

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No.S-351 of 2024

[Ghulam Nabi v. Muhammad Mithal and 06 others]

Applicant : Ghulam Nabi s/o Rasool Khan, Gadi Pathan
Through Mr.Harish Chander, Advocate

Respondent No.1 : Muhammad Mithal s/o Ghulam Rasool
Through Mr.Abdul Razzaq Laghari, Advocate

Respondents No.2 to 7 by : Mr. Ayaz Ali Rajpar, A.A.G Sindh.

Dates of Hearing : 14.04.2026 & 20.04.2026

Date of Decision : 30.04.2026

JUDGMENT

ARBAB ALI HAKRO J:- Applicant Ghulam Nabi has invoked the revisional jurisdiction of this Court under Section 115 C.P.C, assailing the judgment dated 21.08.2024 and decree dated 23.08.2024, passed by the learned District Judge, Mirpurkhas, in Civil Appeal No.25 of 2024, whereby the appellate Court maintained the judgment dated 19.12.2023 and decree dated 23.12.2023 passed by the learned I-Senior Civil Judge, Mirpurkhas, in F.C. Suit No.63 of 2015, dismissing the applicant's suit.

2. The factual substratum, as emerging from the pleadings, reveals that agricultural land comprising Survey Nos.82/1 to 16, admeasuring 16-00 acres, situated in Deh 122, Taluka Mirpurkhas (now Taluka Hussain Bux Mari), was originally estate land. Out of this tract, an area of 8-00 acres bearing Survey Nos.82/1, 8 to 11 and 14 to 16 was allotted on 11.03.1965 to late Ghulam Rasool, father of the applicant, as resumed land by the Assistant Land Commissioner, Tharparkar. The remaining 8-00 acres, comprising Survey Nos.82/2 to 7, 12 and 13, constitute the "suit land". It stands admitted on record

that the suit land was leased to the applicant for two consecutive terms of five years each, first from Kharif 1980-81 to Rabi 1985-- 86, and thereafter from 1985-86 to 1989-90. Form-A bearing Serial No.L-327 was issued in his favour by the Barrage authorities, and the applicant continued to cultivate the land and pay the requisite land revenue and Dhal assessments during the subsistence of the lease. On 19.12.2008, an open katchery was convened by the District Officer (Revenue/Estate), Mirpurkhas, for the disposal of the suit land under the Land Grant Policy. The applicant, asserting himself to be a landless hari, resident of the same deh and in continuous possession of the suit land, participated in the proceedings. Respondent No.1, Muhammad Mithal, also contested for the grant. The granting authority, however, allotted the suit land to respondent No.1 on harap conditions from Rabi 2008-09, according to the applicant, without recording the mandatory certificates of eligibility and ineligibility of the contestants, and without considering the applicant's prior leasehold rights and possession. Aggrieved by the grant, the applicant preferred Land Grant Appeal No.11 of 2009 before the Executive District Officer (Revenue), Mirpurkhas. The EDO called for a possession report from the Mukhtiarkar (Revenue), which, as per the record, showed the applicant's possession of the suit land. Notwithstanding such a report, the appellate authority dismissed the appeal on 06.04.2010 and upheld the grant in favour of respondent No.1. The applicant thereafter invoked the revisional jurisdiction of the Member (Judicial-I), Board of Revenue, Sindh, Hyderabad, who vide order dated 01.01.2015 maintained the order of the EDO and dismissed the revision. The applicant asserts that both revenue fora failed to appreciate the documentary evidence demonstrating his preferential entitlement under the Land Grant Policy, including his status as a landless hari, his residence in the same deh and his prior leasehold cultivation. Following the dismissal of his revision before the Board of Revenue, the applicant alleges that respondent No.1, accompanied by his relatives, attempted to forcibly dispossess him from

the suit land, issuing threats and asserting rights under the impugned grant. The applicant claims to have resisted such attempts, giving rise to an imminent threat of dispossession. Consequently, the applicant instituted F.C. Suit No.63 of 2015 before the trial Court, seeking declaration that he was more eligible and entitled to the grant of the suit land, that the orders of the revenue authorities were illegal, void and without lawful authority and seeking mandatory and permanent injunctions restraining the respondents from acting upon the impugned grant.

3. Upon service, respondent No.1 filed his written statement, denying the applicant's claim of possession after 1990, disputing his residence in Deh 122 and asserting that the applicant's documents, including the resident certificate and Form-A, were managed or irrelevant. Respondent No.1 further pleaded that the suit was barred by limitation and that he was lawfully granted the suit land after observing all codal formalities. The official defendants filed their written statement through the Mukhtiarkar (Estate), admitting the earlier lease in favour of the applicant but supporting the subsequent grant to respondent No.1.

