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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.173-R of 2011

The Punjab Cooperatives Board for Liquidation

Versus

Dr. Nazir Saeed etc.

JUDGMENT

Date of Hearing:-	19.11.2018.
Petitioners by:-	Syed Aal-e-Ahmad, Advocate.
Respondents by:-	Mian Subah Sadiq Wattoo, AAG.

CH. MUHAMMAD IQBAL, J:- Through this writ petition, the petitioner has challenged the validity of order dated 31.01.2011 passed by the Member (Judicial-V)/Chief Settlement Commissioner, Board of Revenue, Punjab whereby alleged allotment against Khata RL-II No.7 in Shivpura Kalan measuring 345-Kanals 15-marlas was declared bogus and resumed in favour of the state.

2. Brief facts of the case are that one Syed Nisar Ahmad etc., filed application/complaint on 27.08.2004 alleging therein that their father Muhammad Islam was displaced person who got temporary allotment of land measuring 50-Kanals 3-Marlas in village Shivpura Kalan, Tehsil Cantt., Lahore. Mst. Ummatul Hameed an alleged evacuee claimant also got allotted evacuee land measuring 345-Kanals 15-Marlas including land measuring 50-Kanals 3-Marlas already temporarily allotted to predecessor of said Syed Nisar Ahmad, the alleged subsequent allottee got incorporated her allotment order in revenue record on the basis of

robkar dated 23.10.1984 and mutation No.123, dated 30.10.1984 was sanctioned in the revenue record in her favour. She transferred said land in favour of National Industrial Finance Corporation Limited vide mutation No.124, which was further transferred in the name of Muhammad Ashiq vide mutation No.125. The District Collector, Lahore reviewed all the aforementioned mutations but the Additional Commissioner (Revenue), Lahore vide order dated 02.04.1988 restored the said mutations. Muhammad Ashiq further alienated land measuring 345-Kanals 15-Marlas to Park View Cooperative Housing Society vide mutation No.258 dated 14.12.1990. Respondents No.2 to 7/applicants/complainant filed application claiming therein that they are still in possession of land measuring 50-Kanals 3-Marlas temporarily allotted to their predecessor and Mst. Umat-ul-Hameed etc., fraudulently got allotted the said land through fake, fictitious and non-existent order of the settlement office whereas her claim was never received in Lahore from Karachi for any allotment. After hearing the concerned parties, Member (Judicial-V)/Chief Settlement Commissioner, Board of Revenue, Punjab resumed land measuring 345-Kanals 15-marlas in favour of the state and also rejected application of Syed Nisar Ahmad etc., vide order dated 31.01.2011. Hence, this writ petition on the ground that the petitioner is bonafide purchaser and Chief Settlement Commissioner has no jurisdiction to pass such order, as such, order is erroneous which is liable to be reversed.

3. Heard. Record perused.

4. Admittedly, suit land measuring 345-Kanals 15-Marlas situated in village Shivpura Kalan, Tehsil Cantt., Lahore is an evacuee property. From the perusal of inquiry conducted by the Chief Settlement Commissioner in Khata RL-II No.7 shows that Mst.Umat ul Hameed etc. the alleged allottees were the resident of Karachi. There is no any order placed on record which shows that their claim was ever transferred from Karachi to Lahore by the order of any competent authority. Neither any order dated 28.09.1972 allegedly passed by the Additional Settlement Commissioner Lands Lahore is appended with this petition nor produced before the Chief Settlement Commissioner. The alleged order dated 28.09.1972 on which basis all the allotments, mutations and alienations are structured has never been passed by any Additional Commissioner Lands Lahore nor the same is brought on record by the petitioner, as such, all the superstructure so built on the said foundation stood automatically collapsed as a clear fraud was committed by Umat-ul-Hameed etc., with the evacuee property. It is well settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction stood automatically dismantled and any ill-gotten gain achieved by committing fraud cannot be validated under any laws. Reliance is placed on the cases of Nawab Syed Raunaq Ali etc. Vs. Chief Settlement Commissioner & Others (PLD 1973 SC 236), The Chief Settlement Commissioner, Lahore Vs. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331), 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), Khair Din Vs. Mst. Salaman & Others (PLD 2002 SC 677), Talib Hussain & Others Vs. Member, Board of Revenue & Others (2003 SCMR 549), Khadim Hussain Vs. Abid Hussain & Others (PLD 2009 SC 419), Lahore Development Authority Vs. Firdous Steel Mills (Pvt.) Limited (2010 SCMR 1097). 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 was/is 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).

