

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

R. A. No. S – 34 of 2003

Date of hearing : 15.03.2021

Date of announcement : 01.10.2021

Applicants : Nandomal through his Legal Heirs and others, through Mr. Khalid Mehmood Shaikh, Advocate.

Respondents No.1-3 : The P.O. Sindh through the Secretary Rehabilitation Sindh and others, through Mr. Noor Hassan Malik, A.A.G.

Respondent No.4 : Haji Doulat Khan through his Legal Heirs and others, through Mr. Abdul Mujeeb Shaikh, Advocate.

### Case law cited by the Applicant's counsel.

1. **2007 S C M R page-729**  
[*Rehmatullah and others versus Saleh Khan and others*];
2. **2016 S C M R page-1417**  
[*Peer Baksh through LRs and others versus Mst. Khanzadi and others*];
3. **2001 C L C page-1312**  
[*Haji Haroon Mandrah and another versus Abdul Rahim and others*];
4. **2016 Y L R page-405**  
[*Khushnood Ahmad versus Additional District Judge, Islamabad and others*]; and
5. **P L D 1965 Supreme Court page-690**  
[*Haji Abdullah Khan and others versus Nisar Muhammad Khan and others*];

### Case law relied upon by Respondents' counsel.

1. **1982 S C M R page-1038**  
[*Munir Ahmad etc. versus Noor Muhammad*];
2. **1984 S C M R page-403**  
[*Jamal Din and another versus Mst. Pari Jan and 4 others*] – Jamal Din Case

3. **P L D 1985 Supreme Court page-278**  
[*Walayat and others versus Muhammad Shafi and others*] – Walayat Case;
4. **P L D 1972 Lahore page-262**  
[*Shadi Khan and another versus Khan Saeed-ud-Din Khan, Settlement and Rehabilitation Commissioner, Lahore and others*]; and

**Law under discussion:**

- (1) Displaced Persons (Compensation and Rehabilitation) Act, 1958-  
***Relevant Law.***
- (4) The Qanun-e-Shahadat Order, 1984 [***the Evidence Law***].
- (5) Civil Procedure Code, 1908 (“CPC”)

**Judgement**

**Muhammad Faisal Kamal Alam, J.:** – This Revision Application is preferred against the concurrent decisions of learned Appellate Court (Judgment dated 02.04.2003 and Decree dated 05.04.2003, respectively) and of learned Trial Court (Judgment and Decree dated 15.06.2001) in Civil Appeal No.14 of 2001 and F.C. Suit No.278 of 1978 (respectively) filed by present Applicants, in respect of a house allotted / given to predecessor-in-interest of private Respondent No.4, by the Official Respondents.

2. The relevant facts of present dispute is, that predecessors-in-interest of present Applicants have filed a First Class Suit (*F.C.*) ***Suit No.151 of 1973 (New No.278 of 1978)*** before the learned II<sup>nd</sup> Senior Civil Judge, Sukkur, arraying Province of Sindh, officials from Settlement Department as Defendants No.1, 2 and 3, and Haji Doulat Khan son of Ladho Khan, predecessor-in-interest of present Respondent No. 4 as Defendant No.4. Applicants have challenged the transfer of House No.

D-242 to Doulat Khan (*erstwhile Defendant No.4*), *primarily*, on the ground, that since the said house is in possession of the predecessors-in-interest of present Applicants, since 1949, thus they were entitled for its transfer and not the said late Doulat Khan. The other main contention is that under the relevant provisions of the Displaced Persons (Compensation and Rehabilitation), Act, 1958 (the “**Relevant Law**”), two houses to a local could not have been granted / transferred, because at the relevant time the said Doulat Khan was already allotted another House No. D-248.

3. Since record of the property was not legible, therefore, vide order dated 15.02.2021, learned A.A.G. has filed the Written Statement along with documents through concerned Mukhtiarkar, who was present on behalf of Deputy Commissioner, Sukkur, in compliance of the earlier order of 01.02.2021. Material facts are that the Applicants are residing in a residential property No.B-242, Pano Akil, Sukkur (the “**Subject Property**”), which was transferred under the erstwhile Relevant Law, to the predecessor-in-interest of Respondent No.4, namely, above Doulat Khan.

