

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3437 of 2002

Syed Abid Hussain Shah (Deceased) and Others

Vs

Chief Land Commissioner Islamabad and Another

PETITIONERS BY: M/s Hafiz S.A Rehman, Muhammad Munir
Paracha & Nouman Munir Paracha, Advocates

RESPONDENTS BY: M/s Naeem Bokhari, Muhammad Imad Khan and
Syed Naseem Ahmed Shah, Advocates.
Syed Muhammad Tayyab, DAG.
Mr. Hassan Waqar Cheema, ADC (R), ICT.

DATE OF HEARING: **03.05.2019**

ATHAR MINALLAH, CJ.- The petitioners have

invoked the jurisdiction of this Court under Article 199 of the Constitution, challenging order, dated 18.05.2002, passed by the Chief Commissioner, Islamabad Capital Territory. In addition it has also been prayed that a declaration be given to the effect that taking possession of land by respondent no.2 was illegal. A direction has also been sought for re evaluation of the produce index units.

2. The necessary facts for adjudication of this petition are that Syed Abid Hussain Shah and Syed Muzaffar Ali Shah (hereinafter referred to as the "***predecessors in interest***") owned and possessed land which were in excess of the limits prescribed under section 3 of the Land Reforms Act, 1977 (hereinafter referred to as the "***Act of 1977***"). Pursuant to a notification issued by the Provincial Land

Commission, the predecessors in interest voluntarily submitted their respective declarations under section 7 read with section 9 of the Act of 1977. The declarations were submitted before the competent authority and in the prescribed manner and form. The Deputy Land Commissioner, Rawalpindi, in exercise of powers vested under section 7 read with section 9 of the Act of 1977 passed orders, dated 19.07.1977 and 18.06.1977, in respect of Syed Abid Hussain Shah and Syed Muzaffar Ali Shah respectively. The said orders were duly implemented and, consequently, land surrendered by the predecessors in interest which was in excess of the permissible limits was resumed in favour of the Government. The resumed land was disposed of under section 15 of the Act of 1977. Admittedly, no objection whatsoever was raised by the predecessors in interest, let alone preferring an appeal against the aforementioned orders passed under the Act of 1977, because the entire exercise was based on their own declarations and voluntary surrender of the excess land. On 18.11.1978, the land surrendered by the predecessors in interest was allotted in favour of fifty five persons by the Deputy Land Commissioner, Rawalpindi. Later it was alleged that the disposal of the surrendered resumed land was made in violation of the provisions of the Act of 1977 and, therefore, the Chief Land Commissioner/Administrator, Islamabad, vide order dated 18.01.1982, exercised suo motu powers and granted permission to review the order, dated 18.11.1978, passed by the Deputy Land Commissioner, Rawalpindi. The Deputy Land Commissioner, after affording an opportunity of hearing to the parties, declared the disposal of land in favour of the fifty five persons as null and void. The Federal Land Commission (hereinafter referred to as the "**Commission**") vide order, dated 26.02.1984, dismissed the revision petition which was

filed under section 27 of the Act of 1977 assailing order, dated 18.01.1982, passed by the Chief Land Commissioner/Administrative, Islamabad, whereby the Deputy Land Commissioner was granted permission to review the order, dated 18.11.1978. Moreover, the Commission, vide order dated 26.02.1984, also dismissed the applications filed by the predecessors in interest seeking direction to the Deputy Land Commissioner for redetermination of the units. The relevant portion is as follows:-

"If the declarants were aggrieved in any manner about the classification of the land, they should have moved the concerned quarters at the time of submission of their Declaration Forms. Already more than six years have elapsed since they surrendered the land to the state. They are not even a party in the present proceedings which are between disputing tenants."

