

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE SAJJAD ALI SHAH**

**MR. JUSTICE JAMAL KHAN MANDOKHAIL**

*(DJ) AFR*

**Civil Appeal No. 190 of 2015**

(On appeal from the judgment of the Peshawar High Court Mingora Bench (Dar ul Qaza) Swat dated 19.03.2012 passed in C.R. No. 425 of 2003)

Government of KP thr. Secretary Home & TAs and ... Appellant(s)  
others

**VERSUS**

Noorani Gul thr. LRs

... Respondent(s)

For the Appellant(s) : Mian Shafaqat Jan, Addl. AG KP  
Ali Rehman, SI (Legal)

For the Respondent(s) : Mr. Muhammad Ajmal Khan, ASC/AOR  
(through video link from Peshawar)

Date of Hearing : 15.04.2022

**JUDGMENT**

**Jamal Khan Mandokhail, J.** Facts in brief are that the land settlement proceedings were conducted in the year 1986, wherein, the unsettled property was recorded in the name of the Provincial Government. The respondent claiming to be its owner, challenged the entries through the instant suit. He claimed that the land described in the plaint belonged to him, which is in his cultivated possession. The trial court decreed the suit, whereas, the appellate court reversed the findings. The respondent filed a civil revision before the learned Peshawar High Court, Mingora Bench, which was allowed and the judgment and decree passed by the trial court was maintained. The appellants filed a civil petition for leave to appeal, wherein leave was granted by this Court on 17<sup>th</sup> March, 2015, in following terms:-

*"Heard the learned Additional Advocate General, KP as well as the learned ASC for the respondent and perused the record. There are conflicting judgments of the Courts below.*

*2. Learned Additional Advocate General contends that the impugned judgment is based on misreading and non-reading of evidence.*

*3. Leave to appeal is granted to examine inter alia the above contention. Till the hearing of the appeal, parties shall maintain status-quo in respect of disputed property."*

2. Heard the learned counsel for the parties and have perused the record. Admitted facts of the case are that the land in question was unsettled, having no revenue record. The government started first settlement proceedings in the area, which were completed in the year 1986, wherein, the land in question was recorded in the name of the government. Perusal of the record would reveal that there is no evidence to prove that before the settlement proceedings, the government was either owner or in possession of the disputed land nor is there any reason in doing so. To the contrary, the respondent has claimed his ownership and possession over the suit property. The respondent produced oral evidence to establish his ownership and possession, as the land had no record before the settlement proceedings, therefore, there was no possibility of producing documentary proof. During the pendency of these proceedings, a local commissioner was appointed, who also confirmed the possession of the respondent. It is a fact that some of the adjacent properties belonging to several persons have been recorded in their names during the settlement proceedings, but the government did not dispute their ownership nor objected the settlement proceedings to their extent.

3. The land in question was recorded in the name of the government, merely on account of being an unsettled one. It is a settled principle of law that in case of claim of ownership of property, the government is equally responsible to show that the property has either been acquired through due process of law or it has become its owner, in respect of a property, which has no rightful owner as provided by Article 172 of the Constitution of the Islamic Republic of Pakistan, 1973. Under the said provision of the Constitution, the government has the right to take ownership of an unclaimed or ownerless property. It occurs when an individual dies or disappears with no will and no heirs and his property remains unclaimed for a considerably

prolonged period of time. It refers to a right of "escheat". Before acquiring such unclaimed or ownerless property through the right of escheat, the government is required to follow the procedure provided by law and to invite objections from general public, through widely circulated notice through all mediums of communication.

4. Admittedly, the government did not acquire the property in question through sale, gift or exchange, nor had ever claimed its right of escheat. Simply because the land in question was unsettled, when the first settlement was started, cannot be termed it as unclaimed or ownerless property. Since the respondent is claiming to be its rightful owner before the preparation of record during the settlement proceedings of the year 1986 and also proved his possession over the land in question, therefore, his claim was superior than that of the government. As far as the contention of the learned Law Officer that the respondent has not produced any documentary proof with regard to ownership of the property in question is concerned, suffice it to observe here that admittedly before the settlement proceedings, the property in question was unsettled, having no record to document ownership of the land owners. According to the Land Revenue Act and the Settlement Manual, it is the responsibility of the Provincial Government to conduct periodical land settlement proceedings in respective Provinces, but unfortunately, the needful was not done. Under such circumstances, the land owners cannot be held responsible for having no documentary proof. It was the government that neglected its duty to conduct settlement proceedings to incorporate title and ownership in the record of rights, therefore, the rightful owners could not be deprived of their fundamental right to acquire, hold and dispose of property in any part of Pakistan, as enshrined in Articles 23 and 24 of the Constitution.

5. It is a fact that after merger of the State of Swat into Pakistan, the properties which were in the ownership of Ruler of Swat, were recorded in the name of the government, whereas the properties of the individuals/private persons remained in their own names as is evident from the settlement proceedings of the year 1986, wherein, names of numerous owners of unsettled lands have been recorded in the revenue record, but the government did not question them. Admittedly, the land was unsettled, without any documentary proof and if documentary proof was to be considered as the only way to prove

ownership of the land, then the principle applies to the government as well. The government was bound to prove its ownership with regard to the property in question, but it did not produce any evidence to establish its ownership before the first settlement proceedings. As there was no documentary proof whatsoever of the unsettled land, therefore, possession and control of the respondent over the land is sufficient proof of ownership, but admittedly, the government was neither in possession of the property nor the same was under its control or supervision. The claim of the government is since not supported by any evidence, therefore, merely on the basis of the land being unsettled, is not a rightful claim. Learned Additional Advocate General appearing on behalf of appellant-government has not been able to substantiate the stance of the government nor has highlighted any point of law warranting interference in the findings of the learned High Court.

These are the reasons for our short order dated 15.04.2022, which is reproduced herein below:-

*"For reasons to be recorded separately, this appeal is dismissed."*

B-VI

Islamabad, the

15.04.2022

**"APPROVED FOR REPORTING"**

K.Anees/-