

HIGH COURT OF AZAD JAMMU AND KASHMIR
\KOTLI CIRCUIT/

Writ Petition No: 88/2019
Date of institution: 20.06.2019
Date of Decision: 02.05.2024

Mst. Shamim Akhtar daughter of Shah Muhammad wife of Talib Hussain Shakir, Khokhar by caste, resident of Pang Peeran Tehsil & District Kotli.

Petitioner

Versus

1. Custodian of the Evacuee property Azad Jammu & Kashmir, Muzaffarabad.
2. Muhammad Sharif son of Shah Muhammad,
3. Sardar Begum widow of Muhammad Azam,
4. Muhammad Akhtar son of Muhammad Azam,
5. Safia Begum,
6. Suriya begum,
7. Sajiya Begum, daughters of Muhammad Azam,
8. Perveen Akhtar,
9. Tanveer Akhtar, daughters of Muhammad Sharif,
10. Muhammad Rajab,
11. Muhammad Arif, sons of Muhammad Sharif, Khokhar by caste, residents of Pang Peeran Tehsil & District Kotli.
12. Deputy Rehabilitation Commissioner, Kolti.
13. Tehsildar/ARC, Kotli,
14. Girdawar Circle Pang Peeran, Kotli,
15. Patwari, Halqa Pang Peeran Tehsil & District Kotli.

Respondents

**WRIT PETITION UNDER ARTICLE 44 OF THE AZAD JAMMU &
KASHMIR INTERIM CONSTITUTION, 1974.**

Before: Justice Mian Arif Hussain, J.

PRESENT:

1. Malik Muhammad Zaraat, Advocate for the petitioner.
2. Mr. Rafi Ullah Sultani, Advocate for respondents No.2 to 11.

JUDGMENT :

Through the captioned writ petition, filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner has implored the following relief:-

“In view of the above stated submissions and grounds, it is, therefore, more graciously prayed that this writ petition may kindly be accepted and impugned judgment passed by the respondent No.1 dated 10.05.2019 may kindly be set aside and order to respondent No.1 to include the petitioner’s name as legal allottee in the proprietary rights dated 18.06.1987 according to her share and also as a legal heir of her father Shah Muhammad and mother. Any other relief which the Court may think just and proper, petitioner may be found entitled may also be granted.”

2. The precise facts, stated in the petition leading to filing of the instant writ petition, as per the claim of the petitioner are that respondent No.1, herein, issued certificate of Proprietary Rights, pertaining to survey Nos. 78,83 and 84 situated at village Pang Peeran, Tehsil & District Kotli on 18.06.1987. It is averred that in the aforesaid certificate, names of his brother, respondent No.2, herein and late brother Muhammad Azam were included, however, the petitioner's name has not been included in the said Proprietary Rights Certificate. It is claimed that as per "**Declaration Form**" bearing No.007556, petitioner's name is recited as a member of the family but her name was not included in the Proprietary Rights Certificate dated 18.06.1987, therefore, the petitioner filed a review petition before the Custodian, for inserting her name in the said certificate but the learned Custodian, without assigning any plausible reason, has rejected her review petition vide judgment & order dated 10.05.2019, hence, the petitioner was constrained to file the captioned writ petition.

3. The respondents, after admission of the writ petition for regular hearing, on court notice, filed written statement, wherein, they have refuted the claim of the petitioner in toto with the assertion that though the petitioner's name, as a family member is recited in the **Declaration Form** but allotment was made in favor of Muhammad Sharif, respondent No.2, herein, and his brother Muhammad Azam. It is claimed that the name of petitioner was not included in the allotment chit, so, she is not entitled to question the sanctity of PRTO. It is claimed that the petitioner challenged the sanctity and veracity of PRTO issued on 18.06.1987, in the year, 2019 through filing review petition, which was hopelessly time-barred and the same has rightly been dismissed by the learned Custodian, hence, the writ petition in hand, being devoid of substance merits dismissal with costs.

4. Arguments heard.

5. The learned counsel representing the petitioner, herein, after narrating the facts of the case at some length, submitted that in the light of contents of

Declaration Form, petitioner's name was included as a member of family of allottees but her name could not be inserted in the Proprietary Rights Certificate. The learned counsel maintained that for the purpose of correction in the PRTO, review petition was filed before the learned Custodian and it was enjoined upon the learned Custodian to amend/correct the entries of PRTO by recording the name of petitioner as an allottee. The learned counsel maintained that father of petitioner was surviving at that time but in order to defeat the legal heirs, father's name was also not included, which fact signifies that all the family members including petitioner, recited in the **Declaration Form**, were not listed in the allotment chit, so, PRTO being contrary to law and facts, is liable to be modified. While referring to the following case law, prayer has been made for acceptance of writ petition and abrogation of the impugned order dated 10.05.2019:-

