

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-3376 of 2012

(*Syed Sharafat Hussain & Others v. Chief Secretary, Government of Sindh & Others*)

Present:

Zafar Ahmed Rajput &
Sana Akram Minhas JJ

Petitioner: Syed Sharafat Hussain et al
In Person (Advocate)

Official Respondents: Chief Secretary, Government of Sindh et al
Through, Mr. Sheharyar Mehar
Assistant Advocate General

Date of Hearing: 22-10-2024

Date of Decision: 11-11-2024

ORDER

1. **Sana Akram Minhas, J:** The Petitioner No.1, an advocate representing himself and his co-petitioners (his siblings), asserts that they are "*displaced persons*" in terms of the repealed *Registration of Claims (Displaced Persons) Act, 1956* who migrated to Pakistan during the partition of sub-continent and are therefore entitled to compensation for the lands they abandoned in India. They seek such compensation through the allotment of evacuee land left behind by non-Muslims who had similarly migrated from Pakistan.
2. The Petitioners contend that, following a thorough review of their claim (for lands abandoned in India), the special claims courts established under relevant evacuee laws, awarded them 8082 Produce Index Units ("**PIUs**") for their abandoned agricultural land. The Central Record Office, Lahore confirmed their entitlement. According to the Petitioners, converting the PIUs into acreage (which they statedly based on the official rate schedule set by the Central Record Office for Nawabshah, where 34 PIUs equalled 1 acre of canal-irrigated land), resulted in the Petitioners' verified entitlement as 238 acres. Of this, only 171.07 acres (equivalent to 5818 PIUs) have been allotted/settled, leaving 67 acres (or 2264 PIUs) outstanding allotment. Additionally, 95.20 acres of the allotted 171.07 acres remain unmutated, and

the Petitioners seek formal mutation for this portion. For clarity, the claims asserted by the Petitioners¹ are summarized in the table below:

DESCRIPTION	Produce Index Units (PIUs)	EQUIVALENT IN ACRES
Total Verified Entitlement	8082	238
Settled / Allotted	5818	171.07
Outstanding Settlement / Allotment	2264	67
Unmutated Portion Of Allotted Land	***	95.20 (out of 171.07)

3. The Petitioners aver that, while they had received partial compensation through the allotment of evacuee agricultural land in Nawabshah District,

¹ Prayer Clauses in memo of Petition:

This Honourable Court be pleased to:

1. Declare that all the lands, abandoned in Pakistan by the non-Muslims evacuees are not the booty of the war of independence for establishment of Pakistan as a Country but are entrusted to the Government only for the purpose of settlement of claims of the Muslims migrated to Pakistan after having sustained heavy losses of lives and properties passing through the storm of fire and blood and consequently their lands abandoned in India was taken entrusted to Indian Government for the reciprocal settlement of claims of the non-Muslim migrants to India; and the said lands were not for its disposal in any other way till all the lands stand settled in lieu of the claims. The ownership rights of the claimants as judicially determined under the Registration of Claims (Displaced Persons) Act III of 1956 and subsequently maintained in successive securities finally maintained Entitlement Units 8082 vide QPR-V No.495/24970 could not be curtailed neglecting para 5 of the Security of Claims (Evacuee Property) Regulation No.89 of 1961.
2. Declare that even after enactment of the Evacuee Property Displaced Persons Laws (Repeal) Act No.XIV of 1975 each and every incomplete work relating to the claimant's entitlement has to be completed by Respondents as their bounden duties in exercise of the powers under the said enactment; and the Notification No.SECY(RS&EP)BOR/2005-246 Dated: 09-12-2005 is no bar and of no effect being contrary to the rights, justice and fair play as commanded under the laws and Article 264 of the Constitution of Islamic Republic of Pakistan. None could be led to suffer for the faults of others even for the fault of Government.
3. Directing all the Respondents 1 to 4 to settle 8082 Entitlement Units by adjusting with the already settled, to be settled land mutating all lands so settled in the Revenue Record of Rights issuing the necessary relevant documents of Petitioner Claimant's title to the lands within 2 months. Further directing that for the adjustment of the balance 2264 Entitlement Units, the Respondent 1 to 4 should involve their own Respondent No.5 to cooperate with the Petitioner Claimants in mutual consideration for the settlement of evacuee lands equivalent to 2264 Entitlement units out of the so-called Government lands for the purpose of permanent transfer, mutation and issue of Khatoni with copy of mutation entries to the claimant petitioner.
4. Directing the Respondent No.1 and 2 to arrange within two months for the refund of entire amount of recovered cost and the interest in respect of the so-called excess 95.20 Acres of lands worked out to be Rs.47,785/- with additional profit thereon @ Rs.10% p.a. payable since January 1, 1976 payable till the payment to the Petitioners through Cheque or Pay order or the Draft as the Respondents may choose the mode of payment preferably within two months.
5. Cost of the proceedings with Special/Compensatory cost in the sum of Rs.500,000/- (Rupees Five Lakhs) payable within 2 months with any other further relief which this Hon'ble Court may deem proper in view of the grievances caused by the Respondents to have been faced by the Petitioners for the last 36 years playing with the dolls of Respondents promises based on the misrepresentation, false grounds under the secret policy of non-finalization of the pending settlement work and to usurp the evacuee lands prejudicing the rights of the fellow claimant citizens violating clearly the laws including the Constitutional duty and guaranteed rights.

