

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

C.P.L.A.104-L/2017

*[against the judgment dated 28.10.2016
passed by the Lahore High Court, Lahore in
W.P.No.27579/2011]*

*Member (colonies), Board of Revenue,
Punjab, Lahore and others*

...Petitioner

Versus

*Rasheeda Bibi (deceased) (widow) of
Ghulam Sarwar (deceased) through
legal heirs and others*

...Respondent(s)

For the Petitioner : Mr. Wasim Mumtaz Malik, Addl. AG

For the Respondents : Mr. Muhammad Ghaffar-ul-Haq, ASC

Research Assistance by : Dr. Muhammad Mumtaz,
Research Officer

Date of Hearing : 23.09.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- The case in hand emanates from a petition originally instituted before the Supreme Court of Pakistan under Article 185 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”), prior to the advent of the Constitution (Twenty-seventh Amendment) Act, 2025 (“the 27th Amendment”), seeking leave to appeal against the judgment dated 28.10.2016 rendered by learned Single Judge of Lahore High Court, Lahore in Writ Petition No.27579/2011. Through the impugned judgment, the learned High Court, while exercising its constitutional jurisdiction, allowed the writ petition preferred by the respondents. Subsequent to the constitutional reconfiguration brought about through the promulgation of the 27th Amendment, and in view of the transitional framework envisaged therein, the instant matter, stood transmitted to this Court and now falls for consideration and adjudication in accordance with law.

2. Briefly stated, agricultural land measuring 49 acres, 5 kanals and 13 marlas, situated in Chak No. 2/KB, Tehsil Pakpattan, was leased to the respondents under the Temporary Cultivation Lease Scheme from Kharif 1968 to Rabi 1978, with extensions granted from time to time under the prevailing Government policy. Their application for conferment of proprietary rights under Notification dated 03.09.1979 was rejected on 14.05.2001, the land being situated within the prohibited zone, and the appeal thereagainst was dismissed on 11.12.2001. Upon remand by the Member, Board of Revenue on 28.02.2004, the EDO (Revenue), Pakpattan, vide order dated 28.10.2008, accepted their claim and directed issuance of challan for deposit of the land price. The said order was subsequently taken up in review with permission of the Member (Colonies), Board of Revenue, and the respondents' claim was rejected vide order dated 24.08.2011. The respondents successfully assailed the same before the Lahore High Court, which, vide impugned judgment dated 28.10.2016, allowed their writ petition, giving rise to the present proceedings.

3. We have heard the learned counsel for the parties and have meticulously examined the record

4. The controversy, in essence, gives rise to two questions: first, whether the land in dispute was amenable to the conferment of proprietary rights under the policy Notification dated 03.09.1979; and, secondly, whether the EDO (Revenue) was competent to review the order dated 28.10.2008 after obtaining the sanction from MBR, passed by his predecessor in office.

5. Adverting to the first question, it is undisputed that the respondents entered into possession of the land under the Temporary Cultivation Lease Scheme and subsequently sought conferment of proprietary rights under the Notification dated 03.09.1979. The juridical distinction between a temporary right of cultivation and permanent divestiture of State title is fundamental. The former neither extinguishes State ownership nor engenders any vested, accrued or indefeasible right in favour of the lessee; the latter can emanate only upon strict fulfilment of the conditions prescribed by the instrument constituting the very source of such

entitlement. Indeed, the Notification itself does not recognize acquisition of proprietary rights *as of right*. Where the land falls within a category expressly excluded from grant, the embargo operates upon the eligibility of the land itself and correspondingly circumscribes the competence of the authority to alienate it. The principle *quando aliquid prohibetur ex directo, prohibetur et per obliquum*—what cannot lawfully be done directly cannot be accomplished indirectly—is attracted with full force; an express prohibition against alienation cannot be circumvented through administrative action, antecedent possession or collateral compliance.

