

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.155763 of 2018

Sarfraz Khan

Versus

Province of Punjab & others

J U D G M E N T

Date of hearing: 05.11.2024.
Petitioner by: Mr. Asim Mahmood Malik, Advocate.
Respondents by: Mr. Muhammad Saad Bin Ghazi, Assistant
Advocate General along with Aman Ullah
Joiya, Tehsildar Jhang.
Respondent No.3 *ex parte*.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant revision petition, petitioner has assailed vires of judgments & decrees dated 06.04.2015 & 31.10.2017, passed by learned Civil Judge and Additional District Judge, Jhang, respectively, whereby petitioner's suit for declaration was concurrently dismissed.

2. Brief facts of the case are that petitioner filed suit for declaration, which was contested by respondents through written statement. Learned Trial Court, after framing issues, recording evidence and hearing arguments of both sides, proceeded to dismiss the suit vide judgment & decree dated 06.04.2015. Feeling discontent, petitioner preferred appeal before learned Appellate Court, which was dismissed vide judgment & decree dated 31.10.2017. Hence, instant revision petition.

3. Learned counsel for petitioner submits that after execution of the sale deed and sanction of mutation, suit property has devolved upon petitioner after getting property rights by District Collector, Jhang vide order dated 23.09.2006 and after payment vide mutation No.1403 dated 30.11.2006. He adds that suit property had become private land,

therefore, Board of Revenue could not pass the order for cancellation of allotment. He argues that important aspects of the matter have not been considered by learned Courts below while passing impugned judgments & decrees, thus, same are unsustainable in the eye of law. In support, he has referred to Province of the Punjab, through District Officer, Toba Tek Singh and others v. Nazir Ahmed and 9 others (2008 SCMR 749), Province of Punjab through Collector and 4 others v. Haji Wali Muhammad and 4 others (2004 MLD 441), Rulya v. Province of Punjab through District Collector, Sargodha and others (2006 YLR 1915), Abdul Ghaffoor and others v. Mst. Rasoolan Bibi and others (2009 YLR 1593) and Province of the Punjab through Collector and 2 others v. Mst. Nabeela Taj and others (2015 YLR 1635).

4. Conversely, learned Law Officer defends the impugned judgments & decrees by contending that petitioner in violation of clause 12 of the notification dated 19.03.1995 regarding temporary cultivation lease scheme transferred / alienated land to several persons on 21.06.2008 before 05-years after the date of execution of deed in favour of petitioner, thus, the Board of Revenue under Section 30(2) & Section 24 of the Colonization of Government Lands (Punjab) Act, 1912 (“the Act of 1912”) read with clause 15 of the notification dated 19.03.1995, has lawfully resumed the land in question. He adds that in matters relating to allotment of land, refusal and cancellation in accordance with law are exclusive domain of the revenue authorities. In support, he has relied upon Muhammad Ishaq v. Abdul Ghani and 3 others (2000 SCMR 1083), Abdul Ghafar and others v. Government of West Pakistan and others (PLD 1963 (W.P.) Karachi 215) and Province of Punjab through Collector and 2 others v. Muhammad Farooq and 2 others (2017 YLR Note 362).

5. Arguments heard. Available record perused.

6. Petitioner filed suit for declaration with the contention that order dated 30.11.2010, passed by Member (Judicial-VI), Board of Revenue,

Punjab, Lahore / respondent No.2, being against the law and facts, without jurisdiction and based on *mala fide*, is inoperative qua the rights of petitioner as in the light of Collector's order dated 23.09.2006, petitioner is owner of the suit property detailed in the plaint; and that respondents be restrained from cancelling the deed in question executed in favour of petitioner and removing his name from the column of ownership in revenue record.

7. It is the stance of petitioner that petitioner Sarfraz Khan and respondent No.3 Noor Muhammad were jointly allotted land i.e. lot No.3 measuring 56-Kanal 11-Marla, situated in square No.30 *khata* No.148/705, Chak Sheikhana, Tehsil & District Jhang in the year 1989 as a part of cultivation scheme. Petitioner made his part of the land cultivable and continued to pay *lagan* and ultimately moved application to the DDOR, Jhang for partition of his land and receipt of remaining *lagan*, which was allowed and petitioner's share of land measuring 28-Kanal 06-Marla was partitioned in square No.30. Petitioner moved first application for grant of proprietary rights on 31.12.1995 (*Exh.P1*), he again moved application for grant of proprietary rights on 01.09.2006 (*Exh.P2*), which was allowed vide order dated 23.09.2006, passed by District Officer (Revenue), Jhang and petitioner was held entitled for grant of proprietary rights of the suit property in accordance with notification-1995 and finally, mutation No.1403 was attested in favour of petitioner on 30.11.2006, which was produced in evidence as *Exh.P16*.

