

Stereo. HCJDA 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P.No.2411-R of 2017 .

Sui Northern Officers Cooperative Housing Society Ltd.

Vs.

Member (Judicial-V) Board of Revenue Punjab etc.

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JUDGMENT

Date of Hearing:	13.02.2017.
Petitioner by:	M/s.Tauqeer A. Munir, Mian Muhammad Mohsin and Ghazanfar Ali Syed, Advocates.
Respondents by:	Mr.Muhammad Sohail Dar, Advocate.

CH. MUHAMMAD IQBAL, J:- Through this constitutional petition, the petitioner challenges order dated 19.01.2015 passed by the Member (Judicial-V) Board of Revenue/Administrator (Residual Properties)/Notified Officer, Punjab whereby the allotment order dated 22.08.1996 in favour of Mst.Riaz Fatima and Mst.Mukhtar Fatima was recalled.

2. Brief facts of the case are that Mst.Riaz Fatima and her sister Mst.Mukhtar Fatima migrated to Pakistan in the year 1947. They filed their rural claim in the year 1957 but due to some error in the measurement of land the claim of the said ladies was verified by the claim officer after correcting the clerical mistake vide order dated 01.08.1958 and verified the claim of allottees to 80 Bhigas instead of 18 Bhigas. After getting the certified copies

of verification order, the said ladies filed application on 25.04.1961 to the Central Record Office for issuance of their entitlement certificate. They also filed a constitutional petition bearing W.P.No.275-R of 1970 before this Court, in which vide order dated 30.09.1975 (announced on 01.10.1975) a direction was issued to the Chief Settlement Commissioner to entertain the application of the respondents for entitlement certificate and deal with it on merits in accordance with law. The entitlement certificate for 2592 units was issued by the Central Record Office and it was sent to the then Deputy Commission, Bhakkar vide order dated 18.01.1994 for allotment. The Deputy Commissioner, Bhakkar refused to make allotment on the ground of repeal of Settlement Laws. This Court on a constitutional petition (W.P.No.123-R 1994) filed by Mst. Riaz Fatima vide order dated 23.10.1995 set aside order dated 18.01.1994 passed by the then Deputy Commissioner, Bhakkar and remanded the case to the Chief Settlement Commissioner/Member Board of Revenue to consider the case of the Mst.Riaz Fatima for allotment of land subject to eligibility and genuineness of the claim within two months. The case was then referred to A.C/Deputy Settlement Commissioner (Land), Gujrat but due to non-availability of the evacuee agricultural land, no allotment was made in the District Gujrat. Then the case was

entrusted to Secretary Revenue/ Settlement Commissioner (Lands)/Notified Officer, Punjab for allotment of agricultural land, who vide order dated 22.08.1996 allotted and confirmed 1184 PIUs in favour of Mst.Riaz Fatima etc. A copy of the order was sent to Additional Deputy Commissioner (General), Lahore City, Lahore for implementation and incorporating the names of Mst.Riaz Fatima and Mst.Mukhtar Fatima (allottees) in the revenue record. On the basis of order dated 22.08.1996, Mst.Riaz Fatima and Mst.Mukhtar Fatima succeeded to get allotted land measuring 200 Kanals 2 Marlas in village Bhaman and 171 Kanals 7 Marlas in village Asal Lakhawal Tehsil City District Lahore on the basis of allegedly a forged general attorney. Mst. Riaz Fatima filed W.P.No.7-R of 2005 before this Court praying that the objections raised by the revenue authorities of Lahore district on mutation No.1757 entered by Patwari on 24.04.2003 may be rejected and the allotment of land measuring 200 Kanals 2 Marlas made by Notified Officer vide order dated 22.08.1996 may kindly be got implemented in the revenue record. The said writ petition was disposed of by this Court vide order dated 11.04.2007 with the direction to the Chief Settlement Commissioner to personally look into the matter as to validity of the aforesaid order by affording full opportunity of hearing to the petitioner either

himself or by any subordinate officer and decide the matter expeditiously in accordance with law. Mrs.Rehan Safdar wife of S.M. Safdar Ziadi daughter of Mst.Riaz Fatima filed W.P.No.37-R of 2013 for implementation of order dated 11.04.2007 passed in W.P.No.07-R of 2005. The said petition was disposed of vide order dated 21.02.2014 with the direction to the respondent to implement the order dated 11.04.2007 within a period of one month after hearing all the concerned. In compliance of the directions passed in W.P.No.7-R of 2005 and W.P.No.37-R of 2013, the Member (Judicia-V) Board of Revenue/Chief Settlement Commissioner/Administrator (Residual Properties/Notified Officer, Punjab after hearing all the parties recalled order of allotment dated 22.08.1996 passed by the Settlement Commissioner / Notified Officer being void ab-initio, passed without jurisdiction vide its order dated 19.01.2015, hence this writ petition.

