

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

....
Writ Petition No.16125 of 2022.

Khizar Hayat.

Versus

Member (*Consolidation*),
Board of Revenue, Punjab, etc.

J U D G M E N T.

Date of hearing: **19.11.2025.**

Petitioner by: Syed Muhammad Ali Gillani,
Advocate.

Respondents#1 & 2 by: Kanwar Sajid Ali, Assistant
Advocate General Punjab.

Respondent # 3 by: Rana Asif Saeed, Advocate.

AHMAD NADEEM ARSHAD, J. Through this

Constitutional Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned the order dated 15.09.2022 passed by respondent No.1 (*Member (Consolidation) Board of Revenue, Punjab, Lahore*) whereby while accepting the Revision Petition (*ROR No.2563 of 2021*) of respondent No.3, order dated 29.10.2021 passed by the Addl. Commissioner (*Revenue*) was set-aside and order dated 11.06.2021 passed by respondent No.2 (*District Collector, Sahiwal*) was restored.

2. Relevant facts forming background of the proceedings in hand are that one Muhammad Yousaf s/o Noor Muhammad was allotted a tenancy under the Statement of Conditions of Horse Breeding

Scheme issued on 01.07.1942, in Chak No.135/9-L, Tehsil and District Sahiwal. He passed away on 08.01.2017, whereafter his legal heirs continued to occupy the leased land. The Colony Assistant reported to the District Collector (respondent No. 2) that the tenancy of the deceased, Muhammad Yousaf, had last been renewed for the period from 01.07.2009 to 30.06.2014, and no renewal had been granted thereafter. Consequently, the legal heirs were alleged to be in unauthorized occupation of the land after 30.06.2014. It was therefore recommended that the tenancy be resumed in favour of the State. Acting on the report, the District Collector issued notices to the legal heirs under Section 24 of the Colonization of Government Lands (Punjab) Act, 1912 (Punjab Act V of 1912), with regard to breach of conditions. During the proceedings, the District Remount Officer, Sahiwal, submitted a report recommending that the tenancy be re-allotted in favour of the petitioner, Khizar Hayat, who is the son of the previous allottee, Muhammad Yousaf. Meanwhile, respondent No. 3 filed an application alleging violation of the tenancy terms and conditions and seeking resumption of the land in favour of the State. After considering the material on record, respondent No. 2, vide order dated 11.06.2021, resumed the land in favour of the State and declared it open for further allotment in the following manner:

"اندريں حالات حسب سفارش کالونی اسٹنٹ ساهیوال مریج گھوڑی پال ہذا بموجب خلاف ورزی شرائط الاٹمنٹ/ عدم تکمیل شرائط بحق سرکار ضبط کیا جا کر Open قرار دیا جاتا ہے۔ اسٹنٹ کمشنر ساهیوال کو ہدایت کی جاتی ہے کہ وہ مریج گھوڑی پال ہذا فوری طور پر ضبط بحق سرکار کروا کر ریونیو آفیسر حلقہ کی سپرداری میں دیں جو کہ مفاد سرکار کو ملحوظ خاطر رکھتے ہوئے اس کی کاشتہ فصلات کا باعث عدہ

حساب رکھے گا اور مورخہ 01-07-2014 تا حال ناجائز کاشت کنندہ کے خلاف کارروائی تاوان ناجائز کاشت حسب ضابطہ عمل میں لائی جائے۔ اور ڈسٹرکٹ ریوائنٹ آفیسر ساہیوال اوپن مربع گھوڑی پال ہذا کی بابت باقاعدہ مشتری منادی کروا کر خواہشمند امیدواران سے حسب ضابطہ درخواست ہائے طلب کر کے کیس ہذا میں اپنی رائے / رپورٹ ارسال کریں۔

مزید براں کالونی اسسٹنٹ ساہیوال کو ہدایت کی جاتی ہے کہ وہ الاٹی کے خلاف مربع گھوڑی پال سے اٹھائی گئی مٹی کی بابت سرکار کے مفاد کو مد نظر رکھتے ہوئے نقصان کا تعین کر کے وصولی واجبات بعد از منظوری محباز امتیازی کو اندر ایک ماہ یقینی بنائیں۔"

3. The petitioner challenged above-referred order by preferring an appeal before Addl. Commissioner (Revenue), which was allowed vide order dated 29.10.2021 and the matter was remanded to the Deputy Commissioner with the direction to decide the case after getting report in presence of the legal heirs of allottee. Relevant portion of the order dated 29.10.2021 is as follows:

"اندریں حالات اپیل ہذا منظور کی جاتی ہے اور حکم زیر اپیل کا عدم مترار دیا جاتا ہے اور ڈسٹرکٹ کلکٹر ساہیوال کو ہدایت کی جاتی ہے کہ کیس ہذا میں ایڈیشنل ڈپٹی کمشنر (ریونیو) ساہیوال سے رپورٹ موقع بموجودگی متعلقین / وارثان لے کر بعد سماعت کیس ہذا کا از سر نو مطابق قانون میرٹ پر فیصلہ کریں۔"

4. Feeling dissatisfied, respondent No.3 assailed said order through filing Revision Petition (ROR No.2563/21) which was allowed by respondent No.1 through order dated 15.09.2022 in the following manner:

"Arguments of both the parties have been heard at length and record related to Horse Breeding Tenancy has also been perused. It clearly reveals from the record that Muhammad Yousaf son of Noor Muhammad tenant under Horse Breeding Scheme in Chak No.135/9-L Tehsil & District Sahiwal died on 08.01.2017. The lease period of the said tenancy was renewed from 01.07.2009 to 30.06.2014. It shows that the respondent intentionally in order to gain the financial benefits cultivated the tenancy without its renewal which is violation of conditions of tenancy. The District

Collector after adopting all the codal formalities resumed the tenancy in favour of the State. The District Collector has rightly imposed Rs.1,16,03,250/- as tawan upon the respondent being illicit cultivator for the period from 2014 to 2021. The arguments put forth by the learned counsel for the petitioner as mentioned in para 3 of this order carries weightage. Therefore, I have solid grounds to interfere in the impugned order passed by Additional Commissioner (Revenue), Sahiwal. Resultantly, the instant revision petition is hereby accepted, order of Additional Commissioner (Revenue), Sahiwal dated 29.10.2021 is set aside and order of District Collector, Sahiwal dated 11.06.2021 is upheld accordingly."

5. Being aggrieved, the petitioner approached this Court through the instant Writ Petition.

6. I have heard learned counsel for the parties at length and gone through the record with their able assistance.

7. After hearing learned counsel for the parties and going through the record it has been observed that late father of the petitioner namely Muhammad Yousaf s/o Noor Muhammad was a Horse Breeding Tenant. After the demise of said allottee, District Remount Officer submitted a report recommending that the tenancy be re-allotted in favour of the petitioner, however, respondent No.3 filed an application alleging violation of terms & conditions of tenancy with the request of resumption of the property in favour of the State. Respondent No.2 vide order dated 11.06.2021 resumed the lease land in favour of the State on the ground of violation and non-fulfillment of conditions of allotment and directed to start proceedings for re-allotment. It was also observed that proceedings should be taken with regard to illegal cultivation and illegal lifting of soil. Said order was set-aside by Additional Commissioner (Revenue)

via order dated 29.10.2021 with the direction to decide the case afresh in presence of legal heirs of the allottee. However, respondent No.1 through order dated 15.09.2022 set-aside the said order and restored the order passed by respondent No.2. Now the questions for determination are that when said tenancy shall determine and what will be the procedure for re-allotment.

8. In pursuance of the provisions of Sub-Section (2) of the Section 10 of the Colonization of the Government Lands Act, 1912, the Governor of the Punjab issued letter No.2838-C on 01.07.1942 with regard to "Statement of Conditions" on which Government was willing to grant land situated on the Lower Bari Doba Canal for the purpose of encouraging Remount Breeding. Condition No.24 of the Scheme provides special conditions of Remount Breeding Tenants which is re-produced below:-

- (a) No tenant shall have any right or title in the land allotted to him under these conditions or shall enter into possession of the same until he shall have produced a mare which is fit for breeding remounts for the army and which has been approved by an officer of Government appointed for the purpose and braided by him. The tenant shall regularly braid from the mare, horses, and/or mules as the Superintendent shall from time to time direct utilizing only the services of a horse or donkey stallion selected by the Superintendent.*
- (b) The tenant shall not sell or otherwise transfer the mare or any interest therein without the permission in writing of the Superintendent.*
- (c) The tenant shall not without the permission in writing of the Superintendent sell or otherwise transfer the progeny of the mare or any interest therein, except to Government until it has attained the age of 18 months.*
- (d) The tenant shall be bound to sell the progeny at any time before it has attained the age of 18 months to Government at such price as may be determined by the Superintendent within limits to be fixed by the Director-General, Army Remount Department, with the concurrence of the Financial Commissioner. If the progeny has attained the age of 18 months and has not been*

purchased by Government the tenant may dispose of it as he thinks fit.

