IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

CIVIL PETITION NO.3750 OF 2020
(Against the judgment dated 08.09.2020 passed by the Peshawar High Court, Peshawar in W.P. 2683-P/2019)

Special Secretary-II (Law & Order), Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others.

...Petitioners

VERSUS

Fayyaz Dawar ...Respondent

For the Petitioners: Mr. Shumail Aziz, Addl. AG, KPK
Mr. Zayed Safi, AC
Mr. Mir Ali

For Respondent: In Person

Date of Hearing: 14.06.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 08.09.2020 passed by the learned Peshawar High Court, Peshawar in W.P.No.2683-P of 2019, whereby the writ petition filed by the respondent was allowed.

2.The résumé of the case as narrated in the Civil Petition is that, during the Army Operation of Rah-i-Nijat in the year 2007, the house of the respondent was damaged due to aerial shelling and some casualties also ensued for which compensation was paid to the respondent. However, the respondent filed Writ Petition No.2683-P/2019 after a lapse of 12 years for compensation on account of alleged damage to his house. The petitioners had filed their comments and denied the claim for the reason that there was no law or policy of compensation in vogue at the relevant time to redress the grievance of

the respondent. The Peshawar High Court allowed the Writ Petition with the directions to the petitioners to pay the compensation to the respondent as estimated by the political agent in the year 2007.

3.The learned Additional A.G, KPK argued that the learned High Court had no jurisdiction to resolve factual controversies or disputed questions of facts in the Writ jurisdiction. The controversy involved in the present case could not be resolved without recording evidence. The incident alleged by the respondent in the Writ Petition pertained to the year 2007, while the policy of compensation was framed in 2013, which has no retrospective effect. In the Financial Assistance Compensation Policy 2013, no provision was incorporated for awarding compensation for any previous incident. It was further contended that the impugned judgment of the High Court is without jurisdiction and without backing or support of any law. He further averred that, at the relevant time, the respondent was compensated by the Government regarding the loss sustained by his family which was received by him without demur. In the end, the learned A.A.G avowed that the belated claim lodged by the respondent through the Writ Petition was also hit by laches which essential point was ignored by the learned High Court.

4.The respondent present *in personam* argued that the actual damage inflicted in 2007 was estimated and verified by the Political Tehsildar and Political Administration vide letter dated 19.08.2007 in the sum of Rs.26,54,000/- (Twenty six Lac and Fifty Four Thousand only). He further contended that subsequent assessment made by Sub-Divisional Assessment Committee was not in consonance with the actual damage caused to the property of respondent. However, he admitted that at the time of Army Operation of Rah-i-Najat, no compensation policy was prevailing but the damage inflicted to the property was approved by the Political Administration as a special case for which the respondent had vigorously pursued before the authorities and also initiated correspondence but no compensation was paid. It was further averred that even though the compensation claim of the respondent related to the year 2007 and the policy for compensation to disaster affectees in FATA was approved with effect from 7.5.2013, but regardless of any law or policy prevalent at the time of incident, the petitioners are bound to consider the case on humanitarian grounds.

5.Heard the arguments. The appraisal of the impugned judgment of the learned High Court expounds that the respondent had already received compensation due to the fatalities but, in addition to that, he was also pursuing his claim for compensation on account of damages to his abode. Nevertheless, the learned High Court conspicuously observed in the impugned judgment that in exercise of constitutional jurisdiction, the Court is unable to practically assess the amount of damage suffered by the respondent but primarily relied on the letters produced by the respondent and allowed the Writ Petition with the directions to pay off the compensation as estimated by the Political Authority.