1. 1996 SCR 359,
2. 1996 SCR 14, &
3. 2016 SCR 358

6. On the contrary, the learned counsel representing the respondents, herein, defended and supported the impugned order, on all four corners and argued with vehemence that the piece of land in dispute was allotted in favor of Muhammad Sharif and Muhammad Azam and not in the favor of the father of petitioner, and under law, in presence of descendants of said allottees, sister is not entitled to the inheritance of the deceased. The learned counsel maintained that the Proprietary Rights Transfer Order (PRTO) was issued in favor of the allottees, according to the allotment chit, so, the review petition has rightly been dismissed by the learned Custodian, in the light of record. The learned counsel maintained that **PRTO** was issued in the year, 1987 and the petitioner remained mum for decades and, filed the review petition in the year, 2019, which was hopelessly time-barred, hence, the same has rightly been dismissed by the learned Custodian. In support of his submissions, the learned counsel referred to and relied upon the following case law and solicited dismissal of writ petition with costs:-

1. 2016 SCR 90,
2. 2015 SCR 1229,

3. 2016 SCR 55,
4. 2013 SCR 1102
5. 2011 SCR 390 &
6. PLJ 2014 AJ&K 85

7. Having heard the learned counsel for the parties, I have also gone through the record, made available at the file with utmost care and consideration. The case law, referred to and relied upon by the parties has also been examined.

8. A contemplate perusal of the record reveals that in favor of the brothers of petitioner, herein, named, “Muhammad Sharif” and “Muhammad Azam” sons of Shah Muhammad, PRTO was issued on 18.06.1987.

9. Petitioner herein, while claiming herself, one of the family member of the allottees, relying upon a **Declaration Form**, bearing No.007556, questioned the propriety and veracity of PRTO, through filing review petition before Custodian of Evacuee Property on 24.01.2019.

10. The stance of the petitioner, herein, is that being daughter of Shah Muhammad and sister of “Muhammad Sharif” and “Muhammad Azam” her

name was also recited in the **Declaration Form** but at the time of preparation of file pertaining to allotment of evacuee property, her name was not included in the said application/file and ultimately, she was deprived of her lawful right, hence, PRTD issued in favor of only two brothers, being against the law and factual position, is liable to be rescinded.

9. The learned Custodian, after inviting objections from the other side and hearing the learned counsel for the parties, ultimately, declined the claim of petitioner, herein, vide judgment, impugned herein, with the observation that **in the light of record available at the file, neither the petitioner moved an application for the purpose of allotment, rather “Muhammad Sharif” and “Muhammad Azam” sons of Shah Muhammad moved such application, resultantly, in their favor allotment chit was issued in the year, 1968 and, ultimately, they were granted Proprietary Rights Transfer Order, hence, mere, recital of name in the “Declaration Form” does not bestow any right to the petitioner, herein, as the “Declaration Form”, simply deals with the matter**

of information regarding family members in terms of whole number of dependents etc. hence, being, mere a family member, petitioner herein, stands not entitled to be awarded the relief claimed for.”

10. During the course of arguments, the learned counsel for the petitioner focused on the point that admittedly, at the time of preparation of file for allotment, father of petitioner was surviving but his name was not included in the allotment chit, purpose of which was to deprive the other family members of their legal shares, likely to be inherited after demise of father of petitioner and respondents, herein, so, said act on behalf of respondent, being based on mala-fide, per se, disentitles them from claiming the sole proprietary rights regarding the disputed piece of land.

11. The said stance, to my mind, at this level is not available to the petitioner, as in the light of the record, available at the file, Muhammad Sharif and Muhammad Azam sons of Shah Muhammad, initiated the matter for the purpose of allotment, who, were accordingly granted the allotment chit, so, the

question of non-adding the name of “Shah Muhammad” in the permit, stands immaterial for the reason that, father of “Muhammad Sharif” and “Muhammad Azam” allottees, was at liberty to move such application on his behalf, but, such proceedings on behalf of Shah Muhammad do not appear to be initiated, hence, stance of mala-fide for the purpose of depriving the legal heirs of “Shah Muhammad” hardly attracts in the matter in hand.

12. Undisputedly, before amendment in the Pakistan Administration of Evacuee Property Act, 1957, brought in the year, 2004, under clause (b) of Section 2, it was provided that **“who acquires or has acquired, on or after the aforesaid date, by way of allotment or lease or by means of unlawful occupation or the illegal means, any right to, interest in or benefit from any property which is treated as evacuee property under any law for the time being in force in India or in any area occupied in India; or..”**

13. From the bare reading of the aforesaid provision of law, it was abundantly clear that an **“evacuee”** is

defined as a person, who has acquired by way of allotment or lease or by any means of unlawful occupation or illegal means, any right to interest in or benefit from any property, which is treated as an evacuee property.

