

Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No.2809 of 2015/BWP

(Abdul Shakoor. v. Member (Judicial-V), Board of Revenue etc.)

J U D G M E N T

Date of hearing: 22.11.2017.

Petitioners by: M/s Ch. Bashir Hussain Khalid and Ch. Naseer Ahmed, Advocates for the petitioner in instant petition (W.P. No.2809/2015) & respondent No.5 to 13 in the connected petition (W.P.No.2766/2015/BWP).
Mr. Mukhtar Ahmad Tahir Kamboh, Advocate for the petitioners in W.P. No.2766/2015.

Respondents by: Rana Shamshad Khan, Additional Advocate General.
Mr. Abdul Sami Chaudhary, Advocate for Chief Settlement Commissioner.
Mian Ahmad Nadeem Arshad, Advocate for respondents No.3 to 10 in W.P. No.2809/2015.

Shujaat Ali Khan, J: - Through this single judgement, I intend to decide instant petition (W.P. No.2809/2015) as well as connected petition (W.P. No.2766/2015) having commonality of law and facts.

2. Unnecessary details apart, the facts, forming factual canvas of the instant petition, are that Ghulam Abbas, predecessor-in-

interest of respondents No.3 to 10, being migratee from Mauza Kundhwala, Amar Kot, Tehsil Fazilka, District Ferozepur, India submitted his claim for allotment of land against that abandoned by him in India. Upon verification of his claim against the abandoned land in India, 603 Produce Index Units (PIUs) were transferred to District Rahim Yar Khan for allotment in the year 1972. Against the said PIUs, land measuring 31 Kanals 15 Marlas situated in Mauza Taranda Siway Khan, District Rahim Yar Khan was proposed for allotment through RL-II No.591. The said allotment was confirmed by the competent authority through order, dated 18.6.1973, however, the same could not be implemented in the revenue record due to the fact that the land in question was situated within the territorial limits of Municipal Committee Rahim Yar Khan. During the interregnum period Ghulam Abbas died. After death of Ghulam Abbas, his legal heirs (respondents No. No.3, 9 & 10) filed declaratory suit with the averments that after deposit of requisite fees in pursuance to the allotment order, they became full owner of the land in question. The said suit was dismissed by the learned Senior Civil Judge, Rahim Yar Khan *vide* judgement and decree dated 26.11.1987. Aggrieved by the judgment and decree passed by the learned Senior Civil Judge, Rahim Yar Khan, respondents 3,9 and 10 filed an appeal which was accepted by the District Judge,

Rahim Yar Khan through judgment and decree, dated 30.7.1989. Further, respondents No.3, 9 and 10 also filed a miscellaneous application for modification of the decree passed by the appellate court which was allowed by the appellate court *vide* order dated 8.3.1990. Against various decisions rendered by the appellate court, the aggrieved parties filed three Civil Revision Petitions (Nos.415-D/1989, 415-D/1990 and 197-D/1991) before this court. The said revision petitions were allowed by this court through consolidated judgment and decree, dated 26.9.1993. While accepting the revision petitions, this court held that claim of Ghulam Abbas for allotment of land would be deemed to be pending. Being swayed with the observation of this court, legal heirs of Ghulam Abbas filed application before the Board of Revenue, Punjab, Lahore for allotment of land against their pending units. As said application remained unattended, legal heirs of Ghulam Abbas filed W.P.No.3715/1996/BWP before this court which was disposed of through order, dated 20.10.1996, in view of the statement of the learned Assistant Advocate General that matter would be decided in terms of judgment, dated 26.9.1993, passed in Civil Revision No.415-D/1989 within three months. Resultantly, the matter was referred to the Assistant Commissioner, Rahimyar Khan/Notified Officer/Deputy Settlement Commissioner (respondent No.2) who, upon

fulfillment of codal formalities allotted land measuring 224-kanals situated in Mauza Bandur, Tehsil and District Rahimyar Khan in favour of legal heirs of late Ghulam Abbas *vide* order, dated 28.04.2001, which was incorporated in the revenue record through Mutation No.5730 attested on 19.10.2001. Later on, the said land was purchased by Abdul Shakoor (petitioner in the instant petition) by virtue of Mutation No.5739 dated 25.10.2001.

