

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.151 of 2008
[Province of Sindh and three others *versus* Roqia Maqsood
Trading Establishment and another]

along with
High Court Appeal No.152 of 2008
[Province of Sindh and three others *versus* Roqia Maqsood
Trading Establishment and another]

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Ms. Sana Akram Minhas, J.

Date of hearings : 18.02.2026 and 24.02.2026

Appellants in both Appeals : (1) Province of Sindh, (2) The Town Police Officer, (3) The Station House Officer and (4) City District Government Karachi, through Mr. Sandeep Malani, Assistant Advocate General Sindh.

Respondents in both Appeals : (1) Roqia Maqsood Trading Establishment and (2) Badar Alam, through Ms. Salman Hamid, Advocate

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due commonality, both the Appeals are decided by this Judgment, as in both the Appeals, the Parties are same.

2. **HCA No. 151 of 2008.** This Appeal is filed against the impugned Order dated 03.03.2008 (*first impugned Order*), passed by the learned Single Judge of this Court in Suit No.341 of 2007, instituted by the Respondent No.1 (*Roqia Maqsood Trading Establishment*), whereas

subsequent **HCA No.152 of 2008** is filed against the Order dated 21.04.2008 (*second impugned Order*), passed by the same learned Bench, dismissing the Review Application of present Appellants (*Government of Sindh and others*).

3. The relevant background of both the Appeals is that the above Suit was instituted by the above named Respondent No.1 (*Plaintiff*) for Specific Performance, Declaration and Permanent Injunction against the present Respondent No.2 (*Badar Alam son of Izzat Hussain*) and the Appellants (*Government of Sindh and others*).

4. The subject matter of the Suit is 50 Acres of Land in Survey No.77, Sector 52-A (49 Acres) and 1 Acre in Naiclass No.58, Deh Belti Amri, Scheme No.33, Karachi (***Suit Land***), claimed to have been purchased by the Respondent No.1 from the present Respondent No.2 through a Registered Conveyance Deed dated 17.02.2005. As per the Complaint, the main reason for filing the Suit was that after purchasing of the Land, it transpired that 05 Acres of Land from the above total area is short. Since the grievances of Respondent No.1 was not satisfactorily addressed either by the private Respondent No.2 or the present Appellants, the above Suit was filed, which was resisted by the Appellants through their Written Statement, in which the main stance of the Appellants is, that the Suit Land is, in fact, the State Land and on the basis of fake and forged documents, the Respondent No.1 is falsely claiming its rights and interest therein.

5. During the pendency of the Suit, an Application-CMA No.7867 of 2007 [*under Order XXIII Rules 1 and 3 of CPC*] was filed, through which, both the present Respondents agreed to settle their disputes outside the Court with the Prayer that the Suit may be decreed in terms of the Compromise. However, this Application was opposed by the

present Appellants, because ownership of the Suit Land was in question; however, the learned Single Bench was of the view that since the Compromise was between the two private Parties and the main Prayer is for Specific Performance and not against the Official Defendants, therefore, Compromise was accepted, the above Suit was decreed only against the private Respondent No.2, but with a condition that the Appellants will inquire into the matter and can proceed against the persons, who are responsible for manipulating and forging the Documents.

6. It is the main contention of the learned Assistant Advocate General, that once the Suit was dismissed, the Court had become *functus officio* and could not have entertained the subsequent Application-CMA No.1569 of 2008, under Section 151 of CPC, filed by the Respondent No.1, after submission of the Inquiry Report with the Prayer that the Suit Land be granted to the Respondent No.1 under the existing Land Grant Policy, which in fact was allowed through the first impugned Order; whereas mainly the prayer clause in the Plaint itself (and so also the Compromise Decree) was / is about execution of lease in respect of 5 acres of land [falling short in the Suit Land].

