

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Writ Petition No. 934-A/2019

JUDGMENT

Date of hearing.....**29.10.2025**.....

Petitioners (Sabir Sultan & others) By Mr. Haji Sabir Hussain Tanoli, Advocate.

Respondents (Govt of Khyber Pakhtunkhwa Revenue Estate Department through its secretary, Peshawar and others) by Sardar Basharat learned AAG while for private respondent Mr. Muhammad Asif Qazi Advocate.

SADIO ALI, J.- Through the instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner (Sabir Sultan) has prayed as under: -

“It is, therefore, humbly prayed that on acceptance of the instant writ petition, impugned notification dated 30.11.2017 may kindly be struck down/cancelled and previous status of Revenue Estate Kokal may graciously be restored. Any other relief which this Honourable Court deems fit and proper in the circumstances of the case may also be granted.”

2. Precisely, the facts leading to the filing of the instant petition are that the petitioners are residents of Village Bandi Qazi-cum-Kokal,

formerly part of Revenue Estate Kokal and now within Revenue Estate Barseen, Tehsil Havelian, District Abbottabad, have filed the present writ petition along with an application under Order I Rule 8 CPC, as numerous persons share a common interest in the matter. The record reveals that during the first settlement of 1872, Patwar Circle Kokal was established comprising three revenue estates, namely Kokal, Gajjal, and Jandaka. The Revenue Estate Kokal itself consists of three main villages, Kokal, Barseen, and Sohlan each having its own headman (Lumberdar), but all being co-sharers in their respective villages with distinct Shamlat lands. The petitioners, being residents of Village Bandi Qazi-cum-Kokal, form an integral part (Mallah) of Village Kokal, sharing the same tribe, culture, and common Shamlat rights in Mahal Kokal and Barseen, including Shamlat Traff Kokal. It appears from the record that certain residents of Village Barseen, with the support of a local MPA, submitted an application to the Senior Member, Board of Revenue (Respondent No.3), which was marked to the local Patwari for inquiry. The concerned Patwari, without conducting any

spot inspection or following due procedure, prepared a fictitious and manipulated report, deliberately excluding the petitioners, who were necessary stakeholders in the proceedings. Acting upon this false report, Respondent No.3 issued the impugned Notification dated 30.11.2017. Upon learning of this development, the petitioners promptly moved an application before Respondent No.3 seeking recall of the said notification, supported by a resolution of the Village Council Kokal-I; however, no decision has been rendered on their representation to date, hence, the instant petition.

3. Arguments heard and gone through the record.

4. Perusal of the record reveals that the impugned Notification dated 30.11.2017, through which the competent authority bifurcated Revenue Estate Kokal into two separate estates, namely Mouza Kokal and Mouza Barseen, was issued strictly in accordance with law and pursuant to the powers conferred under paragraph 7.69 of the Land Record Manual. The said provision authorizes the Board of Revenue to create, divide,

or reconstitute revenue estates as administrative necessity demands, following due consultation and spot verification.

5. The record further manifests that before issuance of the notification, the revenue authorities carried out a complete and transparent process, which included advertisement, consultation with the local inhabitants, and spot inspection. The concerned Revenue Officers visited the site, heard the views of both the residents of Kokal and Barseen, and thereafter prepared detailed demarcation papers to assist the competent authority. The process, thus, was not arbitrary or secretive, but conducted in a fair, open, and lawful manner in consonance with the Land Record Manual and settled procedure of the Revenue Department.

6. It is further evident that the population and geographical area of Mouza Barseen is considerably larger than that of the adjoining revenue estates within the same Patwar Circle. The growing population, administrative complexity, and need for efficient management of land records and fiscal affairs justified the

bifurcation. Such division was essential for ensuring accuracy in revenue collection, better supervision of record-keeping, and transparency in mutation and partition proceedings. The administrative reorganization was, therefore, a measure of necessity rather than convenience.

7. The petitioners' plea that the process was conducted in secrecy or without involving the inhabitants of Bandi Qazi-cum-Kokal stands refuted by the record. The proceedings demonstrate that consultations were duly held with local elders, Lumberdars, and notables of the concerned villages, who consented to the division. The mere dissatisfaction of a few individuals cannot nullify a decision undertaken in the larger public interest after due compliance with law. It is trite law that bifurcation or reconstitution of a revenue estate falls within the exclusive domain of the Executive and constitutes a policy matter. Courts, in exercise of constitutional jurisdiction, refrain from interfering in such administrative determinations unless a clear case of mala fide, lack of jurisdiction, or violation of mandatory legal provisions is established.

