

## THE HIGH COURT OF SINDH, KARACHI

Referee: Mr. Justice Adnan Iqbal Chaudhry.

**C.P. No. D - 1233 of 2017**

[Major ® Raja Muhammad Basharat Ahmed Kayani & 12 others v. Province of Sindh & others]

Petitioners : Major ® Raja Muhammad Basharat Ahmed Kayani and 12 others through Mr. Salim Salam Ansari, Advocate a/w M/s. Sidra Hussain, Okasha Mustafa and Fazil Khoso, Advocates.

Respondents 1-4 : Nemo.

Respondent 5 : Pakistan Navy through Mr. Riazat Ali Sahar, Advocate and Mr. Muhammad Ahmed, Assistant Attorney General for Pakistan.

Dates of hearing : 31-08-2023 & 11-10-2023

Date of Decision : 04-12-2023

### JUDGMENT

Adnan Iqbal Chaudhry J. - This petition under Article 199 of the Constitution of Pakistan was heard by a learned Division Bench where Justice Mahmood A. Khan was inclined to allow the petition in part whereas Justice Adnan-ul-Karim Memon was inclined to dismiss it, hence the matter was placed before me as Referee Judge.

The learned Division Bench has differed both on points of fact and points of law, and therefore, to elucidate those points it is necessary to set-out the underlying facts in chronological order.

#### Chronology of facts

2. The Petitioners are the legal heirs of late Lt. Commander Raja Mirandad Khan [**Mirandad**], who was granted agricultural land in 1962 and 1963 under the Sindh Land Revenue Code, 1879 by way of three 'A' Forms issued by the Revenue Officer Kotri Barrage from the quota of the Pakistan Navy, making a total of 127-16 acres in deh Katadaho, taluka Tando Bago, District Badin [**subject land**].

3. Per the Petitioners, from 1979 onwards Mirandad was on his death bed and could not pay installments of the price of the grant. While para 2 of the petition mentions the date of his death as 1979 and para 8 mentions it as 23-08-1983, it is apparently the latter which is also mentioned in earlier proceedings and is supported by a death certificate.<sup>1</sup> On 05-12-1982, the Assistant Revenue Officer Kotri Barrage cancelled a number of grants for non-payment of installments including the bulk of the land granted to Mirandad. The cancellation order read:

*“Defence Force Zamindari grants shown at S. No. 1 to 54 in all 54 grants of Taluka Tando Bago are hereby finally cancelled from Rabi 1981-82 due to non-payment of instalments on due dates inspite of service of notices upon them as reported by Barrage Mukhtiarkar Tando Bago.”*

The grant for the remaining 4-0 acres was similarly cancelled on 13-08-1996 as under:

*“The following grants of Zamindari Local and Zamindari Defence Force shown in the accompanying lists of Taluka Tando Bago, are hereby cancelled from Rabi 1994-95, finally due to non-payment of instalments on due dates, inspite service of notices, as recommended by the Barrage Mukhtiarkar Tando Bago, under his letter No. 238 dated 26.6.96 .....”*

4. It is averred by the Petitioners that Raja Zubair Kayani, one of the sons of Mirandad, who was cultivating the subject land after him, discovered the cancellation order of 1982 in 1993, and on 22-01-1994 he moved an application to the Commissioner Hyderabad for re-granting the land; that the application remained pending; that Raja Zubair Kayani passed away in 2003, where after the other son of Mirandad, namely the Petitioner No.1, pursued the application for re-grant.

5. In 2005, the Petitioners filed Suit No. 78/2005 before the Senior Civil Judge to restrain the Revenue authorities and the Pakistan Navy from evicting them from the subject land. By order dated 05-04-2006 the plaint of that suit was rejected for want of jurisdiction. Nevertheless, the Petitioners were not evicted.

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<sup>1</sup> Page 571.

