

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

W.P.No.56073/2020

Bakhsh VS. **Member (Judicial VII),
Board of Revenue etc.**

Date of hearing	20.02.2024
Petitioner by	Mr. Manzar Abbas Khokhar, Advocate
Respondents No.1 & 2 by	Raja Muhammad Arif, Additional Advocate General
Respondents No.3 & 4 by	Qari Nadeem Ahmad Awaisi, Advocate

Ch. Muhammad Iqbal, J:- Through this single judgment I intend to decide the titled Writ Petition [No.56073/2020] as well as Writ Petition No.56076/2020 as both these cases have been filed against the consolidated order passed by the Member, Board of Revenue.

2. Brief facts of the titled Writ Petition [No.56073/2020] are that the petitioner/Bakhsh obtained state Charaghah land bearing Lot No.2 Khasra No.59/3/2, 4, 7, 8/1, 13/2, 14 to 17, 18/1, 23/2, 24/1 & 25/1 measuring 72 Kanal 02 Marla situated in Chak No.41/4-L Tehsil & District Okara under 05 years lease scheme on 05.10.1995 for a period from Kharif 1995 to Rabi 2000. Due to non-payment of *lagaan*, the lease was cancelled by the District Collector on 24.06.2000. The petitioner challenged the said order through an appeal which was dismissed by the Executive District Officer (Revenue), Okara vide order dated 16.03.2005. Thereafter, the petitioner filed application for purchase of the state land through private treaty.

Brief facts of the Writ Petition No.56076/202 are that the petitioner/Noor Muhammad obtained state Charaghah land under 05 years lease scheme bearing Lot No.4 Khasra No.54/11/2, 12/2 & 13/4 measuring 01 Acre 02 Kanal 17 Marla situated in Chak No.41/4-L Tehsil & District Okara on 05.10.1995 for a period of Kharif 1995 to Rabi 2000. Due to non-payment of *lagaan*, the lease was cancelled by the District Collector on 24.06.2000. The petitioner challenged the said order through an appeal which was dismissed by the Executive District Officer (Revenue), Okara vide order dated 10.05.2005. Thereafter, the petitioner/Noor Muhammad also filed application for purchase of the state land through private treaty. The respondents No.3 & 4 also filed separate applications for lease of state land to them under Lambardari Grant. The District Collector, Okara consolidated the aforesaid four applications of the petitioners as well as respondents No.3 & 4 and vide consolidated order dated 08.05.2012 dismissed the applications of petitioners [Bukhsh and Noor Muhammad] for purchase of the state land through private treaty and allotted the land measuring 72 Kanal 02 Marla bearing Lot No.2 to Khadim Hussain Lambardar (respondent No.3) as well as allotted lot measuring 01 Acre 02 Kanal 17 Marla to Ali Sher Lambardar [respondent No.4].

The petitioners [Bukhsh and Noor Muhammad] assailed the said order through separate appeals before the Additional Commissioner (Revenue), Sahiwal Division, Sahiwal who vide order dated 18.07.2013 partly allowed the said appeals holding the allotments to the Lambardars (respondents No.3 & 4) as illegal and cancelled the same by directing the District Collector to send a reference to the Board of Revenue for exclusion of the land from Lambardari Grant.

The petitioners [Bukhsh and Noor Muhammad] as well as respondents No.3 & 4 assailed the aforesaid orders through four separate revision petitions and one review application. The Member, Board of Revenue vide consolidated order dated 07.03.2016 upheld the orders dated 18.07.2013 passed by the Additional Commissioner (Revenue), Sahiwal Division and disposed of the ROR No.2006/2013 titled as Khadim Hussain Vs. Bakhsh etc., ROR No.2007/2013 titled as Ali Sher Vs. Noor Muhammad etc. and dismissed the ROR No.2002/2013 titled as Noor Muhammad Vs. The State, ROR No. No.2004/2013 titled as Bakhsh Vs. The State alongwith review petition No.449/2014 titled as Khadim Hussain etc. Vs. Noor Muhammad.

Khadim Hussain and Ali Sher [respondents No.3 & 4] filed review petitions No.190 & 191 of 2016 which were accepted by the Member, Board of Revenue vide order dated 10.09.2020, the consolidated order dated 07.03.2016 passed in revision petitions of the parties was recalled and by setting aside the order dated 18.07.2013 passed by the Additional Commissioner (Revenue), Sahiwal Division the order dated 08.05.2012 passed by the District Collector, Okara was upheld. Hence, these two writ petitions.

