

P L D 2025 Balochistan 121

Before Muhammad Hashim Khan Kakar, C.J. and Muhammad Aamir Nawaz Rana, J

MUHAMMAD AFZAL JAMI---Petitioner

Versus

PROVINCE OF BALOCHISTAN through Senior Member, Board of Revenue,

Balochistan and 3 others---Respondents

C. P. No. (t) 43 of 2022, decided on 17th December, 2024.

Pakistan Legal Practitioners and Bar Councils Rules, 1976---

---R. 149---Constitution of Pakistan, Arts. 29, 30 & 199---Contract Act (IX of 1872), S.23---Constitutional petition---Maintainability---Compromise between the litigants and lawyer qua transfer of certain land as remuneration/professional legal fee---Legality---Issuance of notification by Revenue Department declaring the land settlement work carried out in the concerned Mauza as null and void---Principle of laches---Claim of the petitioner/lawyer was that Fard qua the land mutated to him in lieu of remuneration was not issued to him---Validity---Petitioner, who was a practicing lawyer, had himself admitted that he had received the property in question in lieu of his remuneration, which R. 149 of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 (Rules) had specifically prohibited, thus, the transaction carried out was not only against R. 149 of the Rules, but against the Principles of Policy enshrined in Arts. 29 & 30 of the Constitution, as the consideration in the agreement between the petitioner, as a practicing lawyer, and certain litigants was unlawful in view of said Rule---Thus, the said agreement was void in terms of S. 23 of the Contract Act, 1872---Petitioner had not uttered a single word about the status of the original property owners of the property in question---Since the petitioner had derived his title from the plaintiffs of the civil suit/original owners, thus, it was incumbent upon the petitioner to prove that in fact the said owners, in the subsequent settlement proceedings, were also declared as owners, as the petitioner, on his own, had not asserted any ancestral right in the property---Petitioner had the knowledge of the notification, but even then instead of challenging the same, accepted the same and participated in the settlement proceedings, so subsequently, when his name was not incorporated as the owner of certain land, he at a belated stage challenged the notification without explaining the legal justification of such long delay, thus, the petition suffered from laches---Constitutional petition was dismissed, in circumstances.

Tahir Ali Baloch along with Petitioner for Petitioner.

Zahoor Ahmed Baloch, Additional Advocate-General for Respondents.

Date of hearing: 14th November, 2024.

JUDGMENT

MUHAMMAD AAMIR NAWAZ RANA, J.---The petitioner has averred that he, by profession, is lawyer and has served as District Attorney Turbat, Deputy Attorney General Balochistan and Deputy Prosecutor General NAB Balochistan. Per petitioner, between the years 2004 to 2008, he was engaged in private legal practice in Gwadar and in the year 2004, he was pursuing certain civil matters being counsel of some of the individuals namely Rehmat son of Haji Jan Muhammad, Lal Bakhsh son of Rustam and Mehrab son of Behram etc in Civil Suit Nos.167, 169, 170, 172 of 2004 and Civil Suit Nos.05, 06, 07 and 08 of 2005 which were pending before the Court of Qazi Gwadar.

2. The petitioner, in the above background, has stated that he had entered into agreement with the plaintiffs of aforementioned civil suits and had settled that if the plaintiffs of those suits get succeeded in their suits, he would get 200 acres of land as professional legal fee and the plaintiffs of those suits would be bound to transfer the same in his name. The petitioner has further stated that subsequently, on the basis of compromise, those civil suits were

decreed by the Civil Court and the plaintiffs of those civil suits, by honouring their words, transferred 200 acres of land in his favour and in this regard, mutation was also carried out in his favour.

3. It is the case of petitioner that vide Notification No.70/Settlement/2015 dated 02.06.2015, the Senior Member, Board of Revenue Balochistan, with the approval of the Competent Authority, declared null and void the land settlement work carried out in Mouza Zabadun of Tehsil Gwadar and ordered to revise the settlement of said Mouza. Per petitioner, on 30.03.2021, the Assistant Officer/Collector, Makran Division, had called the land-owners of Mouza Zabadun of Tehsil Gwadar through publication, whereafter the petitioner, through his Attorney, participated in the settlement proceedings. Per petitioner, no one objected upon his rights, and subsequently when he applied for issuance of Fard of property in his favour, no response was given to him and despite filing a number of other applications in this regard, again no response was given to him. With these assertions, the

petitioner has filed the instant Constitution Petition which carries the following prayer:

"(i) Direct Respondent No. 3 to file Report before Respondent No. 4 pending from dated 06.10.2021, accordingly.

