

ORDER SHEET  
**HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**C.P No. D- 27 of 2010**

*(Nooruddin and others vs. Federal Land Commissioner & Ors)*

***Before:-***

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Petitioners : Through M/s. Noorul Haq Qureshi  
& Saad Salman Ghani, Advocate

Respondent - 7 : Through Mr. Muhammad Arshad S.  
Pathan, Advocate

Mr. Ashfaq Nabi Qazi, Assistant  
Attorney General

Mr. Muhammad Ismail Bhutto,  
Addl.A.G.

Dates of hearing: 11.11.2021, 18.11.2021, 09.12.2021  
and 16.12.2021

Date of Judgment: 25.01.2022

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

**ADNAN-UL-KARIM MEMON, J:** Through this petition, the petitioners have prayed as under:-

- a. That, the agricultural land surrendered by respondent No.7 and resumed by Land Commission authorities, so also its grant/allotment to tenants. The status and character of said land becomes "Qabooli land" of tenants/guarantees petitioners for which any proceedings calling respondent No.7 to file Declaration Forms under both Lands Reform Act by Land Commission viz respondent No.1 to 6 for re-determination is unlawful, illegal, void and ab-initio
- b. It may also be declared that respondent No.7 has no right to put the land already granted to the guarantees on becoming Qabooli Land also not to claim the said land to be his own.

2. The case of the parties, as per their pleadings, is that the subject agricultural land i.e. 887-39 Acres was owned by the predecessor interest of respondent No.7 i.e. Molvi, Akhund Khair Muhammad father, and Mst Aminat stepmother of respondent No.7. However, after the promulgation of Martial Law Regulation 64 of 1959 and Martial Law Regulation 115 of 1972, excess land i.e. 382 Acres was resumed by the Provincial Land Commission vide order dated 17.06.1959, under MLR 115/1972 and was disposed of amongst the local haris as per existing land grant

policy by the Chief Land Commissioner Hyderabad. The learned AAG pointed out that respondent No.7 was aggrieved by and dissatisfied with the disposal of the subject land to the Harris filed Civil Suit No. 40 of 1972, which was decreed in his favor. The decree was executed by making revenue entry No.146 on 26.9.2003 in Deh Sadri, entry No. 302 on 26.9.2003, in Deh Sekhat, Entry No.329 on 26.9.2003 in Deh Arain, Entry No. 371 on 26.9.2003 in Deh Jakhri Joya, and Entry No. 199 on 26.9.2003 in Deh Bankoki in the record of rights.

3. Mr. Noorul Haq Qureshi learned Counsel for the petitioners has given a brief history of the case and submitted that the subject land had been granted to one Malook, the predecessor in interest of petitioners 1 to 4 in the year 1960 and so also other co-tenants and some of their legal heirs had sold out their respective shares to petitioners 5 to 7, therefore, the status of land changed as Qabuli land; that the suit proceedings, filed by respondent No.7 were against the Government as the private parties (Harris) who were in actual possession of the land were not impleaded as a party. This fact from record appears to be intentional although the grant of land, subsequent mutation in the names of Malook and other tenants; that respondent No.7 during his lifetime, obtained decree in his favor concealing the fact about the transfer of subject land to Harris. In law once the Land Commission transfer the assumed land, it loses its jurisdiction to interfere or pass any order in respect of the land granted to petitioners, when it became Qabooli land, further, MLR 115 override all other provisions of law and the owner defined in MLR 115 includes a person in possession of the land; that respondent No.7 claim his right on the basis of decision dated 23.3.1990 of Honorable Supreme Court, which has prospective effect but respondent No.7 is claiming the relief on the basis whereof in respect of the land granted to tenants / petitioners in the year 1959/60 which cannot be taken into consideration with retrospective effect, inspite of that respondent No.7 is claiming his ownership of agricultural land admeasuring 882-14 acres equal to 35294 P.I Units (which also includes the lands of petitioners); that the surrendered land after its allotment to other tenants becomes Qabooli land' that land Commission authorities have no jurisdiction to pass any order in respect of Qabooli land; that cause of action accrued to the petitioners when respondent concerned Mukhtiarkar without his signature under

the influence of respondent No.7 had put a Note on the khata of petitioners and refusing to issue them certified copies of khata on the pretext that respondent No.7 had directed him to do so, till submission of Form of re-determination of the subject land, resulting that Zarai Taraqiati Bank had also refused to grant them agricultural loan. Per learned counsel as per the judgment of Federal Shariat Court the respondent No.7 was/is not entitled to hold the entire land and he was required to surrender excess land as such the provincial land commissioner rightly resumed the excess land and disposed of in favor of the petitioners. He next argued that there is no doubt that certain provisions of MLR were declared as repugnant to the injunction of Islam, however, the judgment itself provides its effect as prospective and not retrospective as such the land granted to the petitioners in the year 1959 and 1960 is protected under the law; that 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). He further submitted that the entire civil proceedings undertaken at the behest of respondent No.7 are not under the law and obtained behind the back of the petitioners. He lastly prayed for allowing the instant petition. He further argued that limitation does not run against a void transaction nor does efflux of time extinguish the right of inheritance. Equally a mutation is not a proof of title and a beneficiary thereunder must prove the original transaction. In support of his contentions, learned counsel relied upon the cases of *Muhammad Iqbal v. Mukhtar Ahmad* (2008 SCMR 855), *Hakim Khan v. Nazeer Ahmad Lughmani* (1992 SCMR 1832), *Qazalbash Waqf v. Chief Land Commissioner, Punjab Lahore* [PLD 1990 SC 99], *Chief Land Commissioner, Punjab v. Chief Administrator of Auqaf, Punjab* [PLD 1998 SC 132], *Yousuf Ali v. Muhammad Aslam Zia* [PLD 1958 SC (Pak.) 104], *Muhammad Sharif v. MCB Bank Limited* [2021 SCMR 1158], *Peer Baksh v. Mst. Khanzadi* [2016 SCMR 1417], *Ghulamullah Shah v. Officer on Special Duty, Federal Land Commission* [PLD 1980 Karachi 122], *Muhammad Nawaz v. Member Judicial Board of Revenue* [2014 SCMR 914], *Mitho Khan v. Member Board of Revenue, Sindh Hyderabad* [PLD 1997 Karachi 299], *Ghulam Muhammad v. Suawal Hussain* [1990 MLD 2412], *Ilam Din v. Muhammad Din* [PLD 1964 SC 842], *Nathey Khan v. Mehr Din* [1994 MLD 1630] and *Faiz Elahi v. Amir* [1991 CLC 2005].

