

P L D 2011 Lahore 561

Before Muhammad Ameer Bhatti, J

KAMAL HUSSAIN and others---Petitioners

Versus

DISTRICT OFFICER (REVENUE), BHAKKAR and others---Respondents

Writ Petition No.7686 of 2009, decided on 17th-June, 2011.

Civil Procedure Code (V of 1908)---

----o. XXI, Rr.9 & 10-Constitution of Pakistan, Arts.199 & 187(2)---Constitutional petition--
-Maintainability---Execution of decree---Powers of High Court---Scope---Petitioners had sought the implementation of the decree which was outcome of the civil suit---High Court, no doubt, under Art.199 of the Constitution had powers for issuance of directions to the authorities functioning within its territorial jurisdiction to perform their duties in accordance with law; and could also take the cognizance regarding implementation of the orders, decrees and directions, but that did not include matter of execution of the decree in the sense as provided under O.XXI, C.P.C.-Constitutional petition was not maintainable as on the face of it, detailed inquiry was required for the execution of the decree, which could only be held by exercising the powers as per procedure prescribed by the Civil Procedure Code, 1908.

Muhammad Hanif Niazi for Petitioners.

Firdous Butt, A.A.-G.

Mian Shah Abbas Iqbal for Respondent No.2.

ORDER

MUHAMMAD AMEER BHATTI, J.---Through this constitutional petition, the petitioners have sought the implementation of the decree which is the outcome of the civil suit. When the learned counsel was put the query when a procedure for the execution of the decree has been provided, how through this constitutional petition this court can assume the role of an executing court as it requires detailed inquiry 'and for that matter many disputed questions of fact have been raised which could be settled by the executing court, thus rendering this petition not maintainable.

2. Even otherwise learned counsel appearing on behalf of the private respondents also disputed that as per settlement, land is already in the possession and ownership of the writ petitioner and disputed questions have been raised which, though, is legitimate right and this court in such like circumstance cannot play the role of an executing court. Although learned counsel for the petitioners in response to the query, referred to the judgments of the

honourable Supreme Court reported as 1999 SCMR 2868 and of this court PLD 2008 Kar. 499 and stressed that this court while exercising the powers provided under Article 199 read with Article 187(2) Constitution of Islamic Republic of Pakistan can direct the Revenue Authority for the implementation of the decree.

3. There is no denying the fact that this court has the power for issuance of direction to the authorities functioning within the territorial jurisdiction of this court to perform their duties in accordance with law and can also take the cognizance regarding implementation of the orders, decrees and directions but it does not mean that for that matter execution of the decree in the sense as provided under Order XXI, C.P.C.. Since the order/judgment of the honourable Supreme Court has stemmed from the civil suit and respondents are raising many objections about the transfer of the land as they claimed to have settled the land in the honourable Supreme Court, has already been transferred and in possession of the writ petitioners. Even otherwise record shows that report submitted by the D.O.(R) has been objected by the writ petitioners by filing rejoinder. So, detailed inquiry is necessitated in such like circumstances for the settlement of the parties. Moreover the learned counsel for the respondent placed on record certified, copies of the execution petition filed by the writ petitioners on 18-4-2007 was withdrawn (noticeably at the time when the execution petition was fixed for arguments) by the learned court for the writ petitioners by making a statement that they have assailed the order of E.D.O (R) in this court through the present writ petition by reserving their right to reinstitute it.

4. In the prevailing circumstances, this petition is not maintainable as on the face of it detailed inquiry is required for the execution of the decree, which only can be held by exercising the powers as per procedure prescribed by the Civil Code. Moreover, if execution of decrees in such like cases is allowed, then the provisions of Civil Procedure Code will become redundant and this court will become an executing court which is not warranted under constitutional provisions.

5. Judgments referred by the learned counsel for the petitioners are distinguishable and have no relevancy with this petition.

6. For what has been discussed above, this petition is bereft of legal force and dismissed.

H.B.T./K-38/L

Petition dismissed.