

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A. No. 116 of 1998

Applicants:	Yousuf (since deceased), through his legal heirs, through Mr. Parkash Kumar, Advocate.
Respondent No.4:	Muhammad Anwar through Mr. Arbab Ali Hakro, Advocate.
Date of hearing:	22.11.2021
Date of decision:	13.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J: -Basically, the Applicants are asking for setting aside the Judgment dated 25.05.1998 and Decree dated 27.05.1998 passed by learned Additional District Judge, Tando Muhammad Khan in Civil Appeal No.61 of 1995 whereby the learned Judge while dismissing the said appeal maintained the judgment and decree dated 05.04.1995 & 10.04.1995 passed by learned Senior Civil Judge, Tando Muhammad Khan in F.C. Suit No. 72 of 1992, hence the instant Revision Application.

2. Applicants have averred that they filed F.C.Suit No.72 of 1992 before learned Senior Civil Judge, Tando Muhammad Khan for Declaration & Permanent Injunction, on the premise that they are cultivating the land admeasuring 6 – 4 acres situated at abandoned village Jumopur Deh Nariki Jagir Taluka Tando Muhammad Khan while respondent No.4 belonging to the family of big Zamindar residing at a distance of 3 miles from the suit land. It is further averred that the suit land was granted to the applicants by the Revenue Officer Kotri Barrage on 16.05.1991 for which they paid initial deposit amount and thereafter cultivated the sugarcane crop thereon. However, on seeing cultivation land of the applicant, the respondent No.4 filed an appeal before Addl. Commissioner Hyderabad which was allowed vide order dated 18.09.1991 with the observation that the disposal made by the Revenue Officer Kotri Barrage Hyderabad was not proper and against the land grant policy, therefore, the same was set aside with direction that the disputed land should be disposed of afresh in open Kachehry strictly under the existing land grant policy. The applicants and respondent No.4 had

challenged the said order in appeal and revision before the Board of Revenue Sindh, however, same were disposed of vide order dated 08.03.1992 with the following observation: -

“.....For the foregoing reasons, I remand both the appeal and Revision to the Revenue Officer, Kotri Barrage, Hyderabad with directions to decide the matter afresh in between the parties (M/S Muhammad Anwar, Yousuf & Hameer) and grant the entire land to the person who has better claim over its grant in accordance with the provisions of the existing land grant policy. Both the appeal & revision are disposed of accordingly.”

3. Thereafter the applicants and respondent No.4 filed a review petition before the Member (Judicial) Board of Revenue Sindh Hyderabad, however, the review petition of respondent No.4 was allowed while the review petition of the applicants was dismissed vide order dated 08.6.1992 with the following observations:-

“..... I have considered the arguments put forth by both the Counsels and also gone through the record. The Khasra Gridawari for the year 1981-82 to 1990-91 now produced reveals that Muhammad Anwar is bonafide hari of the disputed land and deserves for grant of land in question. In view of this position, I come to the conclusion that this is a good case for review. I, therefore review my order dated 08.3.1992 and order that land under dispute should be granted in favour of Muhammad Anwar. The review petition filed by Muhammad Anwar is upheld whereas the review petition filed by Yousif and Hameer is rejected accordingly.”

4. The applicants being aggrieved by and dissatisfied with the order dated 08.6.1992 passed by Member (Judicial) Board of Revenue Sindh filed second review petition No.78/1992 before the same Member Board of Revenue who vide order dated 10.10.1992 rejected the review petition with the following observation: -

“..... Perusal of impugned order reveals that the parties had preferred review petitions U/S 8 of the Board of Revenue Act, 1957 against my own order dated 8.3.1992 in respect of the land in question. Since the petitioners have already availed of the remedy of review available to them U/S 8 of the Act ibid, they have no further remedy of the second review. The counsel for the petitioners has failed to show provision of law under which the present review is maintainable. The present review petition filed U/S 8 of the Act ibid, obviously not maintainable as the petitioners have already exhausted this remedy vide impugned order.

