

Stereo. HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
(JUDICIAL DEPARTMENT)

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(1). Cooperative Petition No. 1993/2022.

Niagara Mills (Pvt) Limited and others.

Versus

Punjab Cooperative Board for Liquidation (PCBL) and others.

(2). Cooperative Petition No. 1997/2022.

Niagara Mills (Pvt) Limited

Versus

Punjab Cooperative Board for Liquidation (PCBL).

(3). Cooperative Petition No. 69526/2021.

M/s BNP Pvt Limited

Versus

Punjab Cooperative Board for Liquidation (PCBL) and
others.

(4). Cooperative Petition No. 62924/2021

Kohistan Corporation Pvt Limited.

Versus

Punjab Cooperative Board for Liquidation (PCBL) and
others.

JUDGMENT

Date of hearing: 12.07.2024.

Petitioners by: M/s Taffazal Haider Rizvi, Haider
Ali Rizvi and Benish Sikandar,
Advocates.

Mr. Ashtar Ausaf Ali, Advocate
and Asad Rahim, Advocates in
C.P. No. 62924/2021.

Barrister Muhammad Ahmad
Pansota, Advocate in C.P. No.
69526/2021.

Respondent(s) by: Mr. Sohaib Ahmad Rumi,
Advocate for PCBL.

ASIM HAFEEZ, J. These petitions, instituted under section 11 of the Punjab Undesirable Cooperative Societies Act, 1993 (“**the Act 1993**”), impugn the consolidated judgment of 01.10.2021, by the Judicial Officer, Punjab Cooperative Board for Liquidation (“**the Judicial Officer**”), which had annulled transaction of disposal / sale of land measuring 26-Kanals and 18-Marla situated at Chak No. 212/RB, Railway Road, Faisalabad (“**the property**”), and consequently ordered cancellation of three sale deeds executed in favour of the petitioners [to the extent of land measuring 20-Kanals and 08 Marlas].

Narration of facts:

2. Facts essential for deciding instant petitions are that National Industrial Cooperative Finance Corporation (NICFC) owned the property, which property became vested in Punjab Cooperatives

Board for Liquidation (in short “the **Cooperatives Board**”) by virtue of the Act, 1993. The Cooperatives Board assumed authority and acted as statutory liquidator over wound-up undesirable cooperative societies. By law, the Cooperatives Board was empowered to dispose of assets and property(ies) of undesirable societies, including the property. Funds generated through sale of assets / properties are utilized for satisfying the liabilities of undesirable societies through payments to claimants against verified claims. The Cooperatives Board embarked upon the process of public auction of the properties through advertisement. And for the information of prospective bidders, details of the properties and terms of auction were published in “*Daily Jang, Lahore*” on 05.03.2003. The property, subject matter of instant proceedings, was listed at serial 17 of the advertisement.

For ease of reference the terms of auction read as follows,

شرانط و ضوابط

1. دفتر چیرمین پی سی بی ایل مال و یو پلازہ بینک سکواںر نیلا گنبد لا ہور میں جمع کروانے کے لیے آخری تاریخ مورخہ 15 مارچ 2003 ہے۔

2. خوابشمند پارٹیاں کل رقم کا پر اپرٹی کے سامنے درج کی ہوئی % کے مطابق بطور زرضمانت کال ڈیباٹ پے آرڈر یا بنک ڈرائافت پیشکش کے ساتھ منسلک کرنا ہوگا جو کہ پہلی اور دوسری پیشکش کے علاوہ باقی خریدار کو واپس کر دی جائیگی۔

3. تمام پیشکش تاریخ 17 مارچ 2003 کو 11 بجے موقع پر حاضر خوابشمند پارٹیوں کی موجودگی میں دفتر پی سی بی ایل مال و یو پلازہ بینک سکواںر نیلا گنبد لا ہور میں کھولی جائیں۔

4. پی سی بی ایل سے مندرجہ بالا املاک کی خریداری پر کوئی استامپ ٹیوٹی ارجسٹریشن فیس قابل اطلاق نہ ہوگی۔

5. چیرمین پی سی بی ایل کو اختیار ہے کہ بغیر وجہ بتائے کسی پیشکش کو مسترد کر دے۔

6. پیشکش کی منظوری پی سی بی ایل بورڈ کی منظوری سے مشروط ہوگی۔

7. پیشکش کی رقم کا 25% منظوری کے سات یوم کے اندر اور بقایا 75% ، تیس یوم کے اندر جمع کروانا ہوگا۔ ٹیفائلٹ کی صورت میں زرضمانت ضبط کر لیا جائے گا اور کوئی عذر قبول نہ کیا جائے گا۔ جائیداد کی منتقلی تمام رقم کی ادائیگی کے بعد کی جائے گی۔

8. خریدار رقم کے علاوہ کوئی منظور شدہ پیشکش کا 20% بطور لیکوڈیشن چارجز پی سی بی ایل کوالگ ادا کرنا ہوگا۔

9. پیشکش ہر ایک پر اپرٹی کے لیے الگ زرضمانت جیسے پر اپرٹی کے سامنے درج ہے۔

For the purposes of *lis* at hand, attempt to auction failed when single bid was received and quoted price was less than the base value of the property, procured through evaluation. No reserve price was mentioned in the advertisement but it transpired from the minutes of the meeting of 30.10.2003, that assessed value of the property was Rs.269,500,000/- and in said meeting decision was taken to get the property re-assessed, on the premise that value assessed was on the higher side. Whether the property was re-assessed or not? No details are available and nor any reference was made during hearing(s).

