

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No.61 of 2015,
Date of Institution. 04.03.2015,
Date of Decision. 03.05.2023.*

1. Raja Mehboob Khan S/o Abad Khan.
2. Raja Habibullah Khan S/o Raja Amir Zaman.
3. Raja Ashiq Khan.
4. Raja Liaqat Ali sons of Raja Gulzar Khan caste Rajput R/o Khairi Tehsil Dadyal District Mirpur AJ&K.

...Petitioners.

VERSUS

1. Member Board of Revenue AJ&K Muzaffarabad.
2. Asghar Jan, widow
3. Qamar Tasleem son,
4. Yasmeen,
5. Nasreen daughter (legal heirs of Sher Zaman deceased respondent).
6. Saleem Begum widow,
7. Rashid,
8. Abid,
9. Asif,
10. Akbar sons,
11. Naila,
12. Robeena,
13. Rehana daughters (legal heirs of Muhammad Nazir deceased respondent).
14. Muhammad Akram,
15. Muhammad Ashfaq sons,
16. Khalid Bi daughter (legal heirs of Muhammad Anwar deceased respondent).
17. Zohra Begum wife,
18. Zahid Iqbal,
19. Pervaiz Iqbal sons,
20. Sughra Begum.
21. Fazal Begum.
22. Kaneez Begum.
23. Zahida Begum alias Seedo daughters of Muhammad Abad Khan.
24. Allah Ditta son,
25. Allah Rakhi.
26. Jamila Begum daughters of Fateh Muhammad caste Rajpoot R/o Khairi Tehsil Dadyal District Mirpur AJ&K.

... Real Respondents.

27. Additional Commissioner Mirpur AJ&K.

28. District Collector Mirpur.
29. Extra Assistant Commissioner/Afsar Mall Mirpur.
30. Allah Ditta S/o Riasat Khan.
31. Jahangir Khan S/o Muhammad Iqbal.
32. Abdul Khaliq S/o Ghazan Khan.
33. Ghazanfar S/o Sher Afzal.
34. Rukhsana,
35. Raziat daughters of Sher Afzal.
36. Naseem Bi wife of Sher Afzal.
37. Gulfraz Khan S/o Alif Khan.
38. Abdul Khaliq S/o Muhammad Ismail.
39. Muhammad Rashid Khan S/o Khan Muhammad.
40. Muhammad Riaz S/o Jamal Din.
41. Muhammad Aslam S/o Bagh Ali.
42. Abdul Rashid S/o Subedar Muhammad Zaman.
43. Muhammad Mehrban,
44. Muhammad Suleman sons of Muhammad Hassan.
45. Muhammad Fazal S/o Khuda Bakhsh.
46. Muhammad Anwar S/o Nawab Ali.
47. Abdul Razaq.
48. Muhammad Nawaz sons Nathu Khan.
49. Muhammad Khalid.
50. Muzamal Khan.
51. Pervaiz Khan sons of Hukam Dad Khan.
52. Ghazi Khan.
53. Mehmood Khan.
54. Muhammad Tariq.
55. Zafar Iqbal sons of Muhammad Afzal.
56. Muhammad Fazal S/o Zumard Khan.
57. Ali Moosa sons of Gulzar Khan.
58. Shoukat Ali.
59. Raja Sahab Ali sons of Rasab Khan.
60. Balqees Begum widow of Muhammad Arbi.
61. Faisal S/o Muhammad Arbi.
62. Said Begum D/o Bostan.
63. Muzaffar Begum W/o Muhammad Riasat (daughter of Dhaman Khan).
64. Raja Ajaib Khan.
65. Muhammad Akram.
66. Muhammad Riasat sons,
67. Mst. Jani Begum.
68. Mst. Sarwar Jan daughters of Jahandad Khan.