4. Mr. Muhammad Arshad S. Pathan learned counsel for respondent No.7 has argued that the petitioners are trying to mislead this Court and trying to get the suspension of Member Federal Land Commission (FLC) order dated 29.8.2006 after a lapse of the period of about five years; that the order of FLC dated 29.8.2006 has already been implemented, the petitioners purposely and malafidely moved the application and got the status quo order on the back of respondent No.7 without the issuance of notices, though status quo means that the position at the time of passing status quo order should remain intact and continue till the final order, but the petitioners taking undue advantage of status quo order and trying to get possession of land in question, which has already been given to respondent No.7 through bailiff under the orders of competent Court of law; that the petitioners are trying to misuse the status quo order and trying to drag the respondent No.7 in unnecessary litigation. It is further argued that respondent No.7 had acquired the land from his mother, through gift deed, as she was holding the land jointly as such the Land Commissioner, erroneously withheld the land which was gifted to respondent No.7, treated as the land of Molvi Khair Muhammad, the father of respondent No.7; that respondent No.7 filed appeal before the Chief Land Commissioner, but the same was dismissed vide order dated 29.7.1959; and, in pursuance of such orders the Deputy Land Commissioner, allotted the land to same tenants; that as respondent No.7 had not surrendered the land but same was illegally resumed as such respondent No.7, filed Civil Suit No.40/1972 before learned Senior Civil Judge, where Chief Land Commissioner and Land Commissioner were party and ultimately, the suit filed by respondent No.7 was decreed vide decree dated 23.10.1974, whereby the orders of land commission authorities were declared as void; and, of no legal consequences; that the decree passed by learned Senior Civil Judge and execution orders were challenged by the Sindh Land Commission / Land Reforms authorities before this Court through Revision Application No.199/1975 and then Constitution Petition D-957/1978 (New No.112/1986) wherein allottees / tenants including Malook son of Khair Muhammad were also party, but the Government of Sindh, Land Commission Authority as well as allottees / tenants failed to get the decree of Civil Court set aside. It is further contended that late Malook, the father of petitioners No.1 to 3 and the husband of petitioner No.4 were the party in the earlier proceedings up to the

Hon'ble Supreme Court, but he failed to establish his claim over the land in question; that the alleged agreement dated 23.9.1997, filed by the petitioners along with petition at page 37 is for Survey No.485 only and is conditional one and has lost its legal value, it is mentioned in the agreement that if Malook will not withdraw the petition for leave to appeal filed by him in the Hon'ble Supreme Court, the agreement will be deemed to be canceled; and, it is an admitted fact that the petition filed by Malook was dismissed due to non-appearance of his counsel, as such the agreement has no legal force. It is further contended that respondent No.7 is the real owner of the land in question and the right of ownership has been safeguarded under the provisions of the Constitution of the Islamic Republic of Pakistan, moreover respondent No.7 has already gifted his land including the land in question to his wife, sons, and daughters orally on 22.4.2008 and in writing on 28.6.2008. Lastly, learned counsel for respondent No.7 contended that the petition is misconceived, based upon incorrect facts, hence the same is liable to be dismissed. In support of his contentions, learned counsel has relied upon the cases of Qazalbash Waqf v. Chief Land Commissioner [PLD 1990 SC 99], Sardar Ali v. Muhammad Ali [PLD 1988 SC 287], Yousaf Ali v. Muhammad Aslam Zia [PLD 1958 SC 104] and Chief Land Commissioner v. Chief Administrator of Auqaf [PLD 1998 SC 132].

5. Mr. Muhammad Ismail Bhutto learned Additional AG Sindh has referred to the comments of Mukhtiarkar Revenue Taluka Matiari and supported the stance of respondent No.7 conceding that mutation in the name of respondent No.7 was made because of the court decree.

6. We have heard learned counsel for the parties and perused the material available on record as well as case-law cited at the bar.

7. The pivotal questions involved in the present proceedings are whether the subject land surrendered under Martial Law Regulation (MLR) 64 of 1959, which was resumed by Deputy Land Commissioner (DLC) Hyderabad vide order dated 17.6.1959, and its subsequent allotment to the petitioners became Qabuli Land? And, whether Civil Suit No.40/1972 filed by respondent No.7 was rightly decreed vide judgment and decree dated 23.10.1974, and its viries, could be called in question in Constitution Petition, in

the terms paragraph 19 and 26 of Martial Law Regulation-1972? And, whether the Chief Land Commissioner, Sindh could pass the order after the judgment of Honorable Supreme Court in the case of Qazalbash Waqf, to re-determine of holding declaration under MLR/115/72 and LR-II/77 after the surrender of the excess land by the declarant, its resumption by the government; and its subsequent allotment to the petitioners in the year 1959 and 1960?

8. To understand and evaluate the case, it is important to go through Section 10 of the MLR, 115, reproduced as under:

“10. Acquisition of Land by Government servants.– (1) No person who is or has been in the [Civil Service] of Pakistan and has at any time between January 1, 1959, and two years of his ceasing to be in [Civil Service], acquired any land or any right or interest therein, by any means whatever, either in his own name or in the name of any of his heirs or any other person, shall own or possess any land exceeding 100 acres: Provided that, subject to the other provisions of this Regulation, any such person may, in addition to 100 acres of land, own or possess any land which has devolved on him by inheritance or any other land, not exceeding the area of the land so inherited, which has been acquired by him, in lieu of the land so inherited, whether by exchange or sale, either in his own name or in the name of any other person.