3. I have heard learned counsels for the parties and have gone through the record.

4. Admittedly, the suit land [bearing Lot No.2 Khasra No.59/3/2, 4, 7, 8/1, 13/2, 14 to 17, 18/1, 23/2, 24/1 & 25/1 measuring 72 Kanal 02 Marla and bearing Lot No.4 Khasra No.54/11/2, 12/2 & 13/4 measuring 01 Acre 02 Kanal 17 Marla situated in Chak No.41/4-L Tehsil & District Okara] is Charaghah land which was given to the petitioners on 05 years lease from Kharif 1995 to Rabi 2000. The said lease was not further extended and after cancellation of the lease, the land was resumed

in favour of the state vide order dated 10.05.2005 passed by the District Collector, Okara. The appeals of the petitioners were also dismissed thus the petitioners were no more tenants/lessees over the land in question and after expiry/cancellation of lease, the possession of the petitioners over the said land is that of an illegal nature. It is well settled that law always leans in favour of the law abiding persons and lends nil support to the illegal occupants, usurpers, transgressors, encroachers and grabbers of the State land. Reliance is placed on the case titled as Fazal ur Rehman & Others Vs. Province of Punjab through District Officer (Revenue) Bhakkar & Another (2014 SCMR 1351), wherein the Hon'ble Supreme Court of Pakistan held as under:-

“It is argued by the learned counsel that the petitioner had a 40 years possession over the land in question; therefore, he had been dispossessed in violation of section 32 of the Colonization of Government Lands (Punjab) Act, 1912. We are not inclined because admittedly no document exists in favour of the petitioner to establish his claim to remain in occupation of the property in dispute. Learned counsel stated that an application has been moved before the Board of Revenue for the proprietary rights. We are not inclined because in our considered opinion this argument had not been advanced earlier at any stage and it was not the case of the petitioner in any manner. Contrary to it, it strengthens the plea of the respondent that the petitioner was an unauthorized occupant. We may add that the law leans towards persons who believe in the rule of law and not those who take that law in their hands as happened in the instant case where the petitioner with no legal authority had occupied the premises in dispute. As far as the question that he was in possession for so many years is concerned, it can never be a ground for the purpose of proprietary rights. The petitioner has failed to establish his case in his favour. The learned High Court had rightly declined to exercise its revisional jurisdiction and maintained the orders of the Courts below, thus, we find no merit in this petition which is, therefore, dismissed and leave to appeal is declined. However if the petitioner has any claim for damages he is free to approach the competent forum for redressal of his grievance.”

Similar principle has been reiterated in the case titled as Muhammad Sharif through L.Rs Vs. Province of Punjab through District Officer Revenue, Pakpattan (2014 SCMR 334). In a case

titled as “Shazia Gillani etc. Vs. Board of Revenue, Punjab, Lahore through Member Colonies, etc.” (in C.P. No.732-L of 2016) the Hon’ble Supreme Court has refused to protect the possession of usurpers of state property vide order dated 25.03.2016 holding that:-

“The petitioners are lessees of the land in question. Their lease admittedly expired in 2000 after which they have been in unauthorized possession. No case has been made out for any protection of their rights as per the notification dated 18.7.2005 which has been relied upon in this regard. The discretion of the learned High Court in terms of Article 199 of the Constitution or this Court as per Article 185 of the Constitution is not available for the protection of possession of people who are usurpers of state property. No case has been made out for interference. Dismissed accordingly.”

(emphasis supplied)

In another case, the Hon’ble Supreme Court of Pakistan in Civil Petition No.882-L of 2015 vide order dated 15.03.2017 held as under:-

“2. We find that in the light of above circumstances, the learned High Court rightly allowed the writ petition of the respondents and restored possession of the property to them, and correctly dismissed the writ petition of the instant petitioners, who are admitted encroachers of the property and are in unauthorized possession therefore. Resultantly, this petition is dismissed.”

