

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P.No.39929/2020

Allah Ditta etc. **VS.** Chief Settlement Commissioner
Punjab etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary
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08.09.2020 Malik Sajjad Hussain, Advocate.

Through this writ petition, the petitioners have challenged the order dated 29.04.2020, passed by the Member (Judicial-V), Board of Revenue/Chief Settlement Commissioner/Administrator (Residual Properties)/Notified Officer, Punjab whereby the Deputy Commissioner/Collector, Kasur was directed to dispose of the available ex-evacuee land measuring 48 Acres situated in Moza Harsay Noshera Tehsil Chunian District Kasur through unrestricted public auction and also to recover penalty (*tawan*) from the petitioners/ the illegal occupants.

2. Learned counsel for the petitioners submits that disputed land measuring 48 Acre situated in Moza Harsay Noshera Tehsil Chunian District Kasur was purchased by one Allah Ditta from Mst. Sahibzadi Naseem Begum etc. in the year 1964; that father of petitioners namely Ahmed Din purchased the same from Allah Ditta in 1964; that the petitioners have been cultivating the land measuring 20 Acre whereas remaining 28 Acre is barren land;

that the respondents resumed the said land without intimation to the petitioners; that the petitioners filed Writ Petition No.19197/2020 which was dismissed due to non-availability of the land record; that the petitioners filed application to respondent No.1 for allotment of the suit land which was dismissed vide order dated 29.04.2020; that the petitioners claiming possession of the land measuring 48 Acre moved application to purchase the said land at current market price, which petition has been dismissed through the impugned orders by the Chief Settlement Commissioner. Hence this petition.

3. I have heard the arguments of learned counsel for the petitioners and have gone through the record with his able assistance.

4. Admittedly, the disputed land is an ex-evacuee rural/agricultural land which was allegedly in illegal possession of the petitioners and they filed application for the purchase of said land on the current market price. After repeal of the evacuee laws the ex-evacuee agricultural land was to be disposed of under Section 3(i)(b) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. The said provision of law are as under:-

3. Transfer of Property.- (1) All properties, both urban or rural, including agricultural land, other than such properties attached to charitable, religious or educational trusts or institutions, whether occupied or un-occupied, which may be available for disposal immediately before the repeal of the aforesaid Acts and Regulations or which may become available for disposal after such repeal as a result of a final order passed under sub-section (3) of section 2, shall stand transferred to the Provincial Government, on payment of such price as may be

fixed by the Federal Government in consultation with the Provincial Government, for disposal:-

(a)

(b) in the case of rural properties, by the Board of Revenue of the Province under a scheme to be prepared by the Provincial Government in this behalf;

Provided that agricultural land occupied by a person continuously for four harvests immediately preceding Kharif 1973 shall first be offered for sale to such person unless an order of ejectment has been passed against him in respect of such land.

(emphasis supplied)

As per the above provision of law, the Board of Revenue is empowered to dispose of such land / ex-evacuee rural agricultural land under a scheme to be prepared by the Provincial Government. According to the proviso to clause (b) of Sub-Section (1) of Section 3 of the Act *ibid*, only the persons who are occupying the continuous possession over unallotted/unoccupied ex-evacuee land for four harvests immediately preceding Kharif, 1973 shall be offered first right for sale unless an order of ejectment has been passed against him in respect of such land. Even otherwise, a Scheme for Disposal of Un-allotted/Un-occupied/Occupied Evacuee Rural Agricultural Land was promulgated on 19.11.1974 under Section 3 (1) (b) of the Evacuee Property and Displaced Persons Laws (Repeal) Ordinance, 1974 [which Ordinance later on was named as Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975], whereunder an unallotted land if available unoccupied in subsisting holding of a person within the meaning of land Reforms Regulation, 1972 as enunciated in Chapter I, shall be sold out to him. For ready reference,

Chapter I of aforesaid Scheme is reproduced as under:-

CHAPTER-I

In this scheme unless the subject or context otherwise requires:-

- i) *"Un-allotted land" means evacuee land which has not been allotted/confirmed against verified claims or otherwise disposed or under the provisions of Displaced Persons (Land Settlement) Act, 1958, on or before 30.06.1974.*
- ii) *"Occupied land" means evacuee un-allotted land which is in continuous possession of the occupant for four harvests immediately precedings Kharif, 1973.*
- iii) *"Un-occupied land" means evacuee un-allotted land which is not in possession of any person including the land in adverse possession after Kharif, 1971.*
- iv) *"Subsisting holding" means holding of a person within the meaning of land Reforms Regulation, 1972."*

