Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P No.D-526 of 2022

Petitioner	:	Sher Muhammad Through Mr. Nisar A. Bhanbharo, Advocate
Respondent No.8	:	Nemo
Respondents No.1 to7:		Province of Sindh and others Through Mr. Ahmed Ali Shahani, AAG
Date of hearing	:	01.02.2024
Date of Decision	:	21.02.2024

JUDGMENT

ARBAB ALI HAKRO, J.-Through this petition, the petitioner has prayed as under: -

a) *It be declared that the impugned Order dated 22.3.2022, passed by respondent No.1 is without jurisdiction as matter was already decided by the respondent No.2 on merit between the petitioner and the respondent No.8 vide Order dated 28.10.2009, therefore, impugned Order is illegal, unlawful, unconstitutional, coram non-judice.*

b) *It be declared that the respondent No.1 and 2 has power under the West Pakistan Land Revenue Act, 1967 and West Pakistan Board of Revenue, Act 1957, to decide the land dispute matter of the petitioner and respondent No.8 and learned District Judge Naushahro Feroze has no power in law to refer the matter to respondent No.2 to decide in accordance with law.*

c) *Declare that the learned District Judge Naushahro Feroze respondent No.3 has no jurisdiction under the law to refer the matter to the respondent No.2 again to decide the matter in accordance with law.*

d) *To suspend the operation of impugned Order dated 22.3.2022 and finally set-aside the same which is not sustainable in law.*

e) *Restrain the respondentNo.5, 6, 7, 8 not to interfere in peaceful possession of the petitioner till the final decision of the instant petition.*

2. The brief facts leading to the filing of this petition are that an agricultural land measuring 12-00 acres and part of U.A. No.166,

situated in Deh Jaindo Rajper Taluka Mehrabpur (referred to as the "subject land"), was granted in favour of respondent No.8 in the year 1957-58 on installments. Respondent No.8 paid eight installments but failed to pay the remaining two, resulting in cancellation of his grant on April 11, 1968. In 1984, respondent No.8 filed an application for restoration of his grant upon payment of remaining installments, which was declined. It is asserted that respondent No.6, in an open Katcheri, granted the subject land to the petitioner via an order dated October 28, 2004. Subsequently, respondent No.7 issued Form-A in favour of the petitioner, who deposited an initial amount of Rs.4,924/- and possession of the subject land was handed over to the petitioner. In addition to the petitioner, 23 other grantees were also granted land. The details of the subject land were recorded in Form VII-B on March 7, 2005. The petitioner also deposited a challan of Rs.600/- to demarcate the subject land. Following this, the Settlement Survey Officer carried out the demarcation of the subject land and created new survey numbers bearing No.526 (03-28 acres), 527 (04-20 acres), 528 (03-32 acres), totalling 12-00 acres, formed out of U.A. No.166 bearing Entry No.59 (Ghat Wadh Form) dated November 12, 2007. A Field Book Otara was also issued in favour of the petitioner. It is further pleaded that respondent No.8, being aggrieved by the grant of the subject land to the petitioner, filed a Land Revenue Appeal before respondent No.5, which was dismissed via an order dated May 26, 2006, being hopelessly time-barred. Subsequently, respondent No.8 filed another appeal bearing No.SROA-90/2006 before respondent No.2, who disposed of the appeal via an order dated October 28, 2009, with directions to hand over the subject land to them, who are in physical possession of the same. The brothers and legal heirs of respondent No.8 filed F.C. Suit No.240/2014 against the Order dated October 28, 2009, passed by respondent No.2. However, the suit was dismissed vide a judgment dated May 3, 2018, and a decree dated May 08, 2018. This judgment and decree were then challenged

by the legal heirs of respondent No.8 by filing Civil Appeal No.138/2018 before the appellate court, which remanded the suit to the trial court with directions to proceed in accordance with the law. After remand, the trial court again dismissed the suit via a judgment and decree dated February 27, 2019. The brothers and legal heirs of respondent No.8 again challenged the above judgment and decree through Civil Appeal No.90/2019 before the District Judge Naushahro Feroze, who disposed of the appeal via a judgment and decree dated October 9, 2019, with directions to respondent No.2 to re-examine the case of respondent No.8 and decide the same in accordance with the law. However, the matter was entrusted to respondent No.1, who, after hearing, held that both respondent No.8 and the petitioner failed to establish their case and thereby cancelled the grant of the petitioner. Hence, this petition was filed.

