

Stereo.HCJDA 38.

Judgment Sheet

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

....

WRIT PETITION NO.2826-R of 2022

SAMINA NAZ and 5 others

Versus

EVACUEE TRUST PROPERTIES BOARD, Through its
Administrator Northern Zone, Evacuee Trust Property Board, 7th
Road, Rawalpindi and another

JUDGMENT

Date of hearing: 11.10.2023

Petitioners by: Mr. Mujeeb ur Rehman Kiani, Advocate.

Respondent No.1 by: M/s Muhammad Siddique Awan, Additional Attorney General for Pakistan, Hafiz Ahsan Ahmed Khokhar, Sh. Iftikhar Ahmad and Syed Najam ul Hassan Hashmi, Advocates/Legal Advisors.

Respondent No.2 by: Nemo.

MIRZA VIQAS RAUF, J. The matter under consideration has a chequered history, which starts with the allotment of property No.B.2(b) Liaquat Market, Iqbal Road, Rawalpindi (hereinafter referred to as “subject property”) to the predecessors-in-interest of the petitioners namely Raja Ali Zaman and Raja Muhammad Banaras jointly on 16th May, 1964. As per claim of the petitioners, “subject property” was originally in dilapidated condition and following the allotment, their predecessors-in-interest reconstructed ground floor in the year 1972 after getting permission from the respondent-department and the approval of the building plan from

the erstwhile Municipal Corporation, Rawalpindi. It is claim of the petitioners that respondent-department then sold out the “subject property” through registered sale deed to their predecessors-in-interest on 06th June, 1992 with the permission of the Federal Government through letter No.5(20)/77/ETP dated 26th February, 1992. After the execution of sale deed the predecessors-in-interest of the petitioners constructed first and second floor consisting of shops, stores and twelve wash rooms, after getting building plan approved from the erstwhile Municipal Corporation, Rawalpindi. It is asserted that the sale deed was called in question by the respondent-department through a suit before the Civil Court, which was initially dismissed by the trial court as well as the appellate court, however, in Civil Revision No.373 of 2008 filed by the respondent-department judgments of both the courts were reversed by way of judgment dated 18th January, 2022. The petitioners being aggrieved filed Civil Appeal No.668 of 2022 before the Supreme Court of Pakistan, which too was dismissed by way of judgment dated 04th August, 2022. The petitioners then filed a Civil Review Petition No.588 of 2022, which has been dismissed during the pendency of this petition by way of order dated 06th July, 2023. The grievance of the petitioners is that the respondent-department without any lawful authority, jurisdiction and without notice sealed the “subject property” and started entering into lease agreements with their tenants, which act is illegal and not operative upon their rights.

2. On this petition notice was issued to the respondent-department by way of order dated 10th October, 2022 and report and parawise comments was requisitioned. In its report respondent No.1 stated that the “subject property” vests in the Evacuee Trust Property Board in terms of the Evacuee Trust Properties (Management and Disposal) Act, 1975 (hereinafter referred to as “Act, 1975”). It is also mentioned in the report that one Ali Zaman predecessor-in-interest of petitioners No.1 to 3 was previously occupying the “subject property” as tenant but he succeeded in preparing a forged sale deed No.2477 dated 06th June, 1992, which

was questioned through a civil suit and suit was ultimately decreed in revision petition before this Court. The petition is resisted by the respondent-department on multiple grounds.

3. Learned counsel for the petitioners contended that suit instituted by the respondent-department was consisting of multiple reliefs. He added that though suit was ultimately decreed but decree was never put to execution process. Learned counsel emphasized that once the respondent-department opted to invoke the jurisdiction of Civil Court and succeeded in obtaining a decree it cannot then advert to the provisions of the “Act, 1975”. It is argued with vehemence that since decree was not put to execution in terms of Order XXI of the Code of Civil Procedure (V of 1908), so the respondent-department is precluded either to take over the possession from the petitioners or to seal the “subject property”. Learned counsel submitted that respondent-department is debarred from taking any punitive action by invoking the provisions of the “Act, 1975” on account of doctrine of election. In support of his contentions, learned counsel placed reliance on TRADING CORPORATION OF PAKISTAN versus DEVAN SUGAR MILLS LIMITED and others (PLD 2018 Supreme Court 828), LIAQAT ALI KHAN and 10 others versus CHIEF SETTLEMENT COMMISSIONER, MEMBER (JUDICIAL-V) and 6 others (2021 YLR 349) and IRFAN ULLAH KHAN versus PROVINCE OF THE PUNJAB and others (2020 CLC 594).