7. The learned AAG in support of his arguments has cited the following Case Law_

- (i) **2017 SCMR 316**
[Syed Hakeem Shah (Deceased) through LRs and others versus Muhammad Idrees and others]
- (ii) **1986 SCMR 907**
[Ghulam Muhammad versus United States Agency for International Development (U.S. AID) Mission, Islamabad and another]
- (iii) **2019 CLC 369 [Sindh]**

[Waqar Ahmed Siddiqui and 3 others versus Mst. Shehnaz Parveen]

8. The above Appeals are opposed by Mr. Salman Hamid, the learned Counsel appearing for the Respondent No.1 in both the Appeals; he also filed the Objections on 24.02.2026, that is, after **eighteen years** from filing of these Appeals and upon conclusion of the arguments, also submitted a Statement/ Synopsis on 25.02.2024, along with the Documents. Supported both the above impugned Orders, which according to him, merged in the Order dated 05.05.2008, passed in the above Suit, directing the Appellants to issue Challans of the Suit Land on the commercial rate in favour of the Respondent No.1 and consequently, these Appeals have otherwise become infructuous, as the above Order of 5.5.2008 was not challenged.

In his Objections to the Appeals, he has explained that how both the Appeals are time-barred and Condonation Application filed in HCA No.151 of 2008 should be dismissed. Argued that the first impugned Order was passed on 03.03.2008, but the Application for obtaining Certified Copy was filed on 21.04.2008 and copy obtained on the next day. Under Article 151 of the Limitation Act (1908), 20 days' time is prescribed for filing such Appeals, whereas the HCA No.151 of 2008 was filed on 17.05.2008, and therefore, is barred by 43 days and Condonation Application should be dismissed; whereas, HCA No.152 of 2008, in which Order dated 21.04.2008 is challenged, the record shows that Certified Copy of the impugned Order was applied on 29.04.2008, which was obtained on 30.04.2008 and it was filed on 17.05.2008 and is also a time barred Appeal in view of the above Article. Contended that regardless of the status of the Appellants, being the Officials of the Government of Sindh, no preferential treatment can be afforded to them for condoning the delay on account

of the slackness and negligence of the Officials. Cited following recent Decisions of the Hon'ble Supreme Court appended with his Objections.

- (i) In CPLA No.4430 of 2025.
- (ii) In Civil Appeal No.101-K of 2022.

9. Arguments heard and Record perused.

10. The gist of both the above cited Decisions [by Respondent No.1] is that no preferential treatment can be given to the Officials or the State functionaries in filing an Appeal to the Hon'ble Supreme Court after the lapse of prescribed period of limitation, *inter alia*, because it negates the Doctrine of Equality, enshrined in Article 25 of the Constitution; observed that the explanation mentioned in the condonation application, was unsatisfactory, rather careless, and it is held that, internal procedural requirements or administrative inconvenience of the Government Departments cannot override the legal obligation to file the Petition within the given time. Conversely, such conduct amounts to a conscious disregard of the requirement of law and also reflects poor governance. The established Rule has been reiterated that law favours the vigilant and not indolent. However, it is also observed that delay is condonable if sufficient cause is shown.

11. On the other hand, the Summary of the Case Law relied upon by the learned AAG is, that once the Judgment and Decree is passed, the Court become *functus officio* and cannot reopen the matter except under available provisions of law. In such like a situation, Section 151 of CPC is of no help, as the Original Jurisdiction can only be exercised by a Court of law during the pendency of the Suit / *Lis* and that no other provision of law / remedy is available. Section 152 of CPC, cannot be used to make a correction of a

conscious nature, as the original Judgment and Decree were not open to amendments under the scope of the above provision.

12. After the above Order of 23.11.2007, when the Compromise / Settlement between the Respondents was accepted, as per the directions of the Court, an Inquiry was held by the Officials and the Report was submitted before the Court, which was taken on record on 13.02.2008. It is relevant to mention that while the above Inquiry was pending, another Application was filed by the Respondent No.1 seeking restraining Orders, which was heard and a Status Quo Order dated 26.11.2007 was passed with regard to the possession and the title of the Suit Land.

