

2014 C L C 434

[Peshawar]

Before Nisar Hussain Khan and Musarrat Hilali, JJ

KHYAL BADSHAH---Petitioner

Versus

RAEES KHAN and 3 others---Respondents

Writ Petition No.549-P of 2013, decided on 7th August, 2013.

Constitution of Pakistan---

---Art. 199---Constitutional petition---Auction---Petitioner and respondent participated in auction proceedings wherein petitioner was declared as successful bidder---Validity---Auction was held after proclamation in the newspaper and due process of law---Petitioner offered highest bid which was accepted and approved and he deposited lease-money---Respondent who participated in the auction had waived off his right, if any, by not challenging the said proclamation within a reasonable time---Principle of estoppel was attracted to the case of respondent---Revision petition was filed by respondent after 9 months from passing of impugned order which was beyond the period of limitation and was wrongly entertained---Neither any application for condonation of delay had been filed nor any sufficient cause for delay was available on the record---Revisional forum had ignored the question of limitation and had exercised jurisdiction beyond its mandate attracting interference by the High Court---Impugned order of revisional court was set aside declaring the same as illegal and without jurisdiction and orders of lower fora were restored---Constitutional petition was accepted and revenue staff was directed to enter the name of applicant as lessee after delivery of possession to him.

Abdul Sattar v. Federation of Pakistan and others 2013 SCMR 911; Mrs. Akram Yaseen and others v. Asif Yaseen and others 2013 SCMR 1099 and Anam Jabbar and 6 others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffarabad and 12 others 2013 YLR 169 rel.

Shakil Azam Awan for Petitioner.

Aminur Rehman and Muhammad Iqbal, D.A.-G. for Respondents.

Date of hearing: 7th August, 2013.

JUDGMENT

MUSARRAT HILALI, J.--- This petition is with the prayer to declare the impugned order dated 3-1-2013 rendered by respondent No.4 as illegal and without lawful authority by restoring the concurrent findings of learned courts below dated 25-4-2011 and 1-10-2011 with further direction to respondent No.2 to ask the concerned revenue staff to enter the name of the petitioner as lessee in the Revenue Record and deliver him the possession of the leased property.

2. Briefly, facts of the case are that respondent No.2 put to auction various properties including land Lot No.1 measuring 59 kanals, 1 marla situated in village Parshi, Tehsil and District Kohat. The petitioner and respondent No.1 along with others participated in auction proceedings where after the petitioner was declared a successful bidder after approval on 25-4-2011. Pursuant to the said approval, the petitioner deposited Rs.50,000/- as lease money. Thereafter, respondent No.2 directed the Revenue Officer, Kohat to make entries to this effect in the name of petitioner.

Aggrieved from the said order, respondent No.1 preferred an appeal before respondent No.2, who after hearing both the parties dismissed the same on 1-10-2011. The respondent No.1 then filed a civil suit for redressal of his grievance, however, the learned Civil Judge rejected the plaint on 9-5-2012. Feeling aggrieved, respondent No.1 preferred a civil appeal on 19-5-2012 but subsequently the same was withdrawn on 12-9-2012. Later on, he filed a revision petition, which was allowed by respondent No.4 vide his order dated 3-1-2013, herein impugned.

3. Learned counsel for petitioner contended that petitioner was declared a successful bidder after due process; that respondent No.1 fully participated in the auction proceedings after having been declared unsuccessful, the respondent No.1 was estopped from questioning the correctness of the order dated 25-4-2011 by his own conduct; that revision petition filed by respondent No.1 has wrongly been accepted as the same was hopelessly barred by time with no application for condonation of delay along with the revision petition; that respondent No.1 could not produce any proof of being in possession of the lot in question since 1969 neither at the time of filing appeal before respondent No.2 nor afterwards.

