

2010 Y L R 3248

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

Syed MOHSIN NAQVI and others---Petitioners

Versus

FEDERAL LAND COMMISSION and others---Respondents

Writ Petitions Nos. 5039, 13251, 14660 to 14667, 14795, of 2008, 1684, 1685, 3481, 8422, 9225, 9226, 9548, 10362, 10655, 10782, 10877, 10910, 10911, 10934, 12762, 18773 of 2009 and 12800 of 2010, heard on 29th June, 2010.

(a) Land Reforms Regulations, 1972 (MLR 115)---

---Regln. 12---Land Reforms Act (II of 1977), Ss. 7 & 27---Punjab Land Reforms Rules, 1972, R.12(3)---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Resumption of excess land by Deputy Land Commissioner (DLC) in year, 1977---Determination of resumed land by Senior Member Federal Land Commission and remanding case to Deputy Land Commissioner in year, 1983 for redetermination of holding of declarant after calculating Produce Index Units---Resumption of land by Deputy Land Commissioner in year, 2007 after re-determining Produce Index Units---Plea that after 30-4-1975, Deputy Land Commissioner in year, 2007 could not review his original order of resumption of year, 1977 by virtue of proviso to R.12(3) of Punjab Land Reforms Rules, 1972---Validity---Making of declaration by declarant, assign of original resumption order by Deputy Land Commissioner and then such order of Senior Member of the Commission all constituted decisive steps in such matter---Second order of Deputy Land Commissioner calculating Produce Index Units of declarant as resumed land had been passed in implementation of original order of Senior Member of the Commissioner---High Court declined to strike down second order of Deputy Land Commissioner in circumstances.

Mst. Zahida Sattar and others v. Federation of Pakistan and others PLD 2002 SC 408; Dilshad Nabi Riaz and 7 others v. District Nazim, District Rahimyar Khan and 3 others 2008 CLC 1120; Khan Muhammad and 6 others v. Federal Land Commission through Senior Member, Islamabad and 6 others 2008 CLC 467; Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others PLD 1990 SC 99; Siraj Din v. Member, Federal Land Commission and others PLD 1996 Lah. 243; Muhammad Yusuf Ali Shah v. Federal Land Commission, Government of Pakistan, Rawalpindi and 2 others 1995 CLC 369; Ranjha and others v. Mst. Zahrai Begum and others 2004 SCMR 734; Mst. Sharifan Bibi v. Federation of Pakistan through Cabinet Secretary, Islamabad and 3 others 2002 YLR 3320; Chief Land Commissioner, Punjab and others v. Chief Administrator of Auqaf, Punjab and others PLD 1998 SC 132; Khan Muhammad Khan through Legal Heirs v. Member (Judicial-I), Board of Revenue Punjab, Lahore and 5 others PLD 2006

Lah. 322; Riaz Hussain and others v. Board of Revenue and others 1991 SCMR 2307; Hussain Bakhsh v. Settlement Commissioner, Rawalpindi and others PLD 1970 SC 1; Co. (R) Syed Mukhtar Hussain v. Chairman, Federal Land Commission, Islamabad and 3 others 2004 CLC 1019; The Chief Land Commissioner, Punjab, Lahore and another v. Ch. Atta Muhammad Bajwa and others 1991 SCMR 736; Aacher and 5 others v. Dur Muhammad Usto and 9 others 2002 SCMR 958; Shah Jehan Khan Abbasi v. Deputy Land Commissioner Bahawalpur and another 2006 SCMR 771; Chief Administrator of Auqaf, Punjab v. The Federal Land Commissioner and 8 others PLD 1994 Lah. 50; Attaullah alias Billa and others v. Muhammad Ilyas and others, 2004 SCMR 830; Syed Ale Ali v. Muhammad Asghar, and others 1986 MLD 2782; Niaz Ahmad v. The State PLD 2003 SC 635; Muhammad Yusuf Ali Shah v. Federal Land Commission, Government of Pakistan, Rawalpindi and 2 others 1995 CLC 369 and Azra Parveen and 2 others v. Additional Deputy Commissioner (General)/Deputy Land Commissioner, Multan and another 2002 CLC 654 ref.

Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others PLD 1990 SC 99 rel.

