Ayesha A. Malik, J.- I have read the opinion of the majority as contained in the judgment authored by Mr. Justice Amin-ud-Din Khan with the concurrence of Mr. Justice Yahya Afridi. However, I disagree with the reasoning and conclusion given therein, hence, the instant dissent.

2. These Civil Appeals impugn the same judgment of the Lahore High Court, Lahore (**High Court**) dated 02.07.2010 (**Impugned Judgment**). The Appellants in all these appeals are *Adna Maliks* and *Ala-khud-Adna Maliks* who are seeking implementation of MLR 64[1] read with the 1960 Notification[2] with respect to proprietary rights in the Shamlat Deh.[3] The Respondents in these appeals are *Ala Maliks* and they seek the protection of their superior rights as *Ala Maliks* in the said Deh. The dispute between the parties is, therefore, with respect to the rights of *Ala Maliks* and *Adna Maliks* in the Shamlat Deh.

3. The Appellants are *Adna Maliks* who hold possession over land in the Shamlat Deh. They challenged mutation entries and orders of the revenue officers whereby the land in their possession was not recorded as under their ownership consequent to MLR 64. The case of *Adna Maliks* is based on the implementation of the High Court judgment dated 29.07.1990[4] (**1990 HC Judgment**) and the Supreme Court judgment dated 01.04.1991 (**1991 SC Judgment**) wherein they claim their rights as *Adna Maliks* having possession in the Shamlat Deh has been recognized and upheld in terms of MLR 64 and 1960 Notification. The Respondents are *Ala Maliks,* who claim a superior right in the Shamlat Deh on the basis of their proprietary rights in the village, meaning that, they claim proportionate ownership in the Shamlat Deh according to their proprietorship in the village. They rely on the *Hasab Rasad Khewat* and the *Wajib-ul-Arz* to justify their entitlement to proprietary rights in the Shamlat Deh.

4. This dispute has a longstanding history with multiple rounds of litigation all the way to this Court. In order to appreciate the dispute

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[1] The West Pakistan Land Reforms Regulation, 1959 (Martial Law Regulation No.64) (**MLR 64**).
[2] Notification No.ASP-202-60/1519-L.G. dated 03.03.1960 (**1960 Notification**).
[3] Shamlat Deh, Khata No.304 total land consisted of 1,47,000 *kanals*. 50,686 *kanals* was acquired by the Thal Development Authority. The dispute pertains to land measuring 96,314 *kanals* in Mouza Daggar Aulakh, in Tehsil Bhakkar, District Mianwali. (**Shamlat Deh**).
[4] Judgment by Mr. Munir A. Sheikh, J. in WP Nos.5168 & 5169 of 1983, 1221 of 1969 and 1226 of 1967. Haji Ladhoo v. Member (Revenue), Board of Revenue (Reported as 1991 MLD 99).

between the parties, relevant facts, by way of background, are as follows:

i. The dispute is with respect to the rights of proprietorship in the Shamlat Deh of Daggar Aulakh, District Bhakkar;

ii. The concept of *Ala Maliks*, *Ala-khud-Adna Maliks* and *Adna Maliks* was unique to three areas in the Punjab (namely Bhakkar, Muzaffargarh and Layyah). *Ala Maliks* were the original settlers and owners of the land, *Adna Maliks* were cultivators of the land who entered on the land through *Ala Maliks* and the *Ala-khud-Adna Maliks* were owners who were in cultivating possession of the land. Basically, the Shamlat Deh is the common land of the village governed by the landowners of the village;

iii. On the basis of the West Pakistan Land Reforms Regulation, MLR 64 was introduced in 1959. Part VI of MLR 64 contains the 'Abolition of Certain Interests' and its Paragraph No.22 provided that *Ala-Malkiat* and similar other interests subsisting immediately before the commencement of this Paragraph, shall on such commencement, stand abolished and no compensation shall be claimed by, or paid to persons affected by the abolition. To give effect to Paragraph No.22 of MLR 64, the 1960 Notification was issued by the West Pakistan Land Commission (**Commission**). Clause 6 thereof is relevant which provides that *Adna Maliks* will be made full proprietors of land held by them and that they are not liable to pay any compensation to the *Ala Maliks* or the Commission and further that they are no longer required to pay rent or any other dues to the *Ala Maliks*;

iv. After the promulgation of MLR 64 and issuance of the 1960 Notification, mutation No.1655 was entered in the revenue record on 13.06.1962 by the Assistant Collector-II, Bhakkar (**1962 Mutation**). A dispute started at this point because this mutation was not based on MLR 64 and the 1960 Notification rather it was

based on customary practice and the *Hasab Rasad Khewat,* which meant that it was based on the respective shares in the land holdings of the village. Consequently, the *Ala Maliks* were recorded as owners in the Shamlat Deh. Hence, the dispute between *Ala Maliks* and *Adna Maliks* being a dispute related to proprietary rights in the Shamlat Deh started;

v. *Adna Maliks* challenged the 1962 Mutation before the Collector (Consolidation), who set aside this order, cancelled the mutation, accepted the claim of *Adna Maliks* and remanded the case to the Assistant Commissioner-II, Bhakkar vide order dated 28.01.1967 to once again determine proprietary rights in the Shamlat Deh on the basis of possession;

vi. The *Ala Maliks* filed an appeal before the Additional Commissioner (Revenue) which was dismissed vide order dated 28.04.1967 and the order of the Collector (Consolidation) was maintained by upholding the rights of *Adna Maliks* such that distribution of land in the Shamlat Deh be made on the basis of possession of *Adna Maliks*, who have now become proprietors of that land;

vii. On remand, the Assistant Collector-II, Bhakkar vide order 01.06.1967 maintained his previous order whereby he did not grant *Adna Maliks* their proprietary rights on the basis of possession but rather maintained the rights of *Ala Maliks* on the basis of the *Hasab Rasad Khewat Malikan*;

viii. This order was once again challenged before the Collector, Mianwali who again accepted the appeal of *Adna Maliks* vide order dated 19.09.1970 and required distribution of the land in the Shamlat Deh on the basis of possession. The Collector in the said order directed that the rights of *Ala Maliks* should be extinguished in view of Paragraph No.22 of MLR 64 read with Paragraph No.6(a) of the 1960 Notification and the Shamlat Deh

should be shown in the *Jamabandi* in the column meant for the proprietors of land being column No.5. *Ala Maliks* again filed an appeal against this order before the Commissioner, Sargodha who vide order dated 30.03.1971 dismissed the appeal and maintained the rights of *Adna Maliks*. In the said order, the Commissioner specifically noted that MLR 64 had been implemented in all *khatas* 1 to 303, and therefore, *khata* 304 should be treated no differently. He also recognized the fact that the shamlat land of village Daggar Aulakh was occupied by *Ala Maliks* and *Adna Maliks* and *Ala Maliks* could not claim to be full owners of the Shamlat Deh because they themselves have been selling land including land in the said Shamlat to *Adna Maliks*;

ix. This order of the Commissioner was challenged before the Member (Revenue), Board of Revenue, Punjab, Lahore through a revision petition which was dismissed on 20.05.1982 maintaining the rights of *Adna Maliks*. *Ala Maliks* challenged it in a review application, which was dismissed vide order dated 18.05.1983. They then invoked the jurisdiction of the High Court by filing writ petitions which were dismissed vide 1990 HC Judgment. This judgment declared, in terms of MLR 64, that the rights of *Ala Maliks* stood abolished, hence, their names as owners in the Shamlat Deh were removed;

x. *Ala Maliks* assailed the said judgment before this Court through Civil Petition Nos.823-L and 824-L of 1990, which too were dismissed by 1991 SC Judgment, and maintained the rights of *Adna Maliks*. A review was filed against the 1991 SC Judgment, which was dismissed on 02.02.1992.[5] This closed the dispute with respect to the rights of *Adna Maliks* as they had a judgement of this Court in their favour;

[5] Review by the Supreme Court in CRP. Nos.128-L and 129-L of 1991.