(ii) Direct Respondents Nos. 3 and 4 for issuance of FARD OF JAMABANDI of lands bearing Khewat/Khatauni Nos. 13/13, 25/25, 31/31, 36/36, 4/4 and 9/9 of Mouza Zabad Dun, Tehsil Gwadar, totaling 190 acres, in favour of the Petitioner, in the interest of justice, equity and good conscience;

(iii) Restrain the Respondents from any and all acts and omissions that may render defective Petitioner's ownership title to the lands subject of this Petition;

(iv) Award costs;

(v) Grant any other relief and/or pass any order or direction that this Hon'ble Court may deem fit and proper under the facts and circumstances of this case."

4. On 08.11.2022, the petitioner filed application under Order VI, Rule 17, C.P.C. seeking permission of this Court to amend the prayer clause of the petition. The application was allowed by this Court vide order dated 16.08.2023 and the following prayer was allowed to be included in the main petition:

"(ii-a). The notification dated 02-06-2015 issued by respondent No.1/Senior Member, Board of Revenue Balochistan, Quetta may kindly be set aside to the extent of property in question and the previous position of the property as per the decree of Qazi Gwadar".

5. Learned counsel for the petitioner mainly contended that on

the basis of decree passed by the Civil Court i.e. Qazi Gwadar, the property in question had been transferred in favour of the original owners, who were plaintiffs in Civil Suit Nos.167, 169, 170, 172 of 2004 and Civil Suit Nos.05, 06, 07 and 08 of 2005. Learned counsel further contended that subsequently on the basis of compromise, when those suits were decreed, the plaintiffs of those suits, out of their freewill, had transferred 200 acres of land in the name of petitioner in the revenue record but no Fard/revenue record was provided to the petitioner and for that very reason the petitioner had been approaching the competent authorities and had even participated in the subsequent proceedings of settlement and had given solid proof of his ownership. While concluding his arguments, learned counsel contended that Notification dated 02.06.2015 had been illegally issued by the Senior Member, Board of Revenue Balochistan without considering the actual facts of the case.

Arguments heard. Relevant record perused.

6. The certain land-owners of Mouza Zabadun of Tehsil Gwadar had filed a number of civil suits which had been decreed by the Civil Court on the basis of compromise and as a professional legal fee, the petitioner received 200 acres of land from the plaintiffs of those civil suits and got mutation in his favour. Record transpires that on the basis of decree passed by the Qazi Gwadar, mutation entry No. 109 was carried out in favour of the certain individuals. Perusal of said mutation entry depicts that the name of petitioner is not included

therein. As per stance of the petitioner, subsequently those landowners had transferred 200 acres of land in his favour through different mutation entries. Record reflects only one mutation entry i.e. mutation entry No.98, whereas the other Fards/revenue record are not depicting reference of any previous mutation entry.

7. The petitioner, who is a practicing lawyer, has himself admitted that he has received the property in question in lieu of his remuneration, which is in violation to Rule 149 of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 ('Rules, 1976'). For the facility of ready reference, the *ibid* Rule is reproduced:

"149. An advocate shall not himself or in benami purchase any property at a probate, foreclosure or judicial sale in an auction or proceeding in which such advocate appears for a party, nor shall he accept the whole or part of the property, in respect of which he had been engaged to conduct the case, in lieu of his remuneration, or as a reward or bounty".

(Emphasis supplied)

8. Since the aforementioned Rule had specifically prohibited the lawyer to enter into any such agreement in order to get the remuneration for his professional legal services, therefore, the transaction carried out was not only against the *ibid* Rule 149 of the Rules, 1976 but against the principles of Policy enshrined in Articles 29 and 30 of the Constitution of Islamic Republic of Pakistan, 1973; as the consideration in the agreement between the petitioner, as a practicing lawyer, and certain litigants is unlawful in view of the *ibid* Rule 149 of the Rules 1976, therefore, the said agreement was void in terms of section 23 of the Contract Act, 1872 ('Act, 1872'). For the facility of reference, the *ibid* section is reproduced:

"23. What considerations and objects are lawful and what not. The consideration or object of an agreement is lawful, unless- it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void".