In view of the legal position discussed above, the present petition being 2nd review is not maintained and is rejected as such.”

5. Against the aforesaid orders passed by the Revenue hierarchy, the applicants filed F.C. Suit No.72/1992 before learned Senior Civil Judge Tando Muhammad Khan wherein the learned trial Court to adjudicate the matter between the parties framed the following issues:-

- i. *Whether the order of defendant No.3 dated 18.09.1991 and the orders dated 08.03.1992, 08.06.1992, and 10.10.1992 passed by defendant No.2 are illegal and malafide?*
- ii. *Whether the plaintiffs continued to be the grantee of the suit land in pursuance o order dated 16.05.1991 passed by Revenue Officer, Kotri Barrage?*
- iii. *Whether defendant No.4 is in possession of the suit land, if so what is its effect?*
- iv. *Whether the suit is not maintainable?*
- v. *Whether the suit is barred by law?*
- vi. *Whether this Court has no jurisdiction in the matter?*
- vii. *What should the decree be?*

6. The learned trial Court after careful examination of the parties and evidence dismissed the suit of the applicants vide impugned judgment and decree dated 05.4.1995 and 10.4.1995 respectively as discussed supra. An excerpt of the judgment is reproduced as under:-

“ISSUE NO:3

Burden to prove this issue lies upon defendant No:4. As against the oral version of plaintiff No:1, defendant No:4 in support of his evidence has produced the documentary evidence showing his possession over the suit land much before than the original grant in favour of plaintiffs. Apart from the KhasraGirdawari, defendant No:4 has produced the land revenue receipts from the year 1989 to prove that he is in physical possession of the suit land. Dws-Bachoo&Remzan have also fully supported the contention of defendant N:4 regarding his possession over the suit land since last 13-years. On the other hand, the plaintiffs have not produced any positive evidence nor any independent witness or any nekmard of the locality has been examined to prove their possession over the suit land. The defendant No:4 has, therefore, established his case and proved that he is in possession of the suit land. The issue is, therefore, answered in the affirmative.

ISSUES NO:4,5 & 6.

Since all these issues were framed on legal pleas raised by defendant No:4 in his written statement therefore the burden lies on him. The learned Counsel for

the defendant No:4 has mainly stressed on the point that this Court has got no jurisdiction to entertain the suit but failed to point out any specific provision of law as to how the suit is not maintainable and this Court has got no jurisdiction. It is held in an authority reported in 1974 S.C.M.R-36 that the jurisdiction of the Civil Courts even if barred and conferred upon Special Tribunals, Civil Courts being the Courts of ultimate jurisdiction have jurisdiction to examine Acts of such forums to see if such are in accordance of law or illegal or even malafide. Therefore, in the light of the said authority the orders of Member Board of Revenue could have been challenged in the Civil Court. The issues are therefore, answered accordingly.

ISSUE NO:7

In view of findings to issues No.1, 2 and 3, the suit of the Plaintiffs is hereby dismissed. In the circumstances the parties are left to bear their own Costs.”

7. The applicants being aggrieved by and dissatisfied with the aforesaid decision, filed statutory Appeal No.61 of 1995 which too was dismissed vide Judgment dated 25.05.1998 and Decree dated 27.05.1998. An excerpt of the judgment is reproduced as under:-