Sindh, however, the allotment process of the balance land and the mutation of the already allotted land came to a halt in 1975. This cessation occurred due to the enactment of the *Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975 ("Repeal Act 1975")*, which repealed various evacuee laws pertaining to evacuee properties. Through this Petition, (filed on 21.6.2012), the Petitioners, amongst others, now seek resumption and completion of this allotment process for the remaining lands and mutation of the already allotted evacuee land – despite the Repeal Act's enactment and the 37 years that have since passed.

4. We have heard the parties and perused the record.
5. The key questions before us that require determination are:
 - i) Whether unsatisfied verified claims of displaced persons (in this case Petitioners) constitute "*pending proceedings*" under Section 2(2)² of the Repeal Act 1975, entitling them to land allotment?
 - ii) Whether the Petitioners can suddenly switch from a civil suit to writ jurisdiction without fully availing the appellate or revision remedies prescribed by law?
 - iii) Without prejudice to the above, whether the present Petition is hit by laches?

² Section 2 of *The Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975*:

2. Repeal of certain laws. (1) The following Acts and Regulations are hereby repealed, namely:

- (i) the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956),
- (ii) the Pakistan Rehabilitation Act, 1956 (XLII of 1956),
- (iii) the Pakistan (Administration of Evacuee Property) Act, 1957 (XII of 1957),
- (iv) the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958),
- (v) the Displaced Persons (Land Settlement) Act, 1958 (XLVII of 1958),
- (vi) the Scrutiny of Claims (Evacuee Property) Regulation, 1961, and
- (vii) the Price of Evacuee Property and Public Dues (Recovery) Regulation, 1971.

(2) Upon the repeal of the aforesaid Acts and Regulations, all proceedings which, immediately before such repeal, may be pending before the authorities appointed thereunder shall stand transferred for final disposal to such officers as may be notified by the Provincial Government in the official Gazette and all cases decided by the Supreme Court or a High Court after such repeal which would have been remanded to any such authority in the absence of such repeal shall be remanded to the officers notified as aforesaid.

(3) Any proceedings transferred or remanded to an officer in pursuance of sub-section (2) shall be disposed of by him in accordance with the provisions of the Act or Regulation hereby repealed to which the proceedings relate.

(4) The final orders passed under sub-section (3) shall be executed by the Board of Revenue of the Province in accordance with the provisions of the Act or Regulation hereby repealed to which the proceedings related.

