

IN THE COURT OF MUHAMMAD JAMIL KHAN

Senior Civil Judge (Judl:)/AIQ/Referee Judge, Swat

Suit No. 22/4 LA

"Malak Ahmad Jan etc vs Malak Muhammad Deedar etc"

Date: 25.05.2022

Present:

Petitioner Malak Ahmad Jan advocate in person as well as for rest of the petitioners

Respondents through Shah Salam Khan advocate and Saiful Malook advocate

Arguments heard and record perused.

Vide my detailed summary judgment of even date, placed on file, consisting of sixteen (16) pages, the application for summary judgment stands allowed with no order as to costs. Resultantly, all the four tribes of Moza Bahrain - Narrair, Bat, Baser and Cavor - recorded in the record of rights for the years 1985-86 are held entitled to the compensation amount as 16 rupees shares which each of the tribe had in a total share of 64 rupees. The acquiring authority shall distribute the compensation amount among the four tribes and then should try to deliver to each member of the tribes what share they had in their own tribe.

File be consigned to the record room after necessary completion and compilation.

Announced: 25.05.2022

(Muhammad Jamil Khan)

Senior Civil Judge (Judl:)/AIQ/Referee Judge, Swat

IN THE COURT OF MUHAMMAD JAMIL KHAN

Senior Civil Judge/AIQ (Judl:)/Referee Judge, Swat

Suit No: 22/4 LA

Date of Institution: 08.12.2012

Date of Transfer In: 25.07.2019

Date of Decision: 25.05.2022

Malak Ahmad Jan son of Manzaray Malak

R/o Bahrain, Tehsil Bahrain, District Swat & Others (Petitioners)

VERSUS

REFERENCE PETITION

Summary Judgment: 25.05.2022

Shah Salam Khan advocate filed the following applications:

1. Application for amendment in the main reply already submitted by him.
2. Application for making correction in the application at serial No: 1.
3. Application for adjourning the case sine die.
4. Application for rejection of the main petition.

As against the above, the main petitioners also pressed their two following pending applications:

1. Application for Summary judgment.
2. Application for depositing the compensation amount in the profitable account of this court.

In view of the above, all the parties were directed to submit replies which they did and thus, the case was fixed for arguments only on three applications on the request of all the learned counsel. This order will now determine the fate of the following three applications only:

1. Application for adjourning the case sine die.
2. Application for rejection of the main petition.
3. Application for Summary judgment.

Facts of the case are that the government acquired land measuring 212 kanal 11 marla in various khasra numbers in Tehsil Bahrain including land measuring 21 kanal 19 marla falling in khasra Nos. 3836, 4663, 8451, 4664 & 4852 in the suit Moza for construction of "Daral Khwar HPP Bahrain". The government, after observing legal formalities, released the amount of compensation of Rs. 13,09,00,038/- and placed the same at the disposal of Tehsildar Bahrain vide letter No. 3449/264/Acq: dated 07.05.2012. However, the petitioner Malak Ahmad Jan advocate filed an application before Tehsildar Bahrain wherein he contended that the acquired land measuring 21 Kanal 19 Marla is the joint ownership of four tribes - Narairr, Bat, Baserr and Cavorr - as only they are owners of 64 rupees daftar equally divisible shares amongst them.

Tehsildar Bahrain, after conducting the proceedings, held that there exists a dispute as to the amount of compensation; hence, he referred the matter to the civil court for decision, withholding the amount of compensation as a trust till final decision by a civil court.

In light of the above, the petition of Ahmad Jan advocate was referred to "Referee Judge" claiming that the government wants to establish SHYDO Daral Power House Project on River Swat for which acquisition of land was started; that the government cut down the trees and also acquired land for the said project in shamilat land; that the government released the compensation amount; that Tehsil Bahrain consists of 64 rupees daftar which is the ownership of four tribes Bat, Baserr, Cavorr and Narairr divisible equally amongst them; that the tribe Narairr tries to conceal and twist facts of the case in connivance with the revenue officials grabbing 3/4 shares of the petitioners' compensation amount; that the compensation amount kindly be equally divided amongst the above four tribes after proper apportionment.

The application was resisted by the opposite parties being represented by Learned Saif ul Malook and Shah Salam Khan Advocates raising therein several legal and factual objections.

