

JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.33958/2014

Zahoor-ud-Din Vs. Town Committee, Shorkot, etc.

JUDGMENT

Date of hearing	29.05.2018
Petitioner by	Hafiz Abdul Rehman Ansari, Advocate.
Respondents	M/s. Farooq Abbas Khan Bhatti and Imtiaz Hussain Rehan, Advocates for respondent No.1. Mr. Muhammad Arif Yaqoob Khan, Addl. Advocate General for respondent No.2 assisted by Khalid Iqbal, Chief Officer, Municipal Committee, Shorkot. Mr.A.G. Tariq Ch., Advocate for respondents No.3(a) to 3(g).

Ch. Muhammad Masood Jahangir ,J: The admitted facts of the case in hand were that Town Committee Shorkot started construction of New General Bus Stand on the State land, whereas a chunk of it was earmarked for commercial purposes to fetch revenue to be incurred upon the welfare of the public and when the construction of the Stand was near to its completion, it was desired that the commercial plot along with the subject site for Petrol Pump cum Service Station might be auctioned. In due process under publication in two daily newspapers the auction was conducted and one Muhammad Aslam Khan stood highest bidder of the suit plot, but on his failure to deposit the auction price, his offer was cancelled and in subsequent event, which was convened without any publication in the newspaper, the auction ended in favour of Ch. Abdul Ghani, however, despite its

recommendation for approval by the then Administrator of the Town Committee, it was finally rejected vide letter dated 19.1.1974 by the Controlling Authority. The rejection was never challenged by the bidder any further, who thereafter happened to be Councilor as well as Chairman of the same Town Committee and after 13 years of the rejection of his bid, filed a suit for specific performance of contract, which was never settled, however, his legal heirs after his death succeeded to procure a consent decree dated 13.02.1995 with regard to the subject plot.

2. Although on behalf of the Deputy Commissioner/ Province of the Punjab, an application for setting aside of the said consent decree was filed, but it was straightaway declined without any trial. Feeling aggrieved, Province of the Punjab, preferred Civil Revision No.2192 of 1996 before this Court, which was rejected being barred by limitation as well as on merit vide order dated 13.02.1997. Again a time barred Civil Petition No.707-L/1997 was preferred before the august Supreme Court, which was solely refused on the score of limitation. Thereafter, Zahoor Din, the present Writ Petitioner blew the whistle to point out the connivance of the Town Committee for making loss to the public exchequer through application for cancellation of the decree dated 13.02.1995 against the respondents before the Civil Court, but was summarily rejected vide order dated 22.03.2014 and so was the fate of his Civil Revision having been dismissed through order dated 11.10.2014, hence Writ Petition in hand.

3. At the very outset, Mr. A.G. Tariq Ch., Advocate, learned counsel for private respondents raised a preliminary objection that decree passed in favour of his clients in earlier round of litigation was maintained on facts and law by this Court and the decree of Civil Court was merged in it, as such petition for setting aside of decree could be maintained before this Court, whereas the Civil Court had no jurisdiction to adjudicate upon it. The argument of Mr. Tariq has force. In the recent era, on this issue the apex Court has rendered two authoritative judgments reported as *Nasrullah Khan and others Vs. Mukhtar-ul-Hassan and others (PLD 2013 SC 478)* and *Sahabzadi Maharunisa and another Vs. Mst. Ghulam Sughran and another (PLD 2016 SC 358)*, wherein it was concluded that if a decree was further maintained by the Appellate or the Revisional Court, then application under provision supra for its setting aside would lie to such last Court, which affirmed it on facts and law and in the case in hand, the decree of the Civil Court, as such was affirmed by this Court, while dismissing Civil Revision No.2191 of 1996 vide order dated 13.02.1997, whereas Civil Petition for leave to appeal was declined by the Supreme Court, hence the Petition of petitioner under section 12(2) *ibid* was not competent before the Civil Court, however, the facts and merits of the case have compelled me to convert instant Constitutional Petition into application under afore-noted provision of law, so that the matter may be adjudicated upon merits. The landmark judgment of the apex Court passed in case reported as *Mian Asghar Ali Vs.*

