

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.293/2014

Muhammad Yaqoob Khan and others

Versus

Chief Commissioner, Islamabad Capital Territory and others

Dates of Hearing: 04.10.2019 and 06.05.2020

Petitioners by: M/s Samad Mehmood and Sohail Mahmood, Advocates

Respondents by: Mr. Shakil-ur-Rehman Khan, Advocate for respondent No.1 in W.P.No.293/2014, respondents No.1 to 3 in W.P.No.292/2014 and respondents No.1, 4 and 5 in W.P.No.294/2014
Malik Qamar Afzal, Advocate for respondents No.4, 5 and 11 in W.P.No.293/2014
M/s Muhammad Munir Peracha and Nouman Munir Peracha, Zeeshan Munir Peracha and Malik Muhammad Asghar, Advocates for respondents No.8, 9 and 10 in W.P.No.293/2014, respondents No.14 to 16 in W.P.No.292/2014 and respondents No. 6, 7 and 8 in W.P.No.294/2014
M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates for respondents No.12 to 17 in W.P.No.293/2014, respondents No.18 to 23 in W.P.No.292/2014 and respondents No.10 to 15 in W.P.No.294/2014
Raja Inam Amin Minhas, Ch. Waqas Zameer and Ch. Ehtesham-ul-Haq, Advocates for respondent No.4 in W.P. No.292/2014 and respondents No.2, 3(a) and 3(b)

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.292/2014, 293/2014 and 294/2014, since they entail common questions of law and fact.

2. Through the said petition, the petitioners, who are the legal heirs of Sardar Muhammad Khan and Mst. Fazal Begum, impugn the order dated 03.12.2013, passed by the Court of the Chief Commissioner, Islamabad Capital Territory, Islamabad ("I.C.T."), whereby the revision petition filed by the petitioners' predecessors under Section 2(3) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 against the order

dated 29.08.1961 passed by the Settlement and Rehabilitation Commissioner (Lands), Rawalpindi, were dismissed.

3. The operative paragraphs of the impugned order dated 03.12.2013 are reproduced herein below:

“15. After hearing learned Counsels of the parties and perusing the record, it becomes evident that at the time of allotment of the land in favour of the Respondents, there was no discrepancy or defect and the said land was available for allotment and the order dated 29.08.1961 obtained by the Petitioners without impleading the Respondents as party and finally Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi vide order dated 05.10.1999 set aside the order dated 29.08.1961. The learned Counsel for the Petitioners could not rebut the allegations of forgery, illegal transfer of his claim from Montgomery to Rawalpindi as mentioned in the Memorandum of Inquiry dated 06.07.1960 and even did not challenge the same independently before any other forum which has attained finality.

16. In the light of above said discussion and going through the relevant record and submissions of the learned Counsels, the petitions of Petitioners are hereby dismissed accordingly and order dated 28.09.1960 is up held.”

4. The said impugned order was passed after the Hon'ble Lahore High Court, vide judgment dated 05.10.1999 passed in writ petition No.1-R/1994, set-aside the order dated 29.08.1961 passed by the Settlement and Rehabilitation Commissioner (Lands), Rawalpindi, and remanded the matter to the Notified Officer (Lands) for a decision afresh.

5. The facts essential for the disposal of these petitions are that Mst. Sakina Bibi, widow of Barkat Ali Khan (the predecessor of Sardar Muhammad Khan, Mst. Shah Bibi and Mst. Fazal Begum (who in turn are the petitioners' predecessors) had migrated to Pakistan from Hoshiarpur, India, and submitted rehabilitation claim No.7941 under the Rehabilitation and Settlement Scheme at District Montgomery (now District Sahiwal) in 1949. Against the said claim, she is said to have been granted 6,582 index units vide RL-II No.140. She had utilized 699 units in District Montgomery whereas the remaining 5,883 units against claim No.7941 were said to have been transferred on 06.05.1955 from District Montgomery to District Rawalpindi. Mst. Sakina Bibi had died issueless prior to the said transfer. The record does not show the exact date of Mst. Sakina Bibi's death. However, RL-II No.2

against claim No.7941 was issued in District Rawalpindi in Mst. Sakina Bibi's name.

6. The following three different mutations of inheritance were recorded after Mst. Sakina Bibi's death:-

- (i) On 08.12.1952, inheritance mutation No.28 was recorded at Chak No.63-GB, *Tehsil Jaranwala*, District *Faisalabad* in favour of Sardar Muhammad Khan (son of Mst. Sakina Bibi's husband's nephew, i.e. Mst. Sakina Bibi's husband's brother's grandson (پوتا) and Rasheed Ahmed Khan (Mst. Sakina Bibi's brother's son).
- (ii) On 13.08.1953, another inheritance mutation is shown as recorded on RL-II No.140 at District Montgomery in favour of Sardar Muhammad Khan only.
- (iii) On 15.04.1957, a mutation of inheritance was attested by the Settlement Tehsildar, Rawalpindi in favour of Sardar Muhammad Khan, Mst. Shah Bibi and Mst. Fazal Begum as legal heirs of Mst. Sakina Bibi. This is reflected in Memorandum No. 93-ADC/R94 dated 06.07.1960 issued by the Deputy Rehabilitation Commissioner (Lands), Rawalpindi and RL-II No. 2.

7. Vide order dated 16.12.1957 passed by the Assistant Rehabilitation Commissioner (Lands), Rawalpindi land measuring 1,784 *kanals* and 2 *marlas* in *village Sarai Madhu*, District Rawalpindi was confirmed in favour of Mst. Sakina Bibi's legal heirs namely, (i) Sardar Muhammad Khan (ii) Mst. Shah Bibi and (iii) Mst. Fazal Begum, according to the shares mentioned in the mutation of inheritance dated 15.04.1957.

