

IN THE HIGH COURT OF SINDH HYDERABAD CIRCUIT

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Muhammad Faisal Kamal Alam

C.P. No. D-2180 of 2017

Masood Ahmed Wassan & others

Versus

Province of Sindh & others

Date of Hearing: 04.03.2020 and 12.03.2020

Petitioners: Through Mr. Ali Ahmed Palh Advocate

Official Respondents : Through Mr. Allah Bachayo Soomro,
Additional Advocate General.

Respondents No.9 & 10: Through Mr. Ishrat Lohar Advocate

Respondents No.11: Through Mr. Ayatullah Khowaja Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- In pursuit of a desire of the President of Islamic Republic of Pakistan, as disclosed in the summary, in the year 2010 and 2011 to provide houses to the poorest of the poor, a summary was presented to the then Chief Minister to accomplish the object by introducing a scheme under the name and style of “Shaheed Mohtarma Benazir Bhutto Town” Mirpurkhas (hereinafter referred to as SMBBT). In order to achieve the object, EDO Revenue was asked to identify the land in the respective cities where all infrastructures or amenities were available, keeping in view the failure of the similar kind of scheme in 1986 namely “Five Murla Scheme”. In consequence whereof a fertile land of a research based Agriculture Department (respondent No.11) was identified. Impugned herein is the aforesaid action of Sindh government by some of the petitioners who were threatened to be deprived of the benefits arising of the research based agriculture department with which this land was/is attached.

2. Some allegiants were chosen to whom job of identifying the land was assigned. The Commissioner, Deputy Commissioner, Members Board of Revenue, Land Utilization Department and Mukhtiarkar (respondents) were able to complete the task and out of entire Mirpurkhas they were able to point out a portion measuring 78-13 Acres, out of this research based land which was and is already a reserved land for agriculture research. The summary was then floated to the worthy Chief Minister Sindh which was approved.

3. We shall now first set forth the facts which are not disputed. From around 282 Acres of most fertile land, attached with the research based agriculture department of Sindh, 78-13 Acres of fertile land was identified in the vicinity of Tando Jam by Land Utilization Department/Member Board of Revenue, Commissioner, Deputy Commissioner and Mukhtiarkar (respondents in the petition) for presenting it to Provincial Government for Chief Minister's approval, which was accordingly approved. Aggrieved of the alleged approval of the said summary, the petitioners filed this petition and consequently notices were issued to respondents including Government of Sindh and others.

4. Project Director SMBBT and its Chief Executive as respondents No.9 and 10 respectively filed comments and defended the government's action on the ground that there was no research work going on and hence they thought that the land is more suited for this (desired residential scheme) purpose instead of steering the research work aggressively, if it (research department) had not been performing, allegedly.

5. Respondent No.11 Director General Agriculture Research Sindh Tando Jam filed separate comments also and challenged the action and decision of the Provincial Government and Chief Minister and provided

details and history by placing on record details along with summary report.

6. Assistant Advocate General filed comments on behalf of respondents No.2 and 11 and stated that the Agriculture Supply & Price Department through its Secretary raised objection that this land cannot be spared as it would hamper the research activities related to horticulture crops. Although they stated in the comments that cutting of grownup trees was not allowed by the respondent No.2, yet the respondent No.2 did not ask for dismissal of this petition, as could be seen from the contents of the comments particularly in response to prayer clauses.

7. Respondent No.12 i.e. Environmental Protection Agency (EPA) also filed comments wherein they only submitted that it is for proponent to submit environmental impact assessment report to the Sindh Environmental Protection Agency (SEPA) for examination and evaluation of its environmental impact.

8. With above background, we have heard the learned counsel for parties as well as learned Addl. Advocate General and perused the record.