3. On the other hand, one Rehmat Ali, predecessor-of-interest of petitioners in the connected petition, being migratee from Salamat Pura, Tehsil Paluth, District Jalandhar, India, filed Claim No.132320 for allotment of land against his land abandoned in India. After verification of his claim, initially he was allotted land measuring 169-Kanals & 12-Marlas in Mauza Bandur, Tehsil and District Rahim Yar Khan against R.L-II No.828/78 in lieu of 457 PIUs leaving 56 PIUs unsatisfied. As Khata No.41, wherein Rehmat Ali was allotted land, was jointly owned by the Muslims and non-Muslims owners, the allotment made in his favour could not be effectuated in the revenue record. As a result, he, alongwith others, filed Writ Petition No.1283/1963 before the erstwhile High Court of West Pakistan, Lahore but without any success as the same was dismissed through judgment, dated 31.03.1966. Aggrieved by the judgment passed by the erstwhile High Court of West Pakistan, Lahore, Rehmat Ali, alongwith

others, agitated the matter before the apex court of the country. The august Supreme Court of Pakistan decided the matter through judgment reported as Rehmat Ali and others v. The Settlement and Rehabilitation Commissioner, Bahawalpur Division, Bahawalpur and others (1973 SCMR 356). Thereafter, land measuring 161 Kanals 12 Marlas situated in Mauza Bandur Tehsil & District Rahim Yar Khan was allotted in favour of Rehmat Ali in lieu of 457 units whereas his claim for allotment of land against 56 pending PIUs remained undecided. Resultantly, Rehmat Ali filed application, dated 13.06.1973, before the District Collector/Rehabilitation Officer, Rahimyar Khan which was followed by a reminder, dated 20.11.1973. After death of Rehmat Ali in the year 1995, his inheritance devolved upon his legal heirs (petitioners in the connected petition). As the application filed by Rehmat Ali in the year 1973 was not being decided by the relevant authority, his legal heirs (petitioners in the connected petition) filed W.P.No.3632/2000 before this court which was disposed of through order, dated 11.08.2000, with a direction to the Notified Officer to decide the matter within one month. As the grievance of legal heirs of Rehmat Ali was not redressed despite passing of order, dated 11.08.2000, by this Court they were constrained to file another Writ Petition (No.335/2001) for allotment of land against their pending units,

however, they opted to withdraw it on 03.07.2001 with the contention that the Notified Officer assured them for redressal of their grievance. Since the grievance of the legal heirs of Rehmat Ali was not attended to by the authority concerned, they were compelled to file another W.P.No.3082/2002 which they opted to withdraw on 28.02.2012 with permission to agitate their grievance before the Chief Settlement Commissioner, Punjab. After withdrawal of aforesaid writ petition, they filed application before the Chief Settlement Commissioner, Punjab for cancellation of the land allotted in favour of legal heirs of Ghulam Abbas and its allotment in their name in lieu of their pending PIUs. The Chief Settlement Commissioner, Punjab, through order, dated 11.02.2015, while turning down the request of legal heirs of Rehmat Ali for allotment of land against their pending units, cancelled the land allotted in favour of legal heirs of Ghulam Abbas in the year 2001. Aggrieved by the cancellation of the land from the name of legal heirs of Ghulam Abbas, Abdul Shakoor has filed the instant petition whereas the legal heirs of Rehmat Ali being aggrieved of non-allotment of land in their favour in lieu of pending units have filed the connected petition.

4. Mr. Bashir Hussain Khalid, Advocate representing the petitioner in the instant petition & respondents No.5 to 13 in the connected petition submits that the impugned order is not

sustainable for the reason that after decision regarding allotment of a specific land by the Notified Officer, the same is not appealable/reviewable before any other authority working under the settlement laws but in the matter of the petitioner, the land allotted in the names of legal heirs of Ghulam Abbas has been cancelled by the Chief Settlement Commissioner, Punjab while exercising his powers of review on the application submitted by the legal heirs of Rehmat Ali (petitioners in the connected writ petition); that Chief Settlement Commissioner has no power to review an order passed by the Notified Officer; that the apex court of the country during the course of hearing of C.P. No.1644-L/2011 observed that Notified Officer shall not exercise *suo moto* jurisdiction upon any miscellaneous application which does not fall within the categories of cases specified in the Repeal Act, 1975; that after repeal of Settlement Laws in the year 1975 the landmark judgment was rendered by the apex court of the country in the case reported as *Nawab Din v. Member, Board of Revenue (Settlement & Rehabilitation) Punjab, Lahore and 4 others* (PLD 1979 SC 846) which till date holds the field and according to the *ratio-decidendi* of the said judgment the proceedings pending regarding verification of claims of refugees cannot be equated with the pending proceedings for allotment of land on the basis of verified claims;

that power of review of Chief Settlement Commissioner to annul an allotment on the ground that the claimant being not a refugee his claim was bogus, is always there but the said power cannot be exercised to undo a valid allotment made on the basis of verified claim.

