IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No. S – 122 of 2010

(Chatto & others v. Government of Sindh and others)

Date of hearing & Decision : **25-04-2022**

Mr. Soomar Das R. Parmani, Advocate for the Applicants
Mr. Mehboob Ali Wassan, Assistant Advocate General
Nemo for the Private Respondents

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned judgment dated 13.5.2010 passed by 3rd Additional District Judge, Mirpur Mathelo, in Civil Appeal No. 26 of 2003, whereby, the Appeal has been dismissed and Judgment dated 28.2.2003 passed by Senior Civil Judge, Ubauro in F.C Suit No.54/1998, through which the Suit of the Applicants was dismissed, has been maintained.

2. Learned Counsel for the Applicants has contended that both Courts below have erred in law and facts in dismissing the Suit of the Applicants; that the Applicants had lawful rights for allotment of the land in question as haris; that the land of private Respondents was cancelled and thereafter was illegally restored by the Chief Minister for which he had no lawful justification and jurisdiction; that this aspect of the matter has been overlooked by the Courts below, hence this Civil Revision merits consideration. In support he has relied upon the cases of *Akbar Hussain v. Wadero Muhammad Tayyeb (P L D 1995 Karachi 452); Sindh People's Welfare Trust v. Government of Sindh (2005 C L C Karachi 713); Dr. Zahir Ansari vs. Karachi Development Authority (P L D 2000 Kaachi 168); Abdul Haque Indhar v. Province of Sindh (2000 S C M R 907); Iqbal Hussain v. Province of Sindh (2008 S C M R 105); American International School System v. Mian Muhammad Ramzan (2015 S C M R 1449) and unreported Order dated 28-11-2000 passed by this Court in C.P No.D-177/2000.*

3. Insofar as the private Respondents are concerned, despite being served, but nobody had turned up on their behalf, therefore, the matter has been heard with the assistance of learned AAG Sindh, who has supported the judgments of the Courts below.

4. I have heard the learned Counsel for the Applicants and learned AAG Sindh and perused the record.

5. It appears that the Applicants filed a Suit for declaration and injunction and sough the following prayers;-

(a) To declare that the defendant No.2 acted illegally, against the law, and order for Restoration of Re-grant is illegal and null and void abinitio.

(b) To declare that the plaintiffs are haris of the suit land and no eligible grant of the suit land on Harap Right on P.T.

(c) To grant permanent injunction restraining the defendants, from interfering with the peaceful, cultivating possession and enjoyment of land produce and may not be ejected with due process of law and restraining the Defendant No.3 from changing the nature of the suit.

(d) To award the costs of the suit.

(e) Any other relief as deems fit under the circumstances of the case.

6. The learned Trial Court settled various issues and after evidence came to the conclusion that the Applicants had no right to claim the relief as prayed and the Suit was dismissed. In Appeal the same has been maintained through the impugned judgment.

7. The Applicants precise case as pleaded is to the effect that the suit land was to be allotted to them on Harap basis with permanent tenure. The said claim was based on the premise that initially the entire suit land of 110-29 Acres was allotted in auction to one Ahsanul Haq in 1966-1967 who had paid 1/4th of the entire auction amount; but had thereafter defaulted. It is further case of the Applicants that out of the said land an area of 32-38 Acres was granted to various persons on Harap condition on permanent tenure basis on 13-01-1978 and 14-01-1978, whereas, after such allotment out of the suit land the remaining area of 77-31 acres of the land was available with Guddu Barrage Authorities. It is their case that the balance available land was then re-granted to Ahsanul Haq pursuant to

some autographic orders of the Chief Minister, which according to the Applicants could not have been done, and therefore, it became their right to claim the said land. Admittedly, the entire case of the Applicants is based merely on such claim on the basis of which the Applicants have filed a Suit seeking declaration not only for its allotment; but so also against the re-grant or allotment to Ahsanul Haq. It is also a matter of fact that the said land was thereafter sold / allotted to various other persons which is also an admitted position as per evidence of the Applicant in the following terms;-