6.In realism and practicality, there was no policy document for entertaining or satisfying any claim of compensation pertaining to the year 2007. However, vide Notification dated 7.5.2013, the Governor, Khyber Pakhtunkhwa, in the capacity of Chairperson, (ex-officio), "FATA Disaster Management Commission" under the provision of sub-section (3) of Section 14 of the National Disaster Management Ordinance, 2007, succeeded by the National Disaster Management Act 2010, read with Section 1 (2) (a) of the SRO No. M-302/L.-7646, Government of Pakistan and Frontier Regions Division Notification dated 10.03.2008, approved with immediate effect the policy governing Compensation Packages for disaster affectees of FATA. On the even date, the "Policy Governing Compensation Packages for Disaster Affectees of FATA" was proclaimed for particularizing and itemizing the rate of financial assistance for various categories of affectees, approved/sanctioned by the Federal Government. The Khyber Pakhtunkhwa Provincial Government duly adopted, *mutatis mutandis*, the Uniform Compensation Package(s) for the legal heirs of Provincial Police Personnel and Civil Servants of the provincial Government who, while in service, were martyred due to acts of terrorism, as contained in the Notification No. FD/(SOSR-II)4-199/2011 dated 22.02.2011 for employees working in FATA by the Federal Government vide its Notification No. FS/E/100-5(Vol-5) Part IV/4078-84 dated 09.04.2011. The mechanism for compensation is provided in Clause 5 of the aforesaid Policy, whereas the criteria for validation of claims are mentioned in Clause 6, wherein Sub-Clause A pertains to "Loss of Life and Injury", while Sub-Clause B is related to "Housing Compensation" and Sub-Clause C is germane to "Losses

of Animals". Since the matter in issue is precisely concomitant to housing compensation, therefore, Sub-Clause B is relevant, according to which the rate of compensation for a fully damaged house was fixed at Rs.3,00,000/- while for a partially damaged house the amount of compensation was fixed at Rs.50,000/- and for collapsed wall and boundary wall only, the rate of compensation was Rs.20,000/-. It is further provided in the policy as a contrivance and method of determination of compensation that the damages to the house(s) shall be verified through a Joint Committee comprising of a local school teacher, the concerned Political Moharrir and the concerned Local Imam Masjid. The report of the Joint Committee shall be endorsed by the Political Naib Tehsildar/Political Tehsildar, attested by Assistant Political Agent and countersigned by the Political Agent/Deputy Commissioner (FR) concerned. In order to provide for an effective national disaster management system and for matters connected therewith or incidental thereto, the Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa, and Punjab had passed Resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan, 1973, to the effect that Majlis-e-Shoora (Parliament) may, by law, regulate the national disaster management system to overcome unforeseen situations and, as a result of aforesaid Resolutions, the National Disaster Management Act, 2010 was promulgated. Originally, Section 39 of the 2010 Act was in relation to the compensation payable on requisition of any premises as rent to its owner, which was subsequently substituted by Khyber Pakhtunkhwa Act No.VI of 2012 and according to substituted Section 39, the procedure and mechanism of payment of compensation was laid down which accentuates that where by reason of any disaster, resulted in a substantial loss of life or human suffering or damage to and destruction of property or a large scale migration of the affected people consequent to the disaster, there shall be paid compensation to the affected people for the losses to the life or property, in addition to relief, rehabilitation, settlement activities, provided that amount of compensation shall be determined by the Provincial Government.

7.It is matter of record that earlier also an inspection report dated 6.12.2021 was submitted on the directions of this Court by the Assistant Commissioner, Mirali, but the respondent took the plea that he was not present at the time of the inspection. Keeping in view

