

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

....

W.P. No.5106/2024

Muhammad Iqbal Khan Lashari, etc.

Versus

Federation of Pakistan, etc.

JUDGMENT

Date of hearing: **24.07.2024.**

Petitioners by: Mr. Muhammad Shahzad Shaukat,
Advocate.

Mr. Naveed Farhan, Advocate for
petitioners in W.P. No.4869/2024 and C.M.
No.4354/2024 and C.M. No.4352/2024.

Khan Muhammad Hussain Azad, Advocate
for petitioners in W.P. No.5672/2024 and
5382/2024 and applicants in C.M.
Nos.4348 to 4351 of 2024 (Applications
under Order 1 Rule 10 of CPC) in W.P.
No.5106/2024.

Ch. Muhammad Shakeel, Advocate for
applicant in C.M. No.4356/2024
(Application under Order 1 Rule 10 of
CPC).

Respondents by: Mr. Tahir Mehmood Mufti, Deputy
Attorney General.

Ch. Muhammad Jamil, Assistant Attorney
General.

Mr. Zafar Iqbal Awan, Additional
Advocate General.

Mr. Jamshed Iqbal Khan Khakwani,
Assistant Advocate General.

Mr. Abdul Khaliq Khan Sadozai, Senior
Legal Advisor of CDA.

Mr. asad Humayun, Advocate for respondents No.29 and 32 in W.P. No.5382/2024.

Rana Aftab Ahmad, D.S. Land Commission, Board of Revenue, Punjab.

Ameer Taimoor, Additional Deputy Commissioner, Bahawalpur.

ASIM HAFEEZ, J. This and connected constitutional petition, bearing W.P No.4869 of 2024/BWP (for convenience of reference they are identified as ‘**main petitions**’), primarily question the legality of decisions taken at the meeting dated 15.06.2024 - chaired by Senior Member Board of Revenue/Chief Land Commissioner Punjab, which meeting apparently was carried out pursuant to the letter of 11th June 2024, addressed to the Managing Director Cholistan by Secretary Implementation Committee, wherein, on the application of some of the legal heirs of Late Ameer of Bahawalpur, who had alleged conduct of illegal sale of land by some of the legal heirs, a request was made for taking action in wake of violations of Acceding State (Property) Order 1961].

Petitioners, additionally, seek declaration against follow-up actions / orders by the Board of Revenue – pursuant to the meeting of 15.06.2024 - whereby it proceeded to cancel revenue Mutations, claimed by the petitioners to be allegedly recorded in their favour, either by or on behalf of legal heirs of Late Ameer of Bahawalpur - [reference to legal heirs implies indication to those legal heirs with whom transactions, subject of cancelled Mutations, were alleged, and not to all of the legal heirs]. By way of background, it is pertinent to highlight that Implementation Committee [in short ‘SAFRON’] had been entrusted with the task of distribution of the properties of Late Ameer of Bahawalpur, amongst Late Ameer’s legal heirs, in light of judicial decisions and in particular, section 3 of the Acceding State (Property) Order 1961 [President’s Order No.12 of 1961] and decision in the case of *Prince A.M. Abbasi and another V. Federal Government*

through Secretary and 24 others (PLD 2002 Supreme Court 170).

Implementation Committee in meeting on 08.01.2024 directed Managing Director Cholistan Development Authority to complete the process of transfer of land of *Shikar-gah* in the name of the legal heirs of Late Ameer of Bahawalpur, besides issuing other directions. In meeting on 15.02.2024, Implementation Committee recorded observations, on the information of Managing Director Cholistan, that process of recording of Mutations had been completed and process of Mutations in the name of the descendants of some of the legal heirs is underway. And pursuant to the letter of 11th June 2024 and decisions of the Meeting of 15.06.2024, alleged Mutations *inter alia* in favour of the petitioners were cancelled. This is brief background of proceedings out of which present petitions, arose.

2. Learned counsel for petitioners of main petitions, while explaining their interest in the property, submit that after recording of the Mutations in favour of the heirs of Late Ameer of Bahawalpur, petitioners, who had previously entered into executory arrangements with some of the legal heirs, - [with whom executory arrangements through agreements / general power of attorney's, regarding sale of part of the property were entered with] – proceeded to seek enforcement of executory arrangements and concluded those arrangement(s) through execution and recording of respective Mutations. (Copies of Mutations and cancellation endorsements thereupon are appended with the petitions.) Notably, none of the legal heirs, with whom executory arrangements are alleged and claimed to have been concluded, are impleaded as parties. Therefore, any comment or discussion regarding the validity and lawfulness of underlying transactions, subject matter of Mutations in question, is consciously avoided to avoid prejudice. Question of cancellation of Mutations is a different matter and dealt with, specifically.

