

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-2238 of 2012

[Prof. Dr. Syed Hasanuddin Ahmed & Ors versus Federation of Pakistan & Ors]

**Before:**

**Mr. Justice Muhammad Iqbal Kalhoro**

**Mr. Justice Muhammad Saleem Jessar**

Petitioners : Through Mr. Hakim Ali Siddique advocate.  
Interveners : Through Mr. Irfan Ahmed Qureshi advocate.  
Respondents: Through Mr. Ghulam Abbas Sangi Asstt: Attorney General  
and Mr. Allah Bachayo Soomro, Additional A.G Sindh

Date of hearing : 26.10.2022.

Date of Decision : 14.12.2022.

## O R D E R

**MUHAMMAD IQBAL KALHORO, J.** This petition is filed against observations, reproduced below, made in Minutes of Meeting of Provincial Verification Committee, item No.19, held on 24.02.2011 under the Chairmanship of Member (Judicial-V) Board of Revenue Lahore, Punjab, overcasting / invalidating, essentially, claim of Mst. Kulsoom predecessor-in-interest of petitioners over the land admeasuring 01.00 acre in .S No.291 situated in Deh Nareja Taluka & District Hyderabad.

2. Briefly stated, Mst. Kulsoom Bibi had migrated from India to Pakistan leaving behind agricultural land at Allahabad (UP) India. Accordingly, she filed a claim and was granted/allotted a verified claim for 125 Units through UR-I, and MR-V Certificate was issued for 1825 Produce Units (PU) by Central Record Office, Fareed Kot House, Lahore, Pakistan. It has been stated that total area of S. No.291 situated in Deh Nareja Taluka & District Hyderabad was 02-20 acres, out of which Ms. Kulsoom Bibi was allotted 01-00 acre (**subject land**) in satisfaction of her claim through Khatooni No.28 dated 14.03.1960 while remaining area of 01-20 acre was allotted to other Claimants. But vide order dated 25.07.1975, the Deputy Commissioner Hyderabad canceled the allotment in favor of Mst. Kulsoom Bibi on the ground that MR-V Certificate was not found in the file. By that time, Mst. Kulsoom Bibi had already expired, and

hence her real brother Syed Zafaruddin, Ahmed, being her legal heir, challenged the said order through C.P No.D-41/1988, which was allowed vide judgment dated 28.07.1993 in the terms whereby the matter was remanded to Deputy Commissioner, Hyderabad / Additional Settlement Commissioner Land, Hyderabad for reconsideration after hearing all the parties; however, meanwhile said Zafaruddin also expired leaving behind present petitioners as his legal heirs. In any case, the matter remained pending with Deputy Commissioner, Hyderabad for want of a reply to letters written to Central Record Office, Lahore seeking confirmation of MR-V Certificate. Finally, the petitioners filed a C.P No.D-521/2010 praying for directions to respondents to decide the matter on available record. In the pendency of that petition, the court directed to depute some responsible officials from the office of respondents to be sent to Central Record Office, Lahore for reexamining the record and reconfirming the position. In compliance, the City Mukhtiarkar (Revenue) Hyderabad and In Charge Evacuee Property Branch Hyderabad were sent to Lahore. They submitted the report confirming availability of MR-V Certificate and other documents with Central Record Office. But, along with the report, they also submitted minutes of meeting (impugned here) of the Verification Committee Punjab, suspecting veracity and genuines of the claim of Mst. Kulsoom Bibi and stating that complete record of the claim of Mst. Kulsoom Bibi was not traceable. C.P No.D-521/2010 was finally disposed of on 13.11.2012 leaving the petitioners at liberty to approach Deputy Commissioner for mutation, and the Deputy Commissioner to decide the same strictly in accordance with law. Impugned observations are reproduced herein below for reference:

**“Complete record of Claim in respect of Kalsoom Bibi could not be traced out. However, the Claim File and MR-V Register have been produced. The record was thoroughly scrutinized. A perusal of the record shows that the signatures affixed on the Register MR-V and on the Entitlement Certificate differ with each other. Both these signatures do not tally at all. The Chair has observed that many over writings exist in the Claim File. In the wake of scrutiny of the record and lengthy deliberation, Provincial Verification Committee has reached to the conclusion that it by no means is a fit case for the genuineness of the Claim. Based upon record and merits, this Committee is inclined to turn down the veracity and genuineness of the claim in question.**

