

ORDER SHEET
IN THE HIGH COURT OF SINDH AT Karachi
C.P. No.D-2088 of 2024

(Delhi Hakiman Co-operative Housing Society Ltd. versus The Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 23.04.2026

Ms. Baseerat Shafi, advocate for the petitioner.
M/s Faraz Ahmed Abro and Aqib Hussain, advocates for respondent No.4 along with DSR Muhammad Arshad HQ Pakistan Rangers (Sindh).
Ms. Wajiha Mehdi, Assistant Attorney General.
Mr. Ali Safdar Depar, AAG along with Ali Asghar Mehar, Focal Person, Home Department.

ORDER

Adnan-ul-Karim Memon, J. The Petitioner, Delhi Hakiman Cooperative Housing Society Limited has filed the present petition under Article 199 of the Constitution of the Islamic Republic of Pakistan seeking the following reliefs:-

- "1. Declare that the petitioners are the exclusive lawful and bonafide owners of the subject property and entitled for its vacant and physical possession from respondent No. 4, forthwith*
- 2. Direct the respondents, their officers, sepoys, personal agents, employees, representatives, successors or any agency to vacate the petitioners' land and to remove their illegal and unconstitutional possession and construction if any, from the land of the petitioner without any delay.*
- 3. Any other relief, which this hon'ble court may deem fit and proper under the circumstances of the case and be awarded."*

2. After hearing learned counsel for the parties and examining the record, it appears that the controversy raised in the present constitutional petition primarily relates to title, validity of allotment, alleged cancellation thereof, and consequential right of possession over the subject property. The Petitioner asserts lawful ownership and continuous possession of the property since 1975, whereas the Respondents contend that the allotment was cancelled in 1994 and that the premises were temporarily occupied by Pakistan Rangers due to law and order requirements. These competing assertions involve disputed questions of fact, particularly regarding the legality and effect of cancellation of allotment, the nature of possession thereafter, and the circumstances under which the Respondents continued occupation.

3. It is well-settled that where determination of rights requires record-based factual inquiry, evaluation of evidence, and adjudication of disputed documents,

Community Hall was exclusively used for social, welfare, and community purposes and was never put to any commercial use. It is submitted that the Petitioner continuously remained in peaceful possession, with its chowkidar and gardener stationed at the premises until January 1996. Learned counsel further submits that in January 1996, officials of Respondent No.4 Pakistan Rangers, purportedly deployed to maintain law and order in Karachi, forcibly occupied the subject property with the facilitation of the civil administration. The occupation was described as a temporary arrangement; however, despite the lapse of more than 25 years, the Respondents have neither vacated the premises nor paid any utility charges or compensation, thereby unlawfully retaining possession of the Petitioner's property. It is contended that the continued occupation of the subject property by the Respondents is wholly illegal, arbitrary, and without lawful authority, amounting to a blatant violation of the Petitioner's fundamental rights guaranteed under Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973. It is added that the administrative authorities have miserably failed to discharge their constitutional and statutory duties, resulting in deprivation of the Petitioner's lawful proprietary rights. Learned counsel submits that despite repeated representations, applications, and correspondence made to the concerned authorities over the years, including the Home Department and Revenue Authorities, however, no relief has been granted. Even the legal notice dated 30.09.2023 served upon the Respondents elicited no response, leaving the Petitioner with no alternate efficacious remedy except to invoke the constitutional jurisdiction of this Court. It is finally submitted that the Petitioner is suffering continuous prejudice, irreparable loss, and mental agony due to the illegal occupation and inaction of the Respondents. Hence, the instant constitutional petition has been filed seeking protection of the Petitioner's fundamental rights and restoration of its lawful possession.

3. At the outset, the learned AAG, on behalf of Respondents raised preliminary legal objections contending that the constitutional petition is not maintainable as it involves serious disputed questions of fact, which cannot be adjudicated in constitutional jurisdiction. It was further submitted that the petitioner lacks locus standi to invoke the extraordinary jurisdiction of this Court. The petition is also stated to be barred by laches, having been filed after an inordinate delay of approximately 30 years without any plausible explanation. It was further argued that the petitioner has failed to exhaust alternate statutory remedies, and in view of settled law including 2011 SCMR 279, constitutional jurisdiction cannot be invoked where effective alternate remedies are available. It was also contended that the proper forum for adjudication of such dispute lies before the Anti-Encroachment Tribunal under the Sindh Public Property (Removal of Encroachment) Act, 2010, hence the petition is not maintainable before this Court. On merits, the learned AAG submitted that the contents of the