3. The learned counsel for the petitioner submits that in the year 2005 the petitioner purchased two chunks of land from two different vendors (respondents No.2 and 3), details whereof is as under:-

- i) Land measuring 36 Kanals 17 Marlas falling under old Khewat No.147/357, new Khewat No.148/365, Khatoni No.357, Khasra Numbers 199/(6-0-0), 200/3-0-0), 201/(8-0-0), 202/(8-0-0), 203/(8-0-0), 204/(8-0-0), 205/(8-0-0), 206/(8-0-0), 207/(8-0-0),

208/(8-0-0), 219/(4-0-0) 11-Qitas, 1/2 of the total area of land measuring 73 Kanals and 14 Marlas, equal to 36 Kanals and 17 Marlas vide Register Haq Daran of 1997-98, situated in Had-Bast Mouza "Asal Lakho-wal" tehsil and district Lahore, vide sale mutation No.1400, register Dakhil Kharij, sanctioned under the seal and signature of respondent No.5 dated 21.09.2005, registered vide sale deed /Dastawaiz No.24424, Bahi No.1, Jild No.1545, registered with the office of sub-registrar Nishtar Town Lahore, on 15.09.2005, against a consideration of Rs.2,75,38,125/-. The sale mutation in the name of the vendor exists as Mutation No.1272, vide Halqa Patwari Rapat No.148 dated 04.08.2005.

- ii) The second area of land measuring 36 Kanals and 17 Marlas falling under Khewat No.147, Khatoni No.357 Khasra Numbers 199/(6-0-0), 200/(3-0-0), 201/(8-0-0), 202/(8-0-0), 203/(8-0-0), 204/(8-0-0), 205/(8-0-0), 206/(8-0-0), 207/(8-0-0), 208/(7-14-0), 219/(4-0-0) 11-Qitas, 1/2 of the total area of land measuring 73 Kanals and 14 Marlas equal to 36 Kanals and 17 Marlas vide Register Haq Daran of 1997-98, situated in Had-Bast Mouza "Asal Lakho-wal" tehsil and district Lahore vide sale mutation No.1272, register Dakhil Kharij sanctioned under the seal and signature of respondent No.5 dated 22.06.2004 registered vide sale deed/ Dastawaiz No.26063, Bahi No.1 Jild No.1578, registered with the office of sub-registrar Nishtar Town Lahore on 13.10.2005 against a consideration of Rs.2,75,38,125/-.

And the possession of 73-Kanals 14-Marlas land was handed over to the petitioner. Tabulated Revenue Data of subject property as given in para 1 of the petition is as under:-

TABULATED REVENUE DATA OF SUBJECT PROPERTY.

Acquired by petitioner from Dr. Muhammad Arshad and Shahid Hameed Khawaja.

S.No.	Old Khewat No.	New Khewat No.	Old Khasra No.	New Khasra No.	Mutation No.
1	<u>147</u> <u>357</u>	<u>148</u> <u>365</u>	6-0-199	6-0-203	<u>1400</u> <u>1416</u>
2	Do	Do	3-0-200	3-0-204	Do
3	Do	Do	8-0-201	8-0-205	Do
4	Do	Do	8-0-202	8-0-206	Do
5	Do	Do	8-0-203	8-0-207	Do
6	Do	Do	8-0-204	8-0-208	Do
7	Do	Do	8-0-205	8-0-209	Do
8	Do	Do	8-0-206	8-0-210	Do
9	Do	Do	5-0-207	5-0-211	Do

10	Do	Do	7-14-208	7-14-212	DO
11	Do	Do	4-0-219	4-0-223	Do
Total area of land: 73 Kanals and 14 Marlas					

The learned counsel submits that after purchasing the same, the petitioner society got approved a housing scheme from LDA and sold out/transferred different plot to its members. Land measuring 73 Kanals 14 Marlas purchased by the petitioner is a part of total land measuring 171 Kanals 14 Marlas allotted to Mst. Riaz Fatima daughter of Syed Zaigham Hussain in Mouza Asal Lakhawal Tehsil and District Lahore. He submits that the Chief Settlement Commissioner without lawful authority cancelled the allotment in favour of Mst. Riaz Fatima and Mst. Mukhtar Fatima including the land purchased by the petitioner. He submits that the allotment of land was made to the original allottees on 22.08.1996 and the Member Board of Revenue was not authorized to cancel the same after the lapse of 18 years 4 months 28 days through the impugned order dated 19.01.2015, as such, the impugned order is not sustainable in the eye of law, therefore, the same may be set aside.

4. The learned counsel appearing on behalf of the respondents submits that the original order of allotment order dated 22.08.1996 was fake, fictitious, fraudulent and got prepared with malafide intention just to usurp the state property; that the claim of the

original allottees was for rural land as such urban land could not have been allotted to them and that too in Lahore City which was declared as building site, as such so-called allotment order is not sustainable in the eye of law. He further submits that the petitioner purchased the suit land during the pendency of writ petitions and principle of lis pendens is fully applicable upon the case of the petitioner. Further submits that the impugned order was passed on 19.01.2015 whereas the instant writ petition is filed by the petitioner on 25.01.2017 i.e. after the lapse of 2 years and 6 days, as such principle of laches is also attracted; that the original allottee did not challenge aforementioned cancellation order till to date; that the allottees Mst. Riaz Fatima and Mukhtar Fatima themselves admitted that the alleged allotment was obtained on the basis of forged general power of attorney and agreement to sell, as such the Notified Officer/Administrator (Residual Properties)/Member (Judicial-V) Board of Revenue Punjab rightly recalled fictitious and fraudulent allotment order dated 22.08.1996, which was never passed by a competent authority and has committed no illegality.

