

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
Mr. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(D.J.)
CIVIL APPEAL NO.875 of 2017

(On appeal against judgment dated 17.02.2017
passed by the Lahore High Court, Lahore in Writ
Petition No.1649/2010.)

Salah-ud-Din and others

... Appellants

vs

Govt. of Punjab through District Officer
(Revenue), Jhang and others

... Respondents

For the Appellants : Mr. Muhammad Munir Paracha, ASC
Mr. Mehmood A. Sheikh, AOR

For Respondents : Malik Asif Taufeeq, Addl. AG, Punjab
No.1-4 (Govt.)

For Respondents : Mr. Aftab Alam Yasir, ASC
No.5 to 11 and 12 a/w
(L.R.s) Ch. Hafeez Ullah Yaqoob, ASC.

Date of Hearing : 18.10.2022

JUDGMENT

Munib Akhtar, J.: This appeal was allowed on 18.10.2022 by a short order, for detailed reasons to be recorded later. Those reasons are set out below.

2. The appeal arose in the following circumstances. The predecessors-in-interest of the contesting private respondents ("contesting respondents") mortgaged certain land with a mortgagee (who was a non-Muslim) by means of a registered mortgage deed sometime in 1902. The term of the mortgage was 20 years. At Partition the mortgagee migrated to India and became an evacuee in terms of the evacuee laws that were

enacted after Independence. In terms of those laws, his rights as mortgagee vested in the Custodian (an office created by and under the said laws) and/or the Central Government, and eventually (sometime in 1965) by means of the relevant entries this position was reflected in the revenue record. The land was thereafter allotted to the predecessor-in-interest of the present appellants, it appears sometime in 1969.

3. In 1964 the (then West Pakistan and subsequently Punjab) Redemption and Restitution of Mortgaged Lands Act, 1964 ("Act") was enacted. Sometime in or about 1972 the predecessor-in-interest of the contesting respondents filed an application under the Act seeking to redeem the mortgage that had been created in favor of the (non-Muslim) mortgagee, under s. 3 thereof. This application was contested by the predecessor-in-interest of the appellants. By an order dated 18.12.1972 the application was dismissed as having been filed before a revenue authority that had no jurisdiction in the matter. Upon such dismissal, the predecessor-in-interest and/or the contesting respondents themselves did nothing. Decades passed. On or about 06.07.2002 the Board of Revenue issued what purported to be a memorandum, in terms of which the Board enlarged the time within which the money due on the mortgage had to be deposited (under s. 4 of the Act) to 20.06.2003. Seeking to take the benefit of this memorandum, the contesting respondents filed a fresh application under s. 3 of the Act. This application was dismissed vide order dated 24.04.2003 as, inter alia, being barred by time and an appeal (under s. 14(1)) against the said dismissal failed. The matter was then taken by the contesting respondents to the Board of Revenue by way of further appeal/revision (under ss. 14(2) and/or 15), which was also dismissed by an order dated 22.06.2004. Against this dismissal the said respondents approached the Lahore High Court by way of writ petition (WP 18292/2004) which, by order dated 18.09.2007, was pleased to remand the matter to the Board for deciding it afresh.

4. On remand the Board again dismissed the revision/appeal by order dated 22.12.2009. The dismissal was on the

ground of limitation as also for various other reasons. Being aggrieved by this order, the contesting respondents filed a writ petition in the High Court (WP 1649/2010) which was allowed by means of the impugned judgment. The various orders of the revenue authorities were set aside. The contesting respondents' application under s. 3 of the Act was deemed pending and was ordered to be disposed of in accordance with law. Aggrieved by this decision the appellants petitioned this Court, and leave to appeal was granted vide order dated 19.06.2017.

5. Before us, learned counsel for the appellants submitted that the learned High Court had clearly erred in taking a view of the matter different from that which had prevailed with the authorities acting under the Act. It was submitted that the application (filed subsequent to the memorandum of the Board) was hopelessly time barred and that in any case the land had vested in the Custodian and/or Central Government under the evacuee laws and thereafter properly allotted to the predecessor-in-interest of the appellants. The learned High Court, it was respectfully contended, had misdirected itself on the law, and its application to the facts and circumstances of the present case, and the impugned judgment ought therefore to be set aside.

6. Learned counsel for the contesting respondents strongly defended the impugned judgment. It was submitted, by placing reliance of various judgments of this Court (and also the judgments relied upon by the learned High Court) that the application filed by the contesting respondents after the enlargement of time by the Board was well within time. It was submitted that the revenue authorities had plainly erred in law and on the facts and the learned High Court had corrected the resulting position by means of the impugned judgment, which ought to be sustained.

7. After having heard learned counsel for the parties we concluded that, with respect, the learned High Court had erred and the impugned judgment had to be set aside. Since the whole matter turned on the application of the relevant

provisions of the Act, we invited learned counsel to assist us in relation thereto. Those provisions, as presently material, are set out below:

"3. **Petition for redemption.**— After the principal money becomes due and before a suit for redemption is barred, a mortgagor of land not exceeding fifty acres in area or of land the principal money secured by which does not exceed five thousand rupees, may apply to the Collector for an order directing that the mortgage be redeemed and that he be put in possession....

4. **Deposit of amount due under mortgage.**— The mortgagor shall in his application declare what sum is to the best of his knowledge due under the mortgage and deposit such sum with the Collector at the time of making the application.

5. **Powers of Collector to order ejectment.**— Where the Collector, after hearing the mortgagee and holding such enquiry as may be prescribed, is satisfied that the mortgagor has a right to redeem and has deposited or is prepared to pay the sum which the Collector finds due under the mortgage, he shall make an order directing that mortgage be redeemed.

7. **Saving of suits to establish rights.**— Any party aggrieved by an order of the Collector passed under section 5 or 6, may institute a suit to establish his rights in respect of the mortgage; but, subject to the result of such suit, if any, the order shall be conclusive:

Provided that notwithstanding the provisions of Article 14 of Schedule I of the Limitation Act of 1908, a mortgagor may file a suit for the redemption of his mortgaged land within the un-expired period of limitation fixed by law for the redemption of the mortgaged land.

8. **No second petition.**— The dismissal of a petition under this Chapter shall bar any further petition under this Chapter by the same petitioner or his representative in interest in respect of the same mortgage."

8. During the course of his submissions learned counsel for the contesting respondents put his case on limitation in the following terms. It was submitted that the principal money due on the mortgage had to be repaid at the conclusion of the twenty year period. Therefore, limitation began to run against the predecessor-in-interest of the contesting respondents (and of course, them as well) in 1922, and not 1902 when the

mortgage was created. As provided in Article 148 of the First Schedule to the Limitation Act, 1908, any suit for redemption had to be brought within 60 years. It was submitted that limitation therefore ran up to 1982 (and not 1962 as erroneously concluded by the revenue authorities). Learned counsel further contended that since admittedly the mortgagee left Pakistan and became an evacuee in or about 1947, and the Central Government did not appear in his place in the revenue record as mortgagee till 1965, the contesting respondents were also entitled for this period (i.e., 1947 to 1965) to the benefit of s. 13 of the Limitation Act (exclusion of the time for which the defendant is outside Pakistan). Thus, the application filed in 2002 (or thereabout) was well within time and could not have been dismissed on that ground.

9. With respect, we were unable to agree. It must be remembered, and we more than once invited the attention of learned counsel to this during the course of the hearing, the present matter fell to be decided wholly within the four corners of the Act, and not otherwise. Even if everything said by learned counsel were to be accepted, it would mean that the first application filed in or about 1972 was within time. But that application was rejected. Thereafter, neither the predecessor-in-interest nor the contesting respondents themselves did anything. The application of 1972 was not renewed before the revenue authority who did have jurisdiction under the Act nor was any suit for redemption filed in the civil courts. Several decades passed. It was not until the Board issued, in 2002, the aforesaid memorandum enlarging the time for deposit of money due up to 20.06.2003 that the contesting respondents filed a fresh application under the Act. We invited learned counsel for the contesting respondents to show us the provision of law under which the Board had the power to extend the period of limitation under the Act and, even if it did have such power, whether it could be exercised retrospectively, i.e., revive claims that had become time barred for purposes of filing an application under s. 3. No such power was shown for the simple reason that no such power existed. In any case, and more

importantly, the second application had become barred and did not lie by reason of s. 8 of the Act. No suit for redemption was admittedly filed. Therefore, the revenue authorities were quite correct in dismissing the second application. The learned High Court, with respect, erred materially in coming to the contrary conclusion. Insofar as the judgments of this Court relied upon by learned counsel for the contesting respondents and by the learned High Court are concerned, it is not necessary to consider them in any detail, since almost all those cases related either to the application (or otherwise) of the evacuee laws or in proceedings that started by way of civil suits in respect of the mortgage concerned (sometimes directly and in other cases also with reference to settlement laws). Neither of these situations applies here. The present case must be decided squarely within the four corners of the Act and not otherwise. Only one judgment, cited by the learned High Court, *Muhammad Luqman v Allah Diwaya and others* 2006 SCMR 718 arose out of the Act, but the facts there were quite different from those at hand. As already held, in the facts and circumstances of the present case the contesting respondents' claim could not succeed.

10. For the foregoing reasons we concluded that the appeal ought to be allowed and made the short order already referred to.

Sd/-J

Sd/-J

Sd/-J

Islamabad, the
18th October, 2022
Naveed/*

Not approved for