xi. However, a new round of litigation commenced on account of the interpretation and implementation of the aforementioned 1990 and 1991 judgments of the High Court and this Court respectively. Mutation Nos.2064 to 2067 dated 28.02.1994 (**1994 Mutations**) became the basis of this dispute because once again these mutations were based on the *Hasab Rasad Khewat Malikan* granting *Ala Maliks'* proportionate proprietary rights in the Shamlat Deh;

xii. *Adna Maliks* again claimed implementation of MLR 64 and the 1960 Notification in the light of the judgment of this Court as it was their case that they were entitled to become proprietors of land which was in their possession. They challenged 1994 Mutations before the Assistant Commissioner/Collector, Bhakkar through an appeal which was dismissed vide order dated 07.02.2001 by upholding the said mutation such that the Shamlat Deh had been equitably distributed among all three factions i.e. *Ala Maliks*, *Adna Maliks* and *Ala-khud-Adna Maliks*; a revision against the said order was dismissed by the Executive District Officer (Revenue), Bhakkar on 26.11.2001. This order was assailed before the Member (Judicial-II), Board of Revenue, Punjab, where it was maintained vide order dated 30.03.2005 and it was held that the revenue officer was to distribute shamlat land according to the terms and conditions set forth in the various clauses of the *Wajib-ul-Arz*. *Adna Maliks* filed writ petitions before the High Court challenging these orders, however, petitions were dismissed vide the Impugned Judgment[6]; and

xiii. The Impugned Judgment holds that the proprietary body means that three types of people (*Ala Maliks*, *Ala-khud-Adna Maliks* and *Adna Maliks*) and the entire proprietary body of the village will be entitled to the disputed land.

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[6] Judgment of the High Court by Mr. Muhammad Khalid Mehmood Khan, J. in WP. No.10329 of 2005.

5. The Appellants before this Court, being *Adna Maliks*, argued that MLR 64 read with the 1960 Notification has to be implemented as the 1990 HC Judgment and 1991 SC Judgment recognize their rights on the ground that they were given proprietary rights with respect to the land in their possession in the Shamlat Deh irrespective of the fact that they had no proprietary rights in the village itself. Their case is based on the understanding that they have been granted proprietary rights on the basis of their possession in the Shamlat Deh irrespective of any customary practice or agreement as per the *Wajib-ul-Arz* or proprietary rights based on the *Hasab Rasad Khewat.* The Respondents, on the other hand, are *Ala Maliks* and they claim their rights in the Shamlat Deh on the basis of the longstanding custom and practice that *Ala Maliks* are given proprietary rights in the Shamlat Deh based on their proprietorship in the village. They do not deny the Appellants' contention that MLR 64 did away with the proprietary rights of *Ala Maliks,* or that *Adna Maliks* became full owners of the land in their possession after MLR 64. They stated that *Adna Maliks* are entitled to possession as per the *Jamabandi* of 1945-46 which is undisputed and any land, in excess of what is recorded in the said *Jamabandi*, has to be returned to *Ala Maliks*. They also rely on the *Wajib-ul-Arz* to defend their possession and claim their shares in the Shamlat Deh. Respondent No.1 (Government of Punjab) supports the argument of *Ala Maliks* and argues that *Adna Maliks* cannot be given possession of the land in their actual physical control as that land is in excess of what they are entitled to.

6. The issue between the parties is the understanding of MLR 64 and the 1960 Notification and its interpretation as given by the aforementioned 1990 and 1991 judgments of the High Court and this Court respectively. Another issue between the parties is the implementation of MLR 64 as the Respondents accept that the Appellants have a right to proprietary possession in the Shamlat Deh, however, the dispute is as to the quantum of land they can claim a right over and the formula on the basis of which this possessory right has to be recorded.

7. In order to appreciate the contentions of the parties, it is necessary to understand the concept of the shamlat and the rights associated therein. The land revenue system in Punjab is old and dates

back to the Mughal rulers who introduced the system of land administration in the sub-continent.[7] The British colonialists reformed and formalized the system by introducing legislation pertaining to the rights and responsibilities of owners of land *vis-a-vis* the state as well as their rights and duties towards tenants. A land revenue system was put into place with different officers such as the *tehsildar*, the *patwari* and the village headperson with their powers and duties and a dispute resolution system for managing disputes. In this regard, the concept of shamlat land was essentially a wasteland around the cultivated land owned by the village owners which they had the right to reclaim the land or allow others to cultivate the same. Fundamentally, it was a system of share or *hissadari* in the joint property of the village (known as the *Deh*) for those who had proprietary rights or cultivating rights in the village. By way of custom and practice, the common land of the village was considered to be the property of the village, which was to be used for common purposes for the benefit of the village. Those who owned property in the village were *hissadars* in the shamlat, being a collective right and not an individual right.[8] This is because land ownership was a symbol of strength, prestige and unity in the village as the land owner was the link between the individual villagers and the village community and was responsible for developing the land in the common use area or shamlat.[9] The land in the shamlat comprised of uncultivated land or wasteland (*banjar*) as well as vacant spaces used for extending the village boundaries. The landowners of the village had the first right to cultivate and use this land in proportion to their share of holding in the village itself. As they were the original settlers of the village, they enjoyed a higher right over and above the cultivators and possessors of land. Consequently, within the shamlat, there were certain rights classified as *superior* and *inferior* rights which governed the administration of the Shamlat Deh. The landowners were referred to as *khewat dars* due to their share in the *khewat* and collectively, the *khewat dars* were referred to as the *malkan deh* as they enjoyed a series of rights with respect to their ownership in the village; one of which was that they were entitled to a share in the shamlat as they claim ownership of all unappropriated land. These rights were mentioned in the village administration papers known as the *Wajib-ul-Arz.* Although

[7] The Muslim ruler Sultan Alauddin Khilji who ruled Indo-Pak sub-continent from 1296 to 1316.
[8] Qudrat Ali v. Government of N.W.F.P. (1993 SCMR 381).
[9] SIR W.H. RATTIGAN, CUSTOMARY LAW (Universal Law Publishing Co. Pvt. Ltd. 16) (2007).

these rights varied from village to village, *Ala Maliks* enjoyed, in general, the right to reclaim the land and cultivate it, the right to partition the land, collection of land revenue and profits from the produce of the land. Significantly, the *Wajib-ul-Arz* was based on custom or usage as agreed by the villagers, which sets out the rights, duties and management of the Shamlat Deh.

8. On the other hand, the labourers, cultivators and grazers were responsible for collecting the land revenue for the benefit of the landowners and were referred to as *mal guzars* who were entitled to use the land in the shamlat for cultivation purposes. Their possession was acknowledged and documented. On the basis of their possession, they cultivated the land on payment of certain dues to *Ala Maliks*. As a consequence of their possession, they enjoyed the right to collect firewood or graze their cattle on the land and could not be evicted but did not have any identified share in the Shamlat Deh rather enjoyed rights over the land in their possession for cultivation purposes while the *Adna Maliks* could expand the area of their ownership by reclaiming shamlat land they could not bring. The *Wajib-ul-Arz* reflected the customs and rights practiced in the village for both *Ala Maliks* and *Adna Maliks* as the same being the document depicting the manner in which the *malkan deh* and the *mal guzars* could co-exist in the village.[10] Essentially, this was all customary practice which was documented by the village in the form of an agreement reflected in the *Wajib-ul-Arz*. The *Jamabandi* (Register *Haqdaran Zamin*) provides for the details of the land and includes the name of the owner of the *khewat* as well as the cultivator (if any). The owners are reflected in the *Jamabandi* in column No.5 and the tenants in column No.6 which reflects the possessor-cum-cultivators of the land. The *Hasab Rasad Khewat* reflects the revenue being paid against the landholdings.[11]

9. The case law with respect to the rights and interests of *Ala Maliks* and *Adna Maliks* clearly shows that there was a dual form of ownership recognized in South-West Punjab where the original settlers, *Ala Maliks*, enjoyed superior rights of ownership on account of the fact that they broke the land, set up wells, cultivated the land and developed it. These *Ala Maliks* were granted land by the government at the time, and they

[10] SIR JAMES M. DOUIE, THE SETTLEMENT MANUAL WITH NOTES (Mansoor Book House 6) (1981).
[11] Circular No.78 dated 31.03.2001 (guidelines) addressed to all DCOs, ACs, *Tehsildars* etc.

