IN THE HIGH COURT OF SINDH HYDERABAD CIRCUIT

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Muhammad Faisal Kamal Alam

C.P. No. D-620 of 2014

The Fauji Foundation Charitable Trust
Versus
Federal Land Commission & others

Date of Hearing:	06.02.2020 and 27.02.2020
Petitioners:	Through Mr. Jhammat Jethanand Advocate.
Official Respondents/ Province of Sindh:	Through Mr. Allah Bachayo Soomro, Assistant Advocate General.
Respondents/DAG:	Through Mr. Muhammad Humayoon Khan, Deputy Attorney General.
Respondents No.5 & 6:	Through Mr. Farooq H. Naek Advocate.
Respondents No.8:	Through Mr. M. Sulleman Dahri Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner being aggrieved of the resumption of land by virtue of order No.3629 dated 05.12.1972, 04.04.1973 and 22.12.1973 passed by respondent No.5, 4 and 3 Deputy Commissioner, Land Commissioner and Additional/Relief Land Commissioner respectively under M.L.R. 115 has challenged the same through the instant petition after almost 41 years, yet again.

2. Brief facts are that the petitioners, being an entity under Charitable Endowment Act, 1890 is administered by a Committee, formed vide notification of 08.03.1972 of the Federal Government has challenged the resumption of land, referred above. The subject land claimed to have been vested with Federal Government under notification dated 13.10.1972. By Resolution No.26 of 02.08.1976 the

Committee authorized Secretary to initiate legal proceedings against such resumption. The Secretary in pursuance of such authority delegated to him by the Committee, further authorized Major Ikramul Haq, the Officiating General Manager on 14.03.2014 to file present petition, which sub-delegation itself is questioned.

3. The petitioner at the relevant time, when the additional/surplus land under the prevailing law, was resumed, it owned the land measuring 1170-20 Acres described in the Part I to Part III of the Schedule-A, plus the lands shown in Schedule-B and Schedule-C respectively. The total holding of the petitioner in terms of Schedules attached in 1971-72 (before resumption) was 2498-06¼ Acres, which was equal to 64952 Produce Index Units (PIUs). It is thus pleaded by the petitioner that they were/are neither declarant nor liable to be declared as charitable institution within the definition provided under the prescribed law and/or in the alternate it was urged that having been registered under ibid Endowment Act 1980, the status of petitioner is different and distinct than one which is covered by definition. The petitioner initially retained an area of 538-08 Acres which equals to 14000 PIUs. Aggrieved of it the petitioner preferred an Appeal No.70-3/LC/72, which was dismissed by the respondent No.4 (Land Commissioner) vide order dated 04.04.1973.

4. The SROR No.869/1972-73 was then filed which met the same fate vide order dated 22.12.1973 passed by respondent No.3 Additional/Chief Land Commissioner. Consequently petitioner, being aggrieved of the orders, filed CP No.121 of 1974 before this Court. For convenience the prayer clause of the aforesaid petition is not repeated at this stage as we have left it for discussion in our findings ahead, since the cumulative effect of the prayer clauses of the two petitions (earlier and present), is inevitable.

5. During pendency of aforesaid petition, it is claimed that MLR 115 was repealed by Act II of 1977, however again petitioner filed declaration under Act II of 1977, which is again claimed to have been made by mistake. In pursuance of the above, vide order dated 14.01.1978 passed by respondent No.5 further area of 230-20 Acres which equals to 6000 PIUs were provisionally resumed, leaving finally an area of 307-28 Acres, which is equal to 8000 PIUs with petitioner. This additional resumption is not shown to have been challenged under the hierarchy as it did earlier before respondents No.4 and 3. It is pleaded that the proposal to "EXEMPT" the entire land in occupation of the petitioner and/or its predecessor from the provisions of Land Reforms, was discussed and the Chairman who was also the Chief Martial Law Administrator, decided in the meeting on 12.03.1979 to give the "***resumed***" land on 30-years lease to petitioner on payment of reasonable rent. Based on such understanding the aforesaid petition was withdrawn however with permission to file fresh. (The concept and purpose of permission shall be discussed later). In pursuance of the Minutes of Meeting and as per direction of the Federal Land Commission, respondent No.5 executed two lease deeds in respect of resumed lands i.e. (i) land measuring 1959-38½ Acres and (ii) land measuring 230-20 Acres for 30 years at the rate of Rs.80 per acre per annum.

