

**THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**BENCH**

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE ATHAR MINALLAH

**CIVIL PETITION NO.148-L OF 2024**

*(Against order dated 07.11.2023 of the Lahore High Court, Multan Bench passed in Writ Petition No.3509 of 2022)*

Member, Board of Revenue, Punjab etc. ... Petitioners

**Versus**

Sheraz Khan ... Respondent

For the petitioners: Mr. Baleeg-uz-Zaman, Addl.AG Punjab

For the respondent: Mr. Abdur Rehman Khan Laskani, ASC  
Syed Rifaqat Hussain Shah, AOR.

Date of hearing: 04.07.2024

**ORDER**

**Athar Minallah, J.** The Member, Board of Revenue, Punjab and Additional Commissioner (Revenue), Multan Division, Government of Punjab ('**petitioners**') have sought leave against order dated 07.11.2023 of the High Court whereby the constitutional petition filed by the respondent was allowed and, consequently, the orders passed by the respective revenue officials were set-aside.

2. The respondent's father, Razi Khan ('**allottee**'), was one of the affected displaced persons pursuant to the execution of the Tarbela Dam Project ('**Project**'). He met the criteria and was eligible to claim the benefits in accordance with the policy formulated for settlement of the displaced persons as set out under the Tarbela Dam Oustee Scheme ('**Scheme**'). His case was processed by the competent authorities designated under the Scheme and he was allotted the requisite land by the Collector, Khanewal on 02.1.1975. However, possession of the allotted land could not be handed over to him because civil litigation was pending and, therefore, in accordance with the terms set out under

the Scheme, alternate land was allotted in Tehsil Khanewal. It is noted that at the time of allotment the status of Khanewal was that of a Tehsil of District Multan. The Deputy Commissioner, Multan, vide letter dated 20.08.1980, addressed to the Board of Revenue, had explicitly confirmed that the land selected and proposed for allotment was 'free from all encumbrances' and was 'situated at a distance of more than three miles of Khanewal Municipal Committee and one mile from the nearest Railway Station'. The Resettlement Organization, vide letter dated 19.02.1980, had also advised issuance of an order under section 10(4) of the Colonization of Government Lands (Punjab) Act, 1912 ('**Colonization Act**'). Consequently, an order dated 21.05.1981 was passed under section 10(4) *ibid* and possession was also given to the allottee. The allottee filed an application for grant of proprietary rights relating to the land allotted to him under the Scheme formulated under the Colonization Act but it was declined by the Additional District Collector, Khanewal vide order dated 16.11.2016. The said order was challenged before the Additional Commissioner (Revenue), Multan but the latter upheld the decision by dismissing the appeal vide order dated 14.10.2017. The revision petition filed by the allottee was subsequently dismissed by the Member (Judicial-III), Board of Revenue, Punjab vide order dated 18.01.2022. The aforementioned orders were challenged before the High Court by invoking its constitutional jurisdiction under Article 199 of the Constitution. The High Court allowed the petition vide the impugned order dated 07.11.2023.

3. We have heard the learned Additional Advocate General, Punjab at great length. He has drawn our attention to the Memorandum issued by the Secretary (Colonies), West Pakistan dated 01-05-1969 and has argued that the revenue officials had rightly dismissed the request for grant of proprietary rights because the allotted land fell within the

prohibited zone. In response to our query he has not disputed that when the land was allotted it was outside the limits prescribed under clause (viii) of the Scheme notified on 12-08-1964 and, moreover, it was free from any defect or encumbrance.

4. It is not disputed that the allottee was one of the displaced persons on account of the execution of the Project. Admittedly, he was deprived of his properties so as to execute the Project as it served public purpose. The Scheme was formulated under the Colonization Act which had unambiguously set out the eligibility criterion and the terms and conditions for allotment. The Scheme has to be read with the memorandums and notifications issued from time to time and the same will be discussed later. The object was to resettle and compensate those who were displaced and had lost their properties. The Memorandum dated 12.08.1964 described the details of how the land was to be selected. The land was to be selected by the Resettlement Organization, which in this case was the Water and Power Development Authority ('WAPDA'). The latter was then to intimate the selected land to the Deputy Commissioner concerned. A comprehensive and self contained procedure was prescribed leading to passing of formal orders of allotment under section 10(4) of the Colonization Act and then putting the allottee in possession. Through Memorandum dated 01.05.1969 the Board of Revenue had imposed an affirmative duty on the designated officials to thoroughly scrutinizing the status of the selected land. It was the obligation of the Revenue Officer and the Settlement Officer, WAPDA to ensure that the selected land was 'free from any defects and encumbrances'. The issuance of an allotment order under section 10(4) of the Colonization Act was subject to issuance of allotment chits by the Allotment Committee after satisfaction of WAPDA regarding the suitability of the selected land and issuance of a no objection certificate

