

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

C.R.No.506/2019

Pakistan Mineral Development Corporation (Pvt.) Ltd. through its Managing Director VS. The Province of the Punjab through Chief Secretary and another

Date of hearing	05.09.2023
Petitioner by	Mr. Imran Hassan Ali, Advocate
Respondents by	Mr. Jaleel Abbasi, Assistant Advocate General Malik Abdul Razzaq, Assistant Advocate General

Ch. Muhammad Iqbal, J:- Through this civil revision, the petitioner has challenged the validity of the judgment & decree dated 15.07.2009 passed by the learned District Judge, Jhelum whereby the appeal of the respondent was allowed, the judgment & decree dated 07.03.1993 passed by the learned Civil Judge, Jhelum was set aside and the suit for declaration filed by the petitioner was dismissed.

2. Brief facts of the case are that on 04.01.1984 the petitioner/plaintiff filed a suit for declaration against the respondents/defendants and contended that the petitioner/plaintiff may be declared as owner of land measuring 18606 Kanal & 17 Marla situated in village Rakh Dandot as per entries in the Jamabandi 1962-63, which land was transferred by the Central Government in favour of the petitioner/plaintiff and the respondents/defendants have no concern whatsoever with the suit

property and the entries in the Jamabani for the year 1966-1967, 1970-1971, 1974-1975 and 1978-1979 in the ownership column showing Province of the Punjab as owner of the suit land may be declared as illegal and unlawful and said record may be corrected accordingly.

The respondents/defendants filed contesting written statement and raised objection that mutation No.350 was got attested on 13.11.1968 by the Central Government in favour of the Provincial Government as such the suit is badly time barred. That the matter was referred to the Attorney General for Pakistan who announced award against the petitioner/plaintiff and the said Award dated 25.01.1982 was not challenged by the petitioner. That as per Section 49 of the West Pakistan Land Revenue Act, 1967, the Provincial Government is owner of the suit property. As per divergent pleadings of the parties, the learned trial Court framed issues as under:-

- “1. *Whether the plaintiff is owner in possession of the suit property? OPP*
- 2. *Whether the entries in the revenue record are illegal, void and ineffective upon the plaintiff rights? OPP.*
- 3. *Whether the suit is time barred? OPD.*
- 4. *Whether the suit is barred by res judicata? OPD.*
- 5. *Whether the suit has not been sufficiently stamped, if so its effect? OPD.*
- 6. *Relief.*

After framing of the above issues, the petitioner/plaintiff produced in affirmative only the documentary evidence as Ex.P1 to Ex.P9 in the statement of its counsel who closed the right of leading affirmative evidence of the plaintiff on 04.07.1987. The respondent failed to produce evidence and their right to produce evidence was closed under Order XVII Rule 3 C.P.C on 31.10.1987. Thereafter, the petitioner produced its Manager, Estate as PW-1 who got recorded his statement and also produced Ex.P10 to Ex.P15 in evidence. The learned trial Court on the basis of evidence of the petitioner/plaintiff decreed the suit vide

judgment & decree dated 25.11.1987. Being aggrieved, the respondent filed an appeal which was accepted vide judgment & decree dated 17.06.1990 by the learned appellate court who by setting aside the judgment & decree dated 25.11.1987 of the learned trial Court allowed the respondent/defendant to produce evidence.

After remand, respondent produced Ex.D1 to D4 in evidence, thereafter, the learned trial Court again decreed the suit vide judgment & decree dated 07.03.1993. Being dissatisfied, the respondent preferred an appeal which was allowed vide judgment & decree dated 15.07.2009 by the appellate court who by setting aside the judgment & decree dated 07.03.1993 passed by the learned trial Court dismissed the suit of the petitioner. The petitioner challenged the decision of the appellate court through instant civil revision which was earlier dismissed by this Court vide judgment dated 30.05.2016. The petitioner assailed the said judgment of this Court through filing Civil Appeal No.2218 of 2018 which was allowed on 12.09.2018 by the Hon'ble Supreme Court of Pakistan who remanded the matter to this Court to decide it afresh on merits. Hence the instant Revision Petition is being decided on merits.

3. I have heard the arguments of learned counsels for the parties and have gone through the record with their able assistance.

