

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE/REVIEW JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

CIVIL MISCELLANEOUS APPLICATION NO.6250
OF 2018 IN CIVIL REVIEW PETITION NO.425
OF 2005 AND CIVIL REVIEW PETITION NO.425
OF 2005 IN CIVIL PETITION NO.1208-L OF
1998

(Against the order dated 06.05.1999 passed by this Court in C.P. No. 1208-L/98 etc.)

Fazeelat Agha

...Applicant(s)/Petitioner(s)
(In both cases)

VERSUS

Chief Settlement Commissioner, MBR, Punjab Lahore & others

...Respondent(s)
(In both cases)

For the applicant(s)/
petitioner(s):

Mr. Mehmood A. Sheikh, Sr. ASC

Respondent No.1:

Mr. Muhammad Amir Malik, ASC

For private respondents: Nemo

Date of hearing:

01.11.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.:- The facts giving rise to the present matter are that the review petitioner is the successor-in-interest of the heirs of Nawab Faiz Ali Khan of Karnal, East Punjab, who had a *Jagir* at Karnal and owned agricultural land to the extent of 6597 Biggas in village Malkana, Tehsil Bhawanigarh, District Sanam of Patiala State. He also owned urban immovable property in Patiala State. Nawab Faiz Ali Khan died in 1917 and according to the *Shajrah Nasab* of the family, he was survived by his four sons namely Nawabzada Mumtaz Ali Khan, Nawabzada Fayyaz Ali Khan, Nawabzada Aftab Ali Khan and Nawabzada Rajab Ali Khan. Nawabzada Rajab Ali Khan is reported to have died in

1986, issueless. The agricultural land was mortgaged against a debt of Rs.50,000/- prior to the death of Nawab Faiz Ali Khan in 1917, and was in possession of the mortgagees, when except for Nawabzada Mumtaz Ali Khan, all other sons were minors.

2. After partition, all four brothers migrated to Pakistan. Nawabzada Mumtaz Ali Khan filed Claim Form No.6107 for the property abandoned in India and similarly, the other three brothers, Nawabzada Fayyaz Ali Khan etc. filed separate Claim Form No.8258 in respect of their share in the property. The Central Record Office, Lahore, verified the entire abandoned land against Claim Form No.6107 of Nawabzada Mumtaz Ali Khan and the claim filed by the other three brothers was returned with the remarks that no land in their names was found in the Register Haqdaran. Nawabzada Fayyaz Ali Khan and his two brothers approached the Settlement and the Rehabilitation Authorities urging that the agricultural land pertaining to their share should be verified as their names duly stood entered in the Pedigree Table of their late father Nawab Faiz Ali Khan. However, their applications were dismissed summarily, firstly by the Additional Rehabilitation Commissioner on 13.10.1955 and then by the Rehabilitation Commissioner on 12.02.1959 on the ground that according to the Revenue Record received from India, Nawabzada Mumtaz Ali Khan was the sole owner of agricultural land in the Malkana Estate and the other brothers had failed to agitate for correction of entries in the said Revenue Records from the time they attained majority until partition. The Rehabilitation Commissioner failed to take into account the statement of the counsel for the claimants that he had approached the Civil Court in Pakistan for correction of entries in the Revenue Record of India, however, the Civil Court found that it could not adjudicate on entries in the Revenue Record in India. Being aggrieved by the orders of the Rehabilitation Authorities, Nawabzada Fayyaz Ali Khan etc. filed W.P.

No.193-R/1959 in the High Court but the same was dismissed on 13.07.1959 on the short ground that the father of the writ petitioners had died in 1917 and the Rehabilitation Commissioner was justified in refusing to re-open the matter.

3. Subsequently, relying on certain decisions of the Courts, Nawabzada Fayyaz Ali Khan etc. filed another W.P. No.592-R/1960 but this too was dismissed on the sole ground that the point involved was decided against the writ petitioners in the earlier writ petition. Subsequent thereto L.P.A. No.2/1961 was also dismissed. Ultimately, C.P.L.A. No.77/1962 was filed by the said three brothers in the Supreme Court of Pakistan.

4. In the meantime, the dispute in respect of abandoned urban immovable property owned by Nawab Faiz Ali Khan in India, which was pending before the Claims Organization, was decided and the entire property was distributed in equal shares in favour of all the four aforementioned brothers *vide* orders of the Deputy Claims Commissioner, Lahore, dated 18.09.1959 and 31.12.1959. In view of this, it was urged before the Supreme Court by these three brothers that the agricultural land left by Nawab Faiz Ali Khan should also be distributed in favour of all the four brothers equally. The Supreme Court *vide* judgment dated 19.07.1962, dismissed the C.P.L.A. No.77/62 with the following observations:-

"The fact that in the meantime, a finding in favour of the petitioners was given by the Deputy Claims Commissioner does not alter the situation. The grievance of the learned counsel is that no Tribunal has yet determined on the merits the question as to whether the petitioners are entitled to inherit their father's land. That may be so, but the remedy lies only with the Rehabilitation Authorities, who have clear jurisdiction in the matters."

5. The predecessors-in-interest of the petitioner could not avail the benefit of the abovementioned observations of the Supreme Court for some time because the orders dated 18.09.1959 and 31.12.1959 passed by the Deputy Claims Commissioner in respect of verification of urban property in their favour, on the basis of which they were requesting for verification of claim of agricultural land, had been challenged by the legal heirs of Nawabzada Mumtaz Ali Khan. These orders of the Deputy Claims Commissioner were set aside by the Additional Claims Commissioner *vide* his order dated 25.04.1961. A Revision Petition against the said order remained pending with the Claims Commissioner for eight years and it was only on 05.11.1969 that the Claims Commissioner restored the orders of the Deputy Claims Commissioner affirming the entitlement of all four brothers to get equal shares in the urban property of the late Nawab Faiz Ali Khan. Subsequent thereto, W.P. No.915-R/1973 was filed against the order of the Claims Commissioner which remained pending for 11 years and was ultimately dismissed for non-prosecution on 15.10.1984 by the High Court. These orders do not appear to have been challenged further by any interested party with the result that the orders of the Deputy Claims Commissioner as well as the order of the Claims Commissioner upholding the orders of the Deputy Claims Commissioner attained finality by dismissal of the said writ petition. In view of this, the predecessors-in-interest of the petitioner, after dismissal of the said writ petition, represented to the Chief Settlement Commissioner for verifying their claim for agricultural land, in the light of observations of the Supreme Court quoted above, but they failed to get any relief. The predecessors-in-interest of the petitioner then filed W.P. No.121-R/1989 in the High Court. This writ petition was disposed of by the High Court on 11.2.1990 with the observations as reproduced below:-

"After arguing the case at considerable length, learned counsel for the petitioner states that they do not press this writ petition as the petitioner shall take appropriate remedy before the relevant Authorities on the basis of the observations made in the Judgment of the Supreme Court of Pakistan dated 19.7.1962 rendered in petitioners' Civil Petition for Special Leave to Appeal No.77 of 1962. Writ Petition, accordingly, stands disposed of as not pressed."