gave permission to enter upon the land to *Adna Maliks* who cultivated or grazed the land. Effectively, *Ala Maliks* were superior owners and *Adna Maliks* were inferior owners based on possession and not on any proprietary interest. The general principle of this dual ownership was to protect the village boundaries from outsiders coming in.[12] In the *Ghulam Haider* case, the issue was with reference to the exclusive ownership of *Ala Maliks* in the shamlat, which the High Court clarified that the said land does not exclusively belong to *Ala Maliks*. The Court held that *Ala Maliks* enjoyed the right to cultivate wasteland and after them this right was given to *Adna Maliks*. The High Court in the *Ghulam Haider* case after reviewing old settlement reports held that it was optional for *Ala Maliks* to take *Jhuri* from *Adna Maliks*, and in case the land was partitioned, the rights of *Adna Maliks* with respect to possession would remain such that it could not be distributed. Basically, this case clarifies that *Ala Maliks* enjoyed a superior possessory right compared to *Adna Maliks* and that *Adna Maliks* possessory rights were a recognized form of ownership as far back as the settlement record goes. The *Ghulam Haider* case also relied on the *Wajib-ul-Arz* and held that the conditions in *Wajib-ul-Arz* may not be applicable in future considering changed circumstances, which may be in the form of legislative and executive action. In the *Mitha* case, which is specifically with reference to the area of Daggar Aulakh in Bhakkar, the High Court examined the history of the settlement of this village and on the basis thereof concluded that there were two kinds of ownerships existing in this village being *Ala Maliks* and *Adna Maliks* who share possession of the shamlat land.[13] In the *Muhammad Ahsan* case, MLR 64 has been relied upon with reference to the proprietary rights of *Adna Maliks* in the shamlat lands. While examining MLR 64 and the 1960 Notification, the rights of *Adna Maliks* were again recognized in the *Muhammad Ahsan* case by concluding that *Ala Malkiat* was abolished by MLR 64 and that now *Adna Maliks* are '*made full proprietors of the land held by them*' and payment of land revenue to the government was a necessary prerequisite qualification to be regarded as *Adna Maliks*.[14] Then, in the *Hussaina* case, this Court concluded that even though MLR 64 had been issued, the *Wajib-ul-Arz* did not show the abolishment of the rights of *Ala Maliks* nor did it show that *Adna Maliks* were given

[12] Ghulam Haider v. Haider (PLD 1951 Lahore 92) (**Ghulam Haider**).
[13] Mitha v. Ghulam Hussain (PLD 1949 Lahore 86) (**Mitha**).
[14] Muhammad Ahsan v. Pathana (PLD 1975 SC 369) (**Muhammad Ahsan**).

proprietary rights.[15] The *Hussaina* case also ruled since *Ala Maliks'* rights have been terminated by MLR 64, then the areas would available for partition will now be resumable by the government, with the exception that areas that are in the possession of *Adna Maliks* will not be resumed.[16] In the *Fateh Sher* case, which again was dealing with village Daggar Aulakh, this Court concluded that the revenue hierarchy throughout its decision and in terms of column No.5 of *Jamabandi* over the years recognized that the possession in the shamlat included *Adna Maliks*, and consequently, *Ala Maliks* could not claim exclusive possession of the shamlat to the exclusion of *Adna Maliks.*[17] Hence, they were not entitled to a decree for possession of the shamlat land.[18] The *Fateh Sher* case further held that *Ala Maliks* claim is based on their *Ala Malkiat* rights, which were abolished by MLR 64, and the same overrides all orders, decrees, rules or custom and usage; hence, they cannot claim exclusive possession in the shamlat of the village. In the words of *Fateh Sher's* judgment, this Court stated:

> [10]. With the coming into force of Martial Law Regulation No.64 any decree passed in favour of the appellants on the basis of their *Aala Milkiyat* cannot be executed and will be rendered absolutely ineffective. In these circumstances, no decree either for possession or ejectment of the respondents can be passed in favour of the appellants.
> (**Emphasis Added**)

This view was again reiterated in the *Tassaduq Hussain* case which again was with reference to the same village in Bhakkar.[19] This Court in the *Tassaduq Hussain* case has ruled that two essential conditions for *Adna Malkiat* are cultivating possession and payment of land revenue to the state. All of the aforementioned cases clarify that rights in the shamlat land were primarily governed by custom which translated into the *Wajib-ul-Arz*, and that there was no hard and fast rule with respect to customary practice in the shamlat as it varied from village to village. With specific reference to village Daggar Aulakh, the judgments show that the possessory rights of *Adna Maliks* are not denied and further that the claim of *Ala Maliks* of their exclusive share in the shamlat land of the village has been repeatedly denied after the issuance of MLR 64. In this regard, the case law relied by the opinion of the majority is clearly distinguishable from the facts of the instant case and does not address the issue at hand.

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[15] Hussaina v. Fazal Rahim Khan (PLD 1975 SC 574) (**Hussaina**).
[16] *Id.*
[17] Khanan v. Fateh Sher (1993 SCMR 1578) (**Fateh Sher**).
[18] *Id.*
[19] Tassaduq Hussain Shah v. Allah Ditta Shah (2023 SCMR 1635) (**Tassaduq Hussain**).

10. The legislative history with reference to the land revenue system has not evolved much over the years. The Punjab Land Revenue Act, 1887, which was the first law post-partition in relation to land revenue was adopted by Pakistan in 1957. This 1887 Act was repealed by Land Revenue Act, 1967 under which there are the Land Revenue Rules. The Punjab Land Dispositions (Saving of Shamilat) Act, 1951 was in relation to shamlat land. This law was repealed by the West Pakistan Land Dispositions (Saving of Shamilat Ordinance), 1959 (**Ordinance**) which was the Ordinance to provide for uniform interpretation with regard to the disposition of shamlat land in West Pakistan and it required that the shamlat land shall not be included in the sale of land unless specifically mentioned as the subject matter of such disposition. The objective was to avoid conveyance of shamlat land unless specifically stated in the sale deed. The term *shamlat* is defined in Section 2 of the said Ordinance as land described as shamlat in the record of rights and the land so described, shall be deemed to be shamlat, notwithstanding that the whole or a part of it is in the possession of one or more of the proprietors in the estate or of any other person. This Ordinance required that the right in the shamlat land was no longer contingent on land holding rather it could be sold, if required in the sale deed.

11. With this background, I shall examine Paragraphs No.3 and 22 of MLR 64, being relevant, which are reproduced below:

> [3]. Regulation to override other laws, etc.- The provisions of this Regulation, and any rule or order made thereunder, shall have effect notwithstanding to the contrary in any other law, or in any order or decree of Court of other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document.
>
> 22. Intermediary interests. *Ala-Malkiat* and similar other interests subsisting immediately before the commencement of this Regulation, shall on such commencement, stand abolished and no compensation shall be claimed by, or paid person affected by the abolition.

MLR 64 introduced some land reforms with reference to ownership and possession of land and placed limits on individual holdings while at the same time, certain interests attached to the land were abolished. In this context, Paragraph No.22 of MLR 64 abolished the interest of *Ala Malkiat*. Subsequently, Secretary, West Pakistan Land Commission, Lahore issued a circular to all the Deputy Land Commissioners (Deputy Commissioners, Settlement Officers, and Political Agents) in West Pakistan, except Kalat Division and Collector, Karachi, relevant portion whereof, is reproduced below:

> [I] am directed to invite your attention to the paragraph 22 of the Martial Law Regulation No.64, under which *Ala Malkiat* and similar other interests subsisting immediately before the commencement of the Regulation, shall on such commencement, stand abolished without any compensation, and to the replies received from you to letter No.551/59/1266-LR I, dated the 17th March, 1959 from the Secretary, Board of Revenue. The matter was considered by the West Pakistan Land Commission in its meeting held on the 9th June, 1959, and it was decided that:-
>
> (a) *Adna Maliks* should be made full proprietors of land held by them as such;
>
> (b) *Adna Maliks* should not pay any compensation to the *Ala Maliks* or the Commission;
>
> (c) With effect from Rabi 1959, the *Adna Maliks* should stop paying anything in cash or kind to the *Ala Maliks*;
>
> (d) Where a person is entered as *Ala Malik* and as well as *Adna Malik*, or where land is held only by an *Ala Malik* and there is no *Adna Malik* under him, the *Ala Malik* should be considered as a full proprietor and the entries in the revenue records should be corrected accordingly;
>
> (e) No *Ala Malik* will be entitled to any compensation on account of the extinguishment of his rights as laid down in Paragraph 22 of the Martial Law Regulation.
>
> 2. I am to request you that necessary action may be taken in accordance with the above decisions of the Commission.
>
> (**Emphasis Added**)

