

P L D 2001 Supreme Court 415

**Present: Muhammad Bashir Jehangiri
and Javed Iqbal, JJ**

**SECRETARY TO THE GOVERNMENT OF THE PUNJAB,
FOREST DEPARTMENT, PUNJAB, LAHORE through
Divisional Forest Officer---Appellant**

versus

GHULAM NABI and 3 others---Respondents

Civil Appeal No. 1269 of 1998, decided on 22nd November, 2000.

(On appeal from the judgment of the Lahore High Court, Multan Bench, Multan, dated 19-12-1996 passed in W.P. No. 5803 of 1994).

(a) Transfer of Property Act (IV of 1882)---

---S. 100---Registration Act (XVI of 1908), Ss.18 & 49---Constitution of Pakistan (1973), Arts. 199 & 185(3)---Constitutional petition before High Court---Maintainability---Transfer of land---Disputed questions of facts-- Leave to appeal was granted by Supreme Court to consider the contentions of the petitioner that the voluminous documents produced on record on the basis of which Commissioner and Member (Colonies), Board of Revenue had set aside the order of the E..A.C.O./Collector could not be legally set aside by High Court in exercise of extraordinary Constitutional jurisdiction and High Court erred in law by interfering under. extraordinary Constitutional jurisdiction as restoration of the order of E.A.C.O./Collector would amount to perpetuation of illegality.

(b) Transfer of Property Act (IV of 1882)---

---S. 100---Registration Act (XVI of 1908), Ss. 17, 18 & 49---Transfer of land---Shelter-belt area, allotment of---Disputed land was the property of Provincial Government and the same had been given to Forest Department for plantation of shelter-belt---Same land was allotted to the respondent in 'lieu of adjustment of her claim---Board of Revenue cancelled the allotment for the reason that the disputed land was not available for allotment as the same had already been transferred to the Forest Department---High Court in exercise of Constitutional jurisdiction set aside the order of the Board of Revenue and upheld the allotment---Contention of the respondent was that the Forest Department could not have been considered owner of the land as no document pertaining to ownership could be brought on record and under the provisions of S.100 of Transfer of Property Act, 1882, and Ss. 18 & 49 of Registration Act, 1908, the ownership could not devolve upon the department---Validity---Where claim of the respondent could not have been adjusted against the land in dispute, the question of applicability of provisions as contained in 5.100 of Transfer of Property Act, 1882, and Ss.17 & 49 of Registration Act, 1908, would not arise---Board of Revenue had decided the controversy in comprehensive manner and the conclusion drawn by the Board did not call for any interference---Supreme Court set aside the judgment passed by the High Court and resultantly the order passed by Board of Revenue was upheld.

(c) Constitution of Pakistan (1973)---

---Art. 1,99---Constitutional jurisdiction of High Court---Scope---Disputed question of fact---Forums available in the hierarchy under the relevant law had decided all the controversial questions on the basis of record and in accordance with

law---Interference by High Court---Scope---High Court could not go into disputed questions of fact in exercise of its Constitutional jurisdiction.

NLR 1992 CU 99; 1991 CLC 2004; 1991 CLC 605; 1991 MLD 1492; 1987 PCr.LJ 1413; 1987 CLC 2519; 1982 CLC 2227; 1990 PCr.LJ 1478; 1990 PCr.LJ 1997; 1990 CLC 456; 1990 CLC 479; 1990 MLD 563; 1990 MLD 389; PLD 1989 Kar. 185; 1989 SCMR 918; 1989 CLC 1253; PLD 1988 Quetta 52; 1988 SCMR 1259; 1988 CLC 2220; 1988 CLC 2201; PLD 1989 Lah. 31; 1987 CLC 2519; 1987 PCr.LJ 1413; 1987 PCr.LJ 939; PLD 1987 Lah. 336; 1986 CLC 2403(2); 1986 CLC 54; 1986 CLC.1146; PLD 1985 Lah. 545; PLD 1985 Lah. 217; PLD 1985 Kar. 546; 1985 PCr.LJ 1437; 1984 SCMR 963; PLD 1984 Kar. 155; 1984 CLC 2002; 1983 CLC 1801; 1983. SCMR 732; 1982 SCMR 497; PLD 1982 Kar. 449; PLD 1982 Kar. 581; PLJ 1981 Kar. 239; PLD 1942 Quetta 136 (sic); 1982 CLC 693; 1982 CLC 553; 1982 CLC 805; 1982 CLC 1115; 1982 CLC 2227; 1982 CLC 2491; 1982 CLC 1784; 1982 CLC 2076; 1982 CLC 2518; PLD 1982 Lah. 401; PLD 1981 Lah. 583; PLD 1981 Lah. 459; 1981 Law Notes 384; 1981 CLC 1242; 1981 CLC 1400; 1981 CLC 1403; 1981 .CLC 1569; 1981 CLC 195; 1980 CLC 952; 1980 Law Notes 26; PLD 1986 Quetta. 93; PLD 1984 Kar. 269; 1970 SCMR 158; PLD 1963 Lah. 63; PLD 1962 Lah. 797; PLD 1964 Dacca, 522; 15 DLR 307; PLD 1980 Quetta 1; PLD 1979 Kar. 212; PLD 1979 Kar. 465; PLJ 1979 Kar. 17.; 1979 CLC 872; PLD 1978 Lah. 917; 1978 PCr.U 141; 1978 SCMR 449; NLR 1978 Civil 1162; PLD 1978 Kar. 867; PLD 1978 Quetta 34; NLR 1978 Civil 597; NLR 1978 Civil 311; PLJ 1976 Quetta 67; PLD 1977 Kar. 214; PLD 1977 Lah. 718; PLD 1977 Kar. 601; PLD 1973 Lah. 230; .PLD 1973 Lah. 628; PLJ 1974 Lah. 330; PLJ 1974 Lah. 598; 1974 PLC 89; 1974 Law Notes 105; PLD 19741 .ah. 318; PLD 1973 Lah. 228; 1973 Law Notes 350; PLD 1975 Lah. 967; PLI 1975 Kar. 304; PLD 1975 Kar. 967; PLJ 1975 Lah. 317; 1975 SCMR 184; 1973 SCMR 422; 1974 SCMR 28; 1984 SCMR 377; PLD 1990 Pesh. 122; 1982 SCMR 372; 1982 SCMR 883; 1984 CLC 925; 1984 CLC 941 aيتد 1983 CLC 1801 ref,

