

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

Writ Petition No.254943 of 2018

Faiz Ahmad etc.
Versus
Chairman Federal Land Commission, Islamabad etc.

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JUDGMENT

Date of Hearing:-	22.11.2023 & 07.12.2023
Petitioners by:-	Barrister Naseem Sabir Ch. Advocate. Mr. Nasir Ahmad Awan, Advocate in W.P. No.247224/2018
Respondents by:-	Rana Sher Zaman Akram, Addl. Advocate General alongwith Mahboob Ali Shaukat, Naib Tehsildar. Sardar Muhammad Iqbal Athar Khan Khetran, Advocate for respondents No.5 & 6. Mian Muhammad Hussain Chotya & Mr. Noor Ahmad Malik, Advocates for respondent No.7. Rana Zulfiqar Ali, Federal Land Commissioner.

CH. MUHAMMAD IQBAL, J:- Through this
single judgment, we intend to decide the titled Writ Petition
along with Writ Petition Nos.13725/2021, 247224/18,
13769/2021, 13792/2021, 13782/2021, 13775/2021 as
common questions of law and facts are involved in these writ
petitions.

2. Through these petitions, the petitioners have
challenged the vires of order dated 15.10.2018 passed by the
Member, Federal Land Commission, Islamabad whereby
resumed state land measuring 230-Kanals 08-Marlas was
allotted to Muhammad Sharif, Manzoor Ahmad and Bashir

Ahmad [respondents No.5 to 7] with equal share under Paragraph 18(3) of MLR 115/1972.

3. Brief facts of these writ petitions are that land measuring 230-Kanals 08-Marlas situated in village Amin Kot, Tehsil Depalpur, District Okara was resumed from the declarant, Abdul Samad Khan. The said land was allotted to Muhammad Ali alias Mumma son of Jamal, Muhammad Ashiq son of Ameerah and Muhammad Sharif son of Mehmood by Deputy Land Commissioner vide order dated 05.12.1998. The said order was challenged in appeals by different persons before the Land Commissioner who vide order dated 14.07.1999 accepted the said appeals and passed direction to the appellants in the said case to submit their applications on the prescribed forms before the Deputy Land Commissioner, Okara for allotment of the surrendered land and further directed to decide the same in accordance with law as per provisions of Paragraph 18(3) of MLR-115/1972.

Muhammad Ali alias Mumma etc., challenged the said order through revision petitions before the Chief Land Commissioner, Punjab, who vide order dated 12.09.2000 accepted the petitions and remanded the matter to the Deputy Land Commissioner, Okara to decide the matter afresh with the direction that allotment should be made after due publicity and inviting applications from the eligible tenants. The said order was challenged through revision petitions before the Federal Land Commission who vide order dated

12.05.2001 maintained the order of Chief Land Commissioner.

Whereafter as many as 11 persons applied for allotment of the aforementioned surrendered/ resumed land. The Deputy Land Commissioner allotted said land to Muhammad Yousaf, Muhammad Iqbal and Muhammad Usman vide order dated 27.03.2002. Against the said order, Muhammad Ali alias Mumma, Muhammad Ashiq, Muhammad Sharif, Muhammad Bashir, Bashir Ahmad, Muhammad Hussain and Faiz Ahmed filed separate appeals before the Land Commissioner, Okara who set aside the allotment order dated 27.03.2002 passed by the Deputy Land Commissioner, Okara vide order dated 07.12.2005 holding that Muhammad Yousaf etc., were not tenants of any landowner during crucial crops i.e. Kharif 1971 and Rabi 1972, rather their names have been entered in Girdawari register by way of forgery and the names of tenants were incorporated on the basis of so called girdawari. He held that the matter needs to be probed thoroughly and thus he by setting aside the order dated 27.03.2002 of the Deputy Land Commissioner, Okara remanded back the matter to him with the direction to make thorough inquiry and then pass order as per law. The said order was assailed through five revision petitions by Manzoor Ahmed and Bashir Ahmad etc. before the Chief Land Commissioner, Punjab who dismissed the said revision petitions vide order dated 15.02.2010. Against