12. Consequently, the superior rights of *Ala Maliks* as owners of the land were abolished which meant the *hissadari* right in the Shamlat Deh was also terminated. The elimination of *Ala Malkiat* meant that the rights of these *malkan deh* or owners of the land, who were enjoying *hissadari* in the Shamlat Deh finished and what remains are possessory rights. So, they can claim proprietorship of the land in their physical possession but not of land claimed under the *hissadari. Adna Maliks*, on the other hand, were given proprietary rights over land in their possession by virtue of the 1960 Notification whose Clause 6(a) requires that they become full proprietors of land that they are in possession of. In the context of the dispute in hand, the *Jamabandi* for the year 1945-46 reflects the land in the possession of *Adna Maliks* in the Shamlat Deh which is not a disputed document. Similarly, *Khasra Girdawari* for the years 1958-62 shows the extent of possession in favour of *Adna Maliks* which is also not in dispute. Both documents are neither denied nor objected to by *Ala Maliks* rather have been relied upon by the Government of Punjab (Respondent No.1). So, effectively, *Adna Maliks* became equal owners such that the land under their cultivation became their ownership and land revenue for that land had to be paid to the government.

13. Notwithstanding the above, the dispute between *Ala Maliks* and *Adna Maliks* continued after MLR 64 and the 1960 Notification with *Ala Maliks* seeking their *hissadari* in the Shamlat Deh based on *Ala Malkiat* rights. The first challenge came to the 1962 Mutation because it sanctioned the entire land in favour of *Ala Maliks* as they were shown exclusive owners of the Shamlat Deh based on the customary practice of *Wajib-ul-Arz*, which is totally contrary to MLR 64 and the 1960 Notification. Paragraph No.3 of MLR 64 clearly provides that the said MLR shall have effect notwithstanding any other law, order, decree, custom or usage. Meaning thereby that MLR must prevail over all other laws and custom or usage. Therefore, the 1962 Mutation was against the requirements of MLR 64. The 1962 Mutation was set aside by the Collector Bhakkar and required that entries be made as per possession. This order was maintained through the revenue hierarchy all the way to the High Court and then this Court in the aforementioned 1990 and 1991 judgments, which repeatedly maintained the right of *Adna Maliks* with respect to their possession in the Shamlat Deh and the fact that MLR 64 had abolished *Ala Malkiat*. More importantly, the 1990 HC Judgment and the 1991 SC Judgment both concluded that the revenue authorities did not commit any illegality in removing the names of *Ala Maliks* from column No.3 of the *Jamabandi* for the year 1945-46 in which they were reflected as owners. This fact alone is enough to show that the rights of *Adna Maliks* consequent to MLR 64 and the 1960 Notification had to be recognized, in that, the revenue record had to translate the possessory rights of *Adna Maliks* into their proprietary rights. In this regard, I have examined the voluminous revenue record and note that this revenue record shows that the possession of *Adna Maliks* in the Shamlat Deh has not been challenged. Secondly, the available records do not reflect that *Ala Maliks* had, at any time, challenged MLR 64 or the 1960 Notification; to the contrary, they repeatedly sought exclusive possession in the Shamlat Deh as against *Ala-khud-Adna* and *Adna Maliks*, which were denied by this Court.[20] Furthermore, as per the revenue record and the *Jamabandi* relied upon by the Respondents, *Adna Maliks* did enjoy possession in Shamlat Deh. This possession goes back in time as per the old settlement record. Thereafter, the 1990 HC Judgment explained that *Ala Maliks* had earlier

[20] Fateh Sher, *supra* note 17 and Ghulam Haider, *supra* note 12.

in 1941 filed suits for possession of land in the Shamlat Deh against *Ala-khud-Adna Maliks* and the High Court in the *Mitha* case held that *Ala Maliks* could not claim exclusive possession of the Shamlat Deh. Hence, even at that time, their claim for exclusive possession was denied as the revenue record and the *Wajib-ul-Arz* recognized the possession of *Adna Maliks*. The 1990 HC Judgment was challenged before this Court which maintained the same vide the 1991 SC Judgment and again challenged in review, where the judgment was maintained on 02.02.1992. Hence, these judgments recognized the rights of *Adna Maliks* and clarified that even where there were no *Adna Maliks* under *Ala Maliks*, *Ala Maliks* could not claim ownership in the Shamlat Deh on account of MLR 64. Furthermore, as per the revenue record and the *Jamabandi*s relied upon, *Adna Maliks* did have possession in the Shamlat Deh; therefore, they are entitled to proprietary rights over the land in their possession consequent to MLR 64. On the question of whether *Ala Maliks* are entitled to claim full proprietorship of the Shamlat Deh after MLR 64 where there are no *Adna Maliks*, the 1960 Notification clarifies this position in its Clause 6(d). However, as per the facts and record of this case, Clause 6(d) is not relevant as the presence and possession of *Adna Maliks* is accepted factually and legally.

14. The Respondents have argued that the 1990 HC Judgment and 1991 SC Judgment do not create any special right in favour of the Appellants because these judgments recognized that the shamlat land belongs to the entire proprietary body of the village. They also argue that *Adna Maliks* are not entitled to the proprietary rights or possession beyond their entitlement which is recorded in the *Wajib-ul-Arz* and in terms of the *Hasab Rasad Khewat*. They rely on the *Hasab Rasad Khewat* and *Wajib-ul-Arz* and question the basis of *Adna Maliks* claim for proprietary rights. The 1990 HC Judgment, in relation to the rights of *Ala Maliks* and *Adna Maliks*, is of the view as under:

> [...] A bare reading of Para 22 of MLR 64 shows that all intermediary interests like Aala Milkiat and similar other interests subsisting immediately before the commencement of the said Regulation stood abolished without payment of any compensation to any person who was affected by such abolition. By operation of Para 22 the rights of the petitioners as Aala Maliks stood automatically abolished, therefore, the revenue authorities did not commit any illegality in removing the names of the petitioners from column No.3 in which they were recorded as owners in the capacity of Aala Maliks.
>
> 8. The question still remains to be decided whether under Para 6(d) of Notification dated 3.3.1960 the petitioners were entitled to claim full proprietorship of the land even after abolition of intermediary interest.

> Para 6(d) as is manifest from its reading was applicable where there was no Adna Maliks under the Aala Maliks. … Learned counsel for the petitioners when questioned as to how in view of this finding and the entry in column No.5 of shamlat deh as Adna Malik it could be maintained by the petitioners that there were no Adna Malik, learned counsel maintained that the entries in column No.5 of shamlat deh as a matter of fact relate to show description of land and they do not mean that the entire proprietary body of the village was to share the shamlat land as Adna Maliks. The argument of the learned counsel for the petitioners in my view has no substance. Column No.5 as observed by the revenue authorities is meant for Ada Maliks. The entries showing the land as shamlat deh means that the entire proprietary body of the village was treated and considered to be Adna Maliks, therefore, it could not be argued that the petitioners were full proprietor of the entire land by virtue of Para 6(a) or Notification dated 3.3.1960 on the ground that there were no Adna Maliks under them.
> …
> 9. In view of the above discussion the orders passed by the revenue authorities for removal of the names of the petitioners as Aala Maliks in view of Para.22 of MLR 64 is unexceptionable.

This Court upheld the aforementioned judgment of the High Court in 1991 SC Judgment in the following terms:

> [6]. The learned Counsel has failed to create any dent in the findings recorded by the High Court. The proprietary body in the village consists of three categories, namely, Aala Maliks, Aala Khud Adna Maliks and Adna Malik. As Shamlat belonged to the whole village and would be vesting in the entire proprietary body comprising the aforesaid three categories, we agree with the High Court that mention of "Shamlat Deh" in column No.5 of the Jamabandi is synonymous with the entire proprietary body of the village which alongwith Aala Maliks also includes Aala Khud Adna Maliks and Adna Maliks. It is thus not a case in which Aala Maliks had no Adna Maliks under them. Para 6(d) was, therefore, not attracted. The petitioners, thus, were not entitled to conferment of full proprietary rights on them.