6. It is now claimed that the provisions of MLR 115 and Act II of 1977 since been declared repugnant to the injunctions of Islam w.e.f. 23.03.1990, in the light of Qazilbash case hence orders of resumption of land passed by respondents No.5, 4 and 3 dated 05.12.1972, 04.04.1973 and 22.12.1972 respectively be declared as null and void and of no legal effect and the petitioner be deemed to be in possession as it was earlier before promulgation of ibid laws. Petitioner claimed to be in possession of the resumed land as lessee paid lease money at the rate of Rs.80 per

acre per annum w.e.f. 1979-80 till 1994-95. It is however claimed that since then the rates have been revised unilaterally in terms of rate given in the chart below:-

S.No.	From	To	Rate
1	1995-1996	1996-1997	Rs.160/-
2	1997-1998	1998-1999	Rs.240/-
3	1999-2000	--	Rs.325/-
4	2000-2001	--	Rs.400/-
5	2001-2002	2134	Rs.700/-

7. Consequently and for the purpose of this petition a cause to initiate the present proceedings triggered when the respondents claimed an increase in the ***rate of lease*** unilaterally at the rate of Rs.,4500/- per acre per annum w.e.f. 2009. Since the amount, as claimed, was not only illegal and unlawful but also arbitrary exercise of power, it (petitioner) had not paid the same as it had already paid the same at the rate of Rs.700 till June 2013. The recovery proceedings claimed to have been initiated illegally and unlawfully under Land Revenue Act and consequently warrants of arrest dated 27.02.2014 was issued against Manager of the petitioner. This letter, urged to be in violation of order dated 10.04.2014 passed in this petition and consequently petitioner amended the petition by impugning warrants of arrest as well as consequent orders dated 24.01.2014 and 27.02.2014 respectively issued by respondent No.6.

8. Initially this matter was heard at length on 06.02.2020 when Mr. Jhammat was questioned about the maintainability of this petition and his answers were not found satisfactory. He then resorted to point out that there are counsels from the respondents' side who may like to appear. We may point out that this matter was already heard at length when Mr. Jhammat made the above statement. The statement made by Mr. Jhammat was strange but the purpose was meaningful as learned

Addl. Advocate General was present to address and he never asked Court for adjournment. We however directed all counsels to appear on the next date i.e. 27.02.2020.

9. Mr. Allah Bachayo Soomro, Additional Advocate General Sindh, appeared for Province of Sindh and Mr. Farooq H. Naek Advocate on behalf of respondents No.5 and 6. The contention of petitioner's counsel out rightly denied by Mr. Naek. It is urged that the petition suffers from laches of almost more than four decades and no explanation is provided for this inordinate delay, which petition otherwise cannot be maintained under the law. It is urged that the land has already been resumed and the challenge, as thrown by petitioner insofar as enhancement of lease money is concerned, is not a challenge on the touchstone of mala fides as despite repeated notices, petitioner failed to respond and consequently notices for demand and warrants of arrest were issued, which were absolutely in accordance with law.

10. Learned counsel further submitted that the petition as well as the remedy suffers and barred on account of doctrine of promissory estoppel. Petitioner claimed to have surrendered all such rights which were agitated in the earlier petition bearing No.121 of 1974 when as a consequence whereof two leases of 30 years were executed and acted upon.

11. Learned Deputy Attorney General has supported the case of the petitioner and submitted that for security point of view the land was required by petitioner but remained unsuccessful to substantiate/ manifest his contentions.

12. We have heard the learned counsel and perused the material available on record. In view of pleadings and contentions of the learned counsels, following points have emerged:-

I) Whether powers granted to the Secretary in terms of Resolution No.26 dated 02.08.1976 could further be delegated under the aforesaid Resolution to enable the Manager to file this petition?

II) Whether in the absence of a challenge to a declaration filed by the petitioner **"*twice*"** as being charitable institution, any observation can be made by this Court with reference to their declarations which were made four decades ago?

III) Whether the land was lawfully resumed under MLR 115 of 1972 and Act II of 1977?

IV) Whether such resumption could be challenged after almost more than four decades?

V) Whether petitioners bartered/surrendered their rights (right to contest earlier petition No.121 of 1974) with the execution of two leases of 30 years each by applying doctrine of election and the relief could not be granted under doctrine of estoppel?

VI) Whether it was lawful for the petitioner to retain possession under 30 years leases? And/or

VII) Whether a lawful process was involved in execution of 30 years leases in case it was so desired by the provincial government to lease out the land for their/its monetary benefit?

VIII) Whether lease money was lawfully enhanced by the respondent?

IX) Whether before issuing warrants of arrest procedure as required under Chapter VIII which deals with the collection of land revenue was exhausted?

13. For the purpose of deciding the controversy we have scanned all documents attached with the pleadings.

14. This petition was filed on the basis of a Resolution, as referred above, bearing No.26 passed on 02.08.1976 by the Committee formed to administer petitioner. It enabled the Secretary to exercise the powers mentioned therein and to act accordingly. The Committee so

empowered with the mentioned authorities and acts, was required to file this lis through an authorized person. However, on the basis of the aforesaid Resolution such authority was delegated to the Secretary of the above referred Committee, to exercise all such powers which include powers mentioned in clause 6 of the Resolution. The Committee never authorized the Secretary or delegated any such powers to the Secretary for further delegation of powers. In the absence of such delegation, the act of Secretary to execute an authority letter in favour of a manager to enable him to file and institute legal proceedings is far stretched.