> "It is correct to suggest that Jam Bhambhoo son of Maqbool Ahmed, had purchased the suit land measuring 95 acres. It is correct to suggest that Jam Bhambhoo Khan son of Jam Maqbool Ahmed is not party in the suit. It is correct to suggest that entry No.270, dated 23-07-1998, was kept on the basis of registered sale deed bearing registered No.927, dated 21-04-1998. It is correct to suggest that I have not challenged the said registered sale deed in the present suit. It is correct to suggest that our ancestors not challenge the grant of Ahsanul Haq in respect of suit land before any competent forum. It is correct to suggest that we also did not challenged the allotment order of Ahsanul Haq. It is correct to suggest that we also did not prefer any appeal before revenue forum against allotment of suit land or re-allotment in favour of Ahsanul Haq."

8. From the perusal of the aforesaid evidence of plaintiff Chatto, it appears that despite being in knowledge that at the time of filing of the Suit, the land had already been sold to someone else, the said person was not joined as a party. He further admits that a registered sale deed was executed in favour of such person, but he had never challenged the same. He has further admitted that his ancestors never challenged the grant of Ahsanul Haq before any competent forum nor did they prefer any departmental appeals against the allotment or re-grant of the land to Ahsanul Haq. In these peculiar facts of the case, the argument of the Applicants' Counsel that the order of the Chief Minister was invalid or illegal, does not require any interference by this Court as apparently these proceedings have come before this Court from a Suit under Section 42 of the Specific Relief Act, and apparently the Suit was by itself misconceived and not maintainable as the Applicants were never entitled to seek declaration.

9. Admittedly, the Applicants were not holding any title on the suit property and it was only an anticipated claim in the form of an application for allotment which was pending and on the basis of which a declaratory suit was filed. According to Section 42 of the Specific Relief Act, only that person can maintain a suit for declaration who is entitled to any legal character or to any right as to any property. This means that the character or the right which the plaintiff claims and which is denied or threatened by the other side must exist at the time of the suit and should not be the character or right that is to come into existence at some future time[1]. This was in effect a suit for a declaration, not with respect to an existing right, but with respect to some possible anticipated right which even otherwise was never granted in the entire period in question. Per settled law a Suit on such right cannot be entertained in terms of section 42 of the Specific Relief Act, 1877, as at the time of filing of the Suit, the Applicant was not holding any title to seek the relief as prayed for. In fact, what the Applicants wanted was to obtain an affirmative declaration that they may have a right to claim or own the property upon grant of their pending application and till such time the said right is granted, their lien on the suit property remains, whereas, the land cannot even be granted to anyone else. In other words, they had asked for a declaration not of an existing right; but of chance or possibility of acquiring a right in the future. The character or right within the contemplation of s.42 ibid, which the Applicant / Plaintiff asserts or claims, and which is allegedly being denied by the other side must exist at the time of filing of the Suit for such a declaration and should not be the character or right that is to come into existence at some later stage. It is also a settled law that no declaration of an abstract right can be granted; howsoever, practical it may be to do so. The Courts after coming to a definitive conclusion that the land in question was never owned by the Applicant, were fully justified to refuse exercise of any discretion in the matter, as it is not a matter of absolute right to obtain a declaratory decree; rather it is a discretionary relief and was rightly refused in the given facts of the case in hand. This power of granting a discretionary relief should be exercised with care, caution and circumspection. Such power ought not to be exercised where the relief claimed would be unlawful. The Courts have always been slow and reluctant in granting such relief(s) of declaration as to future or reversionary rights.

[1] AIR 1944 Lahore 110 Ahmad Yar Khan Vs.Haji Khan and Ors

10. In view of hereinabove facts and circumstances of this case, it appears that the Courts below have arrived at a just and fair conclusion in accordance with law and on the basis of the evidence so led by the Applicants, whereas, neither a case of misreading or non-reading of the evidence has been made out. Moreover, there are concurrent findings of facts against the Applicants, for which no justifiable case has been made out for interference. Therefore, this Civil Revision Application does not merit any consideration; hence, was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

Judge

ARBROHI