the said order, eight revision petitions were filed before the Chairman, Federal Land Commission, Islamabad who vide order dated 09.09.2011 set aside the aforementioned orders and allotted the land to Bashir Ahmad and Manzoor Ahmed. The said order was assailed by Muhammad Yousaf etc., through Writ Petition No.21947 of 2011 and this Court vide order dated 30.05.2016 remanded the matter to the Chairman, Federal Land Commission, Islamabad to decide the same afresh as per law. In compliance of said direction, the Member, Federal Land Commission, Islamabad vide impugned order dated 15.10.2018 allotted land measuring 230-Kanals 08-Marlas in equal share to Muhammad Sharif son of Mahmood, Manzoor Ahmad son of Barkat Ali and Bashir Ahmed son of Barkat Ali being senior tenants of the adjoining mouza. Hence, these writ petitions.

4. We have heard the learned counsels for the parties and have gone through the record.

5. Admittedly, as per report submitted by the Assistant Commissioner/Collector Sub-Division Depalpur, the resumed land measuring 230-Kanals 08-Marlas comprising Khewat No.14, Khatooni No.30, Khasra Nos.1/23, 24, 25 3/25 4/1, 2,3,4,5,20 5/2, 3,4,5,9/1, 19,6/12 7/25, 11/17, 12/1,21 13/9, 12 14/4, 15/11, 17/19, 18/4, 19/4, 12 20/9, 12 of Mouza Amin Kot Tehsil Depalpur, District Okara is situated within the prohibited zone as it falls within seven (7) KM, from Municipal Committee, Haveli-Lakha, Tehsil

Depalpur. For ready reference, the aforesaid report is reproduced as under:-

In pursuance of court's direction dated 22 11 2023. I have the honour to submit the requisite report, which is as under:-

2. As per stuffing of report of revenue hierarchy/Tehsildar, Depalpur, state land measuring 230-kanals 8-marlas comprising khewat No 14 khatuni No 30 khasra Nos 1/23,24,25 3/25 4/1,2,3,4,5.20 5/2,3,4,5,9/1,19, 6/12 7/25, 11/17, 12/1 21 13/9, 12 14/4 15/11, 17/19, 18/4, 19/4 12 20/9,12 is owned by provincial government Baqaya Sarkar falling in Mauza Amin-kot, tehsil Depalpur district Okara.

3. Aforesaid piece of state land falls within prohibited zone, which is seven (7) KM, away from Municipal Committee, Haveli-Lakha, tehsil Depalpur.

4. Submitted please.

Assistant Commissioner/
Collector Sub-Division,
Depalpur”

The above said report has not been challenged or got reversed by any party and the said report has attained status of finality, thus, as per notification dated 12th December, 1972 Martial Law Regulation No.115 the property which is situated within prohibited zone as provided in the Colonies Department's Circular memorandum No.3024-72/3946-CL-III dated 12th December, 1972 cannot be permanently allotted under Paragraph 18(3) of Martial Law Regulation 115. For ready reference, said notification is reproduced as under:-

“Letter No. ASR-11-3456-73/2687-LC (II), dated the 5th July, 1973, from the Secretary, Punjab Land Commission, to all Deputy Land Commissioners and Land Commissioners.

SUBJECT:- AREA AROUND LARGE TOWNS
RESUMED UNDER MARTIAL LAW
REGULATION 115.

I am directed to state that certain areas around large towns have been resumed under Martial Law Regulation 115 which are reported to be untenanted. A question has arisen whether such areas should be allotted under paragraph 18 (3) of Martial Law

Regulation 115. Since these areas are very valuable and are likely to be required for extension of abadis or public purposes etc., it has been decided that all areas resumed under Martial Law Regulation 115 which are untenanted and fall within the prohibited zones as given in the Colonies Department's Circular memorandum No. 3024-72/3946-CL-III, dated the 12th December, 1972 and noted below shall not be permanently allotted under paragraph 18 (3) of Martial Law Regulation 115 but shall be kept in reserve for extension of abadis and other public purposes etc.