2. It appears that despite the above observations recorded by the Commission, the predecessors in interest filed applications for reclassification of their lands, whereas the orders passed under the Act of 1977 had attained finality. The applications were forwarded to the Land Commissioner/Deputy Land Commissioner, Islamabad, vide order, dated 17.07.1984. The learned Chief Land Commissioner/Administrative, vide order dated 23.01.1986, dismissed the petition filed by Syed Abid Hussain Shah seeking reclassification of his land. The said order was not challenged by the predecessors in interest. The Deputy Land Commissioner/Assistant Commissioner, Sadar, vide order dated 06.03.1986, submitted a report to the Deputy Commissioner/Land Commissioner. Likewise, another report was also

submitted in relation to a petition filed by Syed Muzaffar Hussain Shah. The Deputy Commissioner/Land Commissioner, Islamabad Capital Territory passed a detailed order, dated 24.08.1986, yet again putting the controversy raised by the predecessors in interest to rest by declaring that the prayer for seeking reclassification of the resumed land was devoid of merit. The said order was upheld by the learned Chief Land Commissioner/Administrative, Islamabad Capital Territory vide order dated 02.09.1986. The latter order was challenged before the learned Lahore High Court, Rawalpindi Bench through W.P.No.597/1986, and it was disposed of vide order dated 28.06.1993 by setting aside order, dated 02.09.1986, and remitting the matter for reconsideration and decision afresh. Pursuant to the remand order, the learned Chief Commissioner, Islamabad Capital Territory, passed order, dated 04.08.1994. This was a detailed and well reasoned order. Nonetheless, it was challenged before the learned Lahore High Court, Rawalpindi Bench and consequently W.P No.504/1995 was decided vide judgment dated 15.08.2001. The matter was once again remanded to the competent authority for a decision on merit. Consequently, the learned Chief Commissioner, Islamabad Capital Territory again dismissed the claims of the predecessors in interest vide the impugned order, dated 18.05.2002. The Government of the Punjab, vide letter dated 09.08.1979, had offered some portion of the land surrendered by the predecessors in interest to M/s Fecto (Pakistan) Ltd (hereinafter referred to as the **"respondent Company"**) for setting up a cement plant. Earlier, the petition in hand was decided vide order, dated 08.06.2017, without affording an opportunity of hearing to the respondent Company. The said order was challenged before the august Supreme Court and the matter was

remanded so that the respondent Company is not condemned unheard.

3. The learned counsels for the petitioners at the very outset have unequivocally stated that the proceedings leading to the impugned order were conducted under the Act of 1977. They have, therefore, unambiguously conceded that the earlier order, dated 08.06.2017, whereby this petition was dismissed, was based on the mistaken assumption that the authorities who had passed the orders did not have jurisdiction under the Act of 1977. They have argued that; the determination of units for the purposes of the Act of 1977 was a complicated and highly technical matter and, therefore, the officials had erred in failing to calculate the units in accordance with the classification of land; it was the duty of the revenue officials to scrutinize the declarations filed by the predecessors in interest and the failure to do so could not have prejudiced vested rights; the revenue officials had failed to correctly calculate the units of Khasra Nos.202, 229 and 226; it was mandatory under section 5 of the Act of 1977 that the joint holding should have been partitioned; the land surrendered by the predecessors in interest was allotted under section 15 of the Act of 1977, vide order dated 18.11.1978, to fifty five eligible persons; the illegality of the disposal of surrendered land was upheld by the learned Commission; conclusive findings were recorded by the Deputy Land Commissioner and the Commission to the effect that the surrendered land was uncultivated i.e. 'Ghair Mumkin Ghas'; the disposal of land in favor of respondent Company was illegal in view of section 17 of the Act of 1977; the units were required to have been recalculated on the basis of actual classification of land; the Deputy Land Commissioner had submitted a report wherein the land was declared as 'Ghair

Mumkin Ghas' and the learned Lahore High Court, vide judgment dated 15.08.2001 in W.P.NO.504 of 1995, had unambiguously declared that the revenue record was not sacrosanct and that the competent authority, under the Act of 1977, was empowered to determine the actual status of the surrendered land and thereafter recalculate the units; the Chief Land Commissioner vide the impugned order, dated 18.05.2002, had completely ignored the directions given by the Lahore High Court while disposing of W.P.No.504 of 1995; it was only when allotments in favour of fifty five persons were cancelled that the predecessors in interest came to know the actual status of the land and that the declarations were not in accordance with the Act of 1977; the land belonging to the predecessors in interest was in the nature of Kharaj as Dahl Bajh i.e. impossible to cultivate; it was the duty and obligation of the Deputy Land Commissioner at the time of accepting the declarations to make a determination and failure to do so was illegal and has exposed the predecessor in interest to irreparable loss; the learned Lahore High Court had correctly appreciated the matter vide judgment dated 15.08.2001.

