IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Appln. No. S-186 of 2023

Appellants	:	Wahid Bux s/o Ahmed Khan, Bhutto & 10 others *Through* Mr. Sanaullah Mahar, Advocate
Respondent No.2	:	Syed Safdar Ali Shah s/o Anwar Ali Shah *Through* Mr. Mukhtiar Hussain Katpar, Advocate
The State	:	*Through* Mr. Ghulam Abbas Kubar, AAG
Date of Hearing	:	01.12.2025
Date of Order	:	15.01.2026

O R D E R

KHALID HUSSAIN SHAHANI, J.— Applicant Wahid Bux and 10 others invoke revisional jurisdiction of this court, calling in question concurrent judgments of the courts below, whereby the plaint of F.C Suit No.174/2021, for declaration, cancellation and permanent injunction was rejected under order VII rule 11 CPC vide order dated 31.01.2022 by the court of learned Senior Civil Judge Ghotki and its appeal No.28/2022 also dismissed vide judgment & decree dated 02.06.2023 by the learned Additional District Judge-II, Ghotki.

2. The factual matrix, as emerges from the record and submissions, is that an extent of about (1-24) acres out of Survey No.17, Deh Qadirpur, Taluka and District Ghotki, was granted to Syed Giyasuddin Shah in relaxation of the Land Grant Policy 1989 with effect from Kharif 1993-94, pursuant to orders of the Chief Minister Sindh, and A-Form No. 8055 was issued upon payment of full malikhana, the original A-Form being still available in the official record. Subsequently, the grant was cancelled by the Government of Sindh, Land Utilization Department, again with the approval of the Chief Minister, but the Government initiated a suo motu general exercise directing authorities to hear grantees individually; in consequence thereof, the Commissioner Sukkur Division, after hearing, passed an order dated 25.08.1998 whereby the grant in favour of Giyasuddin was

restored/maintained. That order was challenged through revision before the ES & EP Board of Revenue Sindh, which dismissed the revision *(Dewan Mal and another v. Shah and others)* as time-barred by order dated 20.05.2002; later, yet another revision was carried before the Member, Reforms Wing and Special Cell, Board of Revenue Sindh, against the same order of 25.08.1998, which was again rejected vide order dated 26.05.2005 with an observation that the aggrieved party could, if so advised, resort to appropriate court proceedings. In the interregnum, respondent No.2 purchased the land from respondent No.1 (successor of grantee) through a registered sale deed executed in 2002, supported by receipts and T.O forms, and the revenue record reflected this transaction and subsequent cultivation. It also appears that certain constitutional and revenue proceedings, including C.P. No.D-226/2021, were instituted by or at the instance of the plaintiffs' side, but no relief was obtained that disturbed the grant or the revenue hierarchy's orders. The instant civil suit, however, was instituted only in 2021, wherein the plaintiffs sought declaration and cancellation of the old grant, the restoration orders, the sale in favour of respondent No.2, and consequential injunctions, while also asserting that their right of drainage/easement had been infringed only one month prior to the suit, thereby attempting to anchor limitation on a recent cause of action.

3. On behalf of the applicants, learned counsel Mr. Sanaullah Mahar assailed the judgments below primarily on three interconnected planks. *First*, he argued that the trial court misapplied Article 120 of the Limitation Act by treating the suit as a simple declaratory/cancellation action, whereas, according to him, the dispute fell within the realm of easementary rights, particularly the right of drainage, thus attracting Article 26 of the Limitation Act regarding acquisition and disturbance of easements and section 15 of the Easements Act, 1882, which contemplates a

