IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.136 of 2010

Present: Mr. Justice Salahuddin Panhwar

Date of Hearing:	30.09.2013.
Applicant:	Jan Muhammad & 6 others through Mr. Mir Mohammad Jamali, advocate.
Respondents:	Ghulam Nabi Shah & others Mr. Raham Ali Rind, advocate for respondent No.1.
State:	Through Mr. Sharfuddin Mangi, advocate.

JUDGMENT

SALAHUDDIN PANHWAR, J. Through this Civil Revision, the applicant has assailed judgment and decree dated 03rd March 2010 and 06th March 2010, passed by Ist Additional District Judge, Thatta in Civil Appeal No.16 of 2003, (Re:Jan Mohammad and others vs. Ghulam Nabi Shah and others), whereby learned Appellate Judge maintained the judgment dated 28th January 2003 passed by the Senior Civil Judge, Thatta in First Class Suit No.43 of 1991 (Re: Ghulam Nabi Shah vs. Province of Sindh and others).

2. Succinctly, the facts, as pleaded by respective parties, are that plaintiff/respondent No.1 filed FC Suit for Declaration and Permanent injunction, wherein pleaded that a residential plot No.A, admeasuring 2475 Sq.ft, situated in Makli Taluka, District Thatta was allotted to plaintiff/respondent No1 for residential

purpose by the Deputy Commissioner, Thatta (respondent No.3) after completing all legal formalities at the rate of Rs.4/- per Sq.ft vide his order No.Rev./-1593 of 1989 Thatta dated 30.4.1989. Allotment order was confirmed by the Commissioner, Hyderabad Division, Hyderabad vide his order No.212 Rev-III/-89-1235 Hyderabad dated 02.05.1989 at the rate of Rs.3/- per Sq.ft instead of Rs.4/- per Sq.ft. The plaintiff / respondent No.1 paid malkana; executed Qabooliat and Ijazatnama was also issued in his favour on 15.5.1989. The plaintiff / respondent No.1 was put in possession of the suit plot and entries were also affected in village Farm-II. Some mischievous persons put the evil eyes over suit plot and compelled plaintiff / respondent No.1 to sell suit plot to them. On refusal by plaintiff / respondent, those persons filed a time barred incompetent appeal before the defendant /respondent No.2, but without giving proper opportunity of hearing cancelled the suit plot vide his order dated 27.9.1990 which order of defendant / respondent No.2 is null, void, malafide, without jurisdiction, against the principles of natural justice, equity and without jurisdiction. The plaintiff / respondent No.1 appeared on first date of hearing before defendant / respondent No.3 and moved application for time to engage advocate but he did not hear and passed such illegal and malafide order. It is further alleged that defendant / respondent No.3 under the influence of Chief Minister of Sindh cancelled all the plots granted to the persons during the period commenced from 01.12.1988 to 06.8.1990, including the suit plot of plaintiff / respondent No.1 without any reason but on political grounds. This order of defendant No.1 / respondent No.2 was communicated to plaintiff /respondent No.1 through

defendant / respondent No.4 vide his order No.Rev/-2791 of 1990, Thatta dated 17.10.1990. plaintiff / respondent No.1 claimed that order of cancellation was illegal, void, malafide and without jurisdiction as allotment in his favour was legal and that he incurred considerable amount over leveling the same and that he has been in possession therefore, prayed for following relieves:-

> *"a) Declare that orders of defendant No.2 dated 27.9.1990 and defendant No.3 dated 17.10.1990 passed 9on the directions of defendant No.1 canceling the suit plot viz. plot No.A, area 2475 Sq.feet situated in Makli are null, void, malafide, without jurisdiction and against the principles of natural justice and equity and further declare that the plaintiff is lawful allottee of the suit plot and is owner of suit plot situated in Makli, Taluka & District Thatta;*
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> *b) Issue permanent injunction restraining the defendant, their agents, representatives and / or any other person claiming through them from interfering with peaceful possession and enjoyment of the plaintiff over the suit plot or doing any other act prejudicial to the interest of plaintiff;"*