8. The Assistant Rehabilitation Commissioner (Lands) Rawalpindi vide order dated 06.01.1958, allotted 12 *kanals*, 13 *marlas* of land in *khasra* numbers 402/1, 403 and 404 in village *Sarai Madhu*, Tehsil Rawalpindi to (i) Bashir Ahmad, (ii) Mst. Inayat Begum and (iii) Mst. Kholi-un-Nisa Begum. This land had earlier been allotted to the abovementioned legal heirs of Mst. Sakina Bibi.

9. The said order dated 06.01.1958 was assailed by Sardar Muhammad Khan, Mst. Shah Bibi and Mst. Fazal Begum in an

appeal before the Court of the Deputy Rehabilitation Commissioner (Lands), Rawalpindi. Vide order dated 07.06.1958, the said appeal was allowed and the allotment of the said land made in favour of the respondents in the said appeal was set-aside. The appellants' stance in the said appeal was that their claim for the allotment of the said land was superior to that of the respondents in the said appeal. In the said appellate order, it was recorded that in the village *Sarai Madhu*, the evacuee area was 1,800 *kanals*, out of which more than 1,784 *kanals* had been confirmed in favour of the appellants in the said appeal. Furthermore, it was observed that the appellants in the said appeal had been allotted land in the said village from November 1955 onwards whereas the respondents in the said appeal had taken away their claim from this District and brought it back in August 1957.

10. The Assistant Rehabilitation Commissioner (Lands), Rawalpindi passed an order dated 29.11.1958 whereby, *inter alia*, land allotted to Sardar Muhammad Khan, Mst. Fazal Begum and Mst. Shah Bibi against Mst. Sakina Bibi's claim No.7941 under the Rehabilitation Settlement Scheme was cancelled, and it was directed that the claim forms be returned to District Montgomery. It may be mentioned that the said order dated 29.11.1958 is not on the record.

11. Sardar Muhammad, Mst. Fazal Begum and Mst. Shah Bibi challenged the said order dated 29.11.1958 in an appeal before the Deputy Rehabilitation Commissioner (Lands), Rawalpindi. The said appeal was allowed vide order dated 26.05.1959 and the case was remanded to the Assistant Rehabilitation Commissioner (Lands) for 'action' in accordance with the law. In the said order dated 26.05.1959, it was mentioned that in May 1958 a *Robkar* was received from the Settlement Officer, Montgomery, wherein it was mentioned that settlement forms had been mistakenly taken to District Rawalpindi by Mst. Fazal Begum, and that after a probe into the allegations, a reference was made by the Settlement Officer, Rawalpindi to the Settlement Officer, Montgomery for certain clarifications. It is also mentioned in the said order that the

reply received from the Settlement Officer, Montgomery shows that *“[t]he mutation of inheritance in respect of Mst. Sakina Bibi has been sanctioned in favour of Sardar Mohammad Khan in the Montgomery District, whereas a similar mutation was decided in the Rawalpindi District, in favour of Mst. Fazal Begum and Mst. Shah Begum, beside Sardar Mohammad Khan.”* It is also mentioned that after receiving the said reply, the Settlement Officer, Rawalpindi summoned Mst. Fazal Begum but she did not turn up, and in the meantime, the Rehabilitation duties pertaining to agricultural land were transferred from the Settlement Officer to the office of the Deputy Commissioner. The conclusion arrived at by the Deputy Rehabilitation Commissioner (Lands), Rawalpindi in his order dated 26.05.1959, was as follows:-

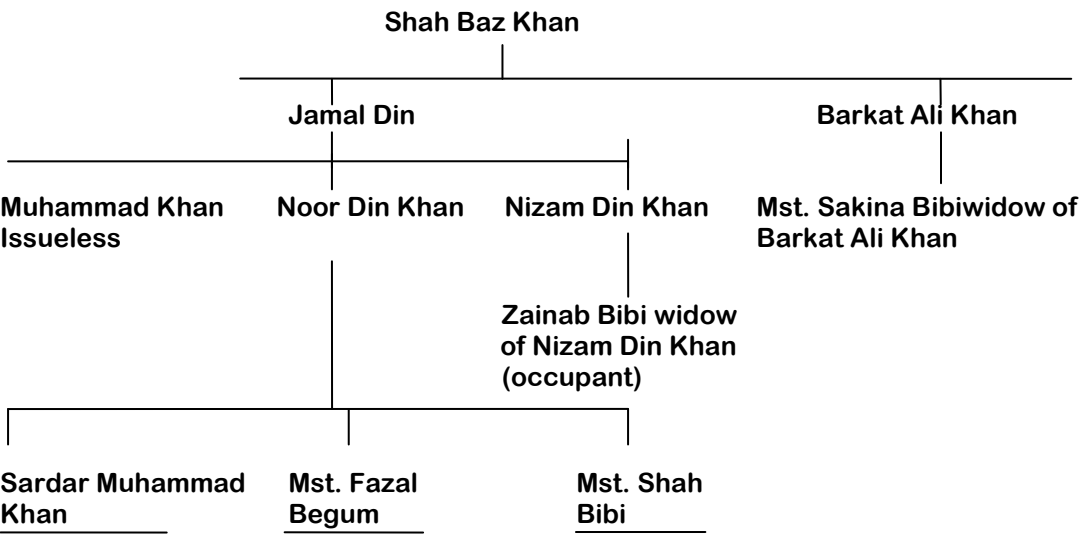
“The legal provisions under which an order can be reviewed in Section 11(5) of the Pakistan Rehabilitation Act of 1956, which says that an A.R.C. may, after giving a notice to the parties concerned, review his own order in order to correct errors or supply omissions which are apparent upon the face of the record.

