

JUDGMENT SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

C.M. No.1160 of 2022
(Application u/s 12 (2) CPC)

Chief Settlement Commissioner/Member (Judicial-V), Board of Revenue, Punjab, Lahore
V.
Aurangzeb Shaafi Barki etc.

in

ICA No.09 of 2020

In
W.P.No.2290 of 2019
Aurangzeb Shaafi Barki etc.
V.
District Commissioner etc.

Date of hearing: 10.06.2024

Petitioner by:- Mr. Shahid Munir, AAG with Agha Zaheer Abbas Sherazi, Deputy Commissioner Murree.

Respondents by:- Syed Iqbal Husain Shah Gillani,
Advocate

SADAQAT ALI KHAN, J. Entire area of Revenue Estate of Mouza Murree Brewery is 708-Kanals & 18-Marlas which is situated in the hilly area of Murree and was owned by Murree Brewery Company Limited which constructed a Brewery and Malt House along with few residential houses with Pacca passages for the use of staff of the company. In the year 1943, on shifting of the Murree Brewery to Rawalpindi, the company sold the Murree Brewery with open land of the Estate to M/S Kirpa Ram Brothers, who converted the building portion of the Estate into a hotel i.e. Kashmir Hotel.

2. In the year 1947, during partition of sub-continent, M/S Kirpa Ram Brothers migrated to India. The buildings constructed in Murree Brewery Estate were either burnt or extensively damaged. The remaining area of Murree Brewery Estate was characterized in the special Jamabandi for the year 1947 and record prepared by the Settlement Authorities shows it; Banjar Qadeem, culturable land and non-culturable land, Ghair Mumkin Pahaars, road, Water Tanks and Abadi.

3. It is important to note here that *vide* Notification dated 24.11.1956, Mouza Murree Brewery was brought within the limits of Municipal Committee, Murree.

4. In the year 1960, statedly Tehsildar Murree proposed certain area of land of Murree Brewery Estate in the Register RL-II for the allotment to Nafisa(**Nafees**) Banu and her husband Khan Abdul Shafi Khan Barqi, who was an Assistant Executive Officer, NWR, (North Western Estate Railway) at relevant time, predecessors of private respondents (**appellants in I.C.A. No.09 of 2020**).

5. Meanwhile, the Deputy Commissioner Rawalpindi, directed the concerned authorities not to allot any land in Murree Brewery Estate.

6. This order of the Deputy Commissioner Rawalpindi, was challenged by the private respondents by filing an appeal before the Additional Settlement and Rehabilitation Commissioner, Rawalpindi which was allowed and Sub-Divisional Officer, Murree while exercising the powers of the Assistant Settlement Commissioner (Land), statedly confirmed the proposal of the allotment of the land in favour of predecessors of the private respondents (**Nafisa/Nafees Banu and her husband Khan Abdul Shafi Khan Barqi**). It is important to note here that the Sub-Divisional Officer was not vested specifically with the

powers of the Assistant Settlement Commissioner (Land) at the relevant time.

7. The Chief Settlement Commissioner cancelled so called allotment in favour of predecessors of the private respondents *vide* order dated 09.10.1963. The private respondents challenged this Order by filing Settlement Revision Petition u/s 21 of The Displaced Persons (Land Settlement) Act, 1958 ("**The Act 1958**") before this Court which was allowed *vide* order dated 20.11.1968 by setting aside the Order dated 09.10.1963 passed by the Chief Settlement Commissioner, Pakistan and case was remanded to him (**Chief Settlement Commissioner, Pakistan**) for decision afresh in accordance with law.

8. In the post remand proceedings, the Chief Settlement Commissioner again had not accepted the claim of the private respondents *vide* order dated 06.12.1971 which was challenged before this Court by filing the Settlement Revision Petition No.38 of 1972. It is important to note here that one Rana Mehmood Khan and Miraj Hassan etc had also filed separate settlement Revision Petitions Nos.75 and 30 of 1972 respectively for allotment of land in their favour from the Estate of Mouza Murree Brewery. All these three Settlement Revision Petitions have been heard by this Court on 20.07.2000 and allowed *vide* consolidated judgment dated 03.10.2000 ("**Judgment under implementation**").

