

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.3261/2021.
Date of institution 07.10.2021.
Date of decision 10.09.2024.

1. Mohammad Yaqoob Chishti s/o Molana Ali Mohammad Klaravi Caste Gujjar, r/o Chattra North Tehsil Abbaspur District Poonch;
2. Asif Mehmood s/o Molana Ali Mohammad Klarvi Caste Gujjar r/o Chattra North Tehsil Abbaspur District Poonch.

Petitioners

VERSUS

1. Board of Revenue through Registrar Board of Revenue having his office at Chatter Muzaffarabad;
2. Mohammad Ishaq Qadri s/o Molana Ali Mohammad Caste Gujjar r/o Tehsil Abbaspur District Poonch;
3. Commissioner Revenue Division Poonch, having his office at Rawalakot Azad Kashmir;
4. Collector/Deputy Commissioner District Poonch, having his office at Rawalakot;
5. Assistant Commissioner Abbaspur, District Poonch;
6. Tehsildar Department of Revenue, Tehsil Abbaspur District Poonch;
7. Patwari Constituency of North Chattra Abbaspur, District Poonch;
8. Madrasa Darul Uloom Ghosia Mehria, Public School through Mohammad Ishaq Qadri s/o Molana Ali Mohammad Caste Gujjar r/o Tehsil Abbaspur District Poonch.

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Syed Nazir Hussain Shah Kazmi, Advocate for the Petitioners.

Noshaba Iqbal, Legal Advisor for Board of Revenue.
Sardar M. R. Khan Advocate for Respondents No. 2 & 8.

JUDGMENT:

Through this constitutional petition, the petitioners are seeking annulment of the order passed by Member Board of Revenue dated 15.07.2021 as well as order passed by the Commissioner Revenue dated 16.01.2016. Further direction has also been sought for cancellation of basic order dated 28.02.2008 passed by respondent No.1, herein, through which land comprising survey No.770 measuring 2 kanal 7 marlas was ordered to be sanctioned in favour of "Madrasa Ghosia Mehria Public School".

2. The facts necessary for disposal of the captioned writ petition are that the petitioners and respondent No.2 are real brothers and for education of Islam and Islamic studies, their father being a religious person established a Madrasa and in the last period of his life, Molana Ali Mohammad (their father) also established a foundation "Madrasa Darul Allum Ghosia Mehria Klran". As per stance of the petitioners, the description of the land was made in the manner that upon land comprising survey No.771, a Mosque has been constructed, upon survey No.772, house has been constructed, survey No.773

measuring 5 marlas is shown to be under the possession of Madrasa and the land of Madras was also donated by the petitioners and respondents No.2 through "Waqaf Deed" and after the death of their father, the parties decided to run the system of Madrasa jointly, in this regard all the three brothers made an agreement dated 16.08.1999. It has been stated that respondent No.2 has been settled in abroad with his family for the last 30 years, however, he with mala-fide intention against the agreement supra submitted an application through his sons for grant of Khalsa Land bearing survey No.770 without knowledge and consent of the petitioners and respondent No.4 illegally and against the law and relevant rules known as "Azad Jammu & Kashmir Grant of Khalsa Land Rules 1985" issued an order on 28.02.2008 and the petitioners got knowledge about the fact when respondent No.2 started construction. The petitioners aggrieved from the said order filed an appeal before the Commissioner Revenue Poonch Division which was dismissed on 16.01.2016. Against the order of Commissioner Poonch, petitioner No.1 preferred an appeal before Member (Judicial) Board of Revenue Azad Jammu & Kashmir which also met the same fate vide order dated

15.07.2021, hence, this petition for setting aside the supra orders.

3. On filing of the petition, official respondents No.3 to 6 including respondent No.2 filed parawise comments, wherein, the claim of the petitioners was refuted in toto and prayed for dismissal of the writ petition.

4. Previously this Court vide judgment dated 24.05.2023 dismissed the writ petition in limine and the petitioners, herein, approached the Hon'ble Supreme Court by filing PLA. The Hon'ble Supreme Court after admitting the writ petition remanded back the case to this Court for decision on merit through order dated 30.11.2023.

5. The learned counsel for petitioners vehemently argued that the initial order regarding grant of Khalsa Land dated 28.02.2008 is void and against the law and rules, hence, the superstructure on the basis of said order is also illegal and unlawful. He further argued that the decisions/orders impugned herein, are also illegal and without lawful authority as the Subordinate Courts brushed aside the law and some procedural defects regarding grant of Khalsa land in favour of respondent No.2. He further contended that when the application for grant of Khalsa Land was submitted by his son, respondent No.2 was in

abroad and legally he was not empowered to submit application, hence, the application is illegal and no any Subordinate Revenue Courts considered this legal point, furthermore, respondent No.2 does not come within the definition of local destitute, hence, the grant of Khalsa Land is illegal. Lastly, the learned counsel prayed for setting aside the basic order as well as the orders passed by Member Board of Revenue and Commissioner Revenue.

