

Stereo.HCJDA 38.

Judgment Sheet

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

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CIVIL REVISION NO.1004 of 2015

CHAKLALA CANTONMENT BOARD

versus

M/S UMAR KHAN AND OTHERS.

JUDGMENT

Date of hearing: **28.03.2024**

Petitioner by: Mr. Babar Ali, Advocate.

Respondent No.1 by: Mr. Arfan Ullah Malik,
Advocate.

Respondent No.2 by: Mr. Sarfraz Rauf, Assistant
Attorney General.

MIRZA VIQAS RAUF, J. This petition has a chequered history at its back. Respondent No.1 (hereinafter referred to as “respondent”) was owner of the land measuring 24-kanal 05-marla bearing Survey No.1222 situated at Tench Bhatta Tehsil & District Rawalpindi within the limits of Cantonment Board. Out of the said land, land measuring 02-kanal 02-marla was utilized by the petitioner-Board for construction of Dhari Hassnabad Tulsa Road and Harley Street to Tulsa Road through its resolution. The owner of the land/“respondent” was, however, assured that he shall be provided alternate land for the land utilized in the road. A Surrender Deed was executed between the “respondent” and Cantonment Board on 24th June, 1987 whereby it was agreed that following land would be given to the “respondent” in lieu of land utilized for construction of road:-

Survey No.602/597	5,250 sft
Survey No.602/621	362 sft
Survey No.622/1321/Pt (Road side berm)	1,353 sft (classified as C)
Survey No.622/1321/Pt (Road side berm)	3,188 sft (classified as C)
Total:	12,153 sft

2. On failure by the petitioner-Board to fulfill the commitment, the “respondent” instituted a suit for specific performance, possession and recovery of compensation. The suit was though resisted but it was decreed vide judgment dated 20th November, 1990. The petitioner-Board challenged the judgment and decree of the trial court up to the Supreme Court of Pakistan but remained unsuccessful. This followed the execution proceedings wherein the petitioner-Board filed an objection petition but it was dismissed through order dated 08th March, 2014. Feeling aggrieved, the petitioner-Board preferred an appeal before the learned Additional District Judge, Rawalpindi but the appeal was also dismissed through order dated 05th January, 2015, hence this petition under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “CPC”).

3. Learned counsel for the petitioner-Board contended that the Executing Court travelled beyond the decree. He added that in order to resist the execution proceedings, the petitioner-Board filed an objection petition. It is contended that without examining the objections raised by the petitioner-Board, the Executing Court discarded the same mechanically. Learned counsel submitted that the Appellate Court while confirming the order of the Executing Court committed material irregularity and as such impugned order is not tenable.

4. Conversely, learned counsel for the “respondent” submitted that the execution proceedings have unnecessarily been hampered by the petitioner-Board. He added that objection petition was rightly dismissed being misconceived.

5. Heard, record perused.

6. As the petition in hand is arising out of execution proceedings so it would not be apt to go into rigmarole of the factual resume. It is an admitted fact that “respondent” was owner of land measuring 24-kanal 05-marla bearing survey No.1222 situated in the revenue estate of Tench, Dhari Hassanabad, old Rawalpindi, now Chaklala Cantt Rawalpindi. The land was utilized by the petitioner-Board for construction of a road and bridge leading from Harley Street to Tahli Mohri. The controversy was amicably negotiated by the petitioner-Board with the “respondent” in furtherance of which he applied for alternate land. The application of the “respondent” was placed before the Board in its meeting held on 29th June, 1985. It was resolved in the Board’s meeting that alternate land be allotted to the “respondent” in lieu of land measuring 02-kanal 02-marla on payment of formal rent and without premium. The Cantonment Executive Officer was authorized to process the case and refer the matter to the competent authority. The “respondent” thus surrendered his land in favour of the petitioner-Board through Surrender Deed No. No.4969 dated 24th June, 1987. In furtherance whereof, the Ministry of Defence, Government of Pakistan, Rawalpindi, vide letter No.75/230/Lands/87/3524/D-12/ML&C, dated 18th October, 1987 issued a sanction for exchange of land measuring 02-kanal 02-marla with land of equal measurement situated at Khadim Hussain Road, Rawalpindi *inter alia* on the following conditions:-

- i). Acceptance of exchange of land by the Cantonment Board; and
- ii). Lease of land measuring 02-kanals 13-marlas in favour of Respondent No.1 by way of private treaty in Schedule VIII of the CLA Rules, 1937.

7. The conditional sanction was conveyed to the “respondent” for fulfillment of the conditions contained therein but it was not accepted by him and ultimately he instituted a suit for specific performance of the agreement alongwith compensation, which was decreed vide judgment dated 20th November, 1990 in the following manner:-

"RELIEF

25. As a result to be above findings, the suit of the plaintiffs for the specific performance of the contract is decreed. The plaintiffs have already performed their part of the contract by surrendering their land in favour of the defendants, therefore, the defendants are hereby ordered to give their land to the plaintiffs within three months of this order and if they will not do like such then the plaintiffs are entitled to get the possession of their land and they are also entitled to Rs.;2,11,200/- from the defendants as ground rent calculated upto the institution of the suit and further ground rent of their land till the defendants would demolish the road and bridge from the land of the plaintiffs. The defendants are burdened for the costs of this suit."