6. The respondents' reliance upon the original temporary lease is equally misconceived. A temporary cultivation lease and conferment of proprietary title are juridically distinct transactions, operating upon different legal incidents. Whereas the former merely permits possession and cultivation without derogation from State title, the latter results in permanent divestiture of public property and must, therefore, derive its legitimacy strictly from the governing policy. *Nemo dat quod non habet* embodies the cognate principle that no person can confer a better title than he possesses; correspondingly, a public functionary cannot confer a proprietary interest which the governing law or policy places beyond his authority to grant. The antecedent lease could, therefore, neither metamorphose into ownership nor confer immunity from the restrictions governing permanent alienation of the land.

7. Once the competent record establishes that the land was within the prohibited category at the legally relevant stage, the respondents' claim necessarily fails at its foundation. Protracted possession, successive extensions of lease, deposit of price or acceptance of Government dues cannot efface a substantive embargo upon alienation. The maxim *sublato fundamento cadit opus*—once the foundation is removed, the superstructure falls—aptly applies: where the foundational eligibility for conferment of proprietary rights is absent, consequential administrative steps cannot independently sustain the claim. Equally, *ex nihilo nihil fit*; no enforceable proprietary entitlement can emanate from an act

which the competent authority was legally disabled from performing. Administrative acquiescence cannot transmute an inchoate expectation into a vested right, nor can an erroneous exercise of authority validate that which the governing policy expressly withholds.

8. Viewed in this perspective, the order dated 28.10.2008, insofar as it contemplated or directed further steps towards conferment of proprietary rights without first determining and overcoming the legal embargo attaching to the land, proceeded upon a fundamentally erroneous assumption as to the respondents' entitlement as well as the competence of the authority to alienate the property. The defect was not merely procedural in nature; it went to the very root of the matter, for the eligibility of the land constituted a condition precedent to the lawful exercise of authority under the policy. In the absence of satisfaction of that foundational requirement, no direction towards transfer of proprietary title could acquire legal efficacy.

9. There is yet another aspect which merits consideration. State property is held by public functionaries in trust for the community and cannot be alienated except under lawful authority and in strict conformity with the governing law and policy. Where the official record discloses a legal prohibition affecting the very competence of the authority to transfer such property, the Court cannot disregard it merely for want of a specific plea. Rules of pleadings, though essential to procedural fairness, cannot be invoked to perpetuate an illegality resulting in unauthorized divestment of State property. The Courts are, therefore, under a duty to take cognizance of any established legal impediment apparent from the record and ensure that public property is not alienated through administrative error, omission, acquiescence or otherwise, contrary to law. See, *Al-Shafique Housing Society*¹, *Shabbir Hussain*², and *Abdul Haq Indher*³.

¹ *Al-Shafique Housing Society v. P.M.A.* (PLD 1992 SC 113)

² *Provincial Government through Collector, Kohat and another v. Shabbir Hussain* (PLD 2005 SC 337)

³ *Abdul Haq Indher v. Province of Sindh* (2007 SCMR 907).

10. This brings us to the second question concerning the exercise of review jurisdiction. Section 163 of the Punjab Land Revenue Act, 1967 expressly empowered a competent Revenue Officer to review an order passed either by himself or by his predecessor-in-office, subject to the conditions prescribed therein. Thus, review by a successor-in-office was not, by itself, without jurisdiction, provided the reviewing authority possessed the requisite statutory competence and complied with the conditions governing such review. The relevant section 163 is hereby reproduced;

“Review.– (1) 8 [9 [A Commissioner]], Collector or an Assistant Collector, may, at any time, on his own motion, review any order passed by himself or any of his predecessors-in-office, and on so reviewing modify, reverse or confirm the same.

(2) Any person considering himself aggrieved by an order passed by 10[11[a Commissioner]], Collector or an Assistant Collector, and who, from the discovery of” new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was passed, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the order passed against him, may apply for a review of the order to 1 [2 [the Commissioner]], Collector or Assistant Collector, as the case may be, and such officer may modify, reverse or confirm any order passed by himself or by any of his predecessors-in office:

Provided that–

(a) an order passed by his predecessor-in-office shall not be reviewed under sub-section (1) or sub-section (2) by the–

- (i) [Commissioner]], without first obtaining the sanction of the Board of Revenue;
- (ii) Collector, without first obtaining the sanction of the [Commissioner]], and no order shall be reviewed by any other Revenue Officer, without first obtaining the sanction of the Revenue Officer to whose control he is immediately subject;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(3) For the purposes of this section, the Collector shall be deemed to be successor-in-office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor-in-office.

