

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN.

JUDICIAL DEPARTMENT

C.R. No.409 of 2003

Juma Khan *Versus* *Ameer Sultan etc.*

J U D G M E N T.

Date of Hearing	11.1.2017.
Petitioner By	Mr. Muhammad Masood Bilal, Advocate.
Respondents by	Mr. Fayyaz Hussain Shah Hashmi, Advocate.

HABBIB ULLAH AMIR, J: Through this revision petition, petitioner has assailed judgment and decree dated 17.2.2003 passed by learned Additional District Judge, Lodhran.

2. The facts, in brief, of this case are that Juma Khan, petitioner/plaintiff instituted a suit for possession in respect to Ihata No.49 measuring 01 kanal situated at Chak No.1-4/MPR, Tehsil Dunyapur, District Lodhran against Ameer Sultan etc. respondents/defendants with the contention that petitioner/plaintiff was an effectee of Terbela Dam Project who migrated to aforesaid Chak and being an effectee took over possession of abovementioned Ihata. 15/16 years back he was challaned in criminal case and imprisoned for 25 years and in his absence, respondents illegally possessed over the said Ihata owned by petitioner and got constructed a room over there. It came to the knowledge of petitioner about this after when he was released in the case and thereafter he made a request to the respondents to vacate the disputed property which was refused and through his

suit he sought for a decree of possession and the suit was controverted by defendants/respondents through filing their written statement. On divergent pleadings of parties, learned trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to the decree of possession in respect of disputed Ihata? OPP
2. Whether the plaintiff has not come in the Court with clean hands? OPD
3. Whether the suit is not maintainable in its present form? OPD
4. Whether the defendant is entitled to special cost under section 35-A CPC? OPD
5. Whether the plaintiff has no cause of action to file this suit? OPD
6. Relief.”

3. It is worth mentioning here that previously case was decreed, however, in appeal the matter was remanded and following additional issues were framed and parties were directed to produce their respective evidence:

“1-A Whether the suit is barred by time? OPD

1-B Whether the suit property was transferred in the name of son of the defendant through mutation No.385? If so, its effect? OPD”

4. In support of his case, petitioner himself appeared as P.W.1, produced Ahmad Fiaz as PW.2 and also produced Exh.P.1 to Exh.P.3 as documentary evidence. While respondent Ameer Sultan appeared as D.W.1 and produced Bashir Ahmad and Azeem Khan as DW.2 and DW.3 and also tendered documentary evidence as Exh.D.1 and Exh.D.2. Learned trial court after

recording of evidence and hearing arguments advanced by learned counsel for both the parties, decreed the suit. Feeling aggrieved, respondents/defendants preferred an appeal which has been accepted by learned Additional District Judge, Lodhran vide judgment and decree dated 17.2.2003, hence this petition.

5. Learned counsel for petitioner contends that impugned judgment and decree passed by learned lower appellate court dated 17.2.2003 has been passed in arbitrary and summary manner, against law and facts of case; that the findings of learned Additional District Judge, Lodhran are against evidence available on record and has also fallen in serious error in adopting the view that a copy of Exh.P.2 is not a part of revenue record and cannot be relied upon; that there is overwhelming evidence available on record that Ameer Sultan, predecessor-in-interest of respondents without any valid allotment in his favour occupied the Ihata owned by the petitioner who was in possession of same since 1990 and findings of learned Additional District Judge, Lodhran are liable to be set aside.

6. On the other hand, learned counsel for respondents controverted the arguments advanced by learned counsel for petitioner on the ground that learned lower appellate court accepted the appeal and dismissed the suit after appreciating the material including evidence of the parties; that petitioner/plaintiff was not allotted the disputed Ihata and that neither date of possession over Ihata was given nor any evidence has been

produced to establish that plaintiff was lawful owner of Ihata or had ever been allotted the same by concerned quarters.