3. In nutshell, primary grievances of the petitioners of main petitions are two-fold. Firstly, that Mutations, once executed and recorded by the revenue officers, cannot be cancelled by or under

orders of the Board of Revenue unilaterally and without issuance of prior notices. And secondly, that conduct of meeting of 15.06.2024, held pursuant to letter of 11th June 2024 of the Secretary Implementation Committee and decisions taken therein were devoid of any legality because before issuance of letter of 11th June 2024, Implementation Committee ceased to be effective, after expiry of allotted term and absence of any extension, to-date.

4. There are two other petitions fixed along, bearing W.P No.5382 of 2024/BWP and W.P No.5672 of 2024/BWP (for convenience of reference they are identified as '**ancillary petitions**'), wherein the petitioners are claiming interest in the property on the basis of alleged executory agreements, allegedly executed on various occasions but before the recording of Mutations in favour of the legal heirs of late Ameer of Bahawalpur – legality or otherwise of executory agreements and existence thereof is not subject matter of adjudication. These petitions seek enforcement of decisions of meeting of 15.06.2024; directions to give continuing effect to the order of cancellation of Mutations; directions to ensure conduct of inquiry against delinquent officers, responsible for recording Mutations, though cancelled, and protection of alleged possession of land. Notably, petitioners therein, simultaneously, claim tenancy rights on the premise that property, notwithstanding being recorded in the name of legal heirs, had been resumed by the State under the Land Reforms Regulations – it is not for this court to comment qua the legality of alleged claim based on executory agreements, question of resumption of land under question, and issue of grant of tenancy and entitlement thereto, which are alien to the lis and otherwise not amenable to constitutional jurisdiction.

5. Office of the Attorney General pleads that task of Implementation Committee was not fully complete, which was required to deliver possession of land amongst the legal heirs - acknowledged and 23 in numbers, which may include descendants of some of the heirs. It is pleaded that there is every likelihood that the

Government would pass requisite orders for extending term of the Implementation Committee, to allow it to complete the task assigned.

6. On last date of hearing main petitions were entertained for hearing and interim injunction was granted in terms of order of 05.07.2024.

7. Heard. Record and applications perused. Various applications were filed in petitions under reference, which inter alia seek permission to implead the applicants and placement of documents. And one of the application bearing C.M. No.4354/2024 in W.P. No.4869/2024, seeks permission to supplement the prayer clause – seeking relief in the nature sought in W.P. No.5106/2024. Applications are considered while deciding the matter and no need is felt to adjourn the matter, determination whereof is confined to deciding legal questions, largely relating to the interpretation of decisions, variously passed by the Hon'ble Supreme Court of Pakistan and justiciability of orders of cancellation of Mutations.

Contextual description of present controversy:

8. Context of the challenge thrown and controversy at hand need to be contextualized. Fundamentally, grievances are directed against decisions made at the meeting on 15.06.2024 and orders / actions taken regarding cancellation of Mutations, on the premise that Implementation Committee had no lawful existence to address letter of 11th June 2024. It is repeatedly emphasized that requirements of section 163(2)(c) of the Land Revenue Act 1967 were not adhered to, which renders action of cancellation void, being taken without issuance of notices and affording hearing.

9. Foundation of the argument is inherently misconceived. Facts and circumstances encountered are unique. It is pertinent to distinguish the scope and effect of cancellation of Mutations, from ordinary proceedings relating to the cancellation of Mutations. Provisions of Acceding State (Property) Order 1961 [President's