13. It would be relevant to reproduce the terms of the Compromise Decree:

“a) Direct and restrain the Defendants not to interfere in the possession and ownership of the Suit Land of the Plaintiff and also not to interfere and harass the Plaintiff in the peaceful and smooth operation of Plaintiff's business and development of the Suit Land.

b) Direct the Defendant No. 1 to specifically perform his part of the contract in favour of the Plaintiff by executing fresh lease in respect of 5 acres of land falling short of land measuring 40 acres in Naiclass 77, Sector 52-A, Scheme 33, Karachi. [Emphasis added]

c) Permanent injunction restraining the Defendants, their agents, attorneys or anyone else acting or working for and on their behalf from interfering in to the smooth business of the Plaintiff on the land and its development in any manner whatsoever, including that the Defendant must not approach the Revenue Authorities/Mukhtiarkar concerned in respect of the Land thereby prevent them from passing the entries of the Land in their record and/or the Revenue

Authorities/Mukhtiarkar concerned perform their statutory duties by recording the entries of the Land in their Record in favour of the Plaintiff.

d) Direct the Defendants and declare that the Plaintiff is a lawful owner of the Suit Land and is entitled to get benefit therefrom.

e) Cost of the proceedings.

f) Other, equitable relief as this Hon'ble Court may deem just and proper under the circumstances of the case.

The suit coming up on this 23rd day of November, 2007 for hearing before Mr. Justice Nadeem Azhar Siddiqi, in the presence of Mr. Salman Hamid, Advocate for Defendant, Mirza Adil Baig, Advocate for the Defendant No. 1 and Mr. Ahmed Pirzada A.A.G for Defendant Nos. 2, 4 and 5; the Plaintiff and Defendant No. 1 having filed a Compromise Application Under order 23 Rule 1 & 3 CPC R/w. Section 151 CPC duly signed by Plaintiff, Defendant No. 1 and their respective Advocates, it is hereby ordered that the suit is decreed against the Defendant No. 1 in terms of compromise application as under:-

1. That the Defendant No. 1 and other shall not interfere in the possession and ownership of the Suit land of the Plaintiffs and shall allow them to run their business peacefully on the Suit Land and to make development on it.

2. That the Defendant No. 1 has agreed to handover physical possession of the piece of land measuring 05.00 acres out of 49-00 acres in Sector 52/A, Scheme-33, Karachi in the presence of Nazir of the High Court within 30 days from the date of consent decree, which is to be passed by this Hon'ble Court in terms of the present compromise.

3. That Defendant No. 1 shall also handover the 4-00 acres piece of land out of 49-00 acres Suit Land in Sector 52/A, Scheme-33, CDGK, Karachi and handover the peaceful

possession in the presence of Nazir of the High Court thereof to the plaintiffs within 30 days from the date of the consent decree, which may be passed by this Hon'ble Court in terms of the present compromise.

4. *It is also agreed between the Defendant No.1 and the Plaintiffs that because of Defendant No.1's old age, the Plaintiffs, on their own shall pursue the matter of adjustment of shortfall of Suit Land, allotted by BOR and shall also apply to the BOR for granting adjustment/exchange of the said shortfall of the Land, admeasuring approximately 06-00 acres out of 40-00 Acres in Naiclass No: 77 and Sector 52/A, Scheme-33, Karachi.*

5. *That since the above Land may be hit by Ordinance-III of 2001, the Plaintiffs will pay the amount of differential challan of malkano which may be issued by the Land Utilization Department BOR.*

6. *That since the dispute has been settled between the Defendant No:1 and the Plaintiffs in terms of the above, the Plaintiffs do not press the suit and/or prayer against rest of the Defendants.*

It is hereby further ordered that the above compromise is subject to the condition that the Government of Sindh will enquire into the matter and will proceed against the persons who are responsible for forging and fabricating the documents and the Government is also entitled to initiate proceedings for taking possession of the suit property, if the documents of the property are found to be forged and fabricated.

It is hereby further ordered that the execution of decree against the defendant No. 1 is subject to the result of the enquiry to be conducted by Government of Sindh and submit report within six weeks for perusal of this Hon'ble Court.

