

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

Civil Revision No.991-D of 2014

Raja Abdul Ghafoor

Versus

Province of Punjab through District Collector, Rawalpindi

JUDGMENT

Date of hearing: 04.09.2024.

Petitioner by: Mr. Muhammad Shuaib Abbasi, Advocate.

Respondents by: Mr. Imran Shaukat Rao, Assistant Advocate General along with Saeed Nawaz, Tehsildar, Ahtesham Ahmad, Girdawar and Muhammad Haroon, Patwari.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant revision petition, petitioner has assailed the vires of judgments & decrees dated 30.09.2011 & 30.05.2014, passed by learned Civil Judge and Additional District Judge, Rawalpindi, respectively, whereby suit for declaration along with permanent injunction, filed by petitioner, was concurrently dismissed.

2. Facts in brief are that petitioner instituted a suit for declaration along with permanent injunction against the respondent to the effect that he is owner-in-possession of land measuring 04-Kanal 11-Marla bearing Khasra No.132 situated in the revenue estate of Hanaser, Tehsil Kahuta, District Rawalpindi, in terms of registered sale deed No.346 dated 27.09.1975 and mutation No.603 attested on 08.11.1975; and that orders dated 09.10.1990 and 20.11.1990, passed by respondent, be declared illegal, void and ineffective qua the rights of petitioner with regard to the suit land. The suit was contested by the respondent by filing written statement. Learned Trial Court after framing issues, recording evidence and hearing arguments of learned

counsel for the parties, proceeded to dismiss the suit vide judgment & decree dated 30.09.2011. Feeling aggrieved, petitioner filed appeal before learned Additional District Judge, who vide judgment & decree 30.5.2014 dismissed the same. Hence, this revision petition.

3. Learned counsel for petitioner submits that petitioner is a *bona fide* purchaser of the disputed land, but mutation was cancelled without issuance of any notice, rather without holding any inquiry and affording opportunity of hearing to the petitioner. He further submits that the Provincial Government was not competent to cancel allotment granted by the Central Government. He adds that the registered sale deed of the property is still intact. He argues that after repeal of the Evacuee Laws in the year 1975, past and closed transactions could not be re-opened by the respondent. In support, he relied upon *Khawaja Bashir Ahmad v. The Additional Settlement Commissioner, Rawalpindi and others (1991 SCMR 1604)*.

4. On the other hand, learned Law Officer defends the impugned judgments & decrees.

5. Arguments heard. Available record perused.

6. Record shows that the allotment was initially made in favour of one Faiz Muhammad s/o Muhammad Alam vide mutation No.398 dated 06.01.1973. Subsequently, the disputed property was sold to Muhammad Iqbal vide mutation No.399. Later, the disputed property was further alienated in favour of Capt. Ghulam Muhammad vide registered sale deed No.86 dated 25.06.1973 and mutation No.481 dated 16.11.1973. Finally, through registered sale deed No.346 dated 27.9.1975 and mutation No.603 attested on 08.11.1975, the petitioner purchased the disputed property from said Capt. Ghulam Muhammad. During the proceedings before the revenue authorities, it was established that Faiz Muhammad's claim was bogus, leading to the cancellation of his mutation vide order dated 09.10.1990 and subsequent transfer in favour of the respondent vide mutation No.975 dated 20.11.1990.

7. Admittedly the Displaced Persons (Land Settlement) Act, 1958 was repealed by the Displaced Persons Laws (Repeal) Act,

1975 whereafter no new allotment could be made by the Notified Officer / Chief Settlement Commissioner. However, if any earlier allotment of evacuee land was obtained fraudulently, the authority possesses inherent powers to investigate such fraudulent allotments as fraudulent allotments lack legal sanctity. Under Section 10 of the Displaced Persons (Land Settlement) Act, 1958, the Chief Settlement Commissioner has the jurisdiction to adjudicate or investigate the legitimacy of evacuee claims and if, fraud is found in the allotment process, can reverse the allotment order. The jurisdiction of the Chief Settlement Commissioner / Notified Officer in this regard has been affirmed by the Hon'ble Supreme Court of Pakistan in a judgment reported as Messrs Beach Luxury Hotels, Karachi v. Messrs Anas Muneer Ltd. and others (2016 SCMR 222) wherein it is observed that when an allotment matter is re-opened, the Settlement Authority has the jurisdiction to re-examine all the facts related to the title of the parties from the inception of claim and to decide the matter according to available record and applicable law. Reliance is placed upon Sheikh Rauf Ahmad v. Dr. Nazir Saeed, Member (Judicial-V), Board of Revenue (2020 YLR Note 52).