69. Muhammad Sadiq.
70. Muhammad Sabir sons of Alif Din.
71. Gulnasab S/o Muhammad Sadiq.
72. Muhammad Aslam sons of Fazal Dad Khan.
73. Pervaiz Khan S/o Riasat.
74. Ghulam Hussain.
75. Muhammad Sadiq sons of Sher Baz Khan.
76. Basharat.
77. Nazakat sons.
78. Fazal Begum widow of Muhammad Aslam.
79. Shabir Hussain S/o Muhammad Sadiq.
80. Khurshid Ahmed S/o Muhammad Sadiq.
81. Muhammad Suleman S/o Mohkam Din.
82. Yasir Mehmood S/o Suleman caste Jat.
83. Azam Hussain S/o Qurban.
84. Mushtaq Hussain S/o Muhammad Alam.
85. Muhammad Riaz S/o Shahnawaz.
86. Abid Hussain.
87. Abdul Rehman S/o Zaman Ali Bhatti.
88. Muhammad Fazal S/o Muhammad Ismail.
89. Haroon S/o Abdul Razzaq caste Sheikh.
90. Muhammad Bashir.
91. Muhammad Rasheed sons of Allah Ditta.
92. Muhammad Fazal S/o Ismail.
93. Abdul Rashid S/o Abdullah.
94. Muhammad Yasin S/o Fazaldad.
95. Tariq Muhammad S/o Muhammad Alam.
96. Basharat S/o Muhammad Aslam caste Jat.
97. Zubaida Begum wife of Dost Muhammad.
98. Nisar Ahmed S/o Muhammad Alam.
99. Farzan Begum D/o Abad Khan.
100. Naseem Begum D/o Abad Khan.
101. Alif Noor,
102. Muhammad Bashir sons of Nathu Khan.
103. Nargis Begum D/o Hukam Dad.
104. Ghazi Khan.
105. Muhammad Tariq.
106. Muhammad Zafar sons,
107. Qamar Begum.
108. Faqar Begum.
109. Shehnaz Begum daughters of Muhammad Afazl.
110. Muzamal Begum widow,

111. Muhammad Fazal son.
112. Asia D/o Zumard Khan.
113. Jahangir Shaheen.
114. Koman.
115. Parveen Akhtar.
116. Hina D/o Lehrasab Khuna.
117. Rashid Begum.
118. Zar Begum.
119. Phulan Begum daughters of Ghazan Khan.
120. Raj Begum widow.
121. Sajid.
122. Ansar.
123. Yasir Muhammad Sons.
124. Shebaz D/o Malik.
125. Faisal
126. Asif sons.
127. Haroon.
128. Shahida Noreen.
129. Zarooof D/o Arbi Khan.
130. Zupan Begum.
131. Ameer Qabil.
132. Gulfraz Khan.
133. Shehzad Khan.
134. Zaheer Abbas Khan sons.
135. Shehnaz Begum.
136. Hamzad Begum daughters of Zar Khan.
137. Abdul Rashid S/o Abdul Mutlib.
138. Khalida Begum W/o.
139. Zulfiqar Ali Kiani.
140. Istafa Ali Kiani sons.
141. Musarat Begum.
142. Kareeza Begum.
143. Farhat Begum.
144. Nusrat Begum daughters of Ghalib Khan.
145. Muhammad Akram.
146. Muhammad Ishfaq.
147. Javed Khan sons.
148. Khalida Begum D/o Dost Muhammad.
149. Orangzeb S/o Dhaman Khan.
150. Maqsood Begum
151. Muhammad Ali son.
152. Maroof D/o Muhammad Riaz Khan sons of Feroz Khan.

153. Asghar Begum.
 154. Azmat Begum daughters of Fateh Khan.
 155. Muhammad Nawaz S/o Nathu Khan.
 156. Muhammad Ayub S/o Jalal Khan R/o Kheri Tehsil Dadyal
 District Mirpur.

