

Judgment Sheet
IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR
(JUDICIAL DEPARTMENT)

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Writ Petition No.2916 of 2006/BWP.

(Sahibzadi Saira Mehreen Abbasi, etc. VS Federation of Pakistan, etc)

Writ Petition No.7305 of 2019/BWP.

(Sahibzada Mujeeb bib Afzal Abbasi VS Federation of Pakistan, etc)

J U D G M E N T

Date of hearing: **28.03.2024 & 30.03.2024.**

Petitioners by: M/s Abdul Mughni Farani & Syed Fouz-ul-Kabir, Advocates.

Mr. Usman Sultan, Advocate in C.M. No.1723 of 2024.

Respondents by: Mr. Tahir Mahmood Mufti, Deputy Attorney General for Pakistan.
Ch. Muhammad Jameel, Assistant Attorney General for Pakistan.
Malik Zafar Iqbal Awan, Addl. Advocate General.
Mr. Abdul Khaliq Khan Saddozai, Advocate/Law Officer of Cholistan Development Authority Bahawalpur.
Rao Nasir Mahmood Advocate.
Mr. Fazal Mahmood Chughtai, Advocate in C.M. Nos. 3738, 3739 of 2012.
Mr. Muhammad Khalid, Deputy Collector Irrigation, Bahawalpur.

AHMAD NADEEM ARSHAD, J. This single judgment shall dispose of above captioned Writ Petition as well as Writ Petition No.7305 of 2019/BWP titled “Sahibzada Mujeeb-Bin-Afzal Abbasi, etc. Vs Federal Government, etc.” as same questions of law & facts are involved in both the petitions.

It is also pertinent to mention here that said petitions were fixed for hearing on 28.03.2024. On that day, it was apprised to the Court that there is a written request for adjournment on behalf of petitioner's counsel (Mr. Abdul Mughni Farani, Advocate). Said request was vehemently opposed from respondents' side. Hence, while hearing arguments from respondents' side, cases were reserved for announcement of judgment.

On 29.03.2024 learned counsel for the petitioners appeared in the Court and verbally requested that he be given an opportunity to argue his cases. In the interest of justice, opportunity of hearing is granted to the learned counsel for the petitioners on 30.03.2024. Learned counsel for the respondents present in the Court also avail right of rebuttal.

2. Through this Constitution Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the vires of the notification No.SRO-436(I)2006 dated 10.05.2006 issued by respondent No.1 (Govt. of Pakistan through its States and Frontier Regions Division Secretary, Islamabad), whereby specific *Wandas* regarding the property of late Ameer of Bahawalpur Sir Sadiq Muhammad Khan Abbasi were made in favour of his twenty three legal heirs on the recommendation of implementation committee and prayed as under:

It is therefore most respectfully prayed that :-

- (a) Allowing the writ petition the notification No. No.SRO 436(I)2006 issued by the respondent No.1 Govt. of Pakistan may very graciously be declared as illegal, ultra vires, without lawful authority and nullity in the eye of law.*
- (b) The respondents No.1 to 6 may please be orders to maintain joint Wandas in the Shikargah and in the alternative to reconstitute all the Wandas justly, equitably and fairly in accordance with law.*

- (c) *That Implementation Committee may please be directed to strictly comply the report of Mr. Justice Abdul Shakoor-ul-Salam in the light of judgments of apex Court.*
- (d) *Such other orders may please be passed as are just and beneficial to the petitioners.”*

Whereas, in the second Writ Petition (7305 of 2019/BWP) petitioners of said Writ Petition prayed as under:

“It is therefore, most humbly prayed that by accepting instant constitutional petition, the impugned notification SRO. No.436(I)2006 issued by the respondent No.1 is against the judgment dated 02.10.2018 passed by the Hon’ble Supreme Court of Pakistan and also against the judgment reported as PLJ 2002 Supreme Court 210 and also against the summary of worthy Prime Minister of Pakistan dated 20.11.2018 may kindly be set aside and declared as illegal, void, without lawful authority and is not sustainable in the eyes of law and is liable to be set aside and a direction may kindly be issued to the respondents that they should remain and abstain from distributing the resumed land of Shikargah measuring 277947 acres situated in Cholistan, Tehsil Yazman District Bahawalpur amongst the legal heirs of his Highness Ameer of Bahawalpur in the interest of justice. Any other appropriate relief, which this Hon’ble Court deem fit and proper in the circumstances of the case may also be awarded.”

3. Learned counsel for the petitioners while reiterating the facts and grounds as pleaded in the Writ Petitions, prayed for acceptance of the Writ Petitions.
4. Contrarily, the respondents vehemently opposed the contentions of learned counsel for the petitioners by maintaining that petitioners should have approached the Federal Government for redressal of their grievance and prayed for dismissal of the writ petitions.
5. I have heard learned counsel for the parties at full length and perused the record with their able assistance.
6. Before discussing further, it is better to see the background of the controversy. In 1947 through an Act of the British Parliament known as Indian Independence Act, 1947, the British Crown gave up its sovereignty in respect of various provinces of Sub-Continent known as British India and divided those into two dominions i.e. one of India and other of Pakistan. It also lacks its suzerainty in respect of the States in the Sub-Continent with which it had special

relationship under treaties or agreements about foreign affairs, defence, etc. and who had otherwise remained to rule as before the advent of the British in the Sub-Continent. Henceforth, the States were to conduct their own affairs.