5. Mr. Naseer Ahmad Chaudhry, Advocate appearing on behalf of petitioner in the instant petition and *proforma* respondents No.5 to 13 in the connected petition, while adopting the arguments advanced by Ch. Bashir Hussain Khalid, Advocate, additionally submits that as this court while deciding CR. No.415-D/1989 declared that claim of Ghulam Abbas would be deemed to be pending, no illegality was committed by the Notified Officer while making allotment in favour of legal heirs of Ghulam Abbas.

6. Learned Law Officer, assisted by learned counsel representing the Settlement department, while opposing the instant petition, states that this court while deciding above referred Civil Revision Petitions held that R.L-II No.6799 issued in the name of Ghulam Abbas was not genuine, thus, no land could be allotted in favour of Ghulam Abbas or his legal heirs in presence of such findings; that this court, while accepting the above noted revision petitions, reversed the findings of the

appellate court, as a result those of the civil court were upheld meaning thereby that allotment of land in favour of Ghulam Abbas in Mauza Taranda Siway Khan was held illegal, thus, no land could be allotted to him in future in lieu of the said land; that it was established on record that out of the land allotted to Ghulam Abbas, major chunk was earmarked for construction of an International Hotel but the said fact escaped notice of the Notified Officer; that the Chief Settlement Commissioner has not annulled the allotment in favour of Ghulam Abbas merely on the ground that the land fell within the limits of municipal committee but also it was found that claim of Ghulam Abbas was referred to Dera Ismael Khan, thus, the same could not be satisfied in District Rahimyar Khan without proper transfer by the competent authority; that a person who seeks equitable relief is supposed to come to court with clean hands; that plea of *bona fide* purchaser is not attracted against the land allotted under settlement laws; that at the most petitioner can sue against his vendors for making his loss good; that report of Patwari that the land in question does not fall within territorial limits of municipal committee cannot be given precedence over the findings of the Chief Settlement Commissioner; that the controversy involved in the present petition cannot be decided without recording of evidence which exercise cannot be undertaken in these proceedings. In support of

his contentions, learned Law Officer has produced copies of Notification bearing No. LGA/526/3447-50, dated 10.03.1986, regarding the local limits of the Municipal Committee Rahim Yar Khan, Site Plan of the Municipal Committee, letter dated 01.09.2012 addressed by the District Collector, Rahimyar Khan to the Assistant Commissioner Rahimyar Khan and others, Notification bearing No.200-2012/107-C.V.T (III), dated 25.08.2012, issued by Board of Revenue Punjab, copy of letter addressed by the Additional District Collector, Rahimyar Khan to All the Assistant Commissioners of the district, dated 20.05.2015, Notification bearing No.141-215/64-CVT (III), dated 20.05.2015, issued by the Board of Revenue, Punjab.

7. Mian Ahmad Nadeem Arshad, Advocate appearing on behalf of respondents 3 to 10 in the instant petition has supported the stance taken by Ch. Bashir Hussain Khalid, Advocate.

8. Ch. Bashir Hussain Khalid, Advocate for the petitioners in the instant petition, while exercising his right of rebuttal, submits that the learned Law Officer as well as learned counsel representing Settlement department has tried to mingle up certain facts just to mislead this court which is not acceptable; that as findings of this court whereby revisions petitions filed by the Municipal Committee were accepted and it was declared that

claim of Ghulam Abbas would be deemed to be pending, were not challenged by the Settlement department it acquiesced with the same, thus, at this stage, it cannot introduce new plea while taking U-turn; that though certain portion of land of a Tehsil can be considered as Urban but the entire Tehsil cannot be considered so; that there is no factual inquiry as contented by the learned Law Officer rather the matter can conveniently be decided by this court on the basis of available material; that the petitioner has already asserted in ground (vii) of the instant petition that if it is established on record that at the relevant time the land allotted to Ghulam Abbas fell within the municipal limits of Rahim Yar Khan, the petitioner would have no case; that the petitioner is ready to bear the expenses for appointment of local commission to verify said fact and that *mala fide* on the part of the legal heirs of Rehmat Ali is manifest from the fact that while filing application before the Chief Settlement Commissioner, Punjab they did not array the petitioner as party despite knowing the fact that his name was incorporated in the revenue record in the year 2001.

