

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD**

C.P. No. D- 790 of 2014

Date of Hearing : 01.02.2016

Date of Decision :

Petitioners : Manthar Ali and others through
 Mr. Mohsin Raza Gopang, Advocate

VERSUS

Respondent : Syed Fazil Habib Shah Office,
 Accountant D.C.O Hyderabad through Mr.
 Naimatullah Soomro, Advocate

Official Respondents: D.C. Hyderabad and others through
 Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

MUHAMMAD IQBAL KALHORO, J.- Petitioners' case is that they are resident of village Muhammad Jaffar Palari, Hatri, District Hyderabad. On 10.04.2014 at about 3:00 a.m. respondent No.7 namely Syed Fazal Habib Shah, Accountant in the office of D.C.O Hyderabad came along with police force, demolished their houses and dispossessed them from their village. It is further claimed that respondent No.7 in collusion with high-ups of Revenue Office has managed a false khata; and on the basis of which he is professing his ownership over their village's land and further in order to consolidate his occupation has got false FIRs registered against them. Petitioners further claim that their village is surveyed by HESCO Authorities for supply of electricity and is also enlisted for the proposed survey to be taken under Gothabad Scheme. For this purpose, it is shown in the list of villages at S.No.228. According to petitioners, transfer of their village land on lease, if any, in favour of respondent No.7 is illegal *ab initio*. They have lastly prayed for protection against alleged harassment being caused to them by respondent No.7, mutation of village in their names, restoration of its possession and a

direction for not registering false FIRs against them at the instance of respondent No.7.

2. During arguments, counsel for petitioners mainly placed reliance on the newspaper clippings to establish the possession and dispossession of the petitioners from the village by police force. He also referred to the documents appended with petition, available at page No. 27 to 51 of the file, to strengthen his case.

3. Counsel for respondent No.7 has denied the case of petitioners in toto. He argued that respondent No.7 purchased the land from respondent No.9 (Government of Sindh) by way of a registered lease deed dated 4.8.2011 and since then he is in possession thereof. He further contended that the petitioners were never in possession of above land and there was no such village by name Jafar Palari over the said area. In the comments respondent No.7 has stated that he is not Accountant in the office of D.C.O, Hyderabad but he was Assistant Director, Sehwan Development Authority and resigned from the said post on 15.08.2011.

4. Mukhtiarkar Gothabad Hyderabad has filed statement dated 12.6.15, whereby he has disclosed that on his direction Tepedar of the area visited the subject land and reported that there was no village by name Jaffar Palari, but about 2/3 years ago some flood affectees had come and built *pacca* houses which were demolished by the police. The Mukhtiarkar has further stated that the Tapedar on verification of relevant record also reported that no village by name Jaffer Palari is entered in the village directory published by Sindh Gothabad Board of Revenue Sindh in the year 1991, and no village by such name is either sanctioned/regularized under The Sindh Gothabad (Housing Scheme), Act, 1987, nor any sanad has been issued.

5. Respondent No.4, SSP Hyderabad has filed comments stating therein that one Rab Dino, Kamdar of respondent No.7, had lodged FIR No. 53 of 2014 on 10.5.2014 at PS Hatri under Sections, inter alia, 324 PPC. After registration of FIR the accused nominated therein along with 35/40 unknown persons armed with deadly weapon blocked the National Highway. Police went to disperse them but they resisted by making aerial firing and hindered the police from performing official duty, therefore, a case bearing Crime No. 54 of 2014 at Police station Hatri was also registered against them. According to him the accused had encroached upon the land of complainant Rab Dino.

6. We have considered contentions of the parties and perused the material. In regard to the assertion of the petitioners that their village is duly sanctioned and registered in village directory published by Sindh Gothabad Board of Revenue Sindh; nothing has been placed on record to substantiate their claim. The documents referred to by the counsel for petitioners in his arguments are some applications moved to the authorities concerned for registration of the village and issuance of lands to the villagers. A feasibility report prepared by Hyderabad Electric Supply Company for supplying electricity connection to the village and a voter list pertaining to the year 2012 showing names of some persons being residents of village Muhammad Jaffar Ali Palari. It is thus obvious that the said village is neither sanctioned nor regularized under 1987 Act, and yet no land has been issued to any villager. Seen in the backdrop of these facts, it would be evident that the petitioners have *ex-facie* failed to establish their right or title over the area which they claim as their village namely Jaffar Ali Palari. Their possession, however, on the said land is apparent from the comments of official respondents, who have described it in the words that the petitioners had occupied the said land as encroachers. To some extent, from the statement of Mukhtiar, an allusion to the possession of the petitioners is also available in the words that on the said area some flood affectees had come and had built *pacca* houses, but they were dispossessed by the police.