*Given under my hand and the seal of the Court this
23rd day November, 2007.”*

14. The said Inquiry Report is available in record of the present Appeal as Annexure “F”. The Recommendations were incorporated in the First impugned Order of 03.03.3008, it would be useful to reproduce the same herein under_

- “1. During the course of enquiry, it has been revealed that the land measuring 50-00 acres is already under enquiry before the Court of Executive District Officer (Revenue), CDGK on the recommendation of the then Incharge District Officer (Revenue), City District Government, Karachi, therefore, the Executive District Officer (Revenue), CDGK to expedite proceedings U/s. 164 of Sindh Land Revenue Act, 1967 and finalize the case within shortage possible time in respect of land under enquiry as well as subsequent entries crop-up there to in addition to initiate Suo Moto proceedings U/S. 164 in respect of other entries effected in the Revenue Record in Dehs Songal, Thoming & Bijar Bhutti on the basis of said so-called order of adjustment dated 14.05.1992 and mutation Entry No.32, Dated 16.05.1985 VF-VII-A Deh Bitti Amri.*
- 2. The possession of the land to be taken by the Government after final orders of the Honourable High Court of Sindh.*
- 3. After taking over possession, the land may be put to allotment by the Government under existing Land Grant Policy. If any of the subsequent purchaser(s) including the plaintiff in Suit No.341/2007 M/s. Ruqyya Maqsood Trading Establishment is interested to purchase the land on market price from the Government it may be given first opportunity to avoid future litigations.”*

15. The above Recommendations were accepted in the impugned Order in the following terms_

“The recommendation are accepted and after taking over possession the land may be put to allotment by the government under existing land grant policy. The land may be given to the Plaintiff of Suit No.341/2007 M/s Roqia Maqsood Trading Establishment on the market price. The Defendants No.2 is directed to issue requisite challan in favour of the Plaintiff.”

16. From the above last Paragraph of the impugned Order, it is apparent that the learned Single Bench, in fact, directed the Appellants to give the Suit Land to Respondent No.1 on the market price and the requisite Challan be issued. Aggrieved of this observations and directions, the Appellants preferred a Review Application [CMA No.2255 of 2008] dated 18.03.2008, which was dismissed vide second impugned Order dated 21.04.2008 (against which HCA No.152 of 2008 is preferred).

17. It is not difficult to conclude that the operative part of the first impugned Order is clearly in violation of the terms of the Compromise Decree dated 15.12.2007 (*supra*), and particularly Paragraph-6 thereof, in which, the Respondent No.1 did not press the Suit against the Official Defendants / now the Appellants, but, it is in fact the present Appellants, against whom the direction was issued in the impugned Order that the Suit land should be given to the Respondent No.1.

18. Adverting to the second impugned Order passed on Appellants' Review Application (CMA No.2255 of 2008, filed on 18.03.2008; at page-177 of the Application Part).

19. In this Review Application, the Appellants had prayed that the first impugned Order may be recalled / varied, or reviewed, as it was obtained by misrepresentation and concealment of facts. The ownership of the Suit Plot was disputed, based on forged and fabricated Documents, as stated in Paragraph-3 of the supporting Affidavit of the Review Application. In Paragraph-9, it is stated that Paragraph-3 of the Recommendation (*reproduced in the foregoing Paragraph*) may be treated as deleted, as the Inquiry Officer had travelled beyond the terms of the Reference. It is stated in Paragraph-14 (*of the supporting Affidavit*) that after decreeing the Suit,

the Court had become *functus officio* and could not have passed the first impugned Order, sought to be reviewed / varied. The afore-referred Letter dated 07.03.2008 of the Land Utilization Department is also available in record (*at page-193 of the Application Part*).

20. Even if the third Paragraph of the Recommendation is ignored (*as mentioned in the Review Application that it should be deleted*), the two other Paragraphs of the Recommendation are intact, stating that the possession of the Suit Land was to be taken over by the Appellants after the final Orders of this Court, because, another Inquiry was pending against the Suit Land, based on the conclusion (*as contained in the Inquiry Report*), that the Entries in respect of the Suit Land were **bogus**. Instead of appreciating the prevalent scenario, the Review Application was dismissed [vide second impugned Order] mainly on the ground that apparently some departmental controversy existed between the Inquiry Officer [*ibid*] and his superiors, which should not be commented upon and since the first impugned Order is correct, thus, no interference is required.