Hence, the contention of the Respondents is incorrect. Both the High Court and this Court have upheld MLR 64 and have denied *Ala Maliks* their claim to full proprietorship.

15. Now, the question is to what extent should *Adna Maliks* be given proprietary rights because it is the claim of the Respondents that they are in possession of land to which they are not entitled to any possessory or proprietary right. I am of the view that the only basis for *Adna Maliks* proprietorship in the Shamlat Deh is the possession that they enjoyed as of 03.03.1960. This is because *Adna Maliks* entered upon the land with the permission of *Ala Maliks* and were allowed to cultivate and develop the land prior to 03.03.1960; this possession over the land is not denied; their right to use the land is also not denied; what is in issue is reliance on the customary practice that proprietorship of land in the Shamlat Deh belongs to the entire village and therefore, *Ala Maliks* have a superior right over the land in the shamlat. However, this superior right was abolished vide MLR 64. Consequently, there are no superior

rights for *Ala Maliks* and any claim on the basis of *Ala Malikat* stands terminated after MLR 64. Where a person was entered in the revenue record as *Ala Malik* as well as *Ala-khud-Adna Malik*, they could retain that land as *Adna Malik* but not as *Ala Malik*. The only time they could retain their title as *Ala Maliks* is when there is no *Adna Malik* under them, however, this is not the case in the present Appeals. Consequently, the Respondents *Ala Maliks* cannot claim title on the basis of any *hissadari* notwithstanding the *Wajib-ul-Arz* or *Hasab Rasad Khewat* because Paragraph No.3 of MLR 64 specifically states that the provisions of MLR 64, and any rule or order made thereunder, shall have effect notwithstanding anything to the contrary in any other law, or in any order or decree of Court of other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document which has been relied upon in *Fateh Sher* case.[21] Furthermore, the *Wajib-ul-Arz* and the *Hasab Rasad Khewat* did not incorporate the requirements of MLR 64 and the 1960 Notification. It continued with its customary agreement notwithstanding the law. It is also informed that the *Wajib-ul-Arz* and *Hasab Rasad Khewat* relied upon predate MLR 64, hence that too is of no consequence. Therefore, any claim of *Ala Maliks* with respect to the *hissadari* of Shamlat Deh cannot be entertained. So far as the Appellants' claim to proprietary rights on the basis of possession is concerned that is pursuant to MLR 64, 1960 Notification and judgments of this Court.

16. So, the question now boils down to what area in the possession of *Adna Maliks* is lawful possession under MLR 64. The starting point of the dispute is MLR 64 and the 1960 Notification so whatever they had in their possession as of 03.03.1960 translates into proprietary rights. This possession of *Adna Maliks* is evident from *Khasra Girdawari* for the years 1958-62 which is not disputed. Thereafter, if more land has been acquired or is in the possession of *Adna Maliks* then this is a question of fact which they have to establish before the revenue authorities, who would have to raise the issue in accordance with law by following due process. In other words, the revenue authority would have to give notice to the relevant *Adna Maliks* to show exactly what part of the land is in excess after MLR 64 and the 1960 Notification and the *Khasra Girdawari* for the years 1958-62 having no connection to the land which was in

[21] Fateh Sher, *supra* note 17.

their possession as on 03.03.1960. It is clarified that proprietary rights of *Adna Maliks* as on 03.03.1960 is based on MLR 64 and any excess land in their possession for which they claim proprietary right has to be based on some grant, lease, inheritance or lawful manner involving proper transfer of title in their favour. In the event that there is extra land with no legal backing and subject to Clause 6(d) of the 1960 Notification, an order must be passed to that effect and the land will resume in favour of the government. Reliance on the customary agreements is actually without basis as MLR 64 read with the 1960 Notification clearly sets out the legal position which was then interpreted by the 1990 HC Judgment and 1991 SC Judgment and the *Fateh Sher* case, hence, to suggest otherwise is in contravention to the law. It may be noted that the three villages at Bhakkar, Muzaffargarh and Layyah were not the only examples of this practice as many places in the Indian Punjab recognized similar rights and in-fact they promulgated the Punjab Village Common Lands (Regulation) Act, 1961 and the Punjab Abolition of *Ala Malikiyat* and *Talukdari* Rights Act, 1952 which abolished the rights of *Ala Maliks* and vested full proprietary rights in *Adna Maliks*.[22] Therefore, the Appellant's proprietorship claim on the basis of possession is backed by law and in accordance with the judgments of this Court.

17. On the basis of these facts, the exercise to determine the rights of *Adna Maliks*, on the basis of their possession, is an exercise in facts, based on the record. Despite clarity in the legal position, this dispute lingers on even today due to the reliance on the customary practices recognized in the *Wajib-ul-Arz* and the *Hasab Rasad Khewat* as neither of these documents show the abolishment of the rights of *Ala Maliks.* It is clarified that neither the *Wajib-ul-Arz* nor the *Hasab Rasad Khewat* can be relied upon. As the *Jamabandi* of 1945-46 is not disputed that becomes the start point. The entries in column No.5 thereof are accepted reflecting the possession of *Adna Maliks.* The *Khasra Girdawari* of 1958-62 is the next point of check, where the entries are

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[22] Section 3 of the Punjab Abolition of *Ala Malikiyat* and *Talukdari* Rights Act, 1952 states:

> Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, except as otherwise provided in this Act –
>
> (a) all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force), of an *ala malik* in the land held under him by an *adna malik* shall be deemed to have been extinguished as from 15th June, 1952; and full proprietary rights shall be deemed to have vested in the *adna malik* free from all encumbrances.
>
> (b) the *ala malik* shall cease to have any right to collect or receive any rent or customary dues in respect of such land; provided that the extinguishment of the right of the ala malik as aforesaid shall not affect his rights to receive compensation in accordance with this Act.

not denied. So possession up to the *Khasra Girdawari* of 1958-62 is accepted as being possession of the *Adna Maliks* who have become proprietors of the same. Beyond this *Khasra Girdawari*, that is after 1962, the Appellants are to establish their claim of being *Adna Maliks* entitled to proprietary rights over the land under their possession as *Adna Maliks* which means that they must establish their possession based on their rights as *Adna Maliks* with reference to any land allegedly held in excess to any lawful right. To ensure due process, the guidelines for the revenue officers are as follows:

- Possession as per MLR 64 and the 1960 Notification as on 03.03.1960 is not in dispute.
- Possession acquired after MLR 64 has to be explained in terms of Paragraph No.16 of the instant judgment.
- Subject to Clause 6(d) of the 1960 Notification, excess land should be resumed by the government subsequent to MLR 64.

18. In view of the aforementioned, *Adna Maliks* are entitled to proprietary rights for the land in their possession in consequence of MLR 64 and the 1960 Notification. Hence, these Appeals are allowed and the Impugned Judgment is set aside.

JUDGE

'**APPROVED FOR REPORTING**'
Azmat | Kehar Khan Hyder/-

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 Appeals No.936 to 938/2012
(Against the judgment dated 02.07.2010 passed by Lahore High Court at Lahore in W.P. Nos.10329/2005 and 8274/2005)

Muhammad Ramzan and others
(civil appeal No.936/2012)
Muhammad Ashraf and others
(civil appeal No.937/2012)
Haji Ladhoo (Late) through LRs and others
(civil appeal No.938/2012)

....Appellants

versus

Member (Judicial-II) Board of Revenue, Punjab, Lahore and others
(in all cases)

....Respondents

For the appellants:	Mr. Tariq Aziz, AOR/ASC. *(in civil appeal No.936/2012)* Syed Ali Zafar, ASC. Syeda B.H. Shah, AOR. *(in civil appeal No.937/2012)* Mr. Muhammad Akram Sheikh, Sr. ASC assisted by Syed Fazaz Raza, Advocate. Sheikh Mehmood Ahmed, AOR. *(in civil appeal No.938/2012)*
For the respondents:	Barrister Umer Aslam Khan, ASC alongwith Mr. Muhammad Ikram Ch., Sr. ASC. Malik Noor Muhammad Awan, ASC. Maulvi Anwar ul Haq, ASC. Syed Rifaqat Hussain Shah, AOR.
For respondent/Government:	Mr. Muhammad Baleegh-uz-Zaman, Addl. AG Punjab alongwith Malik Abdul Waheed, Member Consolidation. Jamshed Gulzar, Tehsildar.
Research & assistance by:	Miss Maira Hassan, Law Clerk.
Date of Hearing:	13.2.2024, 14.2.2024, 15.2.2024, 20.2.2024, 26.2.2024 and 02.05.2024

