

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

HUMAN RIGHTS CASE NO.69229-P OF 2018

(Regarding functioning of Patwaris, Kanungos and Tehsildars in urban area of Lahore)

In attendance: Mr. Ahmed Awais, A.G. Punjab
Rana Shamshad Khan, Addl. A.G. Punjab
Mr. Sibtain Mahmood, AAG Sindh
Mr. Ayaz Swati, Addl. A.G. Balochistan
Malik Akhtar Hussain, Addl. A.G. KP
Syed Ahsan Mustafa, Director BOR Punjab
Mr. Saadullah, Supdt, BOR, KPK
Mr. Habibullah, Law Officer for DC, Lahore

Mian Zafar Iqbal Kalanauri, ASC
Mr. Amanullah Kanrani, ASC/President, SCBA
(*amicus curiae*)

Date of hearing: 03.01.2019

JUDGMENT

MIAN SAQIB NISAR, CJ.- The instant matter arises from a *suo motu* notice taken pursuant to various complaints that despite the fact that Lahore is an urban area and thus not subject to land revenue, revenue authorities are functioning therein and entering mutations, etc. A report was called from the Senior Member, Board of Revenue (*MBR*), Punjab requiring him to explain, *inter alia*, under what authority of law are Patwar Circles, Kanungos and Tehsildars established and how transactions in the alleged revenue Record are being maintained or changed. Pursuant thereto, a report was submitted stating the following:-

- i. Within the District of Lahore there are 363 estates/mauzas in Tehsils Raiwind, City, Cantonment, Shalimar and Model Town;
- ii. Out of these estates, 246 are under settlement, three are under consolidation of holdings operation and the remaining 114 are urban;
- iii. The land records of 218 estates in Lahore District have been computerized and the Board of Revenue, Punjab has already

issued notifications under Section 41-A(2) of the Punjab Land Revenue Act, 1967 (*the Act of 1967*);

- iv. Sections 41-A and 41-B of the Act of 1967 deal with preparation of computerized records;
- v. Section 42 thereof deals with the procedure of manual mutation by the revenue field officers;
- vi. Section 42-A thereof deals with computerized mutation at the Arazi Record Centres at Tehsil level;
- vii. The Arazi Record Centers at the Tehsil level established under the Punjab Land Records Authority Act, 2017 deal with computerized land revenue record; and
- viii. Since the land record of 218 estates in Lahore District has been computerized while the remaining 145 are yet to be computerized, therefore, Patwaris, Kanungos and Tehsildars are dealing with mutations and maintaining the revenue record in the light of the instruction issued by the Board of Revenue under the purview of the Act of 1967 and the Punjab Land Record Manual (Second Edition 1958).

Notices were also issued to the other provinces for their input. The Senior MBR, KPK in his report has submitted that the Act of 1967 is applicable in the Province of KPK since 1974. The urban areas have already been earmarked in the Shajra Aks as 'Laal Lakeer' and hence the sub-Registrar of each District under Section 17 of the Registration Act, 1908 (*Act of 1908*) is dealing with properties of urban areas and maintaining its record. However, the only record being maintained by the Patwari, Kanungos, Tehsildars, by way of Aks Shajra and Massavi is to the extent of roads and drainage system owned by the government or local authorities, whereas, the revenue record being maintained by the Patwaris, Kanungos, Tehsildars is regarding the rural area(s). The Revenue and Estate Department prepare the land record at the time of settlement through the settlement staff whereafter it is handed over to the concerned District Revenue Agency on completion.

Whereas in urban areas the post of Sub-Registrar has been created at the district level to register documents under the Act of 1908 including property documents by registering sale deeds. As far as the local area authorities are concerned, the land is transferred to the concerned local area authority through a mutation whereafter subsequent transactions are carried out by other concerned authorities. Revenue Officials like Patwaris, Girdawars, etc. have no role in transactions falling within the domain of such areas. In the report submitted by the Board of Revenue, Balochistan, it is stated that under Section 6 of the Act of 1967 the Government of Balochistan is empowered to create Patwar Circles in the urban area, which have been created *vide* notifications issued from time to time. It is further submitted that Section 3(2) thereof authorizes the Board of Revenue to issue general or special orders to the Collector, to determine for the purposes of the said Act, “*what lands are included within the site of a town or village, and to fix and from time to time to vary the limits of the same, regard being had to all the subsisting right of the land-owners*”; however, the record of the Board of Revenue, Balochistan is silent to the extent of issuance of general or special orders in this behalf. Besides, the Transfer of Property Act, 1882 (*Act of 1882*) is not applicable in the Province of Balochistan, whereas, the record of rights is established in urban and rural areas under Section 116 of the Act of 1967.

2. Before proceeding further it would be appropriate to consider the relevant provisions of the Punjab Land Revenue Act, 1887 (*Act of 1887*), the Act of 1967 and the Punjab Local Government Act, 2013. which read as under:-

The Punjab Land Revenue Act, 1887

3. Definitions.- (1) “estate” means any area—

(a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or

(c) which the Local Government may, by general rule or special order, declare to be an estate;

4. Exclusion of certain land from operation of Act.- (1) Except so far as may be necessary for the record, recovery and administration of village cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land revenue.