9. The Chief Settlement & Rehabilitation Commissioner challenged this consolidated Judgment before the Supreme Court of Pakistan by filing civil appeals No. 484 to 486 of 2002 which were dismissed on technical ground *vide* Order dated 13.12.2007 which is hereby reproduced:-

"The office has reported that the appellants in these appeals have not provided proper addresses of

respondents mentioned in the summons notice nor the legal representatives of respondent No.4 in Civil Appeal No.484/2002 have been brought on record. Neither Mr.M.A.Qureshi, AOR nor any one else has appeared on behalf of the appellants despite these matters having been called time and again. Even the needful, as pointed out by the office, does not appear to have been done by the appellants. Therefore, Civil appeals No.484 to 486 are dismissed and summons notice is disposed of.”

10. It is important to note here that Rana Mehmood Khan, petitioner in Settlement Revision Petition No.75 of 1972 and Miraj Hassan and others, petitioners in Settlement Revision Petition No.30 of 1972 despite acceptance of their claim *vide* consolidated judgment dated 03.10.2000 passed by this Court discussed above sensing the situation i.e. their claim was baseless, have not come to the court for implementation of the judgment. The Deputy Commissioner Murree, present in the Court with record submits that they have not approached the Revenue Authority for implementation of the judgment in revenue record but the private respondents filed Crl.Org.No.32 of 2017 for implementation of the judgment dated 03.10.2000 which was dismissed by the Single Bench of this Court *vide* Order dated 10.04.2019. Then, they (**private respondents**) filed Writ Petition No.2290 of 2019 for implementation of the judgment dated 03.10.2000 which was also dismissed *vide* judgment dated 14.01.2020. Then, they (**private respondents**) filed ICA No.09 of 2020 against the judgment of dismissal of their writ petition which was disposed of *vide* judgment dated 21.10.2020 by this Court with modification in the judgment discussed above that competent authority will pass appropriate order for implementation of consolidated judgment dated 03.10.2000 strictly in accordance with law.

11. The Chief Settlement Commissioner has challenged the order of ICA dated 21.10.2020 supra by

filing instant C.M. (**application u/s 12 (2) CPC**) which is being decided through this judgment after receiving reply from the private respondents.

12. After hearing both the parties and on perusal of the record with their able assistance, we have observed as under:-

- i. Admittedly, neither the suit land is in possession of the private respondents nor ever remained with them.
- ii. It is mentioned in Para-4 of the consolidated judgment dated 03.10.2000 passed by this Court in Settlement Revision Petitions Nos.30, 38 (**relating to suit land**) and 75 of 1972 that the Murree Brewery Estate was brought within the limits of Municipal Committee Murree in the year 1956 (**vide notification dated 24.11.1956**), which means, status of the suit land has been changed from rural to urban land. The private respondents claim their right for the allotment of suit land under **The Act 1958** read with West Pakistan Rehabilitation Settlement Scheme 1956 ("**The Scheme 1956**") being Displaced Persons (Indian Migrants)
- iii. Land is defined in Para-(i) of Chapter-1 of Part-1 of **The Scheme 1956** i.e. land means all evacuee land held for agricultural purposes or for purposes subservient to agriculture or for pasture etc....
- iv. Urban immovable property is defined in para (ix) of chapter 1 of part 1 of **The Scheme 1956** i.e. urban immoveable property means,-- (a) all immoveable property situated within the limits of a corporation, a municipal committee etc....

- v. It is mentioned in para 4-A of chapter 2 of part 1 of **The Scheme 1956** that the following categories of land will not be allotted under the Rehabilitation Settlement Scheme and will remain excluded from the scheme i.e. (i) urban land (Urban immoveable property).
 ii....
- vi. In view of above, this Court had no jurisdiction to allot suit land being urban land to private respondents *vide* judgment dated 03.10.2000 discussed above.
- vii. It has specifically been mentioned in Para 44-A of Chapter (1) of part (2) of **The Scheme 1956** that rural evacuee agricultural land available in six border districts Sialkot, Gujranwala, Gujrat, Jhelum, Rawalpindi and Attock should be reserved and utilized for temporary allotment to those Jammu and Kashmir refugees who can cultivate the land themselves. The transfer of claims under any circumstances to these districts should not be permitted which para (44-A) is hereby reproduced:-

“44-A. Allotment to Jammu and Kashmir refugees.

After meeting the claims pending on 12th February, 1957, for settlement under the Rehabilitation Settlement Scheme, all categories of rural evacuee agricultural land available in six border districts of Sialkot, Gujranwala, Gujrat, Jhelum, Rawalpindi and Attock should be reserved and utilized for temporary allotment to those Jammu and Kashmir refugees who can cultivate the land themselves. The transfer of claims under any circumstances to these districts should not be permitted. The evacuee land thus allotted to Jammu and Kashmir refugees will be from the Rehabilitation Settlement Scheme.”