3. Mr. Hakim Ali Siddique learned counsel for petitioners argued that the impugned observations are made by respondents without jurisdiction; that no case whatsoever was pending in respect of verified claim of Mst. Kulsoom before them, which had attained finality and become a past and closed transaction; that respondents 2 to 7, who are Officers of Revenue

Department, Government of Punjab, had no judicial power under any law including Evacuee Property Laws, to re-verify or reopen finalized and verified claim of Mst. Kulsoom Bibi; that predecessor-in-interest of petitioners was allotted land and Khatooni was issued on 14.03.1960 thereafter rehabilitation fees was paid and mutation order was issued; that in view of order dated 13.11.2012 passed in C.P No.D-521 of 2010 the respondents were only required to confirm availability of MR-V Register and they were not allowed to examine the record, as such the respondents have overstepped directions of this Court contained in the above said order; that respondents had no jurisdiction or authority to conduct inquiry/re-determine genuineness of claim of Mst. Kulsoom Bibi, which already stood verified and confirmed way back in 1960; therefore, the impugned observations are without jurisdiction, illegal, void *ab initio*, and nullity in the eyes of law and the same are liable to be set aside by this Court. He has relied upon Notification No.817/61 Martial Law Regulation, (2) Evacuee Property and Displaced Persons Laws (repeal) Act, 1975, cases reported as 2006 SCMR 562, 1985 SCMR 758 and 2010 CLC 1810.

4. Mr. Irfan Ahmed Qureshi learned counsel for the intervener, on the other hand, argued that late Mst. Kulsoom Bibi after acquiring the subject land had appointed one Syed Moinuddin S/o Jamrad Khan as her Attorney, who had sold out the subject land to one Bashir Ahmed through registered Sale Deed bearing No.2402 dated 03.10.1979, and he subsequently sold out the same to M/s Blue Man Limited, a subsidiary Company of intervener M/s. Fateh Industries Limited, Site Area Hyderabad; that said Bashir Ahmed kept M/s Blue Man Limited in dark and did not disclose about cancellation of subject land in favour of Mst. Kulsoom; and that brother of Mst. Kulsoom, after cancellation, had applied for cash compensation; that official respondents in CP. No.D-41/1988 had admitted that the subject land had been canceled in favour of Mst. Kulsoom and file had been sent to Settlement Commissioner Karachi for cash compensation; that on 14.07.1981 ADC-I Hyderabad canceled all the entries in Record of Rights in favor of Mst. Kulsoom as well as entries kept in respect of subsequent transactions; and thereafter M/s Blue Man Limited applied for grant of subject land, as it is situated within the premises of intervener/M/s. Fateh Industries; that meanwhile brother of Mst. Kulsoom challenged order dated 25.07.1975 before this Court, but did not deliberately implead M/s Blue Man Limited as party, though it was subsequent purchaser and in possession of the land; that this Court vide order 28.07.1993 declared the order dated 25.07.1975 as illegal and set aside the same; however, after about 15 years attorney of present petitioners got the case re-opened by filing C.P No. D-521/2010 in which reports called from quarters concerned clearly showed that subject land was/is in possession of intervener M/s Fateh

Industries; that the intervener filed an application to become party on the ground that the subject land was now government land and it had already applied for allocation of the same; that petitioners had no right and interest in the subject property, which is situated within buildings of intervener and intervener has already applied for allocation of the same in accordance with law. He prayed for joining the intervener as party and at the same time dismissal of the petition.

5. Learned Assistant Attorney General as well as learned Additional A.G Sindh stated that the Provincial Verification Committee was constituted under the Chairmanship of Member (Judicial-V) Board of Revenue Punjab to verify veracity and genuineness of claims of various claimants and vide minutes of meeting dated 24.02.2011 the said Committee did not endorse veracity and genuineness of claim of predecessor-in-interest of petitioners, as such the petitioners have no right at all in respect of subject property. As far as the order dated 13.11.2012 passed in C.P No.D-521/2010 is concerned, both Law Officers submitted that the directions contained in the said order were for mutation to be done in accordance with law; however, since the claim based on which mutation was to be made has not been verified by the Competent Committee; the question of mutation does not arise at all. They further added that even otherwise grievance of petitioners, if any, involves disputed questions of facts, which cannot be decided by this Court in its constitutional jurisdiction.

