

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 9346 of 2024.

Muhammad Wilayat Khan v. Ismail Khan etc.

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02. 19.02.2024. Mr. Zafar Iqbal Chohan, Advocate for the petitioner.
Rana Shamshad Khan, Additional Advocate General.

Unnecessary details apart, on 19.07.2022, the petitioner filed complaint before the Provincial Ombudsman, Punjab, Lahore (respondent No.4), *inter-alia* with the allegations that land of graveyard and two ponds was illegally allotted by the revenue authorities to the private persons. After summoning of reports from the concerned departments, respondent No.4, *vide* decision, dated 06.09.2022, directed the Additional Deputy Commissioner (Revenue), Narowal, to restore original position of Khasra No.1599 according to its status prior to the years 1984-85. Aggrieved of the decision of respondent No.4, respondents No.1 to 3 filed representation before the Governor, Punjab, Lahore (respondent No.5) in terms of section 32 of the

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Punjab Office of the Ombudsman Act, 1997 (the Act, 1997) which was allowed *vide* order, dated 03.01.2024 and decision of respondent No.4 was reversed. Aggrieved of order, dated 03.01.2024, passed by respondent No.5, the petitioner has filed this petition.

2. Learned counsel for the petitioner submits that while upsetting the findings of respondent No.4, respondent No.5 failed to appreciate that the land of graveyard and ponds could not be allotted to private persons under the garb of consolidation proceedings; that according to section 37 of the Act, 1997 said enactment has overriding effect over other laws, thus, no illegality was committed by respondent No.4 while issuing certain direction through his decision which was reversed by respondent No.5 in a casual manner; that respondent No.4 has the jurisdiction to deal with any allegation of mal-administration, thus, no illegality was committed by him while issuing direction to the revenue authorities for restoration of original entries; that as per section 2(1) of the Act,

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1997, agency means a department, commission or office of a provincial government or a statutory corporation, thus, respondent No.4 was competent enough to issue direction to the revenue authorities and that *bona-fide* nature of claim of the petitioner is evinced from the fact that pursuant to the decision, rendered by respondent No.4, revenue authorities have already taken up cognizance of grievance of the petitioner relating to allotment of land of ponds.

3. Learned Additional Advocate General, while opposing the submissions made by learned counsel for the petitioner, submits that according to own showing of the petitioner, the land of the graveyard and ponds was allotted to the private persons as a result of consolidation proceedings, thus, no other forum, except the consolidation authorities, have jurisdiction to look into any illegality and that according to section 13 of the Punjab Consolidation of Holdings Ordinance, 1960 (the Ordinance, 1960), Board of Revenue can call for and examine any record relating to consolidation proceedings irrespective of period of limitation and the petitioner

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would be at liberty to invoke said provision for redressal of any grievance relating to consolidation proceedings.

4. In exercise of his right of rebuttal, learned counsel for the petitioner submits that since grievance of the petitioner was in relation to maladministration on the part of the revenue/consolidation authorities, same was amenable to the jurisdiction of respondent No.4.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition.

6. It is admitted position that the land, subject matter of the complaint filed by the petitioner, was allotted in favour of private persons as a result of consolidation proceedings conducted in the year 1984-85. According to section 11(1) of the Ordinance, 1960, an aggrieved person can challenge order of a Consolidation Officer confirming the scheme within sixty days before the Collector and under sub-section 2 of the said provision, a second appeal lies before the Commissioner. Further, section

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13 of the Ordinance, 1960, empowers Board of Revenue to call for and examine record of proceedings conducted under the Ordinance, 1960 at any time *suo moto* or on the application of an aggrieved person but the petitioner did not bother to avail any of the above remedies. Though, learned counsel for the petitioner tried to wriggle out of the said dilemma by stating that the petitioner was not aware about the consolidation proceedings but it cannot be believed that a person, who is residing in the same village, was not aware about consolidation proceedings as they were not only conducted openly but also took considerable time.

