

2010 Y L R 1641

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal JJ

RANG ILLAHI and 3 others ---Petitioners

Versus

BORDER AREA COMMITTEE and another---Respondents

Writ Petition No.66/R and C.M. No.816 of 2003, decided on 16th April, 2010.

(a) West Pakistan Border Area Regulations, 1959 [M. L. R. No.9]---

---Reglns. 9 & 10---Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), Settlement Scheme No. VI---Constitution of Pakistan (1973), Art.199---Constitutional petition---Border Area Committee, powers of---Setting aside of transfer order---Land in question was transferred in favour of petitioner by Settlement Authorities, under Settlement Scheme No. VI, which order was declared illegal by Border Area Committee and the same was set aside---Validity---No power was envisaged by Regulations Nos.9 and 10 of West Pakistan Border Area Regulations, 1959, to interfere with or adjudicate upon any order passed by Deputy Settlement Commissioner under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1958---If an allotment / transfer was made by a particular authority under a particular provisions of law, then the machinery provided in that law for enforcing remedy against such order had to be adopted---Border Area Committee, which was a Provincial Authority had no jurisdiction itself to adjudicate upon a matter and cancel the transfer order passed by Settlement Authorities under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1958, therefore, it had no power to declare as illegal an allotment of a property made by Settlement Authorities---If Border Area Committee considered itself aggrieved of the correctness and authenticity of transfer made in favour of petitioner, it had to have recourse to a court of law for getting the decision---High Court, in exercise of constitutional jurisdiction, declined to give protection to order passed by Border Area Committee, whereby transfer order made by Settlement Authorities was set aside, as the same had exceeded the limits prescribed by West Pakistan Border Area Regulation, 1959---Order passed by Border Area Committee was passed illegally and was without lawful authority and the same was set aside---Petition was dismissed in circumstances.

Province of Punjab and others v. Member Colonies, Board of Revenue, Punjab and others 1986 SCMR 529 distinguished.

(b) Constitution of Pakistan (1973)---

---Art. 199---Civil Procedure Code (V of 1908), O.I, R. 10---Constitutional petition---Necessary party---Applicants filed application for impleading them as party to petition---

Validity---Mere fact that parties had compromised a matter earlier during hearing of an Infra-Court Appeal, the same might not be relevant for enabling applicants to be impleaded in constitutional petition---Order of disposing of Intra-Court Appeal based upon compromise and initial order was not set aside and observation made about status of predecessor-in-interest of applicants remained intact---High Court declined to implead applicants as party to the petition---Application was dismissed in circumstances.

Sh. Muhammad Hanif for Petitioners.

Aamir Zahoor Chohan for Respondent No.1.

Muhammad Sajjad Afzal for the Applicant (in C.M. No.816 of 2008).

Date of hearing: 12th April, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---The petitioners were transferred land measuring 5 Kanals, 8 Marlas situated in Khasra No.6548, situated in Kasur Androon, Tehsil and District, Kasur by the Deputy Settlement Commissioner vide order dated 4-8-1976 under the Settlement Scheme No.VI on a Claim Form submitted and registered at Serial No.556, dated 28-11-1959 (Annexure-E) under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958). This transfer of the land was subject-matter of an inquiry by the Border Area Committee, in pursuance to an order passed by a learned Single Judge of this Court dated 22-3-1994 in Writ Petition No.850-R of 1980. The Border Area Committee vide order dated 8-4-2003 declared the transfer order in favour of the petitioners passed by the Deputy Settlement Commissioner dated 4-8-1976 as void and illegal.

2. This order dated 8-4-2003, passed by the Border Area Committee has been assailed in the instant writ petition.

3. The writ petition has been contested by the Border Area Committee. The respondent No.2, who claimed to be the auction purchaser of the subject land, which according to him is a Karkhana Burf, moved C.M. No.1 of 2004 for being impleaded in the writ petition and vide order dated 19-3-2004, he was directed to be impleaded in the writ petition subject to all just exceptions. Nobody appeared on behalf of the respondent No.2, therefore, he is proceeded ex parte.

4. It is contended by the learned counsel for the writ petitioners that the transfer order made in favour of the petitioners was duly passed by the then Deputy Settlement Commissioner vide Transfer Order dated 4-8-1976 under the Settlement Scheme No.VI in exercise of powers vested in him under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958) and the Border Area Committee-respondent No.1 has no lawful authority to cancel the order passed by the Deputy Settlement Commissioner of transferring the land in favour of the petitioners. The learned counsel for the petitioners elaborated that the observations made in the judgment dated 22-3-1994 passed in Writ Petition No.850-R of 1980 relied upon by the Border

Area Committee "that Border Area Committee will be at liberty to proceed with matter in accordance with law or institute proper proceeding in this behalf in case it is of the view that the transfer obtained by respondents Nos.2 to 6 is illegal or without jurisdiction" does not ipso facto confer a jurisdiction upon the Border Area Committee, which is not otherwise vested in it as there was no law which authorized the Border Area Committee to adjudicate upon the question of determining the legality or otherwise of the Deputy Settlement Commissioner's order dated 4-8-1976 what to say of cancelling it. It is argued that the impugned order dated 8-4-2003 passed by the Border Area Committee is absolutely illegal and without lawful authority. The learned counsel submitted that the application for obtaining of the subject property, which was an urban property in the form of a building was moved on 28-11-1959 and was registered with the Deputy Settlement Commissioner's office at serial No.556, which document is annexed with the writ petition. The learned counsel further argued that the Deputy Settlement Commissioner was a statutory officer empowered under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of (1958) and the order passed by the Deputy Settlement Commissioner was not at all amenable to the power of cancellation exercisable by the Border Area Committee-respondent No.1, thus, it was prayed that the impugned order dated 8-4-2003 be declared illegal, void and without lawful authority.

