

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali
Justice Irfan Saadat Khan

Civil Appeal No.187-L/2009 & C.P.L.A. No.769-L/2016

[Against the different judgments dated 23.12.2003 passed by the Lahore High Court, Multan Bench in civil revisions No.1291 and 1292 of 1995]

The Province of Punjab, etc (in C.A. 187-L/2009)

The Province of the Punjab through District Collector, Sargodha, District Sargodha, etc (In CP.769-L/2016)
...*Appellant(s)*
...*Petitioner(s)*

Versus

Bashir (in C.A.187-L/2009)
Rulya (in CPLA 769-L/2016)
...*Respondent(s)*

For the Appellant(s) and : Mr. Khalid Masood Ghani,
Petitioner(s)/Province of Punjab Additional Advocate-General
(in both cases)

For the Respondent(s) : Sheikh Naveed Sheharyar, ASC
Sheikh Usman Karim ud Din,
ASC (in both cases)

Date of Hearing : 2nd of June, 2026

Judgment

Muhammad Ali Mazhar, J.- The Civil Appeal No.187-L/2009 is directed against the judgment dated 23.12.2003 passed by the Lahore High Court in Civil Revision No.1291/1995, whereby judgment and decree of the Trial Court was restored and suit was decreed and judgment and decree dated 24.11.1994 passed by the District Judge, Sargodha was set aside.

2. According the facts recounted in the memo of appeal, respondent No.1 filed a suit for declaration with permanent

injunction asserting the ownership of land measuring 20 kanals 10 marlas of Chak No. 89/NB, Tehsil & District Sargodha. He pleaded that land measuring 50 kanals and 5 Marlas was allotted to Muhammad Yousaf, (respondent No. 4) vide order No. 650, thereafter he transferred the suit land in favour of the respondent No.1. After transfer by sale, the mutation was also sanctioned in the revenue record. Subsequently, the Member (Colonies), Board of Revenue, Punjab cancelled the allotment of Muhammad Yousaf, on the ground that the land allotted to him fell within the prohibited area within five miles radius of the municipal limit and thus the allotment was obtained through fraud and misrepresentation, hence the civil suit was filed. The learned Trial Court vide judgment and decree dated 21.4.1992 decreed the suit. The defendants, appellants/petitioners in this case, filed the appeal before the learned District Judge, Sargodha which was allowed vide his judgment and decree dated 24.11.1994 and dismissed the suit of the respondent No.1. Ultimately, the respondent No.1 invoked the Revisional jurisdiction of the High Court and vide impugned judgment, the learned High Court while allowing the revision application, set aside the appellate judgment and decree dated 24.11.1994 passed by the District Judge, Sargodha and restored the judgment and decree dated 21.04.1992 by the learned Civil Judge.

3. The learned Additional Advocate-General ('**AAG**') raised a point that land was cancelled for the reason that it fell within the prohibited area of 5 miles radius of municipal limit, thus allotment was cancelled under suo motu power exercised by the Board of Revenue Authority. It was further contended that the competent authority rightly exercised its jurisdiction under the law, whereby the Board of Revenue could proceed for cancellation of tenancy rights obtained through fraud or misrepresentation. It was further contended that the learned High Court failed to appreciate that under section 10 and 30 (2) of the Punjab Colonization of Government Land Act, 1912,

the Member Board of Revenue (Colonies), was fully competent to cancel the allotment obtained by fraud and misrepresentation. He further argued that before cancellation, a notice was issued to the original allottee and the respondents could not demand any notice of cancellation to them.

4. The learned counsel for the respondents argued that the land was properly allotted to Muhammad Yousaf and after receiving the sale consideration, the possession was also handed over, hence there was no lawful justification for cancelling the allotment. It was further contended that the respondents were bona fide purchasers against valuable consideration and their names were also entered into revenue record but no notice was served to them before cancellation of allotment of Muhammad Yousaf. It was further averred that the provision under which land was cancelled was not applicable as there was no material on record that the allotted land fell within the prohibitory area as claimed by the petitioners. According to him, municipal limit at the time of allotment was to be looked into. He alternatively argued that had the land been in prohibited zone even then it could not have been cancelled under law without notice and affording opportunity.

5. Heard the arguments. The impugned judgment of the learned High Court rightly figures out that the competent authority may proceed against fraudulent transfers of tenancy/lessees' rights under sections 16 and 30 (2) of the Punjab Colonization of Government Lands Act, 1912, but not with regard to land permanently settled on the allottees. Looking at the details, it is clear beyond any shadow of doubt that the sale consideration was fully paid and possession of the land was handed over without any demur. At this point in time, the land in question vested in the respondents and their names are duly reflected in the revenue record as recorded owners in possession and there were no pending proceedings

for cancellation of the land to the original allottee. The learned High Court while affirming the judgment and decree passed in the suit by the Trial Court held that while exercising power under section 30 (2) of the Punjab Colonization Government Lands Act, 1912 neither any notice was issued nor any opportunity of hearing was afforded to the respondents before cancellation of allotment of land. The appellate court failed to appreciate the correct legal proposition, hence the learned High Court set aside the appellate judgment and decree dated 24.11.1994 passed by the District Judge, Sargodha and restored the judgment and decree dated 21.04.1992 by the learned Civil Judge.

