

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan
Mr. Justice Shahid Bilal Hassan

Civil Petitions No.3297 of 2024 and 1921-L of 2024

[Against order dated 29.05.2024 passed by the Lahore High Court, Lahore in Writ Petition No.75147 of 2023]

Muhammad Yousaf
(in CPLA No.3297/2024)

Commissioner Gujranwala Division, Gujranwala
and others
(in CPLA No.1921-L/2024)

...***Petitioner(s)***

Versus

Member Judicial-IV, Board of Revenue, Punjab,
Lahore and others
(in CPLA No.3297/2024)

Maratab Ali and another
(in CPLA No.1921-L/2024)

...***Respondent(s)***

For the Petitioner(s)

Rai Azhar Iqbal Kharal, ASC
(in CP.3297/2024)

For official Respondent(s)

Mr. Khalid Ishaq,
Advocate General, Punjab.
(in CP.3297/2024)
Mr. Sanaullah Zahid,
Additional Advocate General, Punjab
(in CP.3297/2024)

For RespondentNo.5

Malik Noor Muhammad Awan, ASC
(via video link, Lahore in CP. 3297/2024)

For the Petitioner(s)

Mr. Khalid Ishaq,
Advocate General, Punjab.
(in CP.1921-L/2024)

For Respondent No.1

Malik Noor Muhammad Awan, ASC
(via video link, Lahore in CP.1921-L/2024)

Date of Hearing:

28.11.2024

JUDGMENT

AYESHA A. MALIK, J.- These Civil Petitions are directed against order dated 29.05.2024 passed by the Lahore High Court, Lahore (**High Court**) whereby the writ petition filed by Maratab Ali, Respondent No.5 in CPLA No.3297 of 2024 and Respondent No.1 in CPLA No.1921-L of 2024 (**Respondent**) was allowed and the orders of

the three revenue forums passed against the Respondent were set aside.

2. There are two sets of Petitioners before this Court, both of whom have challenged the grant of *charagah* land to the Respondent on the basis of the Notification of 2006¹ issued by the Board of Revenue (**BOR**). Muhammad Yousaf, the Petitioner has challenged the grant of *charagah* land to the Respondent under the *lambardari* grant as being illegal. The Government of Punjab has also questioned the grant of *charagah* land to the Respondent as being against government policy especially the Notification of 2019² which lays down the statement of conditions for grant of leases of certain available state agricultural lands, excluding *charagah* land, for temporary cultivation.

3. The facts of the case are that the Respondent was appointed as *lambardar* of Chak No.23, Tehsil Malikwal, District Mandi Baha-ud-Din in 2001 and was consequently allotted *charagah* land measuring 140-Kanals and 18 Marlas situated in the said *chak*, under the *lambardari* grant vide mutation No.1173 dated 24.02.2009. This allotment was challenged through two rounds of litigation. In the first round of litigation, the allotment of *charagah* land as *lambardari* grant in favour of the Respondent was challenged by one Iftikhar Ahmed before the Executive District Officer (Revenue), who set aside the order of allotment on 03.02.2010. The BOR vide its order dated 21.09.2010 set aside the order of 03.02.2010 and maintained the allotment in favour of the Respondent. A review was filed against the said order which was dismissed on 22.11.2011 by the BOR. A second review was filed and allowed vide order dated 10.10.2013 whereby the order of the Executive District Officer (Revenue) was upheld thereby maintaining the grant in favour of the Respondent as illegal with a direction to the District Officer (Revenue) that, if deemed necessary, he may move for inclusion of excess *charagah* land in the *lambardari* schedule. The order of 10.10.2013 was challenged before the High Court through Writ Petition No.2886 of 2013, which petition was dismissed on 20.10.2016 on the ground that a second review was not maintainable before the BOR. The said order was upheld by this Court vide order dated 22.01.2018 passed in Civil Petition No.3996 of 2016.

¹ Notification No.81-2006/50-C.(V), Dated 17.01.2006. (**Notification of 2006**).

² Notification No.2106-2019/753-CL(I), Dated 13.09.2019. (**Notification of 2019**).

4. In the second round of litigation, Muhammad Yousaf filed Writ Petition No.34069 of 2022 before the High Court once again challenging the grant of *charagah* land to the Respondent. The High Court on 03.06.2022 directed the Deputy Commissioner, Mandi Baha-ud-Din to pass a speaking order on the issue. The Additional Deputy Commissioner, Mandi Baha-ud-Din passed order dated 09.05.2023 wherein he cancelled the allotment in favour of the Respondent. This order was premised on the advice received from the BOR vide letter No.538-2022/1877 C-V, dated 10.06.2022 which observed that *charagah* land could not be allotted to anyone under the *lambardari* grant. The said order was upheld in appeal before the Commissioner, Gujranwala Division, Gujranwala on 16.06.2023 and again by the BOR on 25.09.2023. In the meanwhile, the Notification of 2019 was assailed through WP No.35693 of 2020 before the High Court which petition was dismissed on 13.08.2020. The Respondent then filed WP No.75147 of 2023 specifically challenging the orders of 09.05.2023, 16.06.2023 and 25.09.2023, which petition was allowed vide the impugned order.

