

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Intra Court Appeal No. 49 of 2023

Abid Hussain. **Vs.** Province of Punjab through
District Collector Bahawalpur
and fourteen others.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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22.03.2023 Mr. Muhammad Ibrahim Khan, Advocate for the
appellant.

This Intra Court Appeal has been filed against the order dated 28.02.2023, passed by the learned Single Judge in Chambers in Writ Petition No.3254 of 2016, whereby the Petition filed by the respondents No.5 to 15 under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was allowed and the order dated 13.09.2014 passed by respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, Bahawalpur was set aside being illegal and void as having been passed without jurisdiction.

2. The brief facts, necessary for the disposal of the instant appeal are that the appellant, filed a *Mukhbari*

application on 03.05.2014 (*inadvertently mentioned as 10.09.2014 in the order dated 28.02.2023, passed by the learned Single Judge in Chambers*) before the Commissioner/Chairman Divisional Verification Committee constituted under notification No.705-2010-74/0.1.R. dated 06.05.2011, alleging therein that Hamid Ali (predecessor-in-interest of the respondents No.5 to 15) was not the owner of the land through any valid order or document, but the revenue staff, without any order of the competent authority, showed him as owner in possession of land measuring 544 kanals 18 marlas in Mouza Uch Moghla, 200 kanals in Mouza Makhdoompur, 72 kanals 19 marlas in Mouza Rasulpur, 46 kanals in Mouza Budhwali and 130 kanals 7 marlas in Mouza Uch Bukhari since 1959-60, and entered inheritance mutations on the basis of RL II No.1, 6, 9, 34, 37, 76, 84, 87 and as such the same were required to be verified. This application was marked to respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, on whose direction a detailed report dated 08.09.2014 was filed by respondent No.3 namely Assistant Commissioner , Ahmedpur East, according to which entries regarding names, casts and the mutations were declared bogus and requiring verification. Respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, having gone through the report dated 08.09.2014 as submitted by respondent No.3 namely Assistant Commissioner,

Ahmedpur East, vide order dated 13.09.2014, directed the respondent No.3 namely Assistant Commissioner, Ahmedpur East, to implement the order dated 13.09.2014 and to scrutinize the matter of the title of the houses No.121 to 126 and prepare a detailed report for submission to the Chairman Verification Committee so that the same could be determined. The respondents No.5 to 15 filed the Writ Petition No.3254 of 2016, and vide order dated 28.02.2023 passed by the learned Single Judge in Chambers, the same was allowed and the order dated 13.09.2014 passed by respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, Bahawalpur was **set aside** being illegal and void as having been passed without jurisdiction, hence this appeal.

3. The learned counsel for the appellant submitted that the learned Single Judge in Chambers had erred in facts and law while passing the order dated 28.02.2023. The learned counsel for the appellant further submitted that the learned Single Judge in Chambers lacked the jurisdiction to pass the impugned order. The learned counsel for the appellant also submitted that the respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, Bahawalpur had the jurisdiction to pass the order dated 13.09.2014. The learned counsel for the appellant further submitted that the learned Single Judge in Chambers did

not consider the impact of the dismissal of the suit and appeal as filed by the respondents No.5 to 15 regarding the same property.

4. We have heard the learned counsel for the appellant and perused the record.

5. Admittedly as per the facts, the appellant, filed an application on 03.05.2014 (*inadvertently mentioned as 10.09.2014 in the order dated 28.02.2023, passed by the learned Single Judge in Chambers*) before the Commissioner/Chairman Divisional Verification Committee constituted under notification No.705-2010-74/0.1.R. dated 06.05.2011, alleging therein that Hamid Ali (predecessor-in-interest of the respondents No.5 to 15) was not the owner of the land through any valid order or document, but the revenue staff, without any order of the competent authority, showed him as owner in possession of land measuring 544 kanals 18 marlas in Mouza Uch Moghla, 200 kanals in Mouza Makhdoompur, 72 kanals 19 marlas in Mouza Rasulpur, 46 kanals in Mouza Budhwali and 130 kanals 7 marlas in Mouza Uch Bukhari since 1959-60, and entered inheritance mutations on the basis of RL II No.1, 6, 9, 34, 37, 76, 84, 87 and as such the same were required to be verified. The appellant in his application did not name Hatim Ali and Sajida Begum though they were also the predecessors-in-interest of the respondents No.5 to 15 and the respondent No.2 namely Additional District Collector /Member Divisional Verification Committee passed the

