

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

Writ Petition No.12812 of 2019

Tahir Jameel

Versus

**Lahore Development Authority through its Director General,
Lahore & others**

JUDGMENT

Date of hearing: 11.05.2023.

Petitioner by: M/s Aurangzeb Mirza and Muhammad Irfan Hanjra, Advocates.

Respondents by: Barrister Hamza Amjad, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.:-

Through this constitutional petition, petitioner has assailed correspondence dated 05.10.2018, issued by respondent No.2 / Director Land Development-I, Lahore Development Authority (“**LDA**”), Lahore, whereby petitioner was advised to contact his vendors in order to recover the claimed compensation. Petitioner has also sought direction from this Court for respondent-LDA to grant exemption in his favour for the land acquired for development of Muhammad Ali Johar Town Scheme, Lahore (“**Johar Town**”). Petitioner is also seeking his entitlement of two plots of 05-Marlas each in the aforesaid scheme in terms of the land owned by him, close to the area wherefrom his land was acquired.

2. Learned counsel for petitioner submits that petitioner is entitled for exemption of his acquired land and same was granted pursuant to order passed by the Commissioner, Lahore Division, Lahore, but subsequently the same has been given to some other person on the basis of an *ex parte* decree, which has already been set aside. He adds that respondent-LDA is under legal obligation to fulfill its duties with regard to exemption of any available plot of similar nature to the

petitioner. He further submits that impugned actions of respondent-LDA are unsustainable in the eye of law.

3. On the other hand, learned Legal Advisor for respondent-LDA defends the impugned actions by contending that petitioner was in fact served a notice by respondent-LDA on 14.09.1999 intimating the cancellation of ownership of the petitioner, however, petitioner never turned up.

4. Arguments heard. Available record perused.

5. Record shows that petitioner purchased land measuring 01-Kanal 11-Marla, situated in Village Niaz Baig through registered sale deed dated 13.01.1979 and mutation No.17371 in respect thereof was sanctioned on 21.03.1983 in favour of petitioner. Respondent-LDA acquired petitioner's land for development of M.A. Johar Town Scheme and on 20.12.1995, petitioner filed application for grant of exemption with respondent-LDA against his acquired land. Award was made by respondent-LDA Land Acquisition Collector on 29.11.1995. Respondent-LDA claimed development charges amounting to Rs. 44,468/- which were duly paid by the petitioner on 25.07.1998. Petitioner thereafter was waiting for the allocation of the plots which got approved for 2 plots of 105 Sq. Meters by the Directorate of Exemption on 01.10.1998. With regard to specific plot numbers, he came to know that the revenue authorities of LDA on the basis of an *ex parte* decree dated 21.07.1997 had cancelled the award in favor of the petitioner. Petitioner approached LDA authorities where the information of the *ex parte* decree was brought to his notice which was immediately challenged and the *ex parte* decree was got set aside by the Civil Court vide order dated 13.03.2000. By the orders of LDA, petitioner approached Commissioner, Lahore Division, Lahore, for correction of award and restoration of the name of the petitioner as an awardee, who after conducting proceedings as per law, restored the name of the petitioner as an awardee vide order dated 04.04.2015. However, instead of restoring the name of petitioner as awardee, exemption was granted to aforesaid decree-holders, who further sold

the land to a third party. Subsequently, vide impugned order, petitioner's request was declined on the strength of amendment brought in the year 2013 in Section 25-B(7) of the LDA Act, 1975, by observing that once the authority satisfies any claim of compensation in respect of a property, LDA will not entertain claim of any subsequent interested person, who will recover the compensation from the person who earlier received the compensation in respect of same property.

6. The questions before this Court are: (i) Whether respondent-LDA was not obliged to follow the principles of natural justice and ensure observance of minimum requirements of due process while deciding matter adversely against petitioner, especially when valid order regarding restoration of petitioner's exemption was in filed? and (ii) Whether amendment in Section 25-B(7) of the LDA Act, 1975, brought in the year 2013, could have been applied retrospectively while deciding petitioner's request?

