

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Writ Petition No. 03/2022;  
Date of institution. 10.01.2022;  
Date of hearing. 21.06.2022;  
Date of decision. 21.06.2022.

1. Shaheen Shareef;
2. Naseem Shareef;
3. Shameem Chaudhary;
4. Tazeem Chaudhary;
5. Sehrish Firdos;
6. Anum Firdos D/o Muhammad Shareef R/o House No.42  
Sector F/1 Tehsil & District Mirpur.

..... Petitioners

**VERSUS**

1. Municipal Corporation Mirpur through its  
Administrator/Chairman Municipal Corporation  
Mirpur;
2. Administrator/Chairman Municipal Corporation  
Mirpur;
3. Estate Officer Municipal Corporation Mirpur;
4. Encroachment Officer Municipal Corporation  
Mirpur;
5. Controller Encroachment Municipal Corporation  
Mirpur;
6. Building Inspector Municipal Corporation Mirpur;
7. Town Planner Municipal Corporation Mirpur;
8. Inspector Control Encroachment Municipal  
Corporation Mirpur;
9. Mirza Abdul Aziz S/o Fazal Kareem R/o House  
No.132-A Sector F/1 Mirpur;
10. Chaudhary Muhammad Shabbir;
11. Shakeel Ahmed S/o Muhammad Shareef R/o  
House No.42 Sector F/1 Mirpur.

..... Respondents

**WRIT PETITION**

**Before:— Justice Chaudhary Khalid Rasheed, J.**

**PRESENT:**

Sheikh Adil Masood, Advocate for the petitioners.  
Mr. Awais Ahmed Qureshi, Advocate for respondent No.1.  
Legal Advisor Municipal Corporation Mirpur.

**JUDGMENT:**

The captioned writ petition has been filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974, whereby approval of plan to change the use of land from residential to commercial regarding plot No.41 dated 01.02.2006 and permission for construction of plaza on the said plot dated 01.12.2021 have been assailed.

Detailed facts forming the background of the instant petition are, petitioners purchased house constructed on plot No.42 measuring one kanal situated at sub sector F/1 Mirpur vide transfer order dated 08.11.1982. It is further claimed that petitioner No.1 along with his family resides in the said house and plot No.41 is adjacent to the residential house of the petitioners which was a residential plot, however, private respondents with mala fide intention in connivance with official respondents obtained permission on 01.12.2021 for construction of plaza on the said plot which is coram-non-judice and against the rules and regulations governing the matter.

The respondents contested the petition by filing written statement and refuted the claim of the petitioners.

The learned counsel for the petitioners reiterated the facts and grounds already taken in the writ petition and submitted that under clause 26(a) of Azad Jammu & Kashmir Building Regulations, 2006, conversion of residences into commercial building or any change of use of land is out of the jurisdictional domain of the official respondents. The learned counsel further argued that transfer of land use from residential to commercial dated 01.02.2006 was not in the knowledge of the petitioners which was obtained secretly by the private respondent in connivance with official respondents and the same kept secret but came into the knowledge of the petitioners when private respondent started commercial construction on the said plot. The learned counsel further solicited that petitioners approached the official respondents for redressal of their grievance but failed to get any relief. It is further contended that as per condition No.2 of the approval dated 02.02.2006, it was necessary for the private respondent to obtain NOC from the petitioners whose plot is adjacent to the plot in question but private respondent failed to comply with the requirement of clause 13 of the Azad Jammu & Kashmir Building Regulations, 2006, hence prayed for acceptance of the writ petition.

While controverted the arguments advanced by the learned counsel for petitioners, the learned counsel for respondent No.9 zealously held that the impugned orders are just, in line, consonance and nexus with the relevant provisions of law. He submitted that an alternate remedy of appeal under clause 86 of the Azad Jammu & Kashmir Building Regulations, 2006 is available to the petitioners, hence, the instant writ petition is not maintainable. The learned counsel further argued that the approval of plan to change the use of land from residential to commercial has been issued in favour of the private respondent before the promulgation of Regulations, 2006, hence the same are not applicable to the case of the petitioners rather at that time Azad Jammu & Kashmir Local Government (Amendment) Act, 1999 was holding the field which authorized under section 15 to the committee to change the use of land of any plot, therefore, respondents have not committed any illegality while changing the use of plot No.41 from residential to commercial. He also stated that the land use was changed in 2006 and the writ petition has been filed in 2022, hence is also hit by the principle of laches.