4. The learned counsel who has appeared on behalf of respondent no.2 i.e. Messrs FECTO Cement Limited has argued that; the question regarding jurisdiction vested in the officials who conducted the proceedings and passed orders in the case in hand has been admitted by the learned counsels for the petitioner and jurisdiction has been conceded; the predecessors in interest had voluntarily made declarations, and that too in the manner and form prescribed under the Act of 1977; the predecessors in interest did not raise any objection nor had they contested the orders passed by the competent authority for almost seven years after their declarations had

attained finality; the predecessors in interest were attempting to rectify the long standing revenue record otherwise than as provided under the Land Revenue Act, 1967 (hereinafter referred to as the "**Act of 1967**"); the authorities described under the Act of 1977 were not vested with jurisdiction or powers as those of the revenue officials under the Act of 1967; declarations in the case of both the predecessors in interest were accepted and had become a past and closed transaction which could not be have been amended, annulled or in any manner interfered with directly or indirectly; the respective orders passed by the Deputy Land Commissioner, pursuant to declarations made by the predecessors in interest, were acted upon and the surrendered land was taken into possession and subsequently disposed of; the dispute was to the extent of disposal of the surrendered land in favour of fifty five allottees vide order dated 18.11.1978; at no stage had the predecessors in interest challenged their own declarations made under oath to the Deputy Land Commissioner; the land was also voluntarily surrendered: the predecessors in interest had filed applications before the learned Wafaqi Mohtasib seeking payment of compensation relating to the surrendered land; the alternate remedies provided under the Land Reforms Rules, 1977 (hereinafter referred to as the "**Rules of 1977**") were not availed by the predecessors in interest; the instant petition is hit by the doctrine of latches; delay defeats equity or equity aids the vigilant and not the indolent; reliance has been placed on '*Jawad Mir Muhammadi and others v. Haroon Mirza and others*' [**PLD 2007 SC 4721**].

5. The learned counsel who has appeared on behalf of respondent no.1 has adopted the arguments advanced by the learned

counsel for the respondent no.2 and has defended the legality of the impugned order.

6. The learned counsels have been heard and the record perused with their able assistance.

7. The facts of the case in hand are peculiar. This protracted litigation has continued despite the fact that the orders which were passed by the competent authorities under the Act of 1977 had attained finality, as would be discussed later. It is a curious case because the predecessors in interest had belatedly filed miscellaneous applications without challenging the orders which were passed pursuant to their own voluntary declarations. They had willingly surrendered the excess land which vested in the Government consequent upon being resumed. The admitted facts are that the predecessors in interest, on their own volition and voluntarily, had made declarations under section 7 of the Act of 1977 between June and July of 1977 on the basis of the revenue record and the entries therein had existed since 1963. The entries were recorded in the record of rights and had been carried through in three successive jamabandis. Before making the voluntary declarations, followed by surrendering the excess land, the predecessors in interest had neither objected to nor attempted to correct the long standing entries recorded in the revenue record. The excess land was surrendered without demur and at the option of the predecessors in interest it was earmarked for this purpose. They were given the option sans interference by the competent authority. The latter passed orders, dated 19-07-1977 and 18-06-1977 under section 7 of the Act of 1977. The competent authority, vide order dated 18-11-1978, disposed off the surrendered land amongst fifty five persons. The predecessors in

