

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No. 170-M/2024

Mst. Nazi Shaukat Ali Khan and others Vs. Miangul Hilal through Legal Heirs and others

Present: *Mr. Iftikhar Ahmad (Senior), Advocate for petitioners.*

Mr. Haq Nawaz Khan, Addl: A.G for official Respondents.

M/S. Sardar Zulfigar & Ikram Ullah, Advocates for Private Respondents.

Date of hearing: **13.10.2025**

JUDGMENT

SABIT ULLAH KHAN, J.- This petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, calls in question the legality, propriety and correctness of the order dated 12.12.2023 passed by the learned Member-III, Board of Revenue, Khyber Pakhtunkhwa, whereby the revision of the private respondents was accepted while setting aside the concurrent orders of the subordinate revenue authorities dated 24.07.2021 and 15.07.2021, and consequently remanded the matter to the Deputy Land Collector/ Deputy Commissioner, Swat for decision afresh on merits. The petitioners, who claim themselves to be the legal heirs of late Miangul Abdul Wadood, have assailed the said order on multifarious grounds through instant petition asserting that the learned Member Board of Revenue has travelled beyond his jurisdiction by ignoring the settled principles of law, and illegally revived the proceedings which

were withdrawn unconditionally and thus could not, as per their contention, be restored.

2. The facts of the case, though prolix and historically layered, may be succinctly stated that the dispute concerns landed property situated in the revenue estate of Saidu Sharif, Swat, originally forming part of the personal and state holdings of the ex-Ruler of Swat. Following the merger of princely state into Pakistan in the year 1969, vide Martial Law Regulation (MLR) 122 of 1972, under Paragraph 1 (2) of Regulation No.122 was extended to the ex-State and under Paragraph No.2 (a), a *Commission* known as “**Dir-Swat, Land Disputes Enquiry Commission**” was appointed by the Provincial Government vide Notification No.66 S.O (S.P.L)/HD/70 dated 08th October, 1970 for determination of:

(a). What property is State property of the former States of Dir and Swat, respectively; (b). What property is private or personal property of the late Nawab of Dir Sir Shahjehan Khan, ex-ruler of the former State of Dir, and the late Sir Abdul Wadud Mian Gul Sahibzada, K.B.E, Badshah Sahib of the former State of Swat respectively; and (c) the respective shares of the various heirs of the aforesaid two ex-Rulers in their personal or private property. In essence, the aim of the Commission was to distinguish between state and private property and mechanisms for settlement and devolution of

property disputes in the region were provided in MLR-122 and MLR-123 of 1972.

3. The private respondents, claiming the descendants of Miangul Umar Khan, moved the competent land commission in 1971 asserting proprietary rights over certain lands and residential houses. Their claim culminated in a decree dated 28.04.1975 passed by the Federal Land Commission. Over subsequent decades, several execution and settlement proceedings ensued, including a fresh application in 1987 seeking further corrections in the record of rights. Those proceedings remained dormant until 2012, when the respondents once again approached the Federal Land Commission, obtained an order dated 02.07.2012, and secured mutation No. 3441 dated 26.07.2012. That order, however, was challenged by the present petitioners and was set aside by this Court on 07.02.2013, which judgment attained finality. Thereafter, the respondents sought restoration of their 1987 proceedings. The Deputy Commissioner dismissed the said application on 24.01.2020 holding it incompetent in law as the earlier application had been withdrawn without reservation. Against said order, appeal of the petitioners was dismissed by Additional Commissioner dismissed on 15.07.2021. On revision the Member-III, Board of Revenue, by order dated 12.12.2023, disagreed with restrictive view adopted below, observed that the revenue fora possess plenary jurisdiction to

rectify and re-open proceedings in the interest of justice, and consequently remanded the case to the competent officer for decision on merits. It is this order, which has been impugned before this Court.