(emphasis supplied)

5. Moreover, admittedly, land in question is a Charaghah land and under the law/policy neither its proprietary rights can be granted nor it could be sold through private treaty to any person. With regard to the Charaghah land and its settled objectives of utilization, a policy Notification dated 3rd September 1979 (under Temporary Cultivation Lease Scheme) and Notification dated 20th April, 1983 were issued by Colonies Department which placed an embargo on the grant of proprietary rights of Charaghah land and such lands were expressly excluded from any grant or grant of proprietary rights under Temporary Cultivation

Lease Scheme. In Clause 2 of the aforementioned notification dated 03.09.1979 following lands have been excluded from every grant which is as under:-

2. Exceptions and Reservations. Unless it is otherwise specifically provided, the following lands shall be deemed to have been expressly excluded from every grant under these conditions;

- (i) lands already allotted under permanent grants;
- (ii) lands reserved or earmarked but not yet allotted under permanent grants;
- (iii) charagahs;
- (iv) lands lying within a belt of:-
 - (a) ten miles running along and on the outer side of outer limits of a Corporation;
 - (b) five miles running along and on the outer side of the outer limits of a Municipality;
 - (c) three miles running along and on the outer side of the outer limits of a Town Committee or a Mandi Town;
- (v) lands which are/may be reserved for any purpose.

(emphasis supplied)

Through another Notification No.1925-83/1253-CLI dated 20th April, 1983, the Govt. of the Punjab Colonies Department, the Charaghah Land was excluded from any grant of proprietary rights. The relevant clause III of the said notification is as under:-

Exceptions and Reservations. Unless it is otherwise specifically provided, the following categories of State Land shall be deemed to have been expressly excluded from every grant under these conditions;

- i) land already allotted under permanent grants;
- ii) lands already reserved or earmarked for permanent grants or for a public purpose;
- iii) reserved Charaghah or Charaghah Baqaya in Colony chaks;
- iv) lands lying within 10 (ten) miles of the outer limits of a Municipal Corporation, within 5 (five) miles of the

outer limits of a Municipality or with 3 (three) miles of the outer limits of a Town Committee/Mandi Town;

v) land lying within 5 (five) miles of the outer limits of a Cantonment Board area;

vi) lands allotted or leased out under service grants viz, Lambardari grants, House/Mule Breeding tenancy, Livestock Breeding tenancy and River Action Scheme.

(emphasis supplied)

In the subsequent Notification No.7402-86/374-CLI dated 1st February, 1995, issued by the Board of Revenue, Punjab, Lahore, a clarification has been furnished regarding the land of prohibited Zone previously enunciated under notifications of 1979 and 1983 for the purpose of grant of proprietary rights. Further, vide Notification No.1997-2001/1174-CLI dated 9th July, 2001, the following lands have been excluded from every grant:-

3. Exceptions and Reservations. Unless it is otherwise specifically provided the following categories of state land shall be deemed to have been expressly excluded from every grant to be made under these conditions.

1. Land already reserved under any other scheme including permanent grants/schemes and service grants.

2. **Reserved Charaghah or Charaghah Baqaya in colony Chaks;**

3. Lands lying inside municipal limits and within prohibited zone which will be upto

i). 10 (Ten) miles beyond the outer limits of a Metropolitan/Municipal Corporation as existed on 1.1.2001.

ii). 5 (Five) miles beyond the outer limits of a Municipal Committee as existed on 1.1.2001

iii). 3 (Three) miles beyond the outer limits of a Town Committee/Mandi Town as existed on 1.1.2001.

In the policy notification dated 04.02.1998, the exception from grant of proprietary rights of state charaghah land remained intact. The relevant text whereof is reproduced as under:-

“i). The Charaghah land around the village abadis as also alongwith roads shall not be converted into State land and shall not be used for any purpose except with the prior permission of the Board of Revenue and that for a public purpose only. A

recommendation in this behalf should invariably be initiated by the District Collector through the Commissioner of the relevant division.”

6. Perusal of the afore quoted policy notifications makes it abundantly clear that Charaghah lands have expressly been excluded from any kind of grant or grant of proprietary rights, as such its any alienation or grant under Lambardari grant will straightway offend policies on the subject. The successive policies/notifications on the subject manifestly place restrictions on conversion of the State charaghah land into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or its any other alternative use. Further change of character of the Charaghah land was subservient to the manifestly described wider scope of public purpose, which is to be adjudged objectively by the Board of Revenue. An alike controversy has been considered and declined by this Court in its judgment cited as Muhammad Israfeel & Others Vs. The Province of Punjab & Others (2021 MLD 313). The order passed in supra judgment was challenged in Intra Court Appeal (No.37127-2020) as well as a subsequent ICA No.85/2021 titled Mushtaq Ahmad etc. Vs The Province of Punjab etc. along-with other connected ICAs and same also stood dismissed. Further, on 05.10.2021 another Writ Petition [No.57766/2021] was also dismissed on analogy of the aforementioned judgment [2021 MLD 313] which order of dismissal was assailed before the Apex Court who while dismissing Civil Petition No.1925-L/ 2021 on 25.08.2022 upheld the order of this Court. Thus to that extent the issue has attained conclusivity.

