

**IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN
JUDICIAL DEPARTMENT**

Writ Petition No.7-R of 2014

Mohammad Ashraf etc.
Versus
Member (Judicial-V) BOR/CSC etc.

JUDGMENT

Date of Hearing:-	13.01.2020
Petitioners by:-	Mr. Ahsan Raza Hashmi, Advocate
Respondent by:-	Mr. Muhammad Ramzan Khalid Joiya, Additional Advocate General.

CH. MUHAMMAD IQBAL, J:- This single order shall dispose of titled writ petition along-with connected Writ Petition Nos.6-R/2013, 20-R/2014, 17-R of 2014, 8-R/2013, 14-R/2014, 3348/2014, 11-R/2013 12-R/2016 as subject matter of these petitions is same as well as common questions of law and facts are involved.

2. Through these writ petitions, the petitioners have challenged the vires of orders dated 22.07.2013, 20.09.2013, 07.11.2009 & 07.06.16 passed by the Member (Judicial-V), Board of Revenue / Chief Settlement Commissioner / Administrator (Residual Properties) / Notified Officer, Punjab only to the extent of fixation of market price of the state land.

3. Brief facts of the case as contended by the learned counsel for the petitioners are that one Munir Hussain Shah and Shabbir Hussain Shah sons of Walayat Hussain Shah were owners of land measuring 3696-Kanals through RL-II No.157, 158, 538 situated in Chak No.424-B/TDA & 462/TDA Tehsil & District

Layyah. The petitioners purchased the land measuring 200-Kanals from the widow of Munir Hussain Shah through mutation No.200 dated 19.01.2001 and another mutation No.275 was sanctioned on 21.12.2004. Land measuring 62-Kanals 05-Marlas was purchased by Muhammad Afzal, Asif Ali sons of Rehmat Ali from the legal heirs of Munir Hussain Shah. That mutation No.47 dated 21.07.1988 in respect of land measuring 200-Kanals was sanctioned in the name of predecessor-in-interest of the petitioners. That land measuring 50-Kanals was also transferred in the name of Ghulam Hussain son of Nizam Din and Muhammad Sarwar son of Nizam Din. Muhammad Sarwar mutated the land in the name of his sons namely Muhammad Azam and Muhammad Azeem. Respondent No.1 vide orders dated 22.07.2013, 26.11.2013 & 07.06.16 cancelled the allotment of original allottees being bogus. The petitioners press these writ petitions only to the extent of fixation of price of the resumed evacuee state land for the year when they purchased the land from the alleged original allottees. Hence, these writ petitions.

4. I have heard the arguments advanced by the learned counsels for both the parties and gone through the record with their able assistance.

5. At the very outset, the learned counsels for the petitioners do not challenge the cancellation of allotment of land and only press these writ petitions with regard to the purchase of the same as per law. The petitioners being subsequent purchasers challenged orders dated 22.07.2013, 26.11.2013 & 07.06.16 only

to the extent of fixation of price stating that market price may be fixed as it was in the year when they purchased the land from the original allottee. Under Section 3 of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975, a fresh scheme of Disposal and Management of urban evacuee properties was promulgated in 1977 and its para 6,11,12 and 30 deals with disposal of the urban evacuee land. For ready reference, Para-11 & 12 of the Scheme, 1977 are reproduced as under:-

11. Sale by auction.—A house, shop or a building site having permanent construction for the transfer of which no application is received and every property that is cancelled from the name of a defaulter and a vacant building site shall be disposed of un-restricted public auction.

12. Disposal of houses, shops or a building sites by negotiation.—If a house, a shop or a building site having been put to auction twice fetches no bid or fetches a bid short of the reserve price it shall be disposed of by negotiation by inviting sealed tenders which shall be opened by the Deputy Administrator (Residual Properties) of the area concerned in the presence of the tenderers. If the highest offer made for such a house, a shop or a building site is equal to or exceeds 75% of its reserve price, it may be accepted by the Deputy Administrator (Residual Properties) and where the highest offer made is below 75% of the reserve price but not less than 50% it may be accepted by the Administrator (Residual Properties), of the area or where the highest offer made is below 50% it may be accepted by the Member, Board of Revenue (Residual Properties).

The matter of allotment of evacuee urban properties by the Settlement Authorities after the repeal of Displaced Persons (Land Settlement), Act 1958 came under consideration of the Hon'ble Apex Court in the case titled American International School System Vs. Mian Muhammad Ramzan & Others (2015 SCMR 1449), wherein it is observed that from the perusal of

above said Para of the Scheme *ibid*, the evacuee properties shall be transferred only through sale by auction and in case if the building site having been put to auction twice fetches no bid or fetches a bid short of the reserve price then it shall be disposed of through negotiation by inviting sealed tenders.

From the perusal of the Evacuee Properties & Displaced Persons Laws (Repeal) Act No.XIV of 1975 as well as Scheme 1977, admittedly, the land in question is an urban evacuee property and there is neither any provision available in the repealing Act nor in the Scheme 1977 for sale of the property through any private treaty or at market price. The request of the petitioner that they are ready to purchase the said property at the rate when the land was allotted to the allottee or on the rate when they purchased the property from the original allottee, is not tenable or acceptable as the property in question is a building site and as per Scheme 1977 it should be disposed of through an unrestricted public auction in terms of Para-11 of the Scheme *ibid*. Admittedly the land in question is a public property and public functionaries are the trusty/ custodians of the said land which could only be disposed of in accordance with law and most transparent and suitable *modus operandi* is that the reserved price be fixed by the price assessment committee whereafter the same should be put to unrestricted open transparent public auction, which better serve the cause. Reliance is placed on the case titled as *Muhammad Ramzan & Others Vs. Member (Revenue) Chief Settlement*

Commissioner & Others (1997 SCMR 1635) wherein the

Hon'ble Supreme Court of Pakistan held as under:-

“18. The Government of the Punjab Province then prepared and prescribed Scheme for the management and disposal of available urban properties (See PLD 1977 Punjab Statute page 62). Certain provisions of the Scheme were amended in 1985 (See PLD 1985 Punjab Statute page 6). The terms "available properties" and "building sites" were defined in paragraphs 1 (c) and 1(d) of the Scheme, 1977. Paragraph 6 provided that an available building site on which a person in possession has raised a permanent construction and applied for its transfer may be transferred to him alongwith an area which does not exceed three times the constructed area on the transfer price and where any person having made a permanent construction on a building site did not apply for transfer, it should be disposed of through unrestricted public auction alongwith the construction. The value of such construction shall be determined by the Deputy Administrator and paid to such a person out of the auction proceeds by such authority as may be specified. Paragraph 11 of the Scheme also provides for auction of the building site.”

(emphasis supplied)

Reliance is also placed on the case titled as American International School System Vs. Mian Muhammad Ramzan & Others (2015 SCMR 1449). For ready reference, relevant portion of *American International School System case (supra)* is reproduced as under:-

“In the instant cases, as record shows that on mere desire of the then Chief Minister of Punjab, the Member (Colonies) BOR, Punjab doled out valuable “residual evacuee property” at a throw away price to the petitioner-School, knowing fully well that the subject property is not the State land and that the subject evacuee land could only be disposed off through open auction in terms of the Scheme, 1977 and otherwise, he was not at all competent to undertake such exercise, which authority under the Scheme, 1977 vested in the Member, Board of Revenue (Residual Properties).”

6. Moreover, there is no provision in the law or in the scheme for the sale of state land through a private treaty and no policy exists in which the notified officer is shown competent to dispose of the urban evacuee property through a private understanding rather it is mandatory that disposal of evacuee/state land shall be made through unrestricted public auction as settled in *American International School System case (supra)*, wherein the Hon'ble Supreme Court of Pakistan has held that under Paragraphs 1 (d), 11, 12 and 30 of the Scheme for Management and Disposal of Available Urban Properties, 1977, the evacuee urban properties should be disposed of through unrestricted public auction. A similar view has been laid down by the Hon'ble Supreme Court Pakistan in the case of *Muhammad Din & Others Vs. Ghulam Muhammad Naseem Sindhu & Others* (PLD 1991 SC 1). Further in C.P. No.709-L/2009 titled *Member (Judicial-V), Board of Revenue/Chief Settlement Commissioner, Punjab & 2 Others Vs. Sagheer Muhammad Khan & Others*, the Hon'ble Supreme Court of Pakistan vide order dated 02.01.2015 settled that after promulgation of the Repeal Act 1975, the property can only be disposed of through open auction, the relevant portion thereof is reproduced as under:-

“7. Considering the above, we are clear firstly that the conclusion arrived at by the learned Single Bench in para 9 of the impugned judgment, as reproduced above is incorrect and the reliance on the case of Muhammad Hussain (*supra*) is also misplaced. Secondly, it is evident that as of date, the respondents can have no claim on the property in question. According to the current law and arrangements put in place by the Province subsequent to the Repeal Act the property will have to be disposed of through open public

auction so that the assets vested in the Province and ultimately in the people of the Province are duly protected. This shall not prevent the Province from proceeding against the respondents or others both for recovery of compensation for occupation and use of the property and for any other action civil or criminal in this case. This petition is converted into appeal and is allowed in the above terms.”

(emphasis supplied)

Further all the organs of the state are placed under obligation to comply with the orders of the Hon’ble Supreme Court of Pakistan as enshrined in Article 189 of the Constitution of Islamic Republic of Pakistan. As such supra quoted dicta of the Hon’ble August Court clearly set down the hallmark principle for disposal of urban land through unrestricted open auction, as such, the said evacuee land can only be disposed of through transparent unrestricted and widely published public auction. Moreover the Government of Punjab has visualized and promulgated a fresh scheme on the subject in the year 2013 wherein it conclusively formulated a principle that evacuee or the state land should only be disposed of through unrestricted open auction, as such presently no scheme is available for sale of the land through any private treaty.

7. In view of above, these writ petitions are **dismissed**. Orders dated 22.07.2013, 20.09.2013, 07.11.2009 & 07.06.16 are hereby modified and evacuee land should be disposed of through unrestricted public auction. The petitioners have a right to participate in the auction proceedings and their request for fixation of market price in the year when they allegedly purchased the land from the alleged original allottee is not

tenable and the same could not be granted, as such, their request is also turned down.

(CH. MUHAMMAD IQBAL)
JUDGE

Shahzad Mahmood

Approved for reporting.

JUDGE