

Stereo.HCJDA 38.

Judgment Sheet

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

....

Civil Revision No.414-D of 2012.

Province of Punjab, etc.

Versus

Muhammad Yousaf.

JUDGMENT.

Date of hearing: **19.03.2024.**

Petitioners by: Mr. Zafar Iqbal Awan, Addl. Advocate General.

Respondent No.1 by: Muhammad Asif Mahmood Pirzada, Advocate.

AHMAD NADEEM ARSHAD, J. Through this Civil Revision filed u/s 115 of *Code of Civil Procedure, 1908*, petitioners (Province of the Punjab, etc.) assailed the validity and legality of judgment & decree dated 18.04.2012 whereby the learned Appellate Court while accepting the appeal of the respondent set-aside the judgment & decree dated 15.07.2011 passed by the learned Trial Court and decreed his suit.

2. Relevant facts forming the background of this petition are that respondent/plaintiff instituted a suit for declaration on 11.04.2003 and sought declaration that he being lessee of state land from Rabi 1970 to Kharif 1979 under ten years temporary cultivation scheme through order of Collector dated 18.11.1969 and on the basis of review order passed by Member, Board of Revenue dated 05.07.1995

is entitled to get the suit property measuring 48 Kanals, 15 Marlas on the market rate along with 10% surcharges in 10 equal installments and challenged the orders dated 24.12.2001 and 21.09.2002 passed by petitioner No.2 (*defendant No.2 i.e. Member (Judicial) Board of Revenue, Punjab, Lahore*) whereby he while using the power of second review set-aside the order of review of his predecessor dated 05.07.1995. The respondent (plaintiff) namely Muhammad Yousaf in his plaint maintained that he was allotted land by the Collector vide order dated 18.11.1969 for 10 years temporary cultivation scheme from Rabi 1970 to Kharif 1979; that Senior Member (Colonies), Board of Revenue vide order dated 05.07.1995 while reviewing its earlier order dated 26.02.1980 declared that he is entitled to purchase land measuring 48 Kanals, 15 Marlas under his possession on payment of the market price plus 10% surcharge, payable in 10 equal half yearly installments; that petitioner No.2 reviewed said order through order dated 24.12.2001 and subsequently vide order dated 21.09.2002 modified the order dated 24.12.2001; that suit property is under his possession since allotment and prayed that he be allowed to make payment of the suit property with 10% surcharge in 10 equal installments and proprietary rights be given to him.

3. Petitioners (defendants) resisted the suit through filing contesting written statement whereby they raised certain preliminary objections that plaintiff's suit is not maintainable in its present form; that under Section 36 of the Colonization of Government Lands Act, 1912 the Civil Court has no jurisdiction to entertain the suit; that the plaintiff earlier instituted a suit with regard to the suit property and

during the pendency of said suit, second suit is not proceedable; that the impugned orders were passed in accordance with law which have attained finality; that the suit property belongs to provincial government and situated within the prohibited zone which cannot be allotted; that the suit property was cancelled vide order dated 17.01.1978 due to non-fulfillment of the conditions and appeal against it was dismissed on 02.07.1979 and revision against said orders also met the same fate vide order dated 26.02.1980, therefore, the review filed against said order after lapse of 15 years was not maintainable and the said order of review dated 05.07.1995 had rightly been reviewed vide order dated 24.10.2001. While replying on facts, they refuted all the averments made in the plaint and prayed for the dismissal of the suit. Learned Trial Court, keeping in view divergent pleadings of the parties, framed necessary issues and invited them to produce their respective evidence. After recording evidence of the parties pro & contra, oral as well as documentary, dismissed the suit vide judgment & decree dated 15.07.2011. Feeling aggrieved, the respondent preferred an appeal which was allowed vide judgment & decree dated 18.04.2012 and as a consequence thereof judgment & decree of the learned Trial Court was set-aside and the suit was decreed. Being dissatisfied, petitioners approached this Court through instant Civil Revision.