15. This petition on the basis of an authority letter of the Secretary of the Committee of Administration was filed by one Major Ikramul Haq (Retd.) son of Ch. Ghulam Muhammad Shaque. The petitioner has not been able to explain as to how these powers have been delegated to a Manager by the Secretary, to whom alone the Committee delegated such powers to act accordingly. This Resolution enabled and empowered the Secretary to conduct day to day business which does not require any special attention of the Chairman or Member of the Committee. When after deliberation the Members of the Committee of the Administration of the petitioner resolved that the Secretary to act as authorized person, then unless otherwise explained, it does not deemed to have empowered the secretary, to further delegate the powers to a Manager. Hence we are of the view that such delegation of powers through an authority letter is not borne out of the Resolution nor it was the implied authority delegated to the Secretary to further delegate such powers and an approval from committee was inevitable. We do not find it in consonance with Order XXIX Rule 1 CPC. Reliance is placed on (i) 2004 SCMR 1034 Khalil Ahmad v. Mst. Muhammad Jan, (ii) PLD 2005 SC 705

Muhammad Yousuf v. Haji Sharif Khan and (iii) PLD 2005 SC 418 Imam Din v. Bashir Ahmed.

16. We however shall move on further since we have heard the case on merit as well. We have left the discussion on prayer clauses of earlier petition and this petition purposely, as it is now when it needed most. In the earlier petition, the petitioner claimed an identical relief except a portion of it which is based on a cause that accrued to it when the notice of demand and warrant of arrest were issued and it is only prayer clause "id" in the first paragraph of prayer clause which was inserted as an additional relief in the present petition. For the convenience the two prayer clauses are reproduced as under:-

Prayer Clause in instant CP No.D-620 of 2014

(i) To declare that the following orders have been passed without lawful authority and are of no legal effect and may be quashed and set aside:

(a) Order No.3629 dated 05.12.1972 passed by respondent No.5 (Annexure-F)

(b) Order dated 04.04.1973 passed by respondent No.4 (Annexure-G)

(c) Order dated 22.12.1973 passed by respondent No.3 (Annexure-H)

(d) Notice and warrant dated 24.01.2014 and 27.02.2014 respectively issued by respondent No.6 (Annexure P&Q)

(ii) That permanent injunction be issued restraining the respondents from interfering with the ownership and possessory rights of petitioner of land fully described in schedule-A.

(iii) ***That permanent injunction be issued restraining the respondent from interfering with the leasehold rights of the petitioner and in any manner from increasing rate of lease money from Rs.80/- per acre per year.***

(iv) That respondents may be directed to adjust the illegally recovered amount towards future lease money of schedule-B and to refrain from doing anything which they are not permitted by law.

(v) Any other relief this Hon'ble Court deems fit may be granted.

(vi) Costs of the petition be borne by the respondents.

Prayer clause in earlier CP No.D-121 of 1974

I. *To declare that the following orders have been passed without lawful authority and are of no legal effect and to quash and set aside the same:-*

   (a) ***Order No.3629, dated 5th December, 1972, passed by Respondent No.1 (Annexure-B)***

   (b) ***Order dated 4th April, 1973, passed by Respondent No.2 (Annexure-C)***

   (c) ***Order dated 22nd December, 1973, passed by Respondent No.3 (Annexure-D)***

II. ***To restrain the respondents their agents and representatives from dispossessing the petitioner from the Land Farm bearing survey No. as given in the schedule annexed herewith and marked "E" measuring about 2500 acres situated at Deh Nukerji and Deh Kandani and from recovering the same and to refrain from doing anything which they are not permitted by law to do.***

III. ***To award costs of the proceedings.***

IV. *To grant such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

17. Substantial piece of land was resumed under MLR 115 in the year 1972-73. The resumption of land was challenged by the petitioner by virtue of an Appeal bearing No.70-3/LC/72, which was dismissed by respondent No.4 vide order dated 04.04.1973 (challenge in the earlier petition as well as this petition) followed by order passed on SROR No.869/72-73 filed by the petitioner and dismissed by respondent No.3 vide order dated 22.12.1973 (which was also impugned in the earlier petition as well as this petition). The petitioner challenged two orders, referred above, and the resumption of subsequent land when Act II of 1977 came into being, in the earlier petition. There was no challenge under the hierarchy, of a subsequent land resumed (at least not demonstrated). While the petition was pending, the petitioner then interested in an idea of occupying land on 30 years lease instead of fighting over a lost case. This was resolved in a meeting held in Chief Martial Law Administrator's (CMLA) Secretariat on 12.03.1979. Minutes of meeting though were to consider the request of petitioner for exclusion

of Fauji Sugar Mills Farm from operation of Land Reforms Regulations 1972 (MLR 115) however it was resolved differently. The meeting was presided over by President/CMLA and attended by (a) Ministers of Finance & Law, (b) Secretaries Law, Defence and Cabinet, (c) Member FLC and (d) Managing Director Fauji Foundation (petitioner). It was resolved and decided in the meeting that the land in question be given on a long term lease of 30 years to petitioner under section 17 of Land Reforms Act, 1977.

