JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.120 of 2014
Cantonment Board Rawalpindi through its Executive Officer
Versus.
Muhammad Qasim Khan Niazi

Date of Hearing:	04.08.2016
Petitioner by:	Ch. Muhammad Yaqoob, Advocate,
Respondents by:	Sheikh Ahsan-ud-Din, Mohi-ud-din Aamir Mughal, Saifullah Khan Serohay, and Arshad Mahmood, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to dispose of instant Civil Revision Petition No.120/2014 as well as Civil Revision Petitions Nos.121 to 123/2014, all filed by the Cantonment Board Rawalpindi, against the respondents, who were plaintiffs before the learned trial court. All the petitions are against the judgments and decrees dated 13.02.2014, passed the Court of the learned Additional District Judge, Islamabad, whereby, the respondents' appeals against the judgments and decrees dated 15.03.2013, passed by the Court of the learned Civil Judge, Islamabad, were allowed, and the civil suits filed by the respondents/plaintiffs were decreed. Vide the said judgments and decrees dated 15.03.2013, the learned Civil Court had dismissed the civil suits for permanent injunction instituted by the respondents/plaintiffs. These petitions involve common questions of fact and law and the judgments and decrees in question are almost identical.

2. The record of civil revision petition No.120/2014, shows that through registered Sale Deed No.2819, dated 31.05.2005, registered with Joint Sub-Registrar, Islamabad, the respondent and his sister purchased 12/75th share comprising 12 *marlas* ("the Plot") of *khasra* No.991/750, which comprises 3 *kanals* 15 *marlas* of Mouza Notheha Tehsil and District Islamabad. Thereafter, the respondent raised construction on the Plot.

3. On 10.05.2006, the respondent instituted a suit for permanent injunction before the Court of the learned Civil Judge, Islamabad, praying for a restraint against the petitioner from interfering with the construction raised by the respondent on the Plot. As per the pleadings, the said suit was instituted because the petitioner was interfering with the construction being raised by the respondent on the Plot. The petitioner was of the view that since the Plot fell within the jurisdiction and the territorial limits of the Rawalpindi Cantonment, the respondent could not raise construction thereon without the petitioner's approval of the building plan. The said suit was contested by the petitioner by filing a written statement. In said written statement, it was *inter alia* pleaded that the respondent had raised construction without the approval of the site plan by the Cantonment Board Rawalpindi. Furthermore, it was pleaded that as per notification No.37/11/C/ML&C/81/3418/D-12/ML& C/81 dated 03.08.1981, issued by the Federal Government, the Plot was situated within the limits of the Rawalpindi Cantonment, and was, therefore, under the management and control of the petitioner/ Cantonment Board Rawalpindi.

4. The following issues were framed by the learned Civil Court on 13.11.2007:

> *"1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed? OPP*
> *2. Whether the suit in hand is barred under Section 56 of Specific Relief Act, 1877? OPD*
> *3. Whether the plaintiff has got no cause of action to file the instant suit? OPD*
> *4. Whether the Civil Court has no jurisdiction to entertain the matter? OPD*
> *5. Whether the suit is false, frivolous and has been filed with malafide intention, hence, the same is liable to be dismissed with special costs under Section 35-A C.P.C.? OPD*
> *6. Relief."*

5. The respondent was examined as PW-1, whereas, the petitioner produced two witnesses, namely, (i) Chaudhry Muhammad Zia, (DW-1), and (ii) Adil Rasheed, (DW-2). Both the said witnesses were Survey Draftsmen at the Rawalpindi Cantonment Board. As mentioned above, vide judgment and decree dated 15.03.2013, the learned Civil Court dismissed

the said suit. The appellate court, vide judgment and decree dated 13.02.2014, allowed the respondent's appeal and consequently, decreed the suit instituted by the respondent. The said judgment and decree passed by the appellate court has been impugned by the petitioner in this civil revision petition. The connected civil revision petitions are also against such an appellate order.