ii) In Shamrooz Khan Vs. Muhabbat Khan and another (1989 SCMR 819).

iii) In another judgment reported as Syed Wajihul Hassan Zaidi Vs. Government of the Punjab and others (PLD 2004 SC 801).

iv) A Division Bench of this Court in a case reported as Muhammad Baqir Vs. Haji Shokat Ali and 3 others (2005 CLC 1106).

The main trunt of the allottee's claimant is that she was allotted land on the basis of order passed in Appeal No.66/1973 by the Settlement Commissioner on 04.06.1973, whereas from the perusal of record it evinces that neither appeal No.66/73 was ever entertained, nor mentioned in any official register maintained by any competent authority. Repeatedly the orders were passed for the production of the order of allotment before respondent No.1 but allottee or the petitioner despite being subsequent purchaser and beneficiary has neither produced said order before the Chief Settlement Commissioner nor even before this Court which default itself speak about non-existent of the allotment order as well as postulate the existence of fraud in the preparation of such a fake order and it can conveniently said that a fraud was committed with the evacuee property on the basis of alleged bogus order dated 28.09.1972 which was never passed by any competent authority. Further the proposal as well as recommendation for allotment of the land were prepared by an Advocate who has no power or authority in this regard whereas under Para 63-68 of Rehabilitation Settlement Scheme, only Patwari, Qanoongo and Revenue Officer are authorized to make such recommendation after consultation of the official record whereas order dated 06.04.1973 is a fake order which is passed in violation of Para 63-68 of Settlement Scheme. Such disposal of land can only be confirmed by Deputy Rehabilitation Commissioner after fifteen days fixed for filing the objections but in this case the proposal was confirmed by the settlement

authorities on the same date in violation of the instructions contained in para 68 of settlement scheme, as such, order dated 06.04.1973 passed by Settlement Commissioner Lands Lahore is without authority against the law which can be ignored. Even Chief Settlement Commissioner entertained complaint of Syed Nisar Ahmad on 27.08.2004 and passed restraining order for alienation of the evacuee land but despite presence of stay order the Registrar Cooperative Societies Punjab passed the order dated 14.10.2004 regarding the merger of the suit land with DHA beyond his vested jurisdiction as he was not competent to pass such order.

5. As regards the claim of the petitioner to be the bonafide purchaser and has protection of law under Section 41 of T.P.A., suffice it to say that it is settled law that a purchaser is saddled with extraordinary responsibility of taking care and caution and to a deeply scrutinize the genuiness or originality or legality of the title of the vendor before purchasing the land under the principle of caveat emptor subject to incidence of Sections 10 & 11 of Transfer of Property Act and any infirmity or deficiency in the title found later shall always travel with the land and purchaser is precluded to subsequently raise plea of protection available under Section 41 of the Transfer of Property Act rather they have to face the rigors of their own committed negligence for non-conducting a bonafide and reasonable investigation into title of the vendor under the principle of Caveat Emptor. Reliance can be placed on the case reported as Muhammad Yamin and others Vs. Settlement Commissioner and others 1976 SCMR 489). Since the alleged allotment of Mst. Umat

ul Hameed was declared as bogus by Chief Settlement Commissioner whereafter vendee has no right, title or interest in the demised premises as it has to soar and sink with the allottee, as such, it is clear that no protection is available to the petitioner under Section 41 of the Transfer of Property Act as settled by Hon'ble Supreme Court of Pakistan in a reported case titled *Bashir Ahmad and Others Vs. Additional Commissioner with powers of Settlement Commissioner (L) and others (1983 SCMR 1199)* held as under:-

“...Since, an allotment of land is subject to the provision of sections 10 and 11, every purchaser from a allottee is to be saddled with the knowledge that the transaction of purchase is subject to the incidence of those sections and as such he cannot raise the plea of protection on the principle of section 41 of the Transfer of Property Act. His remedy is not against the Department but against the vendor. We are, therefore, inclined to hold that the view taken in the earlier two cited cases will govern the contention raised before us.”