4. Conversely, learned Law Officer submitted that after passing of the decree in favour of the respondent-department, which attained finality with the dismissal of review petition, the petitioners have left with no right whatsoever in the “subject property”. It is contended that “subject property” is an evacuee property and the department is vested with the authority to proceed against the petitioners under Section 25 of the “Act, 1975”. Learned Law Officer while making reference to the scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 submitted that no right is left with the petitioners even *qua* the superstructure raised on the “subject property”.

5. Learned Legal Advisor while adopting the arguments of learned Law Officer added that the petition is tainted with *mala-fide* and the petitioners are lingering on their unauthorized possession without any lawful authority. Reliance is placed on ATIF RIAZ versus FEDERATION OF PAKISTAN through Secretary Ministry of Religious Affairs, Islamabad and 6 others (PLD 2023 Lahore 536).

6. Heard. Record perused.

7. The “subject property” was owned by the Evacuee Trust Property Board, which was initially rented out to Raja Ali Zaman and Raja Muhammad Banaras, predecessors-in-interest of the petitioners by the Deputy Commissioner/Chairman defunct Evacuee Trust Committee *vide* order dated 16th May, 1964. During the subsistence of tenancy, the predecessors-in-interest of the petitioners approached the then Federal Minister for social welfare and rural development and solicited outright sale of the “subject property” in their favour. The Federal Minister assented to the request and accorded approval for sale of the suit land *vide* memorandum dated 22nd March, 1977. The Federal Government was when made aware of the said memorandum, it issued another memorandum dated 13th May, 1977 and restrained the Evacuee Trust Property Board from finalizing the deal. The matter though came to an end but the Deputy Administrator Evacuee Trust Property Board, Rawalpindi executed a sale deed on 06th January, 1992 in favour of the predecessors-in-interest of the petitioners. Being aggrieved the respondent-department instituted a suit for declaration and cancellation of sale deed, permanent and mandatory injunction. Suit was initially dismissed by the trial court *vide* judgment and decree dated 08th January, 2002, which was though questioned in appeal before the learned Additional District Judge, Rawalpindi but appeal too was dismissed *vide* judgment and decree dated 17th January, 2008. It would not be out of place to mention here that accompanied cross objections on behalf of the petitioners with regard to findings on issue No.1 were allowed. The respondent-department then assailed the findings of the courts

below before this Court in Civil Revision No.373 of 2008, which was accepted by way of judgment dated 18th January, 2022 and suit was decreed as prayed for. The petitioners being dissatisfied from the said judgment filed Civil Appeal No.668 of 2022 before the Supreme Court of Pakistan but same was dismissed through judgment dated 04th August, 2022. The petitioners then filed Civil Review Petition No.588 of 2022, which was dismissed by way of order dated 06th July, 2023 i.e. during pendency of this petition. This makes the matter relating to the status of the property and rights of the parties appertaining thereto very clear and simple. In short it can be observed without even a hint of doubt that the “subject property” vests in the Evacuee Trust Property Board and the petitioners have left with no right whatsoever to claim *qua* the “subject property”.

POINT FOR DETERMINATION

8. In the wake of above discussion, the sole point which requires determination of this Court is as to ***“whether the respondent-department can resort to the provisions of the “Act, 1975” instead of invoking the provisions of Order XXI of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “C.P.C.”)?”***

9. “Act, 1975” was promulgated to provide for the management and disposal of evacuee properties attached to charitable, religious or educational trusts or institutions. Section 2(d) of the “Act, 1975” defines “evacuee trust property” as under :-

“(d) “Evacuee trust property” means evacuee trust properties attached to charitable, religious or educational trusts or institutions or any other properties which form part of the Trust Pool constituted under this Act.”

