

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP.No.D-8386 of 2017

Date: Order with signature(s) of the Judge(s)

**Before: Salahuddin Panhwar &
Khadim Hussain Soomro, JJ**

1. For orders on CMA No. 12097/2024.
2. For hearing of Misc. No. 35111/2017.
3. For hearing of main case.

31st May 2024

Mr. Khawaja Shamsul Islam, advocate for the petitioner.
Mr. Ghulam Mujtaba Phull advocate for petitioner No.4.
Mr. Suresh Kumar, AAG.
Mr. Akhtar Ali Mastoi, advocate for BoR.

Salahuddin Panhwar, J:- Through this Constitution petition, the petitioners have prayed as under:

- a. Declare that the order dated 23.5.2017 passed by Respondent No.5 is in gross violation of doctrine of *locus poenitentiae* and past and closed transaction in view of the order dated 06.4.2016 and 10.11.2016 passed by this Honourable Court in Constitutional Petition No.D-544 of 2016.
- b. Declare that the impugned order dated 23.5.2017 passed by Respondent No.5 under the threat of NAB is outside the ambit and scope of the mandatory provisions of the Land Revenue Act, 1967, therefore, has no legal value in the eyes of law, hence, liable to be set aside forthwith.
- c. Declare that after the order dated 09.9.2014 passed by Respondent No.5 he became *functus officio*, therefore, can neither recall nor review the same in terms of Section 163 of the Land Revenue Act, 1967 more particularly when the aforesaid order culminated into a judicial order in terms of Article 201 of the Constitution of Islamic Republic of Pakistan passed by this Honourable Court dated 06.4.2016 and 10.11.2016, therefore, become past and closed transaction.
- d. Declare that the impugned order dated 23.5.2017 is violative of Article 10A and 204 of the Constitution of Islamic Republic of Pakistan read with Section 24-A of the General Clauses Act.

- e. Mandatory injunction, suspend the operation of the impugned order dated 23.5.2017 passed by Respondent No.5, consequently, restrain the Respondents, or any person or persons acting for, under or on their behalf including its servants, employees, agents, attorneys or officers from dispossessing the Petitioners from their lands i.e. Survey No.302 admeasuring 8 Acres 29 Ghuntas, Survey No.303, admeasuring 16 Acres 36 Ghuntas, Survey No.304 admeasuring 12 Acres 01 Ghuntas, Survey No.307 admeasuring 6 Acres 38 Ghuntas, Survey No.308 admeasuring 13 Acres 04 Ghuntas, Survey No.309 admeasuring 11 Acres 06 Ghuntas and Survey No.310 admeasuring 4 Acres 02 Ghuntas situated at Deh Dih Tappo Ibrahim Hyderi, District Malir, Karachi, which was allotted to them pursuant to this Honourable Court's orders dated 06.4.2016 and 10.11.2016.
- f. Permanent injunction, restrain the Respondents, or any person or persons acting for, under or on their behalf including its servants, employees, agents, attorneys or officers from dispossessing the Petitioners from their lands i.e. Survey No.302 admeasuring 8 Acres 29 Ghuntas, Survey No.303. admeasuring 16 Acres 36 Ghuntas, Survey No.304 admeasuring 12 Acres 01 Ghuntas, Survey No 307 admeasuring 6 Acres 38 Ghuntas, Survey No.308 admeasuring 13 Acres 04 Ghuntas, Survey No.309 admeasuring 11 Acres 06 Ghuntas and Survey No.310 admeasuring 4 Acres 02 Ghuntas situated at Deh Dih Tappo Ibrahim Hyderi, District Malir, Karachi as well as not to allot the same to anyone else.
- g. Any further and better relief that this Honourable may deem appropriate in view of the facts and circumstances of the case; and
- h. Grant the costs of the proceedings