It is also necessary to clarify that an independent rent proceeding was filed by private Respondent No.4 against the Applicants, and their eviction order was handed down by the learned Rent Controller and the Appellate Forum, which is challenged by way of C. P. No S – 904 of 2009, tagged along with present Revision Application. However, only R. A. No. S – 34 of 2003, is heard.

4. In the first round of litigation, the above *Lis* filed by present Applicants was decided on the basis of preliminary issues, as mentioned in the present impugned appellate order, and consequently, the Suit was dismissed; however, when the same was challenged in Civil Appeal No.19 of 1987, the decision of Trial Court was set aside and the case was remanded with directions, *inter alia*, that a fresh decision be given after a

full dress trial. Consequently, parties led the evidence and learned Trial Court handed down the judgment dated 15.06.2001, dismissing the above *Lis* of present Applicants, as mentioned in the opening part of this Decision.

5. The claim of present Applicants is that they were in possession of the Subject Property since 1949 and hence on that basis, they are entitled for allotment of Subject Property, but official Respondents in collusion with the predecessor-in-interest of present Respondent No.4, viz. Haji Doulat Khan, transferred the Subject Property to him. It is averred in the plaint that, firstly the present Applicants (Plaintiffs) filed their LH Form [an application in the prescribed format for transfer of a house under one of the Settlement Schemes of the Relevant Law], before the official Respondents for allotment of Subject Property in 1966, but their claim was not decided and finally when they received notices from the Department / official Respondents for payment of rent, former (present Applicants) visited the office of Respondent No.3 on 26.11.1968 and acquired knowledge that the Subject Property was already transferred to the afore-named Haji Doulat Khan – Predecessor-in-interest of present Respondent No.4, which was then challenged by the present Applicants, before the official Respondents by filing an Appeal, that was converted as Revision No.16 of 1973, which was dismissed in favour of Respondent No.4, vide Order dated 29.09.1973, whereafter, the above *Lis* was filed. *Whereas*, the stance of private Respondents is, that their predecessor-in-interest, Haji Doulat Khan, was allotted the Subject Property due to his occupation of the same, in terms of the Relevant Law and the Rules, besides the fact that Applicants were given possession in 1965 and not before that. Subsequently, Applicants' predecessor-in-interest damaged and sub-let the Subject Property. Any collusion between Respondents *inter se* has been denied. It is further stated

in Written Statement so also in the testimony of Dr. Abdul Mateen Shaikh, who deposed on behalf of Respondent No.4, that the Subject Property was purchased by the father of above said witness through a registered Sale Deed. Same fact is mentioned in the Written Statement of private Respondents.

6. Arguments heard and Record perused.

7. The undisputed facts are that Provisional Transfer Order (“PTO”), under erstwhile Displaced Persons (Compensation and Rehabilitation) Act, 1958, was issued in favour of said Doulat Khan, whereafter Permanent Transfer Deed (“PTD”) No. 08196 dated 25.10.1967 was issued in his favour, which in terms of Paragraph 41 of the Settlement Scheme Number 1 of the Relevant Law, is a title document.

8. Gist of the case law cited by learned Advocate for Applicants is that no limitation would run against a void order and when the basic order is without the lawful authority, then all superstructure built on it will fall on the ground automatically; fraud vitiates even solemn order and proceeding (this proposition has been developed in support of the arguments, that in the first place, Subject Property should not have been allotted and transferred to private Respondent No.4 and even a PTD is issued, it is of no consequence). Onus is on private Respondent No.4 to prove the validity of transaction. A question of law can be raised at any stage of the proceeding. Courts do not come to the rescue of a person, who has committed a wrong or violated any law.