In another case titled *Talib Hussain & Others Vs Member, Board of Revenue & Others (2003 SCMR 549)*, the Hon'ble Apex Court held as under:-

“It is important to emphasis that petitioner's entitlement is based upon the entitlement of Syed Nizamuddin, therefore, petitioner either to have survive or sink depending upon determination of legal status of the property which was transferred to him and as now he has failed to keep his entitlement alive, therefore, petitioner's claim is bound to be rejected.”

In a case titled *Abdul Hamid Vs. M.B.R. and others (1994 CLC 1160)*, this Court held as under:-

“4. The learned counsel for the petitioners has contended that all the petitioners are bona fide purchasers for value of the land from the transferee and they are entitled to retain the same. It is not disputed that transfer in favour of Noor Muhammad was found to be fraudulent. Not only that it was further found by the Notified Officer that Noor Muhammad, the real claimant, A was not traceable and some other person had obtained allotment by

impersonating him. As the vendor of the petitioners had no right in the land, he could not pass any title to the petitioners and they have no consequently legal right to retain the land (See Gul Muhammad and others v. The Additional Settlement Commissioner and others (1985 SCMR 491) and Manzoor Hussain v: Fazal Hussain and others (1984 SCMR 1027).”

This Court in a reported case Mst. Aziz Bibi & 22 Others Vs Additional Commissioner (Revenue) with the Powers of Settlement Commissioner (Lands), Lahore Division & Another (2002 YLR 3268) has observed that “since an allotment of land is subject to the provision or sections 10 and 11, every purchaser from an allottee is to be saddled with the knowledge that the transaction of purchase is subject to the incidence of those sections and as such he cannot raise the plea of protection on the principle of bonafide purchaser as envisaged in section 41 of the Transfer of Property Act. His remedy is not against the Department but against the vendor.

In another case titled as Rasheed Ahmad & 2 Others Vs Additional Commissioner (Rev.) Notified Officer Gujranwala Division, Gujranwala & Others (2007 CLC 1801) the learned Division Bench of this Court held as under:-

“8. Abdul Baqi is the original allottee. His claim was found bogus. Sale in favour of respondents will not confer better title to them. They will sink or swim with him and thus, are not protected under section 41 of the Transfer of Property Act. We respectfully follow the above view.

6. Further, the petitioner stated that Bilquees Barkat alienated land measuring 18-Kanals 1-Marla in favour of National Industrial Finance Corporation Limited vide mutation No.454 sanctioned in favour of PCBL on 18.01.2003 and the petitioner is bonafide alienee /transferee of the said land and its right in the property

are duly protected suffice it to say that the petitioner has already sold out the said land to one Muhammad Ayub son of Haji M. Saddique against full paid consideration through a registered sale deed dated 12.06.2003 whereafter petitioner has least concern any further with the suit property. Moreover the alleged allotment order was passed in 1972, whereas the allottee after about a period of more than 12 years sought for the implementatment of allotment order without advancing a reason for being dormant for such a long time which also make very allotment as non existent as such entire proceedings of allotment are fictitious and fake in nature. Moreover, learned Member (Judicial-V), Board of Revenue / Chief Settlement Commissioner / Administrator (Residual Properties) / Notified Officer, Punjab declared entire the allotment in favour of Mst. Bilqees Barkat as forged and bogus vide Order dated 24.4.17 which order was assailed further in writ petition No.79106-R of 2017 and this Court vide order dated 28.09.2017 upheld the above maintaining that she is not holding any legal valid allotment in her favour. Learned law officer also produced the original file of the settlement department before this Court and from perusal of said record it reveals that there is no any allotment order was ever passed by any competent authority in favour of Mst. Bilqees Barkat against RL-II No.7. The alleged order dated 28.09.1972 is not available in the judicial file of the Chief Settlement Commissioner even the record of appeal No.66/73 also not available whereas land measuring 345 Kanals 15-Marlas was allotted in the name of Umat-ul-Hameed etc., on the basis of alleged order dated 06.04.1973 which was

incorporated in the revenue record in the year 1984 whereas no such order of allotment was ever passed by the Chief Settlement Commissioner regarding allotment in favour of Umat-ul-Hameed or Bilqees Bibi etc. Further, the wording of alleged robkar dated 23.10.1984, is as under:-