18. The Minutes of aforesaid meeting with CMLA were forwarded on 12.03.1979 and it was considered inadvisable to undertake subject legislation in the nature of an amendment in Land Reforms Regulations 1972 (MLR 115) and the land Reforms Act 1977 (Act II of 1977) to exempt Fauji Sugar Mills Farms from the provisions of Land Reforms Act. The Federal Government under the above discussed nomenclature (Cabinet) thought that such "***exemption***" might be misunderstood and could lead to unavoidable criticism of the government and the armed forces. Besides, it would invite from other charitable institutions and trust etc., similar demands which the Federal Government may find difficult to resist.

19. The petitioner, while their petition was pending were conscious of their rights and entitlements and consciously elected to have the same land on 30 years lease, instead. The two leases were executed on 05.01.1980 whereafter earlier petition No.121 of 1974 was withdrawn.

20. There is apparently no purpose behind obtaining permission for filing fresh petition as for any fresh cause no permission was required and the "subject cause" i.e. resumption of land was being dealt with when parties negotiated to resolve it by way of 30 years lease and which cause deemed to have been consumed. Under Order XXIII Rule 1 CPC a litigant is only allowed to withdraw a lis and to file it again, if the

defects in the petition are not curable and so far as fresh cause is concerned, no permission was required. Order XXIII Rule 1 CPC read as under:-

> *“"1. Withdrawal of suit or abandonment of part of claim:(1) At any time after the institution of a suit the plaintiff may as against all or any of the defendants withdraw his suit or abandon part of his claim.*
>
> *(2) Where the Court is satisfied -*
>
> *a) that a suit must fail by reason of some formal defect or*
>
> *b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,*
>
> *it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of a claim.*
>
> *"(3) Where the plaintiff withdraws from a suit or abandons part of a claim without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*
>
> *(4) …."*

21. This is where the doctrine of election would come into play and consequently doctrine of promissory estoppel. Petitioner, in its dealing with official respondents opted for one of the option available and once an option was availed, leaving and ruling out other, it/petitioner cannot have a second recourse to have another option under the doctrine of election and consequently based under law of Estoppel. This is waiver of alleged right amongst the available range and once an option is chosen, the other goes out of reach. If petitioner thought it had a right and it bartered the same with other option, estoppel would come into play as by conduct it is evident. This principle of election, for the purpose of the present controversy, is derived from principle of estoppel.

22. The better course available, as they thought, was to have a land of a long term lease on payment of reasonable/nominal rent while giving

away any right if existed at the relevant time. Based on such reasoning and the conclusion in the above terms, which was a barter of their rights to contest the earlier petition, a decision was taken and consequently the petition was withdrawn with alleged permission, to file fresh. Permission granted to petitioner was not unconditional. Petitioner was only allowed to file, if so advised, and this would not exclude the jurisdiction of this Court to examine the case, in the above terms.

23. A question now would be, as has been raised by the petitioner, whether such rights to challenge the reclaimed/excess land, resumed under MLR 115 would still be available under the facts and under the law. A simple answer to it would be "NO". Remedy and/or relief was earlier availed in lieu of 30 years lease when the earlier petition was filed and it is for this reason that the dispute was set at rest while they were at both the ends of the fence. This question is now far from being conceived if such relief is still available to petitioner.

24. The petitioner has thrown a challenge to nullify the orders passed in the year 1972 and 1973 respectively, which orders too were accepted when they surrendered themselves at the time of execution of 30 years lease in respect of the same land. Reliance is made on the case of Abid Mahmood Butt v. Manager S.B.F.C. reported as 2002 YLR 1383.

25. Let us now discuss whether 30 years leases were executed after following the procedure as required under the law, in favour of the petitioner. In terms of Section 21 of MLR 115 as well as under section 17 of Act II of 1977, the provincial government under the nomenclature as they were at the relevant time, if thought to have it utilized, that should have been done under a transparent mechanism i.e. any lease either for a shorter period or a longer period should not have been done without public notice in order to avail maximum monetary profit and to attract public at large and that should be the only consideration in order

to maintain the orchard, and agricultural land, yielding maximum produce. Such was not done in the instant case hence we do not appreciate the manner in which such leases were executed as the Provincial Government did not get the maximum out of it. Section 21 of MLR 115 and 17 of Act II of 1977 read with other relevant provisions, reproduced below, would be frustrated if the public interest and for public purpose such land was not used.