Learned counsel for the respondents Shah Salam Khan advocate argued that there are nine revenue estates consisting of Moza Satal Garai, Zor Kalay, Bahrain, Torwal, Kedam, Cham Garhi, Balakot, Liakot and Peshmal who only owns 64 rupees daftar in Bahrain whereas the entire Tehsil Bahrain includes in its jurisdiction many other estates like Terrat, Shahgai, Paklai, Madyan, Shorgat Bangaish, Kalagai, Baranvi, Chail, Shankor, Bashigram, Dabargai, Ayeen, Darolai, Garnai, Ramet, Mankyal, Budai Serai and Aryanai and these Mozas have no right in 64 rupees daftar, therefore, it is wrongly mentioned in the main petition that Tehsil Bahrain is consisted of 64 rupees daftar. He also relied on judgment passed in civil suit No. 190/1 dated 09.09.2004 while referring not only to contents of the judgment but also to a document bearing No. 766 dated 22.09.1959 being relied upon by the learned Judge while announcing the said judgment. However, he objected to mutation No. 1653 dated 26.03.2015 which was attested based on aforesaid judgment as he claimed the Revenue Officer misconceived its true spirit. He also objected that the petitioners did not file the main petition in a proper and legal manner rather he filed the same in a customary manner and since 1974 the customary law in this part of Pakistan ceased to have force of law. To put it short, he argued that judgment passed in civil suit No. 190/1 dated 09.09.2004 is correct but the revenue officials while attesting mutation No. 1653 dated 26.03.2015 have wrongly interpreted the same which created problems. He also argued that Petition in hand is time barred referring to Section 18 of the Land Acquisition Act, 1894.

As against the above, learned Saiful Malook advocate argued that document No. 766 dated 22.09.1959 originally determined the rights of different tribes and when, in suit No. 190/1 dated 09.09.2004, the parties entered into compromise it made addition in the obligatory conditions of the original document; that the said judgment was implemented in its true sense in mutation No. 1653 dated 26.03.2015 and that the said culmination cannot be disputed; he also argued that the main petition does not contain the particulars which as per CPC the pleading should contain.

Malak Ahmad Jan advocate argued that Malak Dedar etc are not the exclusive owners of shamilat rather it is the ownership of four tribes who are equally entitled to the compensation; he also argued that the judgment passed in suit No. 190/1 pertains to rights in royalty and it does not at all affect ownership rights of the owners in shamilat; he also challenged the validity and legality of mutation No. 1653 dated 26.03.2015.

Arguments heard and record perused.

Having heard the arguments, the respondents raised objection that the petition does not contain the particulars as prescribed by Order-VI, VII & VIII CPC. The petition in hand was moved by Malak Ahmad Jan advocate U/S 30 of the Land Acquisition Act (LAA) to the Deputy Commissioner, Swat who after summoning the opposite party not only heard the parties but also decided the petition holding that the matter is referable to the civil forum for decision as it involves question of apportionment of the compensation amongst the disputants. The Deputy Commissioner, Swat also withheld the compensation amount as a trust till the decision of the reference. By any stretch of imagination, it is a reference even if it does not contain the particulars as required. The matter is unambiguous and clear as it only involves a question as to the apportionment of compensation amongst the disputants.

For the reasons mentioned above, the application for rejection of the petition stands dismissed.

Respondents filed second application for adjourning the case sine die as other suits are pending in different courts having the same subject matter. This is the oldest case whereas the other cases filed either by the petitioners or respondents have been filed subsequently. In the Code of Civil Procedure, 1908 there is no concept of adjourning a case sine die although courts sometime adopt it for convenience which the exigencies of a case require. However, there is a concept of staying the suit in Section 10 of the Code of Civil Procedure, 1908, but the test for staying the suit or suits is that the prospective decision in a subsequent suit will operate res judicata. It is the subsequent suit which is to be stayed but not the earlier. This case is older in age, therefore, under the provision cannot be stayed though the subsequent suit or suits pending in this, or other courts may be.

For the reasons mentioned above, petition for adjourning the case sine die too stands dismissed.

Now the only issue left is whether application for summary judgment is entertainable, it depends upon the nature of controversy and the evidence adduced so far.

