

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Shahid Bilal Hassan
Justice Aamer Farooq

C.P.L.A.No.1718-L of 2015

(Against the order dated 12.05.2015 passed by Lahore High Court, Lahore in W.P.No.4218 of 2008)

Senior Member Board of Revenue, Punjab, Lahore, etc.

... *Petitioner(s)*

Versus

Abdul Shakoor (deceased) through his L.Rs.

... *Respondent(s)*

For the Petitioner(s): Mr. Ahmad Awais Qazi, Additional Advocate
General Punjab

For Respondent: Mr. M.A. Ghaffar UI Haq, ASC

Assisted By: Mr. Owais Nasir, L.C.

Date of Hearing: 27.03.2025

ORDER

SHAHID BILAL HASSAN, J. Dissatisfied with the order dated 12th May, 2015 passed in W.P.No.4218 of 2008 by the Lahore High Court, Lahore, the petitioner(s) have filed the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, seeking indulgence of this Court while granting leave to appeal against the said order.

2. Succinctly, Senior Member/Member (Revenue), Board of Revenue ("**Senior Member**"), declaring himself to be a representative of the State and the Punjab Government, and acting in the capacity of Member, Board of Revenue challenged order dated December 07, 2007 of the Member (Judicial-II)¹ and as such directed Member (Judicial-II) to review and recall their order. The order of the Senior Member dated March 26, 2008 ("**Order**") was assailed before the High Court in its writ jurisdiction which was found to be outside of the Senior Member's jurisdiction. High Court in its order dated May 12, 2015 ("**Impugned Order**") reasoned that the Senior Member exercised the power of review *suo*

¹ Order granted proprietary rights of land measuring about 198 "acres" in village Mauza Rakh Kotla, Tehsil and District Jhang under Tubewell Sinking Scheme to the present respondents

motu i.e. without an application for review moved by an aggrieved party, which power was never vested in the Senior Member in terms of Section 8 of the Board of Revenue Act, 1957 ("**the Act**").

3. We have heard learned counsel representing the parties and have gone through the impugned order, record as well as relevant provisions of law on the subject with their able assistance.

4. Considering the arguments, advanced at bar and going through the record, it is observed that power to review in revenue jurisdiction is vested in the Board of Revenue under Section 8 of the Act on a very limited score, at the motion of "any aggrieved person" within a period of 90 days from the date of decree or order, as the case may be, on the ground(s) *inter alia* 1). On the discovery of new and important matter or evidence, which despite due diligence, was not within the knowledge of review petitioner or could not be produced by him at the time when the decree or order was passed or made, 2). On account of some mistake or error apparent on the face of the record and lastly 3). for any other sufficient reasons. The Board may, after due notice to the parties affected and after hearing them, pass such decree or order as the circumstances of the case require. *Suo motu* power to review does not vest in the Board of Revenue.² In the present case, the order passed by the Senior Member Board of Revenue is not in accordance with the provisions of Section 8 of the Act and it gravely suffers from at least four legal infirmities. Firstly, that the order has been passed without there being a motion filed by an aggrieved party. In Atta Muhammad Qureshi it was held that any neglect of the mandatory procedure prescribed by statute invalidates any action taken in deviation thereof.³ Secondly, that it has been passed without affecting notices to the aggrieved parties. Thirdly, that it has been passed without hearing the present respondents whose proprietary rights of land have been extinguished. Lastly, that the order has been reviewed outside the period of limitation i.e. 111 days from the order dated December 07, 2007 passed by the Member (Judicial-II). As such the order of the Senior Member was *suo motu* and thereby in violation of Section 8 of the Act. Reliance in this regard can be placed on an earlier decision of this Court where, by way of background, the basis to allow the writ petitions was that the respondents were condemned unheard and that the Punjab Board of Revenue Act, 1957 does not permit

² Basher Ahmed (Deceased) through LRs. vs. Member (Consolidation) Board of Revenue, Lahore and others (2022 SCMR 620), para. 9

³ Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore (PLD 1971 SC 61)

exercise of any *suo motu* review jurisdiction.⁴ Therefore, purported exercise of jurisdiction thereunder by the Member (Colonies), Board of Revenue was ex facie without lawful authority, the respondents were not heard and a general letter was issued undoing the orders passed earlier.⁵ Moreover, in Riaz Hussain this Court held that in the absence of any provision conferring a power to extend the period of limitation, an order if passed by a Member, without condoning the delay, would be wholly without jurisdiction.⁶ Such is the case before us, as the present respondents were condemned unheard, a general letter was issued by the Senior Member undoing the order passed earlier by Member (Judicial-II), and the review was entertained outside the limitation period of 90 days. This purported exercise by the Senior Member was unlawful to begin with as the *suo motu* review was wholly without jurisdiction and without lawful authority.