order dated 13.09.2014 regarding the property of Hatim Ali and Sajida Begum (the predecessors-in-interest of the respondents No.5 to 15) also. This application of the appellant was marked to respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, on whose direction a detailed report dated 08.09.2014 was filed by respondent No.3 namely Assistant Commissioner, Ahmedpur East, according to which entries regarding names, casts and the mutations were declared bogus and requiring verification. Respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, having gone through the report dated 08.09.2014 as submitted by the respondent No.3 namely Assistant Commissioner , Ahmedpur East, vide order dated 13.09.2014, directed the respondent No.3 namely Assistant Commissioner , Ahmedpur East, to implement the order dated 13.09.2014 and further directed to scrutinize the matter of the title of the houses No.121 to 126 and prepare a detailed report for submission to the Chairman Verification Committee so that the same could be determined. The application ,as mentioned above, was submitted by the appellant on **03.05.2014** to the Commissioner/Chairman Divisional Verification Committee. The provisions of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 in this regard are clear and unambiguous. When we go through the wording of section 2 of the Evacuee Property

and Displaced Persons Laws (Repeal) Act (XIV of 1975), it clearly provides that all proceedings relating to evacuee property *which were pending on the cutoff date, that is, 30.06.1974* or any matter which was pending before a superior court in appeal or revision, or which was pending because of remand by a superior court, at the time of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) will fall within the definition of *pending cases*. Only such matters, which were either actively pending consideration before Authorities for final disposal or had been remanded by the High Court or Supreme Court, were to be finalized by the Notified Officer. Settlement or Rehabilitation Authorities, by express positive assertion had no jurisdiction to entertain any fresh petition or representation. Where question of entitlement concerning agricultural property was neither remanded by Supreme Court nor any such directions were made by the High Court whereby Notified Officer on its strength could commence proceedings, any petition or representation filed with regard to matter which otherwise stood finalized long back or even where aggrieved person might believe to have legitimate claim, could not be entertained by Chief Settlement Commissioner or Notified Officer or any other Settlement Authority by virtue of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. Section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of

1975), *before being amended* through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022), read as under :-

“2. Repeal of certain laws.— (1) The following Acts and Regulations are hereby repealed, namely:-

- (i) the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956);
- (ii) the Pakistan Rehabilitation Act, 1956 (XLII of 1956);
- (iii) the Pakistan (Administration of Evacuee Property) Act, 1957 (XII of 1957);
- (iv) the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958);
- (v) the Displaced Persons (Land Settlement) Act, 1958 (XLVII of 1958);
- (vi) the Scrutiny of Claims (Evacuee Property) Regulation, 1961; and
- (vii) the Price of Evacuee Property and Public Dues (Recovery) Regulation, 1971.

(2) Upon the repeal of the aforesaid Acts and Regulations, **all proceedings which, immediately before such repeal, may be pending** before the authorities appointed thereunder shall stand transferred for final disposal to such officers as may be notified by the Government in the official Gazette and all cases decided by the Supreme Court or the Lahore High Court after such repeal which would have been remanded to any such authority in the absence of such repeal shall be remanded to the officers notified as aforesaid”

The appellant moved the application on **03.05.2014** i.e. after 39 years of Repeal of Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975). Therefore, we are of the considered view that the application of the appellant could not be considered as a pending case under the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 . Reliance is placed on the case of “*Muhammad Din Versus The Deputy Settlement Commissioner*” (**2022 SCMR 1481**) wherein the august Supreme Court Of Pakistan has held as under:-

