

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH  
JUDICIAL DEPARTMENT

C.R No: 66-A of 2012

JUDGMENT

Date of hearing.....

Appellant(s)/Petitioner (s).....

Respondent (s).....

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**QALANDAR ALI KHAN,J:-**

This

revision petition by Khanzeb, petitioner, calls in question judgment and decree of the learned Additional District Judge-VII, Abbottabad in Appeal No.22/13 dated 20.10.2011, whereby judgment and decree of the learned trial Court/Civil Judge-XII, Abbottabad dated 25.11.2010 was upheld/maintained. The petitioner prayed for acceptance of the revision petition and setting aside the judgment and decree of both the Trial as well as appellate Courts.

2. The facts leading to the instant revision petition, briefly stated, are that the petitioner had lodged a suit for declaration and perpetual injunction thereby challenging notice dated 19.08.2000 requiring him to remove encroachment on Cantonment Board path on the ground that he had constructed his residential house on Khasra No.2146 situated in Sheikh-ul-Bandi after securing approval of construction plan from Cantonment Board and had made no encroachment upon Khasra No.2151/1, as alleged in the impugned notice. Moreover, respondents/defendants were not owners in possession of Khasra No.2151/1 which was **'Shamilat-deh'** and petitioner/plaintiff was one of the co-owners.

3. In his plaint, the petitioner/plaintiff further averred that at the behest of some interested persons, the Cantonment Board Authorities had served

him with notice for removal of encroachment on the said Khasra number, therefore, he had lodged suit in the Civil Court, but due to some formal defect the suit was withdrawn with permission to file fresh suit, hence the subsequent suit on the plea that the petitioner/plaintiff had raised construction on his own property/land after approval of the plan by the concerned authorities in the Cantonment Board and that claim of the respondents/defendants that the petitioner/plaintiff had encroached upon the path of the Cantonment Board was totally wrong and baseless as neither Khasra No.2151/1 was acquired nor any demarcation of the said khasra number had taken place so as to justify the notice for removal of alleged encroachment on the said property.

4. The suit was resisted by respondents/defendants who submitted their separate written statements, wherein

they contended that though construction plan of the petitioner/plaintiff was approved for raising construction on Khasra No.2146 but the petitioner/plaintiff had encroached upon Khasra No.2151/1, which was Cantonment path, therefore, on the complaint of local inhabitants regarding blockage of the path by the petitioner/plaintiff, which was verified through revenue officials, the petitioner/plaintiff and other persons who had encroached upon the cantonment path, according to the demarcation carried out by revenue officials, were served with notice for removal of encroachment.

5. The pleadings of the parties were reduced to as many as 9 issues, where after the parties led their respective evidence, and the learned trial Court/Civil Judge-XII, Abbottabad, eventually dismissed the suit vide judgment and decree dated 25.11.2010. Aggrieved of the order of the learned trial Court, the

petitioner preferred appeal, which, too, met the same fate, and was dismissed by the learned appellate Court/Additional District Judge-VII, Abbottabad vide the impugned judgment dated 20.10.2011; hence this revision petition, inter alia, on the grounds that the respondents were neither owners nor occupiers of the suit Khasra number, therefore, the impugned notice was baseless and issued with malafide intention at the behest of respondent No.4. The petitioner also questioned the entries in favour of respondents regarding suit khasra number in the revenue record, and stressed that the impugned judgments without spot investigation had no basis at all. The petitioner claimed that report of the Girdawar, Imdad Hussain, was overlooked, which rendered the impugned judgments void, wrong and against the principles of natural justice.

6. Arguments of learned counsel for the petitioner, standing counsel for Cantonment Board/respondents No.1 to 3 and learned counsel for private respondent No.4 heard, and record perused.

7. Admittedly, this is a suit against Cantonment Board, and Section 273 of the Cantonment Act 1924, specifically bars a suit instituted against a Cantonment Board for "any act done, or purporting to have been done, in pursuance of the Act or any Rule or bye law made there under, until the expiration of two months after notice in writing has been left at the office of the Board", stating therein "explicitly the cause of action, the nature of the relief sought" etc and further the plaint shall contain "a statement that such notice has been so delivered or left". In other words, delivery of requisite notice containing the aforementioned details is a *sine-qua-non* for institution of a suit against a Cantonment Board under the above referred section of law; and a suit for declaration even with prayer of injunction as ancillary relief, unless declaratory relief is dropped and suit is

confined to relief of injunction only, would not be maintainable in the light of judgment in the case of **Haji Abdus Sattar Kotriwalla Vs. The Cantonment Board Hyderabad and another** reported as **1988 CLC 1182 (Karachi)**.

8. The record would show that though a vague reference to the requisite notice has been made in Para No.6 of both the original and amended plaints, but, let alone proof of leaving the notice at the office of Cantonment Board, even the notice has not been placed on record/file so as to make suit against Cantonment Board maintainable under the above referred mandatory provision of law. Therefore, suit of the plaintiff was even otherwise liable to be dismissal on this score alone.

9. On merits too, the suit was not sustainable, as negative declaration was sought to the effect that the Cantonment Board had no right, whatsoever, in respect of the suit khasra number, but the record, right from the settlement in the year 1904-05, showing the suit khasra number as a path, proved otherwise, and the

petitioners/plaintiff was unable to prove to the contrary and establish on record that long standing entries in the revenue record did not reflect situation on ground, notwithstanding the fact that a suit in the year 2001 challenging therein long and consistent entries in the revenue record only after receipt of notice for removal of encroachment was even otherwise hopelessly time barred.

10. Even the report of Imdad Hussain, former Girdawar (PW.3) reinforced the fact that a path existed all along in the revenue record since 1905-1906, despite reporting that path was no more in existence on ground, which fact was taken into consideration by both the Courts below and it was held by the learned appellate Court/Additional District Judge-VII, Abbottabad, in his impugned judgment, that after the path was encroached upon and included in the house of the petitioner/plaintiff, it was but natural that the path no longer existed and that the said witness obviously, could not find a path during his visit to the spot. The close relationship of the said Imdad Hussain with petitioner/plaintiff



notwithstanding, even he could not come to the rescue of petitioner/plaintiff in view of the overwhelming revenue record, together with statements of DWs, showing existence of the path for more than a century.

11. In the circumstances, when existence of path prior to encroachment thereon by the petitioner and three other persons mentioned in the impugned notice is abundantly proved not only from the record but also through other supporting evidence, and encroachment thereon was also evident from the fact that path no longer existed after the same was encroached upon and made part of the construction raised by the petitioner and the other three persons mentioned in the impugned notice, the Cantonment Board, to which the path unquestionably belonged, was well within its right to serve the petitioner with notice for removal of encroachment in the light of demarcation of revenue staff. The suit was, as such, bereft of merit and was rightly dismissed by the trial Court and the order of dismissal maintained by the

appellate Court, which are not open to exception, being based on proper appreciation of evidence and sound reasoning. The revision petition, is, therefore, dismissed with costs.

**Announced:**  
**13.04.2015**

**J U D G E**