

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision Application No. S- 78 of 2004

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For Katcha Peshi.
2. For hearing of CMA 428-2004.

Mr. Jamshed Ahmed Faiz, Assistant Attorney General for Applicants.
Mr. Manoj Kumar Tejwani Advocate for Respondents.

Date of hearing: 29-05-2017

J U D G M E N T

MUHAMMAD SHAFI SIDDIQUI J., This civil revision application apparently shows that it is filed by four applicants i.e. Federation of Pakistan through Secretary, Ministry of Religious and Minority Affairs, ii) The Evacuee Trust Property Board through its Chairman, iii) The Administrator, Evacuee Trust Properties and iv) Assistant Administrator, Evacuee Trust Properties. This civil revision application is signed by Advocate Abdul Razak Bhutto Advocate only on behalf of applicants, but surprisingly there is neither any memo of appearance on record nor any Vakalatnama or any authority extended to counsel on behalf of all these four applicants. It has been further pointed out that same was the position before the appellate court when civil appeal No. 08 of 2002 was filed and was signed by only an Advocate claimed to have been appearing for all the appellants therein. The appellants therein are the same as in this revision. Mr. Jamshed Ahmed Faiz, Assistant Attorney General has conceded to this extent that there is no such memo of appearance, Vakalatnama or any other

authority in this regard, presented to this court or to appellate court. This could have been a curtains for the applicants, however, considering the nature of case, I proceeded to discuss the merits of the case as well.

2. The respondents filed suit for declaration and permanent injunction bearing suit No. 165 of 1995 with the following prayer:

“a) To declare that the suit land is the personal and private property of the plaintiff and as such is not liable to be treated, declared or called ‘Trust or Evacuee Trust property’ and the order of defendant No.3 contained in Gazette Notification dated 7.1.1979 and any other action taken or intended to be taken by the defendants No.3 and 4 for treating the suit land as Trust or Evacuee Trust Property, attached to charitable, religious or Educational Trusts or institutions and/or acquiring, assuming or taking over the same for any such purpose is arbitrary, unilateral, illegal, ultra vires, in excess of jurisdiction and lawful authority and mala fide hence null and void and not binding on the rights of the plaintiff over the suit property.

b). To restrain the defendants particularly the defendant No.4 by way of permanent injunction from holding auction for leasing out the suit land on 23.12.1986 or thereafter at any time, as intended by him and from invading the rights of the plaintiff over the suit land and from interfering in any manner with its possession and enjoyment over the suit land personally or through their agents, subordinates, servants and any man claiming through or under them.

c). To award costs of the suit to the plaintiff and

d). To grant any other relief as deemed fit and necessary under the circumstances of the case”.

3. After service, applicants No.2,3&4 filed their written statement and the matter proceeded on merit. Respondents recorded evidence of their witnesses, namely, Mansha Ram and Naranjan Lal and produced certain documents as exhibits, but surprisingly no counsel either cross-examined witnesses of the respondents nor they led their evidence through own witnesses, consequently on consideration of the evidence and documents produced, suit of the respondents was decreed. Aggrieved of the judgment and decree, it is claimed that appeal was preferred by four applicants, however, appeal too was dismissed.

4. I have heard learned counsels and perused the relevant record.

5. The prime consideration for the trial court as well as appellate court was that i) whether suit property was Evacuee Trust Property or Evacuee Property? and ii) As to whether plaintiffs are the owners of the subject-land?. The judgment and decree of the trial court was passed on 12.08.1997 and the appeal was preferred belatedly after four years. Apart from the fact that there is no iota of evidence to consider the contentions of applicants, appeal itself was barred by time. In the judgment of the trial court, evidence of two witnesses led by the respondents was considered in line of documents such as Form-VII-B issued by Mukhtiarkar, Certificate dated 12.12.1986 showing agricultural land situated in Deh Raharki at Exh.77, true copy of order of custodian passed on 10.06.1974 at Exh. 78, Dhal receipts in several numbers with copy of Takrari Register, issued on 17.11.1958, copy of form VII at Exh.86 and other copy of Form VII issued on 28.09.1974 and several Dhall receipts alongwith Form Golf showing

appeal and Bastagi of the year 1972-73, were considered. Although appeal was belatedly barred by time, yet appellate court considered all such points for consideration as well as considered evidence available on record and upheld the judgment of the trial court and there is no ambiguity, error so far as judgment of the trial court or appellate court is concerned. It could have been very conveniently dismissed on the ground of limitation, yet appellate court deemed it appropriate to consider the merit of the case as well.

6. I am now confront with another point which relates to the jurisdiction of trial court which is the only ground that could upset the judgment. In the case of **EVACUEE TRUST PROPERTY and others v. MUHAMMAD RAMZAN and others (2000 M L D 100)**, Court has held as under:-

“15. Reverting to the question of bar of jurisdiction contained in section 14 of Act XIII of 1975, a civil Court is debarred from having jurisdiction in respect of any matter which the Federal Government or any Officer appointed under the said Act is empowered to determine thereby Mr. Soomro has referred to the exclusive jurisdiction enjoyed by the chairman, Evacuee Trust Property Board under section 8 of Act XIII of 1975. Such power, again, is referable to a dispute if an evacuee property is attached to a charitable, religious, educational trust or otherwise. The provisions of Act XIII of 1975 do not create an authority in any of the functionaries thereunder to determine if a non-evacuee property is to be treated as an evacuee trust property. Consequently, the notification dated 7-1-1979 was out side the scope of Act XIII of 1975 in relation to the subject property and was, therefore, unauthorised and without jurisdiction; and, an act without

jurisdiction can always be checked by a civil Court and the finding to that effect recorded in the lower appellate judgment does not call for any interference”.

