IN THE SUPREME COURTOF PAKISTAN

(Review Jurisdiction)

Present:
Mr. Justice Mian Saqib Nisar
Mr. Justice Mushir Alam

C.R.P. No.100 of 2016 in C.P. No.2364 of 2015 &
C.R.P. No.101 of 2016 in C.P. No.2365 of 2015
Against the order dated 31.12.2015 passed by this Court in CPs No. 2364 and 2365 of 2015.

Mian Asghar Ali **Petitioner(s)**
(in both cases)

VERSUS

Govt. of Punjab thr. Secretary
(Colonies) BOR, Lahore & others (in CRP 100/2016)

District Collector Sahiwal & others (in CRP 101/2016)
Respondent(s)

For the Petitioner(s): In person

For Respondent(s): Mr. Mudassir Khalid Abbasi, Asstt. AG
Ch. M. Rafiq, Legal Advisor, Distt. Govt. Sahiwal
Abdul Rauf Sindhu, Legal Advisor TMA Sahiwal
Rana M. Yousaf, Tehsildar, Sahiwal

On Court's Notice: Mr. M. Farooq Altaf, Solicitor Punjab

Date of Hearing: 29.09.2016

ORDER

Mushir Alam, J-. Instant Civil Review Petitions arise out of an order of this Court dated 31.12.2015, whereby Civil Petitions No.2364 & 2365 of 2015 filed by the review petitioner were dismissed and leave declined.

2. Facts, in *nutshell*, are that the review petitioner, who was neither in possession nor a tenant within the contemplation of Colonization of Government Land Act, 1912 in relaxation of ban from Chief Minister, managed to obtain piece of land through private treaty dated 29.9.1994. Municipal Committee, Sahiwal and notable approached the Member (C) BoR, for the recall of such order, when yielded no result prompted President of Anjuman-e-Tajraan, to challenge the same before the Lahore High Court*(through Writ Petition No.4039 of 1995)*. Learned High Court, vide order dated 11.07.1995 suspended the operation of the impugned sale. The writ Petition was ultimately disposed off with direction to the *Member (Colonies) Board of Revenue*,

Punjab to decide the matter in accordance with law. Consequently, the *Member (C) BoR,* after hearing all the parties through order dated 4.7.1998 *(page 78-82 CPLA No. 2364 of 2015)* held that order for the grant of land was obtained by misrepresentation cancelled the impugned sale, in exercise of powers vested in him under Section 30(2) of the Colonization of Government Land Act, 1912.

3. Record shows that the Review petitioner engineered its review beyond limitation, through *Member (C) BoR*, without any notice to the parties, on 13.4.2000, which order was successfully challenged by *Administrator Municipal Committee Sahiwal, Province of Punjab* and others (through WP No. 6547, 6399 & 6670 of 2000), which order was set aside on merits as well as on limitation vide judgment dated 05.07.2004.

4. Review Petitioner challenged the said judgment through Civil Petitions No.2466 to 2468 of 2004, before this Court, wherein leave was declined vide judgment dated 16.12.2004; since reported as *Mian Asghar Ali v Province of Punjab through District Collector and others* (***2006 SCMR 936)***, operative part whereof is reproduced here in below:-

> *"Independent thereof any intervention with the impugned order would tantamount to encouraging perpetuation of patent illegal devices to protect the illegitimate gains reaped by the political vultures for unjust enrichment at the cost of public exchequer which has eroded the very moral fabric of the society."*

5. The petitioner, against the above leave declining order, filed Civil Review Petitions No.21 to 23 of 2005. However, after exchange of preliminaries, including proposal for the allotment of alternate land, the Review Petitioner through application dated 25.7.2009 chose to withdrew the same on the ground that *his request for the allotment of alternate land is being examined by the Member (C) BoR, from, which forum he may get the requisite relief therefore, he wishes to withdraw the Review petition with a permission to revive the same in case his grievance is not redressed"* consequently review petitions were dismissed as withdrawn vide order dated 28.7.2009, as detailed in paragraphs 5 to 7 of the Judgment under Review.

6. Thus the order dated 4.7.1998, of cancellation of sale of subject land by way of private treaty passed by the *Member (C) BoR*,

attained finality for all intent and practical purposes and laid to rest by this Court as noted in last preceding paragraph.

7. The record further reveals that the request of the Petitioner for the allotment of alternate land was turned down by the *Member (Colonies) BoR* through a speaking order dated 16.6.2010 (page No. 131-132 of CPLA No. 2354 of 2015). Since it was a fresh cause of action, therefore, the Petitioner did not sought revival of Review Petitions, which were dismissed by this Court, as withdrawn as noted in paragraph 5 above.

8. The Petitioner challenged the above order dated 16.6.2010 passed by *Member (C) BoR*, through Writ Petition *(W.P No.1685 of 2011),* which was allowed vide judgment dated 25.6.2014, whereby the Revenue Authority were directed to grant alternate land in favour of the petitioner measuring 02 Kanals 17 Marlas 01 Sarsahi.

9. The Judgment *(in W.P No.1685 of 2011)* was successfully challenged by the Respondents through *ICAs* No.283 and 357 of 2014. Learned Bench of the High Court, though sustained the objections of the Review Petitioner that *ICAs* were not maintainable. However examining the case on merits converted the same *into review application* set aside the judgment dated 25.06.2014 passed by the learned single Judge in exercise of Review jurisdiction.

10. The judgment of the learned Division Bench, in exercise of review jurisdiction dated 25.06.2015 was challenged by the Review Petitioner before this Court through Civil Petitions No.2364 & 2365 of 2015, which for the reasons noted therein were dismissed, vide judgment in Review dated 31.12.2015.

11. The Review Petitioner being dissatisfied with the judgment dated 31.12.2015 passed in CPLA No. 2364 of 2015 filed instant Civil Review Petitions and, this Court in consideration of the following assertion made by the Review Petitioner, vide order dated 18.8.2016 issued notice to the Respondents on two fold grounds :-

> *"On merits the petitioner states that the cancellation of a sale deed has been made on the orders of the Chief Minister, Punjab who had no such authority*

> *and, therefore, the principle of dictated exercise of jurisdiction/force command shall apply. However, when confronted that such cancellation has been made on the basis of the order passed by the learned High Court in Writ Petition No.4039/1995, it is submitted that such order was not valid in law because it had been passed simpliciter on the basis of the letter which was issued on the dictation of the Chief Minister. It is also submitted that once the sale deed has been executed in his favour by the government, it could not be cancelled except in accordance with law i.e. by resorting to the provisions of Section 39 of the Specific Relief Act, 1877 and the respondent had no unilateral authority to cancel the same. It is further submitted that the ICA could not be converted into a review and even otherwise the criteria for review of a judgment is altogether different from that of the exercise of appeal or revision and in the instant matter, no case on the touchstone of review was made out, yet the judgment of the single Judge in Chambers was reviewed by the Division Bench of the High Court. These according to the petitioner are some of the vital aspects of the matter which eluded the attention of this Court while passing the judgment under review. Issue notice to the respondents."*

12. As regard first contentions of the Petitioner, as noted above, Petitioner was called upon to show that the *cancellation of a sale deed has been made on the orders of the Chief Minister, Punjab who had no such authority and, therefore, the principle of dictated exercise of jurisdiction/force command shall apply.* Petitioner drew our attention to page 153, item number 5 whereby the worthy Chief Minister during his visit to Sahiwal on 21st March, 1998 made announcement for the cancellation of land to the Petitioner, which was under occupation of Municipal Committee.

13. We have examined the record with the assistance of Petitioner and learned ASC for the Respondents. As noted in the narrative above, in detail that the order for the cancellation of conveyance deed through private treaty (dated 29.10.1994), was passed by the *Member (Colonies) BoR* through detailed order dated 4.7.98 (page 78 CPLA NO.2364 of 2015) pursuant to various representation and essentially on the directions made in WP No. 4039 of 1995. Therefore, it cannot be said that the impugned sale was either cancelled on the direction of the Chief Minister or for that matter in *dictated exercise of jurisdiction/force command,* of the Chief Executive of the Province. It may be observed that it was the Review Petitioner, as observed by this Court, in earlier round culminated into judgment reported as *Mian Asghar Ali* ***(Supra)*** who *"exerted political influences with provincial hierarchy got 8 marlas plus prime commercial land situated within the compound of Municipal Committee, Sahiwal from Member BOR, securing relaxation of ban from Chief Minister,*

Punjab, precipitating in sale deed dated 29.10.1994, in violation of Municipal committee's Policy keeping the later in darkness" against, which the Civil Review Petitions, were also dismissed as withdrawn and matter of cancellation of conveyance deed for all practical purposes attained finality and a *fait accompli*. No exception to the cancellation of sale deed obtained by the Review petitioner by misrepresentation and through fraudulent means, by the Member (C) BOR, under section 30(2) of *Colonization of Government Land Act, 1912* could now be agitated in subsequent proceedings, founded entirely on different cause of action obliquely.

14. It may not be out of place to mention that the controversy raised by the Petitioner culminating into present Review Petition is not arising out of the order *(dated 4.7.1998)*, of cancellation of sale deed by way of private treaty but, the order dated 16.06.2010 passed by the *Member (Colonies) BoR,* whereby his request for the allotment of alternate land was declined for valid reasons.

15. This brings us to second challenge posed by the Review Petitioner that the learned Division Bench in High Court had no jurisdiction to convert an ICA into a review application, which is to be heard and decided by the same Bench/Judge, of which order is subject to review, arguments seemingly persuasive received our anxious consideration, we have examined large number of case law relied upon by the Review Petitioner. There is no cavil to the proposition expounded by the (15 members) Full Bench of this Court in the case of *Justice Khurshid Anwar Bhinder and others* v. *Federation of Pakistan* (***PLD 2010 Supreme Court483)***, wherein at page 528; it was held that scope of review is much different and the review jurisdiction is substantially and materially different to the appellate jurisdiction, because it can only be utilized on specific grounds mentioned in Order XLII Rule 1 to 6 of Code of Civil Procedure, 1908, similar view was followed by a five member Bench of this Courtin a recent pronouncement in the case of *Jamshoro Joint Venture Ltd. v. Khawaja Muhammad Asif* ***(2014 SCMR 1858 @ 1874)***. The Petitioner in person has also relied upon *Jalal Din and another v. Major Muhammad Akram Khan, Member Border Area Committee, Lahore and others* **(*PLD 1963 (W.P) Lahore 596)*** and *Lt. Col. Nawabzada Muhammad Amir Khan v. (1) The Controller of Estate Duty Government*

of Pakistan, Karachi and (2) Pakistan, through the Secretary, Ministry of Finance, Government of Pakistan, Rawalpindi ***(PLD 1962 Supreme Court335)*** in support of above proposition.

16. Courts are sanctuaries of justice, exercises and derive jurisdiction and authority to adjudicate and determine rights and obligations of disputants in accordance with the Constitution and law. This is not the occasion, to dilate in detail the origin of Courts and various jurisdictions that may be exercised by different tier of Courts created and established under the Constitution and law. Article 175, of the Constitution of Pakistan, 1973 as expounded by this Court in the case of *S.M.Waseem Ashraf v. Federation of Pakistan through Secretary M/o Housing and Works, Islamabad and others* (***2013 SCMR 338 @ 345)***, resonate the principle that *no Court should exercise any jurisdiction in any matter brought before it until and unless, such jurisdiction had been conferred upon it by the Constitution itself or under any law.* Courts exercises original, appellate, revisional, review or constitutional jurisdiction as mandated under the Constitution and the law. Parameters are laid down in substantive and procedural law defining the scope and limitation within which such jurisdiction is to be exercised by the Courts. For the purposes of present controversy, suffice it to say that there is marked difference, between the Appellate Jurisdiction and Review Jurisdiction. Appellate Jurisdiction is always exercised by a higher court/forum/authority or a level above the court/forum/authority that adjudicated and decided the lis, whereas the review jurisdiction arms the very Court/forum/authority to correct its own mistake or error that crept in the order or decree and is apparent on the face of record. Right to seek Review is substantive right conferred by law that enables the Court (may be in original, appellate, revisional or constitutional jurisdiction), which decided the *lis* before it to, correct its own mistake, or error on grounds specified and in the manner circumscribed by Constitution, any special statute governing review and where applicable under section 114 read with Order XLVII Rule 1 to 6 of CPC.

17. In the case of *Mohiuddin Molla v. (1) The Province of East Pakistan (2) Abdus Sobhan and (3) Ketab Ali* ***(PLD 1962 Supreme Court119)*** it was held by a full Bench of this Court, that the Civil Procedure Code does not create new powers but regulates the exercise

of powers already possessed by the Courts. Even before the CPC, 1908 was enacted the Civil Courts possessed powers of the kind mentioned in CPC. The Civil Courts possessed these powers because they have jurisdiction to determine and protect the civil rights and for protection of these rights the exercise of such power is essential. Courts are sanctuaries of justice, and by nature of its existence is possessed of inherent authority to do *ex debito justitiae*, that is to say *issue such directions, order or decree as may be necessary for doing complete justice, to make such order as may be necessary for the ends of justice or to prevent abuse of the process of law and to secure the ends of justice*, which find manifestation in constitutional and other legislative instruments (see Article 187 subject to Article 175 (2) of the Constitution, 1973, Section *151 Code of Civil Procedure, 1908;* and Section 561-A Cr.P.C).

18. Power to convert and or treat one kind of proceeding into another is derived from authority to do *ex debito justitiae*, which always existed and have always been exercised by the Court not only to advance the cause of justice but also to prevent the injustice. No fetters or bar could be placed on the High Court and or this Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it has jurisdiction over the *lis* that has fallen on its lap for adjudication in exercise of another jurisdiction vested in the very Court or may remit the *lis* to the court/forum/authority of competent jurisdiction for decision of the *lis* on its own merits. Courts have been treating and or converting appeal into revisions and vice versa and Constitution Petitions into appeal or revision and vice versa. In the case of *Jane Margrete William v. Abdul Hamid Mian* ***(1994 SCMR 1555)***, CMA under section 151 CPC filed in the High Court, was treated as cross objection. In the case of *Capital Development Authority v. Khuda Bakhsh and 5 others* ***(1994 SCMR 771)***, where the High Court converted the CMA filed in a disposed off Writ Petition as a separate Writ Petition and decided the same accordingly, this Court held if the High Court was satisfied that circumstances of the case justified conversion of Miscellaneous Application filed by the Respondent in a disposed off case into proceedings under Article 199 of the Constitution of Pakistan, there is no legal bar to such conversion of proceedings. Even objection as to non issuance of notice before such conversion, was not considered fatal by this Court. Even time consumed pursuing remedy before a

wrong forum or jurisdiction in appropriate cases is condoned (see *Shamsul Haq and others v. Mst. Ghoti and 8 others* ***(1991 SCMR 1135)***. In a case cited as *Muhammad Anis and others v. Abdul Haseeb and others* ***(PLD 1994 Supreme Court 539)***, eligibility for consideration of promotion; was successfully challenged in writ jurisdiction of the High Court. On appeal, this Court came to a conclusion that such question falls within the competence of Service Tribunal, therefore, writ is not maintainable. Consequently impugned judgment passed by the High Court in exercise of writ jurisdiction was set aside and in paragraph 16 of the judgment *supra* this Court treated the Writ Petition as Service Appeal pending before the Service Tribunal with direction to decide the same after notice to the parties concerned in accordance with law. In similar circumstances in a judgment recently reported as *Province of Sindh and another v. Muhammad Ilyas and others* ***(2016 SCMR 189)*** dismissal from service order was challenged before the learned Sindh High Court through Constitution Petition. The Constitutional Petition was treated by the High Court as service appeal and sent to the Service Tribunal; which was decided by the Service Tribunal on merit and this Court declined leave in the matter. Similar course was followed by the learned Division Bench of Peshawar High Court in a case reported as *Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others* ***(2015 PLC (C.S) 215)***. In the cases reported as *The Thal Engineering Industries Lt. v. The Bank of Bahawalpur Ltd. and another* ***(1979 SCMR 32)***, *Karamat Hussain and others v. Muhammad Zaman and others* ***(PLD 1987 Supreme Court139)*** *and* *Capital Development Authority* ***(Supra)*** similar course was followed.

19. As noted above, Appellate and Review Jurisdiction are two separate and distinct jurisdictions, regulated and governed with concomitant limitation prescribed by law. As noted above, authority to review decree or order is possessed by the very Judge/Court or forum/authority, which passed the decree or order and by no other Judge/Court forum/authority. Exception to the exercise of such review jurisdiction by a judge or Court other than the one that passed the decree or order *(not being High Court)* is provided under rule 2 of Order LXVII, whereby a judge, successor to the judge who passed decree or order subject to review, enjoys plenary powers to hear and decide review application which fall within the parameter prescribed by Rule 1 and set out in Rule 2 of Order XLVII CPC. In terms of rule 5 ibid,

where the Judge or Judges of High Court or any one of the Judges who passed the decree or made the order under review continues or continue to be attached to the High Court and is not precluded by absence or other cause for a period of six months next after the application for review is made, it is only such Judge or Judges or any of them shall hear and decide the Review Application. However where the eventuality of seeking review is not covered by Rule 5 of Order XLVII CPC, than another exception to general rule to hear and decide the Review Application by the same Judge is catered for in Rule 3, part 'B' to Chapter 3 of the Rules and Orders of the Lahore High Court, Lahore Volume-V, Relating To Proceedings In The High Court; *(LHC Rules)* as amended, which reads as follows:-

> *"3. In cases not provided for by Order XLVII rule 5 of the Civil Procedure Code, an application for a review of a decree or order shall be heard:*
>
> *(a) if the decree or order , review of which is applied for, was passed by a Judge sitting alone, by a Bench of two or more Judges, or*
>
> *(b) if the said decree or order was passed by a Bench of two or more Judges, by a Bench consisting of at least as many Judges as the Bench review of whose decree or order is applied for"*

20. Said Rule also came up for consideration in the case of *Shabbir Ahmed and another v. Akhtar Alam and others* (***PLD 1994 Supreme Court598)***. In cited case, Controversy that was agitated before this Court was whether provision of Order XLVII Rule 5 CPC were applicable for review in constitutional petition under Article 199 of the constitution and applicability of *Rule 5 of Chapter 3-B of Volume V of LHC Rules,* this Court came to a conclusion that where a division bench passed the order and when occasion to hear review arose one of the two judges was available in terms of rule 5 of Order XLVII CPC was competent to hear and not by Rule 5 of *LHC Rules* (*which inter-alia provide "The chief Justice shall nominate the Judges constituting a Division bench or full Bench*). In Sindh High Court generally writ jurisdiction is exercised by Division Bench (barring few exceptions like in family or rent cases where single Judge entertains writ petitions). In Lahore High unless provided by law or by the rules or by special order of the Chief Justice all cases are heard and disposed off by a Judge sitting alone.

21. In the light of discussion made above it is to be seen whether instant case fall within the exceptions as postulated in the

provisions noted above or otherwise. Instant case, was originally decided in exercise of writ jurisdiction by a learned Single Judge of the Lahore High Court, who was no more available on the strength of the Lahore High Court, when the subject *ICAs* came up for consideration before the leaned Division Bench of the Lahore High Court and the learned Bench came to a conclusion that *ICAs* are not maintainable, considered it to be a fit case for Review. Had the learned single Judge been available on the strength of the Lahore High Court learned division bench after the conversion of *ICAs* into Review Application, could have remitted the Review application for the decision of the same learned Judge in accordance with rule 5 of Order XLVII CPC. However record shows that the same Judge was not available. The eventuality is not covered by Rule 5 of Order XLVII CPC therefore, in exercise of authority in terms of the Rule 3 of Part 'B' of Chapter 3 of the LHC Rules as reproduced above are attracted and, it was only a learned Bench of two or more Judges that was competent to hear and decide Review Application arising out of *decree or order , review of which is applied for, was passed by a Judge sitting alone.* In this view of the matter, learned Division Bench, being cognizant of the stated position of law, as noted above observed *"However, the facts and the merits of the case have forced us to convert these ICAs into review applications, so that the matter may be adjudicated upon merits as the learned single (Judge) who originally passed the impugned order is no more on the strength of this Court" ....."* *and a Division Bench is competent to hear the same, resultantly by invoking all the provisions in this regard we convert these ICAs into review applications..."* Therefore, no exception to assumption of jurisdiction by the learned Division Bench of the Lahore High Court converting *ICAs* against the order of the learned single Judge into Review Application could be taken.