روبار مور نمبر 23.10.84 جو کہ ہمارے دستخطوں سے عدالت سے برائے منتقلی رقمہ مذکورہ
بالا جاری ہوئی تھی منسوخ کی جاتی ہے کیونکہ کھاتہ نمبر RL-II7 مندرجہ بالا موضع شیخوپورہ
تحصیل لاہور چھاؤنی فرضی اور جعلی ہے۔ 14.9.06

From perusal of copy of alleged RL-II No.7 it is written as under:-

بجوالہ حکم انگریزی امروز کھاتہ ہذا کنفرم کیا جاتا ہے۔ 6.4.73

اسسٹنٹ کمشنر (لینڈ) لاہور۔

It is asserted that the Assistant Land Commissioner confirmed the allotment on the basis of order dated 06.04.1973 but the above order is not available in the record of settlement department and petitioner was time and again required to produce the said order but it could not produce the same before any forum even before this Court. Moreover Chief Settlement Commissioner vide notification No.1624/78/855/RL dated 19th June, 1978 decided that any allotment which has not yet been incorporated in the revenue record before coming into force of the Evacuee Property & Displaced Persons (Repeal) Act, 1975 or within one year after passing of allotment order, whichever is later, may be deemed to have been obtained fraudulently by anti-dating the entries in the register R.L.II and should be considered as cancelled forthwith, after hearing objections, if any, of the so-

called allottee. For ready reference, notification whereof is reproduced as under:-

No.1624/78/855/RL
Office of the Member Board of Revenue
(Settlement & Rehabilitation Wing)
Punjab.

Dated Lahore the 19.6.1978.

From

Mian Waheed-ud-Din Rathoro,
Secretary (Rural)
(Settlement & Rehab. Wing)
Board of Revenue Punjab.

To

1. All the wholtime Settlement Commissioners (L) & Addl: Settlement Commissioners (L) Punjab.
2. All the Deputy Commissioners and Assistant Commissioners (ASC) (L) in the Punjab.

Subject: Allotment of resumed land to informers etc. Mr. A.K.Khalid, C.S.C./Member Board of Revenue (S&R) Punjab.

Memorandum:

The Chief Settlement Commissioner / Member, Board of Revenue(S&R) Punjab, has been pleased to decide that any allotment that has not been incorporated in the revenue record before coming into force of the Evacuee Property & Displaced Persons (Repeal) Act, 1975 or within one year of the passing of allotment order, whichever is later, may be deemed to have been obtained fraudulently by anti-dating the entries in the register R.L.II and should be cancelled forthwith, after hearing objections, if any, of the so-called allottee

2. The Chief Settlement Commissioner/Member Board of Revenue(S&R) Punjab, has further been pleased to order that all cases where land has been resumed on 'Mukhbari' applications filed by attorneys of the original claimants should invariably be submitted to the Chief Settlement Commissioner for necessary orders as he thinks necessary with regard to the proposal/allotment of the land so resumed, under Section 14 (1A) of the Displaced Persons (Land Settlement Act, 1958, read with section 3 of the Evacuee Property & Displaced Persons Laws (Repeal) Act, 1975.

3. You are, therefore, requested kindly to ensure strict compliance of orders of Chief

Settlement Commissioner/ Member Board of Revenue accordingly, without further delay.

Sd/-SECRETARY RURAL)
(SETT: & REHAB. WING)
BOARD OF REVENUE PUNJAB.

No.1624/78/855/RL dated 19th June, 1978.

A copy is forwarded to all the Commissioners/Addl. Commissioners (Settlement Commissioners (Land) Punjab for information and necessary action.

Sd/-SECRETARY RURAL)
(SETT: & REHAB. WING)
BOARD OF REVENUE PUNJAB.