In the present case, the omission or error is not of a nature which can be termed as apparent upon the face of the record. The land had been allotted in satisfaction of the claims about which it is said that they were not brought to this district by the legal heirs of the original claimant. There is thus involved in this case a dispute about the inheritance. The merits of the dispute have not been judicially inquired into and the allotment made in favour of the appellants were cancelled without coming to a judicial decision whether or not these claimants were not really the legal heirs of the original claimant.”

12. Now, an interesting turn of events took place when the Additional Deputy Commissioner (Revenue)/Deputy Rehabilitation Commissioner (Lands), Rawalpindi issued a report/Memorandum No.93-ADC/R dated 06.07.1960 to the Additional Rehabilitation and Settlement Commissioner, Rawalpindi, requesting that the allotments of evacuee land made in District Rawalpindi against the claim of Mst. Sakina Bibi and/or her legal heirs be revised and cancelled. The position taken in the said report was that the transfer of claim No. 7941 and the surplus index units against RL-II No.140 from District Montgomery to District Rawalpindi was fraudulent.

13. It may also be mentioned that through the said Memorandum No.93, dated 06.07.1960, it had been reported that Mst. Sakina

Bibi’s units had been irregularly and fraudulently brought from District Montgomery to District Rawalpindi. The pedigree table showing the relationship between Mst. Sakina Bibi on the one hand and Mst. Fazal Begum, Sardar Muhammad Khan and Mst. Shah Bibi on the other is given in the Memorandum No.94 dated 06.07.1960, and the same is reproduced herein below:-



14. After laying down the above pedigree table, the Memorandum No.93 dated 06.07.1960 also sets out the reasons for holding that Mst. Fazal Begum and Mst. Shah Bibi were not entitled to inherit from Mst. Sakina Bibi in the following terms:-

“According to this ‘Shajra-Nasab’, Sardar Mohd. and his two sisters Mst. Fazal Begum and Mst. Shah Bibi are the children of Noor Din Khan s/o Jamal Din brother of Barkat Ali Khan husband of Mst. Sakina Bibi deceased. Under the law of ‘Shariat’ when Mst. Sakina Bibi died, 1/4th of the property devolved on her and shall now pass on to her own heirs and the remaining 3/4th shall devolve on other heirs of her husband Barkat Ali. Barkat Ali’s only heir now existing is Sardar Mohd Khan because in the presence of a residuary distant kindreds like grand nieces are excluded. In other words only Sardar Mohd. Khan is entitled to 3/4th of the land left by Mst. Sakina Bibi and not his sisters Mst. Fazal Begum and Mst. Shah Bibi. Inspite of that Mst. Fazal Begum dishonestly brought those units to Rawalpindi, got an incorrect mutation attested fraudulently and secured illegal allotments of land. Since the units were brought to this district fraudulently by Mst. Fazal Begum through her agent Abdul Latif and not by Sardar Mohd. it is not a regular transfer and should not have been settled in this district. Sardar Mohd Khan now agrees that his sisters may get a share but since the allotment has been obtained by fraud it cannot be allowed to stand.

3. *Besides, 1/4th of the property is to go to Mst. Sakina Bibi’s own heirs who do not live in this district. One of such heirs is said to be Rashid son of Ghulam Hussain Khan a brother of Mst. Sakina Bibi settled in Tehsil Jaranwala. There may also be others.”*

For the purposes of clarity, the said Memorandum No.93 dated 06.07.1960 is reproduced in its entirety in "**Schedule-A**" thereto.

15. On the basis of memorandum No.93 dated 06.07.1960, the Additional Rehabilitation Commissioner, Rawalpindi exercising the powers of the Rehabilitation Commissioner, vide order dated 28.09.1960, passed under Section 11(4) of the Pakistan Rehabilitation Act, 1956 cancelled the allotments of land made against claim No.7941 in Rawalpindi District to Sardar Muhammad Khan, Mst. Fazal Begum and Mst. Shah Bibi.

16. The said order dated 28.09.1960 was assailed by Sardar Muhammad Khan in a revision petition before the Court of the Chief Settlement and Rehabilitation Commissioner (Lands), Rawalpindi. Vide order dated 29.08.1961, the said revision petition was allowed and the allotments made in favour of the petitioner in the said revision petition as well as Mst. Fazal Begum and Mst. Shah Bibi were restored.

17. Between 28.09.1960 and 29.08.1961, 1,784 *kanals* and 2 *marlas* of land situated in *Mouza Sarai Madhu*, (which had earlier been allotted to Sardar Muhammad Khan, Mst. Fazal Begum and Mst. Shah Bibi vide RL-II No.2 against claim No.7941) was allotted to 13 different allottees vide RL-II Nos. 3 to 13.

18. It would be apt to mention that after the transfer of Mst. Sakina Bibi's rehabilitation claim No.7941, land was allotted against the said claim in other villages in District Rawalpindi. Now as mentioned above, through order dated 28.09.1960, all such allotments were cancelled. After such cancellation, land in different villages (which was earlier allotted against claim No.7941, vide RL-II No.2) was allotted to different people including one Salah-ud-Din in Village *Jarahi*. When the order dated 29.08.1961 was passed and the allotment made against claim No.7941 vide RL-II No.2 was restored, Salah-ud-Din, on 10.01.1968 filed writ petition No.20-R of 1968 before the Hon'ble Lahore High Court challenging the said order dated 29.08.1961. The said writ petition was allowed vide order dated 14.12.1973.

19. At this stage, it is pertinent to mention that prior to the filing of writ petition No.20-R/1968, Sardar Muhammad Khan, who was one of the respondents in the said writ petition, had passed away. Sardar Muhammad Khan's legal heirs filed the review application No.29/1979 against the said order dated 14.12.1973. Vide order dated 23.12.1987, the said review application was allowed, and it was held that the earlier order dated 14.12.1973 was *ab initio* void having been passed against a dead person.

