

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

**CIVIL PETITION NO. 1857 OF 2022, C.M.A. NO. 3899 OF 2022
& C.M.A. NO. 1032 OF 2023 IN C.P. 1857 OF 2022.**

[Against judgment dated 24.03.2022 passed by the Lahore High Court,
Rawalpindi Bench, Rawalpindi in ICA No. 13 of 2021]

Rehm Dad

...Petitioner(s)

Versus

Province of Punjab through its Chief Secretary,
Lahore & others

...Respondent(s)

For the Petitioner(s) : Ch. Imran Hassan Ali, ASC

For the Govt. of Punjab : Mr. Sanaullah Zahid,
Additional Advocate General, Punjab

For Respondent No. 5 : Mr. Tariq Aziz, AOR/ASC

For Respondent No. 6 : Malik Ghulam Mustafa Kandwal, ASC

Date of Hearing : 15.02.2024

JUDGMENT

Ayesha A. Malik, J.- This Civil Petition is directed against judgment dated 24.03.2022 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi (**High Court**) whereby the Intra Court Appeal No. 13 of 2021 (**ICA**) filed by the Petitioner was dismissed.

2. Brief facts of the case are that land belonging to the predecessors of the Petitioner was acquired vide notification published in the Punjab Gazette dated 31.10.1952 for establishing Fauji Cotton Textile Mills and ancillary buildings, godowns and quarters. On 31.07.1985, Karam Dad and others filed a suit for declaration that the subject land was no longer required for the purpose for which it was acquired, hence, the same may be returned to them. The suit was dismissed by the trial court vide judgment dated 21.04.2001 whose decision was upheld by the appellate court in appeal vide judgment dated 06.05.2006 and the High Court in the civil revision vide judgment dated 13.04.2010. The judgment dated 13.04.2010 of the High Court was upheld by this Court vide Order dated 18.08.2010.

Subsequently, the Petitioner filed Writ Petitions No. 4132 of 2010 and 2936 of 2011 before the High Court. Writ Petition No. 4132 of 2010 was dismissed vide Order dated 19.10.2010 as the Petitioner chose to withdraw the said petition with the option to pursue his application moved under Rules 14 and 15 of the Punjab Land Acquisition Rules, 1983 (**1983 Rules**). Vide Order dated 20.02.2012, the Member (Colonies), Board of Revenue, Punjab (**BOR**) dismissed the application under Rules 14 and 15 of the 1983 Rules by holding that the land cannot be returned to the Petitioner. In the meantime, Writ Petition No. 2936 of 2011 was disposed of as not pressed vide Order dated 28.05.2018. Thereafter, the Petitioner filed a third Writ Petition No. 2907 of 2018, which was dismissed as being without merit vide judgment dated 21.01.2021 of the High Court. Lastly, the Petitioner filed the ICA, which was dismissed vide judgment dated 24.03.2022 (**Impugned Judgment**) for being not maintainable in the presence of *proviso* to Section 3(2) of the Law Reforms Ordinance, 1972 (**LRO**). Hence, the Petitioner has challenged the decision of the Division Bench of the High Court before this Court through the instant Petition.

3. In the Impugned Judgment, the Division Bench of the High Court dismissed the ICA on the ground that the same is not maintainable in light of the *proviso* to Section 3(2) of the LRO as Sections 18 and 54 of the Land Acquisition Act, 1894 (**LAA**) provides the right of reference and appeal respectively to the Petitioner against the Order dated 20.02.2012 of the BOR. The Impugned Judgment further finds that the Petitioner even had the right to file a review under Section 8 of the West Pakistan Board of Revenue Act, 1957 (**BOR Act**). Consequently, the Division Bench was of the view that the ICA is not maintainable as the *proviso* to Section 3(2) of the LRO precludes such right of appeal.

4. Counsel for the Petitioner challenges the Impugned Judgment by submitting that the ICA is maintainable. He submitted that there is no appeal, review or revision available against the Order dated 20.02.2012 of the BOR on the application under Rules 14 and 15 of the 1983 Rules. Hence, the *proviso* to Section 3(2) of the LRO is not attracted, and the ICA is competent. On the other hand, the counsel of the Respondents supports the decision of the Division Bench of the High Court and argues that the ICA was rightly dismissed.