Explanation.– For the purposes of this sub-paragraph and clause (d) of sub-paragraph (1) of paragraph 12, “civil service of Pakistan” means any civil service, post or office in connection with the affairs of the Federation or a Province, and includes a service as a Judge of the Supreme Court or a High Court Comptroller and Auditor-General, Chief Election Commissioner and Chairman or Member of the Federal or a Provincial Public Service Commission, but does not include service, as President, Governor, Minister of State, or as a Speaker, Deputy Speaker or other Member of the National or a Provincial Assembly.]

(2) Where any person to whom the provisions of sub-paragraph (1) apply] has, within the period specified therein, transferred in favour of any of his heirs or has acquired in the name of any of them any land, and such land continues to be owned or possessed by his heirs, he shall for the purposes of that sub-paragraph be deemed to be the owner of such land.

(3) Nothing in this paragraph shall apply to a person who is serving or has retired as member of [the Military, Naval, or Air Forces] of Pakistan.”

9. To go ahead with the aforesaid propositions, and reach the correct conclusion of the case, we would like to have, first, a glance over the factual aspect of the case. Petitioners claim that respondent No.7 (Akhund Ghulam Muhammad, since deceased, now through legal heirs) being the owner of agricultural lands situated in different Dehs of Taluka Hala had surrendered 382 acres, under Martial Law Regulation (MLR) 64 of 1959, which was later on resumed by Deputy Land Commissioner (DLC) Hyderabad vide order dated 17.6.1959. Subsequently out of the above-resumed land, lands out of Survey No. 482(7-36 acres), 444 (7-9 acres) & 487/B (0-16 acres) of Deh Sekhat were allotted to one

Malook son of Khair Muhammad Mahar, father of petitioners 1 to 3; and, husband of petitioner No.4. It is averred by the petitioners that; 09-29 acres from Survey Nos.130/128-29 were granted to Bago son of Noor Muhammad Dakhnoo; and, on his death, the said land was inherited by his three sons, who through registered sale deed dated 08.9.1994 sold out the land to petitioner No.5; 10-03 acres from Survey No.230/128-29 were granted to Mir Muhammad and on his death his legal heirs namely Noor Muhammad Soomar, Mst. Mithan, Eisso, inherited the same, out of which Noor Muhammad sold his 30 paisa share, being 03-01 acres and Eisso sold his 09 paisa share being 02-37 acres to petitioner No.6; that Haji Siddique son of Noor Muhammad was also granted 10-00 acres land from Survey No.230/128-29 of Deh Sekhat; and, on his death, his land was inherited by his legal heirs, out of whom Ahmed son of Achar sold his share 10-00 acres to petitioner No.7 on 29.9.1990, the same stood mutated in the name of petitioner No.7 in the revenue record; that thereafter the petitioners since they are in physical cultivation possession of the said lands. As per record respondent, No.7 filed F.C. Suit No.40 of 1972 before the learned Senior Civil Court which was decreed vide judgment and decree dated 30.08.1974. An excerpt of the aforesaid judgment and decree is reproduced as under: -

*“The suit coming up for final hearing on 30th August 1974 before Mr. Tehseen Ahmed Bhatti, Second Senior Civil Judge, Hyderabad in presence of Mr. Fazal Hussain Advocate for plaintiff and in absence of the defendants (Ex-parte) its ordered by judgment that the suit of plaintiff is decreed as prayed with costs.”*

10. We have gone through the pleadings of respondent No. 7 in his F.C. Suit No.40 of 1972, in which he simply sought possession of the subject land and not the declaration of his title, which remained undecided after the promulgation of MLR- 1972. An excerpt of the pleadings of the suit is as under.

*“1. That the agricultural land measuring 887-39 acres situated in Deh Sadri, Deh Jakbari Joyo, Deh Sekhat, Deh Arain, and Deh Bhanoki Tulka Hala District Hyderabad more fully described in the schedule as under was originally the joint property in equal shares of Mst: Aminat W/o Moulvi Khair Mohd, the stepmother of the plaintiff and Moulvi Khair Mohd the father of the plaintiff along with the about 9814.37 acres of other lands.*

*2. That the said Mst. Aminat was the first wife of Moulvi Khair Mohd but as she bore no children to him, he married as the second time with her consent and out of which marriage the plaintiff and his brother Ghulam Ahmed were born.*

*3. That the real mother of Plaintiff expired when he was about 11 years old and the Plaintiff was therefore reared and brought up*

by Mst. Aminat, she also maintained the plaintiff and his family out of her separate income.

4. That in November 1957, the said Mst: Aminat made an oral gift of her entire property consisting of urban property and agricultural land and transferred the possession of the same to the plaintiff, however record of rights continued to remain in her name and no mutation was effected in the name of the plaintiff.

5. That Mst: Aminat expired on 15.12.1957. After her death also owing to his young age the plaintiff did not the mutations effected in the revenue record.

6. That after the death of Mst: Aminat, the plaintiff asked his father Moulvi Khair Mohd to partition the land and separate his share but the latter avoided to do so and eventually refused to partition the land. The plaintiff there upon filed a suit for declaration and partition of the jointly held agricultural land against Moulvi Khair Mohd on 3-2-1959 vide suit No.78 of 1959 in the Court of Sub-Civil Judge Hyderabad.

7. That however the land Reforms Regulation was promulgated and came into force on 07-2-1959. The suit filed by the Plaintiff was decreed on 9-3-1959 after a reference to Arbitration through Court. Under the terms of this decree the plaintiff was declared exclusive Owner of the suit land. Subsequently in execution of the decree the revenue record was mutated in the name of the plaintiff in regard to the suit land.