2. Precisely, the relevant facts as set out in the petition are that petitioners were lawful owners of the land referred to in paragraph No.4 of the petition. However, respondent No.2 (Deputy Commissioner Malir) cancelled the said land by order dated 01.02.1999, which order was assailed by them before the Board of Revenue. Accordingly, order of the Deputy Commissioner was recalled. Subsequently, the petitioners also filed CP.No.D-544/2016, which was allowed with the direction that the order passed by respondent No.5 Member Land Utilization, Board of Revenue has attained finality, hence alternate land shall be provided to the petitioners. In compliance thereof, land was allotted to the petitioners and they are still in possession. However, after the lapse of several years, respondent No.5 recalled earlier order dated 09.09.2014 by order dated 23.05.2017, without hearing the petitioners, hence, according to the petitioners the said order is *coram non judice*. It is further case of the petitioners that respondent

No.5 was not competent to recall the order passed by him as the same was adjudicated by this Court and observed that same had attained finality. Besides, it is contended that even the exercise of judicial review was not undertaken, therefore, the impugned order may be recalled. It is further contended that a contempt application was preferred wherein respondent No.5 appeared and filed affidavit stating that he was compelled by NAB officials to recall his earlier order.

3. Learned counsel for BoR and learned AAG though controverted the claim of the petitioners, but they were unable to deny the fact that same officer recalled his earlier order without any valid reason and without hearing the petitioners. Further, they have not disputed the comments filed by the respondent No.5 wherein it is contended that *“In reply to Para-12, it is submitted that answering respondent No.5 has not committed any disobedience of order passed by this Honourable court but always do respect and comply within stipulated time. Moreover, the order dated 23.05.2017 was passed under the pressure of NAB authority. Besides, answering respondent has no malafide intention against the petitioner”*. It is also replied in para-11 that *“It is fact that order dated 23.05.2027 was passed under the duress of NAB Authority”*. However, learned A.AG Sindh contends that that order is available.

4. Conversely, counsel for the petitioners contends that since the respondent No.5 was not competent to sit over the earlier order passed by himself and the order passed by this Court whereby adjudication was made, hence, this is a case of writ of prohibition and this Court is competent to declare impugned order as ab-initio null and void. Being relevant order dated 06.04.2016 passed by this Court in C.P. No.D-544 of 2016 is reproduced herewith:-

“1) Urgent application is granted

(2) Learned Counsel for the Petitioners has drawn attention of this Court to para-3 of written/reply/parawise comments filed by the Respondent No 5 on 28.03.2016 wherein it is stated that:-

.....It is respectfully submitted that the grievance of the Petitioner has already been redressed vide Order dated 09.09.2014 passed by the Respondent No 5 and the operative part thereof, is reproduced hereunder-

In view of the facts and legal position the order dated 01/02/1999, passed by the Deputy Commissioner is set-aside and allow the appeals, with the observation that if no land is there at site, therefore the Deputy Commissioner Korangi and also Deputy Commissioner

Malir Karachi are hereby ordered to provide the alternative state land available in anywhere in in equal price to the Appellant."

Per learned Counsel for the Petitioner, order of the Respondent No.5 referred to above, has not been challenged before any competent authority and/or otherwise, there is any impediment whatsoever in implementation of the order dated 09.09.2014 as the same has got finality.

In view of above position. Respondents are directed to implement order dated 09.09.2014 passed by the Respondent No.5, referred to above, within forty- five (45) days from receipt of this order and submit compliance report to this Court through MII-II.

In the above terms, instant petition stands disposed of."

5. Since the Respondent No.5 had failed to comply with the Order dated: 06.04.2016 passed by this Court, the Petitioners filed Contempt Application on which this Court passed another Order dated: 10-11-2016, which reads:

"Alleged contemnor No.1 Syed Muhammad Ali Shah, Deputy Commissioner Malir, is present in person alongwith his counter affidavit, which taken on record. He states that an order has been passed on 23.09.2016 by t Member (Land Utilization) Board of Revenue Sindh (page 49 of his counter affidavit), relevant portion whereof is reproduced below:-

"Keeping in view order passed by the Honourable High Court in C.P.D. No.544/2016, dated 06.04.2016, I do hereby order for exchange of land measuring 100 acres shown in para 2 and such mutation shall be effected in the favour of the parties mentioned in column No.2 as per prescribed area and possession of the subject land be handed over to all the seven parties mentioned in column No.2 and so such intimation will be sent to the Honorable High Court MIT-II, for confirmation accordingly."