In February 2004, Niagra Mills (Pvt) Limited – (the “first petitioner”), approached the Chairman Cooperatives Board, through letter dated 18.02.2004, and showed interest in purchasing the property. And willingness matured into offer in writing for

Rs.221,000,000/-, through letter of 25.02.2004, accompanied with security deposit receipt of Rs.500,000/-.

3. On 22.03.2004, evidently, bidding was arranged amongst three bidders, which exercise culminated upon offering of Rs.275,100,000/- by the first petitioner – [the ‘highest bid’]. The highest bid was approved by the Cooperatives Board in meeting dated 24.03.2004 in favour of the first petitioner. It appeared that vide letter of 13 April 2004, first petitioner claimed to have had deposited 25% of the bid price, upon indicating accompanying instrument of Rs.41,265,000/-, who sought extension of 120 days for making payment of Rs.206,325,000/- [75% of the bid price]. No objection certificates (‘NOCs’) were issued on 05.07.2004 – three NOCs were issued to the nominees of the first petitioner [successful bidder]. Sale deeds, respectively in the name of the nominees, were executed on 05.07.2004 –cumulatively to the extent of land measuring 20-Kanals & 08-Marlas. Record depicts that on 17th March 2008, the Cooperatives Board demanded payment of Rs.63,303,458/-, inclusive of liquidation charges – wherein it was acknowledged that sum of Rs.217,298,542/- was received till then along 2% liquidation charges. Letter indicated reference to letters addressed to successful bidders regarding some litigation against

part of the property. Record showed that successful bidder tendered instrument of Rs.47,960,752/-, committing that difference, if any would be paid subject to measurement of available land. A criminal case was registered, bearing F.I.R No. 15/2014 dated 23.04.2014, against petitioners and Cooperatives Board's ex-management, which ended in acquittal of the petitioners vide judgement dated 26.03.2018 by Special Judge Anti-Corruption Faisalabad. It appears that the Cooperatives Board took possession of the land measuring 06-Kanals & 10-Marlas in or about November 2017. The Cooperatives Board, , through Secretary, brought action for seeking cancelation of alleged transaction of sale, NOCs and sale deeds of land measuring 20-Kanals & 08 Marlas, on 16.02.2018. And contemporaneously, the first petitioner also instituted suit seeking declaration and mandatory injunction and transfer of remaining land of 06-Kanals & 10-Marlas. Both the proceedings were consolidated; issues were framed, and evidence led. Judicial Officer passed the order against the petitioners. Matter is adjudicated in view of aforesaid stated facts.

Submissions:

4. Learned counsel for the petitioners questioned the authority of the Judicial Officer to exercise jurisdiction on the premise that

enactment conferred powers on the Cooperatives Board, which powers cannot be further delegated to the Judicial Officer. In precise, the objection is that assumption of jurisdiction by the Judicial Officer is contrary to the mandate of law. It is asserted that Judicial Officer had no authority to act as Court, in the absence of statutory sanction and that tantamount to offend Article 175 of the Constitution of Islamic Republic of Pakistan, 1973. Learned counsel banked on the doctrine of *res-judicata*; and elaborates that once disposal of the property by way of negotiated sale was approved by the Cooperatives Board, and NOCs were issued, followed by execution of sale deeds, transaction of sale became past and closed transaction, which cannot be re-opened, let alone after 14 years. In brief, principle of finality of the decision is pleaded. Learned counsel emphasized that competitive bidding took place, and first petitioner was declared as the highest bidder, whose bid was approved by the Cooperatives Board, unconditionally. Adds that factum of piecemeal payment or delay, if any, was inconsequential since the Cooperatives Board had neither transferred complete chunk of land, nor did it possess the land till 2017. And land measuring 6-Kanals and 10-Marlas is still not transferred. Learned counsel elaborated that subsequent to the execution of sale deeds, the Cooperatives Board got registered a