8. That in compliance with the provisions of the Land Reforms Regulation and the directions of West Pakistan Land Commissioner the plaintiff and Moulvi Khair Mohd filed their separate declarations of their holdings before the Deputy Land Commissioner Hyderabad. The Plaintiff included the suit land as his property in his declarations and Moulvi Khair Mohd did not include the same in his declaration: Taking into consideration the facts that the plaintiff was already owing the suit land as his holding, Moulvi Khair Mohd in exercise of his option under paragraph 9(f) of the West Pakistan Land Reforms Regulation gifted about 450 acres from out of his holding to his other son Ghulam Ahmed exhausting his entire permissible ceiling for gifts.

9. That it appears that after allowing the maximum benefit of permissible retention in his own name and towards gifts to his said son, the Deputy Commissioner Hyderabad ordered the resumption of the excess land to the extent of about 1094 acres from Moulvi Khair Mohd.

10. That in respect of the declarations filed by the plaintiff the Deputy Land Commissioner Hyderabad by his order dated 13-6-1959 allowed the plaintiff to provisionally retain further directed that the Civil Court Decree be scrutinized and report sent to the Land Commissioner Hyderabad. At the same time the Deputy Land Commissioner directed the plaintiff to make a separate application for confirmation of so called alienation although no such application was competent in law.

11. That the matter come up for decision before Land Commissioner Hyderabad on 02-7-1959 who by order of the same date purported to scrutinize the decree of the Civil Court treating it as an alienation and gave a finding the decree as collusive transaction solely on the presumptive inference based on the fact that parties were related as father and son. He directed land in question be considered to be part of the land of Moulvi Khair Mohd and treated as such.

12. That the plaintiff filed an appeal against the said order of Land Commissioner to the Chief Land Commissioner who disposed it off by his order dated 29-7-1959. The Chief Land Commissioner rejected the appeal of the plaintiff on the ground that the decree was obtained by the consent of the plaintiff's father.



13. That thereafter the plaintiff is not aware of the further proceedings taken in pursuance of the aforesaid order of Chief Land Commissioner or whether any order of the resumption of the suit land was passed by any such proceedings or order was served upon the plaintiff. However the plaintiff is certain that his father Moulvi Khair Mohd was never offered an option to amend his declaration or made suitable changes in his choice with regard to gift in the light of the aforesaid orders treating the suit land as part of his holding. It is submitted that if such a choice had been offered to Moulvi Khair Mohd he would not have deprived the plaintiff of the benefit of his right of gift leaving his other son to retain the entire permissible gift holding.

14. That the plaintiff's father expired on 21-1-1960 and during all this time ever since the gift in favour of the plaintiff be continued to remain in possession enjoyment of the said suit land, previously jointly with his father and after the decree exclusively.

15. That the plaintiff was deprived of the possession by the officers of defendant No.1 after the Rabi crop of 1960 in about May of the year. The land is at present being treated as vested in the provincial Government.

16. That it appears that land is being cultivated by the haris under conditional grants which are so far not final and the government retains the alleged ownership and possession through the said haris.

17. That the orders passed by the Deputy Land Commissioner Hyderabad (Annexure "B") and Chief Land Commissioner West Pakistan (Annexure "C") are void without lawful authority and of no consequence in all for the following reasons:-

(i) In that the said officers had no jurisdiction or power withdrawal to examine the validity of the Court decree.

(ii) In that the said orders are arbitrary and are not based on sound or rational, judicial or other principles.

(iii) In that no enquiry was directed by any of the said officers towards examination of the factum of gift made Mst. Amina in favour of the plaintiff but the same was confined to merely the genuineness of the proceedings of the suit and decree.

(iv) In that finding of the Land Commissioner Hyderabad and Chief Commissioner West Pakistan to the affect that the decree was consent decree was based on no evidence.

(v) In that the land reforms regulation did not have retrospective operation so as to nullity the effect of decree in a suit instituted prior to the enforcement thereof.

(vi) In that the Land Commissioner and Chief Land Commissioner did not apply their own minds to the questions arising in the matter and did not exercise their judgment thereto but merely acted according to the instructions of the Land Commissioner which did not applicable to the facts of the case insofar as the decree in question was not passed on the basis of compromise or consent.

(vii) In that the provisions of paragraph 7 of the Land Reforms Regulation were not attracted to the present case at all insofar as the plaintiff did not acquire any right by transfer in the suit land from Moulvi Khair Muhammad.

(viii) In that Moulvi Khair Muhammad was not given any opportunity to revise his option of land in his own name and with regard to gift after the passing of the impugned orders.

*(ix) In that no proceedings were taken and no orders of resumption passed with regard to the suit land,.*

*(x) In that the area comprised in the suit lands was under litigation at the date of promulgation of suit and could not therefore be resumed finally.*

18. *That for the reasons submitted above, the said three orders having been passed without lawful authority or jurisdiction are nullity in law and are not binding on the plaintiff. According to the plaintiff's title to the suit land is unaffected by the said orders and defendant No.1 has no right to continue in possession thereof.*

19. *That on 11.1.1966 the plaintiff was served with a notice by Mukhtiarkar and Assistant Land Commissioner Hala demanding an amount of Rs.3965/- lease money for the suit land for the year 1959/60, and thereby once again invaded upon the rights of the plaintiff.*

20. *That the plaintiff applied to the defendant calling upon them to restore possession of the suit land to him but so far they have not complied. Hence this suit.*

21. *That the possession is at present with defendant No.1 defendant No.2 has been impleaded as the impugned orders were passed by defendant No.3 and 4 purportedly an exercise of delegated authority of West Pakistan Land Commissioner of which defendant No.2 is the successor by operation of law defendants No.3 and 4 are impleaded as they persist to treat the impugned orders as valid and lawful and are interested in giving continuous effect to them.*