5. Heard. Record perused.

6. From the perusal of the record, it reveals that Mst.Mukhtar Fatima and Mst. Riaz Fatima filed writ petition No.275-R of 1970

praying for issuance of entitlement certificate qua their QPR form of claim for rural land. In para 4 of the said writ petition, it has been stated that they filed application for “entitlement certificate” with the O.S.D. Central Record Room, Lahore under the provisions of para4-A Chapter I Part II of the Supplementary Rural Scheme to the West Pakistan Rehabilitation Settlement Scheme. In para No.4 of W.P.No.123-R of 1994 filed by Mst. Riaz Fatima, it was admitted that the claim was verified against agricultural land. As such it is proved on record that the claim of the original allottees was against only the agricultural/rural land. But, as against the claim of rural land, the urban land of city Lahore was got allotted by Mst.Riaz Fatima and Mst. Mukhtar Fatima beyond the eligibility and entitlement whereas the properties in the District Lahore have been declared as building site in 1973 which are immuned / excluded from allotment against any kind of claims. The Hon’ble Supreme court of Pakistan in cases reported as Muhammad Ramzan and others Vs. Member (Rev.) /CSS and others (1997 SCMR 1635) and Ali Muhammad through Legal Heirs and others Vs. Chief Settlement Commissioner and others (2001 SCMR 1822) has observed that under notification dated 16.05.1973, the competent authority declared the evacuee properties as “building sites” and it cannot be allotted against rural claims and it can only be disposed of

Under The Scheme For Management And Disposal Of Available Urban Land, 1977.

Undoubtedly the impugned allotment order was procured in the year 1996 on the basis of fraud which has rightly been declared to be without lawful authority by the notified officer vide order dated 19.01.2015, as the land allocated in urban area having been declared as building sites which was not available for transfer against unsatisfied Produce Units (PIU). Reliance is placed on Ali Muhammad's case ibid (2001 SCMR 1822), Syed Ansar Raza Zaidi and others Vs. Chief Settlement Commissioner and others (2007 SCMR 910) and American International School System Vs. Mian Muhammad Ramzan and others (2015 SCMR 1449).

The Hon'ble Supreme Court of Pakistan in Muhammad Ramzan's case ibid also held that the Chief Settlement Commissioner was competent to convert agricultural land into "building site" and consequently notification dated 16.05.1973 was valid. Therefore, on the issuance of the said notification every agricultural land, which had not been adjusted, allotted or utilized till then against verified claims ceased to be available for transfer. Additionally, Evacuee Property and Displaced Persons Laws (Repealed) Act, 1975, became effective from the first day of July, 1974. Hence the status of evacuee property as existing on such date could not be changed or converted subsequent to

promulgation of said enactment. The authority for disposal of the property or residual work was merely to be restricted to finalize rehabilitation process. The claimants with unsatisfied entitlement could resort to any other remedy if available under the law, but were not entitled to obtain allotment of urban land in satisfaction of pending units as alternate land/measure or otherwise. Notified officer had no jurisdiction to allot, or transfer the land or grant alternate land against unadjusted verified units.

7. Petitioner's claim for allotment or adjustment of PIU remained under consideration of the Deputy Commissioner, Bhakkar who vide letter dated 18.01.1994 stated that since Settlement Laws have been repealed in 1975 and the claimants filed applications for receiving cash compensation in accordance with the policy of the government dated 30.04.1977, the office of D.C.Bhakkar cannot proceed further in the matter and observed that the claimants may seeks remedy in the competent forum for compensation etc against their verified claim. The said letter is reproduced as under:-

“From
The Deputy Commissioner, Bhakkar,
Bhakkar .

To

The Deputy Secretary (S&R)
Board of Revenue Punjab,
Farid Kot House, Lahore.

No.34/NT(O).

Dated 18.01.94

Subject:- ALLOTMENT OF LAND CLAIM FORM NO.68124 FILED BY M/S RIAZ FATIMA, MUKHTAR FATIMA IN LIEU OF THEIR LAND ABANDONED IN INDIA.

Memorandum.

Kindly refer to Senior Member (Colonies) DO No.102/92/PS/SMBR© dated 7th December, 1992, on the above subject (copy enclosed).

2. The matter has been enquired into. Claim Form No.68124 for 2592 P.I. Units was verified by the Central Record Office in favour of M/s Riaz Fatima and Mukhtar Fatima in equal shares. The petitioners filed writ petition No.275-R-1970 and on the direction of the High Court, a duplicate was also issued by the Officer Incharge, Central Record Room on 21.7.77 (copy enclosed). The Settlement Laws were repealed in 1973 and the claimants filed their application for cash compensation in accordance with the Policy of the Government on 30.4.77 (copy of receipt enclosed). As such their case was forwarded to the Board of Revenue alongwith others vide No. _____ dated _____.

3. Since the Settlement Laws have been repealed and their case does not fall in the category of pending case, as such this office is unable to proceed further in the matter.

4. However, the petitioners may seek remedy in the competent court of Law for having allotment or compensation against their claim. As they deem fit.

Deputy COMMISSIONER (R)
BHAKKAR ”

8. From the perusal of letter dated 20.08.2002 addressed to Mr.Safdar Zaidi, husband of respondent No.4 annexed at page 76 with W.P.No.7-R of 2005, it reveals that upon an application of Mst.Riaz Fatima, the Chief Settlement Commission Punjab allowed the withdrawal of application filed 29.12.1996 for allotment of land on the basis of fraud, forgery and fake documents. A portion of the said letter is reproduced as under:-

“The Chief Settlement Commissioner, Punjab vide order dated 07.08.2002 has been pleased to allow the withdrawal of your application dated 29.12.1996 regarding allotment of land

through forgery and fake documents by Ch. Ejaz Ahmad & others R/O Gujrat.”

