

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 3321 of 2011.

Nakhara (deceased) through legal heirs & others
VS.
Chief Federal Land Commissioner, Islambad, etc.

DATE OF DECISION: 02-02-2012.
PETITIONER BY: Ch. Abdul Khaliq Thind, Advocate & Hafiz
Munawar Iqbal, Advocate
RESPONDENTS BY: Hafiz Hifz-ur-Rehman Syed, Advocate for
respondent No.1.
Fida Hussain, ALA.
Sh. Muhammad Awais, Advocate for
respondent No.2,3,4,7,8 and 9.

SHAUKAT AZIZ SIDDIQUI; J: The briefly stated facts giving rise to file the instant writ petition are that petitioners are owner in possession of the land, situated in Square No.16, Qilla Nos.7 to 14, 17, 18 having been purchased through a Civil Court decree dated 25-07-1976 and through allotment under MLR 115 vide order dated.30-04-1974 of Deputy Land Commissioner, Sargodha. Whereas the petitioner, Amir s/o Chakar was allotted land under MLR 115 in the same square Qila Nos.22,23/2, 24/2, 25/1 and 25/2 vide order dated 30-04-1974 of Deputy Land Commissioner, Sargodha as sitting tenant and in cultivating possession.

2. The respondent No.2 Ahmed Khan & others moved a belated application on 19-03-1995 before D.C/Collector Sargodha to the effect that they are in the possession of the subject land and requested its cancellation from the name of the petitioner and to allot them the same under the Colony Scheme. Deputy Commissioner/Collector forwarded this application to the Assistant Commissioner Sargodha, for hearing the parties and to submit his findings/recommendations, who after hearing the parties submitted his report dated.11.11.1995 and recommended to consign the application of respondents No.2 to 10, being without any substance. therefore, the D.C Sargodha dismissed the same vide order dated.29-09-1996. Feeling aggrieved of this order, respondents preferred an appeal before the court of E.D.O (R) Sargodha which

also met the same fate, vide order dated.19-10-2006. Still not satisfied, respondents filed revision petition by way of ROR No.660/2007 before Board of Revenue (BOR) which too was dismissed vide order dated.05-10-2009 by member judicial IV Board of Revenue. The respondents further assailed the order dated.05-10-2009 passed by the member judicial IV Board of Revenue, before the member Federal Land Commission who accepted the revision vide impugned order dated. 25-07-2011 and reversed the concurrent findings rendered by the forums below while restoring the land in dispute to the respondent.

3. The learned counsel for the petitioner contended that order dated.25.07.2011 passed by the member Federal Land Commission is illegal, unlawful, result of miss reading and non-reading of record have resulted in gross mis-carriage of justice. Application of the respondent even otherwise was not entertainable, having been filed after lapse of 22 years and concurrent findings in the first round of the litigation up to Supreme Court. And in the second round of litigation with regard to the same subject could not be reopened/set at naught for the illegal/bogus claim of the respondents for the yester years. The decree dated.26-05-1976 is available on record as Ex-P1 by virtue of which the award dated.12-05-1976 was made rule of the court in the light of statement recorded by the parties, therefore, the petitioners were correctly allotted the land under MLR-115 and that they had purchased some the land through Civil Court's decree prior to resumption of land in favour of Punjab Land Commission. That, the matter of allotment made under MLR-115 had also been agitated in Lahore High Court, Lahore from where status quo order had also been granted in favour of petitioner. The learned counsel further contended that, the impugned order passed by respondent No.1 is not borne out from any revenue record and he while passing the order neither pursued the record nor applied the judicial mind to the facts of the case, which amounts to destitute of any legal authority. The learned counsel for the petitioners prayed that by exercising the extra ordinary jurisdiction conferred under Article 199 of the Constitution of Islamic Republic of

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Pakistan, the impugned order dated.25.07.2011 passed by respondent No.1 may be set aside and declared as illegal without jurisdiction, ultra vires and ineffective upon the rights of the petitioners.

4. On the other hand, learned counsel for respondents half-heartedly supported the impugned order passed by the Respondent No.1. However, when confronted, learned counsel conceded that proper remedy was to file application under section 12(2) CPC.

I have heard the learned counsel for the parties, perused the record and gone through the impugned order.

5. Before dilating upon the jurisdiction assumed by the respondent No.1, it seems appropriate to reproduce the operative part of the impugned order:-

"I have considered the arguments for the parties/counsel for the petitioners and gone through the record of the case carefully. On examine of the record available on the file, it has been found that the land in question was allotted to the respondents under MLR-115, as well as decree of the court and their allotment is intact since, 1974, but the petitioners were senior tenants in mouza and the allotment was made in their absence for the respondents, who were lessees and hence were not eligible. (emphasis provided). The record produced in the court reveals that the allotment made to the respondents was not made in accordance with law. The petitioners were tenants of the mouza till 1973 and therefore the respondents have been shown in the revenue record. Since the petitioners could not pursue the case due to criminal case, the respondents in connivance with the revenue staff managed to get the allotments. According to law senior tenants of the land have right of allotment than the other tenants. Therefore, the revision petition is accepted and the allotment is restored to the petitioner and orders of the below courts favouring the respondents are set aside.

Judgement was reserved when the case was last heard on 25-06-2011. This order should, be conveyed to all concerned through the Deputy Land Commissioner, Sargodha."

6. Through above mentioned order the respondent No.1 despite making observation with regard to existence of judgment and decree in favour of petitioners, with long standing entries since 1974 has cancelled their allotment. So much so he tried to frustrate the judgment and decree existed in favour of the present petitioners. If the grievance of the respondents was with regard to judgment and decree, it should have been agitated before the same court by way

of filing application under section 12(2) CPC and the respondent No.1 was lacking the jurisdiction to encroach upon the same.

7. It is being observed with great concern that respondent No.1 not only tried to frustrate the judgment and decree passed by the court of competent jurisdiction but through impugned order ignored the judgment of Hon'ble Lahore High Court Lahore passed in writ petition No.1259/1986 dated.31-01-2001 and order dated.11-04-2011 passed in CP No.605/2001 by Hon'ble Supreme Court. The respondent No.1 under no circumstance, can be allowed to even comment on the judgment and decree passed by Civil Judge 3rd class, what to talk of making cryptic effort to frustrate the same and dare to ignore the judgment and orders passed by the superior courts of the country. The judicial, quasi-judicial and executive authorities are under obligation to show respect to any decision passed by the courts of law and any aggrieved person of any order, judgment and decree can agitate the same in accordance with the procedure prescribed for the same. It is an admitted fact that judgment and decree passed in favour of petitioner by court of competent jurisdiction still hold the field, in such an eventuality, to make it redundant by respondent No.1 is nothing but a colourable exercise of authority, an abuse of process of law, sham, unprecedented, illegal, disgusting and contemptuous as well.

In this view of the matter, instant writ petition is allowed and impugned order dated 25-07-2011 is set aside and the allotment of petitioner is restored.

Before parting with the judgment this court may observe that impugned order, apparently is result of irrelevant consideration, therefore, Chairman Federal Land Commission is directed to hold an inquiry in this regard and apprise this court with result of same.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Approved for Reporting.

JUDGE

"Waqar Ahmed"
Blue Slip added.