7. The State of Bahawalpur was ruled by His Highness Alhaj Sir Sadiq Muhammad Khan Abbasi. On 03.10.1947, the Ruler of Bahawalpur State through an instrument of accession acceded to Pakistan, which was accepted by the then Governor General. Supplementary instruments of accession were also executed between the Ruler of Bahawalpur and the Governor General. Before the formation of one unit in the western wing an agreement was executed on 17.12.1954 between the Ameer of Bahawalpur and the Government of Pakistan, by which Bahawalpur State reiterated its accessions to Pakistan and agreed to merge in West Pakistan.

8. In respect of the States in accession with Pakistan, on the 21st of August, 1961 the President of Pakistan, in pursuance of the proclamation of Martial Law, promulgated the President's Order No.12 of 1961 called the Acceding State (Properties) Order, 1961, (*hereinafter referred to as Order, 1961*).

9. On 24th May, 1966 his Highness Alhaj Sir Sadiq Muhammad Khan Abbasi, the Ruler of Bahawalpur State passed away. Some of the heirs of the late Ruler filed an application under Article 03 of the Order, 1961. The President appointed a Commission in 1967 to make an inquiry into the properties and their distribution etc. The commission headed by Mr. Abu Nasar submitted its report on 26.01.1968, whereby, detailed the properties both in Pakistan and abroad, i.e. United Kingdom and India, determined 24 heirs; 04 widows, 10 sons and 10 daughters, validated "Farmans" and dealt with the application of the Land Reforms Regulations. About properties in United Kingdom, on the basis of the

“Will” of the late Ameer of Bahawalpur and her renunciation of any claim to the property in Pakistan, those were left with the Dowager Her Highness O.J. Abbasi. So far as property in India, compensation under the law was paid to the late Ameer in his life time. For the properties in Pakistan, excluding the Dowager Her Highness O.J. Abbasi, the remaining heirs were found to be 23: 03 widows, 10 sons and 10 daughters. The shares were found to be $\frac{1}{8}^{\text{th}}$ for 03 widows, remaining $\frac{7}{8}^{\text{th}}$ for the 10 sons and 10 daughters in the ratio of 2:1. The properties in the Pakistan were divided in two categories. One was given to the succeeding Nawab and the other was distributed amongst all the heirs of the late Ameer. In the light of said report, the President promulgated Devolution and Distribution of Property (Ameer of Bahawalpur) Order, 1969, on 19th February, 1969 which was published in Gazette of Pakistan (extraordinary) on 20.02.1969.

10. Said order of 1969 was assailed by succeeding Ameer through Writ Petition before this Court by relying on instruments of accession, merger agreement, rule of custom i.e. primogeniture claiming that he was entitled to the entire estate included the ones distributed amongst all the heirs of the late Ameer in the schedule II. A learned Division Bench of this Court which was seized of the matter partly allowed the petition by declaring that the devolution order had not been passed by the Government of Pakistan in accordance with law and, therefore, it was of no legal effect. The case was, however, remitted to the Central Government for fresh disposal of the dispute before it, in accordance with law. The judgment was reported as “Brig. His Highness Nawab Muhammad Abbas Khan Abbasi, Ameer of Bahawalpur. V. Government of Pakistan, through the Joint Secretary, Ministry of States and Frontier Regions, Rawalpindi and 23 others” (PLD 1978 Lahore 1166). Said judgment was

challenged by the Government of Pakistan as well as by the Nawab Brig. His Highness Muhammad Abbas Khan Abbasi through Civil Appeals. The august Supreme Court of Pakistan while dismissing these appeals, observed that Nawab Muhammad Abbas Khan Abbasi was not entitled to claim the properties left behind by the late Ameer on the rule of primogeniture. It was further observed that the entire estate of the late Ameer is to be distributed amongst all the legal heirs in accordance with the rule of Muslim Law. Said decision is reported in “Govt. of Pakistan V. Brig. His Highness Nawab Muhammad Abbas Khan Abbasi and others” (PLD 1982 SC 367). Against the said judgment a review petition was filed which was dismissed with certain observations on 27.11.1983 that the matter of distribution/devolution required determination of intricate factual controversies among the legal heirs of the late Ameer of Bahawalpur which was the exclusive function of the Central Government to determine. Said judgment is reported as “Brig. H.H. Nawab Muhammad Abbas Khan Abbasi, Ameer of Bahawalpur V. Govt. of Pakistan and others” (PLD 1984 SC 67).