9. Mr. Mukhtar Ahmad Tahir Kamboh, representing the petitioners in connected petition states that he would not press said petition to the extent of respondents No.5 to 13. Consequently, the connected petition is dismissed as not pressed

to the extent of said respondents only. To the extent of rest of respondents learned counsel submits that as the application was filed by Rehmat Ali (predecessor-in-interest of the petitioners) on 13.06.1973, followed by a reminder, dated 20.11.1973, their case fell within the category of pending proceedings; that the findings of respondent No.1 that case of the petitioner did not fall within category of pending proceedings stands nullified from the record; that Notification, dated 16.05.1973, only put a clog against allotment of land which had already been declared as building site whereas the petitioners claimed allotment of agricultural land against their pending units; that the case-law referred in the impugned order is not applicable to the case of the petitioner. Relies on Tufail Muhammad through L.Rs v. Messrs Siddique Textile Mills Ltd. and others (2009 SCMR 1091), Province of the Punjab through Secretary Settlement and Rehabilitation Department, Lahore v. Akhtar Ali Khan and others (2007 SCMR 459), Umra and others v. Additional Settlement Commissioner and others (2005 SCMR 1713), Ali Muhammad through L.Rs. and others v. Chief Settlement Commissioner and others (2001 SCMR 1822), Nawab Din v. Member, Board of Revenue (Settlement & Rehabilitation) Punjab, Lahore and 4 others (PLD 1979 SC 846) and Rehmat Ali and others v. The Settlement and

Rehabilitation Commissioner, Bahawalpur Division, Bahawalpur
and others (1973 SCMR 356)

10. Learned Law Officer, assisted by learned counsel appearing on behalf of Settlement department, submits that connected petition is not maintainable as three earlier petitions on the same subject have already decided by this court; that the application submitted by Rehmat Ali (predecessor-in-interest of the petitioners) in the year 1973 was dismissed by the Notified Officer, on 10.06.2001, in presence of the petitioners but the said fact has been concealed by them while filing connected petition, thus, they are not entitled to equitable relief; that *mala-fide* on the part of the petitioners is also manifest from the fact that through they also filed proceedings before the District Collector, Rahim Yar Khan but the said fact has also not been incorporated in the connected petition; that the order passed by the Notified Officer was not challengeable before any authority established under the settlement laws rather the same could only be assailed before this court in writ petition but till date the petitioners have not challenged orders dated 10.06.2001 and 19.07.2002 passed by the Notified Officer and District Collector, Rahim Yar Khan respectively thus the connected petition merits dismissal.

11. Ch. Bashir Hussain Khalid, Advocate for the petitioner in the instant petition in furtherance of his above arguments submits that the learned Law Officer as well as the learned counsel representing the Settlement Department have adopted inconsistent pleas inasmuch while defending the order impugned in instant petition they have argued that the Chief Settlement Commissioner, Punjab rightly reviewed the allotment made in favour of legal heirs of Ghulam Abbas, however, while opposing the connected petition they have adopted the plea that order passed by the Notified Officer is not challengeable/reviewable before any authority working under the Settlement Laws rather the aggrieved parties are supposed to approach this court in respect of their grievance against the order passed by the Notified Officer.

12. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with these petitions as well as the case-law cited at the bar.

13. During the course of arguments, Mr. Mukhtar Ahmed Tahir Kamboh, Advocate for the petitioners in the connected petition clarified that he has instructions not to press the petition to the extent of respondents No.5 to 13 meaning thereby that private parties have no rival claim against each other rather the

petitioners in both these petitions are confining their prayer for setting aside of the impugned order passed by the Chief Settlement Commissioner, Punjab.

14. Now reverting to the merits of the case, I have noted that Learned Law Officer, assisted by the learned counsel representing the Settlement Department, ferociously argued that since the claim of Ghulam Abbas was declared as bogus by this court in its judgment, dated 26.9.1993, no land could be allotted to him or his legal heirs as their case did not fall within the definition of pending proceedings. To appreciate the said contention, I have gone through the entire judgment rendered by this court in above referred Civil Revision Petitions. While dealing with the validity of allotment of land in favour of Ghulam Abbas this court has *inter-alia* observed as follows: -

“7. Applying this principle to the facts and circumstances of the case it is eminently clear that the allotment made by the Settlement Authorities to Ghulam Abbas was merely paper transaction and, therefore, it did not create any right in his favour. The land was in possession of the Province of Punjab and it was being used for public purposes. It was, therefore, not in the compensation pool and was incapable of allotment to Ghulam Abbas. This being the legal position, I have no difficulty in coming to the conclusion that allotment, even if made, in favour of Ghulam Abbas was wholly coram-non-judice and was of no lawful consequences. This well established principle of law was wholly over-looked and disregarded by the learned District Judge while rendering the decision dated 26.11.1987. It, therefore, suffers from patent error of law which is evident on the face of record.

