

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

C.R.No.115655/2017

Province of Punjab through
Collector, District Sialkot etc.

VS.

Mst. Sughran Bibi (deceased)
etc.

Date of hearing	01.11.2023
Petitioners by	Raja Muhammad Arif, Additional Advocate General
Respondents by	Rana Nasrullah Khan, Advocate

Ch. Muhammad Iqbal, J:- Through this civil revision the petitioners have challenged the validity of the judgment & decree dated 23.02.2016 passed by the learned Civil Judge, Sialkot who decreed the suit for declaration with possession and mandatory injunction filed by the respondents and also assailed the judgment & decree dated 11.07.2017 passed by the learned Additional District Judge, Sialkot who dismissed the appeal of the petitioners.

2. Brief facts of the case are that the respondents/plaintiffs filed a suit for declaration with possession and mandatory injunction against the petitioners/defendants on 03.09.2008 and contended that suit land measuring 166 Kanal 03 Marla bearing Khewat No.1 Khasra Nos.44, 45, 46, 79, 80, 81, 83, 82, 85, 86, 89, 90, 94, 93, 97, 98, 99, 220 situated at village Baila Be-Charagh, Tehsil Sialkot had been mortgaged to the predecessor-in-interest of the respondents/plaintiffs by non-Muslim prior to 1947 and at the time of partition of the

subcontinent in 1947, said non-Muslim (mortgagors/owners) migrated to India and the rights of mortgagors were transferred in favour of Settlement Department. That the respondents/plaintiffs No.1 & 2 filed a suit in 1979 against the Settlement Department which was ex-parte decreed on 08.06.1982 by declaring the respondents/plaintiffs as owners-in-possession of the suit property due to expiry of period of 60 years. The Forest Department filed an application before the Deputy Commissioner, Sialkot for mutation of the land measuring 684 Acre of Baila Be-Charagh which was allowed and subsequently mutation No.131 dated 03.05.2001 was entered in favour of Forest Department on the basis of a notification dated 26.12.1951. The respondents/plaintiffs were not made party in the aforesaid application of Forest Department upon which the respondents/plaintiffs filed an application for review of the mutation. The Deputy Commissioner Sialkot vide order dated 21.08.2007 again declared that the suit land belonged to Forest Department. The respondents/plaintiffs filed an appeal which was dismissed by the Executive District Officer (Revenue), Sialkot vide order dated 18.06.2008. The respondents/plaintiffs challenged the notification dated 26.12.1951 as well as orders dated 03.05.2001, 21.08.2007 and 18.06.2008 through the suit.

The petitioners/defendants filed contested written statement and contended that the land measuring 684 Acre was allocated to the Forest Department by the Custodian of the Evacuee Property vide order dated 10.02.1948 and possession was also handed over. The notification dated 20.12.1951, which was duly issued, whereby the land is owned by the Forest Department. That on 27.02.1965 Chief Settlement Commissioner, West Pakistan issued notification that from that date, no land allotted/un-allotted which is in possession of Forest Department will be allotted against any claim. Subsequently, Chief Settlement

Commissioner vide meeting dated 29.06.1965 sold the suit land as well as other similar lands to the Forest Department at the rate of Rs.14/- PIU. The Forest Department paid the consideration and in this way, the Forest Department became the exclusive owner of the suit land. That the Senior Member, Board of Revenue issued order 04.10.1979 for transfer of the suit property from Settlement Department to the Forest Department and subsequently, vide order dated 04.12.1979, direction was passed in this regard to mutate the suit land in favour of Forest Department. The respondents/defendants further contended that a group of fraudulent persons including the respondents/plaintiffs trying to illegally got allotment of the suit land. That one Muhammad Siddique filed Mukhbari application upon which Deputy Commissioner Sialkot vide order 07.03.1982 passed order for review/rectification of mutation Nos.4 to 16, 20 to 24, 37, 38 to 43. The said order dated was assailed in an appeal before the Commissioner, Gujranwala Division which was accepted on 27.03.1985 and the case was remanded to the Deputy Commissioner Sialkot. Haji Abdul Karim filed Writ Petition No.189-R/1987 wherein vide order dated 09.02.1992, the matter was also remanded to the Deputy Commissioner, Sialkot for fresh decision. In these post-remand proceedings, the Deputy Commissioner, Sialkot vide order dated 28.02.2001 declared that the suit land is owned by the Forest Department and in the light of said order, Mutation Nos.131 and 132 dated 03.05.2001 were entered and sanctioned. The order dated 28.02.2001 as well as mutations No.131 & 132 were challenged by the respondents/plaintiffs and others before the Executive District Officer (Revenue) Sialkot and review only to the extent of Muslim owners was accepted but to the extent of ownership of the suit land by the Forest Department, the same was dismissed.

