

Stereo.HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

C.R. No.55609 of 2021

Province of Punjab and others

v.

Ch. Abdul Hameed

J U D G M E N T

Date of hearing	23.10.2024
Petitioners by	Mr. Waheed Alam, Asst. Advocate General with Fateh Muhammad, Naib Tehsilar, Chak No.47, Tehsil Sargodha.
Respondent by	Mr. Naweed Shahryar, Advocate.

Rasaal Hasan Syed, J. This civil revision calls in question judgment and decree dated 24.11.2020 as well as 09.6.2021 of the courts below.

2. Brief background of the matter is that land measuring 21 kanals in Chak No. 47/NB was initially leased out to Kalu son of Sherwali in year 1960-61 for setting up brick kiln which later was leased out through open auction in favour of respondent for establishing a brick kiln for a period of five years. On the request of respondent in the year 1990, the sale of said land was approved in his favour. After process the respondent was communicated vide letter No. 7245-89/2797/CS/VI dated 08.4.1990 the sanction of sale @ Rs. 1,50,000/- per kanal along with 10% surcharge which amount was required to be paid within six months. The District Collector,

Sargodha solicited advice from the Board of Revenue regarding issuance of Conveyance Deed in favour of respondent in respect of suit property which was allowed vide order dated 10.3.2016 (Ex. P2) subject to payment of Rs. 29,05,454.51 alongwith compound interest. The respondent deposited the requisite amount as calculated by District Collector and thereafter a Conveyance Deed was prepared and issued in his favour on 16.6.2016 on deposit of dues. It was three months thereafter that the newly incumbent of District Collector, Sargodha made a Reference to the Board of Revenue Punjab vide letter No.368/CA/UCC dated 03.9.2016 seeking Review of the order dated 10.3.2016 and cancellation of Conveyance Deed under section 30(2) of the Colonization of Government Land (Punjab) Act, 1912 (the “**Act**”) whereupon Member (Colonies), Board of Revenue, Punjab issued notice to respondent and thereafter allowed the Review resulting in cancellation of Conveyance Deed in favour of respondent with an order to confiscate the amount deposited by him. This was vide order dated 13.12.2017 of Member (Colonies), Board of Revenue, Punjab which order was challenged by the respondent in civil suit, taking stance that the Board of Revenue had no jurisdiction to cancel the allotment under section 30(2) of the Act and that there was no fraud in the obtainment of sale nor it was so claimed and that on the issuance of Conveyance Deed the relationship of tenancy ceased to exist and in

fact absolute title vested in the respondent and that the remedy of respondent was to file a suit for seeking cancellation of the document which could not be unilaterally cancelled. The suit was resisted by the petitioners by filing written reply. Issues were framed, evidence of respondent was recorded. The petitioners in the course of proceedings thereafter disappeared and were proceeded against ex parte and ultimately the suit of respondent was partly decreed to the extent of order of the Member (Colonies), Board of Revenue, Punjab regarding confiscation of the amount deposited which was declared to be untenable while the relief for cancellation of Conveyance Deed was declined. Appeal was filed by the respondent challenging the judgment and decree dated 24.11.2020 of the trial court. After considering the points raised in appeal as also the findings of the trial court, the appeal was accepted by the learned Addl. District Judge vide impugned judgment dated 09.6.2021; in result, the judgment of the trial court was modified and the order of Member (Colonies), Board of Revenue, Punjab in respect of cancellation of Conveyance Deed was also annulled while the order of trial court to the extent of annulment of the confiscation of the amount deposited was not interfered with. In the instant revision petition, the petitioners have now challenged the judgments of the appellate court and also of the trial court.