- viii. Suit land at that relevant time was part of district Rawalpindi and could not have been allotted to Indian Migrants (**private respondents**). In these circumstances, this Court had also no

- jurisdiction to allot suit land to Indian Migrants (**private respondents**) *vide* consolidated judgment dated 03.10.2000 discussed above.
- ix. This Court while narrating the facts of present case in para 2 of consolidated judgment dated 03.10.2000 has mentioned that the private respondents were allotted land (**suit land**) against their verified claims under **The Scheme 1956** on the basis of their entitlement as determined through register RL-II which is not supported by the record.
 - x. The Deputy Commissioner present in the Court submits that neither the private respondents had submitted their claims being Indian Migrants to Registering or an Additional Registering Officer nor same (**claims**) have been verified by the Claims Commissioner or the Additional or Deputy Claims Commissioner in view of relevant provisions of Registration of Claims (Displaced persons) Act, 1956. So mentioning of verified claims under **The Scheme 1956** in the consolidated judgment dated 03.10.2000 while narrating the facts of the case by this Court is result of misleading by the private respondents against the record.
 - xi. In absence of meeting with said requirements, the private respondents have absolutely no right to claim for the allotment of the suit land, rather private respondents have obtained consolidated judgment by misleading the Court against the record.
 - xii. During the pendency of criminal original No. 32 of 2017, Nayer Iqbal, Member (Judicial-V)/Chief

Settlement Commissioner Board of Revenue, Punjab, Lahore while submitting his report Dated 19.03.2018 before this Court has observed as under:-

“After perusal of record and reports, no traces of any allotments in favour of the petitioners have been found either in revenue or in settlement record yet. Even scrutiny of allotments was never ever made at any stage at any proper form. The procedure laid down in Rehabilitation Scheme framed under the Displaced persons land settlement Act, 1958 was never followed which make the allotments and claims as doubtful.”

- xiii. The Deputy Commissioner has produced copy of report dated 28.03.2018 prepared by the committee constituted by Deputy Commissioner, Rawalpindi under the directions of Chief Settlement Commissioner/Member (Judicial V) Notified Officer, Board of Revenue Punjab Lahore which shows that record of RL-II available in District record room Rawalpindi was de-sealed at 4:45 pm on 28.03.2018, it was perused and no record of RL-II regarding Mouza Murree Brewery of Tehsil Murree, District Rawalpindi was found which is hereby reproduced:-

“Kindly refer to the subject cited above . In compliance of the order of Additional Deputy Commissioner(Revenue), Rawalpindi *vide* letter No.148/ADC®/NTO dated 28.03.2018 the committee constituted of (1) Mr.Liaqat Ali Kalhoro, Assistant Commissioner (City). Rawalpindi, 2. Mr.Ahmad Hassan Ranjha Sub Registrar (U-I). Rawalpindi (3). Rehan Nawaz NTO(HQ). Rawalpindi alongwith Junaid Shoukat. Moharar Moina. Rawalpindi deseal the record of RL-II available in District Record Room. Rawalpindi at 04-45 PM dated 28.03.2018.The record was perused and no record of RL-II regarding Mouza Murree Brewery of Tehsil Murree District Rawalpindi was found The record again sealed in presence of all committee members at 05-25 PM. The 12 No of keys of four locks and video of all desealed and sealed proceedings is attached.

Report is submitted as desired.”

- xiv. On 29.06.2019, the Additional Deputy Commissioner (Revenue), Rawalpindi while

dismissing the application of private respondents had observed in Para 7 as under :-

درج بالا حالات و واقعات سے صاف عیاں ہے کہ
 فیصلہ مورخہ 03-03-2014 مصدرہ چیف سیٹلمنٹ
 کمشنر / نوٹیفائیڈ آفیسر پنجاب میں واضح تحریر نہ ہے
 کہ الائیز کو کتنا کتنا رقبہ دیا جائے اور اب مطابق
 رپورٹ چیف سیٹلمنٹ کمشنر/ نوٹیفائیڈ آفیسر مورخہ
 19.03.2018 کے مطابق الائمنٹ ہی مشکوک ہے۔
 ان کو مد نظر رکھتے ہوئے زیر دستخطی کے پاس
 مزید کاروائی کا کوئی اختیار نہ ہے۔ لہذا سائیلان کو
 ہدایت کی جاتی ہے کہ اپنی دادرسی کے لئے مجاز
 فورم چیف سیٹلمنٹ کمشنر / نوٹیفائیڈ آفیسر سے رجوع
 کریں۔ مثل بعد ترتیب و تکمیل داخل دفتر ہو۔