22. *That the plaintiff prays for judgment and decree of possession directing defendant No.1 to put the plaintiff in possession of the suit lands."*

11. From the foregoing narration of facts, the circumstances of the case, this Court has to consider whether the petitioners predecessors in interest were in occupation of the subject land as the tenant. No doubt first right in respect of the land comprising tenancy of a tenant was conferred under sub-para (3)(d) of para 25 of the MLR 115, but the above-stated clause prescribes three attributes of tenant; firstly, that he shall hold land; that he shall hold it under another person/landlord, and thirdly, that he is liable to pay rent for the use and occupation of it to such a person. All these three attributes concur to creating the legal relationship between landlord and tenant. Looking from this angle, it can safely be said that petitioners have established by unimpeachable evidence that they were in possession of the suit land at the time of aforesaid grant. The record reflects that the tenancy of petitioners has not been declared a nullity by the competent court of law and/or under the hierarchy of Revenue and Rehabilitation Authorities. In this view of the matter, the petitioners have acquired the right title in their favor of the subject land. Besides that private respondent, No.7 did not seek relief against the petitioners in the suit proceedings, therefore the suit was confined to the extent of possession, and respondent No.7 failed to clear his

title of the subject land on merits on the purported plea of gift, moreover, the suit ought to have been dismissed being barred under paragraph 19 and 26 of the Land Reforms Regulation, 1972 which, explicitly provide that the decision of Government shall not be called in question before any Court, including the Honorable Supreme Court and this Court, on any ground whatsoever, as such, prima-facie the decision of learned trial Court was erroneous, thus, the suit was not maintainable before the learned Civil Court.

12. The decision of the Hon'ble Supreme Court in the case of Qazalbash Waqf v. Chief Land Commissioner reported in PLD 1990 SC 99 is clear in its terms and needs no further discussion. An excerpt of the decision of the Hon'ble Supreme Court is reproduced 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 20 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(1) of the Land Reforms Regulation in so far as it does not give sanctity to the grounds of ejection 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 interregnum.

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. ....”

13. While dealing with 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.”

14. Reliance is further placed on the case of Shah Jehan Khan Abbasi v. Deputy Land Commissioner reported in 2006 SCMR 771. Relevant para 4 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 12 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.”

15. As per record, the tenants/haris were not a party in the proceedings, *prima-facie* the respondent No.7 in paragraph 21 of his pleadings just mentioned the factum of orders passed by the land commission on the premise that the hierarchy of land

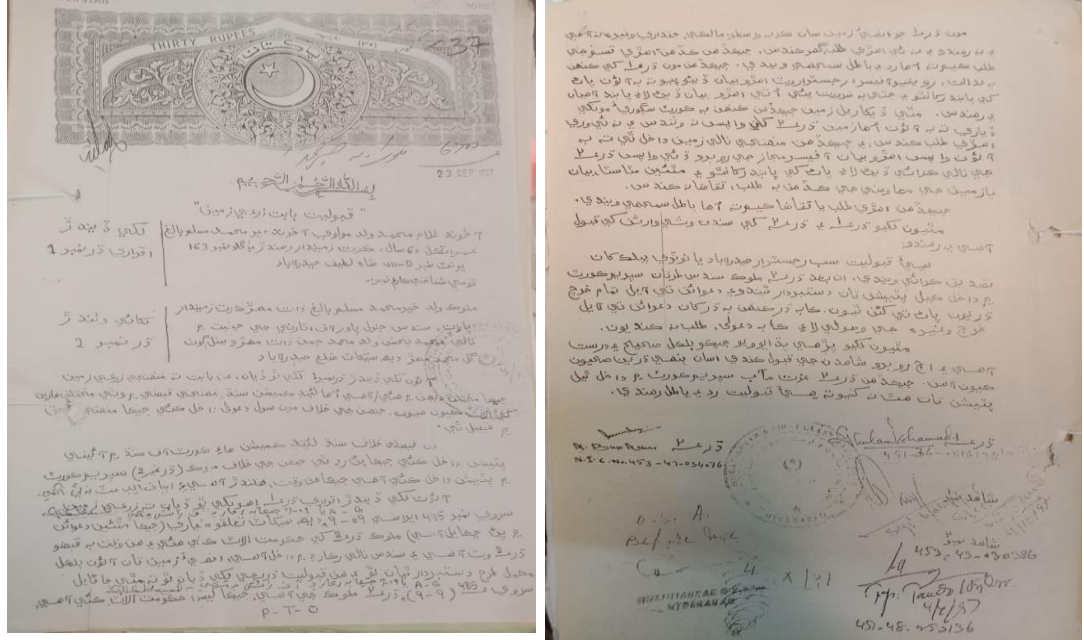
commission was treating the aforesaid orders as valid orders. Prima-facie, Land Reforms Authorities had already completed the resumption proceedings before 23-3-1990., thus the decision of land grant authority, at the relevant point in time, on the subject land was final and ought not to have been called in question under paragraphs 19 and 26 of the Land Reforms Regulation, 1972 which, explicitly provide that the decision of the Government shall not be called in question before any court, including the Honorable Supreme Court and this Court, on any ground whatsoever, as such, the last decision of Federal Land Commission in the year 2003 as discussed supra was/is not under the law, thus, liable to be reversed.