Order No.12 of 1961] and decisions by Hon'ble Supreme Court of Pakistan are distinguishing features, which extend protection to the orders of cancellation of Mutations. Ordinarily, the Revenue Authorities, when confronted with the matters calling for cancellation of recorded Mutation(s), may either assume jurisdiction to review the Mutation(s), subject to notice or suggest the parties to approach court exercising general jurisdiction, in case an intricate question of law is involved or issue of determination of title requires recording of evidence. This discourse is not relevant for the purposes of present controversy and why so? Answer is found upon perusal of the contents of letter No.CDA-2024/Col/384-85 dated 15th June 2024, wherein reference to various decisions of Hon'ble Supreme Court of Pakistan were made, *inter alia* to orders of 07.04.1982 and 02.10.2018 – former was passed in the case reported as *Brig. His Highness Nawab Muhammad Abbas Khan Abbasi V. Deputy Land Commissioner, Bahawalpur and others (1982 SCMR 991)* and later was passed while adjudicating "**Civil Appeals No. 883 to 886 of 2012 and 1187 to 1190 of 2016**". It is expedient to reproduce paragraphs 2 to 7 of the order of 02.10.2018 first, which read as:-

"2. The relevant portion of the aforesaid judgment reported as *Brig. His Highness Nawab Muhammad Abbas Khan Abbasi v. Deputy Land Commissioner, Bahawalpur and others (1982 SCMR 991)* referred to in the impugned judgment and in the leave granting order of this Court reads as under:-

"The result will be that as soon as the final position of the holdings of the heirs of late Ameer of Baliawalpur has been decided by respondent No.3, respondents Nos.1 and 2 will be at liberty to proceed under the provisions of the Land Reforms Regulation, 1959 (MLR 64). The orders of the Land Reforms Authorities impugned before us are, accordingly, set aside with the clarification that as soon as respondent No.3 makes the final order under Article 3 of the Acceding State (Property) Order, 1961, the respondents Nos.1 and 2 can proceed further in the matter in accordance with law."

3. The Federal Government has filed CMA No.9227 of 2017 wherein it has been stated that pursuant to the aforesaid judgments of this Court *Government of Pakistan v. His Highness Nawab Muhammad Abbas Khan Abbasi and others (PLD 1982 SC 367)* and *Briq. H.H. Nawab Muhammad Abbas Khan Abbasi, Ameer of Bahawalpur v. The Government of Pakistan and others (PLD 1984 SC 67)* to implement the same, a Committee was formed under the Chairmanship of Mr. Justice A. S. Salam, former Judge of this Court. The said Committee submitted its report dividing the

property among the heirs of His highness late Ameer of Bahawalpur, including the present Respondents and such distribution has been accepted by the said legal heirs whereupon the Federal Government in exercise of the powers conferred by Article 3 of the Acceding State (Property) Order 1961 (PO No.12 of 1961) and all other powers enabling it in this behalf, issued further amendment through SRO No.946(1)/2003 dated the 30th September 2003 (Annex III) in the "Devolution and Distribution of Property (Ameer of Bahawalpur) Order, 1969".

4. The aforesaid actions and consent to the distribution of the land as well as the issuance of the Notifications by the Federal Government have been confirmed by the learned counsel for the Respondents.

5. When confronted with the aforesaid state of affairs, the learned Addl. AG Punjab states that the instant appeals have lost its efficacy as the conditions specified for proceedings under MLR 64 by the impugned judgment have been fulfilled. Under the circumstances, the instant appeals are liable to be disposed of.

6. In the above circumstances, these appeals are disposed of. Any person aggrieved by any future action taken by any authority can seek his remedy, if any, available under the law.

7. With regard to the impleadment applications which have primarily been filed by the subsequent purchasers, it is to be noted that they are to swim and sink with the sellers. Therefore, as the main appeals have been disposed of, the impleadment applications have lost their relevance and are accordingly dismissed".

10. And relevant paragraphs from decision in the case of Brig. His Highness Nawab Muhammad Abbas Khan Abbassi (supra) are reproduced hereunder, for sake of more clarity,

"However, it has been held in the aforesaid judgment that the distribution made in the order of respondent No.3 passed on 20.2.1969 suffers from certain infirmities and respondent No.3 has been directed to decide the matter afresh in the light of the observations made in the said judgment. Consequently, the orders passed by respondents Nos.1 and 2, with regard to the distribution of the property as also relating to the resumption of the excess area will require modification and case properly be decided only after a final decision is taken by respondent No.3, with regard to the distribution of the property amongst the various heirs of the late Ameer. We may here clarify that the appellant, as also the other heirs of the late Ameer, are citizens of Pakistan and are not above the law and that the provisions of Martial Law Regulation No.64 are applicable to them but as the identity of the exact property owned by each heir is not yet determined resumption of the excess area cannot, in these circumstances, be made with exactitude.