- xv. This order of the Additional Deputy Commissioner, Rawalpindi has not been challenged rather on 30.07.2019 Aurangzeb Shafi Barqi along with others filed Writ Petition No.2290 of 2019 which also does not show that order dated 29.06.2019 passed by the Additional Deputy Commissioner, Rawalpindi had been challenged in said writ petition, rather this order had been concealed which writ petition was dismissed *vide* order dated 14.01.2020 by Single Bench of this Court.
- xvi. All this shows that no person including the private respondents was allotted land within the Revenue Estate of Mouza Murree Brewery through RL-II being Indian Migrants.
- xvii. The private respondents through C.M.No.404 of 2020, moved in I.C.A No.9 of 2020, have produced RL-II No.1190 dated 10.12.1960 pertaining to Nafisa(**Nafees**) Banu through her husband Khan Abdul Shafi Khan Barqi, Assistant Executive Officer NWR (**North Western Estate Railway**) and R.L-II No.1198 in the name of Khan Abdul Shafi Khan Barqi wherein he was not shown with his official position mentioned

above. Perusal of these two RL-II shows that they were got attested from Naeem Akbar Sheikh, Oath Commissioner, Lahore. The private respondents have also produced copy of RL-II No.1190 pertaining to Nafisa (**Nafees**) Banu, predecessor of the private respondents, through C.M.No.1156 of 2024, moved in Crl.Org.No.44 of 2021 which shows that they have obtained its copy on 13.10.1999 from Copying Agency of the office of Deputy Commissioner, Rawalpindi. Contrary to this, the Deputy Commissioner present in the Court has produced instructions issued by Maqbool Ahmad Sheikh, the then Member Revenue Board Punjab dated 12.12.1984, according to which copy of RL-II shall not be issued to any party in any case. In these circumstances copy of RL-II No.1190 obtained by the private respondents on 13.10.1999 from copying agency of Deputy Commissioner Office, Rawalpindi is a fake and bogus document.

- xviii. Column No.4 of all these three copies of RL-II was left blank and detail required under the law regarding property left by Nafisa (**Nafees**) Banu and Khan Abdul Shafi Khan Barqi, predecessors of the private respondents in India with detail of village, Tehsil and District has not been mentioned which falsifies their plea of having verified their claims. Report dated 28.03.2018 prepared by the Committee consisting of Assistant Commissioner (City), Rawalpindi, Sub-Registrar (U-I), Rwp and NTO (HQ), Rwp reproduced above *qua* non-availability of RL-II of

Murree Brewery wherein suit land is situated, shows that all these three copies of RL-II produced by private respondents, discussed above, are fake and bogus documents and were prepared through fraud and forgery just to grab State land situated within the heart of Murree having worth of billions of rupees. All officials/officers and the private respondents involved therein cannot be spared from their criminal liabilities.

- xix. It is not mentioned in the consolidated judgment dated 03.10.2000 that how much land was allotted to respondents. The private respondents have mentioned in para-2 of their W.P No.2290/2019 that their predecessors were allotted land measuring 114K-07M. It is mentioned in para-10 of the judgment dated 14.01.2020 passed in W.P No.2290/2019 that the private respondents were of the view that their entitlement is 116-Kanals. Perusal of fake RL-II 1190 pertaining to Nafisa(**Nafees**) Banu shows that she was allotted land measuring 38K-15M and RL-II 1198 pertaining to Khan Abdul Shaafi Khan Barqi shows that he was allotted land measuring 43K-6M (**total 82K-1M**). All this shows that the private respondents having false claim are not certain even about their actual entitlement till today which negates their claim.
- xx. Above discussed facts suggest that the land of Mouza Murree Brewery could not have been allotted to the private respondents *vide* consolidated judgment dated 03.10.2000 passed by this Court in Settlement Revision Petitions

Nos.30, 38 (**relating to suit land**) and 75 of 1972, rather this Court had no jurisdiction to pass consolidated judgment in their favour which has been obtained by misleading the Court against the record and suppressing the facts. It is void and per incuriam judgment which cannot be implemented.