3. At the outset, the learned counsel representing the petitioner submits that the matter was referred to respondent No.1 for re-examination of the case of the legal heirs of respondent No.8, who was the allottee of the subject land. However, he contends that respondent No.1 has unlawfully determined that the petitioner is not entitled to the re-grant of the subject land. The counsel further argues that respondent No.1 failed to provide findings on the land grant to the petitioner on October 28, 2004, by respondent No.4. He also asserts that respondent No.1 lacks jurisdiction to decide the matter based on the direction of the learned District Judge/appellate authority, as the matter was already decided on merits between respondent No.8 and the petitioner via an Order dated October 28, 2009. Lastly, the counsel submits that the impugned Order is illegal, without lawful authority, and is therefore liable to be set aside. He placed reliance on PLD 1987 SC 123 & 2009 SC 210.

4. The learned Assistant Advocate General contends that respondent No.1 has lawfully exercised the jurisdiction vested under the law. He argues that the subject land, which was granted under the

terms and conditions of the Land Grant Policy, has not been complied with and that the T.O. Form was not issued in favour of the petitioner. He further contends that the subject land has been lawfully retrieved and returned to the pool of State land. As such, he asserts that the petition is not maintainable and is liable to be dismissed.

5. We have heard Counsel for thePetitioner andlearned Assistant Advocate General and have perused the record with their assistance.

6. In the case at hand, respondent No.1 has revoked the grant previously given to the petitioner. This decision was made while adjudicating an appeal, following the directives of an appellate court. These directives were part of a judgment delivered on October 9, 2019, in Civil Appeal No. 90/2019. To fully comprehend the intricacies of the case, it is crucial toreproduce the said directives here under: -

> *"Further, his application/proceedings for acceptance of the last two installments and recalling/re-allotment of the land in question to him are pending before revenue authorities, therefore, the Board of the Revenue Sindh, is directed to re-examine the case of the appellants/plaintiffs who are legal heirs of the lawful allotteeAllah Wadhayo and decide the same in accordance with the law within three months from the date of this judgment."*

7. The directives above clearly indicate that respondent No.1 was tasked with revisiting the case of respondent No.8's legal heirs and making a decision in line with the law, not the case of the petitioner. However, Respondent No.1, through the impugned Order, determined that neither the Petitioner nor Respondent No.8 could prove their case, leading to the denial of their request for the restoration or re-grant of land. Notably, the petitioner did not request re-grant of the land in question as it had already been granted to him. The impugned Order does not provide any reasoning for cancelling the petitioner's grant. Interestingly, Paragraphs No.4 and 5 of the impugned Order appear to support the petitioner, making it beneficial to reproduce these paragraphs hereunder: -

> *"4. I have considered the arguments of learned counsel for the parties and gone through the entire material available on*

record. The attested copy of "A" Form/record shows that on 23.01.1957, an area of 12-00 acres land out of U.A. No.166 of Deh Jaindo Rajper Taluka Mehrabpur was granted in favour of appellant from Kharif 1957-1958 on installment basis. As per record, the appellant only paid 08 instalments, but thereafter failed to pay remaining last two instalments and due to failure in payment of such installments, the grant of 12-00 acres land of appellant was cancelled under Order of A.R.O.'s No.550 dated 11.4.1968 w.e.f Rabi 1967/68. It is important to mention here that instead to challenging the above Order, the appellant filed an appeal before the Executive District Officer (Rev.) Naushahro Feroze against the Order dated 28.10.2004, passed by the District Officer (Revenue) Naushahro Feroze regarding grant of land in question in favour of respondent No.1.After hearing arguments, vide Order dated 21.5.2006, the Executive District Officer (Rev.) Naushahro Feroze dismissed the appellant of appellant. After that, the said Order dated 21.5.2006 was challenged before this court and on 28.10.2009, the Order of E.D.O. (Revenue) Naushahro Feroze was set aside by this court with the directions to hand over the land in accordance with law to who has the physical possession of land. Thereafter, on 08.12.2014, Kouro Khan, through his L.R.'s, filed a suit for declaration, cancellation of false entry of revenue record of rights and permanent injunction in the Court of Senior Civil Judge Mehrabpur which was numbered as First Class Suit No.240/2014 (old) F.C. Suit No.107/2017 (New), which was contested by the respondent side and vide judgment dated 03.5.2018, the learned Senior Civil Judge dismissed the said suit. The appellant challenged the above judgment/decree before the appellate court by filing Civil Appeal, which was numbered as Civil Appeal No.90/2019 and vide Order dated 09.10.2019, the Hon'ble District Judge/Civil Appellate Court Model Court Naushahro Feroze set aside the Judgment of Senior Civil Judge Naushahro Feroze with the directions to the Board of Revenue to re-examine the case of appellant legal heirs and then to decide the same in accordance with law. It is important to mention here that the District Officer Rev. Naushahro Feroze, in open Katchery after vide publicity, had granted the land in favour of respondent No.1, and it was the responsibility of the appellant to appear, but he failed to participate in the same.

5. *It is pertinent to mention here that as per letter 226/2021 Mehrabpur dated 10.3.2021, issued by the Mukhtiarkar (Revenue), Mehrabpur, the side inspection of the land in question was conducted by the Supervising Tapedar of the beat, who in his report has stated that as per Entry No.32 dated 12.01.2009 of VF-VII-B of DehJandoRajper, the land was granted to respondent No.1. The report further shows that another Entry No.160 dated 08.03.2012 duly signed by the Assistant Commissioner, Mehrabpur, on 08.3.2012 in respect of land bearing S. Nos.526, 527 and 528 of DehJandoRajper, TalukaMehrabpur, was also entered in the VF-VII Part-A in the name of respondent No.1 Sher*

> *Muhammad, son of Ali Muhammad Rajper. As per said report, there are houses of Meraj Community on Survey No.526, and they are residing with the consent of owner Sher Muhammad, son of Ali Muhammad Rajper. The record shows that respondent No.1 is in peaceful possession of the land in question, and the appellant has failed to bring on record any documentary proof of cultivating the land or payment of land revenue. Moreover, the learned Senior Civil Judge, NaushahroFeroze, in his judgment dated 03.5.2018, has mentioned that "No proof in of cultivation of land or payment of land revenue, receipts of instalments were brought on record".*
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> [Underlined supplied for understanding]

8. The impugned Order, regrettably, does not show that the petitioner was given a chance to argue why his grant should not be cancelled or why his request for re-grant of the subject land should not be declined. Even otherwise, there is substantial documentary evidence and admitted facts supporting the petitioner's claim.The grants/allotments made under Section 10 of the Colonization and Disposal of Government Lands Act, 1912 can be cancelled/resumed in accordance with the provisions of Section 24 of the Act, 1912.It would also be expedient to examine the Section 24, of the Colonization and Disposal of Government Lands Act 1912, which is reproduced as follows:

> *"24. Power of imposing penalties for breaches of conditions.--- When the Collector is satisfied that tenant in possession of land has committed a breach of the conditions of his tenancy, he may, after giving the tenant an opportunity to appear and state his objections---*
>
> *(a) impose on the tenant a penalty not exceeding one hundred rupees; or*
>
> *(b) order the resumption of the tenancy:*
>
> *Provided that if the breach is capable of rectification, the Collector shall not impose any penalty or order the resumption of the tenancy unless he has issued a written notice requiring the tenant to rectify the breach within a reasonable time, not being less than one month, to be stated in the notice and the tenant has failed to comply with such notice."*

9. Bare reading of the aforesaid Proviso to the provision of law itself shows that the Collector shall not impose any penalty or order the resumption of the tenancy unless he has issued a written notice requiring the tenant to rectify the breach within a reasonable time, not being less than one month, to be stated in the notice and the tenant has failed to comply with such notice. In the case of Horticultural Society of Pakistan and another v. Province of Sindh and others (2005 CLC 1877), it was held by the division bench of this Court that:-

> *"Be that as it may it is clear from the terms of section 24 of the Colonization of Government Lands Act itself that the breach being capable of rectification, the Collector in the first instance was mandated to grant reasonable time to the petitioner to rectify the breach. In the event of petitioners' inability to do so within aforesaid time he was required to independently apply his mind and decide either to impose a penalty or order resumption of tenancy. He failed to perform both the statutory obligations and proceeded to act under dictation from the Chief Minister. Even the elementary principles of natural justice were denied. Accordingly we are constrained to hold that the cancellation of lease was mala fide, void and inoperative." (pg. 1880).*

10. In the case of Messrs Super Drive-In-Ltd. Through Managing Director and others v. Province Of Sindh through Member (L.U.) and others (2012 CLC 117), it was held by a division bench of this Court that:

> *"It From perusal of the provisions of section 24, it appears that before passing any order of cancellation, imposing penalty or resumption of the tenancy of the land a show-cause notice is required to be issued to the lessee requiring him to rectify the breach within a reasonable time, which shall not be less than one month, to be stated in the notice. From perusal of the notice as referred to hereinabove, it appears that in spite of remand by the learned Member Board of Revenue, the Deputy Commissioner did not bother to issue any show-cause notice in terms of section 24 of Colonization of Government Lands Act, 1912, whereas only a notice of hearing was issued, which in our view is not proper compliance of the provisions of section 24. We are of the view that the respondents have not conducted themselves fairly, honestly and in a transparent manner, which is required from any public functionary while discharging their public functions".*

11. Moreover, the subject land was granted to the petitioner in an open katchery by the D.D.O. (Rev.) NaushahroFeroze, according to the