9. Précis of the case law cited by learned counsel for Respondent No.4 is that when a property is in litigation, it cannot be a subject matter of auction by the Settlement Authorities. Allegation of fraud and misrepresentation was repelled and it was held that since appellants (of the

reported case) were neither the allottees nor they were considered to be entitled to the transfer of the plot in dispute, therefore, they had no *locus standi* to file the suit and challenge the transfer of the plot in dispute in the names of the respondents; same principle is reiterated by Hon'ble Supreme Court in **Walayat** Case [*ibid*], that a person merely on the basis of long period of possession cannot challenge the transfer of property in favour of some other person; while holding that in terms of the Sections 22 and 25 of the afore-referred Relevant Law, civil Courts had no jurisdiction to question the validity of the orders passed by the Settlement Authorities. If a person / applicant did not apply for transfer of a house in his possession, but allows another person to have it, it can be safely inferred that he had no desire to get that house; to such facts, principle of *estopple* can also be pressed into service and a challenger is estopped from claiming the same property later on after being unsuccessful under the Earmarking Scheme (under the relevant law and rules) and if a house is already disposed of, then the matter cannot be reopened.

10. The contradictions in the evidence of Applicants, has been correctly appraised by the learned Trial Court, and maintained by the learned Appellate Court. In the plaint, it is stated that Applicants applied for the transfer of the Subject Property in the year 1966, *whereas*, in the testimony of Applicants' main witness (Shree Chand Jasvani), it is deposed that application to the Settlement Authority was made in between 1953 and 1959.

To corroborate his testimony regarding being in possession since 1949, at least the Applicants' witness should and could have produced the rent receipts, particularly, when they claim that they were paying rentals to government; but no documentary evidence in this regard was produced. It is

also a settled principle of evidence law that documentary evidence excludes the oral evidence. The claim of Applicants is based on oral assertion, *whereas, admittedly,* the rebuttal / stance of Respondent No.4 is corroborated by official documentary evidence, in particular, the PTO (Provisional Transfer Order) dated 11.11.1959 and PTD dated 25.10.1967, which is a title document, authenticity whereof was not challenged but procedure adopted for its issuance to said late Doulat Khan, was questioned as discussed above, which too the Applicants have failed to prove.

11. Another undeniable piece of evidence is the reply of Advocate of present Applicants, vide his Notice dated 26.11.1968 (available in record and part of Evidence), to official Respondents, in response to their notices for payment of rentals. From the said legal notice, it is quite clear that present Applicants have acknowledged the transfer of Subject Property in the name of said Haji Doulat Khan, way back on 26.11.1968 (the date of the above Notice), but challenge the said allotment / transfer of ownership in the year 1973 through the above Revision No. 16 of 1973, that is, **after five years**. At the relevant time, the same should have been challenged under Section 19 of the Relevant Law within fifteen days, but the same was not done.

The aforereferred Order dated 29.09.1973 passed by the official Respondent (the then Additional Settlement Commissioner, Khairpur Division at Sukkur), is also significant when it has given a finding that the disputed property was not available for disposal under Settlement Scheme No.VIII (as claimed by Applicants), while rejecting the claim of Applicants. This finding of fact could not be dislodged by the Applicants. In the same Order, the said Revision of Applicants was dismissed, as already mentioned hereinabove, being hopelessly time barred.

12. In terms of Section 22 of the above Relevant Law, since the issuance of PTD No. 08196 dated 25.10.1967, was not challenged, thus, it has attained finality. Official Respondents have filed their Written Statement, in which they have acknowledged the fact that Subject Property was initially allotted to the predecessor-in-interest of present Respondent No.4, the above-named Doulat Khan, for the sum of Rs.2154 on the basis of his L H Form No.338, way back on 11.11.1959 and subsequently, official Respondents executed a PTD No.08196 dated 25.10.1967, in favour of said Doulat Khan.

13. The statement of witness of Respondent No.4 (Dr. Abdul Mateen Shaikh), that his father late Abdul Lateef purchased the Subject Property from late Doulat Khan, through a registered Sale Deed, was not specifically disputed in the cross-examination. This fact is also mentioned in paragraph-17 of the Written Statement.