8. It also appears from the record that the real petitioners belong to Village Bandi Qazi, which is geographically situated adjacent to Mouza Barseen and at a considerable distance from Village Kokal. Hence, their claim of being directly aggrieved by the bifurcation lacks factual and legal foundation. The impugned notification neither infringes upon their proprietary rights nor affects their Shamlat entitlements. They have, therefore, failed to establish themselves as “aggrieved persons” within the contemplation of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Furthermore, even if the petitioners or any other person considers themselves affected by the administrative bifurcation, the Land Revenue Act, 1967 provides a complete and adequate mechanism for redressal through the Revenue hierarchy. Constitutional jurisdiction cannot be invoked as a substitute for ordinary statutory remedies.

10. It is evident that the impugned notification has been issued by the competent authority in a lawful manner, after adopting all

requisite procedural formalities and in furtherance of administrative necessity. The bifurcation of Revenue Estate Kokal into Mouza Kokal and Mouza Barseen is based upon geo-factual realities, population growth, and administrative expediency, aimed at improving the efficiency and transparency of the revenue record. In this respect reliance may be placed on **PLD 2021 Peshawar 27.**

11. During the course of arguments, learned counsel for the petitioners was confronted that the relief sought does not justify interference by this Court in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, unless it is established that the impugned action is tainted with mala fides, arbitrariness, or violation of law. However, learned counsel failed to point out any jurisdictional defect, procedural irregularity, violation of law, or infringement of fundamental rights. The impugned notification, having been issued after observance of the due process prescribed under paragraph 7.69 of the Land Record Manual, cannot be termed as coram non

judice or without jurisdiction. It is well-settled by the superior Courts that the constitutional jurisdiction of this Court under Article 199 cannot be invoked to question administrative or policy decisions of the Government where the competent authority has acted within its lawful domain and in accordance with law.

12. In addition, the law is well settled that constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, cannot be exercised in matters involving disputed questions of fact, which require recording of evidence. The scope of this Court under Article 199 of the Constitution of Pakistan is dependent on the questions which are devoid of factual controversies, therefore, this Court cannot interfere in such like matters where disputed questions of facts are involved. In the case of "Munda Eleven Cricket Club vs. Federation of Pakistan", reported as PLD 2017, Lahore, 802, the Hon'ble Court has held that the question as to the authenticity of documents involved a factual controversy, such as authenticity standing on the touchstone of evidence, which the high court

under its constitutional jurisdiction could not record, scope of the constitutional jurisdiction of the high court was on the questions which were devoid of factual controversies. Similarly, in the case of *“Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others v/s Intizar Ali & others”* reported as *2022 SCMR 472*, the apex court observed that superior courts could not engage in factual controversies, as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence.

“21. So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on Fateh Yarn Pvt Ltd. v. Commissioner Inland Revenue (2021 SCMR 1133). Admittedly, the learned High Court while passing the impugned

judgments had went into the domain of factual controversy, which was not permissible under the law. We have noticed that in Civil Appeal No.1213/2020 although the respondents had filed the civil suit but they were not appointed on regular basis and most of them do not have the required qualification/experience at the time of their appointment. Learned counsel had stated that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, is involved in these appeals. However, this argument of the learned counsel is misconceived. The question of applicability of Article 212(3) of the Constitution arises only when any party has approached this Court against the judgment passed by the Federal Service Tribunal but except Civil Appeals Nos. 1218 to 1220/2020 same is not the case here, therefore, this has no relevance in the present proceedings. Even in the aforesaid Civil Appeals, the respondents were neither regular employees nor they had the requisite qualification/experience at the time of their appointment nor had they filed the application within thirty days within the purview of Section 7 of the Khyber Pakhtunkhwa Sacked Employees

(Appointment) Act, 2012, therefore, as discussed in the preceding paragraphs, the learned Service Tribunal could not have directed for their reinstatement.”

13. Further reliance may also be placed on the cases titled “Messrs Fateh Yarn Pvt. Ltd. Faisalabad Vs. Commissioner Inland Revenue Faisalabad and others” (2021 SCMR 1133), “Director Military Lands and Cantonment Quetta Cantt. Quetta and Others VS. Aziz Ahmed and others” (2023 SCMR 860), “Pecial Secretary-II (Law and Order), Home and Tribal Affairs Department, Government Of Khyber Pakhtunkhwa, Peshawar andothers Vs. Fayyaz Dawar” (2023 SCMR 1442) and “Messrs Sprint Oil and Gas Services Pakistan FZC, Islamabad VS. Oil and Gas Development Company Limited (OGDCL), Islamabad” (2024 SCMR 117), wherein it has been held by the Hon’ble apex Court that

“High Court’s jurisdiction under Article 199 of the Constitution may not be invoked when contracts have to be interpreted, and all the more so when they are technical and/or complex, nor when evidence is required to be recorded. In the

exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court also does not enter into the realm of disputed facts.”

14. For the reasons recorded hereinabove this writ petition, being without any substance, is hereby dismissed.

Announced:
29.10.2025.

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*Hon'ble Mr. Justice Sadiq Ali
Hon'ble Mr. Justice Syed Mudassar Ameer*

Shahid/*