

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE SYED HASAN AZHAR RIZVI**

**C.P.L.A. No. 211-Q of 2017 and
C.P.L.A. No. 5070 of 2017.**

*(Against the judgment dated 09.10.2017 passed
by the High Court of Balochistan Quetta in
C.P.No. 824 of 2011.*

***Director Military Lands & Cantonment
Quetta Cantt Quetta and another.***

(in CP.No. 211-Q of 2017)

***Military Estate Officer, Quetta Circle,
Quetta.***

(in CP.No. 5070 of 2017)

...Petitioners

Versus

Aziz Ahmed and others.

(in both cases)

...Respondents

For the petitioners:

Ch. Aamir Rehman, Additional
Attorney General.
Mr. Adnan Basharat, ASC on behalf
of Cantonment Board Quetta.

For the respondents:

Syed Ayaz Zahoor, Sr. ASC.
(Through video link from Quetta).

Date of Hearing:

18.01.2023

J U D G M E N T

AMIN-UD-DIN KHAN, J:- Through this single judgment we intend to decide the instant petition as well as CPLA No. 5070 of 2017 as both petitions have been filed against the same judgment. Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 leave has been sought against the judgment dated 9.10.2017 whereby Writ Petition No. 824 of 2011 filed by respondent Nos. 1 and 2 was accepted.

2. Brief facts are that respondents Nos. 1 & 2 filed a Writ Petition with the following prayer: -

A. *Declaring that the act on the part of the respondents in issuing letter dated 23.7.2011, dated 11.10.2008, are contrary to the decisions so taken by the Cantonment Board in its meeting held on 12.4.2008 and 29.11.2010 vide Resolution No. 6 & 53, is totally illegal improper, in excess and mis-exercise of the authority vested in respondents thus totally without jurisdiction, thus of no legal consequences;*

B. *Further declaring that the respondents are bound to comply with the decision so taken by the Quetta Cantonment Board vide Resolution No. 6 dated 12.4.2008 followed with Resolution No. 53 dated 29.11.2010;*

C. *In consequence to relief Clause "A" & "B" the respondents be directed to allow the subdivisions of the plot No. 322-D after declaring the letter dated 23.7.2011 illegal, improper, null and void;*

D. *Permanently restraining the respondents from taking any uncalled for action against the petitioners, contrary to the decisions of the Board;*

E. *Any other relief with cost of petition be also awarded.*

They narrated that they are the lessee of Bungalow No. 322-D measuring 2984 Sq. Ft. (wrongly mentioned in Para 2 of Writ Petition, is 2904 Sq. yard) situated at Tufail Road Quetta Cantonment Quetta. Further pleaded that initially, the said plot belonged to one M/s. Haji Karam Bakhsh and Sons Contractors who were lessee of the respondents of Writ Petition and the same was entered in his name on 20th of April 1953. The lease deed was executed for a period of thirty years and the same was renewable at the option of the lessee. That the leasehold rights with the consent of the respondents of Writ Petition were purchased from Haji Karam Bakhsh and Sons by Boman Abadan Irani and others and on this behalf sale deed of leasehold rights was executed. It is further pleaded in the petition that access to the house in question was given through Pakka Lane which existed since the year 1947 and is being used by the inhabitants of the plot in question wherein the Bungalow of writ petitioners exists. It is stated that adjacent to the house in question Survey No. 326 & 327 exists. Further pleaded that there is a lane towards Survey Nos. 326 & 327 **which is 97 Sq. Ft. in length and approximately 11 feet** in breadth.

Thereafter, one Kamal in the year 1982 purchased these leasehold rights from Boman Abadan and others. That after the purchase by Mr. Kamal and writ petitioner No.2 who were 50% shareholders in the lease, therefore, Mr. Kamal Din holder of his share i.e. 50% transferred his leasehold rights in favour of writ petitioner No. 1 by way of oral gift and in this behalf, same was also communicated to the petitioner of CPLA. No. 5070 of 2017 and such was incorporated in GLR's Extract Quetta Cantonment accepting writ petitioner Nos. 1 & 2 as 50% shareholders each in the plots in question. Writ Petitioners intended to bifurcate the same into 5 plots, therefore, requested the MEO for a grant of permission to bifurcate Plot No. 322-D into five plots including Plot No. 322-D. Their request was forwarded to the Board consisting of a President and other members as per provisions of Section 13-A of the Cantonment Act of 1924. The request was placed before the Board in the shape of Resolution No. 6 dated 12.04.2008. The Board approved the same on the basis of the condition attached in the letter of Director Military Lands & Cantonment, Quetta Cantt communicated to the MEO on 25.6.2008. Thereafter, the result of the same was communicated to writ petitioners. The validity of the period was six months, therefore, respondent Nos. 1 & 2 requested the MEO to issue challans for the deposit of requisite amount as per letter dated 25.6.2008 issued by the Director Military Lands and Cantonment, Quetta Cantt. However, MEO was reluctant in issuing the same and to the contrary on 11.10.2008 without any lawful authority refused to accede to the request on the ground that the subdivision plan does not provide for approach road/access to proposed Plot No. 322-D, 322-D/1, 322-D/2, 322-D/3 and Plot No. 322-D passes through and occupies the land in Survey No. 326 which is classified into "C" Land vested in Cantonment Board Quetta. Further that the lane in Class "C" is the property of Cantonment Board and cannot be allowed to be occupied for the

purpose of approaching road to the subdivided plots. That respondents of writ petition did not issue NOC to writ petitioners as well as subdivision plan of the plot in question was not accorded and through letter dated 23.7.2011 the MEO informed writ petitioners that 30 feet wide approach road is to be traversed according to subdivision plan through "C" Class land of survey No. 326 which cannot be used as approach road, therefore, advised to amend/modify the subdivision plan, carving out the road from the land leased out to the writ petitioners and apply afresh for further course of action, therefore, Writ Petition with the prayers already noted supra.

3. The respondents filed their parawise comments and raised the objection that the writ petition is not maintainable and that for factual determination the civil court can be approached. It was further objected that any resolution passed by the Cantonment Board is not binding upon the ML&C Department. They defended their letters dated 8.10.2008, 11.10.2008 and 23.7.2011 while refusing subdivision of plot No. 322-D.

4. We have heard the learned counsel for the parties at length and gone through the record as well as the comprehensive judgment passed by the learned High Court. The learned High Court was of the view that there is no need to record evidence to resolve the controversy with regard to the existence of a disputed road between classified "C" land falling under survey No. 326 and 327 and it is used by the writ petitioners or for using the same as an approach road to the proposed subdivided plots, therefore, the objection that the writ petitioner be directed to approach the Civil Court was overruled. The High Court has recorded that in the year 1985, the writ petitioner No. 2 and Kamal-ud-Din Ahmed demolished the main building existing on plot No. 322-D. Subsequently, in January, 2008, the writ petitioners

being lessee, applied to respondent No. 2 of the writ petition for subdivision of Plot No. 322-D. Now the question for determination before us as argued on behalf of the petitioners that whether the High Court was competent to overrule the objection as to the maintainability of the writ petition that the matter cannot be resolved without recording evidence. Further, what is the authority of the Cantonment Board with regard to "C" Class land, whether the Cantonment Board can change the classification of the land under its control and whether the disputed land was part of Survey No. 322-D or part of 326 or Survey 327.

5. It is a settled proposition of law that constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be exercised to resolve the factual controversies. Reliance can be placed on "Government of Khyber Pakhtunkhwa vs. Intizar Ali" (2022 SCMR 472, "Amir Jamal Vs. Malik Zahoor-Ul-Haq" (2011 SCMR 1023). In the instant case, from the documents placed on record by the parties it can be gathered that the disputed road/lane leading to survey No. 322 as pleaded in Para No. 3 of writ petition, "said lane is 97 Sq.Ft in length and approximately 11 feet in breadth" whereas claim of the writ petitioners is that it is 30 feet wide and further the writ petitioners claim that it is a road leading to survey No. 322 whereas as per the Director Military Lands & Cantonment it is part of survey No. 326 and 327 which are adjacent inter se. In the GLR Class "C" land is recorded as green belt roadside grassy plot. Survey No. 326 consists upon 8712 square feet whereas survey No. 327 is 3049 sq.ft and nothing else is recorded in the said two survey numbers except, "roadside grassy plots" with their measurement. This negates the version of the writ petitioners that between Survey Nos. 326 and 327 there is a road. If the stance of the writ petitioners is accepted it is against the record and it is not

admitted position that there was a road between survey Nos. 326 and 327, for such stances taken by the writ petitioners either recording of evidence for arriving at a conclusion sought by the writ petitioners was required or otherwise there should have been an admitted position before the learned High Court for exercising jurisdiction under Article 199. Nothing of the said requirement was available with the learned High Court, therefore, the findings of the High Court that in the instant matter recording of evidence is not required and jurisdiction under Article 199 for resolving the matter in issue and grant of a relief to the writ petitioners for determination of writ petition in accordance with the relief sought can be adjudicated is misconceived in our view.

