

P L D 2002 Supreme Court 5

Present: Sh. Riaz Ahmad, Munir A. Sheikh and Rana Bhagwandas, JJ

GOVERNMENT OF PUNJAB, COLONIES DEPARTMENT, LAHORE and others---Appellants

versus

MUHAMMAD YAQOOB --- Respondent

Civil Appeals Nos.2233 and 2234 of 1998, decided on 10th September, 2001.

(On appeal from the judgment dated 3-5-1995 of the Lahore High Court, Lahore passed in W. Ps. Nos. 1049 of 1991 and 3221 of 1995).

(a) Pakistan (Administration of Evacuee Property) Act (XII of 1957)---

----S. 25(2)---Notification No.186-88/1316-CIV, dated 12-6-1988-- Exchange of State land with evacuee land---Allottee in possession of evacuee land---Proposal of allotment confirmed in favour of allottee---Proposal of the Authorities regarding exchange of land in possession of the allottee was assailed before High Court on the ground that the proposal of the Authorities was against the provisions of Notification No. 186-88/1316-CIV, dated 12-6-1988---Plea raised by the Authorities was that the allottee was not in possession of the land---Reliance of the Authorities was on the report of field staff --Validity-- -Allottee in his Constitutional petition which was supported by affidavit pleaded that he was in possession of the land---Where the land was proposed for the allotment in 1953 and the proposal was accepted/confirmed on 29-5-1993, initial presumption was that the allottee was in possession thereof which could be rebutted by strong evidence by the Authorities which must be available with them---Mere reliance on report of the field staff in order to rebut such strong presumption was not sufficient from which Court was justified to infer that the allottee in fact was in possession of the land---Neither any affidavit of any member of the field staff to counter the affidavit of the allottee nor the report of the field staff was produced before High Court ---Allottee had fulfilled all the conditions mentioned in the Notification No.186-88/1316-CIV, dated 12th June, 1988 and he was entitled to the benefit of the Notification---Supreme Court directed the Authorities to pass formal order of adjustment of alternate land in the name of the allottee in accordance with law ---Appeal was allowed accordingly.

(b) Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1957)---

----S. 2---Pending proceedings---Effect---Proceedings under the repealed laws would be decided as if those laws had not been repealed---Scope of pending proceedings was also extended to cases which would be remanded by the High Court and the Supreme Court---Cases so remanded were to be decided according to the repealed laws by Notified Officer.

Nawab Din v. Member, Board of Revenue (Settlement and Rehabilitation), Punjab, Lahore and 4 others PLD 1979 SC 846; Aligarh Muslim University Old Boys Cooperative Housing Society Ltd. v. Muhammad Hismauddin Ansari and 4 others 1993 SCMR 1062 and Nawabzada Zafar Ali Khan and others v. Chief, Settlement. Commissioner/Member, Board of Revenue, Punjab, Lahore and others 1999 SCMR 1719 ref.

(c) Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1957)---

----S. 2---Term "pending proceedings" as used in S.2---Object and scope---"Pending proceedings" would mean an initial step taken as contemplated under the settlement laws for allotment of land against verified claim of the claimants but the same did not finalize before the repeal of the evacuee laws.

(d) Evacuee Property and Displaced Persons Laws (Repeal) Act (XIV of 1975)---

----Ss. 2 & 3---Constitution of Pakistan (1973), Art.199---Constitutional jurisdiction of High Court---Evacuee property---Pending proceedings---Issuance of direction by High Court in exercise of jurisdiction under Art. 199 of the Constitution for allotment of land under settlement laws---Validity-- Where the case of the respondent was not a case of pending proceedings within the contemplation of provisions of Ss.2 & 3 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, the direction issued by the High Court was violative of law which could not have been given under Art.199 of the Constitution---High Court could direct a person performing functions in connection with the affairs of the Federal Government to do what law required him to do whereas direction issued in the present case was to the contrary i.e. to do what law did not require him to do---Judgment passed by High Court in Constitutional petition was set aside by Supreme Court.

Ch. Mushtaq Masood. Advocate Supreme Court and Rao Muhammad Yusuf Khan, Advocate-on-Record for Appellants.

Sharifuddin Pirzada, Senior Advocate Supreme Court, Malik Azam Rasool, Advocate Supreme Court and Mehr Khan Malik, Advocate-on- Record for Respondents.

Dates of hearing: 7th and 8th June, 2001.