4. I have heard learned counsel for the parties at length and perused the record with their able assistance.

5. It evinces from the record that the respondent Muhammad Yousaf appeared in the witness box as P.W.1 and produced Ghulam

Mujtaba and Khadim Hussain as P.W.2 and P.W.3. He produced 13 documents as Exh.P.1 to Exh.P.13 and photocopies of four documents as Mark-A to Mark-D. In rebuttal, petitioners produced Fazal Mahmood concerned Patwari as D.W.1 but they did not produce any documentary evidence.

6. The respondent produced allotment order dated 18.11.1969 as Exh.P.1. Perusal of said document, it appears that *Lot* No.35 consisting of 23 Acres, 02 Kanals & 01 Marla was allotted to the respondent on lease under temporary cultivation scheme for a period of 10 years from Rabi 1970 to Kharif 1979. District Collector resumed the said *Lot* vide order dated 17.01.1978 merely on the ground that the respondent/allottee failed to pay the rent. The respondent assailed said order of resumption before the Additional Commissioner (Revenue), Bahawalpur, who dismissed his appeal on 02.07.1979 by maintaining that the suit land was situated within the municipal limits of Municipal Committee, Hasilpur. The respondent challenged said orders through revision of revision (ROR No.2114/1978-79) before the Member (Colonies), Board of Revenue, Punjab, who dismissed his revision vide order dated 26.02.1980 on the ground that the whole land except Khasra No.328/6 stood transferred to the Municipal Committee and therefore Collector was not competent to grant its lease to the respondent. The orders dated 17.01.1978, 02.07.1979 and 26.02.1980 were not brought on record. Being dissatisfied, the respondent filed a review petition (Review Petition No.216/1995). Said Review Petition was accepted by the

Member (Colonies), Board of Revenue, Punjab, vide order dated 05.07.1995 (Exh.P.10) in the following terms:

"In this case, the petitioner has requested that 48 Kanals, 15 Marlas of rectangle No.328/6 which is still in his possession and is situated within prohibited zone, may be allowed to him at market price. As the petitioner has not so far been ousted from the land in dispute, I, therefore, keeping in view long affiliation of the petitioner with the said land which remained under his lease allow him to purchase the same land i.e. 48 Kanals, 15 Marlas on payment of market price plus 10% surcharge, payable in 10 equal half yearly installments."

7. The respondent approached the District Collector for the implementation of said order. The Settlement Officer/District Collector Bahawalpur through letter No.HVC/60 dated 17.01.1996 moved the review of the said order dated 05.07.1995 on the grounds that there is no policy with regard to the sale of the state land. Member (Judicial-IV), Board of Revenue, Punjab, Lahore (petitioner No.2) vide order dated 24.12.2001 (Exh.P.12) reviewed the order dated 05.07.1995 by declaring it unlawful and void. Subsequently, the District Officer (Revenue), Bahawalpur moved a letter dated 17.06.2002 (Exh.P.11) and sought review of the order dated 24.12.2001 with the contention that the review order dated 24.12.2001 was passed in the review petition of the respondent instead of the review petition filed by the District Collector and prayed that title of the case may be read as "The State through Deputy Commissioner Bahawalpur (petitioner) Versus Muhammad Yousaf (respondent)". Member (Judicial-IV) in the light of said letter amended the order dated 24.12.2001 vide order dated 21.09.2002 (Exh.P.13) as under:

“State through the District Collector Bahawalpur (petitioner) versus Muhammad Yousaf s/o Abdul Razzaq (respondent).”

8. Perusal of Mark-A “C. Form No.12” (Prescribed in Paragraph No.19) Ledger for Temporary Cultivation Scheme, the respondent deposited the rent till 15.10.1976 but failed to deposit the rent for the year 1977, therefore, his tenancy was resumed for non-deposit of rent of one year. Provision of Section 24 of the Colonization of Government Lands Act, 1912 provided that whenever a breach of condition of tenancy had been committed by the tenant, Collector could either impose a penalty or order resumption of tenancy, but where the breach was capable of rectification, neither of the two measures could be taken before calling upon tenants to rectify the said breach within a reasonable period. Failure to do so within said time, the Collector was required to independently apply his mind and decide to impose a penalty or order resumption of tenancy, but the Collector had failed to perform both statutory obligations and directly proceeded to resume the said lot. Therefore, the basic resumption order was not in accordance with the law.