7. It is not discernible from record as to whether any notice was served upon petitioner or he was associated while conducting and finalizing exemption proceedings in favour of decree-holders of aforesaid *ex parte* decree, which was subsequently set aside. It is unimaginable that when the entire process of exemption was completed, how can the award be cancelled even without issuing any notice or affording any opportunity of hearing to the petitioner merely on the basis of an *ex parte* decree. Any order passed against an aggrieved person, without providing him / her proper hearing or giving any reasons, is unsustainable in the eye of law as the public functionaries are obliged to follow the principles of natural justice while deciding rights of the parties. Petitioner had paid the entire development charges as directed by LDA in year 1998, hence, the process of subsequent exemption in favour of another party could not have been finalized without associating the earlier exemptee. This Court, in view of special circumstances, has ample powers to give direction to public functionaries to act in accordance with law by virtue

of Articles 4 & 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and set aside order passed by the Authorities which is not valid in eye of law. Reliance is placed upon Muhammad Aslam v. Government of the Punjab, Service and General Administration, Punjab Civil Secretariat, Lahore through Secretary and 5 others [2003 PLC (C.S) 433].

8. Needless to emphasize that petitioner is entitled to due process, right to be treated fairly at all times, right to procedural fairness and right to procedural propriety. Petitioner, being a citizen of the Islamic Republic of Pakistan, has the right to a fair procedure and it has been constitutionally guaranteed. In this regard, reliance is placed upon Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010).

9. The legal position in respect of Sec 25-B(7) of LDA Act 1975 does not support the case of LDA. This Act was passed as an Act XXVI of 2013 which in terms of judgments of the Hon'ble Supreme Court does not have any retrospective affect. It is by now a well settled law that an amendment in a section or its substitution which curtails substantive right or accrued right cannot itself have a retrospective operation unless the legislature elected to give it retrospective effect. Therefore, substituted or amended section of a statute cannot obliterate accrued or vested rights. In the instant case, as the section 25-B was added through an amendment in the year 2013 whereby substantive rights of the awardees were curtailed without giving it retrospective effect therefore this amendment cannot affect the accrued rights before the said amendment. Reliance is placed upon Zakaria H.A. Sattar Bilwani and another v. Inspecting Additional Commissioner of Wealth Tax, Range-II, Karachi (2003 SCMR 271), Mst. Sarwar Jan and others v. Mukhtar Ahmad and others (PLD 2012 Supreme Court 217), Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314), Badshah Gul Wazir v. Government Of Khyber Pakhtunkhwa through Chief Secretary and others (2015 SCMR 43), Commissioner Inland Revenue v. Messrs

Olympia Chemicals Ltd., Lahore (2021 PTD 1512), Islamabad Electric Supply Company Limited Through Additional Director General Legal v. National Electric Power Regulatory Authority and others (PLD 2021 Islamabad 221), Kashif Mahmood v. Additional District Judge and others (2022 MLD 1762) and The Commissioner Inland Revenue, Zone-II, Regional Tax Office, Lahore v. Shazia Zafar (2022 PTD 1942).

In the case of Muhammad Tariq Badr supra, the Hon'ble Supreme Court has ruled as under:-

"16. ... Before further proceeding with the matter it may be mentioned that according to the settled law a change in the substantive law which divests and adversely affect the vested rights of the parties shall always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law has been made applicable retrospectively. In other words the vested and substantive rights of the parties are and should be decided according to the law which was prevalent when the action was initiated and the door of the Court was knocked; and/or the machinery (of the Court) was set in motion."

Likewise, in the case of Badshah Gul Wazir supra, the Hon'ble Supreme Court has observed as under:-

"10. ... The learned Bench also erred in law by holding that, "a substituted section in an Act introduced by an amending Act is to be treated having retroactive operation as the function of a substituted section in an Act is to obliterate the rights of the parties as if they never existed." With respect to the learned judges the proposition formulated by them does not accord with the law and settled precedents. A substituted section, and particularly one curtailing substantive rights, does not have "retroactive operation" unless the legislature elects to give it retrospective effect. Nor does a substituted section obliterate accrued rights; section 6 and section 4 respectively of the Federal and Provincial General Clauses Act specifically preserves such vested rights as mentioned therein. The courts have interpreted laws and notifications in the light of the General Clause Acts to save rather than obliterate vested rights."

10. In view of the above, instant petition is allowed, impugned letter/correspondence is declared to be illegal and without lawful authority, thus, same is set aside. The matter is remitted to respondent

No.2 with direction to redress petitioner's grievance strictly in accordance with law, after appreciating the available record as well as applicable law and contentions of the petitioner, preferably within a period of thirty days from the receipt of certified copy of this judgment.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S./Sultan