Pending Verified Claims & Pending Proceedings

6. The Petitioners argue that, as displaced persons, their claims should be treated as pending proceedings, which would entitle them to land allotment despite the repeal of relevant statutes under the Repeal Act 1975. However, this interpretation is inconsistent with the Supreme Court's rulings on Section 2(2) in cases such as **Muhammad Ramzan v. Member Revenue** (1997 SCMR 1635), **Member, Board of Revenue v. Muhammad Mustafa** (1993 SCMR 732) and **Saifullah v. Board of Revenue** (1991 SCMR 1255). The Supreme Court has consistently held that unsatisfied claims do not constitute pending proceedings and are, therefore, at best limited to monetary compensation, if any.
7. Specifically, in *Muhammad Ramzan* (supra), the Supreme Court ruled that after the evacuee laws were repealed, no provisions were made for allotment of land based on pending verified PIUs. The Court clarified that "*pending proceedings*" in Section 2(2) of the Repeal Act did not equate to an obligation to satisfy verified claims. This judgment aligned with earlier decisions of *Member, Board of Revenue* (supra) and *Saifullah* (supra), which also held that mere pendency of a claim did not amount to pending proceedings. The Court further stated that, by the time the Repeal Act came into effect, there was no land available for adjustment against PIUs, and verified unutilized / left over PIUs would not constitute a pending case under Section 2(2) and, therefore, the notified officer had no jurisdiction to allot or transfer land against unadjusted verified claims.
8. In **Mehboob Baig v. Deputy Settlement Commissioner (Land)** (2002 MLD 1512), a decision rendered by a Division Bench of this Court, the central issue was whether unsatisfied verified claims under the now-repealed *Displaced Persons (Land Settlement) Act, 1958*, and the *Displaced Persons (Compensation and Rehabilitation) Act, 1958*, could be considered "*pending proceedings*" under Section 2(2) of the Repeal Act 1975, thus entitling displaced persons to land allotments instead of merely monetary compensation, if at all. The Bench examined the provisions of the Repeal Act and ruled that unutilized PIUs or verified claims did not qualify as "*pending proceedings*" under the said Act, thus denying petitioners land allotment rights based solely on unutilized PIUs under the repealed statutes. Very importantly, the Division Bench also noted that at the time of the enactment of the Repeal Act 1975, no proceedings under the laws pertaining to evacuee properties or displaced persons were pending before any court or authority which could be subsequently decided by officers notified by the Provincial Government under Section 2(2) of the Repeal Act.

9. The *Mehboob Baig* case (supra) also referenced **Ali Muhammad v. Chief Settlement Commissioner** (2001 SCMR 1822), where the Supreme Court emphasized that claimants who had not succeeded in getting evacuee agricultural land confirmed or satisfied in their favour under Sections 10 and 11 of the *Displaced Persons (Land Settlement) Act, 1958* by 1st July, 1974 (when evacuee laws and regulations were repealed), their cases could not be considered as pending merely because their PIUs remained unadjusted.
10. In light of the authoritative rulings by the superior courts, we are guided to conclude that the mere existence of certain unutilized PIUs against the Petitioners' verified claims at the time the Repeal Act 1975 took effect, does not bring their case within the scope of the expression "*pending proceedings*" nor entitle them to allotment of land.

