

2018 S C M R 1177

[Supreme Court of Pakistan]

Present: Mushir Alam and Syed Mansoor Ali Shah, JJ

ALLAH DITTA and others---Appellants

Versus

MEMBER (JUDICIAL), BOARD OF REVENUE and others---Respondents

Civil Appeal No. 1257 of 2013, decided on 13th March, 2018.

(On appeal from judgment of Lahore High Court, Rawalpindi Bench, dated 03.10.2013, passed in W.P.

No. 3386 of 2006)

(a) Punjab Land Revenue Act (XVII of 1967)---

---S. 135--- Application for partition--- Objections against---Non-speaking order---Respondent filed application for partition before the Tehsildar under S. 135 of the Punjab Land Revenue Act, 1967, which was allowed with the passing of a preliminary decree---Naqsha jeem was prepared and objections filed by the appellant to the said naqsha jeem were rejected by the Tehsildar---Appeal against the same before the DO(R) was dismissed, while revision filed before the EDO (R) was also dismissed---Finally the Member Board of Revenue remanded the matter to the DO(R)---Contention of appellant was that land sold by the respondent was not excluded while preparing naqsha jeem---Validity---Orders of the Tehsildar, the DO(R), as well as, the EDO(R) did not address the objections raised by the appellant regarding adjustment of the land sold by the respondents through a speaking order---Member Board of Revenue had rightly remanded the case to the Revenue Officer below to examine the record and pass a speaking order in such regard---Supreme Court remanded the matter to the Tehsildar concerned to consider the objections filed by the appellant against naqsha jeem and decide the same through a speaking order, clearly attending to the objection regarding land to be excluded from the share of the respondent, if any---Appeal was allowed accordingly.

(b) Remand---

---Scope---Order of remand was not a final order and simply sent the matter for re-examination for the second time---Remand order did not finally determine the claim or the rights of the parties---Forum to which the case was sent for fresh decision was free to re-examine the case and pass a fresh judgment---Against any such subsequent decision or judgment, alternate remedy was available to the parties.

(c) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of the High Court---Scope---Remand order---Order of remand that was facially perverse or with

out jurisdiction or otherwise void could be interfered with under Constitutional jurisdiction like any other order.

Ghulam Rasool v. Khudai Dad PLD 1986 Quetta 130 ref.

(d) Punjab Land Revenue Act (XVII of 1967)---

---S. 164--- Constitution of Pakistan, Arts. 184(3) & 199---Constitutional jurisdiction of the High Court/Supreme Court---Scope---Remand order passed by Member, Board of Revenue---Constitutional Court must approach and examine a remand order passed by the Board of Revenue with care and circumspection, so as to sparingly interfere with it, unless, the remand order was facially perverse, without jurisdiction or otherwise void.

Ramzan v. Rehabilitation Commissioner (Legal) Sargodha PLD 1963 Lah. 461; Kaniz Fatima v. Board of Revenue PLD 1973 Lah. 495 and Ghulam Rasool v. Khudai Dad PLD 1986 Quetta 130 ref.

Muhammad Munir Paracha, Advocate Supreme Court for Appellants.

Ch. Afrasiab Khan, Advocate Supreme Court for Respondent No.2.

Date of hearing: 13th March, 2018.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Leave to appeal was granted on 3-10-2013 to examine whether writ petition is maintainable against a remand order ?

2. Brief background of the case is that the respondent filed an application for partition before the Tehsildar under section 135 of the Land Revenue Act, 1967, which was allowed on 29.5.1999, with the passing of a preliminary decree. Thereafter, naqsha jeem was prepared and objections filed by the appellant to the said naqsha jeem were rejected by the Tehsildar on 25.5.2000. Appeal against the same before the D.O (R) was dismissed on 28.5.2003, while revision filed before the EDO (R) was also dismissed on 26.7.2004. However, finally in ROR filed before the Member Board of Revenue, the matter was remanded to the DO(R) vide order dated 31.10.2006. The said remand order was challenged before the High Court and vide impugned order dated 3-7- 2013, the remand order of the MBR was set aside and that of the EDO (R) was upheld.

3. In the above factual matrix, we have noticed that the objections raised by the appellant against naqsha jeem were not attended to through a speaking order. The crux of the objections was that the land sold by the respondents was not excluded while preparing naqsha jeem.

4. Learned counsel on behalf of respondent No.2 submits that the preliminary decree itself clearly mentions that the area sold by the respondents be adjusted while preparing the naqsha jeem. He while referring to the orders of the Revenue Authorities below submits that entire revenue record has been perused before deciding the matter and the required exclusion of land has taken place.

5. We have gone through the record of the case and also examined the orders passed by the Revenue Authorities. The orders of the Tehsildar, the DO(R), as well as, the EDO(R) do not address the objections raised by the appellant regarding adjustment of the land sold by the respondents. It is for this reason that the Member, Board of Revenue remanded the case to the DO(R) to examine the record and pass a speaking order in this regard. We are not satisfied with the orders passed by the Revenue Authorities from Tehsildar to EDO(R) and are in agreement with the decision of the Member, Board of Revenue.

6. Order of remand is not a final order and simply sends the matter for re-examination for the second time. It does not finally determine the claim or the rights of the parties. The forum to which the case is sent for fresh decision is free to re-examine the case and pass a fresh judgment. Against any such subsequent decision or judgment, alternate remedy is available to the parties. Further, Board of Revenue is the highest

court of appeal and revision in revenue cases and is a controlling authority in all matters connected with the administration of land, collection of land revenue, preparation of land record and other matters (See section 5 of the Board of Revenue Act, 1957). In this background the courts after having judicially examined the remand order passed by the Board of Revenue have expressed reluctance to interfere and for these reasons have maintained that order of remand would not be amenable to writ jurisdiction (see *Ramzan v. Rehabilitation Commissioner (Legal) Sargodha* (PLD 1963 Lahore 461), *Kaniz Fatima v. Board of Revenue* (PLD 1973 Lahore 495) and *Ghulam Rasool v. Khudai Dad* (PLD 1986 Quetta 130). This is not an absolute rule. An order of remand that is facially perverse or without jurisdiction or otherwise void can be interfered with, like any other order (see *Ghulam Rasool (supra)*). The constitutional power to judicially review an order of remand passed by the Board of Revenue is not in any manner curtailed or abridged by the precedents cited above. Infact, the principle that emerges from the wisdom of the precedents is that, for reasons narrated above, the constitutional court must approach and examine a remand order passed by the Board of Revenue with care and circumspection, so as to sparingly interfere with it, unless of course, the remand order is facially perverse, without jurisdiction or otherwise void. Amenability of writ jurisdiction against a remand order is in this context and subject to above conditions.

7. In the present facts and circumstances of the case, we agree with the order of remand passed by the Board of Revenue. We, therefore, set aside order dated 03.7.2013, passed by the High Court, and modify order dated 31.10.2006, passed by the Member, Board of Revenue to the extent that the case now stands remanded to the Tehsildar concerned to consider the objections filed by the appellant against naqsha jeem and decide the same through a speaking order, clearly attending to the objection regarding land to be excluded from the share of the respondent, if any.

8. This appeal is allowed and the case is remanded in the above terms.

MWA/A-7/SC Case remanded.