11. In the light of said decisions of Hon’ble Supreme Court of Pakistan, Commission was appointed by the Central Government for distribution of the estate of the late Ameer amongst the legal heirs. Recommendations were made. For further action, another Committee was constituted. The Committee prepared a report but it was not signed. Another Committee was constituted, who recommended an interim package about urban properties. This interim package was challenged through Constitutional Petitions which were dismissed on 03.07.1997. The matter again went before the Hon’ble Supreme Court of Pakistan. The Hon’ble Supreme Court of Pakistan in its judgment “Prince A. M.

Abbasi and another V. Federal Government through Secretary and 24 others”

(PLD 2002 Supreme Court 170), observed as under:

“In view of what has been discussed above, we hold that in the circumstances of the case, the interim package announced by the Inquiry Commission does not meet the ends of justice and is also not in accordance with the direction of this Court contained in various pronouncements with regard thereto in general and two cases: one filed by the Government of Pakistan PLD 1982 SC 367 (supra) and secondly by Brig. H. H. Nawab Muhammad Abbas Khan Abbasi (supra) PLD 1984 SC 67 in particular.

16. *The perusal of these judgments and the record, thus warrants that the controversy shall have to be resolved afresh in accordance with the direction contained in the case of Government of Pakistan PLD 1982 SC 367 (supra) and the observation made subsequently in review petition in “Brig. H. H. Nawab Muhammad Abbas Khan Abbasi (supra) by this Court.”*

It was further held that:

“We are, therefore, of the considered view that in the interest of justice, equity and fair play and in order to render adjudication of the controversy once for all, the committee to be constituted by the Federal Government for making recommendation shall be headed by a learned Retired Judge of this Court.”

It was concluded that:

“Now the stage is set for considering out of the available retired Judges of this Court, the name of the learned Retired Judge to head the committee. After due consideration, we agreed on the name of Justice (R) Abdul Shakoor-ul-Salam residing at Lahore these days to head the committee for ascertaining the properties left by the late Ameer of Bahawalpur, the extent of the shares of various claimants therein and to suggest the mode of the distribution of the properties amongst the claimants/heirs, in the light of the two judgments rendered by this Court in (i) Government of Pakistan V. His Highness Nawab Muhammad Abbas Khan Abbasi and others” PLD 1982 SC 367 and (ii) Brig. H. H. Nawab Muhammad Abbas Khan Abbasi and others V. Govt. of Pakistan and others” PLD 1984 SC 67 and make recommendations to the Federal Government of Islamic Republic of Pakistan accordingly. ”

12. In pursuance of said order of the Hon’ble Supreme Court, the Federal Government constituted a Committee under the Chairmanship of Justice (R) Abdul Shakoor-ul-Salam through SRO-140(1)/2002 on 07.03.2002 with the following terms of reference, namely:

- “a) To ascertain the properties left by the Late Ameer of Bahawalpur.*
- b) To determine the shares of various claimants in the properties left by the late Ameer of Bahawalpur.*
- c) To suggest the mode of the distribution of the properties amongst the claimants/heirs in the light of the two judgments rendered by the*

Supreme Court i. Govt. of Pakistan V. His Highness Muhammad Abbas Abbasi and others” (PLD 1982 SC 367) and ii. Brig. H. H. Nawab Muhammad Abbas Khan Abbasi and others V. Govt. of Pakistan, etc. (PLD 1984 SC 67) and;

- d) *To make recommendation to the Federal Government of Islamic Republic of Pakistan accordingly. The Committee, in discharge of its function, may also deal with those who have encroached upon or disposed of the property of Late Ameer unauthorizedly or who are getting income from such a property illegally; and hear any or all legal heirs or their counsel. ”*

In the light of said terms of reference the Committee concluded as under:

- “1. Properties left by the late Ameer subject matter of the Supreme Court judgments are those mentioned in Mr. Abu Nasir’s report and in the first and the second schedule of the Devolution and Distribution Order, 1969.*
- 2. The share are: 03 widows 1/8, the rest 7/8 amongst 10 sons and 10 daughters in the ratio of 2:1.*
- 3. Mode of devolution in view of the two judgments dealt with in the main report.*
- 4. Other matter about encroachers and disposal unauthorizedly relating to third parties, normal law of the land would take care. No benefit can accrue by grouping in the dark.*
- 5. However, it has come to notice that some heirs had usufruct of agriculture land in their possession, while others did not have any land in their possession. The total Revenue Authorities may be directed to investigate and estimate the loss to those deprived of their due, and the Federal Government from the compensation of the resumed land, make necessary adjustments.”*

And made following recommendations:

“36 years have gone by. May heirs even their heirs has died in the meanwhile. Sharia law is being applied for the distribution of the inheritance. So, it is not only an official responsibility but an Islamic duty to finalize the matter as soon as possible. Therefore, it is recommended that action may taken step by step.

The shares of the heirs are undisputed and these are 03 widows 1/8th, the balance 7/8th amongst the 10 sons and 10 daughters in the ratio of 2:1.

First action should be taken under the Land Reforms Regulation in the light of the report of the Commission headed by Mr. Abu Nasir who was Chief Land Commissioner himself, had consulted the Land Reforms Commission and the report had been accepted by the President of Pakistan. He had noticed that most of the heirs, expecting 2 or 3 have already got ceiling limits. They be given choice as earlier decided. Other 2 or 3 be given land of their choice upto the ceiling. Rest of the land resumed and compensation paid. It had earlier been noted that revenue authorities had assured that the whole job can be done in 02 months. Let it be done now.

