

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 928-L OF 2015

(On appeal against the judgment dated
19.02.2015 passed by the Lahore High Court,
Lahore in Writ Petition No. 193/2013)

Jan Muhammad

... Petitioner

VERSUS

The Member (Colony) etc

... Respondents

For the Petitioner: Mr. Akhtar Masood Khan, ASC
Mr. M. Ozair Chughtai, AOR (Absent)

For Respondents (1-2): Mr. Razzaq A. Mirza, Addl. A.G.

For the Respondent (3): Mr. M.A. Ghaffar ul Haq, ASC
Mr. Muhammad Anwar Khan, AOR
(Absent)

Date of Hearing: 20.10.2016.

JUDGMENT

FAISAL ARAB, J.- On 23.11.1956, the Board of Revenue of the then West Pakistan launched a Scheme described as 'Grow More Food'. Under the said scheme, the barren state land was to be leased out in compact blocks of not exceeding 12 ½ acres for growing food grains. Temporary leases were initially granted for a period of three years, which period was subsequently enhanced to five years. After expiry of five years, leases were extended for another one year. It was one of the terms and conditions of the lease that in case the lessee fails to cultivate the leased land or any part thereof, the lease shall terminate.

Thereafter, vide notification No. 5449-58/7272-C(G) dated 29.10.1958 this condition was relaxed and it was provided that at-least 50% area must be brought under cultivation to avoid termination of the lease.

2. Vide notification dated 22.10.1962 bearing No. 4826-62/4419-S (G) III, the state land leased out under 'Grow More Food Scheme' was to be sold by private treaty to the lessees to the extent of 12 ½ acres with the maximum upper limit of 13 acres to those lessees only who are self cultivators and whose term of temporary lease had expired in Rabi 1962 or on any other period thereafter, except for such lands, which fall within certain radius of a town or municipality limits.

3. Vide notification dated 01.06.1970 bearing No. 5086-69/1683-CL III, it was made clear that where a lessee cannot be granted proprietary rights on account of the land being in the proximity of a municipality or town or within one mile of a railway station, though the lessees were otherwise entitled to the grant of proprietary rights, they would be offered alternative State land elsewhere. Such lessees were not to be dispossessed from their lands until the alternate land is provided to them and in case they have already been dispossessed and their lands have been utilized by the government for some permanent scheme, they would also be entitled for the alternate land.

4. On 26.04.1971 another notification bearing No. 1488-71/1217-CL-III was issued which provided that all allottees under the 'Grow More Food Scheme' shall be granted proprietary rights,

provided they have fulfilled the terms and conditions on which leases were granted and those who had fulfilled the terms and conditions but have been evicted by the Government, their possession shall be restored and in cases leases of such lands have been subsequently granted to other persons, the same shall stand automatically cancelled. It was further provided that in case such lands have already been allotted by the government for any permanent scheme and restoration of possession to the allottees has become impossible, then, such allottees were to be accommodated in some alternate area with the same rights as they would have exercised in the lands allotted to them.

5. In the present case, the petitioner was allotted land measuring 96 kanals 18 marlas in Chak No. 556/GB Tehsil Samundari, District Faisalabad on temporary lease bases in 1957 under the Grow More Food Scheme. The lease came to an end after the expiry of lease period in Rabi 1962 and the possession reverted back to the State. After termination of lease way back in 1962, the petitioner in the year 1984 applied for grant of alternate land in lieu of the land that was allotted to him in 1957 under the 'Grow More Food Scheme' to the Assistant Commissioner/Collector Samundari, who vide his order dated 02.12.1984 declared the petitioner eligible under Notification No.1488-71/1217-CL-III dated 26.04.1971 for such allotment. Hence vide order dated 21.07.1986 the petitioner's application for alternate land was allowed and he was granted proprietary rights in another piece of land measuring 52 kanals 9 marlas in Chak No. 485/GB, Tehsil Samundari, District Faisalabad. At this stage, the respondent No. 3 came forward and filed an application before Member (Colonies) Board of