3. Heard.

4. From the facts as are evident in the documents appended with the petition, it is discernible that the suit property was initially leased out to Kalu son of Sherwali for the purpose of establishing a brick kiln was later leased out to the respondent through open auction for five years. At the request of respondent in the year 1990 the sale of land through private treaty was approved in favour of respondent as communicated vide letter dated 08.4.1990. The sale was sanctioned at the rate of Rs. 1,50,000/- per kanal along with 10% surcharge which amount was to be deposited within six months. Later the respondent was allowed by the Board of Revenue to deposit this amount through 14 half yearly installments. The respondent applied for the grant of proprietary rights of the property in the year 1990 which was allowed by Member (Colonies), Board of Revenue, Punjab as confirmed vide Ex.P1 dated 19.8.1990 in terms thereof. On payment of the requisite amount, a request for issuance of Conveyance Deed was made on which a Reference was sent by District Collector Sargodha seeking advice for issuance of Conveyance Deed in favour of respondent which was heard and decided by Member (Colonies), Board of Revenue, Punjab who after hearing both sides passed order dated 10.3.2016 operative part whereof is as follows:

“4. In view of the above, it is observed that respondent paid total sale price of the land i.e. Rs. 40,55,343/- in 2004 which has been verified by the District Accounts Officer, Sargodha vide letter dated 23.12.2014. Now the issue under discussion relates to interest / penal interest for late payments that was deposited into the government treasury in 2004 instead of 1998. The District Collector, Sargodha vide letter dated 17.3.2015 has calculated the said amount as Rs. 29,05,454.51 (normal interest Rs. 1,27,116.66 and penal interest Rs. 16,34,292.85). The District Collector will also calculate and recover the compound interest from the respondent for the relevant period. The matter is referred to the District Collector, Sargodha with the direction to ensure that in future the land will not be used other than the purpose for which it was originally sold to the respondent. If the respondent deposits the above said amount i.e. Rs. 29,05,454.51 plus compound interest, to be calculated by the District Officer for the relevant period, within (30) thirty days after issuance of the certified copy of this order then the Collector may proceed further in the matter in accordance with law/policy. Disposed of accordingly.”

In pursuance to the permission granted the Conveyance Deed was executed in favour of respondent on 16.6.2016. Six months later, on 03.9.2016 the later incumbent District Collector, Sargodha sent a Reference to the Board of Revenue for Review and invoking powers under section 30(2) of the Act; the case was examined by the Board of Revenue vide letter dated 24.11.2016, notice under section 30(2) of the Act was issued against the respondent to explain as to why the Conveyance Deed should not be cancelled and the amount deposited be not confiscated. Vide order dated 13.12.2017 the Member (Colonies), Board of Revenue, Punjab directed that the Conveyance Deed and subsequent mutations attested in favour of the respondent be cancelled, the amount deposited

be also confiscated and a direction was issued to the District Collector to impose penalty/tawaan, recover the same and ensure that the entry to this affect be incorporated in the Revenue Record. This order was challenged by the respondent in a civil suit wherein the cancellation of Conveyance Deed in his favour and confiscation of amount credited by him in the Treasury was ordered to be confiscated and tawaan was imposed. Main stance in the plaint was that the Board of Revenue did not have jurisdiction to cancel the Conveyance Deed as the parties were no longer governed of terms of tenancy rather the respondent was holding the property as absolute owner; Review was solicited after the expiry of limitation period which aspect was not considered; there was no violation on the part of respondent as regard the terms and conditions of Conveyance Deed and that in any case the petitioners could not cancel the Conveyance Deed as there was no fraud in the execution of Conveyance Deed which was executed after due process and taking into consideration of all the facts and that the remedy of petitioners was to file a civil suit.

5. It is manifest from the impugned judgments that in so far as the order of the Member (Colonies), Board of Revenue, Punjab to the extent of confiscation of the deposited amount and imposition of tawaan, the same was held to be illegal by the learned Civil Judge who decreed the suit to that extent while in appeal the order of cancellation of Conveyance Deed was also held to be illegal and without jurisdiction.

Perusal of the order passed by the Member (Colonies), Board of Revenue, Punjab reveals that he acted purportedly under section 30(2) of the Act and directed cancellation of Conveyance Deed and also confiscation of the amount deposited, on the assumption as if the respondent had breached the terms and conditions of the lease by not obtaining NOC for establishing a brick kiln and that the brick kiln at site was in operation and that the condition of timely payment of installment were not fulfilled and that the revenue staff did not consider the ground reality. On these assumptions he opted to allow Review of the earlier order of his predecessor Member (Colonies), Board of Revenue, Punjab dated 10.3.2016.

