2013 S C M R 96

[Supreme Court of Pakistan]

Present: Ejaz Afzal Khan and Ijaz Ahmed Chaudhry, JJ

PUNJAB LAND COMMISSION through Secretary and others---Petitioners

Versus

Mst. IQBAL ABBASI and others---Respondents

Civil Petitions Nos.1162-L, 1178-L to 1180-L of 2012 and C.M.As. Nos.1729-L to 1732-L of 2012, decided on 12th September, 2012.

(On appeal from the judgment dated 17-10-2011 passed by the Lahore High Court, Lahore in W.Ps. Nos. 6360, 7769 of 2006, 14667 of 2009 and 15422 of 2010).

West Pakistan Land Reforms Regulation (64 of 1959)---

----Paras. 8 & 16---Constitution of Pakistan, Art. 185(3)---Limits on individual holding of land---Resumption and vesting in Government of excess land---Excess land holding of late Ameer of Bahawalpur---Contentions on behalf of Provincial Government and Land Commission (petitioners) were that the late Ameer was subject to paragraphs 8 and 16 of West Pakistan Land Reforms Regulation, 1959, therefore, he could not have retained land which was more than what was prescribed by paragraph 8 of the said Regulation; that although declaration submitted by the late Ameer was approved on 26th February, 1966 but subsequently, it was reviewed and the matter was ultimately taken to the Supreme Court, which held that Land Reform authorities could proceed with regard to resumption of excess land once a final decision was taken with regard to distribution of the property amongst various legal heirs of the late Ameer---Validity---Points raised in the present petitions were of public importance and required a thorough examination and authoritative pronouncement, as they had not been fully dealt with in earlier judgments of the Supreme Court---Leave to appeal was granted in all the petitions to consider the points raised in the present petitions, subject to limitation.

Brig. His Highness Nawab Muhammad Abbas Khan Abbasi v. Deputy Land Commissioner, Bahawalpur and others 1982 SCMR 991 ref.

Ch. M. Hanif Khatana, Additional A.-G. Punjab, Jawwad Hassan, Additional A.-G. Punjab, M. Javaid, Dy. Secy. Punjab, Land Commission Lahore and Ali M. Khokhar, Land Revenue Consultant, BOR, Punjab for Petitioners (in C.Ps. Nos. 1162, 1178-L - 1180-L of 2012 and C.M.As. Nos. 1729-L - 1732-L of 2012).

Muhammad Shahzad Shaukat, Advocate Supreme Court for Respondent No.1 (in C.P. No.1178-L of 2012).

Mian Subah Sadiq Klasson, Advocate Supreme Court for Respondents Nos.1 to 4 (in C.P. No.1179-L of 2012).

Naveed Rasool Mirza, Advocate Supreme Court for Respondents Nos.1 and 2 (in C.P. No. 1180-L of 2012).

Nemo for other Respondents.

Date of hearing: 12th September, 2012.

ORDER

EJAZ AFZAL KHAN, J.---Learned Additional Advocate-General, Punjab appearing on behalf of the petitioners contended that Martial Law Regulation No.64 was promulgated in 1959 and given effect from 7 day of February, 1959; that the said regulation in view of its provision contained in paragraph 8 prescribed the limits on individual holding and that the provision contained in paragraph 16 clearly provided that land in excess of the area permissible for retention under part-III shall vest in and be resumed by the government free from any encumbrance of charge. If this aspect, learned Additional A.-G. maintained, is considered then Ameer who was by then alive was subject to the above mentioned law and thus could not have retained more than what was prescribed by para 8 of the regulation. Though learned Additional A.-G. added, the declaration submitted by late Ameer was approved on 26th February, 1966 but subsequently, it was reviewed and the matter was ultimately taken to the Supreme Court of Pakistan which in the case of Brig. His Highness Nawab Muhammad Abbas Khan Abbasi v. Deputy Land Commissioner, Bahawalpur and others (1982 SCMR 991) while allowing the appeal held as under:--

"However, it has been held in the aforesaid judgment that the distribution made in the order of respondent No.3 passed on 20-2-1969 suffers from certain infirmities and respondent No.3 has been directed to decide the matter afresh in the light of the observations made in the said judgment. Consequently, the orders passed by the respondents Nos. 1 and 2, with regard to the distribution of the property as also relating to the resumption of the excess area will require modification and case properly be decided only after a final decision is taken by respondent No.3, with regard to the distribution of the property amongst the various heirs of the late Ameer.

We may here clarify that the appellant, as also the other heirs of the late Ameer, are citizens of Pakistan and are not above the law and that the provisions of Martial Law Regulation No.64 are applicable to them but as the identity of the exact property owned by each heir is not yet determined resumption of the excess area cannot in these circumstances, be made with exactitude.

The result will be that as soon as the final position of the holdings of the heirs of late Ameer of Bahawalpur has been decided by respondent No.3, respondents Nos.1 and 2

will be at liberty to proceed under the provision of the Land Reforms Regulation, 1959 (M.L.R. 64). The orders of the Land Reforms Authorities impugned before us are, accordingly, set aside with the clarification that as soon as respondent No. 3 makes the final order under Article 3 of the Acceding State (Property) Order, 1961, the respondents Nos.1 and 2 can proceed further in the matter in accordance with law."

3. The High Court, the learned Additional A.-G. submitted failed to appreciate the controversy in its proper perspective which not only tends to defeat the provisions of the Regulation but also cause an enormous loss to the government.

4. Points raised being ones of public importance require a thorough examination and authoritative pronouncement that to when these have not been fully dealt with in the earlier judgments of this Court. We therefore, grant leave to appeal in all these petitions to consider the points listed above, subject, of course to limitation. In the meantime if any contempt proceeding is pending in any forum that would stand stayed. As this matter had been lingering on since long. It would be desirable that it be listed for hearing within a period of 6 months.

MWA/P-22/SC Leave granted.

;