

HIGH COURT OF AZAD JAMMU AND KASHMIR

1. Writ Petition No. 53/2023,
Date of institution: 28.01.2023,
Date of Decision: 06.01.2024

1. Chairman WAPDA through Director (Legal) WAPDA, WAPDA House Lahore;
2. WAPDA through Director (Legal) WAPDA, WAPDA House Lahore;
3. General Manager, MDO, WAPDA Mangla, Mirpur AK through Director (Legal) WAPDA, WAPDA House Lahore;
4. Resident Engineer (Civil) mangla Dam Organization (MDO), Mangla Mirpur AK through Director (Legal) WAPDA, WAPDA House Lahore.

... Petitioners

VERSUS

1. Syed Ikram Shah Son of Syed Haider Shah R/o Plot No. 283 & 286 Sector F-03, Part –V, Mirpur AK;
2. Mirpur Development Authority (MDA) through Director General;
3. Director General Mirpur Development Authority (MDA), Mirpur;
4. Mirpur Development Authority Board through its Secretary;
5. Allotment Committee of MDA through its Secretary;
6. Revising Authority of MDA through its Secretary;
7. Town Planning Department of MDA through its Town Planner;
8. Town Planner MDA;
9. Director Works MDA;
10. Member Technical MDA;
11. Director Estate Management MDA;
12. Deputy Director Estate Management, Mirpur Development Authority respondents No. 02 to 12 having their office at Mirpur Development Authority (MDA), Sector F-2, Mirpur A.K;

...Respondents

13. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary, new Secretariat Muzaffarabad;
14. Secretary Physical Planning & Housing new Secretariat Muzaffarabad, A&K;
15. Collector Tehsil & District Mirpur, A.K.

....Proforma Respondents

2. Writ Petition No. 3452/2023,
Date of institution 16.12.2023.

1. Ikram Hussain Shah Son of Syed Haider Shah R/o House No. 742, Sector F, Block G, New City Mirpur, Azad Kashmir;
2. Adeel Naeem Son of Mohammad Rafique Naeem R/o Dheri Sahibzada P/o & Tehsil Khiuratta, District Kotli Azad Jammu and Kashmir.

... Petitioners

VERSUS

1. Mirpur Development Authority, Mirpur through its Director General;
2. Director General Mirpur Development Authority, Mirpur;
3. Director Estate Management/Estate Officer Mirpur Development Authority Mirpur;
4. Deputy Director Estate Management, MDA Mirpur;
5. Town Planner Mirpur Development Authority Mirpur;
6. Revising Authority MDA Mirpur through its Chairman and Member;
7. Inspector Encroachment MDA, Mirpur;
8. Senior Superintendent of Police Mirpur;
9. SHO, Tothal Police Station Mirpur;
10. District Magistrate Mirpur;
11. Water and Power Development Authority through its Chairman Head Office at WAPDA House Lahore;
12. Chairman Water and Power Development Authority Head Office at WAPDA House Lahore Pakistan;
13. Chief Engineer WAPDA Mangla Dam Raising Project Mangla;
14. Superintendent Engineer WAPDA, Mangla Dam Raising Project Mangla;
15. Deputy Chief Inspector of Explosive Govt. of AJK Directorate of Industries and Commerce Upper Tariqabad near MDA Office Muzaffarabad;

...Real Respondents

16. M. Yousaf son of Fazal Hussain R/o Barjah Tehsil Samhani Dsitrit Bhibmer;
17. Mohammad Hussain Son of Mohammad Ibrahim R/o Village Kalyal Cakswari Tehsil and District, Mirpur;
18. Mehmood Akhtar Son of Mohammad Ibrahim R/o Kalal Chakswari Tehsil and District Mirpur;

19. Shahbaz Kan S/o Raja Rehmat Ullah R/o House No. 8-A, Street No. 189, Mohallah Ataf Part New Bogiwal Baghban, Pura Lahore;
20. Mohammad Jhangir S/o Karamat Hussain R/o Ward No. 24, Purani Abadi, Ththoal Mirpur;
21. Rizwan Ahmed Qurehis Son of Abdul Qayyum S/o Abdul Qayyum Qurehsi R/o Dhala Islamgarh, Tehsil and District Mirpur;
22. Nasreen Begum D/o Javed Iqbal R/o House No. 11, Sector B-02, Mirpur;
23. Naheed Reham D/o Abdul Rehman R/o Village Domal Chakswari, Tehsil and District Mirpur;
24. Samia Muzaffar W/o Muzaffar Hussain R/o House No. 125, Sector F/1, Mirpur Azad Kashmir.

