

Form No: HCJD /A38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

JUDGMENT

F. A. O. No. 29323 of 2021

Riaz Ahmad etc. Versus Secretary to Govt. of the Punjab etc.

Date of Hearing: 11.03.2024

Appellants by: Mr. Muhammad Saeed Sheikh,
Advocate.

Respondents No.1 & 2 by: Mr. Muhammad Usman Arif,
Advocate alongwith Rana Ehsan Ul
Haq, District Manager, Auqaf
Department, Kasur.

Respondent No.3 by: Rana Ghulam Sarwar, Advocate.

Ch. Muhammad Jawad Yaqub,
Addl. A.G., Punjab alongwith Rana
Zafar, Deputy Commissioner,
Muhammad Jaffar, ADC ® Kasur,
Mirza Anayat, Superintendent and
Muhammad Mansha Patwari.

MASUD ABID NAQVI, J. Brief facts necessary for the adjudication of this *lis* are that the appellants/applicants filed an application under Section 11 of Punjab Waqf Properties Ordinance, 1979 before the learned District Court with the averments that disputed land was leased out to Syed Hussain Shah as “Patta Dawami” and the disputed land was sold to the appellants through different sale deeds. The appellants/applicants constructed buildings on the disputed land and are owners in possession of disputed land.

Aggrieved from Notification dated 20.01.2010, issued by District Manager, Auqaf, Kasur wherein the land was declared as Auqaf's land, the appellants/applicants filed an application seeking declaration that disputed land is not a Waqf Land. The respondents filed replies to the application and raised legal as well as factual objections. Issues were framed and contesting parties led their respective oral as well as documentary evidence. After hearing the arguments advanced by both the parties, the learned District Court vide order and decree dated 10.03.2021 **dismissed** the application of appellants/applicants. Feeling aggrieved, the appellants/applicants preferred instant appeal and challenged the validity of the impugned order & decree passed by the learned District Court.

2. Learned counsel for the appellants argues that appellants are lessee of Central Government and Auqaf Department cannot claim the land/ properties purchased by the appellants through sale deeds and infact sale deeds were/are just transfer of lease holding rights from Syed Hussain Shah who was perpetual lessee and in support of his arguments has also relied on cases reported as Auqaf Department through Chief Administrator Auqaf, Punjab Lahore Vs Secretary, Ministry of Religious Zakat, Ushar and Minorities Affairs Government of Pakistan, Islamabad and 3 others (2009 SCMR 210), Chief Administrator Auqaf and others Vs Diwan Sheikh Taj-ud-Din and others (PLD 2012 Supreme Court 897),

Chief Administrator Auqaf Vs Allah Bakhsh (decd) through LRs and another (2011 SCMR 235), Muhammad Hussain Vs Chief Administrator Auqaf, Punjab, Lahore and 2 others (2009 Y.L.R.911(Lahore) and Mueen-Ud-Din and 8 others Vs Administrator General of Auqaf, Pakistan, Islamabad and another (PLD 2007 (Lahore) 583). While learned counsel for Auqaf Department argues that sale deeds in favour of the appellants do not confer any ownership rights to the appellants and sale transactions were simply result of fraud committed by the appellants in connivance with officials and land in dispute is "لیے بے جا کی سرائے قبرستان", attached with Shrine of Hazrat Baba Bhullay Shah. Further argues that only Auqaf Department has claim on the disputed land/properties and neither the Central Government nor Provincial Government is claiming the Auqaf land and under Section 7 of Ordinance, Chief Administrator Auqaf has the authority to take over waqf property by a notification. Waqf property is duly defined in Section 2 (e) of the Punjab Waqf Properties Ordinance, 1979. Learned Addl. Advocate General has also supported the claim of the Auqaf Department and has relied on plethora of judgments including the case of Government of Sindh and others Vs Muhammad Shafi and others (PLD 2015 SC 380).

3. I have heard the arguments of learned counsel for the contesting parties as well as the learned law officers and perused the available record as well as the impugned order and decree.

4. On 20.02.2024, learned counsel for the appellants recorded his statement before this Court which is reproduced hereunder;

"Learned counsel for the appellants states that the predecessor-in-interest of the appellants namely Shah Hussain was a lessee of Central Government and the sale deeds executed in favour of the appellants were simply a transfer of the lease holding rights to the appellants and the predecessor-in-interest of the appellants was a perpetual lessee to the extent of 04 kanals 18 marlas and 445 Sqr, Ft...."