JUDGMENT

MUNIR A. SHEIKH, J.--By this common judgment, we propose to decide Civil Appeals Nos.2233 and 2234 of 1998 as facts of these two are so inter-linked and inter-connected as questions of law and facts, therefore, it is desirable to decide the same by a consolidated judgment.

2. These appeals by leave of the Court are directed against the judgment dated 3-5-1995 of the Lahore High Court through which Constitutional petitions filed by the respondent as to transfer of land in his name in Chak No.220/RB Tehsil and District Faisalabad in the Revenue Record and allotment of evacuee land in Chak No.223/RB, Faisalabad against his unsatisfied verified claim have been accepted.

3. Civil Appeal No.2234 of 1998 has arisen from W.P.No.1049 of 1991 and it relates to land situated in Chak No.220/ RE, Tehsil and District, Faisalabad. It is evident from the copy of RL-II placed on the record of the writ petition and also in this appeal that land measuring 87 Kanals, 3 Marlas comprising Killas Nos. 1 to 3, 8 to 10 of Sq.No.35 and Killas Nos.21 to 23 and 24 Min of Sq. No.85 situated in Chak No.220/RB was proposed for allotment in the name of the respondent against his verified claim of 1788 P.I. Units under the Rehabilitation Scheme as it then existed on 29-2-1953. This proposal was accepted on 29-5-1953. The respondent was still left with entitlement of 916 P.I. Units. He claimed to be in possession of land comprising Killas Nos.2, 3, 4, 23, 24, 25/1, 25/2, 20, 21 and 2 of Sq. No.51 situated in Chak No.223/RB, Tehsil and District Faisalabad which was evacuee rural agricultural land. He filed W.P.No. 1049 of 1991 for a direction that the land proposed in his name in Chak No.220/RB and confirmed on 29-5-1953 may be formally transferred in the Revenue Record according to the settlement laws as permanent allottee as owner thereof. As regards land situated in Chak No.223/RB. he sought a direction through W.P. No.3221 of 1995 filed on

19-4-1995 from which Civil Appeal No.2233 of 1998 has arisen for allotment of the said land in his name under the repealed settlement laws being a case of pending proceedings for unsatisfied portion of the verified claim to the tune of 916 P.I. Units.

4. In the comments filed by the appellants/departments, it was admitted that the respondent was allotted land in Chak No.220/RB as per RL-II but as per Field Staff report, it has never been in his possession. It was also stated in the comments as to whether the respondent fulfilled the conditions of Notification dated 12-6-1988 which reads as under:--

"It is not correct. The petitioner is not fulfilling the conditions of the Notification dated 12-6-1988 as he is not in possession of the land. As such the land now having been converted as exchanged State Land since 3-1-1958, the petitioner cannot get its proprietary rights. "

At another place, it was stated as under:--

"It is correct to the extent that the persons fulfilling conditions of Notification dated 12-6-1988 may be allowed to acquire proprietary rights. "

5. As regards land in Chak No.223/RB the allotment of which the respondent claimed as a case of pending proceedings, it was stated as under:--

"It is incorrect. The land applied for is included in the Exchanged State Land and it is not in possession of the petitioner. As such the case of the petitioner does not come within the purview of this notification. "

6. It may be stated here that on 3-1-1958, through Notification, the Federal Government approved the transfer of evacuee lands in District Faisalabad for development of Faisalabad City by way of exchange to the Provincial Government. In order to avoid hardships which would have resulted in dislocation of the allottees of such land given in exchange by the Federal Government who had been permanently settled before the exchange was given effect to in the revenue papers that the Provincial Government in the Colony Department issued Notification No. 186-88/1316-CIV on 12-6-1988 evolving a criteria for accommodating such allottees on the said land which had become State land after exchange and vested in the Provincial Government which is reproduced below in extenso:--

"GOVERNMENT OF PUNJAB, COLONIES DEPARTMENT NOTIFICATION"

Lahore dated the 12th June, 1988

No.186-88/1316/CIV. Whereas certain areas of State Land situated in the district of Faisalabad were exchanged with former evacuee land around city of Faisalabad in the interest of urban development and the said exchange was approved by the Government of Pakistan under section 25(2) of the Pakistan (Administration of Evacuee Property) Act, 1957 (XII of 1957), vide Ministry of Rehabilitation letter No. F.21(6)/57-P.II, dated 3rd January, 1958;

