

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.412/2019

Mazhar Hussain

versus

Federal Employees Cooperative Housing Society & 2 others

Petitioner: In-person (Mazhar Hussain)

Respondents by: Mr. Sajid Mehmood Abbasi and Raja Ajeeb Ahmad Abbasi, Advocates for Respondent No.1.
Mr. Naseem Ahmad Shah, Advocate for Commissioner, ICT.
Malik Karim Bukhsh Awan, Advocate for Respondent No.3
Muhammad Waseem Khan, District Collector, Islamabad.
Ghulam Murtaza Chandio, Naib Tehsildar.
Khalid Farooq, Halqa Patwari, Lohi Bher, Islamabad.

Date of Hearing: 28.02.2020.

MOHSIN AKHTAR KAYANI, J: Through the captioned civil revision petition, Mazhar Hussain (petitioner) has assailed the judgment and decree dated 27.04.2019, passed by learned Civil Judge (East), Islamabad as well as judgment and decree dated 18.07.2019, passed by learned Additional District Judge (East), Islamabad, whereby the suit filed by the petitioner for declaration, cancellation and perpetual injunction qua the suit Mutation No.950, dated 28.06.2013, has been dismissed, concurrently.

2. The petitioner in-person contends that his father Gheeba Khan was owner of land situated in Mouza Choocha Shaikhan, Islamabad, who died on 09.03.1982 and his mother Mst. Akbar Jan died later on, therefore, he had approached the revenue officials Halqa Patwari for attestation of inheritance mutation, which was incorporated vide Mutations No.948 & 949, dated 31.05.2013, qua his both parents, whereafter the respondent revenue department has fraudulently got executed and sanctioned Mutation No.950, dated 28.06.2013, whereby land measuring 3-Kanals from the above mentioned inherited land was transferred in favour of the Federal Employees Cooperative Housing Society i.e. Respondent

No.1 (FECHS). The suit was contested by the respondents, whereby the FECHS has taken a specific stance that land in question was sold by the petitioner after receiving an amount of Rs.300,000/- and mutation was sanctioned in accordance with law on the basis of verbal agreement to sell. Similarly, Naib Tehsildar and Halqa Patwari i.e. Respondent No.2 and 3, respectively, have taken the stance that Mutation 950, dated 28.06.2013, was sanctioned after adopting due process of law in presence of witnesses representing both sides and no fraud was committed. Pursuant to recording of evidence of the parties, the suit of the petitioner was dismissed concurrently vide the impugned judgments and decrees. Hence, the instant civil revision petition.

3. The petitioner in-person contends that the revenue staff is in connivance with Respondent No.1 (FECHS) and they have not considered the requirements of sale and even not mentioned payment/consideration in the record through independent mode. Similarly, respondents have not adopted the legal process in execution of Mutation No.950, which is not confirmed from any independent record, even the Roznamcha Waqiyati in this regard was prepared by the officials in violation of law and same was not placed on record to justify the said sale transaction in any manner.

4. Conversely, Respondent No.1 was initially proceeded ex-parte, but on conceding statement of petitioner (Mazhar Hussain) in C.M. No.266, the ex-parte proceedings were set aside, whereafter Respondent No.1/FECHS was heard on merits, who contended that the sale consideration was paid to the petitioner, who has acknowledged all the mutations along with the witnesses by way of thumb impression and signatures, which is evident from the certified record and both the Courts below have rightly dismissed the suit filed by the petitioner. Similarly, Respondents No.2 and 3 also supported the stance of Respondent No.1, however the Halqa Patwari and Naib Tehsildar were directed to appear in person, who have placed on record the Roznamcha Waqiyati (Daily Diary) of Mouza Lohi Bher regarding Mutation No.950, vide order dated 14.02.2020 before this Court, whereafter the Collector, Islamabad has been directed to appear, who put appearance before this Court and he has been confronted with original

Roznamcha Waqiyati, to which he conceded that the said Roznamcha Waqiyati is not attested, verified or counter signed by any of the authority.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner namely Mazhar Hussain has filed a suit for declaration, cancellation and perpetual injunction against respondents on 29.08.2013 mainly on the ground that he approached the revenue authorities for attestation of inheritance mutation of his parents namely Gheeba Khan and Mst. Akbar Jan, whereafter Mutations No.948 (Exh.P1) and No.949 (Exh.P2), dated 31.05.2013, have been sanctioned as both the parents of petitioner died on 09.03.1982 and 01.09.2004, respectively. However, the petitioner has taken the specific stance that after the attestation of these inheritance mutations, all the legal heirs have been referred in these two mutations, but later on he came to know that Mutation No.950, dated 28.06.2013, has also been sanctioned in favour of Respondent No.1 (FECHS), as a result whereof land measuring 3-Kanals in Mouza Choocha Shaikhan, Tehsil and District, Islamabad has been transferred against sale consideration of Rs.300,000/- on the basis of oral agreement.

