

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 25/2021;
Date of institution. 14.01.2021;
Date of hearing. 23.06.2022;
Date of decision. 24.06.2022.

1. Raja Muhammad Riaz S/o Raj Muhammad;
2. Munir Ahmed S/o Muhammad Ismail;
3. Muhammad Akram S/o Muhammad Fazal Ahmed Khan;
4. Sikandar Hussain S/o Fazal Elahi;
5. Aamir Shahzad S/o Fazal Ahmed;
6. Muhammad Usman S/o Zaffar Iqbal;
7. Yasir Shahzad S/o Muhammad Yousuf;
8. Mirza Muhammad Akbar Baig S/o Shafi Baig;
9. Abdul Rasheed S/o Kifayat Ali;
10. Nasir Ali S/o Muhammad Latif;
11. Shahbaz Hussain Shah S/o Syed Bashir Hussain Shah;
12. Muhammad Bashir;
13. Muhammad Latif S/o Sain Khan;
14. Abid Saleem;
15. Masood Ahmed S/o Muhammad Saleem;
16. Tasawar Ahmed S/o Muhammad Tufail;
17. Sajjad Mehmood S/o Muhammad Bashir;
18. Akhlaq ur Rehman S/o Chaudhary Ghulam Hussain;
19. Muhammad Shahzad S/o Muhammad Akbar;
20. Wasim Ismail S/o Muhammad Ismail;
21. Khadim Hussain S/o Lal Din;
22. Basit Ali S/o Muhammad Zaman;
23. Tayyab Azam S/o Muhammad Azam R/o village Dheri Rustam/Khaliqabad Tehsil & District Mirpur.

..... Petitioners

VERSUS

1. Reference Judge Mirpur;
2. Asim Janjua Advocate Court Auctioneer;
3. Muhammad Yonus S/o Muhammad Yousuf;
4. Nasir Mehmood S/o Qurban Hussain;
5. Maqbool Hussain S/o Shah Muhammad;

6. Majid Shahzad S/o Walayat Hussain;
7. Muhammad Imran S/o Ghulam Muhammad;
8. Muhammad Shoaib S/o Fazal Hussain R/o Khaliqabad Tehsil & District Mirpur;
9. Taimoor Ali Khan S/o Muhammad Azam Khan R/o House No.25 Sector E/4 Mirpur;
10. Gul Nawaz S/o Hazoori R/o Pind Jattan Tehsil Samahni District Bhimber;
11. Ghulam Ahmed Khan S/o Allah Ditta Khan R/o Samahni District Bhimber;
12. Muhammad Azam S/o Abdul Rehman R/o Dheri Rustam Tehsil & District Mirpur;
13. Sultan Zumard S/o Abdullah R/o Khaliqabad Mirpur;
14. Muhammad Basit Ali S/o Muhammad Rafique R/o Dheri Phali Mirpur;
15. Zahoor Hussain S/o Abdul Aziz R/o Dheri Rustam Tehsil & District Mirpur;
16. Muhammad Ijaz Dilawar S/o Dilawar Khan R/o Kathar Tehsil Dadyal District Mirpur;
17. Raja Tahir Khan S/o Raja Sarwar Khan R/o Daora Tehsil & District Bhimber;
18. Maqsood Hussain Advocate S/o Farman Ali R/o Samahni District Bhimber;
19. Safdar Hussain S/o Sajawal Khan R/o Samwal Sharif Tehsil & District Mirpur;
20. Ghulam Ahmed S/o Allah Ditta R/o Samahni District Bhimber;

.....Real Respondents

21. WAPDA through Chairman WAPDA;
22. Azad Government through Chief Secretary Muzaffarabad.

..... Respondents

WRIT PETITION

Before:— Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Sardar Hamid Raza Khan, Advocate for the petitioners.

M/s Babar Ali Khan, Chaudhary Yasir Mehmood and Malik Qadeer Hussain, Advocates for respondents.
AAG for official respondents.

JUDGMENT:

The captioned writ petition has been filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974, to assail auction proceedings initiated by Reference Judge for payment of decretal amount to decree holders.

Detailed facts giving rise to this petition are, respondent No.24 filed an application for execution of decree dated 07.02.2007 before Reference Judge Mangla Dam Raising Project, Mirpur. Respondent No.2 after hearing the parties on the application ordered to auction the property of judgment debtor/WAPDA. It is submitted that the auction property was under the use of inhabitants of village Dheri Rustam as grazing yard since long, hence, the same could not be auctioned by Reference Judge rather as per MOU signed between Govt. and WAPDA the land was in the ownership of the Govt. It is also stated that the advertisement regarding auction was also not published in a well known newspaper rather was published in a newspaper which is not circulated in Mirpur.

