

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-7031 of 2021

Present:

Justice Zafar Ahmed Rajput

Justice Ms. Sana Akram Minhas

Petitioner : Muhammad Sadiq Malik, through
Mr. Ghulam Nabi, Advocate.

Respondents : Province of Sindh, through its Chief Secretary,
No. 1, 5, 6, 7 & 8. Home Department; Senior Member, Board of
Revenue; Deputy Commissioner Malir,
Karachi; Senior Superintendent of Police,
District Malir, Karachi & Station House
Officer, PS Shah Latif, respectively, through
Mr. Pervez Akhtar Mastoi, Assistant Advocate
General (“AAG”).

Respondents : Malir Development Authority, through its
No. 2 & 3. Director General & Director MDA Land,
through Mr. Salman Ansari, Advocate.

Respondent : Managing Director, Katchi Abadi
No. 4. (*Nemo*)

Respondents : Mubarak Ali & Syed Arshad Hussain Shah
No. 9 & 10. (*Nemo*)

Date of hearing : 12.11.2024.
Date of order : 12.11.2024.

ORDER

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

- a). *To restrain, the respondents No.6 to 10, their agents, servants, friends, companions, colleagues, persons, representatives, workers and/or anybody else acting on their behalf or in their name, from visiting, threatening, and / or dispossessing the petitioner from the said Plots No.SB-33, SB-34, SB-35 and SB-36, situated Main National Highway, Near Razaqabad Police Training Centre, Karachi, in any manner whatsoever in nature, without due course of law.*
- b). *To restrain, the respondents No.6 to 10, their agents, servants, friends, companions, colleagues, persons, representatives, workers and / or anybody else acting on their behalf or in their name, from disturbing the construction work going to be start in the said plots, in any manner whatsoever in nature, without due course of law, as the petitioner is lawful owner of the said plots.*
- c). *To direct the respondent No2 to 8, to provide shelter/ protection to the petitioner in construction work, being constructed on the said plots.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioner participated in an open auction conducted by the Malir Development Authority (“MDA”) on 20.01.2007 in respect of open plots and offered bids for Plot Nos. SB-33, SB-34, SB-35 and SB-36, situated at Main National Highway, near Razaqabad Police Training Centre, Karachi (“**the subject plots**”). The bids offered by the Petitioner were approved and accepted by the Respondents No.2 & 3 at the rates of Rs.24,000/-, Rs.27,100/-, Rs.16,200/- and Rs.16,000/- per square yard, respectively. Accordingly, the Respondents No.2 & 3 issued Bid Confirmation Letters dated 10.08.2007 in favour of the Petitioner, pursuant thereto, the Petitioner paid the entire amount in respect of the subject plots in installments, as per Bid Confirmation Letters. Upon receipt of the entire sale consideration, the Respondents No.2 & 3 issued the Allotment Letters dated 28.06.2019 and, after due demarcation, handed over their physical possession to the Petitioner. On 05.10.2021, when the Petitioner, along with certain labourers, proceeded to commence construction work on the subject plots, some unidentified miscreants arrived at the site and extended threats of dire consequences and attempted to forcibly dispossess the Petitioner therefrom by falsely claiming ownership over the subject plots; however, owing to the timely intervention of the labourers and local residents, the said persons could not succeed in their attempt. Following the said incident, the Petitioner lodged FIR No.1616/2021 under Sections 147, 148, 149, 448, 511 and 427, P.P.C., at Police Station Shah Latif Town, Karachi, whereafter the said persons did not return to the site. The Petitioner, accompanied by labourers, again visited the subject plots for the purpose of commencing construction; however, the Respondents No.9 & 10, along with some unknown persons, arrived at the site and likewise attempted to dispossess the Petitioner by extending threats of dire consequences and claiming ownership over the subject plots. The Petitioner subsequently learnt that the said persons, including the Respondents No.9 & 10, were allegedly acting illegally under the supervision and patronage of the Respondents No.6 to 8, who intended to unlawfully occupy the subject plots. The Petitioner accordingly approached the Respondents No.2 to 5 and requested them to intervene and resolve the matter; however, with no response. The Petitioner, having invested a substantial amount in the subject plots, intends to commence his business thereon; nevertheless, the Respondents No.9 & 10, in collusion with other persons and with the support and patronage of the Respondents No.6 to 8, continue to extend threats of dire consequences, as a result whereof the Petitioner has been unable to undertake construction over the subject plots and continues to suffer loss. Hence, he has maintained the instant Petition.