4. Learned counsel for the petitioners strenuously contended that once the application filed by the respondents dated 28.02.1987, was withdrawn unconditionally then no authority, including the Board of Revenue, could revive it. He urged that such revival/restoration amounts to gross illegality and is hit by the principle embodied in Order XXIII Rule 1, C.P.C, and that the impugned order offends the doctrine of finality. He further submitted that the remand order virtually nullifies the judgment of this Court dated 07.02.2013, which had already settled the matter.

5. Conversely, learned counsel representing the respondents supported the impugned order and maintained that the learned Member-III has rightly exercised supervisory revisional jurisdiction to prevent any miscarriage of justice and has merely directed that the case be decided on merits. Further contends that the application for withdrawal of the application was based on the lawful order passed by the Federal Land Commission dated 02.07.2012, in consequence thereof, mutation No. 3441 dated 26.07.2012, was duly attested in favour of respondents. Hence, the continuation of proceedings before learned Additional Deputy Commissioner

(A.D.C), Swat on the earlier application dated 28.02.1987 became redundant and unnecessary under the law. This is because the decree of Federal Land Commission dated 28.04.1975 had already been executed in both letter and spirit. However, following the judgment of this Court dated 07.02.2013, the respondents were left with no alternative legal remedy except to restore the matter before the worthy Additional Deputy Commissioner, Swat, in order to give effect to the decree and that the respondents cannot be made to suffer due to any act of the Court or delay in execution proceeding. The execution before the executing Court or competent authority, if not wholly satisfied, may lawfully be re-agitated and resumed before the same forum.

6. I have considered the submissions of learned counsel for the parties and carefully perused the record appended with the instant petition.

7. The impugned order passed by the learned Member Board of Revenue does not, by itself, determine any substantive right. It merely remands the matter to the competent forum for its adjudication on merits after affording opportunity to all sides. Recently, in the case titled Syed Raheem Vs. Muhammad Kareem and others¹, this Court has upheld the order passed by learned Member Board of revenue

¹ 2024 MLD 282

remanding the case to the lower forum for decision a fresh by holding that the same is not open to judicial review. It is a settled principle of law that an order of remand merely directs re-examination of the matter without finally determining the rights of the parties; hence, such an interlocutory order, passed by the competent revenue forum, is not amenable to judicial review under writ jurisdiction². In said case, the apex Court has observed as under:

“Order of remand is not a final order and simply sends the matter for re-examination for the second time. It does not finally determine the claim or the rights of the parties. The forum to which the case is sent for fresh decision is free to re-examine the case and pass a fresh judgment. Against any such subsequent decision or judgment, alternate remedy is available to the parties. Further, Board of Revenue is the highest Court of appeal and revision in revenue cases and is a controlling authority in all matters connected with the administration of land, collection of land revenue, preparation of land record and other matters. In this background, the Courts after having judicially examined the remand order passed by the Board of Revenue have expressed reluctance to interfere and for these reasons have maintained that order of remand would not be amenable to writ jurisdiction.”

Moreover, it is also a settled law repeatedly enunciated by Superior Courts in the cases titled President All Pakistan Women Association, Peshawar Cantt. Vs. Muhammad Akbar Awan and others and Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State³, that High Courts, while exercising

² 2018 SCMR 1177

³ 2020 SCMR 260 and 1999 SCMR 1447

constitutional Jurisdiction, should refrain from interfering with interlocutory or remand orders unless the same are patently without jurisdiction or suffers from manifest perversity. Reliance may also be placed on case titled Secretary to Government of Punjab Forest Department Vs. Ghulam Nabi and 03 others⁴. No such infirmity is apparent in the instant case. Furthermore, the revenue hierarchy established under the 1967 Act is a complete code, designed to secure the accuracy of record of rights and to decide questions relating to possession and inheritance in summary manner. The application of civil code therein is merely supplementary, not controlling. It follows, therefore, that the technical bar of Order XXIII Rule 1, C.P.C cannot be imported rigidly to revenue proceedings, the object of which is to uphold the correctness of revenue record rather than to determine civil title conclusively.

