JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3296 of 2017

Talib Hussain, etc

Versus

Faiz Alam, etc.

Date of Hearing:	**27.01.2025**
Appellant by:	Mr. Muhammad Asad Abbas Raja, Advocate.
Respondent by:	Mr. Aamir Azad, Advocate. Mr. Muhammad Asif Jameeel, State Counsel. (For R. Nos. 12 to 14).

MUHAMMAD AZAM KHAN, J. The petitioners have filed the present writ petition against the respondents wherein they have assailed the order dated 23.05.2017 (**"Impugned Order"**) passed by the Chief Commissioner, exercising the powers of Board of Revenue, Islamabad whereby the appeal filed by the respondents against the order dated 17.02.2016 has been accepted.

2. The brief facts of the case are that the predecessor of respondents namely Jalal Khan mortgaged land bearing Khasra No. 101(old) 96 (new) and Khasra No. 106 (old) 103 (new) situated in the Revenue State of Lohi Bheer, Tehsil and District, Islamabad through mutation No. 1346 dated 26.06.1953 to one Mehrban the predecessor of the petitioner, against the consideration of amount Rs. 600/- and possession was also delivered to the mortgagee. The predecessor of the respondents later on redeemed the mortgage land measuring 2 Kanal 11 Marla in Khasra No. 96 through mutation No. 213 dated 16.04.1963 while the suit land i.e. 1 Kanal 6 Marla in Khasra No. 103 Khatooni No. 830 Khewat No. 485 is still in the possession of the petitioner as mortgagee.

3. Mehrban s/o Allah Ditta predecessor of the petitioner incorporated his name in Khasra No. 103 in the registered Haqdaran-e-Zameen 1954 on the basis of mutation No. 212 dated 16.04.1963 which

was challenged by the successor of Jalal Khan i.e. the respondents. The petitioner alleges that Mehrban purchased the suit land i.e 1 Kanal 6 Marla in Khasra No. 103 from Jalal Khan, while on the other hand the respondents claimed that the same has been wrongly incorporated in the name of Mehrban rather it was redeemed. The successor of Jalal Khan i.e. respondents applied for the possession through redemption of land measuring 1 Kanal 6 Marla bearing Khasra No. 103 before the Additional Deputy Commissioner (Revenue)/District Collector Islamabad. On 11.05.2010 the District Collector decided the application and ordered that the application for redemption of suit land has not been filed on the prescribed Form as per The West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964. Moreover, he directed that certain corrections in revenue record are required before decision of the redemption issue. The respondents made an application before the Tehsidar/Collector, Islamabad for the correction of the record and after obtaining the report the Additional Deputy Commissioner, Islamabad vide order dated 29.09.2010 allowed to make necessary correction in the revenue record by allowing "*Sehat Inteqal*"**.** It was observed in the said order that: -

رپورٹ تحصیلدار:

چونکہ ریکارڈ مال میں غلطی مثل حقیقت سال ۱۹۵۶ میں واقعہ ہوئی۔جس کی درستی بذریعہ فردبدر نہ ہوسکتی ہے۔بلکہ درستی اندراج بذریعہ صحت انتقال کے ممکن ہے۔ اندریں حالات بالامناسب ہے کہ فردبذریعہ صحت انتقال درستی کے احکام دیئے جاویں۔تاکہ درستی اندریں فیصلہ عدالت مورخہ ۱۰۔۵۔۱۱ پر عمدرآمد اور درستی ہو سکے۔

حکم:

463/NTCo/29-9-2010

رپورٹ تحصیلدار ملاحظہ ہوئی۔نمبر خسرہ 103 سابق، حال 10 تعدادی 1K-6M بذریعہ انتقال X1346 رہن ہوا۔جس کا عملدرآمد مثل حقیقت بندوبست میں کرتے وقت راہن/مرتہن کی بجائے فریقین کو مالک درج کردیا جو آج تک غلط اندراج چلا آرہا ہے۔اس لئے درست عملدرآمد کیلئے انتقال نمبر 1346 کا عملدرآمد بصیغہ صحت X انتقال کی اجازت دی جائے۔

4. Application for redemption of the said land was filed on the prescribed Form after the correction of record through Sehat mutation No. 2896 as per the direction of the District Collector. That Application

was accepted vide order dated 16.07.2013. The petitioner assailed the said order before the Commissioner (Revenue) through filing of appeal which was accepted vide order dated 17.02.2016 with the observation that *"the land was fraudulently transferred by the predecessor of petitioner through mutation No. 212 hence the matter is liable to be adjudicated in Civil Court."*

5. The respondents went in appeal before the Chief Commissioner exercising the powers of Board of Revenue who decided in their favour vide the impugned order.

6. The counsel on behalf of the petitioner argued that the predecessor of the petitioners namely Mehrban purchased the suit land from predecessor of the respondents namely Jalal Khan and it was rightly incorporated in the revenue record in their name and if the respondents want to challenge the same, the right forum will be the Civil Court as held by the Commissioner (Revenue) and the Revenue Authority has no jurisdiction to decide the matter in question.

7. On the other hand, the counsel on behalf of the respondents argued that under The West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964 the revenue authorities are competent to adjudicate upon the matter in question and not the Civil Court. The said Act barred the jurisdiction of Civil Court hence the matter has rightly been decided by the revenue authorities.

8. Arguments heard, record perused.

9. It is established from record that vide mutation No. 1346 total land measuring 2 kanal 12 Marla consisting of Khasra No. 101 (old) 96 (new) and 106 (old) 103 (new) were mortgaged by one Jalal Khan predecessor of respondents in favour of Mehrban predecessor of petitioners on 26.06.1953. Khasra No. 101 (old) 96 (new) was redeemed through mutation No. 213 in the year 1963 while the other Khasra No. 106 (old) 103 (new) was rightly ordered to be redeemed vide order of the Collector, but the same was not accepted by the Commissioner (Revenue) perhaps on the assumption that mutation No. 212 vide which the land

Khasra No. 106 (old) 103 (new) was allowed to be fraudulently transferred in the name of Mehrban and he held that the jurisdiction lies with the Civil Court.

10. To ascertain the above said assumption of Commissioner (Revenue) mutations Nos. 1411-1421 and 2012 were examined which reveal that through mutations Nos. 1411-1421 land bearing Khasra No. 2379/94, 586, 97-2380/94-2283/100 measuring 4 Kanal 19 Marla was alienated by Jalal Khan in favour of Mehrban. While incorporation of the said mutations in Misal-e-Haqiqat in the year 1956-57, instead of Khasra No. 97, Khewat No. 307 and Khatooni No. 587, Khasra No. 106 (old) 103 (new) was mentioned erroneously. The said wrong entry was corrected through Sehat mutation No. 2896 on 21.11.2011.

11. In light of the above discussion, it is clear beyond any shadow of doubt that Khasra No. 106 (old) 103 (new) was correctly redeemed.

12. It is pertinent to mention here that the petitioner's counsel has mentioned in his arguments regarding a Civil Suit decided against the respondents that it was regarding the same suit property. On perusal of consolidated Judgment dated 22.03.2011 passed by the learned Civil Judge, 1st Class, Islamabad in suits for declaration titled as *Kalu Khan etc, v. Kali Jan, & Kali Jan v. Kalu Khan* the matter between the same parties was decided but the Khasra numbers are totally different to that of the Khasra numbers involved in the instant petition. Moreover, the cause of action and matter in question was different. For ready reference the issues which were framed by the learned court are as under:-

> "1. Whether predecessor of plaintiffs namely Jalal, sold property measuring 5 kanal, detailed in Para No. 2 of the plaint and handed over the possession but defendants took the advantage of illiteracy of Jalal and in connivance with the Revenue Staff got entered Khasra no. 94/1, in the mutation No. 117, instead of Khasra nos. 97 and 98? OPP
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> 2. Whether the plaintiffs are still owners of Khasra no. 94 and 743 and mutation no. 117, dated 28.11.1960 is illegal,

based on fraud and misrepresentation and liable to be corrected? OPP

3. Whether the plaintiffs are entitled for decree for declaration and permanent injunction as prayed for? OPP

4. Whether the defendants are owners of property detailed in Para No. 1, of the plaint of suit filed by defendants and possession of defendant over Khasra no. 94 and 743 in illegal? OPD

5. Whether the defendants are entitled for decree for declaration as well as for possession? OPD

6. Relief."

13. Under Section 17 of the West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964 the jurisdiction of Civil Court is barred. For ready reference the above said Section is reproduced here under: -

"Section 17: No Civil Court shall have jurisdiction to entertain any claim or enforce any right under a mortgagee declared extinguished under this chapter or to question the validity of any proceedings under this chapter"

14. On the same point the Peshawar High Court in the case of *Liaqat Ali and others v. Hukam Khan* **(2011 CLC 1034)** has held that: -

"Section 17 of Redemption and Restitution of Mortgaged Lands Act, 1964, had barred the jurisdiction of Civil Court--- Appellate Court while deciding the appeal had travelled beyond the parameters of its jurisdiction as prescribed under the law, because when a remedy was available to a litigant under the special law, he had the right to invoke the jurisdiction of said Special Tribunal or court established under the special law because of the reason of S.9, C.P.C., which had expressly prohibited the cognizance of suit barred by law---Visualizing the judgment of Appellate Court, in the light of said provision of law it was evident that the exercise of jurisdiction was not permissible under the law---Appellate Court had not taken to advert and comprehend the true intent and purpose of law, and failed to apply the same to the facts of the case---Since Appellate Court restituted the mortgage being the subsisting usufructuary mortgage not less than twenty years old, findings were in contravention of provisions of S.10 of West

> Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964. ”

15. The Lahore High Court in the case of *Allad Dad v. Muhammad (deceased) through L.Rs and others* **(2017 YLR 1662)** has held that: -

> “Application under S.3 of Punjab Redemption and Restitution of Mortgaged Lands Act, 1964 was competent before District Collector and the Civil Court had no jurisdiction under Section 17 of the said Act--- Admittedly, the plaintiff or his predecessor never applied for redemption of the land in question before the Collector; when it was so, the suit was not competent---Pre-existing rights could be declared through a declaratory decree and no new right could be created through such decree--- Plaintiff had not approached the appropriate forum and as such his civil suit was not competent ---Judgment and decree passed by first appellate court was not sustainable under the law---Civil revision was allowed accordingly.”

16. Thus keeping reliance on the dictum laid down by the Sister High Courts, and Section 17 of The West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964, I am of the view that Civil Court has no jurisdiction to adjudicate upon the matters related to redemption of mortgages and the order of the Chief Commissioner who is exercising the powers of Board of Revenue has rightly decided vide the Impugned Order in favour of the respondents, resultantly the instant writ petition is **dismissed.**

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open Court on 03.02.2025

JUDGE

ISLAMABAD | 03.02.2025
APPROVED FOR REPORTING

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