6. Pursuant to the observations of the Supreme Court and in the light of the orders of the Lahore High Court in W.P. No.121-R/1989, the predecessors-in-interest of the petitioner approached the Member (Settlement & Rehabilitation), Board of Revenue, Punjab, with the request that their claim in respect of their shares in the abandoned land may be verified.

7. The Rehabilitation Commissioner, in his order dated 26.02.1992, found as to the maintainability of the petition, that in the past, the Rehabilitation Authorities refused to verify the claim of Nawabzada Fayyaz Ali Khan, Nawabzada Aftab Ali Khan and Nawabzada Rajab Ali Khan merely on the technical ground that in the *Jamabandi* received from India, the name of only Nawabzada Mumtaz Ali Khan, the eldest son of Nawab Faiz Ali Khan was mentioned as the sole owner. The grievance of the other three sons that they could not be deprived of inheritance from their father's land was neither attended to nor dealt with by the Rehabilitation Authorities nor were any findings, for or against them, given on the point. The remedy in this respect, as also observed by the Supreme Court in its orders dated 19.07.1962, clearly lay with the Rehabilitation Authorities. While the controversy on this point was resolved by the Authorities in the Claims Organization in so far as urban property of Nawab Faiz Ali Khan was concerned, the matter was still undetermined as to the agricultural land. Notice was taken of the fact that except for the allotment of agricultural lands to the extent of about 36,000

PIUs made against the Claim Form No.6107 in favour of Nawabzada Mumtaz Ali Khan or his heirs, the remaining Units out of the total of about 80,000 PIUs were still lying unsatisfied/pending and could be adjusted for allotment in favour of the petitioner(s) against their share of inheritance if found to be so entitled. Reliance in this respect was placed on the judgments of the Supreme Court passed in C.A. No.215/1990 and 653/1990, in which it was observed that the pending Units could be adjusted against any available land. Considering all the facts and, more particularly, in view of the observations of the Supreme Court, in its order dated 19.07.1962 in C.P.L.A. No.77/1962 and in the orders of the Lahore High Court in W.P. No.121-R/1989, dated 11.02.1990, it was found that the case of the predecessors-in-interest of the petitioner case was fully covered by Section 2(2) of the Displaced Persons Laws (Repeal) Act, 1975 as, for all practical purposes, it fell within the ambit of "pending proceedings".

8. On the merits the Rehabilitation Commissioner found that as established from the judicial orders/judgments of various Courts, Nawabzada Mumtaz Ali Khan was never put down as the owner of the landed property of village Malkana, India and other urban immoveable property of the *Jagir* in his own right. It was an admitted fact that he had derived interest in the property as eldest son of Nawab Faiz Ali Khan. Furthermore, it was accepted that Nawab Faiz Ali Khan was survived by four sons, namely, Nawabzada Mumtaz Ali Khan, Fayyaz Ali Khan, Aftab Ali Khan and Rajab Ali Khan as per the Pedigree Table received from India, the authenticity of which was not challenged by anyone. The claim of the petitioners had been resisted by Nawabzada Mumtaz Ali Khan only on the ground that the family was governed by the Rule of Primogeniture, under which Nawabzada Mumtaz Ali Khan would be treated as the sole owner to the exclusion of his three brothers. Thus, there was no dispute.

that Nawabzada Fayyaz Ali Khan, Aftab Ali Khan and Rajab Ali Khan were the legal heirs of Nawab Faiz Ali Khan, as his sons.

9. The Rehabilitation Commissioner concluded that the only question to be determined was whether the other three brothers were entitled to equally share the inheritance of Nawabzada Faiz Ali Khan as his sons or not. Mr. Abdul Rehman, Naib Tehsildar, Central Record Office, Lahore, in his statement, confirmed the Pedigree Table received from India showing the said four sons to be legal heirs of Nawab Faiz Ali Khan. He also confirmed that the entire landed property of Nawab Faiz Ali Khan in the Estate of Malkana, India, had been verified against the Claim Form No.6107 of Nawabzada Mumtaz Ali Khan, as according to the *Jamabandi* received from India, his name was entered as the sole owner of the said land. He also invited the attention of this Court to a note annexed with the *Jamabandi*, which indicated that the entire ownership had been entered in the name of Nawabzada Mumtaz Ali Khan as being the eldest son and that the other sons, Nawabzada Fayyaz Ali Khan, Aftab Ali Khan and Rajab Ali Khan had not been given any share in the ownership as per family custom prevalent in the estate. However, he admitted that this note was unsigned and un-dated and there was no documentary proof available in the Central Record office relating to the Family Custom so mentioned, although, it was for this reason that the entire land abandoned in village Malkana, India was verified against the Claim Form filed by Nawabzada Mumtaz Ali Khan.

10. It is pertinent to note that the Rehabilitation Commissioner took into account the detailed enquiry conducted by the Claims Organization regarding the question of existence or prevalence of such custom in the particular family of Mandal Afghans to which Nawab Faiz Ali Khan belonged. He recounted that evidence was recorded of Rukn-ud-Daula Shamsheer Jang Nawab Muhammad Sajjad Ali Khan, the elder

brother of the first Prime Minister of Pakistan, Nawabzada Liaquat Ali Khan. Nawab Sajjad Ali Khan was also the head of a Mandal family from Karnal and testified that the Rule of Primogeniture did not apply to Mandal Afghans, rather, they were governed by Shariah law as far as the distribution of property amongst the sons was concerned. It was finally held by the Deputy Claims Commissioner and the Claims Commissioner that no such custom was conclusively proved and rather it was established that excepting the exclusion of females from inheritance, the family was governed in all matters by Mohammadan Law and, therefore, it was ordered that the urban immovable property of Nawab Faiz Ali Khan should be equally distributed among the four sons of Nawab Faiz Ali Khan. The case of **Mst. Lali Begum Vs. Nawab Muhammad Azmat Ali Khan** (Punjab Record 1875, Vol. 10, page 21) was relied on.

11. Thus, the judicial orders of the Claims Organization, which had attained finality, were considered to be a very important and strong piece of evidence by the Rehabilitation Commissioner, Punjab.