4. The trial Court framed ten issues on 06.10.2017. The applicant examined four official witnesses, including the Senior Clerk of the Additional Commissioner, the Junior Clerk of the Mukhtiarkar (Estate), the Tapedar of Tapo Sikanderabad, and the Clerk of Union Council Mirpur Old, who produced Form-A, Deh statements, revenue entries, and the resident certificate. The applicant also examined himself and produced zamimoon, lease documents, revenue receipts and the certified copy of the Board of Revenue's order.

5. Respondent No.1 examined himself. The Court also examined a supervising Tapedar as Court Witness, who produced entry No.348 dated 06.01.2009 relating to the grant in favour of respondent No.1.

6. The trial Court vide judgment dated 28.03.2023, dismissed the suit. The applicant preferred Civil Appeal No.57 of 2023, wherein the learned appellate Court vide judgment dated 08.11.2023, set aside the judgment and remanded

the matter with directions to re-examine the official witness from the Mukhtiarkar (Estate) office and re-write the judgment afresh.

7. Upon remand, the trial court re-examined the official witness Mehran Khan at Ex.103, who produced the application of respondent No.1, Form-A No.PC-732, Form-A No.L-327 of the applicant and the deh statement dated 19.12.2008. After recording further evidence and hearing the parties, the learned trial Court again dismissed the suit through judgment dated 19.12.2023.

8. The applicant challenged the said judgment through Civil Appeal No.25 of 2024, which too was dismissed by the learned appellate Court on 21.08.2024, maintaining the findings of the trial Court. The applicant, being dissatisfied with concurrent findings of both Courts below, has now instituted the present Civil Revision.

9. Learned counsel for the applicant contended that the impugned judgments suffer from manifest misreading and non-reading of material evidence and that both Courts below failed to appreciate the legal complexion of issues No.1 and 2, which were purely legal in nature and required no evidentiary appraisal, as settled in 2009 CLC 46. He submitted that the applicant, having exhausted the entire revenue hierarchy, approached the Civil Court under Section 9 C.P.C, as the orders of the revenue fora were without jurisdiction, mala fide and in patent violation of the mandatory provisions of the Land Grant Policy, 1989, particularly Condition No.9(2) and (3), which require the granting authority to record a certificate of eligibility and ineligibility on the application and in the relevant register. He argued that the omission of such certificate is not a curable irregularity but a fatal illegality, relying upon 2025 SCMR 584. Learned counsel further submitted that the applicant had established his preferential entitlement by proving his earlier leasehold rights, continuous possession up to 1990 and his father's allotment of the adjoining 8-00 acres, thereby bringing him within the first category of priority under Condition No.5(1). He emphasized that the grantee, respondent No.1, neither

proved possession nor produced any documentary evidence of delivery of possession, and even admitted, in cross-examination that no possession certificate was produced. He argued that the official witness at Ex. 103 categorically stated that no document existed showing delivery of possession to the grantee, rendering the alleged grant unenforceable, as held in 2004 CLC 108. He further submitted that respondent No.1 paid only five out of fifteen instalments, thereby breaching Condition No.18 and that the appellate Court erred in treating such default as inconsequential. Learned counsel also argued that the plea regarding the applicant's employment in the Railway Department was beyond pleadings and could not be considered, relying on 2010 SCMR 1840 and PLD 1985 Rev. 25. He maintained that the entire process of grant was tainted with political influence, disregard of mandatory requirements and suppression of the applicant's preferential rights, warranting interference in revisional jurisdiction.

10. Learned counsel for respondent No.1 supported the concurrent findings of both Courts below and submitted that the applicant failed to establish any illegality, jurisdictional defect or perversity in the impugned judgments. He argued that the suit was not maintainable, as the applicant had no subsisting right after the expiry of his lease in 1990, and that he approached the Civil Court after an unexplained lapse of nearly 18 years. He contended that the applicant was neither in possession of nor a resident of Deh 122, and that the resident certificate produced was managed, issued in 2014, and did not reflect the applicant's CNIC. Learned counsel maintained that the grant in favour of respondent No.1 was made strictly in accordance with the Land Grant Policy after holding an open katchery, where respondent No.1 was found to be a landless hari of the same deh, duly testified by other participants. He submitted that the revenue authorities, including the EDO and Member, Board of Revenue, examined the matter and upheld the grant and that their findings could not be lightly interfered with. He argued that the applicant's claim of preferential right

was misconceived, as his earlier lease had expired long ago and conferred no vested right. He further submitted that respondent No.1 complied with all codal formalities, that mutation was duly effected and that he remained in possession of the suit land, cultivating it and enjoying its produce. He asserted that the applicant's allegations of political influence were baseless and lacked evidence, and that the revision is an attempt to reopen concurrent findings of fact, which is impermissible in revisional jurisdiction.