... Proforma Respondents

WRIT PETITIONS

Before:- Justice Sadaqat Hussain Raja, C.J/V.J

PRESENT:

Raja Qamar Idrees, Advocate on behalf of WAPDA.

Mr. Aurangzaib Chaudhary, Advocate for the petitioner Ikram Hussain Shah.

Mr. Frooq Akbar Kiani, Advocate for respondents No. 1 to 12/ Mirpur Development Authority in Writ Petition No. 53/2023.

JUDGMENT:

As common questions of law and facts are involved in the titled writ petitions, therefore, the same are clubbed together and are disposed off through this single judgment.

Facts of writ petition No. 53/2023 are that Water and Power Development Authority (WAPDA) has been established under WAPDA Act, 1958 to develop, maintain dams and power plants all over the Pakistan. It

is further stated that the WAPDA acquired land in accordance with Land Acquisition Act, 1894, and in line with Land Revenue Act, 1967 and an agreement dated 24.06.1967 was also executed for construction of Mangla Dam. It is further stated that the Government of AJK will only retain sovereignty rights over acquired land. As a result after acquiring the land in AJK territory for the purpose of Mangla Dam and allied works at the cost of WAPDA completed the Mangla Dam in 1965. It is alleged that the petitioners acquired land of Mouzia Nandwal Tehsil and District Mirpur AJK located at Jari Kals vide award No. 89(C-II) dated 31.07.1960 for construction of Mangla Dam as working area for the Dam and it is further alleged that as per record WAPDA remained in continues possession of acquired land since the construction of Mangla Dam. It is contended that the real respondents No. 2 to 12 have secretly and with mala fide intention created plots marked them at the land acquired by WAPDA in Mouza Nandawal Tehsil and District Mirpur and adjacent to Mangla DAM without obtaining NOC and without affording opportunity of hearing to the petitioners. It is further alleged that allotments of the

plot in Sub Sector F-3 Part-V, Mirpur were made to many people including plots No. 283 to 286 in favour of Syed Ikram Shah Son of Syed Haider Shah and such allotment and residential as well commercial purpose are gross violation of mandatory provision of law by misusing powers by real respondents No. 2 to 12.

The writ petition was admitted for regular hearing vide order dated 13.03.2023 and the respondents have filed written statement wherein, it is stated that the petition is liable to be dismissed on account of laches. It is further stated that WAPDA has transferred the acquired land measuring 1950 kanal in favour of MDA in lieu of Rs. 10 million rupees vide letter dated 04.06.1990 which was duly paid by the Mirpur Development Authority. It is contended that the petitioners remained silent for pretty long time despite the knowledge that the impugned plots have been transferred and lastly transferred to respondent No. 1 who is the 3rd purchaser of the impugned plot. It is further contended that the plots in questions were never remained in possession of petitioners because the ownership was mentioned in the name of Azad Govt. It is submitted that the petitioners

received the amount as consideration of land, so, the writ petition is liable to be dismissed.

Facts of Writ Petition No. 487/2023 are that the impugned plots bearing No. 816-H, 816-I, 816-J situated at Sector F-3 Part-V Mirpur have been allotted to the petitioners after obtaining NOCs from the relevant authorities and the petitioners are constructing petrol pump upon the same, however, the respondents are interfering in the construction process with mala fide reasons. It is alleged that the plots have been allotted and transferred in the names of proforma respondents and thereafter in the name of petitioners. It is further alleged that the petitioners started construction work on above mentioned plots, however, respondents No. 1 to 14 are interfering & stopping the construction process and threatened to demolish the construction forcibly.

Respondents have contested the writ petition by filing written statement, wherein, it is stated that the petitioners have no cause of action to file the instant writ petition. It is further stated that the land in which the impugned plots have been allotted is still in ownership of WAPDA through AJK Government which is evident by

mutations No. 55 and 56 and the MDA has no authority and concern with the land in dispute and the petitioners have no annexes with the original owners from whom the land was acquired. It is submitted that the Government of Azad Jammu and Kashmir was a necessary party which was not arrayed as party in instant writ petition and in abeyance of necessary party the instant writ petition is not maintainable. It is further submitted that the land falls within 2500 feet of Dam Toe and falls within safety area seriously prohibited to be used for any other purpose and the acquired land is the sole ownership of WAPDA and the WAPDA is the real owner of acquired land.

I have heard the learned counsel for the parties and gone through the record of the case.