In terms of Section 6 of the “Act, 1975” evacuee trust property shall vest with the Federal Government. As already observed that “subject property” was an evacuee trust property, however, it was sold out to the predecessors-in-interest of the petitioners on the recommendations of the Federal Minister but without approval from the competent authority. Sale was challenged through suit

which was though initially dismissed but in revisional jurisdiction this Court by way of judgment dated 18th January, 2022, while setting aside the concurrent findings of the courts below decreed the suit as prayed for. The petitioners though challenged the judgment before the Supreme Court of Pakistan in Civil Appeal No.668 of 2022 but remained unsuccessful. The relevant extract from the same is reproduced below :-

“13. On being confronted with the question as to whether ETPB’s board had ever moved a resolution to the effect that the suit property is to be sold to the Appellants, the Learned Counsel for the Appellants was unable to point out any document which could reasonably lead us to conclude the existence of such a resolution. Even otherwise, no resolution from the ETPB’s Board sanctioning sale of the suit property to the Appellants was ever placed on record. There is also nothing on the record to suggest that the concerned Minister had ever directed the ETPB’s board to deliberate on the matter and pass a resolution concerning the sale of the suit property to the Appellants. If there was never any resolution, then there was never any sanction of the sale either. If there was never any sanction, then there could have been no approval from the Federal Government for sale of the suit property. If there was never any approval from the Federal Government, then the Sale Deed itself would be illegal as well as ineffective owing to the reason that in light of Article 173 of the Constitution, the President would not be deemed to have accorded approval for the sale of the suit property through the Federal Government. The High Court had therefore rightly concluded that being bereft of its executive nature, the Sale Deed had been obtained without the approval of the Federal Government and was therefore illegal and *void-ab-initio*.”

Civil Review Petition No.588 of 2022 filed by the petitioners was also dismissed by way of order dated 06th July, 2023. Since sale in favour of the predecessors-in-interest of the petitioners was *void ab-initio*, so status of the “subject property” remained as an evacuee property right from the first day and it has never lost the characteristic of evacuee property for a single moment.

10. There is no cavil to the proposition that in ordinary course a decree holder can only get the fruits of the decree by putting it to the test of execution in terms of Order XXI of “C.P.C.” but on account of nature of the property being evacuee it always would remain a subject of the “Act, 1975”. Section 25 of the “Act, 1975” authorizes the Chairman, Administrator, Deputy Administrator and Assistant Commissioner to eject any person in possession or

occupation of any evacuee trust property whose possession or occupation is unauthorized. Section 31 of the Act *ibid* provides an overriding effect to the “Act, 1975”. Needless to reiterate that when once it is declared by the court of competent jurisdiction that the “subject property” is an evacuee property and the sale in favour of the predecessors-in-interest of the petitioners was *void ab-initio*, status of the petitioners being successors-in-interest of the purported vendees becomes that of illegal occupant and trespassers, paving way for respondent-department to invoke the penal provisions of the “Act, 1975”.

11. So far contention of learned counsel for the petitioners that the respondent-department is precluded to invoke the provisions of the “Act, 1975” on the basis of doctrine of election as is elaborated in the *Trading Corporation of Pakistan’s* case *supra*. It is observed that though a civil suit was instituted by the respondent-department seeking annulment of the sale deed *qua* “subject property” which was ultimately decreed but as the status of the “subject property” remained as an evacuee property even with the execution of sale deed, so no clog can be imposed upon the respondent-department to invoke the provisions of the “Act, 1975”.

12. Adverting to the question as to the effect of decree not put to execution process, it is observed without any hint of doubt that ownership of a decree holder remained intact even if the decree is not put to execution. As already observed that the “subject property” is an evacuee property, so it vests with the Federal Government as per Section 6 of the “Act, 1975”. While dealing with similar proposition in the case of *ARSHAD ALI and 3 others versus SARTAJ and 8 others* (2016 YLR 127) the Division Bench of Peshawar High Court observed as under :-