(d) Constitution of Pakistan (1973)---

----Art. 199---Constitutional jurisdiction of High Court---Scope---High Court acting as Court of appeal---Validity---Constitutional jurisdiction of High Court under Art. 199 could not be converted into that of an Appellate Jurisdiction---Disputed question of fact could not be entered or allowed to be re-agitated under Constitutional jurisdiction---Where relevant law provided other forums for the purpose, finding of fact recorded by Lower Appellate Court on appraisal of evidence could not be disturbed under Constitutional jurisdiction---High Court in exercise of Constitutional jurisdiction could neither go into question involving minute details nor could it decide facts of which no foundation was laid, unless the same was shown that such controversy was devoid of supporting record, or perverse.

1982 CLC 1972; 1987 PCr.LJ 1413; PLD 1981 Lah. 511; 1990 MLD 563 and 1990 MLD 344 ref.

(e) Constitution of Pakistan (1973)---

----Art. 199---Constitutional jurisdiction of High Court---Scope---Question of fact, investigation of---Disputed question of fact which necessitates taking of evidence can more appropriately be done in the ordinary Civil Procedure for litigation by a suit---Extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the action of executive or other authority can be established without any elaborate inquiry into complicated or disputed facts.

1991 CLC 1078; PLD 1989 Pesh. 36; PLD 1990 Kar. 186; PLD 1990 Kar. 378; 1986 CLC 2635; 1984 CLC 3279; 1986 CLC 2559; NLR 1986 UC 407; 1986 SCMR 598; PLD 1987 Quetta 103; 1982 CLC 2268; PLD 1985 Lah. 134; 1986 CLC 2416; PLD 1981 Pesh. 57; PLD 1986 Lah. 409; 1986 Law Notes 1131; 1981 SCMR 291; 1982

CLC 2421; 1981 CLC 1332; 1980 CLC 736; PLD 1982 Lah. 831; 1978 PCr.LJ 141; 1968 SCMR 935; PLD 1970 Dacca 633; PLD 1968 SC 185; 20 DLR (SC) 144; PLD 1967 Dacca 709; PLD 1970 Lah. 569; PLD 1968 Lah. 1244; PLD 1970 (W.P.) (sic) 1; PLD 1971 Lah. 866; PLD 1971 Kar. 517; PLD 1972 Lah. 262; 1971 SCMR 110; 1971 SCMR 697; 1970 SCMR 853; 1969 SCMR 217; 1968 SCMR 880; 1968 SCMR 145; 1970 DLC 330; 22 DLR 337; 1970 DLC 29; 21 DLR 938; PLD 1968 Dacca 367; PLD 1969 Dacca 74; PLD 1969 Dacca 779; PLD 1965 Dacca 263; PLD 1964 SC 636; 16 DLR (SC) 457; PLD 1964 Kar. 468; PLD 1964 BJ 15; PLD 1963 Lah. 98; PLD 1964 Kar. 90; PLD 1964 Dacca 522; 15 DLR 703; PLD 1962 Kar. 712; PLD 1962 Lah. 189; PLD 1962 Lah. 16; PLD 1961 Lah. 842; PLD 1961 Lah. 304; PLD 1961 Lah. 756; PLD 1960 Dacca 541; PLD 1960 Dacca 31; PLD 1960 Dacca 523; PLD 1960 Dacca.660; 12 DLR 255; PLD 1958 Lah. 345; PLR 1959 (1) W.P. 163; 11 DLR (W.P.) 14; 11 DLR 367; PLD 1959 Lah. 915; PLR 1960 (1) W.P. 830 and PLD 1957 Kar. 921 ref.

(f) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition---Re-appraisal of evidence ---Validity-- High Court in exercise of Constitutional jurisdiction cannot re-appraise evidence and come to its own independent findings where findings of facts have been recorded by Authority below after giving good reasons in support for the same.

1988 CLC 1198 ref.

(g) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition---Refusal of relief---Scope---Superior Courts have ample jurisdiction to refuse a relief where granting it would tantamount to injustice.

1988 SCMR 516; PLD 1975 SC 331; PLD 1968 Lah. 1334; PLR 1969 (1) W.P. 342; PLD 1968 Lah. 166; 1973 SCMR 127; PLD 1991 SC 691; 1990 CLC 1174; PLJ 1990 Lah. 283; 1984 CLC 1729; PLD 1984 Quetta 158; 1973 SCMR 127; 1990 MLD 2192 and PLD 1984 Quetta 158 ref.

(h) Constitution of Pakistan (1973)---

---Art. 199---Constitutional jurisdiction of High Court---Scope---Act without jurisdiction---Effect---High Court cannot come to rescue of a person seeking its stamps or approval for order or action which was patently unjust, being without jurisdiction and hence, void ab initio.

PLD 1989 SC 166; 1987 MLD 1098 and 1986 CLC 54 ref.

(i) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition---Grant of relief by High Court-- Scope---Where the grant of relief is immoral, unfair or against the dictates of good conscience and fairplay, High Court is not bound to grant relief to such petitioner simply because he is legally entitled to the same.

