

Judgment Sheet
**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,
RAWALPINDI**

JUDICIAL DEPARTMENT

Writ Petition No. 244 of 2012

**Gulzada Khan and others Vs. Tehsil Municipal
Administration etc.**

JUDGMENT

Date of Hearing:	02.05.2017.
Petitioners By:	Mr. Samad Mahmood, Advocate.
Respondents No.1 & 2 By:	Raja Muhammad Farooq Raza, Advocate and Mr. Nadeem Akhtar Bhatti, Assistant Advocate General Punjab.

MIRZA VIQAS RAUF, J.- This single judgment shall decide the instant petition as well as Civil Revision No. 371-D of 2016 as there is complete commonality and similarity in questions of fact and law involved in both these petitions. The subject matter in both these petitions is the property No. B-VII-2-S/8 bearing Khasra No. 191 situated in Bano Bazar Jhelum which is under the occupancy of the petitioners as well as respondents No. 3 to 15 in the shape of various shops.

2. It is the claim of the petitioners that the property in question was an evacuee property which was initially owned by Rajindar Singh. Initially while treating the property in question as an evacuee property forming part

of the compensation pool under section 4 of the Displaced Persons Compensation and Rehabilitation Act, 1958, it was included in the auction list in the year, 1972. The respondent Department which was initially a Municipal Committee though applied for the transfer of ownership of this property but failed. Consequently, the petitioners were found entitled for the transfer of the property in question by the Deputy Rehabilitation Commissioner vide order dated 17.06.1974 which followed the issuance of permanent transfer deeds of respective shops in favour of the petitioners and respondents No. 3 to 15. Though an appeal was filed by the Department but the same was dismissed vide order dated 04.12.1975. In the meanwhile, evacuee laws were repealed by virtue of The Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 (Act. XIV of 1975) w.e.f. 01.07.1974 and the matter became past and closed transaction. The Board of Revenue Punjab on the representation of the then Municipal Committee remanded the matter to the concerned authority for its fresh determination and resultantly, vide order dated 01.01.1986, permanent transfer deeds were declared void and the property in question as well as other properties were declared as evacuee. In the meanwhile Municipal Committee Jhelum issued notices to the occupants for vacation of property in question. The petitioners feeling aggrieved of the notices issued by the respondent department instituted a suit before the Civil Court which was ended in a compromise vide order dated 02.02.1983. In the year 1994, the respondent department issued notice to the petitioners for the payment of rent, which were assailed by the petitioners by way of various writ petitions, however, same were dismissed vide order dated 22.10.1998. The petitioners assailed the said

order by way of Civil Petitions No. 77 to 106 of 1999 before the Hon'ble Apex Court, however, same were withdrawn to approach any other forum if available under the law for redressal of their grievance. The petitioners as well as other occupants of the respective properties again approached this Court by filing number of constitutional petitions including W.P.No. 1872/1999, however, all these petitions were dismissed vide judgment dated 12.03.2002. The petitioners though filed Civil Petition No.407 of 2004 before the Hon'ble Supreme Court of Pakistan against the said order but the same was dismissed as withdrawn with the observations that the petitioners may avail alternate remedy, if available to them.

3. With this background, the petitioners and respondents No. 3 to 15 instituted a suit for declaration, permanent and mandatory injunction with the prayer that they are lawful owner in possession of the respective units of building site bearing No. B.VII-2-S/8 and the purported compromise dated 02.02.1983 is of no legal consequence, ineffective and is nullity in the eyes of law. It is note worthy that connected Civil Revision No. 371-D/2016 arises out of the said suit. The petitioners simultaneously, filed the instant constitutional petition with almost same prayer and on the basis of same facts.

