

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, BAHAWALPUR
BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT**

C.R. No.80-D of 2010

Province of Punjab through EDO (R)

Versus

Mehnga Khan (deceased) through Legal Heirs, etc.

J U D G M E N T

Date of hearing: 06.06.2023.

Petitioner by: Rai Mazhar Hussain Kharral, AAG

Respondents by: M/s Muhammad Ibrahim Khan and
Shoaib Iqbal, Advocates

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant petition, petitioner has assailed vires of judgments and decrees dated 07.3.2009 passed by learned Civil Judge, Ist Class, whereby suit for possession through pre-emption filed by respondents No.1 to 6 was decreed and judgment and decree dated 28.10.2009 passed by learned Addl. District Judge, Bahawalnagar, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated the facts of the case are that predecessor of respondents No.1-A to 1-F/Mehnga Khan instituted a suit for possession through pre-emption against petitioner and respondents No.2 to 5 regarding agricultural land, detailed in Para-1 of the plaint, by contending that Mst. Rashida Begum entered into oral sale mutation No.468 attested on 30.12.2003 with defendants against an ostensible price of Rs.8,20,000/- in order to defeat his superior right of pre-emption. The plaint duly contains the contents regarding alleged performance of *Talb-i-Muwathibat* and *Talb-i-Ishhad*. During

proceedings of the suit, the defendants/ respondents No.2 to 5 made statement regarding partial decree of the suit whereas petitioner contested the suit. Learned Trial Court vide judgment and decree dated 07.3.2009 decreed the suit in the following terms:-

"The contention of the Province of Punjab is that the Province of Punjab is still the owner of the suit land and proprietary rights of the suit land have not been conferred. As the parties to the lis have entered into compromise and the defendants have got recorded their statements regarding the partial decree of this suit. In such circumstances, the transfer of the land in favour of the plaintiffs would be subject to all limitations and formalities as mentioned by the province of Punjab in his written statement and the plaintiffs would be stepping into the shoes of vendee/defendants. As such, suit of the plaintiffs for pre-emption is hereby partially decreed to the extent of 16-kanals comprising square No.60 Qilla No.5-2 Kanal 12 Marlas, Qilla No.6, 2 Kanals 12 Marlas, Qilla No.15, 2 Kanal 12 Marlas, Qilla NO.6, 6 Kanals 12 Marlas and Qilla No.17, 1 Kanal 12 Marlas. While, their remaining prayer is turned down. The plaintiffs are also entitled to collect Zar-e-Soam deposited by them. Decree sheet be drawn. File be consigned to the record room."

Feeling aggrieved, the petitioner preferred an appeal, which was dismissed by the learned Addl. District Judge, Bahawalnagar vide judgment and decree dated 28.10.2009. Hence, this revision petition.

3. Learned counsel for petitioner contends that land in question is not pre-emptable being a colony land, thus, suit was not maintainable and impugned judgments and decrees are unsustainable in the eye of law.

4. On the other hand, learned counsel for respondents has supported the impugned judgments and decrees.

When confronted as to how right of pre-emption can be claimed when the property vests with the Province of Punjab, learned counsel for respondents submits that suit has been decreed after proving performance of *Talb-i-Ishhad* and *Talb-i-Muwathibat*.

5. The law that governed the relationship between the State and the tenants over State land prior to the Colonization of Government (Punjab) Lands Act, 1912 ("the **Act of 2012**"), was the Government Tenants (Punjab) Act, 1893. However, it was repealed vide section 2 of the Act of 1912. The legal provision corresponding to sections 18 and

19 of the Act of 1912 was contained in section 8 of the Repealed Act of 1893. Section 19 of the Act of 1912 is a more elaborate provision in relation to transfer of tenancy rights declaring the same to be void without the previous consent in writing of the Commissioner or by such officers as he may by written order empower in this behalf. It is, therefore, important that any transfer of tenancy rights be exercised strictly in accordance with the spirit of law as envisaged under this section.

6. The scheme of the Act of 2012 indicates that right to acquire property is a grant by the government and the government has the power to allot or refuse allotment of a property. The discretion of government to select the person as transferee of colony land is so important that even the original allottee cannot transfer or sell the land in his occupation to a third person without obtaining permission by the Collector under Section 19 of the Act, which provides that rights or interests vested in a tenant cannot be transferred without written consent of the Commissioner. Admittedly, in the instant case, order under section 19 was obtained while entering into transaction between Mst. Rashida and respondents No.2 to 5, and this fact was admitted and duly narrated by plaintiff in the plaint of suit in question.

7. Similarly, the cases of tenants under the Schemes where there is an inbuilt concept of conferment of proprietary rights to the extent provided in the Scheme would also be covered subject to continuance of the tenancies as per terms and conditions governing them. Therefore, all Government grants are required to take effect according to their tenor in the statement of conditions governing them. It is difficult to press into service a right of tenant other than that enforceable under the law in accordance with the statement of conditions providing for the same. Such a right or a vested interest in terms of section 19 of the Act of 1912 is created in a tenant on the examination of his eligibility for conferment of proprietary rights in his favour. As a necessary consequence so long as a property in colony area is owned by the Government and not by a private party, any transaction done under

section 19 of the Act of 1912 would not be pre-emptible. Even otherwise the Supreme Court of Pakistan in *Muhammad Aslam and others v. Shabbir Ahmad and others*” (**PLD 2003 SC 588**) held that owing to the non-withdrawal by the Government of Punjab of Notification No.74 dated 12.06.1944 issued by the Government of Bahawalpur, the land in colony area falling within the ambit of the Act of 1912 remains non-pre-emptible.

8. Needless to say that right to occupy land can neither be acquired by automatic sale nor by substitution because in case of substitution, which is the right of pre-emption, the provisions of section 19 are violated. In nutshell, a right to acquire or purchase property in colony area is a right specifically permitted by the government and it cannot be substituted by ignoring the provisions of section 19 of the Act of 1912. If not susceptible to substitution, the obvious conclusion would be that any such transaction is not pre-emptible. Reliance is made on cases law reported as “*Muhammad Aslam and others v. Shabbir Ahmad and others*” (**PLD 2003 SC 588**), “*Abdul Majeed through L.Rs and others v. Sher Din through L.Rs.*” (**2015 SCMR 620**), “*Mst. Rehmat Bibi v. Nathe Khan and others*” (**PLD 1969 SC 197**) and “*Muhammad Siddique and others v. Muhammad Sharif and others*” (**2012 SCMR 1387**)

9. In view of above, this petition is **allowed** and impugned judgments and decrees of the Courts below are hereby set aside. Consequently, suit of respondents for possession through pre-emption stands dismissed.

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for Reporting.

Judge

Waseem