

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

CIVIL APPEAL NO.71-P & 864/2014

(Against the judgment dated 22.04.2014 passed by Peshawar High Court, Mingora Bench, Dar ul Qaza, Swat in CR No.737-M/2012)

Principal Public School Sangota (in CA No.864/14)
Government of Khyber Pakhtunkhawa through Chief Secretary and others (in CA No.71-P/14)

...Appellants

Versus

Sarbiland and others

...Respondents

For the appellants in CA No.71-P/2014: Mr. Muhammad Shumail Butt,
AG Khyber Pakhtunkhawa
Mr. Muhammad Suhail, Addl:
AG

For the appellant in CA No. 864/2014: Representative of the Principal
of the Public School, Sangota

For the contesting respondents in both appeals: Mr. Muhammad Arshad
Yousafzai, ASC

Date of hearing: 26.11.2021

JUDGMENT

Qazi Faez Isa, J. The respondent Nos. 1 to 4 (**'the plaintiffs'** or **'the contesting respondents'**) filed a representative suit on 2 November 2002 alleging that land measuring 73 *kanals* and 11 *marlas* in *Khasra* No. 557 (**'the land'**) was *shamilat*, that is village common land, but its ownership was wrongly shown in the settlement records as that of the Provincial Government, and possession was shown to be with and was with the Sangota Public School, situated in Mouza Sangota, Tehsil Babuzai, District Swat (**'the School'**). The School is being run by the Presentation Sisters since 1965. The School was also arrayed by the plaintiffs as a defendant in the suit. The suit was decreed by the learned Civil

Judge, Swat. Both the School and the Government of Khyber Pakhtunkhwa ('the Government'), which was also arrayed as a defendant, filed separate appeals and both these appeals were allowed by the learned Additional District Judge, Swat. Thereafter, the contesting respondents filed a civil revision before the High Court, which was allowed *vide* impugned judgment dated 22 April 2014.

2. The School and the Government have filed separate appeals assailing the judgment of the High Court. Civil Appeal No. 71-P/2014 has been filed by the Government, but belatedly with a delay of 19 days. However, Civil Appeal No. 864/2014 filed by the School is filed within the prescribed period of 30 days. An application (CMA No.660-P/2014) has been filed by the Government to condone the delay in filing its appeal on the ground that the Government was under the mistaken impression that a civil petition for leave to appeal (which may be filed within 60 days) was required to be filed. The Government and its different departments are arrayed as respondent Nos. 5 to 8 in the appeal filed by the School and they support the School's appeal.

3. We have heard the representative of the School, the learned Advocate-General and the learned Mr. Muhammad Suhail, learned Additional Advocate-General, of Khyber Pakhtunkhwa. They submit that the preparation of the first settlement of the area commenced in the year 1981 and was completed by the year 1986 and, consequently, the revenue record was prepared. The first entry in the property ownership record, Register of *Haqdaran-e-Zamin* or *Jamabandi*, of the area is of the year 1985-86 (Exhibit P-3/1) and it showed the Provincial Government to be the owner of the land and that the land was under the possession/occupation of the School. The learned Advocate-General submits that the land was given in the year 1964 to the School by the former ruler of Swat, the Wali of Swat State. By referring to MLR No. 118¹ ('**MLR 118**') he states that it stipulates that from 1 September 1972 all

¹ PLD 1972 Central Statutes pages 441 to 443, Martial Law Regulation No. 118, dated 1 April 1972.

privately-managed colleges and schools shall vest in the Provincial Government and that its paragraph 14 ousts the jurisdiction of the courts, therefore, the said suit was not maintainable.

4. Reliance is also placed by the learned Advocate-General on MLR No. 122² - The Devolution and Distribution of Property (Dir and Swat) Regulation - ('**MLR 122**') and MLR No. 123³ - The Settlement of Immovable Property Disputes (Dir and Swat) Regulation - ('**MLR 123**'). He states that MLR 122 was in respect of the lands which were owned by the Wali of Swat wherein the people had no right or interest and MLR 123 was in respect of all other lands in the former Swat State wherein people had a right and/or interest, and that in respect of the latter a Federal Land Commission was constituted for the purpose of determining the claims of different parties and to attend to their disputes. Subsequently, MLR 122 was amended and paragraph 6-A was incorporated therein which expanded the jurisdiction of the Federal Land Commission and empowered it to also consider claims/cases covered by MLR 122. The learned Advocate-General submits that the suit was not maintainable because both MLR 122 and MLR 123 specifically ousted the jurisdiction of the courts. We enquired from the learned Muhammad Arshad Yousafzai, who represents the contesting respondents, whether the land is governed by either of these MLRs and he agrees with the learned Advocate-General and says that the land comes within the purview of MLR 122. If the contesting respondents concede that the land was personally owned by the former ruler of Swat State then the contesting respondents and those they represented had no interest in the land.