4. Onus to prove issue No.1 and 2 was upon the petitioner/plaintiff. In order to dislodge the above onus petitioner-plaintiff produced documentary evidence comprising Ex.P1 to Ex.P9 in the statement of its counsel and closed the right of producing affirmative evidence on 04.07.1987. The said statement of counsel is as under:-

بیان کیا کہ نقل رجسٹر حقدار ان زمین سال 1966 جمع بندی سال 1979-80 Ex.P1 67 نقل رجسٹر حقدار ان زمین سال 1962 چھپی بنا م و وزارت صنعت و Ex.P2، قدرتی وسائل مورخہ 26.05.62 Ex.P3 63-63 چھپی مورخہ 23.11.1963 Ex.P4، چھپی Ex.P5 11.5.62 نقل حکم بورڈ آف ریویو مورخہ 11.1.69 Ex.P6 چھپی مورخہ 29.6.62 Ex.P7 1.7.74 چھپی مورخہ 29.6.62 Ex.P8 پیش کرتا ہوں اور شہادت مدعی تائیدی ختم کرتا ہوں۔

As after producing above evidences, the petitioner closed its affirmative evidence, thus the respondents were legally required to produce evidence but the respondent/defendant failed to lead evidence, as such their right of producing evidence was closed under Order XVII Rule 3 CPC on 31.10.1987. Despite there being non-availability of defence evidence and statement of the petitioner's counsel for closure of affirmative evidence and without having permission from the trial court, the petitioner produced in evidence its Manager (Estate) namely Abdul Rahim (PW1) who tendered further documents Ex.P10 to Ex.P15 in his affirmative statement in absence of the learned counsel for the respondent and neither any opportunity of cross examination on the PW was given to the respondent nor the said witness ever appeared to face question of the opposite party as the learned petitioner's counsel again closed right of petitioner's evidence on 08.11.1987 which statement of counsel is as under:-

بیان کیا کہ شہادت مدعی ختم کرتا ہوں۔
من کر درست تسلیم کیا۔

Thus, in absence of the opposite counsel, leading of evidence in clandestine manner without affording an opportunity of cross-examination on the statement of PW-1 and also questioning the veracity of Ex.P-10 to Ex.P-15 vitiate legality of the said evidence.

5. As per revenue record, since 1962 till 1968, the land in question remained in ownership of the Central Government who provisionally transferred the management of the department/organization to the petitioner and the factum of transfer of land to the province superseded all the previous correspondence / letter of the Government with the petitioner. Further, the land in question was never allotted by any competent authority in favour of the petitioner nor its ownership has ever been transferred in favour of the petitioner. Thus, the plea of ownership of the petitioner is without any force.

Further, it is worth mentioning here that the State land belonging to either Federal or Provincial Government is always maintained and managed by the Government Institution but none of such institution is absolute owner of it rather the title and ownership always remained with the concerned Government who has the authority under the law to take away a chunk of land from its one institution / Department and assign the same to other Department and its intra Government assignee department is debarred to claim absolute ownership of said land, rather the Central Government being owner was competent to transfer the said land to the province.

6. Moreover, the said land was transferred in favour of the Provincial Government through mutation No.350 dated 30.11.1968 and since then the ownership of Province of Punjab is reflected in the revenue record/ Jamabandis, which status is in field till date. Even otherwise, under Section 49 of the West Pakistan Land Revenue Act, 1967 the Provincial Government is owner of the mines and minerals. For ready reference, aforesaid provision is reproduced as under:

“49. Rights of Government in mines and minerals.— Notwithstanding anything to the contrary in any other law, or in any order or decree of Court or other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document, all mines and minerals shall be and shall always be deemed to have been the property of Government, and Government shall have all powers necessary for the proper enjoyment of its rights thereto.”

The explanation of the word “Government” has been provided in the Punjab Laws (Adaptation) Order, 1974 which is as under:

“Explanation – For the purposes of this section, “Government”, in relation to nuclear energy, mineral oil and natural gas, shall mean the Federal Government, and in relation to other mines and minerals the Government of the Punjab.”

