

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No. 249 of 2024

[Khuda Bux @ Iqbal vs. Province of Sindh and others]

Applicant by : Barrister Jawad A. Qureshi, Advocate

Respondent No.5 : Mr.Pardeep Kumar, Advocate

Respondents No.1 to 4 by : Mr.Allah Bachayo Soomro, Addl. A.G

Date of hearing : **07.4.2025 and 14.4.2025**

Date of Decision : **28.4.2025**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Revision Application, filed under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C.**"), the applicant assails the Order dated 23.07.2024, passed by learned District Judge (MCAC), Tando Muhammad Khan ("**Appellate Court**"), whereby the applicant's appeal was dismissed. Consequently, the Order dated 20.10.2023, passed in F.C. Suit No. 123/2022 by learned Senior Civil Judge-II, Tando Muhammad Khan ("**Trial Court**"), rejecting the plaint under Order VII, Rule 11 of the C.P.C., was upheld.

2. The pertinent facts, succinctly stated, are that the applicant's grandfather, Muhammad Azeem, was granted 01-38 acres in Survey Nos. 33 and 34 of Deh Kari, Tando Muhammad Khan, in 1946-47, and the land was duly mutated in his favour vide Entry No. 27 in 1973, based on a T.O. Form. This land, referred to as the "**suit land**," was subsequently granted to the applicant on muhag rights through A-Form No. 13067 for Rabi 1999-2000. Respondent No. 5 contested this grant, filing an appeal under Section 161 of the Land Revenue Act, 1967, before the Additional Commissioner-II, Hyderabad, in 2021. Claiming ownership of 02-00 acres (disputed land) granted in 1939-40 and 03-00 acres (undisputed land) granted in 1940 to Ramzan s/o Jadam, Respondent No. 5 alleged the land had been purchased from Ramzan's heirs in 1989. Following a series of legal proceedings, including appeals and revision applications, the Board of Revenue ultimately upheld Respondent No. 5's challenge. The applicant's subsequent Review Application under Section 8 of the Sindh Land Revenue Act, 1957, was dismissed on 06.12.2021, advising the applicant to seek legal remedy through the Court of law, hence, he filed the

suit for Declaration and Permanent Injunction before the trial Court with the following prayers: -

- a) That this Court may be pleased to declare that the plaintiff was granted land admeasuring 1-38 guntas on muhag right basis, vide A-Form No.13067 from Rabi 1999-2000 vide Order dated: 23.12.1999 legally and defendant No.05 has no legal right to claim the same.
- b) That, this Court may be pleased to declare that the Land Grant Policy which was came into force in the year 1989, have no legal effect or binding on grant which was made to the grandfather of plaintiff in the year 1946-1947.
- c) This Court may be pleased to grant Permanent Injunction against the defendants, restraining them from further selling out, alienating and transferring or encumbering the suit property bearing an area of 01-38 Ghuntas from Phital Bhada in Muhag of S. No.33 & 34 and others of Deh Kari Taluka and District Tando Muhammad Khan in any manner themselves or through their men, sons, employee, servants, relatives agents directly or indirectly till decision of the suit.
- d) Costs.
- e) Any other relief.

3. Upon issuance of summons, Respondents No. 4 and 5 filed their respective written statements. Subsequently, learned Trial Court, on 04.07.2023, was pleased to frame issues. Thereafter, Respondent No. 5 preferred an application under Order VII Rule 11 C.P.C, seeking rejection of the plaint, to which the applicant duly filed a Counter Affidavit. Upon meticulous consideration, the learned Trial Court, vide Order dated 20.10.2023, was pleased to reject the plaint. Aggrieved by the said Order, the applicant preferred an appeal before the learned Appellate Court, which was dismissed through the impugned Order dated 23.07.2024. The applicant now invokes the revisional jurisdiction of this Court to assail the concurrent findings of the courts below.