There is a clear deviation in stance taken by the appellants/applicants from posing themselves as owners in possession of buildings on the disputed land originally taken in plaint to holders of lease rights and the appellants are also claiming the lessee of Central Government. Although, only in Mark-C/register patta dar dawami maintained by Improvement Trust Kasur, words "ملکیت پختہ دار، داں" are written and by heavily relying on Mark-C, learned counsel for appellants/applicants argues that disputed land was perpetually leased out to original lessee i.e. Syed Hussain Shah by Improvement Trust Kasur and is not attached to shrine of Hazrat Baba Bhullay Shah as waqf land. Now question arises that whether there exists a perpetual lease in favour of original lessee i.e. Syed Hussain Shah or not and for ascertaining & adjudging this question if a particular lease is perpetuity or otherwise, the Hon'ble Supreme Court of

Pakistan in a case reported as **Government of Sindh and others Vs Muhammad Shafi and others** (PLD 2015 SC 380) held that:-

.....After the enforcement of the two enactments referred to above, however, the question of determination of whether a lease is one in perpetuity or not stands simplified. Section 17 of the Registration Act ibid mandates certain instruments to be compulsorily registerable and subsection (d) of section 17 provides in the list of such documents “a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent.” The effect of non-registration of such instruments is provided by Section 49 of the Registration Act in the manner: -

“49. Effect of non-registration of documents required to be registered.—No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall—

- (a) *Operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, or in immovable property, or*
- (b) *Confer any power to adopt, unless it has been registered.”*

Similarly it is clear from Section 107 of TPA that a lease of any property beyond one year could only be effected by a registered instrument (note:-subject to the exemption qua other leases orally made coupled with delivery of possession). This is the express and unequivocal mandate of the law. It is settled principle of law that whether law requires an act to be done in a particular manner, it has to be done accordingly and not otherwise. At this point, we may also add that if an act

*is done in violation of law, the same shall have no legal value and sanctity, especially when the conditions/circumstances which may render such an act invalid have been expressly and positively specified in law (see section 49 *ibid*).....*

By simply perusing Mark-C/register patta dar dawami maintained by Improvement Trust Kasur, words "ملکیت پذیر دار دوائی" are written and land is described as "غیر ملکی پذیر جانشی سرائے قبرستان": allocated for outsiders Zaireen & graveyard Peer Jungli Wala as per the record which clearly indicates the intention of authorities about the use of land. Therefore, there remains no doubt that the lease was/is neither perpetual lease in favour of original lessee i.e. Syed Hussain Shah nor transferable and can only be used for religious purposes.

5. The lease of immovable property is defined under Section 105 of the Transfer of Property Act, 1882 which regulates and determines the relationship of lessor and lessee and unambiguously stipulates that lease of immovable property is a transfer of a right to enjoy such property, made for certain time, express or implied, or in perpetuity in consideration of price paid or promised and the transferor is called lessor, the transferee is called lessee, price is called the premium and money, share of crops, service or any other thing of value to be rendered periodically or on specified occasion to the transferor by the transferee. So, the essential features of lease are the transfer of interest to enjoy property with exclusive

possession by the transferor to the transferee for certain time or in perpetuity for consideration of price paid or promised etc. Learned counsel for the appellants/applicants argues about the perpetual lease but neither in arguments or in application under Section 11 of the Punjab Waqf Properties Ordinance, 1979 nor during the recording of examination in chief of AW-1 & AW-2, any consideration either paid or promised to be paid by the original lessee or subsequent lease holders was argued/pleaded/deposed which is a basic requirement of lease.

6. One of the appellant/applicant namely Tahir Saeed appeared as AW-1 & produced private witness namely Saeed Ilyas as AW-2 while rest of the two AWs were government officials. Tahir Saeed/AW-1 & Saeed Ilyas/ AW-2 supported the contents of application in examination in chief but in cross-examination, both the witnesses neither had the exact knowledge about the ownership of Syed Hussain Shah on the disputed land nor the terms of perpetual lease. Relevant portion of cross-examination of Tahir Saeed/AW-1 is reproduced hereunder;

سید حسین شاہ کی ملکیت کے بارے میں مجھے علم نہ ہے۔ مجھے علم نہ ہے کہ حسین شاہ کے پڑھ دوائی کی اشراط کیا
تھیں-----

7. The learned District Court has properly appreciated the contents of the application and has also discussed in detail statements of AW's & RW's on the basis of documents exhibited by both sides

and thereafter reached at the correct conclusion regarding the controversy. The impugned order and decree do not suffer from any infirmity, legal or factual, requiring interference, therefore, this appeal is **dismissed.**

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

JUDGE

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