5. We have heard counsels for both parties at length. The only basic question before us is whether the ICA is maintainable in the light of the *proviso* to Section 3(2) of the LRO. The relevant part of the said section is reproduced hereunder:

[3]. Appeal to High Court in certain cases.

...

(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under [clause (1) of Article [199] of the Constitution of the Islamic Republic of Pakistan] not being an order made under subparagraph (I) of paragraph (b) of that clause:

Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] **arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or one review] to any court, tribunal or authority against the original order.**

(Emphasis added)

6. Before determining the maintainability of the ICA, the fundamental question that needs to be answered is what is the *law applicable* to the instant matter? The Impugned Judgment concluded that the LAA and BOR Act both are laws applicable to this case, which provided various remedies to the Petitioner and hence, the ICA was hit by the *proviso* to Section 3(2) of the LRO. We need to examine whether this reasoning of the Division Bench of the High Court is sound within the intents and purposes of Section 3(2) of the LRO.

7. Section 3(2) of the LRO has been subject to judicial scrutiny and interpretation. The essential requirement to invoke the *proviso* to Section 3(2) of the LRO is to see whether the right of at least one appeal, revision or review is available to the original order in a proceeding where the relevant law is applicable.¹ Terms *original order*² and *proceedings*³ in the said *proviso* have been interpreted by this Court in *Karim Bibi*, which declares the significance of the original order and the law applicable to the original order as follows:

[8]. After giving our anxious consideration to the arguments urged in support of this appeal we are, however, not impressed by any of the contentions raised. The test laid down by the Legislature in the proviso is that if the law applicable to the proceedings from which the Constitutional Petition arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more Judges of the High Court. **The crucial words are the "original order".** It is clear from the wording of the proviso that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order in the

¹ International Islamic University v. Syed Naveed Altaf (2023 SCP 362).

² Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I (PLD 1985 SC 107), Muhammad Aslam Sukhera v. Collector Land Acquisition (PLD 2005 SC 45) and *Karim Bibi*.

³ Karim Bibi v. Hussain Bakhsh (PLD 1984 SC 344) (*Karim Bibi*).

Constitutional Petition, which may be the order passed by the lowest officer or authority in the hierarchy or an order passed by higher authorities in appeal, revision or review, if any, provided in the relevant statute. Therefore, the relevant order may not necessarily be the one which is under challenge but the test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective of the fact whether the remedy of appeal so provided was availed of or not. **Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced.** The word "proceedings" has been used in different enactments and has been subject to judicial interpretation in a number of cases wherein it has received either restricted or wide meaning according to the text and subject-matter of the particular statute. ... In the latter case reference was made to the definition of the term "proceedings" in the book "Words and phrases" which may usefully be reproduced as under ;

"The term 'proceedings' is a very comprehensive term, and, generally speaking, means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked. A 'proceeding' would include every step taken towards the further progress of a cause in Court or before a Tribunal, where it may be pending. It is the step towards the objective to be achieved, say for instance the judgment in a pending suit. The proceeding commences with the first step by which the machinery of the law is put into motion in order to take cognizance of the case. It is indeed a comprehensive expression and includes all possible steps in the action under the law, from its commencement to the execution of the judgment."

(Emphasis added)

8. In relation to the applicability of the law, the determining factor, as held in Karim Bibi, is the *order with which the proceedings under the relevant statute commenced*.⁴ Karim Bibi gives meaning to the phrase original order with respect to the concerned law under which the legal proceeding has been initiated or commenced. Hence, in terms of the *proviso* to Section 3(2) of the LRO and ruling in Karim Bibi, the settled principle is that the *law applicable* shall be the law by which the proceeding started or commenced, which forms the basis of the original order.

9. The above principle has been consistently followed by this Court. In Wazir Begum,⁵ one of the parties filed an application to purchase the disputed land under Section 3(1)(b) of the Evacuee Property and Displaced Persons Laws Act, 1975 (now repealed) (**Evacuee Property Law**) before the Member, BOR. The intra-court appeal filed by the petitioner in Wazir Begum was dismissed as the same was not maintainable in terms of *proviso* to Section 3(2) of the LRO. However, this Court in Wazir Begum set aside the judgment in the intra-court appeal and remanded the matter to the High Court on the ground that

⁴ Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I (PLD 1985 SC 107), Muhammad Aslam Sukhera v. Collector Land Acquisition (PLD 2005 SC 45) and Karim Bibi.