7. The suit has been contested by the Respondent No.1 (FECHS) with the categorical stance that they had paid entire sale consideration and Mutation No.950, dated 28.06.2013 (Exh.P3) was sanctioned with three (03) witnesses of the petitioner who have received the entire sale consideration.

8. The petitioner appeared as PW-1 and has reiterated his stance before the Court by denying the sale agreement as well as the mutation together with the receiving of sale consideration as referred in Exh.P3, but he acknowledged that all three (03) mutations i.e. No.948, 949 and 950 contain signatures of Tahir Mehmood, Muhammad Yasin and Arif Nazir but he acknowledged their signatures and thumb impressions with different contention.

9. On the other hand, Respondent No.1 (FECHS) has produced Abdur Muqsit as DW-1, who has submitted authority letter (Exh.D1) and contends that

Mutation No.950 was attested in accordance with law and the petitioner was paid the complete amount in presence of Tehsildar, Islamabad. However, during the course of cross-examination, he is not aware of any of the transaction referred in Mutations No.948, 949 and 950. DW-1 Abdur Muqsit was also confronted with Mutation No.949, whereby he acknowledged that the date of 31.05.2013 has been crossed and date of 30.05.2013 was referred in the mutation.

10. In order to resolve the controversy, I have called the Halqa Patwari and Tehsildar along with Collector, Islamabad to bring on record the Roznamcha Waqiat, which was produced before this Court and same was impounded for perusal. During the course of perusal of said Roznamcha Waqiat of Mouza Lohi Bher, it appears that the same contains details w.e.f. 01.10.2012 up till 23.09.2013, the register is found to be written with same hand and is not signed by any of the competent authority nor the same has been countersigned/attested by any of the competent authority under the Land Revenue Act, 1967, even there is no book number which could be confirmed that the same was registered by any competent authority and at last, it has been observed that it should have been in terms of Form No.XX but surprisingly, a remarked column (کینٹ) on entire daily diary is vacant. However, when all these facts have been confronted to the Halqa Patwari, he could not explain the position nor the Tehsildar concerned. The Collector at this stage contends that he will initiate inquiry against the officials separately and he has also submitted Circular No.48/ADCR, dated 02.04.2019, which is reproduced as under:

**OFFICE OF THE ADDL. COMMISSIONER (REVENUE)/
DISTRICT COLLECTOR, ICT,
ISLAMABAD**

No.48/ADCR

Dated:- 02-04-19

CIRCULAR

All the Revenue Officials are hereby directed that if any register as per Land Record Manual is opened/started by them or their sub-ordinate Revenue Staff, in the beginning of every register a certificate shall be

recorded on first page of the register indicating the number of pages and date of start. The same should be verified from the concerned Circle Revenue Officer. The Tehsildar is also directed to verify the same and submit detailed report to the undersigned within three (03) days. Furthermore if during surprise visit/checking any register/record is found incomplete, strict action under the E&D Rules 1973 shall be taken against the said official. Revenue Officers shall personally responsible for completion of record and maintenance of the registers pertaining to revenue record. In future all the registers shall be provided by the office and no register be purchased from the market.

**OFFICE OF THE ADDL. COMMISSIONER (REV)/
DISTRICT COLLECTOR, ICT,
ISLAMABAD.**

11. I have also attended to the relevant entries at Serial Nos.530 and 531, which are related to the entries of Mutations No.948 and 949, which pertain to the petitioner's parents namely Gheeba Khan and Akbar Jan, whereas Serial No.534, dated 31.05.2017, is related to Mutation No.950 of sale transaction of 3-Kanals of land by the petitioner in favour of Respondent No.1 (FECHS) against sale consideration of Rs.300,000/- but all the entries seem to be suspicious as these entries, if seen in the light of evidence available on record, there is no confirmation regarding *Jalsa-e-Aam* in which these mutations have been sanctioned, although, the Tehsildar and other revenue officials have visited the Halqa but the entire Daily Diary is silent to that effect.

12. In order to resolve the controversy, I have confronted the Collector, Islamabad in terms of Section 42 of the Land Revenue Act, 1967, which deals with the Periodical Record of Rights relating to land-owners and the relevant provisions, whereby the Halqa Patwari has been made liable to incorporate all the changes in the Daily Diary. To clarify the position, Section 42(3) is reproduced as under:

42. Making of that part of periodical records which relates to land-owners.-

- (1)
- (2)
- (3) *The Patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall*

also make an entry in the Roznamcha and in the register of mutations respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which report should have been made to him under either of those sub-sections and has not been so made.