... *Proforma Respondents.*

WRIT PETITION

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

PRESENT:

*Muhammad Farooq Minhas, Advocate, for the petitioners.
 Ahmed Saad Assistant Advocate General and Ch. Muhammad Reaz,
 Advocate, for the respondents.*

JUDGMENT:

Through the titled writ petition filed under [**Article 44**] of the [**AJ&K Interim Constitution, 1974**], the petitioners have solicited the following relief:-

“It is, therefore, humbly prayed that the impugned order of the learned Member Board of Revenue of Azad Jammu & Kashmir dated 28.04.2014 may kindly be declared illegal, unlawful, without jurisdiction as well as quashed. Any other relief this Hon’ble Court deems proper may also be granted in favour of the petitioners.”

2. As per stance taken by the petitioners, the impugned decision of Member Board of Revenue dated 28.04.2014 has been assailed through the petition in hand, whereby Member Board of Revenue reversed his own decision dated 22.11.2008 in the guise of powers of review without following the procedure provided in Section 8 of AJ&K Board of Revenue Act, 1993, which is as under:-

“8. Review of Orders by the Board:- (1) Any person aggrieved by a decree passed or order made by the Board and who, from the

discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient cause desires to obtain a review of the decree passed or order made against him, may apply to the Board for a review of judgment and the Board may, after giving notice to the parties affected thereby and after hearing them, pass such decree or order as the circumstances of the case require.

(2) Every application for a review of a decree or order under sub-section (1) shall be made within ninety days from the date of that decree or order.

(3) The Review of Order or decree passed by a Member may lie to Member but Review of order or decree passed by Full Board shall only lie to Full Board.”

3. The instant petition was initially admitted for regular hearing and now was placed before the Court for final arguments. Ch. Muhammad Reaz Advocate is present before the Court on behalf of respondents No.2 to 5 (legal heirs of Sher Zaman deceased respondent No.2) while Ahmed Saad Assistant Advocate General is present on behalf of official respondents.

4. I have heard learned counsel for the parties at some considerable length and perused the available record appended with the writ petition as well as with the written statement. Muhammad Farooq Minhas, Advocate, learned counsel for the petitioners vehemently contended that the impugned decision rendered by single member of Board of Revenue dated 28.04.2014 on the face of it is illegal, without

lawful authority and capricious as Member Board of Revenue brushed aside the scope of review while deciding the lis brought before him and rendered the decision by himself sitting over his own decision already passed whereas scope of review as per law in this regard is very limited and only a fresh material or deviation from law in the decision in review can be considered as a ground for getting review of the previous decision. It has further been added that the previous decision given by Member Board of Revenue dated 22.11.2008 was comprehensive enough and has been passed purely in legal manner through which the matter was remanded back to the Assistant Collector in the light of detailed report of Assistant Collector for de-novo probe and adjudication of the matter after providing opportunity of hearing to all the relevant people/parties. Learned counsel for the petitioners further contended that in fact the previous process of partition was not initiated and finalized by the relevant authorities in utter disregard of law as the petitioners and others who are in possession of the landed property as co-sharers and have constructed their houses over the said land have not been even summoned nor heard by any way. Lastly, learned counsel for the petitioners while supporting the previous decision passed by Member Board of Revenue dated 22.11.2008 requested to accept the instant petition and to remand the lis for a fresh decision.

5. While controverting the arguments advanced by learned counsel for the petitioners, Ch. Muhammad Reaz Advocate, representing the respondents No.2 to 5 (legal heirs of deceased

respondent No.2) submitted written arguments wherein he categorically alleged that the instant writ petition is meritless and the decision rendered by Member Board of Revenue by exercising the powers of review is completely in line with the scheme and spirit of law which warrants no interference at all. It has further been alleged in the written arguments offered by the respondents that the previous partition has been carried out in accordance with the scheme and spirit of law governing the review jurisdiction and all the pre-requisites for partition of the said land were fulfilled. He further alleged that the petitioners have failed to implead the necessary parties in the line of respondents. Learned counsel has also raised the objection qua maintainability of the writ petition on account of principle of laches and prayed for dismissal of the writ petition.