6. The foundational question in this case was as to whether the Member (Colonies), Board of Revenue, Punjab could Review the order dated 10.3.2016 by which the execution of Conveyance Deed was approved and whether the Reference for review was within time and whether the pre-conditions of section 30(2) of the above Act existed in this case and also as to whether after the execution of conveyance deed, the Member (Colonies), Board of Revenue, Punjab had any jurisdiction to cancel the conveyance deed in the absence of pre-requisites of section 30(2) of the Act.

7. Perusal of the file shows that in the instant case the approval of sale in favour of the respondent was communicated to the respondent vide letter dated 08.4.1990; sale was sanctioned at the rate of Rs. 1,50,000/- per kanal

alongwith10% surcharge which amount was to be deposited within six months; later the Board of Revenue allowed the deposit of the amount through 14 half yearly installments; respondent deposited the amount; and applied for the grant of proprietary rights through Conveyance Deed; which was allowed by Member (Colonies), Board of Revenue, Punjab vide Ex.P1 dated 19.8.1990. On payment of requisite amount request for issuance of Conveyance Deed was made on which the Reference was sent by District Collector Sargodha seeking advice for issuance of Conveyance Deed in favour of the respondent. This was heard by Member (Colonies), Board of Revenue, Punjab and ultimately vide order dated 10.3.2016 in affirmative was passed. It was noticed in the order that the respondent had deposited the sale price i.e. Rs. 40,55,343/- which was verified by District Accounts Officer, Sargodha vide letter dated 23.12.2014 and that issue relate to the interest/ penal interest for late payment that was deposited in the Government Treasury in 2004 instead of 1998 and that the District Collector, Sargodha had calculated the amount as Rs. 29,05,454.51 (normal interest Rs. 1,27,111/- and penal interest Rs. 16,34,292.85). The Collector was directed to calculate and recover the compound interest from the respondent for the relevant period. It was also observed that in future it be ensured that the land did not get used for any purpose other than for which it was originally sold by to the respondent and if the respondent deposited the amount of

Rs.29,05,454.51 plus compound interest to be calculated by District Collector/Officer for the relevant period in 30 days after issuance of copy of the order the matter may proceed further in accordance with law/policy. In pursuance thereof the Conveyance Deed was executed in favour of respondent. Six months later on 03.9.2016 there was a change at the office of District Collector and the new incumbent sent a Reference to Board of Revenue for Review and the case was fixed in the court on judicial side when the impugned order was passed vide order dated 13.12.2017. It is manifest from the facts that the order under challenge was passed on 10.3.2016 while the Review was sought on 03.9.2016. It was after six months from the date of order that the jurisdiction to Review was invoked under section 8(2) of the Board of Revenue Act, 1957 and application for Review of order could only be made within 90 days of the order. In this case the Review was solicited after six months approximately. Reference was time-barred which could not be entertained on this score which aspect was ignored although it was the primary duty of the Member (Colonies), Board of Revenue, Punjab to attend to the question of limitation first; even if it was not raised. The order dated 13.12.2017 passed by the Member (Colonies), Board of Revenue, Punjab on a time-barred reference is without jurisdiction and is liable to be annulled.

8. As regards the provision of section 24(b) of the Act it has remained subject matter of consideration in number of cases decided by the

