

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 194 of 2010

Lal Bux (deceased) through his legal heirs v. Govt. of Sindh and others

Date of hearing: **16-05-2022**

Date of decision: **16-05-2022**

Mr. Ghulam Murtaza Korai, Advocates for the Applicant.
Mr. Abdul Mujeeb Shaikh, Advocate for Respondents No.5(a) to (d).
Mr. Noor Hassan Malik, Assistant Advocate General Sindh.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 28-06-2010 passed by 1st Additional District Judge, Ghotki in Civil Appeal No.88 of 2000, whereby, while dismissing the Appeal, the judgment and decree dated 30-06-2000 passed by Senior Civil Judge, Ubauro in two consolidated Suits No.24 of 1995 (Old No.49 of 1986) and No.26 of 1986 has been maintained, through which both the Suits were dismissed.

2. Heard learned Counsel for the parties as well as learned AAG and perused the record.

3. It appears that the Applicant had filed a Suit bearing No.49 of 1986 for declaration and permanent injunction and sought the following relief(s):

- a) *Declaration that orders dated 25.11.1979 and 17.3.1985 passed by the defendant No:3 and order dated 16.3.1980 passed by defendant No:2 to allow the suit land to defendant No:1 without contest and without application for grant of the suit land in kachery and the order dated 9.12.1985 passed by the learned defendant No:4 to remand the case to the defendant No:2 for fresh disposal in open kachery again are illegal, ultravires, null and void and the plaintiff contested in the kachery, granted him suit land and he obtained ijazatnama is only entitled to grant of the suit land.*
- b) *Grant Permanent Injunction restraining the defendant No:2 from fresh disposal of the suit land again in open kachery and the defendant No:1 from interference into the possession of the suit land.*
- c) *Award costs of the suit to the plaintiff.*
- d) *Any other relief which this Hon'ble Court deems fit and proper under the circumstances of the case.*

4. Similarly, the private Respondent also filed his Suit again for declaration and permanent injunction. However, for the present purposes after dismissal of his Suit he has not sought any further relief; therefore, this Civil Revision Application is only confined to the Suit of the present Applicants.

5. From perusal of the record, it appears that there was a dispute between the Applicant and private Respondent in respect of grant of Suit land, and the Respondent No.5 approached the Additional Commissioner, Sukkur challenging the grant of the land to the present Applicant, and on 25-11-1979, the following order was passed by the Additional Commissioner:

“I have heard the advocates for (torn) .. Perused the revenue as well as barrage record, During the course of arguments and on my enquiry from the representative of the Barrage Department he stated before me that the respondent is holding more than 16.00 acres of land and he is not hari by profession and he is well to do person. I have also seen the impugned order which clearly shows that publicity was not made. In view of the above facts and in the larger interest of justice I remand the case back to the C.O he should reexamine the case and dispose of the land between the parties in accordance with land grant policy.

Announced in open Court.”

6. Thereafter, another order was passed on 16-03-1980 by the Colonization Officer, Gudu Barrage, Sukkur pursuant to the above order and the same reads as under:

“S.No. 460 area 1-34 acres of deh Kamushaheed Taluka Ubauro was subject of dispute between Ghulam Hyder (appellant) and Lal Bux (respondent) before the Additional Commissioner, Sukkur Division, Sukkur who vide his order dated 25.11.1979 has remanded the case with the observations that the Colonization Officer, Gudu Barrage, Sukkur should re-examine the entitlement etc of the parties and dispose of the disputed land in accordance with the land grant policy.

Consequent thereupon the parties were called and heard on 16-3-1980, and Barrage record perused. The Counsel for the appellant Ghulam Hyder produced the extract of Khasra Girdawari duly signed by the Mukhtiarkar Ubauro indicating the holding of the respondent Lal Bux more than 16-00 acres. As such he is not entitled to get more land in view of the Policy in vogue.

Accordingly the disputed S.No. 460/1-34 acres of deh Kamushaheed taluka Ubauro is therefore allowed to the appellant Ghulam Hyder s/o Muhammad Arbi Dakhan.

Informed the parties.”

7. This order was then appealed before the Additional Commissioner, Sukkur who vide his order dated 17-03-1985 dismissed the Appeal in the following terms:

“4. I have heard the parties as well as their advocates. Gone through the impugned order and so also perused the record. Also heard the Tapedars. The appellant admitted in the Court that he is holding land in two dehs Guhram Chachar and Kamoon Shaheed. Therefore he is not entitled to get land in two dehs. The respondent is hari and resident of deh. The land has rightly been granted in open kachery. I maintain the order of the lower Court. The appeal is rejected.”

8. Lastly, a Revision Petition was filed by the present Applicant against the above order and the Member Board of Revenue while dismissing the Revision Petition vide his order dated 09-12-1985 has been pleased to hold as under:

“5. I have considered the case. The Additional Commissioner remanded the case to the Colonization Officer for deciding the case afresh on merits since the respondent did not contest in kachery, the grant of land to him by the Colonization Officer on remand is against para 6(4) of the land grant policy which contemplate that haris should be granted land in open kachery. As regards petitioner there are concurrent findings that the petitioner hold more than 16-00 acres of land. Munshi Fateh Muhammad Tapedar Revenue after referring the record stated that an area of 48-00 acres of land is on the khata of deceased father of the petitioner. Further more the petitioner has been granted S.Nos.669 and 670 area 8-00 acres of deh Kamoon Shahid and S.No.429 area of 3-39 in deh Gohram Chachar as such the petitioner is also not eligible for the grant of the land.

For the foregoing reasons, I cancel the grant of the respondent and direct that the disputed land should be disposed of afresh in open kachery in accordance with the provisions of the existing land grant policy.

Announced.”

9. The Applicant, being aggrieved by the above orders, preferred a Suit for declaration and injunction challenging the validity of these orders which was dismissed by the Trial Court, and in Appeal as well, the Applicant has been unsuccessful. The Applicants' Counsel was confronted as to how and in what manner in this Civil Revision Application any indulgence could be granted against concurrent findings of fact not only by the two Courts below, but so also by at least four authorities in the Revenue hierarchy, and to this, he has argued that these orders are against the Land Grant Policy inasmuch as there is no restriction for grant of the land if some land is already available in Applicants father's name; secondly, he has also argued that even there is no restriction for grant of land if there is already a land in other Dehs in the name of the Applicant, and lastly, he conceded that the

Applicant is willing to return one of the land in the Dehs and the present land be allotted to him.

10. All these submissions made by the Applicants' Counsel are not tenable inasmuch as the grant of land is not a matter of right for which a declaratory Suit could be filed. It is a matter of policy and vests discretion in the Revenue authorities while granting the land or otherwise. The remedy as provided in law has already been availed, and therefore, both the Courts below including this Court are not required to sit over such discretionary exercise of powers by the revenue authorities, which otherwise appear to be in accordance with law; coupled with the fact that the entire case of the Applicant is dependent on ascertainment of true facts which have been found to be against the Applicant; hence no interference is warranted in this Revisional jurisdiction. Notwithstanding this, the land in question must not be available anymore as the last order was passed in 1985 by directing the disposal of land afresh in open katchery in accordance with the existing land grant policy.

11. In view of hereinabove facts and circumstances of this case, no case for indulgence is made out, and therefore, by means of a short order in the earlier part of the day, this Civil Revision Application was **dismissed** with pending application and these are the reasons thereof.

Abdul Basit

J U D G E