21. The direction mentioned in the first impugned Order and maintained in the second impugned Order, in a Suit, which had come to an end, travels beyond the above reproduced terms of the Compromise Decree, embodied in Paragraph-6, that since the dispute was settled between the Respondent No.1 and Respondent No.2 (*Badar Alam*), the Suit was not pressed against the Appellants; but, the compromise **was subject to the condition** that the Government of Sindh (*Appellant No.1*) would hold inquiry and proceed against those persons, responsible for forging and fabricating the documents, besides, initiating the proceedings to take over the possession of the Suit Land. The **Conclusion** [at Page 95 of the Appeal File] of the

Inquiry Report confirms that the purported title documents were / are forged and the Suit Land has been usurped by the private individuals.

22. The legal consequence of both the impugned Orders is that the terms of the Compromise Decree has been modified, rather violated. It is a settled principle that even the Executing Court cannot travel beyond the terms of a Decree. But, here the impugned Orders have created an altogether new situation by directing the Appellants to give Suit Land to the Respondent No.1, which was never mentioned in the above Compromise Decree; conversely, the Suit was dismissed against the Officials Appellants. Not only this, by virtue of the impugned Orders, the relief is granted to the Respondent No.1 beyond the pleadings of its above Suit No.341 of 2007.

23. Acceptance of the above Inquiry Report and its Recommendations, reproduced in the first impugned Order, means that factual determination in the Inquiry Report are accepted, which includes that the land in question was already under another Inquiry before the Court of Executive District Officer Revenue CDGK (the then), because Entry No.32 dated 16.05.1985, Deh Belti Amri, regarding 86-21 Acres, and Entry No.32/16 dated 16.09.1996 in the same Deh regarding the Suit Land, which were made on the basis of Order dated 14.05.1992 (PS/MBR/LU/1518/92) in the name of Rafiuddin son of Sirajuddin was **bogus** and was inserted in the record of rights after 2003 to usurp the Government Land.

24. It is also one of the arguments of the learned Counsel for the Respondent No.1 that both the impugned Orders have merged into the subsequent Order of 05.05.2008, which was never challenged. Through this Order, directions were issued by the learned Single Bench that the Challan on commercial and residential basis, in respect of the Suit Land be issued in

favour of the Respondent No.1. We do not agree with the contention of the learned Counsel for the Respondent No.1, because both the impugned Orders can be independently considered by us in these Appeals, which is being done in the preceding paragraphs.

25. Adverting to argument about period of limitation.

We have to consider the overall record of the case to reach a conclusion whether limitation in these Appeals should be condoned, owing to 'sufficient cause' as mentioned in Section 5 of the Limitation Act, (1908), so also observed in the above two Judgments of the Hon'ble Supreme Court, relied upon by the learned Counsel for the Respondent No.1.

26. The first impugned Order was passed on 03.03.2008, the Application for a Certified Copy was given on 15.03.2008, made ready on 29.04.2008 and was obtained on 30.04.2008, whereas the Appeal was filed on 17.05.2008. In terms of Article 151 of the Limitation Act (1908) within 20 days, a High Court Appeal should have been filed and, therefore, HCA No.151 of 2008 is barred by nine days.

The second impugned Order was passed on 21.04.2008, the Application for a Certified Copy was filed on the next day, it was made ready on 29.04.2008, supplied on 30.04.2008 and the Appeal was filed on 17.05.2008. This High Court Appeal is within time, because time consumed in preparation of the certified copy is to be excluded.

Even if we ignore the submissions of the learned AAG in support of condonation of delay in filing the HCA No.151 of 2008, inter alia, as the above Review Application was filed and remained pending till it was decided by the second impugned Order, we are, even otherwise, of the view

that the limitation period in such matters is condonable by the Courts, if, by not condoning the limitation period, grave illegality continues to persist. The reported Judgment relied upon by the learned AAG is applicable to the facts of the present case, gist of which is discussed above, that after the passing of decree, Court becomes *functus officio*.

27. The above convincing discussion do constitute sufficient cause, for condoning the delay, therefore, the Judgment cited by the learned Counsel for the Respondent No.1, are distinguishable from the unique facts of these Appeals.

28. The upshot of the above is that both the Appeals are accepted and the impugned Orders are set-aside.

29. Parties to bear their respective costs.

JDUGE

JUDGE

Karachi.

Dated: 30.07.2026.

M. Javaid PA