According to the above policy the available unoccupied / unallotted vacant rural agricultural land should be disposed of according to Chapter-IV of aforesaid Scheme, which ordains the disposal of such land through unrestricted open public auction. For ready reference, relevant portion of the Chapter-IV is reproduced as under:-

CHAPTER-IV

"4. All the available un-allotted and un-occupied vacant rural agricultural land will be disposed of by means of un-restricted open public auction according to the following terms and conditions:-

1) *Auction will be conducted by a Committee consisting of (1) A.C/EACO/EASO and (2) Ilaqa Magistrate of the area concerned. Where there is no Ilaqa magistrate any Magistrate Ist Class nominated by the Deputy Commissioner.*

2) *The highest bid which shall not be below the reserve price may be accepted or rejected by the respective Deputy Commissioner, C.O/S.O without assigning any reason.*

(3) *An appeal against the orders passed under sub-para (ii) above may be preferred to the*

Additional Commissioner (Revenue) of the Division within 15-days of the said order.

(4) No person having duty to perform in connection with the auction shall either directly or indirectly bid for it.

(5) No minor will be entitled to bid except through his guardian.

If any person desires to bid on behalf of another he will deposit with the A.C/EACO/EASO (a) original special power of attorney of (b) a Copy of general power of attorney attested by a Magistrate or an Oath Commissioner.

(6) If two or more persons desire to bid jointly, they will submit in writing their authorized agent holding a power of attorney on their behalf the names and addresses of the persons joining in the bid and will also indicate therein their respective shares in the property to be obtained in auction.

(emphasis supplied)

Further vide Memorandum dated 02.12.1998, a procedure has been described for disposal of the available and likely to be available rural agricultural land. For ready reference, aforesaid referendum is reproduced as under:

No.1407-98/3594-RL(A)I.
Board of Revenue, Punjab,
Farid Kot House Lahore.
Dated the 02.12.1998.

From

The Board of Revenue: Punjab (Settlement & Rehabilitation) Wing.

To

- 1) All the Commissioners of Division, in the Punjab;
- 2) All Additional Commissioners (R) of Divisions, in the Punjab.
- 3) All Deputy Commissioners, in the Punjab;
- 4) All Additional Deputy Commissioners (G), in the Punjab
- 5) All Assistant Commissioners, in the Punjab.
- 6) All Officers at Headquarters Office, Lahore.

Subject: **DISPOSAL OF AVAILABLE AND LIKELY TO BE AVAILABLE RURAL AGRICULTURAL LAND (EVACUEE) IN THE PUNJAB.**

Memorandum:

A scheme for the disposal of available and likely to be available rural agricultural land (evacuee) in the Punjab was circulated vide this office circular No.915-POL/74, dated 19.11.1974. A copy of the Scheme is again enclosed for ready reference. A time schedule for the disposal of the land has been prepared. The available or likely to be available land is categorized as follows:-

A) 'Occupied Land' where the occupant is in possession of the land four harvests prior to Kharif 1973 and his land holding does not exceed subsistence holding of 12 1/2 acres.

B) 'Occupied Land' the occupied land in excess of the subsistence holding and the land occupied not falling under Category 'A'.

C) 'Un-Occupied Land' which is neither allotted nor occupied by any person.

2. As regards Category 'A' the occupant is required under Chapter-II Para 2(ii) of the Scheme to submit his option to the Assistant Commissioner concerned to purchase the said land. The Assistant Commissioner after scrutiny of record will submit report to the Member, Board of Revenue/Chief Settlement Commissioner Punjab through the Deputy Commissioner for approval of sale of land at Rs.100/P.I.Units.

3. As far as Categories (B) and (C) are concerned, the land is to be disposed of through open auction under Chapter-III Para 3 of the Scheme, by a Committee constituted thereunder. However, an un-authorised occupant is given the right of first purchase on payment of the price equal to the highest bid offered in open auction.

.....