- (e) The tenant shall maintain and manage the mare and its progeny in such manner, and at such place, as shall be deemed satisfactory by the Superintendent and shall at any time when required to do so produce the mare and its progeny for the inspection of any officer of Government appointed to inspect brood mares and young stock in the colony at such places, as he may appoint.*
- (f) If any mare maintained by the tenant under the provisions and stipulations herein contained shall die or otherwise cease to be in his possession or be found or become incapable of bearing foals fit to become remounts for the army, the tenant shall within three months from the date of the happening of any such contingency produce another mare fit for breeding, remounts for the army to be approved, branded, maintained, utilized for breeding, managed, produced and in case of need replaced as herein provided in respect of the mare furnished on allotment; and the same rules shall apply throughout the duration of his tenancy to all mares maintained hereunder and their progeny.*
- (g) The tenant shall if so required subscribe to an insurance fund for the replacement of mares at such rates and at such times as may be fixed by the Director-General Army Remount Department with the concurrence of the Financial Commissioner.*
- (h) The tenant shall if so required by the Superintendent permit the progeny to be hoof-branded.*
- (i) Every colt shall be castrated before reaching the age of 18 months unless the Superintendent gives the tenant written permission to keep it entire.*

Condition No.04 of the said "Statement of Conditions" provides period of Remount Breeding Tenancies, which reads as under:

"4. Period of Remount Breeding Tenancies. *The tenancy granted under these conditions shall be for a period of six years and at the expiry of this period it will determine unless renewed by the Collector. Before the expiry of the tenancy or the renewed period of the tenancy the tenant may apply to the Collector for its renewal and if during the term of such tenancy the tenant has not been entirely satisfactory, the Collector may refuse to renew it, and his decision shall be final. If, however, the Collector is of the opinion that the tenant holding a tenancy on these conditions or a renewed tenancy on the conditions published with:-*

(a) Punjab Government notification No.964-S, dated the 24th June, 1915 as amended by Punjab Government notification No.5080, dated the 21st February, 1919; or

(b) Punjab Government notification No.2965-C, dated 22nd July, 1941 as amended by Punjab Government notification No.3611-C., dated the 6th September, 1941."

Whereas, Condition No.25 determines the period of tenancy

which reads as follows:

"25. Any tenancy granted on the conditions set forth in this statement shall determine:-

a) on the expiry of the lease under clause 4;

b) on the decease of the tenant;

c) on the tenant's ceasing to held, either as proprietor or as a tenant of Government otherwise than under these conditions, land in the estate in which this tenancy is situated;

Explanation: Land included in the village site, whether occupied as a residence or otherwise, and land which has been mortgaged and made over to the possession of a mortgage, shall not be deemed to be land for the purpose of this sub-clause.

(d) on resumption of the lease ordered under section 24 of the Colonization of Government Lands (Punjab), Act, 1912, for a breach of the conditions herein set forth;

(e) on relinquishment of the tenancy by the tenant giving in writing to the Collector on or before the 15th day of January in any year notice of his intention to relinquish the tenancy at the end of the agricultural year then current;

Provided that when a remount breeding tenancy determines under such clauses (a) to (e) and no suitable tenant, holding land in the estate concerned, is forthcoming the Commissioner after considering the objections, if any, of the proprietors and tenants of the estate wherein the vacant tenancy is situated, may: -

a) transfer the tenancy to another estate where a suitable candidate holds land either as proprietor or tenant otherwise than under these conditions; OR

b) appoint to the vacant tenancy a candidate holding land in another estate in the colony either as proprietor or tenant otherwise than under these conditions. In this case a resident sarbrah approved by the Collector shall be appointed in respect of

the remount breeding tenancy, but such appointment will not relieve the remount breeding tenant of responsibility for the fulfillment of any of the conditions of his tenancy except that of personal residence in the estate wherein the remount breeding tenancy situated."

9. As per "Statement of Conditions" on which the Government agreed to grant land in the Colony for the purpose of Horse Breeding, (Correction Slip No.4-C, M, dated Lahore, the 23rd August, 1934) clause 16 provides that if the tenant desires to renew the tenancy he has to give notice six months prior to the expiry of that term to the government. Said clause is read as under:

"16. The tenancy shall in the first instance be for a term of 10 year and if the tenant, six months prior to the expiry of that term, gives to the Government and to the District Remount Officer notice in writing of his desire to renew the tenancy and provided that the tenant has carried out the conditions of this grant in all respects to the satisfaction of the Government and that the Government desire the tenant to continue to breed horses the tenant shall be entitled to a renewal of the tenancy for a further period of 10 years on the same conditions including this condition of renewal, subject to such modifications as regards the number of brood mares to be maintained by the tenant as the Government may consider to be reasonable at the time of such renewal."