5. The Petitioners' case is that the land allotted to the Respondent is *charagah* land hence it cannot be allotted in a *lambardari* grant. It is also their case that if at all this land had to be allotted, permission from the BOR was mandatory for the purposes of the allotment. The Respondent, on the other hand, claims that his allotment is under the Notification of 2006 in accordance with law and that *charagah* land is actually state land hence there is no bar on its allotment. He states that the cancellation of his mutation was without legal basis as the allotment is on a temporary basis in accordance with the requirements of the *lambardari* grant. He also states that reliance on the Notification of 2019 is misconceived as the same is not applicable to him given the land was allotted to him under the Notification of 2006. The impugned order has accepted the argument of the Respondent, treated the *charagah* land as state land and maintained the grant in favour of the Respondent on the basis of the Notification of 2006 primarily while also relying on the Notification of 1944³. Consequently, the basic issue before the Court is whether *charagah* land is state land and whether *charagah* land

³ Notification No.2664.C. Dated 22.09.1944 contains statement of conditions applicable to tenancies for temporary cultivation of land, under the Colonization of Government Lands (Punjab) Act, 1912. (**Notification of 1944**).

can be allotted as *lambardari* grant under any permissible scheme which approves *lambardari* grants.

6. In order to appreciate the arguments of the parties, it is necessary to understand the concept of *charagah* land. Historically, *charagah* referred to open pasture, a field or meadow used for grazing cattle.⁴ This land was considered as common land reserved for grazing purposes, for the benefit of the village and not of any individual. It was historically considered as non-cultivable, explicitly used for a collective purpose, as part of the collective rights of the village. *Charagah* land was found in the form of a strip of land, three squares or rectangle in extent, all around the village *abadi* which would give a clear space of 500 feet width between the outer houses and the nearest cultivation. This strip of land was always maintained by the village and was not to be allotted or sold or exchanged but could, if required, be used for public purpose. Some of the public purposes included extension of schools and playgrounds, pits for temporary storage of manure, for village tanks and for planting of trees.⁵ The basic concept of *charagah* was that it was used for grazing purposes for the residents of the locality, however, with the development of towns and municipalities, the usage of this land became an issue. Consequently, Collectors of Districts were authorized to re-fix *charagah* areas.⁶ However, this power was misused, hence, the BOR issued Memorandum of 1998⁷ with reference to the practice of converting state land into *charagah* land stated therein that *charagah* land around the villages could not be converted into state land and could not be used for any purpose other than a public purpose and that too with the permission of BOR. This notification was issued to address the concern that District Collectors were converting *charagah* areas into state land for the purposes of allotment under various different schemes. Accordingly, this notification sets the policy of the government that *charagah* land cannot be converted into state land nor can it be allotted for any purpose other than a public purpose and that too with the permission of the BOR. Through various subsequent notifications/ memorandums issued from time-to-time, detailed statements of conditions were provided with respect to the leasing out of *charagah*

⁴ A Glossary of Judicial and Revenue Terms, New Edition, by H.H. Wilson. Page 102.

⁵ Punjab Colony Manual, Volume I (1933 Edition), Charagah Policy, Para No.321. (**Charagah Policy**).

⁶ Memorandum No.2572-58/3372-S(G), Board of Revenue, West Pakistan, Lahore, Dated 10.06.1958.

⁷ Memorandum No.50-98/151-CS-V, Board of Revenue, Punjab, Lahore, Dated 04.02.1998. (**Memorandum of 1998**).

land.⁸ However, it is important to note that on 09.07.2001 a notification⁹ was issued providing for the statement of conditions for grant of proprietary rights in state land whereby *charagah* land was specifically excluded from the grant of proprietary rights. On 01.07.2003, another notification¹⁰ was issued providing the statement of conditions for grant of state land for agricultural purposes to landless tenants and small land owners whereby once again *charagah* land was excluded from the category of state land which could be granted for agricultural purposes. Even in cases where a temporary lease of state land was given with reference to *charagah* land, it was for a very specific period and even at times for a specific quantum of land.¹¹ Therefore, the notifications issued over time essentially either excluded *charagah* land from being leased out or if included for the purposes of leasing, specific conditions were provided such as a specified period of time was given usually not exceeding three years and the quantum of land was also provided, sometimes not exceeding four acres. Furthermore, there is no notification which grants proprietary rights, *lambardari* grants or long-term lease of *charagah* land.

