

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Qazi Faez Isa
Mr. Justice Maqbool Baqar

Civil Petition No. 1975/2019

*(Against the judgment dated 25.02.2019
of the Peshawar High Court, Bannu Bench
passed in CR No. 104-B/2015)*

Gul Nawaz & others

Petitioners

Versus

Rashid Ahmed & others

Respondents

For the Petitioners : Mr. Salahuddin Malik, ASC
Mr. Mehmood Ahmed Sheikh, AOR

For the Respondents : Not represented

Date of Hearing : 02.02.2021

ORDER

Qazi Faez Isa, J. A suit for specific performance was filed by the petitioners who alleged that they had entered into an agreement to sell dated 30 April 2009 with the respondents for the sale of certain lands. The petitioners were required to lead evidence in support of their claim which they failed to do despite being granted a number of opportunities; resultantly their side was closed and the learned Judge of the Trial Court dismissed their suit. The petitioners challenged the decision by filing an appeal, which was dismissed and so too the revision filed by them before the High Court. Therefore, it is against three concurrent judgments that the instant petition has been filed.

2. The learned counsel says that the petitioners were not given sufficient opportunity to lead evidence before closing their side and dismissing their suit. The learned counsel has referred to the order sheets of the Trial Court, which have been filed through CMA No. 1473/2020.

3. The Trial Court's order dated 3 October 2012 refers to an application of the petitioners whereby they sought the Court's permission to prove the '*lqrar Nama*, [agreement] *through*

secondary evidence’ because its original was stated to be with the defendants (respondents herein). We asked the learned counsel to refer to the secondary evidence sought to be produced, that is the copy of the said *Iqrar Nama*, however, the learned counsel states that the same was not an *Iqrar Nama* but a decision dated 30 April 2009.

4. The petitioners had relied on an *Iqrar Nama* (agreement) but later stated that the document was instead a *decision*. Leaving aside the question whether they could change their stance so fundamentally, we have examined the referred to document which is a ‘decision’ issued by the “*Emarat-e-Islami Taliban, Waziristan wa Afghanistan*” (**Taliban**). The Taliban had no legal authority to decide cases. The Taliban infiltrated into Pakistan and by mid-2005 had illegally occupied and assumed control over a part of the territory of the Islamic Republic of Pakistan, including parts of Waziristan. Pakistan is a sovereign country and the applicable law of Pakistan applies over every inch of its territory. Every square inch of the territory of Pakistan is precious and must be kept free and safe.

5. The physical possession of any part of the territory of Pakistan taken over by the Taliban contravened the Constitution of the Islamic Republic of Pakistan (**Constitution**) and any decision given by the Taliban would be unconstitutional, unlawful and of no legal effect. Subverting the Constitution and subjugating the people does not confer legitimacy on an aggressor nor renders an aggressor’s decisions constitutionally legitimate. The learned counsel’s attempt to alternatively categorise the purported ‘decision’ as an *agreement* is also not permissible because it undermines the sovereignty of Pakistan. The purported agreement is ‘forbidden’, ‘unlawful’ and opposed to ‘public policy’ in terms of section 23 of Contract Act, 1872, therefore, it is of no legal effect.

6. The learned Judge of the Trial Court had provided a number of opportunities to the petitioners to lead evidence but they had repeatedly failed to do so and failed to establish the subsistence of an agreement between themselves and the respondents. We have also considered the submission that if the petitioners were

permitted to produce the 'decision' / 'agreement', they would have succeeded. However, as stated above, the purported 'decision' / 'agreement', could neither be made the basis of a suit nor relied upon. Therefore, leave to appeal is declined and consequently this petition is dismissed.

Judge

Judge

Islamabad
2nd February, 2021
Rizwan

Approved for reporting