He states that the order passed by this Court and the above order passed by the Member (Land Utilization) Board of Revenue Sindh shall be complied with without fail latest by 3rd December, 2016. Similar statement has been made by alleged contemnor No.3 Gada Hussain Abro, Mukhtiarkar Korangi, for self and on behalf of alleged contemnor No.2 / Deputy Commissioner Korangi.

Learned counsel for the petitioners is satisfied with the statements made today and seeks disposal of this application in terms thereof. Accordingly, this application is disposed of in terms of the above statements. It is clarified that in case of non-compliance of this order, the above named officials shall, expose themselves to contempt of Court proceedings".

6. The aforementioned Order demonstrates conclusively that the Order issued on **09.09.2014** by Respondent No.5 has reached a state of **legal finality** for all intents and purposes. Furthermore, this Court passed an Order on **06-04-2016** in C.P. No.D-544 of 2016 to enforce the aforementioned Order. The

Respondents have not impugned the Orders dated **06-04-2016** and **10-11-2016** passed by this Court before the Honourable Supreme Court, thereby allowing these Orders to achieve finality in terms of legal consequences and implications.

7. The record indicates that Respondent No.5, in an act of **judicial overreach**, passed the Impugned Order on **23-05-2017**. This was done by invoking **suo motu** authority without just cause, denying the “aggrieved parties” their right to be heard, and exceeding the **90-day limitation** prescribed by **Section 8**, of the **Sindh Board of Revenue Act, 1957**. To underscore the significance of this issue, it is pertinent to quote **Section 8** of the Act, 1957, as follows:-

“8. (1) Any person considering himself aggrieved by a decree passed or order made by the Board and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him, may apply to the Board for a review of judgment and the Board may, after giving notice to the parties affected thereby and after hearing them, pass such decree or order as the circumstances of the case require.

(2) Every application for a review of a decree or order under sub-section (1) shall be made within ninety days from the date of that decree or order”.

8. Bare reading of the aforesaid provision of law would clearly show that: **Section 8(1)**: This subsection allows any person who feels aggrieved by a decree or order of the Board to seek a review of that decree or order. The grounds for seeking a review can be:

- The discovery of **new and important evidence** that was not available or could not be presented earlier despite due diligence.
- The presence of a **mistake or error** that is clearly evident on the record.
- Any other **sufficient reason** that justifies a review.

The aggrieved person must apply to the Board for a review, and the Board, after notifying and hearing the concerned parties, may pass a new decree or order as required by the case’s specifics.

Section 8(2): This subsection specifies the time limit for seeking a review. An application for review must be filed within **ninety days** from the date of the original decree or order.

In this case, the “aggrieved party” did not submit an application for review, nor were the essential criteria for invoking the review process satisfied. Furthermore, the authority to conduct a review was utilized by Respondent No.5 after the statutory limitation period outlined in Section 8(2) of the Act of 1957 had expired. Consequently, the fundamental conditions stipulated in Section 8 of the Act of 1957 have been blatantly breached by Respondent No.5.

9. In legal parlance, the provision akin to Section 8 of the Sindh Board of Revenue Act, 1957, is encapsulated within Section 8 of the Punjab Board of Revenue Act, 1957. The distinction lies in the prescriptive period for seeking review, which is 30 days under the Punjab statute, as opposed to 90 days under the Sindh legislation. Honourable Apex Court of Pakistan, in the Case of *Basher Ahmed (Deceased) through LRs. v. Member (Consolidation) Board Of Revenue, Lahore and others (2022 SCMR 620)*, elaborated on the jurisdiction to review a judicial order under section 8 of the Punjab Board of Revenue Act, 1957. The Apex Court clarified that the power to review in revenue jurisdiction is vested in the Board of Revenue but is limited to certain conditions. An “aggrieved person” may move for review within 30 days from the date of the decree or order on the following grounds:

1. **Discovery of new and important matter or evidence:** This ground applies if, despite due diligence, the matter or evidence was not within the knowledge of the petitioner or could not be produced at the time when the decree or order was passed.
2. **Mistake or error apparent on the face of the record:** If there is a clear mistake or error that is evident from the record itself, it can be a ground for review.
3. **Any other sufficient reason:** This is a more open-ended ground that allows for review for reasons deemed sufficient by the Board.