Secondly, the properties of the late Ameer should be distributed and dealt with as in para 21 and 22 above straightaway. Wherever, action is to take place, that should simultaneously be held within 2 or 3 months.

Thirdly, after keeping sufficient amount for administrative purposes and discharge of other liabilities of the late Ameer, the rest of his money in the hands of the State should be disbursed immediately amongst the heirs according to their Sharia share described above. We were told that some are in dire need.

If some omission occurs or error creeps in or there is something amiss, that may be looked after later but the major steps mentioned above should not be postponed, otherwise controversy or even litigation will go on without any benefit to anybody and loss to all including the State”.

13. The Committee also answered the objections of the parties who claimed to purchase the property of late Ameer of Bahawalpur from the co-sharers, on stamp paper. They prayed that the property purchased by them should be included in the respective shares of the heirs so that they do not face any difficulties afterwards in getting the same mutated in their favour. These properties were allegedly under agreements from the heirs or successors-in-interest. Title the specific properties did not vest in the sellers at the relevant time. The committee observed that the law (Art.3 of P.O.12 of 1961) in pursuance of which the committee is functioning, deals in question between persons claiming to be the heirs or successors to the property of late Ameer and not between the heirs or successors and third parties and disposed of their objections in the following terms: -

“The purchasers may approach the relevant authorities like Land Reforms Authorities for relief and if their agreements are genuine, possession obtained in lieu thereof, the Authorities may accommodate them in accordance with law or they may approach the Courts of law for such relief on proof of their claim as may be available to them in accordance with law like following the property in the hands of their sellers or damages. The law (Article 3 of P.O.12 of 1961) in pursuance of which this Committee is functioning deals with questions between persons claiming to be the heirs of successors to the property of late Ameer and not between the heirs on successors and thirds’ parties. The relationship or transaction between then is governed by the Ordinary Law.”

Some persons have filed applications that they had been given land by the late Ameer on simple “Farman’s” and they have possession against the

claimed land, but it was not mutated in the revenue record in his life time due to certain reasons. Therefore, the lands be devolved from the properties of the late Ameer. Committee observed that such property cannot be taken out from the devolution and distribution as there are no proofs in support of such contention.

Certain persons had submitted the copies of consent decrees issued by the Civil Courts against their claims and prayed that these decrees may be implemented in the revenue record. The committee decided not to interfere at this stage and those persons may approach the respective authorities to implement these decrees of Civil Court.

14. Through SRO-252(I)/2003 dated 07.03.2003 the Federal Government considered the recommendations of the Committee and made certain amendments in the paragraphs Nos.2, 3, 5, 1st schedule and added para Nos.3-a and the 3rd schedule in the Devolution and Distribution of the Property (Ameer of Bahawalpur) Order, 1969.

15. Through notification SRO-321(I)/2003 dated 26.03.2003 the Prime Minister approved the recommendations of the Committee and constituted an Implementation Committee headed by Justice (R) Abdul Shakoor-ul-Salam and directed the Committee to take action step-by-step as under: -

- “a. Distribute all income in the hands of the state received from the production of properties of the late of Ameer of Bahawalpur amongst twenty-three legal heirs according to Shariah shares after keeping sufficient amount for administrative purposes and discharge of other liabilities of the late Ameer;
- b. Recall the revenue record in respect of the properties of late Ameer of Bahawalpur Sir Sadiq Muhammad Khan Abbasi for necessary correction on the basis of devolution and distribution of property (Ameer of Bahawalpur) Order 1969, as amended by the Order No.S.R.O.252(I)/2003, dated the 7th March, 2003; hand over possession of allotted property on the basis of above order; and if desired, call for assistance of the Federal Government in the

Ministry of KANA and SAFRON for the purpose assigned to them.”

16. However, Federal Government vide notification No.SRO 1117(I)/2003 dated 20.12.2003 due to ill-health of Mr. Justice (R) Abdul Shakoor-ul-Salam and his inability to act as the Chairman of the Implementation Committee appointed Justice (R) Abdul Qadeer Chaudhry as the Chairman.

17. The Chairman of the Implementation Committee wrote a letter No.F.2/1/Sce.VII/2002 dated 18.08.2004 to Managing Director Cholistan Development Authority, Bahawalpur, which reads as follows:

“Under the S..R.O. No.321(I)/2003 dated the 26th March, 2003 the Federal Government constituted an Implementation Committee to implement the devolution and distribution of property (Ameer of Bahawalpur) Order , 1969 as amended by the Orders under S.R.O. No.252(I)/2003 dated 7th March, 2003 and S.R.O. No.946(I)/2003, dated the 30th September, 2003.