12. It was clearly held by the said authorities that the Rule of Primogeniture in matter of succession other than *Jagir* property was not followed in this particular family and, therefore, the immovable property vested in all the four brothers in equal shares. This view was further fortified in the judgment in **13 Punjab Records, 1875**, wherein it was held that male members of the Mandal Afghan family to which the parties belonged were governed by Mohammadan Law.

13. In light of the findings of the Claims Organization and relying on the statement of the Naib Tehsildar, Central Record Office, the Rehabilitation Commissioner held that no substantial evidence existed to show that the succession of Nawab Faiz Ali Khan was to be governed by the Rule of Primogeniture. Furthermore, following the principle laid down in **13 Punjab Records, 1875**, as reaffirmed by the Judicial

pronouncements of the Authorities in the Claims Organization which had since attained finality, it was found that Nawabzada Fayyaz Ali Khan, Aftab Ali Khan and Rajab Ali Khan being, admittedly, the sons of Nawab Faiz Ali Khan were to be treated at par with their eldest brother Nawabzada Mumtaz Ali Khan. Accordingly, they were declared to be entitled to the inheritance in the agricultural land of Malkana Estate in equal shares and consequently, had the right to get allotment of agricultural land to the extent of their respective shares.

14. Hence the Rehabilitation Commissioner concluded that the entire area of 6597 Biggas abandoned in Village Malkana, India, was verified against Claim Form No.6107 filed by Nawabzada Mumtaz Ali Khan. The total Units of this claim came to about 80,000 out of which the claim to the extent of 36,000 PIUs was already allotted to Nawabzada Mumtaz Ali Khan in Village Sanatpura, Akbar Ghenoky and Kingrianwali, Tehsil and District Gujranwala. The Rehabilitation Commissioner ordered that all the four brothers should be formally treated as heirs of Nawab Faiz Ali Khan and should be given equal shares in the Claim Form No.6107 to the extent of 20,000 Units each. In that way, the entitlement of Nawabzada Mumtaz Ali Khan, Nawabzada Fayyaz Ali Khan and Nawabzada Aftab Ali Khan or their heirs, in view of Nawabzada Rajab Ali Khan having died issueless would be enhanced from 20,000 Units to approximately 26,666 Units each. Nawabzada Mumtaz Ali Khan had already got allotment to the extent of 36,000 Units, which was in excess of his actual entitlement to the extent of 9,334 Units. The allotments were very old and most of the allotted area had been sold to different vendees and had since changed hands. The predecessors-in-interest of the petitioner, who were the heirs of Nawabzada Fayyaz Ali Khan and Aftab Ali Khan, voluntarily surrendered their claim to the excess allotment obtained by Nawabzada Mumtaz Ali Khan and expressed their willingness to accept

proportionate reduction in their own entitlement. Accordingly, it was decided that all the allotments of agricultural land obtained by Nawabzada Mumtaz Ali Khan, who had paid the mortgagee who had also migrated to Pakistan and redeemed the mortgage, or his heirs against Claim Form No.6107 were not to be disturbed and would remain intact. The net result would be that the entitlement of Nawabzada Fayyaz Ali Khan and Nawabzada Aftab Ali Khan would be reduced from 26,666 Units to approximately 22,000 Units each and their legal heirs, the predecessors-in-interest of the petitioner, would be entitled to get allotment to the said extent, i.e. up to 22,000 units in each case.

15. In line with his findings, the Rehabilitation Commissioner ordered that the concerned Authorities of District Gujranwala, where Claim Form No.6107 was pending would proceed further in accordance with paragraph No.67 of the Rehabilitation Settlement Scheme to settle the claim of the predecessors-in-interest of the petitioner by sanctioning the necessary mutations of inheritance and issuance of certificates of units in their favour according to the shares as determined *vide* his order dated 26.02.1992. The predecessors-in-interest of the petitioners would be entitled to get allotment of evacuee agricultural lands available anywhere in the Province, against these Entitlement Certificates which could be transferred to any other place as per their choice, if so desired.

16. The order of the Rehabilitation Commissioner dated 26.02.1992 was impugned before the Lahore High Court in W.Ps. No.183-R/1992, 10-R/1993 and 62-R/1993. The Lahore High Court, on 18.04.1993, dismissed *in limine*, W.P. No.183-R/1992 filed by Mst. Qamar Sultana, daughter of Faiz Ali, with the direction to the heirs of Mumtaz Ali Khan to settle the matter with Mst. Qamar Sultana within two months failing which she would be at liberty to file a fresh writ petition. In respect of W.P. No.10-R/1993 filed by the legal heirs of Fayyaz Ali Khan and Aftab

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Ali Khan, their counsel conceded that they were willing to surrender a portion of their shares for amicable settlement of the matter. Such proposal was accepted by the counsel for Mst. Qamar Sultana and the parties were given a period of two months to settle the matter. W.P. No.62-R/1993 was filed by Mst. Qamar Sultana seeking a share of the land left by her father, Nawab Faiz Ali Khan. While disposing of the said writ petitions, the High Court took the view that Mst. Qamar Sultana had no *locus standi* to challenge the impugned order dated 26.02.1992, that the Settlement Commissioner rightly held the brothers of Mumtaz Ali Khan to be entitled to their respective shares and that the writ petitioners had failed to make out the case to interfere with the order dated 26.02.1992 on merits or otherwise. The order dated 26.02.1992 was directed to be implemented subject to compromise with Mst. Qamar Sultana. The three writ petitions were disposed of in the said terms. It is pertinent to note here that the Chief Settlement Commissioner was impleaded as a party in W.P. No.183-R/1992. He appeared and was represented by counsel during the proceedings.

17. The respondents filed C.P.L.A. No.1153-L/1993 against the judgment in W.Ps. No.183-R/1992, 62-R/1993 and 10-R/1993. The Chief Settlement Commissioner was again impleaded as a party in the said C.P.L.A. The august Supreme Court found that the learned Single Judge in chambers proceeded on sound and equitable principles. Since the urban property left by Nawab Faiz Ali Khan was distributed amongst all his four sons, there was no reason why the rural agricultural property should be given in its entirety to the eldest son of Nawab Faiz Ali Khan. It was also held that there was force in the contention that Mumtaz Ali Khan was not an aggrieved party after passing of the impugned judgment since excess area previously allotted to him had not been cancelled. The C.P.L.A. No.1153-L/1993 was dismissed on the said grounds on

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29.01.1995. Thus, the order of the Rehabilitation Commissioner dated 26.02.1992, which had merged in the judgment of the High Court in W.P. No.183-R/1992, was upheld by the Supreme Court.