(4) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

Since the order sought to be reviewed had been passed by the predecessor-in-office of the EDO (Revenue), section 163 of the Punjab Land Revenue Act, 1967 required prior sanction of the Board of Revenue. Such sanction is merely a condition precedent enabling the successor Revenue Officer to exercise review jurisdiction. In the present case, upon a reference made by the EDO (Revenue), the Member, Board of Revenue, by order dated 24.08.2011, granted the requisite sanction after examining the matter under section 163. The High Court, however, set aside the said order, giving rise to the present controversy before this court. Viewed in the above perspective, the reference to the Board of Revenue for permission to review the order dated 28.10.2008 was in conformity with section 163 of the Punjab Land Revenue Act, 1967, as the order had been passed by the predecessor-in-office. The prior sanction of the Board merely enables the successor Revenue Officer to exercise review jurisdiction and does not amount to an appellate, revisional or substantive determination of the matter. The merits of the review remain exclusively for determination by the competent Revenue Officer in accordance with law.

11. A distinction must also be maintained between review sought by an aggrieved person and review undertaken *suo motu*. While an application for review is subject to the limitation and conditions prescribed for such remedy, *suo motu* review derives directly from the statutory authority of the Revenue Officer and cannot, in the absence of an express provision, be subjected mechanically to the limitation governing a party-initiated application. The legality of the exercise must, therefore, be determined according to its true character and the statutory conditions applicable thereto.

12. The matter may also be examined from the standpoint of the nature of the right claimed by the respondents. A direction to deposit the prescribed price, lease money or other Government dues did not, by itself, confer proprietary title or create an indefeasible right to the transfer of State land. It was merely a step towards the proposed grant, which remained subject to fulfilment of all substantive conditions prescribed by the governing policy. Until those conditions were satisfied and proprietary rights were lawfully conferred by the competent authority, title continued to vest in the State and the respondents' possession remained referable to the temporary lease. Equally, payment or acceptance of the prescribed amount could not cure the absence of a foundational condition of eligibility. If the land fell within the prohibited zone and was, therefore, excluded from grant under the governing policy, neither deposit of the price nor its acceptance by the Revenue authorities could remove that prohibition or validate an otherwise impermissible alienation. A procedural or consequential act cannot override a substantive restriction upon the authority of the State to alienate its property. The respondents, therefore, acquired no vested or accrued right to compel completion of the transfer merely because they had acted upon an earlier direction or deposited the amount demanded. Their entitlement remained contingent upon lawful satisfaction of the conditions governing the grant. Any contrary view would allow an intermediate administrative step to defeat an express policy prohibition and compel alienation of State property which the competent authority was not legally empowered to transfer.

13. Having examined the matter in the foregoing perspective, we find that the learned High Court did not address the foundational controversy arising from the record. The primary question was not merely whether the Revenue Authorities were competent to review the earlier order, but whether the respondents were legally entitled to proprietary rights under the Notification dated 03.09.1979. Such entitlement necessarily depended upon whether the land fell within the prohibited zone expressly excluded from grant. If the land was so situated, no proprietary right could lawfully arise under the policy. The impugned judgment, however, proceeded

substantially on the question of review jurisdiction without returning any definite finding on this anterior and determinative issue. The proper course was first to examine the relevant provisions of the Notification dated 03.09.1979, determine the legally relevant point of time for assessing the status of the land, and consider the contemporaneous revenue and other official record to ascertain whether the land fell within the prohibited zone. Only thereafter could the legal efficacy of the order dated 28.10.2008 be determined. A procedural defect in review proceedings, even if established, could not validate a substantive entitlement expressly prohibited by the governing policy. This consideration assumes greater significance where State property is involved, for an erroneous administrative order, acquiescence or payment of Government dues cannot authorize alienation which the law itself forbids.