7. I have heard the learned counsel for parties and perused the file.

8. Petitioner/plaintiff in his suit has specifically claimed his possession over Ihata No.49 situated at Chak No.1-4/MPR, Tehsil Dunyapur, District Lodhran which was allotted to him being displaced person of Terbela Dam Project. However, he was sent to jail in a criminal case and imprisoned for life. After his release from jail, when he returned, it came to his knowledge that his Ihata has been encroached upon by respondents where they had also constructed a residential room. Though petitioner appeared in the witness box as PW.1 but he did not mention the date or year when Ihata in dispute was transferred to petitioner/plaintiff or its possession was handed over to him by the concerned department. Moreover, PW.2 also did not give the date or year when the disputed Ihata was allotted to petitioner. There is no denial from any corner that resettlement of displaced persons of Terbela Dam Project was promulgated on 12.8.1964 and Terbela Dam Scheme was introduced on 12.8.1964 and it was decided to allocate land in Toba Tek Singh Tehsil, District Lyallpur, Jhang, Multan, Bahawalpur, Bahawalnagar and Rahimyar Khan for effectees of Terbela Dam and in order to avoid any possible complications in transfer of the land to WAPDA following procedure was to be adopted and followed:-

“(1) Selection of land:- The resettlement organization of WAPDA will select land and will intimate their selection to the Deputy Commissioners concerned.

(2)

(3) Issues of allotment orders:- When WAPDA is satisfied about the suitability of the land and the Deputy Commissioners have given their “No Objection” to the area selected the allotment chits will be issued by the Allotment Committee of the resettlement organization to the displaced persons. These shall be produced before the Collector of the District who will pass formal orders of allotment under section 10(4) of the Colonization of Government Lands (Punjab) Act, 1912, placing the displaced persons provisionally in possession of the land.”

9. The said scheme unfolds straightforwardly that after satisfaction of WAPDA about suitability of land and issuance of “No Objection” by Deputy Commissioners concerned to the area selected, the allotment chits will be issued by the Allotment Committee of the resettlement organization to the displaced persons. These shall be produced before the Collector of the District who will pass formal orders of allotment under section 10(4) of the Colonization of Government Lands (Punjab) Act, 1912, placing the displaced persons provisionally in possession of the land and no person shall be deemed to be a tenant or to have acquired any title, right or interest in State land in absence of written order of Collector concerned and after possession has been so taken the grant would be held subject to the condition declared applicable thereto and it is now the settled law that in absence of written order of grant of allotment and proof of payment of money

to Board of Revenue or Provincial Government, no person would be deemed to have acquired any title, right or interest in State land in absence of written order of Board of Revenue/Provincial Government. To strengthen this view, reliance can be placed on the judgment reported as **“Sherri CBE (CITIZENS FOR A BETTER ENVIRONMENT) and another” v. Government of Sindh through Secretary, Land Utilization Department Board of Revenue, Karachi and others**(2009 YLR 955).

10. Exh.P.2, i.e. Field Staff Report having been produced by petitioner on record though reflects name of petitioner and same bears attestation of Deputy Director (L & L), Clearance Cell, WAPDA Ghazi Terbela but no document has been brought on record establishing or proving that he was put into possession in accordance with Section 10(4) of the Act (ibid) and that he had complied the formalities which are prerequisite for allotment of Ihata as provided by Terbela Dam Scheme vide No.586-64/3265-S(G)II), Lahore dated the 12th August, 1964. Statement of plaintiff in evidence has minutely been perused and it is observed that petitioner himself conceded that he had no proof of his allotment with him and once he has himself brought on record that he has no proof of his ownership, the whole claim of his allotment has crashed. The onus was on petitioner to prove himself the allottee in possession of Ihata in dispute but despite ample opportunity he has not produced any material in support of his claim.

11. Another aspect of this case is that petitioner has not given any specific date when as per his contention possession of

disputed Ihata was forcibly taken by respondents/defendants but he has himself admitted this fact that about 15/16 years back, defendants/respondents got possession of said Ihata and that he instituted suit after 15/16 years which is hopelessly barred by limitation and petitioner did not come to the court within time, hence finding of learned Additional District Judge on issue No.1-A is also in accordance with law and in view of above discussion, this court feels no hesitation to hold that nothing has been pointed out to establish that learned Additional District Judge, Lodhran had exercised jurisdiction not vested in him by law or acted in exercise of jurisdiction illegally and with material irregularity. Moreover, no illegality or infirmity has been pointed out or found in the impugned judgment of the learned lower appellate court, thus this revision petition is **dismissed** being devoid of merits.

(HABIB ULLAH AMIR)
JUDGE

Approved for reporting

JUDGE