9. The respondent assailed the said order by preferring an appeal, the Additional Commissioner, while deciding the appeal should have seen the validity of said order under attack but he while dismissing the appeal upheld the resumption order on another ground that the suit land was situated within the municipal limits of Municipal Committee, Hasilpur. The Board of Revenue maintained the said order while dismissing the respondent's revision petition.

10. Now the question arises whether the Additional Commissioner and Member, Board of Revenue could resume the land on the ground that the suit land had come within the prohibited zone. There is nothing on the record to show that at the time of allotment in favour of the respondent, the suit property was falling within the prohibitory zone. The suit property was allotted by the Competent Authority after due verification of its status through revenue officials. There is no cavil with the proposition that land falling within the prohibited zone is immune from allotment under any scheme. Said allotment could not be cancelled, because once the land was made available for allotment, it was transferred and settled on the respondent, it would supersede all the notifications imposing such prohibitions. Under the law, the presumption is that acts done by the statutory functionaries were done in good faith and in a lawful manner, according to law applicable at that time. Under the principle of *locus potentiae*, the petitioners were not justified to act in the complained manner to cancel the land of the respondent. The question as to whether a piece of land falls within a prohibited zone is to be determined from the date of allotment and not from the time of grant of proprietary rights. The petitioners failed to bring on record any evidence to establish that at the time of allotment or at the time of resumption the land was falling within a prohibited zone. The Hon'ble Supreme Court of Pakistan in a case titled "PROVINCE OF PUNJAB THROUGH DISTRICT COLLECTOR V. GHULAM MUHAMMAD" (1994 SCMR 975) while dealing with a similar proposition observed as under:

“2. The respondent/tenant had been allotted land on temporary cultivation scheme which had to be resumed and thereafter he was settled on alternate land. When the question of conferment of proprietary rights to such tenant arose, the respondent was held not entitled to it on the ground that his allotted land fell within the prohibited zone and secondly it was excluded from allotment on the basis of being a part of ‘KHUSK BIAS’ river. On both these points the instructions of the Board of Revenue existed. As regards the prohibited zone, the instructions were that the distance should be measured as required when the allotment was made and not as when the proprietary rights were conferred. On this test, the allotment of the respondent was beyond three miles limits then applicable to him when he got the allotment but within five miles i.e., with the limits when he was to be given proprietary rights.....” (*emphasis provided*).

In another case titled “PROVINCE OF PUNJAB THROUGH SECRETARY COLONIES, BOARD OF REVENUE AND OTHERS V. CH. ABDUL SATTAR.” (2012 SCMR 1007), august Supreme Court observed as under:

“Having considered the submissions made and the law declared, we find that admittedly when the land was allotted to Abdul Rehman, the same did not fall within the prohibited zone and therefore would not be hit by a subsequent notification to which reference has been made above.”

This Court also followed this dictum in the cases titled “MUHAMMAD AKHTAR V. SENIOR MEMBER, BOARD OF REVENUE, PUNJAB, LAHORE AND ANOTHER” (2008 CLC 825), “MUHAMMAD AKHTAR V. SENIOR MEMBER BOARD OF REVENUE AND ANOTHER” (2011 MLD 589), “PROVINCE OF PUNJAB THROUGH DISTRICT COLLECTOR, VEHARI V. NIAZ ALI AND 4 OTHERS” (2011 MLD 1149) AND MUHAMMAD FAROOQ AND OTHERS V. MEMBER (JUDICIAL-II) BOARD OF REVENUE, PUNJAB, LAHORE AND OTHERS” (2022 MLD 1129).

11. The Member (Colonies), Board of Revenue, Punjab, keeping in view the facts & circumstances of the case reviewed his earlier

order dated 26.02.1980 vide order dated 05.07.1995 and allowed the respondent to purchase the land under his possession measuring 48 Kanals, 15 Marlas out of total allotted land on payment of the market price plus 10% surcharge, payable in ten equal half yearly installments.