ORDER

Amin-ud-Din Khan, J. Against the dismissal of Writ Petition No. 10329 of 2005, the appellants filed two petitions i.e. CPLA.No.1661-L of 2010 as well as CPLA No. 1750 of 2010, whereas Writ Petition No. 8274 of 2005 was also dismissed through the consolidated judgment and same was challenged through CPLA No. 1718-L of 2010. After grant of leave the petitions have been converted into appeals respectively as CA No.936, 938 and 937 of 2012. Leave granting order dated 8.10.2012 is reproduced:-

> "These petition for leave to appeal have arisen out of the judgment dated 20.07.2010 of Lahore High Court, Lahore whereby a learned Judge in its chambers dismissed the petitions filed by the petitioners and maintained the order dated 30.3.2005 of Member (Judicial-II) Board of Revenue Punjab.
>
> 2. The dispute between the parties, indeed, pertains to the interpretation of the judgments rendered in the cases of **"Ladhoo Vs. B.O.R."** (1991 MLD 99), and **"Ladhoo. v. B.O.R"** in **CP. No.823 and 824-L of 1990**.
>
> 3. Learned counsel appearing on behalf of the petitioners contended that where Ala Malkiyat and similar other interest stood abolished by virtue of paragraph 22 of MLR-64, no Ala Malik could assert any right in respect of the property comprised in Shamlat Deh except to the extent it was recognized in the judgments mentioned above. The learned counsel next contended that though Wajibul Araz being one of the most fundamental documents regulating the rights of the village proprietary body could have been looked into but paragraph 3 of the Regulation tends to override it, therefore, it cannot be made a basis for distribution of the property comprised in Shamlat Deh. The impugned judgment, learned counsel added, when seen in this background, runs counter to the declared law of the land.
>
> 4. As against that learned counsel appearing on behalf of the respondents contended that neither the Regulation nor the judgments rendered in the cases of **"Ladhoo vs. B.O.R."** and **"Ladhoo v. BOR" in CP No.823 and 824-L of 1990 (supra)** tend override the recognized modes prescribed by law for distribution of Shamlat, therefore, the land comprised in Shamlat Deh shall have to be distributed not according to possession but according to the share in the village proprietary. The impugned judgment, the learned

counsel submitted, being in line with the entries made in the Wajibul Araz and dicta laid down in the cases of **"Ladhoo. Vs. B.O.R."** and **"Ladhoo. V. B.O.R" in CP No.823 and 824-L of 1990 (supra)** is not open to any interference.

5. When we asked the learned counsel for the respondent as to what decision was taken by the Member Board of Revenue which was upheld by the High Court and this Court in the judgments mentioned above and whether all these aspects of the case which are relevant for the purposes of determining entitlement of each owner have been fully considered, he could not refer to any. We also for a while paused to consider that in case Shamlat is to be distributed on the basis of possession, where would go the village proprietary and what would be the implication of paragraph 13 of the Regulation which provides for inclusion of share of each owner in Shamlat for determining the maximum limit he is entitled to retain thereunder. Whether a property which is comprised in Shamlat Deh would cease to be Shamlat simply because a part or whole of it has been rendered cultureable by one or a handful owners? All these questions and the questions raised by the learned counsel for the parties not only require a thorough examination but authoritative pronouncement. We, therefore, grant leave to appeal, inter-alia, to consider the above mentioned aspects of the case. The parties would be at liberty to submit additional documents. In the meantime, entire record of this case culminating in the judgment dated 29.07.1990 of the High Court be also requisitioned. As this matter has been lingering on ever since sixties, we would desire that it be listed within a period of two months. As far as the question of mesne profits is concerned, it would be decided at the time of final hearing of the appeal. CMA No.1493-L of 2010 in C.P. No.1718-L of 2010 also stands disposed of."

2. We have heard the lengthy arguments advanced by the learned counsel for the parties on various dates of hearing.

In Writ Petition No. 10329 following prayer was made:-

"In the circumstances, it is most respectfully prayed that the mutations No.2064, 2065, 2066 and 2067 sanctioned by the Assistant Collector-II Grade Bhakkar respondent No.4 on 27-02-1994 and 28-02-1994 and the order of the Assistant Commissioner/Collector Bhakker respondent No.3 dated 07-02-2001 and order dated 26-11-2001 of the Executive District Officer (Revenue) Bhakker respondent No.2 and the impugned order dated 30-03-2005 of the Member (Judicial-II) Board of Revenue respondent No.1 affirming the aforesaid mutation No.2064, 2065, 2066 and 2067 may kindly be set aside as illegal, corum non judice, void ab initio and without lawful authority and of no legal consequences whatsoever.

> It is further prayed that the New Jamabandies prepared on the basis of the partition of Shamlat Land in Khata No.304 amongst the right holders of Khata No.1 to 303 and consigned to the Tehsil Office may also kindly be declared to be the illegal having been prepared without lawful authority and of no legal consequences whatsoever.
>
> It is further prayed that the respondents may kindly be directed to implement the judgment of the Lahore High Court, Lahore dated 29-07-1990 and the judgment of the Supreme Court of Pakistan dated 01-04-1991 in letter as well as in spirit, on the basis of the possession/cultivation amounts the Aala Malik, Aala Khud Adna Maliks and Adna Maliks in Khewat No.304 only.
>
> Any other relief which this Honourable Court deems fit and proper may also be awarded. Cost of the petitions may also be awarded."

In Writ Petition No. 8274 of 2005 following prayer was made:-

> "WHEREFORE it is most respectfully prayed that the order dated 30.03.2005 of respondent No. 1 upholding the orders dated 07.02.2001 of Assistant Commissioner/Collector and order dated 26.11.2001 of Additional Commissioner may kindly be declared to be malafide in disregard of the judgments of Hon'ble High Court and august Supreme Court and of no legal effect and Assistant Commissioner-II, Bhakkar may kindly be ordered to cancel the impugned mutations No. 2064, 2065, 2066 and 2067 dated 27/28.02.1994 and enter and sanction mutations as ordered by the Hon'ble High Court in judgment dated 29.07.1990 allowing the petitioner to retain possession of land in their possession and cultivation as full proprietor."

3. The claim of the appellants revolves around the facts as pleaded by the appellants that previously through the judgment of the High Court of 29th July 1990 "Ladhoo vs. B.O.R" (1991 MLD 99) and "Ladhoo v. B.O.R" in CP.No.823 and 824-L of 1990 whereby the rights over the suit property of Aala Maalkan were denied and thereafter the petition filed by them before this Court was dismissed and the review petition was also dismissed, therefore, the revenue authorities were pressed to implement the said judgment which as per the appellants that their rights were established and the revenue authorities were bound to transfer the proprietary rights in their favour on the land which is in their possession, therefore, the last portion of the first prayer is also to the effect (allowing

the petitioners to retain possession of land in their possession and cultivate as full proprietors). When we go through the complete record and the judgment passed by this Court in case of "Ladhoo v. B.O.R" in CP.No.823 and 824-L of 1990 as well as High Court in case reported as 1991 MLD 99 the stance of the appellants does not seem to be correct as in the previous writ petitions i.e. W.P.Nos.5168 of 1983 and 1226 of 1967 and 1221 of 1969 which were decided through judgment dated 29th July 1990 (1991 MLD 99), Aala Maalkaan pressed the point that after the promulgation of MLR-64 which relates to the proprietorship khata only khata 303 measuring 19920 kanals whereas with regard to Shamlaat Deh their status as Aala Maalik has not been abolished and the revenue authorities were pressed through their petition that whole of the Shamlaat Deh land be transferred in favour of Aala Maalik as no Adna Maalik is recorded in Shamlaat land. Their stance and claim to that effect was rejected as it was against the settled principles of law that the Shamlaat land is to be distributed on the basis of ownership in the village proportionately. At this stage it will be appropriate that the crucial questions involved in this litigation be kept in mind, which are as follows:

i. Whether the High Court or this Court while dealing with the matter under Article 199 or 185 of the Constitution of Islamic Republic of Pakistan, 1973 respectively can create a new right in favour of anyone of the parties?

ii. Whether any right was created by the High Court through judgment reported as 1991 MLD 99 or by this Court through the judgments whereby leave was refused in CP.No.823 and 824-L of 1990 against the judgment of the High Court referred supra and Review was also dismissed?

