

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 03 of 2010

Ali Nawaz Peerani v. Muhammad Kamil and others

Date of hearing: **15-10-2021**

Date of decision: **15-10-2021**

Mr. Nusrat Hussain J. Memon, Advocate for the Applicant.
Mr. Mehboob Ali Wassan, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Though this Civil Revision, the Applicant has impugned judgment dated 24-11-2009 passed in Civil Appeal No.113 of 2009 by the IInd Additional District Judge, Khairpur, through which the judgment dated 30-10-2009 passed by the Senior Civil Judge-II, Khairpur in Civil Suit No.54 of 2005 dismissing Suit of Respondent has been set aside by decreeing the same.

2. Learned Counsel for the Applicant submits that the Applicant and Respondent had contested the matter before the Revenue authorities and the proceeding culminated before the Member, Board of Revenue Sindh in Revision No. SROA-104 of 2001, who, through order dated 26-10-2004, was pleased to set aside the order of the Additional Commissioner-I, Sukkur and remanded the matter once again to the District Officer (Revenue), Khairpur for making allotment of the land afresh, which order was impugned by way of Civil Suit and the same was dismissed. According to him, the Appellate Court then set aside the judgment and has decreed the Suit. He submits that the order of the Member, Board of Revenue Sindh was a reasoned order granting opportunity to both the parties to seek their appropriate remedy in support of their claims. He has prayed for setting aside the order of the Appellate Court.

3. Mr. Liaquat Ali Shar, Counsel, holds brief for Syed Jaffar Ali Shah, Counsel for Respondent No.1, and submits that the Respondent has taken away brief. Accordingly, *vakalatnama* of Syed Jaffar Ali Shah stands discharged. Nobody has turned up, therefore, matter has been heard and is being decided on the basis of available record.

4. Respondent No.1 through its Suit for declaration and permanent had prayed that order dated 26-10-2004 passed by the Member, Board of Revenue Sindh was illegal and liable to be set aside. It would be advantageous to refer to the relevant para of the said order, which reads as under:

“11. In so far the cancellation of grant made by the defunct Colonization Officer, Sukkur Barrage, it stands cancelled. But so far as the further action viz: disposal of the suit land is concerned, the Additional Commissioner-I Sukkur has passed two different orders viz in his first order he has ordered that the land shall be disposed of afresh in open katchery whereas in his second order by allowing the appeal, he has allowed the prayer and thereby has granted the disputed land to M/s Muhammad Kamil and Liaquat Ali in equal shares. Both these orders are quite contradictory and distinct to each other. Hence the impugned order passed by the Additional Commissioner-I is a vague, non-speaking and illegal order which cannot sustain.

12. In view of above, the delay is condoned and the appeal is allowed to the extent that the impugned order dated 13.2.2001 of defunct Additional Commissioner-I Sukkur in land grant appeal No.S-1-12-RAC-97, is set aside. The rest of the prayer of the appellant that the land under dispute may be allotted/granted to him and to his brother Shahnawaz at this stage of the appeal before the Board of Revenue, is declined/refused as not tenable under the law. For the further disposal of the suit land, the case is remanded to the District Officer (Revenue) Khairpur who is the allotting authority as envisaged in condition No.4(1) of the Land Grant Policy, with the directions to hear Ali Nawaz, Muhammad Kamil and Liaquat Ali (provided they had contested the allotment in the open katchery held by the Colonization Officer Sukkur Barrage Hyderabad the time of allotment of suit land to Ali Nawaz) and re-allot the suit land to the eligible person (s) as per Land Grant Policy 1989 provided further that the suit land is free from all encumbrances and it is available for allotment. In case the allotment of land to Ali Nawaz was not made in open katchery or that the allotment of land to Ali Nawaz was not made as per Land Grant Policy 1989 or that M/s Muhammad Kamil and Liaquat Ali are ineligible/or had not contested the allotment in the open katchery, the suit land shall be put in schedule and be disposed of in open katchery strictly in accordance with the land grant policy 1989 provided that the suit land is free from all encumbrances and it is available for allotment/grant. This order shall supercede the previous order made in respect of the allotment/grant of the suit land.”