twenty-year period of enjoyment for a prescriptive easement. In his submission, the cause of action, so far as the plaintiffs' easement was concerned, accrued in 2021 when the drainage was obstructed, one month before filing, and therefore the courts below erred in mechanically applying the six-year residuary limitation period without appreciating that the right asserted was of a continuing and special nature. *Second,* he contended that in deciding an application under Order VII Rule 11 CPC, the court is confined to the plaint and must presume the averments to be correct, and that both the trial and appellate courts failed to give due consideration to the plaint and the documents annexed by the plaintiffs. According to him, no written statement had been filed, no issues were framed and no evidence was led, yet the courts dismissed the suit on limitation and on the premise that easementary rights were not established, which, in his view, could not be determined at the threshold stage without a full trial. He argued that the plaint disclosed a clear cause of action arising from the recent obstruction of the plaintiffs' traditional drainage channel and that, on this footing, rejection of plaint under Order VII Rule 11 CPC was unsustainable. *Third,* he mounted a substantive attack on the legality of the original grant and its subsequent affirmation by revenue authorities. For this purpose, he relied on several authorities. One such line of cases, including a reported judgment of the Supreme Court around 2016 (commonly cited as 2016 SCMR 1449 and akin to later judgments such as C.P No.1700 of 2011), emphasizes that the Chief Minister, under the constitutional dispensation, is neither a monarch nor endowed with unbridled plenary authority to allot state land as a matter of personal grace; rather, the Chief Minister must act strictly in accordance with law, prescribed rules and policies, and cannot bypass the statutory scheme or confer undue benefits in violation of constitutional norms of fairness and transparency. On the strength of such jurisprudence, counsel submitted that

the 1993 grant in relaxation of Land Grant Policy 1989, and particularly in relaxation of the policy's prohibitory clauses (including clause 13/14 restricting allotment and relaxation), was inherently void, being beyond the Chief Minister's lawful authority, and thus any subsequent affirmation by revenue authorities could not cure the original lack of jurisdiction.

4. Counsel then invoked decisions such as *Jehan Khan v. Province of Sindh* (PLD 2003 Karachi 691) and other pronouncements where it has been observed that limitation does not run against a truly void order or one that is non-existent in law, arguing that when an order is ultra vires and without jurisdiction, it can be assailed at any time, and that the plea of time bar cannot be raised to defeat a challenge against such nullities. He suggested that the orders of the Commissioner Sukkur, ES & EP Board of Revenue and Member Reforms Wing, all affirming the grant, were built upon an illegal foundation and thus shared its infirmity; he further contended that the plaintiffs, upon obtaining knowledge of the illegality and upon facing obstruction in 2021, promptly approached the civil court, and the delay ought to be condoned in the light of the doctrine that the law of limitation is not strictly applicable to void orders. Finally, he cited *Hamid Hussain v. Government of West Pakistan* (1974 SCMR 356), *Rases Ghulam Sarwar v. Mansoor Sadiq Zaidi* (PLD 2008 Karachi 458) and other authorities to emphasize that civil courts retain plenary jurisdiction over civil rights unless expressly barred, and that clause 13 of the Land Grant Policy itself, and section 172 of the Land Revenue Act, cannot be read as an absolute ouster of civil court jurisdiction in matters of title and easementary rights. In his formulation, the hierarchy of revenue forums had been exhausted and even constitutional remedy (C.P No.D-226/2021) had been tried, so the plaintiffs' approach to the civil court in 2021, when their easement was practically disturbed, was not only appropriate but necessary to vindicate their rights.

5. On the other hand, learned counsel Mr. Mukhtiar Hussain Katpar for respondent No.2, supported by learned AAG Mr. Ghulam Abbas Kubar, defended the concurrent findings and gave a different characterization to both the facts and the law. He underlined that the grant in favour of the predecessor of respondent No.1 dates back to 1993-94 and has travelled through a full revenue hierarchy: cancellation by the Land Utilization Department, restoration by the Commissioner Sukkur in 1998, dismissal of revision by ES&EP Board of Revenue in 2002, and rejection of further revision by Member Reforms Wing in 2005, with explicit advice to seek proper legal remedy if desired. Throughout this period, the grant remained recognized in revenue records, and the subsequent registered sale deed executed in 2002 in favour of respondent No.2 was duly recorded, with supporting T.O forms and receipts, thereby creating and consolidating third-party rights over nearly two decades. He asserted that the plaintiffs and/or their predecessors were fully aware of these proceedings and orders, as evidenced by their earlier revisions and petitions, including the time-barred revision dismissed by ES&EP Board in 2002 *(Dewan Mal v. Shah)* and later proceedings before the Member Reforms Wing in 2005, and thus they could not plead ignorance or rely on a 2021 obstruction to reset limitation for attacking the same chain of orders. In this regard, he found support in jurisprudence typified by *Atta Muhammad v. Maula Bakhsh and others* (2007 SCMR 1446) and later expositions, where the Supreme Court and High Courts have stressed that statutes of limitation are not mere technicalities but go to the very foundation of legal rights and finality, and that belated challenges to revenue orders, especially after long acquiescence and change of position, cannot be entertained on the pretext of voidness. Those authorities reiterate that even in the case of a void or allegedly void order, limitation generally runs from the date of knowledge, and that a

