

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Amir Hani Muslim
Mr. Justice Mushir Alam

C.M.A No.376-K OF 2014 IN SMC No.16 OF 2011

(Application against the illegal adjustment in Revenue Record Land is being given to Bahria Foundation, filed by Syed Mehmmod Akhter Naqvi)

C.M.A No.450-K OF 2014 IN SMC No.16 OF 2011

(Objection in CMA no.408-K/2014 filed by Syed Mehmood Akhtar Naqvi)

C.M.A No.275-K OF 2014 IN C.M.A No.376-K OF 2014

(Written arguments on behalf of the Senior Member Board of Revenue, Sindh)

C.R.L.O.P. No.20-K OF 2014 IN C.M.A No.376-K OF 2014

(Syed Mehmood Akhtar Naqvi Vs. Malik Israr, Sr. Member Board of Revenue Sindh)

C.R.L.O.P. No.21-K OF 2014 IN C.M.A No.405-K OF 2014

(Syed Mehmood Akhtar Naqvi Vs. M. Ali Shah, Dy. Commissioner, West Karachi)

C.R.L.O.P. No.22-K OF 2014 IN C.M.A No.406-K OF 2014

(Syed Mehmood Akhtar Naqvi Vs. Muhammad Qazi, Dy. Commissioner, Malir)

C.R.L.O.P. No.23-K OF 2014 IN C.M.A No.408-K OF 2014

(Syed Mehmood Akhtar Naqvi Vs. Muhammad Sohail, DG, MDA. Karachi)

C.R.P. No.32-K OF 2015 IN C.M.A.376-K OF 2014

(Muhammad Sohail Vs. Syed Mehmood Akhtar Naqvi and another)

For the Petitioner : Syed Mehmood Akhter Naqvi (in-person)

For Respondents : Mr. Farooq H. Naek, Sr.ASC. for BOR.
Ch. Aitzaz Ahsan, Sr.ASC, for Private Respondents.
Mr. K.A Wahab, AOR. (C.M.A.502-K/16)
Dr. Raana Khan, AOR, (CrI.O.P.6-K/16).
Mr. Zameer Ghumro, A.G, Sindh.
Mr. M. Siddiq Memon, Chief Secretary, Sindh.
Mr. Rizwan Memon, Sr.Member, BOR.
Mr. Waqas Qadeer Dar, P.G, NAB.
Mr. Imtiaz Tajwar, Acting Chairman, NAB.
Mr. Naeem Siraj, DG, NAB Sindh.
Syed Amjad Ali Shah, DPG, NAB.
Mr. Qamar Abbasi, Deputy Director, NAB.
Dr. Muhammad Usman Chachar, Secretary, Services, Sindh.
Mr. Baqaullah Unnar, Secretary, Local Govt

Mr. Imran Atta Soomro, D.G, M.D.A.
Mr. M. Irfan, Law Officer, M.D.A.

Date of hearing : 01-08-2016.

O R D E R

The Prosecutor General, NAB, has filed interim report dated 25.07.2016 (confidential), alongwith a copy of the survey report dated 20.07.2016, prepared by the Ministry of Defence, Directorate of Survey of Pakistan. It is contended by the learned Prosecutor General, NAB, that after the order dated 24.05.2016, passed by this Court, the Survey of Pakistan, was approached by the NAB, for demarcation of the land in actual possession of the Bahria Town.

2. The Director of Survey of Pakistan responded to the request of the NAB and after notices to the Board of Revenue Sindh, Survey and Settlement Department, Sindh, Malir Development Authority (M.DA.), Deputy Commissioner, Malir, and the Bahria Town Karachi, conducted joint survey in presence of the representatives of the aforesaid organizations and compiled report, copy of which was supplied to the NAB authorities and has been placed before us. The Senior Member, Board of Revenue, states that they have not received any copy of the said report. We direct the NAB authorities to supply copies of the survey report to the Senior Member, Board of Revenue, Mr. Aitzaz Ahsan, learned Sr.ASC, for officials of Bahria Town, Mr. K.A Wahab, AOR for the Bahria Town and Syed Mehmood Akhter Naqvi, the Applicant, who request to file their objections if they

deem it appropriate. The confidential report dated 25.07.2016 submitted by the NAB, shall be kept in sealed envelopes by the office.