7. State land, on the other hand, is land owned and controlled by the State. The Land Record Manual¹² defines it as government land, crown land and nazool land. The record of rights shows the land in the ownership of the State which means they can allot it, lease it or use it for public purposes, as per government policy. Usually, this land is used for revenue generation as opposed to *charagah* land which was a common resource for the village. Hence, the distinction between state land and *charagah* land is obvious and clear. *Charagah* land is not state land which is why its usage has to be approved by the BOR. The distinction between state land and *charagah* land is evident from aforementioned notifications as *charagah* land is clearly defined and described as open pasture land for grazing purposes which retains its key fundamental characteristics of being used for public purposes. State land, on the

⁸ Notification No.1622-71/1205-CLI, Dated 24.04.1971, Notification No.3215-79/3973/C II, Dated 03.09.1979, Notification No.1925-83/1253-CLI, Dated 20.04.1983, Memorandum No.7402-86/5249-CLI, Government of the Punjab, Colonies Department, Lahore, Dated 23.10.1986.

⁹ Notification No.1997-2001/1174-CLI, Dated 09.07.2001. (**Notification of 2001**).

¹⁰ Notification No.3040-2003/1921-CLI, Dated 01.09.2003.

¹¹ Memorandum No.3300-74/2342-CL-I, Board of Revenue, Punjab, Lahore, Dated 24.06.1974, Memorandum No.1785-76/5021-CL-I, Government of the Punjab, Colonies Department, Lahore, Dated 03.08.1976, Memorandum No.8837-79/593-CL I, Government of the Punjab, Colonies Department, Lahore, Dated 07.02.1980.

¹² Manual of Land Revenue Laws in Pakistan, Revised Edition 2018. (**Land Record Manual**).

other hand, is land in the ownership of the government which can be allotted or sold depending on the applicable scheme. Hence, *charagah* land is not state land as it has very distinctive features as is evident from the Charagah Policy and the Notification of 2001.

8. With reference to the *lambardari* grant, *lambardars* appointed as village headman were granted land under specific schemes such as the Pedigree Livestock Breeding Scheme or the Temporary Cultivation Scheme. By way of Notification of 2006, a criterion was set for grant of state land on lease to *lambardars*, on the basis of which, state land could be given to *lambardars* for the duration of their tenure. They would hold the land on lease during this time and no proprietary rights could be granted even for state land. The purpose of the *lambardari* grant was to give the *lambardar* a stake in the village revenue collection and to exercise as *lambardar*. Although much has changed over time, the *lambardari* grant continues even today as a form of compensation provided to the *lambardar*, and continues for long duration.

9. In the case at hand, the entire case of the Respondent is that he was given land under the *lambardari* grant on the basis of the Notification of 2006. We have examined the Notification of 2006 and find that it provides for the grant of state land on lease, free of charge to the *lambardar*. The said notification does not mention *charagah* land as being included in state land. Hence, it appears that the fundamental misunderstanding that has arisen in these cases is the fact of construing state land and *charagah* land to be one and the same. However, as already noted above, *charagah* land is distinct from state land and despite different notifications which permitted the lease of *charagah* land it is clear from the Notification of 2001 and further from Notification of 2013¹³ that *charagah* land could only be leased out on specific conditions with the permission of the BOR. These notifications have been overlooked in the impugned order and the treatment of *charagah* land as state land is totally misconceived.

10. This brings us to the next point that the Respondent admittedly does not have permission from the BOR and this fact has been reiterated numerous times in the orders of the revenue

¹³Notification No.917-2013/932-C.L(I), Dated 26.11.2013 for grant of lease of certain available state agricultural lands situated within prohibited zone/State Charagah land for temporary cultivation. (Notification of 2013).

hierarchy passed on 09.05.2023, 16.06.2023 and 25.09.2023. Since the land under the possession of the Respondent in the form of *lambardari* grant is *charagah* land, it was necessary that before the allotment of such land, the BOR consider the purpose and the terms and conditions for the grant if at all. In this regard, we are clear on the fact that *charagah* land was always considered as a common resource for the benefit of the village and, if at all, this land had to be leased out, it would be for a public purpose that too for a specified period of time with the permission of the BOR. There is no notification or provision under which *charagah* land could be converted as state land or could be leased out for an indefinite term to a *lambardar* for the period of his tenure. In the case in hand, the Respondent's tenure started in 2001 and still continues, hence, it is neither short term nor is it a public purpose.

11. With reference to the aforesaid, we note that the BOR gave a specific advice vide letter No.538-2022/1877 C-V, dated 10.06.2022 that *charagah* land could not be allotted to anyone under the *lambardari* grant and the reason for this advice and the cautious guarding of the *charagah* was that the character of the *charagah* land could not be changed. Even this letter was ignored in the impugned order consequent to which the grant in favour of the Respondent was upheld. We find that the revenue officers rightly cancelled the allotment of *charagah* land as *lambardari* grant in favour of the Respondent and ordered for its resumption in favour of the State.

12. In view of the above, these Civil Petitions are converted into appeals and allowed. The impugned order passed by the High Court is set aside. No order as to costs.

JUDGE

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Islamabad, the
28th November, 2024
'Approved for Reporting'
Azmat/*