“6. The only grievance of the petitioners/plaintiffs is that the decree dated 20/09/2003 passed in civil suit No.28/1 in favour of respondents/defendants Nos.1 and 2 could have been put to execution/implementation by respondents/defendants Nos.1 and 2 within a period of three years, thus the same has lost its legal effect and there is no subsisting decree in their favour and the said decree in no circumstances could be equated with the title decree conferring any title in favour of respondents/

defendants Nos.1 and 2. Since the aforesaid decree has been passed just to enforce the agreement to sell earlier executed in favour of respondents/ defendants Nos.1 and 2 through execution of another registered deed in their favour. Since the aforesaid registered deed has not been executed till date in their favour, therefore, the respondents Nos.1 and 2 cannot be held as owners of the disputed property and until the registered deed has not been executed in favour of respondents/ defendants Nos.1 and 2 on the strength of court decree dated 20/09/2003, the ownership/title shall remain vested in the previous owners and the respondents/ defendants cannot claim any title of the disputed property. Learned counsel for the petitioners/plaintiffs bitterly argued that by passing a prescribed time of six years, right conferred on the decree holder, if any, ipso facto stood extinguished. The said argument has no force. The decree dated 20/09/2003 passed in favour of respondents Nos.1 and 2 on the basis of compromise and the moment, defendants/ judgment debtors in that suit made a consent before the trial Court, they have divested of all their rights and liabilities and the rights were transferred in favour of the respondents Nos.1 and 2/decree holders for all purposes. Ownership of the decree-holder remains intact even if the decree is not put to execution. Reference may be made to "Muhammad Latif v. Bashir Ahmad and 7 others" (2004 CLC 1010). We are also fortified, in our view by "Mahboob Khan v. Hassan Khan Durrani" (PLD 1990 Supreme Court 778). In a case "Sher Muhammad through legal heirs v. Member (Judicial) Board of Revenue and 4 others" (2010 MLD 187), it was also held, "Such decree was not required to be put to execution---ownership of decree-holder would remain intact even if such decree was not put to execution". In another case "Mst. Hussain Bibi v. Siraj Din" (PLD 1998 Lahore 548) it has been held that, "Limitation Act merely bars the remedy or assistance of Court for execution of the decree but does not extinguish the right or title based on the decree""

In the case of *ANJUM and 2 others versus Mst. SUFAIDAN and 3 others* (PLD 1989 Lahore 103) this Court laid down the following principles:-

“Two points arise for consideration. First is in regard to possession of the plaintiff and second as to the effect of non-execution of decree passed in favour of the plaintiff on 18-1-1961. Plaintiff gave oral evidence to support her possession over the land-in-dispute. She also gave evidence that some portion of the land which was under mortgage was got redeemed by her and that the tenants paid her the rent in respect of the land comprised in their tenancies. In defence, Adam defendant No.2 appeared as D.W-1 and deposed that possession of the land was with the mortgagee but admitted that defendants were not in possession of the land-in-dispute. Upon oral evidence and the entries existing in the revenue records, possession of the plaintiff over the land-in-dispute was established beyond dispute. Solitary statement of the defendant was insufficient to discredit the overwhelming evidence existing on the plaintiff's side. It is not denied that in the earlier round of litigation, her title to the land-in-dispute was

acknowledged by the Courts and she was found entitled to recover possession of the land in accordance with her entitlement. In Mt. Indar Devi v. Kirpa Ram and another AIR 1930 Lah. 803, it was observed that if a party in whose favour a decree for possession was passed went into possession without intervention of the Court, its possession would be ascribed to the decree. It is well-settled that if a party is in possession of the property, execution of the decree was not required at all and the decree though not executed yet was alive and effective qua the rights acknowledged by it. Limitation bars only the remedy and does not extinguish the right itself unless the case is covered by section 28 of Limitation Act, 1908. A person in possession of the property, has obviously no need to sue execution for possession thereof. Land-indispute is comprised in numerous Khasra numbers. Of it, part is in possession of the plaintiff and the rest is shown to be in possession of other recorded co-owners. Defendants are not in possession. Plaintiff is a co-sharer and even if she is found to be in possession of land less than her entitlement in the joint Khata, her right to the property cannot extinguish because the possession of a co-owner is, in law, the possession of all the co-owners. Their rights cannot be extinguished by reason of the possession of the co-owner unless there is exclusion of the other co-owners for the statutory period. No such exclusion is established in the case. Upon the existing records, petitioners had no right to deny the entitlement of the plaintiff and cause interference with her possession over the land-in-dispute. No case for interference has been made out. Second appeal is properly concluded by findings of the Courts below. In result, appeal fails and is dismissed with costs.”

