhtiarkar (Revenue), he must take action on it provided it contains all the relevant particulars as provided under Land Revenue Rules, 1968; (ii) upon satisfaction of the above requirement, the Mukhtiarkar is required to issue notice to all the concerned khatedars / owners followed by a speaking order accepting and/or refusing the same, as the case may be in case of rejection of the application, the procedure of appeal, revision or review is to be adopted, as provided in the above Act and Rules.

5. Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only "if it is satisfied that no other adequate remedy is provided by law". It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the Constitutional jurisdiction of the High Court, whether such remedy suits him or not.

6. In our view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at the lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law.

7. Under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court/forum exercises jurisdiction strictly under the law. It further follows that this fundamental right of fair trial and due

process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons/cases falling under the former category will certainly be jeopardized.

8. Another shocking yet unfortunately common example of petitions alleging harassment is allegations against Government officials, such as officials of Revenue Departments. The allegations in such cases inter alia are, at the instance of private party; Sale Certificate is not being issued, demarcation of land is not being done or mutation is not being effected; etc. Such petitions are filed before this Court even though the remedies of the acts complained of lie with the Revenue authorities, however, the Revenue authorities are reluctant to perform their duties and this is the reason the petitions are piling up before this court.

9. Primarily, this practice should be curbed and Mukhtiarkar/Assistant Commissioner concerned shall strictly follow the law and guidelines issued by the Board of Revenue in this regard. However, it has been noticed that they are engaging in certain sort of affairs disturbing the public at large, who appear before them. Such practice must be stopped and if in future, the Mukhtiarkar concerned is found indulging in such illegal practices, as pointed out, the Chief Secretary, Sindh shall take prompt action against the concerned Mukhtiarkars and their matter shall be referred to the Provincial Anti-Corruption without further delay. Besides, disciplinary action shall also be taken against the concerned Mukhtiarkar.

10. All the Mukhtiarkars of the Province of Sindh are directed to ensure their availability in their respective offices to sort out the matters of the public at large within their domain and take prompt action on the applications of the aggrieved persons; if they appear before them, so far as their issues about issuance of Sale Certificates, Demarcations, Foti Khata Badal and other ancillary issues. This direction shall not be ignored at all. In case of failure of their duties, appropriate action in terms of Article 204 of the Constitution shall be taken against the Mukhtiarkar concerned, if

the aggrieved party appears before this Court and raises the hue and cry, on the aforesaid points.

11. In view of the above, Mukhtiarkar Shujjabad is directed to decide the issue of issuance of a Sale Certificate in respect of the subject property of the petitioner after hearing all concerned. Learned counsel for the petitioner submits that he will avail the remedy available under the law if adverse order is passed by the *Mukhtiarkar*. This proposal seems to be reasonable and acceded to.

12. The instant petition stands disposed of in terms of the preceding paragraphs.

**JUDGE**

**JUDGE**

\*Ali Sher\*