the said objection, this Court issued a direction to conduct the inspection afresh in the presence of the respondent. Compliant to such directions, the house of the respondent was inspected once more and the version of the respondent was also incorporated in the report which was submitted in this Court by means of C.M.A.No.3872/2022. According to the inspection report submitted by Assistant Commissioner/Chairman, Mirali, Sub-division, the Divisional Committee reached to the conclusion that the actual house was intact but only the front and side boundary wall was damaged which was repaired, therefore it falls in the category of partially damaged house. Whereas the respondent is pursuing and pressing his claim as allegedly calculated by the Political Tehsildar and Political Administration vide letter dated 19.8.2007 to the tune of Rs.26,54,000/- which has been vehemently objected to and disputed by the petitioners by tooth and nail. In this set of circumstances, it is cloudless that the matter in issue encompassed divergent pleas and that the alleged claim of the respondent was never accepted by the petitioners. Seemingly, the claim of compensation was not covered or established under any statutory provision or Government Policy at the relevant time, therefore, the Civil Court had the ultimate jurisdiction to decide the claim of special and/or general damages after recording evidence of the parties and, in order to reach a just and proper conclusion, the right course was to approach Civil Court rather than the High Court in the Writ jurisdiction.

8. It is a well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in the writ jurisdiction. The learned High Court in the impugned judgment itself observed that it cannot practically assess the amount of damage but, despite that, the petition was allowed in disregard of a crucial facet that in the constitutional jurisdiction, the High Court cannot go into miniature and diminutive details which could only be resolved by adducing evidence by the parties vice versa. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy. In the case in hand, the remedy of filing civil

suit was an appropriate and alternate remedy as *remedium juris* which was more convenient, beneficial and effective. The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right. (Ref: Asadullah Mangi and other vs. Pakistan International Airline Corporation **(2005 SCMR 445).** The High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction. Ref: Col. Shah Sadiq vs. Muhammad Ashiq and others **(2006 SCMR 276)**. In the case of Fida Hussain & another vs. Mst. Saiqa & others **(2011 SCMR 1990)**, this Court keeping in mind the plethora of dictums laid down by the superior Courts recapped that the High Court cannot resolve the disputed question of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution. Whereas in the case of Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others **(2011 SCMR 1813)**, this Court intensely conversed the prerequisite and touchstone of jurisdiction conferred upon the High Courts under Article 199 of the Constitution and held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of the High Court under this Article the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a petition under Art. 199. The other remedy in order to be adequate must be equally convenient, beneficial and effective and the relief afforded by the ordinary law must not be less efficacious, more expensive and cumbersome to achieve as compared to that provided under the Article. Ref: Gul Ahmed Textile Mills Ltd v. Collector of Customs Appraisement, (1990 MLD 126), Pak. Metal Industries v. Assistant Collector, (1990 CLC 1022), Allah Wasaya v. Tehsildar/AC 1st Grade, (1981 CLC 1202), Syed Riaz Hussain Zaidi v. Muhammad Iqbal, (PLD 1981 Lah. 215) & Abdul Hafeez v. Chairman, Municipal Corporation (PLD 1967 Lah. 1251). It was further held that the superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence.

This can more appropriately be done in the ordinary civil procedure for litigation, by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only be courts having plenary jurisdiction in matter and on such ground constitutional petition was incompetent. (Ref: State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd. PLD 1983 SC 280).

9.Even though the above findings are sufficient to non-suit the respondent, but one more significant aspect of the case cannot be lost sight of, that the alleged claim of compensation is based on the damages caused in the year 2007, but the respondent filed his Writ Petition in the year 2019, which is virtually after 12 years. Notwithstanding the crucial aspect that a factual controversy cannot be decided in Writ jurisdiction, the Writ Petition was also hit by laches which essential point at issue was not considered by the learned High Court in the impugned judgment. Merely advancing a plea that the respondent was engaged in correspondence with different government officials for pursuing his claim does not protect or save the respondent from the drawbacks or impediments of the doctrine of laches which explicates that a party may have a right which was otherwise enforceable but loses right of its enforcement in case it is hit by laches. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking

constitutional jurisdiction. Ref: PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400 (Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others).

10. As a result of the above discussion, this Civil Petition is converted into an appeal and allowed. Consequently, the impugned Judgment of the learned Peshawar High Court is set aside and the Writ Petition filed by the respondent in the High Court is dismissed.

Chief Justice

Judge

Judge

Islamabad the
14th June, 2022
Khalid
Approved for reporting