8. The pivotal legal question arising in this writ petition revolves around the extent and scope of the revisional jurisdiction of the Member, Board of Revenue, under the Land Revenue Act, 1967, and whether such authority could lawfully direct the restoration of a proceeding previously withdrawn unconditionally before the Subordinate Revenue Officer. The petitioners' primary contention is that the withdrawal of the

⁴ PLD 2001 SC 415

application operated as a complete bar to revival, invoking the prohibition embodied in Order XXIII Rule 1, of the Code of Civil Procedure, 1908, and that impugned order of Member Board of Revenue dated 12.12.2023, therefore, suffers from a jurisdictional defect. The core issue thus before this Court is of two folds: firstly, whether the procedural rigours of civil procedure code apply in strict sensu to the proceedings conducted under special framework of the Land Revenue Act, 1967 and secondly, whether a revisional Authority exercising supervisory control under Section 164 of the said Act, in the interest of justice, remand or direct reconsideration of a matter where no final adjudication has yet been made on merits. This legal question further encompasses the delicate balance between technical finality and the duty to secure substantive justice; a balance that the Superior Courts repeatedly sought to preserve in its jurisprudence. The apex Court in a consistent line of authorities has reaffirmed that revenue fora operate within a special statutory regime where the provisions of Civil Procedure Code apply only to the extent not inconsistent with purpose and spirit of the Land Revenue Act, has categorically held that technical procedure bars, such as those concerning withdrawal or restoration, cannot be invoked to defeat the statutory duty of revenue authorities to maintain accurate record of rights and to ensure adjudication on the merits of ownership and possession. It is a settled principle of law that

withdrawal of a *lis* does not amount to decision on merits of the case⁵. It is also by now an entrenched proposition that Revisional Powers under Section 164 of Land Revenue Act, 1967 are wide, corrective, and Supervisory in nature, empowering the Board of Revenue to rectify jurisdictional errors, procedural irregularities, or injustices committed by subordinate officers. In the case titled Associated Builders (Pvt.) LTD through authorized person and another Vs. Province of Balochistan through Chief Secretary Balochistan and 4 others⁶ has held that the Board of Revenue was the highest forum in revenue hierarchy, which had all powers to direct subordinate revenue authorities to undo the wrong in revenue record by any revenue officer subordinate to the Board and rectify the same. Even in the case titled Sana Ullah Vs. Government of Punjab and others⁷, in a matter arising of the orders of the revenue fora, it was held that the jurisdiction of revision under S. 164 of the Punjab Land Revenue Act, 1967, could be exercised, at any time, by the Board on its own motion or on an application.

9. Furthermore, the apex Court has further clarified that High Courts, while exercising constitutional jurisdiction under Article 199 of the Constitution, ought not to interfere with intermediate, remand, or interlocutory orders passed by

⁵ 2007 SCMR 289

⁶ P L D 2021 Balochistan 157

⁷ 2018 CLC 1987

competent authorities unless such orders are patently without jurisdiction, manifestly perverse, or in defiance of law. In the case of Allah Ditta and others Vs. Member (Judicial) Board of Revenue and others⁸ filed against the remand order of the Member Board of Revenue, the apex Court has observed that:

“Order of remand was not a final order and simply sent the matter for re-examination for the second time. Remand order did not finally determine the claim or the rights of the parties. Forum to which the case was sent for fresh decision was free to re-examine the case and pass a fresh judgment. Against any such subsequent decision or judgment, alternate remedy was available to the parties.”

In view of the above, the revisional order impugned herein, being reasoned, jurisdictionally sound, and merely remanding the matter for lawful adjudication, falls squarely within the lawful exercise of authority of the Board of Revenue and the same does not warrant constitutional interference.

10. In view of the above discussion, the instant petition, being devoid of any merit, is hereby dismissed.

Announced.
13.10.2025

Sd/-
JUDGE

⁸ 2018 SCMR 1177