9. This piece of land out of which the subject land of 78-13 acre was carved out is actually comprising of 282 Acres situated in Deh 100 and Deh 110 of Taluka Hussain Bux Marri. Entire land was/is attached with an agriculture research department. Due to grandness of Mirpurkhas owing to its environment and climate, Sindh Horticulture Research Institute Mirpurkhas was established in the year 1904, as an agricultural farm for research purpose including but not limited to seeds of cotton, wheat, fruit plants nursery and the entry stood in the name of "Government Seeds Farm" in the revenue record.

10. The primary object of this farm was/is to work for the benefit of any individual or group of peasants, farmers, having issues in crop yield and other related matters including but not limited to introduction of new varieties after being tested, which would ultimately affect or benefit national exchequer/economy. One of the significances of the farm is introduction of grafted/ قلمى mango varieties. Petitioners disclosed 120 varieties of mango over an area of 70 Acres, which species were collected from all over the world. In addition to the mango varieties, vegetable and fruit are being cultivated, the breakup of all such is as under:-

| | | |
|-------|----------------------------|-----------|
| i) | Mango orchard | 70 Acres |
| ii) | Chiku | 17 Acres |
| iii) | Guava | 08 Acres |
| iv) | Khirol | 04 Acres |
| v) | Jujube | 04 Acres |
| vi) | Dates | 03 Acres |
| vii) | Nursery | 01 Acres |
| viii) | Other field crops | 75 Acres |
| ix) | Office area colony | 25 Acres |
| | | ----- |
| | Total | 207 Acres |
| | Vegetable Research station | 51 Acres |
| | Poultry (livestock) | 24 Acres |

11. Petitioners have demonstrated that earlier also attempts were made in the past to occupy the land of Agriculture Departments but on timely intervention and orders of Court in CP Nos.D-13 and D-132 of 2009, the land was saved.

12. The orders passed in the aforesaid petitions reflects that a petition was filed before Circuit Court Larkana based on similar summary before worthy Chief Minister. The petition was disposed of with the observation that land shall not be utilized for any residential or commercial purpose. Said petition primarily concerned with land at Larkana attached with Research Institute of Agriculture.

13. Injunctive orders were passed in this petition on 21.06.2017 whereafter comments were filed. Respondent No.2 and 11 in their

comments have stated that since last 70 years research work is being continued and farmers were/are being benefited. Respondents No.9 and 10 focused on approval of summary before a decision was taken. It is very surprising that despite these written comments of Sindh government, in terms of reply to Para 29, where research work stated to be continuing since last (70) seventy years, the Assistant Advocate General stated that because no research was in progress, they opted/selected this land.

14. Let us now examine the scope of such land identification process and process of approval of the summary.

15. Allotment of the subject land seems to have been made under Section 10(1) Colonization of Government Land (Sindh) Act, 1912 as reflected from a letter dated 26.11.2012, Annexure 'A' to parawise comments of respondents No.9 and 10. It is not demonstrated as to how the Facilitation Committee was constituted which convened its meeting on 19.07.2011 for the purpose of recommendation to Chief Minister. Minutes of such meeting reveal that defunct EDO (Revenue) identified that land by using his skills all over Sindh. Following is the description of lands and where those were located, which have been identified to be distributed in pursuance of the above objective:

| <u>Location/Division/Distt.</u> | <u>City/Town</u> | <u>Area reserved (Acres)</u> |
|---------------------------------|------------------|------------------------------|
| Hyderabad Division | Latifabad | 200-00 |
| Jamshoro | Kotri | 40-00 |
| | Senwan | 20-00 |
| | | 20-00 |
| Tando Muhammad Khan | T.M. Khan | 20-00 |
| Matria | Matiari | 20-00 |
| | | 20-23 |
| | | 20-20 |
| | Hala | 20-00 |
| | | 15-00 |
| | | 08-00 |
| Thatta | Thatta | 40-00 |
| | Sajjawal | 11-11 |
| Badin | Badin | 28-02 |