4. At the outset, the learned counsel for the applicant contended that after framing issues, the Trial Court acknowledged that the matter required evidence. However, it rejected the plaint on assumptions, warranting interference by this Court. He further argued that under Section 9 of the Specific Relief Act, civil courts retain ultimate jurisdiction over matters concerning civil rights unless expressly barred, and the applicant's challenge to the revenue authorities' orders fell within this jurisdiction. He also argued that civil courts are empowered to examine the acts of special tribunals for legality and mala fide actions. He contends that the respondent No.5, lacking legal character, challenged the applicant's rightful grant despite the applicant being the owner of

Survey Nos. 33 and 34 of Deh Kari, with legitimate muhag rights. He further contends that the Trial Court contradicted itself by framing Issue No. 2 yet rejecting the plaint on technical grounds. Counsel emphasized that the orders of revenue authorities, particularly dated 02.12.2002, 21.11.2005, and 06.12.2021, required judicial scrutiny. He referenced Mukhtiarkar's report confirming the applicant's possession and development of the land while highlighting the respondent's mala fide intent. He also argued that the Bhada Land had been disposed of in favour of several parties, including the applicant. Counsel concluded that the Trial Court's Order was legally misconceived, and the Appellate Court failed to appreciate the legal position. He stressed that parties should be allowed to lead evidence in cases involving valuable rights and that the matter should have been decided on merits rather than technicalities. In support of his contentions, he relies on case law reported as **2003 YLR 1547 and 2024 MLD 656**.

5. Conversely, learned counsel representing Respondent No.5 contended that the impugned orders of the Trial Court and Appellate Court are well-founded and do not require interference. He argued that the plaint was rightly rejected under Order VII, Rule 11 of C.P.C, as it lacked a cause of action. He contended that the applicant's claim to the grant is without legal merit, while Respondent No. 5 holds a valid title derived from lawful ownership and continuous possession. Counsel emphasized that the revenue authorities acted within their jurisdiction, and the applicant failed to demonstrate any illegality or mala fide actions. He contends that framing of issues by the Trial Court did not preclude it from rejecting the plaint, which lacked substance. In conclusion, he submitted that the concurrent findings of the lower courts are sound and justified, and he prayed for the dismissal of the applicant's Revision Application. In support of his contentions, he relies on case law reported as **PLD 1963 (W.P) Karachi 215, 2021 MLD 790, 2007 SCMR 554, 2003 YLR 2372 and 2005 CLC 1797**.

6. Learned Additional Advocate General (A.A.G.) contended that the orders of the revenue authorities were lawful, well-reasoned, and passed within their jurisdiction. He argued that the applicant's claims lacked merit, as the grant was lawfully cancelled due to procedural and substantive deficiencies. He emphasized that the concurrent findings of the lower courts and the revenue authorities were sound and substantiated by evidence, rendering the applicant's reliance on muhag rights unsubstantiated. He prayed for the dismissal of the Revision Application as no material irregularity or error was identified.

7. The contentions advanced by the respective parties have been meticulously scrutinized, and the accessible record has been assiduously

perused. In order to determine whether an adequate and exhaustive dispensation of justice has been effectuated, it is imperative to critically examine the concurrent findings rendered by both the courts below, ensuring that the adjudication remains within the ambit of established legal principles and jurisprudential precedents.

8. Learned counsel for the applicant has vehemently contended that the orders rendered by the revenue authorities suffer from incurable illegality and are void ab initio. However, it is incontrovertible that the applicant, in his plaint, has conspicuously failed to seek declaratory relief assailing the legality, validity, or jurisdictional competence of the orders dated 21.11.2005 and 06.12.2021. The conspicuous absence of such a prayer in the plaint accords sanctity and irrevocable finality to the impugned orders, rendering them binding in perpetuity. It is a well-entrenched and immutable principle of jurisprudence. Unless an order is specifically impugned and prayed to be obliterated, it crystallizes into an unassailable legal position and cannot be reopened in subsequent proceedings. The applicant's omission to contest these orders at the appropriate judicial forum constitutes a fatal legal infirmity, foreclosing any avenue for interference by the Court. The doctrine of finality and estoppel by conduct, firmly embedded in judicial precedents, mandates that once an administrative or quasi-judicial order attains conclusive effect, it cannot be collaterally assailed unless a categorical and unequivocal plea seeking its nullification is raised. Thus, the applicant, having neglected to challenge the impugned orders in a manner consonant with procedural and substantive legal requirements, cannot circumvent the prescribed legal course by attempting to resurrect a matter already adjudicated and conclusively settled by the competent revenue authorities.