18. C.R.P. No.41-L/1995 was filed against the judgment of the Supreme Court whereby C.P.L.A. No.1153-L/1993 was dismissed. The Supreme Court *vide* its order dated 26.04.1995 dismissed the said review.

19. Subsequent thereto, the predecessors-in-interest of the petitioner filed W.P. No.17-R/1998 in the Lahore High Court for implementation of the judgment of the Supreme Court dated 29.01.1995, whereby the order of the Rehabilitation Commissioner dated 26.02.1992 had been upheld by the Supreme Court. The High Court disposed of the petition *vide* order dated 22.01.1998, directing that the Supreme Court judgment be implemented. The Secretary Revenue/Settlement Commissioner Lands (Urban)/Notified Officer, Board of Revenue, Punjab and the Assistant Commissioner, Lahore Cantt., were impleaded as respondents in the said petition.

20. Meanwhile, Chief Settlement Commissioner, after six years of the order of the Rehabilitation Commissioner and despite having been a party before the High Court as well as the Supreme Court whereby the said order dated 26.02.1992 was upheld, filed W.P. No.91-R/1998 before the Lahore High Court, in order to challenge the order of the Supreme Court, in total and complete violation of the principles of *res judicata* and Article 189 of the Constitution of the Islamic Republic of Pakistan (*Constitution*). A second writ petition (*W.P. No.66-R/1998*) was filed by one Muhammad Sharif who claimed to be an occupant of land bearing *Khasra* No.3196, 3498, 3511 and 3513 measuring 20 *kanals* situated in village Mall District Lahore. According to him, he was in possession of the land for 20 years in lieu of his unsatisfied pending units. It was contended by him that the said land had been wrongly allotted in the names of the heirs

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of the three sons of Nawab Faiz Ali Khan and that it should be sold to him after its cancellation from their names. The third writ petition (W.P. No.77-R/1998) was filed by Nawabzada Ayyaz Ali Khan etc. assailing the order dated 12.02.1998 passed by the Chief Minister, Punjab, on the summary submitted by the Chief Settlement Commissioner to him, whereunder the Chief Settlement Commissioner was directed to proceed in accordance with law and undo the fraudulent allotments so as "to ensure safeguard of public interest".

21. The consideration of the learned High Court was invited during the hearing of W.P. No.91-R/1998 by Ch. Khurshid Ahmed, the counsel for the predecessor-in-interest of the petitioner, that since the order of S. A. Manan J. in the three writ petitions was assailed further before Supreme Court of Pakistan (C.P.L.A. No.1153-L/1993) and leave was not granted therefore, the order dated 29.01.1995 had attained finality and was binding on the parties. The learned Judge-in-Chambers found that this contention was devoid of force. He based his finding on an erroneous interpretation of the law, holding that the Supreme Court, in **Fazal Muhammad Chaudhry Vs. Ch. Khadim Hussain and 3 others (1997 SCMR 1368 at 1370)** had laid down the law to the effect that if there is a conflict between two decisions of the Supreme Court then the decision of the Larger Bench would prevail. The learned Judge failed to take into consideration that this dictum applied to the *ratio decidendi* of judgments being relied on as precedents in a case, and it could not operate to overrule an earlier judgment of the Supreme Court in the same case *inter se* the parties. The principles of *res judicata* and the effect of Article 189 *supra* were wholly ignored in reaching this conclusion and a matter finally decided by the Supreme Court was re-opened by the High Court.

22. In the same vein, the Judge-in-Chambers concluded that the order dated 29.01.1995 in C.P.L.A. No.1153-L/1993 was passed by two

learned Judges of the Supreme Court whereas the decision rendered in **Syed Saifullah Vs. Board of Revenue, Balochistan through its Member (RJT) and 4 others (1991 SCMR 1255)** and **Syed Ali Ibne Muhammad and others Vs. Province of Punjab, Settlement and Rehabilitation Wing through Member Board of Revenue (1988 SCMR 1789)** was by three and six learned Judges respectively, of the Supreme Court. Thus, he was not bound to accept the Supreme Court judgment whereby the order dated 26.02.1992 had been upheld and he was entitled to ignore and undo the judgment of the Supreme Court which had finally concluded the matter *inter se* the parties.

23. Based on an erroneous and flawed interpretation of law, W.P. No.91-R/1998 titled "*Chief Settlement Commissioner Vs. Mian Ihsan ul Haq and others*" was accepted on 06.07.1998 and the impugned order dated 26.02.1992 was declared to be without lawful authority. It was held that all the consequential allotments made on the basis thereof would be treated as nullity and the necessary corrections would be made in the relevant records. It was ordered that a copy of the judgment would be circulated to all the Notified Officers in Punjab with a direction to proceed in accordance with law, check the relevant record and cancel any other allotment, if detected, in the names of the contesting respondents No.2 to 23. W.P. No.77-R/1998 was also dismissed on 06.07.1998, on the basis of the finding in W.P. No.91-R/1998. W.P. No.66-R/1998 was also dismissed on the said date, finding that the claimant had no legal right to claim the land in question.

24. The predecessors-in-interest of the petitioner filed C.P.L.As. No.1208-L/1998 etc. before the Supreme Court seeking leave to challenge the order of the learned High Court dated 06.07.1998' in W.Ps. No.91-R/1998, 66-R/1998 and 77-R/1998. The C.P.L.As. were dismissed by the Supreme Court *vide* judgment dated 23.04.1999 on the grounds that the

order of the Notified Officer dated 26.02.1992 inherently suffered from a lack of jurisdiction and was passed without lawful authority and was a nullity in the eyes of law hence it could not be restored by invoking the constitutional jurisdiction for discretionary relief provided under Article 185(2) of the Constitution. However, the Court did not deal with the question whether a Single Judge in the Lahore High Court could undo the judgment of the Supreme Court rendered on 29.01.1995 whereby the order dated 26.02.1992 of the Rehabilitation and Claims Commissioner had been upheld.

