

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Shafi Siddiqui

Civil Appeals No.112-K to 116-K/2022

Against the order dated 07.10.2022 passed by High Court of Sindh, Karachi in Revision Applications No.73 to 77 of 2004.

Qazi Mumtaz Hussain (in CA 112-K/2022) ...Appellant(s)
Mst. Naimat Khatoon & others (in CP 113-K/2022)
Qazi Jan Muhammad (in CA 114-K/2022)
Qazi Ghulam Rasool Pali deceased through his
legal heirs & others (in CA 115-K/2022)
Mst. Hidayat Khatoon since died through her LRs.
& others (in CA 116-K/2022)

Versus

Government of Sindh through its Secretary ...Respondent(s)
Revenue & others (in all cases)

For the Appellant(s): Mr. Muhammad Yousaf Laghari, Sr. ASC
Mr. Ghulam Rasool Mangi, AOR

For the Respondent(s): Mr. Suresh Kumar, Addl. Advocate
General, Sindh.
Ms. Lubna Pervaiz, AOR
Mr. Ghazanfar Ali Abbasi, Deputy
Secretary BOR.

Date of Hearing: 19.03.2025

ORDER

Muhammad Shafi Siddiqui, J.- In these appeals, filed under Article 185(2) of the Constitution of Islamic Republic of Pakistan, 1973 the primary question is as to whether once a jurisdiction under Law Reforms Act 1977 (1977 Act)¹ is exhausted by filing an appeal, a parallel jurisdiction of Civil Court could be invoked for the redressal of the same grievance triggered by same cause. A decision of this question only would enable us to go and discuss merits of the case independently.

2. The relevant facts are that the declarants were required to file a declaration under 1977 Act vide notification No.70/LC.LR-1977. Section 6 of the 1977 Act prohibits and restricts the holders of the land as under:-

¹ A jurisdictional lineage provided under 1977 Act.

6. Certain transfers void.— (1) The transfer of any land, and the creation of any right or interest in, or encumbrance on any land, made in any manner whatsoever in respect of any area, on or after the commencement of this Act by any person holding immediately before that date an area exceeding his entitlement under section 3, shall be and shall be deemed always to have been void, and the land so transferred or encumbered shall be deemed to have been owned or possessed, as the case may be, by the person by whom it was owned or possessed immediately before that date. (2) Nothing in sub-section (1) shall apply to any transfer of land or the creation of any right or interest in or encumbrance on any land left with a person after he has surrendered the land in excess to his entitlement under this Act."

3. In pursuance thereof the above appellants filed declaration under MLR 115 except one Mst. Naeema Khatoon. The Deputy Land Commissioner Tharparkar in pursuance of the aforesaid provision declared that in the referred cases the declarant held an excess area and were directed to give choice for resuming the excess area. Per record notice was served upon Manager but neither declarants nor the legal heirs (as one claimed to have expired) or their Manager appeared on 23.02.1988 and the excess land was thus resumed to be free from all encumbrances.

4. Being aggrieved with such order of the Deputy Land Commissioner Tharparkar regarding resumption of land, the surviving declarants/legal heirs filed appeal under MLR before the Land Commissioner Mirpurkhas Division which appeal was rejected on 04.03.1997. It is at this stage when jurisdiction of a Civil Court was invoked by filing F.C. Suits No.3 to 7 of 2002 before Senior Civil Judge Umerkot. Filing of the suit was obvious as it was subsequent to the failed attempt to get the order of resumption of land set aside after dismissal of appeal filed before Land Commissioner Mirpurkhas; a similar relief was then attempted by filing civil suit before Senior Civil Judge Umerkot though a further appellate lineage to challenge the order was available.