8. The main contention of petitioner is that, following the repeal of Evacuee Laws in the year 1975, transaction in favour of Faiz Muhammad executed in the year 1973 could not be re-opened. However, it must be noted that transaction in favour of Faiz Muhammad has been proven to be bogus and fraudulent. Therefore, the protection of being a past and closed transaction does not apply to such fraudulent transactions. These transactions are subject to review by the competent authorities and the constitutional jurisdiction of this Court cannot be invoked to shield verification orders for claims obtained through fraud. It is well settled that fraud undermines even the most solemn proceedings, and any structure based on such fraudulent transactions, stands automatically dismantled and any ill-gotten gains achieved by fraudster cannot be validated under any norms of law and any benefit/order obtained through fraud, misrepresentation of true facts cannot assume the status of past and

closed transaction and that illegal orders always remain vulnerable to the legal proceedings of investigation. Reliance is placed upon Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others (PLD 1973 Supreme Court 236), Qutubuddin and others v. Sardar Hidayat Ullah Khan Mokal and another (1976 SCMR 524), Lahore Development Authority v. Firdous Steel Mills (Pvt.) Limited (2010 SCMR 1097) and Sindh Irrigation and Drainage Authority v. Government of Sindh and others (2022 SCMR 595).

Even the petitioner has failed to show that initial allotment was genuine and not fraudulent, therefore, the contention of petitioner that he was not associated while cancelling mutation passed in his favour, is misconceived on the sole principle that fraud vitiates even the most solemn proceedings.

9. Needless to say that the preponderance of judicial authority is in favour of conceding such a power to every authority, Tribunal or Court to *suo moto* recall or review an order obtained through fraud. This is based on the general principle that fraud vitiates even the most solemn proceedings, and no party should be allowed to take advantage of their fraud. There is no rational basis for discriminating between the powers available in this behalf to a Court of general jurisdiction and those available to a Court or Tribunal of special or limited jurisdiction, as the impact of fraud is the same in either case. The responsibility to address and rectify the effects of fraud lies with the authority before which the fraud was perpetrated. Even a Tribunal with limited or special jurisdiction has the power to *suo moto* recall or review an order obtained by fraud. Reliance is placed upon The Chief Settlement Commissioner, Lahore v. Raja Mohammad Fazil Khan and others (PLD 1975 Supreme Court 331).

10. It would be relevant to observe here that when a basic order / transaction is void ab initio, the entire series of subsequent orders / transactions, together with the superstructure of rights and obligations built upon them, must fall to the ground because such orders have a little foundation as the same are based on void order, unless some statute or principle of law recognizing the changed position of the

parties as legal, is in operation. In this regard, reference can be made to Talib Hussain and others v. Member, Board of Revenue and others (2003 SCMR 549), Mustafa Lakhani v. Pakistan Defense Officers Housing Authority, Karachi (2006 SCJ 702), Moulana Attar-Rehman v. Al-Hajj Sardar Umar Farooq and others (PLD 2008 Supreme Court 663), Muhammad Siddiq v. Ashraf Ali and 3 others (2000 MLD 781), Faisal Jameel v. The State (2007 MLD 355), Secretary Communication and Works Department Government of Balochistan and others v. Dad Baksh and another (2013 CLC 343) and Muhammad Iqbal v. Muhammad Ahmed Ramzani and 2 others (2014 CLC 1392).

11. Learned Courts below have rightly appreciated the material aspects of the matter, evidence brought on record and applicable law. Learned counsel for petitioner could not point out any illegality, material irregularity, misreading or non-reading of evidence and jurisdictional error in the concurrent decisions of learned Courts below warranting any interference by this Court.

12. Resultantly, this revision petition, being devoid of any merits, is hereby dismissed. No order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S./ Waseem