25. On 28.03.2005, the instant C.R.P. No.Nil/2005 in C.P. No.1208-L/1998, was filed by the petitioner, who is a widow and a *bona fide* purchaser for value of lands allotted/to be allotted against 33,000 PIUs plus 540 *kanal* 1 *marla* in Mauza Chak Aasu Beshmolla Saraich through Muhammad Akram son of Muhkam Din, Special Attorney of Naeem Zafar and Ahmad Fayyaz, Naeem Zafar himself being the General Power of Attorney of Ghazanfar Ali Khan, Nasim Aftab, Zafar Ali Khan, Shaukat Sultana, Abida Sultana, Mustafa Mukhtar through Abida Sultana, while Ahmad Fayyaz was the General Power of Attorney of Sharafat Sultana through Agreement dated 02.06.1996, out of 44,000 PIUs which had been given to the heirs of Nawab Faiz Ali Khan. Out of the 33,000 Units the petitioner purchased 22,000 Units from Ahmad Fayyaz son of Nawabzada Fayyaz Ali Khan who was holding a General Power of Attorney from his father and aunt Sharafat Sultana through Agreement dated 12.10.1994 and 11,000 Units from Mr. Irshad Butt son of Muhammad Ali Butt who was a General Power of Attorney of Zafar Ali Khan, Ghazanfar Ali Khan, Nasim Aftab, Shaukat Sultana, Abida Sultana, Mustafa Mukhtar through his mother Abida Sultana, through Agreement to Sell dated 18.09.1993.

The detail of the lands against the 33,000 PIUs purchased by the petitioner, Mrs. Fazeelat Agha, through these agreements to sell, from the heirs of Nawabzada Fayyaz Ali Khan and Nawab Aftab Ali Khan are:-

SR.#	MOUZA	AREA SIZE
1	DHALLO KULLA – TEHSIL CANTT. – DISTRICT LAHORE	402-K, 13-M
2	CHAK ASSU – TEHSIL CANTT – DISTRICT LAHORE	790-K
3	KAHNA NAU + KAHNA KUNA – TEHSIL CANTT. – DISTRICT LAHORE	182-K
4	ATTO ASIL – TEHSIL CANTT. – DISTRICT LAHORE	108-K, 11-M
5	MAL – TEHSIL CITY – DISTRICT LAHORE	26-K
6	NEHLA – TEHSIL CITY – DISTRICT LAHORE	57-K, 04-M
7	JHULKE TEHSIL CANTT. DISTRICT LAHORE	51-K, 9-M
8	PANDUKE TEHSIL CANTT. DISTRICT LAHORE	107-K, 3-M
9	SHAHZADA TEHSIL CANTT. DISTRICT LAHORE	130-K, 15-M
10	DHING – TEHSIL CHUNNIAN – DISTRICT KASUR	195-K, 17-M
11	CHARKAE – TEHSIL CHUNNIAN – DISTRICT KASUR	373-K, 09-M
12	PULLARIAN – TEHSIL CHUNNIAN – DISTRICT KASUR	192-K, 17-M
13	NIRMALKAE – TEHSIL CHUNNIAN – DISTRICT KASUR	85-K, 09-M
14	LOLLAY RAJPUTAN – TEHSIL CHUNNIAN – DISTRICT KASUR	32-K, 0-M
15	SATTUKI – TEHSIL CHUNNIAN – DISTRICT KASUR	171-K, 6-M
16	RAJA JUNG – TEHSIL AND DISTRICT KASUR	314-K, 3-M
17	HURDOSARI – TEHSIL AND DISTRICT KASUR	73-K
18	MUSTAFABAD ANDROON – TEHSIL AND DISTRICT KASUR	123-K, 1-M
19	MUSTAFABAD BEROON – TEHSIL AND DISTRICT KASUR	151-K, 0-M
20	RAKH TARA GARH – GUJAR KHAN DISTRICT RAWALPINDI	360-K, 11-M
21	HARNAL – GUJAR KHAN DISTRICT RAWALPINDI	400-K
22	BAJNAL – GUJRA KHAN DISTRICT RAWALPINDI	200-K
23	TEHSIL – KALAR SAIDAN DISTRICT RAWALPINDI	790-K, 18-M
24	MAUZA BHIKHI – TEHSIL AND DISTRICT SHEIKHUPURA	386-K, 14-M
25	KHARIANWALA – TEHSIL AND DISTRICT SHEIKHUPURA	81-K, 10-M
26	MAUZA CHORA SAGAR TEHSIL NANKANA SAHIB DISTRICT SHEIKHUPURA	245-K, 19-M
27	MAUZA MANRAJPURA TEHSIL AND DISTRICT BAHAWALNAGAR	1341-K, 7-M
28	MAUZA LUTAFABAD – TEHSIL AND DISTRICT MULTAN	136-K, 16-M
29	MAUZA JHUK RANJHA TEHSIL TAUNSA SHARIF DISTRICT D. G. KHAN	251-K, 1-M
30	MAUZA KOT MAHUIE TEHSIL TAUNSA SHARIF DISTRICT D. G. KHAN	103-K, 13-M
31	MAUZA JHOK YARN TEHSIL TAUNSA SHARIF DISTRICT D. G. KHAN	178-K, 19-M
32	MAUZA MASU TEHSIL TAUNSA SHARIF DISTRICT D. G. KHAN	50-K, 19-M
33	MAUZA KOT QAISERANI TEHSIL TAUNSA SHARIF DISTRICT D. G. KHAN	828-K, 13-M

26. The learned counsel for the petitioner submitted that the learned Judge-in-Chambers had no jurisdiction to entertain W.P. No.91-R/1998 and the order dated 06.07.1998 was a nullity being *coram non judice*. Furthermore, once a matter is decided by the Supreme Court, no jurisdiction vests in any forum, including any High Court in the country, to undo that judgment. The impugned order, passed in W.P. No.91-R/1998, effectively meant that the learned Single Bench of the High Court sat in appeal over the judgment of the Supreme Court. The learned counsel relied on the judgment reported as **Abdul Majid and another Vs. Qazi Abbas Hussain Shah (1995 SCMR 429)** (paragraph No.6 at page 433), which is being reproduced here for ease of reference:-

"A new trend is noticed that after the conclusion of proceedings in this court, aggrieved party either directly or through someone else starts fresh round of litigation on the same subject matter with the intention of defeating the final adjudication by this court which is disapproved and is to be discouraged with maximum emphasis. It is held by this court that resort to civil litigation on questions already concluded in the previous round of litigation giving rise to fresh frivolous and vexatious litigation is not to be permitted to go unnoticed. Reference can be made to the case of Muhammad Shafi and another -v- Attaullah and others (1984 SCMR 1124)."