Government of Punjab through Secretary (Colonies) BOR, Lahore and others (2017 SCMR 118) clearly permits me to do so. The relevant extract from para-8 of the cited judgment is reproduced hereunder:-

Power to convert and or treat one kind of proceeding into another is derived from authority to do ex debito justitiae, which always existed and have always been exercised by the Court not only to advance the cause of justice but also to prevent the injustice. No fetters or bar could be placed on the High Court and or this Court to convert and treat one type of proceeding into another and proceed to decide the matter either itself provided it has jurisdiction over the lis that has fallen on its lap for adjudication in exercise of another jurisdiction vested in the very Court or may remit the lis to the Court/forum/authority of competent jurisdiction for decision of the lis on its own merits.

As the Hon'ble Judge, who maintained the decree of the Civil Court, while dismissing Civil Revision is no more on the strength of this Court and I am competent to hear the same, resultantly, this Court converts this Writ Petition into application under section 12(2) of the Code, 1908 to check the legality or otherwise of the judgment and decree dated 13.02.1995 rendered by the learned Civil Court as well as order dated 13.02.1997 of this Court, whereby, Civil Revision No.2192/1996 was dismissed, which is going to be decided with a direction to the Office to renumber it.

4. It is contended by of Hafiz Abdul Rehman Ansari, Advocate for petitioner that the subject land was the State property, which was meant for generation of revenue to be used for the welfare of the communal of Shorkot after its collection by the Town Committee and the Administrator had no authority to make a statement on behalf of the Town Committee for permanent

transfer of valuable commercial property; that the statement of the Administrator was result of misrepresentation and beyond his authority; that the plaintiffs/decreed holders were influential persons, who in connivance with officials of Town Committee procured the consent decree; that neither an offer of bid, which otherwise was rejected, generated any right or interest in the suit property to the bidder nor the latter could bring a suit for specific performance of contract with regard to finalization of the bid proceedings; that the bid had already been rejected by the Controlling Authority/Deputy Commissioner vide memo/ order dated 19.01.1974, which order was never assailed before any Authority or even through the suit instituted by the respondents; that the Civil Court absolutely had no jurisdiction to grant decree prayed for in a badly time barred suit. It was emphasized with great vehemence by Mr. Ansari that although in earlier round of litigation, consent decree dated 13.02.1995 was assailed by Controlling Authority, but without any diligence and that neither the real facts were highlighted nor pleaded before the superior Courts and that the petitioner was not a party to the earlier litigation, as such the orders rendered therein would not be a bar for grant of relief.

5. In contra, Mr. A.G. Tariq Ch., Advocate for respondents No.3 (a) to 3(g)/decreed holders strongly opposed the arguments of learned counsel for the petitioner and emphasized with great concern that the Civil Court passed the decree on its merit, which was neither procured through fraud or misrepresentation and that

is why it was maintained in earlier round of litigation upto the august Supreme Court. He added that nothing wrong was committed with Court proceedings and the petitioner having no interest in the subject plot had no *locus standi* and cause of action to make an application for setting aside of the decree. Mr. Tariq was also of the view that sale price was raised from Rs.26000/- to Rs.4,50,000/-, which having been paid, sale deed was also executed in favour of the decree holders, who thereafter established a Petrol Pump over the site and with lapse of considerable time vested right stood accrued in their favour could not be upset. He further submitted that the Administrator of the Town Committee was authorized as well as competent to make statement for the transfer of the suit plot and the Town Committee was bound by his statement, as such the suit was rightly decreed by the Civil Court.