For consideration of these points it will be further appropriate that the nature and rights attached to the suit property admittedly Shamlaat Deh

be discussed in the light of the judgments of the High Court, revenue court as well as of this Court.

"Karim Bakhsh and others versus The State and others" (PLD 1980 Rev.55). Relevant paragraph is quoted as under:-

> "It may be noticed that the rights of shamlat were created by the operation of first regular Settlement and could not be taken away subsequently except by consent of or in consequence of a decree or order binding on the parties after making entries in the record of rights in accordance with section 37 of Land Revenue Act, 1887 (section 45 of Act, 1967). Likewise the reference to mutations which had been sanctioned during the term of second regular Settlement starting from 1901-02 is not relevant."

Paragraph No. 15 from the above judgment is also relevant which is as follows:

> "As regards the entries of jamabandi for 1949-50 the same would no doubt be kept in view for the purposes of adjustment but so far as the determination of the rights of owners as to their share in the shamlat was concerned, it had to be done with reference to the entries of last "Misl Haqiyat" prepared in 1921-22 whereby shamlat was to be shared only by those owners whose wells were assessed to land revenue during the first regular Settlement of 1878-80 i.e. in accordance with "hisa hasab rasad khewat jama bandobast qanuni".

"Mst. Fattain versus Muhammad Aslam etc." (PLJ 2003 Lahore 374)

> "I have heard the learned counsel for the parties and find, that the entries of Hasb-e-Rasad Khewat and Hasb-e-Rasad Zar-e-Khewat, in fact, are interchangeable terms and do not have much significance when the entitlement of the propriety body of the village for the purposes of partition of Shamlat is under consideration. In this regard, the judgments relied by the learned counsel for the respondents, are very clear, thus, applying either of the two rules, the partition of the Shamlat is to be made on the basis of the land revenue assessed to the holding of the co-sharer of the Shamlat. The judgment of the learned Court of appeal is absolutely in line with the above principle and is based upon the proper interpretation of the entries. Moreover, in the earlier round of litigation between the Tullas and Gondals, Ganga Ram, the Collector, had also partitioned the *Shamlat* in between these two groups, on the basis of revenue assessed on the holdings. Furthermore, as has been argued by the respondents side, that *Mst.* Fattan has a very meager share in the *Shamlat* and it seems that the other legal heirs

> of Jallu, had already accepted the scale of partition, therefore, for such small share, the settled division should not be upset."

"Faqir Muhammad versus Mst. Alam Bibi and others" (PLD 1982 Rev. 10).

> "11. In the result I would allow these revision petitions, set aside the order of the Additional Commissioner (Cons.), Lahore, dated 17.3.1981 and restore, as between parties, the confirmation order of the A.C.O. dated 31.5.1963 distributing the *shamlat* land among all the right holders according to their *pro rata* shares calculated on the basis of Hasad Rasad Khewat."

"Muhammad Saleem Shah and 80 others versus Aziz ur Rehman Shah and 43 others" (PLD 2002 Supreme Court 280).

> "Even otherwise the implications of the entries of column of rent and those of column of cultivation being irreconcilable could be that none of the parties could take the possession of the disputed property by virtue of their status as co-sharers in the village Shamilat. The long-standing entries of the revenue record from 1909-1910 to 1987 would show that usufruct of this land was to be enjoyed by the Imam of the village mosque and that neither the proprietary body of the village can take possession thereof nor Imam could relinquish by any mode the possession thereof in favour of anyone else. Another implication of these entries is that the proprietary body of the village notionally remained the owner of the land and that they can jointly evolve any formula to regulate the status thereof as they wish by their own concurrence."

Any entry available in the revenue record unless it is substituted through a valid entry by the decree of any court or valid attestation of mutation of correction of any rights in the land remains in the field, simultaneously if once it is found that the entries have been unlawfully changed, it shall be deemed that the old entries would continue. "Karamat Hussain and others versus Natho Khan and others" (2007 CLC 1391).

> "I have gone through the copies of the record. Copy of Misl-e-Haqiat prepared in the year 1956-57 in both these cases in Exh.D.2 wherein Khasra No.2107 measuring 203 Kanals, 19 Marlas is recorded to be owned by Shamlat Deh and in possession of Maqbooza Malkan. Out of this land, an area of 10 Kanals was shown in possession of nathu Khan, respondent No. 1, whereas 20 Kanals in possession of Barkat Ali, respondent No. 1, in the other case. In the record prepared for the years 1966-67 and 1978-79, the

> classification remained the same. As far as Khasra No. 2313 is concerned, the same was recorded in Exh.D.2 as غیر ممکن پٹڑی and Maqbooza Malkan and 26 Kanals out of this land was recorded in possession of Barkat Ali, respondent No. 1, showing 20 Kanals غیر ممکن پٹڑی as and 6 Kanals as Maira. The entries were accordingly corrected and restored to Maqbooza Malkan. It is well-settled law that uncultivable common land has to be recorded in possession of the owners. Reference may be made to the case of Gul Khan v. Said Hassan Shah and others PLD 1968 Pesh. 148. The entries have, therefore, been lawfully corrected. According to the said judgment of the Honourable Supreme Court being relied upon by the learned counsel for the petitioners once it is found that the entries have been unlawfully changed, it shall be deemed that the old entries would continue. Learned lower Courts, on the face of the said evidence, have acted without lawful authority while passing the impugned judgments and decrees. Both the civil revisions are accordingly allowed and the impugned judgments and decrees are set aside and the suits filed by respondent No. 1 in each of these cases is dismissed but without any order as to costs."

So far as case of Haji Ladhu v. Member Board of Revenue reported as 1991 MLD 99 is concerned, at that time the basic dispute was with regard to claim of erstwhile Aala Malkan over the whole Shamlat land was that they are exclusive owners of whole of shamlat land and no one else including Adna Malkan has no right in it. Para No. 2 of the judgment starts as "*The dispute relates to land measuring 96,000 kanals comprising Khata No.304 of village Doggar Aulakh Tehsil and District Bahakkar which is admittedly Shamilat land. The petitioners Sullah etc. were Aala Malikans*", which was finally determined by the High Court through the said judgment and Writ Petitions were dismissed and even through the decision of CP.No.823 and 824-L of 1990 through judgment passed by this Court dated 1.4.1991 whereby CPs as well as review petition were dismissed.

4. The matter in issue in the instant litigation was not in issue in the said litigation and rights claimed by the present appellants neither agitated nor decided in their favour as they have claimed that the matter

was decided earlier in their favour. Even appellants are unable to state their status that what is their status except that they are in possession and cultivating the Shamlat land, that does not create any right in their favour if they are in possession of Shamlat land. It seems that appellants who were previously Aala Maalik or under the Aala Maalik, they want to grab Shamlat land on the plea that they are in possession. Without any right or valid entrance upon the Shamlat land they cannot claim any right. The rights are on the basis of ownership of the proprietorship in the village i.e. ownership khata i.e. Khata No. 303. We are further of the view that various terms of distribution of Shamlat land upon the proprietors on the basis of pro rota shares calculated on the basis of Hasab Rasad Khewat or Hissa Hasab Rasad Khewat Jama Bandobast Qanuni are interchangeable as held by the revenue hierarchy reported as PLD 1980 Revenue 55.

5. The claim of the appellants now on the basis of pick and choose some portions from the above said previous judgment referred supra of the High Court and of this Court that it has been decided previously that the appellants who are in possession of shamlat Deh land are entitled for recording of their name as owners in Shamlat Land, therefore, through this round of litigation they claim that title of the said land which is in their possession be transferred to the appellants. It is stated by the revenue officials as well as admitted by the learned counsel for the appellants that some of the appellants are even in possession of thousands of kanals of land out of the shamlaat deh land which is subject matter of this litigation. It is also not clear that if there are some appellants before this Court who were previously Aala Maalik. The previous litigation as claimed by the appellants that their rights were

declared in the shamlaat Deh land is absolutely incorrect. We agree that the learned High Court has rightly applied the formula that shamlaat Deh land is to be distributed with full proprietary body of the village in accordance with their entitlement. The fact that Aala Maalik is no more in existence after promulgation of MLR-64. The only two categories remain that Aala Khud Adna Maalik as well as Adna Maalik and distribution of Shamlat land is between the said two categories in accordance with their entitlement in the village i.e. ownership land measuring 19920 kanals in the shamlaat land which is now 96312 Kanals is subject matter of their litigation as the remaining 50688 Kanals land has been acquired by Thal Development Authority.

