

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

W.P. No.4816/2011

Ali Khan, etc  
**Versus**  
Mohammad Khan, etc

**JUDGMENT**

Date of hearing 16.02.2017

Petitioners by: Malik Saleem Iqbal Awan, Advocate.

Respondents by: Mr. Ameer Abdullah Khan Niazi,

**CH. MUHAMMAD MASOOD JAHANGIR, J:-** Admittedly, property measuring 65-kanals 09-marlas falling in Khewat No.644/612, Khatooni Nos.2192 to 2194, Khasra Nos.4694, 4943/4693/1, 4944/4693/2 and 4691 situated in Mouza Chakrala, Tehsil & District Mianwali was joint among the parties and for its partition respondents made an application under Section 135 of the West Pakistan Land Revenue Act, 1967 before the concerned Revenue Officer, who during its proceedings got prepared 'Naqsha Alaf' from the Patwari, which is available at page 57 of the file, wherein, petitioner No.1 was shown to be owner of property measuring 28-kanals 13-marlas, petitioner No.2 of 16-kanals 07-marlas and respondents of 16-kanals 07-marlas, whereas, rest of its part was falling underneath a road passing nearby as well as a graveyard. As per Aks Shajra Kishtwar subject property had a front of 30-karams facing to the

mettled road and the Revenue Officer while initiating ex parte proceedings against the petitioners, awarded 28-karams on the front to the respondents in their wanda, whereas rest of the part of common property having a front of only 2-karams was given to the petitioners through order dated 31.07.1991. The said ex-parte order was assailed by the petitioners before the higher forums but through impugned orders dated 28.02.2005, 15.04.2009 and 19.03.2010, the basic order was concurrently maintained, hence the instant constitutional petition.

2. Today, Malik Saleem Iqbal Awan, Advocate, learned counsel for the petitioners, at the very outset of his arguments, has submitted that almost entire valuable front of the holding available on the mettled road was given to the respondents, which neither was fair nor equitable and to strengthen his aphorism, he offered that the petitioners were ready to surrender property measuring 22 kanals of land from their wanda awarded to them through the impugned orders in rear part of the holding to the respondents against their entitlement of 16 kanals 07 marlas, who were accommodated on the road side, if in lieu thereof the respondents surrender their wanda to the petitioners, but the offer was not accepted by respondents, out of whom one in person was also present alongwith his learned counsel. Mr. Ameer Abdullah Khan, learned counsel for respondents, in response, has tried to argue on technical aspects of the case, but he could not deny that almost entire property facing towards the

mettled road was given to respondents, he stressed that petitioners having been proceeded against ex parte, there was no one to oppose the request of respondents before the revenue officer, who was perfect to pass the basic order, is not tenable. Even after initiating ex parte proceedings, the court being custodian of rights of litigants was required to dispense with justice while keeping in mind their entitlement, but Revenue Officer omitted to act fairly and justly. The other higher forums also acted arbitrarily while tackling the issue under discussion in mechanical manners. The tribunal/ authority delegated with the powers to decide the personal rights of the parties or the rights attached to their properties are required to decide the same judiciously on its merit under the mandate of law. The perusal of impugned orders reveals that those were passed in contravention of norms of justice. The District Collector while declining the first appeal of the petitioners concluded as under:-

"بحث کونسل فریقین سماعت ہوئی۔ ریکارڈ عدالت ماتحت ملاحظہ کیا گیا۔ ابتدائی درخواست تقسیم مورخہ 03-07-1998 کو گزاری گئی۔ عدالت ماتحت نے علی خان مسؤل علیہ نمبر 1 (اپیلانٹ) و دیگر مسؤل علیہم کو طلب کرنے کے لیے نوٹس طلبی پیشی مورخہ 15-09-1988 کے لیے جاری کیا۔ جس پر امیر خان پسر علی خان کانگوٹھا مثبت شدہ ہے۔ پیشی مورخہ 27-07-1991 کے لیے نوٹس پر عطاء محمد نائب قاصد تعمیل کنندہ بموجودگی محمد خان پتی دار کی رپورٹ کے مطابق علی خان نے تعمیل کرنے سے انکار کیا۔ علی خان اپیلانٹ نے مورخہ 15-09-1988 کو جواب درخواست عدالت ماتحت میں داخل کرائی۔ جس میں اس نے کارروائی تقسیم پر کوئی اعتراض نہ کیا ہے۔ جس سے ظاہر ہے کہ اپیلانٹ کو کارروائی تقسیم کا علم تھا اور وہ جان بوجھ کر حاضر نہ ہوا۔ کارروائی تقسیم مکمل ہو چکی ہے۔ انتقال تقسیم درج ہو کر منظور کیا جا چکا ہے۔ اندرین حالات و واقعات اپیل ہذا خارج کی جاتی ہے۔"