interest willingly accepted the aforementioned orders because they did not avail the remedies provided under the law nor had raised objections in any other manner. The predecessors in interest had wholeheartedly accepted the finality of the orders by receiving compensation for the resumed land. The predecessors in interest remained content till the resumed or disposed of land in favour of fifty five persons had not been questioned and declared as void by the learned Deputy Land Commissioner vide order dated 13-04-1983. It appears that, after the passing of the said order, the predecessors in interest for the first time raised objections by filing an application before the Commission where a revision petition against order, dated 18-01-1982, was pending. The applications were dismissed vide order dated 26-02-1984. The relevant portion has been reproduced above. It was rightly observed by the learned Commission that in case the predecessors in interest had any reservations regarding the long standing entries recorded in the revenue records then they should have corrected them in the prescribed manner before filing of the declarations under the Act of 1977. It was correctly observed that it had taken them more than six years to indirectly challenge the proceedings that had attained finality under the Act of 1977. The predecessors in interest did not challenge the order, dated 26-02-1984, nor the earlier orders passed under the Act of 1977. These admitted facts definitely affirm that the orders, dated 19-07-1977 and 18-08-1977, whereby voluntary declarations of the predecessors in interest were accepted and acted upon under section 7 of the Act of 1977 by resuming the land surrendered by them in favour of the Government, had attained finality. Likewise, order dated 13-04-1983, whereby disposal of the resumed land was cancelled and order dated 26-02-1984, passed by the Commission, inter alia, dismissing the

application seeking revaluation of the units, had definitely attained finality since they were never challenged by the predecessors in interest before a competent forum. Since these orders were not challenged before any forum nor interfered with, therefore, they attained finality and thus the matter became a past and closed transaction for the purposes of the Act of 1977. The orders, dated 28-06-1993 and 15-08-2001, passed by the learned Lahore High Court in writ petitions 597 and 598 of 1986 and 504 of 1995 respectively, have been carefully perused and it is obvious that the aforementioned orders were not interfered with. The orders which were challenged before the learned Lahore High Court stemmed from miscellaneous applications which were filed by the predecessors in interest after the orders passed by the Commission and the competent authorities under the Act of 1977 had attained finality. It is settled law that what cannot be done directly can also not be done indirectly. Through filing of miscellaneous applications independent proceedings were initiated, despite the orders passed under section 7 of the Act of 1977 and other provisions *ibid* having attained finality. Such proceedings were alien to the Act of 1977 and the rules made there under. Moreover, the predecessors in interest were also estopped by their conduct from initiating proceedings alien to the Act of 1977. Without setting aside the proceedings under the Act of 1977 and the orders passed therein, the predecessors in interest had virtually attempted to indirectly annul and render the proceedings under the Act of 1977 ineffective by seeking a roving enquiry and that too after more than six years since the orders had been passed *ibid*. With utmost reverence and humility, it appears that the learned Lahore High Court, while entertaining the petitions, had not been properly assisted. This Court is, therefore, of the view that the proceedings pursuant to filing of the miscellaneous

applications, when the orders passed under section 7 of the Act of 1977 and other provisions ibid had attained finality, were inconsequential and alien to the legislative intent of the said special and self contained statute.

8. The question regarding jurisdiction vested in the authorities who had conducted the proceedings and passed orders pursuant to declarations made under section 7 of the Act of 1977 is not disputed. Likewise, the learned counsels for the petitioners had candidly conceded that all subsequent orders were also passed by authorities who did not lack jurisdiction. The learned counsels have laid great stress on the fact that the declarations made by the predecessors in interest were to be considered by the competent authority and that it was a statutory obligation of the latter to have made a determination after application of mind. They have also argued that the competent authority empowered under the Act of 1977 could have corrected the longstanding entries in the revenue record. Without prejudice to the finality of the proceedings and orders passed under the Act of 1977, as has been discussed above, it would be beneficial to examine the provisions of the Act of 1977 and the legislative intent regarding its enactment.