Upon initiation of inquiry by the Secretary Revenue, Halqa Patwari and Tehsildar reported on 30.04.2003 that the area of Mouza Bhaman is urban area. The Secretary after obtaining report from the field staff, recommended cancellation of allotment in favour of Mst.Mukhtar Fatima and Riaz Fatima on the ground that their claim is relating to agricultural land whereas they were allegedly allotted urban land. The said report and order is as under:-

گزارش ہے کے انتقال نمبر 1757 موضع بھماں تحصیل سٹی ضلع لاہور بحکم جناب EASO صاحب مورخہ 17.02.2003 بمقدمہ ریاض فاطمہ بنام تحصیلدار سٹی لاہور درج رجسٹر ہو چکا ہے۔ رقبہ تعدادی 7-k-189 M مشمولہ نمبران خسروہ 910، 903، 889، 888، 912، 924، 997، 986، 956، 957، 967، 968، 969، 971، 972، 980، 979، 981، 982، 993، 960، 951/1، 952، 954 قطعہ 24 تعدادی 7M-189K ہے اور منجانب صوبائی حکومت (متر و کہ) بحق مختار فاطمہ، ریاض فاطمہ بحکم سیکرٹری ریونیو مورخہ 22.8.96 الاٹ ہونا پایا جاتا ہے۔ اس امر کی وضاحت اس جگہ ضروری ہے کہ رقبہ موضع بھماں ار بن ایریا ہے یعنی حدود کارپوریشن ہے جبکہ الاٹی مختار فاطمہ وغیرہ کا کلیم دیہاتی ہے جس کا حکم مورخہ 22.8.96 سے واضح ہے نیز اس حکم کا پیرہ نمبر 12 بھی قابل ملاحظہ ہے جس میں اس امر کا اظہار پایا جاتا ہے کہ اگر رقبہ میں کوئی رکھنا (رختہ) ہو تو حکم الاٹ منٹ منسوخ سمجھا جائے اندر میں حالات رپورٹ ارسال خدمت ہے۔

پٹواری بھماں 30.4.03

رپورٹ پٹواری حلقہ مفصل ہے۔ رقبہ تعدادی 7M-189K مشمولہ نمبران خسروہ 910، 903، 889، 888، 912، 924، 997، 986، 956، 957، 967، 968، 969، 971، 972، 980، 979، 981، 982 قطعہ 24 رقبہ تعدادی 7M-189K ہے جو منجانب صوبائی حکومت بحق مختار فاطمہ۔ ریاض فاطمہ بحکم جناب سیکرٹری صاحب (ریونیو) مورخہ 22.8.96 الاٹ ہو۔ موضع بھماں ار بن ایریا ہے۔ جبکہ مختار فاطمہ کا کلیم دیہاتی ہے جو حکم مورخہ 22.8.96 سے واضح ہے۔ نیز اس حکم کا پیرہ نمبر 12 بھی قابل ملاحظہ ہے جس میں اس امر کا اظہار پایا جاتا ہے اگر رقبہ میں کوئی رکھنا ہو تو حکم الاٹ منٹ منسوخ تصور ہو۔

بمراہ مناسب کارروائی پیش خدمت ہے۔

بخدمت جناب تحصیلدار صاحب بندوبست

-sd- 8.5.03.

نمبر 1159

رپورٹ عملہ فیلڈ قابل ملاحظہ ہے درخواست گزار ریاض فاطمہ بزرگہ صفدر زیدی مختار عام عمل درآمد
رقبہ تعدادی 189 کنال 7 مرلے موضع بھماں کروانا چاہتا ہے۔

عملہ فیلڈ نے رپورٹ کی ہے کہ موضع بھماں اربن ایریا ہے اور مسماۃ ریاض فاطمہ کا کلیم جیسا کہ حکم سیکرٹری
ریونیو (بااختیارات سیٹلمنٹ کمشنر) نوٹیفائیڈ آفیسر سے لیا ہے۔ کلیم رولر ایریا ہے۔ بدیں وجہ اسکو رقبہ موضع اصل
لکھو وال میں بھی الاٹ ہوا ہے۔ رولر ایریا کے کلیم پر اربن رقبہ الاٹ نہ ہو سکتا ہے۔ نیز حکم نوٹیفائیڈ آفیسر بھی قابل
ملاحظہ ہے۔ اس کے پیرہ نمبر 12 میں یہ وضاحت پائی جاتی ہے کہ اگر الاٹمنٹ میں کوئی رخنا ہو تو یہ الاٹمنٹ منسوخ
تصور ہوگی۔ لہذا اسکی رپورٹ تحریر ہے۔

بمراہ کاروائی مناسب مشل ہذا ارسال ہے بخدمت EASO صاحب پیش ہووے۔ 17.5.03

تحصیلدار بندوبست سٹی لاہور

سائل کو بذریعہ کونسل طلب کر کے وضاحت حاصل کر کے فیصلہ مورخہ 22.8.96 و قانون کے مطابق فیصلہ
کریں۔ انتقال کا فیصلہ آپ نے کرنا ہے۔ جو کہ آپ کا اختیار ہے

9. It has been stated in letter dated 24.02.2004 issued by EDO (R) City District Government Lahore that the Member (Colonies) Board of Revenue/Chairman Enquiry Commission has imposed restrictions on making allotment of Evacuee land by any authority in Board of Revenue or by other Officers of Lahore District. The relevant portion of the said letter is reproduced below:-

“Under orders of the Government of Punjab, an Enquiry Commission has been constituted to probe into the malafide allotments of Evacuee Land. The learned Member (Colonies) Board of Revenue/Chairman Enquiry Commission vide his letter dated 21.02.2004, has desired that till further orders no order of allotment of Evacuee land may be made by any authority in B.O.R. or other Officers of Lahore District. An intimation to this effect has also been received on telephone. A copy of the letter received from the Member Colonies/BOR

Chairman Enquiry Commission is enclosed. Strict compliance of the letter in question is ordered to be made.”

