

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.434/20218.

Date of inst.26.02.2018.

Date of decision 22.04.2022.

Raja Junaid Rafique S/o Muhammad Rafique R/o Minha Tehsil
Pattikha Naseerabad, District Muzaffarabad Azad Kashmir.

Petitioner

VERSUS

1. Registrar/District Judge Muzaffarabad having his office at New District Complex Muzaffarabad.
2. Sub-Registrar/Senior Civil Judge Muzaffarabad having his office at New District Complex Muzaffarabad.

Respondents

3. Bibi Amina W/o Syed Muzaffar Ali Shah R/o Bala Noor Shah, Tehsil & District Muzaffarabad, Azad Kashmir.

Pro-forma respondent

WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Raja Mushtaq Khan, Advocate for the petitioner.

Rasheed Ahmed Mughal, Advocate for respondent No.3.

JUDGMENT:-

The titled writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, seeking aid of this Court by urging a specific relief in the following manner:-

“In view of above, it is very humbly prayed that by accepting this writ petition on behalf of petitioner, judgment of respondent No.1, dated 20.02.2018 as well as the order of respondent No.2 dated 23.01.2018 may kindly be set aside and it is further prayed that direct to respondent No.2 to register the sale deed dated 04.01.2018 in favour of petitioner according to land valuation notification dated 10.01.2017 for village Bala Noor Shah and notification dated 13.01.2018 is not applicable on above said sale deed.”

Precise facts culminating into filing of the instant writ petition are that petitioner is 1st class State Subject of AJ&K, who filed application before sub-Registrar/Senior Civil Judge Muzaffarabad for registration of sale deed on 04.01.2018, whereupon the learned sub-Registrar appointed local commission to record statement of executants in this regard. The local commission in compliance of the said order recorded statement of executants on 16.01.2018 and submitted its report on 23.01.2018. The sub-Registrar directed the petitioner to pay stamp duty and taxes as per notification dated 13.01.2018, through order dated 23.01.2018, which was challenged before the learned Registrar/District Judge Muzaffarabad. The learned 1st appellate Court after hearing the parties dismissed the appeal vide judgment/order dated 20.02.2018, hence, the captioned writ petition.

Learned counsel for the parties were directed to file written arguments vide order dated 30.03.2022 and needful has accordingly been done on behalf of the petitioner.

Raja Mushtaq Khan, Advocate filed written arguments filed on behalf of petitioner which are repetition of facts, hence, need not to reiterate here.

I have considered written arguments filed on behalf of the petitioner and minutely perused the contents of writ petition.

Fiat Justitia Ruat Caelum

Let the justice be done though the heavens fall.

Factual matrix ut suprat reveals that a valuation notification dated 13.01.2018, could be applicable retrospectively regarding a sale-deed which was presented for registration before the respondent No.2, much prior to the issuance of the above notification. This is the only question which calls for determination by this Court.

No cavil with the proposition that notification impugned herein, cannot be given retrospective effect to the extent of rights already stood created and that if same is beneficial it may be given retrospective effect on the analogy that an executive order/notification which is detrimental or prejudicial to the interest of a person cannot be operative retrospectively, however, a beneficial order issued by executive authority can be given retrospective effect.

Be that as it may, it is not jot down in the notification dated 13.01.2018, that it shall be operative prospectively. It is astonishing state of affairs that how the above notification can take colour in a prospective manner prospectively itself or for that matter how the said notification can be allowed to frustrate and fragile the vested legal rights of the people.

Judicial and executive power is a trust and is not absolute in any person/authority how high so ever, it may be. Such power is always guided by the principles of good conscience and justice.

The proposition involved in the instant lis is narrow as whether a notification (which imposes or enhances liabilities can apply retrospectively) no mathematical principle is required to

apply simple answer of the same is no any such like notification can be allowed to frustrate the legal vested rights of the concerned people, hence, it could not be read retrospectively for having not been so provided by the law giver.

Reliance in this regard is placed on the following precedents:-

- (i). Syed Rasheed Shah Vs. Azad Govt. and others [2016 SCR 1327].
- (ii). Messrs Elahi Cotton Mills LTD and others Vs. Federation of Pakistan through Secretary M/s Finance, Islamabad and 06 others [PLD 1997 SC 582].
- (iii). Imran Ali Vs. PSC and others [2013 PSC 1237].
- (iv). Jurists Foundation through Chairman Vs. Federal Government through Secretary, Ministry of Defence and others [PLD 2020 SC 1].

It is categorically been laid down in [1997 SCR 582] supra, that an executive order or notification which is detrimental or prejudicial to the interest of a person, the same cannot operate retrospectively. However, beneficial executive order/notification issued by executive functionary can be given retrospective effect.

Nub of above discussion is that by accepting the instant constitutional petition, decisions passed by the District Judge Muzaffarabad dated 20.02.2018 as well as order passed by the respondent No.2, dated 23.01.2018, are hereby set-aside. The respondent-2, is directed to register sale-deed of the petitioner in accordance with law holding the field when sale-deed was produced and submitted for registration as the notification supra dated 13.01.2018, cannot be applied and given effect to the transactions/deeds or any other instrument (coming within the ambit of same) which has been issued/prepared or submitted prior to issuance of the said notification. Parties shall bear their own cost.

Muzaffarabad,
22.04.2022 (MM)

-Sd-
JUDGE