Out of the divergent pleadings of the parties, the trial Court framed issues, recorded pro and contra evidence of the parties and finally decreed the suit vide judgment & decree dated 23.02.2016. Being dejected, the petitioners filed an appeal which was dismissed by the appellate Court vide judgment & decree dated 11.07.2017. Hence, this civil revision.

3. I have heard learned counsels for the parties and have gone through the record.

4. The core controversy involved in this case revolves around Issues No.1 & 2 which are reproduced as under:

“1. Whether the plaintiffs are owners of suit property and orders dated 28.02.2001, 21.08.2007 & 18.06.2008 are illegal, void, against the facts, based on malafide and liable to be cancelled? OPP

2. If above issue is proved in affirmative, whether the plaintiffs are entitled to get the possession of the suit property and get incorporate their names in the revenue record as owners? OPP”

To dislodge the onus, Sh. Allah Ditta (P.W.1) deposed that they are in possession of land measuring 166 Kanal 03 Marla situated in Moza Baila Be-Charagh Tehsil & District Sialkot for more than 100 years from their predecessors as the non-Muslim had mortgaged the same; that the suit land was in the name of non-Muslims who migrated to India; that they filed suit in 1979 which was decreed in their favour on 08.06.1982; that on the application of the Forest Department, the Deputy Commissioner transferred the land measuring 684 Acre of Moza Baila Be-Charagh to Forest Department but the plaintiffs were not impleaded in the said proceedings; that the Deputy Commissioner Sialkot vide order dated 28.02.2001 declared that the suit land is owned by the Forest Department and mutation No.131 was sanctioned in favour of Forest Department; that the District Officer (Revenue) while deciding the review application declared that the suit land

is owned by the Forest Department; that they filed appeal which was dismissed by the Executive District Officer (Revenue); that the order of Deputy Commissioner, Sialkot, District Officer (Revenue) Sialkot and Executive District Officer (Revenue) Sialkot are liable to be set aside; that a decree was passed by Civil Court in their favour. During cross examination, he deposed that:

"مجھے علم نہ ہے کہ جو ہم نے سول کورٹ میں دعویٰ دائر کیا تھا اس میں محکمہ جنگلات کو پارٹی بنایا تھا یا نہ بنایا تھا۔۔۔ یہ درست ہے کہ ہم نے محکمہ بحالیات کے خلاف ڈگری حاصل کی تھی۔۔۔ یہ درست ہے کہ محکمہ جنگلات نے روبرو ڈپٹی کمشنر سialکوٹ اراضی تعدادی 684 ایکڑ دی تھی جس میں اراضی متدعو یہ 166 کنال 3 مرلے موضع بیلہ بے چراغ تحصیل سialکوٹ بھی شامل تھی۔ یہ درست ہے کہ مورخہ 28.02.2001 کو D.C صاحب نے اراضی کو محکمہ جنگلات کی اراضی قرار دیا جس پر انتقال نمبر 131 درج ہوا۔ یہ درست ہے کہ حکم D.C سialکوٹ مورخہ 28.02.2001 کو ہم نے درخواست نظر ثانی میں چیلنج کیا جو کہ ہماری درخواست نظر ثانی مورخہ 21.08.2007 کو خارج ہو گئی تھی۔ یہ درست ہے کہ حکم مذکور کے خلاف ہم نے اپیل بعد الت جناب EDOR سialکوٹ دائر کی جو کہ مورخہ 18.06.2008 کو خارج ہو گئی۔"

Ghulam Nabi (P.W.2) repeated the same facts in his statement-in-chief as stated by P.W.1. During cross examination, he deposed that:

"جو اراضی محکمہ جنگلات کے قبضے میں ہے اس پر درخت لگے ہوئے ہیں۔۔۔ یہ درست ہے کہ موضع بیلہ بے چراغ میں محکمہ جنگلات کا ملکیتی رقبہ 684 ایکڑ ہے جس میں اراضی متدعو یہ بھی شامل ہے۔۔۔ یہ درست ہے کہ جو دعویٰ مدعی نے 1979 میں دائر کیا تھا اس میں میں گواہ تھا۔"

(emphasis supplied)

Rehmat Ali (P.W.3) during cross examination deposed that:

"میں مالکان اراضی کے کہنے پر گواہی دینے آیا ہوں۔ یہ درست ہے کہ اب محکمہ جنگل بھی اس پر مالک ہے۔ یہ درست ہے کہ موضع بیلہ بے چراغ میں محکمہ جنگلات کا ملکیتی رقبہ 684 ایکڑ ہے۔ کچھ رقبہ پر درخت لگائے ہیں اور کچھ خالی پڑا ہوا ہے۔۔۔ یہ درست ہے کہ اراضی متدعو یہ متروکہ پراپرٹی ہے۔۔۔ اراضی متدعو یہ پر محکمہ جنگلات کے لگائے ہوئے درخت میں شیشم، شہتوت، کیکر، پاپلر وغیرہ کے درخت موجود ہیں۔"