7. While responding to Court's query that as to how respondent No.4 had jurisdiction to deal with any issue relating to consolidation proceedings, learned counsel for the petitioner has referred to section 37 of the Act, 1997 to establish that as the said Act has over-riding effect, the jurisdiction of respondent No.4 was fully attracted notwithstanding the decisions of the consolidation authorities. The over-riding effect is to the extent of any other law for

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the time being in force and it does not cover the orders passed by the authorities concerned, under the relevant law. Had the petitioner approached the consolidation authorities before confirmation of consolidation proceedings, the referred provision could come to his rescue but when the consolidation scheme was confirmed by the relevant authorities he was supposed to challenge the same in appropriate proceedings under the provisions of the Ordinance, 1960 and challenge to said proceedings under the garb of section 9 of the Act, 1997 was a misconception.

8. During the course of arguments, learned counsel for the petitioner repeatedly argued that since the land reserved for public welfare was allotted to private persons, during consolidation proceedings, the said proceedings could not be considered as sacrosanct. The grievance of the petitioner might have been genuine but question before this Court is as to jurisdiction of respondent No.4 to decide the fate of consolidation proceedings, confirmed way back in the year 1984-85. At the cost of repetition, it

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is observed that when more than one remedies have been provided against confirmation of consolidation proceedings, without availing the said remedies, the petitioner could not approach respondent No.4.

9. While responding to Court's query as to why the petitioner is shy to approach the authorities established under the Ordinance, 1960, for redressal of his grievance, learned counsel for the petitioner states that since more than four decades have already passed, if any move is made by the petitioner, it would go abortive on the point of limitation. In this regard, I do not see eye-to-eye with learned counsel for the petitioner for the reason that section 13 of the Ordinance, 1960 deals with powers of the Board of Revenue to call for and examine record relating to consolidation proceedings and if any omission or commission is noted, same can be cured. The said provision, for facility of reference is reproduced herein below: -

"13. Power to call for and examine records.—

- (1) The Board of Revenue may—*
- (a) at any time of its own motion call for the record of*

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any proceedings under this Ordinance pending before, or disposed of by any Revenue Officer or Consolidation Officer; or

(b) on application made to it in that behalf by a person aggrieved within ninety days of the passing of an order in any proceedings under this Ordinance by any Revenue or Consolidation, Officer, and after giving such person an opportunity of being heard call for the record of such proceedings.

(2) A Commissioner or Collector, may call for the record of any case under this Ordinance pending before, or disposed of by any Revenue officer or Consolidation Officer under his control.

(3) If in any case in which a Collector has called for the record under sub-section (2), he is of opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner.

(4) The Board of Revenue may in any case called for under sub-section (1) and a Commissioner may in any case called for by him under sub-section (3) passed (sic) such order as it or he thinks fit:

Provided that no order shall be passed under this section reversing or

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*modifying any proceedings or order
of a subordinate Revenue Officer and
affecting any question of right
between private persons without
giving those persons an opportunity of
being heard.”*

According to the afore-quoted provision, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective of any limitation, thus, the apprehension of the petitioner that if he approaches the consolidation authorities, under the provisions of the Ordinance, 1960, he would be knocked out on the basis of limitation, is misconceived.

10. During the course of arguments, learned counsel for the petitioner put much emphasis on the fact that since revenue authorities fall within the definition of agency as defined under section 2(i) of the Act, 1997, no illegality was committed by respondent No.4 while rendering the decision which was set aside by respondent No.5 in routine. In this regard, I am of the view that there is no cavil with the fact that revenue/consolidation authorities fall within

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the definition of agency but question before this Court is as to whether respondent No.4 could interfere with order passed by Consolidation Officer, confirming consolidation proceedings three decades ago.

11. Now coming to plea of learned counsel for the petitioner that since the matter was referred to the revenue authorities in view of the consent of the Additional Deputy Commissioner (Revenue), Narowal, respondent No.5 could not reverse the findings of respondent No.4, I am of the view that when a forum has not been blessed with jurisdiction to hear a matter, same cannot be bestowed even with the consent of opponent side. Reliance in this regard can be placed on the case reported as Karachi Dock Labour, Labour Board v. Messrs Quality Builders Ltd. (PLD 2016 SC 121).

12. For what has been noted above, I see no reason to differ with the conclusion arrived at by respondent No.5 while accepting the representation filed by respondents No.1 to 3. Consequently, this petition is **dismissed** with the observation that the

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petitioner would be at liberty to move the relevant authority for redressal of his grievance, in terms of provisions of the Ordinance, 1960.

(Shujaat Ali Khan)
Judge

Approved for reporting

Judge

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