Despite the above unambiguous instructive or the restrictive order of the competent authority the subordinate revenue officials keep on incorporating the allotment order in the revenue record which necessitated the reiteration and recirculation of above notification. The successor Chief Settlement Commissioner vide notification dated 7th December 2000 again directed the subordinate revenue authorities to stop the further implementation of bogus allotments in revenue record in terms of notification dated 5th September, 1979. For ready reference, notification whereof is reproduced as under:-

No.2127-2000/3321/PA/Secy (S&R),
Board of Revenue, Punjab,
Farid Kot House, Lahore,
Dated the 7th Dec:2000

From

The Board of Revenue, Punjab.

To

1. All Commissioners in the Province.
2. All Deputy Commissioners in the Province.

Subject: **ORDER OF SENIOR MEMBER, BOARD OF REVENUE/MEMBER JUDICIAL-I, IN ROR NO.2469 / 95, SHAUKAT ALI ETC VERSUS PROVINCE OF PUNJAB DATED 18-07-2000.**

It is a matter of common knowledge that various persons from all walks of life, either sitting behind the scene or in the open are out to grab valuable evacuee property through fraud, forgery or manipulation.

Two cases were recently detected in which allotment orders were fabricated and bogus verification was made. The Deputy Commissioner, Gujranwala has been directed to get the criminal cases registered against the culprits.

The case mentioned at subject noted above was decided by the Senior Member/Member-Judl.1, dated 18-7-2000 copy of which is enclosed. The revenue authorities implemented bogus allotment in Register RL-II dated 1971 in revenue record in year 1995. Whereas instructions issued by the Settlement & Rehabilitation Wing of Board of Revenue, Punjab, Notification No. 1624/78/854, dated 19-06-1978 are as under:-

“The Chief Settlement Commissioner/Member, Board of Revenue(S&R) Punjab, has been pleased to decide that any allotment that has not been incorporated in the revenue record before coming into force of the Evacuee Property & Displaced Persons (Repeal) Act, 1975 or within one year of the passing of allotment order, whichever is later, may be deemed to have been obtained fraudulently by anti-dating the entries in the register R.L.II and should be cancelled forthwith, after hearing objections, if any, of the so-called allottee”.

In view of the situation explained above, the Chief Settlement Commissioner, Punjab/Member, Board of Revenue, has been pleased to direct as follows:-

1. No mutation transferring proprietary rights of the land allotted by any order should be sanctioned without prior approval of the Chief Settlement Commissioner, Punjab verbally as well as in writing by an officer not less than a Deputy Commissioner of the District personally to avoid further fraud.
2. A fraud is always a fraud and it is well settled law that no body can be allowed to reap the Fruit of fraud and retain ill-gotten gains. In order to achieve this objective all allotments made after repeal of Settlements Laws in year 1975 will have to be reviewed and as a start the Deputy Commissioners are requested to send all allotment orders received in their districts after 1990 to the Board of Revenue, Punjab for re-verification.
3. Notification dated 5th September, 1979 lays down that allotments obtained on the basis of forged or fabricated orders are total nullity in the eyes of law and, therefore, should be

ignored as non-existent and the land treated as still available for disposal. The Deputy Commissioner are directed to trace out such allotments and take necessary action in the light of these instructions.

MEMBER, BOARD OF REVENUE/
CHIEF SETTLEMNT COMMISSIONER,
PUNJAB, LAHORE

NO. & DATE EVEN

A copy is forwarded for information to:-

1. The Chief Secretary, Government of the Punjab, Lahore
2. The Senior Member, Board of Revenue, Punjab.

MEMBER, BOARD OF REVENUE/
CHIEF SETTLEMNT COMMISSIONER,
PUNJAB, LAHORE

Perusal of record further shows that the alleged robkar was issued and incorporated in the revenue record, much after the promulgation of notifications dated 19.06.1978 whereby a clear ban was imposed on incorporation of any entry regarding the ancient allotment orders in the revenue record. But in the case in hand the alleged impugned allotment order was passed in 1972 whereas same is belatedly incorporated in the revenue record in 1984 which is clear violation of aforementioned notifications, as such the notified officer has rightly passed the impugned order and has committed no illegality calling for interference in the impugned orders.

7. As discussed above, the instant writ petition is misconceived, as such, the same is hereby ***dismissed*** being devoid of any merit.

(Ch. Muhammad Iqbal)
Judge

Shahzad Mahmood

Approved for reporting.

JUDGE