

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.

JUDICIAL DEPARTMENT

W.P.No.147-M/2017.

JUDGMENT

Date of hearing...10/01/2018.....

Petitioners (Amir Muhammad Shah Khan & another) By Mr.Naveed

Maqsood Sethi, Advocate.....

*Respondents (Haji Abdur Rehman & others) by Qazi Zakiuddin, Advocate &
official respondents By Mr.Muhammad Rahim Shah, Asstt: A.G.....*

MUHAMMAD NASIR MAHFOOZ, J:- Petitioners

have invoked jurisdiction of this court under Article 199

of the Constitution of Islamic Republic of Pakistan, 1973

with the following prayer:-

***“that on acceptance of this petition, this Hon’ble
Court may graciously be pleased to:***

***DECLARE: The impugned execution
proceedings pending before the respondent No.5
and impugned orders dated 20.12.2016,
11.01.2016 to be without lawful authority, of no
legal effect, without jurisdiction, discrepant,
faulty, wrong, without application or
misapplication of prudent mind, illegal,
unlawful, with malafide intention and ulterior
motives, arbitrary, capricious, against the
fundamental and constitutional rights of the
petitioners, not in accordance with law and
without due process of law.***

***SET ASIDE: The impugned execution
proceedings pending before the respondent No.5
alongwith all the impugned orders made by
respondents No.6 and 7.***

DIRECT: The respondents to act in the matter in accordance with law accordingly”.

2. It is the case of petitioners that respondents No.1 and 2 have filed execution/implementation petition against the predecessor of the petitioners which was consigned to record room on 23.01.1985 being fully satisfied but the said respondents have once again filed execution petition and got possession of 8 sattas of land vide order dated 25.01.2001 of Tehsildar Balambat. Petitioners objected the same by filing objection petition but the same was dismissed by District Collector/District Officer Revenue vide his order dated 27.10.2003, which was challenged in appeal before the Home Department and on 25.01.2005 the appeal was accepted and the execution petition was dismissed. Respondents No.1 and 2 filed W.P.No.232/2005 in this court which was dismissed on 20.04.2006, the said order was challenged in CPLA No.388-P of 2006 before Hon'ble Supreme Court of Pakistan but the same was also dismissed on 03.03.2010. It is further averred that after dismissal of the execution petition of respondents, petitioners filed application for restoration of possession of 8 sattas of land that was taken over from them which was allowed

and the possession was restored to them vide order dated 11.05.2012. This last order was again challenged by the respondents in W.P.No.334-M of 2012 before this court but the same was also dismissed on 12.06.2014 which was again challenged before Hon'ble Supreme Court of Pakistan in CPLA No.416-P of 2014 and the judgment of this court was upheld. Despite all this litigation, respondents once again in an illegal and unlawful manner filed another execution petition before the Provincial Government which was entrusted to Deputy Secretary (ADMN) Home Department for looking into matter and conclusion of the issue in accordance with law by keeping in view the judgment of Apex Court in letter and spirit. On 17.10.2016 the officer remanded the case to executing officer straight away without considering the judgments of superior courts and objection petition of the petitioners but the same was dismissed and Deputy Commissioner, Dir, also agreed with the observation of the executing court, hence the cause of action accrued for filling the instant writ petition in this court.

3. Private respondents submitted written statement and also submitted application C.M No.1043-M/2017 for rejection of the writ petition being not maintainable.

4. At the very outset, learned counsel for the respondents No.1 and 2 raised a preliminary objection on maintainability of the instant writ petition and submitted that Ist Schedule of the Constitution of Islamic Republic of Pakistan, 1973 has exempted MLR 123 from the operation of Article 8 (1 & 2) of the Constitution. Item No.20 of para II, Regulation II includes Dir and Swat (Settlement Disputes of Immoveable property) Regulation, 1972. He was of the view that petitioners could not invoke jurisdiction of this court on the touch stone of Article 8 of the Constitution.

5. Learned counsel for the petitioners controverted the objection on the ground that they have not challenged vires of MLR 123 or any other law mentioned in Ist Schedule, therefore, this objection is sustainable.

6. It is admitted fact that petitioners have not challenged vires of relevant law and rather seek implementation of the relevant law and similarly respondents No.1 and 2 also seek implementation of the relevant law that is why they have submitted an application for implementation under MLR 123. Contentions of both the learned counsel are overlapping each other and do not go parallel so far as the subject

matter of this petition is concerned, rather they supplement each other. The preliminary objection is, therefore, not relevant for deciding the subject matter in hand as would reveal from the discussion hereunder.