In order to implement the above stated SROs, a meeting of the Implementation Committee was held in the Circuit House, Bahawalpur on the 17th April, 2004 (copy of minutes of the meeting attached) under which it was decided, in light of the decision of the Hon’ble Supreme Court of Pakistan rendered in C.A. No.130/78 dated 07.07.1982 read with the Federal Government’s SRO No.946(I)/2003 dated 30th September, 2003 the land called “SHIKARGAH” measuring 312440 Acres should also be distributed amongst the 23 legal heirs of late Ameer of Bahawalpur according to the Sharia shares being a private property of late Sir Sadiq Muhammad Khan Abbasi, Ameer of Bahawalpur.

Keeping in view the facts, the Implementation Committee in its meeting held in Circuit House, Bahawalpur on 15th August, 2004, decided that the subject land measuring 34466 Acres already allotted by the Board of Revenue, Punjab, under different schemes the effectees be replaced by suitable alternate government land or be compensated through payment. Rest of the subject land measuring 277974 acres should be divided into the following two categories:

I. Cultivable land (ممکن)

II. Uncultivable land (غير ممکن).

The subject land in categories (I) and (II) above should be distributed among the 23 legal heirs, whose name are mentioned in the attached list duly signed by me, with the following conditions:

(a) New JAMABANDI be prepared in the name of Sir Sadiq Muhammad Khan Abbasi, late Ameer of Bahawalpur in both categories separately.

(b) Total land be determined in both the categories, separately.

(c) Shares of each legal heir of the late Ameer of Bahawalpur be worked out according to the Sharia share as per Supreme Court of Pakistan’s judgment dated 07.07.1982.

- (d) *Mutation be entered in the revenue record in the name of each legal heir in category (I) according to their sharia share with the condition that the land already in the possession of the heirs should not be fragmented, but kept as one whole parcel as per their choice/possession strictly within their ceiling.*
- (e) *Joint mutation be entered in revenue record in the name of 23 legal heirs in category (II) straightaway.”*

18. The said Committee could not complete the task within the stipulated time, hence, the Prime Minister extended the tenure of Implementation Committee up to 18.02.2006 vide order No.SRO 819(I)/2005, dated 03.08.2005.

19. The Committee submitted its report and the recommendations of the said committee were considered by the Federal Government vide Notification No.SRO 820(I)/2005 dated 03.08.2005, and ordered the devolution and distribution of the properties, keeping in view 01 *kanal* in Bahawalpur is equal to 02 *kanals* in Ahmadpur East and 04 *kanals* in Dera Nawab Sahib and *vice-versa*. The private land measuring 4455 acres, 5 Kanals and 3 Marlas (*Urban+Agricultural land*) included Residences, Palaces, Shops and Buildings, etc. had been mutated in the revenue record in the names of twenty three legal heirs of late Ameer of Bahawalpur according to *Shariah* shares

Auction of the available moveable private property of the late Ameer of Bahawalpur was made amongst 23 legal heirs. Auction proceeds was deposited into Bahawalpur A/c No. ELS-20223-DC Branch, Bahawalpur.

Distributed an amount of Rs.2,25,00,000/- received from the production/rent of buildings and auction money received from the properties of the late Ameer of Bahawalpur amongst 23 legal heirs according to *Shariah* share.

With regard to the land known as ‘*Shikargah*’ (*Cholistan measuring 3,12,440 Acres land*) it was directed that the same shall be dealt with as mentioned in the

Order of the Implementation Committee's Instructions contained in Letter No.F.2/1/ Sec.VII/2002, dated 18 August, 2004 addressed to the Managing Director, Cholistan Authority, Bahawalpur. The Implementation Committee in its report dated 30th September, 2004 recommended as under:-

- (a) 2,77,974 Acres unsettled land of 'Shikargah' be distributed among 23 legal heirs according to *Shariah* shares.
- (b) Remaining land 34,466 Acres which was allotted to different Schemes, Board of Revenue, Punjab may accommodate the heirs, either by compensation at market value or land adjoining 'Shikargah' according to the heirs choice.

20. The Implementation Committee submitted compliance report through letter dated 21.03.2006. In the said compliance report, consisting upon 11 pages, the Implementation Committee in para No.19 and 20 observed as under:

"The Committee mutated the entire property viz packages and joint mutations, belonging to the private property of late Ameer of Bahawalpur among his 23 legal heirs in the revenue record, according to the Sharia shares, except the land known "Shikargah" measuring 277974 Acres out of total land measuring 312440 Acres. In this regard, Committee decided that the issue of compensation in lieu of 34466 Acres land of late Ameer would be perused by the Federal Government. On the allotment of land known "Shikargah" Dr. Faisal Zahoor, District Revenue Officer, Bahawalpur, is of the view that the land was resumed under the West Pakistan Land Reforms Regulations, 1959, therefore, further action in this regard may not be taken. Moreover, the Chief Land Commissioner, Punjab, has assumed a Suo Motu Revision No.11 of 1990. The Committee, however, concluded that the land known "Shikargah" has been adjudged in favour of legal heirs by order of the Federal Government vide SRO-820(I)/2005 dated 03.08.2005 superseded the decision/policy of the Board of Revenue, Punjab. Moreover, the Supreme Court's judgments in Civil Appeal No.130/78 set-aside the order of the Land Reforms Authorities till respondent No.3 the Federal Government makes the final order under Article 03 of the Acceding State (Property) Order, 1961. Therefore, the Committee decided that land measuring 277974 acres called Shikargah, Cholistan shall be distributed among 23 legal heirs of late Ameer of Bahawalpur in the light of the Implementation Committee's instructions contained in letter No.2/1/Sec.VII/2002, dated the 18th August, 2004 (Annex-XI) which is accordingly incorporated in the Implementation Committee Report 2004 and the Federal Government's Order vide S.R.O-820(I)/2005 dated 03.08.2005.