11. Learned Assistant A.G. Sindh adopted the stance of the official respondents and submitted that the grant of the suit land to respondent No.1 was made strictly in accordance with the Land Grant Policy, 1989, after due publicity and holding of an open katchery. He argued that the applicant's earlier lease expired in 1990 and conferred no continuing right or entitlement, and that the suit land was thereafter duly scheduled for disposal. He submitted that the revenue authorities at all three tiers, granting authority, appellate authority and revisional authority, examined the matter and found respondent No.1 eligible and that their concurrent findings could not be disturbed unless shown to be without jurisdiction or tainted with mala fides, which the applicant failed to establish. Learned A.A.G. further argued that the applicant's resident certificate was doubtful, having been issued decades after the alleged possession, and that the applicant failed to prove residence in the same deh or possession after 1990. He maintained that the official record, including Form VII entry No. 348, reflected the grant in favour of respondent No. 1 and that no document existed showing the applicant's possession after the expiry of his lease. He submitted that the applicant's allegations of political influence were vague and unsupported, and that the revision is devoid of merit and liable to be dismissed.

12. Heard and perused the record.

13. The present Civil Revision, filed under section 115 C.P.C, calls in question the concurrent judgments and decrees passed by the trial Court and the appellate Court whereby the suit of the applicant for declaration and

injunction, essentially challenging the grant of barrage land in favour of the private respondent under the Land Grant Policy, 1989 framed under section 10 of the Colonization of Government Lands Act, 1912, has been dismissed. The entire record of the Courts below, the relevant revenue proceedings, the notified Statement of Conditions for grant of arable State land to haris, small khatedars and mohagdars in Kotri, Guddu and Sukkur Barrage command areas (popularly referred to as the Land Grant Policy, 1989), as well as the case law cited at the bar, have been examined in detail.

14. Before advertng to the factual controversy, it is necessary to remind oneself of the limited revisional jurisdiction of this Court under section 115 C.P.C. As per the settled text, the High Court may interfere only if the subordinate Court appears “(a) to have exercised a jurisdiction not vested in it by law or (b) to have failed to exercise a jurisdiction so vested or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. It is equally well-settled that concurrent findings of fact, based on proper appraisal of evidence, are not to be disturbed in revision unless shown to be perverse, based on misreading or non-reading of material evidence or tainted by jurisdictional error. The revisional Court is not a third Court of appeal; it does not re-appraise evidence merely because another view is possible.

15. The applicant’s case, as pleaded in the plaint and reiterated in arguments, is that he is adjacent landholder and/or mohagdar, that he enjoy a preferential mohag right over the suit land, that the suit land is a “dhoora” and allegedly non-arable and that the grant made in favour of the private respondent is in violation of the Land Grant Policy, 1989 and section 10 of the Colonization of Government Lands Act, 1912. He also alleges that no proper open katcheri was held, no public notice was issued, and no lawful inspection was carried out by the Collector before the grant was made. On this basis, he sought a declaration that he has a preferential right of mohag over the suit land, that the

grant in favour of the private Respondent is illegal, void and of no legal effect and a permanent injunction restraining dispossession.

16. The private respondent, on the other hand, has consistently maintained that the grant was made strictly in accordance with the Land Grant Policy, 1989; that he falls within the category of eligible haris/small khatedars; that the land was duly included in the schedule prepared by the Collector; that open katcheri was held after due publicity; that the revenue authorities, including the Collector and the Board of Revenue, have repeatedly upheld the grant; and that the applicant being at best co-sharers in some adjacent survey numbers with a limited share, has no vested or preferential right to insist that the State land be granted to him. It is further contended that the Land Grant Policy itself negates any notion of an enforceable right to allotment and vests absolute discretion in the competent authority.

17. The trial Court framed the necessary issues, recorded evidence of both sides, examined the revenue record and the grant proceedings and ultimately dismissed the suit, holding that the applicant had failed to establish any enforceable mohag or khasmokal right over the suit land, that the grant in favour of the respondent was made in accordance with the Land Grant Policy, 1989 and that no illegality or mala fides on the part of the revenue authorities had been proved. The appellate Court, on a re-appraisal of the entire material, concurred with these findings and dismissed the appeal.