Patwari Halqa produced revenue record for the years 1985-86 as Ex.PW-1/1. This record shows that the property falling in various number khasras is shamilat. Needless to mention here that no one from the proprietary body is the exclusive owner of the shamilat rather the property is the joint ownership of the entire proprietary body. This shamilat is owned by four tribes of Moza Bahrain namely Narairr, Bat, Baserr and Cavorr. The total shares of the four tribes are 64 rupees in which each tribe has 16 rupees share. It means that each tribe is equally entitled in the shares of the shamilat. Through mutation No. 1484 dated 25.05.2012 Ex.PW-2/1, the acquired property was transferred to the Provincial government, and this is exactly the same property which is held in common by the four tribes.

The acquiring authority-initiated proceedings for acquisition of land measuring 29 kanal and 19 marla in the property held in common by these four tribes through Ex.PW-3/1 & Ex.PW-3/2. The most important document is Ex.PW-3/2 (Acquaintance Role) which shows that the respondents Malak Dedar son of Shamsi Mulk and Sultan Zeb showed themselves general attorneys of the four tribes while withdrawing the compensation amount fixed for the property held in common. This shows that the contesting party Malak Dedar admitted that the four tribes were entitled to the amount of compensation as they were withdrawing the same as general attorneys of the tribes. Being showing himself general attorneys of the principals who in the present case are the four tribes meant that they admitted the ownership of the principals' i.e. four tribes but the petitioners did not allow him to withdraw the said amount by filing the instant petition claiming the compensation amount as the entitlement of co-owners.

Ex.PW-1/1 is a document which was prepared in the years 1985-86 by the settlement officer while conducting settlement proceedings for the first time in District Swat. In these proceedings the settlement officer had inspected the spots and invited the documents containing any claim and thus, after full-fledged satisfaction they incorporated the rights of the persons of the given locality which they owned either exclusively or in common with other persons in the immovable property. This document carries much stronger presumption than the presumption which the periodical record carries. The reason is that this document comes into existence after proper inquiry whereas periodical record is prepared from the four years entries in the jamabandis.

When Malak Dedar was stopped by the petitioners to withdraw the compensation amount, he filed suit No. 42/1 of 2013 but without any progress he had withdrawn the same on 07.10.2015. In this suit he claimed to be the exclusive owner of property acquired in shamilat but since there was no adjudication on merit, therefore, on withdrawal of suit he got relegated to the position which he had before the institution of the suit. Before the institution of the suit, he was a member of the proprietary body who owned the acquired property in common.

Failing to get expected dividends he again approached the revenue officer with a new face having in his hand judgment passed on 25.11.2004 in suit No. 190/1 dated 09.09.2004. Based on this judgment the revenue officer attested mutation No. 1653 dated 26.03.2015 but it seems that the revenue officers wrongly interpreted the legal effect of the said judgment. Prior to this judgment the relationship of the proprietary body was regulated by document No. 766 dated 22.09.1959 and as per this document all the four tribes were having their respective defined shares in different properties. In the above suit compromise was entered into between the contesting parties and besides acknowledging the legal worth of document No. 766 dated 22.09.1959 they added some explanations which explanations pertained to only rights in royalty, and it did not affect the existing relationship amongst the co-owners. To put it short, it made addition in the pre-existing rights, obligations and liabilities.

Viewed through another angle, when after settlement proceedings revenue record for the years 1985-86 came into existence then the presumption is that document No. 766 dated 22.09.1959 was considered and given effect to in the revenue record by the settlement officer. If it was not so, then the proprietary body feeling dissatisfied with the revenue record prepared in 1985-86 would have disputed its authenticity and correctness but till date the said record remained unchallenged. It is not only this record, but Wajibul Arz was also prepared in 1985-86 which contains detailed record of the rights and customs which the owners of Moza Bahrain had in their property exclusively as well as in common. Section-1 of the Wajibul Arz contains details of the rights to use the joint property consisting of 9018-18 kanal. This and other sections of the Wajibul Arz too are undisputed till date. Suit No. 190/1 affected or made addition in the pre-existing rights of the parties in the royalty, but it had not affected their ownership right in any way.

For the reasons mentioned above, the application for summary judgment stands allowed with no order as to costs. Resultantly, all the four tribes of Moza Bahrain Narrair, Bat, Baser and Cavor recorded in the record of rights for the years 1985-86 are held entitled to the compensation amount as per 16 rupees shares which each of the tribe had in total share of 64 rupees. The acquiring authority shall first distribute the compensation amount in the four tribes and then he should try to deliver to each member of the tribes what share he had in his own tribe.

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