

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sajjad Ali Shah
Mr. Justice Yahya Afridi

Civil Appeal No. 730 of 2015

(Against the judgment dated
06.05.2015 passed by the Lahore
High Court, Lahore in Civil Revision
No. 308 of 2005)

Muhammad Din

...Appellant

Versus

The Deputy Settlement Commissioner, etc.

...Respondents

For the appellant:

Mr. Ibad-ur-Rehman Lodhi, ASC
Sh. Mehmood Ahmed, AOR

For respondent No. 1:

Mr. Shaukat Rauf Siddiqui, Addl. A.G.

For respondent No. 3:

Sheikh Waqar-ul-Haq, ASC
Mr. Ahmed Nawaz Chaudhry, AOR
(*absent*)

For respondents No. 5-7:

Mr. Zaheer Bashir Ansari, ASC
Mr. Arshad Ali Ch., AOR (*absent*)

For respondent No. 2(a-b) & 4: *Ex-parte*.

Date of hearing:

08.03.2022

JUDGMENT

Yahya Afridi, J.- Muhammad Din (“**Appellant**”), has challenged the judgment of the Lahore High Court dated 06.05.2015 passed in Civil Revision No. 308 of 2005, whereby the judgment and decree dated 02.03.2005 passed in his favour by the Appellate Court was set aside,

and the judgment dated 24.03.1996 of the trial court dismissing his suit was restored.

2. The controversy between the parties revolves around an immovable property originally bearing No. M/65, situated at Adamjee Road (previously called Mackson Road), Rawalpindi Cantt. ("**suit property**"). Admittedly, the suit property was originally owned by M/s Kaku Shah and Amir Chand; after partition, the same came in the administrative control of the Settlement and Rehabilitation Department ("**Settlement Department**"), being an evacuee property. The events relating to the suit property leading to the institution of the suit by the Appellant have a somewhat chequered history. They are, therefore, stated in chronological order for clarity, as under:

- i. **18.12.1959:** The Deputy Settlement Commissioner issued the Provisional Transfer Order ("**PTO**") (**Exh-P6**), in favour of Manzoor Ahmed Dhami, relating to the house bearing property No. M/65/A&B.
- ii. **20.09.1961:** The Cantonment Executive Officer wrote the letter (**Exhibit-P8**) to the Deputy Settlement Commissioner, for correction of the property No. mentioned in the PTO, which reads as under:

Under Provisional Transfer Order No. RWP-III/200/CH-64, dated 8.12.1959, property No. 65/A&B, Mackson Road, Rawalpindi Cantt., has been transfer to Mr. Manzoor Ahmad Dhami but according to the Cantonment Board record the correct number of this property are 65, 65/A-B, 65/C and 65/D-1.

Will you please amend the P.T.O. accordingly.

(emphasis provided)

- iii. **15.01.1962:** Based on the aforementioned letter, the Deputy Settlement Commissioner issued the Permanent Transfer Deed ("**PTD**") (**Exh-P7**) of the house bearing property No. 65, 65/A-B, 65/C and 65/D-1 in favour of Manzoor Ahmed Dhami.
- iv. **15.02.1973:** The Deputy Settlement Commissioner passed the order, transferring a Plot bearing property No. 65/1-C, Adamjee Road, Rawalpindi Cantt., to Mst. Wahida Begum, mother of the Appellant.

- v. **17.03.1973:** Mst. Wahida Begum, mother of the Appellant, executed the deed of General Power of Attorney in favour of the Appellant, in respect of property No. 65/1-C, stating therein, *inter alia*, that they both were residents of property No. 65/1-C, Adamjee Road, Rawalpindi Cantt.
- vi. **29.03.1973:** Manzoor Ahmed Dhami challenged in revision before the Settlement & Rehabilitation Commissioner, the order dated 15.02.1973 of the Deputy Settlement Commissioner, transferring Plot No. 65/1-C in favour of Mst. Wahida Begum, mother of the Appellant.
- vii. **15.09.1973:** The Settlement & Rehabilitation Commissioner passed the order, accepting that revision petition and setting aside the impugned order dated 15.02.1973 of the Deputy Settlement Commissioner.
- viii. **18.12.1973:** The Deputy Settlement Commissioner made the report (**Exh-P15**), to the Chief Settlement Commissioner in an application made by the Appellant for cancellation of the PTD issued in favour of Manzoor Ahmed Dhami, inter alia stating therein that the PTD of the hosue bearing No. 65, 65/A-B, 65/C and 65/D-1 was issued in favour of Manzoor Ahmed Dhami on the basis of the letter (**Exh-P8**) of the Cantonment Executive Officer.
- ix. **23.02.1974:** The Appellant moved the application (**Exh.P9**) to the Deputy Settlement Commissioner, seeking transfer of house bearing property No. 65/ABC, Adamjee Road, Rawalpindi Cantt., in his favour. The relevant particulars of the said application were in following terms:

"4. Particulars of the house which the applicant desires to be transferred to him on payment of the price:

No:	65/2-3 (as mentioned in the ETO Record 1946) 65/ABC (as mentioned in the Cantt. Board Record 1946)
Ward:	Adamjee Road, Rawalpindi Cantt.
Name of evacuee owner:	Kaku Shah Amir Chand
Date of possession of the house applied for:	Several years – date not known
Whether the house or part thereof is in the occupation of any person other than the applicant and his family? If so, state the name of such person.	None occupies the building or Part thereof for which application is made but Manzoor Ahmed Dhami claims ownernship on adjoining property No. 65/1."

- x. **16.07.1977:** The Lahore High Court (**Exh-D5**), disposed off WP No. 724-L/1974 filed by Mst. Wahida Begum, mother of the Appellant, whereby she had impugned the cancellation of the transfer order dated 15.9.1973, in terms of compromise effected between the parties.
- xi. **19.12.1979:** Manzoor Ahmad Dhani, vide the registered sale deed (**Exh-D2**), transferred to Ghulam Qadir, Bibi Shafia, and Safia Ghulam Qadir ("**Mst. Safia Begum and others**"), property bearing No. 65, 65/A-B, 65/C and 65/D-1, except the portion surrendered *vide* the compromise effected and recorded in the order dated 16.7.1977 in WP No. 724-L/1974.
- xii. **22.06.1980:** The Deputy Settlement Commissioner made the order (**Exh-D4**), implementing the order dated 16.7.1977 of the High Court passed in WP No. 724-L/1974, in following terms:
- "the result of compromise is that Mst. Wahida Begum, the petitioner, shall be deemed to be the transferee of portion measuring 2340 sq.ft. marked in red in the site plan (Exhibit. P1), which is ordered accordingly. Transfer documents issued to respondent No. 1 (Manzoor Ahmed Dhani) be amended accordingly."
- xiii. **16.06.1986:** The Lahore High Court passed the order (**Exh-D1**), disposing off Writ Petition No. 44-R of 1983 filed by Mst. Safia Begum and others, whereby they had challenged the order dated 22.6.1980 of the Deputy Settlement Commissioner, in the following terms:
- "In the course of proceedings the parties agreed for relaying the boundaries in accordance with the order passed by this Court on 16.7.1977 and they further agreed that the process of relaying the dividing line as contemplated by the aforesaid order may be conducted by Mr. Samad Mahmood, Advocate counsel for the respondent. In his report dated 15.6.1986, marked 'A' and the site plan marked 'B' Mr. Samad Mahmood has pointed out that the relaid the dividing line in accordance with the aforementioned order. The present Writ had to be brought because the earlier decision of this Court was totally ignored. This was highly objectionable and the respondent should have kept it in mind while dealing with the matter. It will be appreciated that after the case was decided finally, it could not have been re-opened on any pretext whatsoever at least on the same point. The Parties otherwise are satisfied with the process of relaying the dividing line. The writ petition has borne fruit. The impugned order dated 22.6.1980 of the Deputy Settlement Commissioner is modified as per report marked 'A' and the site plan marked 'B'."
- xiv. **12.10.1986:** The notified Deputy Settlement Commissioner passed the order (**Exh-P17**), whereby he abstained from making any order on the application of the Appellant for transfer of house bearing property No.M-65/ABC in his favour, and cancellation of the PTD

in favour of Manzoor Ahmed Dhami, by observing that he lacked jurisdiction in the matter and directed the Appellant to have recourse in this regard to the Civil Court.

3. It was against this last-mentioned order dated 12.10.1986 (**Exh-P17**), that the Appellant instituted the suit on 31.01.1987, in Civil Court, praying for a decree for:

"declaration to the effect that order dated 12 October 1986 of the Deputy Settlement Commissioner, Rawalpindi/Administration, Residual Properties, Rawalpindi (defendant No.1) is illegal and void and that subsequent surreptitious addition of properties No. 65, 65/C and 65/D-1, Adamjee Road (old Mackson Road) Rawalpindi Cantt. in the transfer documents of defendant No.2 is without any valid order made by any competent authority, wholly void fraudulent, without jurisdiction and of no legal effect, and as **consequential relief** directing the defendant No.1 to transfer property No. 65/ABC (corresponding to property No. 65/2-3 in the ETO's record) to the plaintiff on payment of usual transfer price in accordance with law, and also restraining the vendee-defendants No. 5(a)(b), 6 and 7 from making any claim or interfering in any manner whatsoever in the plaintiff's possession and enjoyment of property No. 65/ABC corresponding to property No. 65/2-3 in the Excise & Taxation record, (shown as red in the plan annex-1), be passed in favour of the plaintiff and against the defendants."