⁵ Wazir Begum v. Member, Board of Revenue (2000 SCMR 989) (**Wazir Begum**).

the order passed by the Member, BOR under Section 3(1)(b) of the aforesaid evacuee property law does not provide for an appeal, revision or review. Hence, the relevant law was Section 3(1)(b) of the Evacuee Property Law, which was the law applicable that did not provide a right of appeal, revision or review.

10. Sajjad Ahmad⁶ has identical facts to the instant matter. The appellants in that case moved an application for restoration of the unutilized area under Rule 14(2)(ii) of the 1983 Rules before the BOR. The Division Bench of the High Court in Sajjad Ahmad dismissed the intra-court appeal on the ground the said appeal is not maintainable in terms of *proviso* to Section 3(2) of the LRO as the order passed under Rule 14(2)(ii) of the 1983 Rules can be challenged under Section 54 of the LAA. However, this Court allowed the appeal in Sajjad Ahmad by setting aside the order of the High Court and declaring that the intra-court appeal was maintainable, as there is no right of appeal, revision or review to Rule 14(2)(ii) of the 1983 Rules under the LAA.

11. In the instant case, the Petitioner moved an application under Rules 14 and 15 of the 1983 Rules before the BOR, which, was dismissed vide Order dated 20.02.2012. It may be noted that the 1983 Rules were made under Section 55 of the LAA. It is established law that the rules framed under the relevant statute are an integral part of the parent act.⁷ If the very existence of rules is based on legislation, then it shall be the said statute, including its rules, which will be the law applicable to proceedings within the meaning of the *proviso* to Section 3(2) of the LRO.⁸ Hence, in the existing matter, both the LAA and 1983 Rules are laws applicable to proceedings before the BOR.

12. Now reverting to the main issue at hand, which is the question of the maintainability of the ICA. In the Impugned Judgment, the Division Bench reasoned that the proceedings were initiated in 1952 at the time of the acquisition of the Petitioner's land and it ended with the award of the Collector. Therefore, the Impugned Judgment concluded that the Petitioner has the right to challenge the award of the Collector by way of reference and then appeal under Sections 18 and 54 of the LAA respectively. So, the Division Bench was of the view that the ICA is not maintainable under the *proviso* to Section 3(2) of

⁶ Secretary to the Government of Punjab v. Sajjad Ahmad (2012 SCMR 114) (**Sajjad Ahmad**).

⁷ Mirza Muhammad Nazakat Baig v. Federation of Pakistan (2020 SCMR 631).

⁸ JS Bank Limited v. Province of Punjab (2021 SCMR 1617).

the LRO as the Petitioner had the right of appeal available under Section 54 of the LAA.

13. The above reasoning in the Impugned Judgment is flawed while applying the law. Firstly, we need to revisit the aforesaid provisions of law. Section 18 of the LAA is the reference to the court against the award of the collector. Essentially, an interested party, who has not accepted the award of the Collector, may request the matter to be referred for the determination of the Referee Court specifically in relation to objections as to the *measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested*. The scope of Section 18 of the LAA is very limited and restricted towards the subject-matter of measurement and compensation of land. It may be noted that the Petitioner has not raised any objections as stated in Section 18 of the LAA. Instead, the contention of the Petitioner has remained that the subject land has not been utilized for the purpose for which it was acquired, hence, the same may be returned to him. That is why, he filed the application under Rules 14 and 15 of the 1983 Rules. Hence, the Petitioner cannot invoke reference provisions under the LAA.