6. Arguments heard and original record of the auction proceedings brought by Mr. Khalid Iqbal, Chief Officer, Municipal Committee, Shorkot after having been taken into custody as well as the original file of C.R. No.2192/1996 was also gone through.

7. There is no denial of the fact that State land was made available to the Town Committee for the establishment of New General Bus Stand and a chunk of it was earmarked for commercial purposes to generate revenue for the Municipality to run its affairs. Initially, the plot for Petrol Pump was put in open auction for its lease through publication in two daily newspapers,

which was auctioned in favour of Muhammad Aslam Khan, but on his failure to deposit the auction price, it was cancelled. The subsequent auction was scheduled without any proclamation through the newspaper, anyhow, Ch. Abdul Ghani, predecessor of respondents No.3 (a) to 3(g) became the highest bidder, but at a compatible low rate than it was earlier offered by Muhammad Aslam Khan. Although the offer of Abdul Ghani was recommended for its approval by the Administrator, however, the Controlling Authority/Deputy Commissioner, Jhang specifically rejected it with the view that the plot was meant for earning funds on periodical basis, whereas through auction for sale it was permanently transferred to cause incessant loss. Perusal of the original file revealed that subsequently efforts were initiated to lease out the plot on episodic basis, but these were in pipeline when as per copy of Gazette Notification dated 10.11.1983 (available on file) Ch. Abdul Ghani, the bootless bidder, took charge of the Committee being its Chairman, who then instituted a suit for the specific performance of agreement, which admittedly was never settled with him, whereas he only participated in a bid and that too was rejected. There can be no escape from the fact that a bid is not more than an offer and does not mature into the vested right in favour of the bidder until the same is accepted. It was admitted by Mr. A.G.Tariq Ch., Advocate that bid rejection order dated 19.01.1974 was never assailed by the bidder before any higher Authority or even through the suit filed by him, hence said order had attained status of finality, which being past and

closed transaction could not be reopened. It was not comprehended at any stage or before any forum so far that once the recommendation of Administrator for the approval of bid was rejected by his Superior Authority, the former was left with no authority to circumvent the order of his superior, but by making a conceding statement before the Civil Court for permanent transfer of the plot, he in fact not only made an unauthorized attempt, rather misrepresented and played fraud with the Court proceedings for the benefit of persons, who had no case at all. The learned Civil Court without realizing the fact that the Administrator had no authority for transfer of the State property passed the impugned decree in a haste, which fact was also not considered by my learned brother while passing order dated 13.02.1997. Mr. A.G. Tariq Chaudhry, learned counsel for respondents was invited to highlight any provision of law that the Administrator on behalf of the Town/Municipal Committee was competent and authorized to make the statement for permanent transfer of property of the Committee, but he as well as the Legal Advisor appearing on its behalf despite consulting the law as well as relevant rules of that era conceded that no such unfettered powers were vested to him. Having admitted so, there left no room to hold that consent decree was result of conspiracy and misrepresentation.

8. The argument of learned counsel for the decree holders that the petitioner had no cause of action or *locus standi* to assail the impugned decree might have some force, but at the same time,

there is no denial that the latter has no personal interest and the grouse raised by him, which reflects that he is a public spirited person, motivated with a desire to save the public property looted by an influential family in connivance with its custodian. This is with nature of public injury arising from the breach of departmental obligations. As such the State should be thankful to such like persons without having personal interest to approach the Court at the cost of their time and expenses, but only for the interest of the public exchequer. Such like efforts are to be welcomed, if not aimed for personal gain. Moreover, any proceedings, order and decree procured through fraud, misrepresentation or connivance can be brought into the knowledge of the Court by any person. See *Ghulam Muhammad Vs. M. Ahmad Khan and 6 others (1993 SCMR 662)* and *Khawaja Muhammad Yousaf Vs. Federal Government through Secretary, Ministry of Kashmir Affairs and Northern Areas and others (1999 SCMR 1516)*.