In the suit, the Appellant mentioned the order dated 12.10.1986 of the notified Deputy Settlement Commissioner, Rawalpindi, as the cause of action to institute the suit. The notified Deputy Settlement Commissioner/Additional Deputy Commissioner (General), Rawalpindi, whose order was impugned in the suit, and Manzoor Ahmed Dhami, the original transferee of the suit property, though were party as defendants No.1 and 2 respectively, did not appear in the suit, and were thus proceeded against ex-parte. The suit was contested by the Executive Officer, Rawalpindi Cantt. (defendant No.3) and the subsequent purchasers of the suit property, i.e., Mst. Safia Begum and others, defendants No. 5A, 5B and 7, (**"Mst. Safia Begum and others"**) by filing their written statements. It is important to note that, the Executive Officer, Rawalpindi Cantt. (defendant No.3) in his written statement maintained the veracity and validity of the letter of The Cantonment Executive Officer

dated 20.09.1961 (**Exhibit-P8**), and reiterated the contents therein. The contesting pleadings of the parties led the trial court to frame nine issues; two of which are crucial for the determination of the present appeal, namely, issues No. 2 and 5, which are reproduced hereunder for ready reference:

2. Whether the letter issued by the defendant No. 3 showing the property No. 65/AB consisted of properties No. 65, 65/AB and 65/ABC is against facts and law? OPP.
5. Whether the suit is barred by limitation? OPD.

On these issues, the trial court concluded thus:

Issue No.2: "The onus to prove this issue was upon the plaintiff. The plaintiff has not produced on record any evidence to show that in the Cantonment Board Record, the disputed property was shown as separate properties. The legality of this letter could be questioned only if property No. 65, 65/AB, 65/C and 65/D-1 had been shown in the record of Cantonment Board as separate properties. Factually, the same has not been treated as one and the same property in the record of Cantonment Board. The letter Ex.P-8 was issued by the Executive Officer on the basis of record maintained by Rawalpindi Cantonment Board, the entries of this letter cannot be challenged on the mere asking of the plaintiff. This letter has been issued by the Executive Officer in discharge of his official duties and according to Cantonment Board record, so the same is neither against the law. The plaintiff has failed to prove this issue, so this issue is decided against the plaintiff."

Issue No.5: "All these documents clearly denote that the suit property was not available for transfer in the year 1974 when the plaintiff filed NCH. [F]rom the date of its final allotment, the limitation will start and in this regard, there is no explanation that why the present suit has been instituted after much long period. The present suit is hopelessly barred by limitation, because the order dated 15-1-1962 and order Ex.P-15 passed on 18-12-1973 as well as compromise Ex.D-1 have attained finality, and these orders have not been challenged in present suit so the suit is clearly barred by limitation. Thus, this issue is decided in favour of the defendants."

With the said findings, the trial court dismissed the suit of the Appellant.

4. The Appellant successfully challenged the judgment of the trial court in appeal. The Appellate Court accepted the appeal of the Appellant and rendered its findings on the crucial issues No. 2 and 5, as under:

"So far as **issue No. 2** is concerned, the copy of assessment list for the year 1946 has been placed on record as Exh.P-10, according to which the properties No. 65, 65-A, & B, 65-C and 65-D-1 have been shown as distinct properties with their separate assessment, therefore, the addition of properties without any

order and recovery of price as per assessment of properties was illegal and void. So, the findings of the learned trial court on issue No. 2 are hereby reversed.....

"As far as **issue No. 5** is concerned, the appellant has challenged the order dated 12-10-1986, whereby DSC had not exercised his legal duty and now the limitation will start from 12.10.1986 when the right to sue accrued to the appellant and the suit was filed on 31.1.1987 while the appellant could not be non-suited on the basis of litigation remained pending between contesting respondents and the mother of the appellant. Resultantly, issue No. 5 is decided in favour of the appellant."

5. The judgment and decree passed by the Appellate Court were successfully challenged in revision by Mst. Safia Bibi and others, before the High Court in its revisional jurisdiction. Hence, the present direct appeal.