(2) A Revenue Officer may define, for the purpose of this Act, the limits of any such land.”

31. Record of rights and documents included therein.- (1) Save as otherwise provided by this Chapter, there shall be record of rights for each estate.

(2) The record of rights for an estate shall include the following documents, namely:-

(a) statements showing, so far as may be practicable,-
(i) the persons who are land owners, tenants or assignees of land revenue in the estate, or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein;-

...

(d) such other documents as the Financial Commissioner may with the previous sanction of the Provincial Governments, prescribe.

The Punjab Land Revenue Act, 1967

3. Exclusion of certain land from operation of this Act.— (1) Except so far as may be necessary for the record, recovery and administration of village cess, or for purposes of survey, nothing in this Act applies to land which is occupied as the site of a town or village, and is not assessed to land revenue.

(2) It shall be lawful for the Collector acting under the general or special orders of the Board of Revenue, to determine for the purposes of this Act, what lands are included within the site of a town or village, and to fix and from time to time to vary the limits of the same, regard being had to all the subsisting rights of the land-owners.”

4. Definitions.— (9) “estate” means any area—

(i) for which a separate record-of-rights has been made; or
(ii) which has been separately assessed to land-revenue; or
(iii) which the Board of Revenue may, by general rule or special order, declare to be an estate;

39. Records-of-rights and documents included therein.— (1) *Save as otherwise provided by this Chapter there shall be a record of rights for each estate.*

(2) *The record-of-rights for an estate shall include the following documents, namely:-*

- (a) *statements showing, so far as may be practicable:*
 - (i) *the persons who are land-owners, , or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein;*
 - ...
 - (d) *such other documents as the Board of Revenue may, with the previous approval of Government, prescribe.*

56. Assessment of land revenue.— (1) *All land, to whatever purpose applied and wherever situated, is liable to the payment of land revenue to Government, except—*

- (a) *such land as has been wholly exempted from that liability by special contract with Government, or by the provisions of any law for the time being in force;*
- (b) *such land as is included in village site;*
- (c) *such land as is included in Cantonment limits;*
- (d) *land on which property tax under the Punjab Urban Immovable Property Tax Act, 1958 (W.P. Act V of 1958), is payable;*

116. Revenue survey may be introduced by Board of Revenue in any part of Province.— (1) *It shall be lawful for the Board of Revenue, whenever it may deem expedient, to direct by notification, the survey of any land in any part of the Province with a view to the settlement of land revenue, the preparation of record-of-rights and preservation thereof, or for any other similar purpose, and such survey shall be called a revenue survey.*

(2) *A revenue survey may extend to the lands of any village, town, or city generally, or to such land only as may be specified in the notification. (3) Subject to the orders of the Board of Revenue, it shall be lawful for the officers conducting any such survey to except any land to which it may not seem expedient that such survey should extend.*

The Punjab Local Government Act, 2013

2. Definitions.— *In this Act—*

(hhh) *“urban area” means an area within the jurisdiction of the Metropolitan Corporation, a Municipal Corporation, or a*

Municipal Committee and includes any other area which the Government may, by notification, declare to be an urban area for purposes of this Act;

6. Local areas.-

(2) *For purposes of this Act, the Government shall, by notification, demarcate and declare a local area consisting of:*

(a) *Lahore District as the Metropolitan Corporation;*

(b) *rural area in a District, other than Lahore District, as District Council;*

3. As per Section 4 of the Act of 1887, the land which is occupied as the site of a town or village and is not assessed to land revenue is expressly excluded from the ambit of the said Act, except where doing so may be necessary for the purposes of record, recovery and administration of village cesses. The said Act was repealed through the Act of 1967, however, a similar exclusion was provided in Section 3 thereof, wherein the land which is occupied as the site of a town or village and is not assessed to land revenue has been exempted from the operation of the said Act except where its application was necessary for the purposes of record, recovery and administration of village cesses.

4. Besides, Section 31 of the Act of 1887 dealt with the record of rights and documents included therein, providing *inter alia* that there shall be a record of rights for each estate which shall, so far as may be practicable, include statements showing the persons who are land owners, tenants or assignees of land revenue in the estate, or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein; statements reflecting the nature of the interests of such persons and conditions attached to such interests; rent, land revenue, rates, cesses or other payments due from and to each of these persons and/or to the Government; a map of the estate; and such other documents as the Financial Commissioner may prescribe with the previous sanction of the Provincial Governments. The said Section was re-enacted with slight modification as Section 39 in the Act of 1967 which more or less contained

the same requirements for entry into the record-of-rights however the previous sanction to be acquired from the Government in order for the Finance Minister to prescribe any additional documents was now to be acquired from the Provincial Government instead. Specific exclusion from payment of land revenue is given in Section 56(2) of the Act of 1967 which provides that land included in village sites, land that has been wholly exempted from that liability on account of a special contract with the Government, or by the provisions of any law for the time being in force, land which is included in Cantonment limits and land on which property tax under the Punjab Urban Immovable Property Tax Act, 1958, is payable are all exempted from the payment of land revenue under the Act of 1967. Additionally, Section 116 thereof provides that a revenue survey may be conducted of any land in any part of the Province with a view to the settlement of land revenue by the Board of Revenue whenever it may deem such survey expedient. This revenue survey may extend to the lands of any village, town, or city generally, or to such land only as may be specified in the notification issued in this regard, however the Board may through its orders exempt any land from such survey.