27. The learned counsel for the petitioner further submitted that the judgment rendered in W.P. No.91-R/1998 was in complete and utter violation of Article 189 of the Constitution and the principles of *res judicata* espoused in Section 11 of the Code of Civil Procedure, 1908 (CPC) which provides that:-

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and

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substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

In support of his submissions regarding the principles of *res judicata*, the learned counsel for the petitioner relied upon the following authorities, the relevant paragraphs wherefrom are reproduced for ease of reference:-

- i. **Advocate General, Government of East Pakistan Vs. Benoy Bhusan Majumdar and 3 others (PLD 1971 SC 179)** *(the last paragraph on page 782):-*

"The principle of res judicata is invoked on the basis that a party who has lost the cause once, should not be allowed to agitate it on the same facts and on the same cause of action to unnecessarily harass the other party."

- ii. **Mirza Maqbool Elahi through Legal Heirs and 8 others Vs. Capital Development Authority and 3 others (1998 SCMR 1074)**, *(paragraph 7 at page 1077):-*

"Learned Judge of the High Court was justified in refusing to interfere in exercise of extraordinary constitutional jurisdiction which is essentially an equitable jurisdiction as the petition suffered from laches and acquiescence. Moreover, successive petitions on the same cause of action were rightly held to be not competent."

- iii. **Pir Bakhsh represented by his Legal Heirs and others Vs. The Chairman, Allotment Committee and others (PLD 1987 SC 145)** *(the first paragraph at page 160):-*

"Since it would be obviously impracticable if there were no end to litigation and if either party to a legal dispute were at liberty to reopen the dispute at any time, the law provides that once a case has been heard and all appeals have been taken (or the time for appeal has gone by) all parties to the dispute and their successors are bound by the court's findings on the issues raised between them and on questions of fact and law necessary to the decision of such issues. According to the principle the matters are now res judicata between them and cannot be the subject of further dispute."

28. The learned counsel for the petitioner also relied upon copies of the *Jamabandi* submitted in C.M.A. No.8780/2018, which, in fact, establish that the entry in the Revenue Records with respect to the land situate at Malkana Estate is "Nawabzada Mumtaz Ali Khan etc.". He submitted that it is apparent from the *Jamabandi* that Nawabzada Mumtaz Ali Khan was not the exclusive owner of the said land.

29. Furthermore, the learned counsel for the petitioner submitted that the order of the Settlement and Rehabilitation Commissioner dated 26.02.1992, upheld by the Supreme Court in the earlier round of litigation, was a well-reasoned order based on the evidence of, amongst others, Rukn-ud Daula Shamsheer Jang Nawab Sajjad Ali Khan. Nawab Sajjad Ali Khan confirmed that Nawab Faiz Ali Khan was a Mandal Afghan, like him, and in their families the Rule of Primogeniture was not followed. In addition, the learned counsel submitted that in case of urban properties the Settlement Rehabilitation Department itself decided that all four brothers were entitled to equal shares in the property left by their father, Nawab Faiz Ali Khan. The order of the Rehabilitation and Claims Commissioner with respect to urban property attained finality and any challenge made by filing a writ petition by the heirs of Nawabzada Mumtaz Ali Khan was not followed through as the writ petition was dismissed as not pressed. However, the Settlement Authorities never came to the court

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to even contend that the Rule of Primogeniture was applicable. It is the finding of non-applicability of that Rule that enabled the Rehabilitation Authorities to accept the claim of the four brothers and distribute the urban property amongst them in equal shares. In W.Ps. No.183-R/1992, 10-R/1993 and 62-R/1993, where the order of the Rehabilitation Commissioner dated 26.02.1992 was challenged, the Chief Settlement Commissioner had been impleaded as a party. On 18.04.1993, the appearance of Mr. Hamid Ali Mirza Advocate on behalf of the Chief Settlement Commissioner had been recorded. The order dated 18.04.1993 whereby the order of 26.02.1992 was upheld was not challenged before any forum by the Chief Settlement Commissioner. Nonetheless, the said order was challenged before the Supreme Court by Nawabzada Mumtaz Ali Khan *vide* C.P.L.A. No.1153-L/1993. The Chief Settlement Commissioner was one of the respondents therein. The said C.P.L.A. was dismissed by the Supreme Court by a well-reasoned and an elaborate judgment. The Chief Settlement Commissioner did not file any review against the said judgment. Mumtaz Ali Khan, on the other hand, filed C.R.P. No.41-L/1995. This civil review petition was dismissed. The Chief Settlement Commissioner had been a party to the proceedings before the High Court as well as the Supreme Court and to his knowledge, the order dated 26.02.1992 had been upheld. The question arises as to under what provision of law could the Chief Settlement Commissioner file a writ petition in the Lahore High Court to challenge and to call in to question a judgment of the Supreme Court. The learned counsel for the petitioner contended that this was a blatant contempt of the Supreme Court. In the circumstances, the exercise of jurisdiction on the part of the learned Single Bench of the Lahore High Court had no basis in law and was *coram non judice*. The learned counsel submitted that the order dated 06.07.1998 fell afoul of the principles of *res judicata* set out in Section 11

of the CPC and Article 189 of the Constitution, which make it abundantly clear that no authority in Pakistan can disobey the judgments passed by the Supreme Court.

30. Last but not least, learned counsel for the petitioner submitted that this was not a case involving any fraud. The claim against the abandoned land in India had been accepted for 80,000 PIUs. The dispute was whether it would go the eldest brother to the exclusion of three other brothers or it would be shared equally between the four brothers. Any additional units which had gone to the eldest brother had been surrendered by the others by accepting proportionate reduction in their share. It was their case that the State did not suffer, however, if they were not allowed to inherit from their father, they would suffer greatly. The order dated 26.02.1992 did nothing but justice and achieved equitable resolution of the dispute.

31. It may be noted that at the conclusion of arguments by the learned counsel for the petitioner, the Court asked a specific question from the learned counsel appearing on behalf of the Chief Settlement Commissioner to the effect that whether a writ petition was competent under any provision of law against the order dated 26.02.1992, when that order had been challenged in an earlier round of litigation before the Lahore High Court in W.P. No.183-R/1992 and the High Court had dismissed the petition and upheld the said order dated 26.02.1992 and C.P.L.A. No.1153-L/1993 filed against the order of the Lahore High Court had also been dismissed along with C.R.P. No.41-L/1995. He frankly conceded that there was no provision in law for filing of the writ petition in the same matter which had been decided by this Court and that the learned Single Bench of the learned High Court was wrong in accepting W.P. No.91-R/1998. He was further asked that since it was a dispute *inter se* the brothers and when the Settlement & Rehabilitation Commissioner

had given the 44,000 PIUs which were the balance of 80,000 PIUs for which the claim had already been accepted and not challenged ever before, the land had gone out of the compensation pool, therefore on what basis did the Settlement Department want that the order dated 26.02.1992 be undone. He again conceded that no extra land was given. It was the balance of 80,000 PIUs of the accepted claim, which had never been disputed, which the other three brothers were allotted. This was their land and had to go to them. In this view of the matter it can be safely concluded that the Chief Settlement Commissioner even lacked the capacity and competence to challenge the order dated 26.02.1992.