6. The Petitioners' application for re-granting the subject land eventually came up before the Member (Land Utilization), Board of Revenue [**Member (LU) BoR**] who allowed the same by order dated 25-05-2006: "*The re-grant allowed, if there is no legal hitch*". Since that order was not being implemented, the Petitioner No.1 moved another application on 20-06-2006 to the Member (LU) BoR<sup>2</sup>, which was placed by the office before the Member (Reform Wing & Special Cell), and who disposed of the same by a vague order dated 25-05-2010, observing that the Revenue Courts were not competent to cancel old entries and the aggrieved party may approach the civil court. The Petitioner No.1 sought a review of that order *vide* Review No. 59/2010 dated 29-06-2010 on the ground that matters of re-grant of land were within the jurisdiction of the Member (LU), not the Member (Reform Wing & Special Cell).<sup>3</sup> That being so, the Senior Member of the Board transferred that application to the Member (LU) BoR, who was of the view that the order for re-granting the land had already been made as far back as 25-05-2006, and therefore allowed Review No. 59/2010 *vide* order dated 02-08-2011 with directions to the Deputy Commissioner Badin to implement the order of re-grant by accepting the arrears of installments. A challan was accordingly issued to the Petitioner No.1 who deposited the remaining installments of the grant on 03-10-2011.<sup>4</sup> He also applied for T.O. Forms for proprietary rights, however, those were not issued because the Navy refused to issue an NoC and had filed C.P. No. D-776/2012 before the High Court at Hyderabad to challenge the implementation order dated 02-08-2011 passed in Review No. 59/2010.

7. By order dated 27-10-2016 passed in C.P. No. D-776/2012, the High Court set-aside the implementation order dated 02-08-2011 passed by the Member (LU) BoR on the ground that it was passed without hearing the Navy. The matter was therefore remanded for a decision afresh. On remand, the Member (LU) BoR dismissed Review

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<sup>2</sup> Page 91.

<sup>3</sup> Page 97.

<sup>4</sup> Page 123.

No. 59/2010 by order dated 28-02-2017 [**impugned order**], restored the subject land to the quota of the Navy, and directed the Deputy Commissioner Badin to evict the Petitioner No.1 and give possession of the subject land to the Navy.

*Contention of the parties*

8. The case of the Petitioners is that the cancellation of the grants was unlawful to being with as it was without prior notice to rectify the default as mandated by the proviso to section 24 of the Colonization & Disposal of Government Lands (Sindh) Act, 1912; therefore, the Member (LU) BoR was competent to re-grant the land to the Petitioners and the Navy had no *locus standi* to oppose the same; and that the impugned order for resuming the subject land was completely perverse. On the other hand, the case of the Navy is that since the cancellation orders had went unchallenged, the subject land reverted to the quota of the Navy and was therefore rightly resumed by the impugned order; that since Mirandad had passed away without acquiring proprietary rights in the subject land, his legal heirs had no *locus standi* to seek a re-grant; and that the order of re-grant could not have been passed without the NoC of the Navy.

*Difference of opinion*

9. Justice Mahmood A. Khan has held that though the Sindh Land Revenue Act, 1967 does not expressly deal with the re-grant of cancelled land, such power emanates from section 24 of the General Clauses Act, 1956; the fact that such power was exercised by Revenue Officers from time to time was manifest in notifications issued by the Board of Revenue itself; that the NoC of the Navy was at best a departmental practice and not a requirement of the law as the land granting authority was the Board of Revenue not the Navy. However, the learned Judge held that the subject land granted to Mirandad was in excess of his entitlement of 100 acres; that he had already been granted 48 acres in another area; and therefore, while the Board of Revenue was competent to re-grant the land to the Petitioners, such

re-grant could not be in excess of 52 acres, and for which the Petitioner may avail remedies under the law.

On the other hand, Justice Adnan-ul-Karim Memon agrees with the impugned order for the reason that Mirandad had yet to acquire proprietary rights in the subject land before it was resumed, and because the grant had been cancelled as far back as 1982 and was never challenged by the Petitioners before any forum. The learned Judge is of the view that the order dated 25-05-2006 passed by the Member (LU) BoR for re-granting the land was without lawful authority; that the order dated 05-04-2006 passed in Suit No. 78/2005 was also a bar to the re-grant; that against the impugned order the Petitioners did not exhaust remedies available under the revenue hierarchy; and that the petition involved disputed questions of fact which could not be resolved in constitutional jurisdiction.