The decision of the learned District Judge, therefore, is without any legal support and cannot be sustained. As the first decision falls down, the subsequent decision also crumbles as being super-structure on a void decision.”
(emphasis provided)

Further, this Court while dealing with the sanctity of R.L-II No.6799 has *inter-alia* observed as under: -

“There is yet another aspect of the case. A bare look on RL-II No.6799 indicates peculiar features which casts serious doubt about the genuineness of RL-II No.6799. There is a note on it by the Patwari which indicates that suit land was proposed to one Noor Smand vide a RL-II No.590; that this proposal was not confirmed as the same was cancelled from one Sadar-ud-Din who had filed constitution petition in the High Court and had obtained a stay order. This is not the end of it.....This being the legal position, the orders of the Deputy Settlement Commissioner dated 30.4.1973 and 18.6.1973 are wholly destitute of any legal foundation.....”

A perusal of the afore-quoted paragraphs shows that the allotment of land subject matter of the Civil Revisions, referred *Supra*, was declared illegal mainly for two reasons *viz.* firstly it was occupied by the provincial government by raising construction at the site, thus, same was not available in compensation pool and secondly the said land was already proposed for allotment in favour of one Noor Samand but nowhere in the entire judgment this Court declared the claim of Ghulam Abbas as bogus.

15. It is imperative to note that this Court in Para No.10 of its judgment, dated 26.09.1993, has *inter-alia* observed as under: -

“10. While parting with this order, it is made clear that the claim of Ghulam Abbas shall be deemed pending within the terms of the Evacuee Properties and Displaced Persons Laws (Repeal) Act, (XIV of 1975) and shall not preclude the competent authorities from allotting any evacuee agricultural land which might be still available.”

A cursory glance over the afore-quoted paragraph affirms that the claim of Ghulam Abbas was held genuine. Further, the competent authority was permitted to allot land against the claim of Ghulam Abbas, thus, no illegality was committed by respondent No.2. Moreover, in his order, dated 28.04.2001, respondent No.1 has referred to certain communications issued by various authorities and after confirmation that claim of Ghulam Abbas to the extent of 603 PIUs was pending, he allotted the disputed land in favour of legal heirs of Ghulam Abbas.

16. It is notable that the Assistant Commissioner/Notified Officer/Deputy Settlement Commissioner, while deciding the matter *vide* order, dated 28.04.2001, *inter-alia* observed as under:-

"بقایا کلیم کے لئے سائیلان مجاز فورم سے رجوع کریں کیونکہ عدالت عالیہ کے فیصلہ 93-9-26 کے تحت انہیں صرف 200 یونٹس کی الاٹمنٹ ہو سکتی ہے۔ جو کہ Pending Proceedings قرار دیئے جا چکے ہیں بورڈ آف ریویو کی چھٹی نمبری (S & R) PA/Secy (S & R) 2127-2000/3321 مورخہ 7-12-2000 میں ہدایت کی گئی ہے کہ آئندہ کسی بھی الاٹمنٹ پر اس وقت تک عملدرآمد ریکارڈ مال نہ کیا جاوے جب تک کہ منظوری چیف سیٹلمنٹ کمشنر سے حاصل نہ کر لی گئی ہو اس لیے فیصلہ ہذا برائے اجازت عملدرآمد ریکارڈ مال توسط جناب ڈپٹی کمشنر / ڈسٹرکٹ کلکٹر رحیم یار خان بخدمت جناب چیف سیٹلمنٹ کمشنر صاحب بورڈ آف ریویو پنجاب لاہور ارسال خدمت ہے بعد آمد اجازت تحصیلدار رحیم یار خان کو عملدرآمد کے لیے لکھا جاوے حکم سنایا گیا۔ تحریر 28-4-2001"

A perusal of the afore-quoted portion shows that the order passed by respondent No.2 was subject to approval by the Chief Settlement Commissioner. A glance over column No. 10 of Mutation No.5730 depicts that the same was sanctioned after requisite approval by the Chief Settlement Commissioner. To verify said fact, reference can be made to the following lines of column No.10 of Mutation No.5730: -

"عطائے حقوق ملکیت الاٹ شدہ تابع حکم مورخہ 28-04-2001 مصدرہ جناب اسٹنٹ کمشنر صاحب /
ڈپٹی سیکشنل کمشنر لینڈ رورل / Notified Officer رحیم یار خان بعد اجازت جناب چیف سیکشنل کمشنر
صاحب لاہور - آر-ایل-ٹو نمبر 591 بروئے چٹھی نمبری (1) (A) 1773RL / 2001-
No.1157 مورخہ 15-10-2001 آمدہ بورڈ آف ریویو پنجاب لاہور کلیم نمبر 6799"