5. Conversely, Muhammad Asim, SDFO (D.W.1) deposed that he is SDFO of Moza Baila Be-Charagh Tehsil & District

Sialkot; that the Forest Department is owner of land measuring 684 Acre which land was given to it by Settlement Department on 10.02.1948; that the Settlement Department issued notification dated 20.12.1958 and thereafter Chief Settlement Commissioner also issued notification 27.02.1965 declaring the Forest Department as owner of any allotted/unallotted land which is under its possession and also declared that such land could not adjusted against any claim; that the Forest Department paid consideration of the entire suit land at the rate of Rs.14/- PIU through cheques and on 04.10.1979 the Board of Revenue, Lahore acknowledged the receipt of payment of entire consideration amount of the suit land thus proprietary rights were granted in favour of the Forest Department and accordingly order dated 04.12.1979 was issued; that later on a few fraudulent persons got alienated some portions of land in their favour; that Muhammad Siddique filed application before Deputy Commissioner, Sialkot upon which Deputy Commissioner cancelled the said allotment orders; that appeal was filed before Commissioner which was allowed and the case was remanded to the Deputy Commissioner, Sialkot; that thereafter Deputy Commissioner, Sialkot vide order dated 08.02.2001 resumed land and mutation No.132 was sanctioned in favour of Forest Department. Imtiaz-ul-Hassan, Incharge Litigation Branch, Forest Department Sialkot (D.W.2) deposed in line with the statement made by the D.W.1. Despite lengthy cross examination the stance of the witnesses could not be shattered by the other side.

6. The respondents/plaintiffs challenged the orders dated 28.02.2001, 21.08.2007 and 18.06.2008 passed by the Deputy Commissioner, District Officer (Revenue) and Executive District Officer (Revenue) Sialkot respectively but the said orders were not produced in evidence by them, whereas, the

said orders were upheld by this Court while dismissing Writ Petition No.95975/2017 vide order dated 06.04.2021.

7. The Deputy Commissioner, Sialkot after considering all the submission of the respondents/plaintiffs, declared that the suit land was transferred in favour of Forest Department by the Settlement Department and on the basis of notification 10.02.1948, Forest Department is in possession of the same. The Deputy Commissioner, Sialkot observed in order dated 28.02.2001 that the land of Moza Baila Be-Charagh Tehsil Sialkot, including the suit land, is owned by the Forest Department. For reference, relevant portion of the order dated 28.02.2001 is reproduced as under:

“9. In view of above discussion advanced by both the parties I hold that the Forest Department was in possession of the land after having paid the price to the Central Govt. and inadvertently, during Consolidation/Settlement operations in the District, the mutation was not incorporated in the revenue record, and the land was wrongly and illegally allotted to the other persons who transferred the same through registered sale deeds and mutations. The application for Q.P.R allotment was filed on 05.07.1974 whereas the Settlement act was repealed on 30.06.1974, which was time barred, and no RL.II. for Bela-Be-Chiragh was made. Under these circumstances, the bogus mutations are hereby ordered to be annulled and mutations in respect of the land measuring 684 Acres, as per notification, is ordered to be attested and sanctioned in favour of the Forest Department.”

8. The respondents/plaintiffs challenged the said order through an appeal before the Executive District Officer (Revenue) which was dismissed vide order dated 18.06.2008. The respondents/plaintiffs did not assail the said order before the Board of Revenue, Punjab as such to the extent of respondents/plaintiffs the said orders have attained the status of finality and have become past and closed transaction. Reliance is placed on Pakistan International Airlines Corporation Vs. Aziz ur Rehman Chaudhary and another (2016 SCMR 14).

9. However, one Muhammad Siddique assailed the orders dated 28.02.2001 and 18.06.2008 through a revision before the Board of Revenue wherein the respondents/plaintiffs were a party. The Member, Board of Revenue vide order dated 26.12.2016 upheld the orders of Deputy Commissioner, Sialkot as well as of Executive District Officer (Revenue). Muhammad Siddique assailed the aforesaid orders through Writ Petition [No.95975/2017] which was dismissed by this Court vide order dated 06.04.2021. For ready reference, relevant portion of order dated 06.04.2021 is reproduced as under:

“4. Admittedly, vide notification/letter No.CEP-1829 dated 10.02.1948 land measuring 684-acres, 05-Kanals & 08-Marlas situated in Mouza Bela Bay Chiragh, Tehsil & District Sialkot was granted to the Forest Department. For ready reference, gist of notification whereof is as under:-