3. Learned counsel for the Petitioner while reiterating the facts of the case has contended that the Petitioner having acquired vested, lawful, and indefeasible rights, title, and interest in the subject plots, coupled with actual physical possession lawfully delivered by the competent allotting authority, is entitled to their peaceful and uninterrupted possession, enjoyment, use, and development, including the right to raise construction thereon, without unlawful interference by any person whatsoever; that the Respondents, being statutory functionaries entrusted with public duties, are under a legal obligation to protect and safeguard the lawful rights and interests of the Petitioner, and to ensure that possession lawfully conferred through an official allotment is not disturbed by private individuals or land-grabbers acting without lawful authority; that the complete inaction and silence of the Respondents No.2 to 5, despite the Petitioner's repeated requests and representations seeking their intervention, amounts to a failure to discharge their statutory duties and constitutes a dereliction of their legal obligations towards a lawful allottee; that the conduct of the Respondents No.9 & 10, in repeatedly attempting to forcibly dispossess the Petitioner by extending threats of dire consequences and asserting false claims of ownership, is wholly illegal, without lawful authority, and constitutes unlawful interference with the Petitioner's vested proprietary and possessory rights and such conduct, being unsupported by any lawful title, document, or sanction of law, cannot be permitted to defeat, undermine, or override rights lawfully conferred upon the Petitioner by the competent authority; that the fact that such attempts at dispossession are allegedly being carried out under the supervision, patronage, or connivance of the Respondents No.6 to 8, who are themselves public functionaries, renders the matter all the more serious, as it *prima facie* reflects misuse of official authority and alleged complicity of public office-holders in facilitating the illegal occupation of property lawfully allotted to a citizen, in derogation of their duty to uphold the rule of law and protect the lawful rights and interests of the Petitioner; that the continuing nature of such threats places the Petitioner's life, property, and security of person at serious risk and warrants the intervention and protection of this Court; that, being a lawful allottee, title-holder, and possessor of the subject plots, the Petitioner has no adequate, efficacious, or alternate remedy in the circumstances of the case, particularly where public functionaries have failed to perform their statutory obligations to protect his lawful possession and where private persons are allegedly attempting to interfere with such possession under official patronage or connivance and that it is a settled principle of law that the constitutional jurisdiction of this Court may appropriately be invoked where the concerned public functionaries fail to protect such lawful possession.

4. Learned counsel appearing on behalf of the Respondents No.2 & 3 has maintained that the Petitioner had purchased the subject plots from MDA and, after making full payment, physical possession thereof had already been handed over to him; that the petition is not maintainable in law, as the Petitioner's grievance essentially relates to alleged threats, apprehended dispossession, and interference by the unknown private persons; such matters fall within the domain of the local police and criminal justice machinery rather than the constitutional jurisdiction of this Court; hence, the instant Petition is liable to be dismissed.