by the concerned Deputy Commissioner as was stipulated under clause 3 of the Scheme. This comprehensive mechanism for allotment was meant to ensure that the order of allotment under section 10(4) of the Colonization Act was passed after all the conditions stipulated under the Scheme, read with the memorandums and notifications issued from time to time, had been met. Clause (iv) of the Memorandum, dated 01.05.1969, explicitly provided that once an allotment order under section 10(4) was passed in favour of an eligible displaced affected person of the Project then it shall not be cancelled. In Ghulam Mohammad's case<sup>1</sup> this Court did not interfere with the judgment of the High Court on the ground that the distance for the purposes of the prohibited zone was to be measured when the allotment was made and not when the propriety rights were conferred. This test was subsequently affirmed by this Court in Ch Abdus Sattar's case<sup>2</sup>. The selection of land, its scrutiny, allotment, putting an eligible claimant in possession and grant of propriety rights were governed under the Scheme. The rights accrued in favour of an allottee were to be determined on the basis of the formulated terms and conditions at the time when the allotment was made. As a corollary, the limits of the prohibited area which existed at the time of allotment were relevant i.e when the order under section 10(4) of the Colonization Act was passed. A subsequent change in the status of the prohibited area could not affect or take away the already accrued rights. The grant of proprietary rights regarding the allotted land under the Scheme were thus relatable to the date of allotment. Any other interpretation would have the effect of reversing and nullifying the Scheme formulated under the Colonization Act to resettle the displaced persons pursuant to the execution of the Project as compensation. Simultaneously, it would have

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<sup>1</sup> Province of Punjab through District Collector, Vehari v. Ghulam Muhammad (1994 SCMR 975)

<sup>2</sup> Province of Punjab through Secretary Colonies, Board of Revenue, Lahore and others v. Ch.Abdus Sattar (2012 SCMR 1007)

the effect of subjecting a citizen to the unimaginable hardship of being deprived of being compensated for loss of property and the human cost resulting from exercise of the power of eminent domain by the State for public purpose.

5. Admittedly, in the case before us, the allottee was eligible for allotment of land under the Scheme as a displaced person pursuant to execution of the Project. All the conditions and terms set out under the Scheme, read with the aforementioned notifications/memorandums were met. The Deputy Commissioner Multan had confirmed to the Board of Revenue vide letter dated 20.08.1980 that the proposed land was 'free from all defects and encumbrances' and that 'it was situated outside the prohibited limits'. The Deputy Commissioner, vide letter dated 21.09.1991, had affirmed that at the time of allotment of the land the Municipal Committee, Khanewal enjoyed 'second class' status and thus the allotted land did not fall within the prohibited area. Later, however, the limits of the prohibited area was extended when Khanewal was upgraded to a District and consequently, the Municipal Committee was also upgraded to 'first class' with effect from 01.07.1985. It is not the case of the petitioners that the allottee was not eligible nor that he had failed to meet the conditions and terms set out under the Scheme. It is also an admitted position that at the time of passing the allotment order and putting the allottee in possession, the land was free from any defects or encumbrances. The land at the time of allotment did not fall within the prohibited area. We are, therefore, inclined to hold that the grant of proprietary rights was relatable to the order passed under section 10(4) of the Colonization Act and the subsequent change in the prohibited area on account of up gradation of Khanewal from a Tehsil to District did not affect the accrued rights. The memorandum to which our attention was drawn by the learned Additional Advocate General is

of no help to the petitioner's case, rather it affirms the right of the allottee for the purposes of grant of propriety rights. The memorandum expressly states that land once allotted to a legitimate displaced affectee of Tarbela Dam under section 10(4) of the Colonization of Government Land Act 1912, shall not be cancelled.

6. The allottee was one of the victims who had been deprived of his property and was subjected to face the challenges on account of an inherent attribute of the State, the power of eminent domain. The property of the allottee and many others were taken over for a public purpose i.e execution of the Project. The effect of expropriating private property through the exercise of the power of eminent domain is definitely disruptive to citizens and communities. The human cost of condemnation is enormous and in many cases immeasurable. However, the exercise of this power is circumscribed by fulfilling two fundamental duties; that a private property is condemned only for a public purpose and most importantly that the affected owner is justly and fairly compensated. In this case the effect of denying the grant of proprietary rights was essentially to take away the right of being compensated for the acquisition of properties and the human cost associated with displacement. The Scheme was formulated with the specific object of compensating the citizens who were displaced and had lost their properties on account of the exercise by the State of its inherent power of eminent domain. The rights which had already accrued could not have been taken away, directly or indirectly. If the limits of the prohibited area had been extended after the allotment then it could not result in nullifying the benefits and rights accrued in favor of the allottee under the Scheme. It was and continues to be a constitutional duty of the government and functionaries of the State to ensure that the rights accrued in favor of the allottee by way of compensation remains

protected. Any action which takes away the rights accrued under the Scheme would amount to arbitrary confiscation of private property rights. If the land allotted under the Scheme is required for public purpose then the accrued rights cannot be taken away in violation of the unambiguous command of the Constitution under Article 24; no person shall be deprived of his or her property save in accordance with law and that no property shall be compulsorily acquired or taken possession of save for a public purpose and save by the authority of law which provides for compensation. The denial of grant of propriety rights in the case before us was violative of the fundamental right guaranteed under Article 24 of the Constitution.

7. The above are the reasons for pronouncement of the order in the open Court whereby leave was refused and the petition accordingly dismissed.

Judge

Judge

**Islamabad the**  
4<sup>th</sup> July 2024  
'APPROVED FOR REPORTING'  
Aamir Sh. /\*