32. We have heard the arguments of the learned counsel for the parties and gone through the record. The main controversy in this case revolves around the order dated 26.02.1992 passed by the Rehabilitation Commissioner Punjab, who by his said order accepted the claim of three sons of Nawab Faiz Ali Khan deceased, to the agricultural property measuring 6597 Biggas which had been left behind in Malkana Estate Tehsil Bhawanigarh, District Sanam Patiala State. The claim of the three brothers namely Nawabzada Fayyaz Ali Khan, Aftab Ali Khan and Rajab Ali Khan, had been rejected in successive rounds by the Claims Organization through orders of the Additional Claims Commissioner as well as the Claims Commissioner. The ground on which their claim form No.8258 was being rejected was that the Rule of Primogeniture applied to the family of Nawab Faiz Ali Khan of Karnal who died in 1917 and on whose death the agricultural land was mutated in the revenue records by way of inheritance mutation in the name of the only the eldest son, Nawabzada Mumtaz Ali Khan. The orders of the Claims Organization were challenged before the Lahore High Court by filing a number of writ petitions which were dismissed and the same was the fate of an L.P.A and C.P.L.A. No.77/1962. The petitioner, Mrs. Fazeelat Agha, the *bona fide*

purchaser for value of lands which were allotted/to be allotted against 33,000 PIUs plus land measuring 465 *kanals* 1 *marla*, in favour of the heirs of Nawabzada Fayyaz Ali Khan and Aftab Ali Khan, contended that C.P.L.A. No.77/62 was dismissed by the judgment dated 19.07.1962 by this Court but while dismissing the C.P.L.A. the Supreme Court opened a door/window of opportunity for her predecessors-in-interest when the Supreme Court held in unequivocal terms that *"The fact that in the meantime a finding in favour of the petitioners was given by the Deputy Claims Commissioner does not alter the situation. The grievance of the learned Counsel is that no tribunal has as yet determined on the merits the question as to whether the petitioners are entitled to indent from their father's land. That may be so, but the remedy lies only with the Rehabilitation Authority who have clear jurisdiction in the matter."* The contention is that the Supreme Court accepted, agreed and determined that the question as to whether the petitioners were entitled to inherit from their father's land had till that day not been determined on merit. The next contention based on the quoted passage from the judgment of the Supreme Court is that the remedy for getting the matter determined on merits was with the Rehabilitation Authorities who had clear jurisdiction in the matter. Both these contentions are good and valid contentions because the Supreme Court did accept that the entitlement to inherit from the petitioners' father's lands had indeed not been decided on merit and it is equally correct that the Supreme Court did hold that the Rehabilitation Authorities had the jurisdiction to do that. It meant all those decisions which had been taken against the petitioners by any forum were not taken on merit and whether the petitioners were to succeed on merit or not, that fell within the jurisdiction of Rehabilitation Authorities and that exercise could be undertaken afresh. Any decision that the Rehabilitation Authorities were to take, that could re-open the whole issue.

33. The said decision by the Supreme Court was taken on 19.07.1962. Learned counsel for the petitioner has explained how the matter remained pending initially for a period of eight years before the Rehabilitation Authorities because of revisional appellate remedies being availed to challenge the favourable decision of the Deputy Claims Commissioner in respect of the inheritance of urban property of Nawab Faiz Ali Khan in favour of the predecessors-in-interest of Mrs. Fazeelat Agha. After the decision of the Claims Commissioner, W.P. No.915-R/1973 was filed which concluded after 11 years on 15.10.1984, when it was dismissed for non-prosecution. So, between 1962 and 1980 the legal remedies in one shape or the other were being pursued. To say that the case of the sons of Nawab Faiz Ali Khan was not pending proceedings is against the record. The sons of Nawab Faiz Ali Khan, when they got no response from the Rehabilitation Authorities, filed W.P. No.121-R/1989, which was disposed of as not pressed on 11.02.1990 with the order that the predecessors-in-interest of the petitioners shall pursue their remedy with the Claims Authorities. It was in this backdrop that the Rehabilitation Commissioner was approached yet again as a result whereof he took the decision dated 26.02.1992.

34. Since the Supreme Court had said that the Rehabilitation Authorities had the jurisdiction to take a decision on merit; we have examined the decision dated 26.02.1992 of the Rehabilitation Commissioner and find that it does not suffer from any infirmity neither does it lack merit. The Settlement and Rehabilitation Commissioner during the proceedings conducted before passing the order dated 26.02.1992, upheld by this Court in the earlier round of litigation, recorded the evidence of, amongst others, Rukn-ud Daula Shamsheer Jang Nawab Sajjad Ali Khan wherein it was confirmed that Nawab Faiz Ali Khan was a Mandal Afghan, like him, and in their families the Rule of

Primogeniture was not followed. We note that in case of urban properties, the Settlement Rehabilitation Department itself decided that all four brothers were entitled to equal shares in the property left by their father, Nawab Faiz Ali Khan. The order of Rehabilitation and Claims Commissioner with respect to urban property attained finality and any challenge made by filing a writ petition by the heirs of Nawabzada Mumtaz Ali Khan was not followed through as the writ petition was dismissed as not pressed. However, the Settlement Authorities never came to the court to even contend that the Rule of Primogeniture was applicable. It is the finding of non-applicability of this Rule that enabled the Rehabilitation Authorities to accept the claim of the four brothers and distribute the urban property amongst them in equal shares. In W.Ps. No.183-R/1992, 10-R/1993 and 62-R/1993, where the order of the Rehabilitation Commissioner dated 26.02.1992 was challenged, the Chief Settlement Commissioner had been impleaded as a party. On 18.04.1993, the appearance of Mr. Hamid Ali Mirza Advocate on behalf of the Chief Settlement Commissioner has been recorded. The order dated 18.04.1993 whereby the order of 26.02.1992 was upheld was not challenged at any forum by the Chief Settlement Commissioner. Nonetheless, the said order was challenged before the Supreme Court by Nawabzada Mumtaz Ali Khan *vide* C.P.L.A. No.1153-L/1993. The Chief Settlement Commissioner was one of the respondents therein. The said C.P.L.A. was dismissed by this Court by a well-reasoned and an elaborate judgment. The Chief Settlement Commissioner did not file any review against the judgment. Mumtaz Ali Khan, on the other hand, filed C.R.P. No.41-L/1995. This civil review petition was dismissed. The Chief Settlement Commissioner had been a party to the proceedings before the High Court as well as the Supreme Court and to his knowledge, the order dated 26.02.1992 had been upheld, therefore he was not entitled, in any shape or form, to

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challenge the order of this Court, in a devious and underhanded manner, by filing W.P. No.91-R/1998 before the Lahore High Court. We find that this attempt to undo and circumvent the orders of this court was a blatant contempt of the Supreme Court of Pakistan.