6. On the other hand, learned counsel for the respondents as well as learned AAG have fully supported the judgment passed by the learned High Court as well as revenue hierarchy. Even we have summoned the Member Board of Revenue to state the position. He also clearly stated that there is no other formula for distribution of shamlaat land, same is distributed in accordance with the entitlement of the proprietary body of the village in accordance with their share and has fully refuted the claim of the appellants.

7. Learned counsel for the appellants were asked many times that what created right they press for declaration in their favour through the writ petition, whether they are recorded Adna Maalik or Aala Khud Adna Maalik, the answer is in the negative. It is admitted by the learned counsel that they are not recorded Aala Khud Adna Maalik or Adna Maalik in the village proprietary land or impugned land but their reply was on the basis of previous judgment of the High Court as well as Supreme Court that their rights have been created through the said

judgment. They have a right to retain the possession and cultivate the same and proprietary rights be transferred in their favour. We are afraid that without any existing right the High Court or even this Court cannot create a right when there is no basis for claim of that right. It is also misconception of appellants that in the previous round of litigation High Court or this Court has created any right in their favour. As we have already noted that some portions of paragraphs of the previous judgment have been referred by the learned counsel for the appellants to claim the right asserted by them when the full paragraph is read it says otherwise, therefore, the claim of the appellants that their rights were established through the previous judgment of the High Court and of this Court is absolutely misconceived.

Thus we are clear in our mind that the High Court while dealing with the matter under Article 199 or this Court while dealing the matter under Article 185 of the Constitution of Islamic Republic of Pakistan, 1973 cannot create a new right in favour of any of the parties before the Court. It is a matter of policy, the Government can offer grant of proprietary rights on the basis of any policy issued under any legislation or through the legislation and it is also clear that through the decision of case titled "Ladhoo v. B.O.R" reported as 1991 MLD 99 and order of dismissal of CP.Nos. 823 and 824-L of 1990 by this Court no rights were created in favour of the present appellants.

8. To understand the controversy in issue it will be appropriate to note the relevant provision of the Regulation and the Notification. Para No.22 of West Pakistan Land Reforms Regulation, 1959 No.64 is reproduced:-

> "Intermediary interests.--- Ala-milkiat, and similar other interests subsisting immediately before the commencement

> of this Regulation, shall on such commencement, stand abolished, and no compensation shall be claimed by, or paid to, any person affected by the abolition."

Para No.6 of the Notification dated 3rd March, 1960 issued under the said Martial Law Regulation is also reproduced, (d) is the most relevant.:-

> "(a). Adna maliks shall be made full proprietors of land held by them as such.
>
> (b). Adna maliks shall not be liable to pay any compensation to the ala maliks or the Commission.
>
> (c). Adna maliks shall with effect from Rabi, 1958-59 discontinue the payment of rent or other dues in cash or kind to ala maliks.
>
> (d). Where a person is entered as ala malik, as well as adna malik or where land is **held** only by an ala malik and there is no adna malik under him the ala malik shall be considered as full proprietor and the entries in the revenue records shall be corrected accordingly. (Underline & bold is ours)
>
> (e). A person who engaged with Government to pay land revenue shall be treated as adna malik or ala-cum-adna malik and considered as full proprietor.
>
> (f). No ala malik shall be entitled to any compensation on account of the extinguishment of his rights as such."

In this Regulation, the land "**held**", means any ala maalik who was having land in his possession in malkiyat khata, meaning thereby he was cultivating the same. This term is synonymous to ala-khud-adna malik. When an ala malik was holding nothing in the ownership khata, all his rights were abolished under Para 22 of the Martial Law Regulation, therefore, it is clear that for determination of rights in the Shamlat Deh the benchmark as well as formula for grant of rights is on the basis of entitlement of a person in the malkiyat khata whatever rights he was holding on the basis of said rights he is entitled to get land in the shamlat deh. A person who is having absolutely no rights in the malkiyat khata, he cannot be granted any right in the shamlat deh khata. At this stage

we can quote paragraph No.14 of the impugned judgment of the Member Judicial-II, Board of Revenue:-

> "I have considered the arguments of all the parties. The parties do not have a major conflict about the matters settled by the Hon'ble High Court. Shamlat land was partitioned according to the provisions of "Wajib-ul-Arz". If we carefully peruse the concluding portion of order of the Hon'ble High Court at para No. 10, it becomes evident that intention was to declare entire proprietary body of the village to share the land. The District Officer (Revenue) as well as the Executive District Officer (Revenue) correctly held that selective interpretation of the orders was not justified. It would be improper to pick a word "possession" out of the order of the High Court for the purposes of implementation but the matter had to be decided in accordance with spirit and intentions of the order. The only way available to the Revenue Officer was to distribute shamlat land according to terms and conditions set forth in various clauses of "Wajib-ul-Arz" which were correctly followed in the concurrent orders of the courts below. Therefore, revision petitions are rejected."

So far as Para 3 of the Regulation is concerned, first we quote para 3:

> "Regulation to override other laws, etc.---The provisions of this Regulation, and any rule or order made thereunder, shall have effect notwithstanding anything to the contrary in any other law, or in any order or decree of Court of other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document."

The contention of the appellants with regard to Para 3 is also misconceived as firstly they have to show that any rights under the MLR in their favour are affected through any contrary rule or custom or usage or in any contract or instrument or deed or other document then Para 3 gives preference of rights created under the M.R. No right has been created in favour of the appellants by the M.R nor they could show that any right has been created in their favour. The only assertion of the appellants was that through the judgment of High Court as well as this Court dismissing CPs filed by other persons rights have been created in favour of the present appellants is absolutely not borne out from the

record and is wrong. We agree with the arguments noted in Para 4 of the leave granting order advanced by the learned counsel for the respondents.

So far as implication of Para 13 is concerned, though it was against the appellants' claim but as the MLR has been declared against the injunctions of Islam by the learned Federal Shariat Court and this Court, therefore, Para 13 has now no application, otherwise, it goes against the appellants.

9. In these circumstances, we note that at the time of grant of leave a wrong picture of the judgment passed by the High Court reported as 1991 MLD 99 was shown to this Court as well as stance of the learned counsel for the appellants that with regard to distribution of shamlat land any exception was created in the instant case is also wrong, as distribution of shamlat land upon the proprietary body of village is a rule under the Land Revenue Act, 1967 and wajib-ul-arz also supports the distribution of shamlat land in accordance with the ownership of the whole proprietary body of the village.

10. Now we clearly state that how the revenue authorities will distribute the land in question. There are only two categories in accordance with Para 6 of the notification dated 3.3.1960. In accordance with Para (a), Adna Maliks have been made full proprietors of land held by them as such and according to sub-para (d) Ala Malik who himself is in possession of land and there is no Adna Malik under him, he was declared to be full proprietor, he is termed as Ala Khud Adna Malik. These two categories are with regard to proprietory khata and admittedly the distribution of shamlat land is upon these two categories and none else will be entitled for grant of land on the basis of possession only. If

anyone is in possession on the shamlat land without having any right in the proprietorship khata, he has absolutely no right for grant of Shamlat land. The first and second category mentioned supra creates the proprietory body of the village, therefore, they are entitled for distribution of shamlat land in proportionate with their proprietorship.

11. In the above circumstances, no case for interference by this Court is made out. Resultantly, all these appeals stand dismissed.

I do not agree with the majority opinion and have appended my dissent herewith

Judge

Islamabad
2 May 2024.
(Mazhar Javed Bhatti)
APPROVED FOR REPORTING

Announced in open Court on 16-9-2024.

ORDER Of THE BENCH

By majority of two to one (Ayesha A. Malik, J. dissenting), Civil Appeal Nos. 936, 937 and 938 of 2012 are dismissed.

Judge

Judge

Judge

Announced on 16th September, 2024 at Islamabad.