criminal case against the petitioners and ex-management, wherein petitioners were acquitted on 26.03.2018, which acquittal is sufficient to dismiss allegations of fraudulent, collusive and deceptive sale. And, thereafter, the Cooperatives Board had no authority to seek re-opening of sale transaction, which stood finalized for all intent and purposes. It is argued that the Judicial Officer had no authority to cancel registered sale deeds, which power exclusively vests in the Civil Court and remedy is available in terms of section 39 of the Specific Relief Act 1877. Learned counsel draw support from following decisions, reported as “Telecard Limited through Authorized representative Vs. Pakistan Telecommunication Authority through Chairman” (2014 CLD 415), “Muhammad Ashraf Khan and 2 others Vs. Muhammad Khan and 9 others” (2004 CLC 1133), “Amir Jamal and others Vs. Malik Zahoor-ul-Haq and others” (2011 SCMR 1023), “Muhammad Ashraf Tiwana and others Vs. Pakistan and others” (2013 SCMR 1159), “S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, M/O Housing and Works, Islamabad and others” (2013 SCMR 338), “Administrator, Thal Development through EACO Bhakkar and others Vs. Ali Muhammad” (2012 SCMR 730), “Nawab Syed Raunaq Ali, etc. Vs. Chief Settlement Commissioner and others” (PLD 1973 SC 236), “PCBL Vs. Zeenat Bibi and others” (2020 YLR 2421), “Director, Directorate-General of Intelligence and Investigation and others Vs. Messrs al-Faiz Industries (Pvt.) Limited and others” (2006 SCMR 129), “Shahida Bibi and others Vs. Habib Bank Limited

and others” (**PLD 2016 SC 995**), “Mrs. Sultana Ahmed Vs. Sindh Industrial Trading Estate Ltd through Managing Director and 2 others” (**2003 YLR 1760**), “Punjab Cooperative Board of Liquidation through Chairman Vs. Muhammad Ilyas” (**PLD 2014 SC 471**) and “Muhammad Hayat and 6 others Vs. Muhammad Nawaz (**1971 SCMR 414**).

5. Conversely, learned counsel appearing for the Cooperatives Board submits that power of delegation is specifically provided in the statute. Further submits that principle of finality / conclusiveness is not attracted since transaction was not completed, and otherwise no finality could be claimed in wake of fraudulent sale, which vitiates everything. Submits that ex-management acted illegally and without appreciating material irregularities, which surreptitiously approved sale against ridiculously low price and on shady terms. Submits that no question of limitation arises in terms of clause (f) of section 7 of the Act, 1993. On facts, it is alleged that failure to hold public auction was fatal and once advertisement was issued there was no option for sale through private treaty, subsequently. Learned counsel cites decisions reported as “MALIK MUHAMMAD ASHRAF. VS. DIRECTOR EXCISE AND TAXATION, MOTOR VEHICLE REGISTRATION AUTHORITY, Islamabad”

(2017 YLR 1136), “CH. LATIF AKBAR, FORMER FINANCE MINISTER, AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR MUZAFFARABAD and 8 others. Vs. AZAD GOVERNMENT OF THE STATE JAMMU AND KASHMIR through Chief Secretary and 10 others.” (PLD 2017 High Court (AJ&K) 32) ”.

6. Heard. Record perused.

Determination:

7. Historically viewed, the episode started with approval of sale of the property through private treaty / negotiated sale and ended upon the decision of annulment of transaction of sale by the Judicial Officer – the sticking point is whether power to annual the sale vests in the Judicial Officer and if transaction under reference could be re-opened or re-visited by the Cooperatives Board, after lapse of 14 years.

Upon hearing learned counsel following issues / questions are found relevant for the purposes of determination, within the scope of jurisdiction extended under section 11 of the Act, 1993.

(1) *What is the scope of jurisdiction under section 11 of the Act, 1993?*

(2) *What is the status of the Judicial Officer? and the scope / nature of the authority extended / exercisable?*

(3) *Whether transaction for disposal of the property could be reconsidered once sale deed(s) were executed? [Petition was submitted 14 years after grant of approval by the Cooperatives Board] – Is the doctrine of past and closed transaction(s) attracted.*

(4) *Whether the concept of finality / conclusiveness admits an exception in liquidation matters under the Act, 1993? In and under what circumstances defence of res-judicata is not available to the beneficiary(ies) of sale, not through public auction but private treaty?*

(5) *Whether Judicial Officer is empowered to cancel registered instruments [the sale deeds] or Civil Court(s) have the requisite jurisdiction.*

(6) *What is the effect of order of acquittal of the accused persons – beneficiaries of the sale - in case FIR No.15/14.*

(7) *Conclusion.*

[Determination of issues in sequential pattern hereby follows]

What is the scope of jurisdiction under section 11 of the Act, 1993?

8. Jurisdiction conferred under section 11 of the Act, 1993 is restricted to confirm, reverse or modify the act or decision complained. Section 11 of the Act, 1993 refers to the action / decision of the Cooperatives Board, Chairman or delegatee thereof, which indicates acknowledgment of the authority of the delegatee –

the Judicial Officer. It is expedient to reproduce section 11 of the Act 1993, which reads as,

11. Application to the Cooperatives Judge.—A person if aggrieved by an act or decision of the Cooperatives Board, may including the Chairman or his delegate may within a period of sixty days from the date of the act or decision] apply to the Cooperatives Judge, who may confirm, reverse, or modify the act or decision complained against, and make such order as he may think just in the circumstances of the case.