20. During the period when the order dated 14.12.1973 passed in writ petition No.20-R/1968 was in the field and the review application of Sardar Muhammad Khan's legal heirs was pending, allotments of the present respondents (who were allotted land in *Mouza Sarai Madhu* between 28.09.1960 and 29.08.1961) were restored under the orders passed by the revenue authorities on 22.05.1982, 26.05.1982 and 27.06.1982.

21. As mentioned above, Sardar Muhammad Khan's legal heirs' review application was accepted vide order dated 23.12.1987, and the order dated 14.12.1973 was recalled by the Hon'ble Lahore High Court. The present petitioners (who are Sardar Muhammad Khan's legal heirs) filed an appeal before the Commissioner, Islamabad against the orders passed by the revenue authorities whereby allotments made in favour of the respondents were restored. The said appeal was allowed vide order dated 27.05.1990 passed by the Commissioner (Revenue), Islamabad. Against the said order dated 27.05.1990, the respondents filed a revision petition before the Board of Revenue, Islamabad. The said revision was dismissed vide order dated 20.08.1992 passed by the Chief Commissioner, Islamabad. Apparently, the *Tehsildar*, Islamabad issued a *Robkar* dated 01.11.1993 for giving effect to the order dated 20.08.1992 passed by the Chief Commissioner, Islamabad.

22. It was in these circumstances that the present respondents filed the following writ petitions before the Hon'ble Lahore High Court:-

- (i) Writ Petition No.370/1986 filed against an order passed by the revenue authorities.

- (ii) Writ Petition No.122/1993 against the orders dated 27.05.1990 and 20.08.1992 passed by the Commissioner (Revenue), Islamabad and the Board of Revenue, Islamabad, respectively.
- (iii) Writ Petition No.1-R/1994 against the order dated 29.08.1961 passed by the Settlement Rehabilitation Commissioner, Rawalpindi whereby the allotment of Sardar Muhammad Khan etc. (earlier cancelled through order dated 28.09.1960) was restored.
- (iv) Writ Petition No. 1274/1994 against the *Robkar* dated 01.11.1993 issued by the *Tehsildar*, Islamabad.

23. All these petitions were decided vide consolidated judgment dated 05.10.1999, whereby the Hon'ble Lahore High Court set-aside the order dated 29.08.1961 passed by the Settlement Rehabilitation Commissioner, Rawalpindi and remanded the matter for a decision afresh. The primary reason why the said order dated 29.08.1961 was set-aside was because the said order was considered devoid of reasons and was the result of a *“mechanical exercise of jurisdiction.”* In addition to that, regarding the connected matters, the Hon'ble High Court observed that, *“those matters have their genesis in the impugned order which has been set aside, consequently the order/action challenged therein cannot be sustained, thus those petitions are allowed and the orders impugned therein are set aside.”*

24. The plea of *laches* taken by the respondents was repelled in paragraph 8 of the said judgment in the following terms:-

“I am afraid that the pleas raised by the respondents' side cannot be allowed to impede the basic principle of justice that no one shall be condemned unheard and that the order passed by quasi-judicial forum must be speaking and should reflect complete application of mind. As regards the question of laches is concerned, I have been apprised that the petitioners are still in possession of the disputed property and their names are duly reflected in the Revenue record. Rather respondents have not sought the change in the revenue record or other concerned record seeking implementation of the order dated 29.08.1961. The explanation given by the petitioner is that they have recently come to know of the above order and have approached this Court. Respondents' side has not been able to show if the said order was ever communicated or the petitioners were aware of the said order.”

25. Civil Appeals No.1953 to 1956/2000 and 343/2002 against the said judgment dated 05.10.1999 were disposed of by the Hon'ble Supreme Court vide order dated 09.01.2007 in the following terms:-

“The appeals are not pressed with the submission that direction be issued to the Notified Officer for expeditious disposal of the matter. In view of the chequered history of the case and the period consumed for disposal it is hereby directed that the matter pending before the Notified Officer shall be disposed of within a period of six months.”

26. The post-remand proceedings before the Chief Commissioner, I.C.T. culminated in the order dated 22.07.2010 dismissing the revision petition filed by the legal heirs of Sardar Muhammad Khan against the order dated 28.09.1960 passed by the Additional Settlement Rehabilitation Commissioner (Lands), Rawalpindi. The said order dated 22.07.2010 was challenged by the present petitioners in writ petition No.5370/2010 before this Court. With the consent of the learned counsel for the contesting parties, this Court vide judgment dated 06.11.2012, remanded the matter to the Chief Commissioner, I.C.T. with the direction to provide an opportunity of a hearing to the contesting parties and decide the matter in accordance with the observations contained in the judgment dated 05.10.1999 passed by the Hon'ble Lahore High Court. Thereafter, the Chief Commissioner, I.C.T. exercising the powers of the Board of Revenue/Notified Officer vide order dated 03.12.2013 dismissed the petitioners' petition against the order dated 28.09.1960, passed by the Additional Rehabilitation Commissioner, exercising the powers of the Rehabilitation Commissioner, Rawalpindi. The said order has been assailed before this Court in the instant writ petitions.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