13. Similarly, the other related provision governing the proposition is Rule 34 of the Land Revenue Rules, 1968, which deals with the Roznamcha Waqiyati to be maintained by the Halqa Patwari. In order to resolve the case in hand, the Rule 34 of the Land Revenue Rules, 1968 is reproduced as under:

34. Roznamcha Waqiyati to be maintained by the patwari.

- (1) *The Roznamcha Waqiyati (Daily Diary) to be maintained by the Patwari under clause (x) of subsection 11) of section 42, shall be in the Form XX.*
- (2) *The pages of Roznamcha shall be stitched in a volume and each page shall bear the book number and page number in print.*
- (3) *The patwari shall prefix to every entry in the Roznamcha a separate serial number, in large and clear figures. Every entry shall be closed by an asterisk, and no blank line shall be left between two consecutive entries. Such orders and instructions as relate to rules of practice, shall be entered in red ink. The date of each day's entries shall be given according to the official calendar.*
- (4) *In addition to the events to be entered in the Roznamcha according to the instructions which may be issued by the Commissioner from time to time, the following occurrences shall be entered in the Roznamcha on the day on which they come to the patwari's notice, and the manner in which they come to his knowledge:-*
 - (i) *Any epidemic disease among human being or livestock, or any calamity affecting crops, including crop pests.*
 - (ii) *All alluvion or diluvion, with approximate areas and details so far as known at that time.*
 - (iii) *Falls of rain and their duration, and whether slight, medium or heavy and the damage or benefit to the standing crops as a result.*
 - (iv) *The dates on which canals or rajbahs began or ceased to run, and on which there was any marked change in the supply of canal water.*
 - (v) *Deaths of land-owners, village officers and pensioners.*
 - (vi) *The ejectment, absconding, or setting of cultivators or right-holders, and the relinquishment, change or renewal of any tenure.*

- (vii) *The execution of any decree of Court affecting the land, its rent, or its produce.*
- (viii) *Taccavi advances made by Government and repayments of the same as also notes of the progress of completion of works for which taccavi has been granted.*
- (ix) *Orders of Revenue Officers or Kanungos received by the Patwari or executed in the Circle.*
- (x) *Attachment proceedings affecting the land, its cultivation, or its produce, or cattle.*
- (xi) *Any encroachment on or damage to nazul or Government property or roads.*
- (xii) *Any suspensions or remissions of revenue, and any alteration of the rate of cesses.*
- (xiii) *The cultivation of land occupied by groves held free of revenue.*
- (xiv) *The erection, destruction or decay of survey marks or boundary marks and the alteration of village boundaries.*
- (xv) *The visit of any Government official to the circle.*
- (xvi) *Any fact relating to land or its revenue or rent specially reported to the Patwari by a person interested therein, with a request that it be entered in his Roznamcha or which the Patwari may think of importance.*
- (xvii) *Any alteration in the ownership cultivating possession or rent of land, which ^ay have been recorded in the crop-inspection register.*
- (xviii) *The receipt of any registration memos received in respect of item (xvii).*
- (xix) *Any case of rick-burning, and, when it is suspected that the crime is due to incendiarism, this should be specified.*
- (xx) *Any cases of increase of mortgage money, with details of the amount, parties and village.*
- (xxi) *Distribution of Dhal Bachhes to headmen and bills of assessment to landowners.*
- (5) *The signature or thumb-impression of the headman or member of the Union Committee, Town Committee or Union Council concerned, shall also be obtained at the time of making the entries, relating to changes in revenue records.*

14. While considering the above requirements of law, the Halqa Patwari present before the Court along with Naib Tehsildar and Collector, Islamabad failed to justify as to why they have not observed the above referred requirements and as to why the register, which has been placed on record before

this Court for inspection, is silent qua each and every aspect referred in Section 42 of the Land Revenue Act, 1967 read with Rule 34 of the Land Revenue Rules, 1968.

15. The entire controversy clearly spells out that the presumption of correctness of record is only available to those entries which have been incorporated in accordance with law while adopting due procedure meant for such kind of entry in terms of Section 52 of the Land Revenue Act, 1967, failing which the presumption stands vanished. It is trite law that entries in Roznamcha Waqiyati itself would not confirm any title and the parties seeking benefit of the said entries have to prove the same by leading convincing evidence relating to sale of land as well as payment of sale consideration. Reliance is placed upon 1996 SCMR 1386 (Tooti Gul vs. Irfanuddin).