| | | |
|---|--|--|
| Dadu | Dadu Mehtar | 40-00 11-23 |
| Sukkur | Naseerabad Abad Jageer Rohri Pano Aqil | 17-29 18-16 20-00 30-00 30-00 25-00 |
| Shaheed Benazirabad | Nawabshah Daur Sakrind Kazi Ahmed Naushero Feroze Kandiario | 13-05 05-00 06-20 05-00 10-00 20-00 20-00 14-00 00-00 00-00 10-00 08-22 |
| Khairpur | Mirwah Khairpur (Gujo) Gambat Shobo Dero/Ranipur | 08-00 08-32 67-14 09-08 08-00 07-22 |
| Ghotki | Ghotki Mirpur Mathelo Dharki Ubauro | 20-00 20-00 12-00 12-27 05-36 03-30 |
| Mirpurkhas Sanghar Umerkot Mithi | Mirpurkhas Khkpri Umerkot Mithi | 100-00 12-00 20-00 40-00 |
| Larkana Division | Larkana Ratodero | 34-00 20-00 |
| Jacobabad | Jacobabad | 30-17 |
| | Thul | 02-25 |
| | | 02-37 |
| Shahdadkot | Qamber Naseerabad Miro Khan | 00-00 20-00 17-00 |
| Kashmore/Kandhkot | Kandhkot Kashmore | 15-00 |
| Shikarpur | Shikarpur Lakhi Khanpur Gari yasin | 31-00 37-05 28-00 16-03 30-00 28-00 |

16. The Committee unanimously resolved to reserve the aforesaid land for residential scheme. The summary, based on the conclusion of

Facilitation Committee, was then presented to worthy Chief Minister for an authoritative approval.

17. There are two summaries available on record; first at page 45 along with comments and other at page 47. First summary has been allegedly approved but second summary, however reveal that since there were department's objections, therefore, in order to handle those objections a visit was required. A blanket visit was then arranged involving all warriors such as Senior Member Board of Revenue, Commissioner, Deputy Commissioner, Mukhtiarkar etc. As a result of this visit they reached to a pre-determined conclusion that no research works or activities were being carried out and land was barren. They found it to be most suitable for the residential subject. The reasons of pre-determination are given in the following paragraphs i.e. paragraphs 22 onwards where progress of department is shown.

18. Land Utilization Department examined the case and were of the view that agriculture based research work has no potential and scope and instead the land be utilized for a concrete structure. Thus, in pursuance of Section 10(1) of Colonization of Government Land (Sindh) Act, 1912 read with statement of conditions notified on 10.11.2010 and as a consequence of the recommendation of the Committee constituted under Condition 3, as stated in report, and on approval of the competent authority on 16.10.2012 read with order dated 27.09.2011, the Government of Sindh Land Utilization Department was pleased to reserve the land admeasuring 78-13 Acres situated in Deh 100 of Taluka Hussain Bux Marri District Mirpurkhas for residential scheme (SMBBT). Two summaries however do not specifically show that they were approved by worthy Chief Minister. The comments of worthy Chief Minister on a later summary at page 47 were only to the extent to "Keep with file of poorest of the poor".

19. In none of the documents attached with the parawise comments filed on behalf of respondents No.9 and 10 the worthy members of the Committee were able to demonstrate as to how this one of the most fertile lands of Sindh is more suited for a concrete structure instead of agriculture based research work. This land had already been attached with Research based agriculture department and was never available for reallocation or reconsideration under Colonization of Government Land (Sindh) Act, 1912. This land was reserved for agriculture department and the revenue entry was made in the revenue record as “Government Seed Farm” in the year 1904 i.e. more than 116 years ago and that is much before the promulgation of the ibid Act itself. The wisdom of authority who kept this land for research work at the relevant time (1904) had far reaching effects and we are still being benefited by some of the wise decisions of the past.