20. In order to implement the order of the Federal Government notified in SRO-820(I)/2005 dated 03.08.2005 with regard to distribution of land called "Shikargah" measuring 277974 acres among 23 legal heirs, the Vice Chairman/Managing Director, Cholistan Development Authority, Bahawalpur was invited in the meeting of the Implementation Committee held on the 31st January, 2006 at Lahore. Wherein, it was decided that the

Cholistan Development Authority (CDA), Bahawalpur may prepare the "Proposed Allotment Plan" and submit it in the next meeting of the Committee at Lahore. The Office of the CDA, Bahawalpur, prepared and presented the draft "Allotment Plan" along with map (Annex-XII) in the Committee's meeting held on 13th February, 2006 at Lahore proposing 23 packages in two each category i.e. cultivable and uncultivable. At the request of some of the legal heirs of late Ameer, it was decided that they should submit their objections against the "Proposed VANDAs" by the 15th February, 2006. No such objection was filed within the stipulated period. However, on the request of some legal heirs, 15 days were granted to file the objections against "Proposed VANDAs", subject to the condition that if the extension is granted by the Government as the tenure of the Committee is to expire on 18th February, 2006. No extension was granted upto now, however, a publication was made in the newspaper dated 06th March, 2006 (Annex-XIII). Five applications were received and forwarded to the Federal Government for appropriate decision, as the Committee cannot dispose of these applications after 18th February, 2006."

21. The Federal Government through Ministry of 'SAFRON' in exercise of the powers conferred under Article 3 of the Order 1961 subsequently through Notification No.SRO 436(I)/2006 dated 10.05.2006 distributed 'Shikargah' land measuring 2,77,974 acres out of total land measuring 3,12,440 acres amongst the legal heirs of Sir Sadiq Muhammad Khan Abbasi. All land of 'Shikargah' i.e. cultivable and non-cultivable has been distributed amongst 23 legal heirs vide said impugned notification according to 'Shariah' share. It was also directed through said Notification that the possession of allotted property shall also be handed over to the allottees in the following manner: -

- "2. The Implementation Committee headed by Mr. Justice (Retd) Abdul Qudeer Chaudhry shall hand over the possession of allotted property on the basis of this Order in terms of S.R.O.321(I)/2003 dated the 26th March, 2003.*
- 3. The words 'SARKAR DAULAT MADAR' appearing in the revenue record of the Bahawalpur city may be substituted with the words 'Government of the Punjab' to protect government offices/institutions.*
- 4. The amount lying in the account of National Bank of Pakistan, Bahawalpur, shall be distributed amongst twenty three legal heirs after determining the liabilities and keeping sufficient amount for administrative expenditure after mutation, transfer of the entire property."*

In this way the entire private property of late Ameer of Bahawalpur measuring 44055 Acres, 05 Kanalas & 03 Marlas (*settled land*) and 3,12,440 Acres (*unsettled land*) had been distributed amongst 23 legal heirs of late Ameer of Bahawalpur.

22. As far as the contention of the petitioners that ‘*Wandas*’ had not been prepared according to parameters recommended/decided by the Chairman, Implementation Committee is concerned, it is submitted that the Implementation Committee, with the assistance of the Cholistan Development Authority, Bahawalpur prepared a draft allotment plan called ‘*VANDAs*’ and handed it over to the Implementation Committee who in turn submitted its ‘Compliance Report’ dated 21.03.2006 alongwith proposed 23 Packages (*VANDAs*) through the Federal Government (*Ministry of SAFRON*).

23. Majority of legal heirs of late Ameer of Bahawalpur appreciated the preparation of 24 ‘*Wandas*’ and its Notification dated 10.05.2006. However, some of them raised certain objections. The Implementation Committee forwarded their objections to the Federal Government for appropriate decision, as the Committee could not dispose of these objections after 18th February, 2006. If the petitioners have filed any objections within the stipulated time, they may approach the Federal Government for redressal of their grievance.

24. For two years between 2003-2005, the Implementation Committee heard all the surviving legal heirs and provided right of hearing. The seven legal heirs and sixty five decedents signed the Distribution Agreement. The Implementation Committee published the relevant hearing dates and the venue, in the newspapers in English and Urdu. After that the Implementation

Committee made its recommendations to the Federal Government which were approved and notified on the 5th of August, 2005 and 10 May 2006.

The complaints that the shares inherited by them in the '*Shikargah*' includes roads and canals have no value.