3. According to the survey report, the M.D.A has exchanged/ consolidated 9140.260 Acres of land to Bahria Town. The survey report contains a portion of green colour with black lines, reflecting that M.D.A has consolidated a piece of land measuring 244.925 Acres which the Bahria Town has not yet developed. The survey report further shows that the total land consolidated by the M.D.A and handedover to the Bahria Town is 9385.185 Acres. The portion marked with pink colour as "A" reflects that the Bahira Town has developed 386.276 Acres of land which has not yet been consolidated by the M.D.A. The portion of survey report in pink colour marked as "B" reflects that Bahria Town has developed an area of 1975.059 Acres which though developed by the Bahria Town has not been consolidated by the M.D.A. Another portion of the survey report marked as "C" in pink colour shows that the land measuring 410.444 Acres has been developed by the Bahria Town, but has not been consolidated by the M.D.A. The survey report shows that total land developed/under development but not consolidated by the M.D.A comes to 2771.79 Acres. In this respect, total area of land of Bahria Town reflected in the survey report comes to 12156.964 Acres.

4. We have inquired from the Chief Secretary, Senior Member, Board of Revenue, and the Advocate General, Sindh, to satisfy us under which law the M.D.A is competent to exchange private

lands with the lands falling in the area which is reserved as corridor area, they could not offer any explanation and submit that no such powers are available with the M.D.A to allot or exchange the private land with the State land. It has come on record that no portion of the land pertaining to the subject matter has ever been allotted and or part in possession under Section 10(4) of the Colonization of Government Lands Act, 1894, by the Sindh Government to the M.D.A, which fact was confirmed by the Senior Member, Board of Revenue and incorporated in the order of this Court dated 09.03.2016, which reads as under: -

“We are informed by the Chief Secretary, Sindh that the Sr. Member, Board of Revenue has proceeded to Islamabad on account of some family emergency and will be back by today evening. Since the matter relates to the Board of Revenue, therefore, we deem it necessary that he should appear before the Court tomorrow before any Order is passed in this matter. We are further informed that in compliance with the Order passed yesterday, Mr. Muhammad Sohail who was assigned the look after as D.G. MDA has been de-notified. The Sindh Government is directed to appoint any officer of their choice, eligible for the post of D.G. MDA, within one week. In the intervening period, the Secretary, Local Government will have the additional charge.

3. We restrained the MDA from allotting and/or dealing with the land in any manner whatsoever till further orders. The Sr. Member, Board of Revenue yesterday, while present in Court, has disputed the authority of the MDA to allot or otherwise deal with the land with anyone as, according to him, the land was neither allotted nor given possession to the MDA. According to the Sr. Member, Board of Revenue, the land within MDA is fully owned by Sindh Government. Beside the aforesaid reason, this Court on 28.11.2012 has passed restraining order restricting the powers of authority from allotting state land to anyone. This restraining order also applies to all the authorities under Sindh Government who claimed their title from the state/Board of Revenue.”

5. After going through the survey report dated 20.07.2016, we, in order to safeguard the public interest and to avoid multitude of proceedings, are constrained to pass the following interim order:-

- (i) the Bahria Town is restrained from undertaking any development activity in the area demarcated with green colour with black lines on it measuring 244.925 Acres and or to deal with this portion of land with any person or organization in any manner whatsoever;
- (ii) the Bahria Town is further restrained from undertaking any development activity on the portion marked as “A” with pink colour measuring 386.276 Acres, which is not consolidated by the M.D.A, with further restriction to deal with this portion of the land in any manner whatsoever;
- (iii) the Bahria Town is restrained from undertaking any development activity on the area marked as “B” with pink colour measuring 1975.059 Acres, which as per survey report has not been consolidated by the M.D.A and to deal with the land in any manner whatsoever;
- (iv) the Bahria Town is further restrained from undertaking any further development activity on the area marked as “C” with pink colour measuring 410.444 acres and or to deal with the land in any manner whatsoever;
- (v) the Bahria Town is further restrained from raising any further development activity in area measuring 2771.779 Acres, which has not been consolidated by the M.D.A and to deal with the land in question in any manner whatsoever;
- (vi) the M.D.A is restrained from consolidating any further portion of the private land of the Bahria Town or any other private enterprise under the

garb of exchange of land in exercise of their powers conferred on them under the M.D.A Act or the Rules framed thereunder;