> ***Definition of "person" and Paras 8, 12, 19, 21 from MLR 115/72***:
> *(7) "person" includes a religious, educational or charitable institution, every trust, whether public or private, a Hindu undivided family, a company or association or body of individuals and a co-operative or other society, but does not include a local authority, a university established by law, a body incorporated by a Central or Provincial law, or an educational institution exempted by Government from the operation of this Regulation;*
> *8.* ***Limits on individual holdings:-*** *(1) Save as otherwise provided in this Regulation, no person shall, at any time, own or in any capacity possess land in excess of one hundred and fifty acres of irrigated land or three hundred acres of unirrigated land, or irrigated and unirrigated land the aggregate area of which exceeds one hundred and fifty acres of irrigated land (one acre of irrigated land being reckoned as equivalent to two acres of unirrigated land), or an area equivalent to fifteen thousand produce index units of land, whichever shall be greater.*
>
> *(2) Notwithstanding the provisions of sub-paragraph (1), an owner may retain, out of the area of land he was holding immediately before the commencement of this Regulation, such additional area, if any, which would bring the total area retained by him to the equivalent of eighteen thousand produce index units, if on the twentieth of December 1971.-*
>
> *(i) he owned an agricultural tractor, certified to be in good working order by an officer authorized by the Commission in this behalf; or*
>
> *(ii) there was installed on his land a tube-well, of not, less than ten horse-power.*
>
> *(3) Any person, who, at any time before the commencement of this Regulation but not earlier than the twenty-fifth day of December 1971, became the owner of an agricultural tractor certified as provided in clause (i) of sub-paragraph (2) or had installed on his land a tube-well of not less than ten horse-power, or at any time after the commencement of this Regulation becomes the owner of such a tractor or installs on his land such a tube-well,*

shall, notwithstanding, the provisions of sub-paragraph (1), be entitled, after becoming the owner of such tractor or having installed such a tube-well, to acquire, possess or own such additional area as would bring the total area possessed of owned by him to the equivalent of fourteen thousand produce index units:

Provided that a person who on the twentieth day of December, 1971 was in possession of an area of land equivalent to more than twelve thousand additional area of land under this sub-paragraph until he has surrendered to Government land in excess of area equivalent to twelve thousand produce index units.

12. ***Declarations****.- (1) A Commission may, by order published in the official Gazette, direct the following classes of persons to submit to such authority, in such manner and form and by such date, as may be specified in the order, the following declarations:-*

(a) Declarations by persons who on March 1, 1967, owned or possessed land in excess of an area equivalent to 15,000 produce-index units calculated on the basis of classification of soil as entered in the revenue records for kharif, 1966, and rabi, 1966-67.

(b) Declarations by persons who on December 20, 1971, owned or possessed an area in excess of 15,000 produce-index units calculated on the basis of classification of soil as entered in the revenue records for kharif, 1969, and rabi, 1969-70, or irrigated land in excess of 150 acres, whichever shall be greater.

(bb) ….

(c) Declarations by persons who have been granted land under the West Pakistan Border Area Regulation, 1959 (Regulation 9 of Zone 'B') and have exchanged the whole or any part of such land with any other land.

(d) Declarations by persons in the Civil Service of Pakistan and other persons to whom the provisions of Paragraph 10 apply, who own or possess land in excess of the permissible limits laid down in the said paragraph.

(e) Declarations by persons who were allowed to retain or were granted lease of any stud or live-stock farms under the repealed Regulation.

(f) Such other declarations as may be required by the Commission.

(2) Where a person who is required to make a declaration under this paragraph owns or possesses land in more than one Province, he shall make the declaration to the Commission for the Province where he permanently resides, and the said Commission shall have the authority to call for any information concerning the said declaration

from any other Province where the declarant owns or possesses land, and to pass orders thereon.

19. ***Utilisation of land under orchards, studs or live-stock farms.-*** *Land under orchards, studs or live-stock farms which is resumed and vests in Government under the provisions of paragraph 15 may be utilized by Government in such manner as it deems fit:*

Provided that if in the public interest Government decides to lease out any such land, the person from whom it was resumed shall have the right of ***first option*** *to the grant of lease of the land resumed from him or of such part of or area from, such land, as government may deem fit.*

21. ***Utilization of land resumed from religious, charitable and educational societies.-*** *Land resumed under the provisions of paragraph 17 shall be utilized in such manner as may be prescribed:*

Provided that if in the public interest Government decides to lease out any such land, the person from whom it is resumed shall have the right of first option to the grant of the lease of the whole or such part of, or area from, such land as Government may deem fit."