9. It was also an admitted fact that the petitioner was not party to the suit instituted by the unsuccessful bidder or to the earlier proceedings played upto the last forum. As such earlier decisions were not barrier in his way to challenge the decree based on fraud, which otherwise vitiates the most solemn proceedings. Moreover, with all respect to the earlier decisions, it was observed through minute study that true facts were never pleaded and agitated in that round of litigation and the Civil Revision was declined without having requisitioned its original

record, which was mainly dismissed on the ground that sale price of the subject plot was enhanced many times, as such, no loss was caused to the public exchequer, whereas it was not examined that the bid was merely an offer and after its rejection, no interest was accrued to the bidder; that there was no contract to maintain a suit for specific performance; that the suit was filed after 13 years of the rejection of the bid and that the Administrator had no authority to make a statement for the permanent transfer of the property and especially when his recommendation for the approval of the bid had already been declined by his Superior. The submission of Mr. Tariq that the Civil Court also awarded decrees to some other bidder, which were never disturbed, as such the impugned decree was also to be honoured was again fallacious. There would be no cavil to confirm that a wrong could not be made basis to make the other wrong right. The next submission of learned counsel for the decree holders that the latters enhanced the value of the subject property from Rs.26,000/- to 4,50,000/-, as such there was no financial loss to the Committee and the learned Civil Court was justified to pass the decree in favour of legal heirs of the bidder also did not carry any weight, as admittedly, the property had been put to auction in 1974, whereas the decree was passed after 21 years in 1995 and during this period the prices might have been multiplied much more. It was not a case where only financial loss was the subject matter, rather it was transgression of powers on the part of the Administrator, who without any fear exploited his authority, which was not vested to him became a tool for the

permanent transfer of valuable property, which was not titled by him to those who were not in a position to claim any interest or right therein. If such a practice is allowed, then there will be no protection to the properties of the State or its Institutions as well as Departments.

10. This Court is neither inert nor idle to close its eyes over the wrong doings either committed with the proceedings of this Court or those working under its command. The supervisory jurisdiction provided under Article 203 of the Constitution confers the general powers upon this Court without any limits, fetters or restrictions, to supervise and control all subordinate Courts in all administrative as well as judicial matters, and also made this Court the custodian of justice within the territorial limits of its jurisdiction. In the cases where there is a total absence of jurisdiction or the manifest excess of jurisdiction, this Court will not refrain in exercising its power under Article *ibid* by remedying the error, mistake, wrong or illegality committed by a subordinate Court, whereas powers under section 12(2) of the Code, 1908 are also unlimited to strike down any proceeding, order and decree tainted with fraud, misrepresentation, collusiveness and for want of jurisdiction, hence the impugned decree being its classic example neither can be protected nor perpetuated.

11. Resultantly, this Petition is accepted, decree dated 13.02.1995 of learned Civil Court as well as order dated 13.02.1997 passed in Civil Revision No.2192 of 1996 are hereby set aside, whereas the application under section 12(2) of the Code

ibid filed by the petitioner before the Courts below and orders passed by them thereon having become redundant require no further treatment and the suit of respondents No.3(a) to 3(g) having no *locus standi* being time barred as well as not maintainable stands dismissed and its superstructure by means of sale deed executed in favour of the latter is also cancelled. The Deputy Commissioner, Jhang being custodian of the State property is directed to restore the possession of the disputed property in favour of the State and seal the premises forthwith, however, decree holders can remove their superstructures under the supervision and control of an Officer to be appointed by the Deputy Commissioner in this behalf. The Municipal Committee will be at liberty to initiate proceedings against the respondents for the recovery of mesne profit. Copy of this judgment, instantaneously be sent to the Deputy Commissioner, Jhang, for strict compliance under intimation to this Court through Deputy Registrar (J) of this Court.

(Ch. Muhammad Masood Jahangir)
Judge

Approved for reporting.

Judge

Syed Zameer