The petitioner in Writ Petition No. 53/2023 filed amendment application. It is stated that in line 7th of writ petition instead of words plot No. 283 to 286 words plots No. 816-J, 816-H, and 816I are required to be added. A perusal of record shows that the writ petition has been filed on 28.01.2023 and the amendment application has been filed on 08.09.2023. As the case has been remanded

by Hon'ble Supreme Court with a direction to decide the matter within a period of six weeks vide order dated 14.12.2023. Even otherwise, the proposed amendment is of clerical nature, hence, neither the objections from the other side nor required deep deliberation hence the application is accepted. Resultantly, it is ordered that instead of words plot No. 283 to 286 words plots No. 816-J, 816-H and 816-I shall be read and written in the writ petition titled Chairman WAPDA Vs Syed Ikram Shah and others.

It is the claim of petitioners (Syed Ikram Ali Shah and others) that Plot No. 816-H, measuring 400 sq yards (40x90) square feet (ii) Plot No. 816-I, measuring 400sq yards (40x90) square feet, (iii) Plot No. 816-J, measuring 400 sq yards (40x90) square feet situated at Sector F-3, Partive-V, Mirpur were properly allotted and transferred in the names of proforma respondents and lastly in the name of petitioners and on the other hand, WAPDA claims that WAPDA is the sole owner of disputed plots. It is evident from the record that the suit land was acquired by the Govt. of Azad Jammu and Kashmir for construction of Mangla Dam which was not used by

WAPDA, hence, the same was used for construction purpose. It is an admitted fact that the Village Nandwal along with other connected land was acquired by the Govt. of Azad Jammu and Kashmir for construction of Mangla Dam Water Reservoir and as per record, the WAPDA is not owner of the land and the record attached also negates the version of WAPDA. The WAPDA took a categorical stance that the funds were provided by the WAPDA for construction of Mangla Dam but it is also an admitted fact that an agreement was executed between WAPDA and the State of Azad Jammu and Kashmir and perusal of contents of said agreement shows that WAPDA has admitted the sovereignty right of the State of Jammu and Kashmir as owner of the acquired land and it is also admitted that the land not so required shall revert to Azad Jammu and Kashmir. Term No. 1 of the said agreement is usefully reproduced as under:

1. Azad Jammu and Kashmir will give all land owned or possessed by it and required for the purpose of the project of perpetual use by Pakistan for the said purpose subject always to the condition that Azad Jammu and Kashmir shall retain rights of sovereignty over such land and land not so required in the sole judgment of Pakistan

for the purpose of the Project shall revert to the Azad Jammu and Kashmir.

So, it is an admitted position that the land is being used by the MDA for housing purpose and the WAPDA has admitted the authority of MDA to allot plots. The petitioner Ikram Hussain Shah attached some documents with the writ petition which transpires that the disputed plots have rightly been transferred and an order as annexure PA also attached with the writ petition which transpires that the plot No. 816-H situated at Sub Sector F-3, Part V has been transferred from Mohammad Hussain S/o Mohammad Ibrahim 3rd buyer to petitioner Ikram Hussain Shah on 22.06.2021. The petitioner Ikram Hussain Shah attached another order as annexure PB with the writ petition which reveals that the petitioner has purchased the Plot No. 816-J situated at Sub Sector F-3, Part V from Rizwan Ahmed Qurehsi Son of Abdul Qayyum Qurehsi 2nd buyer on 03.07.2019. An order as annexure PC also attached with the writ petition which transpires that the petitioner No. 2 Adeel Naeem also purchased plot No. 816-J from Rizwan Ahmed Qurehsi on 03.07.2019. The WAPDA remained silent for a pretty long

period despite of the knowledge that the impugned plots were transferred in different hands and finally transferred to the petitioners Syed Ikram Shah and Adeel Naeem. It may be stated that the plots bearing No. 816-J, 816I, and 816-H were not remained in possession of WAPDA because as per revenue record the ownership has been mentioned in the name of Azad Govt. and the possession has been mentioned in the name of Fazal Ellahi. It is pertinent to mention here that the land was acquired by MDA in lieu of consideration from WAPDA and it was allotted to Sumayya Manzoor in the year 1998 and further transferred to Rizwan Ahmed and finally to Syed Ikram Shah, the petitioner herein.