6. Learned Assistant Advocate General appearing on behalf of the official respondents endorsed the arguments advanced on behalf of respondents No.2 to 5 and also prayed for dismissal of the writ petition.

7. Be that as it may, a perusal of the decision dated 28.04.2014 reveals that Member Board of Revenue in his decision dated 22.11.2008 (listed with the writ petition as Annexure "PD") by reversing the decision of Commissioner dated 22.06.2006 exposed the following verdict:-

"ہم نے رپورٹ اہل کمیشن اور عذرات سائیلان کا جائزہ لیا ہے۔ ہم سمجھتے ہیں کہ اہل کمیشن نے سندنامہ کو لائق ترمیم قرار دیا ہے۔ اس لیے مسل ایکسٹرا اسٹنٹ کمشنر صاحب میر پور اسٹنٹ کلکٹر درجہ اول کو ریوانڈ کی جاتی ہے۔ کہ وہ مطابق رپورٹ اہل کمیشن سائیلان کے عذرات اور عدالت کی ڈگری کو زیر غور لاتے ہوئے بعد از سماعت فریقین ترمیمی سندنامہ جاری کرنے کی کارروائی کریں۔ ریکارڈ افسر مال میر پور کو ارسال ہو۔ حکم سنایا گیا۔ مسل بعد از تکمیل ضابطہ داخل دفتر ہو۔"

8. Through the impugned decision, the Member Board of Revenue by sitting over his own decision reversed the same by neglecting the scope of review ex-facie like exercise of powers of appeal. An appeal, review and revision are remedies bestowed by the statute having their own limitations and contours of jurisdiction. Thus, it also transpires that order/decision passed by Member Board of Revenue herein is also lacking the jurisdiction as the same is without mentioning any ground available for reversal of the decision visualized by the revisional powers makes the decision illegal and without jurisdiction. Even otherwise, a perusal of the previous decision dated 22.11.2008 also reveals that the same is just and proper which meets the ends of justice as through remand of the matter to Extra Assistant Commissioner Dadyal. No illegality has been committed in remand order as the Doctrine of Audi-alterm-partem requires to provide opportunities of hearing to all the concerned quarters prior to passing any order adverse or in favour of any of the parties. While in the instant case, the main grievance of the petitioners is that they have not been heard at the eve of previous proceedings of partition and they have neither been given any sort of notice for communication nor they were required to hear in making the case. Doctrine of audi-alterm-partem is a golden principle which is a symbol of transparency and fairness to all sort of proceedings by way of recognizing the right of hearing to the relevant people/parties in any matter; that too the right of fair trial has also been recognized by the AJ&K Interim Constitution, 1974, as a

constitutional fundamental right. Thus, no deviation and refuge from this material right can lightly be taken or ignored.

9. The fact of the matter is that the decisions of a special Tribunal or forum of quasi-Judicial capacity normally are not interfered in exercise of extra ordinary jurisdiction but where any impugned order or decision seems to have been passed by the relevant authority without taking into consideration the scope and sprit of law and contours of justice seems to have been violated, the High Court can adjudicate upon the matter in exercise of extra ordinary jurisdiction conferred under Article 44 of the AJ&K Interim Constitution. Member Board of Revenue misdirected itself in law and improperly purported to exercise the powers of review by embarking upon the well reasoned decision qua remand and de-novo probe and adjudication of the matter. Thus, he had acted outside the powers conferred on him by law.