“Copy of letter No. CEP/1824, dated 10-02-1948 from S.A. Rehman ICS of Evacuee Property West Pakistan, Lahore, addressed to Chief Conservation of Forest West Punjab, Lahore

Sir,

With reference to your O.M.No. 2554 dated 06-02-1948, forwarding in original letter No. 381/C, dated 27-02-1948, from the Conservator of Forests, Rawalpindi Circle, on the subject of closure of Waste Lands, I, enclose herewith copy of an order passed by me on the subject for your information and necessary action. If considered necessary I will send copy of this order to the Deputy Commissioner concerned provided you intimate to me the names of the Districts in which the lands in question are situated.

Sd/ xxxxx
Custodian.

I.S.A Rehman I.C.S. Custodian of the Evacuee Property, West Punjab, Lahore., hereby authorize the Deputy Commissioner of the District of the West Pakistan. Which are fetched by Soil Erosion agree to the closure of Waste Lands on behalf of the Non- Muslim Evacuee by the Forest Department under the Provisions of the Punjab, Reclamation Act.

11-02-1948

Sd/ x x x x x x x x x x
Custodian of Evacuee Property
West Punjab, Lahore.

In suppression of any order dated the 10-02-1948. I.S.A. Rehman I.C.S. Custodian of Evacuee Property West Punjab, Lahore, do hereby authorize the Deputy Commissioner of the District of Sialkot, Gujrat, Jhelum, Rawalpindi, Attock, Mianwali, and Shahpur to agree to the closure of Waste Lands on behalf of Non-Muslim Evacuee by the Forest Department under the provision of Section 38 of India Forest

Act, and section 3,4,5 and 5 of the Punjab Prevention (Chose) Act, 1900, By Custodian of Evacuee Property Punjab, Lahore.”

Vide Memorandum No.1518/IVS dated 30th June, 1965, the Forest Department paid all the dues. For ready reference, letter dated 30.06.1965 is reproduced as under:-

“Memorandum No.1518/NS

From Ch. Asghar Hussain,
W. P. F. S.,
Divisional Forest Officer,
Gujrat East Forest Division, Gujrat.

To The Collector Sialkot,
District Sialkot.

Dated Gujrat, the 25th June, 1965

Subject:- PAYMENT OF LAND REVENUE TO THE REVENUE AUTHORITY FOR THE LAND IN POSSESSION OF FOREST DEPARTMENT.

A Cheque No. 016064 dated 28-06-1965 for Rs. 1,21,567/00 on National Bank of Pakistan, Sialkot is sent herewith. Kindly adjust the same against the land revenue of the areas as per list attached. The consolidated receipt for Rs.1,21,567/00 may kindly be supplied to this office for necessary adjustment into the departmental accounts on the enclosed F. A. voucher.

Enc 1: / Cheque

Divisional Forest Officer,
Gujrat East Forest Divn:”

Vide Notification [No.4403-D(F)] dated 20.12.1951 possession of the said land was taken over by Forest Department which remained paying the land revenue of the said land since 1951-52 to 1962-63. With regard to the Land of Forest Department, the Chief Settlement Commissioner vide Notification No.65/795-R(L) dated 27.02.1965 directed all the Deputy Commissioners etc. to restrain themselves from making allotment of land notified or otherwise which was under the possession of the Forest Department to any evacuee claimant and its character could not be changed. For ready reference, gist of notification dated 27.02.1965 is as under:-

“Subject: Disposal of evacuee land in possession of the Forest Department.

On the representation of the Forest Department, it has been decided by the Chief Settlement Commissioner that evacuee land in possession of the Forest Department whether notified or unnotified should not be allotted against claim under the provision of the West Pakistan Rehabilitation Settlement Scheme till further orders.

2. The Forest Department is collecting details of forest plantations on evacuee land. The Tehsildars and the Patwaris concerned should be directed to fully co-operate with the Forest Department to preparing complete details of the evacuee lands and make available the requisite records has been required.”

The vires of above notification dated 27.02.1965 was validated by the Hon'ble Supreme Court of Pakistan in its judgment titled as Province of Punjab Vs Muhammad Mahmood Shah (1991 SCMR 1426). Further in a judgment titled as Masooda Begum through Legal Heirs Vs Govt. of Punjab through Secretary Forest, Lahore & 9 Others (PLD 2003 SC 90), the Hon'ble Apex Court has observed as under:-

“The learned counsel for the Forest Department when confronted with the above legal position, he candidly conceded that the allotments which were made prior to 27.02.1965, would be protected by the law laid down by this Court in the judgments referred above and that the judgment of the High Court by virtue of which the order of cancellation of allotment of the vendor of present appellants, was declared illegal was upheld in Civil Petitions Nos.1982 and 1983 of 1996 on the basis of law laid down by this Court in (1991 SCMR 1426), according to which the rights of the allottees of the land prior to 27.02.1965 were protected and conclusively determined”.