“.....It is evident from the record that plaintiff / appellants are not residing in deh Narki Jagir of suit land but it is admitted by plaintiff/ appellant Yousif in his evidence that suit land is situated in abandoned village Jumopur Deh Narki and that the defendant / respondent No.4 is also resident of the same Deh. It is also admitted by plaintiff / appellant No:1 that he resides in Deh Alipur. Plaintiff / appellant Yousif has only examined himself. He has not examined any other witnesses. On the point that plaintiffs / appellants are resident of suit land. On the contrary it is proved that defendant / respondent No:4 is resident Deh Narki where the suit land is situated. He has better case. The eligibility and ineligibility of the plaintiff / appellants is not discussed by Revenue Officer while granting the land in favour of the plaintiffs and on this point the A.D.C. II, Hyderabad has set-aside the grant by order dated 18.9.1991 because the grant has not in accordance with land grant policy. As regards the order passed by Member Board of Revenue in the appeal and revision preferred by both the parties those were rightly rejected and maintained the orders of A.D.C. II. After the cancellation of grant in favour of plaintiffs / appellants they were no more grantee. The Member Board of Revenue has rightly granted the suit land to defendant / respondent No.4 who was hari on the suit lands for more than 10 years which fact was proved from Khasra Girdwari. The Member Board of Revenue was straight away competent to grant the suit land to defendant No:4. The Member Board of Revenue has also rightly rejected the IInd review by order dated:10-10-1992 as IInd review was not maintainable. There was nothing wrong in the order passed by defendant / respondent No:2 & 3. The learned lower Court has very rightly discussed these issues and there is no reasons to interfere with the findings of lower Court. With regard to issue No.2 burden is on plaintiff / appellants. The order dated 16.5.1991 granting land to defendant / respondent No:4 on the basis of which Form -A was issued, as such the plaintiff / appellant did not qualify for grant of the suit land.

This issue has also very correctly replied by the trial court. With regard issue No:3 burden is on the defendant / respondent No.4 who has been claiming possession. The defendant / respondent No:4 has produced the extracts of Khasra Girdwari and land Revenue receipts from the year 1989 and on words. The two witnesses examined by defendant / respondent No:4 namely Bachoo and Ramzan also support the possession of defendant / respondent No:4 over the suit lands since 13-years. As against it no evidence is produced by plaintiff / respondent No:4 is also proved from the evidence as well as from the documents. This issue has also been very rightly answered by the trial court. The judgment passed by the trial court is well reasoned and comprehensive and warrant no interference. The orders dated: 18-9-1991, 8.3.1992 and 10.10.1992 are legal orders. I hereby maintain the judgment and decree of the trial court and dismissed the appeal with no costs.”

8. Feeling aggrieved by and dissatisfied with the said judgment and decree, the applicants filed instant Revision Application before this Court on 28.07.1998.

9. Mr. Parkash Kumar, learned Counsel for the Applicants has argued that the judgments and decrees passed by the courts below are against the facts, law, and equity; that learned appellate Court has committed gross illegality while not framing points for determination in the judgment; that learned appellate Court had no jurisdiction to determine the eligibility of respondent No.4 for the grant of land; that learned courts below have failed to consider the fact that respondent No.2 while granting land in favor of respondent No.4 has not determined his eligibility; therefore, the decision of learned Courts below is erroneous and the same is liable to be set-aside; that the impugned Judgments passed by the courts below to the aforesaid extent are full of errors, based upon misreading and non-reading of evidence; that the findings of the courts below are arbitrary and perverse; that the legal aspect of the case was not considered by both the courts below in the impugned judgments. In support of his contentions, he relied upon the land grant policy notification dated 04.12.1989 and submitted that the applicants are Haris as provided under Section 2(h) of the Policy and they reside in the concerned Deh and cultivating their respective lands, thus the decision of Revenue Officer initially made in favor of the applicants was right and the subsequent orders passed by learned Senior Member, Board of Revenue on Review Application and learned Courts below are nullity in the eyes of law; that the jurisdiction of civil Courts is not barred under the law for the simple reason that the civil

courts being courts of ultimate jurisdiction have to examine the orders passed by the revenue hierarchy. In support of his contention, he also relied upon the cases of Hamid Hussain v. Government of West Pakistan and others [1974 SCMR 356] and Ahsan Ali through legal heirs and others v. Province of Sindh through District Coordination Officer Thatta and 04 others [2007 MLD 887] and argued that if the findings of revenue hierarchy regarding entries in Deh Form VII would not debar the aggrieved party from approaching civil Court for claiming ownership over the suit land as an entry in the revenue record is not in itself proof of title in favor of the parties in whose favor such entry exists, but entitlement/ownership is to be proved by such party independently and for this purpose appropriate forum available is civil court being the Court of ultimate jurisdiction. In support of his contentions, he relied upon the notice of Katchery in the name of applicant Hameer, receipt of initial deposit by him, copy of Khasra Girdwari, land Revenue receipts. At this stage I asked learned counsel whether there were/are documents of the same nature in favor of applicant Yousif, he replied that these documents are not available, hence could not be filed. He lastly prayed for allowing the instant revision application.