10. Mere insertion of few stereotype lines without giving valid and plausible reasons with reference to the previous findings and factual matrix of the case, reversal of a decision in guise of powers of review is not warranted by law. Verbatim of the findings is useful to be reproduced as infra:-

"ہم نے مشمولہ ریکارڈ مسل، بحث وکلاء فریقین اور فیصلہ جات عدالت ہاء ماتحت کا بنظر عیبت جائزہ لیا۔ جائزہ سے پایا جاتا ہے کہ فیصلہ عدالت ہذا درست طور پر صادر نہ ہوا ہے۔ فیصلہ عدالت ہذا منسوخ کیا جاتا ہے۔ نظر ثانی ہذا منظور کی جاتی ہے۔ فیصلہ عدالت کمشنر ڈویژن مصدرہ 22.06.2006 بحال رکھا جاتا ہے۔ اگر حکم امتناعی جاری شدہ ہو تو منسوخ تصور ہو۔"

11. Fact finding report submitted by Additional Deputy Commissioner General Mirpur dated 20.04.2004 on the face of it seems concrete and comprehensive wherein he recommended as under:-

"لہذا مناسب ہوگا کہ معاملہ ہذا بورڈ آف ریونیو کو بدیں سفارش ارسال فرمایا جائے کہ بورڈ آف ریونیو دفعہ 164 کے تحت حاصل اختیارات کو بروئے کار لاتے ہوئے بصیغہ نگرانی سندنامہ و انتقال منسوخ کرے اور سابق صورت قبل از 10.09.1990 بحال کرے۔ مابعد اگر کوئی تقسیم کا قانونی حقدار ہو تو وہ تحت ضابطہ تقسیم کی کارروائی کروائے۔"

It is also evident from the above report that previous proceedings had not been carried out in accordance with law. Para No.6 of the report is liable to be reproduced as under:-