27. Learned counsel for the petitioners submitted that the impugned order dated 03.12.2013 is based on an erroneous assumption of the facts and the law; that the allotment orders passed in favour of the respondents were made at a time when order dated 28.09.1960 passed by the Additional Rehabilitation Commissioner, Rawalpindi was in the field; that the allotments

made in favour of the respondents stood cancelled after the said order dated 28.09.1960 was set-aside vide order dated 29.08.1961 passed by the Settlement and Rehabilitation Commissioner, Rawalpindi; that the cancellation of allotments pursuant to the order dated 29.08.1961 was endorsed in the register (RL-II) against relevant numbers assigned to the respondents; that the respondents did not challenge the order dated 29.08.1961 which held the field for more than thirty-eight years; that vide order dated 25.09.1964 passed by the Chairman, Allotment Committee, the claim of allotment raised by the respondents in writ petition No.294 against RL-II Nos. 102, 11 and 9 was reduced to only 294 units; that the respondent's claim for allotment of land in *Mouza Sarai Madhu* over and above the allotments already made in their favour is based on fraud and misrepresentation; that in paragraph 5 of the impugned order, it has wrongly been presumed that the writ petition No.20-R of 1968 was filed by the respondents; that the said writ petition was filed by an allottee in village *Jarahi*; that the impugned order also incorrectly recorded that writ petition No.122 of 1993 was filed by the respondents against the order dated 29.08.1961; that the allotments in the respondents' favour were made during the period when the revision petition filed by the petitioners' predecessor against the order dated 28.09.1960 was pending and therefore the principle of *lis pendens* applied to such allotments; that the transfer of the land allotted to the respondents is not protected under Section 52 of the Transfer of Property Act, 1882; that subsequent transfer of land by the allottees/respondents to third parties does not create any title in favour of the latter; that the allotments to the respondents could not have been made when no land was available; that impleadment of the respondents in the revision petition filed against the order dated 28.09.1960 was not necessary under the principle of *lis pendens*; that vide order dated 03.07.1958, the Rehabilitation Commissioner, Rawalpindi had held that Sakina Bibi's claim No.7941 was transferred from Montgomery to Rawalpindi in a legal manner; that under Section 11(4) of the Pakistan Rehabilitation Act, 1956, the Additional

Rehabilitation Commissioner could not sit in appeal against an order passed by the Rehabilitation Commissioner; that the order dated 03.07.1958 having attained finality, the findings of fact recorded therein could not have been disturbed vide order dated 28.09.1960; that the order dated 28.09.1960 was void and passed in excess of jurisdiction; and that allotments made in the respondents' favour were based on fraud and misrepresentation and, being in excess of their entitlement, could not have been restored.

28. Learned counsel further submitted that as provided in Section 52 of the Transfer of Property Act, 1882, mere mutation in a revenue record does not create any title; that the impugned order does not conform to the directions contained in remand orders dated 05.10.1999 and 06.11.2012 passed by the Hon'ble Lahore Court and this Court, respectively; that the impugned order does not take into account all the legal and factual pleas raised by the petitioners; that the petitioners are being deprived of their right of settlement in accordance with their entitlement ever since the year 1957; and that the impugned order is ineffective against the rights of the petitioners' entitlement of ownership of land confirmed through RL-II No.2 dated 16.12.1957. Learned counsel prayed for the impugned order dated 03.12.2013 to be set-aside and for the petition to be allowed in terms of relief sought therein.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:-

29. On the other hand, the common stance of the learned counsel for the respondents is that they were allotted land after the cancellation of the petitioners' allotment vide order dated 28.09.1960; that the said order was not passed at the instance of the respondents; that they were allotted land against their entitlements determined by the settlement authorities; that their names were incorporated in the revenue record and they are in possession of the land allotted to them; that the respondents were not impleaded as parties in the revision petition filed by the petitioners' predecessor against the order dated 28.09.1960; that

they were condemned unheard when the order dated 29.08.1961 was passed whereby the allotment made vide RL-II No.2 was restored; that the said order was never served on the respondents; that the respondents challenged the actions of revenue authorities taken in compliance with the order dated 29.08.1961; that the respondents challenged the order dated 29.08.1961 in W.P. No.1-R-1994 before the Hon'ble Lahore High Court; that the Hon'ble Lahore High Court vide judgment dated 05.10.1999 set-aside the order dated 29.08.1961 as well as the orders passed by the revenue authorities in pursuance of the said order; that the petitioners' appeal against the order dated 05.10.1999 was disposed of vide order dated 09.01.2007 in Civil Appeal Nos. 1953 to 1956 of 2000 and 343 of 2002 passed by the Hon'ble Supreme Court; that allotments made in favour of the petitioners were cancelled vide the order dated 28.09.1960 after the transfer of Mst. Sakina Bibi's claim No.7941 from District Montgomery to District Rawalpindi was found to have been fraudulently and illegally made; that vide judgment dated 05.10.1999, the Hon'ble Lahore High Court found the order dated 29.08.1961 to be unreasoned and the result of a mechanical exercise of jurisdiction; that the Hon'ble High Court, in its judgment dated 05.10.1999, had observed that the petitioners had failed to show that the order dated 29.08.1961 was served on the respondents; that in the said judgment it was further observed that the petitioners did not seek a change in the revenue record in implementation of order dated 29.08.1961; that the said judgment dated 05.10.1999 had attained finality; that the allotments made to the petitioners were based on fraud which vitiates most solemn proceedings; that the Memorandum dated 27.05.1963 read with Notification Nos. 2075-Rent/Rehb/63 dated 11.12.1963 and 1262-Rent/Rehb/63 dated 11.12.1963 were issued by Deputy Secretary (Rural) to the Chief Settlement & Rehabilitation Commissioner, West Pakistan whereby several districts were linked with each other; that unsatisfied units of a claimant in one District could only be transferred to its linked surplus District and no other; that District Montgomery was not linked with District Rawalpindi; that

under the said notifications, the maximum number of units allowed to be transferred were far less than Mst. Sakina Bibi's unutilized units, i.e. 5883; that transfer of unutilized units under Sakina Bibi's claim No.7941 could not have been transferred to Rawalpindi District; and that the allotments in favour of the respondents having been made in accordance with law cannot be cancelled after the said settlement was incorporated in the revenue record. The learned counsel prayed for the writ petitions to be dismissed.

