

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

## **Civil Revision No. S – 15 of 2009**

(Syed Ayaz Hussain Shah & others V/S Khamiso alias Hassan through his LRs & others)

Date of Hearing: **09-05-2022**

Date of Judgment: **09-05-2022**

**Mr. Manoj Kumar Tejwani, Advocate for the Applicants.**

**Mr. Mukesh Kumar G. Karara, Advocate for the Legal Heirs of Respondent No.1.**

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned Judgment dated 28.11.2008, passed by the Additional District Judge-II, Ghotki in Civil Appeal No.15 of 2007 (**Syed Ayaz Hussain Shah & others v. Khamiso alias Hassan through his LRs & others**), whereby, the Civil Appeal has been dismissed and the Judgment dated 31.01.2007, passed by Senior Civil Judge, Ghotki in F.C Suit No.22 of 1998 (**Syed Ayaz Hussain Shah & others v. Khamiso alias Hassan through his LRs & others**) has been maintained through which the Suit filed by the Applicants was dismissed.

**2.** Learned Counsel for the Applicants submits that both the Courts below have erred in law and facts; that the grant of land to the Respondent No.1 was in violation of the Land Grant Policy read with Section 10 (2) of the Colonization & Disposal of Government Lands (Sindh), Act, 1912; that the Respondent No.1 was not a resident of concerned Deh; hence was ever entitled; that a mohag right was created in favour of the Applicants; that no public notice was ever issued nor any open Katcheri was ever held for grant of land to the Respondent No.1; that no inspection of the site or area was ever made by the Collector and therefore both the Courts below have seriously erred in law in dismissing the Suit of the Applicants, hence this Civil Revision be allowed. In support of his contention, he has placed reliance on the cases reported as *Islam-ud-Din v. Mst. Noor Jahan* (**2016 SCMR 986**); *Muhammad Hasan v. Muhammad Bachal* (**PLD 1986 Rev.119 [Sindh]**); *Ghulam Nabi v. Director, G.M.B Project Hyderabad* (**PLD 1986 Rev.121 [Sindh]**); *Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami* (**2007 SCMR 818**); *Nazim-ud-Din v. Sheikh Zia-ul-Qamar* (**2016 SCMR 24**) and *Ali Gohar Khan v. Sher Ayaz* (**1989 SCMR 130**).

**3.** On the other hand, learned Counsel for Respondent No.1 has argued that initially the Suit was filed by two Applicants who had a 16 percent share in the adjacent property, and thereafter Applicant No.2 was transposed as a Defendant as he never wanted to contest the grant of land to Respondent No.1; whereas, the remaining share was owned by some other person, who was never joined in the proceedings; hence being co-sharer, the Applicants could not assert any claim or right; that the land was properly granted to Respondent No.1 in terms of Section 10 of the Act read with the Land Grant Policy, 1989, including Condition No.3 of the said Policy; that even otherwise, it is provided in the Policy that it is not mandatory for the Revenue authorities to grant the claimed land and no right is created to any person as Revenue authorities have absolute discretion; that the discretion has been properly exercised in favour of the Respondent No.1; whereas, there are concurrent findings of facts against the Applicants not only by the two Courts below, but so also by the Revenue authorities, hence no case is made out. He has prayed for dismissal of this Civil Revision with costs.

**4.** I have heard learned Counsel for the parties. It appears that the Applicants had filed a Suit for declaration and injunction and sought the following prayer(s):

(I). To declare that the plaintiff have preferential right of Mohag over the suit land as such is entitled to its grant.

(II). To declare that the suit land being a DHOORA is not arable as such has been erroneously included in the schedule of Haries for disposal on permanent tenure.

(III). To declare that the orders, passed by the defendants No:2 to 4 in favour of defendant No:1 and against the plaintiffs are wrong, illegal, malafide, hence null and void under the law.

(IV). To restrain the defendants No.1-A to A-D from dispossessing the plaintiffs from the suit land in any manner whatsoever permanently.

(V). To award the costs of the suit to the plaintiffs.

(VI). To grant any other relief which this Honorable Court deem fit and proper under the circumstances of the case”.

**5** Learned Trial Court as well as Appellate Court have come to a conclusion that two Revenue authorities have passed Orders in accordance with law; whereas, no case for indulgence is made out, hence the Suit was dismissed which has been maintained by the Appellate court.

At the very outset, the Applicants' Counsel was confronted as to how a declaratory suit under Section 42 of the Specific Relief Act was maintainable on behalf of the Applicants, as apparently no right had accrued in favor of the Applicants and mere issuance of a Policy by itself does not create any absolute right and in response, he has not been able to satisfactorily respond.

6. Section 10(2) of the Act read with Land Grant Policy, 1989 clearly provides through Condition No.3(2) that no person shall as of right be entitled to the allotment of land under these conditions and Board of Revenue retains an absolute discretion in the selection and making allotments to the haris, small khatedars and mohagdars. Apparently, the Suit by itself seeking a declaration without there being any right accrued to the Applicants on the face of it was not maintainable. Not only this, even otherwise, the Revenue authorities as well as two Courts below have recorded concurrent findings of fact against the Applicants and no justifiable cause has been made out on behalf of the Applicants before this Court so as to interfere with the concurrent findings of the fact. On facts they have come to the conclusion that the Applicant was not a hari but a zamindar of the area; hence, on this count alone, no right had accrued to the Applicant. In act, the entire case of the Applicant was built on the premise that Respondent No.1 was not qualified for the grant of land in question. However, for challenge to any such grant, in law the Applicant had not right to seek a declaration, whereas, admitted position is that the Applicant by himself was not qualified for any such grant. Neither it appears to be a case of misreading or non-reading of evidence; nor of lack of jurisdiction so as to exercise any powers under Section 115 CPC to upset these concurrent findings of the fact so recorded by the two Courts below including Revenue authorities.

7. In view of hereinabove facts and circumstances of this case, no case for indulgence is made out and therefore by means of a short order passed in the earlier part of the day, this Civil Revision was **dismissed** and these are the reasons thereof.

**JUDGE**

Ahmad