

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Revision No. S – 211 of 2010

(Abdul Sami vs. Province of Sindh and others)

Date of hearing: 22-10-2021

Date of order: 22-10-2021

Mr. Shafqat Raheem Rajput Advocate for the Applicant
Mr. Ahmed Ali Shahani, Assistant Advocate General

JUDGMENT

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicant has impugned judgment dated 18.09.2010 passed by 2nd Additional District Judge, Ghotki in Civil Appeal No.38 of 2008 through which the judgment of Senior Civil Judge, Ghotki in F.C Suit No.17 of 2005 decreeing the Suit of the Applicant has been set-aside and the appeal has been allowed.

2. Learned counsel for the Applicant submits that the appeal was not maintainable as it was only filed by two defendants and the remaining defendants were neither joined as appellants nor as respondents and in support he has relied upon order dated 11.03.2015 passed by this Court in Civil Revision No.S-101 of 2011 (*re- Riaz Muhammad vs. Dildar Muhammad and others*). He has further argued that the entry and allotment of the Applicant was cancelled without notice; hence, the order impugned in the Suit dated 27.04.1995 and subsequent orders were illegal and without lawful authority, therefore, the trial Court was justified in decreeing the Suit. He has prayed for setting-aside the order in appeal.

3. On the other hand, learned Assistant Advocate General has argued that the land in question was unlawfully allotted under the orders of Chief Minister and in violation of the Land Grant Policy; that the Applicant at the relevant time was a government servant and working in Board of Revenue Hyderabad, whereas his father was at the relevant time working as Barrage Mukhtiarkar; hence the allotment was manipulated; that a proper show cause notice was issued and was never responded; that the appeal before the Revenue authorities against the order of cancellation was hopelessly time barred as it was filed after eight (08) years; that the land was never allotted in open *katchery* to a landless hari; that

the order of the Appellate Court is proper and in accordance with law; hence no case is made-out.

4. I have heard the learned counsel for the Applicant, learned Assistant Advocate General and perused the record.

5. It appears that the Applicant had filed Suit for Declaration and Injunction and the prayer was to the effect that the order dated 27.04.1995 passed by the Additional Commissioner through which the allotment of the Applicant was cancelled and subsequent orders of the authorities in Appeal and Revision including cancellation of entry No.3057 dated 12.01.1993 were illegal, unlawful, and without notice; hence, were liable to be set-aside. The learned trial Court after recording evidence decreed the Suit of the Applicant; however, the Appellate Court through impugned judgment has been pleased to set-aside the judgment of the trial Court and has dismissed the Suit. The findings of the learned Appellate Court as relevant reads as under; -

“15. Admittedly the suit land was granted to the respondent on harap basis, the same is too in violation of land grant policy. The Notification NO:SB-III/1-279/P/1704789 Dated: 04.12.1989 (Ex.59), clearly shows that the Schedule of land available for allotment shall be prepared by the Collector and shall be published widely at least two months before the scheduled date of Katchery, it further clearly shows that the land is to be disposed off in open katchery. It is also appears that the land is granted from un-S.Nos: same is marked in a sketch shall which shall be prepared and given for the allotment and the Order of the Collector shall be incorporated in the sketch with his signature.

16. The claim of respondent suit land was granted to him on the basis of small khatedar right from Kharif 1992-1993 by the Colonization Officer Guddu Barrage, under the directions of Chief Minister Sindh in relaxation of land grant policy 1989. In this regard I rely upon an unreported case/CP NO: D-177 of 2000 Re. Muhammad Aslam Vs. Qadir Bux (supra) the Honorable High Court of Sindh Bench at Sukkur has held as under:

“The record reveals that initially the land was granted to Petitioner under the Orders of the then Chief Minister, in Relaxation to the land grant policy on harap rights in Disregard of statutes and deprived the actual Haris of Their grant of land. The Chief Minister was neither competent nor empower to pass such Order.”

17. For the reasons discussed herein above, I am of humble view that the suit land was illegally granted to the respondent, T. O. Form also illegally issued before 20 years and mutation entry also kept illegally. In such like cases when basic Order was without jurisdiction and it can not be treated as legal due to passage of time. It is also settled law that when the basic Order is without lawful authority, then the superstructure shall have no fall on the ground automatically as laid down by the apex Court reported in PLD 1958 S.C. 104. In this view of the matter, findings of trial court on issue NO: 01 is hereby reversed.

