

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.37/2009.
Date of inst. 06.10.2009.
Date of decision. 18.02.2022.

1. Muhammad Zulqarnain;
2. Muhammad Murslin;
3. Muhammad Murtaza;
4. Muhammad Mustafa, sons;
5. Resham Jan;
6. Azra Begum;
7. Kulsoom Begum, daughters;
8. Bano Bi widow of Muhammad Hussain;
9. Muhammad Shafi S/o Muhammad Din;
10. Pannu Khan Salim;
11. Muhammad Nasim;
12. Muhammad Yousuf S/o Kalu, caste 1 to 9 Mughal, and 11 to 12 Awan, R/o village Dabsi Tehsil Fatehpur Thakyala District Kotli.

..... Petitioners

VERSUS

1. Muhammad Pervaiz Khan;
2. Muhammad Rahim Khan;
3. Muhammad Naeem Khan;
4. Muhammad Zahim Khan;
5. Muhammad Zahir Khan S/o Muhammad Nazir Khan, caste Sudhan R/o village Dabsi Tehsil Fatehpur Thakyala District Kotli, Azad Kashmir;
6. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary Muzaffarabad;
7. Board of Revenue Azad Jammu and Kashmir Muzaffarabad;
8. Member Board of Revenue Azad Jammu and Kashmir, Camp Mirpur, Azad Kashmir;
9. Commissioner Mirpur Division Mirpur;
10. Additional Commissioner Mirpur Division Mirpur, Azad Kashmir;
11. Collector District Kotli, Azad Kashmir;
12. Assistant Commissioner Fatehpur Thakyala;
13. Tehsildar Fatehpur Thakyala;
14. Naib Tehsildar Fatehpur Thakyala.

.....Respondents

WRIT PETITION

Before: Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Sardar Ghulam Mustafa, Advocate, for the petitioners.
Nemo for the respondents.

JUDGMENT:

Through this petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the legality and correctness of judgment dated 23.08.2008 recorded by Member Board of Revenue has been assailed, whereby a revision petition filed by respondent No.3 was accepted while setting aside the order dated 08.01.2007 recorded by learned Additional Commissioner Mirpur Camp Kotli and Nautor in favour of respondents vide order dated 06.04.2006 was restored.

The learned counsel for the petitioners strenuously argued that the land in question is Ghair Mumkin chrand. The learned Advocate further argued that the private respondents never remained in possession of the said land, he submitted that Additional Commissioner Mirpur after detailed discussion, rightly cancelled the order dated 06.04.2006 but the learned Member Board of Revenue in a slipshod manner, called off the

order dated 08.01.2007 recorded by the Additional Commissioner, Mirpur. The learned counsel claimed that the impugned order is not speaking one, hence, liable to be annulled. The learned counsel further proceeded that one of the private respondents being employee of the Revenue Department maneuvered the entries in the Khasra Girdawari but in Jamabandi, the respondents are not entered as in continuous possession of the land, it is further claimed that under the Azad Jammu and Kashmir Regularization of Nautor and Grant of Khalsa Land Ordinance 1974 and Khalsa Land Rules, a land demarcated for common purposes cannot be sanctioned in favour of any person. In support of his submissions placed reliance on following case laws:-

1. 1999 SCR 158.
2. PLD 1192 Lahore 345.
3. 2005 PSC 1669.

As nobody appeared on behalf of the respondents despite service, therefore, they were proceeded ex parte.

I have heard the learned counsel for the petitioners and gone through the record of the case with utmost care and caution.

A perusal of the record reveals that land in question is entered as Ghair Mumkin Charand (grazing land) in the Jamabandi appended with the writ petition. As per section 2(v)

of the Azad Jammu and Kashmir Regularization and Grant of Khalsa Land Act, 1974, land which is used for village common purpose excluded from the definition of Khalsa land, hence, could not be regularized under section 3 of the said act which only deals with the land comes within the ambit of Khalsa land. For proper appreciation section 2(v) of the Azad Jammu and Kashmir Regularization and Grant of Khalsa Land Act, 1974, is reproduced as under:

2(v) "Khalsa land" means the land which is entered in the revenue record as such or which may be entered as such on any future date under any in law, but it does not include the demarcated forest and such other lands which are required for village common purposes."

Hence, the land used for village common purposes could not be regularized under section 3 of the said Act which only deals with the land comes within the ambit of Khalsa land. in favour of any body, reliance can also be placed on 2005 PSC 1669 relied upon by the learned counsel for the petitioners. The Member Board of Revenue also not denied the fact that the land in question comes within the category of Ghair Mumkin Chrand(grazing land) as defined in section 2(ix) of the said Act, Section 2(ix) of the said Act is reproduced hereunder:

2(ix) "Village common purposes" includes such purposes as grazing land, public roads, village paths, graveyards,

water points, cattle ponds, meeting places or such other purposes as may by past usage or common custom be established to be community purposes in a particular community; or such other purposes as may be prescribed by the Government.”

It is also confirmed by the Collector in the comments filed by him and by ignoring the entries of Jamabandi the learned Member Board of Revenue preferred to reverse the findings of Additional Commissioner just on the basis of entries in the Khasra Girdawaries despite the fact that presumption of truth lies with Jamabandi and not with Girdawaries. According to the report of Girdawar dated 14.08.2009 available at page 49 of the file the petitioners are in possession of the disputed land for the last 40 years in shape of houses and growing crops. The said report also reveals that private respondents in connivance with the revenue officials have managed to get entries of their possession in the Khasra Girdawaries which flagrantly negated by the entries in Jamabandi. The Member Board of Revenue while deciding revision petition skipped to judiciously ponder the revenue record and accepted the revision petition in an anomalous manner which is not warranted by law. It was also enjoined upon the Member Board of Revenue to pass a well reasoned and speaking order. My this view finds support from PLD 1992 Lahore 345. The Board of Revenue while passing the

impugned edict failed to apply its judicial mind particularly sine pondering this preponderant aspect of the case in hand that as per revenue record the disputed land is in use of village common purpose whereas the order passed by learned Additional Commissioner dated 08.01.2007 is a detailed and well reasoned which entails to be upheld.

In view of above, the instant writ petition is accepted while setting aside the impugned orders dated 23.08.2008 and 18.08.2009 by restoring the order passed by Additional Commissioner dated 08.01.2007.

Circuit Kotli,
18.02.2022(M.N)

-Sd-
JUSTICE

Approved for reporting.

-Sd-
JUSTICE