18. The first and foundational question is whether, on the scheme of the Land Grant Policy, 1989, any vested or enforceable right accrues to a particular individual to demand a grant of a specific piece of State land, to sustain a declaratory suit under section 42 of the Specific Relief Act. The Statement of Conditions, issued under section 10(2) of the Colonization of Government Lands Act, 1912, expressly provides in condition 3(2) that: "No person shall as of right be entitled to the allotment of land under these conditions and Board of Revenue retains an absolute discretion in the selection and making allotments

to the haris, small khatedars and mohagdars." This language is categorical and admits of no ambiguity. It negates any notion that the mere existence of eligibility or priority under the Policy translates into a legally enforceable right to compel the State to grant a particular parcel of land. The Courts below have correctly treated this clause as decisive on the question of enforceable right.

19. The applicant's counsel has argued that, notwithstanding this clause, the Policy creates a legitimate expectation and a preferential right in favour of mohagdars and adjacent landholders, particularly where the land is a "dhoora" or strip contiguous to their holdings. Reliance has been placed on the definitions of "mohagdar" and "small khatedar," as well as on the priority scheme for haris. The Policy indeed defines "mohagdar" as "a person holding Kabuli land contiguous to state land but intersected by a working karia, bund, rund or railway line" and "small khatedar" as a person holding less than sixteen acres. It further provides that "the haris, small khatedars and mohagdars shall be eligible for allotment of lands under these conditions." However, eligibility is not synonymous with entitlement as of right. The same Statement of Conditions, after setting out the categories of eligible persons, immediately reiterates that no person shall, as of right, be entitled to allotment and that the Board of Revenue retains absolute discretion. The two provisions must be read together: eligibility and priority guide the exercise of discretion; they do not convert discretion into compulsion.

20. The second limb of the applicants' case is the assertion of a preferential mohag right over the suit land. The Policy does recognize mohag rights in a limited and carefully circumscribed manner. Condition 12 provides that a mohagdar shall be eligible for allotment of land on mohag basis of his kabuli holding held by him for at least five years before 1st July, 1970, up to the limit of sixteen acres inclusive of his kabuli holding and further clarifies that no person shall be allowed to exercise mohag right more than once and that any person who has already exercised mohag right and has been granted land shall not be

entitled to exercise this right again. The provisos deal with isolated pieces of land and dis-sized karias, bunds or paths in front of private survey numbers. The Courts below have examined the revenue record and have concurrently found that the applicants have neither proved that the suit land falls within the precise description contemplated by the Policy for exercise of mohag right, nor that they satisfy the temporal and quantitative conditions (five years' kabuli holding before 1st July, 1970 and within the ceiling of sixteen acres). These are pure questions of fact, decided on the basis of documentary and oral evidence, and no misreading or non-reading of material evidence has been pointed out.

21. It is also significant that the applicant is not the exclusive owner of the adjacent survey numbers; rather, as noticed by the appellate Court, he holds only a fractional share, while other co-sharers have neither joined the proceedings nor supported the claim. A co-sharer, without the consent of all co-owners, cannot assert an exclusive preferential right over State land on the basis of contiguity. The Courts below have rightly held that such a fragmented and disputed claim cannot be elevated to a legally enforceable mohag right capable of displacing a grant made by the competent authority under the Policy.

22. The third plank of the applicants' challenge is that the grant is vitiated by non-compliance with procedural requirements of the Land Grant Policy, 1989, particularly the preparation and publication of the schedule of land, the holding of open katcheri and the consideration of objections. The Policy, in condition 7, requires the Collector to prepare a schedule of land available for allotment in lots not exceeding sixteen acres, to authenticate each page with his signature and to widely publicize the schedule at least two months before the scheduled date of katcheri. Condition 8 prescribes the form and manner of applications and their entry in a register. Condition 10 mandates that the allotment shall be made in an open katcheri after wide publicity and after taking into consideration any objections raised in respect of the applicant. The Courts below have examined the relevant revenue files, including the schedule, the notices, the

katcheri proceedings and the orders of the Collector and the Board of Revenue and have concurrently held that these requirements were substantially complied with.

23. The applicant's counsel has attempted to argue that the publicity was inadequate, that some notices were not personally served or that the katcheri was not held in the precise manner envisaged. Even if some minor irregularities in procedure were assumed for the sake of argument, the question in revision is whether such irregularities amount to the subordinate Courts "acting in the exercise of their jurisdiction illegally or with material irregularity" within the meaning of section 115, C.P.C. The Courts below have found, on evidence, that the essential features of the Policy, the preparation of the schedule, the opportunity to apply, the holding of an open katcheri, and the consideration of objections were present. No perversity or gross illegality has been demonstrated. It is trite that not every procedural lapse, if any, warrants interference in revision, particularly where the grant has been repeatedly upheld by the revenue hierarchy and the civil Courts.