6. Learned counsel for the petitioner submitted that the petitioner in its written statement had taken objections to the jurisdiction of the learned Civil Court to adjudicate upon the suit, but the learned courts below did not advert to the said objections; that the learned Appellate Court erred by not appreciating that the learned Trial Court had no jurisdiction to entertain and try the suit; and that the learned Appellate Court erred by holding that no evidence had been brought by the petitioner to discharge with burden of proving Issues Nos.2 to 5. He drew the attention of the Court to notification dated 30.09.1981, issued by the Federal Government (Ministry of Defence) in exercise of the powers conferred by Section 4(3) of the Cantonments Act, 1924. This notification was tendered in evidence as Ex.D-2, and specifies the areas included in the Rawalpindi Cantonment. The Plot is said to be located between Cantonment Board Pillars No.105 and 128. He further submitted that on 19.12.2012, the petitioner filed an application for the summoning of record from the Survey of Pakistan, but this application was unlawfully dismissed, vide order dated 21.01.2013. On 27.02.2013, the petitioner had also filed an application under Order 1, Rule 10 C.P.C. for the impleadment of (i) Survey of Pakistan and (ii) Islamabad Capital Territory, but this application was also dismissed by the learned civil court on 28.02.2013.

7. Learned counsel for the petitioner further submitted that the order dated 16.07.2009, passed by the Hon'ble Lahore High Court in W.P.No.1892/2004, and order dated 22.06.2012, passed by the Hon'ble Supreme Court in Civil Petition No.594/2011, are not binding on the petitioner, because these are orders in *rem*, and not orders in *personam*. The finding of

the Hon'ble High Court to the effect that Revenue Estate Notheha does not fall within the Rawalpindi Cantonment, was not binding, and that this issue should have been determined afresh by the learned lower Courts. He was of the view that had the learned Trial Court summoned the record from the Survey of Pakistan, it would have been made clear that the Plot was within the limits of the Rawalpindi Cantonment. Learned counsel further submitted that it was obligatory upon the respondent to have sought approval of the building plans before raising construction on the Plot, which was situated within the jurisdiction of the Rawalpindi Cantonment.

8. On the other hand, learned counsel for the respondent narrated the facts in a chronological order, and submitted that the Hon'ble Lahore High Court, vide order dated 16.07.2009 passed in W.P.No. 1892/2004 had conclusively held that Revenue Estate Notheha was not within the limits of the Rawalpindi Cantonment; that the petitioner's petition against the said judgment was dismissed by the Hon'ble Supreme Court, vide order dated 22.06.2012; that the said orders were binding on the petitioner, and the petitioner could not take a position contrary to the what was held by the Superior Courts. He further submitted that as the Plot on which construction was raised by the respondent was situated in *khasra* No.991/750, Revenue Estate Notheha, there was no need for the respondent to seek an approval of the building plans from the petitioner; that the suit was instituted because the petitioner was unlawfully interfering in the respondent's peaceful possession and lawful construction on the Plot; and that the learned Trial Court had correctly dismissed the petitioner's application for summoning the record and impleadment of parties, because they were filed at a highly belated stage of the proceedings. He further submitted that the judgment and decree dated 13.02.2014, passed by the learned appellate court is strictly in accordance with the law and facts of the case and warrants no interference in the revisional jurisdiction of this Court.

9. I have heard the arguments of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the institution of the suit and the filing of this petition, have been set out in sufficient detail in paragraphs 02 to 03 above and need not be recapitulated.

10. The properties which are the subject matter of Civil Revision Petitions Nos.121 to 123/2014 are situated in Mouza Notheha Tehsil and District, Islamabad. The property which is the subject matter of Civil Revision Petition No.121/2014 is located in *khasra* No.860/852/762/58, and that of Civil Revision Petition No.123/2014 is located in *khasra* No.987/740. The properties which are subject matter of Civil Revision Petition Nos.120 and 122/2014 are located in *khasra* No.991/750. In essence, the dispute between the petitioner and the respondent is whether the said properties are situated within or beyond the territorial/geographical limits of the Rawalpindi Cantonment.

11. As mentioned above, the respondent in civil revision petition No.120/2014 had purchased 12/75th share, comprising 12 *marlas* in *khasra* No.991/750, which comprises 3 *kanals* 15 *marlas*. The petitioner does not dispute the respondent's ownership of the land on which he was raising construction. The petitioner's case is that since the said property/Plot is situated within the limits of the Rawalpindi Cantonment, it was mandatory for the respondent to have obtained approval of the building plans before raising any construction thereon. The respondent disputes this and takes the position that as the Plot is beyond the territorial limits of the Rawalpindi Cantonment, there was no need to have obtained approval of the building plan from the petitioner.

