

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

R.F.A. No. 53-M/2016
With CMs No. 727 , 828 & 1001/2016.

THE GOVERNMENT OF KHYBER
PAKHTUNKHWA & OTHERS
Vs.
NAWABZADA MUHAMMAD SHAHABUDDIN
THROUGH LRs & OTHERS

JUDGMENT

Date of hearing: **16.11.2016.**
Date of announcement: **17.11.2016.**

Appellants: - *(Government & others) by Mr. Sabir Shah, A.A.G.*

Respondents: - (Nawabzada Muhammad Shahababuddin (late) through LRs & others) by M/S Rana Muhammad Arshad Khan , Ihsanullah & Muhammad Nabi, Advocates.

MUHAMMAD YOUNIS THAHEEM, J.- Through the instant appeal, the appellants have challenged the order/judgment dated 16.6.2016 passed by the learned District Judge/Zila Qazi Dir Lower at Timergara, vide which objection petition of the appellants/judgment debtors has been dismissed.

2. Brief but necessary facts of the case are that Nawabzada Muhammad Shahab-ud-Din Khan, the predecessor-in-interest of the respondents No. 1/1 to 2/16 owned property as Khan of Jandol. The predecessor of the respondents Nawabzada

Mohammad Shahab-ud-Din Khan submitted declaration forms before the then Deputy Land Commissioner Dir in respect of transfers of his property to his close relatives/family members and servant subsequently the Deputy Land Commissioner sent his recommendations to the Land Commissioner Malakand Division, who duly validated and confirmed the declarations filed by said Nawabzada Shahab-ud-Din Khan, but, afterward the Chairman Federal Land Commission by exercising his *suo moto* powers passed an order on 20.6.1975 and set aside the aforesaid orders of Deputy Land Commissioner and Land Commissioner Malakand Division.

3. The above-referred order of the Chairman Federal Land Commission dated 20.6.1975 was challenged by the predecessor of present respondents and others by way of filing of writ petition bearing No. 391/1976 before the Hon'ble Lahore High Court alongwith two other writ petitions Nos. 709 & 1524 of 1976, which were decided through consolidated judgment dated 13.11.1995 in terms that all the three writ petitions were accepted and order of the Chairman Federal Land Commission dated 20.6.1975 was set aside and that of Deputy Land Commissioner and Land Commissioner were maintained.

4. Feeling aggrieved, the official respondents/ provincial government of N.W.F.P (then it was) and now Khyber Pakhtunkhwa assailed the order of Lahore High Court before the Hon'ble Supreme Court of Pakistan through Civil Appeals No. 210, 211 & 212 of 1996, which were dismissed vide consolidated order dated 09.12.1997 being barred by time.

5. Subsequently, the predecessor of respondents and other aggrieved persons filed writ petitions No. 1339, 1340, 1341 of 1998, 471 of 1999 & 64/2003 before this Court for redressal of their grievances and all these connected writ petitions were allowed through consolidated judgment dated 28.4.2004 and the matter was referred to District & Sessions Judge Dir for implementation/execution of the judgment of Hon'ble Lahore High Court dated 13.11.1995. The relevant concluding Para No. 8 of judgment of this Court dated 21.9.2004 is reproduced as under:-

"8. For the aforesaid reasons, W.P. No. 1339/1998, 1340/1998,1341/1998, W.P. No. 471/1999 and W.P. No. 64/2003 are accepted. The matter is sent to the learned District & Sessions Judge, Dir for implementation/execution of the judgment of the Lahore High Court dated 13.11.1995 in an appropriate manner. The learned District & Sessions Judge, Dir shall have all the powers under the law for

proper and peaceful finalization of the matter which shall be concluded within a shortest possible time. The petitioner Nawabzada Shahabuddin Khan and others shall make available all the relevant record to the learned District & Sessions Judge, Dir for facilitating the implementation/execution of the judgment of the Lahore High Court. W.P. No. 108/2004 is hereby dismissed. The parties are however left to bear their own costs."

6. After many twists and turns, during pendency of execution proceedings, the objectors, present appellants filed an objection petition before the learned executing Court, which was dismissed vide order dated 24.4.2014. Feeling dissatisfied from the above order of learned executing Court, the appellants filed R.F.A. No. 39 of 2014 before this Court, which was dismissed vide order dated 07.8.2014. The appellants assailed the order of this Court dated 07.8.2014 before the Ho'ble Supreme Court of Pakistan through civil petition No. 552-P of 2014, which was also answered in negative vide judgment/order dated 10.7.2015.

7. The present appellants once again challenged the order dated 30.7.2015 passed by learned executing Court of District Judge Dir Lower at Timergara through FAO No 92-P of 2015 before this Court at principal seat, Peshawar, which was dismissed vide order dated 26.10.2015 and once again

the said order of this Court was assailed before the Hon'ble Supreme Court of Pakistan through civil appeal No. 647-P of 2015, which was dismissed vide order dated 21.3.2016.

8. The judgment debtors, the present appellants moved another objection petition bearing No. 01/11 of 2016 before the learned executing Court, which was dismissed vide impugned order dated 16.6.2016, hence, the instant appeal *inter-alia* on the grounds mentioned therein.

9. Mr. Sabir Shah, learned Additional Advocate General appearing on behalf of the appellants argued that the property of Nawabzada Mohammad Shahab-ud-Din Khan was initially came under consideration in view of Martial Law Regulation No. 115 and it was clearly mentioned in the order of then Deputy Land Commissioner dated 12.3.1973 that predecessor of the respondents had gifted/alienated all his landed property to his LRs and servants and there was nothing left for resumption for the purpose of land reforms. He further added that the Chairman Federal Land Commission vide order dated 20.6.1975 by exercising *suo moto* powers set aside the order of *fora* below under section 29 of the MLR 115. He further contended that in respect of State properties, Notification No. 10/16-SOTA-11/72-1520

had been issued on 15.9.1972, while with regard to private properties of Ex. Ruler of Dir State and Nawabzada Mohammad Shahab-ud-Din Khan, the Khan of Jandol Notification No. 10/16-SOTA-11/72/1522 was promulgated on 15.9.1972, but these Notifications have not been challenged by either of party. He also argued that the government took over possession of the listed properties prior to the proceedings of inquiry under MLR 115. The learned counsel further argued that the respondents during pendency of writ petition before the Hon'ble Lahore High Court have filed writ petition bearing No. 353 of 1984 titled as "Nawabzada Mohammad Shahab-ud-Din vs D.L.C. Dir" before this Hon'ble Court, which was dismissed on 03.12.1989, but this fact has been deliberately concealed by the respondents. He also added that the appellants have got no objection if the execution proceedings are confined to the extent of properties mentioned in the judgment of Hon'ble Lahore High Court or enlisted in the Notification No. 1522 and shall not execute the properties declared as public properties or State enlisted in Notification No. 1520. He argued that the learned executing Court is supposed to execute the order of Hon'ble Lahore High Court dated 13.11.1995 passed in W.P. No. 1391 of 1976 alongwith two (2) other connected petitions. In

support of his arguments, he placed reliance on the plethora of judgments cited as 2003 SCMR 501, PLD 2004 S.C. 570, 2010 CLC 1527 (Quetta) & 1996 CLC 539 Lahore.

10. On the other hand, learned counsel for the respondents M/S Rana Muhammad Arshad Khan, Ihsanullah Khan & Muhammad Nabi Khan, Advocates argued that after many twists and turns, the orders/judgments/decrees up to Hon'ble Supreme Court of Pakistan have been passed in favour of the predecessor of the respondents way back first by Deputy Land Commissioner dated 24.5.1973 and Land Commissioner Malakand Division dated 29.5.1973, but the appellants on the one pretext on the other had deprived their clients i.e. the respondents to enjoy the usufructs of property owned by them and declared as the private property of Ex-Ruler of Dir State and Khan of Jandol Nawabzada Mohammad Shahab-ud-Din Khan, the predecessor of present respondents, who transferred the same to the respondents and the respondents from generation to generation over a long period since merger of State of Dir had been dragged into frivolous litigation by the appellants and respondents with the hope that one day they will enjoy the fruits of their owned properties. They further argued that the chequered history of the case in hand

and glaring verdicts in favour of the respondents are the proof that there exist lawful orders/judgments and decrees in their favour, the execution of the same has been delayed by the appellants due to reasons that the properties were taken into possession by the provincial government during detention of Nawab of Dir and Khan of Jandol in the Punjab Province of Pakistan and now on the personal whims of each government functionaries since decades. They lastly prayed for dismissal of the appeal with heavy cost and placed reliance on the judgment passed in the instant case by Hon'ble Lahore Court, Peshawar High Court and Hon'ble Supreme Court and various judgments of superior Courts cited as 1999 SCMR 1633, 2012 SCMR 366, 1994 CLC 500 (Lahore), 2004 CLC 1633 (Peshawar), 1986 MLD 1961 (Lahore), 1991 SCMR 1149, 1999 CLC 1845 (Peshawar) & PLD 1974 Karachi 426.

11. Arguments of learned counsel for the parties heard and record perused with their able assistance.

12. From perusal of the record, it reveals, that the Ex State of Dir was autonomous territory during British Rule in India and during that time Sir Mohammad Shah Jehan Khan purchased land of Jandol valley for Rupees two and half lac from the

British government in 1890 and later on the said land was transferred to Nawabzada Mohammad Shahabuddin Khan and was decreed as Khan of Jandol by Nawab of Dir, the said Khan of Jandol was predecessor of respondents No. 1/1 to 2/16.

13. Subsequently, after partition of India when Pakistan came into being, the status of Dir was kept intact by the government of Pakistan headed by the then Governor General Hazrat Quid-e-Azam Mohammad Ali Jinnah. Thereafter, on 08.10.1960, the Government of Pakistan arrested the predecessor of respondents and his father Sir Mohammad Shah Jehan Khan, Nawab of Dir the head of the Princely State of Dir and both of them were detained in province of Punjab at Lahore and during that detention period Sir Mohammad Shah Jehan Khan died durin house arrest, while predecessor of respondents was kept under detention in Bungalow at Gulberg Lahore and later on restrictions upon his movements were relaxed and he was allowed to move any where in the province of Punjab only vide order dated 20.12.1975 and during this period the properties of predecessor of respondents were taken into possession by the Provincial Government.

14. It further transpires from the record, that Sir Nawab Mohammad Shah Jehan Khan was the

Ruler of Dir State, while his son Nawabzada Mohammad Shahab-ud-Din was Khan of Jandol. The then Ruler of Dir State introduced two (2) laws in the year 1870 known as '*Dasturool Amal*' and '*Rewaj-e-Aam*' (criminal law). Afterwards, in the year 1965, the then president Field Marshal Ayub Khan constituted a Commission to settle the land disputes in Dir State. Here it is necessary to mention that Land Reforms introduced through Martial Law Regulation No. 64 are not relevant to the properties of the Ex. Ruler of Dir State and Khan of Jandol. Here it is further necessary to briefly narrate some other related facts that during the detention of Sir Nawab Mohammad Shah Jehan Khan, the Ruler of Dir State his son Nawabzada Muhammad Khosro Khan, the brother of the respondent No. 1 Nawabzada Mohammad Shahab-ud-Din Khan was acceded to the throne of Princely State of Dir with slightest change that new Political Agent was appointed by the government of Pakistan in the Court of Dir State locally known as "*Shahi Darbar Riyasat-e-Dir*".

15. In the year 1969 after imposition of Martial Law in the Pakistan by the General Yahya Khan, the State of Dir was merged into Federation of Pakistan and was declared as District of then province of (N.W.F.P) now Khyber Pakhtunkhwa and another

commission vide Notification No. 55-SO/HD-70 dated 08.10.1970 was constituted by the provincial government of N.W.F.P. Home Department known as **“Dir-Swat Land Disputes Enquiry Commission”** with certain terms of references, while earlier commission was merged into aforesaid commission. The aforesaid commission after hearing prepared a detailed inquiry report about the entire property of Nawabzada Mohammad Shahab-ud-Din Khan (predecessor of the respondents). According to which, some properties were transferred to different other persons/ close relatives i.e. sons, wives, daughters and servants etc.

16. Later Zulfiqar Ali Bhutto, then Chief Martial Law Administrator of Federation of Pakistan introduced Land Reforms vide Martial Law Regulation No. 115, but the same Regulation was not made applicable to Dir State because during those days the Ex. State of Dir, which became District Dir after merger was under the administration of Central Government. Two Regulations i.e. MLR 122 & MLR 123 were promulgated to bifurcate as to which of the property was going to be given to the predecessor of the respondents and the Ex. Ruler of Dir State and which of property would fall in possession of State i.e. Federation of Pakistan through Government of N.W.F.P. In the meanwhile, the predecessor of the

respondents submitted the declaration form LR-1 alongwith an affidavit that he or his LRs are not in possession of more than 12000 P.I.Us of land and the Deputy Land Commissioner Dir had accepted the declaration forms LR-1 and LR-II of the declarants, predecessor-in-interest of the respondents to the effect that he had transferred all his land in District Dir before 01.3.1962 to various persons, so, that property did not fall in the purview of MRL 115 despite the fact that same Regulation was not applicable to District Dir (Ex-State). The details of the alienations made by predecessor of the respondent No. 1 is given as below: -