In case of **Begum Syeda AZRA MASOOD v. Begum NOSHABA moeen and others (2007 S C M R 914)**, the Hon’ble Supreme Court held as under:

“8.....The law is clearly settled that an ouster clause in any statute will only apply when the authorities constituted therein act within the four corners of the statute and if they step out of it, the protection available to the orders passed by a Tribunal of special jurisdiction is no more available and Court of plenary jurisdiction could examine the controversy”.

In the case of **GUL SHAH v. Hafiz GHULAM MUHAMMAD and others (2009 S C M R 1058)**, the Hon’ble Supreme Court held as under:

“8. Admittedly, under section 14 of Act XIII, 1975 the jurisdiction of Civil Court is ousted/barred, out that jurisdiction is barred in ordinary cases and when mala fide and malice is attributed to the official respondents, then the Civil Courts are the Courts of ultimate jurisdiction and, they can decide the matter in accordance with law. In the instant case, the malice/mala fide against the official respondents is clearly reflected as P.T.O. was granted to the respondent in the year 1960 and right from year 1960 uptill 1994, there was no wrong with the respondent but when he enhanced the rent of the present petitioners being his tenants, then the present petitioners with the connivance of the official respondents took up the matter again and cancelled the P.T.O. and dragged the respondent to prolong litigation. The respondents have been allotted the suit property as back as from 1960 and

they incurred huge expenses on the construction of the property and then it let out to the present petitioners. The department slept over the matter for 34 long years and then suddenly came out of slumber in the year 1994, when the petitioners agitated the matter with the respondents regarding the status of the property. So, in such-like circumstances, if there is clear cut mala fide and malice apparent on the face of record, the jurisdiction of the Civil Court cannot be ousted”.

7. Civil court is a court of ultimate jurisdiction and is always competent to examine whether the orders brought before it for judicial scrutiny are in accordance with legal framework and do not suffer from mala fides. The paramount rule, is to keep in mind while scrutinizing the ouster clause of any Act wherein the jurisdiction of civil court has been barred, is that if the order passed under an Act is within the competence and jurisdiction of a person who has passed the order, then certainly the debarring clause is available and that order passed by such person or authority cannot be challenged in the civil court, and if the order passed by a person or authority, is without jurisdiction or beyond the authority conferred through an Act upon the person or authority, then the civil court certainly has jurisdiction to scrutinize the decision rendered.

8. So far as the evidence that has come on record that could lead to one presumption that applicants have failed to establish their case, whereas, respondents by examining witnesses and by producing relevant documents have established their case to the satisfaction of the two courts below. In case of **FEDERAL GOVERNMENT OF PAKISTAN v. KHURSHEED**

ZAMAN KHAN and others (1999 S C M R 1007), the Hon'ble Supreme

Court has held as under:-

“12. In the judgment, dated 24-10-1992 (C.As. 172 and 173 of 1994), the High Court did not take any decision on merits and held the order, dated 6-8-1978 passed by the Federal Government as without lawful authority and of no legal effect on the ground that the revision petition before the Federal Government was not maintainable. We have already held that the High Court was not correct in taking the aforesaid view. In this situation normally the case would have been remanded to the High Court for decision on merits but we find that the litigation has been pending for several decades and even the writ petition before the High Court was filed over 20 years ago and, in the circumstances, we have decided to dispose of these two appeals on merits. We had heard arguments on merits also in great detail.

In the Jamabandis, the property, subject-matter of these appeals, was throughout shown to be owned by individuals. It is not, a case where the properties were mutated in the name of a trust or charitable institution. The owners had perhaps used such property or parts thereof for some charitable purpose but such use by itself could not make the property a trust property. In the circumstances, the Chairman of the Evacuee Trust Property Board by his order, dated 28-7-1976 rightly held that the property was not trust property. However, in revision, the Federal Government by order, dated 6-8-1978 upset the order of the Chairman. From the order in revision, reproduced hereinabove, it is apparent that no weight at all was given there to the fact that, till Partition, the property, according to the records, was shown to be owned by individuals. In the

circumstances, in the absence of any evidence that the owners had dedicated the property for charity, no ground was made out for setting aside the order of the Chairman. In the circumstances, the order of the Federal Government could not be sustained”.

9. In the absence of any evidence, written statement of applicants cannot be considered as an alternate. This is a revisional court and not the appellate court. The jurisdiction of this court as such is confined to the extent:

- a) where the trial court exercised its jurisdiction not vested in it by law,
- b). failed to exercise a jurisdiction so vested,
- c). acted in the exercise of the jurisdiction illegally or with material irregularity.

The exercise of revisional jurisdiction is limited only to the correction of the errors of jurisdiction committed by the courts below or if they are based on mis-reading or non-reading of evidence which is not the case here. Where courts below had applied their mind to the factual and legal aspect of the case and had given cogent reasons in support of the conclusion arrived at by them and no material mis-reading or non-reading of evidence was pointed out, interference in revisional jurisdiction has always been declined.

10. I do not see any substantial ground available within the frame and parameters of section 115 CPC to interfere in the concurrent findings of the two courts below. He has neither been able to point out which part of the evidence was overlooked nor he was able to point out any wrong

assumption of jurisdiction either by trial court or appellate court to cause interference.

11. Hence, these are the reasons for dismissing this civil revision application by a short order dated 29.05.2017.

JUDGE

Ahmad