

southern street. The deceased succumbed to the injuries at the spot. The motive for the occurrence, as narrated in the F.I.R., was that the petitioner was a vagabond and used to roam in the street where the house of the complainant was situated. The complainant and the deceased, on a number of occasions, had asked the petitioner not to roam in the street and 6/7 days before the occurrence. When restrained to roam in the street, a quarrel took place between the petitioner and the deceased and due to the intervention of Shahbaz Hussain and Malik Zulfiqar Ali, reconciliation took place, but while leaving the spot, the petitioner threatened the deceased with dire consequences.

5. During the investigation the police arrested the acquitted co-accused, real brother of the petitioner, Hussain alias Hussaina, as companion of the petitioner, who had launched the attack. In course of trial it was alleged that Hussain alias Hussaina, brother of the petitioner, had fired a shot with a pistol hitting the deceased although in the F.I.R. the brother of the deceased was not named nor the complainant had attributed any role to the companion of the petitioner. Rather it was stated that the companion was empty-handed. The learned Judges in the High Court considered this aspect, but did not pay attention to it on the ground that the complainant was under a shock and therefore, he omitted to mention the role played by said Hussain alias Hussaina, brother of the petitioner. It is not believable that the complainant would omit to mention the name of the brother of the petitioner although they lived in the same vicinity. The learned trial Judge by giving benefit of doubt acquitted him. This circumstance coupled with the question as to whether the other eye-witnesses, who have been relied upon, living at a considerable distance, had seen the occurrence, requires consideration. The other eye-witnesses prima facie seem to be chance witnesses and their explanation about their presence at the scene of occurrence also requires examination. In this view of the matter, we will grant leave to appeal to reappraise the evidence to ascertain as to whether the evidence in this case was correctly appreciated in consonance with the principles laid down by this Court to govern the appraisal of evidence.

N.H.Q./M-281/S

Leave granted.

1999 S C M R 2674

[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui, Sh. Ijaz Nisar  
and Mamoon Kazi, JJ

MUHAMMAD SIDDIQUE and others---Appellants

versus

ABDUL MAJID and others---Respondents

Civil Appeals Nos.506, 507 and 510 of 1993, decided on 23rd February, 1999.

SCMR

1999]

(On appeals from the judgment and order of the Lahore High Court, Lahore, dated 20-6-1992 passed in Writ Petitions Nos.31-R of 1986 and 111-R of 1986).

(a) Displaced Persons (Land Settlement) Act (XLVII of 1958)---

---Ss. 10 & 11---Registration of Claims (Displaced Persons) Act (III of 1956), S.6---Mukhbhari proceedings---Interference of Settlement Authorities/Notified Officer with order verifying claim of claimant/allottee passed by Claims Organization under Registration of Claims (Displaced Persons) Act, 1956---Claimant whose claim in respect of land left in India was verified under Registration of Claims (Displaced Persons) Act, 1956 and secured allotments of land in different revenue estates in lieu of his claim---Settlement Authorities/Notified Officer, cancelled allotment by allottee on basis of verified claim in Mukhbhari proceedings holding that allotment was obtained by claimant through misrepresentation and fraud---Finding of fact recorded by Settlement Authority/Notified Officer was set aside by High Court in exercise of Constitutional jurisdiction---Validity---Claims Organizations created under Registration of Claims (Displaced Persons) Act, 1956 and Displaced Persons (Land Settlement) Act., 1958 were not only different in their functions but they exercised jurisdiction in different spheres---Fraud, no doubt would vitiate solemn proceedings, but an order obtained through fraud was only voidable and unless it was set aside in appropriate proceedings, it would hold field---To avoid effect of an order obtained by fraud, two courses were open, firstly that it could be challenged directly by way of proceedings prescribed for that purpose and secondly, it could be attacked collaterally---Powers available to an Authority or Tribunal of limited jurisdiction to recall order obtained through fraud, would not extend to cases where order was attacked collaterally in proceedings---Power to disregard an order obtained by fraud or misrepresentation in a collateral impeachment, was available to superior Courts or Courts of general jurisdiction---Such power was not available to a Tribunal which either had acted in an administrative capacity or enjoyed only a special or limited jurisdiction in defined sphere---In absence of anything in language of Ss. 10 & 11, Displaced Persons (Land Settlement) Act, 1958 to indicate that officer appointed under that Act could upset or recall order passed by an officer appointed under provisions of Registration of Claims (Displaced Persons) Act, 1956, officer exercising power under Displaced Persons (Land Settlement) Act, 1958 would have no Authority to recall or set aside order passed under the Act of 1956---Order of entitlement passed in favour of claimant/allottee under Registration of Claims (Displaced Persons) Act, 1956 having attained finality, Settlement Commissioner exercising powers under Ss. 10 & 11 of Displaced Persons (Land Settlement) Act, 1958 could not interfere with order passed in favour of claimant/allottee even on ground that said order was obtained by fraud---High Court, thus, had rightly observed that order passed by Chief Settlement Commissioner, was not sustainable in law.  
[pp. 2679, 2680, 2681, 2682] A, B, C, D, E & F