14. Moreover, the appeal under Section 54 of the LAA lies before the High Court *from the award, or from any part of the award*. Meaning thereby the appeal can only be filed before the High Court after the decision of the Referee Court.⁹ As the Petitioner has not raised objections before the Referee Court under Section 18 of the LAA so he cannot seek the remedy of appeal under Section 54 of the LAA. Therefore, no right of appeal was available to the Petitioner in terms of Section 54 of the LAA. Consequently, the *proviso* to Section 3(2) of the LRO is not attracted to the existing case as no right of appeal, revision or review is available to the application under Rules 14 and 15 of the 1983 Rules filed by the Petitioner. Therefore, the High Court has incorrectly concluded that the ICA is not maintainable.

15. The Impugned Judgment is also of the view that the Order dated 20.02.2012 passed by the BOR is the order against which the remedy of review was available to the Petitioner under Section 8 of the BOR Act; so, *proviso* to Section 3(2) of the LRO precludes the Petitioner to

⁹ Land Acquisition Collector v. Mian Khan (PLD 2007 SC 620).

file the ICA. However, this observation does not have any legal basis. Firstly, the BOR Act is not the law applicable to the Order dated 20.02.2012 passed by the BOR under the *proviso* to Section 3(2) of the LRO and *ratio decidendi* of the Karim Bibi. Secondly, the law applicable to the instant proceeding is the LAA and 1983 Rules; so the BOR Act is inapplicable within the meaning of *proviso* to Section 3(2) of the LRO.

16. There is another aspect to the matter. The Impugned Judgment has reasoned that the application under Rules 14 and 15 of the 1983 Rules filed by the Petitioner did not start any new proceedings but it is a continuation of the Order dated 31.10.1952. The Division Bench concluded that the original order was the order passed in 1952. However, we do not agree with this reasoning. Basai¹⁰ has similar facts. In Basai, one of the parties (Muhammad Siddique) was a displaced person from East Punjab and was allotted land through an order. Without challenging the original allotment order, the appellant and others in that case moved separate applications under Sections 10 and 11 of the Displaced Persons (Land Settlement) Act, 1958 (**Displaced Persons Law**) for the cancellation of allotted land obtained by Muhammad Siddique before the Chief Settlement Commissioner. The intra-court appeal filed in Basai was dismissed as not maintainable. However, this Court allowed the appeal in Basai and held as:

[9]. In the light of above, it is clear that the proceedings initiated on an application under section 10 of Displaced Persons (Land Settlement) Act 1958, would not be deemed to be in continuation of the original proceedings giving rise to the order of allotment and the order passed in the subsequent proceedings would not be challengeable by way of an appeal or revision under Displaced Persons (Land Settlement) Act, 1958 after its repeal by virtue of Evacuee Laws Repeal Act, 1975, therefore, the order passed by the notified officer in exercise of his powers as Settlement Commissioner under section 3 of the Evacuee Laws Repeal Act, 1975 in the pending proceedings would be deemed to be an original order for all intents and purposes.

(Emphasis added)

17. Hence, the allotment order was not the original order in that case but the subsequent proceeding initiated on Sections 10 and 11 of the Displaced Persons Law and the order passed thereon was considered as the original order by this Court in Basai. Likewise, the original order in the existing matter is not the Order dated 31.10.1952 but the subsequent Order dated 20.02.2012 passed by the BOR on the application under Rules 14 and 15 of the 1983 Rules. Hence, the Impugned Judgment has failed to correctly apply the law.

¹⁰ Basai v. Qaim Ali (PLD 2003 SC 325) (**Basai**).

18. To sum up, the ICA is maintainable as no right of appeal, revision or review is available on the Order dated 20.02.2012 passed by the Member, BOR on the application of Rules 14 and 15 of the 1983 Rules.

19. Consequently, this petition is converted into an appeal and the same is allowed with the following observations:

- i. The Impugned Judgment dated 24.03.2022 of the Lahore High Court in the ICA No. 13 of 2021 is set aside;
- ii. The instant matter is remanded to the Division Bench of the Lahore High Court for deciding the ICA afresh within a period of thirty (30) days from the receipt of a certified copy of this judgment; and
- iii. The aforementioned observations are only to the extent of the maintainability of the ICA and without prejudice to the rights of the parties before the Division Bench in the ICA.

20. All listed CMAs are disposed of accordingly.

JUDGE

JUDGE

JUDGE

Islamabad
15.02.2024
'APPROVED FOR REPORTING'
Kehar Khan Hyder/-