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Judgment Sheet
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

....

Civil Revision No.190 of 2019.

Principal Govt. Gordon College, Rawalpindi.

Versus

Sialkot Mission and another.

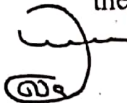
J U D G M E N T.

Date of hearing: 10.06.2022.

Petitioner by: Sardar Triq Anees, A.A.G
Respondent No.1 by: Mr. Asad Ullah Khan & Mr. Imran
Aziz Qureshi, Advocates.
Mr. Amir Shahzad, Asst. Prof. Govt.
Gordon College Rawalpindi.

AHMAD NADEEM ARSHAD, J. Tersely, necessary facts forming background of the proceedings in hand are that respondent No.1 instituted a suit for declaration alongwith consequential relief against the petitioner and respondent No.2 by challenging mutation No.8250 dated 02.09.1982 with the contention that the administration of Gordon College was taken over under M.L.R issued by the President of Pakistan in year 1972 and thereafter in year 1973 petitioner and performa respondent No.2 without any lawful authority starting raising illegal constructions against which suits for injunctions were instituted which were decreed on 31.01.1988, but during the pendency of said suit defendants illegally and unauthorizedly managed to get sanction mutation No.8250 on 02.09.1982 against the law and facts which is inoperative upon their rights. Defendants contested the suit by filing written statement in contrast. Learned Trial Court, out of the divergent pleadings of the parties, framed necessary issues and invited the parties to produce their respective evidence. After recording evidence of parties, pro &

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contra, suit of the respondent No.1 was decreed vide judgment & decree dated 02.04.2004. Feeling aggrieved, petitioner preferred an appeal which was dismissed by the learned Appellate Court vide judgment & decree dated 09.07.2007. Being dissatisfied, petitioner preferred a Civil Revision (C.R. No.476 of 2007) before this Court which was subsequently dismissed as withdrawn via order dated 01.07.2009. Thereafter, petitioner filed instant Civil Revision in the month of November, 2009.

2. I have heard the learned counsel for the parties at length and perused the record with their able assistance.

3. Perusal of record shows that against the impugned judgments and decrees of the Courts below initially petitioner filed Civil Revision No.476 of 2007 before this Court. However, the same was withdrawn with permission to file afresh vide order dated 01.07.2009. Thereafter, petitioner filed instant civil revision on 07.11.2009. Alongwith civil revision petitioner moved an application (C.M No.743-C of 2009) under Section 5 of the Limitation Act, 1908 for condonation of delay. This Court vide order dated 22.12.2009 issued notices to the respondents on the said application. Subsequently, this C.M was dismissed due to non-prosecution on 25.03.2014. In order to restore that application petitioner firstly, filed application (C.M No.3-C of 2014) for review of order dated 25.03.2014 and secondly, through C.M No.137-C of 2019 filed under Section 151 CPC prayed for setting aside of order dated 25.03.2014. This Court on 18.03.2019 observed that as main civil revision was not numbered so far, therefore, office was directed to assign number to the civil revision, however, C.M No.137-C of 2019 was dismissed being misconceived. In compliance with order dated 18.03.2019 office allotted number to the instant Civil Revision as 190 of 2019 which is still at motion stage.

4. This civil revision came up for hearing on 21.11.2019 when learned Assistant Advocate General sought time in order to move C.M seeking transposition of respondent No.2 (*The Province of Punjab through Collector, Rawalpindi*) in the array of petitioner. But he failed to

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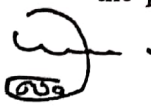
move any such application before this Court. Subsequently, respondent No.1 (*Sialkot Mission of the United Presbyterian Church in USA through its General Attorney Mr.Thamas, 6-Empress Road, Lahore*) filed C.M No.569-C of 2022 for replacement of name and address of the applicant, namely, Brig (R) Nayyar Fardows upon the name of Mr. Thamas to represent respondent No.1 in the main civil revision. This C.M came up for hearing on 10.05.2022 on which date notices were issued to other side for 10.06.2022 but respondent (*Principal, Gordon College, Rawalpindi*) failed to submit reply on this application. Resultantly, keeping in view the contentions made in this application which is duly supported by an Affidavit of the applicant (*Brig (R) Nayyar Fardows*) as well, the same is allowed.

