

**Stereo.HCJDA 38.**  
**JUDGMENT SHEET.**  
**LAHORE HIGH COURT,**  
**RAWALPINDI BENCH RAWALPINDI.**  
**JUDICIAL DEPARTMENT**

**WRIT PETITION NO.3790 OF 2019**

**AZRA BIBI and another**

*versus*

**FAZAKAT HUSSAIN and others**

**JUDGMENT**

Date of hearing: **04.12.2025.**

Petitioners by: Raja Imran Aziz, Advocate.

Respondent No.1 by: Mr. Sarfraz Ahmad Qureshi, Advocate.

Respondent No.2 by: Ex-parte.

Respondents No.3 to 6 by: Ms. Rahat Farooq Raja, Assistant Advocate General, Punjab.

**Mirza Vigas Rauf, J.** This petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from order dated 27<sup>th</sup> November, 2019 passed by Member (Judicial-I), Board of Revenue, Punjab in exercise of revisional jurisdiction bestowed under the Punjab Land Revenue Act, 1967 (hereinafter referred to as “**Act, 1967**”).

2. The petition was admitted for regular hearing by way of order dated 23<sup>rd</sup> December, 2019, however, on the last date, learned counsel for the petitioners was confronted with Court’s query as to how this petition is maintainable in the light of availability of alternate remedy of review provided under Section 8 of the Punjab Board of Revenue Act, 1957 (hereinafter referred to as “**Act, 1957**”), he sought its transmission to the Board of Revenue, Punjab, Lahore with the direction to treat it as review. The request was, however, resisted by learned counsel for respondent No.1 (hereinafter referred to as “**respondent**”) and in the light thereof, case was adjourned for today, leaving the counsel to address the issue.

3. Heard. Record perused.

4. In the above backdrop, there is no need to advert to the desultory facts. There is consensus on all ends that the matter in issue arises from an application for demarcation, moved by the **respondent**, before the Assistant Commissioner, Kahuta, while invoking the provision of the **Act, 1967**. After going through various phases, ultimately it came up before the Board of Revenue, Punjab, Lahore in revisional jurisdiction wherein the impugned order was passed. Section 8 of the **Act, 1957** provides remedy of review, which reads as under: -

**8. Review of orders by the Board.**—(1) Any person considering himself aggrieved by a decree passed or order made by the Board and who, from the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made, or on account of some mistake or error apparent on the face of the record [or for any other sufficient reason] desires to obtain a review of the decree passed or order made against him, may apply to the Board for a review of judgment and the Board may, after giving notice to the parties affected thereby and after hearing them, pass such decree or order as the circumstances of the case require.

(2) Every application for a review of a decree or order under subsection (1) shall be made within ninety days from the date of that decree or order.

[(3) As far as practicable, the application for a review shall be filed before the same Member or Full Board, as the case may be, who or which has passed the order or judgment or decree sought to be reviewed.

(4) After the final disposal of the first application for review, no subsequent application for review shall be entertained.]

There is no dispute interse all in attendance that against the impugned order, remedy of review is available. The question before this Court is as to whether in the light of availability of remedy of review, this Court can remit the matter to the Board of Revenue with the direction to treat it as review in terms of Section 8 of the **Act, 1957**.

5. It is an oft-repeated principle of law that no fetters can be imposed upon the powers of the High Court or the Supreme Court to convert and treat one type of proceeding into another and to decide the same subject to jurisdiction or to remit the *lis* to the competent

authority/forum/court for decision on merits. Reliance to this effect can be placed on Mian ASGHAR ALI versus GOVERNMENT OF PUNJAB through Secretary (Colonies) BOR, Lahore and others (2017 SCMR 118).

Relevant excerpt from the same is reproduced below: -

18. Power to convert and or treat one kind of proceeding into another is derived from authority to do *ex debito justitiae*, which always existed and have always been exercised by the Court not only to advance the cause of justice but also to prevent the injustice. No fetters or bar could be placed on the High Court and or this Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it has jurisdiction over the lis that has fallen on its lap for adjudication in exercise of another jurisdiction vested in the very Court or may remit the lis to the court/forum/authority of competent jurisdiction for decision of the lis on its own merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. In the case of Jane Margrete William v. Abdul Hamid Mian (1994 SCMR 1555), C.M.A. under section 151, C.P.C. filed in the High Court, was treated as cross objection. In the case of Capital Development Authority v. Khuda Bakhsh and 5 others (1994 SCMR 771), where the High Court converted the C.M.A. filed in a disposed off Writ Petition as a separate Writ Petition and decided the same accordingly, this Court held if the High Court was satisfied that circumstances of the case justified conversion of Miscellaneous Application filed by the Respondent in a disposed off case into proceedings under Article 199 of the Constitution of Pakistan, there is no legal bar to such conversion of proceedings. Even objection as to non-issuance of notice before such conversion, was not considered fatal by this Court. Even time consumed pursuing remedy before a wrong forum or jurisdiction in appropriate cases is condoned (see Shamsul Haq and others v. Mst. Ghoti and 8 others (1991 SCMR 1135). In a case cited as Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539); eligibility for consideration of promotion; was successfully challenged in writ jurisdiction of the High Court. On appeal, this Court came to a conclusion that such question falls within the competence of Service Tribunal, therefore, writ is not maintainable. Consequently impugned judgment passed by the High Court in exercise of writ jurisdiction was set aside and in paragraph 16 of the judgment supra this Court treated the Writ Petition as Service Appeal pending before the Service Tribunal with direction to decide the same after notice to the parties concerned in accordance with law. In similar circumstances in a judgment recently reported as Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) dismissal from service order was challenged before the learned Sindh High Court through Constitution Petition. The Constitutional Petition was treated by the High Court as service appeal and sent to the Service Tribunal; which was decided by the Service Tribunal on merit and this Court declined leave in the matter. Similar course was followed by the learned Division Bench of Peshawar High Court in a case reported as Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa

through Chief Secretary and 2 others (2015 PLC (C.S.) 215). In the cases reported as The Thal Engineering Industries. Ltd. v. The Bank of Bahawalpur Ltd. and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139) and Capital Development Authority (Supra) similar course was followed.