(b) Land Reforms Regulations, 1972 (MLR 115)---

---Regln. 12---Land Reforms Act (II of 1977), S.7---Constitution of Pakistan (1973), Art. 199---Constitutional petition--Ex parte order of resumption of excess land by Deputy Land Commissioner---Plea that such order had been passed without hearing petitioner---Validity---Deputy Land Commissioner before fixing case for hearing in order to procure attendance of petitioner had issued to him notice and then got published notice in newspapers, but he did not turn up---Case had been adjourned for seven times before initiating ex parte proceedings against petitioner--Deputy Land Commissioner in such circumstances had no option except to examine case himself and passed impugned order---High Court dismissed constitutional petition in circumstances.

(c) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition, pendency of---Order of status quo obtained by petitioner from High Court---Violation of status quo order by petitioner by alienating major portion of suit land---Effect---Constitutional petition was liable to be dismissed on such score alone---Principles.

Attaullah alias Billa and others v. Muhammad Ilyas and others 2004 SCMR 830 and Syed Ale Ali v. Muhammad Asghar and others 1986 MLD 2782 rel.

(d) Transfer of Property Act (IV of 1882)---

---S. 41---Constitution of Pakistan (1973), Art.199---Constitutional petition, pendency of---Purchase of property from petitioner during status quo order---Applicant's plea to be bona fide purchaser of suit land---Validity---Applicant had purchased suit land during pendency of constitutional petition---Applicant had not displayed any efforts to satisfy himself about bona fide claim of petitioner---High Court repelled such plea of applicant in circumstances.

Mian Muhammad Kashif for Petitioners.

Ijaz Ahmad Awan for Petitioners (in connected Writ Petitions Nos.14660 to 14667 and 14795 of 2008).

Waqar A Sheikh for Petitioner (in connected Writ Petition No. 10934 of 2009).

Barrister Muhammad Ahmad Pansota for Petitioners (in connected Writ Petitions No. 10362, 18773 and 12762 of 2009).

S.M. Masud, for Petitioners (in Writ Petitions Nos. 13251 of 2008, 10782 and 8422 of 2009).

Hafiz Saeed Akhtar for Petitioners (in Writ Petitions Nos. 9225 and 9226 of 2009).

Shakil-ur-Rehman Khan, Addl. A.-G. for Respondents.

Ch. Bashir Ahmad for F.L.C. (in Writ Petitions No. 5039, 13251 of 2008 and 8422, 1684, 1685, 9225, 9226 of 2009).

Shaukat Ali Mehr for Respondents Nos. 5 to 7 (in Writ Petition No. 5039 of 2008).

Muhammad Shahzad Shaukat for Respondent No. 8 (in Writ Petition No.5039 of 2008).

Parvez I. Mir for Respondent, Imtiaz Rafi Butter.

Syed Salman Jafri for Respondents Nos. 15, 16, 22, 26 and 33.

Muhammad Iqbal Javed Deputy Secretary Punjab Land Commission, Board of Revenue, Punjab.

Muhammad Rizwan Butt, Patwari Halga Amirpur, Tehsil and District Lahore.

Date of hearing: 29th June, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---This judgment will dispose of Writ Petitions Nos. 5039, 13251, 14660 to 14667, 14795 of 2008, Writ Petitions Nos. 1684, 1685, 3481,8422, 9225, 9226, 9548, 10362, 10655, 10782, 10877, 10910, 10911, 10934, 12762, 18773 of 2009 and Writ Petition No.12800 of 2010 as common questions of facts and law are involved in these cases.

2. The brief facts giving rise to the instant writ petitions are that One Jamil Hussain Naqvi was the owner of land measuring 468-Kanals 18-Marla, in villages Kalowali and Banka Cheema, District Gujranwala, whereas he owned land measuring 1799-Kanals 12-Marlas in village Amirpur, District Lahore. After the promulgation and enforcement of MLR 115 in the year,

1972, on 24-5-1977 the said Jamil Hussain Naqvi made declaration under the said MLR and the Land Reforms Act, 1977. After retaining the basic ceiling of 8000 P.I. Units the said Jamil Hussain Naqvi surrendered land equivalent to 2207 P.I. Units under the MLR and this surrender was made by him out of his total ownership from Gujranwala land.

3. The Deputy Land Commissioner, Lahore made determination of the act of surrendering by the said Jamil Hussain Naqvi through an order dated 22-10-1977. The Deputy Land Commissioner held in the order dated 22-10-1977 that the excess land of Jamil Hussain Naqvi was calculated equivalent to P.I. Units 6032. This order dated 22-10-1977 was challenged through an appeal before the Land Commissioner, Lahore. This appeal was accepted vide order dated 26-12-1977 and the case was remanded back. The first resumption order dated 12-2-1982 was passed by Deputy Land Commissioner, Lahore. The Deputy Land Commissioner ordered resumption of land equivalent to 988 P.I. Units out of the land owned by said Jamil Hussain Naqvi. These P.I. Units were divided in the following manner:--

"From Lahore 98 P.I. Units were ordered to be resumed whereas from Gujranwala 890 P.I. Units were ordered to be resumed."