5. Respondent No.1/plaintiff instituted a suit for declaration against petitioner/defendant and sought declaration to the effect that he is owner of suit property measuring 08 Kanals & 13 Marlas bearing Khasra Nos.1274-1277 situated in revenue estate of Mohal Sikni, Rawalpindi (*Liaquat Road, College Road*) commonly known as "*Gordon College, Rawalpindi*" and the mutation No.8250 sanctioned on 02.09.1982 is absolutely illegal, null and void and of no legal effect on the proprietary rights of respondent No.1 and sought cancellation of said mutation. This suit was resisted by the petitioner as well as respondent No.2 by filing their respective contesting written statements. The learned trial court framed necessary issues and with regard to main controversy framed Issue No.4 in the following terms:-

"Whether mutation No.8250 sanctioned on 02.09.1982 in favour of defendant No.1 in respect of the suit property is illegal, void and ineffective against the proprietary rights of the plaintiff and the same is liable to be cancelled."

Petitioner as well as respondent No.2 claimed ownership on the basis of Martial Law Regulation No.118 of 1972 ('MLR') with the contention that suit property stood transferred in their name whereas contention of respondent No.1 was that through said MLR mere management and administration of the Institution was entrusted to the petitioner as well as respondent No.2 and no ownership rights

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were vested or transferred to them. In order to better appreciate the contentions it is better to narrate the history of MLR and para 5 of MLR which is as under:-

"Martial Law Regulation No.118 was promulgated by the Chief Martial Law Administrator (Mr. Z. A Bhutto) on 1st April, 1972. This continued in force by the Interim Constitution of the Islamic Republic of Pakistan, 1972, which came into force on the 21st day of April, 1972 by Article 280 (3) thereof.

The said sub-article provides:-

"(3) All Martial Law Regulations and Martial Law Orders, except the Martial Law Regulations and the Martial Law Orders specified in the Seventh Schedule, are repealed with effect as from the commencing day and on that day each Martial Law Regulation and the Martial Law Orders so specified shall be deemed to have become an Act of the appropriate Legislature and shall, with the necessary adaptations, have effect as such:

Provided that no Bill to amend or to repeal any of the Martial Law Regulations or Martial Law Orders specified as aforesaid shall be introduced or moved without the previous sanction of the President."

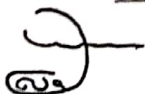
Thus, on the lifting of Martial Law on 21.04.1972, Martial Law Regulation No.118 became an Act of the appropriate legislature. On 21.08.1972, it was amended by the promulgation of Ordinance XXVI of 1972 by the Governor of Punjab which Ordinance was subsequently replaced by an Act of the Provincial Legislature, namely, "Martial Law Regulation No.11 (Punjab Amendment) Act, 1973 (Act X of 1973)". It has since been designated as the "Privately Managed Schools and Colleges (Take-Over) Regulation, 1972."

Para-5 of the said MLR is as under:-

"Such Privately Managed Schools and Colleges as the Central Government, in the case of School situated in the Islamabad Capital Territory and the Provincial Government in any other case may by notification in the official Gazzette issued at any time on or the after first day of October, 1972 specific on this behalf shall vest in the Central Government or as the case may be in the Provincial Government together with all the properties attached to it."

6. In this backdrop, petitioner as well as respondent No.2 claiming their ownership upon the suit property. The said MLR was discussed by the Hon'ble Supreme Court of Pakistan in its illuminated judgment titled as Board of Foreign Missions of the Presbyterian Church in the United States of America through Lahore Church Council Vs The Government of the Punjab through Secretary Education, Civil

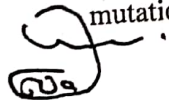
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Secretariate, Lahore and another (1987 SCMR 1197). In this judgment while defining the word vest observed that the word 'vest' is a word of variable import not having a fixed connotation and does not necessarily mean to 'vest in title'. It was further held that merely because the privately managed schools along with their assets were to vest in the Government under the terms of para 5 of the Martial Law Regulation No.118 it did not imply that Government had become the owner in relation to the buildings wherein schools or colleges were being run. The intention of Martial Law Regulation No.118 manifestly was only to take over the management of the institutions and not to confiscate the property in which the privately managed school was being run.