12. The question whether a property owned by one Haji Muhammad Ijaz situated in *khasra* No. No.991/750, Revenue Estate Notheha was within or beyond the territorial limits of the Rawalpindi Cantonment, was the subject matter of W.P.No.1892/2004, titled "Haji Muhammad Ijaz Vs. The Cantonment Board, Rawalpindi" before the Hon'ble Lahore

High Court. This question was decided against the Rawalpindi Cantonment Board by the Hon'ble High Court, vide order dated 16.07.2009, which is reproduced herein below in its entirety:-

> ***"This writ petition was filed in this Court on 29.06.2004 to question a notice (Annex-A) issued by the respondent in terms of Section 185 of the Cantonment Act 1924, alleging that the petitioner is constructing shops without getting a plan sanctioned. It came us before the Court on 30.06.2004 when after noting the contention that the property is not located within the Cantonment limits, notice was issued to the respondent. On 13.7.2004 in the presence of learned counsel for both the parties, the Revenue Officer was directed to inspect the site and to make a report vis-à-vis its location. This report was filed in this Court as far back as on 20.07.2004. None of the parties have raised any objection against the report for a period of last five years.***
>
> ***2. I have examined the said report with the assistance of the learned counsel for the parties. The proceedings were carried out in presence of the deceased petitioner and the Land Superintendent of the respondent-Cantonment Board. The conclusion is that the location of property in question is in Sector I-14 of District Islamabad (revenue estate of Notheha) and not in the limit of Rawalpindi Cantonment Board.***
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> ***3. In view of the said un-objected report, the writ petition is allowed and the respondent is restrained from implementation the impugned notice. No orders as to costs."***
>
> **(Emphasis added)**

13. The Cantonment Board, Rawalpindi, assailed the said order in Civil Petition No.594/2011, before the Hon'ble Supreme Court. Vide order dated 22.06.2012, the said petition was dismissed. Perusal of the said order dated 22.06.2012 shows that the said petition was dismissed on merits as well as limitation. For ease of reference, the said order is reproduced herein below:-

> ***"This petition is barred by 586 days and the ground taken for condonation of delay in paras 4 & 5 of the application (CMA No.1793/2011) is that by mistake petitioner had filed Intra Court Appeal, which remained pending and was ultimately dismissed on 16.3.2011 and that on account of the bona fide mistake of pursuing a remedy of Intra Court Appeal, the delay was caused. The afore-referred ground in the facts and circumstances of this particular case has not been found by us to be tenable in law to justify condonation because he was duly represented before the High Court by a counsel and a wrong advise by a counsel is no valid defence. Even otherwise, on merits we find that the learned High Court primarily allowed the constitution petition challenging the notice issued by the petitioner Cantonment Board to the respondent for unauthorized construction on the ground that in terms of the report submitted by the Commission appointed by the Court, the property in question did not fall in the jurisdiction of the petitioner Department and the said finding of fact has not even been challenged before us today. In the***

afore-referred circumstances, CMA No.1793/2011 being misconceived is dismissed and consequently, CPLA No.594/2011 is also dismissed as hopelessly time-barred." (Emphasis added).

14. As is apparent from the perusal of the order dated 16.07.2009, the Hon'ble Lahore High Court, had directed the Revenue Officer to inspect the site and submit a report as to its location. In the said order dated 16.07.2009, the location of the property which was in question in that writ petition was held to be located beyond the limits of the Rawalpindi Cantonment Board. The Hon'ble High Court had come to this conclusion on the basis of the report of the Revenue Officer, who had inspected the site/property (which was in issue in the said writ petition No.1892/2004) in the presence of the Land Superintendent of the Rawalpindi Cantonment Board. The report of the Revenue Officer in that case had gone unchallenged. The respondent in the proceedings before the learned Trial Court produced the said report as Ex.P-2. Perusal of Ex.P-2 shows that the property, which was the subject matter of the dispute in writ petition No.1892/2004, was situated in *khasra* No.991/750, which is in Revenue Estate Notheha, Tehsil and District Islamabad. In the said report (Ex.P-2) it is also recorded that according to notification dated 06.01.1981, the entire Revenue Estate Notheha is located in Sector I-14, Islamabad, and is not located within the limits of Rawalpindi Cantonment Board.