**Scope of Referee Judge in constitution petitions**

10. The scope of a Referee Judge in constitution petitions, as distinct from the scope in criminal appeals, has been discussed by this Court in the cases of *Muzammil Niazi v. The State* (PLD 2003 Karachi 526) and *Aijaz Hussain Jakhrani v. National Accountability Bureau* (PLD 2023 Sindh 1). It is settled that in constitution petitions the scope of a Referee Judge is restricted to points on which the members of the Division Bench have differed; and that such points can be both of law and facts, that being the interpretation accorded to section 98 CPC read with clause 26 of the Letters Patent of the Lahore High Court and Rule 5 of Chapter IV-N, Volume V of the High Court Rules, the latter as applicable to the Sindh High Court. It has also been held that the Division Bench who first heard the petition continues to retain jurisdiction over the matter; that the opinion of the Referee Judge is to be remitted to that Division Bench for passing judgment by majority i.e. of the members of that Bench and the Referee Judge; and that where the Division Bench does not formulate points of difference for the opinion of Referee Judge, the latter may formulate such points himself.

11. Upon the difference of opinion, only Justice Mahmood A. Khan has formulated points for determination by the Referee Judge *vide* order dated 23-12-2022. Justice Adnan-ul-Karim Memon has not joined that order. Therefore, relying on the case-law discussed above, and after examining the respective opinion of the members of the Division Bench, I have formulated additional points on which the learned Judges are at variance.

**Points formulated by Justice Mahmood A. Khan**

- “I. Whether this Court enjoys jurisdiction to entertain this petition?
- II. Whether an absolute ownership is required for re-grant ?
- III. Whether the civil proceedings of Civil Suit No. 78 of 2005 referred in our judgment(s) filed by the petitioner restricted entertainment of this petition?”

**Additional points formulated by Referee Judge**

- IV. Whether the order dated 25-05-2006 passed by the Member (LU) BoR for re-granting the subject land to the Petitioners was passed with lawful authority ?
- V. Whether the NoC of the Pakistan Navy was mandatory for re-granting the subject land to the Petitioners ?
- VI. What was the effect of the order dated 27-10-2016 passed by the High Court in C.P. No. D-776/2012 ?
- VII. Whether the impugned order dated 28-02-2017 passed by the Member (LU) BoR is lawful ?
- VIII. Whether relief to the Petitioners should be confined only to 52 acres and not the entire 127-16 acres of the subject land ?
- IX. What should the decision be ?

**Opinion of Referee Judge**

*Point I. Maintainability of the petition.*

12. The impugned order dated 28-02-2017 was passed by the Member (LU) BoR in review jurisdiction under section 8 of the Board of Revenue Act, 1957, and by virtue of section 6(2) of said Act, it is deemed to be an order of the Board of Revenue. Neither the Board of

Revenue Act nor the Sindh Land Revenue Act provide a further remedy against such an order, and therefore, resort can be made to Article 199(1)(a)(ii) of the Constitution of Pakistan. To that end at least, the underlying facts and proceedings narrated in paras 2 to 7 above do not involve disputed questions of fact. The facts that are disputed are also discussed *infra*. Therefore, in my opinion, the petition is maintainable to the extent of prayers against the impugned order dated 28-02-2017 and for consequential relief.

*Point II. Point formulated by Justice Mahmood A. Khan can be elaborated as follows:  
What was the effect of the cancellation orders dated 05-12-1982 and 13-08-1996 ? And, where Mirandad had not acquired proprietary rights in the land before his death, whether his legal heirs could not claim any interest therein ?*

13. The subject land was granted to Mirandad by the Revenue Officer of Kotri Barrage under Rules framed under section 62 of the Sindh Land Revenue Code, 1879 for the grant of State land for agricultural purposes in the area of the Ghulam Mohammad Barrage (Kotri Barrage). The Petitioners have filed two set of Rules, the first *vide* notification dated 12-03-1958, and the second *vide* notification dated 09-05-1963. It is not clear from the record which of the Rules were applied in granting land to Mirandad. However, it is not disputed that under either Rules the grantee could acquire proprietary rights in the land on payment of the price in installments, provided that the land could be resumed if the grantee defaulted in payment.

