

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 47 of 1996**

**Photo Khan Khaskheli & others v. Choudry Jalaluddin Arain & others**

Date of hearing: **22-11-2021**

Date of decision: **22-11-2021**

Mr. Muhammad Asim Malik, Advocate for the Applicants.  
Mr. Nishad Ali, Associate of Mr. A. M. Mobeen Khan, Advocate for Private Respondents.  
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned judgment and decree dated 11-04-1996 and 17-04-1996, respectively, passed by the Additional District Judge, Sukkur in Civil Appeal No.91 of 1990, whereby the judgment and decree dated 16-07-1990 and 30-07-1990, respectively, passed by the 2<sup>nd</sup> Senior Civil Judge, Nawabshah in F.C. Suit No.247 of 1979, through which the Suit of Respondent No.1 was dismissed, has been set aside and by allowing the Appeal, the Suit has been decreed.

2. Learned Counsel for the Applicants submits that the Appellate Court was not justified in setting aside the judgment of the Trial Court, whereby the Suit was dismissed; that the Respondent being a *zamindar* had no right to claim the land; that his allotment and grant of land was in violation of the Land Grant Policy; that the orders passed by the officials of the Revenue Department, through which the allotment was cancelled, were correct in law and could not be interfered with by the Civil Court; that on this ground, the Suit was not maintainable, hence, the Appellate Court has failed to appreciate the law, and this Revision be allowed.

3. On the other hand, Respondents' Counsel has filed written submissions, and it has been stated that the orders passed by the Revenue authorities on the appeal of the applicant were hopelessly time barred as the original order was passed by the Colonization Officer, Sukkur Barrage on 16-03-1973; that the Respondent No.1 had paid all the Government dues (*malkana*) in 1973 and Form 'A' and *qaboolyat* were also issued

immediately; that the Revenue authorities had no jurisdiction to distribute the land equally between the parties; that the Applicant was never a *hari* as claimed, otherwise he ought to have been aware regarding disposal of the Suit land, therefore, the Appellate Court was fully justified in decreeing the Suit.

4. I have heard the Applicants' Counsel and perused the written arguments of Respondents' Counsel.

5. It appears that Respondent No.1 filed F.C. Suit No.247 of 1979 for declaration and possession seeking a prayer that orders passed by Respondents No.3 & 4, whereby the grant of land was cancelled, were illegal, mala fide, void and without jurisdiction with a further prayer of restoration of possession to the extent of half of the Suit land. After exchange of pleadings, the learned Trial Court dismissed the Suit of Respondent No.1 on the ground that the issue that whether the land should have been granted to Respondent No.1 or the Applicant was within the exclusive jurisdiction of the Revenue authorities and could not be interfered with by the Civil Court. The said judgment and decree was then impugned in Appeal, and the learned Appellate Court has been pleased to allow the Appeal by setting aside the judgment and decree of the Trial Court and Suit of Respondent No.1 was decreed as prayed.

6. As to the case of the Applicants is concerned, it appears that admittedly the Suit land was granted to Respondent No.1 by way of an order dated 16-03-1973, which was passed by the Colonization Officer, Sukkur Barrage and was never challenged until 1975. The challenge in fact was in the form of an Appeal before Commissioner, Sukkur, who vide order dated 25-10-1975, allowed the Appeal and the relevant finding of the Commissioner reads as under:

*“I have heard the representative of the Barrage Department as well as the Revenue tapedar of the beat and have perused the sketch. The appellant is landless hari and the respondent is a zamindar. The Bhada in dispute is unsurveyed and is about 4-13 acres of land. It is also fact that the respondent has established the Madarsa in the disputed land. Both the parties have therefore equal right over the abandoned Bhada. I therefore direct that half of the land may be granted for the use and benefit of Madarsa and half of it may be granted to the applicant on usual terms and conditions. The land should be measured properly according to their grants. The appellant may be allowed land preferably in Mohag of S.No.74 where he alleges to have been residing and has built a house.”*

7. The said order was then impugned by Respondent No.1 before Member (Relief and Settlement), Board of Revenue Sindh, Hyderabad, who vide order dated 03-06-1977 dismissed the Appeal of Respondent No.1. The order reads as under:

*“This is an appeal against the order dated 25.10.1975, passed by the learned Commissioner, Sukkur Division, whereby he upheld the appeal of the respondent and ordered that half of Bhada land preferably in Muhag of S.No.74 of deh Kanghal, taluka Naushahro Feroze may be granted to the respondent and the remaining half be granted for use and benefit of the Madersah established by the petitioner.*

2. *The facts of the case are already given in the impugned order and need not be reproduced.*

3. *Heard the parties and perused the relevant case papers. It has been held by the learned Commissioner that the disputed Bhada land is about 4-13 acres and that both the parties have equal right over the abandoned Bhada. I do not find any justification to interfere with the impugned order which is maintained and the appeal of the petitioner is hereby rejected.”*

8. The Respondent No.1, being aggrieved with both these orders, then filed Suit which was dismissed, and thereafter in Appeal, it has been decreed. As to the orders passed by the Revenue authorities including the Commissioner and Member, Board of Revenue are concerned, both have failed to assign any cogent reasons to interfere with the allotment order of Respondent No.1. The Commissioner, in his order, as to the facts of the case had admitted that there is also an issue of duplicate grant of applicants; whereas, while passing the order without any supporting material and evidence, finding was recorded. Nothing has been stated as to under what law both the parties had equal rights and as to the use and benefit of the land in question. It was also not satisfactorily arrived at as to why such a belated request / appeal of the Applicant was entertained. As to the order of the Member, Board of Revenue, it is needless to state that the said order is not in fact any order as it has not assigned any reasons and is merely relying upon the order of the Commissioner and has failed to give any independent findings. As to the finding of the Trial Court that the Suit is not maintainable, the same appears to be misconceived in the present facts and circumstances of the case, as apparently, both the orders passed by the authorities were without jurisdiction and void, therefore, the jurisdiction of the Civil Court cannot be ousted in each and every case. Enough case law is available to support such proposition. Reliance may be placed on the case reported as Mian Muhammad Latif v Province of West Pakistan (PLD

1970 SC 180) and Muhammad Jamil Asghar v The Improvement Trust (PLD 1965 SC 698).

9. The Appellate Court, after perusal of the record, has come to a just conclusion that firstly the attempt of the Applicant to get the orders of allotment upset were hopelessly time barred as the order was passed by the Colonization Officer on 16-03-1973, which ought to have been challenged within a maximum period of one year; whereas, the appeal was admittedly preferred in 1975. As to the issue that grant of Government land is the exclusive act of the Revenue officers and such dispute, if any, can only be agitated before the Revenue Courts is concerned, again the learned Appellate Court has come to a correct conclusion that when the order itself was time barred, whereas, the jurisdiction was not exercised properly and in accordance with law, then the Civil Court had the jurisdiction.

10. In view of herein above facts and circumstances of this case, no case for indulgence is made out and the impugned order is correct in law; therefore, this Civil Revision Application does not merit any consideration and is hereby **dismissed**.

Abdul Basit

J U D G E