superior courts and the consistent view is that once the Collector had confirmed the proprietary rights in favour of the original allottee through a registered sale deed the Provincial Government had no right to claim ownership and that if any fraud is detected it could only be challenged the same through a civil suit. Reference in this regard can be made to the case of Province Of Punjab and others v. Mst. Nabeela Taj and others (2013 YLR 2286). In Province Of the Punjab through District Officer, Toba Tek Singh and others v. Nazir Ahmad and 9 others (2008 SCMR 749) it was observed to the effect that the allottee after fulfilling the requisite formalities i.e. the payment of price etc., and execution and registration of sale deed in his favour, the power with regard to the cancellation under sections 16 and 30(2) of the Act can be exercised only in the case of tenancy and not in the case of permanent allotment and more so with the pre-requisite of condition of fraud and misrepresentation and the impugned order was held as without jurisdiction by further observing that if the petitioners felt aggrieved of the allotment order the remedy for them was to file a civil suit. Reference can also be made to the case of Muhammad Asghar v. Member Board of Revenue and others (2009 MLD 1023) where it was observed to the effect that after payment of full price the allottee became sole owner and the statement of condition ceased to exist and allottee was no longer tenant. In the instant case, admittedly the payment of full price plus interest and penal interest had been confirmed and that the

conveyance deed was ordered to be executed in favour of the respondent on receiving full consideration. It was thus a case in which respondent had full proprietary rights in the property and was no longer a tenant. The term as original tenancy ceases to operate.

9. As to the grounds on which interference was made by the Member (Colonies), Board of Revenue, Punjab it is observed that none of these could be considered to be concealment of fact on the part of respondent nor the same could constitute fraud or misrepresentation. It is discernible from the order dated 10.3.2016 that the department fully knew that the property was leased out initially in 1967 and in 1990 the department agreed to sell the property in favour of the respondent, it was also in the knowledge of the Member (Colonies), Board of Revenue, Punjab and the other officers of the department that the price was required to be paid initially within six months by the Board of Revenue itself considering the facts and circumstances allowed to pay the same in 14 half yearly installments. The respondent did pay 12 installments and issue remained only of two installments on which the question was as to what course of action should be adopted in respect of the late payment of remaining two installments and also the execution of Conveyance Deed. The Member (Colonies), Board of Revenue, Punjab passed a judicial order on 10.3.2016, took note of all the facts and considered that the respondent paid the sale amount in 2004 instead of 1998 and therefore, interest along with penal interest was

imposed. The amount of penal interest was calculated by which was ordered to be paid with a direction to determine the penal interest for the remaining period as should be recovered for transfer of property. The other conditions were that land should not be used for any purpose other than brick kiln. Admittedly the brick kiln was not functional at that time but despite that no action was taken on this count rather the view taken was that the department shall ensure that the property should be used only for brick kiln. It was not the case that the respondent concealed any information from the department rather office of Colonization Department was fully conscious of the ground reality as to late payment and also qua the brick kiln and after considering all these facts the department/Member (Colonies), Board of Revenue, Punjab allowed the process to be completed by execution of Conveyance Deed. The respondent did deposit the amount of sale price as determined, the interest and penal interest; whereupon the Conveyance Deed was executed with the condition that it should not be used for any other purpose except for the purpose of brick kiln. It was not the objection that this condition was not violated by using the property for different purposes rather the allegation was that the brick kiln was not functioning. This being so there was no question of fraud or misrepresentation or concealment of facts on the part of respondent and therefore, the pre-requisites of section 30(2) of the Act were not attracted. The department in these

circumstances, if intended, could challenge the Conveyance Deed, by filing a civil suit instead of being a judge of their own cause. The order passed by the Member (Colonies), Board of Revenue, Punjab was illegal, without jurisdiction and liable to be held as such as has been declared in the impugned judgment of learned Addl. District Judge and the appeal was rightly allowed to this extent while the other part of relief regarding confiscation of amount deposited by respondent was declared to be illegal by the learned Civil Judge which order was not challenged either in appeal or by cross-objections by the petitioners nor does it appear to have been seriously pressed at the time of hearing of this revision petition as the same attained finality. No misreading or non-reading of evidence could be pointed out during the course of hearing of the petition nor any such misreading or non-reading was observed.

10. For the reasons stated above this revision petition is without any merit which is, accordingly, **dismissed**.

(RASAAL HASAN SYED)
JUDGE

ANNOUNCED IN OPEN COURT ON 29.11.2024.

JUDGE

APPROVED FOR REPORTING

JUDGE