To the above effect reference can also be made to Mst. HUSSAIN BIBI versus SIRAJ DIN (PLD 1998 Lahore 548) wherein it is held as under :-

“6. There is considerable force in the arguments raised by the respondent's learned counsel. The pre-emption decree was passed in favour of the respondent on 25-2-1974 in the presence of the petitioner's learned counsel. On that date the petitioner's evidence was closed under Order XVII, rule 3, C.P.C. because she had failed to produce her evidence. She was aware of the decree but did not challenge it in the higher legal forum. Therefore, the decree attained finality and the respondent became lawful owner of the disputed land. Thereafter, the respondent became entitled to claim physical possession of the land. The respondent approached the Court for execution of the decree on 21-6-1982 which was rightly dismissed as being time-barred on 26-3-1986. Prior to that the respondent had also filed a suit for recovery of mesne profits on 17-12-1983. The proposition of law is well settled that the Limitation Act merely bars the remedy or assistance of Court for execution of the decree but does not extinguish the right or title based on the decree. In the Full Bench judgment of Allahabad High Court in the case of Ram Karan Singh and another, it was held that the Limitation Act did not necessarily extinguish the right, though it certainly placed a bar against the remedy by suit; that in certain cases it provided creation of

rights by prescription and the corresponding extinction of rights (under section 28 of the Limitation Act). In the case of Bala Kushaba, it was held that where right to property had been established by a decree for possession the barring of the right of execution did not extinguish the right and only the remedy had become barred. In the case of Muhammad Fazal, it was held that where an application for execution of decree for possession had become barred by limitation, it did not ipso facto extinguish right and title of the applicant in respect of the property. In the case of Ideal Life Insurance Company Ltd., it was held:-

"Rights and remedies are two different aspects of a case and if the remedy is barred the right is not automatically extinguished."

In the case of The District Board, Banaras it was held:-

"The case is different where immovable property is involved and a right to claim possession becomes time-barred. In that event the title to the property itself is extinguished by virtue of section 28 of the Limitation Act. But in the case of movable property the right to sue itself is extinguished but the title does not cease to exist. In this view of the matter it is possible to decree the claim for compensation while holding that the claim for declaration is time-barred."

In the case of MUHAMMAD LATIF versus BASHIR AHMED and 7 others (2004 CLC 1010) this Court in somewhat similar circumstances held as under :-

"7..... Though executability of the decree in favour of respondents Nos. 1 to 7 dated 28-9-1989 was not matter, before the two Courts below because it will be decided by the Executing Court, before whom the execution petition, if any, ultimately comes, yet it is a settled phenomena that rights conferred by the decree, not brought for execution, remain intact. In this manner, if the decree, dated 28-9-1989 declared respondents Nos. 1 to 7 owners of the land in dispute, their ownership will not extinct only due to non-execution of the said decree....."

Guidance in this respect can also be sought from ALI AHMAD AND ANOTHER versus MUHAMMAD FAZAL AND ANOTHER (1972 SCMR 322).

The petitioners thus cannot take refuge under the doctrine of election to protect their possession, which is not only unauthorized but illegal.

13. It is also one of the contentions of learned counsel for the petitioners that the petitioners are entitled for the superstructure built upon the "subject property", suffice to observe that in terms of clause 18-A(5) Chapter VI-A of the scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 structure

raised on the evacuee trust property vest in the Board. The contention is thus highly misconceived.

14. It appears that the petitioners after being unsuccessful in the first round arising from the civil suit has now devised a mechanism to protect their illegal and unauthorized possession upon the “subject property” by filing this petition. The petitioners have no right whatsoever in the “subject property” and filing of this constitutional petition is nothing but to thwart and circumvent the process of law. The constitutional jurisdiction is not meant to provide aid to a party, who is adamant to grab the property of the State. On account of unauthorized possession, the petitioners have already earned a lot of money through rent received from the tenants of the shops constructed on the “subject property”. This petition is undoubtedly not only frivolous but vexatious, resultantly it is **dismissed** with costs of **Rs.2,00,000/-**, which shall be deposited with the Deputy Registrar (Judicial) of this Court within **thirty days**, failing which the same shall be recovered from the petitioners as arrears of land revenue in accordance with law.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**