CATEGORY 'B AND C'

a) All Assistant Commissioners shall prepare schedule of auction of the land with the approval of the Deputy Commissioner and furnish a copy thereof to the Board of Revenue (S&R Wing), Punjab for information.

b) The schedule will be given wide publicity through advertisement in at least two national "Dailies" and also through other like beat of drum, pasting of notice at Tehsil Headquarters etc.

c) The whole exercise including drawing of schedule, approval of auction, recovery of bid money and implementation in revenue record shall be..... by 30.06.1999 under the Scheme.

.....

.....

Sd/-

Secretary (Settle: & Reh;)
Board of Revenue, Punjab
Faird Kot House, Lahore.

In addition to the above the Hon'ble Supreme Court of Pakistan in its decision dated 02.01.2015 rendered in C.P. No.709-L/2009 titled Member (Judicial-V), Board of Revenue/Chief Settlement Commissioner, Punjab & 2 Others Vs. Sagheer Muhammad Khan & Others, has set down a sacrosanct principle for disposal of public assets and it has conclusively been settled that after the promulgation of Repealing Act, 1975 the evacuee

property can only be disposed of through unrestricted and transparent open auction. The relevant portion thereof is reproduced as under:-

“7.....According to the current law and arrangements put in place by the Province subsequent to the Repeal Act the property will have to be disposed of through open public auction so that the assets vested in the Province and ultimately in the people of the Province are duly protected. This shall not prevent the Province from proceeding against the respondents or others both for recovery of compensation for occupation and use of the property and for any other action civil or criminal in this case. This petition is converted into appeal and is allowed in the above terms.”

(emphasis supplied)

As the issue of disposal of state land has finally and conclusively been decided by the Hon’ble Apex Court of the country and its decisions have binding effects on all the organs of the state as enshrined in Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. The above mentioned hallmark principle have been clearly laid down by the Hon’ble August Court wherein it is conclusively held that the state asset/land should be disposed of through unrestricted open auction and any order passed by the executive authority / judicial or quasi-judicial forum in contravention of pronouncement of the August Apex Court shall indeed be considered as nullity in the eyes of law. Here in this case the petitioners is admittedly an illegal occupant over the evacuee land, as such, he is not considered entitled for any discretionary relief in constitutional jurisdiction of this Court. The Hon’ble Supreme Court of Pakistan in a case titled as “Shazia Gillani etc. Vs. Board of Revenue, Punjab, Lahore through Member Colonies, etc.” (in C.P. No.732-L of 2016)

has held that there is no protection to possession of usurpers of state property vide order dated 25.03.2016 and held as under:-

“The discretion of the learned High Court in terms of Article 199 of the Constitution or this Court as per Article 185 of the Constitution is not available for the protection of possession of people who are usurpers of state property. No case has been made out for interference. Dismissed accordingly.”

In another case, the Hon’ble Supreme Court of Pakistan in Civil Petition No.882-L of 2015 vide order dated 15.03.2017 held as under:-

“2. We find that in the light of above circumstances, the learned High Court rightly allowed the writ petition of the respondents and restored possession of the property to them, and correctly dismissed the writ petition of the instant petitioners, who are admitted encroachers of the property and are in unauthorized possession therefore. Resultantly, this petition is dismissed.”

5. Land measuring 3323 Kanal situated in Moza Harsay Noshera was allegedly allotted to Mst. Naseema Begum against Khata RL.II.No.193 in the year 1964 and her said allotment was cancelled and the said land was resumed in favour of the state on 04.10.1981. Similarly the alleged allotment of the disputed land in favour of Muhammad Younas etc. was also canceled by the Chief Settlement Commissioner vide order dated 31.12.2008 being bogus and land was resumed on 22.01.2009 in favour of the state. The petitioners assert that their predecessors purchased land measuring 48 Acre in the year 1964 from allottee and since then they are occupying possession of the said land. As the very allotment of the allottee has been cancelled as such the possession of subsequent purchaser has no

protection of law which extends nil support to the land grabbers and illegal occupants. Reliance is placed on the cases reported as Fazalur Rehman & Others Vs. Province of Punjab through District Officer (Revenue), Bhakkar & Another (2014 SCMR 1351) and Muhammad Sharif through L.Rs Vs. Province of Punjab through District Officer Revenue, Pakpattan (2014 SCMR 334).

