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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No. S-22 of 2007.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Hearing of main case.

01.10.2020.

Mr. Abdul Rehman Bhutto, advocate for the Applicant.

Mr. Safdar Ali Ghouri, advocate for the Respondent No.1.

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This Civil Revision Application is directed against judgment dated 31.05.2007, passed in Civil Appeal No.05/2005 by the Additional Judge, Kashmore, whereby the judgment and decree of the trial Court dated 09.05.2006 and 10.05.2006 respectively, in F.C Suit No.98 of 2003 has been maintained.

Learned Counsel for the Applicant submits that the Suit land in question was granted to respondent No.1, unlawfully and was impugned through Appeal under section 161 of the Land Revenue Act by the present Applicant and the said Appeal was allowed vide order dated 30.09.2002; that the said order was challenged in revision by respondent No.1 and simultaneously, Suit in question was filed; that the Civil Court had no jurisdiction to entertain the Suit under section 9, C.P.C, as the Revenue Authorities had already taken cognizance of the matter, therefore, the trial Court as well as Appellate Court have erred in law; that the land after cancellation was granted to the Applicant and therefore, could not have been cancelled; that the Appellate Court has failed to settle points for determination as required under Order 41 C.P.C; that the stance of respondent No.1, has been contrary to the facts inasmuch as they first concealed filing of revision against the order of the Revenue Authorities, and while confronted, accepted that they have chosen to avail the said remedy; that such

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conduct of respondent No.1, mandatorily required that the Suit ought to have been dismissed. In support, he has relied upon the cases of *Muhammad Yousaf and others v. Haji Murad Muhammad and others (PLD 2003 Supreme Court 184)*, *Abdullah Khan through his L.Rs v. Member Judicial Board of Revenue and 4 others (1987 CLC 994)*, *Iqbal Hussain v. Province of Punjab through Collector, Bahawalpur District (2001 CLC 1019)*, *District Officer (Revenue) Thatta and another v. Karim Bux (2016 CLC 1372)*, *Mst. Malookan v. Bacho Mal and 4 others (2017 CLC 1123)* and *Raja Khan v. Shah Nawaz and 10 others (2019 CLC 2061)*.

On the other hand, learned Counsel for the private respondents has opposed this Civil Revision Application on the ground that the bar of jurisdiction is not absolute; that cognizance by E.D.O (Revenue) by entertaining appeal under section 161 *ibid* filed on behalf of the Applicant was without jurisdiction as the respondents were never confronted as to any cancellation, nor any notice was issued; that once an action is without jurisdiction, the Civil Court's jurisdiction cannot be barred and is always available and, therefore, he has supported the judgment of the trial Court as well as the Appellate Court.

I have heard both the learned Counsel and perused the record.

The learned Counsel for the Applicants has primarily attacked the impugned orders on two grounds: first that the Appellate Court failed to settle the points for determination as required under Order 41 Rule 31, C.P.C. To that it may be observed that this argument is misconceived inasmuch as the Appellate Court has given findings with proper reasoning on the entire controversy and even if it has failed to settle the points for determination the same would not *ipso facto* render the impugned judgment as being liable to be set aside as the said rule

is not absolute in that if the Appellate Court in terms of Order XLI Rule 31, though fails to settle specific points for determination; but on the basis of material available on record and after going through the Record & Proceedings of the trial Court has given its cogent findings attending to the controversy and the objections so raised, then it can suffice and the provision is deemed to be duly attended to. If the Appellate Court in each and every case, has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more so, when all the questions raised have been answered by the Appellate Court. It is, but sufficient, that the Appellate Court answers the material questions in its judgment and even if no points are framed for determination it would not *ipso facto* render the judgment illegal or without lawful authority subject to, that the point or controversy has been attended to and decided on the basis of evidence available before the Court. This could only sustain when the judgment is itself without reasoning and also fails to determine the points for determination and not when it is a reasoned judgment attending to all the relevant issues / pertinent controversy between the parties. For such proposition reliance may be placed on the cases reported as ***Muhammad Iftikhar v. Nazakat Ali (2010 SCMR 1868)***, ***Hafiz Ali Ahmad v. Muhammad Abad and others PLD 1999 Karachi 354***, ***Ghulam Samdani and others v. Faqir Khan PLD 2007 Peshawar 14***, ***Abdullah and 11 others v. Muhammad Haroon and 8 others 2010 CLC 14*** and ***Muhammad Azam v. Mst. Khursheed Begum and 9 others 2013 Y L R 454***.