According to the order impugned in these petitions the Chief Settlement Commissioner observed that he had gone through record of the case prior to passing the same but as the said important fact escaped notice of respondent No.1, it cannot be believed that he decided the matter in its true perspective. Further, if the allotment made by respondent No.2 was validated by the Chief Settlement Commissioner, the same could not be re-opened on a miscellaneous application of other persons who were clamoring for allotment of land against their pending units but the said important fact also went unnoticed.

17. The second ground of attack by the learned Law Officer as well as learned counsel appearing on behalf of the Settlement

Department is that as the unsatisfied units of Ghulam Abbas were transferred to Dera Ismael Khan the same could not be satisfied in district Rahimyar Khan without their proper transfer by the competent authority. Perhaps, learned Law Officer has raised such plea in oblivion of the following observation of respondent No.2 in order, dated 28.04.2001: -

"***** عدالت عالیہ کے احکامات متذکرہ بالا کی روشنی میں چیف سیشنٹ کمشنر پنجاب نے بحکم مورخہ
05-05-98 کیس فیصلہ کے لیے دفتر زیر دستخطی کو ٹرانسفر کیا کہ اسسٹنٹ کمشنر /
Notified Officer / مطابق قانون فیصلہ کرے۔۔۔۔۔"

A perusal of the above-quoted portion from the order passed by respondent No.2 shows that he took cognizance of the matter upon reference by respondent No.1 and to fortify his observation he has referred to certain communications but those have not been discussed in the impugned order meaning thereby that the same has been passed without appreciating the relevant material.

18. Learned Law Officer as well as the learned counsel appearing on behalf of Settlement department have repeatedly argued that as the land in question was earmarked for construction of International Hotel the same was not available for allotment under Settlement Laws. The said assertion cannot be given any weightage for the reason that in order, dated 28.04.2001, respondent No.2, while dealing with said limb of the matter has *inter-alia* concluded as under:

"*****گواس رقبہ میں سے چیف سیٹلمنٹ کمشنر بورڈ آف ریونیو پنجاب نے 4-75 کنال رقبہ انٹرنیشنل ہوٹل کے لئے Reserve کر دیا تھا لیکن اب خلفان سعید المزروئی ڈائریکٹر جنرل شیخ زید بن سلطان انہیان کراچی پاکستان نے بحوالہ چٹھی نمبر AC/661 مورخہ 10-10-1997-3 زیر دستخطی کو مورخہ 02-2001-27 تحریر کیا ہے کفالت کنندہ (Sponsor) کو فرسٹ کلاس انٹرنیشنل ہوٹل رحیم یار خان کی تعمیر میں کوئی دلچسپی نہ ہے اور زیر آمدہ رقبہ انٹرنیشنل ہوٹل کی اب ضرورت نہ رہی ہے نیز حکومت کے سابقہ تعاون کا شکریہ بھی ادا کیا ہے۔-----"

As per afore-quoted portion from order of respondent No.2 the Sponsor abandoned the idea of construction of International Hotel at the site in the year 1997 whereas allotment in favour of legal heirs of Ghulam Abbas was made in the year 2001, thus, *prima-facie* the condition stipulated in Notification, dated 16.05.1973, that Building Site cannot be allotted under Settlement Laws was not attracted in the case in hand.

19. A perusal of the impugned order shows that respondent No.1 proceeded to annul the allotment made in favour of legal heirs of Ghualm Abbas on the ground that at the relevant time their case did not fall within the definition of "pending cases" in terms of the Repeal Act, 1975. In this regard, I am of the view that the said plea being contrary to the findings of this Court contained in Para No.10 of judgment, dated 26.09.1993 is not sustainable.

Considering from another angle, legal heirs of Ghulam Abbas filed W.P. No.3715/1996/BWP before this Court which

came up for final hearing on 20.10.1996 when the same was disposed of in the following terms: -

“The learned Assistant Advocate General, who has entered appearance on Court’s call, assures that the respondent will decide the matter strictly in accordance with the order of this Court dated 26-9-1993 passed in Civil Revision No.415-D/89 (annexure ‘A’), within three months from the receipt of this order. In view of this, learned counsel for the petitioners does not press instant petition but reserves his right to come to this Court if need arises. Order accordingly. Disposed of as requested.”