5. Indeed the jurisdiction of the Civil Court under the special circumstances could be exhausted but not in a case where the appellant

and/or a litigant has attempted a forum other than the Civil Court, as in this case, by not only filing declaration under MLR 115 but also when the Deputy Land Commissioner Tharparkar, after assuming lawful jurisdiction, resumed the excess land; the appellants under the hierarchy of 1977 Act invoked the jurisdiction of Land Commissioner Mirpurkhas Division by filing their respective appeals which were taken to their logical end. By applying the principle of Doctrine of Election the appellants cannot be permitted to have another bite of the cherry by invoking original jurisdiction of Civil Court for a similar recourse. As per the doctrine of election a person aggrieved of an order/judgment may have a host of remedies to challenge the same but he shall have to elect one of those remedies and after choosing one he may not avail another remedy². Thus, the appellants themselves have chosen to be ousted from availing the jurisdiction of Civil Court long back when they opted to invoke the jurisdiction in pursuance of 1977 Act.

6. Neither any malafide could be attributed to the actions taken by the Deputy Land Commissioner Tharparkar nor could the resumption of excess area in pursuance of 1977 Act be termed as void or without jurisdiction. All that was done was within the frame of 1977 Act. The articulated consequential remedy then available was not exhausted, as disclosed in later part of paragraph 5 of the impugned order.

7. The appellants have not presented a case of jurisdictional defect so as to enable a civil Court and/or a constitutional Court to assume the jurisdiction.

8. The actions of resumption of excess land were taken prior to the effective date whereas the Qazalbash's case³ which itself suggested its affect as prospective and not retrospective. The declaration was to be given effect from 23.03.1990 and the provisions of Regulation which were

² PLD 2018 SC 828 (Trading Corporation of Pakistan v. Devan Sugar Mills Ltd.)

³ 1993 SCMR 1697 (Government of Pakistan v. Qazalbash Waqf)

self-executory were not, in any manner to be affected thereby. The relevant part of the impugned order is reproduced as under:-

17 Under the Martial Law Regulation, a limit was prescribed on landholdings; and, the land above the permissible limit was required to be surrendered to the State. Further land reforms were introduced through the Land Reforms Act II of 1977, which further reduced the upper permissible limit of landholdings. Both under MLR 115 as well as Land Reforms Act, 1977, "persons" owning or possessing land beyond permissible limits were required to submit declarations giving details of their holdings and excess land, i.e. over and above the permissible limits was to vest in the Government. Section 9 of the Land Reforms Act, 1977 reads as follows:-

9. Vesting in Government of excess land-

(1) Land is excess of the area permissible for retention by a person under section 3, shall be surrendered by him to the Land Commission of the Province where such land is situated, and it shall vest in Government free of any encumbrance or charge: Provided that rights and obligations of any person in respect of the standing crops on land surrendered under this section shall remain unaffected until the standing crops are removed or the 30th day of June next following, whichever is earlier.

(2). Land determined, under subsection (5) of section 7, to be in excess to the entitlement of a person shall vest forthwith in the Government free of any encumbrance or charge and the defaulter shall be deemed to have forfeited the right and option under section 4

(3) Any land under litigation which is in excess to the entitlement of a person under this Act, shall vest in the Government subject to the final adjudication of the rights of the litigants.

(4) Any land surrendered by a person which was in his possession as a lessee or mortgagee shall not vest in the Government but shall, subject to the provision of Section 3, revert to lessor or mortgagor, as the case may be.

(5) Any land surrendered by a person, which was held by him as the landlord of an occupancy tenant or a Muqarraridar or as an Adna Malik shall not vest in Government but shall, subject to other provisions of this Act, vest in the occupancy tenant Muqarraridar or Adna Malik, as the case may be free from any encumbrance exchange."

18. In subsection (2) of Section 9 of the Act 1977, reference has been made to subsection (5) of Section 9 which is also reproduced here

"(5) Where any person fails to make a declaration under this section, an officer of the district concerned,

who is authorized by a Commission in this behalf, shall, of his own motion or otherwise, and after calling for such information and recording such evidence as he may deem necessary, determine the land owned or possessed by such person in excess to his entitlement under this Act and make an order to this effect."

9. In view of above, we do not find any lawful reason to interfere with the well-reasoned and comprehensive judgment encompassing all questions involved therein. The learned Judge was well within his right to intervene while exercising jurisdiction under section 115 CPC as there was jurisdictional defect determined by the Revisional Court. Appeals merit no consideration and the same are accordingly dismissed.

Judge

Judge

Announced in open Court on 21.03.2025.

Judge

Karachi

"Approved for reporting"