20. There is not an iota of evidence that in terms of any land grant terms or any condition attached therewith, this allocation (made in 1904) is liable to be reversed or altered. Section 10(5) of Colonization of Government Land (Sindh) Act, 1912 even if read retrospectively provides that if a person who has been granted, allotted or leased out, land after applicability of this Act to the Province of Sindh, or a person who may have been granted land under this Act hereinafter for specific purpose has [in terms of clause (b)] failed to use the land for the purpose for which it was granted or allotted or converted or leased out and the period of five years from the date of grant, allotment, conversion or lease has expired, the grant, allotment, conversion or lease of the land shall automatically stand cancelled and the amount deposited shall stand forfeited. Firstly no such observations were made regarding the reserved land and secondly this land was never available for reconsideration for the present proponent as it is continuously being

used for the purpose it was reserved, as reflected in Para 29 of comments filed by respondents No.2 and 11 and also describe in the later paragraphs of this judgment.

21. Nothing in this Act, promulgated in 1912 is available to exercise such powers for reconsidering the purpose of such land reserved for agriculture research. Section 10-A of the *ibid* Act provides that:

“10-A. (1) NO land shall be disposed of except by Government in accordance with the provisions of this Act, to an autonomous body, authority, company, a person or a group of persons.

(2) Save as otherwise provided under this Act or rules -

(a) no land for agricultural purposes shall be disposed of except under the statement of conditions issued under sub-section (2) of Section 10, of this Act;

(b) No land for commercial purpose shall be disposed of except by open auction at a price not less than market price;

(c) no land exceeding one hundred and twenty square yards under incremental housing shall be disposed of at a price not less than twenty five percent of the market price;

(d) residential land exceeding one hundred and twenty square yards shall be disposed of at a price not less than fifty per cent of the market price;

(e) no land for industrial purpose shall be disposed of at a price not less than twenty five percent of the market price;

(f) no residential-cum-commercial land shall be disposed of at a price not less than seventy five percent of the market price;

(g) no amenity plot shall be disposed of at a price not less than fifty percent of the market price.”

22. Besides the above referred discrepancies, the allocation of land for residential purpose is also in violation of Section 10(A) of the *ibid* Act. The Executive Directorate Horticulture Research Center Mirpurkhas has filed details as to the achievements and progress of last three years for the assistance of this Court. Furthermore, since 1965 the Respondent No.11 department is holding events to demonstrate their progress and achievements. The first event in this regard was organized in June 1965

when Malik Amir Muhammad Khan, Governor West Pakistan appeared as chief guest followed by a number of events which are shown as under: -