From the above-quoted order, it is abundantly clear that the learned Law Officer gave assurance that the matter shall be decided in accordance with judgment, dated 26.09.1993, passed by this Court in C.R. No.415-D/1989. If the matter was not covered under the definition of pending proceedings there was no compulsion for the learned Law Officer to give such assurance. Further, when the department did not bother to challenge the judgment of this Court, dated 26-09-1993, the Chief Settlement Commissioner could not withdraw the allotment made in favour of legal heirs of Ghulam Abbas on the ground that at the time of allotment their case did not fall within the category of pending proceedings.

20. It is very ironical to note that respondent No.1 while passing the impugned order in Para No.2 of his order has relied upon the opinion of the legal advisor rendered in the year 2013.

There is nothing on record to show that in the year 2001 when the land was allotted in favour of legal heirs of Ghulam Abbas it fell within the prohibited zone. The apex Court of the country while clinching the issue under discussion in the case reported as Province of Punjab through Secretary Colonies, board of revenue, Lahore and others v. Ch. Abdus Sattar (2012 SCMR 1007) has *inter-alia* held as under: -

5. *Having considered the submissions made and the law declared, we find that admittedly when the land was allotted to Abdul Rehman, the same did not fall within the prohibited zone and therefore, would not be hit by a subsequent notification to which reference has been made above. This court was seized of a similar issue in Province of Punjab through District Collector Vehari v. Ghulam Muhammad (1994 SCMR 975) wherein the judgment of the learned High Court was not interfered with because "as regards the prohibited zone, the instructions were that the distance should be measured as required when the allotment was made and not as when the proprietary rights are conferred. On this test, the allotment of the respondent was beyond three miles limits then applicable to him when he got the allotment but within five miles i.e., with the limits when he was to be given proprietary rights. The Collector applied the latter." (Emphasis is supplied)."*

If the impugned order is adjudged on the touchstone of the afore-quoted verdict of the apex Court of the country there leaves no ambiguity that respondent No.1 while deciding the matter omitted to consider said important aspect. There is nothing on record that in the year 2001 when the land was allotted in favour of legal heirs of Ghulam Abbas it fell within the limits of Municipal Committee Rahimyar Khan or it was declared as

Building Site rendering it immune from allotment under Settlement Laws.

21. It is admitted position that respondent No.2 was enjoying powers of the Notified Officer/Deputy Settlement Commissioner in the year 2001 at Sub Divisional level, thus, the order passed by him could not be reviewed by respondent No.1 while dealing with miscellaneous application filed by legal heirs of Rehmat Ali for allotment of land in lieu of their 56 pending PIUs. In this regard, reliance can be placed on the case of Nawab Din (*Supra*) wherein a line of distinction has been drawn between the cases of genuine claimants and those whose claims from the inception were found to be bogus. In the latter category, the Chief Settlement Commissioner enjoys all persuasive powers to annul any allotment whereas the allotment of land on the basis of verified claims is immune from review by the said authority.

22. It is very strange to note that though the name of Abdul Shakoor, petitioner in the instant petition, was incorporated in the revenue record in the year 2001 on the basis of Mutation of sale bearing No.5739, dated 30.10.2001, but while filing the application the legal heirs of Rehmat Ali did not array him as party seemingly to keep him aloof from the proceedings being conducted by the Chief Settlement Commissioner, Punjab.

23. It is not out of place to mention over here that prior to filing application before respondent No.1 in the year 2012, the legal heirs of Rehmat Ali filed multiple Writ Petitions (referred above) before this Court wherein they only prayed for allotment of land against 56 pending PIUs but in none of them they prayed for cancellation of land from the name of legal heirs of Ghulam Abbas, however, while filing application before respondent No.1 they, in addition to praying for allotment of land against their pending PIUs, also requested for cancellation of land allotted in favour of legal heirs of Ghulam Abbas. This fact shows that for the first time they changed their stance after eleven years of allotment of land in favour of legal heirs of Ghulam Abbas.

24. Considering from another aspect, legal heirs of Rehmat Ali could move for allotment of land against their pending PIUs but they had no cheeks to move for cancellation of land already transferred in the name of legal heirs of Ghulam Abbas and being a past and close transaction same was not open for interference by any authority working under Settlement Laws but respondent No.1 while deciding the matter did not consider the said important fact.