12. Said order of review was subsequently further reviewed by the Member (Colonies) vide order dated 24.12.2001 and 21.09.2002. Now the question arises, whether a second review was permissible and whether the Member, Board of Revenue was empowered to review the order of his predecessor? Under Section 08 of the West Pakistan Board of Revenue Act (XI of 1957), the power of review was available which was exercised by Board of Revenue while passing the order in the first review. Further review of the order passed in review could not have been done by the Board of Revenue in the absence of any such power to vest in the Board by law. The Board of Revenue exceeded its jurisdiction by passing orders in question in an ostensible exercise of the power of review to vest in it. No power to review an order passed on a review petition by the Board of Revenue was available. As no power of second review was available under the law, the exercise of any such jurisdiction was without lawful authority and non-est. In this regard guidance is sought from the case titled "ALLAH WASAYA V. MEMBER (COLONIES), BOARD OF REVENUE, PUNJAB, LAHORE" (2006 YLR 2084), wherein it was observed as under:

"8. There is no provision in the West Pakistan Board of Revenue Act for filing a second review petition. This legal question of maintainability of second review petition by the Board of Revenue has already been dealt with by the

superior Courts. Careful analysis of the provisions of section 8 (supra) leads to a conclusion that power of review can be exercised by the Board of Revenue, only upon an application filed by a person who considers himself aggrieved by a decree passed or order made by the Board and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed and the order was made. The Board has no power of suo motu review. In this context reliance can be placed to the case of Umar Din and others v. Member (Colonies), Board of Revenue and others (1984 CLC 17).

10. The power of entertaining second review application is neither contained in the West Pakistan Board of Revenue Act nor in the Civil Procedure Code as contained in rule 9 of Order XLVII (supra). In case of Muhammad Shafi v. The Member (Colonies), Board of Revenue and 2 others (1995 CLC 966), it has been observed that after dismissal of first review application, second review application on the same grounds and against the same order could neither be entertained nor adjudicated---Although there was no express prohibition for second review in West Pakistan Board of Revenue Act, 1957, yet the Act did not either expressly or impliedly exclude general principle of res judicata and rule of finality of judgment---Except for clerical or arithmetical mistakes or accidental slips or omissions in the decision which every Court, Tribunal or Authority has inherit powers to correct second application for review after the decision of first on its merits could not be competently instituted.”

13. It is well-settled that the right of review is a substantive right and is always a creation of the relevant statute on the subject. The power of review being a statutory remedy cannot be assumed by an authority in the absence of a clear-cut provision in this regard. Similarly, a second review does not exist if not created or granted by a statute. After the final disposal of the first application for review, no subsequent review including the “curative review” shall lie. The august Supreme Court of Pakistan while dealing with the proposition of second review in a case titled “YAR MUHAMMAD AND OTHERS V. MST. SAMEENA TAYAB AND OTHERS” (2022 SCMR 1592) observed as under:

“The most important legal aspect of the case is that review petition of the petitioners before the Member (Judicial-II),

Board of Revenue, Punjab was allowed vide order dated 14.07.1998 whereas transfer in the names of alleged Islamabad Oustees and the subsequent sale in the name of Respondent No.1 was made on 31.07.1998. Respondent No.1, after sale in her favour, challenged the order of review dated 14.07.1998 in favour of petitioners by way of yet another review petition whereas petitioners had filed an application under section 30 of the Colonization of Government Lands (Punjab) Act, 1912 for cancellation of conveyance deed in favour of Respondents Nos.4 to 7. Though the said review petition of Respondent No.1 was dismissed on merits on 29.09.1999 but the question would be that how a review petition was entertained and considered against an order of review. Legally 2nd review petition was not competent and was unlawfully and illegally entertained which under the law should have been dismissed on its very inception and there was no need to discuss the merits of the case once again.”

14. The learned Appellate Court, keeping in view the facts & circumstances of the case as well as evidence available on the record, allowed the appeal of the respondent and decreed his suit. Learned Addl. Advocate General representing the petitioners remained unable to point out any illegality, irregularity or jurisdictional defect in the impugned judgment & decree of the Appellate Court.

15. For the foregoing reasons, this petition is dismissed being devoid of force/substance.

**(AHMAD NADEEM ARSHAD)
JUDGE.**

APPROVED FOR REPORTING.

JUDGE.

*M. Arsalan**