Respondents appeared before the Court and contested the petition by filing comments, whereby the claim of the petitioners has been refuted.

During pendency of writ petition the petitioners filed application for impleading decree holders in line of respondents. The other side filed objections on the application. Arguments on the application as well as preliminary arguments have been heard.

The learned counsel for the petitioners reiterated the facts and grounds raised in the writ petition and argued that an application for impleading necessary party can be filed at any time and no time period for impleading necessary party in the line of respondents is provided by law rather the Court has to decide such applications keeping in view the circumstances of the each case. It is also contended that the instant case is at initial stage hence, it is in the interest of justice to allow the said application. In alternative, it was submitted that the decree holders are not necessary party rather they are proper party hence, in absence thereof the writ petition is maintainable. On merits of the case, it was claimed that Reference Judge was not competent to auction the land which was in the ownership of govt. hence, requested for the admission of the writ petition. He placed reliance on 1997SCR 239, 2001 SCR 45 and 2001 SCR 444

The learned counsel for the respondents opposed the application and zealously argued that a right has accrued in favour of the respondents which cannot be snatched by

allowing the petitioners to implead necessary party in the line of respondents and to fill up the said lacunas in presence of which the writ petition is liable to be dismissed. On merits he submitted that any person aggrieved from the order of Executing Court regarding auction of immovable property may move to the Executing Court for redressal of his grievance under Order 21 Rule 90 CPC and the order of Executing Court is appealable, hence, the instant writ petition is not maintainable in presence of alternate an efficacious remedy, hence, prayed for dismissal of the writ petition. He placed reliance on 2019 SCR 942.

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

The petitioners through the captioned petition have assailed the auction proceedings conducted by the Reference Judge Mirpur for satisfaction of decrees of the Court passed in favour of decree holders, who are required to be impleaded in the line of respondents. The instant writ petition No.25/2021 has been filed on 14.01.2021, whereas the applications for impleading decree holders in line of respondents have been filed on 12.05.2022 after an inordinate delay of more than one year, hence liable to be dismissed as held in 2012 SCR 181 and 2013 SCR

222. The learned Apex Court of Azad Jammu & Kashmir in 2019 SCR 942 has held that a right accrued in favour of a party cannot be snatched. Under law who seeks relief of the Court must approach the Court within a reasonable time and law does not help the indolent. Due to negligence of the petitioners, a right has accrued in favour of the respondents which cannot be snatched and the petitioners cannot be allowed to fill up the lacunas of their case at belated stage as held in 2003 SCR 74 and 2000 SCR 153, therefore, the application filed for impleading decree holders in line of respondents is hereby, rejected.

The contention raised by the learned counsel for the petitioners that decree holders are not necessary party rather are proper party has no substance because auction has been made on their applications to satisfy the decree upheld by the learned Apex Court in their favour and after auction proceedings they have received the decretal amount, hence, they are directly affected if any adverse order is passed, thus, they are necessary party. Reliance may also be placed on 2005 SCR 57.

As far the merits of the case are concerned under Order 21 Rule 89 and 90 C.P.C any person whose interests are affected by the sale of immoveable property sold in execution of a decree may apply to the Executing Court to set-aside the

sale on the ground of a material irregularity or fraud in publishing or conducting it and if the said application is disallowed under Order 21 Rule 92 CPC then said Order is appealable under Order 43 Rule I(j) of the CPC within a period of ninety days from the date of sale under Article 166 of Limitation Act, 1908 and said time period can be extended in case of delayed information of any fraud under Article 18 of Limitation Act, 1908, hence, the extra ordinary constitutional writ petition, in presence of statutory remedy available to the petitioner is not maintainable, thus, liable to be dismissed on this sole ground. Reliance may be placed on 1981 SCMR 108 and 2019 SCMR 321.

Moreover, the petitioners have claimed the cancellation of auction proceedings on the ground that the said land is in their use for grazing cattle as a result of MOU signed between the Govt. and WAPDA but petitioners have not appended any proof regarding their said claim with the memo of writ petition and furthermore, admittedly the land was owned by WAPDA and the decree was also passed against WAPDA, thus, neither petitioners were necessary to be heard before passing order for auction of property nor any of their legitimate right was infringed through the impugned auction proceedings, hence, petitioners have got no locus standi to file the instant writ petition.

The crux and upshot of the above discussion is, the captioned writ petition is dismissed in limine for non-impleading necessary parties in line of respondents as well as on its merits.

Circuit Mirpur.
24.06.2022.

-Sd-
JUSTICE

Approved for reporting.

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JUSTICE