25. Learned Additional Advocate General with a view to establish that at the time of allotment of land in favour of legal

heirs of Ghulam Abbas the same fell within the municipal limits of Rahimyar Khan has referred to Notification No.LGA/526/3447-50, dated 10.03.1986, issued by the Commissioner, Bahawalpur Division, Bahawalpur. In the said Notification, while defining the limits of the Municipal Committee Rahimyar Khan, names of Mauza Colony Mills, Usman Colony, Basti Samiullah alongwith Dera Jats, Housing Scheme-C alongwith Dera Jats, Hakam Chand, Dera Jats Residential, Tibbi Larra etc. have been included but name of Mauza Bandur is not there. Prima facie it depicts that at the relevant time Mauza Bandur was not situated within the territorial limits of Municipal Committee, Rahimyar Khan.

26. As far as the Notifications produced by the learned Law Officer relating to extension of urban area for levy of Capital Value Tax (CVT) are concerned, they are of no help to the respondents firstly for the reason that the same have been issued in the year 2012 and 2015 whereas allotment in favour of legal heirs of Ghulam Abbas was made in the year 2001 and secondly the said Notifications cannot be considered as conclusive proof of the territorial limits of the Municipal Committee Rahimyar Khan.

27. Now taking up the connected petition, I have observed that Rehmat Ali filed application alongwith reminder in the year 1973

which remained pending till the year 2000. As the application submitted by Rehmat Ali was not being decided by the authorities concerned, his legal heirs filed Writ Petition No.3632/2000 before this Court which was disposed of on 11.08.2000 while issuing direction to the competent authority to decide the matter. Pursuant to said order respondent No.2 took up the matter and decided the same on 06.01.2001 whereby application submitted by Rehmat Ali was dismissed. After dismissal of application by respondent No.2, the legal heirs of Rehmat Ali tried their luck before the District Officer (Revenue)/Collector but without any success as he dismissed the same *vide* order, dated 9.07.2002. Further, respondent No.2 passed order on 06.01.2001, in presence of legal heirs of Rehmat Ali but while filing the connected petition in the year 2015, neither they have referred to the orders passed by the Assistant Commissioner/Notified Officer and the District Collector, Rahim Yar Khan nor have challenged them, thus, their prayer for allotment of land against 56 pending PIUs after setting aside of order passed by the Chief Settlement Commissioner cannot be acceded to. As concealment of material facts on the part of the legal heirs of Rehmat Ali (petitioners in connected Writ Petition) is floating on the surface they are not entitled to equitable relief from this Court in exercise of Constitutional jurisdiction vested

under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as held by the apex Court of the country in the case reported as Rehmat Din and others v. Mirza Nasir Abbas and others (2007 SCMR 1560).

28. The contumacious conduct of legal heirs of Rehmat Ali (petitioners in connected Writ Petition) is also established from the fact that though in Para No.11 of the petition they have referred to report, dated 11.01.2001, regarding availability of land for allotment against the pending PIUs pursuant to the assumption of cognizance by respondent No.2 but knowingly concealed the fact of passing of the order by the Assistant Commissioner after submission of said reports and turning down their request by the District Collector, Rahim Yar Khan.

29. According to the prayer clause of the connected petition, legal heirs of Rehmat Ali have prayed for allotment of land against their 56 pending PIUs. As per respondent No.1, since their case did not fall within the category of pending cases as no proceedings for allotment of land against the said units was pending before any competent forum in terms of Repeal Act, 1975, they were not entitled for allotment of land rather they could move to receive compensation. Though learned counsel representing the legal heirs of Rehmat Ali (petitioners in the

connected petition) have addressed the Court at great length but have failed to establish that their claim to the extent of allotment of land against 56 PIUs was covered under the definition of pending proceedings in terms of the Repeal Act, 1975. Even otherwise, when the petitioners have been found guilty of concealment of material facts from this Court they are not entitled to any equitable relief.

30. As far the judgments referred by respondent No.1 in his order are concerned, suffice it to note that while deciding the matter, he has misapplied the said judgments in the instant matter without formulating the points of controversy between the parties and their resolution on the basis of the record of the case.

31. As a necessary corollary to the discussion made in the afore-going paragraphs, I have no hesitation to hold that while deciding the matter respondent No.1 has omitted to consider material facts which had important bearing on the outcome of the *lis* between the parties. Consequently, instant petition is **accepted**, the order impugned to the extent of cancellation of land from the name of legal heirs of Ghulam Abbas is **set aside** and the matter is remanded to respondent No.1 for decision afresh after verifying certain facts referred *Supra* and those which are part of order passed by respondent No.1.

32. As far as the connected petition is concerned, the same is **dismissed.**

Judge

APPROVED FOR REPORTING

Judge

Announced in open court today i.e. 10.01.2018.

Judge

GR*