6. The thrust of the High Court in rejecting the claim of the Appellant was essentially on three points: firstly, that in view of the orders passed by High Court in WPs No. 724-R-1974 and 44-R-1983, the dispute regarding the suit property stood resolved between the mother of the Appellant and Manzoor Ahmad Dhami, the original allottee; secondly, that the Appellant did not take any positive step to restrain Manzoor Ahmad Dhami to sell the suit property to Mst. Safia Bibi and others, the subsequent purchasers, thereby acquiescing in to the further transfer of the suit property and, thus, by his conduct was estopped to bring the suit to challenge that transfer; and thirdly, that the order dated 12.10.1986 passed by the Deputy Settlement Commissioner could not give a fresh period of limitation to institute the suit.

7. Learned counsel for the Appellant has contended that the application of the Appellant for transfer of the disputed property had been filed before the Deputy Settlement Commissioner, Rawalpindi, before the cutoff date provided under the Evacuee Property and Displaced Person Laws (Repeal) Act, 1975 ("**Repealing Act**") therefore, the

matter should be remanded to the notified Deputy Settlement Commissioner, for the decision of the said application, treating that as a "pending proceeding" within the contemplation of section 3 of the Repealing Act.

8. In rebuttal, the learned counsel for the respondents opposed the matter to be remanded back to the notified Deputy Settlement Commissioner for another round of litigation and contended that the record was clear on all issues, which had been rightly adjudged by the trial and the revisional court.

9. The valuable arguments of the learned counsel for the parties have been heard, and the record has been perused with their able assistance.

10. There is no cavil to the legal stance taken by the learned counsel for the Appellant that in case any proceedings relating to evacuee property is pending on the cutoff date, that is, 30.06.1974, the officer notified under section 2(2) of the Repealing Act was competent to proceed and decide the same in accordance with the repealed laws. However, there is nothing on the record of the present case that the application made by the Appellant to the Chief Settlement Commissioner for cancellation of the PTD (**Exh-P7**), wherein the Deputy Settlement Commissioner had filed the report (**Exh-P15**), was pending on the cutoff date. The mere pendency of the application of the Appellant, before the Deputy Settlement Commissioner, for transfer of the suit property to him under Scheme No. VIII could not make the issue of the validity of the PTD (**Exh-P7**) alive and bring it within the scope of a "pending proceeding" under section 2 of the Repealing Act. In absence of any such pending proceeding as to the validity of the PTD (**Exh-P7**), the notified Deputy

Settlement Commissioner rightly referred the Appellant to have recourse to Civil Court to get adjudged the validity of the PTD (**Exh-P7**). It hardly needs reiteration that after the promulgation of the Repealing Act, the officers notified under that Act, do not possess the jurisdiction to declare any PTO or PTD regarding which no proceedings were pending on the cutoff date, as null and void on the grounds of alleged fraud or forgery; they can only deal with and decide the pending proceedings and cannot initiate any new proceeding. Anyone who wants to challenge any PTO or PTD issued under the repealed laws, and has *locus standi* to do so, is to knock at the doors of Civil Court, a court of plenary jurisdiction, for the redress of his grievance.¹

11. Further, we find the conduct of the Appellant, throughout the entire proceedings culminating in the institution of the suit, to be not above board. Firstly, it is noted that the Appellant, while representing his mother Mst. Wahida Begum as her attorney, stated himself to be a resident of the house bearing property No. 65/1-C, not No.65-ABC, Adamjee Road, Rawalpindi Cantt. As per his own statement made in the deed of General Power of Attorney, he stated to have been residing with his mother in the house bearing property No. 65/1-C, thus, leaving doubt in our minds as to how he could simultaneously be in possession of another house bearing property No.65-ABC as claimed by him in his application (**Exh.P9**) made to the Deputy Settlement Commissioner, seeking transfer of that house in his favour. Secondly, the Appellant was unable to clearly and specifically state the period of his alleged possession, in his application (**Exh.P9**), of the house bearing property

¹ Muhammad Ayub v. Ghulam Muhammad 2005 SCMR 1650; Wazir Hussain v. Abdul Rehman 2002 YLR 1600.