5. The key term used in the aforementioned provisions is "land", which has neither been defined in the Act of 1887 nor the Act of 1967, therefore, the same is liable to be construed from other relevant statutes and/or in light of its ordinary dictionary meaning. As per Section 4(1) of the Punjab Tenancy Act, 1887, "land" means *"land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land"*. The term "land" has also been defined in the Land Reforms Regulation, 1972, to mean land which is not occupied as the site of a town, village, factory or industrial establishment, and is occupied or has been or can be let for agricultural purposes allied or subservient to agriculture and includes the sites of buildings and other structures on such

land. The term "land" has been defined in Section 2(3) of the Punjab Alienation of Land Act, 1900 to mean, *"land, which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agricultural or for pasture, and includes (a) the sites of buildings and other structures on such land; (b) a share in the profits of an estate or holding; (c) any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land-owner; (d) a right to receive rent; (e) any right to water enjoyed by the owner or occupier of land as such; (f) any right of occupancy; and (g) all trees standing on such land"*. As per the judgment of **Ghulam Rasul Vs. Ikram Ullah (PLD 1965 Lahore 429)**, relying on **Vir Bhan and another Vs. Sham Singh etc. (AIR 1944 Lahore 455)** it was held that the term "land" in Section 141 of the Punjab Land Revenue Act (XVII of 1887) has a special and restricted meaning and does not comprise site assessed to land revenue on which buildings with structures of a permanent character have been constructed.

6. Adverting to the dictionary meanings of "land", according to Black's Law Dictionary (Ninth Edition), it means *"an immoveable and indestructible three-dimensional area consisting of a portion of the earth's surface, the surface above and below the surface, and everything growing on or permanently affixed to it. An estate or interest in the real property"*. In Chambers 21st Century Dictionary it is defined as *"the solid part of the Earth's surface as opposed to the areas covered by water"* and *"ground that is used for agriculture"*. As mentioned in Wharton's Law Lexicon (Fourteenth Edition) *"the word land used in its generic terms comprehends every species of ground, soil, or earth or whatsoever as meadows, pastures, woods, moors, waters, marshes, furze and heath. It includes also houses, mills, castles and other buildings for the conveyance of the land the structure upon it also passes."*. From the above dictionary as well as statutory definitions, it is established that the term land includes within its meaning buildings and structures etc., and thus includes land falling within the ambit of Punjab Urban Immoveable Property Tax Act, 1958. **Therefore, the exemption to such land to payment of land revenue under Section 56(2) of the Act of 1967**

applies to all such urban property falling within the ambit of the said Act.

7. Section 4 of the Act of 1887 has been explained by Om Prakash Aggarwala in the third edition of his commentary thereof as under:-

“It is usual to measure the village site in one number, together with the small plots attached in which cattle are penned, manure is stored, and straw is stacked, and other waste attached to the village site. The entry in the column of ownership and occupancy is simply abadi deh. In the shajras this number is inked in red so that in common parlance abadi deh is known as the area within the lal lakir.

Land included within Municipal limits: - It must not be assumed that merely because a definite area of land which is not assessed with land revenue happens to have been included, for jurisdictional purposes within the limits of a Municipal Committee, ipso facto becomes the site of a town, and the act of including it within Municipal limits makes it the site of a town or village within the meaning of section 4 of the Land Revenue Act, so as to oust the jurisdiction of the revenue officer over such land. Every case must be decided on its merits [Jiwa v. Karam Baksh 1925 L.L.T.3=1925 P.C.L.I (Rev.)]

Thus, it is clear that any land that is occupied as the site of a town or village and is not assessed to land revenue is exempt from the operation of the provisions of the Act of 1967. However, as is evident from the above commentary (regarding Section 4 of the 1887 Act in India which is *pari materia* to Section 3 of Act of 1967), every case must be decided on its merits and the mere inclusion of a certain area within a town/village for jurisdictional purposes does not trigger the exemption from land revenue under the law. For instance, the construction of a house on one single field does not convert land otherwise subject to land revenue, into the site of a town or village. Similarly, where the area is under fluctuating assessment and if during the currency of a settlement of a particular part of the land is used for purposes other than agriculture, it is not excluded under Section 3(1) of the Act of 1967.

