

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 54 of 2016

*(Muhammad Usman Mahar & another v.
Meenhoon Mahar through his legal heirs & others)*

Date of hearing : **07.04.2025**

Date of decision : **07.04.2025**

Mr. Sajjad Muhammad Zangejo, Advocate applicants.
Mr. Mian Abdus Salam Arain, Advocate for respondents No.1 to 10.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – Through this Civil Revision, the applicants have challenged the judgment and decree dated 27.04.2010, passed by learned Senior Civil Judge, Ghotki in two consolidated suits i.e. F.C. Suit No.39 of 2005 instituted by respondents No.1 to 10 (**‘respondents’ suit**) and F.C. Suit No.01 of 2007 filed by the applicants (**‘applicants’ suit**). By that decision, the trial Court decreed the respondents’ suit to the extent of prayer clauses (a), (b) and (c), while dismissing the applicants’ suit. The applicants also seek to assail the judgment and decree dated 30.04.2016, passed by learned Additional District Judge-I, Ghotki in Civil Appeal No.29 of 2010, whereby their appeal was dismissed and the trial Court’s findings were upheld.

2. Respondents No.1 to 10 filed a suit for declaration and permanent injunction, stating that the land comprising Block Nos.19/3 (1-20 acres) and 19/4 (3-20 acres), totaling 5-00 acres in Deh Bhanjro, Taluka Ghotki, was granted on *harap* basis to the applicants by the Deputy Colonization Officer, Ghotki (respondent No.11). Respondent No.1, Meenhon (now deceased), and his father, Pir Bux (late) challenged the said grant step-by-step before three forums viz. (i) Colonization Officer, Guddu Barrage, Sukkur, (ii) Additional Commissioner, Sukkur, and (iii) Member, Board of

Revenue, Sindh, Hyderabad (respondents No.12, 13 and 14, respectively). Respondent No.14, vide order dated 24.07.1979, remanded the matter with direction to respondent No.12 to revoke the grant, conduct a site inspection and dispose of the land as per Land Grant Policy. Accordingly, the Colonization Officer visited the site on 09.12.1979, found the land to be within 20 chains of village Ghurio Mahar, already occupied by houses, school, graveyard and Eidgah, and cancelled the grant through order dated 03.02.1980. However, the applicants filed an appeal against the said order without arraying the respondents as party, and the Additional Commissioner reversed the cancellation through order dated 20.09.1981, re-granting the land to the applicants in equal shares on *harap* basis without giving opportunity of hearing to the villagers including the private respondents. After remaining silent for over two decades, the applicants allegedly began encroaching upon the suit land, demolishing the graves and the Eidgah, and issuing threats to the villagers including the private respondents. When the respondents learnt of the 1981 order, they filed a appeal / revision before the Member, Board of Revenue, Sindh, which was dismissed as time-barred vide order dated 06.01.2005. The respondents challenged the legality of the orders dated 20.09.1981 and 06.01.2005 as being contrary to natural justice and Land Grant Policy, asserting that the original cancellation order dated 03.02.1980 was valid. They sought declarations to this effect, a permanent injunction restraining the applicants and the official respondents from interfering with their possession or demolishing the existing structures.

3. The applicants filed a suit for declaration and permanent injunction, asserting that they were lawful owners and allottees of Block Nos.19/3 (1-20 acres) and 19/4 (3-20 acres) to the extent of 50 paisa share each, situated in Deh Bhanjro, Tapo Berrari, Taluka Ghotki, granted to them on *harap* basis by the Colonization Department, with TO form issued and corresponding entry recorded in the revenue record. They alleged that the

respondents, particularly respondent No.2, who was a local Primary School Teacher and son of a neighbouring landholder, firstly tried to purchase the fertilized land of the applicants who refused, and secondly with the support of Education Department authorities and other co-villagers (including private respondents), unlawfully attempted to construct a primary school and residential houses on the suit land without their consent or legal right. Despite the applicants' resistance and ongoing civil litigation, the respondents allegedly used force, brought construction material, and tried to excavate and encroach upon the suit land, causing repeated confrontations. The applicants further claimed that they had cultivated the land, mortgaged it with bank (ADBP/ZTBL, Ghotki) for a loan, and continued to pay government dues. They also cited attempts by the respondents to implicate them in false criminal cases, which led to legal proceedings including a habeas corpus petition under Section 491, Cr.P.C. The applicants sought a declaration of ownership and an injunction to restrain the respondents from interfering with their peaceful possession or carrying out any construction on the suit land.