7. Against that, the claim of respondent No.7 over the area is based on a Registered Lease Agreement Deed. A perusal thereof indicates that on behalf of Government of Sindh the District Officer (Revenue) Hyderabad executed that document in pursuance of statement of conditions issued under sub-section (2) of section 10 of the Colonization of Government Land Act, 1912 (Notification No.9/298/03/983/08/S.O-I dated 21.11.2008). The said document further bears that respondent No.7 was granted the said land on lease-hold-right basis for 99 years by the District Officer (Revenue) Hyderabad vide allotment order No.01-492/03/SO-I/128/11 dated 27.5.2011 and accordingly its possession was handed over to him. It is also mentioned therein that in fulfilment of the terms and conditions of the statement of conditions, the vendee (respondent No.7) had paid occupancy price; and it is also mentioned therein that the land has to be used solely for "Incremental Housing Purpose". Admittedly when the subject land was granted to respondent No.7 (dated 27.5.2011), he was government employee, working as Assistant Director Sehwan Development Authority, as according to his own

statement he resigned only on 15.08.2011. Before we comment on as to what were those special circumstances that led the Government of Sindh to grant subject land to respondent No.7 and while granting the land to him all the legal formalities were adhered to or not. We would like to visit some of the decisions given by this court highlighting the state of affairs prevalent in the Revenue Department of Sindh particularly when it comes to maintaining record of rights, granting lands to people and allied actions and omission of the officers of the Revenue Department which speak volumes about rampant corruption amid their ranks.

8. On 23.12.2004 a Division Bench of this Court in C.P. No.D-265 of 2004 passed the order; relevant paragraph whereof reads as under:-

“ Under these circumstances, we would direct the Senior Member Board of Revenue to order the concerned officials that the original revenue record shall be kept with the concerned Mukhtiarkar in future and shall not be removed from his office by any of his subordinates. The Tapedars and / or Supervising Tapedars shall not be handed over the original revenue record. The entries in the record shall be kept and signed by the Supervising Tapedar along with the concerned Mukhtiarkar. The DDO (Revenue) shall verify such entry. The concerned Mukhtiarkar shall be made custodian of the record and the Tapedars of the beat shall have no access to the original record in future. These directives are issued in order to minimize tampering of the revenue record which has become a common feature of the day and high-ups in the revenue department have failed to take the required steps to check the forgeries in the record of rights resulting in usurpation of thousands of acres of government lands by land grabbers through the blessings of the subordinate revenue staff besides depriving the private owners from enjoying their own properties. The aforesaid directives shall be forthwith circulated by the Senior Member, Board of Revenue, to all concerned for compliance under intimation to the MIT, of this court. Non-compliance of any of the directives contained in this order would expose the concerned officials to contempt proceedings.”

9. Again a Division Bench of this Court, in presence of high ranking revenue officials, passed another order on 28.5.2009 in C.P. No.D-11/2007; relevant paragraphs whereof read as under:-

We have directed the two Senior Officials of the Board of Revenue to formulate guidelines for the officers of the Revenue Department in order to reconstruct the record. The proposed guidelines have been placed before us and we have perused the same. It is only confined to the reconstruction of the record but it does not cater as to how the existing revenue record, which is tampered with, can be rectified and or authenticated. The proposed guidelines do not provide any suggestion for action against the revenue officials who were and are instrumental in tampering with the revenue record, we would like the revenue officials, who were guilty of tampering with the revenue record, should be taken to task, in order to ensure that in future no revenue official has the courage to tamper with the revenue record. The Senior Member is expected to hold inquiry against such officials forthwith and award and or recommend appropriate punishment.

