

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

CP. No.D- 982 of 2012

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Adnan-ul-Karim Memon.

1. For hearing of M.A 9160/12
2. For orders on M.A 15844/15
3. For hearing of main case

Date of hearing: 30.01.2019, 11.02.2019, and 13.03 2019.

Date of decision: 21.02.2019.

Mr. Muhammad Hashim Bajeer, Advocate for petitioner.

Jagdish R. Mullani, Advocate for respondent No.8.

Mr. Allah Bachayo Soomro, A.A.G. along with  
Ali Hyder Jiskani, Supervising Tapedar Taluka Kazi Ahmed

**ORDER**

**MUHAMMAD IQBAL KALHORO,J:-** Petitioner has made multiple prayers challenging all the following orders in the petition but his counsel in his arguments has contested only an order dated 19.06.2012 passed by Member Reforms Wing & Special Cell Board of Revenue, Sindh on a review application filed by respondent No.8 namely Niaz Hussain setting aside an order dated 10.11.2010 passed by Member Judicial-II, Board of Revenue, Sindh whereby he has maintained the order of Executive District Officer (Revenue) Shaheed Benazirabad cancelling grant of disputed land (2.25 acres) in survey No. 501 (1.23 acres) and 502 (1.2 acres) Deh Kundah Wado Taluka Daulatpur, in favour of respondent No.8 and directing the District Officer (Revenue) Shaheed Benzirabad to dispose of the land afresh as per Land Grant Policy to the deserving people.

2. As per brief facts petitioner's father Muhammad Ishaque was leased out an area of 16-02 acres of land in Survey Nos. 501 and 502 Deh Kundhawado, Taluka Daulatpur, District Nawabshah in the year 1961-62 for one year, which was extended every year and he used to cultivate the same and pay land revenue, etc. In the year 1997 Deputy Commissioner / Settlement Authority, Nawabshah put the same land in schedule and after observing all the codal formalities stipulated in Katcha Land Grant Policy and holding *Katchery* granted it to the petitioner vide order dated 25.06.1997. Pursuant to which

initial deposit was paid, Qabuliat was executed and thereafter regular installments were paid until the grant stood fully paid and ripe for issuance of T.O Form. Meanwhile, respondent No.8 allegedly in connivance with lower staff of the office of Deputy Commissioner / Settlement Authority, Nawabshah without any schedule and other necessary formalities including *Katchery* managed to obtain a grant order dated 10.04.2002 in respect of the same land and also obtained a pass book in his name fraudulently from Barrage Mukhtiarkar, Nawabshah, who had no such jurisdiction. The petitioner came to know about such grant order in the year 2006 and moved an application to the Executive District Officer (Revenue), Shaheed Benazirabad, who vide his order dated 29.04.2009 cancelled such with direction to the District Officer (Revenue) to dispose of the said land afresh under the Land Grant Policy. Respondent No.8 filed an appeal against the said order u/s 161 of Sindh Land Revenue Act, 1967 before respondent No.2, Member, Board of Revenue, (Judicial-II), who rejected the same vide order dated 10.11.2010. He, however, filed a review petition against that order under section 8 West Pakistan Board of Revenue Act, 1957, which was allowed through impugned order and whereby an area of 08-02 acres from S.Nos.501 and 502 was allowed to be retained by respondent No.8 and an area of 04-18 and 1.23 acres from the said survey numbers by the petitioner, hence this petition.

3. Respondent No.8 has filed objections to the petition. He has questioned maintainability of this petition and has further submitted that the petitioner has not approached this court with clean hands; that the alleged Eksala lease in favour of father of petitioner is bogus and fraudulent document; that S.Nos.501 and 502 consist of an area of 15-05 acres, which is government Nakabuli land and was made available for disposal to deserving harries of Deh; that he was granted an area of 4-18 acres in S. No.501 and an area of 8-22 acres in S. No.502 total 13-00 acres, whereas, petitioner was granted area of 1-23 acres in S. No.501 and an area of 1-02 acres S. No.502, and an area of 11-34 acres in S. No.213 total area 14-19 acres. Further, he has supported the impugned order by submitting that the said order was passed after considering all aspects of the case and in terms of consent whereby petitioner got land as per his entitlement.

4. Respondent No.5 Head Quarter Mukhtiarkar (Estate), Shaheed Benazirabad has filed his comments stating that an area of 01-23 acres in S. No.501, an area of 01-02 in S. No.502 and an area of 11-34 in S. No.213, total an area of 14-19 acres was granted to petitioner Muhammad Hanif in the year 1997 vide entry No.1 of Register K-II. Later on, an area of 04-18 in S. No.501 and an area of 05-22 acres in S. No.502, total 13-00 acres were granted to Niaz

Hussain in the year 2002 and pass book No.382365 dated 14.07.2003 was issued to him by Head Quarter Mukhtiarkar (Estate) Shaheed Benazirabad. Respondent No.6 taluka Mukhtiarkar, Qazi Ahmed in his comments has simply stated that previously the land revenue for the land in question was being paid by the petitioner but now the same is being paid by respondent No.8.

5. Learned Counsel for the petitioner has submitted that the impugned order is not sustainable in law; that the scope of review jurisdiction is very limited and can only be exercised upon discovery of new and important matter or evidence which was not within the knowledge of the aggrieved person or could not be produced by him at the time of decision of the case or if there is some mistake or error apparent on the face of record; that no such grounds existed before Member, Board of Revenue, Sindh to justify his reviewing the earlier order on merits; that the petitioner is in possession of all the documents pertaining to years 1962 to 1997 when ultimately he was issued allotment order; that claim of respondent No.8 is based upon false and fabricated documents; that the petitioner had not consented to the impugned order but the learned Member (Judicial-II) Board of Revenue, Sindh has phrased the said order in the manner as if he had given no objection.