And whereas it subsequently transpired that for some of the area so exchanged, claim holders had been given permanent transfer deeds/allotment orders, as the case may be, against consideration received by the Settlement Department, Government of Pakistan or in satisfaction of verified claims (urban or rural) under the repealed Settlement Laws, prior to 3rd January, 1958. It was, therefore, considered that it would cause hardships to dispossess such persons from the aforesaid land which has since become State land;

Now, therefore, in exercise of the powers conferred by section 10 of the Colonization of Government Lands (Punjab) Act, 1912 (V of 1912), the Government of the Punjab in the Colonies Department is pleased to issue the following terms and conditions for the disposal of the abovementioned category of State land;

- (1) Persons holding genuine and valid Permanent Transfer Deeds (in the case of urban area) or in whose case valid allotment orders exist in Register RL-11 (in case of rural area) in respect of the evacuee land (now State land), as mentioned above, and which were finalized prior to 3rd January, 1958 may be allowed to acquire proprietary rights for such land provided:
 - (a) he/they satisfy the District Collector, Faisalabad about the validity/authenticity of his/their PTDs/allotment orders and that these are still intact;
 - (b) no litigation is pending in any Court about the land in question;
 - (c) final payment of price to the Settlement Department/adjustment of claim is proved from the record;
 - (d) no other Government dues including Settlement fee etc., are payable by the grantee;
 - (e) he/they is/are in possession of the land in question.

(2) In case the District Collector is satisfied about the above conditions he will record an issue and order of transfer of such property in the form at Annexure 'A'.

(Sd.)

Secretary to Government of Punjab,

Colonies Department."

7. Learned Judge of the High Court in W.P.No.1049 of 1991 regarding land situated in Chak No.220/RB came to the conclusion that since the initial proposal for allotment of the State land against verified claim had been confirmed on 29-5-1953, therefore, the approval given by the Federal Government on 3-1-1958 for exchange of evacuee lands in District Faisalabad and transfer of the same to the Provincial Government was not binding on the respondent-allottee qua this land as it could not form part of the exchange transaction, therefore, his allotment remained intact and he was entitled to retain it, therefore, a direction was issued for the sanction of mutation in the Revenue Record under the settlement laws transferring the said land in favour of the respondent as confirmed allottee. Learned Judge of the High Court lost sight of the fact that in the year 1953, allotment of land was made under the Rehabilitation Settlement Scheme and the permanent settlement of the confirmed allottees was made under the Displaced Persons (Land Settlement) Act, 1958 and under the Scheme framed thereunder, therefore, it was decided in a number of cases by the High Court as also by this Court that the exchange in respect of all these evacuee lands was valid and the allottees could only be accommodated in lieu thereof. Notification dated 12-6-1988 was issued in order to achieve the said purpose of avoiding hardships which would have been caused to the allottees on account of their large scale dislocation, therefore, the allottees before getting the rights under the said notification were to satisfy the authorities about the fulfilment of the conditions laid down thereunder.

8. In this case, however, we find that according to the comments, the case of the department was that out of all the conditions, the only condition which the, respondent did not fulfil was that he was not in possession according to the report of the Field Staff. It was not alleged that the allottee also did not fulfil the other conditions. It was

admitted in clear terms in the comments that the respondent was a confirmed allottee of the said land in Chak No.220/RB, therefore, the only question was whether he was in possession at the time of issuance of the said Notification and prior thereto in order to get benefit of the said Notification as allottee.

9. The respondent in his writ petition which was supported by affidavit pleaded that he was in possession of the said land. He having been proposed) the allotment of the said land in 1953 which proposal was accepted/confirmed on 29-5-1993, initial presumption was that he was in possession thereof which could be rebutted by strong evidence by the department which must be available with it. Mere reliance on report of the Field Staff in order to rebut such a strong presumption was not sufficient from which we are justified to infer that the respondent in fact was in possession of the land. Neither any affidavit of any member of the Field Staff to counter the affidavit of the writ petitioner nor the said report of the Field I Staff was produced before the High Court, therefore, we would agree with Mr. Sharifuddin Pirzada, learned counsel for the respondent that so far as land measuring 87 Kanals, 3 Marlas allotted to respondent in Chak No.220/RB is concerned, he had fulfilled all the conditions mentioned in notification dated 12-6-1988, therefore, as regards that land, his case squarely falls within the scope of the said Notification and he was entitled to the benefit of the same and should have been dealt with accordingly and given alternate land.

