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JUDGMENT SHEET
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT

F.A.O. No.68 of 2000.

(Chief Administrator of Auqaf Punjab Lahore versus. Muhammad Amin)

J U D G M E N T

Date of hearing.	01.12.2016
Appellant by	Mr. Ihsan Sabri Chaudhary, Advocate
Respondent by	Ch. Abdul Salam, Advocate

IBAD-UR-REHMAN LODHI J.:- The present respondent has challenged the validity of Notification No.SOP-II-3(39)A/92, dated 23.08.1992 issued by the present appellant, whereby he took over the control and management of property Khanqah Sharif Kheway Wali by declaring the same as *Waqf* property, by means of an application under Section 7 of The West Pakistan Waqf Properties Ordinance, 1961, which was decided by the learned Additional District Judge, Faisalabad vide impugned decision dated 22.01.2000.

2. The present appellant has challenged such findings in this appeal, which earlier was dismissed for non-prosecution on 29.11.2006 and for its restoration; the appellant has moved C.M. No.01-C of 2008, which was also dismissed for non-prosecution on 24.05.2010. Thereafter, the appellant has moved another C.M. No.1240-C of 2010 for restoration of earlier dismissed C.M., which was dismissed by this Court vide order dated 05.10.2010.

Feeling aggrieved, the appellant has moved Civil Petition No.2052-L of 2010 before the Hon'ble Supreme Court of Pakistan, where, after converting the Civil Petition into appeal, the same was allowed by setting aside order dated 05.10.2010 passed by this Court

on the consenting statement of respondent's son appearing in the said petition and this appeal was remanded to this Court for its decision.

3. Section 6 of The West Pakistan Waqf Properties Ordinance, 1961 empowers the Chief Administrator of *Auqaf* to take over *waqf* property by "notification". For ready reference, the same is reproduced herein below:-

“(1) Notwithstanding anything to the contrary contained in Section 22 of the Religious Endowments Act, 1863, or any other law for the time being in force, or in any custom or usage, or in any decree, judgment or order of any Court or other authority or in any proceeding pending before any Court or other authority, the Chief Administrator may, by notification, take over and assume the administration, control, management and maintenance of a Waqf property.”

The term 'notification' used in the above Section is defined in Section 2(41) of West Pakistan General Clauses Act, 1956 (VI of 1956) in the following manner:-

“Notification shall mean a notification published under proper authority in the Official Gazette.

The above definition of "notification" has also been interpreted by the Hon'ble Supreme Court of Pakistan in the same manner in case titled "MUHAMMAD SULEMAN ETC. versus ABDUL GHANI" (PLD 1978 Supreme Court 190).

Hence, it is clear from the above definition and law laid down by the Hon'ble Supreme Court of Pakistan that a notified order or notification, which is not published in the Official Gazette, has no legal sanctity.

Admittedly, the respondent has challenged the Notification No.SOP-II-3(39)A/92, dated 23.08.1992 (Exh.P-6) in his petition, which was not published in the Official Gazette at the relevant time, rather the same was published in Official Gazette on 06.01.1993 through Exh.P-5. Hence, the proposed notification issued by the Department on 23.08.1992 (Exh.P-6) was having no legal value and the same cannot be enforced through any judicial proceedings for the reason that before publication in Official Gazette, the same was of no substance. As such, the claim of the petitioner before the District Judge by challenging only Notification dated 23.08.1992 (Exh.P-5) was not adjudicate-able by a Court of law.

I am fortified in my this view from the kind guidelines provided by the Hon'ble Supreme Court of Pakistan in case titled "GOVERNMENT OF THE PUNJAB, FOOD DEPARTMENT through Secretary Food and another versus Messrs UNITED SUGAR MILLS LTD. and another" (2008 SCMR 1148). In the said judgment, the Hon'ble Supreme Court of Pakistan has observed as under:-

*"---S.3(1)---West Pakistan
General Clauses Act (VI of 1956),
S.2(41)---Control, supply,
distribution, disposal of foodstuffs by
notified order---Scope---Notified
order---Connotation---Notified order
would mean notification through
publication in official Gazette and not
by passing an order and keeping same
in office of department concerned---
Notification not published in official
Gazette would be invalid---Notified
declaration could take effect from
date of publication in Gazette and not
from any prior date."*

4. As the respondent has only called in question notification dated 23.08.1992 (Exh.P-6), which in fact was the proposed notification to be published in Official Gazette, but at no stage of time, the original petition was got amended by adding challenge to notification dated

06.01.1993 (Exh.P-5), no relief was possibly available to respondent with reference to said notification published in Official Gazette, however, strangely the learned Additional District Judge, Faisalabad, while passing the impugned judgment, has proceeded not only to set aside the notification dated 23.08.1992, but also subsequent notification published in Official Gazette on 06.01.1993. The relief qua notification dated 06.01.1993 is definitely an excessive relief than that of one claimed by the petitioner in his petition. To such extent, the order of the learned Additional District Judge, Faisalabad is result of illegality and in excess of jurisdiction.

5. The petition moved by the respondent before the learned District Judge is declared to be defective one and no proceedings were required to be initiated on such petition, wherein notification published in Official Gazette was never called in question. The findings arrived at by the learned trial court is based on erroneous consideration, which are not sustainable in the eye of law and the same are set aside.

6. Resultantly, this appeal succeeds and the same is **allowed** in view of above findings and the petition filed by the present respondent before the learned District Judge, Faisalabad stands dismissed.

Judge

Approved for reporting.

Judge