2. The following is the limit for prohibited zones:-
In the case of-

1. Corporations. = 10 miles from the outer limits of the Corporation.
2. First Class Municipal Committees. = 5 miles from the outer limits of the Municipal Committee.
3. Second Class Municipal Committees. = 3 miles from the outer limits of the Municipal Committee.
4. Town Committees. = 2 miles from the outer limits of the Town Committee.
5. Railway Stations. = 1 mile from the outer limits of the Railway Station.

In the case of Cantonment Boards the prohibited zone shall tally with the limit prescribed for the local body to which they are adjacent, e.g. the limit of the prohibited zone in the case of Lahore Cantonment Board will be the same as that prescribed for the Lahore Corporation and the limit for the Cantonment Board, Multan, will be the same as fixed for the Municipal Committee, Multan-and so on.”

(emphasis supplied)

The term “outer limits” means the piece of land which starts from the end point/boundary of territorial limits a municipal committee/corporation etc. In the instant case, the limit of “prohibited zone” as per the notification reproduced above, is regarding the land stretched till 05 miles from the “outer limits” of municipal committee. The main reason for imposition of ban on allotment/grant of proprietary rights of

the state land falling in prohibited zone is to cater the present and future needs of the local population as well as for the use of other different public purposes. As per the report reproduce above, the land in question is situated about 07 KM away from Municipal Committee Haveli-Lakha District Okara. In the aforesaid notification, the limit of “05 miles from the outer limits of Municipal Committee” has been prescribed, which distance while measuring in Kilometers comes to 8.05 KMs [as 01 Mile = 1.609 KM] whereas as per the aforesaid report of the Assistant Commissioner, the land in question is situated at the distance of only 07 KM away from the above said Municipal Committee which is within prohibited zone. Thus, the land in question is situated within the “prohibited zone” as such the authorities are debarred to make any allotment of said land. An alike controversy qua the allotment of land situated within prohibited zone has been considered and declined by this Court in its judgment cited as Muhammad Israfeel & Others Vs. The Province of Punjab & Others (2021 MLD 313). The order passed in supra judgment was challenged in Intra Court Appeal (No.37127-2020) as well as a subsequent ICA No.85/2021 titled as Mushtaq Ahmad etc. Vs The Province of Punjab etc. along-with other connected ICAs and same were also stood dismissed. Further on 05.10.2021 another Writ Petition [No.57766/2021] was also dismissed on analogy of the aforementioned judgment [2021 MLD 313] which order of

dismissal was assailed before the Apex Court who while dismissing Civil Petition No.1925-L/ 2021 on 25.08.2022 upheld the order of this Court. Thus the bar on the allotment of state land falling in prohibited zone has attained finality and all the state functionaries are under bounded obligation to comply with dictates of the Hon'ble Superior Court of law.

But the respondent-authorities have not considered command of the aforementioned notification as well as the law on the subject while deciding the matter in issue as such the orders of the allotment of land falling within the prohibited zone were passed in clear violation of the aforementioned notification as well as the law on the subject. Thus there is no hesitation to hold that allotments of the surrendered state land falling within the prohibited zone are patently illegal and liable to be set aside.

6. Moreover the Courts of law are custodian of the public properties, assets or interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful, cautious and assure itself to the extent of certainty that no mischief is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law

even without being influenced by respective pleadings of the parties. In this regard, reliance is placed on judgments cited as Al-Shafique Housing Society Vs. P.M.A (PLD 1992 SC 113), Provincial Government through Collector, Kohat and another Versus Shabbir Hussain (PLD 2005 SC 337) and Abdul Haq Indher Vs. Province of Sindh (2007 SCMR 907).

7. For what has been discussed above, the orders passed by the Land Commissioner, Deputy Land Commissioner, Chief Land Commissioner as well as Federal Land Commission, Islamabad regarding allotment of land in question in favour of any party either the petitioners or the other side, are hereby set aside in toto by declaring that land in question, being situated within the limits of prohibited zone cannot be allotted permanently to any person or tenant.

8. Resultantly, all these writ petitions are allowed accordingly. If either party of the case is in possession of the land in question, the District Collector, Okara is directed to retrieve the same and also recover Tawan as per law.

(Masud Abid Naqvi)
Judge

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Judge