5. However, objection with regard to the ouster clauses contained in MLR 118, MLR 122 and/or MLR 123 was not taken before the Trial Court and no issue/s was framed with regard thereto. Therefore, it will not be appropriate to consider the same at this juncture.

² Gazette of Pakistan, Extraordinary, 12 April 1972.

³ Gazette of Pakistan, Extraordinary, 12 April 1972.

6. The suit was filed on 2 November 2002 in respect of the land which has been in the possession of the School since the year 1964 and was hopelessly time-barred, submits the School's representative and the learned Advocate-General. According to them, the suit should have been filed within six years of 1964, that is, latest by the year 1970, but it was filed after thirty-eight years. According to them, the applicable provision is Article 120 of the First Schedule to the Limitation Act, 1908 (**the Act**) which prescribes a limitation period of six years from the time *the right to sue accrues*. They further submit that if it is contended, that Article 142 of the First Schedule to the Act is applicable, which provides for twelve years for filing of a suit, then too the suit is time-barred as it was filed after sixteen years, but add that Article 142 is not applicable because, admittedly, neither the contesting respondents nor any of those they represented were in possession of the land, which is a prerequisite to attract Article 142. Alternatively, but without conceding, they submit, that if the date giving rise to the *cause of action* is taken from the date of the first settlement and recording of ownership rights to the land, that happened in the year 1985-86 and from this date too the suit was time-barred.

7. The learned counsel for the contesting respondents relies upon the judgments of the learned Civil Judge and of the learned Judge of the High Court and states that both these judgments are well reasoned and sustainable. With regard to the period of limitation the learned counsel states that the *Jamabandi* is periodically updated and the preparation of every fresh *Jamabandi* gives rise to a fresh cause of action. However, the learned counsel did not refer to any *Jamabandi* which had been prepared afresh or updated. He also did not dilate on whether this principle is applicable when no change is made in the updated *Jamabandi* with regard to the initial entry.

8. We have heard the learned counsel and the School's representative and with their assistance examined the documents

on record. Civil Appeal No. 71-P/2014 is belatedly filed with a delay of 19 days because, as stated by the Government, it was under a misapprehension that a petition, and not an appeal, had to be filed to challenge the impugned judgment. The High Court had set aside the judgment of the Appellate Court, which clearly meant that an appeal lay⁴ which had to be filed within thirty days,⁵ but this was not done. The Government is supposed to know the law of the country, especially something as basic as the prescribed time period within which an appeal needs to be filed. The School, run by the Presentation Sisters, knew the law and were vigilant. They filed an appeal within time to protect their interest and the interest of the children studying in the School. The reason given to condone the delay does not behoove the Government and the highest law office of the Province. However, since both appeals arise from the same impugned judgment then, even if the appeal filed by the Government is dismissed because it was belatedly filed, the appeal filed by the School is maintainable and needs consideration.

9. The failure to file an appeal within the prescribed period of thirty days reflects the Government's ineptitude in not protecting public property but also its disdain towards the beneficiaries of the School, the local children who study in the School. The School is situated in the troubled Swat region which has suffered inequities at the hands of those who oppose the education of girls, have resorted to violence, attacked schools, forced schools to shut down and attacked school-going children. The School is the only all-girls school in Swat and it is educating over a thousand girls. The School was bombed by terrorists and remained closed for about five years due to terrorist activity in Swat. The Government's gross incompetence and neglect in filing a timely appeal may have achieved the very same result which the rampaging terrorists had achieved, which is the forced closure of the School.

⁴ Article 185(2)(d) or (e) of the Constitution of the Islamic Republic of Pakistan.

⁵ Supreme Court Rules, 1980, Order XI Rule 2.

10. The first command from Almighty Allah to Prophet Muhammad (peace and blessings be upon him), and through him to humanity, was *Iqra* – Read.⁶ *Iqra* is a command, it is expressed in the command from of the Arabic verb.⁷ This first command proceeds to then mention the *pen*⁸ (*qalam*) and *education* or *learning*⁹ (*ilm*). Of the myriad of things that the Most Benevolent Creator could have conveyed in the first revelation in the Holy Qur'an He, in his Infinite Wisdom and Mercy, considered reading, writing and education to be of the primary importance. Prophet Muhammad (peace and blessing be upon him) also placed great emphasis on education; he enabled the non-Muslim prisoners taken after the Battle of Badr,¹⁰ to secure their freedom if they taught the illiterate amongst the Muslims to read and write. This was probably the first ever use of a *community service order* (used in some countries), which is the successor of a probation order.¹¹ Prophet Muhammad (peace and blessings be upon him) had also said to the men and women of the Islamic community to go as far as China, a non-Muslim country, to seek knowledge.¹² Islam's emphasis on education and learning distinguished it from the prevailing civilizations where education and learning was restricted either to a particular class or to a section of society. Islam was inclusive and non-discriminatory - '*The most honoured of you in the sight of Allah is the one who is the most righteous*'.¹³ Race, colour, status, wealth and gender were submerged under the Islamic equality principle. Ironically, education has come under attack in the Islamic Republic of Pakistan despite the Constitution guaranteeing equality¹⁴ of sexes and which compels the State to

⁶ Holy Quran, *surah Al-'Alaq* (96) verse 1.

