

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-5102 of 2024

Present:
Justice Zafar Ahmed Rajput,
Justice Ms. Sana Akram Minhas,

Petitioner	:	Muhammad Usman Hingoro, through M/s. Shabir Ahmed Kumbhar & Mohammad Nawaz Tahiri, Advocates.
Respondents No. 1 to 3	:	Government of Sindh, through Secretary, Mines & Mineral Development Department; Director General, Mines & Mineral Development and Deputy Commissioner, Thatta (<i>Nemo</i>)
Respondents No. 4 to 6	:	Sher Khan Pathan, Imran Pathan and Ishaq Pathan (<i>Nemo</i>)
Date of hearing	:	29.10.2024.
Date of order	:	29.10.2024.

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the
Petitioner inter-alia seeks the following relief: -

- a) *To direct the official respondents to cancel the lease of the private respondents in respect of Crush Plant situated at subject land.*
- b) *To direct the private respondents to remove the Crush Plant situated at subject land.*
- c) *To direct the private respondents to pay the compensation to the petitioner for last ten years.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioner's great-grandfather, namely, Usman son of Motio, who died approximately 45 years ago, was the owner of land measuring 15 acres, situated at Makan Bajero, Deh Kohistan 7/3, Tapo Jung Shahi, District Thatta; that after the death of said Usman, his legal heirs, including the Petitioner's father, remained in possession of the subject land; that the Respondents No.1 & 2 granted the subject land to the private respondents for the installation and operation of a crush plant, without the consent, knowledge and permission of the Petitioner's father; who have commenced their business under the name and style of "Pakistan Stone Crusher"; that the Petitioner approached various forums, including SSP, Thatta,

the Respondent No. 2/ *Director, Mines & Mineral Department, Sindh, Karachi* and the Respondent No.3/ *Deputy Commissioner, Thatta* through numerous applications seeking removal of the crush plant from the locality, cancellation of the licence of the crush plant and restoration of possession of the subject land; that the Respondent No.3 called for a report from the concerned Mukhtiarkar vide letter dated 30.01.2024, who submitted his report, vide letter dated 08.08.2024, to the effect that the record relating to the subject land had been destroyed in a fire incident in 2007; that the private respondents subsequently started harassing and intimidating the local villagers and lodged a series of false FIRs against the residents of the locality, being FIR Nos. 152, 153, 154, and 155 of 2024, registered at Police Station Makli, District Thatta; that the private respondents, by virtue of their financial and political influence, are exerting pressure upon the vulnerable and elderly residents of the locality, thereby creating an adverse and disturbing environment; that the operation of the crush plant is adversely affecting the locality, causing health-related problems and financial loss to the Petitioner and other co-sharers; that despite having approached the concerned authorities and forums, no effective remedy has been afforded to the Petitioner; hence, having left with no efficacious remedy, he has invoked the constitutional jurisdiction of this Court for redressal of his grievances.

3. Learned counsel for the Petitioner contended that the life, health, and safety of the inhabitants of the area are at serious risk on account of the crushing activities of the private respondents, as the operation of the crush plant has adversely affected the surrounding environment and has allegedly created an unhealthy and hazardous atmosphere, resulting in various ailments among the local residents; that the installation and operation of the crush plant have caused substantial deterioration in the environmental conditions of the area, as the plant emits smoke, dust, and foul-smelling substances, thereby exposing the inhabitants of the locality to hazardous conditions, causing respiratory and skin-related ailments; that the continued operation of the crush plant in close proximity to the nearby KDA Canal gives rise to a serious apprehension of contamination and pollution of the water, which may adversely affect the health and well-being of the population dependent on said water supply; that the private respondents are allegedly burning used tyres and other rubber-based materials for the preparation of asphalt, as a consequence of which hazardous smoke and an offensive and noxious odour spread over the surrounding area, rendering the environment extremely unhealthy and making life difficult for the local villagers; that the acts and activities of the private respondents are causing serious environmental and

public-health concerns and are detrimental to the inhabitants of the locality; that the removal or closure of the crush plant is necessary in the larger public interest and for the protection of the environment, as well as the health and safety of the local population; that the Hadero Wildlife Sanctuary is situated in the vicinity of the subject land and the applicable law prohibits the installation or operation of explosive or hazardous activities within the prescribed distance of five kilometers from the Wildlife Sanctuary; as such, the operation of the crush plant in such proximity is in violation of the environmental and wildlife-protection laws; therefore, the crush plant is liable to be removed from the subject land.

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

5. The relief sought through the instant petition essentially relates to the cancellation of the lease/permission allegedly granted in favour of the private respondents, removal of the crush plant, and award of compensation for the alleged loss suffered by the Petitioner. However, the Petitioner has failed to place on record any cogent and legally admissible material establishing his title to, or lawful entitlement over, the subject land. Mere assertion that the Petitioner's great-grandfather was the owner of the subject land, and that the Petitioner and his predecessors have remained in possession thereof is by itself insufficient to establish an enforceable right, particularly where the Petitioner has not produced any documentary evidence demonstrating that his father was the legal heir of Usman, the person alleged to have been the owner of the subject land. Moreover, the relevant revenue record pertaining to the subject land is stated to have been destroyed in a fire. In these circumstances, questions of title, ownership, possession, and the status of the subject land are matters that require determination on the basis of evidence, and cannot appropriately be undertaken in the constitutional jurisdiction of this Court.

6. The allegations regarding environmental pollution, health hazards, contamination of the canal, burning of tyres, and violations of wildlife and environmental laws are also based primarily on assertions made by the Petitioner. No authoritative inspection report, scientific assessment, environmental impact assessment, or other competent material has been produced before us to establish that the crush plant is being operated in violation of any applicable law or that its operation is the source of the alleged diseases and environmental degradation. Such disputed questions of fact cannot suitably be adjudicated in the constitutional jurisdiction merely on the basis of allegations contained in the Petition.

7. Likewise, the prayer for cancellation of the lease/permission and restoration of possession necessarily involves the determination of disputed questions relating to title, possession, the nature and legality of the alleged grant, and the respective rights of the parties. Such questions require the production of evidence and examination of the relevant record, for which the Petitioner may avail remedy before the competent forum in accordance with law. The constitutional jurisdiction of this Court is not intended to substitute ordinary civil or statutory remedies where the controversy essentially involves disputed questions of fact and rights.

8. It is also noteworthy that the Petitioner seeks compensation for the alleged loss suffered over a period of ten years; yet, no material has been placed on record demonstrating any legally ascertainable loss, its causal connection with the acts of the private respondents, or the legal basis for awarding such compensation in the present proceedings. Mere filing of applications before different authorities, without establishing a corresponding legal right or infringement thereof, does not, by itself, furnish a cause for invoking the extraordinary constitutional jurisdiction of this Court.

9. In view of the foregoing, it appears that the Petitioner has failed to demonstrate any enforceable legal or constitutional right warranting the exercise of the extraordinary jurisdiction of this Court. The Petition is founded upon disputed questions of fact, unsupported allegations, and claims requiring determination by the competent forum after recording of evidence. No case has been made out for the issuance of the extraordinary writs sought by the Petitioner.

10. Consequently, the instant Constitutional Petition, being devoid of merit and not maintainable in the constitutional jurisdiction of this Court, is dismissed in *limine*, along with pending applications. The Petitioner shall, however, remain at liberty to avail any other remedy available to him under the law, subject to all just exceptions and legal limitations.

11. The above are the reasons for our short order dated 29.10.2024.

JUDGE

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