6. We have heard learned counsel for the parties and perused the record and gone through the law cited at bar. Insofar as the contention that the claim of Mst. Kulsoom Bibi is a past and closed transaction, has attained finality, not to be reopened and decided by the Deputy Commissioner by way of order dated 25.07.1975 cancelling such allotment in her favour, is concerned. It is neither factually nor is legally correct. This court in its order dated 28.07.1993 in CP No.D-41/1988 has dedicated an entire paragraph to replying this question and has held otherwise, which is reproduced herein below for ease of reference.

**“The question arises as to whether the Deputy Commissioner was competent on 25.7.1975 (viz after 1.7.1974) to pass the impugned order as Additional Settlement Commissioner (Land). Admittedly on said date Displaced Persons (Land Settlement) Act, 1958 of section 10 and 11 were invoked for passing the impugned order, was not in existence having been repealed on 1.7.1974 by Ordinance No: XV of 1974. Despite repeal of said ordinance, its provisions could be invoked in respect of all the proceedings which, immediately before such repeal may be pending before the authorities appointed thereunder, as per sub-section (2) of section 2 of the Ordinance XV of 1974 and as per subsection (2) of section 2 of the Act XIV of 1975. The impugned order does not show as to**

since when proceedings regarding cancellation of allotment of land in question were pending before the Deputy Commissioner, who was exercising powers of Additional Settlement Commissioner (Land). But the impugned order shows that the Deputy Commissioner Hyderabad took the proceedings for cancellation of allotment on receiving an application dated 12.5.1974 of Haji and others, who had approached the Chief Minister of Sindh, Karachi for cancellation of allotment order in respect of S. Nos: 10,18,19,20,442,291 and 294 of deh Nareja taluka Hyderabad City and for being given said land on "Harap" rights. Under the same order, the Deputy Commissioner also dealt with case of Jurial Khan who had moved an application before the Revenue Minister, Government of Sindh by stating that he had purchased 3-29 acres of land out of S.No.10 of deh Nareja from one Syed Hyder Mahdi and the remaining area of S. No.10 and others of deh Nareja may be given to him. In any case the application for cancellation of allotment was moved by Haji and others much before 1.7.1974 and hence the matter about cancellation of the allotment, shall be deemed to pending, for the purpose of Sub-section (2) of section 2 of the Evacuee Property & Displaced Persons Laws (Repeal) Act 1975. With presentation of the application for cancellation of allotments the machinery of law was put in motion, because such application was given to none else than Chief Executive of the province, from whom the Deputy Commissioner and Addl: Settlement Commissioner (Land) Hyderabad was deriving his power and it would be immaterial as to, on what date the Deputy Commissioner received said application. In this view of the matter we hold that the Deputy Commissioner and Additional Settlement Commissioner (Land) was competent to pass the impugned order."

In the end, this Court, while noting that the impugned order was passed against the dead person Mst. Kalsoom Bibi, remanded the matter to the Deputy Commissioner/Additional Settlement Commissioner (Land) Hyderabad for re-decision after giving an opportunity of hearing to all the parties including heirs of late Mst. Kalsoom Bibi. It was in compliance of that order the matter again landed up on the file of the Deputy-Commissioner. But when apparently no further progress could be made by the said official to see through all the terms of the order, petitioners filed CP.No.521/2010 seeking directions to the then Revenue Officials to decide the matter on available record and, in addition, directions to In Charge Central Record Office & the Chief Settlement Commissioner, Lahore and Deputy Secretary (S&R) Board of Revenue Punjab, Lahore to issue verification of MR-V Certificate and UR-I of late Mst. Kalsoom Bibi within certain time. In that petition, various orders were passed. Of a particular mention is the order dated 30.11.2010 whereby the respondent / Revenue Officials were directed to verify the authenticity of MR-V Certificate and the entitlement certificate issued in favour of late Mst. Kalsoom Bibi. Pursuant to which, the City Mukhtiarkar (Revenue) City Survey Hyderabad and In-Charge Evacuee Property Branch Hyderabad were deputed to go to Lahore to the Central Record Office for re-verification and reexamination of the record. The said officials accordingly went there, examined the record and submitted

report confirming availability of MR-V Certificate and other documents, but their report was not without a pinch of salt, and contained the impugned observations by Verification Committee clouding authenticity and genuineness of very claim of Mst. Kalsoom Bibi.