Clause 17 deals with the situation when the tenant dies during the period of tenancy or any extension, which is as follows:

"17. If the tenant should die during the period of the tenancy or any extension thereof, the land shall revert to the Government and shall either be granted to one of his heirs, by selection by the Government, provided that such heir is considered to be fully capable of satisfactorily carrying out the conditions of the grant in all respects, or to some other tenant subject to such payments to the estate of the deceased for stock, buildings, etc., erected by the

deceased, as may be decided by an authority nominated by the Government."

Clause 20 provides condition to determine the tenancy and resume possession of the land, which is as under:-

"20. In the event of any breach or non-observance of the conditions, herein contained on the part of the tenant or in the event of the tenant being declared insolvent or making an arrangement with his creditors, the Government shall have the right to determine the tenancy and resume possession of the land. In such case the tenant shall only be entitled to the value of any buildings erected, wells sunk and trees planted by him, with the sanction in writing of the Government, and in case of dispute as to such value the same shall be settled by the District Remount Officer, and shall in no case exceed the original cost after the deduction of proper depreciation. The right of resumption shall be without prejudice to the right given to the Government by section 28 of the said Act."

10. Later, a Statement of Conditions was enforced by the Government on 22.09.1977 and condition No.50 of the Scheme had contemplated that if the tenant dies during the period of tenancy or any extension thereof, the land shall revert to the Government and may be granted to any one of his heirs considered to be fully capable of satisfactorily carrying out the conditions of the grant in all respects for the unexpired period of the lease or to some other tenant subject to such compensations to be paid to the estate of the deceased as may be decided by the Collector. The Government shall in no case

be under any obligation to grant the lease to the heirs of the deceased tenant

11. In Letter No.6853-81/1014-CL dated 8-3-1982 the Government has further decided and issued a memorandum on the subject of Horse Breeding Tenancy which is re-produced below:--

"Memorandum: Under the existing policy instructions, the Horse Breeding tenancies are resumed in favour of the State on the death of a tenant. The heirs of the deceased are, however, given preference while allotting the tenancies fallen vacant. It has been observed that whenever such an occasion arises and the Collector declares in writing a tenancy to have fallen vacant, before a decision is taken prolonged litigation taken place amongst the heirs of the deceased.

2. In order to overcome this situation, the Board of Revenue, Punjab have decided that after the death of a tenant when the land stands resumed, the Collector should not declare the tenancy to have fallen vacant. "

12. Another statement of conditions was issued by the Government vide Letter No.4292-83/2537-CL-1, dated 9-8-1983 and Condition No.51 of the statement of conditions has provided that if a tenant dies during the period of tenancy the land shall revert to Government and may be granted to any one of his heirs considered to be fully capable of satisfactorily carrying out the conditions of the grant in all respects for the unexpired period of the lease or to some other tenant subject to such compensation to be paid to the estate of the deceased as may be determined by Government on the recommendations of Ministry of Defence of Government of Pakistan.

13. In the backdrop of the statutory framework governing Horse Breeding Tenancies, particularly the "Statement of Conditions"

issued vide letter No.2838-C dated 01.07.1942, as well as the subsequent policy instructions and memoranda issued by the Government, it stands established that such tenancies are not inheritable as a matter of right; nevertheless, the heirs of a deceased tenant are to be duly considered for allotment, subject to their suitability being assessed by the District Remount Officer and the District Collector. The consistent policy position, as is evident from the memorandum dated 08.03.1982 and the revised Statement of Conditions issued on 09.08.1983, is that upon the death of a tenant the tenancy reverts to the Government, yet preference is to be accorded to the legal heirs, and the Collector is obliged to proceed cautiously so as to avoid unnecessary litigation among the heirs by ensuring that any inquiry or fresh assessment of suitability is conducted in a transparent manner and in the presence of all concerned. Hon'ble Supreme Court of Pakistan, in a case titled "Sub. Muhammad Asghar V. Mst. Safia Begum and another" (PLD 1976 Supreme Court 435), emphasized the heirs of deceased allottee should be given preference and that only those found suitable and capable of fulfilling specialized breeding obligations are eligible for allotment. Relevant portion of the judgment is as under:-

"Even otherwise, on a true interpretation of the two memos in question, they only mean that other things being equal, on the death of a lessee with good horse/mule breeding record in those specified Districts, the tenancy should be allotted to the heirs of the deceased in preference to the outsiders. In other words, subject to suitability, the claim of an heir to the allotment must be preferred. He is to be allowed this preference in the allotment of the tenancy only in case he is found to be otherwise suitable for it.