[Emphasis added]

Provision though not ideally worded but intent is evident upon reference to the delegatee of the Cooperatives Board, in context of Cooperatives Board's composition prescribed in law.

Jurisdiction exercised by the Co-operative Judge, being '*persona designata*', is not to be confused with the extent and breadth of judicial review jurisdiction. Co-operative Judge cannot determine or decide qua the constitutionality of any provision of law or declare it *ultra-vires* or give declaration of *intra-vires*, but nevertheless same is empowered to examine, adjudicate and determine the legality of any action or decision of the Cooperatives Board, including the Judicial Officer. In the context of present case, legality of transaction of sale of the property and validity of the decision of the Judicial Officer are subject matter issues and requisite jurisdiction is available. Jurisdiction assumed is in line

with the parameters defined in the case of “*Punjab Cooperative Board of Liquidation through Chairman Vs. Muhammad Ilyas*” (**PLD 2014 S.C 471**), wherein section 11 of the Act, 1993 was interpreted, whereby the scope of remedy was defined, and it was held that Cooperatives Board cannot agitate or vent grievance against the order of the Judicial Officer. Whether the delegator could object to the decision of the delegatee – this question is amplified while dealing with the next issue. I proceed to decide other issues.

What is the status of the Judicial Officer, scope and extent of authority extended / exercisable?

9. In essence, Judicial Officer is an alter-ego of the Cooperatives Board, authorized to exercise the authority of Cooperatives Board, i.e., ‘power of determination of rights and obligations of the persons, in the context of scheme of law - there is a rational in the nomenclature ‘*the Judicial Officer*’. Evidently, the distinction between the powers retained by the Cooperatives Board, and those delegated to the Judicial Officer is the key to understanding and resolution of the controversy. The Cooperatives Board, a body corporate, is the creature of a statute – section 5 of the Act, 1993. In addition to the powers exercisable by a Liquidator, under the Cooperatives Societies Act 1925, specific

powers are extended in terms of section 7 of the Act 1993 to the Cooperatives Board and its delegatee(s). Enactment extended powers to the Cooperatives Board to perform functions, discharge duties and enforce the obligations prescribed. The Cooperatives Board is empowered, by the legislature, to appoint official(s) for efficient performance of its functions under **clause (r) of section 7 of the Act, 1993**. Likewise, the Cooperatives Board is empowered to delegate any of its powers to any official and others in terms of **clause (s) of section 7 of the Act, 1993**. Appointment and delegation of powers upon the Judicial Officer is clear manifestation of the powers conferred under clauses (r) and (s), of section 7 of the Act, respectively. Argument that Judicial Officer cannot exercise powers, being delegatee of the Cooperatives Board, fails to appreciate the mandate of the law and specificity of power of delegation. It is pertinent to mention that powers conferred upon and exercised by the Judicial Officer – though an alter-ego / delegatee of the Cooperatives Board - are in the nature of *quasi-judicial* powers, distinguishable from the jurisdiction conferred and exercised by the Courts. Scope and extent of *quasi-judicial* jurisdiction is explained in the case of **"Government of the Punjab through Secretary, Schools Education Department, Lahore and others Vs. Abdur Rehman and others"** (**2022 SCMR 25**). It is

reiterated that in wake of specific empowerment / authorization by the legislature to the Cooperatives Board, qua appointing an officer and to delegate powers to said delegatee / officer, doctrine of *delegatus non potest delegare* is not attracted. And decisions referred by learned counsel for the petitioners are distinguishable, which do not address the proposition where power of delegation was provided in the law.

Power extended to the Judicial Officer, to act as delegatee of the Cooperatives Board, are not in the category of delegation of legislative powers. Notwithstanding conferment of *quasi-judicial* powers, the Judicial Officer cannot claim attributes and features of the Court. Performance of *quasi-judicial* functions by itself does not convert the Authority or Tribunal into a Court. Reference is made to the decision in the case of “Shafaatullah Qureshi Vs. Federation of Pakistan” (PLD 2001 Supreme Court 142). A forum / body exercising *quasi-judicial* powers is not obligated to strictly apply or follow the procedural law regime strictly – See the case of “S.A. Jameel Vs. Secretary to the Government of the Punjab, Cooperative Department and others” (2005 SCMR 126). Likewise, stringent application of principle of finality of decisions, as applicable qua the legal determinations by the Courts of law, is

not attracted with respect to the actions and decisions of the Cooperatives Board – previous approval of the Board to approve sale has to be examined in the context of distinctive attributes of *quasi-judicial* forum(s) and Courts and exceptions thereto in the context of scope of relevant enactment. Scope of powers conferred and exercisable by *quasi-judicial* forum(s) are respectively defined, which vary in the context of relevant law(s) and no fixed principles, relating to finality of decisions, could be applied in omnibus fashion. Summed up, status of the Judicial Officer is that of an agent, albeit an officer authorized by the Cooperatives Board to act as its delegatee, to exercise the power of determination qua the rights claimed and statutory obligations ought to be enforced. This peculiar situation in the context of delegation of powers, though with different nomenclatures / official designation(s), was subject of discussion in the case of *"Commissioner of Income-Tax, East Pakistan, DACCA Vs. Wahiduzzaman"* (**PLD 1965 Supreme Court 171**), where the Apex Court discussed the status of the Income Tax Officer qua the Income Tax Commissioner and observed that *'the position of the Income-tax Officer is not that of Judicial Tribunal deciding the matter between two contending parties, but rather that of a person acting on behalf of the'*

department who is charged with the duty of seeing that persons pay the amount of income-tax to which they are in fact liable'.