6. Conversely, the learned counsel for private respondents argued that the petitioners have no locus standi to file the instant petition as they do not fall within the definition of an aggrieved person as the land sanctioned as Natour through order dated 28.02.2008 was subsequently alienated through "Waqf Deed" in favour of Madrasa "Darul-Alum Public School" and the said "Trust Deed" was registered by Sub Registrar, however, the petitioners were failed to challenge the Waqf Deed as well as its registration and mutation well in time, hence, the petitioners by their own conduct have admitted further alienation of the land. Finally, the learned counsel prayed for dismissal of the writ petition with costs.

7. Heard, record perused. The petitioners by invoking the extraordinary jurisdiction of this Court are

seeking annulment of the basic order dated 28.02.2008 through which land comprising survey No.770 measuring 2 kanal 7 marlas (whereupon Madrasa Tahleem-ul-Quran Ghosia Mehria Public School was established since their father's time) was ordered to be granted in favour of "Madrasa" after getting detailed reports and spot inspection. The claim of the petitioners is that the basic order and all the subsequent proceedings in shape of order of Commissioner Poonch Division dated 16.01.2016 and the order passed by the Member (Judicial) Board of Revenue Camp Rawalakot dated 15.07.2021 are also liable to be set-at-naught. As per stance of counsel for respondent No.2, appellant/petitioner No.1, herein, Mohammad Yaqoob remained a Principal of the Public Model School in year 2006 and initially when the land was needed for the School, petitioner No.1 being a Principal gave his consent to get the land for construction of the "Madrasa Ghosia Mehria" and fully cooperated to construct building of the School and till 2012, he raised no objection in this regard, however, later on, he started litigation just to suffer respondent No.2. It has also been averred that respondent No.2, herein, is running the system of Madrasa by their own expenses and the land total measuring 3 kanal 07 marlas has been

transferred to “Madrasa Ghosia” through Waqf Deed dated 07.07.2010, which shows that the waqf land is under the ownership and possession of said Madrasa since 2010, moreover, 20 feet pathway was reserved by the private respondent between Mosque and Madrasa, however, petitioners, herein, in absence of respondent No.2, constructed house over 8 feet land but despite the alleged construction 12 feet pathway still exists therein at the spot.

8. It is crystal clear from the record that a detailed report regarding sanction of the land measuring 2 kanal 7 marlas as per “Regularization of Nautor of Khalsa Land Act, 1989” was submitted by Collector District Poonch and Tehsildar Abbaspur (time) after adopting due course of law and making spot inspection, sent the report to Assistant Commissioner Abbaspur which after necessary proceedings was sanctioned on 28.02.2008. The said “Waqf Deed” dated 07.07.2010 was registered and the Madrasa “Ghosia Mehria” constructed upon the waqf Land was also registered by Religious Affairs Government of Azad Jammu & Kashmir through its registration No.908 on 29.05.2012, hence, after its registration, the petitioners, herein, are not competent to initiate any sort of proceedings against the respondent or Madrasa, hence, the learned Member

(Judicial) Board of Revenue Azad Jammu & Kashmir has rightly dismissed the appeal of the appellant/petitioner No.1, herein.

As per scheme of Section 161 C (i) of the Land Revenue Act, 1967 second appeal is not provided against the decision where in first appeal basic and initial order was confirmed.

It is worthwhile to reproduce Section 161 C (i) as infra:-

“161. Appeals. (1) save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely;

- (a) -----
- (b) -----
- (c) to the Board of Revenue only on a point of law, when the order is made by a Commissioner, provided that:-
 - (i) when an original order is confirmed on first appeal, a further appeal shall not lie.”

9. It also reveals from the record that despite fact and factum of “Trust Deed” was brought in the knowledge of present petitioners but despite fact they have failed to challenge the registered “Trust Deed” before any fora. It is also pertinent to mention here that vide said trust deed, the land in question was further sanctioned in favour of the religious School which is legally an independent entity as per law and it is also an admitted fact that administration of the religious School (Madrasa) is also be granted jointly by

the petitioners as well as answering respondents, thus, it can safely be presumed that the property in otherwise has been given in the joint possession and use of both the parties for all its practical purposes, therefore, the stance of the petitioners seeking annulment of the sanctioned of the land in question is not tenable in the eye of law as the sectioned impugned herein has lost its importance after coming into being subsequent "Trust Deed" through which the land was transferred and sectioned in favour of religious School.