In addition to the proposed guidelines, in future, the Mukhtiarkar in letter and spirit shall comply with the provisions of Land Revenue Act and the rules framed thereunder, especially the provisions of Section 42(2) of the Land Revenue Act. We would also direct that in future the entries kept in the revenue record should not be kept in figures but it should also be kept in words in order to minimize the element of tampering in the revenue record. We have noticed that the revenue registers, which are maintained in the name of village form are not properly paged and there are / is pages containing fictitious entries, which are inserted in such registers by the subordinate staff of the revenue department. To avoid such tampering in the record, we direct that in future every page of the register shall have a printed page number on it as is provided under the rules and before such register is used, it should have a certificate on its back, which certificate should not only be issued and signed by the Mukhtiarkar but it should also be attested by the concerned DDO (Revenue) certifying the total pages in the Register.

All these printed registers, as prescribed by the rules, shall be issued by the Board of Revenue and no private register should be used or utilized as official register by any Mukhtiarkar and or any other authority in future as is being practiced by them. We direct the Senior Member, Board of Revenue to immediately provide the requisite printed registers, in terms of the rules, with requisite format printed in it covering the requirement of Rule 72 of the Land Revenue Rules. We are aware of the fact that under the rules, the area of land is required to be given in figures in village form but we would like the Senior Member and or

any other competent authority to amend the rules by adding the words “words and figures” in form VII by amending the relevant form. We further direct the Member, Board of Revenue that while issuing the proposed printed registers to the Mukhtiarkar, he shall establish a separate cell in office of Board of Revenue, which shall have complete record with an officer issuing different printed registers and or material to the Mukhtiarkars in the entire Sindh. Such officer, at the time of issuing register shall stamp and initial each page of the register which he will issue to the Mukhtiarkars. He will also maintain the record of the registers of each Mukhtiarkar and will issue a certificate on the last page of such register and the number of pages the register contains, whereafter a certificate shall be endorsed by the Mukhtiarkar and D.D.O (Revenue) as has been proposed hereinabove. The printed registers would be handed over to the Mukhtiarkar against proper acknowledgment and such record of handing over of each and every register shall be maintained by the Board of Revenue under the proposal cell. The proposed cell shall maintain in duplicate district wise entire revenue record of all Sindh and any future entry kept in any revenue of any district shall be sent to the proposed cell, which shall be kept in proper register. All transactions on village forms II, VII-A and VII-B shall be sent to the proposed cell of the Board of Revenue within three days of such entry by the Mukhtiarkar”.

(Underlined by us for emphasis)

10. It is a matter of record that these specific directions of this court were not complied with and the flaws and loopholes highlighted by this court mentioned above continued unabated. Usurpation of thousands of acres of government land by land grabbers through the blessings of subordinate revenue staff remained unchecked. No diligence of duty to curb the above menace by the high-ups was witnessed. Honourable Supreme Court of Pakistan in such perspective in a Suo Moto case No.14 of 2009 has observed as under:-

"No one in authority, whosoever high office such person in authority may be holding, has any power, jurisdiction or discretion to distribute any public property or asset and in these cases extremely valuable lands, on nominal consideration, which land or asset essentially belong to the People of Pakistan. It was patently mala fide exercise of power. This Court further ordered that the grants of lands to the petitioner specially in the manner, the same was done are prima facie violative of Article 3 (elimination of exploitation) Article 25 (equality clause) and Article 31 of the Constitution of Islamic Republic of Pakistan which requires the State to endeavour to promote observance of Islamic moral standards and Article 38 of the Constitution which

inter alia requires the State to secure the well being of the people by preventing concentration of wealth in the hands of a few to the detriment of general interest. The grant of lands to the petitioner in these cases were reprehensible acts on the part of the highest executive authority in the province, totally alien to the concepts of Islam."

In another case, reported as 2014 SCMR 1611, it is held with regard to manner of exercise of powers by an authority regardless of its status that:

Looking at the powers of the Chief Minister for allotment of public property, here a reference to the case of Iqbal Hussain v. Province of Sindh through Secretary, Housing and Town Planning Karachi and others (2008 SCMR 105) will be useful wherein this court has observed as under:-

"We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in (i) Abdul Haq Indhar v. Province of Sindh (2000 SCMR 907) and (ii) Taj Muhammad v. Town Committee (1994 CLC 2214)."

11. And ultimately the Honourable Supreme Court in its order dated 28.12.2012 in Suo Moto Case No. 16.12.2011 clamped a complete ban on mutation, allotment, transfer, and conversion of any state land in the following words.