4. Conversely, learned counsel for respondent No.1 contended that the forefathers of respondent No.1 remained in possession of the disputed property and after their death respondent No.1 has taken possession of the same; that respondent No.1 had never remained defaulter, therefore, became entitled as cultivator in terms of clause 2(F) of the scheme for lease of evacuee trust agricultural land; that respondent No.2 instead of extending the lease period has illegally advertised the auction of the property in question; that respondent No.1 has spent a huge amount on the suit property and made it cultivable; that the impugned order is based on sound reasons, therefore, the same require no interference by this court in its constitutional jurisdiction.

We have heard learned counsel for the parties and gone through the record appended with this petition.

5. The record transpires that that petitioner and respondent No.1 along with others participated in an open auction proceedings, wherein, the former offered highest bid, which was accepted and approved by respondent No.2 vide his order dated 25-4-2011. Pursuant to the said order, the petitioner deposited lease money while respondent No.1 challenged the order of approval on the ground that he had remained in possession of the said lot since 1969 and had never remained defaulter, therefore, under clause 2(F) of the Act, he became entitled as cultivator. The appeal of respondent No.1 was dismissed on the ground that respondent No.1 could not produce any supporting evidence in respect of his claim. At this juncture, respondent No.1 abandoned the proceedings before the forum provided under the law and filed a civil suit against the approval order of respondent No.2 dated 25-4-2011. However, the learned Civil Judge after hearing the parties rejected the plaint of respondent No.1 for lack of jurisdiction. While rejecting the plaint, the learned Civil Judge directed respondent No.1 to approach the forum provided under the Act as recourse to the civil suit is expressly barred by relevant provision of the Act. Respondent No.1 instead of acting upon the direction made by learned Civil Judge, chose to file a civil appeal on 19-5-2012 and bypassed the express provision of the Act, however, the same was withdrawn on 12-9-2012. Respondent No.1 filed revision petition before Senior Joint Secretary (respondent No.4) on 12-9-2012, which was much beyond the period of limitation as the time for filing revision petition started running from 1-10-2011, the date on which the appeal of respondent No.1 against the approval order dated 25-4-2011 was passed. Neither any application for condonation of delay has been filed along with the revision petition nor any sufficient cause for such delay is available on record, therefore, the same was wrongly entertained. Moreover, respondent No.4 has completely ignored the question of limitation.

6. In the case of Abdul Sattar v. Federation of Pakistan and others (2013 SCMR 911), the Hon'ble apex Court has held that "question of limitation cannot be considered a "technically" simplicitor as it has got its own significance and would have substantial bearing on merits of the case". (lining is ours).

In similar circumstances, the august Supreme Court in a case titled "Mrs.Akram Yaseen and others v. Asif Yaseen and others (2013 SCMR 1099) has also held the same view.

8. In the instant case, the auction was held after proclamation in the newspaper and due process of law. Respondent No.1 waived off his right, if any, by not challenging the said advertisement in a reasonable time and participated in auction, thus, principle of estoppel is attracted to his case. The august Supreme Court of Azad Jammu and Kashmir in a case titled "Anam Jabbar and 6 others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffar Abad and 12 others (2013 YLR 169) held as under:---

"It is now a celebrated principle that one cannot blow hot and cold in one breath. The appellants at one side participated in the entry test conducted by N.T.S. and when they could not achieve the desired result and admission were granted to private respondents, they turn around and challenged the same on the ground that the entry test conducted by N.T.S. cannot be considered for determining the merit".

9. In the circumstances, it is held that revision petition of respondent No.1 was filed after 9 months of passing of the order of appellate authority, therefore, by allowing the same respondent No.4 has exercised jurisdiction beyond its mandate attracting interference by this court.

For what has been discussed above, we allow this petition and set aside the impugned order dated 3-1-2013 recorded by respondent No.4 declaring the same as illegal and without jurisdiction and restore the orders of lower fora dated 25-10-2011 and 1-10-2011 with direction to respondent No.2 to ask the concerned revenue staff to enter the name of the petitioner as lessee in the Revenue Record and deliver him the possession of the leased property.

AG/550/P

Petition allowed.