

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P. No.D-776 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For katcha peshi.
For hearing of MA-4075/12.
For orders on MA-14578/15.
For hearing of MA-7669/16.

27.10.2016.

Mr. Ghulam Mujtaba, Advocate for Petitioner.
Mr. Sundardas, Advocate for respondent No.2.
Mr. Ashfaque Nabi Qazi, Asstt. A.G alongwith Salahuddin, Addl:
Secretary (L.U), Hyderabad.

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At the very outset, learned counsel for Petitioner contends that this is a case of *audi-alterm-partem* as the petitioner was condemned unheard. Learned counsel has referred the order dated 25.5.2010, whereby it was observed that issue of re-grant and cancellation of old entries is purely a matter of civil nature and only Civil Court has jurisdiction for adjudication yet vide order, passed by Member (Land Utilization) Board of Revenue Sindh dated 02.08.2011, re-grant of disputed land was allowed with direction to Deputy Commissioner, Badin to recover the arrears in installments from Major (Rtd) Muhammad Bashrat Ahmed as per policy.

Learned counsel for Respondents, *inter alia*, contends that instant petition is not maintainable and according to order passed by Executive District Officer (Revenue), Badin, land was re-granted to the respondents and, order dated 02.8.2011 is seeking implementation of that order only, therefore, same causes no adverse affect upon the Petitioner of instant petition hence he is not *an* aggrieved person.

Learned A.A.G contends that order passed by Shazar Shagoon, Member (Land Utilization) Board of Revenue Sindh is against the natural justice. He has further contended that it is settled principle of law that no one shall be condemned unheard.

We have perused both the orders in question. It would be conducive to refer the order dated 25.05.2010 which is that:-

“The case of the deceased grantee late Cdr (Rtd) Raja Mirandas Khan Kayani for an area of (127-16 acres) of Taluka Tando Bago, District Badin has been transferred to this Court under the orders dated 28.3.2009 of the learned Senior Member Board of Revenue Sindh, for adjudication as per law.

*Heard the learned counsels of **the Petitioner as well as Navy Officers including the revenue official of District Badin with regard to the disputed land in question.** It has been observed that the learned counsel of the Petitioner has not been able to argue the case properly to reach at the conclusion. Similarly position of the case of the learned counsel of Navy Officer raising objection for the re-grant of the case on behalf of Navy Officers without any reliable evidence.*

*The factual position of the case in brief as it appears from the A-Form No.62/310, 376,376/525 for an area of (127-16 acres) situated in deh Katadaho Taluka Tando Bago, District Badin is that the **disputed land was allotted to the father of the applicant late Lieutenant Cdr (Rtd) Raja Mirandad Khan Kiyani from Defence Force Quota by the defunct Revenue Officer Kotri Barrage from Kharif 1962-63 and 1963-64 which have been cancelled due to non-payment of installments and the District Officer (Revenue), Badin vide his letter No.DO®/988 of 2006 dated 19.7.2006 recommended the case of Ex-Grantee for the re-grant of the land, but the learned Executive District Officer (Revenue), Badin, while forwarding the case to the learned Member (LU) Board of Revenue Sindh has stated that the Navy officers have objected for the re-grant of land.** The then learned Member (LU) Board of Revenue Sindh Mr. Khalid Mehmood Soomro had passed the orders as under:-*

“Re-grant allowed, if there is no legal hitch”

Sd/-25.5.2010

MBR(LU)

Pursuant to the above orders of the learned Member (LU) Board of Revenue Sindh, no formal orders of the re-grant of the land were issued by the Land Utilization Department Board of Revenue Sindh. In the meanwhile, the case has been transferred to this Court on the grounds that the learned Member (LU) is preoccupied in the meetings with the Chief Minister Sindh and as such he could not proceed with the case.

*I have however, gone through the case and perused the A-Forms of the Ex-grantee showing the entries in the revenue record, which indicate that the **Revenue Courts are not competent to cancel the old entries and as such it is for the Civil Court having jurisdiction for adjudication.** The aggrieved party is at liberty to approach the competent forum with respect to their claim, if they so desire.*

Subject to the observations contained in para 5 above, the case stands disposed of.”

Announced.