Sections 9, 15, 16 and 17 of Act II of 1977

9. ***Vesting in Government of excess land.-*** *(1) Land in excess of the area permissible for retention by a person under section 3, shall be surrendered by him within four months of the commencement of this Act, to the Land Commission of the Province where such land is situate, and it shall vest in Government free of any encumbrance or charge;*

Provided that rights and obligations of any person in respect of the standing crops on land surrendered under this section shall remain unaffected until 30th day of June 1977.

(2) Land determined, under subsection (5) of section 7, to be in excess to the entitlement of a person shall vest forthwith in the Government free of any encumbrance or charge and the defaulter shall be deemed to have forfeited the right and option under section 4.

(3) Any land under litigation which is in excess to the entitlement of a person under this Act, shall vest in the Government subject to the final adjudication of the rights of the litigants.

(4) Any land surrendered by a person which was in his possession as a lessee or mortgagee shall not vest in Government but shall, subject to the provision of section 3, revert to lessor or mortgagor, as the case may be.

*15. **Disposal of surrendered land**.-(!) Land vested in Government under this Act, shall, subject to the provisions of this section, be granted free of charge to the tenants who are shown in the Revenue Records to be in cultivating possession of it during Kharif 1976 and Rabi 1975-76;*

Provided that no land shall be granted to a tenant who but for the coming into force of this Act, would have been entitled to inherit land from a person who is required to surrender land under section 9.

(2) Where any tenant who is entitled to grant of land under subsection (1) already owns land, he shall be granted only so much land which together with the land already owned by him, does not exceed twelve acres.

(3) Land which is not granted under subsections (1) and (2) shall be granted to other landless tenants or persons owning less than twelve acres."

*16. **Conditions for grant of land**.-(1) Grant of land under section 15 shall be made on the following conditions*

(a) a grantee or his heirs shall not alienate by sale, gift, mortgage or otherwise the land or any portion thereof during a period of twenty years from the date of the grant;

Provided that for the purpose of obtaining a loan for the development of the land the grantee or his heirs may mortgage it in favour of Government, a Government sponsored institution or a co-operative society ;

(b) a grantee or his heirs shall not sub-let the land.

(2) The Provincial Land Commission concerned may cancel a grant for violation of any of the terms and conditions of the grant after giving an opportunity of being heard to the grantee or his heirs, as the case may be."

*17. **Utilization of land**.- Notwithstanding anything contained in section 15, a Provincial Government may, subject to the approval of the Federal Government, utilize or dispose of land surrendered under section 9 for such public purpose and in such manner as the Provincial Government may deem fit, if it is-*

(a) an orchard ; or

(b) land surrendered by any religious, charitable or educational society or institution ; or

(c) land surrendered by any trust or waqf, whether public or private ; or

(d) land under Shikargabs and stud or livestock farms."

26. The gist of Section 19 and 21 of MLR 115 is that in order to have more than one option for consideration of aforesaid person there has to be public awareness of such decision of government for public intent, only then the right of ***"first option"*** be given to one from whom such land was resumed. This never happened as there was no competition and it was leased out at a meager rate to petitioner which it continued to pay for almost 3 decades, till the impugned notices were issued. These execution of two leases as such is not in accordance with law.

27. The other question that concerns with the enhancement of lease money and the issuance of warrants of arrest is summarized in Chapter VIII heading as "Collection of Land Revenue" in Land Revenue Act, 1967. Section 74 provides that in case of any holding, the holding and its land owner shall be liable for the payment of land revenue thereon and if there be joint land owners of a holding, the holding and all the land owners jointly and severally shall be liable for the payment of the land revenue. There is as such no confusion that the land holding and the land owner is liable for payment of the land revenue. Holding is defined under clause (10) of Section 4 of Land Revenue Act, 1967, which means a share of portion of a (deh) held by one land-owner or jointly by two or more land-owners.

28. Section 79 provides for the statement of account, certified by a revenue officer which prima facie is a conclusive proof of the existence of an arrear of land revenue, of its amount and of the person who is the defaulter. There is no dispute that a number of letters were issued to

the petitioner raising the demand of the land revenue which was not seriously taken into consideration. Since the execution of 30 years lease with effect from 1980, they were paying meager amount of rent at the rate of Rs.80/- per acre per annum and the last self enhancement was at the rate of Rs.700 which claimed to have been tendered until 2013. A unilateral deposit of such amount through a challan cannot be considered as a lawful tender in the absence of any lawful determination of Rs.700/- per acre per annum.