“10. There is no cavil to the legal stance taken by the learned counsel for the Appellant that in case any proceedings relating to evacuee property is pending on the cutoff date, that is, 30.06.1974, the officer notified under section 2(2) of the Repealing Act was competent to proceed and decide the same in accordance with the repealed laws. However, there is nothing on the record of the present case that the application made by the Appellant to the Chief Settlement Commissioner for cancellation of the PTD (Exh-P7), wherein the Deputy Settlement Commissioner had filed the report (Exh-P15), was pending on the cutoff date. The mere pendency of the application of the Appellant, before the Deputy Settlement Commissioner, for transfer of the suit property to him under Scheme No. VIII could not make the issue of the validity of the PTD (Exh-P7) alive and bring it within the scope of a "pending proceeding" under section 2 of the Repealing Act. In absence of any such pending proceeding as to the validity of the PTD (Exh-P7), the notified Deputy Settlement Commissioner rightly referred

the Appellant to have recourse to Civil Court to get adjudged the validity of the PTD (Exh-P7). It hardly needs reiteration that after the promulgation of the Repealing Act, the officers notified under that Act, do not possess the jurisdiction to declare any PTO or PTD regarding which no proceedings were pending on the cutoff date, as null and void on the grounds of alleged fraud or forgery; they can only deal with and decide the pending proceedings and cannot initiate any new proceeding. Anyone who wants to challenge any PTO or PTD issued under the repealed laws, and has locus standi to do so, is to knock at the doors of Civil Court, a court of plenary jurisdiction, for the redress of his grievance.”

Reliance is also placed on the case of "*Nawabzada Zafar Ali Khan and others v. Chief Settlement Commissioner/Member Board of Revenue, Punjab Lahore and others*", reported as **1999 SCMR 1719**.

6. We have also considered that by virtue of 18th Amendment in the Constitution of Islamic Republic of Pakistan, 1973, the Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975) was adapted, with amendments, for the province of the Punjab by the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2012 (XXXVIII of 2012) and though an amendment has been made in section 2 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and section 2(A) has been added according to which all properties *allotted after the repeal of the Acts and Regulations* mentioned in subsection (1) shall be

subject to scrutiny *at any time*, and after observing due process of law, if it is found that any land or property was allotted in contravention of any law or through fraud, forgery or misrepresentation, such allotment shall be cancelled however the property in the instant case **had been allotted much before** the repeal of the Acts and Regulations by the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. According to the facts, the land was transferred in the names of Hamid Ali, Hatim Ali and Sajida Begum (the predecessors-in-interest of the respondents No.5 to 15) during the period 1963 to 1970. Furthermore an amendment has been made in the section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 through the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022) and now section 2(2) provides that all proceedings pending before any notified officer immediately before the commencement of the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022, shall stand transferred for final disposal to the Full Board, and all cases decided by the Supreme Court or the Lahore High Court after the commencement of the said Act of 2022 which would have been remanded to the notified officer shall be remanded to the Full Board. Full Board means the Full Board consisting of three Members

of the Board of Revenue, constituted by the Senior Member, Board of Revenue from time to time. In this case the order was passed by the respondent No.2 namely Additional District Collector /Member Divisional Verification Committee, Bahawalpur who had no jurisdiction in the matter, and not by Full Board as defined under section 1A (aa) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 as inserted by the Evacuee Property and Displaced Persons Laws (Repeal) (Amendment) Act 2022 (XXI of 2022). The learned counsel for the appellant has been unable to point out any illegality or excess of jurisdiction having been committed by the learned Single Judge in Chambers while passing the impugned order dated 28.02.2023. We find that the impugned order dated 28.02.2023 has been passed by the learned Single Judge in Chambers after going through the record of the case and taking into consideration the facts and circumstances of the case.

7. In view of the above discussion, this appeal being devoid of merit, is **dismissed in limine**.

(MUHAMMAD AMJAD RAFIQ) (SADIQ MAHMUD KHURRAM)
JUDGE JUDGE

Raheel

APPROVED FOR REPORTING

JUDGE