The other objection raised is to the effect that once cognizance was taken by the Revenue Authorities and an order was passed, the jurisdiction of the Civil Court is barred. To that, he was

confronted as to in what manner the first jurisdiction was exercised by the Revenue Authorities and in support he has referred to order dated 30.09.2002, passed by the E.D.O (Revenue). On perusal of the same, it appears that such order has been passed by the said officer under section 161 of the Land Revenue Act on the appeal filed by the Applicant. Section 161 of the Land Revenue Act reads as under :

161.Appeal. (1) Save as otherwise provided by this Act, an appeal shall lie from an original or Appellate order of Revenue Officer as follows, namely:-

- (a) to the Collector, when the order is made by an Assistant Collector, of either grade;
- (b) to the Executive District Officer (Revenue), when the order is made by a Collector;
- (c) to the Board of Revenue only on a point of law, when the order is made by an Executive District Officer (Revenue).

Provide that:-

- (i) When an original order is confirmed on first appeal, a further appeal shall not lie:

Perusal of the aforesaid provision reflects that an Appeal in this provision can be preferred against an *original order* or an *Appellate order* by the Authorities so mentioned therein. Learned Counsel for the Applicant was confronted as to what *original order* was passed by the Authorities and to this, he was unable to assist the Court. He argued that in fact the Applicant had challenged the very allotment of the land to respondent No.1, through this appeal as the Applicant was in possession. Again while confronted as to how the Applicant was in possession, the learned Counsel completely failed to justify except that it was a Government land. It is not denied that respondent No.1, was allotted the land in question by the concerned Authority and against such allotment an appeal was entertained by the E.D.O (Revenue) under section 161 of the Act. This Court is of the view that the E.D.O Revenue had no lawful authority to entertain any such appeal without

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there being an original order of the Authority. The proper course was that the authority which had allotted the land ought to have been approached by the Applicant for its cancellation, if any, and the said Authority, if deemed fit, had passed any order either rejecting the application of the Applicant or allowing it, only then an appeal was maintainable. Insofar as the the issue as to whether the order passed by Revenue Authority can be impugned and challenged before a Civil Court directly without exhausting the remedy provided under the hierarchy of the department, is concerned, there is no cavil to the proposition that if a statute provides a proper mechanism for availing the departmental remedy; then it must be availed by an aggrieved party. However, this Rule is not absolute and there is an exception to this proposition and by now it is settled by the Apex Court that where the order impugned is tainted with malafides or without jurisdiction or is otherwise incompetent in law; then jurisdiction of a Civil Court cannot be ousted and is not barred. Reference in this regard may be made to the case of *ABBASIA COOPERATIVE BANK (NOW PUNJAB PROVINCIAL COOPERATIVE BANK LTD.) versus Hakeem Rafiz MUHAMMAD GHAUS and 5 others* reported as **PLD 1997 Supreme Court 3.**, wherein the Hon'ble Supreme Court has been pleased to dilate upon the issue in hand in the following manner;

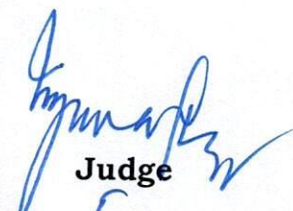
5. The next question which arises for consideration in the cases is, whether the Civil Court was competent to examine the validity of the auction conducted by the authorities? The Civil Court 'under section 9 of the Code of Civil Procedure are competent to try all- suits of civil nature except those or which their jurisdiction is barred either expressly or by necessary implication. It is a well-settled principle of interpretation that the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to. It is also well-settled law that where the jurisdiction of the Civil Court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil Court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or the action taken by the authority or tribunal was not mala fide; (c) that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated. Unless all the conditions mentioned above are satisfied, the order or action of the authority or the tribunal would

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not be immune from being challenged before a Civil Court. As a necessary corollary, it follows that where the authority or the tribunal acts in violation of the provisions of the statutes which conferred jurisdiction on it or the action or order is in excess or lack of jurisdiction or mala fide or passed in violation of the principles of natural justice, such an order could be challenged before the Civil Court in spite of a provision in the statute barring the jurisdiction of Civil Court. In the case before us, the action of the Cooperative Authorities in auctioning the suit property for recovery of the loan against respondent No.1 was challenged in the suit as contrary to the provisions of the Ordinance and M.L.O. 241.

In fact, in this case the entire proceedings initiated by the Appellate Authority were *corum-non-judice* and *non-est* in law, and therefore, even if any revision application was filed, the respondents cannot be compelled to continue pursuing such remedy as even revisional order would have been without jurisdiction. In that case the jurisdiction of the Civil Court was correctly opted for and besides this objection nothing has been agitated or argued so as to convince this Court to interfere in the concurrent findings of both the Courts below, which otherwise appears to be based on proper appreciation of the material evidence led by the parties; hence, no case is made out by the Applicant.

In view of hereinabove facts and circumstances of this case and the law settled by the Courts, this Civil Revision Application fails and was dismissed by means of a short order on 01.10.2020 and these are the reasons thereof.


Judge
5.10.2020