10. The Deputy Secretary (S&R) inquired into the genuineness of allotment and during inquiry proceedings on 16.07.2005, he reported that signature of the designated Notified Officer appearing on different interim orders are at variance with signature on order of allotment. It was further stated that the order dated 22.08.1996 appears to be forged. The Deputy Secretary (S&R) vide his report dated 09.03.2006 in concluding paras has reported as under:-

“I have considered the statements recorded above and have also examined the relevant record. It is evident that the alleged order dated 22.08.1996 was passed without checking the claim record and without consulting the relevant record. In his last days, the said Notified Officer remained seriously ill for quite a considerable period. It is, therefore, not possible that he would have processed the case regularly on so many dates.

Moreover, all the interim orders have been written in the same handwriting and in the same ink, which leads to the conclusion that all these interim orders have been written on a single day, probably after the death of said Notified Officer. The signatures of the Notified Officer appearing on different interims orders and other main order differ from each other. The said order dated 22.08.1996 passed by Ch. Abdul Latif, the then Secretary (Revenue)/Notified Officer appears to be forged. However, final report in this regard can be given after getting report of the hand writing expert and through a regular enquiry after hearing the concerned parties.”

After perusing the report of Deputy Secretary (S&R) regarding genuineness of allotment order dated 22.8.1996, the Member Board of Revenue (J-II)/Chief Settlement Commissioner on 09.03.2006 referred signatures of Ch. Abdul Latif, Former Secretary (Revenue)/Notified Officer on order dated 22.08.1996 to

handwriting experts alongwith his genuine specimen signatures available in the Administration Branch as well as in the Revenue Branches of the Board of Revenue Punjab for expert opinion. The report of the hand writing expert (Forensic Science Laboratory Punjab, Lahore) is as under:-

“Detailed examination reveals that the disputed signatures bear different line quality, alignment, connections, directions of movement, fluency, hooks, and curves, structure, formation etc. compared with the admitted signatures thus indicating the two sets having different authorship.”

After going through the report of the handwriting expert, the Deputy Secretary (S&R)/Inquiry Officer submitted his final report stating that the allotment letter dated 22.08.1996 is a fake, forged or fictitious order and recommended that a criminal case may be registered against its beneficiaries on the charges of grabbing the government property. The said report is reproduced below:-

“As per report of handwriting experts it is clear that the signatures on the allotment order dated 22.08.1996 purportedly passed by Ch. Abdul Latif, former Secretary (Revenue)/Notified Officer are forged/bogus. Thus the allotment of land made in favour of Mst.Mukhtar Fatima and Mst.Riaz Fatima land measuring 202 Kanals in Mauza Bhema and land measuring 171 Kanals in Mauza Asal Lakhawal is illegal, fabricated and made with the forged signatures of Ch. Abdul Latif former Secretary (Revenue)/Notified Officer (deceased). The said allotment order being forged is non-existence and has no legal value. The allotment orders dated 22.08.1996 may be declared as forged document, ante-dated, non-existence and prepared under the forged signatures of the Notified Officer.

The Hon'ble Court may be informed accordingly through Mr.Sameer Ijaz, Advocate. The District Officer (Revenue), Lahore may also be requested to review the mutation of land if any passed on the basis of the said forged

allotment order and the case may also be registered against the beneficiaries on the charges of grabbing government property.”

Against the aforesaid reports Mst.Riaz Fatima and Mst.Mukhtar Fatima neither filed any objections nor they challenged the same before any forum till today, thus, the said report attained the status of finality.

Mst.Riaz Fatima filed W.P.No.7-R of 2005 through her attorney (Safdar Zaidi) seeking implementation of order dated 28.08.1996. This Court vide order dated 11.04.2007 disposed of the same with direction to the Chief Settlement Commissioner to personally look into the matter as to validity of the order dated 22.08.1996 by affording full opportunity of hearing to the petitioner either himself or by any subordinate officer expeditiously and in accordance with law. Order dated 11.04.2007 is as under:-

“Petitioner seeks implementation of the order dated 22.08.1996. Learned counsel for the settlement department says that said order was obtained fraudulently. And the matter is under inquiry. Learned counsel for the petitioner says that he would be satisfied if direction is given to the Chief Settlement Commissioner to personally look into the matter as to the validity of the aforesaid order by affording full opportunity of hearing to the petitioner either himself or by any subordinate officer expeditiously and in accordance with law. Disposed of with the above directions.”

