

**IN THE LAHORE HIGH COURT,
JUDICIAL DEPARTMENT**

W.P. No.57227 of 2024

Naseem Bibi, etc. Versus Imran Qayyum, etc.

JUDGMENT

Date of Hearing:	29.10.2024
Petitioners by:	Agha Abu-al-Hassan Arif, ASC.
Respondents by:	Mr. Safdar Ali Bhatti, Advocate for the Respondents No.1, 2, 7 and 9. Mr. Javaid Akhtar, Advocate with Arzoo Sarwat, Advocate for the Respondents No.3, 4 and 6. Nemo for the remaining Respondents.

JAWAD HASSAN, J. The Petitioners through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) have impugned the orders dated 30.03.2024 and 05.09.2024, passed by the learned Courts below, being illegal and unlawful.

2. The brief facts of the case are that a suit for partition filed by the Respondents was decreed through a judgment and decree dated 16.06.2021. This decision was subsequently challenged before the learned Appellate Court by way of an appeal which was allowed and the matter was remanded to the learned trial Court for a fresh decision. Upon remand, the learned trial Court again adjudicated the matter, which was once more challenged before the learned Appellate Court. The Appellate Court accepted the appeal and, for

the second time, remanded the case to the learned trial Court for a fresh decision. Thereafter, internal auction proceedings were initiated and the impugned orders were passed. Hence, this Petition.

3. Learned counsel for the Petitioners Agha Abu-al-Hassan Arif, ASC submitted that both the learned Courts below did not follow the procedure for internal auction as required under Sections 9 and 10 of the Punjab Partition of Immoveable Property Act, 2012 (the "Act") and the same has been conducted in absence of the Petitioners. He further submitted that the Petitioners are widowed women who have been residing in their ancestral home for decades. The Respondents have purchased the shares of some co-sharers, and Respondent No.1, without paying anything to the co-sharers and are attempting to evict them from their home, which is illegal and unlawful.

4. On the other hand, Mr. Safdar Ali Bhatti and Mr. Javed Akhtar, Advocate for the representing Respondents defended the impugned orders having been passed as per law.

5. Heard. Record Perused.

6. As the case revolves around internal auction of the property amongst co-sharers/co-owners, which purely falls within the ambit of Section 10 of the Act. For ready reference Section 10 *ibid* is reproduced as under:

10. Internal auction.— (1) *If on the date fixed by the Court for the purpose, the co-owners fail to submit written agreement about the partition of the immovable property through appointment of a referee or the referee is of opinion that the property is not partible or the Court finds that the proposal of the referee is in contravention of any law, the Court shall determine the reserve price of the immovable property and direct sale of the property through internal auction on the next date of hearing.*

(2) *The Court shall require the co-owners to be present in person or through their authorized agents on the date of internal auction.*

(3) The internal auction shall be conducted in the Court and the Court shall maintain record of internal auction which shall form part of the suit.

(4) Any two or more co-owners of the immovable property may submit their written offers or counter written offers until one of them makes the highest written offer.

(5) The Court shall declare the highest bidder as auction purchaser in internal auction and direct the auction purchaser to deposit the auction price within fifteen days of the auction but the auction purchaser may deduct from the auction price to be deposited such amount as equals his share in the immovable property.

(6) If the auction purchaser deposits the auction price under subsection (5) within the prescribed time, the Court shall confirm the sale, put the auction purchaser in possession of the property and distribute the auction price amongst the other co-owners according to their respective shares.

(7) If the auction purchaser fails to deposit the auction price under subsection (5) within the prescribed time, the Court shall fix another date for internal auction but such auction purchaser shall not participate in the subsequent internal auctions.

(8) The second or subsequent internal auction shall be held, as far as possible, in accordance with the procedure contained in this section for the first internal auction.

7. Perusal of record reveals that the controversy started from the order dated 07.02.2024, wherein the trial Court observed that the Defendants are not interested to participate in the internal auction and in order to secure the rights of the Parties, one last opportunity was granted to both the Parties to appear in person to participate in the internal auction in light mandate of Section 10 of the "Act". For ready reference the same is re-produced as under:

"Learned counsel for the plaintiffs submitted that the plaintiffs are not interested in internal auction. The defendants are also not interested to participate in internal auction, however, in the interest of justice and to safeguard the valuable rights of the parties, absolute last opportunity is

granted to both the parties to appear in person to participate in internal auction in the light of section 10 of the Punjab Partition of Immoveable Property Act, 2012 for 17.02.2024.”