SCMR



Qutubuddin v. Hidayat Ullah Khan Mokal 1976 SCMR 524; Chief Settlement Commissioner v. Muhammad Fazil PLD 1975 SC 331 and Muhammad Yaqoob v. Nazar Khan 1983 SCMR 1252 ref.

**(b) Fraud---**

---Fraud, no doubt, would vitiate most solemn proceedings but an order obtained through fraud is only voidable and unless it is set aside in appropriate proceedings, it will hold field. [p. 2680] C

Sh. Ziaullah, Advocate Supreme Court and Ch. Mehdi Khan Mehtab, Advocate-on-Record (absent) for Appellants (in C.As. Nos. 506 and 507 of 1993).

Ch. Mushtaq Masood, Advocate Supreme Court for Appellants (in C.A. No. 510 of 1993).

Hamid Mirza, Advocate Supreme Court and S. Inayat Hussain, Advocate-on-Record (absent) for Respondents Nos. 2 to 4 (in C.As. Nos. 506 and 507 of 1993).

Sh. Ziaullah, Advocate Supreme Court and Ch. Mehdi Khan Mehtab, Advocate-on-Record (absent) for Respondents Nos. 5, 8 and 9.

Ch. Mushtaq Masood, Advocate Supreme Court for the Settlement Department.

**JUDGMENT**

SAIDUZZAMAN SIDDIQUI, J.---We propose to dispose of above-mentioned 3 appeals by a common judgment as the questions of law arising in the above appeals are identical.

2. Civil Appeals Nos. 506 and 507 of 1993 are filed by Muhammad Siddique and others (hereinafter to be referred as 'the appellants'), who were informers before the Settlement Authorities while Civil Appeal No. 510 of 1993 is filed by Additional Commissioner/Settlement Commissioner Lands with powers of Chief Settlement Commissioner, Pakistan. Leave granting order in the above case reads as follows:-

"The facts of the case as narrated by the petitioner are that Mst. Chando Bibi filed claim for the land of Mst. Chando-widow of Umrao Khan for the lands in Revenue Estate Ferozpur Jhirka District Gurgaon, rural as well as urban. Allegedly, the Central Record Office verified the Rural Claim to the extent of 7,474 Units against which it was claimed by respondents Nos. 1 to 4 that rural land equivalent to 6,350 units was got allotted in different villages in District Narowal and Tehsil Shakargarh. The urban agricultural land claim under Schedule IV to the Registration of Claims (Displaced Persons) Act of 1956 was verified to the extent of 851 P.I.Us. against which allotments were secured to the extent of 874

P.I.Us. in urban areas of Chakwal and Lahore. Allotments in the name of the said Chand Bibi were secured in different Revenue Estates in different Districts but respondents Nos. 1 to 4 made statement that those allotments were secured by some fraudulent persons and disowned the said allotments. Those allotments were also subject matter of the proceedings under sections 10 and 11 of the Displaced Persons (Land Settlement) Act and were finally cancelled. Since the allotments other than the allotments secured in the name of Chand Bibi in villages Kot Lakha Singh, Khanowal, Palkholi, Mull Rajwa, Lohan and Siraj of Tehsil Narowal and villages Nagowal and Marlwal of Tehsil Shakargarh, District Narowal, were also cancelled and are not subject-matter of the present proceedings. There are different versions with regard to date of death of Mst. Chando as well as Mst. Chand Bibi. There is also dispute as to whether Mst. Chando the predecessor-in-interest of Chand Bibi was alive at the time of Independence and, therefore, Chand Bibi was not entitled to claim anything on behalf of a person who had not migrated to Pakistan but finally the Notified Officer in the order dated 29-12-1985 held that Mst. Chand Bibi was entitled to 1/5th share out of the property of Mst. Chando, the last deceased rightholder. She was declared entitled to 1/5th share in view of provisions of para. 67-B, Chapter 9 Part II of West Pakistan Rehabilitation and Settlement Scheme. Rahim Bakhsh and Jaggu were declared to be entitled to the inheritance of Mst. Chando and their shares were reduced from the allotment secured by Mst. Chand Bibi and finally Mst. Chand Bibi, the predecessor-in-interest of respondents Nos. 1 to 4, was declared to be entitled to the allotment of land to the extent of her 1/5th share i.e. 1212 P.I.Us. of rural and 170 P.I.Us. of urban land.