6. Admittedly the disputed land is an evacuee land owned by the provincial government and it should be disposed of as per the procedure prescribed in Section 3 of the Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975. The Courts of Law always keep in mind while dealing with the matters relating to public property and public interest. An extraordinary obligation is saddled upon the constitutional courts to keep abreast itself with law and facts of the case and when certain material facts unearthed then it should decide the matter as per law even without being influenced by respective pleadings of the parties. In this regard, the Hon'ble Supreme Court of Pakistan in a judgment cited as Provincial Government through Collector, Kohat and another Versus Shabbir Hussain (PLD 2005 SC 337), has held as under:-

“12. Likewise, the learned Presiding Officers are also required to exercise caution when they are dealing with matters relating to public property and public interest of which the Courts of law are the final custodians. It is true that we have never leaned in favour of giving of preferential treatment to the Government departments or agencies but then we are equally obliged, while granting relief, to ensure that public interest is not permitted to be jeopardized

and public property is not allowed to be squandered through mere collusion of some representative of a Government agency”.

7. Even if it is presumed that the petitioners had purchased the land from Mst. Nasima Begum, they could not maintained possession of the same as required by second proviso of section 3 of the Evacuee Property and Displaced Persons Law (Repeal) Act, 1975. The petitioners neither challenged the cancellation orders of allotment nor filed application for purchase of the land in question within time rather they remained under illegal possession of land in question till their ejectment. The petitioners are neither owners nor in possession of the land in question. They tried to purchase land measuring 88-kanals under the garb of their purchased land measuring 58-kanals, 18-marlas, vide mutation No.319 dated 30.11.1964 which had already been resumed in favour of the State, as such, the petitioners cannot be considered in consecutive possession of the land so resumed, as such, they do not fulfill the requirements of section 3 of the Act *ibid*. Thus, the Chief Settlement Commissioner rightly dismissed the application of the petitioners for purchase of the land in question and concluded that the available evacuee land be disposed of through unrestricted public auction.

8. Another aspect of this case is that admittedly the land in question is a public property which cannot be doled upon any person through private treaty to extend favoritism, nepotism and for undue enrichment of individuals at the resources of public, which are meant for ultimate welfare and betterment

of people. Further if the disposal of said land is desired by the concerned authority, the same should be disposed of through unrestricted public auction. Reliance is placed on the judgment decided by the Hon'ble Supreme Court of Pakistan in Civil Petition No.2022-L of 2010 titled as Hafeez Akhtar Randhawa Vs Member (Colonies), Board of Revenue which is as under:-

“We may also add that in re-Suo Motu Case No.10 of 2009 (2010 SCMR 885) and in a number of subsequent cases this Court has already held that lands, mines, minerals, gas etc. are assets which belong ultimately to the people of Pakistan and the same cannot be doled out at the whims and fancies of state functionaries. In another case titled Arshad Waheed Vs. Province of Punjab (PLD 2010 Lahore 510), the Lahore High Court has also reiterated the same view.

This Court in a judgment cited as Arshad Waheed Vs. Province of Punjab and others (PLD 2010 Lahore 510) has elaborately dealt with such like matter and has resolved the controversy as under:

“49. The disposal or transfer of public property without public participation is abuse of public trust. Public Property sold or transferred behind closed doors by public functionaries to some select few undermines the venerated role of trusteeship. Good governance is fundamentally pillared on trust and confidence of the people in the government, public institutions and more importantly in the public functionaries at the helm of the affairs. If this public trust is hemorrhaged, the entire edifice of public administration loses its credibility, which weakens governments and discredits democracy.

50. In “Shri Sachidanand Pandey and another vs. The State of West Bengal and others”, (AIR 1987 SC 1109) at p.1133, O. Chinnappa Reddy, J. after considering almost all the decisions on the subject summarized the propositions in the following terms:--

“On a consideration of the relevant cases cited at the bar the following propositions may be taken as well-established: State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism”.

51. In *“Haji T.M. Hassan Rawther v. Kerala Financial Corporation”* (AIR 1988 S.C. 157) Jagannatha Shetty speaking for the Supreme Court of India said:--

“The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favoritism or nepotism. Ordinarily, these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State owned properties are required to be disposed of publicly. But that is not the only rule. As O.Chinnappa Reddy, J. observed, “that though that is the ordinary rule, it is not an invariable rule.” There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It

must be justified by compelling reasons and not by just convenience.”