14. On the repeal of the Sindh Land Revenue Code, 1879 by the West Pakistan Land Revenue Act, 1967, Mirandad had not acquired proprietary rights in the subject land. Thus, by virtue of the erstwhile sub-section (4)(b) of section 184 of the West Pakistan Land Revenue Act, he was 'deemed' to be a tenant of the Government under the Colonization of Government Lands (Punjab) Act, 1912.<sup>5</sup> Though

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<sup>5</sup> At that time the Colonization of Government Lands (Punjab) Act, 1912 was not applicable to Sindh, hence the deeming clause. The Punjab Act of 1912 was extended to the whole of West Pakistan (excepting Tribal Areas), including Sindh

section 184 of the Sindh Land Revenue Act, 1967 was subsequently omitted by the Sindh Repealing and Amending Act, 1975,<sup>6</sup> but by reason of section 4(1)(a) of the General Clauses Act, 1956, that omission did not have the effect of reviving the Sindh Land Revenue Code, 1879; nor did that omission expressly stipulate that said Code stood revived, which is otherwise the requirement of section 6 of the General Clauses Act, 1956 for reviving a repealed enactment.

15. Having deciphered that Mirandad was a tenant of the Government under the Colonization of Government Lands (Punjab) Act, 1912, and later on as applicable to Sindh [hereinafter '**the Colonization Act**'], the next question is whether the grant was cancelled after notice to rectify the breach as required by the proviso to section 24 of the Colonization Act, for it is settled law that such notice is mandatory, and if not given then the order for cancelling the grant is void.<sup>7</sup> Though the order dated 05-12-1982 for cancelling the bulk of Mirandad's land, which was a common order passed against a number of grantees, recited that notice was served on the grantees, the notice itself and its service is not on the record to show who issued it, who received it, on what date and at what address. On the other hand, it is averred by the Petitioners that no such notice was received by or on behalf of Mirandad who was on his death bed at the time. It is therefore plausible, as submitted by the Petitioners, that they came to know of said cancellation much later. As regards the cancellation order dated 13-08-1996, that was passed much after Mirandad's death, and therefore it cannot be said that the prior notice mentioned therein was served on Mirandad. There is also nothing to show that it was received by any of the legal heirs of Mirandad.

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w.e.f. 07-11-1969 by way of the Colonization of Government Lands (Punjab) (West Pakistan Amendment) Ordinance, 1969 [Ordinance XXXVI of 1969].

<sup>6</sup> Sindh Act No. XVII of 1975. Before that, the West Pakistan Land Revenue Act, 1967 was adapted for the Province of Sindh by the Sind Adaptation of Laws Order, 1975. See *Group Capt. A. M. Morad v. Muhammad Azmatullah Siddiqui* (1991 SCMR 2415).

<sup>7</sup> *Fateh Muhammad v. Mushtaq Ahmed* (1981 SCMR 1061); *Super Drive-In Ltd. v Province of Sindh* (2012 CLC 117); *Horticultural Society of Pakistan v. Province of Sindh* (2005 CLC 1877); *Rehmatullah v. Province of Sindh* (1990 MLD 2353)



16. Be that as it may, assuming that a prior notice was served on Mirandad or on his legal heirs, the cancellation orders dated 05-12-1982 and 13-08-1996 (reproduced above) had not ordered resumption of the subject land under section 24 of the Colonization Act, and that is why the Colonization Officer did not re-enter the subject land to evict the Petitioners under section 25 of the Colonization Act. The resumption order was in fact passed in 2017 by way of the impugned order, and possession was taken thereafter. As highlighted in the case of *Brig. Muhammad Bashir v. Abdul Karim* (PLD 2004 SC 271), there is a difference between an order to cancel the grant and an order for resuming possession of the land by evicting the tenant. Until possession of the land is resumed, the tenant remains a tenant.<sup>8</sup> Therefore, before Mirandad passed away in 1983, since possession of the land had not been resumed by the Colonization Officer, Mirandad was still a tenant under the Colonization Act. After his death his legal heirs became tenants by virtue of sections 19-A and 3(z) of the Colonization Act and step into his shoes. It is not a disputed fact that after Mirandad's death his sons remained in cultivating possession of the subject land, a fact also acknowledged in the Mukhtiarkar's letter dated 02-12-2004.<sup>9</sup> Therefore, it is erroneous to hold that the Petitioners/legal heirs of Mirandad had no *locus standi* with regards to the subject land.