3. Defendant No.3 / respondent No.4 also filed written statement, wherein contended that plot was cancelled by Board of Revenue Sindh in an appeal after hearing both parties. He also maintained that grant was made to plaintiff and subsequently confirmed by Commissioner, Hyderabad Division was in violation of statement of condition notified under No.KB-1131838-07 dated 12/5/1975, by the competent authority. Since the original grant and its subsequent confirmation was without jurisdiction, therefore, grant was rightly set-aside by the competent authority, the order passed by defendant No.2 / respondent was right, proper and lawful and suffer from no legal infirmity. He further

maintained that honourable Chief Minister of Sindh in his general directive canceled the grants / lease and allotments of state land, which were made in contravention of statement of conditions in between the period from 01.12.1988 to 06.8.1990 which were motivated by political means and as grant in favour of plaintiff /respondent No.1 was made in between that period so he was informed the action, taken in the matter. The learned trial Court judge framed certain issues and on conclusion of trial, decreed the suit.

4. The record further shows that later, an application U/s 12(2) CPC was filed by the defendants No.4 to 10 and in consequent whereof the judgment and decree were set-aside by learned trial court judge vide order dated 11.7.1995 and defendants No.4 to 10 were allowed to file written statement they filed their written statement as Ex.86, in which they denied allegations of plaintiff / respondent No.1. They further stated that boundaries given of the alleged suit plot are false no such plot exist with alleged boundaries. The order of Deputy Commissioner, Thatta bearing No.Rev.1593 of 89 dated 30.4.1989 is illegal without jurisdiction, malafide, abinito, void as Deputy Commissioner as per statement of conditions regarding the grant of plots issued under No.KB-1/1/30/72/7096 dated 12.5.1975 Deputy Commissioner / Collector has power only to grant plots measuring 80 Sq.yards without auction. As such Deputy Commissioner, Thatta the defendant No.3 had no power to grant a plot measuring 2475 Sq.yards to plaintiff; the order of Commissioner Hyderabad Division vide order No.212 Rev.-III/89-1235 dated 02.5.1989, confirming the said plot in favour of

plaintiff is illegal, without jurisdiction, abinitio, void as Commissioner could only confirm plot measuring 120 Sq.yards without auction as per statement of condition dated 12.7.1975 thus Payment of Malkana execution of Qabooliat and issuance of ijazatnama are all illegal act and confer no right title or interest upon the plaintiff over suit plot as the very grant of plot to plaintiff by Deputy Commissioner and confirmation by Commissioner are illegal and without jurisdiction. It is further submitted that plaintiff was never put in possession of suit plot, he never remained in possession of suit plot nor he is in possession of suit plot. It is further submitted that answering defendants and other persons of Hamaiti casts have thirty houses situated in Dost Muhammad Hamaiti village adjacent to Thatta drainage Division office and on eastern side of Makli Ghulamullah road at Makli District Thatta. This village is in existence since more than 40 years. Defendant No.3 sanctioned the existing Dost Muhammad Hamaiti village in an area 8.18 acres under his order No.GAS/166 dated 17.5.1993. They prayed that order of grant in favour of plaintiff / respondent No.1 was illegal and that suit was not maintainable as order of cancellation was legal and lawful. The learned trial court judge framed issues afresh and on conclusion of trial, decreed the suit of the plaintiff / respondent No.1.

5. Learned counsel for the applicants, *inter- alia* has contended that both the judgment (s) and decree (s) of learned lower courts are not legal, proper hence not sustainable under the law; the issue (s) and points for determination were not properly framed by the learned lower courts hence the judgments and decrees of courts below cannot be said to be legal because the

learned lower court(s) below decreed the suit with reference to a document which was never produced on record. There is a departure from mandatory provision of Order XLI R 31 CPC which has resulted into serious illegalities, therefore, it was concluded that the appeal be allowed.

6. On the other hand, learned counsel for respondent, argued that instant Civil Revision is devoid of merits. Both Court(s) below have appreciated evidence within the spirit of law hence concurrent findings can not be disturbed in Revisional proceedings.