No active canal system exists in the desert i.e. '*Shikargah*'s land. Although an irrigation plan was proposed hundred years ago and may exists on a map in a department, but in reality, it was abandoned and whatever was began on the ground has long since disappeared under sand. Secondly, tarranced road in the share of the party, in the middle of the desert, can only increase that party land value.

25. The petitioners impugned the said notification while levelling general allegations to the effect that said '*Wanda Jaat*' were not prepared in accordance with law, letter issued by the Implementation Committee and the judgments of the Hon'ble Supreme Court of Pakistan but during lengthy arguments they failed to point out any specific shortcoming, illegality or irregularity in the '*Wanda Jaat*'. Mere on general allegation the hard work done by the Implementation Committee cannot be brushed aside. The issue of the devolution and distribution of the land called '*Shikargah*' was complicated. After thorough deliberations the Committee proposed its distribution plan and implemented through impugned notification which cannot be set-aside merely on surmises and conjectures.

26. Learned counsel for the petitioners also argued that the Implementation Committee totally ignored the recommendation made by the Committee headed by Mr. Justice (R) Abdul Shakoor-ul-Salam in its report dated 05.06.2002 whereby it was recommended that before actual partition of

the land first of all the matter regarding the applicability of the Land Reforms Ordinance, 1959, was to be decided.

27. Said controversy was resolved by the august Supreme Court of Pakistan in its judgment dated 07.04.1982 passed in the case titled “Brig. His Highness Nawab Muhammad Abbas Khan Abbasi V. Deputy Land Commissioner, Bahawalpur and others” (1982 SCMR 991) wherein it was observed as under:

“The result will be that as soon as the final position of the holdings of the heirs of late Ameer of Bahawalpur has been decided by respondent No.3, respondents Nos.1 & 2 will be at liberty to proceed under the provisions of the Land Reforms Regulations, 1959 (M.L.R-64). The orders of the Land Reforms Authorities impugned before us are accordingly set aside with the clarification that as soon as respondent No.3 makes the final order under Article 03 of the Acceding State Property Order, 1961, the respondents Nos.1 & 2 can proceed further in the matter in accordance with law.”

Although the Hon’ble Supreme Court of Pakistan while setting-aside the orders of the Land Reforms Authorities clarified that as soon as the Federal Government makes the final order under Article 3 of the Order, 1961, the Land Reforms Authorities can proceed further in the matter in accordance with law but the Chief Land Commissioner initiated suo motu proceedings on 20.02.1990, which was challenged through Writ Petition (W.P No.15422/2010) “Prince A.M. Abbasi V. Land Commission, etc.”. Said Writ Petition was decided by Division Bench of this Court vide order dated 17.10.2011 and observed as under:

“In this view of the matter, without going into the merits of the case, judgment of the august Supreme Court of Pakistan, mentioned above, has to be implemented in letter and spirit and, therefore, the suo motu proceedings initiated by Chief Land Commissioner on 20.02.1990 are in violation of the judgment of the august Supreme Court of Pakistan dated 07.04.1982 and are, therefore, set-aside. Respondents are directed to implement the judgment of the august Supreme Court of Pakistan strictly in accordance with law and to proceed accordingly.”

Said judgment of this Court was assailed before the august Supreme Court of Pakistan and the said Court disposed of the appeal through order dated 02.10.2018 while observing as under:

“5. When confronted with the aforesaid state of affairs, the learned Addl. A. G. Punjab, states that the instant appeals have lost its efficacy as the conditions

specified for proceedings under MLR-64 by the impugned judgment have been fulfilled. Under the circumstances, the instant appeals are liable to be disposed of.

6. In the above circumstances, these appeals are disposed of. Any person aggrieved by any future action taken by any authority can seek his remedy, if any, available under the law.”

The implementation Committee was well-aware of the decision of the august Supreme Court of Pakistan dated 07.04.1982 passed in Civil Appeal No.130/78 and discussed it in para No.19 of its report as referred supra and made its proposal. In the light of said proposal through notification No.SRO-946(I)2003 dated 30.09.2003 para 04 of the Order 1969 was omitted and para 05 of the Order 1969 was substituted as under:

“5. The entire property of the Late Ameer of Bahawalpur shall be distributed and dealt with first in the manner specified in paragraph 03 and thereafter action shall be taken in accordance with the provisions of the Land Reforms Regulation, 1959.”

In view of the above, the arguments advanced by the learned counsel for the petitioners have no force, hence, repelled accordingly.