Revenue and District Officer (Revenue), Faisalabad seeking cancellation of allotment order issued in favour of the petitioner by taking the plea that the land which was originally allotted to the petitioner in 1957 was surrendered by him and no longer remained under his cultivation. Thereafter, the same was leased out to him for a period of five years under the 'Grow More Food Scheme' from Khareef 1973 to Rabi 1978, which lease was extended upto 1983, therefore, respondent No.3 was eligible for the grant of proprietary rights and not the petitioner. The application moved on behalf of respondent No.3 was however dismissed vide order dated 04.11.2004. The respondent No.3 then filed a review petition before the revenue authority. During the pendency of the said petition, he filed another application under Section 30(2) of the Colonization of Government Lands (Punjab) Act, 1912 for cancellation of allotment of alternate land that was granted in favour of the petitioner. The Member Board of Revenue vide order dated 19.09.2012 declared the order dated 21.07.1986 passed by the Assistant Commissioner/Collector, Faisalabad to be ultra vires and cancelled the sale deed executed in favour of the petitioner on the ground that he obtained allotment order of alternate land by committing fraud and misrepresentation and restored the allotment in favour of respondent No. 3. The petitioner challenged the said order before the Lahore High Court in Writ Petition No. 193/2013, which was dismissed vide impugned judgment. Hence this petition.

6. All allottees under the 'Grow More Food Scheme' were to be conferred proprietary rights, provided that they have fulfilled the terms and conditions on which temporary leases were granted. Those who had fulfilled the terms and conditions but had been

evicted by the government on the expiry of temporary leases, their possession was to be restored and the leases that had been subsequently granted to other persons were to be automatically cancelled. So in terms of Notifications dated 1.6.1970 bearing No 5086-69/1683-CL III and dated 26.04.1971 bearing No. 1488-71/1217-CL-III alternate land was to be given only where the terms and conditions on which temporary leases were granted have been fulfilled by the lessee but (i) the allotted lands were situated either within the proximity of a municipality or a town or where it was within one mile of a railway station or (ii) for some reason the allottees were dispossessed by the government and their lands were utilized for some permanent scheme. All such allottees in terms of the above referred two notifications of 1970 & 1971 were to be accommodated in some alternate area with the same rights as they would have exercised in the lands originally allotted to them. It is an admitted position that the petitioner was granted lease in 1957, which lease expired in Rabi 1962 and on expiry of the lease the land reverted back to the State. He remained no more in its cultivation. Thereafter from time to time the same was leased out to others and finally it was leased out to respondent No.3 who held the lease from the years 1973 to 1983. There is no material on record to show he falls within the situations as envisaged by the above referred notifications of 1970 and 1971.

7. The Additional Advocate General submitted that the petitioner was granted lease in 1957, which lease expired in Rabi 1962 and it is an admitted position that upon expiry of the lease the land reverted back to the State therefore he was not entitled for alternate land under Notification dated 26.04.1971 bearing No.

1488-71/1217-CL-III. He also pointed out that insofar as the claim of respondent No.3 is concerned, he at the relevant time was a teacher in Government school and was not eligible for grant of temporary lease, he too cannot claim any right under Notification dated 26.04.1971 bearing No. 1488-71/1217-CL-III, therefore, allotments were rightly cancelled as the same were obtained by playing fraud and misrepresentation. This aspect was also not examined by the Board of Revenue.

8. We have noted that in terms of Notifications dated 1.6.1970 bearing No 5086-69/1683-CL-III and dated 26.04.1971 bearing No. 1488-71/1217-CL-III alternate land was to be given only where the terms and conditions on which temporary leases were granted have been fulfilled by the lessee but (i) the allotted lands were situated either within the proximity of a municipality or a town or where it was within one mile of a railway station or (ii) for some reason the allottees were dispossessed by the government and their lands were utilized for some permanent scheme. Only such allottees, in terms of the above referred two notifications of 1970 & 1971, were to be accommodated in alternate areas with the same rights as they would have exercised in the lands originally allotted to them. As for below have not examined this case from the perspective of the applicability of the above-referred two notifications, we deem it appropriate to set aside the impugned judgment passed by the High Court and remand the case back to the Board of Revenue, which shall decide whether the petitioner or the respondent No.3 was entitled to the grant of alternate land in terms of the notifications discussed above or the land rightly reverted back to the State.

9. Vide short order dated 20.10.2016, we converted this petition into appeal, allowed it and remanded the case back to the Board of Revenue and these are the reasons for the same.

JUDGE

JUDGE

JUDGE

Islamabad, the
20th of October, 2016
Approved For Reporting
Khurram