

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 24 of 1983

Wadhno and others v. Kambir and others

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

Date of announcement: **24-12-2021**

Mr. Nishad Ali, Associate of Mr. A. M. Mobeen Khan, Advocate for the Applicants.

Nemo for the Respondents.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment dated 28-02-1977 passed by 3rd Additional District Judge, Sukkur, in Civil Appeal Nos.150 & 157 of 1970, whereby, judgment dated 31-07-1970 passed by Civil Judge, Sukkur in Civil Suit No.41 of 1969 has been maintained, through which the Suit of the Respondents No.1 & 2 was decreed against the Applicants and the official Respondents.

2. Nobody has turned up on behalf of the Respondents since long; whereas, the Applicants' Counsel has filed written arguments. I have gone through the same as well as the record including R&Ps available with the Court.

3. Perusal of the record reflects that the private Respondents / Plaintiffs filed a Civil Suit bearing No.41 of 1969 seeking a declaration and permanent injunction to the effect that the grants in favour of the Defendants No.1 to 12 / present Applicants are void, illegal and liable to be cancelled, with a further prayer that they are entitled for restoration of their fallow forfeited land. The said Suit was decreed vide judgment dated 31-07-1970 by Civil Judge, Sukkur; whereas, the Applicants as well as the official Respondents being aggrieved, filed two Appeals bearing Nos.150 & 157 of 1970, which stand dismissed vide impugned judgment dated 28-02-1977. This Civil Revision Application was initially filed at the Principal Seat at Karachi and was assigned Civil Revision No. S-63 of 1977, and thereafter, was transferred to this Bench and a new number was assigned as Civil Revision No. S-24 of 1983.

4. It appears that the case of the private Respondents was that the Suit land was owned by their forefathers and was fallow forfeited somewhere in 1918 or 1919; whereas, such land remained under bandish / restriction for further disposal up to 1944. The said restriction was then extended on 18.9.1994 and remained in field till 1963-64. It is the case of the private Respondents that they were entitled for its restoration pursuant to policy introduced by the Revenue Department, which provided that as and when the restriction is removed in respect of the fallow forfeited land, the same would be granted to the former occupants or their legal heirs, who should have the first right of refusal and if not, will be disposed of through a prescribed procedure which admittedly was not followed. Notwithstanding this, apparently, the land was granted to the present Applicants. The said grant was then challenged by way of the Suit, which was decreed, and the Appeal also failed.

5. It appears to be an admitted position as well as a matter of surprise that the present *Applicants did not examined any witness* in their support and opposed the Suit only on legal grounds. Additionally, the official respondents also failed to examine any witness while defending the Suit. Their legal grounds raised on behalf of the Applicants were (i) that the Suit was incompetent without a prior notice under Section 74 of the West Pakistan Agricultural Development Corporation Ordinance, 1961 (**‘the Ordinance’**); (ii) that the Civil Court had no jurisdiction to decide the matter; (iii) that the Suit was hit by Section 14 of the Limitation Act; (iv) that the Respondents ought to have approached the concerned officials within twenty (20) years of the forfeiture. After exchange of pleadings the learned Trial Court settled issues on these objections as follows:

- Issue No.1. Whether the suit is not maintainable according to law?*
- Issue No.2. Whether the suit is time barred?*
- Issue No.3. Did the fallow forfeited land in suit belong to the plaintiffs and if so, what is the consequence?*
- Issue No.4. Are the orders of the Defendants No:15 to 16 and 17 for the grant of the land in suit malafide, illegal and ultravires and against the policy for the disposal of the lands?*
- Issue No.5. Are the plaintiffs entitled to the relief they seek?*
- Issue No.6. What should the decree be?*

6. As to the first and foremost objection raised on behalf of the Applicants that no notice was issued under Section 74¹ of the Ordinance; hence, the Suit was incompetent is concerned, the Trial Court as well as the Appellate Court repelled the Applicants contention that the Colonization Officer and the Project Director who had allotted the land were officers of the Corporation; rather held that the disposal of the land, being situated in Guddu Barrage, was never done by any of the officers or authorities of the Corporation as provided in section 74 *ibid*; but was done under the revenue laws (Guddu Barrage Policy) and Standing Order No.10 issued by the West Pakistan Land Utilization Department; hence, there was no occasion for the Plaintiffs to first issue a notice under Section 74 of the Ordinance. It was also held that since the orders of the Director Guddu Barrage were subject to an appeal before Member, Board of Revenue, who does not hold the office under the Ordinance, therefore, the said orders impugned by the Plaintiffs were not orders of the officers of the Corporation for which a notice ought to have been issued in terms of section 74 *ibid*. It was further held by the two Courts below that even otherwise in Section 74, an exception was provided that such notice can be dispensed with in case of a Suit for injunction (which the suit in question was), and on this ground as well, this objection was held to be misconceived. I have considered these findings and they appear to be in accordance with law, and I am fully in agreement with such findings of the two Courts below and no exception can be drawn as contended on behalf of the Applicants.