4. The Senior Member Federal Land Commission took up this matter in exercise of his powers under section 27 of the Land Reforms Act, 1977. The Senior Member Federal Land Commission then passed an order dated 20-1-1983 whereby he again remanded back the matter to the Deputy Land Commission and the order dated 12-2-1982 was set aside.

5. This order of the Senior Member Federal Land Commission was assailed through Writ Petition No. 4906 of 1983 which writ petition was dismissed on 22-2-2002 and the order was further assailed before the Hon'ble Supreme Court of Pakistan through C.L.P.A. No.1679-L/2002 which was dismissed vide order dated 3-7-2002.

6. The Deputy Land Commissioner then undertook the matter and passed the order dated 9-3-2004 which is available at page-53. The Deputy Land Commissioner in the said order held that Jamil Hussain Naqvi was entitled to retain total land equivalent to 14000 P.I. Units in both the districts i.e. Lahore and Gujranwala. Further he held that in Gujranwala the said Jamil Hussain Naqvi has total land equivalent to 7918 P.I. Units, therefore, out of his said entitlement 1918 units were held to be excess. The Deputy Land Commissioner further held that since P.I. Units equivalent to 890 had already been resumed by the Additional Deputy Land Commissioner, Lahore, therefore, the remaining 1028 P I Units be resumed from village Kalowali District Gujranwala. The Federal Land Commission issued a directive dated 24-4-2006 whereby it sought implementation report of the order dated 20-1-1983 passed by the Senior Member, Federal Land Commission.

7. Vide order dated 30-6-2006 the Land Commissioner Lahore expressed his inability to pass any order in respect of the subject controversy for the reasons narrated in para-10 of his report dated 30-6-2006 to the effect that on previous occasions he had already dealt with the matter, therefore this time he requested it to be placed before some other officer. Further it is very interesting that in the earlier part of the detailed order which comprises of 11 paragraphs he even expressed his opinion about the merits of the case as well.

8. The matter was then referred to the Federal Land Commission for putting it up before any other member of Federal Land Commission for its disposal under section 27 of the Land Reforms Act, 1977. The matter was then put up before Deputy Land Commissioner, Lahore who has passed the order dated 21-3-2007. This order has been assailed in the main Writ Petition No.5039 of 2008. The remaining writ petitions which have been instituted and are fixed along with this writ petition have been instituted by the vendees of the subject land who have also assailed the order dated 21-3-2007 passed by the Deputy Land Commissioner, Lahore. The Writ Petition No.5039 of 2008 has been instituted by the legal heirs of Jamil Hussain Naqvi, the original declarant.

Facts of other writ petitions.

9. All the petitioners in these writ petitions are vendees from one Imtiaz Rafi Butt who is respondent in the above said writ petitions. The petitioners claim themselves to be the bona fide purchasers of their respective land and all the learned counsel for the petitioners/vendees have addressed common arguments in support of their writ petitions.

Arguments of learned counsel for the petitioners in Writ Petition No.5039 of 2008.

10. It is contended by the learned counsel for the petitioners in Writ Petition No.5039 of 2008 that the impugned order has been passed in violation of the rules of natural justice and without hearing the parties. It is important to note that the Deputy Land Commissioner in the impugned order dated 21-3-2007 held that land equivalent to 5012 P.I. Units of the original declarant Jamil Hussain Naqvi is liable to be resumed and he prepared a table of this resumeable land which is reflected at page-68 of the file, i.e. the last operative part of the impugned order dated 21-3-2007. This according to the learned counsel has been in violation of the guarantees available to the petitioner under the Constitution of Pakistan that no person is to be condemned unheard in respect of his proprietary rights. The learned counsel in support of his submissions relies upon Mst. Zahida Sattar and others v. Federation of Pakistan and others (PLD 2002 SC 408) and Dilshad Nabi Riaz and 7 others v. District Nazim, District Rahimyar Khan and 3 others (2008 CLC 1120).