18. *Reverting to rest issues, I find that these issues relate to issue No.01, based on same oral and documentary evidence. I have already discussed and resolve the issue No: 01, therefore there is no need to repeatedly discussed on rest issues. It is now settle law that suit can be decided even on giving findings on one issue and it is not necessary to give findings on other issues where suit was held to be not maintainable and barred by law. In this regard, I rely upon case law (1) 1995 CLC 1541 SC (AJK) (c) and (2) 1997 CLC 466 (AJK) (d).*

19. *In view of above circumstances, I am of the humble view that the basic requirements for disposal of land on harap condition were not complied with as such the grant in favor of the respondent was in violence of Land Grant Policy, hence the Order passed by learned Additional Commissioner Dated: 27.04.1995, thereby cancelling the grant of the respondent was legal and lawful and rightly maintained by the Member Board of Revenue in the Revision Petition and Review Petition. Thus the impugned Judgment and Decree of the trial court required to interfere.*

20. *Keeping in view of the above reasons and discussion, I have come to the conclusion that the learned trial Judge has decided the suit in haste without applying his judicial mind to the material aspect of the suit, which is bad in law and facts as such the impugned Judgment and decree are not sustainable in law and facts. With these observations, I hereby set aside the impugned Judgment and Decree and the appeal of the appellants is allowed with no order as to costs.”*

6. From perusal of the aforesaid findings of the learned Appellate Court it reflects that though various legal issues were raised by the Applicant before the trial Court; however, the moot question was whether the allotment of the land by itself was done lawfully or not? In para 2 of the plaint, the Applicant has stated that the land was granted on the basis of small khatedar rights from Kharif 1992-93 by the Colonization Officer, Guddu Barrage Sukkur under the **directions of Chief Minister Sindh in relaxation of Land Grant Policy, 1989**. It is a matter of admitted record that there is no proper allotment order produced by the Applicant and today while confronted, he has referred to some challan furnished before the trial Court and on perusal of the same, it clearly reflects that the challan has been issued without any reference to an allotment order; rather it states that it has been issued on the directions of Chief Minister.

7. It is settled law that the Chief Minister has no right or authority to grant land in such a manner. Despite repeated queries, the Applicant's counsel was not in position to respond as to how and in what manner and under what authority the land could have been granted to the Applicant. In that case, if the allotment by itself is illegal and unlawful, the argument that its cancellation was not in accordance with law, is not sustainable. Notwithstanding this, the order dated 27.04.1995 clearly reflects that various notices were issued, whereas, the

Applicant who was working as a Clerk in Board of Revenue had never responded. There is nothing on record to suggest that such finding is incorrect; nor any material has been referred to contradict this fact so recorded in the said order. It further appears that the Appeal against such order was also filed belatedly after a period of eight (08) years and therefore, on that account also, no case for indulgence is made out.

8. As to the merits of his case the Applicant has admitted in his cross examination that he is not in possession of any order for grant of land by the Chief Minister. In fact, it appears from the order of Additional Commissioner dated 27.4.1995, that there is no such order of the Chief Minister in their record, whereas, the land has been disposed of by the C.O.C. Sukkur, in violation of the provisions of land grant policy at his own will, whereas, the T.O form issued on the basis of such an allotment is also illegal. He has further admitted that ***it is correct to suggest that during the year the land was granted to me my father Nabi Bakhsh Gujar was serving as a Barrage Mukhtiarkar.*** Not only this Applicants father also came into the witness box (Exh-49) and admitted that he remained Barrage Mukhtiarkar. He further admitted that since land was granted in relaxation of land grant policy, T.O form was issued earlier (instead of 20 years).

9. As to the argument that the Appeal was not filed competently, as some defendants were neither joined as Appellants; nor as defendants; it would suffice to observe that in the given facts and the illegality in the very allotment of land in question, this objection is too technical, whereas, this is a matter of State land and the aggrieved department had competently filed the Appeal; therefore, on this ground alone the Respondents herein cannot be unsuited. The judgment in the case of Riaz Muhammad (Supra) being in respect of a dispute between private parties is distinguishable on facts; hence, not applicable.

10. In view of hereinabove, facts and circumstances of this case, since the very allotment was unlawful, illegal and against the very Land Grant Policy, therefore, the other objections as raised by the Applicant's counsel are not relevant and need not be decided; the Appellate Court was fully justified in setting aside the judgment and decree in favor of the Applicant; hence this Civil Revision Application does not merit any consideration and is therefore, dismissed.

Judge