| | | | |
|-----------------------|--|--------------------|---|
| 1 st Show | June | 1965 | Malik Amir Muhammad Khan Governor West Pakistan |
| 10 th Show | June | 1974 | Begum Rana Liaquat Ali Khan Governor Sindh |
| 12 th Show | June | 1976 | Dilawar Khanji Governor Sindh |
| 14 th Show | June | 1978 | General Muhammad Iqbal Chief Minister Sindh |
| 16 th Show | June | 1980 | Syed Ghous Ali Shah Chief Minister Sindh |
| 17 th Show | June | 1987 | Lt. Gen. S.M. Abbasi Governor Sindh |
| 19 th Show | June | 1983 | Syed Muzafar Hussain Shah Chief Minister Sindh |
| 29 th Show | June 14 th , 16 th | 1994 | Syed Abdullah Shah Chief Minister Sindh |
| 30 th Show | June 25 th , 27 th | 1995 | Syed Ghous Ali Shah Chief Minister Sindh |
| 35 th Show | June 24 th , 25 th | 2000 | Syed Ali Mir Shah Minister for Irrigation Sindh |
| 36 th Show | June | 2001 | Muhammad Mian Soomro Governor Sindh |
| 37 th Show | June | 2002 | Hassan Ali Chanion Minister for Irrigation Sindh |
| 38 th Show | June | 2003 | Syed Ali Muhammad Khan Mahar Chief Minister Sindh |
| 39 th Show | June | 2004 | Syed Muzafar Hussain Shah Chief Minister Sindh |
| 40 th Show | June 4 th , 6 th | 2005 | Dr. Arbab Ghulam Raheem Chief Minister Sindh |
| 41 st Show | June 2 nd , 4 th | 2006 | Ghulam Murtaza Khan Jatoi Advisor to Agriculture, Govt. of Sindh |
| 42 nd Show | June 5 th , 7 th | 2007 | Syed Muzafar Hussain Shah Senior Advosor for Agriculture Sindh |
| 43 rd Show | June 6 th , 8 th | 2008 to 2012 | Syed Qaim Ali Shah Chief Minister Sindh |
| 47 th Show | June 4 th , 6 th | | Syed Ali Nawaz Shah Minister for Agriculture Sindh |
| 48 th Show | June 4 th , 6 th | 2013 | Nisar Ahmed Khoro Minister for Education, Govt. of Sindh |
| 49 th Show | June 9 th , 11 th | 2014 To 2015 | Syed Qaim Ali Shah Chief Minister Sindh |
| 50 th Show | June 4 th , 6 th | | |
| 51 st Show | June 2 nd , 4 th | 2016 | Pir Aftab Hussain Shah Jellani Chief Minister Sindh |
| 52 nd Show | June 9 th , 11 th | 2017 | Syed Murad Ali Shah Chief Minister Sindh |
| 53 rd Show | June 8 th , 10 th | 2018 | Khair Muhammad Junejo Minister Agriculture Sindh (Caretaker) |

23. Surprisingly, the events which were held in between 2008 to 2012 by the concerned ministry of agriculture, the Chief Minister of the Province and the Minister of Agriculture Sindh were invited as chief guests who attended the events and despite admiration of work, consented to the desire of then president. Despite the appreciations of the progress and work undertaken by the department, an attempt was made to reserve this land for the subject residential scheme.

24. The Department/respondent No.11 was able to demonstrate their progress and research in grafting, budding, layering and cutting of the crop. They have cited a few varieties of mangos, vegetables. Indigenous varieties in Mango, Jujube, Chiku, Onion, Bitter Gourd etc. have also been produced by the Horticulture Research Centre Mirpurkhas (Respondent No.11).

25. Apart from this historical perspective, the other view of the matter is that agricultural research plays a pivotal role in Country's economy. Since Pakistan is an agriculture based country, therefore such research is inevitable for the low scale peasants and farmers. Scientific research on the subject plays its role in crop yield and would run parallel against race with domestic/international population. This globe where we are striving for existence has a limited fertile land and we should make the most of it rather than contribute towards destroying such natural gifts given to our Country. For a concrete structure an agriculture land should not be spared as for it a number of options in terms of barren land etc. are available but for agriculture produce the choice is limited.

26. Provincial government should involve itself and steer agriculture departments to provide a scientific approach for farmers in yielding maximum and better crop out of the available fertile land rather than consuming it for other purposes. These agriculture departments should

be uplifted and upgraded by governments irrespective of any political gains and advantages as it is need of our future generation. Research based concepts and ideas should be introduced which may end up yielding maximum crop which not only caters the food requirement of the country and world but would also add to the economic growth and national exchequer. A technological diversification is an utmost requirement of the present regime and should remain prime concern of developing countries like ours.

27. Amongst the Pakistan's principle natural resources are arable land. Agriculture accounts for about 19 to 20% of Pakistan GDP (Gross Domestic Product). Mango and other fruits forms a permanent crop that yields foreign exchange for the country and Mirpurkhas is known for it in the entire world. Pakistan is an exporter of rice, cotton, fish, fruits especially mangoes and oranges hence it has an economic importance and the graph is being declined as compared to earlier regime when the contribution towards GDP was significantly higher and the reason of decline is none other but wastage of fertile land. Pakistan is the fourth largest producer of prime quality mangoes in the world and contributes approximately 8% of the world's total mango production. It is time now that this abusive treatment with fertile/agriculture land should come to an end. The Provincial Government and the Federal Government should take immediate steps for legislation to preserve the agricultural land of the Country. The Provincial Government should strive hard to revamp Pakistan's agriculture sector so as to address the hurdles faced by farmers and growers. The legislation should be made that the fertile lands of the Province should not be utilized for any other purpose as only then we would be able to save the fertile land for the maximum productivity of food for our future generation and in case we fail in an attempt to do so, the future of our generation would turn