In view of above, the petitioners have no locus standi or right to claim lease/allotment/purchase of the state Charaghah land, therefore their claim is rejected.

7. As regard the grant of lease of the land in question to respondents No.3/Khadim Hussain Lambardar is concerned, suffice it to say that respondent No.3 is descendant of Latkan s/o Karam who had earlier obtained land under Lumberdari grant and then proprietary rights were granted to him on 19.01.1957 and mutation was accordingly incorporated on 22.03.1957, thus the second time allotment of the State land under lumbardari grant is not warranted by law. Reference in this regard is made to Clause 16(h) of the General Colony Conditions 1938 wherein the word “grantee” has been defined as under:

“(h) “grantee” includes any person holding under a grant whether as proprietor or as tenant or otherwise, and shall be deemed to include the successors and assigns of the grantee and when the said term includes co-sharers, any liability imposed by these conditions shall be the joint and several liability of each co-sharer.”

Similarly “tenant” has been defined in Section 3 of the Colonization of Government Lands (Punjab) Act, 1912 as under:

“Original Tenant means any male, to whom a tenancy is first allotted by the Collector, and includes the male transferee of such a tenant and any male nominated by the Collector in accordance with the provisions of Section 21 to succeed a female, to whom a tenancy was first allotted.”

The Colonies Department, Government of the Punjab vide notification No.3910-76/2686-CV dated 13.07.1976 while describing the conditions for disposal of Lambardari grant held that the grant of state land shall be subject to the General Colony Conditions 1938. For ready reference, relevant portion of the aforesaid notification is reproduced as under:

“14. The grant of State land shall be subject to the General Colony Conditions, 1938 issued under section 10(2) of the colonization of Government Lands (Punjab) Act, 1912, so far as they may be applicable thereto.”

As the predecessor of respondent No.3 had already been granted state land under Lambardari Grant as such the respondent No.3 is not entitled for any new allotment under the said grant. As per

Notification No.315-90/1593-CV dated 29.10.1990, a family member cannot obtain more than one lot as Lumberdari Grant as such the respondent No.3 is not eligible for grant of land. For ready reference, relevant portion of the aforesaid notification is reproduced as under:

“(i) Permanent Lumbardars in Colony Chaks who were not given Lambardari grant so far would be eligible to obtain grant upto 12-1/2 acres on lease basis as Lambardari grtn without any promise of proprietary rights in future. The permanent Lumbardars in Colony Chaks who themselves or whose predecessors-in-interest have already been given Lambardari grants would not be given such concessions. Those Lumbardar including their predecessors-in-interest, who have already obtained proprietary rights in respect of their Lambardari grant will also be ineligible for the above grant.”

(emphasis supplied)

The Colonies Department, Government of Punjab has issued notification dated 17.01.2006 regarding statement of conditions for grant of state land on lease to the Lumbardars wherein in Clause 7, the ineligibility criteria has been given as under:

“7. INELIGIBILITY”

A grantee can have only one lot under these conditions at his choice. If at any time it is found that he has got two or more tenancies as a “Lumbardar” under these conditions or under different statement of conditions governing Lambardari grants, all of the grants shall be liable to resumption by the District Collector, provided that a period of one month shall be allowed to the grantee to retain any one of them. The choice shall be communicated to the Collector in writing either personally or through an authorised agent or by registered post (Acknowledgment Due) within thirty days of the receipt of intimation to that effect from the Collector.”

As the respondent No.3 does not fulfill the eligibility criteria laid down in the notifications dated 29.10.1990 and 17.01.2006, reproduced above, as such the order for grant of land to him under Lambardari grant is illegal and hereby set aside.

8. As regard the case of respondent No.4/Ali Sher Lambardar is concerned, elaborate findings have been provided in earlier part of this judgment that the Charagah land cannot be leased out under any grant, thus the claim of above respondent for allotment of Cheragah land under lumbardari grant is devoid of any force and same is according set at naught.

9. Resultantly, both these writ petitions are disposed of in the manner that the order dated 10.09.2020 passed by the Member, Board of Revenue in Review Petitions of the respondents No.3 and 4 is set aside whereas the order dated 07.03.2016 passed by the Member, Board of Revenue in Revision Petitions of the parties of the lis is hereby upheld.

**(Ch. Muhammad Iqbal)
Judge**

Approved for reporting.

Judge

Abdul Hafeez