

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 26 of 2021

(Dehli Muslim Cooperative Housing Society vs. Jam Saeed Ahmed & others)

Date of hearing : **27.09.2024**
Date of decision : **27.09.2024**

Mr. Kamran Mobeen Khan, Advocate for the Applicant
Respondent No.1 Jam Saeed Ahmed present in person
Mr. Asfandyar Kharal, Assistant Advocate General Sindh

ORDER

Zulfiqar Ahmad Khan, J.- The plaintiff filed suit for declaration, cancellation of documents and permanent injunction in respect of survey No.490 admeasuring (1-04) acres (plaint is available at page 99), stating that the subject survey number is situated in deh Saeedabad, Taluka New Sukkur along with other survey numbers, which were acquired by the Government of Sindh in favour of the plaintiff and mutated in the name of the Managing Director, Cooperative Housing Society Union Sukkur. The plaintiff still claimed to be owner of the abandoned railway track admeasuring (7-38) acres and sought a declaration that certain area of said land also be declared to be in the name of the plaintiff and with regard to survey No.490 the report given by defendant No.6 concerned Tapedar be declared as false and illegally obtained. It was also prayed that the sale deed in favour of the predecessor-in-interest of defendant No.1 be declared as illegal.

2. The background of the case is that the said defendant had made an application to the Deputy Commissioner, Sukkur in respect of survey No.490 that the boundaries of the said survey number be marked. The said application was forwarded to the Mukhtiarkar concerned, who furnished a report stated that the said survey number falls within the area accumulated by the plaintiff. The suit was challenged by the defendants by making an application under Order VII Rule 11 CPC, stating that the declaration sought by the plaintiff including the area of Railways track is not maintainable as well, suit is not maintainable as the

plaintiff was not the lawful owners of the said survey No.490 rather they themselves disputed the measured boundaries of survey No.490 which boundaries were measured by the concerned Tapedar, giving a report that the area falls within the area of Dehli Muslim Cooperative Housing Society's land. The said application was entertained by the concerned Court which passed a detailed order dated 27.02.2020 and the said application under Order VII rule 11 CPC was allowed by giving the findings in para 6 (page 61) and para 7 (page 63).

3. Being aggrieved, the plaintiff/applicant filed an appeal under Section 96 CPC, which appeal once again after careful consideration was dismissed vide judgment dated 12.11.2020. The operative part of the appellate Court judgment is reproduced hereunder.

"11. The appellants is (sic) claiming that survey No.490 is not part of the land in their occupation and possession so also the said survey number was not acquired for them as such the subsequent report issued by the tapedar wherein it is stated that the area in the said survey number is in occupation of appellant is incorrect and illegal. The appellant has challenged the basic document which is report of tapedar annexed with the plaint as Ex.J. Apparently, the said report is addressed to Mukhtiarkar on the basis of application filed by defendant No.1 namely Jam Saeed Ahmed which report indicate that survey No.490 for which measurement was conducted on 29.05.2014 along with survey team falls in Dehli Muslim Cooperative Housing Society/plaintiff. The appellant has not indicated in record that whether said report of tapedar was accepted as correct and approved by the Mukhtiarkar or Assistant Commissioner. So also the appellant has not specified as to whether he had challenged such report of tapedar before any Revenue Officer. Section 172 of the Sindh Land Revenue Act, 1967 excludes the jurisdiction of Civil Court in matters falling within jurisdiction of revenue officers. Moreover, specific section for Appeals U/s 161 has been provided in Sindh Land Revenue Act, 1967 wherein appellant could have filed the appeal before the competent Revenue Officer. Without redressing

the grievance by way of filing appeal under Sindh Land Revenue Act, and appealing before the competent Revenue Officer, it appears that appellant has directly challenged report of Tapedar before Civil Court for which it has been mentioned above, the jurisdiction of Civil Court is exclusively barred. In these circumstances, order passed by trial Court whereby plaint is rejected require no interference as the appellants should have approached to the revenue hierarchy challenging the report of tapedar before Revenue Officer and should not have filed Suit before Civil Court directly as such, the plaint was rightly rejected hence, no interference is required to be made by this Court. Therefore, I am of the view that the trial Court has committed no irregularity or illegality while passing impugned order. Therefore, both points are answered as 'negative'."

4. Perusal of which reflects that the Appellate Court has also confronted the appellant that the appropriate remedy for them was available under Section 172 of the Sindh Land Revenue Act, 1967 to file an appeal before the competent Revenue Officer, whereas the applicant/plaintiff has directly challenged the report of the Mukhtiarkar concerned through a civil suit and such jurisdiction of the Civil Court was exclusively barred.

5. Learned counsel for the applicant states that he has placed reliance upon the judgment of Honourable Supreme Court in the case of *Mian Muhammad Latif vs. Province of West Pakistan & another reported as PLD 1970 Supreme Court 180*, where it has been held that when an order is illegal and nullity in the eyes of law passed by the department, Civil Court has the jurisdiction. Perusal of the case law referred by leaned counsel pertaining to Sindh Revenue Jurisdiction Act, 1876 which was fiscal statute and the matter before the court was as to payment of penalty to be charged once the goods arrived into the jurisdiction of Khairpur State and in Ijra Tax Act (III of 1901) as the State had right to charge Ijra tax on the all goods going out of the State. The Honourable Supreme Court placed reliance on the judgment rendered in the case of *Secretary of State vs. Mask & Co. (AIR 1940 P C 105)*, wherein it has been held that if jurisdiction is even excluded, the Civil Court still has jurisdiction to examine

the cases where provisions of the Act have not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

6. The case in hand is that the concerned Mukhtiarkar, who is the sole fact-finding authority had measured the boundaries of survey No.490 and given a report that said survey number fall within the area of the concerned Dehli Muslim Cooperative Housing Society. Even if this Court today decides this matter on merits, this Court once again would go to the concerned Mukhtiarkar to seek his report with regard to the boundaries of survey No.490. Therefore, I do not see that the report was without jurisdiction and be considered nullity in the eyes of law. Admittedly, the applicant had chosen to invoke the jurisdiction of Civil Court which is strictly barred in such matters under Section 172 of the Sindh Land Revenue Act, 1967. I, therefore, do not see any merits in the instant Civil Revision Application, which even otherwise is against the concurrent findings of the two courts below, and accordingly dismissed.

Judge