

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

C.P. No.D-305 of 2008

Present:

Mr. Justice Mahmood A. Khan

Mr. Justice Khadim Hussain Tunio

Petitioner(s) : Mir Karam Ali alias Mir Kazim Raza and others
through Mr. Parkash Kumar, advocate.

Respondent : Senior Member, Federal Land Commission
Islamabad and others through Mr. Ashfaque
Nabi Qazi, Assistant Attorney General Pakistan
and Mr. Allah Bachayo Soomro, Additional
Advocate General Sindh.

Date of hearing : 07.10.2021

Date of decision : 07.10.2021

JUDGMENT

KHADIM HUSSAIN TUNIO, J.-The petitioners have challenged the order dated 03.07.2008 passed by the respondent No. 1 (Senior Member of the Federal Land Commission, Islamabad) whereby cognizance was taken by the respondent in exercise of his suo-moto revisional powers provided u/S 27 of the Land Reforms Act, 1977.

2. In the instant case, one Mst. Roshan Ara, the mother of the petitioners, was an owner/declarant under Martial Law Regulation 115 of 1972 of agricultural lands in Deh Narki, Deh Abad and Deh Kolab of District Tando Muhammad Khan. Through her statement at *Dakhal Kharij* register No. 10387 dated 01.06.1976 of Deh Narki, Mst. Roshan Ara gifted the land admeasuring 118-34 acres having Survey Nos. 72, 79 to 82, 101, 102, 104 to 110, 158, 433, 459, 460 and 461 to her son Mir Noor Ahmed and vide statement in *Dakhal Kharij* register No. 10106 dated 06.10.1976 of Deh Abad, Mst. Roshan Ara gifted the land admeasuring 209-26 acres having Survey Nos. 92 to 104, 110, 113, 116, 117, 118 and 120 to 135 to her son Mir Karam Ali whereas land

admeasuring 107-32 acres having Survey Nos. 73 to 83, 85, 86, 88 and 89 to her son Mir Noor Ahmed. All her sons to whom she had gifted land through the entries above were minors, therefore the possession was handed over to their elder brother namely Muhammad Khan. It is a matter of record that Mst. Roshan Ara did not file declaration under the Land Reforms Act 1977 and therefore the Federal Land Commission examined as to whether she was required to file a declaration or not. After inquiry, the gift mutations made by Mst. Roshan Ara were found to have been made after 04.01.1977 and the earlier dates were ante-dated so as to avoid the provisions of Land Reforms Act-II of 1977, as such the Federal Land Commission suggested resumption of 5988 PIUs which land was in excess of 8000 PIUs which Mst. Roshan Ara had not declared. Such report was forwarded to CLC on 21.06.1979 and the matter was brought before the Additional Commissioner-I who, vide order dated 06.05.1990, cancelled the gift mutation. The petitioners challenged that order before this Court through a constitutional petition which was dismissed. The decision of the Additional Commissioner-I was then challenged before the Member (Judicial) Board of Revenue, Hyderabad who dismissed the appeal as being time barred. However, then the Additional Chief Land Commissioner-III (ACLC-III) while exercising his suo-moto powers, dismissed all the earlier orders passed with respect to the gift mutation and declared that the land of Mst. Roshan Ara was below 8000 PIUs therefore she was not required to file the declaration. The Board of Revenue Sindh moved the Federal Land Commission for taking suo-moto action to determine legality of the order of the ACLC-III and thereafter, through SMR.2(581)/FLC/2000, the Federal Land Commission took cognizance of the matter while exercising its suo-moto powers conferred upon it under S. 27 of the Land Reforms Act, 1977. After a thorough review of the record, the respondent No. 1 set aside the order passed by the ACLC-III while ordering for the resumption of land from the holding of deceased Mst. Roshan Ara, hence this petition challenging the same.

3. Learned counsel for the petitioner has primarily contended that the Additional Commissioner-I cancelled the mutation entries on 06.05.1990, whereas according to the decision of the Hon'ble Apex

Court in the case of **QAZALBASH WAQF v. CHIEF LAND COMMISSIONER** (PLD 1990 SC 99) whereby the provisions of Martial Law Regulation 115 of 1972 and Land Reforms Act-II of 1977 seized to have effect, being repugnant and it took effect from 23rd March 1990 onwards whereas the order with regard to resumption of land was passed on 06.05.1990, therefore was illegal and liable to be set aside. He also contended that the Additional Chief Land Commissioner-III was well within his powers when he ordered for the previous orders to be set aside as the same were null and void in the eyes of law. In support of his contentions, he has placed his reliance on the case law reported as **SALAH-UD-DIN OURESHI versus FEDERAL LAND COMMISSION** (1992 CLC 2362), **MUHAMMAD YUSUF ALI SHAH versus FEDERAL LAND COMMISSION, GOVERNMENT OF PAKISTAN, RAWALPINDI** (1995 CLC 369), **MUHAMMAD SHAHABUDDIN versus CHAIRMAN, FEDERAL LAND COMMISSION** (1996 CLC 539) and **MUHAMMAD JAFFAR KHAN LEGHARI versus BALOCHISTAN LAND COMMISSION, QUETTA** (1997 MLD 1934).

4. On the other hand, learned Assistant Attorney General assisted by the Additional Advocate General have, in one voice, contended that the process for resumption of land against the petitioner-deceased Mst. Roshan Ara had initiated back in the year 1979 and the then Officer Incharge of the Inspection Team of Federal Land Commission Mr. Channesar had forwarded a letter dated 21.06.1979 to the Chief Land Commissioner Sindh. They further contended that the order passed by the Additional Chief Land Commissioner-III was done so while being ultra vires as the case did not involve the question of declaration, but instead the restoration of entries which power solely existed with the revenue officers. They also exclaimed that the dates on the alleged deeds were ante-dated and instead the original dates which were after 4.1.1977 however by producing duplicate leaf of Village Form 15 without producing the original one, the duplicates were replaced with the original to purposefully avoid the Land Reforms Act-II of 1977.