30. During pendency of these writ petitions, legal heirs of Rasheed Ahmed Khan (Mst. Sakina Bibi's nephew) were impleaded as parties. The said legal heirs have placed on record mutation of inheritance No.28 recorded on 08.12.1952 at Chak No. 63-GB, Tehsil *Jaranwala*, District *Faisalabad*. Although in their written comments, the respondents claimed to be entitled to a share in Mst. Sakina Bibi's estate, but they have not sought any relief for themselves and have prayed for writ petitions to be dismissed.

31. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record. The facts leading to the filing of these petitions have been set out in sufficient detail in paragraphs 5 to 26 above and need not to be recapitulated.

32. The record shows that vide judgment dated 05.10.1999, the Hon'ble Lahore High Court declared the Settlement and Rehabilitation Commissioner's order dated 29.08.1961 to be invalid. In the said judgment dated 05.10.1999, it was observed that the order dated 29.08.1961 was passed without application of mind in mechanical exercise of jurisdiction and without giving any reason. The Hon'ble High Court had remanded the matter to the officer notified under Section 2(2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. Since the appeal against the judgment dated 05.10.1999 passed by the Hon'ble Lahore High Court was disposed of vide order dated 09.01.2007 passed by the Hon'ble Supreme Court, the said judgment dated 05.10.1999 attained finality.

33. The consequence of the setting aside of the order dated 29.08.1961 by the Hon'ble High Court was that the order dated 28.09.1960 passed by the Additional Rehabilitation Commissioner, Rawalpindi (whereby the allotments made in District Rawalpindi after the transfer of claim No.7941 vide RL-II No.2 were cancelled) was in the field once again. In the post-remand proceedings, the Chief Commissioner, I.C.T. was to decide the petitioners' revision petition against the order dated 28.09.1960.

34. Now, in essence, the Chief Commissioner, I.C.T. had to decide the revision petition filed by the legal heirs of Sardar Muhammad Khan against the order dated 28.09.1960 passed by the Additional Rehabilitation Commissioner, Rawalpindi whereby the allotments of land made in District Rawalpindi after the transfer of claim No.7941 in District Rawalpindi were cancelled. The said order dated 28.09.1960 was based on the Memorandum No.93 dated 06.07.1960 wherein it was *inter alia* mentioned that the transfer of claim No.7941 from District Montgomery to District Rawalpindi was fraudulent.

35. There is a presumption of correctness attached to the contents of official documents. For the petitioners to be successful in their revision petition before the Chief Commissioner, I.C.T., they had to establish that the said Memorandum No.93 dated 06.07.1960 was based on incorrect facts. In other words, it was for the petitioners to establish that the transfer of claim No.7941 from District Montgomery to District Rawalpindi was in accordance with the law and suffered from no legal infirmity.

36. I have gone through the contents of the petitioners' revision petition before the Commissioner, I.C.T., as well as the narration of the contentions made on behalf of the petitioners in the impugned order dated 03.12.2013 passed by the Commissioner, I.C.T. It appears that in the proceedings before the Commissioner, I.C.T., no submission had been made on behalf of the petitioners that the transfer of claim No.7941 from District Montgomery to District Rawalpindi was in accordance with the law or that Memorandum No.93 dated 06.07.1960 was against the law and

facts of the case. Additionally, in the writ petitions under disposal, there is no pleading on behalf of the petitioners to the said effect. The learned counsel for the petitioners had eloquently narrated the facts leading to the passing of the impugned order dated 03.12.2013, but made no submission to impeach or question the legality or the correctness of the contents of the said Memorandum No.93 dated 06.07.1960. The case was fixed for rehearing more than once so as to give an opportunity to the learned counsel for the petitioners to convince the Court that the said Memorandum No.93 dated 06.07.1960 was unlawful or that the Additional Rehabilitation Commissioner, Rawalpindi could not have passed the order dated 28.09.1960 on the basis of the said Memorandum No.93 dated 06.07.1960. The learned counsel for the petitioners had submitted written arguments wherein the legality of the said Memorandum No.93, dated 06.07.1960 was not questioned.

37. Learned counsel for the petitioners had made lengthy submissions on how the respondents were not entitled to allotment of land against the rehabilitation claims since they had already exhausted their claims through earlier allotments of land which had been sold to other parties who had been impleaded as respondents in the writ petitions. Learned counsel for the petitioners were asked by the Court to concentrate on challenging the legality of Memorandum dated 93, dated 06.07.1960 which had formed the basis of the order dated 28.09.1960 whereby the Additional Rehabilitation Commissioner had cancelled the allotment that had been made against claim No.7941 in District Rawalpindi. He was also told that even if he was successful in showing that land in *Mauza Sarai Madhu* could not have been allotted to the respondents, such land would not revert to the petitioners but to the State. For the said land to revert to the petitioners, they had to establish that Memorandum No.93 dated 06.07.1960 was against the law and the facts.