1990 MLD 2192 ref.

(j) Constitution of Pakistan (1973)---

---Art. 199---Constitutional petition---Grant of relief---Pre-conditions for grant of relief under Constitutional jurisdiction---Scope---High Court is not obliged to press into service its Constitutional jurisdiction in every case in which illegality or void

action or order is impugned---High Court is to see, whether the grant of relief prayed for fosters the cause of justice or it perpetuates injustice---Where the Court finds that in a given case though the action taken -by the authority is illegal but setting aside of the same would result in miscarriage of justice instead of advancing the cause of justice, the Court may decline to press into service its Constitutional jurisdiction---Relief in Constitutional jurisdiction being discretionary should not be granted to hold retention of ill-gotten gains even if for technical reasons impugned order be not strictly justifiable.

1990 CLC 954 ref.

Tariq Mahmood, Additional Advocate-General, Punjab and Rao Muhammad Yusuf Khan, Advocate-on-Record for Appellant.

Raja M. Anwar, Senior Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Respondents.

Date of hearing: 22nd November, 2000.

JUDGMENT

JAVED IQBAL, J.---This appeal by leave of the Court is directed against judgment, dated 19-12-1996 passed by Lahore High Court, Multan Bench, Multan, whereby the Constitutional petition preferred on behalf of respondents has been accepted and the order, dated 17-2-1993 passed by Commissioner. D.G. Khan Division and order, dated 7-11-1994 passed by Member, Board of Revenue, Punjab, were set aside being illegal, void and ultra vires and order, dated 22-8-1984 passed by Extra-Assistant Colonization Officer, Layyah (hereinafter referred to as E. A. C. O./Collector, Layyah,) was kept intact.

2. Leave was granted by this Court vide order, dated 21-7-1998 which is reproduced hereinbelow to appreciate the legal and factual aspects of the controversy:--

"This petition is directed against the judgment dated 19-12-1996 passed by a learned Single Judge of the Lahore High Court, Multan Bench, Multan, whereby the Constitutional Petition filed by respondent No. I was accepted and the orders passed by the Commissioner, Dera Ghazi Khan Division and the Member, Board of Revenue (Colonies) Punjab, were declared to be null and void, ineffective in law, and resultantly the order, dated 22-8-1994 passed by E.A.C.O./Collector, Layyah, was restored.

2. The facts of the case, briefly stated, are that land measuring, 92 Kanals situate in Khasra No.79 and Khasra No.87 of Chak No.249/TDA was adjusted in favour of Mst. Abida Begum (respondent No.2) in lieu of her right of return in respect of land owned by her in village Pattal Munda, Tehsil Kot Adu, District Muzaffargarh vide order, dated 22-8-1984 of the E.A.C.O. Collector, Layyah. Ghulam Nabi respondent No.1 had statedly purchased land measuring 130 Kanals from Mst. Abida Begum (respondent No.2) and 70 Kanals from her husband Ghulam Moeenuddin, vide sale-deed dated 2-6-1984 and the said sale in favour of Ghulam Nabi respondent No.1 was reflected in the order of adjustment. The Divisional Forest Officer of the Government of the Punjab/petitioner came to know of the order of adjustment on 8-3-1986 and applied for supply of copy of the said order on 2-4-1986 and on the same day copy was delivered to him. He then moved the E. A. C. O./Collector, Layyah for review of the order in question but was directed to file an appeal whereupon appeal was instituted with a delay of about two years alongwith an application for condonation of delay. This appeal was allowed and order of the Collector/E.A.C.O. dated 22-8-1984 was set aside on the ground that the land in question was within the executive control of the Forest Department and as such was not liable to be transferred being used as shelter belt to protect M.M. Road from sand etc. Revision of respondent No.1 was dismissed by the

learned Member, Board of Revenue, which led to the filing of Constitution petition in the High Court which was allowed vide impugned judgment dated 19-12-1996.

3. Mr. Muhammad Nawaz Bhatti, learned Assistant Advocate-General referred to the notification dated 1-4-1958 and the documents showing payment of more than Rs.3,00,000 to the Government by the Forest Department in the year 1972 and other documents showing that the land in question constituted shelter belt alongwith M.M. Road and so was not available for allotment by the Collector by way of adjustment in lieu of right of return. It was further contended that the Revenue documents referred to by the learned Judge of the High Court himself in the impugned judgment showing Khasra Nos.79 and 87 as 'Ghairmumkin Zakheera' in possession of Forest Department, provided sufficient basis for setting aside the order of Collector/E.A.C.O., Layyah by the learned Commissioner and learned Member (Colonies), Board of Revenue, though in the ownership column Thal Development Authority was continued to be shown as owner. The Khasra Girdawaris contained the entries that Khasra Numbers in question had fallen in Wanda No.56 confirmed in favour of Mst. Abida Begum allottee, in view of the order passed by the E.A.C.O./Collector, Layyah, but these entries would not change the nature/status of the land which was admittedly 'Ghairmumkin Zakheera Darakhtan' under possession of the Forest Department. It is argued that voluminous documents produced on; record on the basis of which learned Commissioner and learned. Member (Colonies), Board of Revenue had set aside the order of the E.A.C.O./Collector, Layyah could not be legally set aside by the learned Judge of the High Court in exercise of extraordinary Constitutional jurisdiction. It was also urged that learned Judge of the High Court erred in law interfering in extraordinary Constitutional jurisdiction as restoration of the order dated 22-8-1984 of the E.A.C.O./Collector, Layyah would amount to perpetuation of ille gality.

4. The aforementioned pleas, amongst others, require deeper examination. Leave to appeal is, therefore, granted. Interim order, dated 26-6-1997 suspending operation of the impugned judgment shall continue.