In the same vein, Judicial Officer is the delegatee of the Cooperatives Board, which is *inter alia* exercising delegated powers, including power to see if the transaction of sale is carried out in accordance with the law, and jurisprudence settled through judicial pronouncements in the context of sale through public auction, instead of negotiated / private treaty sales. I am unable to decipher any statutory bar or limitation qua the authority of the Cooperatives Board to reconsider its previous decision or action, in the context of allegation of fraud attributed to it. Decision or action of the Cooperatives Board, qua grant of approval in the context of present case, is a specie of reconsideration / re-assessment of earlier decision, in the context of specific allegations. And reconsidered opinion / re-assessment of the Cooperatives Board, when examined and considered by the Judicial Officer, on request, is a different ball game – this is the exercise of power of determination delegated to the Judicial Officer, which, undisputedly, is the power of the Cooperatives Board but delegated. This power of determination is acknowledged by law - in the context of reference to the delegatee in section 11 of the Act,

1993. Enactment, in absence of specific bar, envisages process of self-correction by the Cooperatives Board, internally and without outside help, when encountered with any unwarranted action or wrong decision – fraudulent sale for the purposes of these petitions. Any other interpretation, assuming principle of finality of the decision of the Cooperatives Board, would push the Cooperatives Board in blind alley – a *cul-de-sac* situation. The Cooperatives Board, when aggrieved of its action, likely to prejudice rights of any party, is entitled to raise question touching rights of the parties involved before the Judicial Officer; and Judicial Officer in such situation is required to exercise *quasi-judicial* powers, subject to the limitations and legal constraints and exceptions in the context of principles of finality, evolved, decision by decision. In terms of the ratio laid in the case of “Muhammad Ilyas” (supra), the Cooperatives Board or Chairman cannot avail the remedy of section 11 of the Act, 1993 against the order of the Judicial Officer, but an aggrieved party / person can. The delegator, i.e., the Cooperatives Board, could object to the decision of the delegatee – the Judicial Officer. This is the rational and spirit of the Act, 1993 – and letter of the law reaffirmed the legislative intent. Petitioners misconstrued the position of the Judicial Officer. Judicial Officer and the Cooperatives Board are not mutually exclusive entity(ies)

in the context of division of powers, though former being the alter-ego of latter, but upon distribution, powers available with the Cooperatives Board and those delegated may be termed mutually exclusive, for the purposes of achieving the objectives and purpose of the law. Section 11 of the Act, 1993 acknowledges the status of delegatee, in the context of exercise of delegated power, that is the power of determination of rights claimed against the Cooperatives Board.

There is another angle to it. How petitioners could object to the factum of delegation and assumption of jurisdiction by the Judicial Officer when the first petitioner had approached the delegatee by instituting petition seeking various reliefs. Hence, objection to the jurisdiction, post-adverse order, is devoid of *bona fides* and otherwise offensive to the doctrine of acquiescence / estoppel.

Whether transaction for disposal of the property could be reconsidered once sale deed(s) were executed? [Petition was submitted 14 years after grant of approval by the Cooperatives Board] – Is the doctrine of past and closed of transaction(s) attracted.

10. Learned counsel for petitioners objected to the assumption of jurisdiction by the Judicial Officer on the premise that sale transaction, subject matter of sale deeds, was a concluded matter, which cannot be re-opened after lapse of 14 years. Argument is inherently flawed for two primary reasons. Firstly, sale approved on 22.03.2004 is still incomplete – land measuring 06-Kanals & 10-Marlas is not yet transferred. This provides continuing cause of action. Successful bidder had itself sought enforcement of part performance. Hence, plea of past and closed transaction is patently misconceived.

Secondly, there is no barring provision in the Act, 1993 that restricts the Cooperatives Board from re-visiting transaction of sale upon evidence regarding collusive assistance of ex-management in supporting sale, otherwise replete with illegalities and irregularities, establishing conspicuous fraud, from start to the end. How could irreversibility of a fraudulent action or decision be blocked. Is this logical. Law, to survive, has to be logical. Option of reconsideration of fraudulent act cannot be obstructed – scope of authority of the Cooperatives Board was elucidated in previous paragraph. Fraud vitiates and nullifies sale, admitting no objection regarding limitation, finality of decision or plea of past and closed

transaction. Extent of applicability of doctrine of *res-judicata* has to be examined in the context of peculiar circumstances and scope of duties and responsibilities assigned to the Cooperatives Board, being fiduciary-cum-trustee of the claimants [affectees of cooperative societies' fraud]. Effect of incidence of fraud, in the context of doctrine of *res-judicata* is examined in latter paragraphs.