This grant of the tenancy, as its very name implies, was made for remount breeding. Indeed, this was the sole purpose behind

the grant of the tenancy by the Government. Under its Statements of Conditions, before entering into possession of the land allotted to him, the tenant is required to produce a mare which is fit for breeding-remount for the army and which has been approved by an officer of the Government appointed for the purpose. The tenant is bound to regularly breed from the mare, horses and/or mules as the officer appointed to supervise the remount breeding operations shall, from time to time,, direct, utilizing only the services of a horse or donkey stallion selected by the said officer. He is not permitted to sell or otherwise transfer the progeny of the mare except to the Government at such price as may be determined by the officer concerned. It is his duty to maintain and manage the mare and its progeny to the satisfaction of the officer appointed to supervise remount breeding operations. This presupposes that only those who are considered suitable to discharge these obligations of the remount breeding operations are eligible for the allotment. This is a condition precedent and the choice is confined to those who are considered suitable and have thus qualified for the allotment."

14. Viewed in this context, the allegation against the petitioner, who is the son of the previous lessee, pertaining to lifting of soil from the leased land cannot, in the absence of a proper inquiry, be treated as a conclusive violation of tenancy conditions. The petitioner's stance that soil was removed only to level the land and improve irrigation after getting permission, which required factual verification at the spot, particularly when the record shows that no on-ground inquiry was ever conducted before recording findings adverse to the petitioner. The petitioner also claimed that the period of lease was extended from 01.07.2014 to 30.06.2019 as is evident from the letter No.5/202/Camp dated 22.04.2015 addressed by the District Remount Officer, Sahiwal to the District Collector.

15. It was for this precise reason that the Additional Commissioner (Revenue), while allowing the appeal on 29.10.2021, very rightly remanded the matter to the District Collector with the direction to obtain a site report from the Additional Deputy

Commissioner (Revenue), Sahiwal in the presence of the legal heirs of the deceased tenant and other relevant persons so that the issue of alleged violation could be determined on sound factual footing. The Member (Consolidation), Board of Revenue, while passing the impugned order dated 15.09.2022, failed to appreciate this legal and factual position and did not advert to the mandatory procedural requirement of conducting a proper factual inquiry before upholding resumption of the tenancy, thereby committing material illegality. In these circumstances, the order dated 29.10.2021 passed by the Additional Commissioner (Revenue) reflects the correct legal approach and ensures adherence to the policy governing Horse Breeding Tenancies as well as principles of natural justice.

16. For the foregoing reasons, this Constitutional Petition is **allowed**. Consequently, the impugned order dated 15.09.2022 passed by respondent No.1 is set aside, and the order dated 29.10.2021 of the Additional Commissioner (Revenue) is restored. However, in order to ensure a just, transparent and legally compliant determination of rights, the District Collector, Sahiwal is further directed to conduct a comprehensive and factual inquiry into (i) the alleged violation of the terms and conditions of the Horse Breeding Tenancy, including the allegation of lifting of soil from the leased land; and (ii) the question whether the tenancy stood extended beyond 30.06.2014, particularly in view of the petitioner's assertion and supporting material, including letter No.5/202/Camp dated 22.04.2015 issued by the District Remount Officer. After the death

of original lessee, the land shall stand reverted to the Government as shall be re-leased as per law. The Collector shall also evaluate the candidature of the petitioner for re-allotment of the tenancy by giving due preference to him as the son of the previous tenant, keeping in view the policy position that legal heirs are entitled to priority consideration, and further considering that the petitioner had been assisting his late father in performing the horse breeding obligations and therefore possesses relevant experience, subject to fulfillment of other conditions and suitability requirements of the scheme.

17. As regards the imposition of Tawan, the Collector shall specifically examine whether during the period of occupation the petitioner or other legal heirs continued to maintain approved brood mares and fulfilled the breeding obligations envisaged under Condition No.24 of the Statement of Conditions; and if it is established that mares were provided and breeding obligations were complied with, no Tawan shall be imposed.

(AHMAD NADEEM ARSHAD)
JUDGE.

APPROVED FOR REPORTING.

JUDGE.

*M. Arsalan**