6. On the other hand learned counsel for respondent No.8 defended the impugned order and stated that it being a consent order could not be challenged; that this petition is not maintainable and the petitioner has not approached this court with clean hands; that the alleged Eksala lease in favour of father of petitioner is bogus and fraudulent document; that S.Nos.501 and 502 consist of an area of 15-05 acres, which is government Nakabuli land and was made available for disposal to deserving harries of Deh; that he was granted of 4-18 acres in S.No.501 an area and from survey to the extent of an area of 8.22 acres in S. No.502, total 13-00 acres, whereas, petitioner was granted 1-23 acres land in survey No.501, 1-02 acre in survey No.502, and 11-34 acres in survey No.213 total area 14-19 acres which land is separate than his land; that petitioner had filed a civil suit in the court of Senior Civil Judge Nawabshah which was later on withdrawn by him as such this petitioner is not maintainable.

7. We have considered contentions of the parties and perused the record. It may be mentioned that during the course of hearings we had called relevant revenue officials in court to verify grant of land to respondent No.8 in S. No. 501 and 502. They appeared on 13.03.2019 and informed that land granted in to respondent No.8 has been cancelled in compliance of order dated 29.04.2009 passed by Executive District Officer (Revenue) Shaheed Benzirabad and

submitted a Photostat copy of relevant entry kept in Register K-II. Learned AAG submitted that there is no pre-record of grant to respondent No.8 or material to show that whether this grant was on *harap rights* basis or otherwise. Apparently respondent No.8 has failed to substantiate his claim that he was granted the land after completion of all due formalities, and that the grant was on his *harap rights* basis and was given to him in open *kacheri*, *Qabulit* was executed, payments of instalments were made and that he had deposited all dues in consideration of such grant.

8. Besides, we have noticed that the appeal filed by respondent No.8 against the order passed by Executive District Officer (Revenue) Shaheed Benzirabad was rejected by Member, Board of Revenue, (Judicial-II), but he did not impugn the same before any forum and instead filed a review petition under section 8 of 1957 Act and got the order in his favour. Needless to say scope of review of order or decree is limited and can be sought by an aggrieved person on discovery of new and important matter or evidence which was not within his knowledge or which he could not produce at the time of decree or order, or if there is some mistake or error apparent on the face of the record or there is some other sufficient justification to warrant review of decree or order. Where the review is sought on a ground that relates to the merits, the same would not be allowed and the case would not be reopened in exercise of such powers. It has been held in the case of *Muhammad Yasin Vs Muhammad Khalid Farooq (2010 YLR 144)* by learned Lahore High Court that the power conferred upon the Member Board of Revenue under section 8 of the West Pakistan Board of Revenue Act, 1957 does not empower the successor Member to rehear the matter on merit because he is not sitting in appeal or in a visitorial jurisdiction to correct the error in the order passed by predecessor Member. In the impugned order the reason which has weighed in with Member Reforms Wing & Special Cell Board of Revenue, Sindh to justify review of the earlier order is his observation that Executive District Officer (Revenue) has exceeded prayers and has rendered both the parties rights-less in respect of the subject land. But he has not pointed out any illegality or error in the order of his predecessor Member Judicial-II, Board of Revenue, Sindh to bring his order within the scope of review jurisdiction and secondly by means of the said order he has simply accepted the proposal of respondent No.8 in regard to division of the disputed land and has decided the review application on its terms which has denuded it of any legality. And in our view this constitutes a sole sufficient reason to set aside the same.

9. Notwithstanding the above, we have seen that the order of Executive District Officer (Revenue) Shaheed Benazirabad dated 29.04.2009 is an ex parte order whereby he has cancelled entire land purportedly granted to respondent 8 without hearing him and has referred the matter to the District Officer (Revenue) for fresh disposal of the land as per the Land Grant Policy without ascertaining the relevant facts such as the entire area available in survey No. 501 and 502, whether the areas granted to the petitioner and respondent No.8 in said survey numbers were overlapping each other, whether the petitioner was claiming more area in said survey numbers than granted to him, whether there was any record of grant of the land in favour of respondent No.8 etc. The appeal against that order filed by respondent No.8 was dismissed being time barred by Member Judicial-II, Board of Revenue, Sindh but he has not considered that the order appealed was ex parte and was lacking necessary reasons in support of findings recorded therein and therefore was not ostensibly sustainable. He has also not recorded the reasons for finding the appeal time barred save mentioning the dates of order and filing of the appeal as a justification in support of his view of the same being time barred. He did not proceed to consider when respondent No.8 had come to know of the order against him, when he had applied for a copy of the decision and when it was provided to him as relevant factors before deciding the appeal as time barred.

10. For what has been discussed above we are of the view that not only the order dated 19.06.2012 passed by Member Reforms Wing & Special Cell Board of Revenue, Sindh in review jurisdiction but the order dated 10.11.2010 passed by Member Judicial-II, Board of Revenue, Sindh is also not sustainable for the reasons as above and therefore accordingly are set aside. Resultantly the matter is remanded back to Member Judicial-II, Board of Revenue, Sindh for his decision afresh on merit within three months hereof after affording a proper opportunity of hearing to both the parties and after securitizing all the relevant documents and considering all the relevant facts.

The Petition is disposed of in the terms as stated above.

**JUDGE**

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