4. Written statements were filed in both suits, reiterating the parties' respective claims. The trial Court consolidated the suits, treating the respondents' suit as the leading one, and framed the following issues:

1. *Whether the land in suit is within 20 chains of the village Ghurio Mahar so was reserved as village Asaish? O.P.P.*
2. *Whether the defendants No. 1 and 2 of leading suit have got the land granted illegally? O.P.P.*
3. *Whether the defendants No. 1 and 2 of leading suit have been occupying the land prior to the grant and they have developed the same with heavy expenses and hard labour? O.P.D.*
4. *Whether orders passed by the Executive District Officer, Ghotki, on 20-9-1981 and passed by Member Board of Revenue on 6-1-2005 are illegal and mala fide? O.P.P.*
5. *Whether the suit is not maintainable barred by law? O.P.D.*
6. *Whether the plaintiff is entitled to the reliefs claimed? O.P.P.*
7. *What should the decree be?*

5. After recording evidence and hearing arguments, the trial Court decreed the respondents' suit and dismissed the applicants' suit vide judgment dated 27.04.2010. The applicants' appeal was also dismissed by the appellate Court on 30.04.2016, thereby maintaining the findings of the trial Court. The applicants have now brought this Civil Revision challenging those concurrent findings.

6. Heard learned Counsel for the parties and examined the record with their assistance.

7. Perusal of the record shows that the applicants' earlier grant was revoked by the Member, Board of Revenue, Sindh, who directed the Colonization Officer to hold an inquiry, inspect the site and dispose of the land as per Land Grant Policy. Consequently, the Colonization Officer complied with the directions and ultimately it was ordered on 03.02.1980 that the land in question was lying within 20 chains of the village and under the houses, school, graveyard and Eidgah. The parties were accordingly restrained to cultivate in the subject land. Upon filing an appeal against that order, the land was re-granted to the applicants vide order dated 20.09.1981 by the Additional Commissioner, Sukkur. The said order cannot be sustained in law for the simple reason that it was made without impleading or notifying the parties directly affected by the subject matter of the land. It is a settled principle that no adverse order can be passed against a person without providing an opportunity of hearing, and any order passed in violation of this principle is a nullity in the eyes of law. The record shows that the appeal before the Additional Commissioner was filed and decided behind the back of those whose interests were directly affected by the land in question, thereby violating the fundamental rules of natural justice.

8. Furthermore, the order of the Member, Board of Revenue, Sindh, dated 24.07.1979 had not only declared the grant in favour of the

applicants illegal on factual grounds, such as the land's proximity to the village and its use for communal purposes like a school, Eidgah, graveyard and houses, but also directed a fresh inquiry if any allotment was to be reconsidered. No such inquiry was conducted before the impugned order of 20.09.1981 was issued. The applicants did not challenge the 1979 order in accordance with law, nor did they secure any permission to bypass the inquiry requirement. Thus, the order of 20.09.1981 stands in direct conflict with a binding direction of the superior revenue authority and is, for that reason alone, without jurisdiction.

9. The subsequent order dated 06.01.2005 by the Member, Board of Revenue, Sindh, rejecting the appeal (Case No.SROA-91/2002) as time barred, does not cure the defects of the 1981 order. This order was passed merely on the ground of limitation, and not after examining the merits or legality of the earlier decisions. A decision based solely on limitation without determining substantive rights cannot be considered a reaffirmation of the prior illegal order. It neither validates the original grant nor cures the jurisdictional and procedural defects of the 1981 order.

10. As to the claim of the applicants that they are landless *haris* eligible for grant of state land under the Land Grant Policy, the factual record is otherwise. The applicants, by their own admissions, are businessmen in occupation of commercial premises and owners of other agricultural land. The purpose of the land grant scheme was to provide subsistence support to those who were truly landless and dependent on cultivation for their livelihood. Any grant made in contravention of this objective undermines the policy itself and amounts to misuse of public resources.

11. It is also a matter of record, and indeed not denied, that the land in question had been in use by the local community long before the grant in favour of the applicants. The existence of a government school, graveyard, Eidgah and residential structures on the land is documented

and observable. Such land falls within the category reserved for village extension and communal use, and thus could not have been validly granted under the *haris*' quota or otherwise. Even a cursory application of the relevant land grant rules would reveal that such parcels are expressly excluded from allotment.

12. With respect to the jurisdictional objection raised under Section 172 of the Land Revenue Act, 1967, the bar does not extend to disputes involving title, legality of grant, or fraudulent allotments. It only excludes challenges to revenue entries made in due course by the concerned officers. Where the challenge pertains to rights in the land and involves allegations of illegality or void proceedings, civil courts are fully competent to adjudicate the matter.

13. In view of the foregoing, it becomes evident that the grant in favour of the applicants was made in violation of both applicable law and procedural requirements. The subsequent orders, having been passed either without notice or without jurisdiction, do not confer any legitimacy upon the original allotment. It is only after a comprehensive analysis of these issues that the trial Court and the appellate Court rendered their findings. These findings are supported by law, rooted in the evidentiary record, and require no interference.

14. Accordingly, the Civil Revision, being meritless, is **dismissed** with a cost of Rs.50,000/-, to be deposited in the High Court Clinic's fund.

Above are the reasons of this Court's short order dated 07.04.2025.

J U D G E

Abdul Basit