Order Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D – 1642 of 2011

Date Order with signature of Judge

1. For orders CMA No. 6038/2011.
2. For Katcha Peshi.
3. For order on CMA No. 6039/2011.

Date of hearing : 12.09.2012.

Mr. Sarfraz A. Akhund, Advocate for the petitioners.

Nadeem Akhtar, J.- Through this Constitutional Petition, the petitioners have impugned the order passed on 18.05.2011 by the learned Vth Additional District Judge, Sukkur, in Civil Revision No.16 of 2011, whereby the said Revision filed by respondent No.1 against the petitioners was allowed, resulting into rejection of the plaint in F.C. Suit No. 125 of 2009 filed by the petitioners against the respondents.

2. The case of the petitioners is that property bearing C.S. No. B-1763/6, measuring 88.60 sq. yds., situated in Bagh-e-Hayat Ali Shah, Sukkur, hereinafter referred to as **"the property"**, was originally owned jointly by two Hindus ; namely, Manghraj Jimandas and his wife Jushanmal. The said Hindu owners migrated from Pakistan to India in 1947 at the time of partition, and the property came into the possession of Muhammad Gulzar, the real father of the petitioners, who had migrated from India to Pakistan in the year 1947. Throughout from 1947, the property remained in the exclusive possession of Muhammad Gulzar, and after his death, the petitioners are in possession of the property. The petitioners have alleged that in September 2009, respondent No.1 visited the petitioners at the property and asked them to vacate the same on the ground that he was the owner of the property. Respondent No.1 informed the petitioners that the property had been allotted to his father Abdul Razzaq, and after his death, he inherited the property and became the sole and exclusive owner thereof.

3. It is also the case of the petitioners that they immediately made inquiries from the office of the City Survey Officer, Sukkur, and obtained certified true copy of the extract from the Property Register Card. The inquiry by the petitioners revealed that the property was allotted to the respondent No.1's father by the Settlement Department vide P.T.D. No.10880 dated 02.04.1971, and was then transferred and mutated in his name. We would like to mention here that there was/is no entry in the aforementioned record regarding allotment or transfer of the property after the names of the original Hindu owners, except that in favour of the respondent No.1's father.

4. In the above background, the petitioners filed F.C. Suit No. 125 of 2009 before the 1st Senior Civil Judge, Sukkur, against the respondents praying for a declaration that they are entitled for the allotment of the property in view of

their possession ; for a declaration that the P.T.D. issued in favour of respondent No.1's father and the subsequent entry in favour of respondent No.1 are forged documents having been obtained by them fraudulently ; for cancellation of the said P.T.D. and subsequent entry in pursuance thereof in favour of respondent No.1 ; for a direction to respondent No.2 to allot the property to the petitioners ; and to grant permanent injunction restraining respondent No.1 from dispossessing the petitioners from the property.

5. The respondent No.1 filed an application under Order VII Rule 11 CPC for rejection of the plaint of petitioners' aforementioned Suit. It was urged by respondent No.1 in his application that the Suit was miserably barred by time, and was also barred under Sections 39, 42 and 56 of the Specific Relief Act, 1877. It was specifically urged by respondent No.1 that the Suit was also barred under the provisions of various special laws ; namely, Sections 10, 22 and 25 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, **("the Act of 1958")**, Rule 6 of the Permanent Transfer Rules, 1961, **("the Rules of 1961")**, and the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. This application filed by respondent No.1 was rejected by the trial court vide order dated 18.01.2011 after hearing the parties.

6. Being aggrieved with the order of dismissal, respondent No.1 filed Civil Revision Application No.16 of 2011 before the learned Vth Additional District Judge, Sukkur, which has been allowed by the impugned order dated 18.05.2011. By the impugned order, the application filed by respondent No.1 for rejection of the plaint has been allowed, and the plaint in F.C. Suit No. 125 of 2009 filed by the petitioners has been rejected.