11. The original allottee Mst.Riaz Fatima through her attorney furnished written arguments before the Member Board of Revenue wherein it is clearly admitted that all the proceedings culminated

in to passing of the basic order of the allotment dated 22.08.1996 are based upon a fraudulent general power of attorney which admission is reproduced as under:-

“That Chaudhry Ijaz Ahmad Khatana & Khan Ikram Khan both residents of Gujrat on the strength of collusive decree and the forged power of attorney dated 06.05.1996 approached the Settlement & Rehabilitation Department for allotment of land in pursuance thereof, the allotment of land was made on 22.08.1996 by the Notified Officer to the extent of 315 PIUs in village Bhamman equivalent to 200 Kanals 2 Marlas and to the extent of 869 PIUs in village Aasal Lakhawal equivalent to 171 Kanals 7 Marlas in Tehsil City District Lahore vide CSC case No.16/1996. Copies of allotment order and power of attorney dated 06.05.1996 are attached herewith as Annex-G and G-1 at page 36-40 & 41-43 of the paper book.

That in the end of December 1996, it came to the knowledge of the petitioner about the evil deeds of cheaters, some moved an application through her General Attorney Mr.S.M. Safdar Zaidi by TCS on 29th of December, 1996 before the concerned authority and apprised them of the real state of affairs of the matter/fraud. On the basis of aforesaid application, the stay order was granted by the learned Chief Settlement Commissioner vide order No.06-97/Reader/MBR/CSC dated 04.01.1997. Attached as Annex-H & H/1 at pages 44-46 & 47 of the paper book.”

And when such an admitted fraud unearthed before the competent authority (Notified Officer) he is fully competent to determine the entitlement of a party as well as the legality of proceedings and the order on the strength of his suo motu jurisdiction as well as through Section 24 of General Clauses Act and also by the strength of the case law laid down by the superior courts of the country. The Hon’ble Supreme Court of Pakistan in a recent judgment reported as Messrs Beach Luxury Hotels, Karachi Vs. Messrs Anas Muneer Ltd and others (2016 SCMR 222) observed that when a matter was re-opened the Additional Settlement

Commissioner empowered to re-examine all the facts pertaining to the title of the parties from the very inception and to decide the matter according to available record as per law and similarly in the instant case the matter was referred back to the Notified Officer by this Court to afford hearing to the parties and decide the same on merits, as such, he was fully competent to investigate the whole case as an adjudicating forum. Reliance in this regard is placed on the following judgments of the Hon'ble Supreme Court of Pakistan as well as of this Court:-

- i) In Custodian of Evacuee Property, Lahore Vs. Syed Saifuddin Shah (represented by his heirs) (PLD 1981 SC 565) it has been held that the custodian of evacuee property could also act suo motu in matter even though allottees possessed no locus standi and that review rightly granted on ground of suppression of material facts and misrepresentation amounting to fraud.
- ii) In Shamrooz Khan Vs. Muhabbat Khan and another (1989 SCMR 819) it has been held by the August Court that settlement authorities have the jurisdiction to examine the question of fraud, forgery and fabrication in its own record. Custodian of the record is the best judge in the first place to determine about the veracity, correctness and genuineness of its own record.

iii) In another judgment reported as Syed Wajihul Hassan Zaidi Vs. Government of the Punjab and others (PLD 2004 SC 801) the Hon'ble Apex Court held that jurisdiction to reopen allotment made under repealed settlement law or question of genuineness thereof if the transfer is obtained by a person by practicing fraud, maneuvering and manipulating facts in connivance with the functionaries of the settlement department, the order of transfer being void would remain open to scrutiny by forum concerned.

iv) A Division Bench of this Court in a case reported as Muhammad Baqir Vs. Haji Shokat Ali and 3 others (2005 CLC 1106) has held that if such order upon due inquiry was found that the same was forged and had not been issued at all, then same would be a non-existent order.

12. According to the available record and the writ petitions mentioned above, it is proved that a fraud has been played in obtaining the order dated 22.08.1996 which was never passed by the competent authority. Even if it is presumed for the sake of argument that said order has been passed, yet the same was patently illegal and void ab initio because the land allotted through the said order was situated within the urban limits, which have been declared building sites vide notification dated 16.05.1973 and was not part of the available pool properties meant for

allotment rather the same can only be disposed of through unrestricted public auction under the Scheme for Management and Disposal Of Available Urban Land, 1977. Reliance can be placed on Member Board of Revenue/Chief Settlement Commissioner, Punjab, Lahore Vs. Abdul Majeed & Another (PLD 2015 SC 166) and American International School System Vs. Mian Muhammad Ramzan and others (2015 SCMR 1449).

13. As held above, it is settled principle of law that fraud vitiates most solemn proceedings, acts, instrument, deed, judgment or decrees obtained through fraud and any superstructure so built shall automatically crumble down and the same can be questioned at any time before the Court of law and no party should be allowed to take advantage of his own fraud. Reliance is placed on the cases of Lahore Development Authority Vs. Firdous Steel Mills (Pvt.) Limited (2010 SCMR 1097), Khadim Hussain Vs. Abid Hussain & Others (PLD 2009 SC 419), Talib Hussain & Others Vs. Member, Board of Revenue & Others (2003 SCMR 549), Khair Din Vs. Mst. Salaman & Others (PLD 2002 SC 677), Muhammad Younus Khan & 12 Others Vs. Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar & Others (1993 SCMR 618), Lal Din & Another Vs. Muhammad

Ibrahim (1993 SCMR 710) and Nawab Syed Raunaq Ali etc. Vs. Chief Settlement Commissioner & Others (PLD 1973 SC 236).