⁷ *فعل أمر* – *fael amer*.

⁸ Holy Qur'an, *surah Al-'Alaq* (96) verse 4.

⁹ Above, verse 5.

¹⁰ 13 March 624 AD or 17 Ramadhan 2 AH.

¹¹ Discussed and used by the Balochistan High Court in the case of *Ghulam Dastagir v The State*, PLD 2014 Baluchistan 100.

¹² This saying is cited in Shams al-Din Muhammad al-Sakhawi, in his *al-Maqasid al-hasana fi bayan kathir min, al-ahadith al-mushtahara 'ala 'l-alsina* (Cairo, 1956), by Al-Bayhaqi in his *Shuab al-Iman*, vol. 2 p. 253 and by Ibn Abdul Barr in his *Jamia Bayan al-Ilm*, vol. 7, p. 8.

¹³ Al-Qur'an, *surah Al-Hujurat* (49) verse 13.

¹⁴ Constitution of the Islamic Republic of Pakistan, Article 25.

*provide free and compulsory education to all children of the age of five to sixteen.*¹⁵

11. There were over a thousand attacks on educational institutions in Pakistan between 1970-2019, recorded by the Global Terrorism Database;¹⁶ the highest number of attacks on educational institutions in the world. Unfortunately, neither the National Counter Terrorism Authority ('**NACTA**'), the Ministry of Interior nor the Ministry of Defence of the Government or any other official website maintains such a database. A State protects and supports its citizens. It is a testimony to the courage and determination of the teachers and children who attend schools in such dire circumstances. However, the horrendous number of terrorist attacks and the death and destruction left in their wake requires that the State ensures the guaranteed fundamental right to life¹⁷ and education.¹⁸ What lesson is really being taught to the girls studying in Public School Sangota and to the hundreds of millions of others who are, or should be, in school? Is it that their constitutionally guaranteed fundamental right to life and education is, after all, meaningless.

12. The Trial Court had framed a specific issue with regard to limitation, which was issue No. 7 - *Whether suit of the plaintiffs is barred by limitation?* The learned Civil Judge had decided this issue in favour of the plaintiffs by simply stating that, '*the cause of action for instituting the instant suit accrued to them [plaintiffs] at the time when defendants started interference in the suit property and disturbing their [plaintiff's] possession*'. However, the plaint did not provide any particulars in this regard nor any date when the *cause of action* accrued. It has come on record that the School had possession of the land since 1964. Therefore, this finding is not sustainable. The learned Judge of the High Court did not attend to

¹⁵ Above, Article 25A.

¹⁶ Maintained at the University of Maryland, https://www.start.umd.edu/gtd/search/Results.aspx?page=1&casualties_type=b&casualties_max=&dtp2=all&country=153&target=8&count=100&charttype=line&chart=overtime&ob=GTDID&od=desc&expanded=yes#results-table.

¹⁷ Above, Article 9.

¹⁸ Above, Article 25A.

Issue No. 7. It is clear that the suit was belatedly filed. The plaintiff did not provide a reason for or justify its belated filing, an indispensable deficiency. The defendants had objected to the belated filing and had stated that the suit was barred by limitation, but (as noted above) the learned Civil Judge cursorily and by disregarding the law, decided this issue in favour of the plaintiffs. The learned counsel for the contesting respondents attempted to save the suit by saying that every *Jamabandi* gives rise to a fresh cause of action. It is true that in case of mere correction of an entry in the revenue record, every new adverse entry in the revenue record of rights (*Jamabandi*) gives rise to a fresh cause of action to the person aggrieved of such an entry if that person is in possession of the land regarding which the entry is made.¹⁹ But, this was not only a matter of correction of an adverse entry having been made in the settlement/revenue record with regard to the ownership of the land but also a case in which possession had been assumed or, as alleged by the plaintiffs they were dispossessed. The suit was filed thirty-eight years after possession of the land was taken over by the School and sixteen years after the entry was made in the *Jamabandi*. The suit was clearly time-barred and, leaving aside the other contentions which have been raised, it would fail on this ground alone. Therefore, we allow the School's appeal, Civil Appeal No. 864/2014, and set aside the impugned judgment of the High Court and the judgment of the learned Civil Judge, and dismiss the suit, but since two concurrent judgments in favour of the contesting respondents have been set aside there shall be no order as to cost. And, the Government's appeal, Civil Appeal No. 71-P/2014, is disposed of. It would be appropriate to translate this judgement into Urdu²⁰ for its wider dissemination as it contains matters of public importance, including the importance of education.

Judge

¹⁹ *Khan Muhammad v Khatoon Bibi*, 2017 SCMR 1476.

²⁰ Constitution of the Islamic Republic of Pakistan, Article 251.

Judge

Islamabad
26.11.2021
Approved for reporting.
Rashid