16. We have thoroughly gone through the judgment and decree passed by the learned trial Court in the year 1972, but are unable to find any findings against the orders passed by the land commissions as discussed supra, the learned trial Court just allowed the relief in the suit as prayed, whereas in the prayer clause plaintiff only sought possession of the suit lands, thus it could be presumed that the decision of learned Civil Court was ex-parte against the predecessor in interest of petitioners, and has no binding effect on the petitioners, however, the Government of Sindh being aggrieved by and dissatisfied with the aforesaid judgment and decree, preferred Constitutional Petitions No.957 of 1978 (Karachi) and 112 of 1980 (Hyderabad) before this Court and the same were dismissed vide order dated 03.4.1996. An excerpt whereof is reproduced as under:-

*"In this case the orders passed by Sr. Civil Judge are being questioned in Constitutional Petition although such orders are appealable and revisable by District Court and by High Court under the provisions of Civil Procedure Code. The Civil Procedure Code provides adequate remedy against such orders. The petitioners have been knocking the wrong door. They did not choose appropriate remedies provided by law but invoked Constitutional Jurisdiction of this Court. Article 199 specifies that order can be made when there is no other remedy to aggrieved party. This being the position, it will not be possible to allow the prayer as requested in the petition. Sufficient time was allowed to petitioner to support their petition with some legal arguments but this was not done as the matter is more-than 17 years old and the result will again be the same if it is allowed to prolong. The petition is therefore, dismissed as misconceived."*

17. In the intervening period, the intervener in the aforesaid petition namely Malook, who was not made a party in the above Constitutional Petition, being aggrieved by and dissatisfied with the order dated 03.4.1996 passed by this Court in the aforesaid proceedings, filed Civil Petition for Leave to Appeal No.414-K of

1996 before the Honorable Supreme Court, however, he chosen to remain absent in Honorable Supreme Court on the premise that respondent No.7 agreed not to disturb his possession of the subject land vide agreement dated 23.09.1997. An excerpt of the agreement along with its true translation is reproduced as under: -



English Translation of Above Agreement

**Agreement in respect of Agriculture Land**

23 SEP 1997

**Party No.1**

Akhund Ghulam Muhammad son of Molvi Ahund Meer Muhammad, muslim adult, aged about 60 years by profession landlord, resident of Banglow No.163, Unit No.VII-D, Shah Latif Hyderabad

CNIC No.

**Party No.2**

Malook son of Khair Muhammad, muslim adult, by caste Mahar by profession landlord as a General Attorney of Muhammad Bux son of Juman by caste Mahar resident of Village Gul Muhammad Mahar, Deh Seekhat District Hyderabad

*I the executant Party No.1 do hereby execute that I have/had an agricultural land located in different Dehs, that land was resumed by the land Commission of Sindh and took the same in their possession, after that said land was allotted to the different Haris/Farmers for said land I had filed Civil Suit and the decision whereof came in my favour.*

*Against such decision, Sindh Land Commission filed the Constitutional Petition in the High Court of Sindh which was also rejected, against whereof Malook (Party No.2) has filed Constitutional Petition before the Hon'ble Supreme Court which is pending at present and has not yet been admitted.*

*I the executant Party No.1 do hereby execute and give in writing that Agriculture Land bearing Survey No.485 admeasuring to 9-09 A-G or 7-09 which is available in the record of rights (sd/-),*

*deh Sekhat Taluka Matiari (which is also mentioned in the aforesaid claims). Malook (Party No.2) was allotted by the Government and at present the possession whereof lies with Party No.2 and is registered in his name in the record also. I relinquish from the said land in all respect and through this agreement do hereby execute that abovementioned Survey bearing No.485 (A 9-9G) or (A 7-9G) which is also mentioned in the record of rights (sd/-) the said land has been allotted to him by the Government. I Party No.1 has no concern with the ownership or any right etc over this land and neither shall remain, nor I shall demand or claim. In case I claim the same shall be deemed to be cancelled and incorrect. If I the Party No.1 will the required to appear before Hon'ble Court, Revenue Officer or with the Registrar in that case I bound myself and wherever I will be required, I am and shall remain bound to give such statement. In case if any Hon'ble Court awarded such land to me then in that case I shall not take back (possession) of the said land from Party No.2, nor I shall make such claim and in case such land is allotted to me then in that case I shall get registered the same land to Party No.2 by giving such statement before competent authority and bound myself for the same and I shall not demand /claim for compensation of the said land in respect of mutation/execution.*

*In case I made such demand or claim, same will be deemed false. Whatever executed by Party No.1 and Party No.2 is acceptable and shall remain acceptable to their legal heirs.*

*This agreement shall be got verified from Sub-Registrar Hyderabad or Notary Public, thereafter Party No.2 (Malook) shall withdraw his petition filed by him in the Supreme Court and all expenses incurred on such claims shall be borne by both the parties. No any party shall claim for receiving expenses etc on such claim/demand against each other.*

*Whatever executed above has been read over which is true and correct and today before witnesses we both parties have executed and signed thereon. In case party No.2 will not lay of his hand from the petitions filed before the Hon'ble Supreme, then this agreement shall be deemed to be rejected and false.*

Sd/-  
Party No.1  
CNIC No.451-36-081613

Sd/-  
Party No.2  
CNIC No.453-47-034076

Witness No.1  
Sd/-

D.S.A before me Sd/-4.10.97  
Mukhtiarkar Hyderabad

Sd/- 4.10.97  
Witness No.2  
453-43-030386

Sd/-4.10.97  
Tapedar Tando Hyder  
451-48-25036

18. As per learned counsel for the petitioners that due to the above settlement by and between the parties, petitioner-Malook remained absent, and his CPLA No.414-K of 1996 was dismissed by the Hon'ble Supreme Court vide order dated 27.10.1997 with the following observation:-

*"The learned counsel for the petitioner as well as learned AOR are absent. The petition is also barred by 188 days. The petition is dismissed."*

19. In the intervening period, Land Commission Authorities vide order dated 27.10.2003 declared the entire area as holding of respondent No.7, directing respondent No.7 to file declarations under MLR-115/72 and Act-II/77. Respondent No.7 being aggrieved by and dissatisfied with the aforesaid orders, filed Constitutional Petition No.D-24/2004 before this Court, which was disposed of as not pressed vide order dated 23.2.2006. An excerpt of the order is reproduced as under: -

