

2021 C L C 392

[Lahore]

Before Masud Abid Naqvi and Jawad Hassan, JJ

MUHAMMAD YAQOOB----Appellant

Versus

COMMISSIONER LAHORE DIVISION and others----Respondents

I.C.As. Nos.63865 and 67355 of 2019, heard on 16th November, 2020.

Punjab Overseas Pakistanis Commission Act (XX of 2014)---

---S.7---Intra Court appeal---Functions of the Commissioner---Interference in judicial functions---Scope---Question before High Court was whether the Commissioner was justified in constituting a committee to visit the site of the plots, thrash out revenue record, registration record, Record/Plan of Development Authority, Cooperative Department Record, Housing Society's Record, etc., when the matter was already under adjudication before the courts of competent jurisdiction---Said order was issued on a complaint from the overseas Pakistani citizen---Validity---Government Agencies on the behest and directive of the Commissioner could not initiate proceedings against private persons by issuing them summonses/notices in order to resolve a civil dispute---Determination of third party rights was unequivocally a judicial function and could only be carried out by a court of law i.e. the judiciary, and not by the Punjab Overseas Pakistanis Commission or the Government Agencies, which formed executive organs of the State---Order passed by Commissioner regarding thrashing record amounted to interference in judicial proceedings pending in the Courts of law, where the parties were already appearing---Commissioner had transgressed his power/jurisdiction---Intra courts appeals were allowed.

Shahid Idrees v. Government of The Punjab and others PLD 2018 Lah. 284 rel.

Tanveer Chishti v. City Police Officer and others PLD 2020 Lah. 453 foll.

Shahid Iqbal for Appellant (in I.C.A. No.63865 of 2019).

Faisal Ghafoor for Appellant (in I.C.A. No.67355 of 2019).

Muhammad Rasheed Chaudhry for Respondent.

Syed Shadab Hussain Jafri, Additional Advocate General.

Date of hearing: 16th November, 2020.

JUDGMENT

JAWAD HASSAN, J.---This judgment shall dispose of I.C.As. No.63865 of 2019 and 67355 of 2019 as both have emanated out of the same impugned judgment.

2. The Appellant has assailed the order dated 26.09.2019 passed by learned Single Judge in Chamber whereby he dismissed the constitutional petition filed by the Appellant to declare the letter dated 06.08.2019 issued by Commissioner Lahore Division, Lahore as well as letter dated 19.11.2018 issued by PIA Society, as illegal, unlawful, mala fide, malicious, violative

to the provisions of Articles 4, 5 and 23 of the Constitution of Islamic Republic of Pakistan, 1973.

3. Brief facts for the disposal of this appeal are that the Appellant claims himself as owner in possession of land measuring 04-Kanals 10-Marlas vide sale deed dated 10.12.2010, registered with Sub-Registrar Allama Iqbal Town, Lahore and Mutation No.72072 in the revenue record, land measuring 02-Kanals 08-Marlas through registered sale deed dated 13.06.2018 registered with Sub-Registrar, Allama Iqbal Town, Lahore Mutation No.96267 in the revenue record and land measuring 03-Kanals vide registered sale deed dated 07.09.1989 and Mutation No.30466 in the revenue record.

4. It is the case of the Appellant that the Respondent No.8, PIA Employees Cooperative Housing Society, who had purchased some portion of land in the vicinity in which the land of the Appellant is situated included the land owned and possessed in the map and illegally and unlawfully carved out plots on it, as such the act of the Society is illegal. The land of the Appellant is underneath of Plots Nos.84, 85 and 110-A/1 Block and 207-C Block and the Appellant is in possession over the said plot on the basis of alleged sale deeds. The appellant also filed a civil suit for cancellation of transfer letter which is pending adjudication. The Appellant also filed another suit for possession through partition against the society and others which is also pending before the civil court. The Appellant also filed W.P. No.95095/2017 which was disposed of on 27.10.2017 with the direction to the SHO, Satto Katla, Lahore not to cause any harassment to the Appellant. The President PIA Housing Society Niaz Baig, Lahore made another request to the Deputy Commissioner, Lahore for the removal of illegal possession on the Plots Nos.84, 85 and 100-A/I Block and 207-C Block, of the Society by issuing letter dated 19.11.2018 impugned in W.P. No.5155 of 2019, while through W.P. No.47992 of 2019, the Appellant has challenged Notification dated 06.08.2019 issued by the Commissioner Lahore Division, Lahore whereby committee was constituted to probe into the matter and for restraining the Respondents from interfering into his peaceful possession. Both the writ petitions were dismissed through the consolidated order dated 26.09.2019. Hence this appeal.