38. Now, the said order dated 28.09.1960 whereby the allotment of land made against claim No.7941 was cancelled after notices had been issued to the petitioners' predecessor. The said order

dated 28.09.1960 shows that it was passed after issuance of a notice conveyed through ordinary as well as substituted mode of service, i.e. registered post. The notices are stated to have been returned with a report that the petitioners had refused to receive them. It also shows that the beneficiaries of allotments in District Rawalpindi against claim No.7941 were aware of the proceedings, but refused to accept service and intentionally avoided to appear before the Additional Rehabilitation Commissioner, Rawalpindi. In this view of the matter, the petitioners cannot be said to have been condemned unheard after they had deliberately kept themselves away from the proceedings. In holding so, reliance is placed on the following case law:-

- (i) In the case of Syed Abbas Taqi Mehdi Vs. Syeda Sabahat Batool etc. (2010 SCMR 1840), the Hon'ble Supreme Court declined to interfere and upheld the *ex parte* proceedings where process was returned with the report that the appellant refused to accept the service.
- (ii) In the case of Messrs Evernew Agencies Vs. Customs, Central Excise and Sales Tax Appellate Tribunal, Lahore (2006 PTD 207), it had been held that a party absenting himself to appear before an Authority could not claim that he was not provided an opportunity of a hearing.
- (iii) In the case of Water and Power Development Authority/Lahore Vs. Messrs Bhatti Ice and Rice Mills, Buchiki (2004 YLR 1263), it had been held that where the petitioner was granted several opportunities to appear and file a reply but failed to do so, he cannot be subsequently allowed to take the plea that the order was passed in violation of the principles of natural justice.

39. Learned counsel for the petitioners had not questioned the jurisdiction of the Additional Rehabilitation Commissioner to pass the said order dated 28.09.1960. The said order dated 28.09.1960 had been passed by the Additional Rehabilitation Commissioner, Rawalpindi in exercise of the powers under Section 11(4) of the Pakistan Rehabilitation Act, 1956, which is reproduced herein below:-

“(4) The Rehabilitation Commissioner may, at any time, either of his own motion or on perusal of an application made to him in this behalf, call for the record of any proceeding relating to any of the purposes of this Act, which is pending before, or has been disposed of by an Additional, Deputy or Assistant Rehabilitation Commissioner, for the purpose of satisfying himself as to the legality or propriety of any order passed in the said proceedings, and may after perusal of the record and without hearing any person or his counsel or authorized agent pass such order in relation thereto as he thinks fit:

Provided that the Rehabilitation Commissioner shall not under this sub-section pass an order revising or modifying an order affecting any person without giving such person an opportunity of being heard.”

40. As mentioned above, the said order dated 28.09.1960 was passed on the basis of Memorandum No.93 dated 06.07.1960 issued by the Deputy Rehabilitation Officer. In the said Memorandum, it was alleged that unsatisfied units against Mst. Sakina Bibi's claim No.7941 were illegally transferred from District Montgomery to District Rawalpindi by one Mst. Fazal Begum, who was not Mst. Sakina Bibi's legal heir. Although the exact date of Mst. Sakina Bibi's death is not discernable from the record, it appears that she died in the year 1952 or 1953. After her death, her claim was transferred from District Montgomery to District Rawalpindi on 06.05.1955. By that stage two separate inheritance mutations had already been recorded in District Lyallpur (Faisalabad) and District Montgomery. The three inheritance mutations that were recorded after Mst. Sakina Bibi's death are mentioned in paragraph 6 above. These mutations show three different sets of legal heirs of Mst. Sakina Bibi in different Districts and all three inheritance mutations were recorded at the behest of Sardar Muhammad Khan. This Court cannot countenance the manner in which the several inheritance mutations of Mst. Sakina Bibi were made in favour of different legal heirs.

41. It is an admitted position that at no material stage have the petitioners or their predecessors remained in possession of the land that was allotted against claim No.7941. It is also admitted that after the allotment of land against claim No.7941 was cancelled and allotments were made in the respondents' favour,

the record of rights maintained by the revenue authorities has shown the respondents as owners of such land.

42. The petitioners relied on an earlier order dated 03.7.1958 passed by the Rehabilitation Commissioner to urge the ground that through the said order, it had already been declared that the transfer of claim No.7941 to District Rawalpindi was legal and regular. I have gone through the said order and have observed that the legality of the manner in which claim No.7941 was transferred was not in issue. Therefore, on the basis of the said order dated 03.7.1958 the matter cannot be termed as a past and closed transaction.

43. The petitioners contended that the allotments in the respondents' favour were hit by the principle of *lis pendens*. True, the Hon'ble Supreme Court in the case of Ikram Elahi Vs. Settlement & Rehabilitation Commissioners (Lands), Lahore (1976 SCMR 143) held that under the principle of *lis pendens* the subsequent allottee (who was allotted land after cancellation of earlier allottee's allotment) retains no independent right upon restoration of the earlier allottee's allotment. However, in the present case, the respondents' rights remain unaffected until the order dated 28.09.1960 (whereby the petitioners' allotments were cancelled) remains in the field.

44. Since the petitioners have not been able to show that (i) the order dated 28.09.1960 passed by the Additional Rehabilitation Commissioner, exercising the powers of the Rehabilitation Commissioner, Rawalpindi on the basis of Memorandum No.93 dated 06.07.1960, and (ii) the order dated 03.12.2013 passed by Commissioner, I.C.T., were passed without lawful authority or in excess of jurisdiction, I am not inclined to interfere in the said orders. Consequently, the instant petitions are dismissed with no order as to costs.

45. Before parting with this judgment, it may be observed that the allotments made in favour of the petitioners' predecessors were cancelled on the ground that the transfer of claim No.7941 from District Montgomery to District Rawalpindi was unlawful. As a result of the said transfer 5,883, units out of Mst. Sakina Bibi's

total entitlement of 6,582 units were transferred to District Rawalpindi. It is not the respondents' case that the 5,883 units had been exhausted by Mst. Sakina Bibi or any of her legal heirs in District Montgomery. In fact, the record shows that only 699 units had been utilized in District Montgomery before the transfer of the remaining 5,883 units to District Rawalpindi. Therefore, upon the cancellation of the transfer of 5,883 units from District Montgomery to District Rawalpindi against the claim No.7941, the right of Mst. Sakina Bibi's legal heirs for the allotment of 5,883 units in the erstwhile District Montgomery revives, and upon the revival of such a right, the State remains bound to allot 5,883 units to the legal heirs of Mst. Sakina Bibi. It is not disputed that Sardar Muhammad Khan was indeed one of Mst. Sakina Bibi's legal heirs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