litigant cannot sleep over his rights for decades and then seek to avoid the statutory bar by a bare assertion that the impugned order was without jurisdiction. Relying on this line, counsel contended that in the present case, knowledge and participation of the plaintiffs' side in the revenue and constitutional litigation from 1998 to 2005 is manifest; therefore, any challenge to those orders through a 2021 civil suit is hopelessly time-barred, whether framed as declaration, cancellation or even as a collateral attack under the guise of easement enforcement. Counsel also highlighted that a genuine prescriptive easement under section 15 of the Easements Act requires proof of at least twenty years of continuous, uninterrupted and as-of-right enjoyment immediately prior to the obstruction, but the plaint in the present case, while mentioning an obstruction in 2021, does not articulate, with sufficient clarity and particularity, the precise period, manner and continuity of any such alleged drainage right over the suit land. Instead, the thrust of the pleadings is directed at the legality of the grant and the subsequent revenue orders, which is a matter of title and public law rather than a pure easement claim; this, in his view, justifies the trial and appellate courts' decision to apply the general residuary limitation and to treat the suit as essentially declaratory/cancellation in nature, falling within Article 120 of the Limitation Act and clearly barred considering the dates.

6. As to the plea of no limitation against void orders, respondent's side relied on more nuanced modern jurisprudence, including decisions of the Sindh High Court where it has been expressly clarified that while some earlier pronouncements mentioned that limitation does not run against a void order, later courts have held that this proposition cannot be applied mechanically, and that only in genuinely exceptional cases, where an order is a patent nullity, such as one passed by a person having no semblance of jurisdiction, can delay be overlooked, and even then equitable considerations

like laches, prejudice and intervening rights remain relevant. In those decisions, it has been emphasized that a mere erroneous, irregular or even illegal order does not become "void" in the strict sense and continues to attract the bar of limitation, and that litigants cannot be allowed to circumvent statutory periods simply by labeling an impugned act as void or ultra vires. Applying these principles to the present case, the courts below could legitimately conclude, and this Court concurs, that the 1993 grant, even if open to challenge on grounds of violation of Land Grant Policy or misuse of the Chief Minister's discretion, was not of the rare species of orders passed wholly without jurisdiction in the sense of a total absence of legal authority, but was at worst an order alleged to be illegal or in excess of authority, which must be challenged within limitation. The subsequent restoration and revisions by competent revenue forums further embedded the grant into the legal framework; their orders are, at the very least, formal judicial or quasi-judicial decisions rendered by authorities having ostensible jurisdiction under the Land Revenue and Land Utilization laws, and thus they stand on even firmer footing so far as limitation is concerned.

7. The attempt to bring the matter under Article 26 of the Limitation Act and section 15 of the Easements Act is also, on close scrutiny, misplaced. Article 26 addresses acquisition of a right to easement by twenty years' enjoyment and the period within which such a right can be resisted or lost upon interruption, and section 15 of the Easements Act provides that where such enjoyment has been peaceably and openly continued as of right for the requisite period, the easement becomes absolute and indefeasible. The plaintiffs' pleadings, however, do not meticulously allege a continuous, open and as-of-right drainage or other easementary use over the exact pathway or watercourse across the suit land for twenty years immediately prior to 2021; rather, they refer more broadly to a right of drainage being affected by the

defendants' acts and then revert to attacking the very foundation of the defendants' title and grant. In this sense, the courts below were justified in treating the suit as predominantly one for setting aside or ignoring the 1993 grant, the 1998 restoration order, the 2002 and 2005 revisional orders, and the 2002 sale deed, and in applying the general limitation regime for declaratory and cancellation reliefs, where time starts to run from the date when the impugned orders were passed or at least when the plaintiff first became aware of them and suffered a clear adverse effect. Given that the plaintiffs or their privies not only had knowledge but actively participated in revenue and constitutional proceedings between 1998 and 2005, any suit instituted in 2021 to re-agitate the very same controversy is plainly beyond time.