Applicants should have made the subsequent purchaser [above named Abdul Latif Shaikh] as one of the Defendants, who was a necessary and proper party in terms of the Order I Rule 10 of CPC, but the predecessor-in-interest of present Applicants, opted not to implead the said late Abdul Lateef Shaikh as one of the Defendants. Consequently, in these circumstances, the subsequent purchase Abdul Lateef Shaikh and now his successors-in-interest are *bona fide* purchaser for value and their right and interest in respect of the Subject Property is thus protected [by virtue of the above referred principle] and cannot be set aside, except through a proper proceeding. In this regard the recent judgment of this Court **2020 CLC 1746** [*Dr. Abdul Rashid Paracha versus The Defence Housing Authority and others*] is relevant and a paragraph is reproduced herein under for a ready reference\_

“ . . . . This principle is developed by Courts while expounding Sections 41 of the Transfer of Property Act and 27 (b) of the SRA.



*It is also summarized by the Hon'ble Supreme Court in a reported decision of Ghulam Rasool and others vs. Noor Muhammad and others-2017 SCMR page-81; relevant portion is reproduced herein under \_*

***“The essential ingredients of this section are, (a) that the transferor was the ostensible owner; (b) that the transfer was made by consent express or implied of the real owner; (c) that the transfer was made for consideration; and (d) that the transferee while acting in good faith had taken reasonable care before entering into such transaction. These four imperative / essential ingredients must co-exist in order for a person to take the benefit of the equitable principle, .....*”**

14. Finding of learned Trial Court on Issue No.3, maintained by the learned Appellate Court, is also of significance, when it is determined while deciding the Issue, that when Applicants (Plaintiffs in suit) also submitted their application for transfer of the Subject Property in 1966, they should have seen the official record and got the knowledge about allotment in favour of Respondent No.4, but instead of challenging it timely, they filed the Appeal / Revision before official Respondents after six years. This finding is also supported by the provisions of Relevant Law, that record of properties was open for inspection and hence the record of the Subject Property was also in public domain, which could have been inspected by the Applicants. In these circumstances, it is not believable that Applicants did not know this fact, that property in question was allotted to above named late Doulat Khan way back in the year 1959.

15. The onus was on Applicants to prove collusion between official and private Respondents, which they have failed to prove; thus, the legal principle as envisaged in Article 129(g) of the Qanun-e-Shahadat Order, 1984, which is Section 114 of the erstwhile Evidence Act, 1872 (as applicable when the Lis was instituted by Applicants), is applicable here, that there is a presumption, that official acts are performed in a regular manner, unless it is proven otherwise. Cited decisions by the Applicants’

Advocate are distinguishable, particularly on the law point, that legal issues can be raised at any stage of the proceeding. In this case, the plea of learned counsel of Applicants, that two houses cannot and could not have been allotted to the Respondent 4, is not a pure question of law but a mixed question of law and fact, because details of other property is not mentioned in the plaint, which was confined mainly to the facts that the predecessors-in-interest of Applicants were entitled for allotment of this Subject Property and not Defendant No.4 [now represented through present Respondent No.4(a) to (d)]. Conversely, the reported judgments, particularly the afore-referred decisions of Jamal Din and Walayat [*supra*] handed down by the Hon'ble Supreme Court are applicable; that since the Applicants who were never allotted/transferred the Subject Property, merely on the basis of their possession, did not have *local standi* to challenge the allotment/transfer in favour of the above named predecessor-in-interest of Respondent No.4. If at all there was a case of allotment in violation of the Relevant Law, the official Respondent's are the concerned authorities in this regard to take appropriate action, that too through due process of law and not otherwise.

16. The undisputed documentary evidence leads to the conclusion that there was no collusion between official and private Respondents *inter se*, *inter alia*, as admittedly PTO was issued on 11.11.1959 and the PTD, which is a title document was issued on 25.10.1967. When the same was challenged after six years through revision proceeding before the official Respondents, it was rightly dismissed vide order dated 29.09.1973. No undue haste is present in this entire exercise of allotment of Subject Property to Respondent No.4.

17. The upshot of the above discussion is that the both impugned Decisions and concurrent findings do not suffer from any material irregularity, illegality or are contrary to record and, therefore, no

interference is required in this revision proceeding. Consequently, this revision is dismissed with no order as to costs.

**Judge**

**Sukkur dated: 01.10.2021.**

*Riaz / P.S.*