14. Admittedly the Settlement Laws were repealed in 1975 but the Settlement Authorities by stretching its jurisdiction making allotment to the different persons under the tainted garb of “pending proceedings.” The Hon’ble Apex Court in a case reported as Government of Punjab, Colonies Department Lahore and others Vs. Muhammad Yaqoob (PLD 2002 SC 5) defined the word “pending proceedings” and held that, “Pending proceedings’ would mean an initial step taken as contemplated under the settlement laws for allotment of land against verified claim of the claimants but the same did not finalize before the repeal of the evacuee laws.”. It has further been held that mere possession over any evacuee land would not bring the case as pending proceedings within the contemplation of provisions of section 2 and 3 of the Repealed Act 1975. It has been held by the August Court that the claim remained unsatisfied till the repeal of the Evacuee Laws would not constitute pending proceedings within the purview of section 2(2) of the Repeal Act, 1975. Reference can be made to Member (S&R)/Chief Settlement Commissioner, Board of Revenue, Punjab, Lahore Vs. Syed Ashfaq Ali and others (PLD 2003 SC 132) and Chief Settlement Commissioner/Member,

Board of Revenue (S&R Wing) Punjab Lahore Vs. Akhtar Munir and 6 others (PLD 2003 SC 603).

Even for those claimants who failed in getting their claim confirmed/satisfied against their respective entitlement in terms of Sections 10 and 11 of the Displaced Persons (Land Settlement) Act, 1958 till 1st July, 1974 when evacuee laws/regulations were repealed, their cases could not be deemed to be pending for the reason that Produce Index Units possessed by them had not been adjusted and mere pendency of any application would not be treated as pending proceedings and confer any jurisdiction to Notified Officer to make allotment of the land already declared as building site against the residual or unadjusted agricultural claim. Reliance can be placed on Ali Muhammad through Legal Heirs and others Vs. Chief Settlement Commissioner and others (2001 SCMR 1822).

Furthermore after promulgation of Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, all the properties having status of urban agricultural land gone out of the available pool land and the same were declared as building sites which stood vested in the provincial government and same was not available for any adjustment against any unsatisfied agricultural claim and disposal of all such land gone out of the jurisdiction of

Notified Officer. Reliance is placed on Muhammad Ramzan and others Vs. Member (Rev.) /CSS and others (1997 SCMR 1635), Member, Board of Revenue, Punjab (Settlement And Rehabilitation Wing)/Chief Settlement Commissioner, Punjab, Lahore Vs. Muhammad Mustafa and 74 others (1993 SCMR 732), and Ali Muhammad through Legal Heirs and others Vs. Chief Settlement Commissioner and others (2001 SCMR 1822).

Undoubtedly, the allotment order was obtained on the basis of forged document got prepared by the unauthorized general power of attorney in favour of the original allottees within the urban limits of Lahore against the agricultural claim in the year 1996 after repeal of the Act, whereas the allotted land has already been declared as a building site in 1973 and the jurisdiction of Notified Officer was/is explicitly barred to deal with the affairs of such land/property in any manner whatsoever and even if, any order passed in violation of above notification, that would be treated as void and coram non judice, unjustifiable as the urban properties cannot be allotted against rural agricultural unit. Reliance is placed on **(2001 SCMR 1832) and (2007 SCMR 910)** supra. Further after the repeal of evacuee laws under Section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975 the Chief Settlement Commissioner who is not

competent to dispose of the evacuee property in any manner except the procedure provided under the Scheme For Management And Disposal Of Available Urban Land, 1977. The Hon'ble Supreme Court of Pakistan in the case of Member Board of Revenue/Chief Settlement Commissioner, Punjab, Lahore Vs. Abdul Majeed & Another (PLD 2015 SC 166) has held that the Chief Settlement Commissioner/Notified Officer is not competent to make any fresh or alternate allotment of land.

15. The Member (Judicial-V) Board of Revenue/Administrator (Residual Properties)/Notified Officer, Punjab under the directions of this Court passed in W.P.No. 37-R of 2013 resumed the jurisdiction and passed the impugned order dated 19.01.2015 deciding the matter against the petitioner as the fraud was floating on surface of the record and it is well established by now that where any gain has been obtained by exercising fraud, same forum is vested the power to undo the same and the Hon'ble Supreme Court of Pakistan in a case reported as Muhammad Baran and others Vs. Member (Settlement and Rehabilitation) Board of Revenue Punjab and others (PLD 1991 SC 691) held that where the allotment order made by the authorities was illegal, without jurisdiction, based on fraud and forgery, in that eventuality Notified Officer/Member Board of Revenue can interfere with

illegal transfer of properties by its own motion against the exposed fraud and forgery and in such like matter the superior Courts should avoid to exercise their discretionary writ jurisdiction to annul the order of the Board of Revenue, even though it was clearly without jurisdiction. A portion of the said judgment is reproduced as under:-

“Putting this observation in juxtaposition to the present case; if the allotments relied upon by the appellants made by the Settlement functionaries were illegal and without jurisdiction and indeed if they were also based on fraud and forgery, in that eventuality even if the Board of Revenue which exposed fraud and forgery and set aside illegal transfer of properties worth millions by its own order, the High Court would not in exercise of its discretionary (Writ) jurisdiction annul the order of the Board of Revenue, even though, to borrow the language used in the case of Raunaq Ali the latter “was clearly without jurisdiction.”