- xxi. We are also mindful that this consolidated judgment was challenged before the Supreme Court of Pakistan by the Chief Settlement and Rehabilitation Commissioner by filing Civil Appeals No.484 to 486 of 2002 which were dismissed on technical ground *vide* order dated 13.12.2007 reproduced in Para-9 of this judgment.
- xxii. A void judgment is a court decision that has no legal power. It is like, it never happened. Any one affected by the such judgment can say, it is void even at belated stage. If an order/judgment is without jurisdiction and void, it need not be formally set aside and no question would therefore arise of holding that the matter cannot be considered on merits on account of any bar of limitation. The order/judgment being without jurisdiction is a nullity and does not require to be set aside in appeal.
- xxiii. It is settled by now that Revenue functionaries are not bound to implement the order/judgment which is void or per incuriam, coram non judice and passed without jurisdiction or obtained on the basis of forged, false, fake, fictitious and fabricated documents (**as in present case**). Reliance is placed on case “PROVINCE OF THE PUNJAB

through Secretary Settlement and Rehabilitation Department, Lahore V. AKHTAR ALI KHAN and others.” (2007 SCMR 459).

xxiv. It has been held in different cases of the Supreme Court of Pakistan as under:-

(i) “MUHAMMAD SWALEH AND ANOTHER V. MESSRS UNITED GRAIN & FODDER AGENCIES” (PLD 1964 SC 97)

“It should be remembered that if an order be a nullity then every Court before whom it is brought is not only entitled, but bound to ignore it.”

(ii) “PROVINCE OF THE PUNJAB through Secretary, Health Department V. Dr.S.MUHAMMAD ZAFAR BUKHARI” (PLD 1997 SC 351)

Facts of this case are somewhat similar to the case in hand to the extent that in that case as well writ petition was allowed, ICA was withdrawn and CPLA was dismissed being time barred but judgment being void judgment was not implemented.

13. The law is settled by now that an application u/s 12 (2) of CPC can be decided without framing of issues and recording of evidence which is not obligatory for the Court. It is worth-mentioning that primarily it is the satisfaction of the Court either to frame the issues, record evidence or decide such applications as may deem fit and proper after considering the circumstances of each case. No yardstick can be fixed for adjudication of such application. It is correct that the determination of allegations of fraud and misrepresentation, usually involved investigation into the questions of fact but it is not in every case that the Court would be under obligation to frame issues, record evidence of the parties and follow

the procedure prescribed for decision of the suit. If it was so, the purpose of providing the new remedy would be defeated. The matter is left to the satisfaction of the Court which has to regulate its proceedings and keeping in view the nature of the allegations in the application, may adopt such mode for its disposal, as in consonance with the justice. In present case, *vide* impugned judgment dated 21.10.2020, order for implementation of the void judgment was passed which (**void judgment**) has been obtained against fake and bogus RL-II as well as on false claim. Relevant authorities have also found that no record of RL-II pertaining to Mouza Murree Brewery is available in the record. No RL-II pertaining to Mouza Murree Brewery has been issued either to the private respondents or others.

14. It is settled by now that if on the basis of a void order/judgment subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders, together with the superstructure of rights and obligations built upon them, must, unless some statute or principle of law recognizing as legal, the changed position of the parties is in operation, fall to the ground because such orders have as little legal foundation as the void order on which they are founded. Reliance is placed on case "Yousaf Ali V. Muhammad Aslam Zia and 2 others (PLD 1958 SC (Pak.) 104).

15. In these circumstances, in present case, there exists no need to frame issues and to record evidence in instant C.M. (application u/s 12 (2) CPC) which is allowed, impugned judgment dated 21.10.2020 passed by this Court in I.C.A.No.09 of 2020 is hereby set-aside.

16. In the normal circumstances, if a decree is set aside u/s 12 (2) CPC, the case is revived for decision on merits in accordance with law but, in the light of facts and circumstances of present case discussed above, no useful purpose would be served to hear I.C.A No.09 of 2020 on merits against bogus RL-II which too is hereby dismissed. (**2006 SCMR 12**) “Sheikh Muhammad Sadiq Vs. Elahi Bakhsh and 2 others”.

17. Lastly but importantly, public functionaries are custodians of public property; they must protect and safeguard the public property like a lioness guards her cubs. Even a slight lapse on behalf of the public functionaries in the stewardship of such sacred trust and public confidence, called for strictest accountability in the larger interest of justice and institutional building. In present case, State land having worth of billions of rupees situated in the heart of Murree District Murree is being grabbed by the private respondents in connivance with some of the officials/officers who have given positive reports in their favour against the record, who are not ignorable and liable to face criminal proceedings, we therefore, direct the Director General Anti-Corruption Establishment Punjab to probe the matter and proceed in accordance with law against all the delinquent officers/officials as well as against the private respondents, who are involved in this scam under the intimation to the Addl. Registrar (Judl.) of this Court.

(CH. ABDUL AZIZ)
JUDGE

SADAQAT ALI KHAN)
JUDGE

Approved for Reporting

Judge

Judge