The result will be that as soon as the final position of the holdings of the heirs of late Ameer of Bahawalpur has been decided by respondent No.3, respondents Nos.1 and 2 will be at liberty to proceed under the provisions of the Land Reforms Regulation, 1959 (M.L.R. 64). The orders of the Land Reforms Authorities impugned before us are, accordingly, set aside with the clarification that as soon as respondent No.3 makes the final order under Article 3 of the Acceding State (Property) Order, 1961, the respondents Nos.1 and 2 can proceed further in the matter in accordance with law".

[Emphasis supplied]

11. At the outset, it is appropriate to address the argument that letter of 11th June 2024 is of no legal effect, since Implementation Committee did not exist, legally. Existence or non-existence, operability or otherwise, functionality or non-functional status of the Implementation Committee on 11th June 2024, for the purposes of present petitions, is without any relevance, which situation either way does not render the meeting of 15.06.2024 and subsequent action of cancellation of Mutations unlawful. Existence of the Implementation Committee or otherwise would have had no effect qua the applicability, enforcement and implementation of the Land Reforms Regulations [referred to as “Land Reforms Regime” – And expression Land Reforms Regime contained reference to West Pakistan Land Reforms Regulations of 1959 [Martial Law Regulation No.64 of 1959] and The Land Reforms Regulations 1972 [Martial Law Regulation No.114 of 1972], as the case may be.

12. Meetings of the Implementation Committee on 08.01.2024 and 15.02.2024 clinches the controversy – whereby it directed recording of Mutations in favour of the legal heirs of Late Ameer of Bahawalpur and acknowledged doing of needful by Managing Director Cholistan Development Authority in subsequent meeting – perusal of the minutes of the meetings leaves no doubt qua the business conducted therein. Upon execution of the Mutations, question of holding(s) of the legal heirs of Late Ameer of Bahawalpur stood settled / decided for the purposes of attracting Land Reforms Regime, in the context of decisions by the Apex Court. Factum of execution and recording of Mutations, in favour of the legal heirs, is not subject of challenge through petitions under reference. In light of the decisions (*supra*), it is clear that the moment Mutations were executed and recorded in favour of the legal heirs, Land Commission is required to get down to business and Land Reforms Regime actuates. Petitioners of main petitions and ancillary petitions are unable to satisfy this court that how the cause and effect of decision in the case of *Brig. His Highness*

Nawab Muhammad Abbas Khan Abbassi' (supra), and echoed in the order of 02.10.2018, could be evaded or circumvented, where obligation cast on Land Commission has been clearly spelled out. It is notable that meeting of 15.06.2024 was presided over by Senior Member Board of Revenue / Chief Land Commissioner Punjab, which otherwise implies assumption of jurisdiction under the orders of Apex Court. In these circumstances, letter of 11th June 2024, at best, constitutes an intimation of factum of complaint – [by some of the legal heirs, objecting to third party sale by some other legal heirs], – by the Federal Government. And notwithstanding all shortcomings, letter of 11th June 2024 can at best be treated as intimation from Federal Government, which owes certain obligations in terms of Acceding State (Properties) Order, 1961 in accord with observations recorded in the case of A.M. Abbasi and another V. Federal Government through Secretary and 24 others (supra), – [paragraph 12 thereof].

13. Learned counsel fail to appreciate that alleged action of selling properties, – [if by some of the legal heirs or allegedly carried at their behest] – is patently contrary to the decisions of Apex Court and actually had the effect of defeating and frustrating the purpose and enforcement of Land Reforms Regime. In essence, decision in the case of Brig. His Highness Nawab Muhammad Abbas Khan Abbassi (supra) had the effect of imposing encumbrance / embargo upon the rights of the legal heirs, in dealing with their holdings, subjecting such rights to the conditions imposed and constraints prescribed under Land Reforms Regime. Directions to the effect that “....as soon as final position of holdings of the heirs of late Ameer of Bahawalpur has been decided by respondent No.3, respondents No.1 and 2 will be at liberty to proceed under the provisions of Land Reforms Regulations (1959)

 constitute an act of imposing a judicial encumbrance qua the rights of the legal heirs to deal with holding(s), subjecting it to the mandate and purview of Land Reforms Regime. It does not require an emphasis that any alleged acquirer of rights / interests from the legal