5. The learned counsel for the respondent No.1 Border Area Committee has contended that by virtue of the provisions of West Pakistan Border Area Regulation, 1959, it is within the exclusive jurisdiction of the Border Area Committee to allot or not land situated within the Border Area to any person and any order passed by the Deputy Settlement Commissioner with respect to such land is void ab initio, illegal and without lawful authority and can be declared so by the Border Area Committee. The learned counsel in this context relied upon the judgment reported as Province of Punjab and others v. Member (Colonies), Board of Revenue, Punjab and others 1986 SCLR 529.

6. We have considered the arguments of the learned counsel for the parties and have perused the record.

7. The Border Area Committee is constituted by virtue of Regulation No.4 of the West Pakistan Border Area Regulation, 1959, which reads as follows:

"4. (a) The Provincial Government shall, for the purpose of this Regulation, constitute a Committee or such number of committees as it considers necessary for the border areas.

(b) A Committee constituted under sub-paragraph (1) shall consist of two members, one to be appointed by the Board of Revenue and the other a representative of the Pakistan Army to be nominated by the General Headquarters.

(c) The Member of the Committee from the Pakistan Army shall be incharge of the office of .the Committee.

(d) Anyone of the members of the Committee present at the Headquarters may dispose of any routine matter relating to the functions of the Committee other than the allotment or cancellation of land and hearing of cases."

A bare reading of Regulation No.4 highlights that the Border Area Committee is a Committee, which is constituted by the Provincial Government, whereas, the office of the Deputy Settlement Commissioner was constituted under the provisions of a Federal statute known as the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958).

8. The writ petitioners applied for the transfer of the subject property vide Form dated 28-11-1959, which was registered at serial No.556, copy of which is annexed with the writ petition as Annexure-E and the Deputy Settlement Commissioner vide order dated 4-8-1976 transferred the subject property to the writ petitioners. The Border Area Committee exercises its powers vested in it by virtue of Regulation 10(a) of the West Pakistan Border Area Regulation, which reads as follows:

"10(a) A Committee may scrutinize allotment of any State land or immovable evacuee property within any border area and may, on being satisfied that any allotment was made to a person not eligible for allotment, cancel such allotment and direct the allottee to surrender forthwith the property to the Deputy Commissioner within whose jurisdiction the property is situated, failing which the Deputy Commissioner or the Committee may take possession of the property by evicting any person therefrom with such force as may be necessary for the purpose.

Regulation No.12 of the West Pakistan Border Area Regulations further provides that all properties surrendered or taken possession of under this Regulation shall vest in the Provincial Government free from all encumbrances.

Regulation No.13 of the West Pakistan Border Area Regulations provides that any property surrendered or taken possession of in pursuance of this Regulation shall be allotted by the Committee in such manner and on such terms and conditions as are prescribed in the Schedules annexed to this Regulation.

Schedule-1 provides a list of eligible persons, who can be allotted land by the Border Area Committee for the purpose of Regulation No.9.

9. A study of the above provisions thus provides that the Border Area Committee can only decide the question of eligibility of any person for allotment of land by itself or cancel any allotment made by it of land and direct the allottee to surrender forthwith the cancelled property to the Deputy Commissioner within whose jurisdiction the property is situated. Similarly, Regulation No.9 provides that the Border Area Committee may scrutinize any case of unauthorized occupation of any State land or immovable evacuee property in any border area, and after giving an opportunity of being heard to the person likely to be affected, direct the person in unauthorized occupation of such property to surrender such property to the Deputy Commissioner within whose jurisdiction such property is situated.

The reading of the provisions of Regulations Nos.9 and 10 do not envisage any power for the Border Area Committee to interfere with or adjudication upon any order passed by a Deputy Settlement Commissioner under the provisions of the Displaced Persons (Compensation and

Rehabilitation Act, 1958 (XXVIII of 1958). The acceptance of the arguments of the learned counsel for the respondent-Border Area Committee will amount to reading something which is not provided for in the West Pakistan Border Area Regulation, 1959.