4. Learned counsel for the petitioners submitted that the property in question was an evacuee property owned by Rajinder Singh and while treating the same as such it was transferred to the petitioners under the provision of the Displaced Persons Compensation and Rehabilitation Act, 1958 by way of order dated 17.06.1974. It is added that the respondent department has no right to claim the ownership and the property in question

was wrongly treated as part of the properties, which were declared as non-evacuee by way of the order dated 01.01.1986. Learned counsel for the petitioners contended that the respondents are adamant to deprive the petitioners from their lawful property under the garb of purported compromise which was outcome of coercion and undue influence.

5. Conversely, learned Legal Advisor for the respondent Department, while refuting the contentions raised by his adversary submitted that this petition is not maintainable and it is clearly hit by the principle of res-judicata. Learned Legal Advisor maintained that the matter in issue has already been dealt with and decided by this Court in the previous round which cannot be reopened. It is emphatically argued that the petitioners are lingering on their possession, which is illegal and unlawful. Learned Assistant Advocate General Punjab while adding to the submissions of learned Legal Advisor submitted that the petitioners are playing hoodwink with the process of the court and the instant petition is frivolous one and not maintainable at all.

6. After having heard the respective contentions of both sides at considerable length, I have also perused the record.

7. As already observed that the matter in issue pertains to the property No.B-VII-2-S/8 situated in Khasra No. 191 Bano Bazar, Jhelum. It is the claim of the petitioners that being an evacuee property, it was transferred in their names vide order dated 17.06.1974 passed by the Deputy Rehabilitation Commissioner which followed the issuance of permanent transfer deeds in their favour. The main thrust of the argument raised by the learned counsel for the petitioners is that the order dated 01.01.1986

whereby certain other properties were declared as non evacuee does not correspond to the property in question. While pondering upon this aspect, it is observed that in the previous round the petitioners filed Writ Petition No. 1872 of 1999 questioning the vires of order dated 01.01.1986 passed by the Additional Deputy Commissioner/Deputy Administrator(Residual Property), Jhelum which came up for hearing before this Court alongwith connected petitions. All these petitions were dismissed vide judgment dated 12.03.2002. Record is indicative of the fact that the petitioners assailed the said judgment before the Hon'ble Apex Court through Civil Petition No. 407 of 2004 which was dismissed as withdrawn vide order dated 26.01.2006.

The same is reproduced below:-

“Learned counsel for the petitioners wants to withdraw this petition which is allowed. The petition is dismissed as withdrawn. However, the petitioners may seek alternate remedy if available to them under the law.”

The petitioners alongwith respondents No. 3 to 15 then instituted a suit for declaration, permanent and mandatory injunction which is now subject matter of Civil Revision No. 371-D of 2016. Before adverting to the competency of the said Civil Revision, it would be apposite to first lay at rest the controversy involved in the constitutional petition.

8. Perusal of record leaves no second thought that the matter in issue agitated in the instant constitutional petition has already been canvassed with all vehemence through Writ Petition No. 1872 of 1999 which was dismissed by way of judgment dated 12.03.2002 after considering all these aspects. For sake of convenience, relevant portion of the judgment is reproduced below:-

“I have gone through the impugned order and documents attached with these petitions. Admittedly, the petitions have been filed after more than 8 years and badly suffer from laches. It is inconceivable that the order dated 1.1.1986 passed by the Deputy Administrator (Residual Property) was kept hidden for more than eight years. There is nothing on record to show that the property in question was treated as evacuee property by the competent authority before 1.1.1997 i.e. the target date under the Pakistan Administration of Evacuee Property Act, 1997. The remand order dated 30.1.1984 by which the case was remanded for demarcation to see whether the property was owned by the Municipal Committee was evacuee property was not challenged and attained finality. The demarcation report clearly shows that the property falls in Khasra Number owned by the Municipal Committee. Even otherwise the demarcation being a question fact cannot be challenged in the constitutional jurisdiction. The petitioners entered into an agreement with the Municipal Committee accepting the Municipal Committee as owner of property and their landlord. On the basis of the agreements reaches between the petitioners and the Municipal Committee the civil suits were disposed of. The petitioners cannot be allowed to turn around and challenge the same. The contention of the petitioners that the agreement was entered into under duress is not acceptable. There is no evidence on record to this effect. Even otherwise, it is a question of fact which cannot be gone into for the annulment of the agreement.”