heirs – notwithstanding that transaction(s) claimed are voluntarily acknowledged or accepted by some of the legal heirs or denied – would be bound and subject to the conditions of orders of 07.04.1982 and 02.10.2018 of Hon'ble Supreme Court of Pakistan, including limitations and constraints imposed under the Land Reforms Regime. In view of aforesaid position, the Mutations, which otherwise merely evidence alleged title or embodiment of underlying transactions, or for that matter the alleged executory agreements, are neither enforceable nor extend any rights unto the third parties, except an option to exercise remedies, such as are available for the enforcement of executory arrangements, which in this case are otherwise narrowed down, curtailed and subjected to the applicability of Land Reforms Regime. No comments or observations are recorded qua the legality or otherwise of the transactions and executory agreements. In wake of the conditions imposed and encumbrance placed no rights / interest in the property could be claimed based on Mutations, which act of recording of alleged title is otherwise contrary to the directions / decisions of the Apex Court. Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, mandates that decisions are binding and need to be enforced. There is another downside of the Mutations, executed and recorded. Acknowledging purported conveyance by way of alleged Mutations otherwise have had the effect of reducing the holdings of those legal heirs, against whom claim of sale is alleged. Actually, execution of Mutations or execution of executory agreements, voluntarily or involuntarily, implies evading of statutory obligations under the Land Reforms Regime.

14. Learned Law Officer along the representative of Land Commission Punjab submit that steps have been initiated for implementation of the Land Reforms Regulations, qua the landholding(s) of the legal heirs of Late Ameer of Bahawalpur. There is no cavil that ordinarily Land Commission had the authority to determine the validity or voidness of any transaction found violative of Land Reforms Regime. The issue at hand is slightly different. It is

not disputed that any and all transactions, be it by way of executory agreements or Mutations, are subject to the decision in case of *Brig. His Highness Nawab Muhammad Abbas Khan Abbassi* (supra), hence, no question of *de-novo* review of alleged transactions under reference by the Land Commission arises, in wake of cancellation of Mutations. In terms of the decision of Hon'ble Supreme Court of Pakistan, no legitimacy could be claimed or extended to so-called Mutations to the prejudice of proceedings under Land Reforms Regime.

15. When asked that how any alleged right / interest could be claimed based on alleged Mutations, in wake of the orders of Hon'ble Supreme Court of Pakistan, learned counsel submit that choice and exchange of areas must be provided under the Land Reforms Regulations and declarant is eligible to give its choice, where holding(s) is found in excess of statutory ceiling prescribed. Be that as it may, choice and exchange of area(s) is otherwise subject to limitations prescribed, which matter is within the jurisdiction of the Land Commission and no observations can be recorded now, acknowledging an option of alleged acquirer of rights / interest from the legal heirs, which matter will be considered by Land Commission, when circumstances would warrant.

16. Consequently, no illegality is attributable to the decisions taken in the meeting on 15.06.2024 and subsequent action / orders to cancel the Mutations under reference – [not the Mutations executed and recorded in favour of the legal heirs] - which action / orders of cancellation, in fact, manifest adherence to the directions / decisions of Hon'ble Supreme Court of Pakistan (referred supra). Cancellation of Mutations under reference constitutes lawful exercise of authority, and no interference is warranted to review those orders. It is pertinent to observe that cancellation of Mutations does not imply or warrant *per se* cancellation, rescission or termination of the contractual-cum-executory arrangements, - [authenticity of alleged transactions is not subject matter of present proceedings and no determination thereof is solicited] - which alleged contractual arrangements may be enforced,

by the beneficiaries of cancelled Mutations or the persons claiming executory agreements - [without prejudice to the right(s) and entitlement of the legal heirs concerned to admit or deny alleged contractual transactions whenever the occasion arises] - but only upon the enforcement and conclusive implementation of the Land Reforms Regime. No conclusiveness could be extended to the contractual arrangements at this stage, unless finality is achieved regarding proceedings, subject matter of land reforms – this is the mandate of the decisions of the Apex Court.

17. Petitions, main and ancillary, along with applications are disposed of, subject to the observations recorded in preceding paragraph.

(ASIM HAFEEZ)
JUDGE

Imran/*

APPROVED FOR REPORTING.

JUDGE