

**THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

**Civil Revision No. 13 of 2002**

Applicant : Muhammad Bux Khan son of Khan Bahadur Pir Bux Khan Khuhawar through Mr. Inayatullah G. Morio, Advocate.

Respondents 1,2,4&5 : Secretary Education Department Government of Sindh, Karachi & 03 others through Mr. Liaquat Ali Shar, Additional Advocate General, Sindh.

Respondent No.3 : Managing Director, Sui Southern Gas Company Limited, Karachi through Mr. Shakeel Ahmed S. Abro, Advocate.

Dates of hearing : 06-03-2023

**ORDER**

**Adnan Iqbal Chaudhry J.-** F.C. Suit No. 05/1997 filed by the Applicant was dismissed by the Senior Civil Judge, Shahdadt by judgment/decree dated 27.05.1999. Civil Appeal No. 50/1999 by him too was dismissed by the I-Additional District Judge, Larkana by judgment dated 10.12.2001; hence this revision application.

2. F.C. Suit No. 05/1997 by the Applicant/Plaintiff prayed for a declaration of his ownership of Survey No. 64, measuring 6-37 acres in deh Shahdadt **[suit land]**, and for compensation from the Government of Sindh **[GoS]** and the Sui Southern Gas Company Ltd. **[SSGC]** who had constructed a mini-stadium thereon without acquiring the same under the Land Acquisition Act.

3. Per the Plaintiff, the suit land was gifted to him by his father, Khan Bahadur Pir Bakhsh Khan Khuhawar **[Pir Bakhsh]** in March 1949, evidenced by a statement recorded before the Mukhtiarkar and followed by a mutation; that in 1968, on the application of Pir

Bakhsh, the Assistant Commissioner Shahdadkot revoked the gift by order dated 08-03-1972; that the Plaintiff appealed to the Deputy Commissioner Larkana, but that was dismissed; however, when the Plaintiff's revision application was pending before the Commissioner Sukkur Division, the Plaintiff and his father settled the matter, whereupon the revision application was allowed by order dated 17-07-1976 by setting aside the order of revocation of gift.

4. The events leading to the suit as narrated in the plaint were that in 1995 the GoS took over the suit land and delivered it to the SSGC for constructing a mini-stadium at Shahdadkot pursuant to a program announced by the Prime Minister and the SSGC; that the Plaintiff made an application to the Prime Minister for compensation as the suit land was not government property; that upon an enquiry ordered the Deputy Commissioner Larkana submitted a report dated

13-12-1995 to state that though the Plaintiff's father had donated the suit land to the GoS in 1974, but after the Commissioner's order dated 17-07-1976, the land had reverted to the Plaintiff; that thereafter, letter dated 13.06.1996 was issued from the Prime Minister's office to the SSGC to pay compensation to the Plaintiff; however, the SSGC raised issue that the record of rights still showed that the suit land was the property of the GoS. It was the Plaintiff's case that his father could not have donated the suit land to the GoS as it had ceased to be his father's property, and even if that was done while the Plaintiff's challenge to the revocation of the gift was pending before the Revenue authorities, such transfer/donation was hit by the principle of *lis pendens*.

5. The facts were that both the Plaintiff and the GoS claimed the suit land through Pir Bakhsh, the Plaintiff by way of a gift as his son, and the GoS by way of a donation for public purposes. As regards the SSGC, Mr. Shakeel Abro Advocate submitted that the SSGC did not claim any title to the suit land as it had only constructed the mini-stadium for the GoS at the land provided by the GoS, and

therefore, even if the Plaintiff had succeeded, the SSGC at least could not be held liable for any compensation to the Plaintiff.

6. Despite service, the Defendants/Respondents did not enter appearance in the suit, and in *ex-parte* proof the Plaintiff had produced the following documents:

- (i) statement of his father Pir Bakhsh recorded by the Mukhtiarkar on 11.03.1949 to the effect that he had gifted the suit land along with other land to the Plaintiff, and the acceptance of the gift made by the Plaintiff's mother, Nawab Khatoon as his guardian;
- (ii) Form VII to show that the suit land was mutated to the Plaintiff's name;
- (iii) the order dated 17.07.1976 passed by the Commissioner Sukkur Division to hold that possession of the suit land had been delivered to the Plaintiff pursuant to a gift by his father Pir Bakhsh, and therefore the gift could not be revoked. That order was as follows:

*"Petitioner, Mohammad Bux Khuhawar present. Respondent K.B. Pir Bux Khan present. Mr. Arbab Ali Dinari HVC Office of the Deputy Commissioner Larkana present. ...."*

*Before the case could be argued on merits, the parties stated that they have compromised and made prayer that the revision petition may be disposed of so that they may be able to set the things as per terms of their compromise statement.*