Abandoning Civil Remedies & Invoking Constitutional Jurisdiction

11. Furthermore, and apart from the above, the record reveals that prior to instituting the present Petition, the Petitioners had previously invoked civil remedies for determination of their ownership over the subject land and addressing issues similar to those raised here. The documents available in the record, though haphazard and incomplete, include:
- i) Plaint of FC Suit No.133/1997 (New No.171/2003) (Syed Sharafat Hussain v. Muhammad Bux): This Suit was filed by the Petitioners before the 1st Senior Civil Judge, Nawabshah and was decreed by judgment dated 14.9.2005. Among the issues framed by the Trial Court were:
- “ 5. *Whether the permanent settlement of 20-00 acres comprising of S.No. 25/3 & 4, 38/1 & 3, and 39/4 with adjustment of 2555 P.I. Units out of 8082 P.I. Units and the rest 20-36 Acres retained by plaintiffs under the payment of instalments with interest later on refundable to plaintiffs on additionally verified remaining 5527 P.I. Units from Central Record Office, under Martial Law Regulation No.89 of 1961, was and still is known to the defendant?*
6. *Whether the Plaintiffs are entitled for possession of the suit agriculture lands from the defendant? ”*
- ii) Civil Revision Application No.48/2009 (Syed Sharafat Hussain v. Muhammad Bux): On 26.2.2009, the Petitioners filed this case in this High Court challenging the Appellate Court's judgment and decree dated 1.12.2008 and 6.12.2008, issued in the opponent's Civil Appeal No.62/2005 (which had overturned the Trial Court's

judgment and decree dated 14.9.2005 and 20.9.2005). A Single Judge of this Court granted the Petitioners' Revision Application, issuing a judgment on 1.8.2018 that set aside both the Trial Court's and the Appellate Court's judgments and decrees and remanded the matter back to the Trial Court for a fresh decision on the merits.

The record further indicates that the Petitioner was dissatisfied with the High Court's remand order of 1.8.2018. Consequently, on 25.10.2018, the Petitioner filed a Review Application (CMA No.9515/2018) titled "*Review Application for Moulding the Remand Order dated 1.8.2018,*" seeking reinstatement of the Trial Court's original judgment and decree dated 14.9.2005 and 20.9.2005. Upon reviewing the file of Civil Revision Application, we found that the Review Application had been dismissed by order dated 21.8.2019.

iii) Trial Court's Judgment and Decree dated 31.1.2020 passed after remand of Suit No.133/1997 (New No.171/2003) (Syed Sharafat Hussain v. Muhammad Bux): By judgment dated 31.1.2020, the Petitioners' Suit was partly decreed.

iv) Civil Appeal No.17/2020 (Ali Nawaz v. Syed Sharafat Hussain): This Appeal was preferred by the Petitioners' opponents (before the 4th Additional District Judge, Shaheed Benazirabad) and challenged the Trial Court's judgment and decree dated 31.1.2020. By judgment and decree dated 25.8.2021, this Civil Appeal was dismissed and the Trial Court's judgment and decree dated 31.1.2020 were maintained.

12. What happened thereafter, i.e. the subsequent events, remain unknown as they cannot be discerned from the record of the present Petition and nor was the Petitioner No.1 able to assist the Court in clarifying them. However, what is clear is that the Petitioners cannot abruptly and at will shift to the current Petition (filed under Article 199 of the *Constitution of Pakistan, 1973*) after previously pursuing civil remedies, without fully exhausting the remedies available within the established legal hierarchy. The Petitioners' failure to complete the appellate or revision process in a civil suit preclude them from seeking relief through constitutional jurisdiction and their conduct constitutes an improper attempt to circumvent the established legal process.
13. It is important to highlight that for this very reason, this Court, by order dated 24.3.2022, directed the Petitioners to address the issue of the present Petition's maintainability in light of this Court's earlier decision dated

1.8.2018 rendered in Civil Revision Application No.48/2009 (*Syed Sharafat Hussain v. Muhammad Bux*).

Undue Delay

14. Finally, in addition to the above, even if we were to assume for argument's sake that the Petitioners claims are valid, this Petition is nevertheless barred under the principles of laches. The Petitioners, through this Petition, seek to enforce claims which by their own admission could not be enforced since 1975 due to enactment of the Repeal Act 1975. Yet, this instant Petition was not filed until 2012 i.e. 37 years after promulgation of the Repeal Act.
15. For the foregoing reasons, the instant Petition is **dismissed** with no order as to costs.

JUDGE

JUDGE

Karachi
Dated: 11th November, 2024