(emphasis supplied)

After the enactment of the Act 1967 ibid the domain of Federal Government was limited to nuclear energy, mineral, oil and natural gas and rest of mine, mineral including the salt went into the jurisdiction/ ownership of Government of Punjab. Besides above in the changed legal scenario, the issue of ownership of suit land was also discussed in the Intra Provincial Conference held on 20.11.1979, and it was decided to refer the matter at discord to Attorney General for Pakistan who announced an award on 25.09.1982. According to the said award, the suit land is owned by the Provincial Government whereas the petitioner/ plaintiff can only excavate salt after obtaining license from the Provincial Government on payment of necessary lease money or royalty to it. For ready reference, the relevant portion of the Award is reproduced as under:

“8. Having regard to Section 49 of the West Pakistan Land Revenue Act notwithstanding anything to the contrary or any other law salt would be deemed to have been the property of the Government of West Pakistan. The law here would include WPIDC, Ordinance XXXVIII of 1962. Even under the said Ordinance all that vested in the PIDC was right to do certain acts in the salt mines, it did not affect the proprietary rights of the Government. Be that as it may, even assuming if the contention to the contrary of the counsel of PMDC is correct, as has been stated earlier, in view of Section 49 salt, being covered by expression, mine and mineral, sale mines are the property of the Government of Punjab, N.W.F.P who have all powers necessary for the proper enjoyment of the rights thereto. The

said statutory provisions are not affected by the Constitution of 1973 and hence the contention of PMDC are devoid of force.

9. After giving the consideration to the written and oral submission of the parties and having regard to the legal provisions and all the circumstances, in my opinion, the PMDC can excavate salt in the Province after obtaining licence from the Provincial Government on payment of necessary lease money or royalty to them.”

The above said Award was not challenged by the petitioners as such it has attained the status of finality and matter qua ownership of Province of Punjab has become past and closed transaction. Reliance is placed on Pakistan International Airlines Corporation Vs. Aziz ur Rehman Chaudhary and another (2016 SCMR 14).

7. Even otherwise, the petitioner/plaintiff produced affirmative evidence in the shape of documents Ex.P1 to 9 in the statement of its counsel on 04.07.1987. As per law the petitioner/plaintiff was required to tender documents in statement of its duly authorized person as per law but perusal of the record shows that the documentary evidence has been produced by the learned counsel of the petitioner/plaintiff in his statement which mode of tendering material documents in the evidence is not recognized as a valid tender of the documents in evidence and same wears no intrinsic value. The object of producing the material document by the party in its own statement is to afford a fair opportunity to the other party to cross-examine / question the veracity of the said document, as such the documents produced by the petitioner’s counsel cannot be relied upon as valid piece of evidence and ordinarily such documents are excluded from taking into consideration. Reliance is placed on the cases titled of Mst. Hameeda Begum & Others Vs. Mst. Irshad Begum & Others (2007 SCMR 996), Province of the Punjab through Collector, Sheikhpura & Others Vs. Syed Ghazanfar Ali Shah & Others (2017 SCMR 172), Mst. Akhtar Sultana Vs. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD

2021 SC 715) and Rustum & Others Vs. Jehangir (deceased) through LRs. (**2023 SCMR 730**). Furthermore, it is an astonishing fact that as the right of the respondents/defendants to produce evidence was closed on 31.10.1987, thereafter the petitioner/ plaintiff managed to get recorded the statement in affirmative of P.W.1 on 08.11.1987 and if any statement of witness so recorded or any document is produced after closure of right of leading evidence, such statement and documents are liable to be ignored. The same controversy has been resolved by the learned Division Bench of this Court in a case titled as Jameela Bibi & Others Vs Ahmadi Khanam & Others (2003 YLR 369) wherein it is held as under:-

“7.....The other marginal witness of the document Ch. Abdul Rahim, son of Noor Muhammad has not been examined by the appellants and no valid reason for this omission has been given, whereas Muhammad Aslam son of Jillal Din, other marginal witness was not examined in affirmative, rather he has been produced in rebuttal. We find that as the onus to prove valid execution of the agreement to sell in affirmative nature, was on the shoulder of the plaintiffs, therefore, examining this witness in rebuttal is not of any help to the appellants.....”

Thus, this plea of the petitioner that the land was transferred to it along with its title is misconceived as the petitioner failed to prove its title qua the suit land and remained unsuccessful to dislodge the onus of the above issues through oral well as documentary evidence.

8. 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)*.