In the aforesaid pronouncements, it has been declared that any order passed regarding the allotment of land belonging to Forest Department after 27.02.1965 would not hold field and such order would be considered as violative to the notification dated 27.02.1965, issued by the Chief Settlement Commissioner whereby a complete embargo was placed on allotment of land in possession of forest department against any claims under the provision of the West Pakistan Rehabilitation Settlement Scheme. In another judgment cited as Province of the Punjab through Collector, Sheikhpura and others Vs. Syed Ghazanfar Ali Shah and others (2017 SCMR 172), the Hon'ble Supreme Court of Pakistan while dealing with similar situation observed as under:-

“13. Let us pause here for a while to see where did the memorandum dated 27.02.1965 come from and what did it stand for? This memorandum was issued by the Chief Settlement Commissioner under paragraph 4-A of the Rehabilitation Settlement Scheme, who had the power to exclude land from allotment where it was required for public purpose. The memorandum provided as under:-

“On the representation of Forest Department it has been decided by the Chief Settlement Commissioner that evacuee lands in possession of the Forest Department whether notified or un-notified should not be allotted against claims under the provision of the West Pakistan Rehabilitation Settlement Scheme till further orders.”

The memorandum reproduced above provides that evacuee land in possession of the Forest Department whether notified or un-notified could not be allotted against claims under the provisions of the West Pakistan

Rehabilitation Settlement Scheme, till further orders. Additional Settlement Commissioner or any other Officer in the hierarchy being subordinate to the Chief Settlement Commissioner could not nullify or neutralize its effect unless, of course, ordered otherwise by the Chief Settlement Commissioner himself. It does not give any power or authority even to the Forest Department to nullify or neutralize its effect, or read something in it what is not there. Allottee, too, could not ask for allotment of land on the condition of managing its retrieval from the Forest Department on his own when he does not figure anywhere in the scheme of the memorandum. We do not understand what prevailed on the Additional Commissioner to confirm allotment on the undertaking of the respondents or on the basis of NOC of the Forest Department, if at all it is assumed to have any existence, outside the record, when the memorandum does not provide for either of them. We thus hold that the allotment confirmed in derogation of memorandum dated 27.02.1965 cannot hold good. In the case of Muhammad Ayub and other V. The Province of Punjab (supra) this Court while dealing with an identical issue held as under:-

“The suit was dismissed by the learned trial Court observing “that the plaintiffs never got possession and that many trees have been grown up there in the supervision of the Forest Department” and, therefore, the claim of the petitioners that they were in possession which was allegedly interfered with by the Forest Department, was not well founded. It was also held on account of Memorandum No.65/775-RL dated 27.2.1965 from the Chief Settlement Commissioner Lahore to the Deputy Commissioners, Sialkot, Gujranwala, Sheikhupura, Gujrat Rawalpindi, Jhelum and Attock on the subject of “disposal of evacuee land in possession of Forest Department” which was to the effect that evacuee lands in possession of the Forest Department whether notified or unnoticed were not to be allotted against any claim under the provisions of the West Pakistan Rehabilitation Settlement Scheme, the allotment of this land in favour of Muhammad Din on 1.3.1966 against his verified claim was itself not valid and the subsequent sale of this land in favour of the petitioners did not confer any title on them. The aforesaid judgment and decree was upheld by the learned District Judge on appeal and again by the High Court on revision. Hence this petition for leave.”

14. In the case of Province of Punjab V. Muhammad Mahmood Shah (supra) the same view was restated with

much greater clarity and emphasis in the paragraph which reads as under:-

“9. Under paragraph 4-A of the Rehabilitation Settlement Scheme, the Chief Settlement Commissioner had the power to direct the exclusion of land from allotment where it was required for a public purpose. While so excluding by his directive dated 27.2.1965, the Chief Settlement Commissioner was acting within his lawful authority. The High Court, however, did not approve of it in a case (Civil Appeal No.155 of 1983) where the allotment had been made for the first time on 18.4.1968, by observing as hereunder—

“The main ground on which the Settlement Commissioner set aside the allotment of the petitioners was the order of the Chief Settlement Commissioner dated 27.2.1965 mentioned above restraining the district authorities from allotting such lands as were in possession of the Forest Department. The copy of the Jamabandi for the year 1905-66, however, shows that the possession over some of the land in question at that time was that of the petitioners but he did not go into the same. In any case it has recently been held by a Division Bench of this Court in Inayat Bibi etc. v. Assistant Settlement Commissioner and Chief Settlement Commissioner PLD 1978 Lah. 252 that the Chief Settlement Commissioner could not issue such instructions restraining statutory functionaries to allot land against the claims. The letter dated 27th February, 1965 is thus without lawful authority and of no legal effect:”