28. The Federal Government through Notification No. SRO.257(I)/2019 dated 27.02.2019 reconstituted the Implementation Committee and settled its terms of reference as follows:-

- “(a) Distribute all income in the hands of State received from production of properties of late Ameer of Bahawalpur amongst 23 legal heirs according to Shariah shares after keeping sufficient amount for administrative purposes and discharge of their liabilities of the Ameer;*
- (b) Recall the revenue records in respect of the properties of late Ameer of Bahawalpur Sir Muhammad Khan Abbasi for necessary correction on the basis of devolution and distribution of property (Ameer of Bahawalpur) Order 1969 as amended by the Order No.SRO.252(I)/2003 dated 7th March, 2003;*
- (c) Hand over possession of allotted property on the basis of above order; And*

(d) *If desires call for assistance of the Federal Government in the Ministry of States and Frontier Regions”*

29. As per the Acceding State (Property) Order, 1961 (President’s Order No.12 of 1961), the ultimate decision of devolution and distribution of the property of late Ameer of Bahawalpur rests with the Federal Government. An important provision in Article 03 of this order lays down that where any question arises directly or indirectly between persons claiming to be the heirs and successors of the Ruler of a State or claiming to succeed to the State, concerning the devolution and distribution of any property of that State or of the Ruler, the question shall be decided by an order of the Central Government. In this manner, the Central Government was made the Arbitrator for the settlement of the disputes between the persons claiming to be the heirs and successors of the Ruler, concerning the devolution and distribution of his property. For ease, said Article is reproduced as under:

“Where any question arises directly or indirectly between persons claiming to be the heirs and successors of the Ruler of a State or claiming to succeed to the State, concerning the devolution and distribution of any property of that State or of Ruler the question shall be decided by an order of the Central Government”.

Another Article No.7 of the President’s Order No.12 of 1961 is also relevant which is reproduced as under:

“No Court shall have jurisdiction to entertain any such question as is referred to in Article 03, and no Court shall call in question any order of the Central Government made under that Article or Article 05 or any proceedings conducted therewith.”

30. As discussed above, all the questions relating to the distribution and devolution of properties of the late Ameer of Bahawalpur would be resolved by the Central Government. The Hon’ble Supreme Court of Pakistan while considering said aspect in a case titled “Sahibzada Muhammad Usman Khan

Abbasi, etc. V. Islamic Republic of Pakistan through Secretary M/O KANA and SAFRON, Islamabad, etc.” vide order dated 21.05.2020 observed as under:

“Learned counsel for the petitioners contends that the impugned judgment passed by the learned High Court cannot be sustained on the ground that after the promulgation of Presidential Order No.12 of 1961 called the Acceding State (Property) Order, 1961 (issued vide notification dated 02.11.1961), all the questions relating to the distribution and devolution of properties of the Ameer of Bahawalpur would be resolved by the Central Government. The dispute as to between the claimants of the property whether the legal heirs inter se or any other third party of that State or Ruler, is to be regulated in terms of Article 03 of the Presidential Order, 1961 referred to above. He further contends that Federal Government has finalized the devolution and distribution of the properties of the Ameer of Bahawalpur after considering in the recommendation of the Implementation Committee (placed at pages 82-92). He further contends that in terms of Presidential Order, 1961, no question could be raised before any Court yet Writ Petition was entertained wherein it was directed that controversy is to be resolved by the Senior Member Board of Revenue. It is stated that if at all any controversy is to be resolved it could only be resolved by the Federal Government as noted in the Presidential Order, 1961. Respondent No.36 (Ghulam Rasool Khan) herein who claims to be acting as probono states that the property in dispute cannot be given to the petitioners. When such controversy was raised before the High Court the matter was referred to the Senior Member Board of Revenue and the writ petition was disposed of accordingly.

2. As noted above, that whatever the nature of dispute is, in terms of the Presidential Order, 1961, it is to be resolved and decided by the Federal Government. Therefore, let the parties approach the Federal Government for the dispute impugned before the High Court and decide it in accordance with law. In view of the foregoing reasons the instant petition is converted into appeal and allowed.”
(underline for emphasis)

In view of the above discussion this Court has no jurisdiction to adjudicate upon this matter.

31. For the foregoing reasons, Writ Petition No.2916 of 2006/BWP and Writ Petition No.7305 of 2019/BWP have no force/substance which are **dismissed** accordingly. All the pending Civil Miscellaneous (including applications under Order I Rule 10 C.P.C.) are also disposed of accordingly.

(AHMAD NADEEM ARSHAD)
JUDGE

ANNOUNCED IN OPEN COURT ON _____.

JUDGE

APPROVED FOR REPORTING:

JUDGE

Stereo.HCJDA 38.

Judgment Sheet
IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR
(JUDICIAL DEPARTMENT)

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Writ Petition No.7305 of 2019/BWP.

(Sahibzada Mujeeb bib Afzal Abbasi VS Federation of Pakistan, etc)

J U D G M E N T

Date of hearing: **28.03.2024 & 30.03.2024.**

Petitioners by: Nemo.

Respondents by: Mr. Tahir Mahmood Mufti, Deputy Attorney General
for Pakistan.
Ch. Muhammad Jameel, Assistant Attorney General
for Pakistan.
Malik Zafar Iqbal Awan, Addl. Advocate General.

AHMAD NADEEM ARSHAD, J. For the reasons recorded in
connected Writ Petition bearing No.2916 of 2006 titled “Sahibzadi Saira
Mehreen Abbasi etc. Vs. Federation of Pakistan, etc.” this Constitution Petition
is also dismissed. Parties are left to bear their own costs.

(AHMAD NADEEM ARSHAD)
JUDGE.