11. Seriousness of the request of the Cooperatives Board, to the Judicial Officer, seeking reconsideration of transaction of sale, despite grant of approval previously by the then management, depends upon the fact that how potently, effectively and convincingly the elements of fraud and deception are established. Brief recapitulation of the facts, proving fraud, is essential to highlight prejudicial procedural lapses, substantive flaws and instances of fraudulent / deceptive and surreptitious conduct, throughout. Most fatal factor was holding of negotiated sale through private treaty, without any advertisement. Element of competitiveness, which is ensured through Public auction, was lacking. No approval was procured for sale through private treaty. No pre-sale approval of the Cooperatives Board was procured, settling the terms and conditions of sale – conventionally followed and one of the material condition of prescribing time for payment

of 75% of bid price was missing and concession was abused to the extent that even after lapse of more than three years 75% of bid price remained unpaid. Sale was approved, two days after so-called bidding, by the Cooperatives Board and no discussion qua conduct of negotiated bidding and terms and conditions of sale was held – one liner approval exposed whatever credibility qua sale was claimed. Restricted bidding amongst three bidders was carried out [one of them had shown inclination to purchase property through letter in February 2004, there was no revelation that how other two participants got clue of conduct of negotiated sale]. There was no explanation or reasoning that why the mechanism of public auction was abandoned and instead process of negotiated sale was adopted – what prompted the then management to take paradigm shift: abandoning mechanism of public auction in the midstream and alternatively preferring sale by private treaty. It is apparent from the terms of previous advertisement that property would be transferred upon payment of full bid amount, which condition was flouted while conducting subject matter negotiated sale. Sale deeds were executed on the instructions of successful bidder, in the names of the nominees, on 05.07.2004 without ensuring payment of 75% of bid price. There was no explanation that why was this concession extended to successful bidder? Excuse put forward by

the petitioners that some litigation was pending, and full payment was delayed since the Cooperatives Board did not have the possession, and otherwise not ready to transfer the remaining land of 6-Kanals and 10-Marlas, may have had relevance with respect to voluntary sales, between willing buyer and seller, but not in matters, where statutory liquidators / public authorities are tasked to sell public assets / properties. There was no justification for extending time for payment of 75% bid price. Was this concession agreed as one of the condition of sale? Non-payment of 75% of bid price even stretched beyond three years, though sale deeds were procured within three months of the approval by the Cooperatives Board.

There is another aspect. Segregation of the property into unencumbered or encumbered category was neither agreed nor forming part of sale transaction. Facility of allowing extension qua payment was exclusive for the successful bidder, and other bidders were neither privy to such concession nor such condition was disclosed at the time of bidding. Plea and concept of partial enforcement of sale is alien to public sales. In the context of an unconcluded transaction, the Cooperatives Board is entitled to seek re-opening of fraudulent sale, which is not *functus officio*, and no

such state of redundancy was envisaged upon purposive reading of the Act, 1993. Doctrine of *functus officio* is attracted once the matter / task has been finalized and accomplished and not otherwise. Principle of *functus officio* was discussed in the case of *“Kh. Muhammad Fazil Vs. Mumtaz Munawar Khan Niazi (deceased) through L.Rs and another”* (**2024 SCMR 1059**), and application whereof was qualified till the task is finalized or accomplished. Question of fraud was not subject matter of the facts involved in said case. In instant case approval was extended by the then management and determination of legality of approval, in the capacity of *quasi-judicial* authority, by the delegatee was not pleaded or involved. Whether doctrine of *functus officio* could apply to the Judicial Officer? This question has to be examined in the context of facts of each case and may not be relevant for the purposes of present controversy, which question and will be decided in any other case, involved and raised.

12. I take up the plea of doctrine of *res-judicata* – which is the subject of issue at serial (4). Restrictions in terms of section 11 of Code of Civil Procedure 1908 have had to be read and interpreted with reference to the Court. The Cooperatives Board is competent to seek reconsideration of approval to sale. The Cooperatives

Board is not the Court, hence not obligated to adhere to the provisions of the Evidence Act and Code of Civil Procedure or subject to constraints provided therein. *"Bhag Mal Vs. Muhammad Sharif and 2 others"* (**1991 SCMR 2118**), relevant portion is reproduced hereunder,

"This Court while holding that the Settlement authorities do hold quasi-judicial proceedings, have not clothed them with the status of "Courts" so as to apply the provisions of the Evidence Act or C.P.C. to the proceedings before them except to the extent permitted / specified by the law. See Dr. Niaz Muhammad Mann v. Sh. Muhammad Ahmad (1988 SCMR 1016); Nawab Din v. Member, Board of Revenue (Settlement and Rehabilitation) Punjab, Lahore and 4 others (PLD 1979 SC 846). "