5. Having given due consideration to the arguments advanced by the learned counsel for the parties and perused the record.

6. A bare perusal of the record and the order passed by the Additional Chief Land Commissioner-III shows how ill-informed the concerned official was and the multitudes of illegalities committed by him. The first grave illegality committed by the then Additional Chief Land Commissioner-III was when he decided to take suo-moto action and dismissed all the previous orders including the one passed by the Member (Judicial) Board of Revenue. The basis of the dismissal of appeal vide order dated 05.04.1995 was on the ground that the appeal itself was time-barred by a period of more than four years and the Member (Judicial) Board of Revenue had provided sufficient opportunity to the present petitioners to explain the same, however they miserably failed to do so. Thereafter, the review petition was filed on 12.07.1995 against the said order and again, the same was delayed by seven days. However, upon a perusal of the order passed by the Additional Chief Land Commissioner-III, we found no discussion with regard to the point of the petition being time barred or the condonation of said delay, which otherwise is a crucial point that needed consideration while deciding the review petition as had been done by the Member (Judicial) Board of Revenue. The law of limitation is found upon the maxim "*Vigilantibus non dormientibus aequitas subvenit.*" which in layman's terms means that the law assists those that are vigilant of their rights and not those that sleep on them. The petitioners failed to approach the appropriate forums for adjudication within the stipulated time and therefore slept on their rights. It is an important question needing determination as has already been stated and it is rather fatal that the learned Additional Chief Land Commissioner-III failed to do so.

7. Besides that, the review petition was decided by the Additional Chief Land Commissioner-III while exercising his suo-moto powers provided under Rule 11(1) of the Sindh Land Commission Rules 1977. However, the ACLC-III misinformed himself with regard to the said provision as it conferred suo-moto powers upon the Land Commissioner and that too within 20 days of the passing of the order. Rule 12 of the Sindh Land Commission Rules 1977 further provides the functions of the ACLC in this regard by highlighting that the Additional Chief Land Commissioner may **only** exercise any powers and dispose of

matters if the case is transferred to him by the Chief Land Commissioner, which again was not the case here as the ACLC-III had taken suo-moto action on his own accord. What is pertinent to note here that the rules supra only applied to orders passed by the Land Commission Authority, however again the Additional Chief Land Commissioner was ill-informed to say the least. The orders that were set aside by the ACLC-III, while exercising his powers under Sindh Land Commission Rules 1977, were passed by the Member (Judicial) Board of Revenue and the Additional Commissioner-I in their capacity as revenue officers which pertained to altering the revenue records. A perusal of the Sindh Land Commission Rules nowhere confers powers upon the Land Commissioner to act upon orders passed under the Land Revenue Act 1967, therefore such an act was ultra vires to the powers vested in the Land Commission by the Sindh Land Commission Rules 1977 so relied upon by the Additional Chief Land Commissioner and that in fact the matter brought before the ACLC-III by the petitioners was to seek restoration of the entries involving gift mutations in the revenue record which had been cancelled by the Additional Commissioner-I vide order dated 06.05.1990 being a Revenue Officer, therefore further justifying that the ACLC-III failed to even identify the issue at hand and provided a relief that he could not have. Concerning the order dated 06.05.1990 that cancelled the entries in the revenue record pertaining to the gifts to the petitioners by their mother, learned counsel stated that the same was illegal as according to the case of **QAZALBASH WAQF v. CHIEF LAND COMMISSIONER**(PLD 1990 SC 99), the relative provisions of Martial Law Regulation 115 of 1972 and Land Reforms Act-II of 1977 seized to have effect from 23.05.1990 onwards. At this juncture, it is important to note that the said proceedings were initiated way prior and the initial proceedings of the inquiry team member for the resumption of excess land had taken place on 21.06.1979, therefore the contention of the counsel of the petitioners holds no substance as it was, in clear terms, declared by the Hon'ble Apex Court that the observations shall have no effect on cases where decisive steps have been taken prior to the concerned date *i.e.* 23.05.1990. Moreover, a perusal of the inquiry with respect to the revenue record showed that the mutation entries were ante-dated so as to purposefully dodge the provisions of the Land

Reforms Act-II of 1977. The leaves in the Village Form 15 were duplicates of the original one that were replaced so as to gain unfair advantage. Such a fact proves that the petitioners did not come to the Courts of law with clean hands.

8. The grave errors committed by the Additional Chief Land Commissioner while exercising suo-moto powers not even vested in him and that too for a cause other than that of dispensing justice is shocking on the face of it. Our legislature has developed a proper framework for the scope and execution of suo-moto powers to avoid any uncertainty and unpredictability. A line needs to be drawn to decide which cases fall under suo-motu jurisdiction and which are beyond it and whether a matter really does require such an action or had it already been dealt with accordingly. When indulging in this realm of law, every judicial practitioner must ensure that they are not drifting beyond what is provided by the law and stay within the strict constitutional limit provided. The prime aim of suo-moto powers remains to ensure that the ends of justice meet and the interest of the public and the state remains safeguarded; rather the Additional Chief Land Commissioner concerned in the present case has put the interest of the private petitioner before the will of law. Such power is never exercised to give effect to the will of the adjudicator; but always for the purpose of giving effect to the will of the legislature. Therefore, the impugned order was rightly passed by the Senior Member of the Federal Land Commission and requires no interference thereto.

9. Resultantly, instant constitutional petition was dismissed vide our short order dated 07.10.2021 and these are the reasons for the same.

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