29. Be that as it may, we are not in the process of such determination neither any contrary process disclosed to have been violated. Had it been so, they could have challenged the same under the hierarchy of Land Revenue Act, 1967 as such fiscal determination involving factual controversy is not our domain. The process for the recovery of arrears is triggered in terms of Section 80 of the Land Revenue Act, 1967. It provides by service of notice of demand on the defaulter under section 81, by arrest and detention of his person under section 82, by distress and sale of his movable property and uncut or ungathered crops under section 83, by transfer, under section 84, of the holding in respect of which the arrear is due, by attachment, under section 85, of the holding in respect of which the arrear is due, by annulment, under section 86, of the assessment of that holding, by sale of that holding under section 88 and by proceedings against other immovable property of the defaulter under section 90.

30. There is no doubt that a number of letters were issued demanding therein the land revenue at the amount determined by the authority, however, for the reasons best known to them, these notices were not seriously taken into consideration by the petitioner. We have also noticed that the scheme of the recovery includes a process of attachment of the holding in respect of which arrear are/is due and also

include process against other immovable property of the defaulter under section 90. As discussed, the petitioner is holding 307 Acres of land, which they have retained as a consequence of MLR 115 of 1972 and Act II of 1977. In our view before issuing the warrants of arrest and detention order, the authority should have exhausted the remedy for the recovery of land revenue in respect of the land of which the rentals arrears have not been paid, out of the land, which is owned by the petitioner i.e. 307 Acres. Unless such remedy is exhausted the immediate jump to arrest and detention of his person and/or defaulter would not be a justified process under the scheme provided by the Land Revenue Act, 1967.

31. Adverting to the argument of petitioner's counsel about declaration of M.L.R being repugnant to injunctions of Islam on the basis of which the ceiling to hold land so fixed was declared illegal and unlawful, by virtue of judgment of the Federal Shariat Court, the petitioner should be entitled to hold the entire land; In our view, no doubt it was so declared as repugnant to injunction of Islam however the judgment itself provides its effect as prospective and not retrospective. The review of the said judgment was also dismissed by Hon'ble Supreme Court reported as Government of Pakistan v. Qazalbash Waqf (1993 SCMR 1697). The judgment of Federal Shariat Court and Shariat Appellate Bench of the Hon'ble Supreme Court was then taken into consideration by Hon'ble Supreme Court

32. The Hon'ble Supreme Court in the case of Qazalbash Waqf v. Chief Land Commissioner reported in PLD 1990 SC 99 has concluded as under:-

> *"It is unanimously held that the Federal Shariat Court and the Shariat Appellate Bench of the Supreme court have the jurisdiction and the power under Chapter 3-A of Part VII of the Constitution, to examine the Land Reforms Regulation, 1972 (hereinafter referred to as the Regulation) and the Land Reforms Act, 1977 (hereinafter referred to as the*

Act) and to decide whether or not provisions thereof are repugnant to injunctions of Islam.

2. In accordance with the opinion of the majority of the Judges separately recorded, it is held that the following provisions of the Regulation, the Act and the Punjab Tenancy Act, 1887 to the extent indicated against each, are repugnant to Injunctions of Islam:-

(i) Para. 2, clause (7) of the Regulation in so far as it includes Islamic Waqf for the purposes of other paras of the Regulation which are being held wholly or partly repugnant to Injunctions of Islam.

(ii)The whole of paragraphs 7, 8, 9, 10, 13 and 14 and consequentially Paragraph 18 of the Land Reforms Regulation.

(iii) Paragraphs 15, 16, 19 and 20 of the Land Reforms Regulation, 1972 in so far as they ignore the rights and obligations, the terms and conditions of the grant, license or lease, as the case may be, in resuming the stud and livestock farms, Shikargahs and Orchards and dealing further with them under paragraphs 19 and 20 thereof.

(iv) Paragraph 17 of the Land Reforms Regulation in so far as it relates to Wakf and all other institutions which can validly fall within the definition of Islamic Wakf, and consequential to that extent paragraph 21 also.

(v) Paragraph 25(l) of the Land Reforms Regulation in so far as it does not give sanctity to the grounds of ejectment available in a valid contract between the landlord and the tenant, entered into in accordance with the Injunctions of Islam.

(vi) Paragraph 25(3)(d) of the Land Reforms Regulation having already been declared to be repugnant to the Injunctions of Islam in Said Kamal Shah's case PLD 1986 SC 360.

(vii) The whole of sections 3, 4, 5, 6, 7(5), 8, 9, 10 of the Land Reforms Act, 1977 and consequentially the whole of sections 11 to 17 of the Act.

(viii) The whole of section 60-A of the Punjab Tenancy Act, 1887 in so far as it makes non-occupancy tenancy heritable irrespective of the terms of the contract.

3. The question of repugnancy or otherwise of paragraphs 22, 23, 24 of the Land Reforms Regulation was left undermined in these proceedings as the Court feels that proper and full assistance having not been received

and another decision of the Federal Shariat Court has come into the field during the iterregnum.

4. In accordance with the opinion of the majority of the Judges it is held that the Provisions of paragraph 25(3), Clauses (a), (b) & (c) of the Regulation are not repugnant to the Injunctions of Islam.

