

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-7686 of 2022

Government of Sindh and another
Versus
Asghar son of Ibrahim Shadi and others

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| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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Present: -
Mr. Justice Muhammad Shafi Siddiqui, C.J &
Mr. Justice Jawad Akbar Sarwana.

Priority

1. For hearing on Misc. No.32637/2022.
2. For hearing of main case.

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Dated 11.12.2024

Mr. Mehran Khan, Assistant Advocate General for petitioners.

Mr. Tariq Javed Bhatti and Inspector Khalid Mustafa on behalf of
Principal, Shahid Hayat Police Training College, Saeedabad, Karachi.

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Muhammad Shafi Siddiqui, C.J.- The two suits bearing Nos.452/1996 and 539/1996 in respect of a portion of land measuring 37 acres were filed, which land formed part of 361 acres land, provided and allotted to police department, as claimed. The petitioners contested the two suits which were consolidated and a consolidated judgment was passed. Primarily, a negative declaration against the petitioners was sought by Plaintiff of two suits in the two suits without any declaration for themselves, with the following declaration:-

| <i>Suit No.539 of 1996</i> | <i>Suit No.452 of 1996</i> |
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| <i>a) To declare that the defendant No.1 and 2 has no authority to raise/construct wall of P.T.C. beyond their limits viz. 300 Acres demarcated for P.T.C. and whereby demolishing the already constructed house of plaintiffs in Sajjan Goth and disturbed inhabitation of village in its allotted area for village viz. 37 acres adjacent to P.T.C., the notices dt. 17.8.96 may also be declared illegal void and not binding on plaintiff issued by the defendant No.2.</i> | <i>a) To declare that the defendants No.1 and 2 has no authority to raise/construct wall of P.T.C beyond its limits or to construct the same in such a way where by the houses of the plaintiffs bearing No.411 Sheen Meem No.272, 412 Sheen Meem 270, 410 Sheen Meem 273, 415 Sheen Meem 268, 409, and 416 Sheen Meem 269, admeasuring 300 Sq. yds. Each total area 1800 sq. yds. Duly marked with yellow colour at annexure 'D' situated at Sajjan Goth in Deh Mawach Saeedabad, Karachi adjacent to PTC.</i> |
| <i>b) To grant permanent</i> | |

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| <p><i>injunction restraining the defendants, their subordinates, servants, agents or anybody else through them from demolishing the house of plaintiff's already constructed in Sajjan Goth in its allocated land viz. 37 acres.</i></p> <p><i>c) To grant Cost of the suit.</i></p> <p><i>d) To grant any other relief or reliefs which this Honourable court may deem fit and proper in the circumstances of the case.</i></p> | <p><i>b) To restrain the defendant No.1 and 2 and others defendants their officials/ officer man, agents, person, employees, acting through or under them from demolishing the houses of the plaintiff constructed on plot bearing No.414 Sheen Meem 272, 412 Sheen Meem 270, 410 Sheen Meem 173 415 Sheen Meem 268, 409 sheen meem Nil and 416 sheen meem No.269 admeasuring 300 sq. yds each total area about 1800 sq. yds. duly marked with yellow colour at annexure 'D' and the said defendants may also be restrained from construction boundary wall of PTC beyond their limits around the houses of plaintiff.</i></p> <p><i>c) Costs of the suit.</i></p> <p><i>d) Any other relief which this Hon'ble Court may deems fit and proper in the circumstances of the case.</i></p> |
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2. The two consolidated suits were then decreed as prayed with no order as to costs, vide judgment dated 07.11.2001. The petitioners then filed two appeals bearing No.61/2002 and 62/2002 in the Court of District Judge, West, which appeals were dismissed as being time barred, on 20.08.2002. As against it, civil revision applications Nos.229/2002 and 230/2002 were filed, which were also dismissed as being time barred, on 19.04.2016. This shows the interest that the petitioners had to protect their land which negligence extended not only to the trial court, but also the two remedies that is civil appeals and then civil revisions were “delayed” and consequently the two litigations in the shape of civil appeals and revisions were dismissed as being time barred and trial without a serious contest.

3. Nonetheless, during the pendency of appeals before the District Judge, an application under Section-12(2) CPC was also filed which was dismissed as not maintainable. It was then challenged before the

District Judge as civil revision No.52/2021, which also met the same fate followed by this petition against the judgment of the revisional court.

4. We have heard the learned counsel and perused the material available on record.

5. As is obvious, the Government of Sindh and the police department slept over their rights; not only that the suits were not contested properly, but the two follow-up remedies were also not properly filed as were delayed for reasons best known to them. They are now before us against the judgment which arises out of an application under Section-12(2) CPC which is hit by the doctrine of election. It appears that the petitioners could only be allowed to avail one remedy which they have availed by filing civil appeals against final judgment before the District Judge followed by a revision applications before this Court, hence a second bite of the cherry is not permitted, as observed by the Supreme Court in the case of Trading Corporation¹. The importance of the land however cannot be avoided. The trial court while granting the negative declaration is also under the obligation to see what right the Plaintiffs had in the suit land and whether effect of Section-42 of Specific Relief Act are fulfilled.

6. Seemingly, it was only an excise document which just shows that some taxes are being paid without any nexus of title. They may have been paying taxes but that does not justify their (*plaintiffs*) lawful occupation. The petitioners ought to have taken serious steps or ought to have contested litigation with serious mind, which they have failed.

¹ PLD 2018 SC 828 [Trading Corporation of Pakistan v. Devan Sugar Mills Limited and others].

7. Nonetheless, the record also reflects that an execution application No.03/2019 filed by the decree-holders was also dismissed in the following manner, as the prayer in the execution application exceeds the frame of decree:

“6 Record further shows that the suit was decreed as prayed. They Plaintiff/decree holder neither in the suit had prayed for the possession of the suit land nor such relief has been granted in the decree. It is well settled principle that the executing court cannot go beyond the decree.

7. Upshot of above discussion is that the decree holder in this execution application has only prayed for the possession of the suit land which is beyond decree. It is, therefore, the instant execution application is not maintainable and same is dismissed accordingly.”

8. Nonetheless, apparently as far as the remedy and relief for occupying the land in question (or possession) is concerned, that has not been initiated by the petitioners. They remained busy throughout in contesting the litigation with less serious mind with hope that the possession will be delivered to them by court; however, this contest will not deprive the petitioners, that is Government of Sindh (BOR), which is a principal lessor, as well as the petitioner No.2 for who's benefit the land was allotted for police training, as a college. Although for the purpose of present question of suits no case for indulgence is made out, yet the petitioner has been prosecuting the matter in good faith for whatever it is worth and this will not deprive the petitioners from initiating lawful proceedings for occupying the land in question which if initiated, be taken to its logical end at the earliest.

9. With this understanding, the petition stands disposed of along with listed application(s). Copy be forwarded to Chief Secretary, Sindh.

CHIEF JUSTICE

JUDGE

Ayaz Gul