15. Now, the question whether Revenue Estate Notheha was within or beyond the territorial limits of the Rawalpindi Cantonment had been determined by the Hon'ble Lahore High Court in proceedings to which the Rawalpindi Cantonment Board was a party. As mentioned above, the challenge of Rawalpindi Cantonment Board to the said order was not successful. Therefore, in the face of the said order of the Hon'ble High Court based on the report (Ex.P-2) and the order of the Hon'ble Supreme Court, the petitioner cannot take a position that properties in Revenue Estate Notheha are within the territorial limits of the Rawalpindi Cantonment.

16. It is not disputed that the properties which are the subject matters of Civil Revision Petition Nos.120 to 123/2014 are located in Revenue Estate Notheha. Even if Exh.P-2 and the orders passed by the Hon'ble Lahore High Court and the Hon'ble Supreme Court are not to be taken into consideration, the witnesses produced by the petitioner before the learned Trial Court could not come up with convincing evidence that the properties in question were located within the territorial limits of Rawalpindi Cantonment. As mentioned above, the petitioner produced Chaudhary Muhammad Zia, Survey Draftsman, Rawalpindi Cantonment Board as DW-1, and Adil Rashid, Survey Draftsman, Rawalpindi Cantonment Board as DW-2. DW-1 in his cross-examination, deposed that he was unable to state the exact location of *khasra* No.991/750. He had tendered notification dated 03.09.1981 in evidence as Exh.D-2. He further deposed that there is no mention of *khasra* No.991/750 in Exh.D-2, and that Exh.D-2 does not mention that Revenue Estate Notheha is a part of the Rawalpindi Cantonment. DW-2 in his cross-examination deposed that the record of *khasra* No.991/750 is not with the Rawalpindi Cantonment Board, but with the Revenue Department. Furthermore he deposed that he could not state whether *khasra* No.991/750 is within the limits of Rawalpindi Cantonment or not. The witnesses produced by the petitioner were not ordinary persons, but were Survey Draftsmen at the Rawalpindi Cantonment Board. They should have taken a position with certainty supported by documentary evidence as to the location of the properties in question within the territorial limits of the Rawalpindi Cantonment. As mentioned above, their evidence suggests otherwise.

17. As regards the contention of the learned counsel for the petitioner that the learned Trial Court had erred by dismissing the petitioner's application for the summoning of the record from the Survey of Pakistan and the petitioner's application for the impleadment of the Survey of Pakistan and the Islamabad Capital Territory, suffice to say that they were filed at a highly belated stage of the proceedings. The former was filed on

19.12.2012, whereas the latter was filed on 27.02.2013 (i.e. (five years after the framing of issues). As mentioned above the suit was filed on 10.05.2006, and written statement was filed on 19.06.2006. Issues were framed on 13.11.2007. The delay in the filing of the said applications remained unexplained. In the event, the petitioner considered it necessary to summon the record from the Survey of Pakistan or to implead parties, applications ought to have been filed at an early stage of the trial. Hence, I am of the view that the learned Trial Court correctly dismissed these applications. Additionally, the petitioner did not even impugn the orders whereby the petitioner's said applications were turned down. There was nothing preventing the petitioner to have filed cross-objection under Order XXXXI, Rule 22 C.P.C. against the order of dismissal of its application. The same principle will apply to the rejection of the petitioner's objection to the jurisdiction of the learned Trial Court to adjudicate upon the suit.

18. The objection to the jurisdiction of the learned Civil Court taken by the petitioner in its written statement is vague and lacks specificity. In his submissions, learned counsel for the petitioner submitted that the petitioner had taken the objection to the jurisdiction of the learned Trial Court because in view of the notification dated 30.08.1981, the properties in question lay within the Rawalpindi Cantonment. This I am afraid was a matter to be resolved after the recording of evidence, and not at a preliminary stage of the case. The petitioner, in his evidence, was not able to establish that *khasra* No.991/750 or Revenue Estate Notheha (in which the properties which are the subject matters of Civil Revision Petition Nos.120 to 123/2014 are admittedly located), is within the boundaries of the Rawalpindi Cantonment. All these *khasra* numbers are admittedly located in Revenue Estate Notheha. As the petitioner had not disputed the respondents' title to the immovable properties, they had correctly instituted a suit for permanent injunction.

19. In view of the above, I do not find any jurisdictional error or infirmity in the Appellate Order dated 13.02.2014. The petitioner has not been able to point out any evidence which the learned Appellate Court has not read or misread. Consequently, all the civil revision petitions are dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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