Another paragraph which is extremely relevant in this behalf also merits a look and thus reads as under:-

10. The decision referred to and relied upon for recording the above findings related to absolute prohibition against making the allotments and not qualified prohibition as is contained in paragraph 4-A of the Rehabilitation Settlement Scheme. Hence the very basis for the decision is incorrect. In a decision of this Court in Muhammad Auyb and others v. The Province of Punjab (1989 SCMR 1033), the allotments made on 1.3.1966 were held to be violative of the directive of the Chief Settlement Commissioner dated 27.2.1965. The law point involved in all these cases has received an authoritative pronouncement in Mian Rafi ud Din and 3 others V. The Chief Settlement and Rehabilitation Commissioner

and 2 others (PLD 1971 SC 252) in the following words:-

“It is necessary in my view to keep in mind that there is a distinction between the right to claim a transfer and the right to the transfer and the right to the transference of the property itself. The provisions of the Schedule indicated the persons or the category of persons who can claim the transfer of a particular property but the right to the transfer of the property accrues or becomes vested only after a final order for such transfer has been made in accordance with the provisions of the Act itself, the Schemes, the rules framed under the Act and the instructions from time to time issued. Until a final order of transfer has been made it cannot be said that the property has been disposed of and is no longer available for transfer. It is only when a property is no longer available for transfer that an order of the Central Government laying down a different mode of disposal will not affect it, on the principle that change in the mode of transfer cannot reopen a past and closed transaction.”

5. Admittedly vide letter dated 10.02.1948 the land in question was reserved for forestation and notification dated 20.12.1951 shows the possession of the Forest Department over the said land. The Government of West Pakistan accorded sanction on 20.07.1965 to purchase the said area alongwith other areas for the forestation against payment of sale consideration which (consideration) was paid through cheques during the year 1970 and 1974 by the Forest department to the settlement department and said land by all intent and purpose vested in the absolute ownership of the Forest Department and was not available for any other allotment under any scheme of rehabilitation framed under settlement law. But in contravention of the above notification the land measuring 3320-Kanals 11-Marlas out of abovementioned land of forest department was got allotted during consolidation proceedings by one Naik Muhammad in the year 1973. Against the said allotment Mst. Zainab Bibi and others filed Mukhbari application to the settlement department and after hearing the parties, the allotment in the name of Naik Muhammad was cancelled but the said resumed land was transferred through mutations No.4 to 10, 13 to 17, 20 to 24, 34, 37 to 43 to the different evacuee claimants.

6. Petitioner filed petition on 25.10.1981 before the Assistant Commissioner, Sialkot seeking cancellation of mutation Nos.34, 37 to 43 of village Bela Bay Chiragh on the ground that he purchased the suit land from Muslim owner, as such, the said land could not be made part of the settlement pool. The District Collector after holding inquiry vide order dated

07.03.1982 allowed the review of mutation Nos.4 to 10, 13 to 17, 20 to 24, 34, 37 to 43. The effectees of above order namely Haji Abdul Kareem and Haji Muhammad Yousaf etc. filed an appeal before the Addl. Commissioner (Revenue), Gujranwala who after hearing the parties remanded the matter on 27.03.1985 to the District Collector/Collector, Sialkot for decision afresh. Against the said order, a Writ Petition No.189-R/1987 was filed and this Court upheld the order of the Addl. Commissioner (Revenue), Gujranwala whereafter in post-remand proceedings, the District Collector, Sialkot vide order dated 28.02.2001 resumed the land and in compliance of above order, the Revenue Officer sanctioned mutation No.131 of land measuring 684-acres in the name of Provincial Government and through another mutation No.132 the above said land was transferred in favour of the Forest Department on 03.05.2001.

Against the said order dated 28.02.2001 as well as mutation Nos.131 & 132 dated 03.05.2001, Mian Anwar Shahzad etc. as well as the present petitioner claiming to be purchaser of the land, the Muslim is owner before partition of India filed review petition before the District Officer (Revenue)/Collector, Sialkot who ordered the review of the mutation No.132 to the extent of Muslim property as per their entitlement and rejected the application of the petitioner vide order dated 21.08.2007 and in compliance of above order mutation No.133 was accordingly attested in favour of Muslim owners on 25.08.2008. The above order of the District Officer (Revenue) remained upheld upto the level of Member Board of Revenue. As per record the Muslim property was excluded vide mutation No.133 dated 25.10.2008 whereafter no such land was in the possession of forest department. Moreover, admittedly, notification dated 20th December, 1951 issued by the Governor of West Pakistan in exercise of the powers conferred by Section 38 of the Forest Act, 1927 which is still in field as the same has not been reversed by any competent forum. Even otherwise, a period of many decades have been elapsed and proceeding of conferment of ownership to the Forest Department has attained the status of past and closed transaction which could not be re-opened at the whims and caprice of any indolent party.