35. The learned counsel for the petitioner argued vehemently that once a matter has attained finality and a final judgment has been rendered by the Supreme Court *inter se* the parties, every other forum in the country, is bound by that judgment and is barred from attempting to re-open the matter, which is tantamount to sitting in appeal over the judgment of this Court. We concur with the judgment of this Court rendered in **Abdul Majid's** case (*supra*) relied on by the learned counsel for the petitioner (*reproduced hereinabove*). It is our considered view that no court in the country has the jurisdiction to interfere with and undermine the authority of the Supreme Court of Pakistan. The Chief Settlement Commissioner's actions in this regard by approaching the Lahore High court in a fresh writ petition, despite being party to the earlier proceedings throughout, and being represented up to the apex court, was an unfortunate and most undesirable attempt to indirectly challenge the judgment of this Court, which cannot be countenanced. We find that W.P. No.91-R/1998 was filed in clear violation of the principles of *res judicata* enshrined in Section 11 of the CPC and Article 189 of the Constitution. It is our considered view that the learned Single Judge-in-Chambers had no jurisdiction whatsoever to entertain W.P. No.91-R/1998. The reference made by the learned counsel for the petitioner to the judgments rendered in the cases of **Benoy Bhusan Majumdar** (*supra*), **Mirza Maqbool Elahi** (*supra*) and **Pir Bakhsh** (*supra*) is well placed. In view of the law laid down in these judgments, the order dated 06.07.1998 was a nullity being *coram non judice*.

36. In addition, learned counsel for the petitioner submitted copies of the *Jamabandi* in C.M.A. No.8780/2018, filed in C.R.P. No.425/2005 in C.P.L.A. No.1208-L/1998 in support of his contention that Nawabzada Mumtaz Ali Khan was not the exclusive and sole heir of Nawab Faiz Ali Khan, which would have been the case, had the Rule of Primogeniture been applicable to the family of Nawab Faiz Ali Khan. The *Jamabandi* clearly shows that the entry in the Revenue Records with respect to the land situate at Malkana Estate is "Nawabzada Mumtaz Ali Khan etc." further supporting the sworn evidence of Nawab Sajjad Ali Khan before the Rehabilitation and Claims Commissioner and his finding in the order dated 26.02.1992 regarding the non-applicability of the Rule of Primogeniture in this case. We find force in this contention and accept the same. It is clearly established from the *Jamabandi* that Nawabzada Mumtaz Ali Khan was not the exclusive owner of the said land. The mention of "etc." is a reference to the petitioner's predecessors-in-interest, the three other sons of Nawab Faiz Ali Khan who were minors at the time of his death in 1917.

37. Furthermore, it is our clear finding from the record and the submissions made by the petitioner's counsel before us, in addition to the concessionary response to the question posed to the counsel for the Settlement Department, that this was not a case involving any fraud. The counsel for the Settlement Department made a statement before the court that the land allotted/to be allotted against a total accepted claim of 80,000 PIUs which was never challenged at any forum, had gone out of the compensation pool, hence the land belonged to the heirs of Nawab Faiz Ali Khan and there was no loss to the State if the distribution of the land was made equally between the four brothers, as the total of 80,000 PIUs remained unaltered. We accept the arguments of the learned counsel for the petitioner and agree with the statement made by the counsel for



the Settlement Department in response, therefore it is beyond a shadow of doubt that the claim against the abandoned land in India had been accepted for 80,000 PIUs. The dispute was limited to whether it would go to the eldest brother to the exclusion of three other brothers or whether it would be shared equally between the four brothers. It is also noted that any additional units which had gone to the eldest brother had been surrendered by the others by accepting a proportionate reduction in their share. Hence neither the State nor Nawabzada Mumtaz Ali Khan would suffer if the petitioner's predecessors-in-interests were allowed to inherit their shares from their father's estate. On the other hand, if this was not allowed they would suffer a grave injustice and be deprived of their rightful share in their father's property.

38. Notice was issued in the instant review petition *vide* order dated 26.06.2014. The review petition was entertained *vide* order dated 23.09.2014 and the judgment dated 06.05.1999 in C.P. No.1208-L/1998 was set aside. C.M.A. No.6250/2018 was filed in the matter by the petitioner and heard on 12.07.2018, as a result of which notice was issued to the respondents for the first week of September, 2018. C.M.A. No.6250/2018 in C.R.P. No.425/2005 and C.R.P. No. 425/2005 in C.P. No.1208-L/1998 were heard on 01.11.2018 and a short order of even date was passed in the matter, allowing the noted application and the review petition, as a result whereof C.P. No.1208-L/1998 was converted into an appeal and accordingly allowed and the impugned judgment dated 06.07.1998 was set aside and order of the Rehabilitation Commissioner dated 26.02.1992, which had been upheld by this Court in an earlier round of litigation when C.P. No.1153-L/1993 was dismissed on ~ 29.01.1995, was upheld and maintained.

s39. Accordingly, it is declared that the petitioner, Mrs. Fazeelat Agha, being the *bona fide* purchaser for value of the lands allotted/to be

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allotted against 33,000 PIUs and 465 kanals 1 marla, (details whereof are provided hereinabove), is entitled to retain the same, as the order dated 26.02.1992 of the Rehabilitation and Settlement Commissioner attained finality when it was upheld and maintained by this Court in C.P.L.A. No.1153-L/1993 and C.R.P. No.41/1995. The necessary directions are issued to the Revenue Authorities to deliver possession of the land to the petitioner and to allot further land against the unutilized PIUs, which allotment had been halted because of the impugned order in W.P. No.91-R/1998, which has been set aside by this Court, hence it is directed that the halted process be re-commenced from the date when it was stopped. It is further declared that the petitioner is the owner of the property in her own right, being the *bona fide* purchaser for value, and the entries in the Revenue Record shall be made to the same effect.

40. The foregoing are the reasons for our short order of even date which reads as under:-

"For the reasons to be recorded later, both the application and the review petition are allowed, as a result whereof Civil Petition No.1208-L of 1998 is converted into an appeal and accordingly allowed and the impugned judgment is set aside."