*I have gone through the relevant record and have heard the representative of the D.C. Larkana. It appears that the gifts were made by the respondent as long as in 1949 to the petitioner as well as his wife and five daughters. The possession of the gifted land was delivered by him to the donees. It was after the period of 9 years that the respondent changed his mind and approached the Deputy Commissioner Larkana for the revocation of gift made to the petitioner. The petitioner on the strength of the gift statement got the lands transferred on his khata in the revenue record. He accordingly filed a declaration form under MLR-64 in 1959. His holding was determined by the DLC Larkana and was allowed to retain the land to the extent admissible him under the rules. At this stage the respondent even did not challenge the gift. Besides the provisions of section 45 of the West Pakistan Land Revenue Act are also quite clear on the point. According to this section, in case of gift the fact of possession counts a good deal. A gift to be valid much ordinarily be followed by possession. Since the possession of the land was transferred to the petitioner as long as 1949, therefore no justification to reopen the case at this stage.*

*Under the circumstances I accept the revision petition and set aside the orders of the Deputy Commissioner Larkana as well as of Assistant commissioner Shahdadkot.*

*However, as a result of this order the D.L.C. Larkana will have to take action on the declaration form filed in earlier by the petitioner and pass necessary resumption order keeping in view the provisions of the MLR-115 and notification issued by the Sindh Land Commissioner/Federal Land Commission from time to time."*

- (iv) Report dated 13-12-1995 submitted by the Deputy Commissioner Larkana to the Commissioner Larkana Division explaining *inter alia* that:

*"7/- I have also heard the applicant at-length. In fact, the applicant has proved ownership of S.No.64. The anomaly cropped-up was due to the fact that the possession of land remained with Education Department all along and no application was moved by the applicant Sardar Mohammad Bux Khan Khuhawar for handing over possession or payment of land compensation by the Education Department till the possession of land was handed over to Sui Southern Gas Co. for the construction of Mini Stadium.*

*8/- Applicant Sardar Muhammad Bux Khuwahar has requested for payment of land compensation at the rate of Rs.900/- per sq; yard. The market value of the land in the locality as reported by the Mukhtiarkar Shahdadkot vide his letter No: TM/1392 dated 25/10/1995 (copy enclosed) comes to Rs.1,20,000/- per acre.*

*9/- It is, therefore, requested that the authorities concerned may kindly be moved to arrange payment of land compensation in respect of S.No.64 (6-37 acres) to the applicant Sardar Mohammad Bux Khan Khuhawar at the prevalent market rate."*

7. Thus, the evidence brought by the Plaintiff demonstrated that the suit land had been gifted to him by his father Pir Bakhsh as far back as 1949 along with possession which was duly entered in the revenue record, and though in 1968 Pir Bakhsh had sought to reverse such revenue entry by contending that he had revoked the gift, that was eventually declined by the Commissioner Sukkur Division by way of an order passed in revision proceedings under the West Pakistan Land Revenue Act, 1967.

8. The judgment of the trial court was slipshod to say the least. It had not discussed the above evidence but dismissed the suit by simply holding that a suit under section 42 of the Specific Relief Act was not maintainable when the record of rights showed that the suit land was of the GoS. The judgment of the appellate court was also perverse when it observed that the Plaintiff had not proved that possession of the suit land had been delivered to him under the gift

before his father donated the land to the GoS; and that the suit was not maintainable in the absence of a prayer for possession of the suit land. The learned appellate court failed to appreciate that the Plaintiff's father (donor) was present before the Commissioner Sukkur Division at the time of the order dated 17-07-1976, whereby revocation of the gift was set-aside. He never took issue to such order. Consequently, when the donor himself had accepted that the gift was complete with delivery of possession, there was no occasion for the appellate court to conclude otherwise. The absence of a prayer for possession was no bar to the maintainability of the suit when the Plaintiff was seeking compensation in lieu of possession.

9. Both the courts below did not even question the basis on which the GoS could have claimed ownership of the suit land. The letter of possession on the record pertaining to the year 1973 was in respect of Survey No. 63, not the suit land which was Survey No. 64. Per the comments filed in this revision by the DDO (Revenue) Shahdadkot, entry No. 185 in the *Dakhil Kharij* Register on which the GoS relies, was made on 04-06-1979. That entry was much after the Commissioner's order dated 17-07-1976 holding that the gift in favor of the Plaintiff was intact. On 04-06-1979 Pir Bakhsh was not owner of the suit land so as to be competent to 'donate' the same to the GoS. In any case, that entry in the *Dakhil Kharij* Register was not by itself transfer of property to the GoS. The learned AAG Sindh was not able to show the instrument by which such transfer came to be effected.

10. In view of the foregoing, both the judgments mentioned first above are perverse and suffer from a mis-reading and non-reading of the evidence. Same are set-aside. F.C. Suit No. 05/1997 is remanded to the trial court for passing a preliminary decree in favor of the Plaintiff against the GoS, and thereafter for recording evidence to determine what area of the suit land was taken over by the GoS, and the market value thereof for awarding compensation to the Plaintiffs by the GoS. Revision application stands allowed accordingly.

**JUDGE**  
signed: 27-03-2023

Announced by & on: