

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Yahya Afridi

Civil Appeal No. 1011 of 2016

(Against the judgment dated 14.12.2015 passed by the Lahore High Court, Lahore in C.R. No.898-D of 2002)

Nausher

... Appellant

Versus

Province of Punjab through District Collector, Khanewal & another

... Respondents

For the Appellant:

Mr. Zulfikar Khalid Maluka, ASC

For the Respondents:

Mr. Israr-ul-Haq Malik Addl. AG. Punjab
Mr. Umar Iftikhar Shirazi, ADC(R),
Khanewal.

Date of Hearing:

02.06.2022

JUDGMENT

Yahya Afridi, J.- Nausher (“appellant”) has through the present appeal challenged the judgment dated 14.12.2015 (“impugned judgment”) passed by the Lahore High Court on a civil revision petition filed by the Province of Punjab and the Member, Board of Revenue, Punjab (“respondents”). By the impugned judgment, the Lahore High Court has accepted the revision petition of the respondents, and set aside the concurrent judgments and decrees in favour of the appellant passed by the trial and appellate courts.

2. The appellant had challenged the order dated 26.09.1994 passed by the Member, Board of Revenue, Punjab, in his suit from which the present appeal has arisen. We, therefore, deem it appropriate to

describe first the summary of the proceedings conducted by the Revenue Authorities, before narrating the proceedings of the courts below.

Proceedings before Revenue Authorities

3. One Muhammad Arif made an application (**Exh-D1**), on 22.08.1989, to the Deputy Commissioner, Khanewal for inquiry in the matter of allotment of Government land measuring 97-Kanals and 15-Marlas, situated in Chak No.65/15-L, Tehsil Mianchannu, District Khanewal ("**suit land**"). He, in that application, alleged that the appellant, Nausher, and one Ali Sher fraudulently managed the allotment of the suit land in favour of a dead person, namely, Murad son of Mohri, under the "Grow More Food Scheme", and conferment of its proprietary rights in favour of the said dead person. He further alleged that they then got the suit land transferred in their names from the name of that dead person. All this was carried out by three fraudulent mutations: (i) mutation No.129 (**Exh-D5**) regarding allotment of the suit land under the "Grow More Food Scheme" to Murad, (ii) mutation No.130 (**Exh-D6**) regarding grant of proprietary rights to Murad, and (iii) mutation No.131 (**Exh-D7**) regarding sale of the suit land by Murad in favour of the appellant and Ali Sher. And these three mutations were sanctioned on 21.07.1974. The applicant also annexed with his application, the copy of Death Register regarding death entry of the deceased Murad son of Mohri, according to which Murad had died on 10.10.1971, about three years before the sanction of the said three mutations on 21.07.1974.

4. The Deputy Commissioner, Khanewal entrusted the said application for inquiry to the Assistant Commissioner of Tehsil Mianchannu, where the suit land was situated and the parties resided. During the said inquiry, the appellant took the stance before the Assistant Commissioner that the copy of the Death Register produced by

the applicant, Muhammad Arif, was tampered and related to Mirdad son of Mohri, not to Murad son of Mohri. The Assistant Commissioner called the Secretary of the Union Council concerned, and recorded his statement as to the validity of the copy of Death Register produced by the applicant, who verified its genuineness and validity.

5. Upon completion of the inquiry, the Assistant Commissioner prepared a report dated 23.05.1990 (**Exh-D2**), recording therein his findings: that the copy of Death Register regarding death entry of Murad son of Mohri, produced by the applicant before him as Mark-A, was genuine; that Murad died on 10.10.1971 and left behind in his legal heirs, one widow, four sons and two daughters, who had inherited his estate; that the allotment of the suit land in name of the deceased Murad was obtained fraudulently; that all three mutations were sanctioned on the identification of Haq Nawaz Lambardar, who was the Lambardar of Chak No.77/15-L, and not of Chak No.65/15-L, where the suit land was situated; that the *mala fide* of the appellant and Ali Sher was also evident from the fact that, all three mutations had been sanctioned on one day, that was, 21.07.1974. The Assistant Commissioner, with the said findings, concluded that the allotment of the suit land was obtained fraudulently in name of a dead person, Murad son of Mohri, and therefore, the suit land should be resumed in favour of the Government, under section 30 of the Colonization of Government Lands (Punjab) Act, 1912. He sent the said report to the Deputy Commissioner, Khanewal, and the latter, vide his office memo No.667/CCI/CA dated 11.12.1990, reported the matter to the Senior Member, Board of Revenue, Punjab.

6. The Senior Member, Board of Revenue took cognizance of the matter, and issued notices to the appellant and Ali Sher, as well as to the legal heirs of the deceased, Murad son of Mohri, namely, Mst. Siani etc.,

to show cause as to why the conveyance deed dated 06.07.1974 of the suit land regarding conferment of the proprietary rights in name of the deceased Murad be not cancelled. Later, the Senior Member, Board of Revenue transferred the case to another Member of the Board of Revenue, who heard the legal heirs of the deceased Murad, as well as the appellant and Ali Sher, and passed the order dated 26.09.1994. By this order, the Member, Board of Revenue set aside the allotment of the suit land under the "Grow More Food Scheme" to the deceased Murad, rescinded the conveyance deed conferring propriety rights of the suit land to the deceased Murad, and also cancelled the mutations sanctioned on the basis of that order and deed as well as the subsequent mutations sanctioned on the basis of those mutations in favour of the appellant and Ali Sher.

Proceedings before Civil Courts

7. Being aggrieved of the order dated 26.09.1994 passed by the Member, Board of Revenue, the appellant¹ instituted a civil suit challenging the said order. The petitioner averred in his suit that the order dated 26.09.1994 was passed by the Member, Board of Revenue against law and facts, which the respondents controverted in their written statement. This led the trial court to frame issues and call for evidence of the parties. After recording evidence of the parties, the trial court decreed the suit in favour of the appellant, with the finding that Murad, son of Mohri, was alive at the time of allotment of the suit land, and no fraud in this regard was committed. The respondents' appeal before the District Court also failed.

¹ The other purchaser of the suit land, Ali Sher, had sold his share in the suit land to the petitioner, Nausher, vide mutation No.140 dated 09.08.1975 (Exh-D8) and mutation No. 151 dated 12.05.1977 (Exh-D9). Thus, only the petitioner has been pursuing the matter from the Court of Civil Judge upto this Court.

8. The respondents, therefore, preferred a revision petition before the High Court. The High Court held that the trial court and the appellate court did not consider the important documentary evidence, including the inheritance mutation No.99 dated 14.01.1972 (**Exh-D13**) of the deceased Murad son of Mohri in favour of his legal heirs, which, according to the High Court, completely dismantled the edifice of the appellant's case. The High Court, thus, allowed the revision petition, set aside the concurrent judgments of the trial and appellate courts, and dismissed the suit of the appellant. Hence, the appellant has filed the present appeal as of right.

9. We have heard the valuable arguments of the learned counsel for the parties and with their able assistance have perused the record of the case.

Judicial Review of legality of orders of Revenue Authorities by Civil Courts

10. Before advertng to the merits of the case, it would be appropriate to first address the preliminary objection made by the respondents to the jurisdiction of the Civil Court in entertaining the claim of the appellant challenging the decision of the Board of Revenue rendered in exercise of its statutory power conferred upon it by the law. He contended that under section 30(2) of the Colonization of Government Lands (Punjab) Act 1912 ("**the Act**"), the Board of Revenue, Punjab is vested with the power of dealing with the matter of resuming Government land acquired by any person by means of fraud or misrepresentation, and section 36 of the Act has expressly barred Civil Courts to take cognizance of the matter in which the Board of Revenue exercises any power vested in it by or under the Act.

11. In this regard, we reiterate the well-settled legal position that in view of the general jurisdiction conferred by section 9 of the Code of

Civil Procedure 1908 (“CPC”), Civil Courts have the ultimate jurisdiction, even where their jurisdiction relating to certain civil matters is barred, to examine the acts, proceedings or orders of those special tribunals and determine whether or not such acts, proceedings or orders have been done, taken or made in accordance with law.² Accordingly, when a special tribunal is found to have acted not in accordance with the law under which it purportedly acted, its act does not come within the scope of the exclusionary provisions of the law that bar the jurisdiction of Civil Courts. That is why this Court has held in cases³ where the Revenue Authorities had acted in accordance with law that Civil Courts have no jurisdiction, and in cases⁴ where they had not so acted held that Civil Courts have the jurisdiction to interfere with, and strike down orders passed without lawful authority.

Concurrent remedies before Civil Court and High Court

12. There is another legal dimension that explains the exercise of such limited jurisdiction by Civil Courts to examine and determine the legality of the orders made by the administrative tribunals or authorities, despite the express bar on their general jurisdiction regarding certain civil matters: The right to be dealt with in accordance with law was itself a common law right, before its codification as a constitutional right under Article 2 of the erstwhile Constitution of Pakistan 1962, and Article 4 of the present Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”). By examining and determining whether or not the plaintiff has been dealt with in accordance with law by the administrative

² Hamid Husain v. Govt. of W.P. 1974 SCMR 356; Secretary of State v. Mask and Co. AIR 1940 PC 105

³ Muhammad Sharif v. Province of Punjab 1984 SCMR 1308; Bashir Ahmad v. Manzoor Ahmad 1987 SCMR 1620; Abdul Hamid v. Province of Punjab 1989 SCMR 1741; Alam Sher v. Muhammad Sharif 1998 SCMR 468; Muhammad Ishaq v. Abdul Ghani 2000 SCMR 1083; Muhammad Ali v. Province of Punjab 2005 SCMR 1302; Administrator v. Ali Muhammad 2012 SCMR 730.

⁴ Abdul Rab v. Wali Muhammad 1980 SCMR 139; Province of Punjab v. Yaqoob Khan 2007 SCMR 554; Muhammad Khan v. Province of Punjab 2007 SCMR 1169; Muhammad Nazir v. Ahmad 2008 SCMR 521

tribunal or authority in making the impugned order, a Civil Court enforces this right of the plaintiff, and does not deal with and decide upon the merits of the *lis* decided in the impugned order by the administrative tribunal or authority in exercise of its exclusive statutory power.

13. It would be pertinent to mention here that besides the ordinary remedy before Civil Court under section 9 of the CPC (mentioned above), an *aggrieved person* may invoke the extraordinary remedy before a High Court provided under Article 199 of the Constitution, for the enforcement of his constitutional right to be dealt with in accordance with law regarding the matters like the present one.⁵ This extraordinary remedy before High Court, however, does not affect or extinguish the ordinary remedy which may be available before Civil Courts. Both these remedies are concurrent; however, when one is availed, the other becomes barred under the principle of *res judicata*.⁶

Grounds of challenge and summary procedure to decide them

14. Some of the grounds upon which the legality of an order passed by administrative tribunals or authorities, such as the revenue hierarchy, may be challenged are:

- i. Whether the matter falls within the scope of the power conferred by the relevant statute upon the administrative tribunal making the impugned order;
- ii. Whether the impugned order could have been made under the relevant statute by the administrative tribunal;
- iii. Whether the impugned order states the ground/reason on which it has been made;
- iv. Whether the ground/reason stated in the impugned order falls within the grounds stated by the relevant statute;

⁵ Muhammad Shafi v. Member, Board of Revenue 1985 SCMR 817; Muhammad Ashraf v. Board of Revenue, PLD 1968 Lah 1155.

⁶ Muhammad Anwar v. Nawab Bibi 1989 SCMR 836; Rehmat Ali v. Jan Muhammad 1983 SCMR 1109; Asif Jah v. Govt. of Sind PLD 1983 SC 46; Abdul Majid v. Abdul Ghafoor PLD 1982 SC 146; Ahmad Shah v. Pakistan PLD 1979 Lah 599 (DB); Chiragh-ud-Din v. Province of W.P. 1971 SCMR 447; Muhammad Shafi v. Muhammad Bakhsh PLD 1971 Lah 148 (DB).

- v. Whether a fair and meaningful opportunity of hearing was provided to the aggrieved person before making the impugned order; and
- vi. Whether the finding recorded in the impugned order on disputed fact(s) is based on some evidence.

A Civil Court, therefore, may opt for the summary procedure provided in Rules 3 and 4 of Order XV, CPC, in such suits and treat the complete record of the proceedings conducted by the administrative tribunal as sufficient evidence. The cited provisions are reproduced here for ease of reference:

3. Parties at issue--(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence.--Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment or may, if it thinks fit, after framing and recording issues adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

(Emphasis added)

Rule 3(1) of Order XV, CPC empowers the Civil Courts to proceed in a summary way, irrespective of whether the summons has been issued for the settlement of issues only or for the final disposal of the suit. However, to avoid any objection from a party under the proviso to Rule 3(1), Civil Courts may consider in such suits, to issue the summons for the final disposal of the suit under Rule 5 read with Rule 8 of Order V, CPC.

15. Needless to say, the defendant to whom the summons have been issued for the final disposal of the suit, may at or before the first

hearing or within such time as the Court may permit, present a written statement of his defence under Rule 1 of Order VIII, CPC, or his pleader⁷ may make a statement admitting or denying the allegations made in the plaint, under Rule 1 of Order X, CPC. And the Court on such written statement, if presented by the defendant, or on such statement made by his pleader⁸, proceeds to record the issues and direct the parties for the production of the necessary evidence, as per Rule 4 of Order XV, CPC.

16. The necessary evidence, in such suits, being the complete record of the proceedings conducted by the administrative tribunal, is such that can be produced by the parties at once. The plaintiff can, therefore, in his statement produce the certified copies of such record, and also explain his grounds of challenge to the proceedings conducted and the order made by the administrative tribunal. Likewise, on the defendant's side, the defendant or his representative or custodian of the relevant record can in his statement produce such record of the proceedings which the plaintiff has omitted to produce, and reply to the grounds of challenge made by the plaintiff. Thus, statements of the plaintiff and of the defendant/his representative/custodian of the record along-with the record of the proceedings are ordinarily sufficient evidence to decide the issue of legality of the order challenged in the suit.

Grounds of challenge in the present case

17. Coming to the merits of the present case, we note that the appellant challenged the order dated 26.09.1994 passed by the Member, Board of Revenue, in his suit mainly on the following grounds: (i) that the applicant, Muhammad Arif, had no *locus standi* to make the application for inquiry in the matter of allotment of the suit land; (ii) that as per

⁷ In such suits, mostly defendants are either Governments or their officials and they generally appears through their pleaders.

⁸ Rule 3 of Order XIV, CPC permits framing of issues on the basis of such statement of the pleaders of the parties.

proviso to section 16 of the Act, the allotment of the suit land could not have been cancelled after the lapse of a period of three years; (iii) that the application involved the allegation of fraud, which can only be decided by Civil Court and the Member, Board of Revenue, had no jurisdiction to decide it; (iv) that Murad son of Mohri was alive at the time of the allotment and conferment of the proprietary rights of the suit land; (v) and that the order of the Member, Board of Revenue could not have affected his rights in the suit land, as he was the *bona fide* purchaser of the suit land.

17.1 So far as the ground that the applicant, Muhammad Arif, had no *locus standi* to make the application for inquiry in the matter of allotment of the suit land, is concerned, it is found misconceived. The status of the said applicant was only that of an informer. He was not, and cannot be considered, a party to the proceedings conducted by the Revenue Authorities, in the present case.

17.2 The ground of challenge that as per *proviso* to section 16 of the Act, the allotment of the suit land could not have been cancelled after the lapse of a period of three years, is also not maintainable, as the said proviso has been deleted by the Colonization of Government Lands (Punjab Amendment) Ordinance, 1978.

17.3 The next ground of challenge was that the application involved the allegation of fraud, which can only be decided by Civil Court and the Member, Board of Revenue, had no jurisdiction to decide it. Section 30(2) of the Act has clearly conferred power on the Board of Revenue to decide the allegation of fraud in the following terms:

If, at any time, the Board of Revenue is satisfied that any person had acquired under this Act tenancy rights in respect of any land by means of fraud or misrepresentation or was not eligible to have such rights for any reason whatsoever then notwithstanding the acquisition of proprietary rights by such person in such land or the terms and conditions of any agreement with or rules issued by the Provincial

Government and without prejudice to any other liability or penalty to which such person may be liable under any law for the time being in force, the Board of Revenue may, after giving such person a reasonable opportunity of showing cause pass an order resuming the land in respect of which proprietary rights have been acquired or reduce the area of such land or pass such order as it may deem fit.

This ground is thus not legally tenable. The Board of Revenue is competent to decide upon whether any person had acquired the tenancy rights, under the Act, in respect of any land by means of fraud.

17.4 The next ground, which is also the main ground, of challenge is that Murad son of Mohri was alive at the time of the allotment and conferment of the proprietary rights in the suit land, and that the Member, Board of Revenue erred in deciding this disputed fact. To decide such ground of challenge, a Civil Court is to see whether or not the finding recorded in the challenged order on the disputed fact is based on some evidence.⁹ Civil Court cannot, in its limited jurisdiction of examining legality of the challenged order, record additional evidence on the disputed fact and re-decide the same, as an appellate court of the administrative tribunal. When there exists some evidence and that evidence reasonably supports the finding recorded by the administrative tribunal, it is not the function of Civil Court to reappraise that evidence and to substitute its own finding. Civil Court can interfere with and set aside only such finding of the administrative tribunal which is based upon no evidence or which no reasonable person can record on the basis of the evidence available before the administrative tribunal.

17.5 In the present case, the copy of death entry of Murad son of Mohri recorded in the Death Register of the Union Council concerned, coupled with the statement of the Secretary of that Union Council, verifying genuineness of that copy, as well as the inheritance mutation of Murad son of Mohri, were available before the Member, Board of Revenue

⁹ Bashir Ahmad v. Manzoor Ahmad 1987 SCMR 1620.

in support of the fact that at the time of allotment of tenancy rights and grant of proprietary rights in the suit land, Murad son of Mohri was not alive. He also summoned the legal heirs of Murad son of Mohri for hearing, who maintained the same fact before him. Thus, the finding of the Member, Board of Revenue was based on evidence and that evidence reasonably supported the finding recorded by him. The trial and appellate courts could not have interfered with his such finding of fact. The revisional court, therefore, rightly set aside their judgments and underlined that the inheritance mutation No.99 dated 14.01.1972 (**Exh-D13**) of the deceased Murad son of Mohri in favour of his legal heirs completely dismantled the edifice of the appellant's case.

17.6 The last ground of challenge is also misconceived. It was asserted that the order of the Member, Board of Revenue could not have affected the rights of the appellant in the suit land, as he was the *bona fide* purchaser of the suit land. When the appellant is found to have procured the tenancy rights, as well as the proprietary rights, in the suit land in name of a dead person, and then to have transferred the same in his name from that of a dead person, it cannot lie in his mouth that he is the *bona fide* purchaser of the suit land. Protection under section 41 of Transfer of Property Act, 1882 can only be claimed when the following conditions are fulfilled: (a) the transferor is the ostensible owner; (b) he is so by the consent, express or implied, of the real owner; (c) transfer is for consideration; and (e) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.¹⁰ All these four conditions are lacking in the present case.

18. For the forgoing reasons, we find that the trial court and the appellate court had legally erred in setting aside the order of the Member,

¹⁰ Abdul Ghafoor v. Ghulam Sadiq PLD 2007 SC 433.

Board of Revenue, and the High Court has rightly corrected their error in exercise of its revisional jurisdiction. The appeal is found meritless. It is, therefore, dismissed.

Judge

Judge

Announced in open Court

On 18th August 2022, at Islamabad.

Judge

Approved for reporting

Arif