7. Notwithstanding, learned counsel for petitioners in a hearing on 13.11.2012, held after almost one year of meeting of Verification Committee, made a statement in the court that petitioners had been granted relief in accordance with law -- the claim of (Mst. Kalsoom Bibi) has been verified and only mutation was left to be entered in the record of rights, for which they however sought directions. But the court, instead, disposed of the petition (CP.No.521/2010) leaving the petitioners at liberty to apply for mutation to the Deputy Commissioner, and the Deputy Commissioner to process and decide the case in accordance with law within one month's time. It is obvious that when the impugned note, doubting entitlement of Mst. Kalsoom Bibi to the property, was endorsed by the Verification Committee on 24.02.2011, CP. No.521/2010 was still pending in which the said point could have been agitated by the petitioners. But instead of revealing about impugned observations, they made a statement in the court that the claim of Mst. Kalsoom Bibi had been verified, which was not factually correct, and got disposal of the petition in the terms as stated above.

8. Then, after a long period in February 2016, more than three years of disposal of above petition, the petitioners preferred this petition against, among others, the same respondents viz. the Chief Settlement Commissioner, Lahore and Deputy Secretary (S&R) Board of Revenue Punjab, Lahore, impugning the observations of Verification Committee, on the ground, in the main, *inter alia*, that such Committee has no territorial jurisdiction to decide the claim of Mst. Kalsoom Bibi as her entitlement to the land is a verified claim and a past and closed chapter – this has already been replied above. Little realizing that the impugned note came by only as a result of their effort through petition (CP.No.521/2010) seeking verification of the relevant record by the aforesaid officials at Lahore, and not otherwise. It is obvious that petitioners, by their previous conduct and act, are precluded in law to turn around and take a somersault and say that this time the very authorities at Lahore have no jurisdiction to decide the issue of entitlement of Mst. Kalsoom Bibi.

9. In any case, a close look at impugned note reveals that the Verification Committee has asserted that complete record of claim in respect of Mst. Kulsoom Bibi is not traceable firstly and secondly the signatures affixed on the Register MR-V and on the Entitlement Certificate do not tally with each other, and that there are over writings in the Claim File. The Committee has

affirmed, based on this, that it is not a fit case to be declared as genuine, and has, in the end, turned down veracity and genuineness of the claim of Mst. Kalsoom Bibi. It is to be noted that the Verification Committee had the benefit of looking at the original record available with Central Record Office, Fareed Kot House, Lahore, and has founded its remarks and conclusion on the same. Obviously, we have no such benefit at our disposal to take guidance from and substitute our observations with impugned observations about the claim of Mst. Kalsoom Bibi and declare it as genuine free from a suspicion. Apart from that, we have noted that the impugned observations have been passed in mutation proceedings, summary in nature, which do not decide rights of the parties. These proceedings can be challenged before the proper forum by the petitioners, if on the basis of which the Deputy Commissioner Hyderabad -- who in terms of order dated 13.11.2012 in CP.No.521/2010 was directed by this court to decide the issue of mutation of the petitioners within one month with speaking order -- has passed any order against them. The petition calling out the same would not, in normal circumstances, be maintainable, unless it is shown that grave injustice has been done to the party through the impugned order which is based but on some extraneous material (not the case here) not relevant to the matter. Further, in our view, since the impugned observations have given rise to a controversy, in effect factual in nature, as it now entails a certain enquiry – examination of entire record right from the beginning when Mst. Kalsoom Bibi filed her claim – the petitioners would be best advised to seek their remedy through a regular civil suit before the competent court and to have their title, if any, declared accordingly. In the petition, it is settled, substantive rights of the parties originating from any source including but not limited to some documents, as is the case here, cannot be adjudicated and declaration of sort as is being sought here be given.

10.                Whatever right the intervener/ M/s Fateh Industries Limited is claiming is not based on any independent consideration or analogy and has been derived by it basically from entitlement of Mst. Kalsoom Bibi. As it has been claimed that attorney of Mst. Kalsoom Bibi, Syed Moinuddin had sold the land to one Bashir Ahmed in the year 1979 and he had sold the land to M/s Blue Man Limited, a subsidiary company of M/s Fateh Industries Limited. So, in law, the intervener is destined to swim or sink with Mst. Kalsoom Bibi. If she survives, the intervener shall survive, subject to all just exceptions and validity of its rights, if any, but if she sinks, she should take the intervener down with herself, without any exception.

11.                In view of the above discussion, this petition is dismissed along with all pending applications including application (CMA 4764/18) filed by

intervener. The petitioners, notwithstanding, would be at liberty to avail remedy in accordance with law before the proper forum. There is no order as to costs.

**JUDGE**

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