3. It is mainly contended by learned Additional Advocate-General, Punjab, that the impugned judgment passed by the learned High Court is against law and facts of the case because legal and factual aspects of the controversy have not been examined in its true perspective which resulted in serious miscarriage of justice. It is contended that the disputed land had already been acquired by the Forest Department vide Notification No.SOA(IX)22(87)/58 dated 1-4-1958 over which plantation was made by investing a substantial amount. It is pointed out that the Forest Department had paid an amount of Rs.3,32,64,670 as price of the land to Thal Development Authority (TDA). It is further contended that the appeal preferred on behalf of Forest Department before Commissioner, D.G. Khan Division was not time-barred because time for filing such appeal was to reckon from the date of knowledge i.e. 6-3-1986 and furthermore that delay, if any, was condoned by the. Commissioner and it could riot have been questioned or reversed as has been done by the learned High Court. It is urged with vehemence that the learned High Court has ignored the vital findings as arrived at 'by the forums concerned available in the hierarchy of Revenue Laws that Mst. Abida Begum's right of return in past was worked out to be 6890 Kanals and she had already been adjusted against 7261 Kanals and thus, she had acquired 371 Kanals in excess of her entitlement and, .therefore, the question of further adjustment did not arise and resultantly no such order could have been passed by the learned E. A. C. O./Collector, Layyah, which was thus ab initio void. It is further argued that the shelter belt had been planned by the defendant TDA in the year 1952-53 and plantation was also made by the Forest Department in the year 1958 and without impleading the Forest Department as a party no order could have been passed by the E.A.C.O./Collector. Layyah, which is in violative of settled norms of justice because wrest Department was never. afforded proper opportunity of hearing to explain the factual position which was distorted with the connivance of officials of Revenue Department and Mst. Abida Begum succeeded in getting adjustment. It is further contended that the land in dispute was validly

transferred to the appellant as transpires from copy of 'Fard Taqseem'/Register Haqdaran. Zamin, pertaining to year 1985-86 and corresponding Khasra Girdawari which were not considered by the learned High Court without any rhyme and reason. It is pointed out that the Board of Revenue, Colonies Department vide its Letter No.1582-78/1500/TH-V, dated 30-8-1978 had clarified that shelter-belt area being the land of Provincial Government was no more available for any allotment and re-grant of this land to different local proprietors had been declared illegal but no attention whatsoever was paid by the learned High Court to the policy as formulated by the Government. It is argued that the concurrent findings of fact as derived by the learned appellate and revisional forum could not have been reversed in exercise of Constitutional jurisdiction which has its own limits

4. Raja M. Anwar, Senior Advocate Supreme Court appeared on behalf of respondents and urged emphatically that the impugned judgment being free from any illegality does not call for any interference as it is neither a case of misreading of evidence nor non-reading of evidence but the conclusion as drawn by the High Court is strictly in accordance with law and settled norms of justice. It is next contended that the appeal was hopelessly time-barred and accordingly it should have been dismissed by the learned Commissioner as no lawful justification was available for condonation of delay and on this score alone the order of learned Commissioner was liable to be set aside. It is contended that Notification No.S.O.A.-IX-22(97)/58, whereby the execution charge was handed over to Forest Department has no legal sanctity because the land in question which was given to the Forest Department is neither mortgaged nor a valid sale and, therefore⁴ the Forest Department cannot be considered as owner merely by issuance of the said notification. It is argued that the entire Revenue Record is indicative of the fact that TDA was the owner of the land in dispute which has rightly been adjusted against the claim of Mst. Abida Begum from whom it was purchased by the respondents and being bona fide purchaser no adverse inference can be drawn. It is also argued that in view of the provisions as contained in section 100 of the Transfer of Property Act and sections 17 and 49 of the Registration Act no document whatsoever could be produced substantiating the ownership of Forest Department.

5. We have carefully examined the entire record. The order, dated 22-8-1984 passed by E. A. C. O./Collector, Layyah, Order of Commissioner, D.G. Khan Division, dated-17-2-1993 and order of Member, Board of Revenue, Punjab dated 7-1 i-1994. We have also gone through the impugned judgment. Let us mention here at the outset that the impugned judgment has been passed on wrong premises of law and facts and the same are an outcome of non-reading and misreading of the material pieces of evidence substantiating the assertions of the appellant and negating the stand put forth by the respondent. Before dilating upon the respective contentions as mentioned hereinbelow it seems appropriate to examine the status of Forest Department in respect of the land in dispute in the light of Notification No.S.O.A.IX.22(97)/58 which is reproduced hereinbelow for ready reference:--

"No.S.O.A.IX.22(97)/58.---In view of transfer of Jauharabad and Layyah Forest Divisions from the control of the Thal Development Authority to the Provincial Forest Department with effect from the 1st April, 1958 and in view of the amendment of the former Punjab Notification No.1831-D(F), dated the 1st June, 1951 and subsequent amendments thereto mentioned below:--

(1) No. 2051-D(F), dated the 22nd June, 1951,

(2) No.2028-D(F), dated the 5th August, 1953,

Governor of West Pakistan is pleased to direct that with effect from the 1st January 1959, the executive charges of Thal Forest Circle shall be as follows:--

THAL FOREST CIRCLE

COMPRISING
Executive Charges Headquarters Revenue District River Revenue Com
missionership
to which
attached

Shahpur Forest Division Jauharabad (i) Whole of Shahpur Jehlum Rawalpindi
District

		(ii) Part of Sakesar Reserved Forest falling in Attock District. (iii) Part of Sakesar Reserved Forest falling in Mianwali District.		
Mianwali Forest Division	Mianwali	(i) Whole of Indus Mianwali District except part of Sakesar Reserved Forest including Shahpur Forest Division and part of Bhakkar Tehsil falling in Layyah Forest Division.	Indus	Dera Ismail Khan
Layyah Forest Division	Layyah	(i) Layyah Tehsil and part of Muzaffargarh and Kot Adu Tehsils of Muzaffargarh District, (ii) Part of Bhakkar Tehsil of Mianwali District lying to the South of Jhang Bhakkar metalled Road.	Jhelum	Bahawalpur