11. It is then contended that this re-determination could have been done by the Member Federal Land Commission himself and not by the Deputy Land Commissioner as the effect of the impugned order passed by the Deputy Land Commissioner is that the earlier order passed in the matter have been reviewed, which power is a statutory power and has not been conferred upon the Deputy Land Commissioner. It is then contended that this power of re-determination is not available to the Deputy Land Commissioner after 30-4-1975 as held by this Court in Khan Muhammad and 6 others v. Federal Land Commission through Senior Member, Islamabad and 6 others (2008 CLC 467) in this context.

12. Learned counsel for the petitioners refers to rule 12(3) of the Punjab Land Reforms Rules, 1972 wherein the last proviso to sub-para provides that the power to review envisaged by Para-12 of the Rules shall come to an end on the 30th day of April, 1975. The learned counsel for the

petitioners then contends that the original remand order dated 20-1-1983 passed by the Senior Member Federal Land Commission directed the re-determination of the P.I. Units of the original declarant Jamil Hussain Naqvi and that in the impugned order this exercise of re-determination has not been undertaken by the Member Federal Land Commission. The learned counsel further elaborated that in the impugned order the Member Federal Land Commissioner mechanically repeated the original re-determination made by the Deputy Land Commissioner in the order dated 20-10-1977. The learned counsel then argued that in this matter no decisive step was taken before the target date as held in Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others, (PLD 1990 SC 99) therefore, the orders of resumption passed subsequent to the said date are void ab initio, ultra vires and without jurisdiction. The learned counsel further submits that the term "decisive step" does not include making' of a declaration by the declarant. The term "decisive step" has been used for the first time in Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others, (PLD 1990 SC 99) and according to the learned counsel the term "decisive step" means the vesting of the resumeable land in the government. The learned counsel argues that section 9 of the Land Reforms Act, 1977 is relevant in this context whereby at the time of making declaration by the owner under the MLR the excess land automatically vests in the government. It is important to note that the predecessor in interest of the petitioners made the first declaration of his holding under the MLR 1977 through submission of form LR 1977-I dated 24-5-1977, which is placed as Annexure-A-I from pages 14 to 34, and he surrendered 2207 P.I. Units out of his total ownership. Learned counsel relies upon Siraj Din v. Member, Federal Land Commission and others, (PLD 1996 Lahore 243), Muhammad Yusuf Ali Shah v. Federal Land Commission, Government of Pakistan, Rawalpindi and 2 others (1995 CLC 369) and Ranjha and others v. Mst. Zahrai Begum and others (2004 SCMR 734) in support of his contentions.

13. The learned counsel then argued that the provisions of section 6 of the General Clauses Act and those of Article 264 of the Constitution cannot be made applicable to the facts and circumstances of the present case so as to treat successive proceedings as pending proceedings under the original MLR 1977. Learned counsel relies upon Mst. Sharifan Bibi v. Federation of Pakistan through Cabinet Secretary, Islamabad and 3 others (2002 YLR 3320).

14. In support of his submissions learned counsel for the petitioners further relied upon Chief Land Commissioner, Punjab and others v. Chief Administrator of Auqaf, Punjab and others, (PLD 1998 SC 132), Khan Muhammad Khan through Legal Heirs v. Member (Judicial-I), Board of Revenue Punjab, Lahore and 5 others, (PLD 2006 Lahore 322), Riaz Hussain and others v. Board of Revenue and others, (1991 SCMR 2307) and Hussain Bakhsh v. Settlement Commissioner, Rawalpindi and others (PLD 1970 SC 1).

Arguments of learned counsel for the petitioners of other writ petitions who claim to be the bona fide purchasers of their respective land.

15. The learned counsel for the petitioners submits that the original transaction with respect to the vesting of the land in the Green Acres Farm Housing Scheme is not discernible by the petitioners as to how the land came in possession of the said Cooperative Housing Society. According to the learned counsel for the petitioners the LDA confirmed the ownership of Imtiaz Rafi Butt and all the writ petitioners purchased their respective plots from the respondent Imtiaz

Rafi Butt whose ownership rights were verified through the LDA. It is further contended that houses have been constructed by the petitioners over the subject plots after getting approval of the building plan from the LDA. The site plan of the entire scheme is also appended.

