

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-273 of 2024

(Zulfiqar Ali Roshan & others v Province of Sindh & others)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 27.01.2025

Ms. Navin Merchant, advocate for the petitioners

Mr. Hanif Faisal Alam, advocate for Intervener

Mr. Tauqeer Ahmed advocate for SITE

Mr. Ali Safdar Depar, AAG.

ORDER

Adnan-ul Karim Memon,J; Through this petition, the petitioners have prayed as under:-

- a. *To declare that the petitioners are the lawful owner of the subject 6 plots measuring 3 Acres bearing Plot Nos. H/120, H/121, H/122, H/123, H/125 & H/126 situated as SITE (Super Highway) Phase-II Karachi, SITE survey sheet No. 35P/1-35L/13.*
- b. *Declare that the petitioner are also entitled to get their subject 6 plots measuring 3 Acres bearing Plot Nos. H/120, H/121, H/122, H/123, H/125 & H/126 situated as SITE (Super Highway) Phase-II Karachi, SITE survey sheet No. 35P/1-35L/13.*
- c. *Direct respondent No.2 to conduct the demarcation of the measuring 3 Acres bearing Plot Nos. H/120, H/121, H/122, H/123, H/125 & H/126 situated as SITE (Super Highway) Phase-II Karachi, SITE survey sheet No. 35P/1-35L/13.*
- d. *Direct the respondents to hand over bearing Plot Nos. H/120, H/121, H/122, H/123, H/125 & H/126 situated as SITE (Super Highway) Phase-II Karachi, SITE survey sheet No. 35P/1-35L/13.*

2. Petitioners claim to be the co-owners of 6 plots (3 acres) (half acre each) in SITE Phase-II, Karachi. These plots were allotted for industrial use by the Sindh Industrial Trading Estate (SITE). The petitioners' plots are part of a larger 1000-acre lease granted by Respondent No.2 (SITE), seeking direction to SITE concerned to demarcate their land/plots as disclosed in the prayer clause. They also seek physical possession of the subject plot after demarcation.

3. Learned counsel for the petitioner argued that the petitioners are co-owners of 6 plots (H/120-H/126) totaling 3 acres in SITE Phase-II, Karachi, as per SITE survey sheet No. 35P/1-35L/13. However, the respondents, including the Revenue Department, have initiated proceedings to cancel the property entries. The petitioners claim these actions are malicious and lack due process. They seek court intervention to quash the order and protect their property rights. Counsel argues that Respondent 2 (SITE) acquired 1000 acres from Respondent 1 (BOR), obtained possession after payment, developed a Master Plan with

hundreds of industrial plots, and allotted them through the ballot in 2002. SITE received substantial consideration, development charges, and annual rent, and issued allotment letters to successful bidders. The petitioners seek court intervention to set aside Notification No. U/II/9-84/G(K)/III/3582 dated 10.10.1992 to protect their property rights. Learned counsel for the petitioners has argued that respondent SITE has expressed reluctance towards demarcation of their land/plots on the premise that the demarcation could not be carried out due to certain objections; that they have to exercise the powers for demarcation of the land, but have failed to perform their duty; and, that the petitioners moved various applications to the respondent SITE for demarcation under the relevant law and rules but all his efforts went in vain. Learned Counsel further stated that the official respondents turned a deaf ear to the petitioner's grievances, compelling them to approach this Court. Learned counsel briefed us on the factual aspect of the case and argued that the petitioners are title holders of the subject plots and dispute could only be resolved through demarcation based on the record available in the office of respondent SITE. Learned counsel referred to the orders passed by this court in identical petition whereby the direction was issued to the respondent SITE to demarcate the subject plots, Phase II, SITE Super highway Karachi under the supervisor of the Nazir of this Court with assistance of officials of City surveyor Karachi and thereafter the physical possession of the plot be handed over to them, therefore, the petitioners moved the application for demarcation to respondents but till today the same is pending and respondents have not taken any step in this regard, hence the petitioners filed the instant Petition.

4. Learned Addl. A.G argued that it is the prime duty of SITE to ascertain the entitlement of a person seeking demarcation of land by verifying the legality and genuineness of ownership documents, possession, etc., or dispute, if any; and, if the case of each of the petitioners is genuine only then the respondent SITE is required to exercise the powers for demarcation of the land under the revenue laws or by laws of the respondent SITE. Learned A.A.G. emphasized that the parties have to approach Revenue authorities and Director Settlement Surveys & Land Records for the aforesaid purpose and not this Court. Learned AAG submitted that Rule 67-A of the Land Revenue Rules, 1968, provides a complete mechanism for demarcation proceedings: (i) Application to the Mukhtiarkar; (ii) Notice to concerned parties; (iii) Mukhtiarkar's order; (iv) Appeal/revision/review if the application is rejected. He prayed for dismissal of the instant petition.

5. The counsel for the interveners contended that they are lawful owners and in physical and peaceful possession of the subject plots. He argues that the subject plots were illegally allotted to the petitioners, prompting them to file Civil Suits No. 1146/2014, 883/2024, and 122/2023. The latter was dismissed as withdrawn. The petitioners concealed these litigations from this Court. The interveners fear dispossession under the guise of the demarcation order if passed by this Court. He referred the order dated 31.01.2024 and submitted that in the suit No. 1146 of 2014 inspection report has been placed on record. He prayed for the dismissal of the petition.

6. We have heard learned counsel for the petitioners on the maintainability of the petition and have perused the material available on record with their assistance.

7. On the legal aspect, the petitioners either (a) availed the demarcation remedy but prematurely approached this Court without awaiting its outcome, or (b) failed to avail of the remedy provided in the Land Revenue Act and Rules. If the Mukhtiarkar refuses the application, the petitioners must first pursue remedies such as appeal, revision, or review. Article 199 of the Constitution allows High Court intervention only when "no other adequate remedy is provided by law." It is well-settled that an aggrieved person must exhaust available remedies before invoking High Court jurisdiction, regardless of whether those remedies suit them. The doctrine of exhaustion of remedies prevents unnecessary High Court litigation.

8. The Petitioner's prayers may not be maintainable under Article 199 due to the availability of remedies under Revenue laws. The Petitioner's declaration of ownership has been objected and this court under Article 199 of the Constitution cannot make such a declaration at this stage. The petitioner failed to exhaust available remedies before approaching this Court. This Petition is misconceived and dismissed. The Petitioners may pursue remedies in the appropriate forum.

9. This court concluded that the complex factual issues, including the subject issues as agitated by the petitioners, should be resolved in a civil court. Therefore, the petition is found to be not maintainable and is dismissed along with the pending application(s), and the petitioners may seek remedies through the civil court process if not availed earlier.

JUDGE

JUDGE

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