7. Furthermore, the Board of Revenue issued circular dated 26.07.1980 addressed to all the Deputy Commissioners/Addl. Settlement Commissioners (Lands) in the Punjab to cancel the allotments of the land of Forest Department. For ready reference, Para-4 circular whereof is reproduced as under:-

“Sizeable portion of the land purchased by or transferred to the Forest Department as protected forest has been allotted on forged and fabricated documents or anti dated Khatahs have been prepared in respect thereof. The Forest Department has filed Mukhbari application in respect of the forgery and fraud coming to their notice upto 30-06-

1974, but there are still many cases which have come to the notice of the repeal of the Evacuee Laws with effect from 01.07.1974 or which may come to your notice or the Forest Department in due course of time. Since fraud is fraud and it vitiates all solemn proceedings and there is no limitation of time for interfering in cases of forgery and fraud and further that orders obtained on the basis of forgery and fabricated documents etc. are nullity in the eyes of law and they can be ignored straight-away as non-existent.”

10. Moreover, all the documentary evidence (Exh.P.1 to Exh.P.12) was produced on behalf of the respondents/plaintiffs by their counsel in his statement whereas it is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement so that the adverse party may have a fair opportunity to cross-examine the same, as such the documents produced by the respondents counsel lack intrinsic value and such documents can validly be excluded from consideration. Reliance is placed on the case title Mst. Akhtar Sultana Vs. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 SC 715). Similar view has been reiterated by the Supreme Court of Pakistan in its latest judgment cited as Rustam & Others Vs. Jehangir (deceased) through LRs. (2023 SCMR 730) wherein it is held as under:-

“7. As regards the other two documents i.e. mutation No.1836 (Exh.D-9) and mutation No.1837 (Exh.D-8), it is suffice to say that according to principle settled by this Court in the cases reported as Mst. Hameeda Begum and others v. Mst. Irshad Begum and others (2007 SCMR 996), Federation of Pakistan through Secretary Ministry of Defence and another v. Jaffar Khan and others (PLD 2010 SC 604), Province of the Punjab through Collector, Sheikhpura and others v. Syed Ghazanfar Ali Shah and others (2017 SCMR 172) the document should be produced in the evidence by the party itself and a fair opportunity should be given to the opposite party to cross-examine the same, as such, the said two documents produced by the defendants counsel in his statement could not be taken into consideration.”

(emphasis supplied)

11. So far as the argument of learned counsel for the respondents/plaintiffs that the respondents/plaintiffs had obtained decree dated 08.06.1982 from the Civil Court against the Settlement Department is concerned, suffice it to say that vide notification dated 10.02.1948, the suit land had already been transferred in favour of the Forest Department but the respondents/plaintiffs did not array Forest Department as party/defendant in the said suit whereas in the absence of a necessary party, no effective decree or order can be passed and even if passed that would have no binding force qua the party who was not party to the lis. Reliance in this regard is placed on cases cited as Mst. Maqbool Begum etc. Vs. Gullan & Others (PLD 1982 SC 46) and Province of Punjab through Secretary Excise & Taxation Department, Lahore & Others Vs. Murree Brewery Company Ltd (MBCL) & Another (2021 SCMR 305).

12. The respondents/plaintiffs claim that the suit land was mortgaged by the non-Muslim/evacuees to their predecessors, thus they became owners of the suit land on such basis. Admittedly, at the time of creation of Pakistan, the suit land was owned by non-Muslims who migrated to India and thus the suit land being the evacuee land vested with the Central Government and became part of the compensation pool. It is settled law that where a property, rightly or wrongly, treated to be an evacuee property, such treatment of property could only be assailed through proceedings before the Custodian of Evacuee Property. Reliance is placed on Member BOR Punjab and another Vs. Mst. Siddiqan through L.Rs. and others (2015 SCMR 1721), relevant portion whereof is reproduced as under:-

“2.....It is a settled principle of law that where a property is rightly or wrongly treated to be an evacuee property, such treatment of the property, can only be assailed through proceedings before the appropriate forum. In this case, the relevant law is the evacuee law and the competent forum created by such law namely, is the Custodian or his successor the Notified Officer. Reference is made

to Azizuddin v. Muhammad Ismail (1985 SCMR 666). Reference can be made to the judgment dated 1-10-2014 of this Court passed in Civil Appeal No.514/2008 titled "Nasir Fahimuddin and others v. Charles Philips Mills son of Patrick Mills, resident of 4/2-A, Habib Ullah Road, Lahore and others"; besides the law laid down in Muhammad Din and 8 others v. Province of the Punjab through Collector and others (PLD 2003 Lah. 441), the relevant portion whereof reads as under:

"From the above, it stands settled that when there is a question about the evacuee nature and treatment of a property as such. the civil courts have no jurisdiction in the matter. In the instant case, not. only that the property was treated as an evacuee property, but, the same had also been transferred and permanently settled in favour of the predecessor-in-interest of the petitioners, Noor Muhammad, predecessor-in-interest of respondent No.3, and Nazim-'ud-Din. The Civil Courts in the ' suit, filed. by the respondents, seeking declaration of their title on the basis of PTD, issued in their favour, had no jurisdiction to hold such transfer as void, because the property was nonevacuee and, therefore. its treatment and transfer to the petitioners could not be made.....Even if the property had been erroneously treated and transferred as evacuee, their right in the property, stood extinguished and they had no legitimate title, which could be passed onto Abdul Rashid by way of gift, from whom, respondents Nos.2 and 3 could acquire a lawful title, by stepping into the shoes of the original owners It has been settled till now that, where the "property had been treated and transferred as an evacuee property; even if erroneously, and the non-evacuee owners did not seek their remedy under the law in force at the relevant time, their title to such property stood extinguished and they could not assert their right of ownership before the Civil Court, after the repeal of the evacuee/settlement law, on account of lack of jurisdiction."

13. Moreover, the petitioners/defendants produced notification dated 10.02.1948 (Exh.D.1), notification dated 20.12.1951 (Exh.D.2), receipt of the payment of land revenue (Exh.D.3), notification dated 27.02.1965 (Exh.D.4), the proceedings of the meeting of Chief Settlement Commissioner (Exh.D.5), the certificate for payment of payment of consideration of the land (Exh.D.6), mutation No.132 (Exh.D.8), copies of Jamabandi for the year 2005-2006 (Exh.D.9) & 1961-1962 (Exh.D.10) but the Courts below did not appreciate and discuss the aforesaid documentary evidence.

14. The respondents/plaintiffs failed to prove their case through any trustworthy oral as well as documentary evidence, as

such the findings of both the Courts below on issues No.1 & 2 being based on misreading and non-reading of evidence as well as against the record are hereby reversed and the same are decided against the respondents/plaintiffs and in favour of the petitioners/defendants.

15. The Courts below have neither taken into consideration the evidence nor furnished any well-reasoned findings, as such, they have committed blatant misreading and non-reading of the evidence. The learned Courts below have also failed to apply the correct law which rendered the said dicta as not sustainable in the eyes of law and are liable to be set-aside. This Court, under Section 115 C.P.C, has jurisdiction to interfere in the perverse concurrent judgments & decrees of the lower *fora*. Reliance is placed on the case of Nazim-ud-Din & Others Vs. Sheikh Zia-Ul-Qamar & Others (2016 SCMR 24).

16. The land in question is admittedly a public asset and the Courts of law are custodian of the public properties, public interest and while dealing with matters relating to such properties/assets or interests, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul 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 a judgment cited as Provincial Government through Collector, Kohat and another Versus Shabbir Hussain (PLD 2005 SC 337), wherein the Hon'ble Apex Court of the country has held as under:-

"12. Likewise, the learned Presiding Officers are also required to exercise caution when they are dealing with matters relating to

public property and public interest of which the Courts of law are the final custodians. It is true that we have never leaned in favour of giving of preferential treatment to the Government departments or agencies but then we are equally obliged, while granting relief, to ensure that public interest is not permitted to be jeopardized and public property is not allowed to be squandered through mere collusion of some representative of a Government agency”.

(emphasis supplied)

Further reliance is placed on cases cited as *Al-shafique Housing Society Vs. P.M.A* (PLD 1992 SC 113), *Union Council Dhabeji Vs. Al-Noor Textile Mills Ltd* (1993 SCMR 7), *Multiline Associates Vs. Ardeshir Cowasjee* (PLD 1995 SC 423), *Abdul Haq Indher Vs. Province of Sindh* (2007 SCMR 907), *Taj Muhammad Vs. Town Committee* (1994 CLC 2214) and *Sindh Peoples Welfare Trust Vs. Government of Sindh* (2005 CLC 713).

17. In view of above, this civil revision is allowed, the judgment & decree dated 23.02.2013 passed by the trial Court and the judgment & decree dated 11.07.2017 passed by the appellate Court are set aside and the suit for declaration with possession and mandatory injunction filed by the respondents/ plaintiffs is hereby dismissed. No order as to costs.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge