JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : C.R. NO.184-2015
City School Pvt. Ltd.
Vs.
Rubina Habib etc.

Petitioner by	**:**	**Mr. Muhammad Ishtiaq Ahmad Raja, Advocate**
Respondents by	**:**	**Mr. Zulfiqar Ali Abbasi, Advocate** **Mr. Muhammad Qasim Khan, Advocate** **Mr. Mohi-ud-Din Amir Mughal, Advocate** **Mr. Shahid Munir, Advocate**
Date of decision	**:**	**21.11.2017**

AAMER FAROOQ J. The facts, leading to filing of instant petition, are that petitioner purchased property measuring 16-kanals 4-marlas bearing Khewat No.364, Khatooni No.639, Khasra No.2545/17, 12/2 & 14 situated in Mouza Seham, Tehsil & District, Islamabad. The petitioner made an application to the Revenue Officer for demarcation of the property. In this behalf, notices were issued to the interested parties and on the basis of survey 'Naqsha Tajawaz' was submitted. The report/'Naqsha Tajawaz' was not challenged before the revenue hierarchy. The petitioner filed a Suit for Possession against the respondents, in which, respondents Nos.4 & 5 questioned the report prepared by the Revenue Officer. During course of proceedings, an application was filed on behalf of respondent No.4 for fresh demarcation of the property, which was allowed by learned trial court vide the impugned order dated 03.02.2015.

2. Learned counsel for the petitioner, *inter alia,* contended that judgment relied upon by learned trial court in ordering fresh demarcation is not applicable in the facts and circumstances of the case inasmuch as in the referred case, same was not conducted by the Revenue Officer; that Revenue Officer is competent under section 117 of the West Pakistan Land Revenue Act, 1967 to demarcate the land, even located within the city. Reliance was placed on case reported as 'Dilawar Khan and 2-others Vs. Mst. Mehrun Nissa and 8-others' (2011 YLR 872); that respondents Nos.4 & 5 had the remedy of appeal against the demarcation report prepared by the Revenue Officer.

3. Learned counsels for respondents Nos.4 & 5, *inter alia,* contended that they were not associated in the demarcation process conducted by Revenue Officer hence they have been condemned unheard; that it is just and proper that Local Commission be appointed for fresh demarcation of the property and the Suit be proceeded accordingly.

4. The facts, leading to filing of instant petition, have been mentioned hereinabove therefore need not be reproduced.

5. On the application of the petitioner, demarcation was conducted and 'Naqsha Tajawaz' was prepared.

6. Apparently, the report was prepared after issuance of notices to various parties of the adjacent properties. Grievance of respondents Nos.4 & 5 is that they did not receive any notice and have been condemned unheard therefore Local Commission be appointed for fresh demarcation.

7. Under Section 117 of the West Pakistan Land Revenue Act, 1967, demarcation of land situated within the revenue estate, exclusively falls within the domain of revenue authorities. In this behalf, the Hon'ble Lahore High Court in case reported as 'Anwar Club and another Vs. Muhammad Sarwar' (PLD 1992 Lahore 63) observed as follows: -

> *"Rules 67-A of the Punjab Land Revenue Rules, 1968 framed under the West Pakistan Land Revenue Act, 1967 requires a Revenue Officer to define the limits of an estate, a holding, field or any portion thereof. According to sub-rule (1) of rule 67-A, an application, under section 117 of the said Act for demarcation of any field, etc., is to be made to a Revenue Officer. Clause (b) of sub-rule (4) says that on the receipt of the application, the Revenue Officer would fix time and date for demarcation of boundaries, and under clause (c) thereof, he is required to cause a notice of the application to be given to:*
>
> *(i) the parties to the application;*
> *(ii) Lambardar of the village in which the land mentioned in the application was situated;*
> *(iii) Field Kanungo of the Circle;*
> *(iv) Revenue Patwari of the village if the notice was not to be served through him; and*
> *(v) Any other person whose presence at the time of demarcation of boundaries was considered necessary or expedient by the Revenue Officer.*
>
> *It has been laid down in sub-rule (6) that at the time and on the date fixed for demarcation of boundaries, the Revenue Officer would, in the presence of the parties and other persons mentioned in clause (c) of sub-rule (4) as may be present in response to the notice served on them, cause the measurement of the land to be taken under his personal supervision, strictly in accordance with the instructions and standing orders on the subject issued by the Financial Commissioner and the Board of Revenue, from time to time. Sub-rule (7) provides that after taking necessary measurement, the Revenue Officer, would prepare a plan and a report. It is also his duty to read out his report to the parties and to record their statements as to whether they had understood the proceedings and had any objections*

against any portion of his report. Sub-rule (7) further provides that after recording such statements and his opinion thereon, the Revenue Officer, on return to his headquarter, would place the report together with the plan of encroached area and statements of the parties, on the file and cause the particulars of the proceedings entered in the relevant column of the register prescribed for the purpose"

Similarly, in case reported as 'Dilawar Khan and 2-others Vs. Mst. Mehrun Nissa and 8-others' (2011 YLR 872), the Hon'ble Peshawar High Court observed that under section 117 of West Pakistan Land Revenue Act, 1967, Revenue Officer is empowered to demarcate land even located in the city.

8. Moreover, under section 161 of West Pakistan Land Revenue Act, 1967, appeal is provided against any order passed by a Revenue Officer. The referred provision reads as follows:-

*"**161. Appeal.—** (1) Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely—*

(a) to the Collector, when the order is made by an Assistant Collector, of either grade;
(b) to the 'Commissioner', when the order is made by a Collector;
(c) to the Board of Revenue only on a point of law, when the order is made by a Commissioner;

provided that—

i) when an original order is confirmed on first appeal, a further appeal shall not lie;
ii) when any such order is modified or reversed on appeal by the Collector, the order made by the 'Commissioner' on further appeal, if any, to him shall be final"

Similarly, Section 164 of Land Revenue Act, 1967 provides remedy of revision in appropriate cases.

Respondents Nos.4 & 5 had remedy of appeal and/or revision, which they did not avail. In case reported as 'Badal and another Vs. Mansoor Ahmad Awan and 7-others' (2010 CLC 1968), the Hon'ble Sindh High Court observed that under section 161 of West Pakistan Land Revenue Act, 1967, it is incumbent upon a party to file appeal against original or appellate order, it is aggrieved of.

9. Respondents Nos.4 & 5, by seeking to appoint a Local Commission for demarcation afresh, impliedly seek to assail 'Naqsha Tajawaz' and set it aside, which is not permissible under the proceedings before the learned trial court, as any challenge to the report/'Naqsha Tajawaz', could have been made before the hierarchy under land revenue laws. The learned trial court, while passing the impugned order, has not taken into account the referred fact therefore while appointing Tehsildar as Local Commission or ordering fresh demarcation of the property, has committed material irregularity in exercise of jurisdiction. Even otherwise, the respondents during the course of evidence, can challenge the veracity of 'Naqsha Tajawaz'.

10. In view of above, instant petition is allowed and impugned order dated 03.02.2015 passed by learned trial court is set aside. Consequently, the application filed by respondents No.4 stands dismissed.

(AAMER FAROOQ)
JUDGE

Zawar

Uploaded By: *Engr. Umer Rasheed Dar*