Learned counsel for the petitioner has submitted that the Board of Revenue in exercise of its power has found the fraud and forgery committed by Mst. Chand Bibi in securing allotment from Settlement and Rehabilitation Authority and the High Court erred in its discretionary jurisdiction to annul the order of the Board of Revenue.

Learned counsel has referred to section 10 of the Displaced Persons (Land Settlement) Act XLVII of 1958 which provides as hereunder:-

"If the Chief Settlement Commissioner is satisfied that an allotment has been obtained by any person by means of fraud or false representation then without prejudice to any other penalty to which such person may be liable, the Chief Settlement Commissioner may pass an order cancelling the allotment, or reducing the area of the land allotted or such other order as he may deem fit."



He has also referred to paragraph 67-B of the Rehabilitation and Settlement Scheme which reads as follows:-

"67-B-The rights of the deceased right-holders should be conferred upon their successors after proper enquiry and if and when allotments are made to the successors they should receive land only to the extent of their respective shares in the inheritance. (Reference former Punjab Government Memorandums No. 3705-R(L), dated 2nd June, 1953 and No. 9448-R(L), dated 13th November, 1953)."

The learned counsel has referred to *Qutubuddin v. Hadayat Ullah Khan Mokal* (1976 SCMR 524) wherein it has been held that "in case inquiries made by Chief Settlement Commissioner reveal that fraud has been practised by the petitioner on Claims Registering Authorities the transaction by which verification of claims and allotments of land have been obtained will, in their entirety, become void ab initio and non set in law." It further held that "Writ jurisdiction cannot be invoked to provide a shield to orders of verification of claims obtained by fraud".

Leave to appeal is granted.

As leave has been granted in C.P. No.911/L of 1992, leave to appeal is also granted in the connected Civil Petitions Nos.624/L of 1992, 625/L of 1992, 842/L of 1992 and 843/L of 1992, to consider whether they or anyone of them were informer within the meaning of Displaced Persons (Land Settlement) (Amendment) Act, 1974 section 14 (1-A)/ which contemplates as follows:--

"Where, at any time before or after the commencement of the Evacuee Property and Displaced Persons Laws (Amendment) Act, 1973 (LV of 1973), any person has furnished or furnishes information about any bogus or fraudulent allotment of land and the information has been or is proved to be correct and such land has been or is resumed by competent Authority upon the cancellation of the allotment of such land, the informant shall be entitled-

(a) if he is a claimant, to allotment of the resumed land to the extent of his claim pending for allotment in the same Province or, if the resumed land has already been allotted to some other person to the allotment, to the said extent, of any other land of his choice available for allotment in the same Province; and

(b).....

And whether they are entitled to allotment of cancelled land.

The respondents will not make further alienation of land."