13. Doctrine of *res-judicata* is not applicable with such strictness, as applied with respect to judicial decisions by the Courts, but nonetheless, general principles in the context of administration of justice needed consideration, which principles are discussed in the case of 'WAHIDUSZAMAN' (supra), relevant portion is reproduced hereunder,

"Having examined the decision of the Appellate Assistant Commissioner proceed to consider the principle applicable for determining the bar which may be created by a previous decision of an Income-tax Authority. Where there is no statutory provision barring reopening of a matter the applicability of the principle of res judicata depends on the necessity of giving finality to litigation and the injustice of vexing a person twice in respect of the same matter and these being only general considerations relating to administration of justice with no technical and defined limits the applicability of res judicata in such cases will be

governed by considerations arising with respect to the particular statute under which a matter has been determined the dominant consideration always being that the cause of justice be advanced. The principle of res judicata can be applied with strictness to cases before Courts or before Judicial Tribunals where there are before the Court or Tribunal two contesting parties each trying to substantiate its own case.....”

14. No constraints are available in law to restrict the Cooperatives Board from reconsidering the transaction, manifesting fraudulent conduct and deceptive silence. Though unnecessary to indicate but reference to established jurisprudence is must; Fraud is an exception to the doctrine of *res-judicata*. Right of review of any order / decision of the Court or *quasi-judicial* tribunal is not available in the absence of statutory provision but cases of fraud, mala fide and defect of jurisdiction stand on different footing - *See the case of “Muhammad Sharif through legal heirs and 4 others Vs. Sultan Hamayun and others” (2003 SCMR 1221)*. Straitjacket application of doctrine of *res-judicata* is unwarranted in view of the facts involved and mandate of special law. There is an exception to the doctrine of *res-judicata* – application thereof can legally be stretched to this case. Finality of decision attained cannot be re-opened unless some fraud, mistake or lack of jurisdiction is pleaded or established, as observed in the case of *“Muhammad Raqeeb Vs. Government of Khyber*

Pakhtunkhwa through Chief Secretary, Peshawar and others”
(2023 SCMR 992).

15. In view of the aforesaid, the Cooperatives Board committed no illegality by moving application with the Judicial Officer for reconsideration of previous approval and rectification of gross illegalities committed qua fraudulent sale of the property.

Whether Judicial Officer is empowered to cancel registered instruments [the sale deeds] or Civil Court(s) have the requisite jurisdiction.

16. The objection that Judicial Officer lacked power to cancel sale deed(s) is misconceived. Sale deeds were executed in consequence of the approval by the Cooperatives Board and issuance of NOCs. Once it is found that sale is fraudulent and approval extended was without lawful basis, contrary to the settled jurisprudence and acknowledged prudence qua public auction(s), cancellation of sale deeds is a mere consequence of annulment of a fraudulent sale – a specie of consequential relief. Provisions of the Act 1993 are clear. The Judicial Officer, upon being called upon, had the authority to determine the legality or illegality of the approval of disposal of land, and such determination cannot be assigned to the Civil Court, in view of the mandate of the Act,

1993. Incidence of sale deeds, claimed to have had been executed in favour of third parties, by or on behalf of undesirable societies is different from the nature of the sale deeds, under reference, which were the consequence of sale carried out by the then management. The case of “*Zeenat Bibi and others*” (supra) is distinguishable and in said case sale deed was not executed in pursuance of any alleged sale by the Cooperatives Board, and observations were recorded in the context of absolutely different set of facts. Hypothetically thinking, sale deed registered pursuant to the issuance of sale certificate by the Court(s) executing money-cum-mortgage decree(s), would be ineffective and had no legal value once auction sale stood annulled. Whether auction purchaser could object to the jurisdiction of the executing court on the premise that once sale deed was executed only the Civil Court or Registrar of documents had the jurisdiction to cancel sale deeds, procured pursuant to fraudulent sale(s). Once foundational structure is found and declared dilapidate; declaration of instability of the building is a logical and obvious outcome – and no such separate declaration needed. In the circumstances, no illegality was committed by the Judicial Officer to declare a voidable sale ineffective and of no legal effect, including annulment of all subsequent steps / actions.

What is the effect of order of acquittal of the accused persons – beneficiaries of the sale - in case FIR No.15/14.

17. Acquittal of the petitioners in criminal case have had no bearing on the reconsideration of the alleged negotiated sale, nor could it extend any immunity or protection to the transaction, otherwise found fraudulent, deceptive and prejudicial to the interests of the claimants. Claim of *bona fide* purchasers is discredited in wake of the facts narrated – sale deeds were executed at the instructions of successful bidder, who got executed sale deeds in favour of its nominees, and persistently followed the claim and remained part and parcel of deceptive / fraudulent sale, and actual beneficiary thereof. Requisite ingredients for claiming protection under the principle of bona-fide purchaser were neither pleaded nor any document provided to show what due diligence was carried before purchase.