5. Counsel for the Appellant has argued that while passing the impugned orders in both writ petitions, learned Single Judge in Chamber has failed to consider that during the pendency of the litigation in Civil Court as well as in Revenue Courts the Commissioner/Respondent No.1 or Deputy Commissioner has no jurisdiction to initiate proceedings or constitute any inquiry committee for the purpose of scrutiny of title documents regarding the property of the appellant merely upon the verbal direction of Chief Minister or on the application of Society which is against law and violative to the Articles 4 and 10 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), but this legal aspect of the case has not been considered by the learned Single Judge in Chamber while passing the impugned order, therefore, the same is not sustainable in the eye of law. On query, counsel for the Appellant has categorically conceded that litigation is pending before the Court of civil jurisdiction and he has filed detail of suits pending before courts. The detail of which is given as under:-

Serial No.	Titles of Cases	Courts Name
1.	Sardar Ghulam Jillani v. Muhammad Yaqoob, PIAECHS	Mr. Faisal Rasheed C.J, Lahore.

2.	Muhammad Yaqoob v. Shaista Tariq	Mr. Muhammad Yasir Arafat Dar, C.J.
3.	Muhammad Yaqoob v. Shaista Tariq	-do-
4.	Muhammad Yaqoob v. Najma Sultana	-do-
5.	Muhammad Yaqoob v. LDA	-do-
6.	Muhammad Yaqoob v. Sufi Allah Dad Khan	-do-
7.	Muhammad Yaqoob v. Shahzad Bin Aman	-do-
8.	Muhammad Yaqoob v. Shahid Ameen	-do-
9.	Muhammad Yaqoob v. Lubna Nasir	-do-
10.	PIAECHS v. Addl. Commissioner	-do-
11.	Muhammad Yousaf v. PIAECHS	-do-
12.	Muhammad Yaqoob v. Muhammad Yousaf	Mr. Mohsin Raza, C.J, Lahore.
13.	Muhammad Yaqoob v. Addl. Deputy Commissioner	-do-
14.	Muhammad Yaqoob v. Najma Sultana	Ch. Tariq Ali, C.J Lahore
15.	Muhammad Yaqoob v. Commissioner Revenue.	Mr. Muhammad Abid Ali, C.J Lahore.
16.	Muhammad Yaqoob v. Saba Asif Karamat.	Mr. Muhammad Kamran, C.J Lahore.
17.	Muhammad Yaqoob v. Muhammad Arshad.	Mr. Abdul Hafeez, C.J, Lahore.
18.	Muhammad Yaqoob v. Muhammad Arshad	Ms. Ayesha Alamgir, C.J, Lahore.
19.	Muhammad Yaqoob v. Ashiq Hussain Bhalli	Mr. Naveed Anjum Chaudhry, C.J.
20.	Muhammad Yaqoob v. Wajahat Mir.	Mr. Waqas Ahmad Warraich, C.J, Lahore
21.	Muhammad Yaqoob v. Wajahat Mir.	-do-
22.	Muhammad Yaqoob v. Abdullah	Mr. Muhammad Abid, C.J, Lahore.

Lastly, he prayed for setting aside of the impugned order.

6. On the other hand, the counsel for the Respondent has supported the impugned order and contended that the same has been passed in accordance with law and rules therefore, no exception can be taken to it. Lastly, he prayed for dismissal of the appeal.

7. Arguments heard and record perused.

8. It is reflected from perusal of record that through W.P. No.5155/2019 the Appellant has challenged the letter dated 19.11.2018 whereby the Respondent Society requested the Deputy Commissioner for the removal of illegal possession on the above said plots. While through W.P. No.47992/2019 assailed letter dated 06.08.2019, whereby a Probe Committee

was constituted to visit the site of the plots, thrash out revenue record, registration record, LDA Record/ Plan, Cooperative Department Record, Housing Society's Record or any other document that may be needed with reference to the said plot. Both the writ petitions were consolidated and were dismissed vide order dated 26.09.2019.

9. The question to be determined is whether the Respondent No.1 was justified in issuing the letter dated 06.08.2019 for constitution of a committee to resolve the controversy about Plot No.85-A/I when the matter was already under adjudication before courts of competent jurisdiction. Suffice it to say that the order dated 06.08.2019 issued by the Commissioner, Lahore Division, amounts to interference in judicial proceedings pending in the Courts of law, where the parties are appearing in already mentioned cases, while no action has been taken so far by the Deputy Commissioner on the application of Society. The said order was issued on a complaint from the overseas Pakistani citizen received on Prime Minister Portal and the Chief Minister being Executive Authority of Province who directed the Respondent No.1 to submit a detailed report regarding the matter in issue. In case titled "Shahid Idrees v. Government of The Punjab and others" (PLD 2018 Lahore 284), it has been held that:-

"The functions of the Commissioner appointed under section 6 of the Act are primarily to transmit a complaint received from an overseas Pakistani to a Government Agency for redressal or refer any complaint of Overseas Pakistani to the Ombudsman constituted under the Punjab Office of the Ombudsman Act, 1997. The Commission is more or a facilitation Centre in Pakistan for the Overseas Pakistanis, who cannot attend to their affairs themselves. The Commissioner simply forwards the complaint of an Overseas Pakistan to the concerned Government Agency. Under Section 7(2), the Government Agency is to respond to the Commissioner within a period of 30 days. The District Committees also review complaints of overseas Pakistanis pending with different offices in the district and expedite their disposal".