Order dated 28.10.2004. The Mukhtiarkar (Estate) also issued an A-Form in the petitioner's favour, indicating the payment of ten instalments from 2006 to 2015. Entry No.369, dated 07.3.2005, was mutated in the petitioner's favour based on the aforementioned Order. The petitioner also submitted a copy of the Mukhtiarkar (Estate) letter to the Executive Engineer Irrigation, requesting the inclusion of the subject land in the water list. The Assistant Engineer Kandiaro Sub-Division-I responded by issuing such a water list. The Settlement Survey Officer also demarcated the subject land, creating new Survey Nos.526 (03-28 Acres), 527 (04-20 Acres), and 528 (03-32 Acres), totalling 12 Acres. This was then recorded as entry No.59 in the Ghat Wadh Form. Despite the comprehensive documentary evidence and official correspondence, none of these were considered by respondent No.1 in the impugned Order. The official respondents have not denied or controverted the above documentary evidence. However, when respondent No.7 was directed to produce the entire record regarding the subject land, he responded by stating that their office records were burned during the riots on 27.12.2007, following the assassination of Mohtarma Benazir Bhutto. He produced a copy of the F.I.R. to that effect.

12. Notwithstanding, Section 52 of the Sindh Land Revenue Act, 1967, establishes a presumption regarding the correctness of entries in the record of rights. According to this provision, an entry in the record of rights is presumed true until it is either proven false or a new entry is lawfully substituted. This presumption is significant as it places the burden of proof on the party challenging the entry rather than the party defending it. It means that the record of rights, once entered, carries a strong legal weight. Any party disputing the entry must provide sufficient evidence to the contrary or follow the lawful procedure to substitute a new entry. This provision ensures the stability and reliability of land records, providing a degree of certainty and security to landholders.

13. Under Article 199 of the Constitution, a High Court has the authority to supervise and correct any actions taken by a Tribunal, Court, or Authority that exceed their jurisdiction, powers, or scope of law or if they commit an error apparent on the face of the record. This constitutional jurisdiction allows the High Court to examine the legality of an order passed by a special court or tribunal constituted under a special enactment. If the Order is found to be illegal, the High Court has the power to rectify, rescind, or alter it. Furthermore, any order passed in violation of the law can be questioned and quashed under the constitutional jurisdiction of the High Court. This ensures that any harm or mischief arising from an illegal order can be effectively remedied, thereby upholding the rule of law and ensuring justice. In this regard, reliance can be placed on the case of Naik Muhammad vs. Mazhar Ali and others (2007 SCMR 112), wherein the Supreme Court of Pakistan has held as under-

> *"5. We have considered the submissions and have perused the record' The learned High Court has taken a pain to compare the qualifications and disqualifications of the petitioner and the respondent No.1 in terms of rule 17 as depicted from paras.7 to 10 of the impugned judgment and have come to the conclusion that the Order of the learned member Board of Revenue was not in consonance with the mandatory provisions of West Pakistan Revenue Rules, 1968 whereas the Executive District Officer (Revenue) had given cogent reasons on the basis of the evidence on record and appointed respondent No.1. The learned Member, Board of Revenue had reversed the findings of fact recorded by Executive District Officer (R) in his Order while exercising his revisional power without meeting the reasoning of the appellate court. The contention of the learned counsel for the petitioner that High Court has no jurisdiction to take the cognizance of the matter in the discretion exercised by the Member, Board of Revenue in constitution jurisdiction has no force in view of law laid down by this court in various pronouncements. See Muhammad Yousif's case 1996 SCMR 1581 and Haji Noorwar Jan's case PLD 1991 SC 531. The relevant observation is as follows:--*
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> > *"The Board of Revenue at the apex of the Revenue hierarchy is charged with the statutory duty of interpreting the law, of applying it to individual cases coming up before it and laying down the law for the subordinates in the hierarchy to follow. Any error on its part in understanding the law, in*

> *applying it or in laying down the law can and must be corrected in the constitutional jurisdiction. If it is left uncorrected, it will result in subverting the rule of law."*

14. It was held by the Supreme Court of Pakistan in the Case of Collector of Customs (Valuation) and another v. Karachi Bulk Storage and Terminal Ltd (2007 SCMR 1357) that:

> *"We are afraid, we cannot subscribe to this bald argument of the learned Advocate-on-Record as it is well-settled position in law that where the impugned order is found to be illegal, contrary to law or void ab initio, aggrieved person would be entitled to invoke the jurisdiction of the High Court under Article 199 of the Constitution without availing of remedies under the departmental hierarchy".*

15. For the foregoing discussion, the petition is allowed, and the impugned order passed by Member (Land Utilization) Board of Revenue, Sindh, is set aside as being not sustainable in law.

JUDGE

JUDGE

Faisal Mumtaz/PS