*"After arguing this petition, the consensus has developed that the controversy raised in instant petition could be resolved by Federal Land Commission. According to the Learned counsel for the petitioner, it is to be determined, invariably in all cases declaration forms for re-determination of the liability under Land Reform/M.L.R.115 of 1972 could be called when the power in para-7 and 8 are not available to the authorities concerned. Under the circumstances, this petition is allowed to be withdrawn alongwith all pending applications to enable the petitioner to urge all such questions before the Federal Land Commission. The Federal Land Commission is further directed to decide the controversy preferably within a period of three months from the date of submission of such appeal/representation. The petitioner shall approach the Federal Land Commission within fifteen days. Disposed of."*

20. Learned Federal Land Commission to resolve the controversy between the parties, passed the following order in a Revision petition filed by the respondent No.7:-

*"4. I have heard the learned counsel for the petitioner at length and perused the relevant record. I have also gone through all the series of previous orders and studied the law and authorities of the Superior Courts.*

*5. Examination of the case establishes that it has two parts. Firstly, the land resumed and allotted under Land Reforms Regulation of 1959 (MLR-64) and secondly, resumption of excess of land above than the ceiling of the petitioner under MLR-115 and Act-II of 1977. Regarding the first point of the case, the Sindh Land Commissioner, Hyderabad, has accepted the decree in favour of the petitioner in the light of judgment passed by the High Court in C.P. No.112/1986 in favour of the petitioner, wherein a decree of civil court was maintained by the Honorable High Court. As such the entire area was declared as holding of the petitioner prior to promulgation of MLR-64 and declared being below the prescribed ceiling by the DLC in his orders dated 15.7.2003 and 23.9.2003 and confirmed by CLC in his order dated 27.10.2003. Resultantly, the land belonging to the petitioner was incorrectly and illegally resumed from the khata of the petitioner and was wrongly allotted to the tenants. However, it is not a case before the FLC as this issue has been finalized by the Sindh Land Commission. As regards the second issue wherein the questions relate to the effect of the judgment of the Supreme Court in its judgment passed by Shariat Appellate Bench in Qazalbash Waqt case reported in PLD 1990 SC 99 whether the existing ceiling of land as laid down in the Land Reforms Laws (MLR-115 and Act-II of 1977) apply to present case even after the decision of Supreme Court declaring the provisions of law as repugnant to the injunctions of Islam. It has been stated in paragraph 6 of the order of the Court that the decision shall take effect on 23.3.1990, whereupon the provisions repugnant to the injunctions of Islam will cease to have effect. At*



page 103 of the judgment the learned Judge Mr. Justice Muhammad Afzal Zullah observed as follows:

*"However, I am of the view that the decision of this Court shall affect those cases in which any decisive step has been or is now taken in the ordinary normal course at any stage of the proceedings, in the implementation of the provisions which would cease to have effect as a result of the Court order, prior to the date to be fixed therein. See mutatis mutandis application, the case of Sardar Ali and others v. Muhammad Ali and others (PLD 1988 Supreme Court 287)."*

6. *In the present case whether any "decisive step" have been taken at any stage under MLR-115 and Act-II of 1977? The answer is that no step had been taken either by the declarant or by the land reforms neither authorities nor any proceedings were pending before any land reforms authority. Furthermore the opinion of the learned Judge had taken the view that the excess land, if any, did not vest automatically in the government on the promulgation/enactment of the said Regulation/Act and some step had to be taken by the owner or by the land reforms authorities under the Land Reforms Laws before 23.3.1990, which admittedly had not been taken in the present case. This view point is supported by another judgment of Supreme Court reported as PLD 1998 SC-132. Since the relevant paras of the Regulation and the Act were declared repugnant to the injunctions of Islam and were directed to cease to have effect from 23.9.1990, accordingly in terms of Article 203-D clause (3) (b) read with Article 203 F(2) of the Constitution of Pakistan, 1973, the stricken provisions of the law have lost their sanctity and the same has become un-functional, inoperative and of no legal effect. Thus, the directions issued by the learned CLC, Sindh for filing declaration forms for determination of holding of the petitioner under both the Land Reforms Law and notices issued by the DLC for the same purposes at this stage are without jurisdiction.*

7. *In view of the facts and the clear law position as laid down in the quoted judgments of the honorable Supreme Court of Pakistan, I have no option but to accept the revision petition. The result, therefore, is that the impugned dated 27.10.2003 of CLC and order dated 23.9.2003 of DLC to the extent of directions to file declarations under MLR-115/72 and Act-II/77 are set aside.*

8. *The arguments were heard and order was reserved on last date of hearing for studying the record and quoted authorities of the Superior Courts. The parties be informed directly as well as through the DLC, Hyderabad."*

21. Coming on the legal aspect of the case, primarily under the Martial Law Regulation 115 of 1972, a limit was prescribed on landholdings; and, the land above the permissible limit was required to be surrendered to the State. Further land reforms were introduced through the Land Reforms Act II of 1977, which further reduced the upper permissible limit of landholdings. Both under MLR 115 as well as Land Reforms Act, 1977, "persons" owning or possessing land beyond permissible limits were required to submit declarations giving details of their holdings and excess land, i.e. over and above the permissible limits was to vest in the Government. In principle, it reduced the ceiling to 100 acres of irrigated land; it allowed compensation to the landowners (in the form of bonds) and it made provision for distribution of the

resumed land among landless tenants and small landowners without charge or payment.

22. In the light of the above, a land-owner could own 150 acres of irrigated land; and, 300 acres of unirrigated land or any area equal to 15, 000 P.I. Units as the maximum holding; and, excess of this maximum limit could be resumed by the Government, without compensation to the owners; and, its subsequent distribution to tenants and small owners without charge, just to bring about a more equitable distribution of wealth by carrying out further land reforms. Even clause (1) of Article 253 of the Constitution of the Islamic Republic of Pakistan provides that Parliament may by law restrict the maximum limits as to property or any class thereof which may be owned, held, possessed, or controlled by any person. Article 269 of the Constitution declares inter alia all Martial Law Regulations to have been validly made by the competent authority and shall not be called in question in any Court on any ground whatsoever.