It has been further held in the said judgment that:-

"The main purpose of the Commission is to help/redress the grievance of Overseas Pakistanis relating to Government Agencies. The grievance is, therefore, limited to the obligations and duties of the Government Agencies under the law. In other words, the scope of the complaint must co-relate to the functions of the Government Agency to determine third party rights in a dispute between an Overseas Pakistani and another private person. No such power is vested in the Government Agency under the law. The complaint of an Overseas Pakistani or the redressal of his grievance is limited and confined to the jurisdiction enjoyed by the Government Agency under the law."

In case titled "Tanveer Chishti v. City Police Officer and others" (PLD 2020 Lahore 453), the following pre-requisites for filing of complaint by the 'Overseas Pakistani' before the Punjab Overseas Pakistanis Commissioner ('the Commission') have been elucidated:-

"Commission had to firstly, ensure that the person preferring a complaint to it, fell under the definition of "Overseas Pakistani", before taking any step, under the Punjab Overseas Pakistanis Commission Act, 2014 (the 'Act') or proceeding with his complaint. For a complaint, this was the necessary foundational touchstone, which was required to be met, for putting in place the extraordinary forum to seek redressal of his grievance, against a Government Agency, and it was this very quintessential

part, which was required to be determined, in the first instance by the Commission, before proceeding with the complaint, and adopting the mechanism of transmitting the same to the Government Agency, while recommending initiation of disciplinary actions against the delinquent."

Regarding living a person permanently in Pakistan having nationality of another country, it has been determined as under:-

"Person merely having nationality of another country but living in Pakistan permanently could not be termed as an Overseas (for purposes of the Punjab Overseas Pakistanis Commission Act, 2014 ('the Act') for redressal of grievance and protection for Overseas Pakistani only and not for every dual national. In order to invoke jurisdiction of the Commission, a person had to show that he was an Overseas Pakistani with Pakistani origin and he/she either permanently or temporarily resided outside Pakistan for employment, business or any other purpose as defined in the Act with intention to stay there for an unspecified period. "

Regarding resolution of civil dispute, the powers of Commission have been defined as under:-

"Civil dispute between private persons relating to transaction of money. Government Agencies on the behest and directive of the Commissioner could not initiate proceedings against such private persons by issuing them summons/notices in order to resolve a civil dispute.

Determination of third party rights was unequivocally a judicial function and could only be carried out by a court of laws i.e. the judiciary, and not by the Punjab Overseas Pakistanis Commission (the 'Commission') or the Government Agencies, which formed executive organs of the State. Government Agency had no authority to summon a private person in excess of its powers particularly when the law it operated under, did not expressly or by necessary implication find mention of such powers. No law could authorize an executive Government Agency to determine rights of private parties, as it was the sole prerogative of the courts of law. When the rights, the proceedings became unconstitutional and illegal. Commission or the Government Agencies were not the Courts and, therefore, any assumption of judicial power by the Commission or the Government Agencies on the behest of Commission was also unconstitutional and illegal. Private parties having a dispute over transaction of money, may avail remedy under the Civil Procedure Code, 1908 before the Civil Court which was court of ultimate jurisdiction and was empowered to deal with such like matters."

"No preferential treatment for resolution of disputes. Overseas Pakistanis, no matter wherever they may be, were subject to the same protection of law as every other Pakistani without any discrimination."

10. In view of the above, we have determined that Respondent No.1 was not justified in issuing the letter dated 06.08.2019 for constitution of a committee to resolve the controversy when the matter was already under adjudication before courts of competent jurisdiction. The

order dated 06.08.2019 issued by the Commissioner, Lahore Division, Lahore regarding thrashing record of Plot No.85-A/I amounts to interference in judicial proceedings pending in the Courts of law, where the parties are already appearing. Therefore, the Respondent No.1 has transgressed his power/jurisdiction by issuing the impugned letter dated 06.08.2019.

In view of the above, since the matter is under adjudication before the Courts of competent jurisdiction, therefore, no jurisdiction was vested in Respondent No.1 in both the appeals to entertain and proceed with the matter. Both the appeals are allowed and the order passed by learned Single Judge in Chamber is set aside. Learned District Judge, Lahore is, however, directed to transfer all the suits mentioned in para-5 of this judgment to a court of competent jurisdiction and the said court will decide the same within four months. A compliance report shall be submitted through Additional Registrar (Judicial) of this Court.

SA/M-171/L

Appeals allowed.