8. Further to the foregoing discussion, the definition of the word "estate" under Section 3(1) of the Act of 1887 must be noted which includes (1) any area for which a separate record-of-rights has been made; (2) or which has been separately assessed to land revenue; or (3) would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or (4) which the Provincial Government may, by general rule or special order, declare to be an estate. The same definition of "estate" has been given in Section 4(9) of the Act of 1967. Reference in this regard may be made to paragraph No.123 of Douie's Settlement Manual (*Fourth Edition issued in 1930*), wherein the terms mauzas or villages and mahals or estates have been explained as under:-

123. Mauza or villages and mahals or estates.— *Before describing the village community it will be convenient to explain exactly what is meant by the two terms mauza, which is usually translated "village," and mahal, of which the English equivalent is "estate." A mauza is defined by Mr. Thomason as "a parcel or pastels of land having a separate name in the revenue records and known limits," and a mahal as "any parcel or parcels of land which may be separately assessed with the public revenue, the whole property of the persons settled within the mahal being held hypothecated to Government for the sum assessed upon it." There are two elements in this definition, the separate assessment and, where more than one person own the same estate, their joint responsibility for the payment of its revenue. "Village" is not defined in the Land Revenue Act, but the meaning of "estate" is explained to be "any area—*

- (a) *for which a separate record of rights has been made, or*
- (b) *which has been separately assessed to land revenue, or would have been so assessed, if the land revenue had not been released, compounded for, or redeemed, or a leased, compounded for, or redeemed, or*
- (c) *which the Local Government may, by general rule or special order, declare to be an estate."*

The joint responsibility of all the landowners of an estate for its revenue is provided for in section 61 of the Act. In practice it is rarely enforced. A rule made under clause (c) of the section

quoted above declares “all demarcated areas of uncultivated and forest land owned by Government” to be estates.

A village, as a rule, consists of a single block of land. But occasionally the whole of its land does not lie in a ring fence, and some outlying fields are found mixed up with the lands of another village.

Thus, there remains no ambiguity in the determination that an “estate” means any area for which either a separate record-of-rights (*jamabandi*) has been prepared or which has been treated separately for an assessment or which has been declared to be an estate by the Provincial Government. An “estate” or “mahal” is somewhat different from a village or mauza. Although, according to the judgment reported as **Jamil and 5 others Vs. Sheerin and 3 others (2011 YLR 1083)** passed by the learned Peshawar High Court, the connotation of word “estate” employed in Section 4(9) of the Act of 1967, does not mean that it consists of village or mauza or *gaon* or *pind*; generally an estate or mahal is identical to a village or mauza but an estate may include more than one villages, and a village may be divided into two estates. Furthermore, as per the judgment reported as **Muhammad Khan Vs. Ghulam Rasool and another (1999 YLR 2688)**, the Supreme Court of AJ&K held that the term “estate” is a legal expression which forms the unit for revenue assessment, an estate or mahal is different from a village or mauza, however, generally an estate is a mahal which is assessed to revenue.

9. Under the provisions of Section 3(1) and (2) read with Section 116 of the Act of 1967, the maintenance of record of rights in cities and towns is also the function of the Board of Revenue for which it issues directives from time to time under various provisions of the said Act. In this regard, it is pertinent to note the judgment of the learned High Court reported as **Pervez Ahmad Khan Burki and 3 others Vs. Assistant Commissioner, Lahore Cantt. and 2 others (PLD 1999 Lahore 31)** wherein the following was held:-

"4. Having heard the learned counsel for the parties and perused the record, I am of the view that the contentions raised on behalf of the petitioners are unexceptionable. Undoubtedly respondents Nos.2 and 3 are functionaries appointed under the Punjab Land Revenue Act, 1967 to carry out the purposes of the aforesaid Act. The preamble to the Act recites that it was being framed to consolidate and amend the law relating to the making and maintenance of records-of-rights, the assessment and collection of land revenue, the appointment and functions of revenue officers and other matters connected therewith.

According to section 3 of the Act, except for certain fiscal purposes, nothing in the Act applies to land which is occupied as a building site or such land on which permanent structures have been raised; it loses all characteristics of. A agriculture land and the dispute as regards the partition of such land has to be resolved through the Civil Court and not by Revenue Court. No detailed discussion on the subject is necessary in view of the judgment of this Court in Ghulam Rasool v. Ikram Ullah etc. PLD 1965 (W.P.) Lahore 429 whereafter exhaustive discussion on the subject it was held that a Revenue Officer does not have any jurisdiction to entertain an application for the partition of the properties which have ceased to be land notwithstanding the fact they continue to be assessed to land revenue. The land involved' in the present case is on much better footing inasmuch as the land does not pay any land revenue. The same view was taken in Syed Aslam Shah and 3 others v. Mst. Sakina and another 1988 MLD 1596. So far as the judgment relied upon by the learned counsel for the respondents is concerned, it is clearly distinguishable inasmuch as it related to demarcation of open plots of land."