6. A cursory glance at the language in which the abovementioned notification is couched will show that executive charge of Layyah Tehsil and part of Muzaffargarh and Kot Adu Tehsil of Muzaffargarh District (including land in dispute) was given to Forest Department which was supposed to perform an active role being executive incharge of the land which by no stretch of imagination could have been allotted to anybody without having the prior consent of the Forest Department being executive incharge which was conferred upon it in lieu of Rs.3,32,64,670 duly paid by means of Cheque No.02448/23266, dated 27-6-1972 vide proper receipt which is reproduced hereinbelow for ready reference:--

"Cheque No.02448/231270 of 30-6-1972 for Rs.3,32,64,670 in

favour of Financial Adviser, Thal Development Authority, Lahore in lieu of Cheque No.02448/23266 dated 27-6-1972 of Rs.3,32,64,670 in favour of Administrator, Thal Development Authority is placed for signature please.

(Sd.)
30-6-1972.

Received cheque for Rs-.3,32,64,670

(Sd.)
G. Haider,
30-6-1972
for S. O. Loan."

7. The payment of the said amount also finds support from the Statement of .Forest Department pertaining to year 1972 which runs as follows:--

"B.I(iv)F Chat of settlement, Compensation Lands and rights. Vr. No.24/Div1.6/72.

By amount of Cheque No.02448/31270, dated 30-6-1972 for Rs.3,32,64,670 on State Bank of Pakistan, Lahore on account of payment of TDA's dues against Forest Department.

Rs.3,32,64,670"

8.It is noticeable that on 28-10-1961 land measuring 1761 Kanals from Tehsil Layyah, District Muzffargarh was allocated for the purposes of shelter-belt and handed over to the Provincial Forest Department in Layyah Forest Division as communicated by the E.A.C.O., TPC, Layyah, vide Letter No.Thal/E.A.C.O./3438, dated 30-10-1961 and the statement showing the details of the area transferred from T.D.A. to Provincial Forest Department in Layyah Forest Division was attached which makes it abundant clear that the area of 1761 Kanals was transferred for the purposes of shelter belt to Forest Department and being a lawful transferee how the valuable chunk of said land could have been adjusted. in favour'of Mst. Abida Begum while keeping transferee/executive incharge of the area in dark. The most significant question as to whether the land pertaining to Forest Department could have validly been adjusted/transferred to anybody has been ignored by the E.A.C.O./Collector, Layyah, who did not care to have gone through the record ,of the case with such prudence as his, office demanded on him. He appeared to have failed to apply his conscious mind to the facts of the case and the evidence available and instead, toed the line ill-foundedly and unscrupulously drawn by Tehsildar and Girdawar without having proper scrutiny of the entire record and due to his indifferent and callous approach the Forest Department was deprived from the land worth whereof runs in the millions. Besides that 'Fard Taqseem' was ignored which is indicative of the fact that the land measuring 417 Kanals, 9 Marlas located in Chak No.249/TDA was shown as allocated and reserved for shelter-belt

under the Forest Department. No attention whatsoever was paid to "Register Haqdaran" pertaining to year 1979-80 showing that the land in dispute (Khasra Nos.79-80) was under the ownership-cum-possession of TDA with specific mention that the land was meant for tree plantation and could not be utilized for cultivation purposes. Similarly the "Register Haqdaran Zarnin" for the year 1.985-86 is indicative of the fact that Khasra Nos.79 and 80 were under the possession of Forest Department and meant for tree plantation. The E. A. C. O./Collector, Layyah, has also violated flagrantly the direction as contained in letter No.1582-78/1500/TH-V, dated 30-8-1978 wherein it was clarified that shelter-belt area being the land pertaining to Provincial Government was not available for any allotment and such allotments to different persons had been declared invalid but in spite of it the E. A. C. O./Collector, Layydh, had allotted/adjusted the land in question to Mst. Abida Begum without any lawful justification. In such view of the matter the order, dated 22-8-1983 passed by the E.A.C.O./Collector. Layyah, is ab initio void having no legal sanctity, as the land in dispute located in Chak No.249 'TDA, Tehsil and District Layyah, could not have been allotted/adjusted against her claim pertaining to Pattal Munda, Tehsil Kot Adu, District Muzaffargarh, vide order, dated 22-8-1984 which was assailed before Commissioner D.G. Khan Division by whom the appeal was accepted on 17-2-1993 with the following observations:--

"I have heard the parties and carefully perused the record from which it has been seen that the impugned adjustment has illegally been made with mala fide intentions as valuable land along M M Road which had specially been reserved as a shelter-belt initially under the TDA and subsequently transferred in favour of the Forests Department has been adjusted in favour of the respondents against their entitlement of agricultural land which has also been illegally transferred from village Pattal Munda of Tehsil Kot Adu hence I accept the appeal, set aside the impugned order and direct that the possession of the suit land be immediately handed over to the Forest Department." (Underlining ours)

9. It is an admitted fact that the appeal was time-barred but Commissioner has condoned the delay in view of the prevalent circumstances of the case and justification as put forth by the appellant. He had exercised his discretion judiciously and he was competent to do so. A careful scrutiny of his order would reveal that he had exercised his jurisdiction properly and in accordance with law. We have also examined the order dated 7-11-1994 passed by the learned Member,-Board of Revenue, Punjab, Lahore, which transpires that the controversy has been dilated upon and decided with diligent application of mind after taking into consideration all the pros and cons of the matter and nothing was left unattended to. In order to be more conscious and careful the site was also got inspected and the revision petition preferred on behalf of appellant was dismissed with the following observations:--

"(i) Register Haqdaran Zamin for 1979-80 indicates impugned Khasra numbers to be under ownership-cum-possession of T.D.A. Both the Khasra numbers are recorded as (Tree Plantation)."