8. It is pertinent to note here that the other allottee, respondent No.3, neither made the land allotted to him cultivable nor paid any *lagan* in this regard. He only raised the issue of payment of *lagan* after attestation of mutation in petitioner's favour and filed an application dated 23.07.2023 (*Exh.P24*) rather he filed appeal challenging aforesaid mutation in the Court of EDOR, Jhang, which was rejected vide order dated 17.06.2008 (*Exh.P23*). Subsequently, respondent No.3 filed revision petition resulting in the cancellation of sale deed in

favour of petitioner vide order dated 30.11.2010 (*Exh.P4*), passed by Member (Judicial-VI), Board of Revenue, Punjab, Lahore / respondent No.2.

9. Once sale price has been deposited and possession was handed over to the allottees, by the Collector, no other Revenue Authorities even superior to the Collector can intervene to reverse the Collector's decision. If an allotment has been cancelled by Revenue Appellate Court, the Civil Court has the jurisdiction to set aside the cancellation, especially if it is found to be in violation of the terms of sale or the provisions of the Act V of 1912. The Board of Revenue is not equipped with any authority even to cancel allotment in favour of petitioner once the price has been received and the sale deed has been executed. Furthermore, where a transferee has conveyed the land to a *bona fide* purchaser, the power to resume the land, for which proprietary rights have already been granted, cannot be exercised. After confirmation of the proprietary rights and registration of conveyance deed, the allottee would become absolute owner of the land. Reliance is placed upon *Province of Punjab v. Abdul Latif and 2 others* (PLD 1990 Lahore 66), *Muhammad Liaquat and 5 others v. Member Board of Revenue (Colonies), Punjab, Lahore and 3 others* (2000 CLC 953) and *Province of Punjab and others v. Waseem Arshad and others* (PLD 2023 Lahore 564).

10. The Board of Revenue does not have authority to unilaterally cancel an allotment after proprietary rights have vested through a registered sale deed, unless there is substantial documented evidence of fraud or a significant violation of allotment conditions. In such cases, the Board must have followed strict procedural steps, including issuing a show cause notice and providing an opportunity for response. If the Board of Revenue is seeking cancellation, it is recommended to (i) review the specific conditions of the original allotment and determine if substantial violation exists; ensure full compliance with procedural requirements, including issuing detailed notices to involved parties;

and (ii) if proprietary rights are indeed fully vested, consider legal limitations on the Board's authority and potential challenges based on judicial precedents that protect post-transfer proprietary rights.

11. The Hon'ble Superior Courts have consistently upheld principles that protect proprietary rights under the Act of 1912. In these cases, it has been emphasized that once proprietary rights are granted, same cannot be arbitrarily canceled by the authorities. Section 30 of the Act *ibid* mandates the issuance of a formal show cause notice and provides the affected party with an opportunity to contest any claims of fraud or misrepresentation before the government can resume such land. The Courts have further established that once proprietary rights are conferred and a conveyance deed is registered, the allottee becomes the absolute owner, thereby limiting the Revenue Department's authority to interfere without due legal process. Judicial intervention reflects a strong stance against administrative actions that disregard procedural fairness and statutory requirements. Reliance is placed upon Anjuman-e-Ahmadiya, Sargodha v. The Deputy Commissioner, Sargodha & another (PLD 1966 Supreme Court 639), Karim Khan and 130 others v. The Additional Settlement Commissioner (Land) and 3 others (1993 SCMR 2344), Yar Muhammad and others v. Mst. Sameena Tayab and others (2022 SCMR 1592) and Province of Punjab and others v. Waseem Arshad and others (PLD 2023 Lahore 564).

12. There is no cavil with the proposition that post-sale deed cancellation requires compelling grounds, such as substantial evidence of a legal violation during the initial allotment or transfer process. It is reiterated that proprietary rights, once vested, gain additional protections under the law and can only be disturbed in instances of proven statutory breaches. It is reinforced that procedural fairness is crucial, particularly in cases where proprietary rights are contested post-sale deed. Even in cases involving fraud, the Board of Revenue must provide the affected party with an opportunity to present its case, thereby upholding the principle of natural justice. Reliance is placed

upon Commissioner Multan Division, Multan and others v. Muhammad Hussain and others (2015 SCMR 58), Kamal through Legal Heirs v. Member, Board of Revenue and others (1997 CLC 1735), Province of Punjab v. Javed Iqbal and others (2007 YLR 1008) and Nisar Ahmad v. Member Board of Revenue (Colonies), Punjab, Lahore and another (2019 CLC 46).

13. The case law relied upon by learned Law Officer, being distinguishable, is not attracted to the present scenario.

14. Resultantly, instant revision petition is allowed, impugned judgments & decrees dated 06.04.2015 & 31.10.2017, passed by learned Civil Judge and Additional District Judge, Jhang, respectively, are set aside.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.