6. In order to resolve the main issue, it is imperative to dwell on and ruminate the niceties of Section 32 (2) of the Punjab Colonization of Government Lands Act, 1992 which gives power to exercise suo moto jurisdiction for cancellation of land obtained by means of fraud or misrepresentation. For the sake of convenience, Section 32 (2) of the Punjab Colonization of Government Lands Act, 1992 is reproduced as under:

“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 proprietary rights by such person in such land or 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 reduced the area of such land or pass such order as it may deem fit”. [Emphasis supplied]

7. An analytical survey of the aforesaid sub-section divulges that the Board of Revenue if satisfied that any land acquired under the Act on tenancy by means of fraud or misrepresentation or was not eligible to have such rights, then notwithstanding the acquisition proprietary rights of such land, 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 reduced the area of such land or pass such order as it may deem fit 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 law is clear on all fours that no action detrimental to the tenancy or proprietary rights of land could be initiated or elected without issuing notice. Nothing produced by the petitioner throughout the proceedings shows that any notice before taking any drastic action was issued to the respondents including the original allottee Muhammad Yousaf. Furthermore, as observed by the learned High Court, the matter at hand did not relate to the tenancy rights, hence, there was no authority to cancel the land allotted to Muhammad Yousaf after receiving the entire sale consideration and execution of sale deed. Even no tangible evidence of fraud or misrepresentation was brought on record to trigger suo moto proceedings without notice to the respondents.

8. Insofar as the contention that the land was cancelled for the reason that it fell within the prohibited area of 5 miles radius of municipal limit, the said objection raised by the Government of the Punjab with regard to the distance in radius in order to pointed out the land in question within prohibited area has already been verified and addressed in view of the report submitted by the Survey Department pursuant to the order of this Court which is unmistakably glimmering from the order dated 29.12.2021, which is reproduced as under:

"Pursuant to our order dated 23.07.2021 a report has been filed by the Survey General office which has been prepared by utilizing Satellite Imagery by using WGS-84 Universal Transverse Mercator (UTM) Zone 43N as map projection in Arc GIS Software. According to the report the Radial Distance between Old D.C. Office Building point to actual disputed land Corner B is 5.39 miles (8.66 Km) which is nearest most to the city and the same has been marked. Likewise, the radial distance from Bhatti Chouk to actual disputed land Corner B is 5.30 miles (8.53 Km), the radial distance between General Post Office Building point to actual disputed land Corner B is 5.36 miles (8.63 Km) and the radial

distance between the Railway Station point to actual disputed land Corner B is 6.18 miles (9.95 Km). The limits of the Sargodha Municipal Committee as determined vide notification dated 08.01.1965 is shown in green line appearing on the map submitted by the office of the Survey General office. The representative of the Survey General of Pakistan points out that the green line depicts the outer limits of Sargodha Municipal Committee existing at the time when the allotment in question was made.

2. The learned Additional Advocate General has drawn our attention to 1956 Scheme for the Resettlement of Ejected Tenants of Certain Categories. Section 1 of the said Scheme provides that the Government land in the canal colonies in the former province of the Punjab can be leased out except the following:-

- (a) Areas within Municipal Limits.
- (b) Any area within five miles of the outer Municipal Limits of a colony town.

He maintains that even according to the report of the Survey General office, if the disputed area is calculated from the outer limit as depicted by the green line, it falls within five miles and as such the Government was justified in cancelling the allotment made in favour of the respondents. This question needs to be further examined in light of the notification and the definition of "outer municipal limits".

3. The learned counsel for the respondents also submits that the very cancellation of the respondents' land was illegal insofar as the cancellation was undertaken under Section 32 of the Punjab Colonization of Government Lands Act which was enacted in 1978, whereas the proprietary rights were granted to the respondents in 1976, as such the 1978 law could not have been given retrospective effect.