Name of transferee	Area	Documentary reference
Haji Jamroz Khan, Staff Officer, Jandol	404 Nimakai	Hiba Nama dated 05.4.1956
2 Mstt: timer Bibi, wife	460 Nimkai	Tamlek Nama dated 14-7-51
3 Mr. Qutubuddin Khan (son)	966 Satta 193 Nimkai	Tamlek Nama dated 14-11-59
4 Mor bib (mother)	640 Nimkai	Malkiyat nama dated 1-4-1950
5 Mst: Lahore Bibi (wife)	350 Nimkai 350 Satta	Tamlek Nama dated 6-9-1952
6 Mst. Khan Bibi (wife)	345, ½ Nimkai	Tamlek Nama dated 14-3-1955
7 Mst. Shah Bibi (step mother)	365 Nemkai	Tamlek Nama dated 01-04-1950
8 Bibi Amina Bibi (step mother)	429 Nimkai	Tamlek Nama dated 17-6-1961
9 Mst. Amanatan Bibi (wife)	354 Nimkai	Tamlek Nama dated 02-10-1966
10 Mr. Sardaruddin Khan (son)	166, ½ Nimkai 999 Satta	Tamlek Nama dated 10-02-1966

17. The above matter of declaration forms LR-1 & LR-11 came under consideration by the Land Commissioner Malakand Division, who vide order dated 20.4.1973 remanded the case to the Deputy Land Commissioner/Deputy Commissioner, Dir with certain observations. Upon which, the Deputy Land Commissioner vide order dated 24.5.1973 declared that the properties of predecessor of present respondents Nawabzada Mohammad Shahab-ud-Din Khan do not fall within purview of Martial Law Regulation 115, however, the same order of Deputy Land Commissioner was upheld by the Land Commissioner Malakand vide his order dated 29.5.1973.

18. The Chairman Federal Land Commission by taking *suo moto* notice summoned the record of the case and set aside the findings of Deputy Land Commissioner Dir and Land Commissioner Malakand on 20.6.1975. Since at the relevant time, the predecessor of respondents was detained at Lahore, province of the Punjab, therefore, he filed writ petition bearing No. 391/1976 before the Hon'ble Lahore High Court alongwith two other writ petitions 709 & 1524 of 1976, which were decided through consolidated judgment dated 13.11.1995 in terms that all the three writ petitions were accepted and order of the Chairman Federal Land Commission was set aside in

case titled “*Nawabzada Muhammad Shahabuddin vs. the Chairman Federal Land Commission*” reported as “*1996 CLC 539 Lahore*”. Concluding Para of the said judgment of Hon’ble Lahore High Court dated 13.11.1995 is reproduced as under:-

“13. As a result of the foregoing discussion, these constitution petitions are allowed with grant of requested reliefs. The order passed by the Chairman Federal Land Commission dated 20-6-1975 is hereby set aside having been passed without any lawful authority. Since these petitions involved examination of complicated question of law, we are not persuaded to burden the respondents with costs.”

19. The same judgment of Hon’ble Lahore High Court was challenged before the Hon’ble Supreme Court of Pakistan through Civil Appeals No. 210, 211 & 212 of 1996, which were dismissed vide consolidated order dated 09.12.1997 on the point of limitation.

20. In brief, the implementation/execution of judgment of Lahore High Court is still pending execution and during this period the Provincial Government of N.W.F.P (Now Khyber Pakhtunkhwa)/the present appellants on the one pretext or the other have kept involved the present respondents in endless litigation and after many twists and turns the order/judgment and decrees in favour of

the respondents were kept maintained by this Court as well as Hon'ble Supreme Court of Pakistan after judgment passed by Hon'ble Lahore High Court and despite over a period of long span of time which stretches over a decade the appellants had deprived the respondents from the fruits of their owned property and order/judgment/ decree passed in their favour way back in the year 1973 by Deputy Land Commissioner and in 1995 by the Hon'ble Lahore High Court kept maintained by the Hon'ble Supreme Court of Pakistan is yet waiting for its implementation. The chorological record of above-referred litigation is given as below: -