In the face of the aforesaid directions, the Board of Revenue abusing its authority, has allowed transactions relating to transfer of state land, which, prima-facie, must have caused huge financial losses to the exchequer, particularly, in the absence of reconstruction of record; and encouraged the menace of land grabbing, one of the basic causes of the poor law and order situation.

Under these circumstances, we are constrained to direct that the Deputy Commissioners/ District Coordination Officers of Sindh, to ensure that immediately the entire revenue record of all the district is kept in the custody of Mukhtiarkar in terms of the

directives contained in the aforesaid judgment of the High Court and shall not be removed from the office of the Mukhtiarkar to any other place. Moreover, mindful of rampant corruption and organized crime of land grabbing, particularly, regarding prime state land, and mismanagement/forgeries in the revenue record, we hereby, until further orders restrain the Government/Revenue Department from mutation, allotment, transfer and or conversion of any state land and or keeping any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record in Sindh is reconstructed. The conversion of lease for 30 years or of any term up to 99 years shall also be stopped immediately as by this mode the state land is being sold out at a throwaway price without participation of public at large, which the law does not permit. Any further conversion or mutation of state land in the record of rights from today onwards would be deemed nullity and would expose the Deputy Commissioner / DCO of the relevant districts / dehs besides others to contempt proceedings.

In addition to the above arrangements, the Chief Secretary, Sindh, under his supervision shall ensure completion of process of reconstruction of the revenue record in the entire Sindh in terms of the directives of the High Court, referred to herein-above, within three months from today in terms of the aforesaid judgment / order of the High Court and shall report compliance. He shall also place on record the detailed list of persons and complete details of the lands converted from 30 years to 99 years lease in the Sindh Province after the assassination of Mohtarma Benazir Bhutto till date explaining the procedure adopted by the revenue officials for this purpose. He shall also furnish list of entries kept in the record of rights after the assassination of Mohtarma Benazir Bhutto till date in different districts of Sindh certifying that no other mutation other than mentioned in the proposed list has been effected, which after examination by the Court, if necessary, could be referred to the N.A.B. authorities for inquiry in order to satisfy whether government has suffered losses and or whether revenue authorities have misused and or abused their authority while passing orders in these transactions.

12. Honourable Supreme Court in the above order has made very specific remarks to the past transactions relating to transfer of State land, which, in the esteemed view of the Honourable Apex Court, *prima facie*, must have caused huge financial losses to the exchequer and encouraged the menace of land grabbing, one of the basic causes of the poor law and order situation. While examining the file, we have noticed that respondent No.7 has not placed on record any substance showing that while granting the subject land to him, the relevant rules were followed or not and whether the public at large was invited to participate in allotment proceedings or any auction in this regard was held to provide an equal opportunity to the public. Scrutiny of the file also does not reveal any material indicating extra or special qualification of respondent

No.7, which weighed with the government to select him for granting the subject land while still he was in government service. More so, we have also noticed that the possession which respondent claims was handed over to him in terms of Lease Deed Agreement mentioned above has been disputed by the petitioners, and although their claim to the possession of subject land is shorn of any right or title in their favour, but it at least ostensibly shows that respondent No.7's claim to receiving possession of subject land pursuant to Lease Deed Agreement is not a confirmed fact. Mukhtiarkar concerned and Police officials in their respective comments have also suggested to the possession of the petitioners over the subject land, although in their view it was illegal and unlawful. However, it is crucial to note here that if it is established that respondent was not put into possession, then in law very conferment of proprietary rights of subject land upon him could be called into serious questions. However, we while sitting in constitutional jurisdiction cannot determine all the factual aspects of the case as mentioned above and the merits which led the Government to grant land to respondent No.7. And in absence of any material on record, we also cannot determine the fact whether relevant rules regulating grant of land to individual was adhered to or not. We, however, are of the view that the above facts and circumstances at least call for a thorough probe, hence we have decided to send this matter to Commissioner Hyderabad Division to examine legality of grant of land to the respondent No.7 in the light of above mentioned decisions and to determine as to whether relevant rules were complied with while granting land to respondent No.7. He shall complete such exercise within a span of 30 days after receipt of this order and shall submit such report through Additional Registrar of this court.

JUDGE

JUDGE