4. Let a copy of the notification as well as the report submitted by the Survey General Office be handed over to the learned counsel for the respondents to examine the same and assist us on the next date of hearing. Likewise, the learned Additional Advocate General shall also seek further instructions to clarify the difference between municipal limits and outer municipal limits of a colony town"

9. It is the most dominant prerequisite of due process of law and right of audience that the decision of authority must be rational, not capricious or haphazard. This should be an inevitable sense of duty of all authorities to ensure fair treatment with adequate right of audience for all intents and purposes for adherence to the principles of natural justice. Secured vested rights cannot be devastated or upset by unilateral actions when the relevant law itself advocated to afford right of audience. Before cancelling the land in question, the respondents who were the purchasers against valuable consideration should have been afforded an opportunity of hearing. Under Section 32 (2) of the Punjab Colonization of Government Lands Act, 1992, the condition of

providing a reasonable opportunity of showing cause before resuming the land or reducing the area of such land or even passing such order is not merely a formality but a substantive provision and without compliance to this condition, the whole action deems to be an illegal exercise of powers which is also ultra vires the provision providing a right of audience before any action.

10. It is undeniable, rather a matter of common knowledge, that under Article 10A of the Constitution, the right to a fair trial is a fundamental right. Now the Courts and Quasi-Judicial Authorities are bound to analyse in the facts and circumstances of the case to ascertain whether this indispensable right was afforded or deprived of. Furthermore, the principles of natural justice require that a person against whom action is taken should be afforded a fair opportunity to converge, offer explanation and contest it before he is found guilty and condemned. Where any authority regulates and perform its affairs under a statute which provides the compliance of the principle of natural justice in a straightforward *modus* then application of natural justice should have been adhered to stringently even if the statute is maintaining muteness on the right to fair trial, the canons of natural justice should be lived up to sanguine to the elementary rule of law that no decision which is affecting the right of any person should be taken without providing an opportunity of being heard.

11. It is an admitted position in the case at hand, that before passing an adverse order of cancellation under Section 30 (2) of the Punjab Colonization Government Lands Act, 1992, though the Board of Revenue was required to afford a reasonable opportunity of showing cause earlier than passing an adversative order but neither any notice was issued nor any opportunity of hearing was afforded before cancellation of land on unilateral action with solo move or initiative.

12. In the wake of the above discussion, we do not find any illegality or irregularity in the impugned judgment passed by the learned High Court which may warrant any interference. This Civil Appeal is dismissed accordingly.

13. So far as C.P.L.A. No.769-L/2016, is concerned, this civil petition is barred by 4402 days. We have gone through the application (CMA No.683-L/2016) for condonation of the delay and paragraph No.2 of the same is reproduced as under:

“2.That due to negligence, high handedness and unprofessional behaviour of revenue officials, valuable rights of public exchequer have been put at stake otherwise petitioners have a very good prima facie arguable case on merits.”

14. The mechanical and unpersuasive justification of administrative delays or lapses on the part of officials has almost become a trend which is consistently pleaded for condonation of delay through stereotypical and generalized applications, which in our point of view cannot be considered 'sufficient cause' or a "reasonable ground" as gospel truth but requires dwelling on every nook and cranny. The ground raised for condonation for such a long delay demonstrates the recklessness and inefficiency of the concerned department and its officials including the top brass. In the case of an individual, all decisions rest solely on him with regard to the procurement of advice for challenging the decision at higher forum; the decision to challenge; the engagement of an advocate; supplying the relevant documents to the advocate for the preparation of the appeal/petition and then following the case religiously; however, in the case of the Government or any of its departments, the party has at its disposal the assistance of its own legal department; the help and support of the Attorney General's Office, or the Advocate General's Office as the case may be. Therefore, immediately upon receiving a copy of the judgment/order, the Government departments may move for instructions rather than waiting

for the lapse of the period of limitation provided for approaching the higher Courts.

15. At times this cavalier attitude and approach smears and smacks *mala fide* and leads to the belief that the appeal is intentionally being presented belatedly only as a formality in order to provide an undue advantage to the other side, rather than due to any genuine intent to challenge the judgment or order. Nothing has been articulated in the application moved for condonation who was actually responsible for the delay; and what punitive or disciplinary action was taken against the person who was instrumental in causing the delay.

16. In order to establish sufficient cause, the delay of each and every day is also required to be explained which is also missing from the application moved for condonation of delay. It is also a well settled exposition of law that while considering the grounds for condonation of delay, whether rational or irrational, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government department, autonomous bodies or private sector/organizations, rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens. No doubt the law favours adjudication on merits, but simultaneously one should not close their eyes or oversee another aspect of great consequence, namely that the law helps the vigilant and not the indolent. At this juncture, it is quite relevant to quote a Latin maxim "*leges vigilantibus non dormientibus subserviunt*" or "*vigilantibus non dormientibus jura subveniunt*" which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner.

17. No plausible reasons have been shown for justifying grave inefficiency and negligence of the department in filing of the civil petition in time. The CMA for condonation of delay is dismissed. Accordingly, the civil petition is also dismissed being barred by time.

Judge

Judge

Judge

Islamabad, the
2nd of June, 2026
Syed Farhan Ali
Approved for reporting