(ii) Register Haqdaran Zamin for 1985-86 indicates that both Khasra numbers though owned by T.D.A. were under the' possession of Forest Department and were under Tree Plantation."

It was further observed:--

"8. It is thus clear that both these Khasra numbers are located along Mianwali-Muzaffargarh road on both sides. Their length respectively is 432 and 408 Karams whereas the width is 20 Karams except for the Northern portion of Khasra No.87 where the width is 15 Karams. These narrow strips on either side of Mianwali Muzaffargarh Road were obviously meant to be brought under a forestation for effectively checking the shifting stands from blocking the road. The Revenue Record

further confirms that the impugned Khasra number being part of the shelter-belt, had been transferred to the Forest Department for Tree Plantation. The Forest Department had done fairly extensive Plantation of which the solid proof is the existence of 199 trees which were counted by Tehsildar during his recent visit to the impugned land. Register Hagdaran Zamin had shown the impugned Khasras to be under Tree Plantation even during 1979-80." (Underlining ours)

10. As mentioned in the preceding paragraphs the vital question which should-have been determined at first instance having substantial bearing on the case is as to whether the claim of Mst. Abida Begum could have been adjusted against the land which had already been transferred to Forest Department? The learned Member, Board of Revenue, had adverted to the said question and observed as follows:--

"9. It is obvious that the impugned land was not available ' for adjustment to any local proprietor--not to speak of Mst. Abida Begum whose land had been acquired by TDA in Mauza Pattal Munda of Tehsil Kot Adu and who should have ordinarily been given the adjustment in Tehsil Kot Adu.

10. The E.A.C O 's representative in his report dated 11-8-1994 has brought out that the right of return of Mst. Abida Begum worked out to be 6890 Kanals. The calculation done by the E.A.C.O.'s Office shows that she had already been adjusted 7261 Kanals i.e., 371 Kanals in excess of her entitlement. E.A.C.O., Layyah, may have a second careful look and if it is established that Mst. Abida Belum got adjustment of TDA land in excess for her entitlement, excess area be cancelled after affording the opportunity of being heard to all the-concerned.

11. In view of what has been discussed above, the impugned land was not available for adjustment on 22-8-1984 when the same was adjusted by E.A.C.O. in favour of Mst. Abida Begum. E.A.C.O.'s order, dated 22-8-1984 was thus, ab initio void and has been nightly set aside by Commissioner, D.G. Khan. The revision petition is rejected." (Underlining ours).

11. The above observations are unexceptional and the claim of Mst. Abida Begum could not have been adjusted against valuable parcels of the land pertaining to Forest Department having more than 199 trees which were 25 to 30 years old, specially when her claim was satisfied fully and some how or the other she succeeded in getting 371 Kanals more than her claim. All the points agitated before learned Member, Board of Revenue, and decided in a comprehensive manner were not considered by the learned High Court in its true perspective. It prevailed upon the High Court that on the basis of report of Teshildar and Girdawar the land in dispute was available for transfer and the E.A.C.O./Collector, Layyah, was competent to make such transfer as the land in dispute pertained to T.D.A. but the said conclusion could not have been derived for the following reasons:--

(i) The implication of Notification No.S.O.A.-IX-22(97)/58 whereby the executive charge of Layyah Tehsil and part of Muzaffargarh and Kot Adu, Tehsils of Muzaffargarh District. was handed over to Forest Department and relevant Revenue Records could not be examined with care and caution.

(ii) Payment of an amount of Rs.3,32,64,670 by the Forest Department in lieu of the land in dispute.

(iii) The orders of appellate and revisional forums were not scrutinized properly.

(iv) The judgments of the High Court regarding same land to the effect that the land in question could not have been allotted were not taken into consideration.

(v) Out of his land reserved for the shelter-belt, an area of 157 Kanals, 7 Marlas was adjusted in favour of seven persons in the year 1980, against which the E.A.C.O., moved the Board of Revenue for the cancellation of the same and the Board of Revenue, vide its letter No.1582J-87/1500/THV, dated 30-8-1978, declared their adjustment/allotment to be invalid, against which Muhammad Hussain Shah, one of the allottees filed a Writ Petition in the Hon'ble High Court which was dismissed in limine. Against which, Muhammad Hussain Shah filed another' I.C.A. No.232 of 1979 which was again dismissed on 18-1-1983.

(vi) The memorandum containing the policy for allotment of such lands duly issued by the Board of Revenue was not examined which runs as follows:--

MEMORANDUM:

The case has been re-examined in the Board of Revenue, Punjab and in the light of Enquiry Report by the Assistant Commissioner, Layyah. It has been decided that:--

(1) Memo. No.1000-78/800/TH-V, dated 11-5-1978, regarding exchange of 34 acres and 4 Kanals of Shelter-Belt Area in Chak No.249/TDA with equal area of Chak No.223/A/TDA, be withdrawn, which is accordingly withdrawn.

(2) To supply a copy of the Enquiry Report to the Forest Department for reconsideration of their decision regarding concurrence for the exchange of Shelter-Belt Area measuring 34 acres, 4 Kanals of Chak No.249/TDA, with an equal area of Chak No.223-A/TDA.

(3) Shelter-Belt Area being Provincial Government land was not available for allotment. Re-grant of this land to 6 different local proprietors from 1965 to 1975, was mentioned in Memo No.Thal/50/786, dated 17-1-1977, from the Settlement Officer, Layyah to the Officer on Special Duty to the Minister for/Revenue and Colonies and Extra-Assistant Colonization Officer Memo. No.Thal/ADH/2082, dated 1-2-1978, was, therefore, invalid.

The Commissioner/Extra-Assistant Colonization Officer Layyah, should be cognizant of these allotments and proceed according to law."