*Hyderabad.
25-5-2010*

*(PIR BUKSH JAMALI)
MEMBER (REFORMS WING &
SPECIAL CELL),BOARD OF REVNEUE
SINDH.*

Since, order dated 02.8.2011 is *bone* of contention hence same is also reproduced hereunder which is:-

“This is a Review Petition u/s 8 of the Board of Revenue Act, 1957 against the order dated 25.5.2010 passed by the learned Member (R&S) Board of Revenue Sindh, whereby he has directed to approach the competent forum for the re-grant of the land bearing Block No.180,181,182,217/1,2, 218,219,220/2,3, 216/1,2,3,5 230/1,3,4 total measuring area (127-16 acres) of Deh Khatta Dha Taluka Tando Bago, District Badin.

The facts of the case have already been discussed in the impugned order dated 25.5.2010 of the learned Member (R&S) Board of Revenue Sindh.

Mr. Tirathdass learned Advocate for the Petitioner has mainly contended that the disputed land stands already re-granted by the learned Member (LU) Board of Revenue Sindh on 25.5.2010 but the same was not implemented. He therefore prayed to implement the above order as the applicant cannot be penalized due to administrative lacunas. He therefore prayed to consider the case.

I have heard the learned counsel for the Petitioner and seen the impugned order of the learned Member (R&S) Board of Revenue Sindh as well as Senior Member Board of Revenue Sindh bearing No.Reader/SMBR/2010/162 dated 28.05.2011 and perused the recommendations of the District Officer (Revenue) Badin vide his office letter No.DOR/988 dated 19.7.2006 and as such vested rights have been created in favour of the Petitioner. In these circumstances the Petitioner can not be ousted from the disputed land in light of the recommendations of the District Officer (Revenue) Badin.

In order to secure the ends of justice the re-grant of the disputed land is hereby allowed/implemented. The Deputy Commissioner, Badin is directed to recover the arrears of installments from the Petitioner, if any as per policy.

Consequently, the Review Petition is allowed.”

Announced.

CAMP AT KARACHI.
02.08.2011

SHAZAR SHAMOON
MEMBER (LU) BOARD OF REVENUE
SINDH.

Perusal of both orders shows that issue of grant of land (127-16) acres of deh Khatta Dha Taluka Tando Bago, District Badin was transferred by order of Member (Reforms Wing & Special Cell), Board of Revenue Sindh for fresh decision and matter was precisely reviewed, *as contemplated in paragraph-3 of the order dated 25.5.2010*, which shows that the land was re-granted by Member (Land Utilization), Board of Revenue Sindh, however, in order dated 25.5.2010 at later stage it was observed that this is function of Civil Court to decide the controversy.

We are also of the view that issue, involved between the parties, is an old one yet what is not disputed is the fact that order dated 25.5.2010, passed by Member (Reforms Wing & Special Cell), Board of Revenue Sindh did contain certain *observation* with regard to competence onto such matter therefore, while entertaining *further* application onto the same matter / subject, it was obligatory upon Member (LU), Board of Revenue, Sindh to have heard all *concerned* or *least* those, pursuing the matter while asserting their interest. There should not be any confusion that even while entertaining a '*review*' the authority cannot ignore or by-pass the principle of natural justice and fair-trial which always insist '**providing a fair opportunity of hearing to all concerned, least asserting their rights and interests in a subject**'. A departure from such settled principles, if pleaded to have prejudiced certain rights and interests, shall be sufficient to bring an order to *nullity* or *least* make a case for remand thereof when competence of authority and its status is not under any dispute.

The opening para, reproduced here-in-above, leaves nothing that order dated 02.8.2011 was passed while exercising jurisdiction of '*Review*', as provided by Section 8 of the Board of Revenue Act, 1957 hence it was obligatory upon the *Authority* to have heard all concerned but perusal of the order would show that *only* one side was heard although order was going to reverse a definite *finding*. It is patent that the *present* petitioner was not heard while passing such order, therefore, the order, impugned, was / is *patently* against the spirit and object of 'principle of natural justice' and that of '*fair-trial*' hence impugned order cannot sustain. Accordingly, impugned order is hereby set aside and the case is remanded back to the respondent No.1 for deciding the same afresh in accordance with law after providing opportunity of hearing to the necessary parties. This exercise shall be completed within two months. Till the decision of Member Board of Revenue, parties shall maintain statusquo. Any step taken by Deputy Commissioner, Badin in consequence of impugned order would be having no legal effect in any manner.

JUDGE.

JUDGE.