

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 1348/2019.
Date of Institution 20.08.2019.
Date of decision. 12.06.2024.

Sohrab Younas S/o Muhammad Younas (Late) R/o Rawalakot, Azad Kashmir.

....*Petitioner*

Versus

1. Custodian of Evacuee Property Azad Jammu and Kashmir, Muzaffarabad.
2. Assistant Rehabilitation Commissioner/Tehsildar Rawalakot, Azad Kashmir.

Legal heirs of deceased respondents No.3 Muhammad Bashir Khan

3. Mst. Nazira Begum widow.
4. Saghir Ahmed Khan.
5. Zaheer Ahmed Khan.
6. Khalid Durrani.
7. Yasir Durrani, sons of Muhammad Bashir Khan.
8. Mst. Shazia Bashir.
9. Mst. Fozia Bashir.
10. Mst. Shagufta Khalil.
11. Mst. Shamim Akhtar.
12. Mst. Iram, daughters of Muhammad Bashir Khan, R/o Rawali, Tehsil and District Bagh.

....*Respondents*

WRIT PETITION

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

PRESENT:

Barrister Adnan Nawaz Khan, Advocate for the petitioner.
M/s Syed Nazir Hussain Shah Kazmi and Syed Muzahir Hussain, Advocates for respondent No.3.

Judgment:-

Through the titled writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner is seeking infra relief:-

“It is most respectfully prayed that this writ petition may graciously be accepted and the impugned order

dated 03.07.2019 (alongwith the order dated 30.12.2013 and notification dated 30.01.2014) may kindly be set aside and consequently, the allotment in favour of respondent No.3 may kindly be cancelled by declaring the same as illegal, void ab-initio and without any legal effect upon the rights of the petitioner by restoring the PRTO of the petitioner's father dated 07.03.1989 in its original form, in the interest of justice.”

Summarized facts of the case as per petitioner are that land measuring 5 kanal 6 marla from survey No. 163 was allotted to father of the petitioner (Muhammad Younis) vide allotment chit dated 22.12.1979. Petitioner contended that PRTO dated 07.09.1989 were issued in pursuance of allotment chit dated 22.12.1979 which was modified in compliance of ex-parte order of learned Custodian Evacuee Property dated 30.12.2013 on 30.01.2014 and allotment to the extent of 3 kanal was cancelled. Petitioner alleged that he and the proforma respondent had no knowledge of the order dated 30.12.2013 and modification dated 30.01.2014 (as they are residing in United Kingdom), thus, filed a review petition before the respondent No.1 (Custodian of Evacuee Property) on 28.09.2015 after getting knowledge of the order dated 30.12.2013 and modification dated 30.01.2014. Parties submitted written arguments before respondent No.1, consequently, the respondent No.1 dismissed the review petition of the petitioner vide impugned decision dated 03.07.2019.

Written statement has been filed on behalf of respondent No.3, wherein the claim of the petitioner has been negated and contended that all the allotment of father of petitioner was illegal, hence, PRTO was issued in his favour was also illegal and was rightly

cancelled/modified by the learned Custodian after due process of law. Respondent No.3 contended that land under survey No.163 measuring 2 kanals was allotted in the name of non-petitioner No.3 according to law and entitlement vide allotment chit dated 04.10.1969 out of land measuring 10 kanals 9 marlas, whereas, land measuring 3 kanals was illegally allotted in the name of Muhammad Younas vide allotment chit dated 22.12.1979, which was rightly cancelled by the learned Custodian.

Barrister Adnan Nawaz Khan, the learned counsel for the petitioner submitted written arguments wherein he contended that the matter of determination of respective rights of all the allottees of survey number 163 is still subjudice before Commissioner Rehabilitation in pursuance of order of learned Custodian, Evacuee Property dated 15.07.1997 and respondent No.3 by concealing this fact, filed review petition before learned Custodian and obtained the impugned order which is not sustainable on this sole ground as the same violates/contradicts the order of learned Custodian, Evacuee Property dated 15.07.1997 through which the respective rights of all the allottees are yet to be determined by the Rehabilitation Commissioner. The learned counsel prayed that by accepting the instant writ petition, the impugned order dated 03.07.2019 (alongwith the order dated 30.12.2013 and modification dated 30.01.2014) may be set aside and consequently, the allotment in favour of the respondent No.3 may kindly be cancelled by declaring the same as illegal, void ab-initio and without any legal effect upon the rights of the petitioner by restoring

the PRTO of the petitioner's father dated 07.03.1989 in its original form.

In reply, M/s Syed Nazir Hussain Shah Kazmi and Syed Muzahir Hussain Shah Kazmi, Advocates for respondent No.3 also submitted written arguments and contended therein that the allotment of father of the petitioner was illegal, hence, the Proprietary Right Transfer Order issued in his favour was also illegal and was rightly cancelled/modified by the learned Custodian after due process of law. The learned counsel vehemently contended that the subsequent allotment has no legal value in the eye of law, in this regard reliance has been placed upon 2000 SCR 547 and 2016 SCR 1014. The learned counsel forcefully contended that the second revision before the learned Custodian was not maintainable and has rightly been dismissed by the learned Custodian. In this regard, the learned counsel referred to and relied upon 2016 SCR 1014 and 2022 SCR 138. The learned counsel defended the impugned order on all counts and prayed for dismissal of the writ petition

I have gone through the written arguments and perused the record of the case with utmost care.