5. Shariat Appeals No.1 of 1981, 3, 8, 9, 10 of 1981 and 1 of 1987 are allowed and Shariat Appeal No.4 of 1981 with the reservation contained in para 3 above and Shariat Appeal No.21 of 1984 are party allowed. All the parties shall bear their own costs but the appellant in Shariat Appeal No.1 of 1981 being a Wakf shall be entitled to claim the costs from the respondent/the Federal Government.

6. This decision shall take effect on 23rd March, 1990 whereupon the provisions declared repugnant to the Injunctions of Islam will cease to have effect.

7. …..”

33. While dealing the same issue in the case of Muhammad Ishaq v. Muhammad Shafiq reported in 2007 SCMR 1773 the Hon’ble Supreme Court reappraised the conclusion as under:-

“4. The second aspect is with regard to the repugnancy of para.24 M.L.R. 115 to the Injunctions of Islam. This matter was discussed by learned High Court but we believe that such repugnancy, being retrospective or prospective, is not very relevant in the present case. Para.24 of M.L.R. 115 was declared repugnant to the Injunctions of Islam by Federal Shariat Court in Sajwara's case PLD 1989 FSC.80 but that repugnancy was declared to have effect from 1st January, 1990. It obviously cannot reopen the past and closed transactions and cannot have retrospective effect. ***At the time of present transaction dated 22-2-1978, the repugnancy did not exist****. The only thing material was that no transaction could be declared void under para.24 M.L.R. 115 by the Revenue Authorities, the exclusive jurisdiction being vested in the Land Commission.”*

34. In the instant case also land had been resumed and was evidently leased out to petitioner on long term basis. The land was resumed in the year 1972 and after litigation leased out to petitioner whereafter they withdrew their claim and ***leases were executed on 05.01.1980*** which is

much before the cut of date in the judgment. Reliance is placed on the case of Shah Jehan Khan Abbasi v. Deputy Land Commissioner reported in 2006 SCMR 771. Relevant para 4 of the same is reproduced as under:-

> *"4. …. The crux of the aforesaid rulings is that repugnancy to the Injunctions of Islam, of para.13 of Land Reforms Regulation is prospective with effect from 23-3-1990. Any positive action towards resumption by the Land Reforms Authorities taken and completed prior to 23-3-1990 shall not be affected by the declaration given by this Court in Qazalbash Waqf case (supra). The law on the point is even otherwise not disputed. What now we have to decide is simply a question of fact as to whether, in the instant case, the Land Reforms Authorities had or had not completed the resumption proceedings prior to 23-3-1990."*

35. Similarly, on the question of laches, reliance is placed on the case of Ahmed v. Ghama reported in 2005 SCMR 119, the relevant part of which is reproduced as under:-

> *".....There is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition. In this regard if any authority is needed, reference can be made to cases titled Muhammad Sadiq and others v. The Commissioner, Rawalpindi Division and others 1973 SCMR 422, Shahbaz Khan Mohammad v. Islamic Republic of Pakistan and another 1975 SCMR 4. We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case. The civil miscellaneous application being meritless is hereby dismissed."*

36. This Court is not a Court of appeal as far as two orders of resumption of land is concerned passed on 04.04.1973 and 22.12.1973. This Court only exercise jurisdiction, *inter alia*, if any jurisdictional error was there or constitutional provision was violated which is not the case here, besides, the case being devoid of merit as well. Reliance is placed on the case of Muhammad Ramzan v. The Member Revenue reported in 1994 SCMR 55.

37. It may further be noted that petitioners chose to declare themselves as a charitable institution twice, initially when MLR 115 was introduced and secondly when Act II of 1977 was introduced. It is thus inconceivable and/or not expected that the petitioner, being run by able persons at the relevant time, could make a mistake not only once but twice. It does not appear to be a mistake but contention that it was an error, is not purposeless as petitioner now desire to see it from the other side of mirror. Moreover they have not demonstrated as to how it (petitioner) was not, at the relevant time in the same basket of charitable institution.

38. We, therefore, dismissed this petition being misconceived and set aside only the warrants of arrest issued by the respondents and permit the authority that for the recovery of land revenue they may initiate proceedings under the Land Revenue Act, which may include the attachment of the movable and immovable properties of the petitioner and only in case such recovery process and scheme does not bear fruit, they can resort to other means such as the recourse of arrest and detention. However, if any legal proceedings are initiated for reassessing the amount of rental value and/or rental arrear, that may take independent proceeding but should not halt process of recovery of possession of already resumed land. Rest of the reliefs, being misconceived, had already been declined by short order dated 27.02.2020 of which these are the reasons. The listed applications except contempt applications also stand dismissed along with petition.

Dated: **Judge**

Judge