- (vii) We further restrict the Board of Revenue, Government of Sindh, from dealing with the land of M.D.A or any other Authority which is subject-matter of these proceedings in any manner whatsoever in defiance of the order of this Court passed by a five Member Bench of this Court on 28.11.2012;
- (viii) the M.D.A is restrained from dealing with the land which are subject-matter of survey report either with Bahria Town or with any other organization in any manner whatsoever;
- (ix) defiance of the interim orders passed hereinabove by any of the organization whether public or private shall expose them to contempt proceedings.

6. In order to ensure that no further construction or development activity is carried out on the land specified hereinabove, we direct the NAB authorities through the Prosecutor General that they should immediately if possible by tomorrow obtain google earth maps/images of the entire land stated to be in possession of the Bahria Town as per the survey report and submit the same for record

7. In fact on 28.11.2012, a five member Bench of this Court, has initially passed an order restraining the Sindh Government from dealing with the State land, relevant portion of which is reproduced hereunder:-

“7. 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 upto 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.

8. Today, the learned Counsel representing the Senior Member, Board of Revenue, and Ch. Aitzaz Ahsan, learned Sr.ASC, have submitted that the aforesaid restraining order was modified, by order dated 23.06.2014, passed by a three Member Bench, relevant portion of the said order is also reproduced hereunder:-

Learned Advocate General, Sindh, submits that the order of this Court regarding stay of allotments, mutations, transfer and conversion of any state land is being complied with in letter and spirit.

6. We may at this stage clarify that this order staying the allotment/grant of leases was meant to ensure that the land is not either leased out or allotted for reasons other than bona fide and to land grabbers and this would not prevent the competent authority in the Federal or Government of Sindh to allot or lease out land for a project approved by the concerned authority which is directed towards establishment of any industry or automotive plant or power generating plant or any other initiative in public interest and in accordance with law and the relevant rules. The learned Advocate General, Sindh, shall convey this order to the Chief Secretary and all the provincial secretaries to ensure that the earlier order is not misconstrued and no such project is held up on that account.

9. We may clarify that the aforesaid order dated 23.06.2014 was obtained by misleading the Court on the pretext that re-writing/reconstruction of the record has been completed by the Sindh Government. Today, the Senior Member, Board of Revenue, concedes that the reconstruction and rewriting of the record has not been completed till date. We hold that the order dated 28.11.2012, passed by a five Member Bench of this Court, was never modified and holds the field.

C.M.A.No.502-K of 2016.

10. This Application is allowed, subject to all just exceptions.

Crl. Original Petition No.6-K of 2016.

11. The Secretary, Local Government, Sindh, states that Sohail Ahmed Khan, who was previously D.G, M.D.A, was appointed initially in BS-16 in the Sindh Local Government Department. This fact has been confirmed by the Secretary, Services, Government of Sindh,

therefore, in terms of judgments of this Court reported as Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), he shall be denotified and shall report back to his parent department. He, however, shall be entitled to the seniority with his batch-mates as determined by the judgments of this Court referred to hereinabove. Likewise, any other official/officer working on deputation or otherwise absorbed in the M.D.A shall immediately report back to his parent department, failing which the D.G, M.D.A, and the Secretary, Local Government, who is the administrative head of the M.D.A, shall be exposed to contempt proceedings besides the beneficiary, who is still continuing in the M.D.A.

12. Copy of this order be faxed to the Chief Secretary, Government of Sindh, D.G, M.D.A, the Prosecutor General, NAB, Ch. Aitzaz Ahsan, learned Sr.ASC and Mr. K.A Wahab, AOR (C.M.No.502-K of 2016).

To come up after two months.

Judge

Judge

Islamabad the,
01-08-2016
Not approved for reporting.
Sohail/**