(vii) The scheme pertaining to shelter-belt was launched in the year 1952-53 and amazingly the said land was allotted after about two decades.

(viii),The huge plantation made by the Forest Department and as per inspection report got conducted by Member, Board of Revenue more than 194 old trees were found available.

(ix) The relevant provisions as contained in section 30(2) of Thal Development Act, 1949 (Act Punjab XV of 1949) has not been considered whereby no such land could have been allotted.

(x) The Forest Department being necessary party was never impleaded which fact escaped notice.

12. In the light of what has been discussed hereinabove it can be inferred safely that the entire evidence has not been scrutinized properly. We are not persuaded to agree with Raja M. -Anwar, learned Advocate Supreme Court on behalf of the respondents that the Forest Department could not have considered the owner of the land as no document pertaining to ownership could be brought on record and thus, in view of the provisions as contained in section 100 of the Transfer of Property Act and sections 18 and 49 of the Registration Act the ownership could not have been legally devolved upon the Forest Department for the simple reason that the claim of Mst. Abida Begum

could not have been adjusted against the land in dispute and, therefore, the question of applicability of provisions as contained in sections 100 of the Transfer of Property Act and 17 and 49 of the Registration Act does not arise and the case-law cited by the learned counsel would have no

13. Another vital question which needs consideration is as to whether Constitutional jurisdiction should have exercised in such-like cases specially when the forums available in the hierarchy under the relevant law have C decided all the controversial questions on the basis of record and in accordance with law. It is well-settled by now that "High Court will not go into disputed questions of fact in Constitutional jurisdiction". (NLR 1992 CU 99 + 1991 CLC 2004 + 1991 CLC 605 + 1991 MLD 1492 + 1987 PCr.LJ 1413 + 1987 CLC 2519 + 1982 CLC 2227 + 1990 PCr.LJ 1478 + 1990 PCr.LJ 1997 + 1990 CLC 456 + 1990 CLC 479 + 1990 MLD 563 + 1990 MLD 389 + PLD 1989 Kar. 185 + 1989 SCMR 918 + 1989 CLC 1253 + PLD 1988 Quetta 52 + 1988 SCMR 1259 + 1988 CLC 2220 + 1988 CLC 2201 + PLD 1989 Lah. 31 + 1987 CLC 2519 + 1987 PCr.LJ 1413 + 1987 PCr.LJ 939 + PLD 1987 Lah. 336 + 1986 CLC 2403(2) + 1986 CLC 54 + 1986 CLC 1146 + PLD 1985 Lah. 545 + PLD 1985 Lah. 217 + PLD 1985 Kar. 546 + 1985 PCr.LJ 1437 + 1984 SCMR 963 + PLD 1984 Kar. 155 + 1984 CLC 2002 + 1983 CLC 1801 + 1983 SCMR 732 + 1982 SCMR 497 + PLD 1982 Kar. 449 + PLD 1982 Kar. 581 + PLJ 1981 Kar. 239 + PLD 1942(sic) Quetta 136 + 1982 CLC 693 + 1982 CLC 553 + 1982 CLC 805 + 1982 CLC 1115 + .1982 CLC 2227 + 1982 CLC 2491 + 1982 CLC 1784 + 1982 CLC 2076 + 1982 CLC 2518 + PLD 1982 Lah. 410 + PLJ 1982 Lah. 231 + PLD 1981 Lah. 583 + PLD 1981 Lah. 459 + 1981 Law Notes 384 + 1981 CLC 1242 + 1981 CLC 1400.+ 1981 CLC 1403 + 1981 CLC 1569 + 1981 CLC 195 + 1980 CLC 952 + 1980 Law Notes 26 + PLD 1986 Quetta 93 + PLD 1984 Kar. 269 + 1970 SCMR 158 + PLD 1963 Lah. 63 + PLD 1962 Lah. 797 + PLD 1964 Dacca 522 + 15 DLR 307 + PLD 1980 Quetta 1 + PLD 1979 Kar. 212 + PLD 1979 Kar. 465 + PLJ 1979 Kar. 17 + 1979 CLC 872 + PLD 1978 Lah. 917 + 1978 PCr.LJ 141 + 1978 SCMR 449 + NLR 1978 Civil 1162 + PLD 1978 Kar. 867 + PLD 1978 Quetta 34 + NLR 1978 Civil 597 + NLR 1978 Civil 311 + . PLJ 1976 Quetta 67 + PLD 1977 Kar 214 + PLD 1977 Lah. 718 + PLD 1977 Kar. 601 + PLD 1973 Lah. 230 + PLD 1973 Lah. 628 + PLJ 1973 Lah. 7 + PLJ 1974 Lah. 330 + PLJ 1974 Lah. 598 + 1974 PLC 89 + 1974 Law Notes 105 + PLD 1974 Lah. 318 + PLD 1973 Lah. 228 + 1973 Law Notes 350 + PLD 1975 Lah. 967 + PLJ 1975 Kar. 304 + PLJ 1975 Lah. 317 + 1975 SCMR 184 + 1973 SCMR 422 + 1974 SCMR 28 + 1984 SCMR 377 + PLD 1990 Pesh. 122 + 1982 SCMR 372 + 1982 SCMR 883 + 1984 CLC 925 + 1984 CLC 941 + 1983 CLC 1801). This is more so when it is supported by attending circumstances and relevant record. (PLD 1976 Lah. 880 + PLD 1974 SC 139 .+ PLD 1977 Lah. 24 + PLD 1977 Lah. 194). Constitutional jurisdiction of High Court, cannot be converted into that of an Appellate Court. Disputed questions of fact cannot be entered or allowed to be re agitated in writ jurisdiction. (1982 CLC 1972). When the relevant law provides other forums for the purpose. (1987 PCr.LJ 1413 (DB). It follows that finding of fact recorded by Appellate Court below on appraisal of evidence cannot be disturbed in writ jurisdiction. (PLD 1981 Lah. 511). In Constitutional jurisdiction Court does not go into a question involving minute details nor can it decide facts of which no foundation is laid, (1990 MLD 563 (DB), unless it is shown that such controversy is devoid of supporting record, or perverse." (1990 MLD 344). It hardly needs any elaboration that "the superior Courts should not involve themselves into investigations of disputed question of fact which, necessitate taking of evidence. This can more appropriately be done in the ordinary Civil Procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts". (1991 CLC 1908 + PLD 1989 Pesh. 36 + PLD 1990 Kar. 186 (DB) + PLD 1990 Kar. 378 (DB) + 1986 CLC 2635 (DB) + 1984 CLC 3279 + 1986 CLC 2559 + NLR 1986 UC 407 (DB) + 1.986 SCMR 598 + PLD 1987 Quetta 103 (DB) + .1982 CLC 2268 + PLD 1985 Lah. 134 + 1986 CLC 2416 + PLD 1981