As stated earlier, WAPDA was only the possessor of the land because WAPDA has provided funds to acquire the land from Azad Government and the Azad Government is the owner of the land, however, after some time WAPDA has received consideration amount from MDA and after receiving the consideration amount the possession lies with MDA, hence, WAPDA has no concern with the land in question after withdrawal from his possession. So, in my considered view, the WAPA has

no cause of action to file the instant writ petition. Furthermore, the MDA has sold the land to many State Subjects and the State Subjects are bona fide purchaser of disputed land. The petitioners Syed Ikram Shah also 3rd bona fide purchaser of the land and the bona fide purchaser cannot be disturbed mere on the ground that the Government acquired the land through funds provided by WAPDA. If there is any dispute between WAPA and MDA, the bona fide purchaser cannot be penalized because a right has accrued to the petitioners to keep the possession of land and use the same for any purpose for which he is authorized under law.

The WAPDA took another stance that if any acquired land remains left un-utilized, for the purpose it was acquired, the same cannot be used by other purpose without obtaining NOC from the person/authority who have acquired the land. It is an admitted fact that the land was acquired by the Azad Govt. for construction of Mangla Dam and according to rights pertaining to year 1991-92 the suit land was owned by the Government of Azad Jammu and Kashmir and the WAPDA is not owner of the land. The WAPDA was fully aware that MDA has

allotted the land situated in Village Nandwal to the allottees. This Court in a judgment titled “**Department of WAPDA Vs Raja Maroof and others**” decided on 18.02.2021, held that the WAPDA is not owner of the suit land and there is continuous negotiation between WAPDA and MDA about balance payment and if the payments were transferred by MDA in favour of WAPDA, disputed allotments of plots would have stood legal. The relevant portion of judgment is reproduced as under:

8. It is an admitted fact that the suit land is now being used by the MDA for housing purpose and plots Nos. 62, 63 and 64 have also been allotted to defendant /respondent No. 2 which has been purchased by defendant No. 1 and no documentary proof regarding the ownership of the suit land has been brought on record by the plaintiff/appellant, WAPDA. If the version of the plaintiff/WAPDA that he has provided funds for acquiring the suit land and the MDA was bound to pay the price of the suit land to WAPDA is admitted true even then the plaintiff/appellant can file a suit for specific performance or recovery of money against MDA because WAPDA is not the owner of the suit land, therefore, declaratory decrees cannot be passed in their favour. The defendants/respondents is support of their version produced

documentary evidence as Exh. DM which clearly shows that the plaintiff/department was fully aware that MDA has allotted the land situated in Village Dheri Rustam & Pohta Bensi to the allottees and they have also proved that the authority has approved regularization of the above stated allotments @ Rs. 50,000/- per kanal and plaintiff/SAPDA was agreed to regularizes the allotments for certain sum of amounts, then the plaintiff is stopped to file the suit by their conduct. A perusal of record also shows that there is continuous negotiation between appellant/APDA and MDA about balance payment and if the payments were transferred by MDA in favour of WAPDA disputed allotments of plots would have stood legal. The record also reflects that plaintiffs have taken a contradictory stance about the authority of MDA regarding allotments of the disputed plots but in my view, the learned trial Court has rightly appreciated the evidence while deciding that the MDA has legal authority to allot plots which has been admitted by WAPDA by making a deal to regularize said allotments subject to consideration.

The petitioner has also obtained NOC from District Magistrate Mirpur which is reproduced as under:

آزاد حکومت ریاست جموں و کشمیر۔
از دفتر ڈسٹرکٹ مجسٹریٹ میر پور۔

عدم اعتراض تحقیق

رئیلٹی میجر مارکیٹنگ صاحب Be, Ebergy لمیٹڈ زیر نمبر Mp-ES/001/2002?NOC مورخہ 25.04.2022 تحریک کی ہے کہ پلاٹ نمبر J-816, 816-I, 816-H واقع سب سیکٹر ایف تھری پارٹ فائیو کوٹلی روڈ نزد خالق آباد چوک تحصیل میر پور سائل کو کمرشل پلاٹس تحت ضابطہ ادارہ ترقیات میر پور کی طرف سے الاٹ کیے گئے ہیں پر سائل Be, Ebergy لمیٹڈ کا پٹرول پمپ نصب کرنا چاہتا ہے۔ عدم اعتراض سرٹیفکیٹ جاری فرمایا جائے۔