16. The learned counsel submits that the housing scheme was approved by the LDA on 20-12-1987. According to the learned counsel for the petitioners they are affected by the last impugned order dated 21-3-2007 as the land owned and possessed by the petitioners have been included in the resumed land; the petitioners also submit that they have not been heard in this matter. The learned counsel submits that no decisive step was taken in respect of the land of the petitioners and if any decisive step has been taken that has been declared contrary to the injunctions of Islam and Sunnah. The learned counsel refers to section 7 of the Punjab Undesirable Cooperative Societies (Dissolution) Act, 1993 whereby the exclusive jurisdiction have been conferred upon the Liquidation Board constituted under the said law to look into all the matters concerning the land which vests in the Cooperative Board. This fact however, is also admitted by the learned counsel that as the petitioners have purchased the suit land prior to the enforcement of the Punjab Undesirable Cooperative Societies (Dissolution) Act, 1993, therefore, it did not vest in the liquidation Board. The learned counsel refers to annexure-B page-6 of Writ Petition No.13251 of 2008 wherein the LDA wrote a letter to Imtiaz Rafi Butt on 17-5-1990 confirming that he is the owner of the land involved in Green Acres Farm Housing Scheme.

17. According to the learned counsel the term "decisive step" have been explained and defined in the basic judgment reported as Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99 at page 103). According to the learned counsel the "decisive step" means the order of resumption of land and the delivery of possession. According to the learned counsel in the instant case prior to the target date as fixed in the reported judgment there was no decisive step taken as no resumption order was passed and that the original resumption order dated 22-10-1977 has been set aside. According to the learned counsel at the time of target date the remand order dated 20-1-1983 passed by Senior Member Federal Land Commission was in operation, which order dated 20-1-1983 is not a resumption order as it directed the re-determination of the entitlement of the original owner Jamil Hussain Naqvi, which, according to the learned counsel was done in the year, 2004 which could not have been legally done after the target date. Learned counsel relies upon Chief Land Commissioner, Punjab and others v. Chief Administrator of Auqaf, Punjab and others (PLD 1998 SC 132).

18. Learned counsel contends that the land under the Land Reforms Act, 1977 does not automatically vest in Government under section 9 but some specific order for resumption has to be passed with respect to the land subject matter of MLR 1977. Reliance is placed upon Khan Muhammad and 6 others v. Federal Land Commission through Senior Member, Islamabad and 6 others (2008 CLC 467). According to the learned counsel for the petitioners the order dated 9-3-2004 passed by the Deputy Land Commissioner has attained finality in this matter as it has not been further challenged by the Land Commission or anybody else. According to the learned counsel the land belonging to the owner was resumed only with respect to Gujranwala district and that after three years of the said order the Deputy Land Commissioner cannot assume jurisdiction to pass the impugned order. In this context the learned counsel relies upon Col. (R) Syed Mukhtar Hussain v. Chairman, Federal Land Commission, Islamabad and 3 others (2004 CLC 1019). The learned counsel farther argued that this judgment is on all fours upon the facts

and circumstances of the case. The learned counsel for the petitioners submits that the petitioners are bona fide purchasers of the subject land and the nature of the land has already changed by the efforts/investment made by the petitioners. The learned counsel for the petitioners submits that if any land has to be resumed it should be taken from the petitioners of Writ Petition No.5039 of 2008 who have got vacant agricultural land available with them.

19. From the respondents side main arguments have been addressed on behalf of respondents Nos. 5 to 8, whose arguments have been adopted by all the other private respondents.

20. The learned counsel for the respondents have submitted that the crucial point for the disposal of all these writ petitions is the application or otherwise of the judgment reported as Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99) on the facts and circumstances of the present case. The learned counsel argued that in view of the case law so far established on the subject the "decisive step" in the instant case shall be deemed to have taken first when the declaration was made by the predecessor in interest of the petitioners of Writ Petition No.5039 of 2008. The making of declaration according to the learned counsel under MLR 115 read with Land Reforms Act, 1977 would be that the excess land declared by the original owner/the declarant automatically vests in the Government as provided for in section 9 of Land Reforms Act, 1977.

21. The learned counsel then argued that vide order dated 22-10-1977 the Deputy Land Commissioner, Lahore passed the first order of resumption which would also be treated as a "decisive step". The learned counsel then argued that the second resumption order dated 12-2-1982 after the acceptance of appeal on 26-12-1977 by the Land Commissioner against the order dated 22-10-1977 was passed when the matter was remanded back. The learned counsel then stated that vide order dated 20-1-1983 the learned Senior Member Federal Land Commission passed an order in this matter whereby the making of gift by the original declarant to the extent of 31-Acres 4-Kanals 2-Marlas out of the land measuring 36-Acres 1-Kanal 11-Marlas was held to be valid and after the exclusion of said validly gifted land the declarant was still left with 50-Acres in village Kalowali District Gujranwala.