*Point III. Point formulated by Justice Mahmood A. Khan as to the effect of the order dated 05-04-2006 passed in Suit No. 78/2005 whereby the plaint of the Petitioners' suit was rejected.*

17. Suit No. 78/2005 was filed by the Petitioners to restrain the Revenue authorities and the Navy from evicting them at the time their application for re-grant of the subject land was still pending. The order dated 05-04-2006 rejecting the plaint under Order VII Rule 11 CPC was on the ground that the Revenue authority seized of the application for re-grant was also competent to grant such injunction, and consequently the suit was barred by section 172 of the Sindh

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<sup>8</sup> *Group Capt. A. M. Morad v. Muhammad Azmatullah Siddiqui* (1991 SCMR 2415).

<sup>9</sup> Page 487.

Land Revenue Act, 1967. The suit was thus not filed for any relief against the orders cancelling the grant, nor was the plaint rejected due to the cancellation orders, rather it was rejected for want of jurisdiction. Therefore, the order dated 05-04-2006 passed in Suit No. 78/2005 was no impediment to the Petitioners' application for re-granting the subject land.

*Point IV. Whether the order dated 25-05-2006 passed by the Member (LU) BoR for re-granting the subject land to the Petitioners was passed with lawful authority ?*

18. On 09-06-2009, section 10 of the Colonization Act was amended by Sindh Act No. V of 2009 to add sub-section (5) thereto, which seems to have dispensed with the re-granting of cancelled land, and instead envisages a fresh grant to the same grantee. But prior to that amendment, and at the time the subject land was re-granted to the Petitioners in 2006, the Colonization Officer/Collector and the Board of Revenue were empowered to re-grant cancelled land where the grant had been given with the right to acquire proprietary rights, where the cancellation had followed only due to non-payment, and the cancelled land had yet to be allotted to another. That power to re-grant was given by the Provincial Government by way of Statement of Conditions notified under section 10(2) of the Colonization Act. To illustrate, Rule 14(2) of the erstwhile Statement of Conditions dated 20-11-1972 for the grant of State land to Haris, small Khatedars and Mohagdars in Kotri, Guddu and Sukkur Barrage command areas had provided that: *"If the resumed grant is not granted to any other person the earlier grantee from whom the grant was resumed may apply within a period of 4 years from the date of resumption subject to following conditions: .....*". This power continued in Rule 18(3) of the succeeding Statement of Conditions dated 04-12-1989. A similar provision existed in Rule 22 of the Statement of Conditions dated 08-07-1997 for the grant of katcha State land for agriculture purposes.

19. To regulate the aforesaid power to re-grant cancelled land, the Government also issued notifications from time to time, such as

Notification No. KBI/1/30/72/7038/8070 dated 02-12-1972 and Notification No. PS/AMBR-137/72, dated 19-12-1972. The latter notification read as follows:

*“In the meeting held on 14<sup>th</sup> December 1972 at Hyderabad, the Colonization Officer, Guddu Barrage, pointed out that under the new Land grant policy the work of disposal of land will start from 18<sup>th</sup> December, 1972. There are numerous instances where lands were cancelled for non-payment of installments. The Colonization Officer/Revenue Officer have power to regrant the cancelled grants within 4 years. The powers of regrant beyond 4 years vested in Commissioners. Since the post of Commissioner has been abolished, all such ex-grantees have to go to the Board of Revenue for regrant. This has created lot of inconvenience to the poor people who have to travel from various districts of the Province to Hyderabad for the purpose of getting their lands regranted. After long discussion it was decided that the Colonization Officer/Revenue Officer should regrant the cancelled grants if the cancellation have been made after 1960. These powers the are authorized to exercise for six months during which period they would be able to dispose of available Government land. The Cos./Revenue Officer were, however, requested to exercise the powers cautiously keeping in view the interest of Government. If they feel any difficulty, the cases may be referred to the Board of Revenue for decision.”* (underlining supplied for emphasis)