10. **Trite that extraordinary jurisdiction conferred under Article 44 of the Interim Constitution can only be exercised if the Subordinate Court/Tribunal or Fora of exclusive jurisdiction or for that matter, Board of Revenue as an apex fora in the hierarchy of revenue side exceeds its jurisdiction or acts without jurisdiction, Mere wrong decision on merit in paralance of factual controversies provides no room qua seeking indulgence of this Court in its extraordinary jurisdiction.**

(emphasis supplied)

11. Remedy of writ is an extraordinary remedy which is not available at random to set-aside/quash or reverse the findings of the such Tribunal/Board or quasi-

judicial fora constituted by special laws for adjudication of such like matter. Land in question now vests to a trust, moreover, site is being used for religious purpose. Waqf is created by permanent dedication of property lawfully owned by a person for specific purpose recognized under the Islamic Law as religious, pious or charitable. No particular mode is prescribed under the law for creating Waqf, hence, it may be made verbally or in writing. In Muhammadan Jurisprudence Abdur Rahim writes as infra:-

“The creation of a Waqf does not require the use of any particular words, but the intention to settle the property in perpetuity must be made clear whether by the use of the word Waqf or otherwise. If a Waqf is in the shape of an institution for public use, such as a mosque, a rest house for travelers, a burial ground and the like, some act is necessary by which dedication to public use may be inferred.”

In his book, Muhammadan Law, Syed Ameer Ali writes as under:-

“When the structure does not bear the shape of a mosque, or when there is no evidence of a declaration on the part of Waqif that he has constituted a building into a Masjid and the evidence of dedication depends on the performance of prayers within it, some lawyers have held such prayers should be with Azan and Ikamat. As the purpose of the mosque is that people should pray there is Jamaat, it is required that where there is no express dedication, prayer should have been offered there with Azan and Ikamat.”

Even otherwise, leaving aside the Waqf deed (registered) if a place has been used over decades for charitable or religious purpose, it would assume and acquire the character of Waqf property. Dedicator (واقف) loses the rights qua usufructuary rights or for that matter ownership rights over the said land, as it can only serve the purpose of Waqf.

(emphasis supplied)

Dedication of the property extinguishes the title of original owner ¹.

SQUEEZED ANALYSIS.

Admittedly, property has been transferred in favour of the (Ghosia Mehria Trust) and the fact is well within the knowledge of the other side, neither registered “Trust Deed” has been challenged at proper fora nor the aforesaid trust (existing as a legal body) has been arrayed as a party in the line of respondents. By its very nature, the land in dispute is a piece of crown land which was initially sanctioned in favour of the respondent under the scheme of Regularization of Nautor of Khalsa Land Act, 1989, which was duly transferred in the name of Trust and accordingly registered before Registrar Abbaspur under registration number 908 on 29.05.2012. Hypothetical stance of the

¹. 1997 MLD 299 Haq Nawaz Vs. Province of Punjab.

petitioners qua factual controversy even otherwise is not tenable and wroth consideration as per report of Tehsildar referred by the Commissioner in his decision dated 16.01.2016. It is useful to reproduce the relevant lines as infra:-

”رپورٹ تحصیلدار عباس پور نقشہ تیز کے مطابق مزار شریف مولانا علی محمد منظور شدہ اراضی سے باہر واقع ہے۔ اراضی متدعوئیہ کے اردگرد اراضی نمبرات خسرہ 774, 770, 775 خالصہ محکمہ مال موجود ہے۔ پھر منظور شدہ رقبہ کے علاوہ ملکیتی اراضی سے رقبہ تعدادی 1 کنال جملہ تعدادی 3 کنال 7 مرلے رقبہ بحق مدرسہ غوثیہ مہریہ وقف ہو چکا ہے ایسی صورت میں راستہ وغیرہ کی بندش کا سوال تب پیدا ہوتا ہے جب اراضی متدعوئیہ رسپانڈنٹ کے نام ہو جبکہ رقبہ وقف ہو جانے کے بعد صورت حال مختلف ہوگئی ہے۔ مزار کے اردگرد رقبہ ٹرسٹ غوثیہ مہریہ رجسٹرڈ کے نام منتقل ہے جسکی وجہ سے مزار پر آنے میں کوئی دشواری نہ ہوگی۔“

Both the parties also submitted written arguments in support of their respective contentions; Petitioners in their written arguments repeated the assertion and grounds agitated in the petition and respondents also again highlighted their version. Written arguments offered are nothing more than rhetoric. Counsel for the respondents referred and relied upon the case of Tahir Majeed ² and contended that petitioners are not an aggrieved persons pertaining to the grant of “Teh-Zamenee” of Crown Land. Trite that land which vests with the Government and it is the Government to decide about the said land, no one else can be treated as an aggrieved party who randomly come forward by showing loyalties.

Writ petition at hand for the above multiple reasons is bereft of merit, mater concurrently been decided by

². T^o 2014 SCR 270 Tahir Majeed Vs. Azad Govt. & others

the revenue authorities merits no indulgence at all. Hence, the petition at hand is hereby dismissed with no order as to costs.

Muzaffarabad.

10.09.2024 (Saleem)

JUDGE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel accordingly.

JUDGE

(APPROVED FOR REPORTING)

JUDGE