An over view of above referred portion leads me to an irresistible conclusion that instant constitutional petition is nothing but an effort for revival of cause which has already been buried by way of judgment passed in Writ Petition No. 1872 of 1999 and even the same has attained finality on account of withdrawal of Civil Petition No. 407 of 2004 vide order dated

26.01.2006. This petition is thus, not only misconceived but fallacious on all counts.

9. Now advertent to Civil Revision No. 371-D of 2016, it is observed that the suit which is subject matter of the revision petition was surely instituted after withdrawal of Civil Petition No. 407 of 2004 on the basis of observation recorded therein. Law is well settled that mere recording of some observation while deciding a lis with regard to resort of some alternate remedy is not sufficient enough to equip any party with a right to institute any proceedings, which are otherwise not warranted by law. Even otherwise, order dated 26.01.2006 is very clear in its terms and it was clearly observed by the Hon'ble Supreme Court of Pakistan that the petitioners may seek alternate remedy, if available to them under the law. Guidance in this respect, if needed, can be sought from the case of **Evacuee Trust Property Board and others vs. Mst. Sakina Bibi and others** (2007 SCMR 262). The relevant portion is reproduced below:-

“As the courts below had wrongly assumed the jurisdiction in spite of the exclusive bar contained under the provisions of the special laws, therefore, orders and judgments of the Courts below are without lawful authority or void. It is a settled law that no limitation runs against the void orders. In this view of the matter we condone the delay of one day. It is also a settled maxim that pure question of law can be raised at any stage of the proceedings as the law laid down by this Court in Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690, Almas Ahmad Faiz's case 2006 SCMR 783. It is also a settled law that pleadings of the parties do not control or govern application of proper

law to establish or prove against as law laid down by this Court in Abdul Sattar's case NLR 1992 SC Judgment 279. The learned counsel by the respondents in the first two appeals have given lot of emphasis that civil suit was competent in view of observation of this Court. Mere reading the observation of this Court in order dated 1-5-1964 reproduced in para. 2 hereinabove clearly shows that this Court did not debar the appellants from recourse to the civil Court. This does not mean that permission was granted by this Court in violation of exclusive bar contained under a special law. It is the duty of the civil Court to decide the matter in accordance with the law in view of Article 4 of the Constitution as law laid down by this Court in Utility Stores Corporation's case PLD 1987 SC 447. The other submission of learned counsel for the respondents in the first two appeals that question of jurisdiction was finally decided by the trial Court vide order, dated 8-5-1979 and the appellants had not challenged the same before any higher forum, therefore, order, dated 8-5-1979 had attained finality. It is pertinent to mention here that respondents had not attacked order of rejection of objection raised by the appellants qua the jurisdiction of the civil Court as evident from order, dated 8-5-1979 which clearly shows that objection was repelled by a separate order. The said order was not available even in the record of the lower Court, therefore, principle of res judicata is not attracted as law laid down by this Court in Muhammad Sadiq's case 1978 SCMR 130. Appellants filed written statement before the trial Court on 3-3-1984 raising preliminary objection that the jurisdiction of the civil Court was barred by law. Amended plaint was filed by the respondents on 9-12-2000. Written statement was also filed by the appellants

by raising preliminary objections that the jurisdiction of this Honorable Court is barred by section 14 of Ordinance No. XVI of 1974 and that the plaintiff has remedy available to him under sections 16 and 17 of Ordinance by way of an appeal before the Administrator and revision before the Chairman. Appellants in Civil Appeal No.2038 of 2001 filed application under Order VII, rule 11 of C.P.C. that suit was liable to be dismissed on the well known principle of res judicata. The respondents had not filed any rejoinder before the trial court that the issue of bar of jurisdiction was finally decided by the trial court on 8-5-1979. The aforesaid facts clearly show that no final order was passed against the appellants on the question of jurisdiction in view of bar exclusively by a special law. Even otherwise in the facts and circumstances of this case we are not convinced that order dated 8-5-1979 had attained finality in any canon of justice.”