In the judgment reported as **Dr. Jalal Khan Vs. Qazi Naseer Ahmed, District Deputy Officer, (Revenue), Kharian, District Gujrat and 6 others (2005 MLD 814)** the Lahore High Court held as follows:-

5. I have minutely considered the respective arguments of the learned counsel for the parties and have examined the record, appended herewith. Before proceeding with the determination of the controversy, it has to be kept in mind that property subject of dispute is located within limits of Town Committee, Kharian, and is not only urban in nature but has also been converted into building site. For

examination whether such property could be demarcated by respondent No.2 (Tehsildar/Revenue Officer) under the provisions of Land Revenue Act, 1967, we will have to see provisions of section 3 thereof, which excludes certain land from operation of the Act. This provision of law clearly excludes the land which is kept as a site of Town or village and is not assessed to land revenue. The property subject of dispute being part of site of the Town provisions of the Act (ibid) were not applicable to it and thus resort to its provisions for demarcation thereof was not permissible. Petitioner himself moved for demarcation of a part of site of the Town under section 117 of the said Act, which equips a revenue officer to define the limits of any estate or of any holding, field or other portion of an estate but cannot be extended for this purpose, to the land not falling in any Estate. Had the land subject of dispute been part of any estate, the revenue officer could have proceeded to demarcate it under section 117(1) of the Act, but he could not undertake any such activity about the land falling outside the limits of the estate of any village. Demarcation in terms of section 177 of the Land Revenue Act, 1967 has to be done under rule 67-A of the West Pakistan Land Revenue Rules, 1968, which as well, refers to defining the limits of an estate, a holding, a field or any portion thereof. In view of this clear provision, there is no ambiguity that a Revenue Officer designated under the Land Revenue Act, 1967 could not demarcate any urban property falling within the limits of Town Committee especially that, which has gained the character of building site.

7. *Properties of parties were, undeniably urban even at the time of allotment by Deputy Settlement and Rehabilitation Commissioner, for this reason as well, Revenue Officer was not competent to undertake the exercise of demarcation. Under law, the Revenue Officer could only demarcate boundaries of any estate or any part thereof, under the provisions already discussed. Predecessor of the respondents, who was plaintiff, was required to prove his title to property in possession of the petitioners through some lawful/cogent evidence, in absence of which his suit could not have been decreed. Even otherwise, since there was the only dispute of demarcation which could have resolved the controversy for all times to come, the trial Court should have invoked its own jurisdiction in this behalf, in spite of report Exh.P.1, but both the Courts below, being oblivious of their jurisdiction under Order XXVI, rule 9, C.P.C. proceeded to decide the lis without adverting to*

legality or otherwise of the said report.

In the case of **Khizar Hayat and another Vs. Pakistan Railway through Chairman, Pakistan Railway, Lahore and 2 others (2006 CLC 1028)** the Lahore High Court opined that:-

5. *...It is not disputed between the parties that suit properties are no more agricultural land and are building sites, located within the municipal limits of Khushab. Such properties could not have been demarcated by the officials working in revenue hierarchy under West Pakistan Land Revenue Act, 1967, as its section 3, excluded land kept as site of a town or village from its operation. Language of the provision of law, under discussion, accepts no ambiguity that demarcation of land kept/used as a building site could not have been done under the provisions of Act of 1967, which was A subject to their process only for certain restricted physical purposes like recovery of land revenue etc. In forming this view, I have to my credit a chain of judgments including the cases of Ghulam Rasul v. Ikram Ullah and another PLD 1965 (W,P.) Lah. 429; Tahir Hanif v. Member, Board of Revenue and others 1982 CLC 1732; Syed Aslam Shah and 3 others v. Mst. Sakina and another 1988 MLD 1596 and Pervez Ahmed Khan Burki and 3 others v. Assistant Commissioner, Lahore Cantt. and 2 others PLD 1999 Lah. 31.*

The Lahore High Court held, in the judgment reported as **Muhammad Muneer and 7 others Vs. Member Board of Revenue, Punjab, Lahore and 12 others (2009 MLD 930)**, that:-

“8. *...The land which is excluded from operation of Land Revenue Act, is described in section 3 of Act, 1967...*

9. *The above provision reflects that Act, 1967 will not apply to the land, which is kept as site of town or village and is not assesseed to land revenue. Revenue authorities proceeded with partition of joint land, as there was no objection to the title of owner. The objection of the petitioners, that Killa Nos. 13/3 and 16 in square No.15, are residential and fall under boundary wall of Abadi, were turned down on the ground that change in the classification of land took place through Khasra*

Girdawari during the period of Rabi 2005, when the partition proceedings were pending. No interference in such finding is justified as the Revenue Officer has proceeded in the matter, as per entries in the revenue record, as they existed at the time of filing of the application for partition. Any subsequent change is immaterial. The land, as per Revenue Record, was assessed to land revenue, therefore, the respondent had rightly proceeded in the matter of partition.”