10. We are not in agreement with the findings of the learned Judge of the High Court in W.P. No. 1049 of 1991 that the exchange of evacuee land as approved on 3-1-1958 was not effective against the land allotted to respondent in Chak. No.220/RB on account of which the same was void to that extent but we would hold that the respondent/allottee had fulfilled all the conditions mentioned in the Notification dated 12-6-1988, therefore, he was entitled to the benefit of the said notification and the authorities are hereby directed to pass formal order of adjustment of alternate land in his name in accordance with law within two months from the receipt of certified copy of this judgment by the concerned officer, therefore, Civil Appeal No.2234 of 1998 is hereby partly accepted and disposed of in the above terms.

11. Reverting to Civil Appeal No.2233 of 1998 arising from W.P. No.3221 of 1995 regarding land situated in Chak No.223/RB, it may be observed that it was not the case of the respondent that the said land was ever proposed for allotment in his favour under any of the settlement schemes before the repeal of the settlement laws in 1974 through an Ordinance and thereafter through Act of 1975. Both these laws provided that the proceedings pending under the repealed laws would be decided as if the said laws had not been repealed. The scope of pending' proceedings was also extended to case which would be remanded by the High Court and this Court which too were to be decided according to these laws by a Notified Officer. Mr. Sharifuddin Pirzada, learned counsel for the respondent in his endeavour to bring his case within the scope of the term "pending proceedings" as used in these laws referred to judgments reported as Nawab Din v. Member, Board of Revenue (Settlement and Rehabilitation) Punjab, Lahore and 4 others PLD 1979 SC 846, Aligarh Muslim University Old Boys Cooperative Housing Society Ltd v. Muhammad Hisamuddin Ansari and 4 others 1993 SCMR 1062 and Nawabzada Zafar Ali Khan and others v. Chief Settlement Commissioner/Member, Board of Revenue, Punjab, Lahore and others 1999 SCMR 1719. The argumen: though appearb to be ingenuous but found to be not tenable on close scrutiny. The principle laid down in the case of Nawab Din PLD 1979 SC 846 (supra) would not be attracted to the present case as the expression "pending proceedings" in general terms was under consideration in some other context. As regards case of Aligarh Muslim University 1993 SCMR 1062 (supra), it is manifest from the facts of the said case that proceedings continued to be pending under the settlement laws in different manner after the cancellation of lands for adjustment of other land, therefore, it was rightly held to fall within the purview of pending case as contemplated by the term used in these rules.

12. In the present case, as observed above, the land in Chak No.223/RB was not claimed to have ever been proposed for allotment in favour of the respondent/allottee against his remaining unsatisfied verified claim. He did not plead even in the writ petition that the same had ever been proposed in his favour and the case was pending for further proceedings for its confirmation or otherwise when the settlement laws were repealed. The term "pending proceedings" as used in these laws would mean that an initial step taken as contemplated under the settlement laws for allotment of land against verified claim of the claimants but the same did not finalize before the repeal of the same, therefore, it was with reference to such cases that it was provided that those would be taken forward and concluded under the repealed settlement laws as if they had not been repealed for the said limited purpose and in order to pass final order in such cases a provision was made to appoint a Notified Officer to deal with such cases. Mere possession of any evacuee land as claimed by the respondent in Chak No.223/RB in the writ petition would not make his case, a case of pending proceedings within the contemplation of provisions of sections 2 and 3 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, therefore, the direction issued by the learned Judge of the High Court for allotment of the said land under the settlement laws to the respondent was violative of law which could not have been given, for under Article 199 of the Constitution, the High Court could direct a person performing functions in connection with the affairs of the Federal Government to do what law requires him to do whereas the direction issued in this case was to the contrary i.e., what law did not require him to do he was ordered to do. Learned counsel for the respondent as last attempt relied upon unreported judgment of this Court in Civil Petitions Nos. 1308-L and 1309-L of 1995 in order to show that this case should also be treated as a case of pending proceedings. We have gone through the facts of this case and find that the same are also distinguishable. It is clear that throughout the relevant period, proceedings remained pending for the allotment of the evacuee land, therefore, the case of the respondent for allotment of land in Chak No.2,23/RB as observed above cannot be held to fall within the purview of "pending proceedings" therefore, the judgment dated 3-5-1995 passed in W . P. No.3221 of 1995 impugned in Civil Appeal No.2233 of 1995 is not sustainable. Resultantly the Civil Appeal is hereby accepted and the said judgment set aside.

13. The parties are, however, left to bear their own costs.

Q.M.H./M.A.K./G-78/S Order accordingly.

