

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE AMIN-UD-DIN KHAN

CIVIL PETITION NO.2230 OF 2015

(Against the judgment dated 07.07.2015 passed by the Lahore High Court, Lahore in Writ Petition No.68-R of 2002)

Allah Rakha (decd) thr. LRs & others ...Petitioner(s)

Versus

Additional Commissioner (Revenue) ...Respondent(s)
Gujranwala & others

For the Petitioner (s) : Hafiz S. A. Rehman, ASC

For Respondents No.1 : Ch. Faisal Fareed, AAG, Punjab
& 2

For Respondent No.3 : Syed Rifaqat Hussain Shah,
AOR

For Respondent No.12 : Mr. Muhammad Amir Malik,
ASC

Respondents No.4 to : N.R.
11 and 13 to 16

Date of Hearing : 04.02.2020

JUDGMENT

AMIN-UD-DIN KHAN, J.- This Civil Petition has been filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, challenging judgment dated 07.07.2015, passed by the Learned Lahore High Court, Lahore whereby Writ Petition bearing No.68-R of 2002 filed by the Petitioner, was dismissed.

2. We have heard the learned counsel for the Petitioners as well as learned AAG, Punjab and perused the available record. Plaint in the said civil suit was rejected vide order dated 21.10.1998 and the Appeal preferred there-against was also dismissed vide order dated 04.07.2002. The learned counsel for the Petitioners states that since the suit was found to be not competent and the Plaint was rejected under Section 22 of the Displaced Persons (Land Settlement) Act, 1958, therefore, after rejection of the Plaint, a Writ Petition was filed by the Petitioners. The Petitioners are purchaser from legal heirs of the original allottee of the land for the maintenance allowance, being Jammu & Kishmir refugees. The original allotment against 341 Produce Index Units ("PI Units") were subsequently held to be in excess vide order 09.02.1970. Thus, entitlement of Ghulam Rasool, original allottee, was in excess and he was entitled only to 155 PI Units.

3. Firstly, the point to be considered pertains to filing of the suit to challenge the order dated 09.02.1970, passed by the Additional Settlement Commissioner (Lands) with Powers of the Chief Settlement Commissioner (Lands), Sialkot. We are not convinced with the argument of the learned counsel that the Writ Petition was competent due to the suit being not competent under the law. We are afraid that this argument is not sustainable under the law.

We are clear in our mind that where there is a clause of bar of jurisdiction of Civil Court by virtue of jurisdiction being conferred upon another forum, then that bar is only superseded if the authority exercises its powers in excess of what was provided under the law/statute, or if it was exercised without jurisdiction. It is an admitted position that the Civil Suit was not competent in the instant case, and therefore, the jurisdiction of High Court could also not be made out on the sole basis that the Civil Suit was not competent, particularly where there is no exercise of jurisdiction *coram non judice* or in excess of the authority devolved by the law upon the Settlement Authorities. Therefore, if the Petitioners' argument is accepted that the Civil Court had no jurisdiction due to proper exercise of authority, then by virtue of the same, the High Court would also not be competent to entertain the *lis* as under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. The contentions of the learned counsel are therefore repelled with regard to competency of Writ Petition after earlier rejection of Complaint by the Civil Court.

4. In the instant case, when the matter was scrutinized by the Civil Court, Complaint was rejected and the Appeal was also dismissed, then challenging the same order dated 09.02.1970 of the Settlement Authorities through a Writ Petition filed in the year 2002 was rightly

dismissed by the learned High Court. The principle of laches was also rightly applied, keeping in view the principle of laches in mind. The Writ Petition was filed after 32 years of passing the order of DC/Additional Settlement Commissioner (Lands), Sialkot. All the further defects noted by the High Court are in accordance with facts and record. Therefore, learned counsel could not show any defect in the impugned order and no case for interference in the impugned judgment could be made out.

5. Consequently, this petition is dismissed and leave refused.

JUDGE

Islamabad, the
4th of February, 2020
'APPROVED FOR REPORTING'
Syed Farhan Ali

JUDGE