Although the direction was passed qua the personal appearance of the Parties yet the order sheet is silent with respect to the fact that either on the said date learned counsel for any of the co-owner/Defendant including the Petitioners was present in Court. In this backdrop the fact of issuance of direction appears to be having no legal consequences as it is silent as to whom it was addressed. In absence of this legal requirement the subsequent proceedings appears to be standing on the meek and mild foundations liable to be collapsed.

8. Subsequently, learned trial Court passed the impugned order dated 30.03.2024, the following manner:

“30.03.2024

*Present: Counsel for the plaintiff, Safdar Ali Bhatti, Advocate
Counsel for the defendants No.1 & 2, Mian Ali Raza Kamobh, Advocate.”*

Today, the case is fixed for the internal auction proceedings. The plaintiff No.1 & defendants No.1 & 2 alongwith their counsel are present. The proceedings of the internal auction have been made in the open court. Defendants No.1 and 2 submitted written bid by mentioning price of per Marla as Rs.25,50,000/-. The auction proceedings ended with the highest bid Rs.70,00,000/- per Marla price, offered by the plaintiff. Proceedings of the internal auction have been taken on the separate sheet and the same has been made part of the file. Now, plaintiff No.1 is directed to deposit the auction price after deducting his own share within fifteen days. Now, to come up for submission of auction price on 15.04.2024.”

9. There is no denial of the fact that the “Act” is a procedural law which enunciates certain steps i.e. filing of the suit, summoning of Defendants, appearance of Defendants and filing of written statement within a stipulated period, ascertainment of mesne profit, determination of question of title, if any or share; appointment of referee for partition, internal auction, open auction and private settlement. While conducting proceedings it is incumbent upon the court of law to adhere to each and every step so that the requirement of law and justice should be complied with. One of the steps is “internal auction”, whose proceedings were not conducted in consonance with law by approval of all co-owners and parties as per Section 10(2) of the “Act”. It is settled principle of law that where a law requires to be done in a particular manner it should be done in that manner as anything done in conflict with command of law shall be unlawful and being prohibited. In this regard reliance is placed on the judgments reported as “Khalid Saeed versus Shamim Rizvan and others” (2003 SCMR 1505), “GOVERNMENT OF THE PUNJAB, FOOD DEPARTMENT through Secretary Food and another versus Messrs. UNITED SUGAR MILLS LIMITED and another” (2008 SCMR 1148), “MUHAMMAD ANWAR and others versus Mst. ILYAS BEGUM and others” (PLD 2013 SC 255) and “GHULAM FAREED and another versus SHER REHMAN through LRs” (2016 SCMR 862).

10. From the language of Section 10(2) of the “Act” it unambiguously clears that the Court has to require all the co-owners to be present in person or through their authorized agents on the date of internal auction. The rationale behind the presence of all the co-owners either personally or through their learned counsel is that opportunity of hearing is to be given to the parties so that the ends of justice may be procured. In absence of relevant stakeholders of the proceedings, jumping upon another step/procedure learned trial

Court has not only deprived the absentee co-owners from the opportunity of hearing but also violated the principle of fair trial. After insertion of Article 10-A of the “*Constitution*” in the list of “fundamental rights” it has become obligatory upon the Court to adhere to the procedural steps and to avoid from doing anything which caused prejudiced to the rights of the Parties. Article 10-A of the “*Constitution*” provides right of fair trial and due process for determination of rights and obligations. Because it is the ceremonial principle of law that the act of the Court should not cause prejudiced to the rights of the Parties, which finds its basis in old *latin* maxim *Actus Curiae Neminem Gravabit*. Reliance is placed on the judgment of Hon’ble Supreme Court of Pakistan reported as “*Faqir Muhammad versus Khursheed Bibi and others*” (2024 SCMR 107), wherein it has been observed that:

“Moreover, it is also a well settled elucidation of law that an inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim “actus curiae neminem gravabit”, recognized by both local and foreign jurisdictions which articulates that no man should suffer because of the fault of the Court or that an act of the Court shall prejudice no one. This maxim is rooted in the notion of justice and is a benchmark for the administration of law and justice to ensure that justice has been done with strict adherence to the law and for undoing the wrong so that no injury should be caused by any act or omission of the Court.”