S #	Case No.	Titled	Date of decision	Court	Remarks
1	S.M No. (9) FLD /75	State Vs Ex. Khan of Jandol	20.6.1975	F.L.C.	Remanded
2	W.P. Nos. 391, 709 & 1524/1976	Nawabzad M. Shahab-ud-Din Khan vs FLC	13.11.1995	Hon'ble Lahore High Court	Allowed in favour of respondents
3	CPL Nos 210 to 212.	Fed: of Pakistan vs Haji Jamroze Khan	09.12.1997	Hon'ble Supreme of Pakistan	Dismissed
4	W.P. Nos 1339 of 1999 & A/W 4 other petitions	Nawabzad M. Shahab-ud-Din Khan vs Provincial Govt. etc	28.4.2004	Peshawar High Court, Peshawar	Allowed in favour of respondents
5	CPLs No. 1658 & 1723/04	Haji Abdul Sattar Khan Vs Nawabzad M. Shahab-ud-Din Khan	09.02.2005	Hon'ble Supreme of Pakistan	Dismissed as withdrawn
6	Ob. Pett: no. 14/11 of 2012	Provincial Govt: Vs Nawabzad M. Shahab-ud-Din Khan through LRs	24.4.2014	D & S J Timergara/ Executing Court	Dismissed'
7	RFA No. 39/2014	Provincial Govt: Vs Nawabzad M. Shahab-ud-Din Khan through LRs	07.8.2014	P..H.C. Mingora Bench	Dismissed
8	C.P. No. 552-P of 2014	Provincial Govt: Vs Nawabzad M.	10.7.2015	Hon'ble Supreme of Pakistan	Dismissed

		Shahab-ud-Din Khan through LRs			
9	Objection Petition	Provincial Govt: Vs Nawabzad M. Shahab-ud-Din Khan through LRs	30.7.2015	D & S J Timergara/ Executing Court	Order of attachment of salaries of the appellants (J.D.)
10	FAO No. 92-P of 2015	Provincial Govt: Vs Nawabzad M. Shahab-ud-Din Khan through LRs	26.10.2015	P..H.C. Mingora Bench	Dismissed
11	C.P. No. 647-P of 2015	Provincial Govt: Vs Nawabzad M. Shahab-ud-Din Khan through LRs	21.03.2016	Hon'ble Supreme of Pakistan	Dismissed
12	Obj. No. 01/11 of 2016	Provincial Govt: Vs Nawabzada M. Shahab-ud-Din Khan through LRs	16.6.2016	D & S J Timergara/ Executing Court	Dismissed

21. So, from the above-referred chronological litigation record, it transpires, that the provincial government is creating hurdles on the one pretext or the other in the way of execution of judgment of Hon'ble Lahore High Court, Peshawar High Court and Hon'ble Supreme Court of Pakistan and had once again filed an objection petition bearing No. 1/11 of 2016 on 23.01.2016 when civil appeal was pending adjudication before the Hon'ble Supreme Court of Pakistan and was decided before 16.6.2016, it is the date of decision of aforesaid objection petition, impugned herein.

22. The main contention of the appellants in the instant objection petition is that when no land was resumed for the purpose of land reforms , so, the order of the Deputy Commissioner dated

24.5.1973, order of Land Commissioner dated 29.5.1973 and judgments of Hon'ble Lahore High Court and Hon'ble Supreme Court of Pakistan are not executable is concerned, to this, suffice it to say, that the matter was not about the suit land resumed by the Land Commissioner or not, but it was about the properties which were declared as ownership of Ex-Ruler of Dir State or Khan of Jandol, son of Ex-Ruler and those persons to whom the said properties as discussed above were transferred either through gift deeds or any other means by the predecessor of respondents and were taken into possession by the provincial government functionaries during detention of Ex-Ruler of Dir State and predecessor of respondents and for the purpose of implementation of aforesaid orders, judgments, this Court sent the case to the learned District Judge Dir for its implementation, which was also challenged before the Hon'ble Supreme Court of Pakistan and was maintained, so, the objections of appellants that orders, judgments of High Courts and Hon'ble Supreme Court are not executable has no footings, so, was correctly rejected by the Ho'ble Supreme Court of Pakistan.

23. The averments of objection petition as well as grounds raised before this Court were gone through, considered and record perused with valuable assistance of learned counsel for the parties, but the learned counsel for the appellants failed to point-out that what kind of hindrance is before provincial government in way of implementation/execution of the orders and judgments of the aforesaid Courts of this country, so, this Court also reaches to the conclusion that the objection petition filed by the appellants was to create hurdles in the way of implementation/execution of the above-mentioned orders/judgments and nothing else. As once matter has been decided by the Hon'ble Lahore High Court, several times by this Court as well as several times by the Hon'ble Supreme Court of Pakistan, so, appellants had lost all legal and ethical grounds for interference, so, the instant appeal being bereft of merits stands dismissed with costs.

Announced.
Dt: 17.11.2016

JUDGE

"Nawab"