14. It is evident that nothing is provided that allotment made to a person in the capacity of head of family would be deemed to be allotment in favor of all the family members.

15. Our said point of view lends support from a case law, reported as 2011 SCR 390, whereby, the Hon'ble apex Court of Azad Jammu & Kashmir, while dealing with the said proposition, relying upon "**Sain Khan's case**", has reproduced as under:-

"5. We have perused the relevant provisions contained in the Rehabilitation Act and the Pakistan Administration of Evacuee Property Act, and find that there is no such law that if any allotment is made to the head of a family, the same would be deemed in favour of all the members of such family. The perusal of section 18-A of the Pakistan Administration of Evacuee Property Act lends support to the view that the proprietary rights are to be transferred in favor of an 'allottee' and not to all the members of the

family. The price etc. of the land is also deposited by the allottee i.e. the head of the family and proprietary rights are also transferred to him. However, we are of the view that it is desirable that appropriate amendment is made in the Rehabilitation Act and the Pakistan Administration of Evacuee Property Act, so that the allotment made in favor of head of a family is deemed to be an allotment to all the members of the family according to their shares and not to its head only; otherwise, it may result in injustice to the other members of a family. It may be pointed out that the Courts of law are to interpret the law as it stands on the statute book and not as it should be. We are conscious of the fact that Sain Khan, appellant, father of Muhammad Yaqub, father-in-law of Mst. Shamshad Begum, respondent, and grandfather of her daughters, is depriving the said respondents of their due shares due to lacuna in the law but we are helpless in the view of the statutory provisions.”

16. In view of the above, it stands established that a person who acquires evacuee property, shall only be treated sole allottee and the other family members cannot claim any entitlement regarding allotment issued in favor of the sole allottee, **however**, through amendment introduced in the year, 2004, clause (b) of section 2 of the Act, *ibid*, has been amended and through an explanation of the said clause, it is provided that “**allotment made in favor of head of**

family shall be deemed to be allotment to all members of the family according to their shares.”

17. Admittedly, aforesaid amendment was brought in the light of observation recorded by the Hon'ble apex Court of Azad Jammu & Kashmir in “**Sain Khan's case**” **and** in view of the aforesaid amended provision of law, the allotment made in favor of head of family will be deemed allotted in favour of all family members **but** on the on one hand, in the matter in hand, the proposition is different that “Shah Muhammad”, father of petitioner, herein, being head of family has not been allotted the evacuee property, so, the petitioner, herein, being family member in the light of amended law cannot claim herself an allottee of the evacuee property and on the other hand, amended provision of law has not been given **retrospective effect rather** it will operate prospectively. In this regard, while dealing with the proposition of application of amended provision of law, the Hon'ble apex Court of Azad Jammu & Kashmir, in a case, reported as 2011 SCR 390, has observed that “**the golden principle of interpretation of statutes is that no statutes is to**

be construed to have retrospective effect unless its language so necessitates or unless it is expressly so provided. Held: where a matter stands decided and the decision attains finality as a transaction past and closed, the subsequent amendment in the law will not effect the decision in absences of express intention of law if it touches a right or existence of a right at that time unless expressly provided, it will not operate retrospectively.”

18. The Hon’ble apex Court, while dealing with the identical proposition of application of amended clause (b) of Section 2 of the Pakistan Administration of Evacuee Property Act, 1957, has ultimately, observed that the amendment will not operate retrospectively.

19. In the matter in hand, the allotment chit, in favor of “Muhammad Sharif” and “Muhammad Azam” was issued in the year, 1968, whereas, the PRTO was issued in their favor in the year, 1987, hence, the amended law also does not support the claim of petitioner, herein.

20. Furthermore, it deems apt to observe here that, petitioner herein, remained mum for decades and moved the review petition after elapse of scores of years, so, the learned Custodian has also rightly non-suited her on the score of limitation, too.

21. So far as, the case law referred to and relied upon by the learned counsel for the petitioner, herein, is concerned, the same, being containing distinguishable facts, narrated therein, is not applicable in the case in hand, hence, needs not to be discussed in detail.

22. The pith and substance of the above discussion is that, the writ petition in hand, being devoid of substance, is hereby dismissed with no order as to costs.

Writ petition dismissed.

Kotli Circuit.
02.05.2024

JUDGE

Approved for reporting.

JUDGE