22. Objection of the petitioner in person, that no notice was given to him before the conversion of *ICAs* into Review Application was given, is of no significance, particularly he had notice of *ICAs* and when no prejudice was caused or shown to have been caused to him on merits of the case. Objection of the similar nature, that no notice before conversion of one proceeding into another were also discarded by this Court in the case of *Capital Development Authority* ***(Supra)***.

23. This bring us to see whether grounds of Review within the Contemplation of sub-rule (1) of rule 1 and rule (2) of Order LXVII CPC read with section 114 CPC were available to the learned Bench that is to say ***a)***, on discovery of new and important matter or evidence, which after the exercise or due diligence, was not within the applicants knowledge or could not be produced by him at the time when the decree was passed or order was made ***b)***, or on account of some mistake or error apparent on the face of the record and thirdly ***c)***, for any other sufficient reason.

24. We have examined the *ICAs* in ground ***d)*** it was urged that report of the Member (C) CBR dated 9.3.2009 prepared and submitted in compliance with the order dated 12.1.2009 escaped the notice of learned single judge and ground ***e)*** that order dated 16.12.2004 dismissing CPLA Nos. 2466, 2467 & 2468 of 2004 and the order dated 28.07.2009 dismissing CRP as withdrawn were not taken into consideration by the learned single Judge were the grounds within the contemplation of Review Jurisdiction as envisioned by rule 1 of Order XLVII CPC. As the Judgment of the learned Single Judge, subject matter of Review, was based on erroneous assumption of fact that there was direction of this Court for allotment of alternate land, where as there was no such direction. This Court in earlier round in CRP merely vide order dated 12.01.2009 directed the *Member (C) BOR, to summon the record of previous land and alternate land, afford the parties of an opportunity of hearing to the parties and decide the matter within one month."* The report dated 9.3.2009 was submitted by the Member (C) BOR, in said *CRPs* informing this Court, that there is no provision in the Act of 1912 nor there is any policy of the Government whereby alternate land could be given in like cases, consequently CRPs were withdrawn on 28.7.2009 we have noted that reason for exercising review jurisdiction is manifest from paragraph 9 of the order dated 25.6.2015 which reads as follows:-

> *"The learned Single Judge while passing the impugned order in Chamber was under the misconception that the Hon'ble Supreme Court had given a verdict for the allotment of alternate land in favour of respondent No.1. There was neither such verdict nor any final order available by means of which the apex Court held so. Any interlocutory or ancillary order and even the passing remarks of a Court of law given during the pendency of lis cannot be termed as its final conclusion. There is no cavil with the proposition that all the interlocutory orders merged into the final order or judgment. Admittedly the review petitions filed by respondent No.1 were finally dismissed as withdrawn and if the argument of learned counsel for respondent No.1 is admitted that any interlocutory*

> *order for allotment of alternate land was made, then the same has to be merged into the dismissal order dated 28.7.2009. The learned Single Judge in Chamber committed material error while allowing the writ petition filed by respondent No.1, which is floating on the surface or record and the impugned order is bound to be set aside."*
>
> *(under lined to add emphasis)*

25. In this view of the matter learned Division Bench under the given facts and circumstances was justified to convert the *ICAs* into review applications and decide the same in accordance with the parameters laid down for the exercise of review jurisdiction. No other ground was urged before us. Review Petitioner cannot be allowed to reopen the case of cancellation of land acquired by him through private treaty or to reargue the case afresh in the garb of instant Civil Review Petitions. No error of fact or law was pointed out floating on the face of record. In view of the foregoing discussion, no exception to the judgment under review dated 31.12.2015, passed in Civil Petitions No.2364 & 2365 of 2015 is called for. Accordingly, these review petitions are dismissed.

Judge

Judge

ISLAMABAD, THE
29th September, 2016
Arshed

Not Approved for Reporting