No.65-ABC he was claiming transfer in his favour, within the contemplation of Scheme No.VIII. Finally, the silence and inaction on the part of the Appellant in agitating his own alleged grievance, when he was pursuing the identical cause of his mother on her behalf as her attorney, before different forums portrays a very negative impression which is very hard to ignore. Such conduct of the Appellant disentitles him to the discretionary relief of declaration under section 42 of the Specific Relief Act, 1877. Needless to say, where the conduct of the person claiming declaratory relief is unconscionable or inequitable, the court may decline to grant him the relief on this sole ground.²

12. As far as the findings of the trial and the appellate courts on issue No. 2 are concerned, it is noted that the trial court relied upon the letter dated 20.9.1961 (**Exh-P8**) of the Executive Officer, Cantonment Rawalpindi, while the appellate court failed to discuss the legal implications of that letter. A cursory reference was made by the appellate court to this letter, by observing that it had added more properties in favour of Manzoor Ahmed Dhami. We are afraid, this observation of the appellate court is contrary to the record. The Executive Officer, Rawalpindi Cantt. (defendant No.3), as noted above, affirmed the veracity and validity of his office letter dated 20.09.1961 (**Exh-P8**) and reiterated the contents therein, in his written statement. It was therefore rightly observed by the trial court that the validity of this letter could be questioned only if property No. 65, 65/AB, 65/C and 65/D-1 had been shown in the record of the Cantonment Board as separate properties. We further note that this letter (**Exh-P8**), having been issued by a public

² Muhammad Ali v. Muhammad Amir PLD 1995 Lah 124; Muhammad Riaz v. K.M.C. 2000 CLC 1107; Allauddin v. D.M., Waqf Properties 2003 CLC 799; Shahnaz Parveen v. Javed Yaqoob 2020 MLD 638.

servant in discharge of his official duties, was an official act, which carries the presumption of regularity under Article 129(e) of the Qanun-e-Shahadat, 1984. This presumption though was rebuttable, but as held by the trial court, it could not be rebutted by the Appellant by proving that the contents of the letter (**Exh-P8**) are against the record of the Cantonment Board. Presumption of regularity attached to official acts cannot be rebutted only by making vague allegations.³ We have perused the contents of the letter (**Exh-P8**) and noted that the same merely refers to the correction of the description of the property, not the addition of properties. The findings of the trial court as upheld by the revisional court on issue No. 2 are thus, found to be correct in view of the evidence available on the record of the case.

13. Moving on to issue No. 5 relating to limitation, we note that the main challenge of the Appellant, in the suit, was with regard to the validity of the PTD dated 15.01.1962 (**Exh-P7**), for which purpose the Deputy Settlement Officer had referred him to have recourse to Civil Court for the redress of his grievance. We may, before proceeding further, observe here that the order of the Deputy Settlement Officer referring the Appellant to Civil Court could not, as held by the revisional court, give him a fresh period of limitation to institute the suit to challenge the validity of the PTD dated 15.01.1962 (**Exh-P7**).

14. As far as the Appellant's knowledge of the PTD dated 15.01.1962 (**Exh-P7**) is concerned, we note that he had knowledge from 17.03.1973 when he *vide* the deed of General Power of Attorney accepted to represent

³ Kausar Ghaffar v. Govt. of Punjab 2013 SCMR 99.

his mother, as her attorney, in litigation concerning the suit property and thereafter did represent her before all courts and authorities, including the High Court in Writ Petitions No. 724/R of 1974 and 44/R of 1983. As per Article 14 of the First Schedule to the Limitation Act 1908, the period of limitation for instituting a suit to set aside any act or order of an officer of Government made by him in his official capacity, not otherwise expressly provided for in the said Act, is one year from the date of the act or order; while under the residuary Article 120, the period of limitation is six years. Whichever of these two periods is applied, the suit of the Appellant having been instituted on 31.01.1987 to challenge the PTD dated 15.01.1962 (**Exh-P7**) was clearly barred by the law of limitation.

15. As far the Appellant's prayer of mandatory injunction against the Deputy Settlement Commissioner (Defendant No.1) for direction to transfer, on his application, the suit property to him on payment of the transfer price, we note the same is only a consequential relief. When the main relief sought in a suit is barred by time, the consequential relief, even if be within time, is of no legal avail.⁴ The findings of the trial court, and upheld by the revisional court, on issue No.5 are, therefore, found legally correct.

16. For the foregoing reasons, we have no hesitation in our mind to hold that the present appeal is bereft of any factual or legal merit; therefore, it fails and is dismissed accordingly.

⁴ Javaid Shafi v. Rashid Arshad PLD 2015 SC 212.

17. These are the reasons for our short order dated 08.3.2022, which reads as under:

"For the reasons to be recorded later this appeal is dismissed."

Judge

Judge

Islamabad
08.03.2022
Approved for reporting.
Arif