20. It is to be noted that the above notification dated 19-12-1972 accepted that an application for re-granting cancelled land could be entertained even after 4 years, and to that end the Board of Revenue had issued policy guidelines from time to time which is manifest in its letters dated 10-06-1975, 04-03-1993 and 06-04-1999.<sup>10</sup> By the letter dated 06-04-1999, the Board of Revenue provided that an application to re-grant cancelled land could be entertained by the Commissioner if the application is within 8 years of the cancellation; by the Colonization Officer if the application is within 4 years; and by the Board of Revenue itself if the application is beyond 8 years of the cancellation.

21. Therefore, up until 09-06-2009 when sub-section (5) was added to section 10 of the Colonization Act, the power to re-grant cancelled grants was very much part of the legal framework for cases where possession of land had yet to be resumed or had yet to be granted to a third-party, and the breach of conditions of the grant were rectifiable by the tenant. Such power to re-grant cancelled land by recalling the

<sup>10</sup> Pages 113, 447 and 449.

cancellation order was the exercise of *locus poenitentiae* i.e. the power to recede till a decisive step is taken, which power is recognized in section 20 of the West Pakistan General Clauses Act, 1956.

22. Coming to the case of the Petitioners, though the grant to Mirandad had been cancelled by orders dated 05-12-1982 and 13-08-1996, there was no order for resuming possession of the land under section 24 of the Colonization Act, and the Colonization Officer had also not taken any action under section 25 of said Act for evicting the Petitioners. (That order and action only came about in 2017 *vide* the impugned order). Since non-payment of installments was a breach that was rectifiable, the Member (LU) BoR acted with lawful authority in re-granting the land by order dated 25-05-2006. That being done, nothing turns on the fact that the Petitioners had not appealed the cancellation orders dated 05-12-1982 and 13-08-1996 in the revenue hierarchy. The argument that the re-grant was conditioned “*no legal hitch*” and that the NoC from the Navy was a legal hitch, that is adverted to *infra*.

*Point V. Whether the NoC of the Navy was mandatory for re-granting the subject land to the Petitioners ?*

23. Admittedly, the Navy was neither the grantor nor grantee of the subject land. It was at best entitled to a quota in the grant of Government land for its retired personnel. From the letters dated 13-03-2002 and 17-06-2014 issued by the General Headquarters and MFRO to the Board of Revenue Sindh,<sup>11</sup> it is apparent that the practice of obtaining an NoC from the Navy before granting or re-granting land to its personnel was only an internal arrangement between the Navy and the Board of Revenue which served as a check against fake grants and against re-grant of land that had already been allotted to another. Thus, where possession of the subject land had not been resumed so as to become available in the Navy’s quota for grant to another, it’s NoC was not a pre-condition to the exercise of power by the Board of Revenue to re-grant the land, which power

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<sup>11</sup> Pages 179 and 185.

otherwise vested in it by virtue of Statement of Conditions issued under the Colonization Act. Therefore, I agree with Justice Mahmood A. Khan that the NoC of the Navy before re-granting the subject land was not a requirement of the law.

*Point VI. What was the effect of the order dated 27-10-2016 passed by the High Court in C.P. No. D-776/2012 ?*

24. C.P. No. D-776/2012 by the Navy had only challenged the order dated 02-08-2011 passed by the Member (LU) BoR for implementing the order of re-grant that was passed on Review No. 59/2010. The order of re-grant itself, dated 25-05-2006, had never been challenged by the Navy, nor was that set-aside by the High Court in C.P. No. D-776/2012. The order that was set-aside was the one dated 02-08-2011. After the matter was remanded by the High Court for a fresh hearing on Review No. 59/2010 and a fresh order was passed thereon (the impugned order), the High Court's order dated 27-10-2016 stood complied and nothing further turns on it.