In the case of **Makhdum Raju Shah Vs. Member Board of Revenue, Punjab and 17 others** (2011 YLR 1724) the Lahore High Court held as follows:-

7. *It is an admitted fact between the parties that property is ‘Abadi Deh’ and is not an agriculture one. The only question require resolution is whether Tehsildar was competent to entertain the application of partition of land situated in ‘Abadi Deh’ or not? Under section 3 of West Pakistan Land Revenue Act, 1967, the Revenue Court has no power or jurisdiction to pass a partition order of land which is not agricultural land and is ‘Abadi Deh’. For better appreciation of proposition of law section 3 is reproduced as under:--*

“(3)Exclusion of certain land from operation of this Act.-

8. *The perusal of this provision of law shows that important word is land. The word “land” has not been defined in the West Pakistan Land Revenue Act. This term, therefore, has to be construed according to the ordinary dictionary meaning. Under the Punjab Tenancy Act, 1877 “land” has been defined in the following terms:-*

“Land which is not occupied as the site of any building in a town or village and is occupied or has let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures on such lands”.

9. *The term “land” under Land Reforms Regulations, 1972 means which is not occupied as the site of a town, village, factory or industrial establishment and is occupied or has been or can be let for agricultural purposes allied or subservient to agriculture and includes the sites of buildings and other structure on such land.*

10. Section 2(3) of the Punjab Alienation Act defines the term “land” as under:--

“The expression land means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agricultural or for pasture and includes the sites of buildings and other structures on such land; a share in the profits of an estate or holding; any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land owner; a right to receive rent; any right to water enjoyed by the owner or occupier of land as such; any right of occupancy; all trees standing on such land.”

11. From the perusal of above said provision of law the definition of agricultural land is its agricultural or pasture character.

12. As this is not dispute between the parties that land in dispute is not situated in ‘Abadi Deh’ and the parties are using the said land for residential purposes, the jurisdiction of Tehsildar with reference to its partition in terms of section 3 of West Pakistan Land Revenue Act, 1967 was barred this shows that original order dated 26-3-1996 passed by the Tehsildar was without jurisdiction. It is a settled principle of law that an order passed by a Court not competent to pass is a void order and against void order the bar of limitation is not applicable.

The Peshawar High Court has held in the case of Muhammad Ayaz and others Vs. Malik Zareef Khan and others (PLD 2016 Peshawar 8) that:-

11. Let us first see the forum of revenue hierarchy provided under the Act of 1967. In this regard, the jurisdiction and procedure for partition of undivided immovable property is vested in the Revenue hierarchy under the enabling provisions of sections 135 to 150 of the Act of 1967. What is important to note is that section 3 of the Act of 1967 determines the area coming within the purview and jurisdiction of the Revenue hierarchy. The said provision reads:

“Section 3. Exclusion of certain land from operation of this Act...

The aforementioned provision clearly provides that as far as

non-applicability of Act of 1967 is concerned, it would extend to the area, which is neither within the Site of Village nor paying land revenue. It is also important to note that with time the appropriate Officer would alter the Site of Village and include the areas, which has with time become Abadi in the Mauza and accordingly the said area would be included and recorded within the red line of the Site of Village in the revenue record.

12. While in cases of undivided immovable property, which falls outside the express domain of the Revenue hierarchy as provided under section 3 of the Act of 1967, the jurisdiction for partition thereof would vest in the ordinary Civil Court, of competent jurisdiction and the partition proceedings would proceed under the provision of the Partition Act, 1893.

In 1942, under Section 31(2)(d) *ibid*, the Financial Commissioner, Punjab prescribed a document called *khasra imarati* for certain areas in the estates of Lahore Urban Assessment Circle. Besides, Rule 67-A of the Land Revenue Rules, 1968 referred to demarcation of agricultural land only and not to property other than agricultural land. As determined hereinabove, Section 3 of the Act of 1967 expressly excluded land not assessed to land revenue from operation of the said Act.

10. At this stage, it is to be noted that certain provisions of the Act of 1882, such as, Section 54 (*sale*), Section 59 (*mortgage*), Section 107 (*lease*), Section 118 (*exchange*) and Section 123 (*gift*) were applicable to urban areas of Punjab since 1974 (*and even earlier*). Besides, the transfer of land in urban areas could only be made through registered deeds under the Act of 1908. The registered deeds pertaining to land form the basis of mutations under Section 42 of the Act of 1967 by the revenue field staff and under Section 42-A thereof at the Arazi Record Centre functioning under the Punjab Land Records Authority.

11. Another important statute which is relevant for the issue in hand is the West Pakistan Urban Immoveable Property Tax Rules, 1958 (*Rules of 1958*), whereunder the assessing authority of the Excise & Taxation

Department is required to prepare a property register in Form P.T.I for the rating area and enter therein the necessary particulars, separately for each unit of property. The assessing authority is also required to ascertain the name of the owner and the occupier, if any, of the property and note the same in Register P.T.2.