9. Admittedly the suit land was transferred by the Central Government in favour of the Provincial Government but the petitioner/plaintiff has not properly arrayed the aforesaid parties in the lis whereas it is settled law that in the absence of a necessary party, no effective decree or order can be passed. Reliance in this regard is placed on cases cited as *Mst. Maqbool Begum etc. Vs. Gullan & Others (PLD 1982 SC 46)*, *Province of the Punjab through Member Board of Revenue (Residual*

Properties), Lahore & Others Vs. Muhammad Hussain through LRs & Others (PLD 1993 SC 147), Dr. Saleem Javed & Others Vs. Mst. Fauzia Nasim & Others (2003 SCMR 965) and Government of Balochistan, CWPP&H Department & Others Vs. Nawabzada Mir Tariq Hussain Khan Magsi & Others (2010 SCMR 115), Muhammad Siddique (Deceased) through L.Rs. and others Vs. Mst. Noor Bibi (Deceased) through L.Rs. and others (2020 SCMR 483) and Province of Punjab through Secretary Excise & Taxation Department, Lahore & Others Vs. Murree Brewery Company Ltd (MBCL) & Another (2021 SCMR 305).

10. As regard the argument of learned counsel for the petitioner that the appeal of the respondents/defendants before the learned appellate Court was time barred, suffice it to say that as per record the appeal was instituted by the respondents/defendants within time before the District Judge, Jhelum who returned the same due to lack of pecuniary jurisdiction, thereafter it was presented immediately before this Court and remained pending but subsequently due to enhancement of pecuniary jurisdiction of lower appellate court, it was transmitted back to the District Judge. Thus, the appeal of the respondents/defendants was treated well within time and argument of the petitioner is without any force and same is accordingly repelled. Reliance is placed on a case titled as Sherin and 4 others Vs. Fazal Muhammad and 4 others (1995 SCMR 584).

11. The petitioner/plaintiff has filed suit for declaration but it could not produce any title document or order of allotment issued by the competent authority regarding permanent transfer of the title of the suit land in its favour. It is settled law that through declaratory suit under Section 42 of the Specific Relief Act, 1877 only a pre-existing right can be declared whereas no new right can be created. Reliance in this regard is placed on a recent

pronouncement of the Hon'ble Supreme Court of Pakistan cited as *Director Military Lands and Cantonment Quetta Cantt. Quetta and others Vs. Aziz Ahmed and others (2023 SCMR 860)* relevant text whereof is as under:-

“...we are clear in our mind that through a declaration in civil matters claimed under section 42 of the Specific Relief Act a pre-existing right can be declared and a new right cannot be created by grant of a decree by the civil court. Same is the position here, the learned High court under the Constitutional Jurisdiction vested in it under Article 199 can declare a pre-existing right and no new right can be created through a declaration issued under Article 199...”

12. The next significant aspect of the matter is that the land was transferred by the Central Government in favour of Provincial Government on 13.11.1968 but the instant suit was filed by the petitioner/plaintiff in 1984 i.e. after lapse of 15 years without furnishing any reason in the plaint regarding the delayed agitating the matter whereas the limitation for filing a suit for declaration, under Article 120 of the Limitation Act, 1908 is six years as such the suit filed by the petitioner/plaintiff is badly time barred by nine years and no convincing explanation in this regard has been furnished for condonation of the delay which is a fatal flaw. Reliance is placed on the case titled as *Agha Syed Mustaque Ali Shah Vs Mst. Bibi Gul Jan & Others (2016 SCMR 910)*.

13. The learned trial court has failed to appreciate the legal and factual aspects of the case and decreed the suit of the petitioner/plaintiff whereas the learned appellate court, after discussing the facts as well as evidence of the parties, through a well-reasoned judgment & decree has rightly allowed the appeal of the respondents and dismissed the suit of the petitioner/plaintiff. It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be

preferred and respected, unless it is shown from the record that such findings are not supported by evidence. Reliance is placed on the cases reported as Muhammad Hafeez & Another Vs. District Judge, Karachi East & Another (2008 SCMR 398) and Rao Abdul Rehman (deceased) through legal heirs Vs. Muhammad Afzal (deceased) through legal heirs and others (2023 SCMR 815).

14. In view of above, this civil revision having no merits is hereby dismissed. No order as to costs. Office is directed to dispatch copies of this judgment to the Senior Member, Board of Revenue, Secretary, Mines & Minerals Department, Government of the Punjab and Deputy Commissioner, Jhelum for information and further necessary action as per law.

**(Ch. Muhammad Iqbal)
Judge**

Approved for reporting.

Judge

Abdul Hafeez