5. In addition to the above, the review proceedings by Senior Member were initiated on the administrative side in respect of an order which was passed on the judicial side by Member (Judicial-II). There is no cavil with the proposition that a judicial order is not liable to be set aside through an administrative order. This Court in Commissioner of Income Tax East Pakistan⁷ and Chuttan⁸ has laid down that the power exercised on the judicial side cannot be set at naught through exercising the power on the administrative side, even more so, when the order on the judicial side had attained finality. It is true that the Board of Revenue acts in a dual capacity. On the administrative side, it controls the consolidation proceedings and on the judicial side it deals with disputes arising out of it. But once a dispute has been decided on the judicial side, the exercise of executive authority to nullify the effect of judicial decisions would be an improper exercise of authority. Nullifying the effect of judicial decisions even by legislative process has never received universal backing, although it is not unknown to our system of law. Examples of this can be found in our legislative history nevertheless revoking of a judicial decision by an administrative process is certainly something new and cannot be approved of. In the present case, admittedly the Board of Revenue, exercising their powers on the judicial side, granted proprietary rights in land to the present respondents. It has, therefore,

⁴ Member (Colonies) Board of Revenue, Punjab, Lahore and others vs. Muhammad Shafi and others (2008 SCMR 589), para. 4

⁵ *Ibid.*, para. 7

⁶ Riaz Hussain and others vs. Board of Revenue and others (1991 SCMR 2307)

⁷ Commissioner of Income tax East Pakistan v Fazlur Rahman (PLD 1964 SC 410)

⁸ Chuttan and another vs. Sufaid Khan and another (1987 SCMR 503), para. 5

no powers on the administrative side to set at naught the judicial orders, even more so when they had attained finality.

6. Besides, the order was passed not only in violation of Section 8 of the Act but it also offends the principle of natural justice as laid down by superior courts. The respondents, who were granted proprietary rights by order dated December 07, 2007, have been condemned without being afforded an opportunity of hearing rendering the order violative of the principle of natural justice encapsulated in the maxim *audi alteram partem*. In the University of Dacca, this Court emphasized that the principles of natural justice must be adhered to in all proceedings, judicial or administrative, where the outcome may affect the rights or property of a party, even in the absence of an explicit statutory requirement.⁹ Furthermore, in Syed Abul A'la Maudoodi, it was affirmed that the right to be heard applies equally to administrative proceedings unless expressly excluded by statute, reinforcing that fairness and due process are indispensable to any decision-making process that affects individual rights.¹⁰ So far as the argument that under section 30(2) of the Colonization of Government Lands (Punjab) Act, 1912, the Board of Revenue has powers to pass an order resuming the land obtained through fraud and misrepresentation is concerned, the words 'after giving such person a reasonable opportunity of showing cause' have been used in the said provision of law, which further strengthens the above discussion that no *suo moto* review jurisdiction is vested in the Board of Revenue to undo an order (on judicial side) in exercise of administrative powers, that too, without hearing the person whose vested rights are going to be taken back or withdrawn, because such practice would be nothing but in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which mandates rights to fair trial and opportunity to every litigant(s).

7. From whichever angle we see or evaluate, the Senior Member, Board of Revenue had no jurisdiction to pass the order, challenged in writ jurisdiction before the High Court, for the same purports to have been passed in exercise of *suo motu* review jurisdiction of the Board of Revenue but by virtue of the provisions of Section 8 of the Act, no such power vests in the Board. If *suo motu* review was to be exercised by the Board for rectifying the decision of a learned Member suffering from incorrect interpretation and application of law or non-appreciation of facts, it would lead to an unending cycle of litigation. The order

⁹ The University of Dacca v. Zakir Ahmad (PLD 1965 SC 90)

¹⁰ Syed Abul A'la Maudoodi v. The Government of West Pakistan (PLD 1964 SC 673)

is also illegal because it has been passed in utter disregard of the principle of natural justice that no one should be condemned unheard, as embodied in the maxim, *audi alteram partem*, and because the general letter of the Senior Member sought to set aside a judicial order of the Member (Judicial-II) through an administrative order. In this view of the matter, the learned High Court, while appreciating law on the subject has rightly adjudicated upon the matter in hand and has passed the impugned order within the four corners of law, which does not need to be interfered with by us.

8. The crux of discussion above is that there is no ground to grant of leave in the petition in hand; resultantly, leave is refused, consequent whereof the petition in hand stands dismissed.

9. Before parting with this order, we appreciate the exceptional research and assistance in this case by Mr. Owais Nasir, Law Clerk; his diligence, attention to detail and analytical skills are outstanding.

Judge

Judge

Announced in open Court on 24.04.2025.

Judge

Lahore

'Approved for reporting'
(M.A.Hassan)