5. Perusal of the aforesaid order reflects that the Member, Board of Revenue Sindh, had passed a reasoned order and it only partly allowed the Revision of the Applicant by remanding the matter to the District Officer (Revenue), Khairpur with directions to hear both the parties and re-allot the Suit land to the person as per Land Grant Policy after fulfilment of requisite conditions. It was further directed that the land shall also be free and available for grant under the Land Grant Policy. The learned Trial Court

appreciated the said order, and while deciding issue No.1, came to the conclusion that the said order was correct in law. The relevant finding of the learned Trial Court in respect of issue No.1 is as under:

“From perusal of order dated.13.2.2001 passed by Additional Commissioner-I Sukkur Division Ex-88, it appears that he cancelled the grant in favour of defendant No.1 Ali Nawaz and direct the concerned official that land shall be dispose off afresh in accordance with and the Land Grant Policy. The appeal is admitted and allowed. The prayer of the above appeal filed by the plaintiff Muhammad Kamil and Liaquat Ali that grant in favour of respondents may be cancelled and granted to them. The order of Additional Commissioner-I Sukkur Division is on two footing i.e he admitted and allowed the appeal and second he directed that land shall be dispose off afresh accordance with the Land Grant Policy, therefore, order of Additional Commissioner-I Ex-88 is illegal, ultrawires against the law. From perusal of order dated.26.10.2004, the above order challenged by plaintiffs that it is illegal, malafide, ultrawires, void in-consisted against the law. I have gone through the order of Member Judicial Board of (Rev) Sindh dated.26.2.2004, the above order is speaking and according to law and not malafide one, he ordered that appeal is allowed to the extent that impugned order dated.13.2.2001 of the defunct Additional Commissioner-I Sukkur passed in the land appeal No. S-I-12-RAC & 97 to set aside the rest of the prayer of the appellant that the land under disputed may be allotted/granted to him and his brother Shah Nawaz at this stage of the appeal before the Board of Revenue is declined/refused as not tenable under the law. For the further disposal of the suit land the case is remanded to the District Officer (Rev) Khairpur who is the allotting authority as envisaged in condition No.4 (i) of the Land Grant Policy, with the directions to hear Ali Nawaz, Muhammad Kamil and Liaquat (provide they contested the allotment in open Katchari held by Colonization Officer Sukkur Barrage Hyderabad at the time of allotment of suit land to Ali Nawaz) and re-allot the suit land to the illegible persons as per Land Grant Policy 1989, provided further that suit land is free from all encumbrances and it is available for allotment, in case the allotment of land to Ali Nawaz was not made in open Katchari or that the allotment of land to Ali Nawaz was not made as per Land Grant Policy 1989 or that M/s Muhammad Kamil and Liaquat Ali are ineligible or had not contested the allotment in open Katchari, the suit land shall be put in schedule and be disposed off in open Katchari strictly in accordance with Land Grant Policy 1989, provided that suit land is free from all encumbrance and it is available for allotment/grant. This order shall supersede the previous order made in respect of allotment/grant of the suit land. After passing above order by Member Board of Revenue the plaintiffs failed to comply with the direction of Member Board of Revenue and failed to appear before the District Officer (Rev) Kahirpur and filed present suit without exhausting proper remedy from the Revenue authorities. It is settled principle of law that plaintiffs instituted suit without exhausting remedy available to him by way of appeal revision etc in the relevant law then suit filed by plaintiff is incompetent and not maintainable. In the present suit the plaintiffs have failed to comply with the directions/order passed by Member Board of Revenue, therefore, suit of plaintiffs is not maintainable, order dated.26.10.2001 passed by Member Board of Revenue is legal and according to law, proper. Both the parties

failed to produce proof of possession i.e Khasra Girdwari. It is settled principle of law that Khasra Girdwari is essential document to prove the possession but in the present suit, both the parties failed to produce the same. In the light of above, I decide issue No.1 as affirmative.”

6. The Appellate Court apparently has erred in coming at a different conclusion inasmuch as firstly under normal circumstances a remand order, which has granted opportunity to both the contesting parties, is not to be disturbed as it provides a fair opportunity for them to prove their case. The order of the Additional Commissioner, which has been upheld by the Appellate Court was on the face of it contradictory as it not only cancelled the grant of land of the Applicant but also held that the land be re-allotted; and at the same time also observed that the Appeal of Respondent No.1 stands allowed. This contradiction by itself was an impediment in upholding the said order, therefore, the Appellate Court appears to have erred in setting aside the order of the Trial Court. No prejudice of whatsoever nature was caused to any of the contesting parties as they had ample opportunity to appear before the competent authority and seek re-allotment of the land as per policy. In that case the trial Court was correct in arriving at the conclusion that the Suit must be dismissed.

7. In view of hereinabove facts and circumstances of this case, the Applicant has made out a case for exercising jurisdiction in this matter. Accordingly, the impugned judgment of the Appellate Court dated 24-11-2009 is set aside and the judgment of the Trial Court dated 30-10-2009 is hereby restored.

8. The Civil Revision stands **disposed of** in the above terms.

Abdul Basit

J U D G E