7. Earlier three suits titled "Yousaf Jalil Vs The Province of Punjab, etc.", "Pervez Salamat Vs The Province of the Punjab, etc." and "Mr. Kenneth Old Vs The Province of the Punjab, etc." for perpetual injunction were filed and through consolidated judgment and decree the learned trial court declared that respondent No.1/defendant No.3 of the said suit (Sialkot Mission of the United Presbyterian Church in USA through its General Attorney Mr.Thamas, 6-Empress Road, Lahore) was owner of the property in dispute and the assumption of petitioner and respondent No.2 that they become its owners without any force. The said judgment was assailed and the learned Appellate Court maintained it vide judgment and decree dated 11.12.1991. Perusal of record reflects that possession of the management of Gordon College was taken over by the defendants/petitioner and respondent No.2 under MLR No.118 under the Nationalization Scheme. However, land and the superstructure remained ownership of the respondent No.1. Respondent No.1 tendered certified copy of judgment and decree dated 31.01.1988 as Exh.P.6 passed in the above referred suits whereby it was held by the Court that Sialkot Mission is the owner of the property in dispute. In the light of observation made by august Supreme Court of Pakistan in the supra judgment and judgment and decree dated 31.01.1988 (Exh.P-6) petitioner has no ownership right with regard to suit property. There is no backing of impugned mutation which has been sanctioned against the law & facts.

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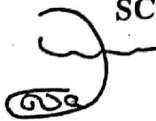


8. As discussed supra suit property was not vested to the Government and mutation No.8250 dated 02.09.1982 was illegally sanctioned in favour of respondent No.2 and rightly the learned courts below decreed the suit of respondent No.1. It is also pertinent to mention here that said mutation was sanctioned in favour of respondent No.2, whereas, he failed to file any revision against the impugned judgments and decrees of the learned courts below, hence, it attained finality against him. Above all civil revision of the petitioner is also barred by time.


9. Learned counsel for the petitioner failed to point out any illegality, irregularity or jurisdictional defect in the impugned judgment & decree.

10. I have seen no illegality, irregularity and mis-reading or non-reading of evidence on the part of learned Courts below while passing the impugned judgments and decrees. There are concurrent findings of facts in the matter recorded by learned courts below and the courts below while passing the impugned judgments and decrees have considered every piece of evidence, oral as well as documentary, produced before them and nothing is shown to have been overlooked any part of the record from their judicious consideration. The findings of the learned courts below on question of facts and law having based upon proper appreciation of oral as well as documentary evidence produced in the suit, are not liable to be reviewed or substituted by this Court while exercising jurisdiction under section 115 of the CPC. In this regard, reliance is placed upon "Syed HUSNAIN NAQVI and others versus Mst. BEGUM ZAKARA CHATHA through LRs and others" (2015 SCMR 1081), "NOOR MUHAMMAD and others versus Mst. AZMAT-E-BIBI" (2012 SCMR 1373), "Muhammad Akhtar versus Mst. Manna & 3 others" (2001 SCMR 1700), "Ghulam Muhammad & 3 others versus Ghulam Ali" (2004 SCMR 1001), "Abdul Mateen and others versus Mustakhia" (2006 SCMR 50) and "Malik Muhammad Khaqan versus Trustees of the Port of Karachi (KPT) and another" (2008 SCMR 428).

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11. For what has been discussed above, the instant Civil Revision is without any merits, hence, the same is hereby dismissed with no order as to costs.

Sd/ 
(AHMAD NADEEM ARSHAD)
JUDGE.

M. Arselan

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