23. Primarily, under MLR 115 the land above the permissible limit vested' in the Government under para. 13 of the Regulation which reads as follows:-

*"13. Vesting in Government of excess land;-*

*(1) Land in excess of the area permissible for retention under Part III shall vest absolutely in Government. Free from any encumbrance or charge and without payment of any compensation.*

*(2) Any encumbrance or charge existing on land surrounded by a person, which vests in Government under sub-paragraph (1), shall be deemed to have been transferred to the land retained by such person under Part III.*

*(3) Where any person is in possession of, or is holding, land in excess of the area permissible for retention under Part III, so much of such excess land as in his possession as a lessee or mortgagee or is held by him as the landlord of an occupancy tenant or a Muqarraridar or as an Ala Malik shall not vest in Government but shall, subject to the other provisions of this Regulation, revert to the lessor, mortgagor, occupancy tenant, Muqarraridar or Adna Malik, as the case may be, and shall be deemed to have so reverted at the commencement of this regulation. "*

24. Section 9 of the Land Reforms Act, 1977 reads as follows:-

*"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 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 the standing crops are removed or the 30th day of June next following, whichever is earlier.*

(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.

(5) Any land surrendered by a person, which was held by him as the landlord of an occupancy tenant or a Muqarraridar or as an Adna Malik shall not vest in Government but shall, subject to other provisions of this Act, vest in the occupancy tenant Muqarraridar or Adna Malik, as the case may be free from any encumbrance exchange."

25. In subsection (2) of Section 9 of the Act 1977, reference has been made to subsection (5) of Section 9 which is also reproduced here:-

"(5) Where any person fails to make a declaration under this section, an officer of the district concerned, who is authorized by a Commission in this behalf, shall, of his own motion or otherwise, and after calling for such information and recording such evidence as he may deem necessary, determine the land owned or possessed by such person in excess to his entitlement under this Act and make an order to this effect."

26. It is well settled now that under the provisions of Land Reforms laws about filing declarations, determination of the excess land, resumption proceedings, etc. are all self-executory provisions and failure to file any declaration under the Land Reforms laws and take any action required to be taken by the declarant and the Land Reforms Authorities did not affect the vesting of the excess lands beyond the permissible limits in the Government on the promulgation/enactment of Land Reforms laws. As pointed out in the judgment of Qazalbash Waqf supra, the declaration given therein was/is to take effect on 23.3.1990, and such provisions of the Regulation which were self-executory were not to be in any manner affected thereby. However, the aforesaid decision shall not affect those cases in which any decisive step has been or was/is taken in the ordinary normal course at any stage of the proceedings, in implementation of the provisions which would cease to have effect as a result of the Court order, before the date to be fixed therein. On the aforesaid proposition, reliance is placed in the cases of Chairman, Federal Land Commission v. Akhtar Abbas (PLD 1989 SC 550), Chief Land Commissioner, Punjab v. Ch. Atta Muhammad Bajwa (1991 SCMR 736), Hakim Khan v.

Government of Pakistan (PLD 1992 SC 595 ), and Kaneez Fatima v. Wali Muhammad (PLD 1993 SC 901). The Honorable Supreme Court in the case of Chief Land Commissioner, Punjab v. Chief Administrator of Auqaf, Punjab [PLD 1998 SC 132], has held as under:-

*"In the facts and circumstances of these cases, the excess land, if any, of the Waqf did not, automatically, vest in the Government on the promulgation/enactment of the Land Reforms Regulation 1972/Land Reforms Act, 1977 and, after 23-3-1990, the date fixed by the Qazalbash Waqf judgment, fresh action could not be initiated by the Land Reforms Authorities against the waqf. These Civil Appeals Nos.23, 24, and 25 of 1995 are, therefore, dismissed but with no orders as to costs*

27. We have thoroughly examined the record produced by the parties with the assistance of learned advocates.

28. In the first place the decree of the suit ex-facie does not create the right in favor of respondent No.7 to dislodge the private respondents, who were haris of the subject land and were granted the land under the land reforms law. These private persons remained in possession of the subject property since the day they were granted land under the land reform policy and were never impleaded parties in the suit, which suit was confined to the prayer of possession. The right of haris has neither been challenged, nor the competence of land reforms authorities granted the resumed land to the haris, has been called in question. These issues have a far-reaching effect on the case at hand.

29. It is well-settled that once land reforms authority has exercised to grant the resumed land to haris, which power has never been challenged, the subsequent proceedings on such an issue is insignificant.

30. Prima facie, respondent No.7 in his lifetime failed to prove the factum of gift purportedly made in his favor by his father and stepmother when he was allegedly minor, however, he posed himself to have attained the majority and filed the suit for possession of the subject property and was well aware of the fact that the haris had already been in possession of the suit property in 1959-60.

31. Record does not reflect that respondent No.7 succeeded in getting the declaration of his title on the subject property from the competent Court of law. Merely filing suit for possession does not entitle respondent No.7 to be declared owner of the resumed land

which was subsequently allotted to the petitioners under the law. Besides that, the contents of the agreement dated 23.9.1997 has not been specifically denied by respondent No.7 in his pleadings even there is no declaration against the petitioners by the competent Court of law, besides that the land commission authorities cannot order in favor of respondent No.7 under the land reforms law.

32. In view of the above facts and circumstances of the case, we hold that the petitioners are entitled to hold the subject land under the land reforms law and subsequent proceedings, adversely affecting their rights, will not come in their way.

33. This petition for the aforesaid reasons is allowed in the above terms.

**JUDGE**

**JUDGE**

Nadir