8. Feeling dissatisfied, an appeal was preferred by the petitioner-Board (Federation of Pakistan) before the learned Additional District Judge, Rawalpindi but it was not acceded too and was dismissed with costs through judgment and decree dated 22nd October, 2004. This followed Civil Revision No.35 of 2005 before this Court which was also dismissed vide judgment dated 18th July, 2013. The petitioner-Board then filed C.P.L.A. No.1773 of 2013 before the Supreme Court of Pakistan which too was dismissed through judgment dated 07th November, 2013, relevant extract from the same is reproduced:-

"4. It is an admitted fact that the Respondents owned 2 Kanals and 2 Marlas of land. It is also an admitted fact that the said pieces of land has been utilized by the Petitioners. It is also in the evidence that the Petitioners were agreed to compensate the Respondents by allotting an alternate pieces of land. It is in the above perspective that the suit was decreed by the learned Trial Court. The said finding of fact has been affirmed by the learned First Appellate Court and the Revision Petition filed by the present Petitioners has also been dismissed. There can be no escape from the fact that the land of the Respondents has been taken over and utilized by the Petitioners. If they are unable to give alternate land without premium as committed by them then obviously the Respondents are entitled to the restoration of land owned by them. In the circumstances, no exception can be taken to the Judgments and Decrees of the learned Courts below and the Impugned Judgment of the learned High Court."

9. It appears that petitioner-Board then filed an application under Section 12(2) of "CPC" before Supreme Court of Pakistan on the ground that judgment and decree dated 20th November, 1990 passed by the Civil Court, Rawalpindi is the result of fraud and misrepresentation and as such decision of the Supreme Court of Pakistan dated 07th November, 2013 is not maintainable. By way of

order dated 30th August, 2019, the application was dismissed with following observations:-

“14. The learned counsel for the applicant has not been able to convince us through any evidence or material on record that the Respondents have committed any fraud or representation that may persuade us to recall or set aside the judgments and decrees in favour of the Respondents and judgment of this Court dated 07.11.2013. Further, if at all any such material was available with the Applicants they could have placed the same on record after seeking permission to do so by moving an application for production of additional evidence. This could have been done at any stage of the proceedings. That this was not done or even attempted to be done at any stage furnishes sufficient grounds to presume that no such evidence or material is available with the Applicant.”

10. The matter did not end here. The petitioner-Board filed Civil Review Petition No.572 of 2019 but it was disposed of as not pressed through order dated 07th February, 2020. For ready reference and convenience, the same is reproduced:-

“...After arguing the matter at some length, the learned counsel for the petitioner does not want to press this petition in order to initiate proceeding to recover the land which was surrendered to it by the respondents in lieu of the alternate land allotted to them. This review petition is, therefore, disposed of as not pressed.”

11. In the above backdrop, while advertting to the objection petition, moved by the petitioner-Board during the execution proceedings, it is noticed that objection petition is founded on the ground that during proceedings of the execution, it transpired to the petitioner-Board that “respondent” succeeded in getting transfer of the land of the Federation in his favour through registered sale deed and possession in consequence thereof has also been delivered to him, which is against the terms of the decree and as such, it is duty of the learned Executing Court to inquire how registered sale deed was got executed against the spirit of the decree and matter of mutation is yet to be decided through the suit filed by the “respondent”. Before moving further, it would not be out of context to mention here that initially in the suit, alongwith Cantonment Board, the Federal Government and other entities were also party and decree was directed against all of them. The objection petition at the face of it is vexatious and baseless. It appears that the

petitioner-Board after exhausting all available remedies and failing to achieve its design, moved objection petition before the learned Executing Court as a last resort to frustrate the process of the execution in terms of decree passed way back in the year 1990 so as to deprive the decree holder from the fruits of the decree. This is classic case demonstrating that actual misery of the decree holder starts with the execution. Needless to observe that it is not expected from a public office/public officer to carve means for frustrating the process of law. I feel no hesitation to observe that the objection petition was moved without any reasonable cause to thwart the execution process. On dismissal of the objection petition, it was expected that the petitioner-Board should realize its duty and not to indulge in unnecessary litigation with the public, who has a confidence and trust that being the public body, Cantonment Board shall guard its rights. After dismissal of objection petition, an appeal was filed before the learned Additional District Judge, Rawalpindi which too was dismissed and rightly so. Revisional jurisdiction under Section 115 of "CPC" can only be invoked in the eventualities mentioned in the said provision of law. It cannot be resorted to in an omnibus fashion. This petition was filed way back in the year 2015 and it remained pending for the last about nine years adding burden to the docket of the Court on the one end and on the other consumed a lot of time, reserved for the matters requiring attention of this court in actual.

12. In somewhat similar circumstances, in the case of Oazi NAVEED UL ISLAM versus DISTRICT JUDGE, GUJRAT and others (PLD 2023 Supreme Court 298), Supreme Court of Pakistan has held as under:-

"11. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980 ("Rules"). The spectre of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence before the Court. These costs in an appropriate case can be

over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the court fee, process fee and lawyer's fee paid in relation to the litigation. Imposition of costs in frivolous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivolous claims or defences brought to the court house but also absence of such cases allows more court time for the adjudication of genuine claims. It also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts. Costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs encourage alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court."

Reliance to this effect can also be placed on ZAKIR MEHMOOD versus SECRETARY, MINISTRY OF DEFENCE (D.P), PAKISTAN SECRETARIATE, RAWALPINDI and others (2023 SCMR 960) and CAPITAL DEVELOPMENT AUTHORITY, CDA through Chairman, CDA, Islamabad versus AHMED MURTAZA and another (2013 SCMR 61).

13. For the foregoing reasons, this petition is **dismissed** being frivolous and vexatious with special costs of Rs.5,00,000/- to be deposited by the petitioner-Board in any approved Charity within one month. In case of failure, it shall be recovered as arrears of land revenue.

**(MIRZA VIQAS RAUF)
JUDGE**

Sajjad

APPROVED FOR REPORTING

JUDGE