The Supreme Court of Pakistan in another judgment reported as “*Federation of Pakistan through Secretary Finance, Islamabad and another V. E-Movers (PVT.) Limited and another*” (2022 SCMR 1021) has observed that:

“The due process requirement must be met in the determination of rights and obligations. The Constitution does not define due process. Therefore, it would not be appropriate to limit its

scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all-encompassing expression which may not be curtailed with reference to particular laws. Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule."

In this regard further reliance is placed on "Muhammad Aslam (deceased) through LRs and another Versus Molvi Muhammad Ishaq (deceased) through LRs and others" (2024 SCMR 1390).

11. From the above it is very much clear that the affecting person should not be condemned unheard and should be allowed opportunity of hearing in case any order is passed against him/her. This Court in the judgment reported as "MUHAMMAD ASLAM v. MEMBER (COLONIES) BOARD OF REVENUE PUNJAB LAHORE and others" (2019 C L C 1141), held that:

10. The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard. Audi alteram partem means 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order'. Meaning thereby the maxim itself says no person shall be condemned unheard. Hence, no case or judgment can be decided without listening to the point of another party. Natural justice means that justice should be given to both the parties in a just, fair and reasonable manner. Before the court, both the parties are equal and have an equal opportunity to represent them. Natural justice is the concept of common law which implies fairness, reasonableness, equality and equity. In our country, the principles of natural justice are the grounds of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") which Article enshrines that every person should be treated equally. The law and procedure must be of a fair, just and reasonable kind.

The principle of natural justice comes into force when prejudice is caused to anyone in any administrative action. The principle of audi alteram partem is the basic concept of the principle of natural justice. This doctrine states that no one shall be condemned unheard. This ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. No decision can be declared without hearing both the parties. The aim of this principle is to give an opportunity to both the parties to defend themselves. No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him. A party is not to suffer in person or in purse without an opportunity of being heard. This is the first principle of civilized jurisprudence and is accepted by laws of men. Generally, this maxim includes two elements: (A) Notice; and (B) Hearing.

(A) Notice:

Before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a sine qua non of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio. Before taking any action, it is the right of the person to know the facts. Without knowing the facts of the case, no one can defend himself. The right to notice means the right of being known. The right to know the facts of the suit or case happens at the start of any hearing. Therefore, notice is a must to start a hearing. A notice must contain the time, place and date of hearing, jurisdiction under which the case is filed, the charges, and proposed action against the person. All these things should be included in a notice to make it proper and adequate. Whenever a statute makes it clear that a notice must be issued to the party and if no compliance or failure to give notice occurs, this makes the act void. Non-issue of the notice or any defective service of the notice do not affect the jurisdiction of the authority but violates the principle of natural justice.

(B) Hearing: - Oral or Personal Hearing- How Far Necessary:

The second ingredient of audi alteram partem (hear the other side) rule is the rule of hearing. If the order is

passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and must be set aside. The reasonable opportunity of hearing which is also well known as 'fair hearing' is an important ingredient of the audi alteram partem rule. This condition may be complied by the authority by providing written or oral hearing which is the discretion of the authority, unless the statute under which the action being taken by the authority provides otherwise. It is the duty of the authority who will ensure that the affected party may be given an opportunity of hearing. However, the above rule of fair hearing requires that the affected party should be given an opportunity to meet the case against him effectively.

11. Reliance in this regard can be placed on the Bank of Punjab case supra in which this Court while relying upon the principles enunciated by the Hon'ble Supreme Court of Pakistan, has held as follows:

"Such principle is applicable to judicial as well as non-judicial proceedings and executive acts and it has to be read into every statute subject to certain exceptions. If right of hearing has not been expressly provided in a statute, provisions of the Constitution can be put into service."

Further reliance is placed on Muhammad Nasrullah Khan versus Pakistan Electronic Media Regulatory Authority through Chairman and others (PLD 2019 Lahore 486).

