

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.1563/2019.
Date of institution 25.09.2019.
Date of decision 26.04.2022.

1. Irshad Begum widow;
2. Mohammad Ehsan-ul-Haq;
3. Mohammad Inam-ul-Haq;
4. Mohammad Israr-ul-Haq sons;
5. Tanzeela Rahim;
6. Ansa Aalia Rahim;
7. Ansa Aasia Rahim;
8. Naheeda Rahim d/o of Abdul Rahim, refugees of occupied Jammu & Kashmir 1965, presently Chak 477, JB, Tehsil Shore Kot District Jhang.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Senior Member Board of Revenue/Secretary Rehabilitation;
2. Senior Member Board of Revenue/Secretary Rehabilitation, Azad Jammu & Kashmir Muzaffarabad;
3. Rehabilitation Commissioner Azad Jammu & Kashmir Muzaffarabad;
4. Assistant Commissioner Rehabilitation for Azad Jammu & Kashmir at Jhang;

Real Respondents

5. Deputy Commissioner Poonch/Rawalakot;
6. Additional Deputy Commissioner Poonch/Rawalakot.

Proforma Respondents

WRIT PETITION (1)

Writ petition No.1582/2019.
Date of institution 30.09.2019.

1. Saja Begum widow;
2. Nadeem Ahmed son;
3. Musarat Sharif;
4. Shazia Sharif;
5. Nazia Sharif d/o Mohammad Sharif, refugees of occupied & Kashmir 1965, presently Chak 477, JB, Tehsil Shore Kot District Jhang.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Senior Member Board of Revenue/Secretary Rehabilitation Azad Jammu & Kashmir Muzaffarabad;
2. Senior Member Board of Revenue/Secretary Rehabilitation, Azad Jammu & Kashmir Muzaffarabad;
3. Rehabilitation Commissioner Azad Jammu & Kashmir Muzaffarabad;
4. Assistant Commissioner Rehabilitation for Azad Jammu & Kashmir at Jhang;

Real Respondents

5. Deputy Commissioner Poonch/Rawalakot;
6. Additional Deputy Commissioner Poonch/Rawalakot.

Proforma Respondents

WRIT PETITION (2)

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Kh. Atta-Ullah Chak, advocate for the Petitioners in both the writ petitions.

Salma Tariq Khan Sadozai, Legal Advisor for Board of Revenue.

JUDGMENT:

Through the captioned writ petitions filed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, the petitioners have challenged the legality and validity of the order dated 29.04.1989 and prayed for setting aside the same.

2. Shortly stated facts of the captioned writ petitions are that predecessor-in-interest of petitioners namely Abdul Rahim and Mohammad Sharif being refugees of 1965 were allotted land in Jhang under Item 5 of the Memorandum of Government of Punjab dated 13.02.1972 and the Deputy Commissioner/Collector District Jhang after due process of law allotted the land measuring 115 kanal 14 marlas and 106 kanal 16 marlas situated in Chak No.477/JB Tehsil Shore Kot District Jhang vide orders dated 26.06.1989 and 05.08.1989 and the said allotment was registered before the Sub Registrar Toba Tak Sing and the predecessor-in-interest of petitioners obtained proprietary rights of 100 kanal lands and the mutations Nos.363 and 364 were also attested. It has been stated that when the petitioners started process to obtain the proprietary rights of remaining land they were told that their allotments have been cancelled through letter dated 29.04.1989, hence, the captioned writ petitions for setting aside the aforesaid letter.

The learned counsel appearing on behalf of petitioners reiterated and repeated the grounds already agitated in the writ petition by way of submitting written arguments.

The main plank of the written arguments of the petitioners is that cancelation of the allotment has been made without serving any sort of notice upon the petitioners and without providing opportunities of hearing which was sine-qua-non as per law, therefore, it is admitted fact that the impugned order has been passed in back of the petitioner which is sheer violation of principle of audi-alteram-partem, (a universally accepted golden principle of law.) Despite fact, if said right is not provided in any statute, it is always read as part and parcel of every piece of legislation.

In my estimation the sole point agitated by the petitioners regarding violation of audi-alteram-partem is suffice for acceptance of the instant writ petition. Averments made in the writ petition are supported by an affidavit as well as substantiated by the record appended with the writ petition which unequivocally reveals that the petitioners as being subject of the State have obtained allotment in their favour.

Be that as it may, State Subject of the father of the petitioners appended with the writ petition as "Annex.J" which has not yet been cancelled, therefore, status of the petitioners has been Subject of the State could not be questioned without cancellation of the State Subject by the Competent Authority in this regard.

Order issued from the Rehabilitation Secretariat dated 29.04.1989 appended as "Anex.G" with the writ petition (which is impugned herein) is on the very face of it non-speaking, arbitrary and without lawful authority, as no reason at all has been given in the order for cancellation of the land allotted in favour of Late Muhammad Sharif, Abdul Raheem sons of Ahmed Din, refugees of 1947, that too, without affording the opportunities of hearing.

It is settled principle of law that an act which requires to be performed in a particular manner can only be performed in the same manner otherwise performance of such like act bears no legal consequences. It is crystal clear that due process of law has not been adopted in the instant matter which is gross violation of the constitutionally fundamental right No.19 i.e. right of fair

trial read with right No.14 protection of property and right No.1 security of person.

So far as the question of entitlement of the petitioners quo allotment of the land is concerned it is not job of this Court to embark upon such like disputed question of facts, it is up-to the relevant authority to consider and adjudicate the same in accordance with law. At present we have only to deal the legality of the order dated 29.04.1989 (impugned herein).

Nub of above discussion is that order dated 29.04.1989 passed by Secretariat Rehabilitation of Azad Govt. of the State of Jammu and Kashmir, Muzaffarabad is nullity in the eye of law, therefore, not sustainable and set-aside accordingly. However, the finding given in the instant lis is not impediment quo any fresh probe in accordance with law if so required.

The writ petitions are accepted in the manner indicated above.

Muzaffarabad,
26.04.2022.

-Sd-
JUDGE