7. Mr. Sarfraz A. Akhund, the learned counsel for the petitioners submitted that the property could not be allotted or transferred to the respondent No.1's father by the Settlement Department as the same was not available for

allotment or transfer at the time of the purported allotment. According to him, under the Evacuee Laws, particularly the Act of 1958, only the petitioners' father was, and after his death the petitioners are, entitled to the allotment and transfer of the property because of their uninterrupted and exclusive possession since 1947. The learned counsel further contended that the P.T.D in respect of the property in the name of the father of respondent No.1 is a forged document as it was procured fraudulently. Lastly, he argued that no right, title or interest in the property had/has been created in favour of the deceased father of respondent No.1 or in favour of respondent No.1.

8. In support of his case, the petitioners have filed only residence certificate issued by the Union Council in the year 2007, two telephone bills of May and June 2009, a letter dated 24.10.2007 addressed to three of the petitioners by Taluka Municipal Administration (T.M.A.), Sukkur City, simply stating that their neighbour was granted permission by the T.M.A. to construct two steps in front of his house subject to the condition that the same will not create any hindrance for any one. We have noticed that, except for the above, not a single document has been filed by the petitioners to show that the property was in their possession since 1947, or that they were granted permission by the Settlement Department / the Government to retain the possession thereof, or that consideration in any form was paid by them to the Settlement Department / the Government. It may be noted that under Section 2(6) of the Act of 1958, "possession" could be said or claimed to be legal and justified if the same is obtained in pursuance of an order passed on or before 20.12.1958 by the Rehabilitation Authority, or by any other officer authorized or permitted by the Central or Provincial Governments.

9. During the course of the hearing, Mr. Akhund conceded that the petitioners' father / predecessor-in-interest, and after his death, the petitioners never applied for allotment or transfer of the property to the Settlement Department, nor do they have any title document in their favour in respect of the

Suit property. A perusal of the plaint filed by the petitioners further confirms that the petitioners admittedly do not have any title whatsoever to the Suit property, as they had prayed in their Suit vide prayer 'A' that it should be declared that they are entitled for the allotment of the property. This prayer itself is sufficient to establish that the petitioners had no title to the property. Under Section 10(1) of the Act of 1958, the Chief Settlement Commissioner, or any other officer authorized in this behalf by him, had the authority to transfer of dispose of any property out of the compensation pool on evaluation basis, or by sale, by means of auction or otherwise. Sub-Section (2) of the said Section 10 further provided that the Central Government could also order the transfer of any property out of the compensation pool in the public interest in such manner as it may deem proper. Admittedly, the property was an evacuee property, therefore, the only authorities which were competent to allot and transfer the property to the petitioners' father or to the petitioners, were the Chief Settlement Commissioner, or any other officer authorized by him, or the Central Government. Admittedly, the petitioners' father, and after his death the petitioners, never submitted their claim nor did they apply to the Settlement Department / the Government for allotment and transfer of the property. The petitioners, therefore, have no *locus standi* to question or challenge the allotment of the property by the competent authority, that is, the Settlement Department in favour of the respondent No.1's father.

10. The authorities cited and relied upon on behalf of respondent No.1 before the learned lower appellate court have been discussed in the impugned judgment. The most relevant authority of the Honourable Supreme Court, which is fully applicable in this case, is *2004 SCMR 790,* _*Abdul Hameed and others V/S Settlement Authority and others.*_ In this authority, there were two rival claims in respect of the same property. One claimant, a refugee from Jammu and Kashmir, had filed form for the allotment of the property as he was occupying the same since creation of Pakistan, and consequently the property was allotted to his widow. The other claimant had not submitted any form. It was held by the

Honourable Supreme Court that, the claimant who had not submitted any form for allotment, cannot lay claim on the disputed property on any score.

11. Similarly, in the case of *Ahmad Jamal V/S Nazir Ahmad Khan and others, 1975 SCMR 24,* it was held by the Honourable Supreme Court that once it is decided that the person claiming the property is not entitled to the transfer thereof, he has no *locus standi* to object to the transfer thereof to another person. In the case of *Habib Ullah and others V/S Chief Settlement Commissioner / Member, Board of Revenue, Lahore and others, 1998 SCMR 351,* it was held by the Honourable Supreme Court that there was nothing on record to indicate that factually the person claiming the disputed property had applied for the transfer thereof. The transfer order in favour of the other person, which had attained finality, was held to be in order.