14. The learned High Court also did not appreciate the true scope of section 163 of the Punjab Land Revenue Act, 1967. The provision permits a competent Revenue Officer, subject to the prescribed conditions, to review an order passed by himself or his predecessor-in-office. Where the order is that of a predecessor, prior sanction of the Board of Revenue operates merely as a statutory condition enabling the successor Revenue Officer to exercise review jurisdiction. The Board, while granting such sanction, neither assumes the review jurisdiction itself nor sits in appeal over the original order. The legality of the proceedings was, therefore, required to be examined keeping this statutory distinction in view.

15. The Board of Revenue, through its order dated 24.08.2011, which was challenged before the High Court through writ jurisdiction, had actually agreed with the recommendations of the Executive District Officer (Revenue), Pakpattan, and allowed him to review the order dated 28.10.2008 passed by his predecessor in office. The High Court has wrongly presumed that the Member, Board of Revenue, had assumed the jurisdiction to review and had reviewed the order, and the finding of the High Court that the review jurisdiction was not vested in the Board of Revenue in this

case, these findings are factually incorrect and against the record; therefore, not tenable under the law.

16. We, therefore, hold that the impugned judgment proceeds upon an incomplete appreciation of the controversy. The respondents' entitlement was required, in the first instance, to be tested against the Notification dated 03.09.1979, particularly the prohibition relating to the prohibited zone, on the basis of the relevant official record. Unless that foundational question was determined, neither the validity of the order dated 28.10.2008 nor the subsequent review proceedings could properly be adjudged. The failure to determine an issue going to the very competence of the authority to alienate State land materially affects the sustainability of the impugned judgment.

17. While going through the record of this case, we have noticed that, on each and every point, whenever any order was passed by the Revenue Hierarchy against the respondents, they challenged the said order through a writ petition and tried to prolong the litigation so that they may gain undue benefit by prolonging the litigation. Even before the Board of Revenue, when the Executive District Officer (Revenue) sent a reference for permission to review the order of his predecessor dated 28.10.2008, the respondents filed a petition on 22.07.2011 before the Board of Revenue, for rejection of the reference submitted by the EDO (Revenue), with a further prayer that sale deed be executed in their favour which too was decided vide the same judgment dated 24.08.2011 passed by the Member, Board of Revenue. The said application was dismissed and the permission for review sought was granted. If we allow the Revenue Hierarchy to start with the process of reviewing the order dated 28.10.2008 and proceed with the matter further, it will consume many decades, as the respondents are creating hurdles in the proceedings of the matter. Now, there is an unambiguous finding against the respondents that they have failed to qualify for conferment of proprietary rights, as they were not in cultivating possession of the land since Rabi 1977, land is situated within prohibitory zone. It has further come to the surface that they were not the original allottees and claim to be sub-tenants under the original allottee. In these circumstances, when the respondents

have adopted a way to bypass the regular proceedings before the Revenue Officials and have, multiple times, resorted to the remedy of writ petition, they are now bound by the findings recorded by the Revenue Hierarchy, which remained unchallenged before the appropriate forum. Therefore, it would not be appropriate to send back the matter, which would be a futile exercise. We have, therefore, decided this matter after hearing the lengthy arguments of both the parties.

18. We would, therefore, hold that the temporary cultivation lease conferred no vested or indefeasible right upon the respondents to proprietary title. Their entitlement remained subject to the conditions of the Notification dated 03.09.1979, particularly the prohibition relating to land falling within the prohibited zone. Likewise, the successor Revenue Officer was competent, subject to the statutory requirements and prior sanction under section 163 of the Punjab Land Revenue Act, 1967, to review an order of his predecessor. The controversy was, therefore, required to be determined in accordance with the governing law and policy, rather than on the basis of prolonged possession, extension of lease or payment of Government dues.

19. For the foregoing reasons, the petition is converted into an appeal and allowed. Consequently, the impugned judgment of the learned High Court is set aside and the order dated 24.08.2011 passed by the Member, Board of Revenue, is restored and maintained on principles, and we further declare that order of the EDO (Revenue) dated 28.10.2008 is not sustainable under the law, respondents have no entitlement for conferment of proprietary rights. In the circumstances of the case, the parties are left to bear their own costs.

CHIEF JUSTICE

JUDGE

Islamabad,
23.09.2026
APPROVED FOR REPORTING
RajaAhsan/-