10. Mr. Arbab Ali Hakro, learned counsel for respondent No.4 has supported the impugned decisions made by the revenue authorities as well by the learned subordinate courts and argued that applicants are not Haris within the meaning of Section 2(h) of the Land Grant Policy as discussed supra. He further argued that the applicants are not residing in Deh Narki Jagir of the suit land and they have also admitted in their evidence recorded by the trial Court. Per learned counsel, the revenue hierarchy has non-suited the applicants within the parameters of law and the courts below have dismissed their claim strictly under law. He next submitted that in revenue matters the jurisdiction of civil Court is barred under Section 172 of the Sindh Land Revenue Act, under various provisions of Specific Relief Act, and Section 36 of the Colonization Act. He prayed for dismissal of the instant revision application being not maintainable against the concurrent findings recorded by courts below.

11. I have heard learned counsel for the parties and gone through the record available before me.

12. I have also perused the deposition of applicant Yousif, and deposition of respondent Muhammad Anwar. The entire case against applicant No.1 is concerning his right to claim the suit land on Harap basis under the land grant policy 1989. In this regard, the evidence available on record explicitly shows the admission of the applicant Yousif in the case, which resolves the entire controversy about his Harap Right on the subject land. He admitted that he is resident of Deh Ali Pur; that his name is entered in the voter list of that Deh; that applicant No.2 is not related to him and his name is also entered in the said voter list; that subject grant of land in his favor was canceled and the matter was referred to Revenue officer for fresh disposal of the subject land in an open Katchery; that suit land was granted to Muhammad Anwar; that he produced copy of Khasra Girdwari was not certified copy; that the name of Hari was being entered every year in the Khasra Girdwari; that Mukhtiarkar deleted the name of Muhammad Anwar and entered his name; that the name of Anwar is entered in the Khasra Girdwari as Hari in the suit land since 1987-88 till today; that he did not produce the land revenue receipt/bill; that suit land was disposed of in open Katchery by Revenue officer; that except initial deposit of Rs.100/- they had not deposited the remaining installments to the Government.

13. In view of the forgoing admission of the applicant on the subject issue, I am of the considered view that the land in question was rightly disposed of in open Katchery by the competent authority under the revenue hierarchy.

14. Reverting to the claim of learned counsel for the applicant that the applicants were condemned unheard by the Member Board of Revenue on the review application, Record reflects that the revenue hierarchy dilated upon the issues in an elaborative manner and gave its findings by appreciating the documentary evidence of the parties, therefore, I do not agree with the assertion of learned counsel that they were unheard on the issues. I am of the view that learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The learned appellate Court has considered every aspect of the case and thereafter passed an explanatory Judgment.

15. I have also noted that in the present case, there is no material placed before me by which I can conclude that Impugned Orders

throughout the proceedings have been erroneously issued either by revenue hierarchy or by both the courts below, therefore no ground existed for re-evaluation of evidence, thus, I maintain the Judgment(s) and Decree(s) passed by the courts below.

16. Regarding learned counsel's argument that Senior Member Board of Revenue could not have reopened the case in review jurisdiction of his earlier order and thereafter, the applicants rightly approached the Civil Court having jurisdiction.