3. The learned counsel for the appellants have jointly contended that the order of the learned Judge accepting the writ petition filed by Abdul Majeed and others (respondents 1 to 4) and dismissing the writ petition filed by the appellants in Civil Appeals Nos. 506 and 507 of 1993 is not sustainable in law inasmuch the learned Additional Commissioner with powers of Chief Settlement Commissioner and Notified Officer has categorically held that the allotment was obtained by the legal heirs of Mst. Chand Bibi through misrepresentation and fraud and in excess of their entitlement. It is contended by the learned counsel for the appellants jointly that the learned Division Bench exercising jurisdiction under Article 199 of the Constitution could not interfere with the findings of fact recorded by the Chief Settlement Commissioner as a Tribunal of exclusive jurisdiction. The learned counsel for the respondents, on the other hand, supported the order of learned Division Bench of the High Court. The learned Judges of the Division Bench while accepting the writ petition observed "the order passed in respect of the claim under the Registration of Claims (Displaced Persons) Act, 1956 (III of 1956) (hereinafter to be referred to as 'Act III of 1956) verifying and recognising right of Mst. Chand Bibi as sole heir, could not be set at naught by the Notified Officer in proceeding under sections 10 and 11 of Displaced Persons (Land Settlement) Act (Act XLVII of 1958) (hereinafter to be referred as Act XLVII of 1958). It is not disputed by the learned counsel for the appellants before us that the claim of Mst. Chand Bibi verified under the provisions of Act III of 1956, has not been set aside or interfered with so far. It is also not disputed by the learned counsel for the appellants that the allotments were made in favour of Mst. Chand Bibi or in favour of her legal heirs under the provisions of Act XLVII of 1958 on the basis of the claim verified under Act, III of 1956. The crucial question, therefore, which arises for consideration in these cases is that whether the settlement authority exercising powers under sections 10 and 11 of Act XLVII of 1958, could set aside or interfere with the order passed by an officer in the Claims Organization under Act III of 1956. The learned counsel for the appellants have jointly contended that the Chief Settlement Commissioner in his capacity as notified officer came to a definite conclusion that Mst. Chandoo, the predecessor of Mst. Chand Bibi never migrated to Pakistan, and therefore, verification of claim in respect of Mst. Chand Bibi under the provisions of Act III of 1956 was wholly without jurisdiction which could be ignored by the settlement department. Sections 10 and 11 of Act XLVII of 1958, under which the allotment was made in favour of legal heirs of Mst. Chand Bibi has been cancelled, reads as follows:-

"Section 10. Power of Chief Settlement Commissioner to cancel Allotment.

If the Chief Settlement Commissioner is satisfied that an allotment has been obtained by any person by means of fraud or false representation then without prejudice to any other penalty to which such person may be liable, the Chief Settlement Commissioner may pass an order



cancelling the allotment, or reducing the area of the land allotted or such other order as he may deem fit."

Section 11. Power of Chief Settlement Commissioner to cancel or terminate allotment or to amend or vary terms of allotment. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of this Act and the rules made thereunder, the Chief Settlement Commissioner, may, for reasons to be recorded in writing, cancel or terminate any allotment or lease made under a Scheme or under this Act, or amend or vary the terms of any such allotment or lease:

Provided that no order under this subsection shall be passed by the Chief Settlement Commissioner without giving the person affected thereby a reasonable opportunity of being heard.

(2) If any allottee, lessee, holder or occupant of any land acquired under this Act by reason of lack of a valid allotment order for lease or on account of an order made under Sub-Section (1) is not, or ceases to be, entitled to the possession of such land, he shall, when so required by the Chief Settlement Commissioner, surrender the possession thereof to the Chief Settlement Commissioner in this behalf.

(3) If any person required under subsection (2) to surrender possession of land, fails to do so, the Chief Settlement Commissioner, or any person authorised by the Chief Settlement Commissioner in this behalf may notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of the land and may use or cause to be used such force as may be necessary for the purpose."

The organizations created under Act III of 1956 and Act XLVII of 1958 are not only different in their functions but they exercise jurisdiction in different spheres which are well-defined. Fraud, no doubt vitiates most solemn proceedings, but an order obtained through fraud is only voidable and unless it is set aside in appropriate proceedings, it holds the field. To avoid the effect of an order obtained by fraud two courses are open. Either it can be challenged directly by way of proceedings prescribed for that purpose or it can be attacked collaterally. The view that a Tribunal of limited jurisdiction cannot recall an order obtained from it by practising fraud unless statutory provisions exist in this behalf, has undergone change. The preponderance of judicial authorities now is in favour of conceding such a power to every authority, tribunal or Court on the principle that fraud vitiates all proceedings. However, such power available to an authority or tribunal of limited jurisdiction to recall an order obtained through fraud does not extend to cases where the order is attacked collaterally in the proceedings. The power to disregard an order obtained by fraud or misrepresentation in a collateral impeachment, is available only to