22. Thus, the learned Senior Member Federal Land Commission passed a remand order after setting aside the order dated 12-2-1982 of the Deputy Land Commissioner and remanded back the matter for re-determination of the holding of the declarant. In this respect the Paragraph No.7 which is the operative part of the order dated 20-1-1983 was referred to, which is reproduced below:

"(7) For reasons discussed in the preceding paragraphs I set aside the orders of the Deputy Land Commissioner, Lahore dated 29-12-1973 and 12-2-1982 and direct him to redetermine the holding of declarant Syed Jamil Hussain Shah (deceased) in accordance with the findings in paragraphs 5 and 6 above, that is to say, that in respect of Mutation No.15 dated 28-9-1972 in village Kaluwali, District Gujranwala the gift shall be considered void to the extent of 36-1-11 acres and the holding of the declarant shall be redetermined accordingly and in respect of the declarant's land in village Amirpura, Tehsil and District Lahore the PIUs will be calculated on the basis of the soil

classification indicated in the entries in the Khasra Gardawari relating to Kharif 1976 before these were changed by the order of Collector, Lahore dated 11-1-1981."

23. The learned counsel for the respondents argued that this order dated 20-1-1983 was also passed before the target date fixed in the judgment reported as Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others, (PLD 1990 SC 99) and would also be treated as one of the "decisive steps" to have been taken in the matter. The learned counsel for the respondents then submitted that this order of the Senior Member Federal Land Commission dated 20-1-1983 was further assailed through Writ Petition No. 4906 of 1983, which was dismissed by a learned Single Judge of this Court through judgment dated 22-2-2000.

24. This judgment dated 22-2-2000 passed of this Court was further assailed through Civil Petition for Leave to Appeal No.1679-L/2002, which C.P.L.A. was dismissed vide order dated 3-7-2002 by the Hon'ble Supreme Court of Pakistan. The learned counsel thus submitted that no objection with respect to the effect of judgment reported as Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99) on the facts of the instant case as claimed by the petitioners of Writ Petition No.5039 of 2008 was raised before the Hon'ble Supreme Court of Pakistan when C.P.L.A. No. 1679-L/2002 was decided on 3-7-2002, The learned counsel for the respondents then argued that the case in hand does not involve the passing of any fresh resumption order, therefore, the objection of the petitioners of Writ Petition No.5039 of 2008 that the impugned order dated 21-3-2007 be set aside on the ground that it is a fresh resumption order and is, therefore, hit by the pronouncement made by the Hon'ble Supreme Court of Pakistan, reported as Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99) is not sustainable.

25. The learned counsel for the respondents in this context relied upon Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99), The Chief Land Commissioner, Punjab, Lahore and another v. Ch. Atta Muhammad Bajwa and others (1991 SCMR 736), Acher and 5 others v. Dur Muhammad Usto and 8 others, 2002 SCMR 958, Shah Jehan Khan Abbasi v. Deputy Land Commissioner Bahawalpur and another (2006 SCMR 771) and Chief Administrator of Auqaf, Punjab v. The Federal Land Commissioner and 8 others (PLD 1994 Lahore 50).

26. The learned counsel for respondent No.8 has further contended that the litigation in this case commenced in the year, 1983 and against the last final order dated 20-1-1983 Writ Petition No.4906 of 1983 was pending which was decided on 22-2-2000 by a learned Single Judge of this Court and all the writ petitioners who are claiming to be the vendees of the subject land are hit by the doctrine of lis pendens as all the vendees who are before this Court purchased the land during the pendency of the Writ Petition No.4906 of 1983. It is also contended by the learned counsel for respondent No.8 while relying upon judgment reported as Attaullah alias Billa and others v. Muhammad Ilyas and others (2004 SCMR 830) and Syed Ale Ali v. Muhammad Asghar, and others 1986 MLD 2782 that the petitioners of Writ Petition No.5039 of 2008 originally instituted writ petition against the order dated 20-1-1983 passed by the learned Senior Member Federal Land Commission and obtained an injunctive order and then sold away the entire land subject matter of the instant writ petition during the pendency of the said writ petition and their writ petition is liable to be dismissed on this score alone.