10. The above observations would make the proposition simple with regard to the competency of the suit instituted by the petitioners before the Civil Court. While examining the prayer clause (a) of the suit, it becomes crystal clear that the petitioners have sought a declaration of their title while questioning the validity of compromise dated 2.2.1983 recorded before the Civil Court in the first round of litigation between the parties. In order to properly appreciate this aspect, it is observed that on issuance of a notice by the then Municipal Committee, the suit was instituted by the tenant namely Noor Elahi predecessor-in-interest of the petitioners before the Civil Court on 21.1.1983 which was decided on the basis of compromise on 2.2.1983

with the following observations:-

”نبروئے بیانات فریقین و تحریری راضی نامہ Ex-A.1 دعویٰ ہذا ڈگری بصورت راضی نامہ بمطابق شرائط مندرجہ Ex-A-1 کیا جاتا ہے مدعی کے حق میں جاری شدہ P.T.6 و ڈگری ہائے عدالت دیوانی یا دیگر متعلقہ جائیداد متدعو یہ منسوخ ٹھہرتی ہیں اور مابین فریقین رشتہ کرایہ داری قائم از ابتدائی کرایہ داری مابین فریقین ٹھہرتا ہے مثل بعد ترتیب و تکمیل داخل دفتر ہوئے۔“
سنایا گیا“

11. It is an admitted fact that in the previous round the petitioners questioned the propriety of the said order in Writ Petition No. 1872/1999 which was dismissed vide judgment dated 01.03.2002. On institution of fresh suit by the petitioners, respondents No.1 & 2 resisted the suit before the Civil Court by filing their written statement. An application under Order VII Rule 11 of The Code of Civil Procedure, 1908 was also moved by the respondent Department seeking rejection of plaint. The petitioners though contested the application but the same was accepted vide judgment and decree dated 17.12.2012 and plaint was rejected. The petitioners then assailed the said judgment and decree by way of an appeal before the learned Additional District Judge, Jhelum but appeal was also dismissed vide impugned judgment and decree dated 17.02.2015.

12. After having critical analysis of all the above referred facts, I am of the considered view that the suit instituted by the petitioners challenging the compromise dated 02.02.1983 was not maintainable on the principle of constructive res-judicata as embodied in Explanation IV of section 11 of C.P.C. Looking from another angle, the petitioners have questioned the

validity of compromise recorded before the court on the basis of undue influence and coercion. Needless to observe that on effecting of compromise, the court, seized with the matter, after recording the statement to this effect disposed of the suit vide order dated 02.02.1983 on the basis thereof. The suit in hand was thus, not proceedable in view of bar contained in section 12(2) of The Code of Civil Procedure, 1908 because after the insertion of sub section (2) in section 12 of the Code *ibid* by way of Ordinance X of 1980, a person challenging the validity of judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction can only seek his remedy by making an application to the court which passed the final judgment, decree or order and not by a separate suit.

13. The jurisdiction exercised by the courts below resulting into rejection of plaint is completely in accordance with law and there is neither any illegality nor material irregularity in the judgments under assailance. The petitioners are occupying the property in question since long and despite admitting the ownership of the respondent department in view of compromise Ex.P.1 on the basis of which order dated 2.2.1983 was passed, they have resorted all possible means to prolong their illegal occupation on the property in question. The petitioners have undoubtedly not only thwart the process of law but played a hoodwink with the process of court as well. The petitions in hand are fallacious by virtue of which the petitioners have been able to prolong their illegal possession upon the property in question without any legal justification.

14. As a result thereof, both these petitions are dismissed with costs of Rs. 50,000/- each which shall be deposited by the petitioners with the Deputy

Registrar (Judl.) of this Court within a fortnight and in case of failure, the same shall be recovered from them as arrears of land revenue.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

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JUDGE