

285

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel

Civil Appeal Nos.1009/2010 and 933-L/2013

(On appeal from the judgment dated 11.10.2010 passed by the Lahore High Court, Multan Bench in W.P. No.1673/2000)

Yar Muhammad and another (in CA 1009/10)
District Collector, Lodhran and another (in CA 933-L/13) Appellants

Versus

Mst. Sameena Tayab and others Respondents

For the Appellants (in CA 1009/10) Mr. Zulfikar Khalid Maluka, ASC
& Respondents Nos.2,3 (L.Rs.) (in CA 933-L/13): Mr. Ahmad Nawaz Ch. AOR (Absent)

For the Appellants (in CA 933-L/13) Mr. Razzaq A. Mirza, Addl.A.G. Pb.
& Respondent Nos.2&3 (in CA 1009/10):

For Respondent No.1: Malik Noor Muhammad Awan, ASC
(in both cases) Mian Ghulam Hussain, AOR (Absent)

For Respondent Nos.4-7: Ex-parte
(in both cases)

Date of Hearing: 7.12.2017

JUDGMENT

Mazhar Alam Khan Miankhel, J.- Through the listed appeals, the appellants, in both the appeals, have questioned the same judgment dated 11.10.2010 of the Lahore High Court, Multan Bench whereby Writ Petition No.1673/2000, filed by Respondent No.1-Mst. Sameena Tayab, was allowed and order of the Member (Colonies), Board of Revenue, Punjab dated 29.09.1999 was set aside. Since common questions of law and facts are involved, therefore, both the listed appeals will have their fate through our this single judgment.

2. Brief facts of this case are that the Government of West Pakistan, in the year 1956, introduced a Scheme with the name and title of Grow More Food and the available state land was given on lease to the self cultivators or small holders of land owning up to subsistence holding i.e. 100 kanals. Terms and conditions of the leases were notified time and again. The petitioners Yar Muhammad and Hassan Bakhsh alongwith their deceased father Khuda Bakhsh were allotted three lots of lands in their individual capacity. The Government *ibid* had also devised a policy for grant of proprietary rights of the said lands to the lessees.

The said leases were cancelled on adverse reports of the revenue staff with the collusion of local landlords and the lands were resumed vide order dated 15.12.1959. The said order was set aside in appeal by the Additional Commissioner (Revenues), Multan Division vide his order dated 17.11.1966 with further directions to the concerned for grant of proprietary rights of the subject land. Again Member (Colonies), Board of Revenue, Punjab, Lahore vide his order dated 7.09.1967 while accepting the revision of Revenue Authorities cancelled the lease of the petitioners. The writ petition of the petitioners (W.P. No.1780/1967) against it was accepted by the Lahore High Court, Lahore vide its judgment dated 26.07.1968. The relevant para of the judgment is reproduced below for ready reference:-

"25. In consequence, we accept the above-mentioned petitions to the extent of holding that these petitioners are entitled to have proprietary rights transferred to them in the land, which were leased to them, subject to the finding by the Revenue Authorities that they have fulfilled the revenue conditions. The adverse orders passed against, based on considerations and interpretations that have found in the above discussion to be erroneous, held to be without lawful authority and of no legal effect; are accordingly set aside and above said cases are remitted to the Board of Revenue for further action in the light of the observation made above."

The above findings of the High Court were upheld by this Court vide order dated 8.04.1975 in Civil Appeal No.60/1971 titled Member (Colonies), Board of Revenue, Vs. Yar Muhammad and two others vide judgment by dismissing the appeal and when the petitioners sought implementation of the judgment of the High Court in their favour, the Member (Colonies), Board of Revenue, Punjab vide his order dated 23.05.1995 observed that present petitioners Khuda Bakhsh and his two sons were entitled for only one lot as per policy and proprietary rights can only be given to the father being head of the family. But this order of the Member (Colonies), Board of Revenue, was set aside in a review petition, filed by the present petitioners in 1995, vide order dated 14.07.1998 and all the three lots allotted in individual capacity in favour of father Khuda Bakhsh and his two sons, the present petitioners, were restored.

The other episode of the case is that during this period of cancellation of the above lease, the leased property was collusively included in the Schedule of Islamabad Oustees and was made available for the allotment as such. Here the case of the petitioners takes another turn. After the inclusion of such property in the Schedule, Respondent Nos.4 to 7 herein collusively got it allotted in their names vide allotment order dated 4.02.1998 being Islamabad Oustees and they were recorded as owners in the revenue record vide mutation No.706 entered on 30.07.1998. Sale in favour of Respondent No.1 was also managed on the same day by entering mutation No.707 on the same day i.e. 30.07.1998. Both the said mutations were attested on 31.07.1998.

3. Respondent No.1, after the alleged purchase of the land, questioned the order of Review passed by Member (Judicial-II), Board of Revenue, Punjab dated 14.07.1998 by filing yet another review petition which ultimately was dismissed by the Member (Colonies), Board of Revenue, Punjab vide order dated 29.09.1999.