7. An analogous provision is contained in section 70² of the Cooperative Societies Act, 1925, and in the case of ***Defence Housing Authority***³, the Hon'ble Supreme Court has held that Section 70 of the Act of 1925 does not apply to all suits instituted against the Society or any of its officers. It is restricted to suits in respect of any act 'touching the business

¹ No suit shall be instituted against the corporation, the chairman, any Director, any person associated with the Corporation, or any officer, adviser or servant of the Corporation, or any person acting under the direction of the Corporation or the Chairman or of any officer or servant of the Corporation in respect of an act purporting to be done under this Ordinance, until after expiry of two months next from notice in writing has been, in the case of the Corporation left at its office or place of abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff and in case the suit is filed, the plaint shall contain a statement that such notice has been so delivered..." provided that nothing in sub-section (1) shall be construed to apply to a suit wherein only relief claimed is an injunction of which the object would be defeated by giving of the notice or the postponement of the commencement of the suit or proceedings..."

² **"70. Notice necessary in suits.**---No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

³ 2015 SCMR 1799

of the society'. If, as held in some of the judgments of the High Court and canvassed by the learned counsel for the appellant, the 'business of the society' should be given an expanded meaning so as to include any business dealing by an outsider with the Society is accepted, then perhaps barely any suit filed against the society would be excluded from the application of section 70 of the Act of 1925. Same is the case in hand as the requirement of notice is only confined to action or orders impugned which are in respect of an act purporting to be done under this Ordinance. It is kind of protection to the officers of the Corporation from being sued and taken with a surprise, and while doing so, a procedure has to be followed. The orders impugned in question were neither passed by the officers of the Corporation; nor were orders in respect of an act done under the Ordinance; hence, the requirement of notice under section 74 of the Ordinance was not required.

8. As to the issue regarding bar of jurisdiction of Civil Courts is concerned, the same per settled law is not absolute, and in exceptional circumstances when the orders passed by the Revenue authorities are lacking jurisdiction or are tainted with *mala fides*, the Civil Courts can always exercise their jurisdiction. Since in this matter, admittedly, the Applicants as well as official respondents never led any evidence to substantiate that the orders, whereby the land was granted, were in accordance with law and by officers having jurisdiction in the matter; therefore, the allotment / grant of land, for which the requisite procedure was to be followed, cannot be held to be lawful and in accordance with law; nor the officers could have exercised jurisdiction in the matter without following the laid down procedure. It is a matter of record that there were certain mandatory requirements before the fallow forfeited land could be disposed of to a person other than the original owner, which admittedly were violated while granting land to the Applicants; hence, the orders passed by the authorities were without jurisdiction and were competently impugned by way of a Civil Suit before the Court. Per settled law, if an order has been passed by an authority which did not had any jurisdiction to do so; or the order was based on *mala fides*, then the jurisdiction of a Civil Court to examine such order is not ousted⁴. This objection is therefore repelled. Mian Muhammad Latif v

⁴ 1. Mian Muhammad Latif v Province of West Pakistan (PLD 1970 SC 180) 2. Muhammad Jamil Asghar v The Improvement Trust (PLD 1965 SC 698). 3. Abdul Rauf v Abdul Hamid Khan (PLD 1965 SC 671). 4. Abbasia Co-operative Bank v Hakim Rafiz Muhammad Ghuos (PLD 19970 SC 3)

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

9. As to the Suit being barred under Section 14 of the Limitation Act, it may be observed that the final order under the hierarchy was passed by the Member Board of Revenue on 30-05-1968; whereas, the Suit was filed in February 1969, which was within one (01) year from such date, and therefore, this objection also appears to be misconceived. The other argument of the Applicants that the Respondents claim for restoration of fallow forfeited land should have been made within twenty (20) years as laid down in the Rules is concerned, it is a matter of record, which has gone unrebutted, that from time to time, there were restrictions / bandish on the disposal of the land, which continued till 1944, and was again re-imposed till 1964. It is a matter of record that the Respondents approached the Deputy Commissioner, Sukkur in 1964, as apparently, the land was disposed of without following the procedure including public notice or obtaining the first right of refusal from the Respondents, and therefore, this objection also fails and cannot be sustained. Further, it is a matter of record that this plea of the Respondents was not dislodged by any evidence; either by the Applicants or the official Respondents by examination of any witnesses; hence, no exception can be drawn to these factual assertions of the Respondents, which otherwise are fully supported by the documents and material on record.

10. As to the issue that the land originally belonged to the forefathers of the private Respondents is concerned, the same has again gone unchallenged, and in fact, the Appellate order reflects that it has not been seriously challenged by the Applicants' Counsel. The land in question was owned by the grandfather of the Plaintiffs namely Dhaney Khan (Exh-104) which is a true copy of the record of rights. This has not been disputed in any manner in the evidence. In that case, the land could have only been disposed of by following the Standing Order, which required that the first right of refusal is to the former owner or his legal heirs, and if not, then it can only be disposed of by way of a public notice, so that it can come to the knowledge of everyone, including the claimants and former owners as well. It is a matter of admitted record that no such exercise was ever carried out before disposal / grant of land in favor of the present Applicants. Since in this matter, the rights of the Respondents in respect of disposal of Suit land has gone unchallenged; therefore, both the Courts below were justified in

holding that the orders passed in favour of the Applicants, whereby the Suit land was granted to them instead of the private Respondents, are correct, in accordance with law and do not require any interference by this Court in this limited jurisdiction.

11. In view of hereinabove facts and circumstances of this case, the Applicants have failed to make out any case for exercise of any discretion in this matter, whereas, neither a case for non-reading or misreading of the evidence is made out; hence, the concurrent findings of the two Courts below need not be interfered with; therefore, this Civil Revision Application does not merit any consideration and is hereby **dismissed**.

Dated: 24-12-2021

Abdul Basit

J U D G E