Despite the fact that petitioners assailed it while preferring a review application before the same authority but he again decided it in arbitrary manner without considering the grounds urged in the review petition through order dated 24-02-2009 which reads as under:-

"مثل ہذا آج پیش ہوئی۔ درخواست گزار حاضر۔ محمد خان مسنول علیہ حاضر۔ بحث درخواست گزار و کونسل مسنول علیہم و ملاحظہ ریکارڈ سے پایا گیا ہے کہ سائل کے والد علی خان نے اپیل دائر کی۔ بعد سماعت کونسل فریقین مورخہ 28-2-05 کو اپیل خارج ہوئی۔ سائل کو اس حکم کے خلاف مجاز عدالت میں اپیل دائر کرنی چاہیے تھی۔ درخواست ہذا پر کوئی کارروائی نہ کی جاسکتی ہے۔ لہذا درخواست خارج کی جاتی ہے۔"

Whereas, in the same manner, the Executive District Officer (Revenue) through order dated 15.04.2009 disallowed the revision of the petitioners in same manner while observing as follows:-

*"I have heard the arguments and perused the impugned order which revealed that said review petition was filed before the District Officer (Revenue) Mianwali against order dated 28.02.2005 of his predecessor whereby he held that during passing order dated 28.02.2005, the then District Officer (Revenue) had heard both the parties and rejected the appeal, therefore, there is no reason to review order dated 28.02.2005 of the then District Officer (Revenue) Mianwali. After giving careful consideration to the facts of the case, I am of the view that to review or confirming on review of previous order, no appeal or revision can lie, therefore, petitioners are directed to seek their remedy from competent court of law."*

The apex revenue hierarchy/respondent No.22 also followed the same pattern in his impugned order dated 19.03.2010, which reads as under:-

*"I have heard the learned counsel for the parties and perused the record carefully. The order of partition has since been implemented in the revenue record through*

*mutation No.1457 sanctioned on 30.03.1995 and parties have since occupied their 'Wandas' on the spot but paper fight is going on. The counsel for the petitioners could not be able to point out any infirmity or legal flaw in the impugned orders of the lower courts which are hereby upheld and the revision petition, being devoid of any force, is dismissed accordingly."*

After going through the orders under challenge there left nothing, but to observe that merits of the case were not dealt with by any of the authorities, rather the petitioners were mainly non-suited on the ground that partition proceedings had already been implemented in the record of rights through attestation of mutation, but none of them paid any heed to observe how the respondents being the owners of lessor part of the common holding were given almost entire frontal part thereof and why the petitioners being major partners were forced to get their Wanda in the hindmost part of the holding, who were bound to consider the category, value, location and potential of the property while partitioning it, which was the most important factor to be followed while conducting said proceedings.

5. Section 164 of the West Pakistan Land Revenue Act, 1967 gives unfettered powers to Board of Revenue, Commissioner and Collector to call for the record of any case pending before or even disposed of by any subordinate Revenue Officer and in any such case, if record thereof has been called for, Board of Revenue as well as the Commissioner can pass such order as they deem fit. Proviso of Section 164 *ibid* further elaborates that interference in revision can also be made in any proceedings or

order of the subordinate Revenue authority, which makes it clear that revisional jurisdiction of the relevant authorities can be invoked in any case pending before a subordinate Revenue Officer or disposed of by him and it is also attributed to any proceedings or order of any subordinate Officer. The revisional jurisdiction conferred upon the Board of Revenue is not subject to restrictions rather the same is very vast and the main object of the provision under discussion is to curtail miscarriage of justice and the apex revenue hierarchy can interfere with the orders of the subordinate authorities even if implemented or acted upon by any of the parties, but I am surprised that respondent No.22 without commenting upon the merits of the case or without considering legality and propriety of the orders assailed before it erred in law while upholding the same in mechanical manner, which practice neither can be protected nor perpetuated. The impugned orders rendered by the revenue hierarchy are short of reasoning, which have been passed without application of judicious mind and ignoring category, potential, value, location and compactness of the property while its distribution.

6. Resultantly, the instant writ petition is accepted, impugned orders passed by the revenue hierarchy being lacking of lawful authority and having no legal effect are hereby set aside and the application for partition of joint holding will be deemed to be pending before the Revenue Officer concerned, who will re-decide the same fairly and justly after considering

the principles to be followed for partition as well as value, category, location of property and entitlement of each party. The parties are directed to appear before concerned Revenue Officer on 13.03.2017 for further proceedings.

**(CH. MUHAMMAD MASOOD JAHANGIR)**  
**JUDGE**

Approved for reporting.

**JUDGE**

**\*A.H.Qamar\***