6- قرار حکم مورخہ 23.10.1986 میں مسلمان عجائب خان، خالق خان، عربی، رزاق، زاہد اقبال، نذیر، جہانگیر، ریاست، اللہ دین کو حاضر ہونا درج کیا گیا ہے۔ جبکہ جہانگیر خان، خالق خان اور راجہ حبیب اللہ کی طرف سے بیان حلفی بھی پیش ہوا ہے۔ کہ انکی طرف سے کوئی وکالت نامہ پیش نہ ہوا ہے۔ جبکہ جہانگیر خان اس وقت انگلینڈ تھا۔ ریاست اور عربی فوت ہو چکے ہیں۔ حکم متذکرہ کا بغور جائزہ لینے سے یہ بات سامنے آئی ہے کہ افسر مال صاحب خود بھی اس روز موجود نہ تھے۔ احکامات محررہ 10.01.1987، 10.03.1987، 06.04.1987 سے عیاں ہوتا ہے کہ مسؤلان کو طلب کیے جانے کا حکم صادر کیا گیا تھا مگر مورخہ 06.05.1987 راجہ محمد فاروق ایڈووکیٹ نے وکالت نامہ و جواب دعویٰ پیش کیا۔ مگر یہ ریکارڈ سے ظاہر نہیں ہوتا اور نہ ہی اس کا وکالت نامہ موجود ہے۔ اور بقیہ مسؤلان میں سے کس قدر تعمیل ہوئی یا نہ ہوئی اور نہ اس حکم سے یہ واضح ہے کہ جملہ مسؤلان کی تعمیل ہونے کی صورت میں کارروائی یکطرفہ عمل میں لائی گئی ہے۔ نہ ہی کسی بیرون ملک مسؤلان کے خلاف کوئی اشتہاریا متبادل تعمیل ہونے کا تذکرہ کیا گیا ہے۔ اور نہ ہی کارروائی مسل پر ایسا کوئی ثبوت دکھائی دیتا ہے۔ یہ عقل تسلیم کرنے سے معذور ہے کہ پورے دیہہ کے مالکان میں سے صرف پانچ اشخاص کو مسل میں حاضر ہونا ظاہر کیا۔ اور جواب دعویٰ پیش ہونے پر طریقہ تقسیم تجویز کر دیا گیا مورخہ 12.05.1987 کو صاحب افسر جلیس حاضر عدالت ہی نہ تھے جبکہ مورخہ 24.05.1987 کو طریقہ تجویز تسلیم کر کے مسل بغرض ترتیب نقشہ جات تحصیلدار صاحب بندوبست ڈیال کو ارسال کی گئی۔ اس قدر عجلت میں کارروائی تقسیم میں لائی گئی ہے کہ حیران ہونے بغیر نہیں رہا جاسکتا کہ اہلیان دیہہ میں سے بیشتر کو نہ تو فریق بنایا گیا اور نہ ہی انکو سماعت کیا گیا۔ بلکہ شملات کی نسبت عملہ مال نے جس قدر نقشہ جات مرتب کر کے مالکان دیہہ کو شملات تقسیم میں دی ہے۔ وہ نقشہ جات بھی خلاف صورت موقع مرتب کیے جانے پائے جاتے ہیں۔ مثال کے طور پر مختار نیگم وغیرہ گلہبار ولد فضلاد وغیرہ کے زیر قبضہ شملات کو بذریعہ نقشہ زہرہ وغیرہ کے حصہ میں ڈال دیا گیا ہے جو کہ اس اراضی سے تقریباً دو میل دور رہتے ہیں۔ جبکہ یہ اراضی نمبرات خسره 111، 106 ان کی مزروعہ رقبہ کے درمیان میں واقع ہے۔ جبکہ موقع پر گلہبار وغیرہ کی چار دیواری اور کٹھی کا ڈھانچہ موقعہ پر تعمیر شدہ اس وقت بھی موجود ہے۔ چند اشخاص کے نام یہ رقبہ تجویز کیا گیا ہے۔ ان کے قبضہ کی نسبت اہلیان دیہہ میں سے کسی نے بھی تائید نہ کی ہے اسی طرح راجہ حبیب اللہ خان ایڈووکیٹ کی نسبت موقع پر یہ دیکھا گیا ہے۔ کہ جس جگہ پر سائل مذکور اور اس کے بھائی کے مکانات تعمیر شدہ ہیں اور شملات اسکے قبضہ میں موقعہ پر موجود ہے مگر پٹواری یا گرد اور حلقہ ترتیب کنندہ نقشہ جات نے خلاف صورت موقع شملات متبوضہ راجہ حبیب اللہ خان وغیرہ بھی کسی دوسروں کے نام تجویز کر کے انتقال تصدیق کر دیا گیا۔ علاوہ ازیں محبوب خان اور لہراست خان وغیرہ کے زیر قبضہ شملات کو بھی زیر نظر رکھے بغیر دیگر اشخاص گلتا سب خان وغیرہ وغیرہ کے نام تجویز کر دیا گیا اور راجہ شیر افضل اور راجہ حبیب اللہ پسران میر زمان جو کہ کھیوٹ نمبر 15 میں مالکان درج ہیں۔ انکو اس وقت تک کوئی شملات بوقت تقسیم نقشہ جات میں شامل نہ کیا گیا۔ اور سرسچا طریقہ تجویز میں درج شرائط کے نفیض نقشہ جات مرتب کر کے مستحق مالکان دیہہ کو اپنے جائز حقوق سے محروم کر دیا گیا ہے۔ اس طرح غلط تقسیم جو کہ صریحاً یعنی برفراڈ اور موقعہ کے نفیض اہلیان دیہہ کو فضول مقدمہ بازی میں الجھانے کیلئے Fictitious کارروائی تقسیم کی گئی ہے۔ اور بدوں سماعت انکو اپنے جائز حقوق سے محروم کیا گیا ہے۔ راقم جملہ کارروائی تقسیم کی مسل ملاحظہ کرنے اور گاؤں میں موقع پر جا کر سرسچا لیاں کو ذاتی طور پر سماعت کرنے کے بعد اس نتیجہ پر پہنچا ہے کہ جملہ کارروائی تقسیم خلاف ضابطہ اور بدوں سماعت مسؤلان عمل میں لائی گئی ہے جس میں صورت موقعہ کا لحاظ کیے بغیر تقسیم اراضی کا سندنامہ مرتب کیا گیا۔ جس کے نتیجے میں اب سارے موضع کے لوگ آہستہ آہستہ ایک دوسرے سے دست و گریبان ہو رہے ہیں۔ اگر اس صورتحال کی بروقت اصلاح نہ کی گئی تو یقیناً جملہ مالکان دیہہ کے درمیان شدید فتنہ و فساد پیدا ہوگا۔ موجودہ معاملہ میں شملات دیہہ کی تقسیم کا سندنامہ جاری کیا گیا جس کا انتقال نمبر 23 مورخہ 10.09.1990 کو تصدیق کیا جا کر تقسیم شدہ اراضی کا عملدرآمد مطابق سندنامہ و انتقال ریکارڈ مال میں ہو چکا ہے۔ یہ گھمبیر صورتحال پیدا ہو چکی ہے۔ جس کی اصلاح اب صرف اور صرف بورڈ آف ریونیو کی سطح سے عمل میں لائی جاسکتی ہے۔ لینڈ ریونیو ایکٹ 1967 کی دفعہ 164 کے تحت بورڈ آف ریونیو کو خود نگرانی کے وسیع اختیارات حاصل ہیں۔ اقتباس بذیل ہے۔