Arguments heard and record gone through.

7. Before dilating upon the subject matter in hand it is pertinent to reproduce the relevant portion from the judgment of August Apex Court passed in CPLA No.416-P of 2014 titled **Haji Abdur Rehman and others Vs. District Revenue Officer (R&E) and others** on 30.05.2016.

“Having said so we have no cavil at the argument that the petitioners became owner of the property in dispute but under no circumstances they could get physical possession of the property known as ‘pul chinar’. The order dated 25.01.2005 of the Additional Secretary Home inasmuch as it reversed the order of the forum below, is correct, but the observations that no decree was passed in favour of the petitioners are against the record and orders reproduced above”.

Perusal of the record reveals that the dispute between the parties is lingering on since the year 1967 when two brothers Zila Khan and Niamatullah filed an application before the then Political Agent, Dir, which was finally decided by Chairman, Tribunal Land Dispute Dir, Swat and Chitral bearing revision No.84 decided on

18.03.1982, the relevant para of this order reveals as under:-

“The defendant/respondent was, therefore, admittedly the owner of the aforesaid land the file does not specifically clarify the land which belong to the plaintiff/petitioner but if they own any more land which has not been transferred by the aforesaid deeds and that is in possession of defendant/respondent then they are entitled to get it from him. This revision petition is, therefore, accepted to the above extent only

Sd/- Mr.Justice Qaiser Khan”.

This order was challenged in W.P.No.420 of 1982 before this court by the predecessor of present petitioners which was dismissed on 25.04.1984 but it was held that the petitioners are owners of 52 sattas of land. This order was challenged before August Apex Court in CP No.179-R of 1984 but the same was also dismissed on 18.11.1984. Thereafter respondents No.1 and 2 filed execution petition which was consigned to record room on 23.01.1985 and it was held that the judgment debtor agreed to the handing over of ‘Dakhal Malikana’ to the decree-holders and vide his statement on file handed over possession. The controversy did not end here. The respondents challenged the order before Mr.Badshah Gul Wazir, Asstt: Commissioner Timergara, which was disposed off on 10.10.1987 with direction to petitioners that they may bring a fresh petition for execution because

tenants/respondents No.2 to 147 were tenants and they were not party to the earlier proceedings so orders could not be implemented against them. Thereafter, the proceedings as mentioned above culminated into the judgment of Hon'ble Supreme Court of Pakistan reproduced above.

8. As the record further reveals that petitioners have been held owners of 52 sattas of land, therefore, the property, the possession of which was restored to the petitioners, is known as '*pul chinar*' as the order of Hon'ble Supreme Court of Pakistan reveals that respondents No.1 and 2 became owners of the property in dispute except the said '*pul chinar*' property. It is also mentioned that the Hon'ble Supreme Court of Pakistan has taken exception to the observations passed in order dated 25.01.2005 by the Additional Secretary Home that no decree was passed in favour of the petitioners therein (respondents No.1 and 2 herein) and held that it is against the record and orders reproduced. It is in this backdrop of the situation that present respondents filed a fresh execution/implementation application decided on 17.10.2016 which has aggrieved the present petitioners to file the instant petition.

9. We do not feel to pass any order on the entitlement of the parties in disputed property because the matter is settled not once or twice but thrice up to the Hon'ble Supreme Court of Pakistan and the only issue that has remained alive from the last 50 years is the physical possession of property that is to be handed over to the present respondents, however, the objections of present petitioners ought to have been properly addressed by the officer exercising powers under MLR 123 but he has not cared to curtail agonies of both the parties by properly considering their contentions. We expect that the Deputy Secretary, Home (presiding officer) would consider the objections of petitioners but should also seriously consider as to whether the respondents have been granted possession of the property measuring 278 sattas of land for which they have been held entitled. The concerned officer shall ascertain the actual possession of respondents No.1 and 2 if possible by appointing a local commissioner of not less than rank of Assistant Commissioner so that the orders/decisions of the authorities exercising powers under the Martial Law Regulation 123 and judgments of this court as well as

Hon'ble Supreme Court of Pakistan are implemented in its true letter and spirit.

This writ petition is, therefore, partially allowed and the order of respondent No.7 dated 17.10.2016 is set aside. The application for implementation filed by respondents shall be deemed pending to be decided alongwith objections raised by the petitioners in their written objections.

No order as to costs.

J U D G E

Announced.
Dt.10/01/2018.

J U D G E

HON'BLE MR.JUSTICE ISHTIAQ IBRAHIM &
HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