27. The learned Additional Advocate General for official respondents has argued while relying upon *Niaz Ahmad v. The State*, (PLD 2003 SC 635) and *Muhammad Yusuf Ali Shah v. Federal Land Commission, Government of Pakistan, Rawalpindi and 2 others* (1995 CLC 369) that "decisive Steps" in this case were taken when the original declaration was made by the declarant/the predecessor in interest of the petitioners of Writ Petition No.5039 of 2008. In this context the learned Additional Advocate General referred to a judgment reported as *Azra Parveen and 2 others v. Additional Deputy Commissioner (General)/Deputy Land Commissioner, Multan and another* (2000 CLC 654) that even where no declaration is made by the owner of the land which become subject of Land Reforms Act, 1977 a "decisive step" has been held to be taken when a notice under section 7 of Land Reforms Act, 1977 is issued to such an owner to make a declaration. The learned Additional Advocate-General contended that the impugned order in the instant writ petitions dated 21-3-2007 cannot be treated as a fresh resumption order but it is an order which has been passed in pursuance to the original resumption order dated 20-1-1983 of calculation of the resumed land for the purpose of resolving the controversy in question as the order dated 20-1-1983 was upheld upto the level of Hon'ble Supreme Court of Pakistan.

28. The learned counsel representing the Federal Land Commission also adopted the arguments of the learned Additional Advocate-General and prayed for the dismissal of the writ petitions.

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

30. The predecessor-in-interest of the petitioners of Writ Petition No.5039 of 2008 Jamil Hussain Naqvi made a declaration on 24-5-1977 by submitting Form L.R. 1977-I which is placed as Annexure-A of the said writ petition in which he surrendered land equivalent to 2207 P.I. Units after retaining the basic ceiling of 8000 P.I. Units. Upon this declaration the Deputy Land Commissioner Lahore made a determination of the entitlement of the declarant by order dated 22-10-1977 and he calculated the excess land to be resumed equivalent to 6032 P.I. Units. Although the order dated 22-10-1977 passed by the Deputy Land Commissioner, Lahore was subjected to appeal but ultimately a final determination of the resumed land was undertaken by the Senior Member Federal Land Commission through an order dated 20-1-1983 and after the said determination the matter was remitted back by the Senior Member Federal Land Commission for calculation purposes to the Deputy Land Commissioner in the light of the observations made in Paragraphs Nos. 5 and 6 of the order dated 20-1-1983 of the Senior Member Federal Land Commission.

31. This order was challenged through Writ Petition No.4906 of 1983 and was upheld by a learned Single Judge of this Court through judgment dated 22-2-2000. The Hon'ble Supreme Court of Pakistan refused to interfere in the matter and the leave was declined vide order dated 3-7-2002 passed in C.P.L.A. No.1679-L/2002. The making of declaration, the passing of first resumption order dated 22-10-1977 and ultimately the order passed by the Senior Member Federal Land Commission dated 20-1-1983, all constitute "decisive steps" in the matter. Therefore, the objection of the learned counsel for the petitioners that the impugned order dated 21-3-2007 passed by the Deputy Land Commissioner is a fresh resumption order and is violative

of the law laid down by the Hon'ble Supreme Court of Pakistan in Qazalbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others (PLD 1990 SC 99), having been passed after the target date fixed therein has no substance and is rejected. The impugned order passed by the Deputy Land Commissioner dated 21-3-2007 is passed in implementation of the original order dated 20-1-1983 passed by the Federal Land Commission and has the effect of calculating the P.I. Units of the original allottee as resumed under the provisions of I Land Reforms Act, 1977 and following calculation was arrived at:

| | | |
|--|------------|-----------|
| (1) Area remained in the name of legal heirs of the declarant free from any encumbrance. (Annex-A) | 274 K-11 M | 1499 |
| (2) Area mentioned in the Declaration Form to be surrendered as choice given by the declarant. (Annex-B) | 323 K-9M | 2666 |
| (3) Balance area resumed from the remaining holding. (Annex-C) | 150 K-5 M | 847 |
| Total | | 5012 PIUs |

The order dated 21-3-2007 is therefore, not liable to be struck down on this score.

32. The next contention of the learned counsel for the petitioners that the order dated 21-3-2007 was passed without hearing them is also without any substance. In this context paragraph No.7 of the Impugned order is relevant which is reproduced below:

"(7) The case was fixed in Peshi and notices were issued to the legal heirs of the declarant but none of them turned up in the Court. Notice was also got published in the newspapers for attendance of the legal heirs in the Court but the attendance of the legal heirs could not be procured. The case was adjourned for 21-1-2007, 14-2-2007, 21-2-2007, 1-3-2007, 8-3-2007, 15-3-2007 and 21-3-2007 and at last ex parte proceedings were initiated against the legal heirs of the declarant and revenue record was examined and it was revealed that the Lahore High Court issued status quo in Writ Petition No. 4906 of 1983 on 22-7-1983. In spite of status quo, the heirs of declarant alienated major portion of land involved in writ petition. Section 6 of the Land Reforms Act, 1977.

