

Qazalbash Waqf vs. Chief Land Commissioner

PLD 1990 SC 99

Author: Muhammad Usman Khalid

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The Supreme Court of Pakistan ("Court") pronounced a landmark judgment in 1989 wherein it declared the land reforms initiated through the Land Reforms Act, 1977 ("1977 Act") and the Martial Law Regulation No. 115 of 1972 ("1972 Regulation") to be repugnant to the teachings of Islam. Hence, the 1977 Act and the 1972 Regulation were set aside. The Court's decision relied heavily on interpretations of the Qur'an and *Sunnah*, effectively halting the reforms.

The Parliament of Pakistan enacted the 1977 Act to limit the maximum area of land that could be owned by a person. The law aimed to address the severe economic inequality resulting from large land holdings which were owned by only a handful of landowners in the country. When the law was enacted, it was first challenged in the Federal Shariat Court ("FSC") on the ground that it was against the injunctions of Islam. The FSC upheld the law and ruled that it was not against such injunctions.¹ The appellants, aggrieved by the said decision, filed a petition in the Shariat Appellate Bench of the Court which subsequently allowed the same and overturned the impugned judgment. This resulted in putting a stop to the long-awaited and much-needed land reforms in the country.

Stare decisis or adherence to established precedents is an important common law concept used for maintaining the propriety of judicial pronouncements. In *Qazlbash Waqf*, Justice Muhammad Taqi Usmani deviated from his earlier concept of "necessity." In a 1986 judgement which declared photography as being against the injunctions of Islam, Justice Usmani dismissed the petitions by invoking the concept of "necessity."² In the said judgment, Justice Usmani did not include "apprehension of harm or casualty" within the meaning of the term "necessity." In *Qazlbash Waqf*, however, the term "necessity" was qualified by the existence of an "apprehension of harm or casualty," raising the threshold for invoking the necessity doctrine. Justice Usmani did

¹ *Hafiz Muhammad Amin etc vs. Islamic Republic of Pakistan and others* PLD 1981 FSC 23.

² *Abu Dawood Muhammad Sadiq vs. The Registration Officer* PLD 1986 SC 564.

not provide any justifications for departing from his earlier understanding of the necessity doctrine, and the 1986 judgement does not even find a mention in the *Qazlbash Waqf* order. Having so held, Justice Usmani proceeded to declare that Pakistan's condition did not meet the said threshold and as a result, the land reforms were deemed to be against the injunctions of Islam. It is evident that had Justice Usmani stuck to his earlier understanding of the term "necessity," the outcome that he reached would have been different.

A reading of Justice Usmani's majority opinion makes it abundantly clear that a scripturalist and static approach was employed while interpreting Islamic law. He applied the injunctions of Islam mechanically and adopted a strictly text-based (perhaps even a reductionist) approach without acknowledging the fact that such injunctions are much more fluid and are open to multiple interpretations. In his judgement, Justice Usmani did not consider *siyasa* (state's political legitimacy in matters of governance) or customary practices as he believed *shariah* (Islamic canonical law premised on the injunctions of Qur'an and *Sunnah*) to be the sole legitimate law. Moreover, the impugned judgment of the FSC, which upheld the land reforms, had referred to Umar bin Khattab's (R.A.) treatment of the lands of Sawad, which was different from how Prophet Muhammad (P.B.U.H.) treated lands.³ While discussing this point in his majority opinion, Justice Usmani distinguished Umar bin Khattab's (R.A.) practice from nationalization, but he did not comment upon the inconsistency between Umar bin Khattab's (R.A.) and Prophet Muhammad's (P.B.U.H.) differing practices. Umar bin Khattab's (R.A.) practice attests to the fact that the injunctions of Islam are fluid in nature and can be interpreted differently depending upon the facts and the circumstances. Therefore, the majority judgment in *Qazlbash Waqf* narrowly interpreted Islamic injunctions with total disregard for state law and customs.

The *Qazlbash Waqf* judgement completely disregarded the historical context underpinning land holdings in Pakistan. It can be argued that the Court was reviewing the laws only in light of Islamic injunctions, but this argument is devoid of force as FSC's impugned judgment did delve into the historical context of large landholdings in Pakistan and questioned their legitimacy.⁴ Even

³ The revenue of the land was set aside for the benefit of the entire Muslim community. See Paul G. Forand, 'The Status of the Land and Inhabitants of the Sawad during the First Two Centuries of Islam,' (1971) 14 JESHO 25.

⁴ *Amin* (n 1) 65.

the Qazlbash family's ownership of the disputed land, who were one of the main petitioners in the case, was due to their "distinguished services" to the British.⁵

It is evident from the preamble of the impugned laws that they were enacted primarily to target the large landholdings which were acquired through questionable means during the Mughal and the colonial eras. The Court could have invoked its powers under Article 187 of the Constitution of the Islamic Republic of Pakistan, 1973 and ordered the government to trace out the titles of all such landholdings that were gained ostensibly through undemocratic means. After such an exercise, the Court could have ordered the government to implement land reforms to the extent of such lands instead of striking down the laws in their entirety.

⁵ Lepel Henry Griffin and Charles Francis Massy, *Panjab Chiefs* (Legare Street Press 2023). The information about the Qazlbash family and the modes of acquisition of property by their elders in Lahore are also described in Oudh High Court's judgment in *Ali Raza Khan vs. Nawazish Ali Khan* AIR 1937 Oudh 280. This information is further supported by the findings of the Judicial Committee of the Privy Council (the highest court of appeal in the British Empire) in *Sardar Nisar Ali Khan vs. K. B Sardar Mohammad Ali Khan* [Lucknow] (1932) UKPC 32.