

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

R.A. No.217 of 2004

Pir Bux & others ..... applicants.

Versus

Province of Sindh & others ..... Respondents.

Applicants through:- Mr. Muhammad Hashim Memon,  
Advocate.

Respondents:- Mr. Wali Muhammad Jamari, A.G.

Date of hearing 23.04.2018.

**JUDGMENT**

**Zulfiqar Ahmad Khan, J.** This revision is outcome of the findings rendered by appellate Court in Civil Appeal No.19 of 1999, which reversed the judgment dated 05.05.1999 of the trial Court that dismissed the suit of the applicants.

2. This litigation arose when the applicants filed F.C.Suit No.200/ 1991 (New No.20 of 1996) for Declaration and Permanent Injunction pleading that applicant No.1 Pir Bux was granted 24 acres land and 4-28 acres land out of U.A. No.1 of Deh Bhopi Taluka Khipro District Sanghar was also granted to applicant No.2 Ghulam Muhammad in the year 1974-75 and after issuance of such Ijazatnama, they were put in possession after payment of all instalments. Subsequently land was surveyed and measured to the tune of 65-17 acres by forming out Survey Nos.420 and 439 and such revised sanctioned order was issued then applicants paid differences of "Malkano". A reference was made by defendant No.4 bearing No.GB/SGR/3/ 1134/89 dated 16.03.1989 for cancellation of above grants being forest land

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and eventually both grants were cancelled by defendant No.3 by order dated 16.05.1990. Thereafter, applicants filed the suit, which was decreed as prayed after raising five issues out of the pleadings of the parties. The said judgment and decree were appealed against, where appellate Court set-aside the findings of the trial Court and dismissed the suit of the applicant, against which the applicants preferred the instant revision.

3. Learned counsel for the applicants submitted that grants of the applicants made in the year 1974/1975 had attained finality as against which, no appeal was preferred by the respondents and cancelling the grants by order of defendant No.3 is void ab-initio and unlawful. Learned counsel further submitted that detailed discussions as to the dispute can be seen in the judgment of the trial Court, yet appellate Court over looked findings of the trial Court and reversed the judgment by committing gross illegality and material irregularity. Learned counsel lastly raised the plea as to the limitation of the appeal being barred by Limitation Act. Learned counsel in support of his contention placed reliance reported at 1986 CLC 2813, 2003 SCMR 1493 and PLD 1978 Karachi 958.

4. In opposition, learned A.A.G. submitted that claim of the applicants is entirely based on the no objection of respondent No.2, who had no authority to grant or extend no objection for grant of Forest land, which was reserved for forest land and its cancellation by order dated 16.05.1990 is legal and

lawful. Learned A.A.G. further submitted that respondent No.3 has vested certain powers and he in exercise of powers conferred U/S. 164 of Land Revenue Act 1967, rightly cancelled the land being forest land. In addition to the arguments, learned A.A.G. submitted that grants of the applicants are hit by Section 23 of the Forest Act, 1927 and only forest land can be granted by the Government by issuing Notification under Section 20. In support of his arguments, learned A.A.G. relied upon case laws reported as 2011 YLR 371, 2003 MLD 75 and unreported order passed in Civil Petition No.172-K of 2006 passed by Honourable Supreme Court of Pakistan.

5. Heard the counsels and perused the material available on record.

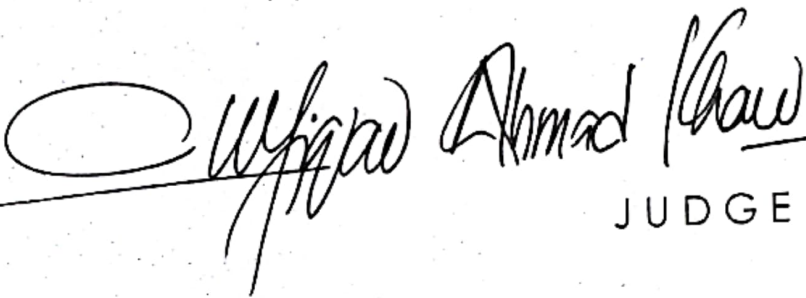
6. It is an admitted fact that 28-28 acres land was granted to the applicants in the year 1974/75 in view of no objection extended by Divisional Forest Officer, which subsequently was measured as 65-17 acres by forming out Survey Nos.420 and 439. A reference was remitted by Colonization Officer, Sukkur Barrage, Hyderabad, to Commissioner, Hyderabad Division, Hyderabad, for cancellation such grants, which consequently cancelled by Additional Commissioner-II, Hyderabad vide order dated 16.05.1990 annexed at Page No.113 U/S. 164 of Land Revenue Act, 1967 by holding that the land should be demarcated again in the presence of concerned quarters and if it did not fall in the area of reserved Forest then the grant to remain intact under the land

grant policy, hence, applicants assailed such order before trial Court where their suit was decreed as prayed and appeal against which was accepted by appellate Court thereby setting aside the judgment of the trial Court. The moot question in the instant dispute is that whether Divisional Forest Officer was competent to extend no objection for grant of forest land to the applicants? In this regard, I tend to agree with the contention of learned A.A.G. that Divisional Forest Officer had no authority to mark no objection for grant of any forest land in view of Section 23 of the Forest Act, 1927 and it is also established by the respondents that the land granted to the applicants was reserved for Forest land in view of Gazette dated 11.12.1947, Notification dated 08.06.1964 and Notification dated 27.11.1947 and there is no denial on record on the part of the applicants that above Notifications / Gazette having not been overturned or recalled after their promulgation and the same were not in operation, therefore, I am of the considered view that the land granted to the applicants was purely reserved for Forest land and DFO was not authorized to record his no objection for the grant of Forest land to public for cultivation or residential purpose. It is matter of record that claim of the applicants is based on the grant of land being forest land as declared above, yet no title documents are forthcoming on the part of the applicants to cement their claim over the land.

7. Be that as it may, the claim of the applicants based on no objection recorded by DFO for grant of forest land, is

illegal, void ab-initio and unlawful, I therefore, found no illegality or material irregularity in the impugned judgment of the appellate Court, hence, same is maintained and judgment of the trial Court is set-aside by allowing this revision.

These are the reasons of my short order dated 23.04.2018 in terms of which, I dismissed the instant revision and maintained the judgment of the appellate Court.

  
10.05.2018  
JUDGE