In view of the aforementioned legal provisions, no lawyer can enter into any agreement to get any moveable or immovable property which is subject matter of any case in which he/she is engaged and providing his/her professional legal services, as it shall be void being prohibited by the Rule 149 of the Rules 1976 and section 23 of the Act, 1872.

9. We have also considered the case of petitioner on merits but could not find any substance in the arguments advanced by learned counsel for the petitioner as the official respondents have taken the categorical stance that the Senior Member, Board of Revenue Balochistan, vide Notification dated 02.06.2015, had cancelled all the entries made in the previous settlement and ordered revised settlement of Mouza Zabadun of Tehsil Gwadar. It was mentioned in the said Notification that the land measurements recorded in the settlement surveys of said Mouza shall remain intact. For ready reference, the *ibid* Notification is reproduced:

"NOTIFICATION

No. 70/Settlement/2015. With the prior approval of the competent authority the land settlement work carried out in Mouza Zabadun of Tehsil Gwadar and Mouza Chatani Bal of Tehsil Jiwani District Gwadar is hereby declared null and void. The competent authority under Section 40 (2) of Balochistan Land Revenue Act, 1967 is further pleased to order Revise Settlement of Mouza Zabadun of Tehsil Gwadar and Mouza Chatanibal of Tehsil Jiwani. However, the land measurements recorded in the settlement surveys of above referred Mouzas will remain intact. Nevertheless, boundaries of Mouza Zabadun with Tehsil Jiwani should be rectified in the revision process. Similarly, the boundaries of Mouza Chahtani Bal of Tehsil Jiwani which are overlapping with Tehsil Suntsar should also be rectified during revision process.

Qamar Masood

Senior Member

Board of Revenue Balochistan "

10. The petitioner has alleged that he, through his Attorney, had participated in the subsequent settlement proceedings which were carried out in the year 2021 and proved his possession over the property in question, but on the other hand, the official respondents have disputed this fact and have stated that in subsequent settlement proceedings, on the date of last attestation i.e. 01.06.2021, neither the petitioner nor his representative attended the proceedings and the petitioner did not prove through any source that in fact he had the possession of the property in question and that since the previous entries in ownership rights () had been cancelled, therefore, the petitioner has no case.

11. It is admitted feature of the case that the petitioner is not the ancestral owner of the property in question, rather through an agreement with the certain individuals, as professional legal fee, he received 200 acres of land. Since the complete settlement work had been annulled by the Senior Member, Board of Revenue Balochistan through the ibid Notification, therefore, it was necessary for the petitioner to prove that the owners from whom he had got transferred the property in question, whether entries in their names were subsequently inserted and their proprietary rights previously recorded were endorsed in the last settlement which allegedly took place on 01.06.2021? The petitioner has not uttered a single word about the status of the original property owners of the property in question.

12. Since the petitioner has derived his title from the plaintiffs of the civil suits mentioned above, therefore, it was incumbent upon the petitioner to prove that in fact the said owners, in the subsequent settlement proceedings, were also declared as owners, as the petitioner, on his own, has not asserted any ancestral right in the property in question.

13. The petitioner, after filing the instant Constitution Petition, through subsequent application under Order VI, Rule 17, C.P.C sought setting-aside of the ibid Notification dated 02.06.2015. Record reveals that the petitioner had the knowledge of the ibid Notification dated 02.06.2015 but even then instead of challenging the legality and validity of said Notification, the petitioner accepted the same and participated in the settlement proceedings (as per version of the petitioner), so subsequently, when his name was not incorporated as the owner of certain land in Mouza Zabadun of Tehsil Gwadar, the petitioner at belated stage, challenged the ibid Notification dated 02.06.2015, which in fact impliedly he had accepted by participating in the subsequent settlement proceedings. In such view of the matter, at this stage, after delay of approximately seven years, the petitioner challenged the said Notification without explaining the legal justification of such long delay; therefore, the petition suffers from laches as well.

For the foregoing reasons, after considering all the relevant facts, we find no merit in this Constitution Petition, consequently same is dismissed.

Copy of this judgment be sent to the Balochistan Bar Council for information.

SA/40/Bal.

Petition dismissed.