In the case of American International School System, *ibid* the Hon’ble Supreme Court of Pakistan held that the Member Board of Revenue (Residual Properties) appointed by the provincial government is the competent authority to deal with the evacuee properties and disposal of the same in terms of the Scheme For Management And Disposal Of Available Urban Land, 1977. Further in another judgment reported as Shamrooz Khan Vs. Muhabbat Khan and another (1989 SCMR 819), the Hon’ble Apex Court held that the Settlement Authorities have jurisdiction to issue notices on the complaint wherein it reveals that the order of transfer was procured on the basis of fraud and

non-existent documents. The relevant portion of the aforesaid judgment is read as under:-

“The jurisdiction of the Tribunal or the Deputy Settlement Commissioner in this case to examine the question of forgery and fabrication in his own record has been upheld by the learned Judge in the High Court and it follows from our decision in the Chief Settlement Commissioner, Lahore V. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331). On no principle, known to the Constitutional jurisdiction, the power of the Tribunal to adjudicate a matter within its jurisdiction could be pre-empted by the High Court in the words in which it has been done. The Custodian of the record is the best judge in the first place to determine the veracity, the correctness and the genuineness of its own record. It should have been given an opportunity to discharge its duty in that respect. It is only then that a review of the adjudication could have taken place in the High Court.

We accept the appeal, set aside the judgment of High Court, recall the writ and allow the Deputy Settlement Commissioner to proceed with the determination of the allegations made in the Application in accordance with the law applicable. No order as to costs.”

Furthermore, the land was got allotted by exercising fraudulent means and it is settled law that fraud vitiates the most solemn proceedings, and no party should be allowed to take advantage of its fraud and any edifice built on fraud must be crumbled down automatically. Reference can be made to The Chief Settlement Commissioner, Lahore Vs. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331) and Khair Din Vs. Mst.Salaman and others (PLD 2002 SC 677).

In view of cited case law, notification and the provisions of Repealed Act, Notified Officer (CSC) has the jurisdiction to re-

open the entire case to investigate element of fraud and decide the same as per law.

16. So far as the arguments of the learned counsel for the petitioner that the petitioner is a bonafide purchaser from the original allottee. Suffice it to say that the petitioner purchased the land in the year 2004 and 2005 whereas the inquiry proceedings as mentioned above in para No.10 of this judgment, were initiated at the report of Patwari/Tehsildar concerned on 03.04.2003 which were pending before the competent forum. The litigation of original allottees was also still pending in shape of W.P.No.7-R of 2005 which was filed on 07.01.2005 and ultimately disposed of on 11.04.2007, when the matter was sent back to Notified Officer for decision afresh as the same was not yet conclusively determined by the competent forum as such petitioner is debarred to claim the right of bonafide purchaser because the petitioner purchased the property during pendency of inquiry proceedings as well as W.P.No.7-R of 2005. Petitioner was under mandatory obligation to be vigilant about the title of the vendors under the principle of Caveat Emptor, but he failed to fulfill its obligation toward the bonafide investigation of ownership or title of the original so called allottee which was under the shadow of serious danger of

unpredictable outcome of the above mentioned pending proceedings.

In a recent judgment reported as Province of the Punjab through Collector Sheikhpura and others Vs. Syed Ghazanfar Ali Shah and others (2017 SCMR 172), it has been held that where original allotment order in favour of the ostensible/purported allottee could not hold the field, any claimant of subsequent bona fide purchase of the same could not be impleaded as party in the suit. The relevant portion of the said judgment is reproduced below:-

“The argument that applicants be impleaded as party on account of being bona fide purchases is devoid of force, where the original allotment made in favour of the vendors cannot hold the field.”

Moreover, the subsequent purchaser/title holder has to swim and sink with original allottee and is debarred to claim better rights qua the person from whom he derived the title. It is interesting to note that the original allottee has not challenged the impugned order dated 19.01.2015 till to date, whereas the petitioner, who is subsequent purchaser filed the instant petition calling in question the vires of aforesaid order after the lapse of 2 years 6 days from the date of passing of the same, as such, the principle of laches is fully attracted in the instant case, so, the instant writ petition is also not maintainable on this score. Reliance is placed on the cases of S.A. Jameel Vs. Secretary to the Government of the Punjab, Cooperative Department & Others

(2005 SCMR 126), State Bank of Pakistan through Governor & Another Vs. Imtiaz Ali Khan & Others (2012 SCMR 280), Civil Aviation Authority through Director General & 3 Others Vs. Mir Zulfiqar Ali & Another (2016 SCMR 183), Nan Fung Vs. H. Pir Muhammad Shamsdin (PLD 1995 Karachi 421) and Messrs Mian Muhammad Awais Muhammad Shabbir, Commission Agents through Muhammad Awais Vs. Secretary to the Government of the Punjab & 8 Others (2009 CLC 963).

17. Further as the original transaction was found unlawful, illegal and void ab initio then every subsequent transaction based thereupon was bound to sink alongwith the fate of original. Reliance can be placed on Maqbool Ahmad and others Vs. Ghulam Hussain and others (2007 SCMR 1223) and Nazir Ahmad Vs. Commissioner, Gujranwala Division, Gujranwala and 2 others (1993 CLC 1943).

Learned counsel have failed to point out any illegality, perversity, irregularity in the impugned order of the Member Board of Revenue, which does not call for any interference in the constitutional jurisdiction of this Court.

18. In view of what has been discussed above, I do not find any merits in this petition, therefore, the same is accordingly **dismissed**.

(CH. MUHAMMAD IQBAL)
JUDGE

Approved for reporting.

JUDGE