7. After careful consideration of contentions, advanced by either sides, examination of material available record and perusal of the both the judgments of learned lower court would show that the decision arrived was based with reference to policies of the government while holding that the property in question falling within rural area of Makli Town.

8. At this juncture, I would insist that since both the learned lower court (s) have passed their decision (s) while comparing two policies / Notifications issued on the same date i.e 12th May, 1975 by Sindh Government i.e Notification No.KB-1/1/30/72/7096 and KB-1/1/30/72/7098 but neither the learned trial court framed any issue with reference to such controversies nor the learned appellate Court framed any point for determination to that aspect. The comparative reading of both the policies / notifications show that the former notification/policy was in respect of disposal of government land :

> *"within the local limits of Taluka Karachi or of Karachi Development Authority Schemes or Municipal Committees in the Provinces"*

while the later notification/policy was also for disposal of government land:

> *"within the limits of People Town Committees, Mandi Towns and other colony areas of Province of Sindh"*

Thus the point / issue regarding application of the notification/policy could not be legally done unless it is determined that as to where plot (piece of government land) falls. Though the learned trial court observed as "it also appears that the suit plot is situated at Makli rural" but the judgment of lower court (s), no where, speaks as to how they arrived at this finding, particularly where such finding / observation is not supported with any document nor the parties were ever put on notice to prove this aspect of the matter and even no report in this regard was ever called by the learned trial court or by the learned appellate court which affirmed the judgment of learned trial court.

9. Above position reflects that the object of the Order XIV R 1 of the Code was never properly achieved, which provides that "every material proposition of fact or law, affirmed by one and denied by other, should be dress as an issue". The stage of framing of issue(s) is not a mere formalities but the object behind it to put the parties on complete notice and knowledge whereby enabling them to support their respective claims by relevant evidence on all material points. It is also worth to add here that the later policy / notification bearing No. No.KB-1/1/30/72/7096 and KB-

1/1/30/72/7098 was never referred by the plaintiff / respondent No.1 nor it was his case that matter of allotment of the plot falls into meaning of this policy instead of that in such an eventuality if the learned trial court was going to consider a policy/notification not brought on record as per prescribed procedure, it was obligatory upon the learned trial court judge to have framed such issue for which the learned trial court was always competent within meaning of Rule-5 of the Order XIV of the Code. It is also important to mention here that Order XIII of the Code puts an obligation upon the parties or their pleaders to produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced. The object behind this provision is also meant to put other side on a notice of such document. It needs not be mentioned that document not brought on record through witnesses and duly exhibited, the validity of such a document, could not be taken into consideration by the court, else not only the object of Order XIII of the Code but also the principle of natural justice and equity shall stand frustrated as held by Apex Court in case of Federation of Pakistan through Secretary Ministry of Defence & another vs. Jaffar Khan & others (2010 PLD SC 604).

10. It is pertinent to mention that the administration of justice demands that the decision should not be made in an arbitrary manner but should strictly be confined to the manner provided by the law itself. The Court (s), no doubt, for proper determination of the rights of parties, could consider those things

which are not pleaded by either sides but not in deviation or departure of the procedure because the procedure is aimed to do substantial justice and not to surprise the parties. The provision of the Order XIV and that of Order XLI Rule 31 of the Code should always been given their due weight else every single decision will give rise to the plea of prejudice, which cannot be approved.

11. The concurrent findings cannot be considered sacred in a situation where the rights of the parties are not determined in accordance with law and the judgment of the courts below are perverse or based on misreading or non-reading of the evidence. The Revisional jurisdiction, as a matter of fact, is meant to rectify the errors made by the subordinate courts particularly where a serious departure from law resulting into a plea of prejudice is found.

12. As discussed above, this Court while accepting the instant revision application, set aside the impugned judgment of the courts below, and the case is remanded back to the trial Court to decide the matter afresh after framing the proper issue regarding application of policies, under the law.

J U D G E