مکتوب سب Be, Ebergy لمیٹڈ کی روشنی میں ایکسین صاحب شاہرات میر پور، اسسٹنٹ کمشنر صاحب میر پور واسٹنٹ ڈائریکٹر صاحب شہری دفاع میر پور 424 کمپوزٹنگل کمپنی (SCO) میر پور مہتمم صاحب ترقیات میر پور اور ڈائریکٹر صاحب اسٹیٹ ادارہ ترقیات میر پور کو رپورٹ ارسال کرنے کی نسبت مکتوب تحریر کیا گیا۔ مطابق رپورٹ ادارہ ترقیات یہ پلاٹس کمرشل ضابطہ الاٹ / منتقل شدہ ہیں۔ اسسٹنٹ کمشنر صاحب میر پور نے تحریر کیا ہے کہ یہ پلاٹس سیفٹی ڈیم سے باکفی دوری پر واقع ہیں اور ع کوٹلی میر پور روڈ سے جانب جنوب دوسری جانب واقع ہیں۔ پلاٹ کافی گہرائی میں واقع ہے جس کو بھرائی کے بعد سڑک کے لیول تک جانے گا جو کہ سڑک کو مزید مضبوط بنانے کے لیے بہتر ہوگا اگر متذکرہ بالا کمپنی کے حق میں NOC جاری فرمایا جائے تو مناسب ہے۔ جبکہ اسسٹنٹ ڈائریکٹر صاحب شہری دفاع میر پور نے زیر نمبر 163 مورخہ 15.06.2022 رپورٹ کی ہے کہ قریب ترین کوئی آبادی و سکول واقع نہ ہے۔ ایکسین صاحب شاہرات میر پور نے تحریر کیا ہے مین روڈ خالق آباد جاتالوں سے کمپنی / سائل روڈ کے درمیان سے دونوں اطراف 40/40 فٹ چھوڑ کر پٹرول پمپ کی تعمیر کرے تو محکمہ شاہرات کو کوئی اعتراض نہ ہے۔ ایکسین صاحب برقیات نیوٹی میر پور نے تحریر کیا ہے کہ محکمہ برقیات کی کوئی تنصیبات متاثر نہ ہوتی ہیں۔

رئیلٹی میجر مارکیٹنگ صاحب Be Ebergy لمیٹڈ کمرشل پلاٹ نمبر J-816, 816-I, 816-H واقع سب سیکٹر ایف تھری پارٹ فائیو کوٹلی روڈ نزد خالق آباد چوک تحصیل میر پور سائل کو Be, Ebergy لمیٹڈ کمپنی کا پٹرول پمپ نصب کرنے کے سلسلہ میں عدم اعتراض تحقیق جاری کیا جاتا ہے۔ تاہم اوپڈا کی طرف سے کسی قسم کے اعتراض کی صورت میں NOC بند منسوخ تصور ہوگا۔

ڈسٹرکٹ مجسٹریٹ

A perusal of above reproduced NOC reveals that the District Magistrate issued NOC after obtaining reports from concerned quarters, so WAPDA has no authority to interfere in the disputed plots of petitioners.

The learned counsel for WAPDA has relied upon a judgment of Apex Court reported as 2017 SCR 1360. The relevant captioned as reported is reproduced as under:

...Writ. Acquired land for WAPDA.... Transferred to MDA without following prescribed legal manner... plots made upon that land... and allotments made in favour of the private respondents such transfer of acquired land to MDA declared illegal..... allottees of the plots to be compensated MDA was directed to adjust such effected allottees within three months. In the best interest of justice, we also deem it proper to direct the MDA to adjust such legal allottees

who have been affected by the notifications dated 13.09.2012, within a period of three months positively from the communication of the order of this Court and submit the report before this Court through Addl. Registrar Branch Registrar Mirpur.

The Hon'ble Supreme Court has time and again issued directions that the Courts should not rely upon the captions mentioned in the judgments rather the Courts should rely the whole judgment of the Apex Court. I am very astonishing that in the whole judgment the words land transferred to MDA was not declared illegal so, the case relied upon by the WAPDA has no nexus with the instant case. The Hon'ble Supreme Court has categorically directed that if any allottee is aggrieved by any act, the MDA should compensate or adjust such allottee. In the instant case, the petitioner Ikram Shah is the bona fide purchaser of the disputed land and land was transferred to MDA vide Government notification dated 22.01.1988. The only dispute between MDA and WAPDA is regarding the price of land which can be claimed by WAPDA by filing a civil suit before the Court of competent jurisdiction or through negotiation between both the institutions. No citizen can be grilled by the authorities in such like situation.

In light of what has been discussed above, the writ petition No. 53/2023 is dismissed, while writ petition

No. 487/2023 titled Ikram Husain Shah Vs MDA is accepted and respondents No. 1 to 15 are restrained from interfering in Plots No.816-H, Plot No. 816-I, Plot No. 816-J.

Muzaffarabad.
06.01.2024

CHIEF JUSTICE/VACATION JUDGE

Approved for Reporting.

CHIEF JUSTICE/VACATION JUDGE