12. As per Section 56 of the Act of 1967 certain lands are exempt from the payment of land revenue. This Section provides, *inter alia*, that all land, to whatever purpose applied and wherever situated, is liable to the payment of land revenue to the Government, except such land as is included in a village site, Cantonment limits, or on which property tax under the Punjab Urban Immovable Property Tax Act, 1958 is payable. However, land revenue was abolished through the Punjab Land Revenue (Abolition) Act, 1998, Section 2 whereof provides that notwithstanding anything to the contrary contained in the Act of 1967 or any other law (*for the time being in force*), no land revenue, as defined in the Act of 1967, shall be charged.

13. The instructions of the Board of Revenue, Punjab contained in Paragraphs 7.40, 7.45, 7.46 and 7.57-A of the Punjab, Land Records Manual (Second Edition 1958) are also relevant. Paragraph 7.40 *ibid* deals with Register Haqdaran Zamin, notes (1) and (2) whereof read as under:-

(1) *In case of estate which is partly within Cantonment limits, Municipal Committee or Town committee, Register Haqdaran Zamin should be prepared in parts, namely (a) for rural lands, and (b) for urban lands.*

(2) *For Colony Town/Chaks see form namely, "Register Haqdaran Zamin Abadi" (Patwari/Tepedar Standard Form No. XXXIV-B). This form will be used where the land in a Colony Town/Chak has been built upon."*

Paragraphs 7.45 and 7.46 *ibid* deal with Jamabandi Abadi for Colony Towns and Chaks. Paragraph 7.57-A *ibid* concerns maintenance of the

record of rights/periodical records for 'rating area' to which the Urban Immoveable Property Tax Act, 1958 applies.

14. In this regard, it is to be noted that in supersession of the earlier Office Memo dated 31.07.1965, the Government of Pakistan through the Revenue Department, issued the following Memorandum bearing No. 3417-68/1203(S) dated 8.7.1968:-

*"To
All Commissioners in West Pakistan.
(except Karachi, Hayderabad & Khairpur Division),*

*All the Deputy Commissioner in the West Pakistan.
(except Karachi, Hayderabad & Khairpur Division)*

*Memorandum No. 3417-68/1203-(S).
Dated the 8th July. 1968*

*Subject: Exemption from the payment of land revenue
and abandonment of revenue records in the
respect of lands located within "rating areas"
of the Urban Immoveable Property Tax Act.*

Reference: In supersession of this office memo No.321-65/1958-(S), dated 31st July, 1965, on the above subject.

Memorandum:

Under Section 56(1)(d) of the West Pakistan Land Revenue, Act, 1967 Land on which Property Tax under the West Pakistan Urban Immoveable Property Tax Act, 1958 (West Pakistan Act-V-1958), is payable, is exempt from the assessment of Land revenue. This Act came into operation in the Province with effect from 1st January, 1968. In view of the above provision, in the Act, the instructions issued in the memorandum under reference stand superseded. You are, therefore, requested kindly to direct the field staff not to assess, land revenue with effect from Rabi 1968 in respect of properties which are subject to assessment of Property Tax.

2. The shortfall in revenue due to the above orders should please be reported for the information of Finance Department.

3. So far as the preparation of record of rights in the Rating Area is concerned it has been decided that the instructions contained in paragraph 2 of Board of Revenue's memorandum No. 3210-65/1859-(S), dated 31st July 1965,

should be followed with a light modification as under. Only the existing staff should however, be employed for this work and no additional staff be entertained.

- i) *The practices of maintaining revenue records in Rating Areas may continue as before. All transactions which have been completed after 8th July, 1968, should be incorporated in the revenue records. If a piece of land has since been sold or otherwise transferred any number of times the mutations of all the transactions should be recorded, datewise.*
- ii) *Areas which have been built up may be treated as 'Abadi Deh' for the purposes of revenue records and further maintenance of record in respect thereof should be discontinued. It may be made clear that only those Khasra/Survey numbers should be treated as Abadi Deh, which have entirely been covered by construction. It would not be advisable to treat a portion of a field number as Abadi Deh and discontinue further maintenance of records in respect thereof.*
- iii) *If a field/survey number is covered by buildings, it would not be necessary to change entries in Jamabandi (Revenue records) forthwith, but new entries may be made at the time of preparation of the next quadrennial Jamabandi (revenue Records). At the time of revising the quadrennial Jamabandi (Revenue records) the Tehsildar/Naib Tehsildar concerned should personally inspect the existing Abadi Deh and compile a report about the field/ survey numbers which were covered by buildings during the last four years. He should then submit a proposal to include that area in the Abadi Deh, for orders of the Collector. After obtaining the orders of the Collector the Tehsildar/Naib Tehsildar should make entries in the new Jamabandi (Revenue Records) by sanctioning a mutation accordingly.*

If any difficulty is experienced in the implementation of the above instruction, a reference may be made to the Board of Revenue for clarification.

