

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Ist Appeal No. S – 05 of 1981

Ist Appeal No. S – 06 of 1981

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

Hearing of case

1. For hearing of statement dated 12-09-2008
2. For hearing of CMA No.226/2008
3. For hearing of main case

09-11-2020

Mr. A. M. Mobeen Khan, Advocate for the appellants in Ist Appeal No. S-05/1981.

Mr. Muhammad Tarique Panhwar, Advocate for the appellants in Ist Appeal No. S-06/1981.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

.-.-.-.-.-.-.-.-.-.-

Both these matters of Ist Appeals arise from the impugned order dated 20-12-1980 as passed by learned District Judge, Sukkur in the suit which had challenged the final order of the revenue hierarchy proceedings dated 07-02-1968 as passed by the learned Member Board of Revenue, whereby the grants of the plaintiffs in the said proceedings were cancelled concurrently from the office of the Colonization Officer (as it then was) till the highest office i.e. the Member Board of Revenue. The revenue hierarchy had passed their orders based upon the revenue record as referred therein as well as personal observation to an extent that hands of one of the complainants were found being soft, and as such not that of a *hari*. The said final order was challenged before the Civil Court of learned District Judge, Sukkur, wherein following issues were framed:

1. *Whether the plaintiffs had been cultivating land in deh Morangra and Jampur Dist: Sukkur since 1958, if so what is its effect?*
2. *Whether the plaintiffs were granted land in suit by Colonization Officer on 8.10.64 under Harap scheme?*
3. *Whether the possession of land was handed over to the plaintiffs and they have cultivated and invested on the land in suit?*
4. *Whether the plaintiffs have paid installments of grant money during the pendency of inquiry, if so what is its effect?*

5. *Whether the grant of land in favour of plaintiffs was illegal, if so what is its effect?*
6. *Whether the inquiry conducted by the defendant No.5 is against the law and inquiry, if so, what is its effect?*
7. *Whether the cancellation of grant by defendant No.4 was not legal, if so what is its effect?*
8. *Whether the order passed by defendant No.3 dated 14.9.66, defendant No.2 dated 1.11.67 and 7.2.68 are illegal, void so what is its result?*
9. *Whether the suit is not maintainable under law?*
10. *Whether this court has got no jurisdiction?*
11. *Whether no cause of action accrued to the plaintiffs?*
12. *Whether the plaintiffs are not entitled to any relief?*
13. *What should the decree be?*

Thereafter, evidence was led, and finally, all the issues favouring the plaintiffs therein were determined and the suit was decreed with costs.

2. Learned counsel for the appellants contended that the present appellants had initially made an application to be joined as a party, which was dismissed, and as further approach in the matter was not found available these appeals have been preferred by them from the final conclusion, whereby rights that are eventually to come to them in respect of the subject land were being denied, and as such they have a right of filing these appeals, as they adversely affect their legal interests. Learned counsel for the appellants further contended that Section 36 of the Colonization Act and Section 172 of the Land Revenue Act restrict and prohibit the intervention of Civil Courts in revenue matters especially where the same relate to revenue matters. In this regard, he relies upon the reported cases of **1998 SCMR page 468** and **2007 SCMR page 554** for the earlier and **1987 CLC Karachi page 994** and **PLD 1963 Karachi page 215** for the second reference. Learned counsel has also relied upon Section 74 of the West Pakistan Agricultural Development Corporation Ordinance and the case law reported at **1995 SCMR page 1249** contending that the negative language used in the said ordinance prohibits

the initiation of civil proceedings. For the rights of the appellants, learned counsel relies upon **1985 SCMR page 1832**. It is also contended that the approach to become a party as made in the matter could have been considered for proper or necessary party, but withstanding this entertainment, the same do not affect his rights to final appeal as his cause of action and disturbance of rights have been disturbed.

3. Learned counsel for the respondents, however, contends that no illegality and/or material irregularity has been pointed out. Rights of both the parties have been determined by the learned Civil Court at the District Judge level and the suit was allowed with costs. It is further contended that element of jurisdiction has not been disturbed, and as such the appeals are liable to be dismissed.

4. Learned AAG supports these appeals and further states that the revenue authorities having proper jurisdiction in the matter had exercised their due jurisdiction and where the same was not shown liable to be disturbed before the learned trial Court, these appeals are liable to be allowed.

5. Having heard the learned counsels and gone through the record with their able assistance especially the lengthy order as passed by the learned trial Court. In my understanding following points require consideration:

Whether the jurisdiction exercised by the learned trial Court was available? If so, was the same properly exercised?

The answer to both the points comes out as negative on account of the following discussion:

It is observed that firstly the learned trial Court has failed to consider the availability of jurisdiction, which is limited to be exercised

based upon showing the element of mala fides and error bearing on the record. It is also observed strangely that evidence has been referred in the judgment which arises from the record of the revenue authorities themselves, but it has not been questioned as to how was it possible that those revenue officials had failed to bring the said record (which was relied upon by the learned trial Court) before their own superior officers of the revenue hierarchy. In this regard, at one stage the learned trial Court had stated that the revenue record was not complete, whereas, the revenue authorities were clear that preceding five years no agricultural activity was taken by the respondents in the matter. It is also observed that the revenue authorities had based their findings upon the Mukhtiarkar's report specifying that the alleged allottees were not residents of the locality who, according to the scheme of colonization as was in vogue then, was to give them preference for increase of agriculture. Said basic elements have failed the attention of the learned trial Court.

6. Before concluding this order, it may observe while it is possible to bring forward elements favouring either party in almost any circumstances, but for a Court of law it is required to be considered as to what the purpose of allocation of land is in the first place, and thereafter, whether the government officials have exercised their required functions, and where no mala fide could be pointed the proceedings of the revenue authorities are not liable to be interfered by a Civil Court as it is/was never available to sit in appeal on their proceedings. Although exercise of jurisdiction may at times be required it has to be seen whether any such material is available and if so, the specific elements must be brought up, discussed and considered to establish the wrong done to any party. No such element found in the impugned order, as such based upon the above

discussions, these appeals stand **allowed**. Office is directed to place a signed copy of this order in the captioned connected appeal.

Abdul Basit

J U D G E