The Respondent No.1 feeling herself aggrieved, questioned the same by way of a Constitutional Petition (W.P. No.1673/2000) which was allowed vide impugned judgment dated 11.10.2010. Hence, present appeals with the leave of this Court vide order dated 1.12.2010, passed in Civil Petition No.2300/10, which reads as under:-

" After hearing learned counsel for petitioner and the caveat leave to appeal is granted, inter-alia, to examine:

1. Whether in pursuance of "Grow More Scheme", the petitioners and their predecessor-in-interest Khuda Bakhsh were allotted the property in dispute and subsequently on 14.7.1998 they were declared entitled for the proprietary rights?
2. Whether after passing of order dated 14.7.1998 by the Board of Revenue the question for consideration would be as to whether the property subject matter of the proceedings was available for transfer to the persons who were claiming the property in Islamabad Oustee Scheme?
3. Whether the respondent Sameena Tayyab, who had purchased the property despite stay order passed by Board of Revenue could have been declared bonafide purchaser without notice in exercise of writ jurisdiction by the High Court.

2. Parties are directed to maintain status-quo."

On the strength of this Order, leave to appeal was also granted in Civil Petition No.2172-L/2010 vide order dated 26.12.2013.

4. Learned counsel for the parties were heard and record of the case was perused. Perusal of the record of the case would reveal that present dispute between the parties cropped-up after cancellation of the allotment of petitioners; filing of their review petition before the Member (Colonies), Board of Revenue, Punjab, Lahore and the inclusion of said land of petitioners in the Schedule of Islamabad Oustees and thereafter, its allotment

to Respondent Nos.4 to 7 and subsequent purchase of the same by Respondent No.1. It is worth to be mentioned here and also established from the record that after filing of review petition, *status-quo* order was passed by the Member (Colonies), Board of Revenue, which remained in field till acceptance of review petition vide order dated 14.07.1998.

5. The record reveals that a proper note/entry regarding *status-quo* order was not made by the Patwari concerned in the revenue record with the collusion of the local influential people and by way of his collusive omissions and commissions the land in question was shown to be an available land for inclusion of the same in the Schedule of properties meant for Islamabad Oustees and, accordingly, the said land was allotted to Respondent Nos.4 to 7 and thereafter sold to Respondent No.1 on the same day and in the same sitting. Respondent No.1 admittedly was the real sister of Malik Aslam Awan. One Abdul Razzaq had filed an affidavit that he has wrongly been shown as an identifier in the Schedule in favour of Respondent Nos.4 to 7. Said Malik Aslam Awan s/o Malik Tayyab Awan has also been shown to be the general attorney of said allottees and as an attorney he first got it transferred in the names of Respondent Nos.4 to 7 and in the same sitting retransferred the same in the name of his sister-Respondent No.1. The learned counsel for Respondent No.1 was unable to deny and rebut all the above facts. The above collusion and fraud when surfaced, the Patwari Halqa concerned was proceeded against and terminated from his service. The entire record regarding the above said facts is available before us which is sufficient to prove the collusion and fraud of respondents and the Patwari Halqa.

6. The most important legal aspect of the case is that review petition of the petitioners before the Member (Judicial-II), Board of Revenue, Punjab was allowed vide order dated 14.07.1998 whereas transfer in the names of

alleged Islamabad Oustees and the subsequent sale in the name of Respondent No.1 was made on 31.07.1998. Respondent No.1, after sale in her favour, challenged the order of review dated 14.07.1998 in favour of petitioners by way of yet another review petition whereas petitioners had filed an application under Section 30 of the Colonization of Government Lands (Punjab) Act, 1912 for cancellation of conveyance deed in favour of Respondent Nos.4 to 7. Though the said review petition of Respondent No.1 was dismissed on merits on 29.09.1999 but the question would be that how a review petition was entertained and considered against an order of review. Legally 2nd review petition was not competent and was unlawfully and illegally entertained which under the law should have been dismissed on its very inception and there was no need to discuss the merits of the case once again.

7. The nutshell of the above discussion is that the basic order of the Member (Colonies), Board of Revenue, Punjab dated 29.09.1999 was illegal and against the law as such void *ab initio*. The impugned judgment dated 11.10.2010 whereby writ petition of Respondent No.1 was allowed and order of dismissal of review of Member (Colonies), Board of Revenue, Punjab was set aside, in the circumstances, would be a nullity in the eye of law. Besides the above, rights of the petitioners were even confirmed earlier by the High Court in its earlier judgment dated 26.07.1968 passed in Writ Petition No.1780/1967 and this Court vide order dated 8.04.1975 rendered in Civil Appeal No.60/1971 (mentioned above), then how can it be taken away or interfered with by the High Court in view of the above collusive acts of omission and commission by the respondents. It is expected that atleast now onward there would be no hindrance before the Revenue Authorities to record the petitioners as owners as per Scheme.

8. If we answer the questions, raised in the leave granting order, the answers, in view of the above discussion, would simply be as under:-

1. Yes, the petitioners alongwith their father were the allottees of the land in question and were also entitled for its proprietary rights.
2. No, it was never an available land for further allotment to Islamabad Oustees.
3. No, in the circumstances, Respondent No.1 cannot be held to be a *bona fide* purchaser.

9. In view of what has been discussed above, Civil Appeal No.1009/2010 is allowed whereas Civil Appeal No.933-L/2013 is dismissed.

Bench-III
ISLAMABAD
6th December, 2017
NOT APPROVED FOR REPORTING
(Nasir Khan)