12. It is also pertinent to mention here that Article 4 of the Constitution clearly states that it is inalienable right of every citizen including Petitioners to be treated in accordance with law by the Respondents and no action detrimental to the reputation, life, and liberty shall be taken except as per law. Article 4 of the Constitution is an established practice that is deep rooted in the custom and usage of law and, therefore, it cannot be overlooked and disregarded by any Court. It is held in judgment reported as Taj Wali Shah V. Bakhti Zaman (2019 SCMR 84) that *"In fact, any right vested in a person to seek his remedy under the law should be liberally*

construed, as this would bolster his recognized fundamental right of access to justice.” A well settled principle is reiterated in case titled “SYED TAHIR HUSSAIN MEHMOODI and others Versus AGHA SYED LIAQAT ALI and others” [2014 SCMR 637] reading as follows:

“to apply and to adhere to law is not a mere technicality, rather it is a duty cast upon the Court as per Article 4 of the Constitution”.

13. It is observed that the learned trial Court has not adhered to the mandatory requirements of **Section 10(2)** of the “Act”, which necessitates the presence of co-owners in person or through their authorized agents during the internal auction proceedings. The internal auction process, as laid down in Section 10, was not followed properly, including the determination of the reserve price and the procedure of submitting offers by co-owners in accordance with law. Moreover, the Petitioner’s contention that the Respondents have failed to pay their share and have sought to evict the Petitioners from their ancestral property is a matter that requires careful consideration, as it involves the rights of vulnerable parties.

14. What has been discussed above, this Court is of the view that the principles of *Audi Alteram Partem* and *Actus Curiae Neminem Gravabit*, as well as Articles 4 and 10-A of the “Constitution” are central to the present case. The maxim *Audi Alteram Partem* ensures that no party shall be condemned unheard, mandating that all parties affected by judicial proceedings must be given a fair opportunity to present their case, while *Actus Curiae Neminem Gravabit* dictates that no one should suffer as a result of a judicial error or omission. Article 10-A guarantees the right to a fair trial and due process, enshrined as a fundamental right, and Article 4 affirms that every citizen is to be treated in accordance with law, with no action taken

to their detriment except as per the law. In the instant case, the orders dated 07.02.2024 and 30.03.2024 passed by the learned trial Court are illegal and unlawful, having violated the procedural requirements under Section 10(2) of the “Act”. The failure to ensure the presence of all co-owners or their authorized agents during the internal auction proceedings, along with the absence of a properly determined reserve price and the lack of opportunity to submit written offers, has deprived the Petitioners of their constitutional right to a fair hearing and due process. These procedural irregularities not only undermine the legality of the orders but also violate the principles of natural justice and procedural fairness, as emphasized by the Hon'ble Supreme Court in judgments **(2024 SCMR 107)** and **(2022 SCMR 1021)**, (*mentioned supra*) which stress adherence to the law to prevent injustice.

15. When confronted, learned counsel for the Respondents submitted that the learned trial Court had conducted the internal auction proceedings in open court, and the highest bidder was directed to deposit the auction price, which he duly deposited. However, no satisfactory explanation was provided as to why the legal requirements under Section 10(2) of the “Act” were not followed, and the internal auction proceeded without the mandatory presence of all co-owners or their authorized agents/representatives.

16. Furthermore, the Appellate Court, vide its order dated 05.09.2024 (impugned herein), failed to properly apply its judicial mind to the facts and legal requirements of the case. It overlooked the serious procedural irregularities committed by the learned trial Court, thereby upholding an illegal and unlawful order in disregard of the principles of natural justice and settled law.

17. In view of the above, it is crystal clear that the basic order dated 07.02.2024; and its subsequent orders dated 30.03.2024 and 05.09.2024 (impugned herein), passed by the learned Courts below

were passed without complying with the mandatory procedural framework laid down in Section 10 of the “Act”. Accordingly, this writ petition is **allowed**, the impugned orders are set aside, and the case is remanded to the learned trial Court with the direction to conduct the internal auction afresh, strictly in accordance with the provisions of Section 10 of the “Act”, ensuring proper notice to all co-owners and adherence to the procedural steps outlined in the law.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

ZIA.UR.REHMAN