The judgment relied upon by the learned counsel for the respondent No.1-Border Area Committee does not help its case at all rather it lends support to the proposition that the two parallel departments i.e. Board of Revenue and the Border Area Committee have independent powers and spheres of working. In the said case, Border Area Committee passed an order of allotment of land and the Board of Revenue reviewed the said order of the Border Area Committee which order of the Board of Revenue was challenged before the High Court and the matter was decided with the observation that the order passed by the Board of Revenue of exercising power of second review in respect of the land, subject-matter of the said writ petition, which was allotted by the Border Area Committee to a particular claimant, was without jurisdiction and was set aside. It was observed in the said judgment that the Board of Revenue does not figure anywhere in paragraph No.10 of the Schedule-3 of the West Pakistan Border Area Regulations, 1959, therefore, no jurisdiction can be exercised by the Board of Revenue to cancel the allotment made by the Border Area Committee of the land, subject-matter of the writ petition. The said judgment operates to lay down the law that if an allotment/transfer has been made by a particular authority under a particular provision of law, then the machinery provided in the said law for enforcing the remedy against such an order has to be adopted. As the Border Area Committee, which is a Provincial Authority has no jurisdiction itself to adjudicate upon a matter and cancel the transfer order passed by the Deputy Settlement Commissioner under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (XXVIII of 1958), therefore, it has no power to declare as illegal an allotment of a property made by a Deputy Settlement Commissioner. If the Border Area Committee considers itself aggrieved of the correctness and authenticity of the transfer made in favour of the writ petitioners, it has to have recourse a Court of law for getting the decision on this point.

11. We under the exercise of Constitutional jurisdiction cannot give protection to the impugned order dated 8-4-2003, passed by the Border Area Committee which exceeds the limits prescribed by the West Pakistan Border Area Regulations, 1959.

12. In view of all the above circumstances, the W.P. No.66/R of 2003 is accepted and the impugned order dated 8-4-2003 is declared to have been passed illegally and is, therefore, without lawful authority and is set aside without any orders as to costs.

MIAN SHAHID IQBAL, J.---During the hearing of the writ petition, C.M. No.816 of 2008 has been moved by the legal heirs of the Mst. Karam Begum (deceased) for their impleadment in the present writ petition. In the said CM, the applicants claimed that they have some rights got secured in their favour on the basis of a compromise effected with the original allottee Meraj Din during the hearing of I.C.A. No.281 of 1992. This CM has been opposed by the writ petitioners with the contention that the transfer made in favour of the petitioners by the Deputy Settlement Commissioner dated 4-8-1976 was assailed by Mst. Karam Begum the predecessor-in-interest of the present applicants through W.P. No.850/R of 1980 which writ petition was dismissed vide judgment dated 22-3-1994 by a learned Single Judge. The observation made in paragraph No.4

of the said judgment was that the plea about the writ petitioners having no locus standi has got merits.

2. The learned counsel for the applicants urged that another W.P. No.470-R of 1980 was instituted by Meraj Din, the predecessor-in-interest of Mst. Karam Begum, which writ petition came up for hearing before the same learned Single Judge, which was also dismissed vide judgment dated 29-7-1992. An I.C.A. No.281 of 1992 was preferred against the judgment dated 29-7-1992, passed in W.P. No.470/R of 1980 in which I.C.A. a settlement between the legal heirs of Meraj Din and one Brigadier Muhammad Saleem, the contesting respondent in the writ petition to whom the land, subject-matter of the said writ petition, was allotted by the Border Area Committee, was arrived at and according to the learned counsel for the petitioners, the rights of said Meraj Din in respect of land measuring 1 Kanal 6 Marlas claimed by the present applicants to have been purchased from Meraj Din was allowed to remain intact. The contention of the learned counsel for the applicants in that since the proprietary rights of Meraj Din were restored back through settlement arrived at in the I.C.A., therefore, the purchase made by Mst. Karam Begum from Meraj Din also remained intact and the present legal heirs of Mst. Karam Begum, who have moved C.M. No.816 of 2008 are necessary and proper party in the instant writ petition.

3. We have heard the arguments of the learned counsel for the applicants as well as that of the writ petitioners and also the learned counsel for the Border Area Committee.

4. The learned counsel for the Border Area Committee expressed his neutrality about the contentions being urged by the applicants of C.M. No.816 of 2008 and that of the writ petitioners and left the matter to be decided by this Court about the impleadment of the applicants.

5. The present applicants were not party in the W.P. No.470-R of 1980, which was dismissed by the learned Single Judge of this Court in which the learned Single Judge observed that the Border Area Committee declared the allotment obtained by the writ petitioner Meraj Din to have been obtained fraudulently and thus the same was cancelled. The following observation in the judgment dated 29-7-1992 at page 7 in paragraph No.6 are reproduced:

"The fact which has been found by the Border Area Committee is that the recommendation letter produced before the Committee on the basis of which the allotment was obtained, was not genuine document. This finding is sufficient to cancel the allotment under para 10 of the Martial Law Regulation No.9."

The mere fact that the parties compromised a matter during the hearing of the I.C.A. may not be relevant for enabling the applicants to be impleaded in the instant writ petition, because in the order dated 26-10-1999 of disposing of the I.C.A. No.281 of 1992 on the basis of a compromise, the judgment dated 29-7-1992 was not set-aside and the observation made in the judgment dated 29-7-1992 about the status of the predecessor-in-interest of the applicants remains intact.

6. In view of the above, C.M. No.816 of 2008 has no merits and the same is dismissed. Petition accepted and application dismissed.

M.H./R-22/L