It depicts from record that land measuring 5 kanal 9 marlas out of survey No.163 was allotted in the name of father of petitioner (M. Youas) through allotment chit dated 22.12.1979 (listed with the writ petition as Annexure PA) and subsequently (PRTO) i.e. Property Rights Transport Order dated 07.09.1989 were also issued while modification was made in the (PRTO) in compliance of the ex-

parte order of learned Custodian Evacuee Property dated 30.12.2013 vide amended order dated 30.01.2014. It is an admitted fact reflecting from the decision impugned that order qua modification was given on back of the petitioner and proforma non-petitioners. It is useful to reproduce the relevant para of the decision of learned Custodian in this regard as under:-

”گوکہ عدالت ہذا کا فیصلہ یکطرفہ ہے لیکن مطابق قانون میرٹ پر فیصلہ ہوا ہے۔ مسؤلان کو کارروائی یکطرفہ ہونے کا کوئی فائدہ نہ دیا گیا ہے۔ ساٹلان کی الاٹمنٹ نمبر خسرہ مذکور سے بعض الاٹیان نے حقوق ملکیت بھی حاصل کر رکھے ہیں۔“

Whereas, the petitioner has taken a specific stance before the learned Custodian as to how the process of summoning of the petitioner itself is defective, resultant of which they could not defend their allotment at the eve of modification took place before the learned Custodian. Relevant para of the judgment impugned reveals as infra:-

”کونسل سائل نے یہ موقف بھی اختیار کیا ہے حکم نظر ثانی اس بنیاد پر صادر کیا گیا ہے کہ نوٹس کی تعمیل بدیں وجہ نہ ہو سکی کیونکہ محمد یونس (الائی) فوت ہو چکا تھا اور اسکے اہل خانہ UK میں رہائش پذیر ہیں، جبکہ نوٹس کی تعمیل نہ ہونے کے بعد اشتہار بسلسلہ آگاہی لوکل اخبار میں شائع کیا گیا جو UK جہاں محمد یونس کے ورثاء سائل و ترتیبی مسؤلان رہائش پذیر ہیں شائع نہ ہوتا ہے اور نہ ہی وہاں پڑھنے کیلئے بھیجا جاتا ہے بدیں وجہ سائل و ترتیبی مسؤلان کو معاملہ کی نسبت علیت نہ سکی۔“

At the outset another important fact going to the roots of case remained unattended by the learned Custodian while passing the impugned judgment that the learned Custodian pertaining to same property has remanded the matter with following directions:-

- (1) جملہ الاٹیاں کے زیر قبضہ رقبہ کی موقع کے حساب سے کیا صورت حال ہے؟
- (2) جملہ الاٹیاں نے الاٹمنٹ کس استحقاق کی بنیاد پر کروائی ہے؟
- (3) جملہ الاٹیاں نے جس استحقاق کی بنیاد پر رقبہ جات الاٹ کروائے ہیں انکے استحقاق کی چھان بین۔
- (4) نمبر خسرہ 163 سابق کی کل تعداد بندوبست سے پہلے کتنی برآمد ہوئی۔
- (5) کمشنر بحالیات مندرجہ بالا امور کی مکمل انکوائری کرتے ہوئے عدالت ہذا کو ارسال کریں تاکہ مابعد تحت قانون حتمی قرارداد صادر کی جاسکے۔

case titled

سردار سید محمد بنام سردار محمد یونس
سردار محمد یونس بنام سردار سید محمد

As per verification upon the application of the petitioner

Suhrab Younas, the learned Custodian verified as under:-

”8/4/2024 جناب عالی!

درخواست برآمد جاری فرمائے جانے تصدیق نسبت حتمی فیصلہ نظر ثانی مقدمہ بعنوانی سردار محمد یونس بنام سردار سید محمد خان پیش ہوئی۔ آمدہ درخواست کی روشنی میں ریکارڈ مقدمات کا ملاحظہ کیا گیا۔ ملاحظہ ریکارڈ سے پایا گیا کہ مقدمہ سید محمد خان بنام سردار محمد یونس خان زیر سماعت عدالت ہذا تھا۔ مقدمہ ہذا میں 15/7/1997 کو فیصلہ صادر کرتے ہوئے مثل بغرض انکوائری و تحقیقات کمشنر صاحب بحالیات کو زیر نمبر 2945/ مورخہ 13/7/1997 ارسال کی گئی تھی۔ جس پر تاحال کمشنر صاحب بحالیات کی جانب سے انکوائری رپورٹ موصول نہ ہوئی ہے۔ لہذا رپورٹ پیش خدمت ہے۔

معاون ریڈر

جناب کسٹوڈین

رپورٹ ملاحظہ ہوئی اصل درخواست حوالہ سائل ہو۔

دستخط

Custodian

Evacuee Property

AJ&K Muzaffarabad

In wake of the above factual matrix decision under challenge is not sustainable as; (1) modification took place in the allotment at the back of the necessary party M. Younas, that too summoning is defective, thus, doctrine of audil alteram partam has been violated, furthermore, right of fair trial under Right No.19 is recognized by the Constitution, ex-parte modification in the allotment without adopting due process of law and providing opportunity of hearing is bad in law. (2) As per direction of the leaned Custodian the

matter of entitlement of allottees of the land in dispute was remanded to the Commissioner (Rehabilitation) which is yet pending adjudication.

In this vista of the matter epitome of the above discussion is that the impugned decision of the learned Custodian dated 03.07.2019 is set aside. Case shall be deemed to be pending before the learned Custodian for denovo decision on merits, particularly, after receiving the supra report of the Commissioner and after giving full opportunity of hearing to the parties concerned.

Writ petition stands accepted in the above indicated manner. File shall be kept in archive.

Muzaffarabad.
12.06.2024.

JUDGE