*Point VII. Whether the impugned order dated 28-02-2017 passed by the Member (LU) BoR is lawful ?*

25. While the impugned order accepts that the subject land could have been re-granted to the Petitioners had their application been made within 4 years from the date of cancellation, it holds that since such application was made beyond the prescribed time, the order dated 25-06-2006 passed thereon for re-granting the land is liable to be re-called. In my view, such ground taken for reviewing the re-grant after 10 years was perverse for the following reasons.

Firstly, as per the instructions issued by the Board of Revenue itself *vide* letter dated 06-04-1999 (page 449), the time-limit of 4 years was prescribed for the Colonization Officer, not for the Board of Revenue who was competent to consider applications for re-grant moved even after 8 years.

Secondly, it was contended by the Petitioners that the application for re-granting the land was moved by them on 22-01-1994 when they came to know of the cancellation order of 1982.

Apparently, in this view of the matter, no issue of delay was raised by the Member (LU) BoR when he allowed the re-grant on 25-06-2006.

Thirdly, the impugned order does not notice that pursuant to the implementation order dated 02-08-2011, the Petitioner No.1 had already rectified the breach by depositing the price of the land, and had applied for T.O. Forms for proprietary rights, which fact was admitted by the Mukhtiarkar in his letter dated 11-10-2011,<sup>12</sup> so also by the Revenue officers who filed comments in the petition.

Fourthly, the review application on which the impugned order was passed, was directed against the order dated 25-05-2010 passed by the Member (Reform Wing & Special Cell). There was no application for reviewing the order of re-grant that had been passed as far back as 25-06-2006.

Fifthly, the review application on which the impugned order was passed had been moved by the Petitioners, not the Navy. Therefore, even if the Member (LU) BoR was inclined to dismiss such application and to resume the land for the Government, I do not see how he could have further directed that possession of State land be delivered to the Navy which was never the grantee of such land. The delivery of possession of the subject land to the Navy was completely unlawful.

*Point VIII. Whether relief to the Petitioners should be confined only to 52 acres and not the entire 127-16 acres of the subject land ?*

26. It was never the case set-up by the Navy that the subject land granted to Mirandad as a retired naval officer was in excess of his quota of 100 acres, or that he had already availed 48 acres from such quota in another area. No-where has that been averred in the counter-affidavits filed on behalf of the Navy. This allegation of excess grant was made for the first time in a synopsis of arguments filed by the counsel for the Navy in this petition and no opportunity was given to the Petitioners to rebut. I do not see how that can even be taken as a submission for consideration. In any case, whether the subject land

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<sup>12</sup> Page 113.

granted to Mirandad was in excess of his quota would be a question of fact that cannot be decided in constitutional jurisdiction, and especially when the relevant provision for seeking cancellation of the excess grant on that ground *viz.* section 16 of the Colonization Act, has never been invoked since 1962-63.

*Point IX. What should the decision be ?*

27. In my humble opinion, based on the above reasons, the Petition should be allowed in the following terms :

- (a) The impugned order dated 28-02-2017 passed by the Member (LU) BoR on Review No. 59/2010 should be set-aside, and the Board of Revenue should be directed to implement the order dated 25-06-2006 for re-granting the subject land to the Petitioners.
- (b) The Navy (Respondent No.5) should be directed to return possession of the subject land to the Collector or Colonization Officer of the Ghulam Muhammad Barrage (Kotri Barrage), and who should then return the same to the Petitioners.

As laid down in the cases of *Muzammil Niazi* and *Aijaz Hussain Jakhriani*, the office shall seek instructions from the Hon'ble Chief Justice for placing this opinion for consideration before the Division Bench of Justice Mahmood A. Khan and Justice Adnan-ul-Karim Memon for passing judgment.

**REFEREE JUDGE**

Karachi:  
Dated: 04-12-2023

**ORDER SHEET**  
**THE HIGH COURT OF SINDH KARACHI**

C.P. No. D - 1233 of 2017

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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**04-12-2023**

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As Referee Judge my opinion is enclosed. As laid down in the cases of *Muzammil Niazi* and *Aijaz Hussain Jakhrani*, the office shall seek instructions from the Hon'ble Chief Justice for placing this opinion for consideration before the Division Bench of Justice Mahmood A. Khan and Justice Adnan-ul-Karim Memon for passing judgment.

**JUDGE**

SHABAN\*