The learned counsel for respondents No.1 to 8 adopted the arguments advanced by the learned counsel for

the private respondent No.9 and prayed for dismissal of the writ petition.

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

It is not disputed between the parties that plot No.41 situated at sector F/1 Mirpur was a residential plot and it is also not denied by the respondents that plot No.42 owned by the petitioners is adjacent to plot No.41. Clause 26(a) of the Azad Jammu & Kashmir Building Regulations, 2006 is very much clear that conversion of residences into commercial buildings or any change of use of land shall not be allowed, thus it can safely be said that any change in use of land is coram-non-judice, void ab-initio and violative of Regulations, 2006.

The contention raised by the learned counsel for the private respondent that the nature of land was changed prior to promulgation of Regulations, 2006 hence, the said regulations are not applicable to the case of the private respondent and the case of the private respondent is governed by Azad Jammu & Kashmir Local Government (Amendment) Act, 1999, if for the sake of arguments it is accepted even then Section 15 of the Act, 1999 provides that committee shall have powers to change the nature from

residential to commercial, the impugned approval dated 02.02.2006 has been issued with the approval of Administrator Municipal Corporation Mirpur and not by the Committee defined in Section 2(1)(a) of the Act, 1999 which postulates that “committee means the Mirpur Municipal Committee constituted under the Local Government Ordinance, 1979, as amended from time to time and as per said Ordinance Municipal committee has been defined in section 13 as under:

**Section 13: Municipal Committees:**

1. A Municipal Committee shall consist of such number of members as may by notification be fixed by the Government.
2. The elected members of Municipal Committee shall, in the prescribed manner elect one of member to be its Chairman/Vice Chairman.
3. The elected Chairman of a Municipal Committee shall be ex-officio members of the District Council.

Thus, on this ground too, the approval dated 02.02.2006 is illegal as it has been mentioned to be given by Administrator only on the recommendations of technical staff and not by the agency which is defined in rule 3(1)(a) of Regulations, 2006 as “Building control agency having jurisdiction in local areas of Municipal limits and master plan area.

Moreover, the permission for construction of plaza in pursuance of the said approval dated 02.02.2006 has

been issued on 01.12.2021 under the Regulations, 2006 and clause 13 of the said Regulations provides that every person who carries out building works shall comply with the directions and conditions illuminated to the approval. A perusal of approval dated 02.02.2006 reveals that it was enjoined upon the owners of the plot to obtain NOC from the neighbouring owners but said condition has not been complied with by the private respondent, hence, on this score too, the permission to construct plaza is liable to be rescinded.

The next contention of the learned counsel for the private respondent that the writ petition is hit by the principle of laches has no substance because permission for construction was given on 01.12.2021 and writ was filed on 10.01.2022, when the private respondent started construction of plaza on the disputed plot, thus, from the date of knowledge the writ petition is well within reasonable time and petitioners have specifically mentioned the secrecy of said approval in para No.3 of the petition, hence the impugned approval of plot to use it from residential to commercial and permission to construct plaza is violative of parent Act and Regulations governing the matter has been assailed within a reasonable time from the approval of construction order and if this practice of giving permission to

use residential plots into commercial shall be allowed to continue it shall spoil not only the whole master plan of the city but shall be a great inconvenience to the residents of the city, thus such practice entails to be discouraged.

The crux and upshot of the above discussion is, the instant writ petition is hereby accepted and approval dated 02.02.2006 and permission dated 01.12.2021 being violative of Azad Jammu & Kashmir Local Government (Amendment) Act, 1999 and Azad Jammu & Kashmir Building Regulations, 2006 are hereby declared as coram-non-judice, ab-initio void and of no legal effect.

Circuit Mirpur.  
21.06.2022.

-Sd-  
**JUSTICE**

Approved for reporting.

-Sd-  
**JUSTICE**