petition are denied in toto and the petitioner has failed to substantiate his alleged ownership with credible documentary proof. It was emphasized that necessary parties such as KDA have not been impleaded, therefore the authenticity of the petitioner's documents cannot be verified in constitutional proceedings. It was further submitted that determination of title requires recording of evidence, which is not permissible in writ jurisdiction. The AAG further stated that the subject property was placed under the control of the Pakistan Rangers pursuant to notifications issued by the Government of Sindh and Federal Ministry of Interior in 1995, due to deteriorating law and order conditions. It was clarified that the Rangers were deployed in aid of civil administration under Article 147 of the Constitution, and the premises were handed over by the Government of Sindh for operational requirements. However, no ownership claim is asserted by the Rangers. It was also contended that the petitioner has remained silent for decades, has never approached any competent forum, and no complaint was ever lodged against the respondents, which demonstrates acquiescence and fatal delay. The dispute, according to the AAG, squarely falls within the jurisdiction of the Anti-Encroachment Tribunal, and the constitutional petition is an attempt to bypass the lawful forum. The AAG further submitted that the petitioner has failed to establish a valid cause of action, and the allegations are false, concocted, and malicious, warranting dismissal of the petition with costs. It was also asserted that the petitioner's conduct reflects clear mala fide intent, and Respondent No.4 reserves the right to initiate proceedings for damages.

4. Pursuant to the order of this Court dated 29.01.2026, the learned AAG submitted that the Home Department, Government of Sindh had sought verification from the Karachi Development Authority (KDA) regarding the subject property. The KDA, through its report, confirmed that the property in question was originally allotted to a cooperative society in 1973, possession was handed over in 1975, but subsequently a show cause notice was issued in 1993 due to misuse, and thereafter the allotment was cancelled vide order dated 26.09.1994. It was further stated that, according to official records, the subject property remains cancelled in the KDA record, thereby negating any claim of lawful subsisting allotment. In view of the above factual position, statutory framework, and official verification report, the learned AAG prayed that the petition being misconceived, time-barred, and not maintainable in law, is liable to be dismissed accordingly.

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

6. It appears from the pleadings of the parties that the dispute primarily relates to title, validity and alleged cancellation of allotment in 1994, and Consequential rights of possession over the subject property after a lapse of about

25/30 years, which involve complex and disputed questions of fact requiring evidence. Such issues cannot be adjudicated in constitutional jurisdiction under Article 199 of the Constitution and are appropriately to be resolved through proper civil proceedings. The petitioner claims lawful ownership and continuous possession since 1975, whereas the respondents assert that the allotment was cancelled in 1994 and that the premises were occupied by Pakistan Rangers due to law and order exigencies. These rival contentions clearly raise seriously disputed factual questions regarding title, cancellation, and nature of possession, which cannot be determined in summary constitutional proceedings.

7. It is well-settled that where determination of rights requires record-based factual inquiry, evaluation of evidence, and adjudication of disputed documents, such exercise is not ordinarily undertaken in constitutional jurisdiction under Article 199 of the Constitution. These matters properly fall within the domain of a competent Civil Court, which is empowered to record evidence, examine witnesses, and determine questions of title and lawful possession.

8. In the present case, even according to the learned Additional Advocate General, issues exist regarding alleged cancellation of allotment and intervening occupation, which further reinforce that the dispute cannot be effectively resolved without a full-fledged trial.

9. In view of the foregoing, and to avoid prejudice to either party while ensuring proper adjudication of rights, it appears appropriate that the petitioner be relegated to the remedy of filing a civil suit or any other proceedings before the competent jurisdictional court for determination of its claim, including validity of the alleged declaration, cancellation and consequential relief of possession.

10. When confronted with this position, learned counsel for the petitioner, assisted by the representative of the society, agreed to the disposal of the petition; however, it was emphasized that the petitioner's claim should not be defeated on technical grounds of limitation, as they have been pursuing remedies diligently before various forums and have only approached this Court on 20.05.2024. The learned AAG, however, contended that all such issues should be examined by the trial court in accordance with law, without any observations from this Court that may prejudice either party, which contention appears justified.

11. It is observed that while property rights are protected under Articles 23 and 24 of the Constitution, the present matter involves disputed questions of fact, including alleged cancellation of lease in 1994 and lack of prior notice thereof, which can appropriately be adjudicated by the civil court. The question of limitation, raised, shall also be considered by the trial court on its own merits keeping in mind the background of the case. Accordingly, this Court cannot, in

exercise of jurisdiction under Article 199, declare the petitioner as exclusive lawful owner or grant possession. The petitioner is, therefore, at liberty to seek appropriate remedies before the competent civil court, which shall decide the matter independently in accordance with law.

12. Accordingly, while leaving all questions of fact and law open, and without touching the merits of the case, the petition along with pending application(s) is disposed of with the consent of parties, with liberty to the Petitioner to approach the competent Civil Court/any other legal forum for appropriate relief.

JUDGE

JUDGE

Shahzad Soomro