Pesh. 57 + PLD 1986 Lah. 409 + 1986 Law Notes 1131 + 1981 SCMR 291 + 1982 CLC 2421 (DB) + 1981 CLC 1332 (DB) + 1980 CLC 736 + PLD 1982 Lah. 831 (DB) + 1978 PCr.LJ 141 + 1968 SCMR 935 + PLD 1970 Dacca 633 (DB) + PLD 1968 SC 185 + 20 DLR (SC) 144 + PLD 1967 Dacca 709 (DB) + PLD 1970 Lah. 569 + PLD 1968 Lah. 1244 + PLD 1970 (sic) (W.P.) 1 + PLD 1971 Lah. 866 + PLD 1971 Kar. 517 + PLD 1972 Lah. 262 + 1971 SCMR 110 + 1971 SCMR 697 + 1970 SCMR 853 + 1969 SCMR 217 + 1968 SCMR 880 + 1968 SCMR 145 + 1970 DLC 330 + 22 DLR 337 + 1970 DLC 29 + 21 DLR 938 + PLD 1968 Dacca 367 + PLD 1969 Dacca 74 + PLD 1969 Dacca 779 + PLD 1965 Dacca 263 + PLD 1964 SC 636 + 16 DLR (SC) 457 + PLD 1964 Kan 468 + PLD 1964 BJ 15 + PLD 1963 Lah. 98 + PLD 1964 Kar. 90 + PLD 1964 Dacca 522 + 15 DLR 703 + PLD 1962 Kar. 712 + PLD 1962 Lah. 189 + PLD 1962 Lah. 16 + PLD 1961 Lah. 842 (FB) + PLD 1961 Lah. 304 + PLD 1961 Lah. 756 + PLD 1960 Dacca 541 + PLD 1960 Dacca 31 + PLD 1960 Dacca 523 + PLD 1960 Dacca 660 + 12 DLR 255 (DB) + PLD 1958 Lah. 345 + PLR 1959 (1) W.P. 163 + 11 DLR (W.P.) 14 + 11 DLR 367 + PLD 1959 Lah. 915 + PLR 1960 (1) W.P. 830 + PLD 1957 Kar. 921). "High Court in exercise of Constitutional jurisdiction cannot reappraise evidence and come to its own independent finding where finding of fact was recorded by Authority below after giving good reasons in support for it". (1988 CLC 1198). There is no cavil to the proposition that "superior Courts have ample jurisdiction to refuse a relief where granting it would be tantamount to injustice (1988 SCMR 516 + PLD 1975 SC 331 PLD 1968 Lah. 1334 (DB) + PLR 1969 (1) W.P. 342 + PLD 1968 Lah. 166 + 1973 SCMR 127), or would perpetuate an illegality (PLD 1991 SC 691 + 1990 CLC 1174 + P1.I 1990 Lah. 283 + 1984 CLC 1729 + PLD 1984 Quetta 158 + 1973 SCMR 127) or perpetual injustice, (1990 MLD 2192) or for retention of ill-gotten gains (PLD 1984 Quetta 158 or if greater harm is likely to be caused thereby than the one sought to be remedied. Individual interest must be subordinated to collective good. (PLD 1989 SC 166 - + 1987 M LD 1098 High Court, cannot come to rescue of a person seeking its stamp or approval for order or action which was patently unjust, being without jurisdiction and hence void ab initio. (1986 CLC 54). Therefore, High Court is not bound to grant relief to a petitioner simply because he was legally entitled to it, if the grant of such relief is immoral, unfair or against the dictates of good conscience and fairplay". (1990 MLD I 2192 (DB)). It hardly needs any elaboration that High Court is not obliged to press into service its Constitutional jurisdiction in every case in which illegality or void action or order is impugned. The Court is to see, whether the grant of relief prayed for will foster the cause of justice or will it perpetuate injustice. If the Court finds that in a given case though the action taken by the authority is illegal but setting aside of such an illegal action would result in miscarriage of justice instead of advancing the cause of justice, the Court may decline to press into service its Constitutional jurisdiction. In this regard reference can be made to 1990 CLC 954 (DB). We are of the considered view that relief in Constitutional jurisdiction being discretionary should not be granted to hold retention of ill -gotten gains even if for technical reasons impugned order be not strictly justifiable.

14. The Member, Board of Revenue has decided the controversy in a comprehensive manner and the conclusion drawn by him hardly calls for an interference. We are, therefore, inclined to set aside the impugned judgment and resultantly the order passed by learned Member, Board of Revenue, dated 7-11-1994 and order passed by Additional Commissioner (Revenue), K D.G. Khan, dated 29-4-1986 shall remain intact. The appeal is accepted.

Q.M.H./M.A.K./S-89/S Appeal allowed.

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