(emphasis supplied)

52. In “Fertilizer Corporation case”, (AIR 1981 SC 344) at p.350 the Court speaking through Chandrachud, C.J., observed:

“We want to make it clear that we do not doubt the bona fides of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all its cards on the table.

(emphasis supplied)

53. In “Ram & Shyam Company vs. State of Haryana” (1985 (3) SCC 267), it has been laid down: (vide p.277, para 12)

“.....On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds.But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property.”

(emphasis supplied)

54. Reliance is placed on good authority to establish that public property cannot be transferred without open procedure of public advertisement, public tender and public auction, unless law provided otherwise. Malik Atta Muhammad and another v. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and others (2007 SCMR 178), Mirza Muhammad Arif and

others v. Chief Engineer and others (PLD 2009 LAH. 489), Muhammad Irshad and another v. Tehsil Municipal Administration through Tehsil Nazim, Lodhran and 3 others (2006 CLC 1902), Mubashir Iqbal v. Secretary, Excise and Taxation, Government of Punjab, Lahore and 5 others (PLD 2005 Lahore 728), Sardar Sultan Ahmed Khan v. Government of Punjab through Project Director, Department of Agriculture Punjab, Lahore and 4 others (2001 MLD 1013), Petrosin Products Pakistan (Pvt.) Limited vs. Federation of Pakistan through Secretary, Privatization Commission, Ministry of Finance, Government of Pakistan Islamabad and 5 others (2001 CLC 820), "Muhammad Shafique Khan v. Secretary to the Government of Punjab Local Government and Rural Department, Lahore and 2 others" (1996 CLC 2045), Administrator, Municipal Committee, Sahiwal vs. Member Colonies, Board of Revenue, Punjab, Lahore and 2 others (2007 CLC 1858), Messrs Noor Shah Filling Station (Regd.) through Manager (Administration) v. Auqaf Department through Secretary/Chief Administrator Auqaf, Punjab and 4 others (2009 CLC 1148), Shaukat Ali and others v. Government of Pakistan through Chairman, Ministry of Railways and others (PLD 1997 SC 342), Shaukat Ali vs. Secretary, Industries and Mineral Development, Government of Punjab, Lahore and 3 others (1995 MLD 123), "Syeda Shahida Tasleem v. The Province of Punjab and others" (PLD 1995 Lahore 110), "Ali Raza v Chairman, Punjab Cooperative Board for Liquidation, Lahore" (2010 YLR 356), Maqsood Khan and others v. Province of Sindh and others (2007 YLR 28). From the Indian jurisdiction reliance is placed on: Aggarwal & Modi Enterprises Pvt. Ltd. & Another V. New Delhi Municipal Council (AIR 2007 SC 3131), Chenchu Rami Reddy and another v. The Government of Andhra Pradesh and others (AIR 1986 SC 1158), State of Haryana and others v. Jage Ram and others (AIR 1983 SC 1207), M/s. Kasturi Lal Lakshmi Reddy etc. v. The State of Jammu & Kashmir and another (AIR 1980 SC 1992), Ram and Shyam Company, v. State of Haryana and others (AIR 1985 SC 1147), Ramana Dayaram Shetty v. The International Airport Authority of India and others (AIR 1979 SC 1628), Shri Sachidanand Pandey and another v. The State of West Bengal and others (AIR 1987 SC 1109), State of U.P. v.

Shiv Charan Sharma and others (AIR 1981 SC 1722), “Fertilizer Corporation v. Union of India” (AIR 1981 SC 344), and Haji T.M. Hassan Rawther vs. Kerala Financial Corporation (AIR 1988 SC 157).

55. Disposal of Public Property without reaching out to the public is a breach of public trust and is therefore facially and ex-facie discriminatory. By giving preference to a select few amounts to treating equals unequally. This offends fundamental right of equality under article 25 of the Constitution.”

9. Learned counsel for the petitioners has failed to point out any perversity, illegality or any jurisdictional defect in the impugned order calling for any interference by this Court in its constitutional jurisdiction.

10. In view of above, this writ petition being devoid of any force is **dismissed** in limine.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Abdul Hafeez