6. Now we come to the second question Class "C" land is in the administration of the Cantonment Board as per the Pakistan Cantonment Property Rules, 1957. As per definition of Rule 2(d) "Class "C" land" means land which is vested in the Board under section 108 of the Act and the "Act" means the Cantonment Act, 1924 (II of 1924). Admittedly, the land vests in the "Board". Under Rule 8 the Cantonment Board cannot transfer the property vested in it except with the previous sanction of the Government and in such manner on such terms and conditions as the Government may approve. Whereas Rule 9 governs the provisions of leasing of Cantonment Property which also provides that no Class "C" land should be leased out or otherwise alienated by the Board save in accordance with such orders as the Government may issue in this behalf. If in the opinion of the Government, Board is not using for the object for which the land was granted to the Board or in the opinion of the Government any breach of the conditions on which it was transferred or the land is required for a public purpose, the Government may resume the land under Rule 7. The Cantonment Board has no independent and exclusive authority to change the classification of the land, its lease or transfer, except with

the previous approval of the Federal Government. In the case of "Federation of Pakistan Through The Secretary, Ministry of Defence Vs Province Of Punjab And Others" (PLD 1975 Supreme Court 37) this Court has explained the scope of Rule 9 of Pakistan Cantonment Property Rules, 1957 in the following terms:-

"Similarly, the provisions of rule 9 of the Property Rules of 1957, giving the Government a right to prescribe conditions under which class 'C' lands can be leased or otherwise alienated by the Cantonment Board, do not negate the ownership of the property by the Board. The Board being a statutory body under the ultimate control and supervision of the Government has, to most cases, to act with the consent and approval of the Government or in accordance with the powers and functions delegated to it. Such delegation may be conditional or unconditional. If the delegation is conditional, the conditions will have to be observed not as a limitation on the rights of property of the Board but as statutory obligations laid down by the statute creating the Boards and giving them powers and functions."

7. So far as the passing of the Resolution No. 6 dated 12.4.2008 and Resolution No. 53 dated 19.11.2010 are concerned, for permitting the subdivision of Survey No. 322 prayed by the writ petitioners, admittedly, these resolutions were not passed with prior approval or permission of the Federal Government when the disputed road which falls in Class "C" land in Survey Nos. 326 and 327 allowing the road leading to the Survey No. 322 of which subdivision was asked from Tipu Road, both these resolutions are against the mandate of Cantonment Board or at least subject to the

approval of the Government. If there was any thoroughfare or road may be 11 feet wide or more from Tipu Road leading to Survey No. 322 crossing from the roadside green belt Survey Nos. 326 and 327 but when the writ petitioners claiming a declaration of their right that it is not the part of Survey Nos. 326 and 327 and a declaration of otherwise than Class "C" land for their entitlement to the subdivision of Survey No. 322 and praying the letters dated 23.7.2011 and 11.10.2008 to be declared contrary to the decision of the Cantonment Board in its meeting held on 12.4.2008 and 29.11.2010 vide Resolution Nos. 6 and 53 is a declaration of right claimed by the writ petitioners through the said resolutions which cannot be granted as we are clear in our mind that through a declaration in civil matters claimed under section 42 of the Specific Relief Act a pre-existing right can be declared and a new right cannot be created by grant of a decree by the civil court. Same is the position here, the learned High Court under the Constitutional Jurisdiction vested in it under Article 199 can declare a pre-existing right and no new right can be created through a declaration issued under Article 199. Resolution passed by the Cantonment Board does not create or confer any right in favour of the writ petitioners unless the same were approved by the Government as the same were relating to the transfer of rights in the property vested in the Government under the administrative control of the Cantonment Board, therefore, the learned High Court fell in error while declaring the right exercised by the Government in accordance with law by refusing to grant subdivision of Survey No. 322 adopted by Resolution Nos. 6 and 53 whereby "C" Class land vested in the Government managed by the Cantonment Board was to be given as an approach road to some parts of the subdivision of survey No. 322. In these circumstances, we convert this petition into an appeal and allow the same. Resultantly, the judgment

passed by the High Court of Quetta is set aside and consequently, writ petition filed by respondent Nos. 1 & 2 stands dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
18th January, 2023
(Mazhar Javed Bhatti)

APPROVED FOR REPORTING