5. Learned AAG, appearing on behalf of the State, has argued that the Petitioner had already lodged an FIR regarding the earlier incident and, if any subsequent threat or attempt at dispossession involving the Respondents No. 9 & 10 had occurred, the Petitioner's appropriate remedy was to lodge a fresh FIR and seek protection from the concerned police authorities in accordance with law; that the allegations of connivance, patronage, or facilitation by the Respondents No. 6 to 8 were bald, unsubstantiated, and unsupported by any cogent or tangible material on record and, therefore, could not furnish a basis for invoking constitutional jurisdiction against the said officials; that the learned counsel appearing for the Respondents No. 2 & 3 had already conceded that the subject plots were lawfully purchased by the Petitioner from MDA and that physical possession had been handed over to him and since the Petitioner's allotment had neither been cancelled nor disturbed by the official respondents, no cause of action existed against them; that any grievance regarding interference with possession of the Petitioner lay essentially against the private respondents; that the official respondents could not, in constitutional jurisdiction, be directed to provide round-the-clock private security or protection for the Petitioner's construction activities, particularly when no such statutory obligation was cast upon the concerned civic/development authorities; that the questions relating to actual physical possession, the existence of any adverse claim, and the genuineness of the alleged threats involved disputed questions of fact which could not appropriately be adjudicated in summary constitutional proceedings; that the Petitioner, if aggrieved, was at liberty to avail himself of the appropriate civil and/or criminal remedies before the competent forums; as such, the instant Petition appears to be misconceived, premature, and not maintainable in the presence of adequate alternate remedies; hence, the same is liable to be dismissed.

6. We have heard learned counsel for the parties as well as learned AAG for the State, and have perused the material available on record.

7. At the very outset, it may be observed that it is not disputed, and indeed stands conceded by learned counsel for the Respondents No. 2 & 3, that the Petitioner has lawfully purchased the subject plots from MDA upon payment of the entire sale consideration and that the physical possession thereof has duly been handed over to him. In these circumstances, as the Petitioner's allotment has neither been cancelled, questioned, nor disturbed by the official respondents, no cause of action is made out against the Respondents No. 2 to 5, nor is any effective relief of the nature sought warranted against them.

8. As regards the Petitioner's grievance concerning threats, apprehended dispossession, and interference allegedly at the hands of the Respondents No. 9 & 10 and certain unknown persons, the same essentially pertains to a law-and-order issue involving the protection of the Petitioner's person and property against alleged criminal acts of private individuals. Such matters ordinarily fall within the domain of the local police and the criminal justice machinery. Admittedly, the Petitioner has already availed of such remedy by lodging FIR No. 1616/2021 in respect of an earlier incident. If any fresh or subsequent threat, interference, or attempt at dispossession has occurred at the hands of the Respondents No. 9 & 10 or any other persons, the Petitioner may avail the appropriate remedy by approaching the concerned police authorities and, where warranted, lodging a fresh FIR in accordance with law, rather than invoking the extraordinary constitutional jurisdiction of this Court.

9. As regards the allegation that the Respondents No. 9 & 10 are acting under the supervision, patronage, or connivance of the Respondents No. 6 to 8, we find such allegation to be a bald and general assertion, unsupported by any cogent, tangible, or legally admissible material placed on record. An allegation of misuse of official authority or connivance with private persons, particularly one of a serious nature, cannot be acted upon in constitutional jurisdiction merely on the basis of the Petitioner's ipse dixit, in the absence of specific particulars and supporting material establishing such involvement.

10. Furthermore, the questions as to who is presently in actual physical possession of the subject plots, whether any bona fide adverse claim of ownership or possession exists in favour of the private respondents, and whether the alleged threats or attempts at dispossession have in fact occurred, involve disputed questions of fact which cannot appropriately be determined in constitutional proceedings without recording evidence. Likewise, the relief sought in prayer clause (c), whereby the Respondents No. 2 to 8 have been asked to provide

“protection” during construction, is vague and, in substance, seeks continuing supervision by this Court over an executive/police function which does not appear to constitute any specific statutory obligation of the concerned civic or development authority and, therefore, cannot be enforced in the manner sought through a constitutional petition.

11. For the foregoing reasons, we are of the view that the instant Petition is misconceived and, to the extent it seeks to invoke the constitutional jurisdiction of this Court for redress of essentially private disputes and law-and-order grievances, is not maintainable in view of the availability of adequate and efficacious alternate remedies. The Petition is, accordingly, dismissed, along with the listed application. The Petitioner shall, however, remain at liberty to approach the concerned police authorities and/or any other forum of competent jurisdiction for appropriate relief in accordance with law in respect of any subsisting grievance agitated herein.

12. The above are the reasons for our short order dated 12.11. 2024.

JUDGE

JUDGE

Athar Zai