"164. Revision: (1) The Board of Revenue, may at any time, on its own motion, or on an

application made to it within ninety days of the passing of any order, call for the record of any case pending before or disposed of by, any Revenue Officer subordinate to it.”

12. Objections qua non-impleadment of parties and other hyper technical objections do not hold water and are repelled. Decision impugned herein is patently illegal, thus, technicalities should not be allowed to step in as Member Board of Revenue by passed the law and passed the impugned decision in utter disregard of law and norms of justice, (which is oozing from the record). Therefore, in exercise of the powers of judicial review and scrutinizing the record I have found that impugned decision is not sustainable in the eye of law and cannot be allowed to remain in field.

13. No cavil to the proposition that High Court would not sit as a Court of appeal on a decision/judgment of Court of special Tribunal in exercise of its constitutional jurisdiction but simultaneously such jurisdiction can be exercised where subordinate Tribunal/Court exceeded its jurisdiction or acted without jurisdiction. Ready reference in this regard is 2008 SCMR 322. High Court in its constitutional jurisdiction could interfere with the order passed by a tribunal of competent jurisdiction, however, said exercise had to be confined to examine that whether the order passed was in accordance with law or there was failure to follow the procedure prescribed in law.¹

14. Litmus test for invoking extra ordinary jurisdiction of the High Court conferred under Article 44 of the Interim Constitution qua

¹ 2013 SCMR 1595

annulment of a decision of any subordinate Court or Tribunal is to substantiate that decision sought to be set aside had occasioned some injustice to the petitioner, that too the said decision is outside the compass and four corners of law, otherwise, the High Court generally remains slow and cautious while embarking upon the findings of special Tribunal or Courts below and avoid to substitute its decisions for that of Tribunal of exclusive jurisdiction or subordinate Tribunal (whatever the case may be).

(Underlining is mine)

15. For the above multiple reasons, the impugned decision passed by Member Board of Revenue dated 28.04.2014 is hereby set aside and the matter in hand shall be deemed remanded back to the Assistant Commissioner Dadyal for deciding the same in accordance with law with an additional direction to expedite and finalize the same within 03 months by providing proper opportunity of hearing to all the concerned people/parties, particularly, the co-sharers and all the other occupants of the land by way of issuing notices and by adopting all other necessary/required measures in this regard. The petition stands accepted in the manner indicated above.

(Order announced).

Muzaffarabad,
May 03, 2023. (RA)

JUDGE

Approved for reporting.

JUDGE