The Board of Revenue, upon receiving a motion for review, is required to give due notice to the affected parties and, after hearing them, may pass a decree or order as the circumstances require. It’s important to note that the Board does

not possess *suo motu* power to review; it can only do so upon the motion of an aggrieved party within the stipulated time frame.

10. Insofar as the exercise of jurisdiction by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan aimed at vacating an order that is manifestly unlawful, it is pertinent to note that under analogous conditions, the erudite High Court of Lahore quashed the Impugned Order issued by the Board of Revenue, wherein the *suo moto* power of review was invoked. The judgments rendered by the learned High Court of Lahore were subsequently upheld by the Apex Court of Pakistan in the case of *Member (Colonies) Board Of Revenue, Punjab, Lahore and others v. Muhammad Shafi and others (2008 SCMR 589)*. In this landmark decision, the Apex Court affirmed that: *"The Punjab Board of Revenue Act, 1957, does not contemplate suo motu powers of review. Therefore, purported exercise of jurisdiction thereunder by the learned Member (Colonies), Board of Revenue was ex facie without lawful authority, the respondents were not heard and a general letter was issued undoing the orders passed after 8-3-1999. Such an order could hardly be maintained. The contention that proper notice was not issued to the learned Member (Colonies), Board of Revenue has no merit because the Law Officer was in attendance. Assuming for the worst that the impugned order of the High Court was rendered as illegal for want of proper notice to the learned Member (Colonies), Board of Revenue even then we are of the view that no case is made out for interference in exercise of discretionary jurisdiction under Article 185 of the Constitution because the impugned order of the learned High Court set aside a patently illegal order and not only our interference will amount to restoring a patently illegal order of the learned Member (Colonies), Board of Revenue but also that no useful purpose will be served to remand the case to the learned Lahore High Court for rehearing because the grounds being urged cannot possible sanctify the letter dated 2-10-1994". The underlining is supplied.*

11. It is acknowledged that pursuant to the Order passed on 09th September 2014, directives for the allocation of alternative land were issued; notwithstanding, said directives were subsequently recalled by Respondent No.5 through the Impugned Order dated May 23, 2017. This power of *suo moto* review was exercised by the Respondent No.5 without fulfillment of the essential criteria for invoking the review process satisfied. Furthermore, the authority to conduct a review was utilized by Respondent No.5 after the statutory limitation period outlined in Section 8(2) of the Act of 1957 had expired. Consequently, the

fundamental conditions stipulated in Section 8 of the Sindh Board of Revenue Act 1957. Notwithstanding the existence of an alternative remedy, the Court remains vested with its inherent power of judicial review. This authority persists even when the aforementioned alternative remedy is neither efficacious nor expeditious. Should a legal right necessitate the performance of a duty, and if the remedy provided by law is less convenient, beneficial, or effective, the jurisdiction of the High Court can be invoked. Furthermore, in cases where a statutory functionary acts mala fide, or in a partial, unjust, or oppressive manner, the Court, in the exercise of its writ jurisdiction, possesses the authority to grant relief to the aggrieved party. Reference may be made to the authoritative decision of the Apex Court of Pakistan in Case of *Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455)*.

12. Based on the rationale expounded hereinabove, the impugned Order, dated 23.05.2017, issued by Respondent No. 5, while exercising *suo motu* powers, stands in flagrant violation of Section 8, of the Sindh Board of Revenue Act, 1957. Consequently, it is hereby declared to be patently illegal and devoid of lawful authority. As a result, the present Constitution Petition is allowed, and the impugned Order passed by Respondent No.5 is hereby set aside. The parties to the *lis* shall bear their own costs.

JUDGE

JUDGE

Sajid