bleak as we are already facing shortage of food in sectors where we were self-sufficient.

28. While acquiring land for any other purpose the productivity of land being acquired should be taken into consideration as against the purpose of acquisition, and the decision should not be based on desire or convenience. This formula for acquiring land may cost more but the approach is futuristic to save the generation for years as the fertile land would be saved.

29. We have often seen that for roads, bridges, gas/oil line etc. most precious lands were/are being acquired or intercepted in between to have a shortest distance to minimize the cost of that project, but we do not realize that while doing so we are not only destroying fertile/ agriculture land but so also risking our future. This acquisition is normally based on feasibility report of that particular project but there is no realization that for providing some convenience or low cost project, precious land is being destroyed, which is far more important for our future than the convenience and low cost project. The project may cost less but consequences would be detrimental.

30. We are living in a world where natural resources such as fertile land is being vacuumed up by development of concrete structure and this would count a lot in future and no one would come for our rescue when we have to yield our own food for our own consumption.

31. In this case as well the land was attached with the research based agriculture department of Sindh which caters for not only fruit crop but other agri products as well. The authorities responsible for identifying this land have not applied their mind at all and in an attempt to please, the most fertile land of the province had been provided for an object which could conveniently be achieved on non-agriculture land subject to law. We have also noticed that a blanket recommendation was

forwarded by the Committee constituted for the aforesaid purpose and without identifying the reasons of disassociating the land with the agriculture based research department, they have made this land available for a scheme called Shaheed Mohtarma Benazir Bhutto Town. The recommendation of the Committee and the action of the authority is neither transparent nor lawful but in fact a mala fide attempt to usurp the most precious and fertile land of district Mirpurkhas where research is being conducted, though may not be in its maximum capacity. In case the authorities thought in their wisdom that the research work was/is not going on to their satisfaction, even then it would not allow them to take a decision to usurp the land for carving out a residential scheme. The provincial government should have emphasized to uplift the research system of the agriculture department and steered the progress by maintaining it rather than to ignore the research based system. They could always find the land anywhere else and provide resources and amenities for dwellers where the land could be developed by land developers.

32. It is important that all over Pakistan good agriculture areas must be preserved for the same purpose only, instead of converting the agriculture lands at free will to housing estates/societies/authorities. Statistics shows that we are blessed with fertile land but not blessed with appropriate policies to save such lands from urbanization. Rural urbanization is taking place rapidly, which may be beneficial for the time being but not beneficial from a diversified angle.

33. The performance of Ministry of Agriculture to save the land was half-hearted and they only presented themselves as marionette since they have not taken action against usurpation of their land. If we really want to protect the agricultural lands and to promote sustainable

agrarian growth for the future, large scale basic reforms and legislation are needed.

34. In view of above facts and circumstances, this petition is allowed and the entire land i.e. 282 Acres situated at Deh 100 and 110 of Taluka Hussain Bux Marri must be restored immediately to its original status as a research based agriculture land attached with agriculture department, and entry in revenue record as “Government Seed Farm” be restored and any subsequent entry shall stand deleted and be deleted accordingly. If any structure has been raised over the land in question, it must be demolished immediately, in two weeks from today and entire land be handed over to the department (Respondent No.11) and Report be submitted by Chief Secretary Sindh through MIT-II of this Court. Copy of this judgment be forwarded to Chief Secretary for compliance.

Dated:

Judge

Judge