12. By virtue of Section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, several Acts and Regulations, including the Act of 1958, were repealed with effect from 01.07.1974. Section 22 of the Act of 1958 attached finality to the orders passed under the Act of 1958, as it provided that all orders passed by any officer appointed under the Act of 1958 shall not be questioned in any court. As per the Extract filed by the petitioners, the property was allotted to the respondent No.1's father on 02.04.1971. The allotment in favour of the respondent No.1's father attained finality and as such it cannot be questioned in any court, as the said allotment was made prior to the repeal of the Act of 1958 on 01.07.1974.

13. For the purposes of this petition, the provisions Rule 6 of the Rules of 1961 are very relevant and important. Under Rule 6(1), any person through an unstamped application in writing could inform the Settlement Authority concerned of the discovery of any error in an entry or about fraud or misrepresentation in obtaining Permanent Transfer of the Property. Under Rule

6(2), on receipt of such information, the Settlement Authority would check the record and, if he was satisfied that the information was false, he would record his order on the application to that effect. Rule 6(5) provided that in all cases where a record of Permanent Transfer was required to be amended, varied or cancelled, a carbon copy of the order passed was to be issued to the transferee at the time of passing of the order to enable him to file an appeal or Revision, as the case may be, against that order. Thereafter, the record was to be amended, varied or cancelled by the Settlement Authority who shall withdraw all attested copies of the record previously issued to the transferee. Rule 6(6) provided that If an appeal or Revision was to be filed by the transferee, the entry was not to be amended, varied or cancelled until the expiry of a period of fifteen days of the passing of the order or the disposal of the appeal or Revision, whichever is later. Finally, Rule 6(7) provided that the record of Permanent Transfer would be amended, varied or cancelled in accordance with the order passed in appeal or Revision filed under Sub-Rule (6).

14. The aforementioned process and procedure of challenging the P.T.D. in favour of the transferee/ father of respondent No.1 was admittedly never availed by the petitioners, although the P.T.D. was issued on 02.04.1971 and the Act of 1958 remained in the field till 30.06.1974. The contention of the petitioners that they came to know about the P.T.D in the year 2009 through respondent No.1, cannot be accepted. From the case pleaded by the petitioners, it appears that, except for retaining possession of the property, they did not take any other step for acquiring the ownership of the property, such as, filing of the form / claim before the Settlement Department for allotment and transfer of the property, or to obtain an order from the Rehabilitation Authority on or before 20.12.1958 under Section 2(6) of the Act of 1958.

15. Before parting with this case, we would like to refer to two reported cases of the Lahore High Court, wherein orders passed in revisional jurisdiction were assailed in the Constitutional jurisdiction.

In the case of ***Hafiz Muhammad Qasim V/S Mst. Soorat Bibi and others, 2000 YLR 2606***, it was held inter alia by the Lahore High Court that an order passed in revisional jurisdiction cannot be successfully assailed in Constitutional jurisdiction of the High Court, and that revisional jurisdiction is almost akin to the Constitutional jurisdiction of High Court and if the High Court starts looking into the revisional order, it would tantamount to entertaining a second revision against the original order which is specifically prohibited under the law.

In the case of ***Mst. Fazal Begum V/S Bahadur Khan and another, PLD 1983 Lahore 365,*** it was held that interference in exercise of Constitutional jurisdiction is warranted only when a case of jurisdictional error is made out.

16. All the aforementioned cases are fully applicable in the present case. In view of the above discussion and the authorities of the honourable Supreme Court, we do not find any infirmity, illegality or jurisdictional error in the impugned order, which in our humble opinion, does not require any interference by this Court. The petition is, therefore, liable to be dismissed in limine.

The above are the reasons for the short Order announced by us in Court on 12.09.2012, whereby this petition was dismissed along with the listed applications.

J U D G E

JUDGE