*Qamar Khan**

Uploaded By: Engr. Umer Rasheed Dar

"From

**The Addl. Deputy Commissioner (Revenue)
& Deputy Rehab: Commissioner (Lands),
Rawalpindi.**

To

**The Addl. Rehabilitation & Settlement
Commissioner, Rawalpindi.
Dated, Rawalpindi the 6th July, 1960**

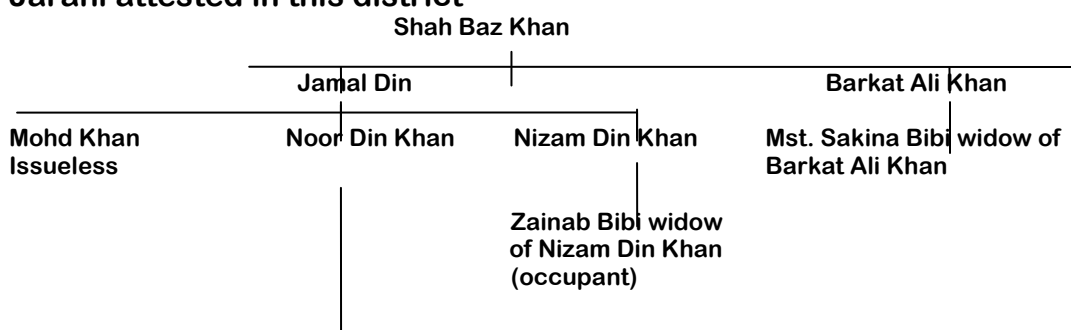
**Subject: Illegal Settlement of claim No.7941 in District
Rawalpindi.**

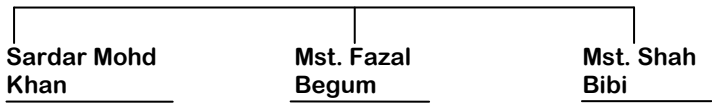
Memorandum.

With reference to the claim noted above on subject, I beg to draw your attention to para 6 sub para 3 of Settlement Officer Rawalpindi's memo No.3368-S.O. dated 8.9.1958 to D.R.C. (Lands) Montgomery which reads as follows:-

“This claim was also registered at Montgomery for Chak NO.7/14/L, by one Mst. Sakina widow of Barkat Ali. The claim in original was not brought to the district but a certificate for 5883 units have been smuggled into the district obviously by the said Abdul Latif irregularly. The receipt of this certificate is not recorded in the office diary nor its dispatch to the Tehsildar is recorded. The ‘robkar’ covering this certificate though signed by somebody on your behalf is neither numbered nor dated. On the margin of this certificate there is a note that 699 units have been settled in district Montgomery and that the claimant having died a mutation of inheritance was pending there. After this certificate was smuggled in this district it was taken to tehsil where a mutation of inheritance was decided by the Settlement Tehsildar, Rawalpindi on 15.4.57, in favour of Sardar Mohd Khan and Mst. Shah Bibi and Mst. Fazal Begum in equal shares as heirs of the deceased. This mutation was sanctioned by the Tehsildar on the attestation of Mohd Yusuf a lambardar of village Topi, one Raja Gulzai Khan, Municipal Commissioner and Abdul Latif recognized agent of Mst Fazal Begum. This point to be noted in this connection in that all the attesting witnesses are the original residents of district Rawalpindi while the deceased was a refugee from Hoshiarpur and probably died at Montgomery. It is possible that the mutation of inheritance pending in district Montgomery might have been decided in favour of some other heirs. Since the claim has not been transferred to this district officially and regularly it is also possible that this claim might have also been settled in this district.”

2. The claim was put in by Mst. Sakina Bibi at Montgomery in 1949 and she also died there. Her inheritance would, therefore, be governed by Islamic Law which was enforced in March, 1948. The following 'Shajra-Nasab' has been prepared on the mutation sheet of village Jarahi attested in this district-





According to this ‘Shajra-Nasab’, Sardar Mohd and his two sisters Mst. Fazal Begum and Mst. Shah Bibi are the children of Noor Din Khan s/o Jamal Din brother of Barkat Ali Khan husband of Mst. Sakina Bibi deceased. Under the law of ‘Shariat’ when Mst. Sakina Bibi died, 3/4th of the property devolved on her and shall now pass on to her own heirs and the remaining 3/4th shall devolve on other heirs of her husband Barkat Ali. Barkat Ali’s only heir now existing is Sardar Mohd Khan because in the presence of a residuary distant kindreds like grand nieces are excluded. In other words only Sardar Mohd Khan is entitled to 3/4th of the land left by Mst. Sakina Bibi and not his sisters Mst. Fazal Begum and Mst. Shah Bibi. In spite of that Mst. Fazal Begum dishonestly brought those units to Rawalpindi, got an incorrect mutation attested fraudulently and secured illegal allotments of land. Since the units were brought to this district fraudulently by Mst. Fazal Begum through her agent Abdul Latif and not by Sardar Mohd it is not a regular transfer and should not have been settled in this district. Sardar Mohd Khan now agrees that his sisters may got a share but since the allotment has been obtained by fraud it cannot be allowed to stand.

- 3. Besides, 3/4th of the property is to go to Mst. Sakina Bibi’s own heirs who do not live in this district. One of such heirs is said to be Rashid son of Ghulam Hussain Khan a brother of Mst. Sakina Bibi settled in Tehsil Jaranwala. There may also be others.
- 4. In the light of the observation made above, this is to request that the allotment of land against 5883 units of claim No.7941 made in this district may be revised and cancelled."