9. The purpose and object declared in the preamble of the Act of 1977 was to bring about a more equitable distribution of wealth by carrying out further land reforms and to prescribe the maximum limits in terms of clause (1) of Article 253 of the Constitution of the Islamic Republic of Pakistan, 1973. Subsections (1) and (2) of Section 2 define the expressions 'Commission' and 'Government' respectively. Subsection (11) defines 'Produce index unit'. The expression 'Prescribed' and 'Tenant' are defined in subsection (9) and (12) of

Section 2 respectively. Section 3 prescribes the limits on individual holdings. Section 4 has given a statutory option to the person falling within the fold of the mischief intended under the Act of 1977 to select land which was to be retained and the one that had to be surrendered, being in excess. Subsection (1) of Section 7 describes the competent authority. Subsections (2), (3) and (4) of Section 7 describe the procedure for making declarations, having regard to the eventualities mentioned therein. Subsection (5) provides for the manner in which a case was to be dealt with if declarations had not been made by a person holding land in excess of the limits prescribed under section 3 *ibid*. Section 9 describes how the surrendered land was to be dealt with. Section 15 prescribes the manner regarding disposal of the resumed land. Section 18 describes the functions of the Commission. Section 21 empowered the Commission to make rules for carrying out the purposes of the Act of 1977. Pursuant to the said powers the Rules of 1977 were made and duly notified in the official gazette. Section 24 had explicitly provided that the Commission was empowered to review a case, or a class of cases decided by it, before or after the commencement of the Act of 1977, if so directed by the Federal Government. Section 30 gave the Act of 1977 an overriding effect over other laws.

10. A plain reading of the Act of 1977 as a whole shows that it is a comprehensive and self contained special legislation to give effect to the prescribed limits on individual holdings of land owned and possessed. An owner of land was required to make a declaration under section 7. The latter was also given the choice to select land which was to be surrendered and vested in the Government after being resumed. The declarations obviously had to be made on the basis of

the revenue record and entries recorded therein that existed at that time. Neither the Provincial Land Commission nor any official exercising jurisdiction and powers under the Act of 1977 were empowered to correct the entries recorded in the revenue record. The determination could only be made under sub section (5) of section 7 in case of a person who had failed to make a declaration contemplated under sub section 1. It is implicit in the language used in sub section (5) of section 7 that the determination contemplated therein did not extend to correcting entries recorded in the revenue record. The expression 'determination' used in section 7(5) was to be made on the basis of the revenue record which existed at the relevant time. In case an owner had any reservation regarding the revenue record and the entries recorded therein, he/she was required to correct the same in the prescribed manner before making a declaration. There is no force in the argument advanced by the learned counsels for the petitioners that the Commission constituted under the Act of 1977 or the officials empowered to perform functions and exercise powers under section 7 of the Act of 1977 were vested with jurisdiction to correct the entries recorded in the revenue record. In the case in hand the predecessors in interest had made voluntary declarations on the basis of the long standing entries which existed in the revenue record at that time. They had never objected to the long standing entries in the revenue record. They had exercised options under section 4 of their own free will and without demur. The land surrendered on their own accord was resumed and had vested in the Government and, pursuant thereto, it was disposed of in the manner prescribed. The proceedings against the predecessors in interest were completed and the orders acted upon in 1977. The proceedings and orders had thus attained finality and had become a past and closed transaction. For more than six

years the predecessors in interest were content with their own declarations and the finality of the proceedings under the Act of 1977. They also failed to challenge the order of the Commission, dated 26-02-1984, which consequently attained finality since no request was made to the Federal Government in terms of section 24 of the Act of 1977. The subsequent proceedings initiated, pursuant to the filling of miscellaneous applications, were alien to the Act of 1977 and thus, to the extent of the proceedings and orders which had attained finality there under, were ultra vires and had no effect thereon. The predecessors in interest were estopped on account of their own conduct from indirectly challenging the proceedings under the Act of 1977 that had attained finality.

11. For the above reasons, this petition is declared to be devoid of merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Announced in the open Court on **05-07-2019.**

(CHIEF JUSTICE)

Approved for reporting.

*Asif Mughal**