

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

C.P.No.D 1290 of 2009.

**Present:-**

Mr.Justice Ahmed Ali Shaikh, J.

Mr.Justice Salahuddin Panhwar,J.

**Petitioners:** Hyder Bux and others through Mr.Bakhshan Khan Mahar, Advocate.

**Respondents:** Province of Sindh and others through Mr.Agha Ather Hussain Asstt.A.G.

**Date of Hearing 05<sup>th</sup> March, 2013.**

**ORDER.**

**SALAHUDDIN PANHWAZR, J-**Through instant petition petitioners seek change of Fotki Khata Badal of late Paryal Fakir, Dilawar Fakir, Muhammad Bux, Khairal Fakir and Mubarak Fakir into the surviving legal heirs as per Tehreers (Fatwa), issued by the Religious Madarsah, according to Mohammadan law.

2. Relevant facts, as set out in the petition are that the petitioners since long have been approaching to the concerned revenue functionaries for change of Foti Khata Badal of above named deceased persons but despite repeated applications the petitioners have not achieved their demand; petitioners moved applications to the respondent (D.O (Revenue) Khairpur ), and on his direction of respondent No.3 (Mukhtarkar) examined the record, demanded illegal gratification for change of Foti Khata Badal from the petitioner; and refused to effect the mutation in records of right. The petitioners possess Islamic Tahreers; according to that

they are legal heirs of said deceased persons, thereby they are entitled for the share of property left by them..

3. Respondent No.5 filed comments wherein it is contended that entire revenue record of taluka Sobhodero was examined, which reveals that by entry No.19 Foti Khata Badal of deceased Paryal Fakir and deceased Dilawar have been already effected to their legal heirs; since the Foti Khata Badal is already effected therefore such mutation in the record of rights cannot be mutated infavour of petitioners. The allegations leveled in petition are illegal; without any substance and controversy relates to the subject matter, falls within the jurisdiction of civil court.

4. Learned counsel for the petitioners inter alia contended that the petitioners have approached to the revenue forum by filing application before EDO Revenue but revenue authorities are not deciding the issue, which is the subject matter of this petition. Change by Foti Khata Badal effected in record of rights is against the law and the petitioners have got certificates from various Madarsah, which reflect that the petitioners are also legal heirs.

5. On the other land learned AAG contended that Foti Khata Badal of foresaid deceased persons have already been effected and certificates issued by some Madarsah in favour of petitioners cannot be proved as admitted, unless proved by leading evidence; therefore jurisdiction lies to the civil court.

6. After consideration of contention raised by respective counsel and meticulous examination of available record, it is manifest that change in revenue record by way of Foti Khata Badal is effected in the name of legal heirs of above deceased persons and it is also matter of record that the petitioners claim themselves as legal heirs on the basis of Sanad issued by some Madarsah thus it is obvious that petitioners have disputed the heir-ship of above deceased persons. ***In such eventuality, it would suffice to say that in Constitutional Jurisdiction the***

*disputed legal status of one cannot be decided because proper course for such purpose is to approach competent Civil Court.* Here we would like to refer principle of law in respect of status of *FATWA* by Federal Shariat Court, in the case law, reported in SBLR 2007 FSC 135 that *no fatwa of any religious scholar, Mufti, a Juris-consultant is binding on a court of law or any party and is of no legal effect, as he does not stand on the pedestal of a Judge.* Moreover in writ jurisdiction recording of evidence is not permissible therefore instant petition is not maintainable under the law. However, the petitioners may avail remedy provided under civil jurisdiction, if so advised.

7. Above are the reasons of a short order dated 05.03.2013 whereby this petition was dismissed.

JUDGE

JUDGE

A.R.Brohi.