superior Courts or the Courts of general jurisdiction. Such power is not available to a tribunal which either acts in an administrative capacity or enjoys only a special or limited jurisdiction in defined sphere (See Chief Settlement Commissioner v. Muhammad Fazil, PLD 1975 SC 331). There is nothing in the language of sections 10 and 11 of Act XLVII of 1958 to indicate that an officer appointed under it could upset or recall the order passed by an officer appointed under the provisions of Act III of 1956. It is true that the officers in the hierarchy of Act XLVII of 1958 have been authorised to set aside or cancel the order of allotment obtained by practising fraud and misrepresentation by a claimant but this authority conferred on the officer appointed under Act XLVII of 1958 is confined only to the alleged fraud committed with reference to the proceedings arising under that Act. There is no doubt in our mind that an officer exercising power under Act XLVII of 1958 has no authority to recall or set aside an order passed under Act III of 1956. In the above-stated legal position, if there was an allegation of fraud with reference to any proceedings decided under Act III of 1956 the same could not be upset or interfered with by the officer exercising power under Act XLVII of 1958. The whole case of the appellants is built upon the order passed by the Notified Officer/Chief Settlement Commissioner dated 29-12-1985. A bare reading of this order shows that the allotment of land in favour of Chand Bibi, under Act XLVII of 1958 has been held to be fraudulent on the ground that the claim of Mst. Chand Bibi under Act III of 1956 was verified as a result of fraud and misrepresentation. This collateral attack on the validity of the verification of claim of Mst. Chand Bibi under Act III of 1956 could not be entertained by the Notified Officer/Chief Settlement Commissioner who was exercising power under sections 10 and 11 of Act XLVII of 1958. It is admitted before us that until the repeal of Act III of 1956 by Act XIV of 1975, no proceedings were filed or initiated under Act III of 1956 to question the validity of claim verified in favour of Mst. Chand Bibi. The order of entitlement passed in favour of Mst. Chand Bibi under Act III of 1956, therefore, attained finality. The Settlement Commissioner exercising powers under Sections 10 and 11 of Act XLVII of 1958, therefore, could not interfere with the order passed in favour of Mst. Chand Bibi under Act III of 1956 even on the ground that the order was obtained by fraud. We are, therefore, of the view that the learned Judges of the Division Bench were right in observing that the order passed by the Chief Settlement Commissioner was not sustainable in law and that the heirs of Mst. Chand Bibi were entitled to the allotment of land in accordance with the entitlement of Mst. Chand Bibi determined under Act III of 1956.

The learned counsel for the Informer as well as Settlement authorities, however, very vehemently argued that even according to verified claim of Mst. Chand Bibi, the allotment was in excess of the entitlement of Mst. Chand Bibi, as determined under Act III of 1956. If it was so then to the extent of the allotment made in favour of Mst. Chand Bibi or her legal heirs which was in excess of the entitlement determined under Act III of 1956, the same could be



resumed and allotted to the Informer in accordance with the law. The learned counsel for the appellants in support of his contention that while exercising power under sections 10 and 11 of Act XLVII of 1958, the Chief Settlement Commissioner could interfere with the verification of the claim made under Act III of 1956, if the same was obtained by fraud, has relied on the case of Qutubuddin v. Hidayat Ullah Khan Mokhal (1976 SCMR 524). The judgment relied upon by the learned counsel for the appellants is not only distinguishable on facts but it is an order whereby leave was refused against the judgment of the High Court. In our view, the case relied upon by the learned counsel for the appellants must be considered in the light of the facts of the case. In that case, it was held that where fraud was committed both on the Claims Registration Authorities as well as Settlement Authorities, the transaction in such a case as a whole, will become void ab initio.

In the case of Muhammad Yaqoob v. Nazar Khan (1983 SCMR 1252) a learned Division Bench of this Court while considering a similar contention, observed as follows:-

- "4. After hearing the learned counsel at length, however, we find no force in any of the contention. The findings arrived at by the learned Judge in the High Court are supported by the decision of this Court in Officer on Special Duty v. Bashir Ahmad (1) which has been referred to and relied upon. We further feel that the case advanced before the Settlement Commissioner in the application under sections 10 and 11 of the Displaced Persons (Land Settlement) Act being that Jaurey Khan had died in India would seem to relate to the registration of the claim under the Registration of Claims (Displaced Persons) Act, 1956 and consequently the Settlement Authorities would be incompetent to deal with the question of fraud committed upon the officers of the claims organisation, under sections 10 and 11 of the Displaced Persons (Land Settlement) Act. In the circumstances and for reasons assigned by the High Court, there attached no finality to the findings recorded by the Settlement Commissioner in his order dated 19-9-1975 so as to oust the constitutional jurisdiction."

We are, therefore, of the view that the order of the learned Division Bench of the High Court holding that the Chief Settlement Commissioner while exercising power under sections 10 and 11 of Act XLVII of 1958 could not interfere with the order of entitlement of Mst. Chand Bibi or her legal heirs determined under Act III of 1956, does not warrant any interference by this Court. The appeals are, accordingly, dismissed but there will be no order as to costs.

H.B.T./M-287/S

Appeals dismissed.