17. To deal with this proposition, I may observe that as per Section 172 of the Land Revenue Act, 1967, only the revenue authorities are entitled to deal with the matters concerning correction of any entry in the record of rights, periodical entry, or register of mutation to the exclusion of the Civil Courts, of course, if the same is not controversial, however, if there is controversy in between the parties on the land, which requires determination through evidence by the Civil Court. It is well-settled law that a civil Court of plenary jurisdiction under Section 9 of the C. P. C. can make an inquiry as to the existence or otherwise of facts. Even if a Court or tribunal of special jurisdiction is empowered to determine facts on the proof of which it has passed an order even that will be open to the scrutiny of courts of general jurisdiction. It is well-established principle that even where the jurisdiction of civil is barred and conferred upon special tribunals, civil Courts being Courts of ultimate jurisdiction will have the jurisdiction to examine the acts of such forums to see whether their acts are under law or are illegal or even mala fide.

18. The plea raised by learned counsel for the respondents that Civil Court had no jurisdiction to take cognizance of the matter has no force because of the law laid down by the Honourable Supreme Court in the cases of (**PLD 1960 SC 113**), *Abdul Rab and others v. Wali Muhammad and others* (**1980 SCMR 139**) and *Muhammad Jamil Asghar v. The Improvement Trust, Rawalpindi* (**PLD 1965 SC 698**). It is pertinent to mention here that different statutes provide that an order made by the authority acting under it shall not be called in question in any Court. The intentions of legislature in their wisdom qua section 36 of Colonization of Government Lands (Punjab) Act, 1912 are that the officers working under the Act should exercise their powers freely and should not be interrupted unnecessarily to

administer colony land according to the terms and conditions issued by the competent authority off and on but this provision does not give unfettered power. The ambit of jurisdiction has been prescribed by the Act and the officers functioning thereunder cannot be allowed to act beyond their scope of jurisdiction. The Civil Court while exercising supervisory jurisdiction has the authority to interfere, if the orders are without jurisdiction, mala fide, excessive, or otherwise not under law or based on fraud. There are several pronouncements of superior Courts that Civil Court despite exclusive power has jurisdiction to take cognizance of the matter in case the authorities under the Special Law have passed the order in violation of Rules and Regulations or mala fide. It is also settled law that manner of exercising power is also termed as mala fide as law laid down by the Honourable Supreme Court in the case of Agha Shorash Kashmiri's case (PLD 1969 SC 14). Besides that that section 36 of the Colonization of Government Lands (Punjab) Act, 1912 is available only where the authorities concerned acted within powers and four corners of their jurisdiction and not their acts are ultra vires or without jurisdiction or void or above their jurisdiction, therefore, the contention of learned counsel for the respondents that Civil Court had no jurisdiction to take cognizance of the matter and entertain the suit filed by the applicants is misconceived. It is settled principle of law that public functionaries are duty-bound to pass orders under the law because of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. On the aforesaid proposition, my view is supported by the law laid down by the Honourable Supreme Court in the case of Utility Stores Corporation of Pakistan Ltd. v. Punjab Labour Appellate Tribunal and others (PLD 1987 SC 447). It is settled law that nobody should be penalized for the actions of public functionaries as law laid down by the Honourable Supreme Court in the case of Umer Din (deceased) through L.Rs. and others v. Abdul Rahim and others (2005 SCMR 496) is providing guiding principle. The aforesaid proposition of law concerning the jurisdiction of Civil Court is further strengthened by the decision of Honourable Supreme Court rendered in the case of Province of Punjab Vs. Haji Yaqoob Khan (2007 SCMR 554).

19. Before parting with this order, it is observed that undoubtedly, Revision is a matter between higher and subordinate Courts, and the right to move an application in this respect by the Applicant is merely

a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

20. In principle the applicants throughout the proceedings have lost their case up to the level of appellate stage and at the revisional stage, they have agitated the grounds already exhausted by them and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the findings of the competent forums.

21. In the light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the concurrent findings recorded by the two competent Courts below and I also do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, the above Revision Application is found to be meritless and is accordingly dismissed along with listed application(s).

JUDGE

**Karar_Hussain/PS **