24. The applicant has also argued that the suit land is a "dhoora" and allegedly non-arable and therefore could not have been included in the schedule of haris for disposal on permanent tenure. This contention was squarely raised before the trial Court and the appellate Court. Both Courts, after examining the classification in the revenue record, the nature of the land and the evidence of the parties, have held that the land is arable State land within the barrage command area and falls within the definition of "land" in the Policy, which excludes only land reserved for public purpose, land within municipal or cantonment limits, land included in town planning schemes and land within prohibited limits specified by the Collector. The Statement of Conditions defines "land" as "the arable state land other than the land reserved for public purpose; lying within limits of Metropolitan Towns or Municipal Committees or Corporations or Town Committees or Cantonments; included in Town Planning

Schemes, whether sanctioned or not and within the prohibited limits of villages, towns or cities specified by the Collector.” The applicant has not shown that the suit land falls within any of these excluded categories. The concurrent finding that the land is arable and grantable under the Policy is thus a finding of fact, supported by the record.

25. Learned counsel for the applicants has relied on various precedents to contend that where a statutory policy or scheme prescribes a particular mode of grant, any departure therefrom vitiates the grant and entitles an aggrieved person to declaratory relief. Those authorities, however, turn on their own facts and on statutory schemes materially different from the Land Grant Policy, 1989. In the present Policy, the Legislature and the Government have consciously inserted an express clause denying any right or entitlement and preserving absolute discretion in the Board of Revenue.

26. It is also pertinent to note that the Land Grant Policy, 1989, is a special regime for the regularization and settlement of arable State land in barrage command areas, with a strong socio-economic objective of providing land to hariis, small khatedars and mohagdars, subject to conditions of self-cultivation, residence, instalment payments and long-term compliance. The Statement of Conditions, inter alia, requires that a hari grantee “shall cultivate the land for a period of twenty years by his own exertion or by the exertion of any member of his family” and that “the grantee who is hari shall reside permanently for a period not less than twenty years from the date of the grant on the land granted to him.” The Courts below have found that the private respondent falls within the intended beneficiary class and that the grant advances the policy objective. Interference in such socio-economic policy implementation, in the absence of clear illegality or mala fides, is not warranted in revisional jurisdiction.

27. The applicant has not been able to point out any jurisdictional defect in the proceedings of the trial Court or the appellate Court. Both Courts had jurisdiction over the subject-matter and the parties; they framed proper issues,

allowed full opportunity to lead evidence, considered the Land Grant Policy, 1989, and the relevant provisions of the Colonization of Government Lands Act, 1912, and rendered reasoned judgments. No instance has been shown where the Courts below exercised a jurisdiction not vested in them, failed to exercise a jurisdiction so vested, or acted in the exercise of their jurisdiction illegally or with material irregularity. At best, the applicant seeks a re-appraisal of the evidence and a different inference from the facts, which is impermissible in revision.

28. Even if one were to examine the matter from the standpoint of equity and fairness, the applicant's position is not compelling. He has not shown that he has been dispossessed from any land lawfully held by him; his grievance is essentially that a neighbouring piece of State land has been granted to someone else, whereas he would have preferred to obtain it himself. The Land Grant Policy, 1989, does not guarantee the satisfaction of such preferences. The Courts below have also noted that the applicant's own title and possession over his adjacent holding are not threatened by the impugned grant. In these circumstances, to set aside a grant made in favour of an eligible hari/small khatedar, who has presumably arranged his affairs and cultivation on the strength of the grant, would itself be inequitable and contrary to the Policy's objective.

29. It may also be observed that the Colonization of Government Lands Act, 1912 and the Land Grant Policy, 1989 provide internal mechanisms for redressal of grievances against grants, including appeals and revisions within the revenue hierarchy. The record shows that the applicants did avail such remedies and that the revenue authorities, including the Board of Revenue, have repeatedly upheld the grant in favour of the respondent. The civil Courts, in turn, have respected those concurrent administrative findings, in the absence of any proof of mala fides, fraud or patent illegality. This layered scrutiny further militates against any interference in revision.

30. For the reasons recorded above, the Civil Revision is dismissed. The concurrent judgments and decrees passed by the learned trial Court and the learned appellate Court are maintained. There shall be no order as to costs.

JUDGE

“Adnan Ashraf Nizamani”