9. Learned counsel for the applicant has sought to argue that the Land Grant Policy, 1989, is inapplicable to his case on the premise that the land was initially granted to his grandfather in 1946-47. However, this contention is manifestly flawed and legally untenable. The applicant is not asserting any right of inheritance from his predecessor; rather, the suit land was re-granted to him vide Order dated 23.12.1999, subsequent to the promulgation of the Land Grant Policy, 1989. Hence, the said policy governs the applicant's grant and is fully applicable. Furthermore, Condition No. 12(1) of the Land Grant Policy, 1989, unequivocally stipulates that no bhada land exceeding 39 Ghuntas may be allotted on muhag rights at once, nor can muhag rights be exercised more than once. The applicant, having been allotted 1-38 acres, blatantly violates this condition, thereby rendering the grant unlawful. Therefore, the grant

cancellation was in strict conformity with the policy and was rightly effectuated by the competent revenue authorities.

10. The applicant's suit is manifestly barred under Section 36 of the Colonization and Disposal of Government Lands Act, 1912, which categorically ousts the jurisdiction of civil courts in matters expressly delegated to the Collector, Board of Revenue, or other revenue officers acting within the domain of the said Act. In this context, it would be appropriate to reproduce the relevant provision as follows:

"A Civil Court shall not have jurisdiction in any matter of which the Collector is empowered by this Act to dispose and shall not take cognizance of the manner in which the [Provincial Government], [Board of Revenue] or Collector or any other Revenue Officer exercises any power vested in it or in him by or under this Act."

11. The plain reading of the above provision unequivocally establishes that disputes regarding government land allocation, cancellation, and administration must be adjudicated solely by the revenue authorities, and civil courts lack jurisdiction to interfere in such matters. The underlying legislative intent behind this bar is to ensure that revenue matters are dealt with by specialized forums possessing the requisite expertise and statutory competence to interpret and administer land grant policies and related regulations.

12. Learned counsel for the applicant argued that civil courts retain ultimate jurisdiction over civil rights unless expressly barred. However, the present case falls squarely within the jurisdiction of revenue authorities, as the dispute pertains to the cancellation of a land grant. The superior courts have consistently held that where a special forum is designated to adjudicate a matter, civil courts cannot assume jurisdiction unless there is a clear violation of fundamental rights or mala fide action. The applicant has failed to demonstrate any illegality or mala fide intent on the part of the revenue authorities.

13. Furthermore, the core issue in the applicant's suit revolves around the validity of the revenue authorities' decision to cancel his grant. According to settled judicial precedents, civil courts cannot examine the manner in which the revenue authorities exercise their statutory powers unless there is a clear violation of fundamental rights or demonstrable mala fide intent. The applicant has not pleaded or established any allegation of mala fide actions or lack of jurisdiction on the part of the revenue authorities. Additionally, Section 36 *ibid* must be interpreted in conjunction with the doctrine of implied exclusion, which asserts that when a special statute confers exclusive jurisdiction on a revenue tribunal, civil courts must refrain from interfering unless explicitly empowered to

do so by law. The applicant's claim relates to land disposal and government grants-matter that squarely fall within the jurisdiction of revenue authorities, and the statutory scheme leaves no room for civil court intervention.

14. The counsel for the applicant contended that the Trial Court had framed issues, thereby acknowledging that the matter required evidence. However, framing of issues does not preclude the Court from rejecting the plaint under Order VII, Rule 11 of the C.P.C. if it is found to be legally untenable. The Trial Court rightly exercised its jurisdiction in rejecting the plaint, as the applicant failed to establish a valid cause of action. The Appellate Court, upon due consideration, upheld the findings of the Trial Court, and no legal infirmity has been pointed out that would warrant interference by this Court.

15. In light of the foregoing discussion, it is evident that the impugned orders passed by both the Courts below were legally sound, and the concurrent findings of the courts below do not suffer from any legal infirmity. Accordingly, the instant Revision Application is **dismissed**.

JUDGE

AHSAN K. ABRO