Reference to above effect can also be made to the case of HAFSA HABIB QURESHI and others versus AMIR HAMZA and others (**PLD 2024 Supreme Court 780**), wherein the Supreme Court of Pakistan has held as under:-

9. Besides, the High Court has the power to convert and treat one type of proceeding into another type. After doing so, it can proceed to decide the matter itself, provided it has jurisdiction over the issue, or it may remit the matter to the competent authority, forum, or court for a decision on its merits. Reference in this regard may be made to the cases of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56); Sher Alam Khan v. Abdul Munim and others (PLD 2018 Supreme Court 449); and the Commissioner of Income Tax (Legal) RTO, Abbottabad v. Messrs Ed-Zublin AG Germany and another (2020 SCMR 500).

6. Law to this effect is also well settled that no party can be vexed on account of act of the Court. No individual should bear any detriment arising from the Court's error, and no act of the Court should operate to anyone's disadvantage. This doctrine embodies the wider basis essential for the fair and proper administration of justice. It is further linked to the principle that the Court is obligated to remedy any harm caused to a party by its own actions. This well-known principle is founded on maxim "*actus curiae neminem gravabit*" (an act of the court shall prejudice no man). Reference to this effect can be made to MUHAMMAD IJAZ and another versus MUHAMMAD SHAFI through L.Rs. (**2016 SCMR 834**) and General (Retd.) PERVEZ MUSHARRAF versus FEDERATION OF PAKISTAN and others (**2024 SCMR 60**).

7. In somewhat similar facts and circumstances, in the case of ABID JAN versus MINISTRY OF DEFENCE through Secretary, Islamabad and others (**2023 SCMR 1451**), Supreme Court of Pakistan ruled as under:-

6. In the case of Muhammad Akram v. DCO, Rahim Yar Khan and others (2017 SCMR 56), an identical controversy was dilated upon by this Court and it was held that no fetters or bar could be placed on the High Court and/or this Court to convert and treat one type of

proceedings into another type into another and proceed to decide the matter either itself, provided it has jurisdiction over the lis before it in exercise of another jurisdiction vested in the very Court or may remit the lis to the competent authority/forum or Court for decision on merits. It was further held that once the Writ Petition which was filed within the period of limitation as provided for the departmental appeal, was treated and remitted by the High Court as departmental appeal, that too where the limitation by then had not run out as noted above, therefore the learned Punjab Services Tribunal had fallen into error to dismiss the Appeal before it on the ground of limitation alone, without adverting to the merits of the case and as a consequence of these findings, this Court had set aside the Punjab Services Tribunal order and remanded the matter with the direction to decide the pending appeal on merits. In the next case of Abdul Qadoos v. Commandant Frontier Constabulary, KPK, Peshawar and another (2023 SCMR 334), a similar controversy was adverted to by this Court keeping in mind the doctrine of ex debito justitiae which refers to the remedies to which a person is entitled to as of right, as opposed to a remedy which is discretionary. Every Court has the power to rectify ex debito justitiae its judgment and order to prevent abuse of process and severe patent oversights and mistakes. This power is an inherent power of the Court to fix the procedural errors if arising from the Court's own omission or oversight which resulted in a violation of the principles of natural justice or due process. In this case also the High Court, in order to avoid a grave injustice and the rigors of technicalities, remitted the matter to the FST but the FST dismissed the appeal on the ground of limitation and in similar circumstances, the matter was remanded back to the Service Tribunal to decide the appeal on merits. This Court in the case of Government of the Punjab, through Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25), held that the lexicons of law provide the definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process.

7. It is the foremost duty of the Court and Tribunal to do complete justice. A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim "*actus curiae neminem gravabit*", which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court, or that an

act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. This is a *de rigueur* sense of duty in the administration of justice that the Court and Tribunal should be conscious and cognizant that nobody should become a victim of injustice as a consequence of their mistake and, in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making the necessary correction forthwith. According to the principle of restitution, if the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not happen. This expression is established on the astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake. [Ref: Homoeo Dr. Asma Noreen Syed v. Government of the Punjab through its Secretary Health, Department and others (2022 SCMR 1546 = 2022 PLC (C.S) 1390)].

Reference to the above effect can also be made to SARFRAZ SALEEM versus FEDERATION OF PAKISTAN and others (PLD 2014 Supreme Court 232).

8. After having an overview of the above referred principles, I feel no cavil to observe that this Court has ample jurisdiction to remit the matter to the Board of Revenue, Punjab to be treated as review in terms of Section 8 of the **Act, 1957** and decided as such.

9. This writ petition is thus accordingly **disposed of**.

**(MIRZA VIQAS RAUF)  
JUDGE**

Sajjad

APPROVED FOR REPORTING

JUDGE