Sd/-

*Deputy Secretary to Government, West Pakistan
Revenue Department"*

In the above Memorandum, being conscious of the fact that under Section 56(1)(d) of the Act of 1967, the land on which property tax is payable under

the West Pakistan Urban Immovable Property Tax Act, 1958 is exempt from the assessment of land revenue, the Government has clarified the precise legal position to the extent of the exemption from the payment of land revenue and abandonment of revenue records in respect of lands located within "rating areas" of the Urban Immoveable Property Tax Act, 1958. In the said Memorandum, specific directions were issued that the areas which have been built up should be treated as '*abadi deh*' for the purposes of revenue records and further maintenance of record in respect thereof should be discontinued. However, it was made clear that only those *khasra*/Survey numbers should be treated as *abadi deh*, which have entirely been covered by construction; whereas, a portion of a field number would not to be treated as *abadi deh* and further maintenance of records would not be discontinued in respect thereof. Besides, it was further directed that if a field/survey number is covered by buildings, it would not be necessary to change entries in *jamabandi (revenue records)* forthwith, but new entries would be made at the time of preparation of the next quadrennial *jamabandi (revenue records)*. At the time of revising the quadrennial *jamabandi (revenue records)* the Tehsildar/Naib Tehsildar concerned would personally inspect the existing *abadi deh* and compile a report about the field/ survey numbers which were covered by buildings during the last four years. He should then submit a proposal to include that area in the *abadi deh*, for orders of the Collector. After obtaining the orders of the Collector the Tehsildar/Naib Tehsildar should make entries in the new *jamabandi (revenue records)* by sanctioning a mutation accordingly.

18. It is to be noted that the terms "urban area" and the "local area" have been defined in Section 2(hhh) and Section 6(2) of the Punjab Local Government Act, 2013. The "urban area" means an area within the jurisdiction of the Metropolitan Corporation, a Municipal Corporation, or a Municipal Committee and includes any other area which the Government may, by notification, declare to be an urban area for purposes of this Act

and the "local area" means the area notified, demarcated and declared by the Government for purposes of this Act as a local area, consisting of Lahore District as the Metropolitan Corporation; and rural area in a District, other than Lahore District, as District Council.

19. From the above, it is clear that land not subject to land revenue, which has been enclosed within Municipal limits, does not *ipso facto* become the site of a town. Meaning thereby that from mere inclusion of a certain area for purposes of jurisdiction within the limits of a Municipal Committee it could not be presumed that it has become the site of a town or village within the meaning of Section 3 of the Act of 1967. However, the 'land' falling within the site of a town or village, if it is not assessed to land revenue, then it stands excluded from operation of the Act of 1967 in terms of Section 3 thereof according to the ratio the Lahore High Court judgment of **Dr. Jalal Khan Vs. Qazi Naseer Ahmed, District Deputy Officer (Revenue) (2005 MLD 814)**. The revenue officer does not have any jurisdiction to entertain an application for partition of the property which has ceased to be land, notwithstanding the fact it continues to be assessed to land revenue as per **Ghulam Rasul Vs. Ikram Ullah judgment** (*supra*) and **Syed Aslam Shah Vs. Mst. Sakina** (1988 MLD 1596). According to the ratio of **Pervez Ahmad Khan Burki and others Vs. Assistant Commissioner and others** (PLD 1999 Lah 31) the revenue authorities have no jurisdiction to carry out demarcation of property which formed part of a bungalow.

20. In light of the above discussions as well as the *ratio decidendi* there is no doubt in our minds that the land/estate located within "rating areas" of the Punjab Urban Immoveable Property Tax Act, 1958, is exempted from the payment of land revenue and the revenue authorities, i.e. Patwaries, Kanungos, Tehsildars etc., are not authorized to enter mutations of alienation of property etc., in their record. We, therefore, hold that under the law, any urban area in Lahore or otherwise within Punjab

which falls within the ambit the Punjab Urban Immoveable Property Tax Act, 1958, are not subject to land revenue and hereby issue directions to the revenue authorities to refrain from any and all functions *(to the extent that these are within the ambit of the Punjab Urban Immoveable Property Tax Act, 1958)* in the said areas particularly with regards to entering mutations, etc. Since the revenue authorities of the Province of KPK are already compliant with these directions, the above findings and directions shall also apply to the Provinces of Sindh and Balochistan as well as that of the Federal Capital. Compliance reports of the above directions *(from all the Provinces and the Federal Capital)* be placed before this Court after a period of one month for our perusal in Chambers.

21. These are the reasons of our short order of even date, which reads as under:-

“For the reasons to be recorded later, it is held that all the urban areas to which the Land Revenue Act, 1967 does not apply shall be governed by the Transfer of Property Act, 1882 (Transfer of Property Act) and the Registration Act, 1908 for the purposes of transfer of property or devolution of any rights in property. No oral mutations for the purposes of the transfer of property shall be valid in law in such urban areas (which have become part of settled areas including municipalities, towns, etc.). The patwaar khana or revenue records can only be maintained for record keeping and not for the transfer of property under any of the modes recognized by the Transfer of Property Act or any other law prevalent at the time. Disposed of accordingly.”

CHIEF JUSTICE

JUDGE

Islamabad, the
3rd of January, 2019
Not Approved For Reporting
Waqas Naseer/*

JUDGE