8. Order VII Rule 11(d) CPC empowers a court to reject a plaint where, from the statements in the plaint itself, the suit appears to be barred by any law, including the law of limitation; at that stage, the court does not weigh evidence but looks at the averments and the dates disclosed. Here, the plaint itself admitted or referred to the 1993 grant, the 1998 restoration, the 2002 and 2005 orders of the Board of Revenue hierarchy, the 2002 registered sale and even earlier petitions, and then simply asserted that cause of action accrued in 2021 one month prior to filing, without reconciling how a fresh cause of action could legitimately reopen long-concluded public and private transactions. Such a bare and conclusory statement, unsupported by a proper easementary factual foundation, could rightly be treated by the trial court as an attempt to evade limitation, warranting rejection/dismissal without burdening the parties and the court with a full-fledged trial. The complaint that the trial court did not "dilate upon the documents" also loses much of its force when seen in this context, because the decisive legal issue was not a factual contest over the authenticity of documents but the objective dates and

the long time span between the impugned administrative actions and the filing of the suit. Where limitation is ex facie apparent from the plaint and admitted chronology, the court is neither bound nor expected to embark on an elaborate evidentiary examination or to defer the question to the stage of final judgment; rather, it is both empowered and obliged to arrest belated litigation at the threshold.

9. The reliance placed by the applicants on case law about the Chief Minister's lack of competence to grant land, and about the absence of limitation for void orders, does not, in the present circumstances, advance their cause beyond the realm of abstract legal propositions. Judgments such as those in C.P. 1700 of 2011 and similar Supreme Court pronouncements indeed reiterate that the Chief Minister is a constitutional trustee and cannot, in disregard of law and policy, allot state land by personal fiat; nevertheless, even such observations do not amount to a blanket licence to reopen, after decades, every grant made with some degree of relaxation or discretion, particularly where revenue authorities and third-party purchasers have acted in the meantime. Similarly, decisions examining void orders and limitation, including (PLD 2003 Karachi 691) and later clarifications by the Sindh High Court and Supreme Court, now stress that only truly null orders, such as those passed by a complete usurper of jurisdiction, may occasionally be challenged without strict adherence to limitation, whereas orders that are simply erroneous, irregular or even illegal are still subject to statutory time bars and to doctrines of laches and finality.

10. In the present case, the grant originated in a governmental process, however flawed the relaxation may be alleged to be; it was then scrutinized and ultimately upheld by the competent revenue forums acting within their ostensible jurisdiction, and a registered sale intervened in favour of respondent No.2 nearly two decades before the suit. These layers of

administrative and transactional history remove the case from that narrow category where an order can be dismissed as non-existent in law, and they reinforce the view that limitation and finality must apply with full rigour. Finally, the scope of revision under section 115 CPC is supervisory and confined to jurisdictional error, illegality or material irregularity. The trial court, in rejecting/dismissing the suit as barred by limitation under Order VII Rule 11(d), and the appellate court, in affirming that decision, both acted within the bounds of their jurisdiction, applied the correct legal tests relating to limitation, easementary rights and threshold scrutiny of pleadings, and reached a conclusion that is reasonably supported by the record and governing case law. They neither refused to exercise jurisdiction vested in them nor assumed jurisdiction they did not possess, nor did they commit any material irregularity that would justify interference.

11. In these circumstances, and particularly in light of the long passage of time from the 1993 grant, the 1998 restoration, the 2002 and 2005 revenue orders and the 2002 sale, the plaintiffs' knowledge and litigation conduct during that period, the absence of a tightly pleaded twenty-year easementary foundation, and the evolved jurisprudence that limitation generally runs even against orders alleged to be void, this Court finds no cogent ground to disturb the concurrent findings. The revision application is therefore dismissed, and the judgments, orders and decree of the courts below are maintained, with parties left to bear their own costs.

J U D G E