(1) The transfer of any land, and the creation of any right or interests in, or encumbrance on any land made in any manner whatsoever in respect of any area, on or after the commencement of this Act by any person holding immediately before that date an area exceeding his entitlement under section 3 shall be and shall be deemed always to have been void, and the land so transferred or encumbered shall be deemed to have been owned or possessed, as the case may be, by the person by whom it was owned or possessed immediately before that date."

33. The Deputy Land Commissioner, Lahore issued notices to the legal heirs of the declarant and they did not turn up and efforts were also made through publications in the newspapers for procuring the attendance of the legal heirs of the declarant but no heed was paid to such notices and ultimately the Deputy Land Commissioner had to examine the record himself and then passed the order.

34. It is also relevant that in paragraph No.7 the Deputy Land Commissioner has noted that the legal heirs of the declarant alienated major portion of the land involved in the writ petition after obtaining the status quo order in Writ Petition No.4906 of 1983. The writ petition instituted by the legal heirs of the declarant is liable to be dismissed on this score alone while relying upon the judgment reported as Attaullah alias Billa and others v. Muhammad Ilyas and others (2004 SCMR 830) and Syed Ale Ali v. Muhammad Asghar and other (1986 MLD 2782).

35. The contention of the learned counsel for the petitioners that the impugned order passed by the Deputy Land Commissioner is not sustainable on the ground that it amounts to review of the previous order has also no substance. The litigation in this matter commenced after the passing of the first resumption order dated 22-10-1977 and before the order dated 20-1-1983 passed by the Senior Member Federal Land Commission the matter has been continuously remanded back after setting aside of the previous order, therefore, no question of review of the order passed earlier arises in the matter through the passing of the impugned order dated 21-3-2007. Thus all the contentions raised by the petitioners of Writ Petition No.5039 of 2008 against the order dated 21-3-2007 have no merits and are rejected.

36. In so far as the contention of the learned counsel for the other writ petitioners are concerned, suffice is to say that these petitioners are also vendees from the legal heirs of the declarant and that too during the pendency of the writ petition and their purchases are subject to the final adjudication of the matter. As we do not find any illegality in the order dated 21-3-2007 passed by the Deputy Land Commissioner on the basis of the remand order dated 21-1-1983, therefore, we do not consider the vendees/writ petitioners entitled to assail the order dated 21-3-2007 on the same grounds, upon which the petitioners of the Writ Petition No.5039 of 2008 have assailed the said order.

37. The contention of the learned counsel for the petitioners that they are bona fide purchasers for value of the subject land also lacks merits. In the first place they have purchased the land during the pendency of Writ Petition No.4906 of 1983, secondly the petitioners have not displayed any effort to satisfy themselves about the bona fide claim of the successor-in-interest of the declarant.

38. However, as the vendees who are the petitioners of other writ petitions claim themselves to be in possession of their respectively purchased lands and have constructed their houses on it and another Housing Scheme by the name of Green Acres Housing Scheme is alleged to be involved in the matter, which housing scheme had all the approvals from the Lahore Development Authority, therefore, we do not consider it appropriate to disturb the possession of the vendees writ petitioners out rightly and would like to remit this matter to the Punjab Land Commission for determination of the following two Matters with respect to the vendees of the legal heirs of the original declarant:--

"(i) If the writ petitioners have purchased the land from the legal heirs of the declarant out of the land which fell into the entitlement of the legal heirs which they were permissible under the Land Reforms Act, 1977 to retain, then the sales made in their favour by the successors of the declarant will not be disturbed and stand protected in

respect of the lands which have been purchased by the vendee/writ petitioners from the successors of the original declarant.

(ii) If the said land has been sold out of the land which is found resumed and fell in excess of the entitlement of the original allottee, then the Punjab Land Commission shall determine its price as prevailing in the years of their purchases and shall ask the vendees writ petitioners to pay the said price of the land to the government. In case the price determined by the Punjab Land Commission is paid by the vendees/writ petitioners, their possession over their respective lands shall not be disturbed. Those vendees/writ petitioners who fail to make payment so determined shall have no protection in respect of their respective lands or constructions.

39. All the writ petitions are, there-fore, dismissed on merits with no orders as to costs. The writ petitions of the vendees/ writ petitioners are further subject to the above mentioned observations made by us.

S.A.K./M-523/L

Petitions dismissed.