Conclusion / Re-iteration of elements establishing fraud:

18. Absence of policy guidelines for carrying-out sales at the time of transaction under reference is insignificant. There is no plausible answer that policy of public auction, once adopted but why then dropped in the case of this particular sale. No *force*

majeure situation pleaded. There is no cavil that re-opening of transaction of sale requires substantive and convincing information qua fraud. To create an exception to the principle of finality, fraud must be established. Facts adequately proved fraud, and the Judicial Officer rightly exercised the jurisdiction to annul the sale. Facts, strikingly, establishing fraud needed to be amplified and focused for the purposes of confirming the decision of the Judicial Officer, in terms of section 11 of the Act, 1993. Once bid lower than the base price was rejected there was no justification to accommodate first petitioner, after 10 months, by entertaining offered price of Rs.221.000 Million, which was lower than the valuation of the property discussed in the meeting of 30.10.2003. Absence of time-limit for deposit of 75% of bid price is fatal. There was no explanation that why ex-management proceeded to extend approval without settling of terms and conditions of sale. Change of heart from the decision of selling through public auction to alleged sale by way of negotiation / private treaty remained a mystery. No explanation provided to justify an exception. One cannot sweep these gross illegalities under the carpet. Facts narrated unequivocally establish that the then management erred while granting approval previously, in wake of blatant illegalities and irregularities, crucial being allowing execution of sale deeds

hastily without adhering to any schedule for payment of 75% of the bid price. Hence, grant of previous approval suffers from wrongful exercise of authority. Guidance is solicited from decisions in the case of “Fazli Hakeem and another Vs. Secretary State and Frontier Regions Division Islamabad and others” (**2015 SCMR 795**) and “Utility Stores Corporation of Pakistan Limited Vs. Punjab Labour Appellate Tribunal and others” (**PLD 1987 SC 447**). Ex-management failed to act in accordance with the law and where it went against the law, such act is construed as an act outside the jurisdiction.

19. In view of the above, it is established that ex-management showed willful blindness, selective enforcement, unjustified benevolence while extending unwarranted concessions to the successful bidder. No rights could be claimed with reference to fraudulent sale. Judicial Officer denied retention of ill-gotten gains and declared the sale deceptive, fraudulent and contrary to the established jurisprudence, deprecating private / negotiated sales in substitution to the public auction.

Judgments referred on behalf of the petitioners are distinguishable, which are authorities in the context of facts involved therein. Reliance to the decision in the case of “Nawab

Syed Raunaq Ali, etc. Vs. Chief Settlement Commissioner and others” (**PLD 1973 SC 236**) is misconceived and without appreciating the distinction drawn in latter decision, reported as “The Chief Settlement Commissioner, Lahore Vs. Raja Mohammad Fazil Khan and others” (**PLD 1975 Supreme Court 331**), relevant portion of the decision is reproduced,

It seems to us that while there are cases in which the power of a Court, or tribunal of special or limited jurisdiction to suo motu recall or review any order obtained from it by fraud has been doubted, yet the preponderance of judicial authority is in favour of conceding such a power to every authority, tribunal or Court on the general principle that fraud vitiates the most solemn proceedings, and no party should be allowed to take advantage of his fraud. There can be no rational basis for discriminating between the powers available in this behalf to a Court of general jurisdiction and a court or tribunal of special or limited jurisdiction, for in either case the effect of fraud is the same, and the duty to undo that effect must lie on the authority on which fraud is practised. We are, therefore, of the view that even a tribunal of limited or special jurisdiction has the power to suo motu re-call or review an order obtained from it by fraud.

However, in the matter of collateral impeachment of such an order, the position appears to be different. Whereas, a superior Court or a Court of general jurisdiction has the power to disregard, as a nullity, an order obtained by fraud or collusion, or on the ground of want of jurisdiction in the Court or authority making it, such a power is not available to a tribunal which either acts in an administrative capacity, or enjoys only a special or limited jurisdiction in a defined sphere. As this question has only recently been examined by this Court at some length in Raunaq Ali v. Chief Settlement Commissioner (P L D 1973 S C 236) it is not necessary to go over the same ground again, and it would suffice to state that the conclusion reached in that case to the effect that where finality is given to the decision of a certain body which has also the jurisdiction to decide finally, facts upon which its own jurisdiction is founded, that decision cannot be called in question in any other collateral proceeding by another tribunal or body of limited jurisdiction.

[Emphasis supplied]

Principle of finality and factum of challenge thrown to an order through collateral proceedings was discussed in the case of *Nawab Syed Raunaq Ali, etc.* (supra), which principal otherwise was discussed in different context - nature of power exercised by certain officers was discussed and observed that the officer was merely a reporting agency and was not a court or *quasi-judicial* authority in any sense. Question of challenge through collateral proceedings does not arise in this case.

20. In view of the above, I hereby, confirm the order of the Judicial Officer of 01.10.2021. Petitions stand dismissed.

(Asim Hafeez)
Cooperative Judge

Decision announced in open Court on 20th September 2024 and judgment signed on _____.

Cooperative Judge

Approved for reporting.

Cooperative Judge

M. Nadeem/*