16. The entire case is based upon two questions i.e. as to whether the land measuring 3-Kanals owned by the petitioner was sold out to Respondent No.1 through a sale transaction against sale consideration of Rs.300,000/- as the petitioner is claiming that a fraud has been played but as such there is no specific evidence available on record except non-compliance of statutory requirements by the revenue authorities which had the reference of allegations. However, it is well established that the onus is always upon the beneficiary to prove the prosecutions, especially when the respondents themselves claimed that they had entered into oral sale transaction and they have paid the amount, it seems that the burden of proof has been shifted in terms of Articles 118 and 122 of the Qanun-e-Shahadat Order, 1984 as the FECHS/Respondent No.1 has special knowledge of payment which they have alleged that they have made the payment.

17. I have gone through evidence of Respondent No.1 (FECHS), but there is not a single piece of evidence in shape of documents, receipt, or bank channel, in which payment could have been proved, therefore, the petitioner's claim seems

to be justified. It is trite law that the beneficiary of the transaction has to discharge the onus. Reliance is placed upon 2010 SCMR 1358 (Muhammad Saeed vs. Mst. Sharaf Elahi) and 2016 SCMR 1225 (Phul Peer Shah vs. Hafeez Fatima). Furthermore, he has to prove the payment of sale consideration independently. Reliance is placed upon 1996 SCMR 1386 (Tooti Gul vs. Irfanuddin) and 2015 CLC 1451 (Abdul Karim vs. Bilal Atiq).

18. The narration of all the details of sale transaction is *sine qua non* for the success of the party who have relied upon the oral transaction as periodical record of rights itself would not confer any title in immovable property and if the transaction referred in periodical record of rights has not been proved independently, it has no legal value as held in the case reported as 2016 CLC Note 18 (Mst. Rasoolan Bibi vs. Ghulam Haider).

19. The following factors have been highlighted from the entire record and evidence discussed above.

- a) Disputed Mutation No.950, dated 28.06.2013 (Exh.P3), has not been proved independently by beneficiary i.e. FECHS (Respondent No.1).
- b) No proof of payment/sale consideration has been established on record by FECHS/Respondent No.1. .
- c) Transaction has not been proved from Daily Diary (روزنامچہ واقعاتی) as the same was not counter signed (column of description is blank in entire daily diary).
- d) Daily Diary (روزنامچہ واقعاتی) has not been verified by any of the land revenue official or counter signed/attested or verified, even the same was not issued from the office of Chief Commissioner, Islamabad.
- e) Daily Diary (روزنامچہ واقعاتی) attains no presumption in favour of respondent No.1 (FECHS) as it is silent qua the fact that same was

written by any particular Halqa Patwari during his service as it does not contain any name, signature and particulars of Halqa Patwari, who has executed the same, even its executor has not been produced in the Court.

- f) Daily Diary (روزنامہ واقعاتی) in this case has not fulfilled the requirements of Section 42 of the Land Revenue Act, 1967 read with Rule 34(5) of the Land Revenue Rules, 1968.
- g) Both the Courts below have not considered the evidence in terms of the Qanun-e-Shahadat Order, 1984.
- h) Onus of proof lies upon the beneficiary of transaction i.e. Respondent No.1 (FECHS) in this case, who has not discharged the same.

20. In view of above, both the Courts below have not considered the requirements of law, the same has not been proved independently by Respondent No.1 (FECHS) nor the record supports the case of the FECHS, therefore, the concurrent findings recorded by the both the Courts below are based upon illegal exercise of jurisdiction, hence, the instant civil revision petition is hereby ALLOWED, the impugned judgment and decree of the learned Civil Judge (East), Islamabad, dated 27.04.2019, as well as judgment and decree of the learned Additional District Judge (East), Islamabad, dated 18.07.2019, are hereby SET-ASIDE. The suit of the petitioner is hereby DECREED as prayed for. Mutation No.950, dated 28.06.2013, regarding transfer of 03-Kanals land in the name of FECHS is declared illegal having no effect on the rights of petitioner. Office is directed to draw the decree sheet. However, the conduct of Tehsildar and Halqa Patwari, *prima facie*, shows negligence in performance of their official duty, therefore, Chief Commissioner, Islamabad is directed to inquire into the matter on its departmental side within the period of 60 days and shall proceed

against the delinquent official(s) in accordance with law. The original Roznamcha Waqiyati is transmitted to the Chief Commissioner, Islamabad for his perusal and future course of action to eliminate such kind of illegalities.

(MOHSIN AKHTAR KAYAN)
JUDGE

Announced in open Court on: 17th March, 2020.

JUDGE

Khalid Z.