

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(APPELLATE JURISDICTION)

**PRESENT:**

*Mohammad Azam Khan, C. J.  
Ch.Muhammad Ibrahim Zia, J.  
Raja Saeed Akram Khan, J.*

Civil appeal No.141 of 2014  
(Filed on 23.04.2014)

1. Dr.Munawar Ahmed,
2. Bushra Begum widow,
3. Naseem Akhtar,
4. Shamim Akhtar,
5. Mubaraka Begum, daughters of Muhammad Ismail (deceased), caste Gujjar, r/o village Goi, Tehsil and District Kotli through their attorney Mansur Ahmed.

....APPELLANTS

**VERSUS**

1. Muhammad Aslam,
2. Muhammad Ashraf,
3. Muhammad Saleem,
4. Muhammad Aftab, sons,
5. Motian Bi,

6. Fatima Bi,
7. Saleem Bi,
8. Khadijan Bi, daughters
9. Nazir Begum, widow of Muhammad Khan, d/o Bhadi, caste Malik, r/o village Goi, Tehsil and District Kotli.
10. Abdul Aziz,
11. Muhammad Akbar,
12. Muhammad Bashir,
13. Ghulab Begum, widow,
14. Muhammad Zafar,
15. Muhammad Mahroof,
16. Muhammad Javaid, sons,
17. Zulaikhan Begum, daughter of Munshi Khan,
18. Lal Muhammad son of Bhadi, caste Malik, r/o village Goi, Tehsil and District Kotli.
19. Custodian of Evacuee Property Azad Government, Muzaffarabad.
20. Deputy Commissioner (Rehabilitation), Kotli.
21. Revenue Officer/ARC Allotment, Kotli.
22. Collector Land Acquisition/Assistant Commissioner, Kotli.
23. Tehsildar/ARC (Possession), Kotli.
24. Patwari Halqa Goi, Kotli.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 25.03.2014 in writ petition No.01 of 2011)

-----

FOR THE APPELLANTS: Sardar Ejaz Nazir,  
Advocate.

FOR THE RESPONDENTS: Malik M.Zaraiat Khan,  
Advocate.

AMICUS CURIAE: Raja Hassan Akhtar,  
Advocate.

Date of hearing: 24.02.2016

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— This appeal by leave of the Court has been directed against the judgment of the High Court dated 25.03.2014, whereby the writ petition filed by the appellants, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the appellants, herein, filed a writ petition in the High Court, alleging therein, that the land comprising survey Nos.967, 1479-min, 968/1-min and 426,

measuring 51 *kanal*, 17 *marla*, situate at village Goi, was allotted to their father and Proprietary Rights Transfer Order (PRTTO), was granted in his favour on 26.08.2002. The private respondents challenged the said PRTTO by way of a review petition before the Custodian of Evacuee Property. The learned Custodian while accepting the review petition cancelled the PRTTO issued in favour of the allottee vide order dated 13.10.2009. They prayed for setting aside the order of the Custodian passed in review jurisdiction. The learned High Court after necessary proceedings, dismissed the writ petition vide impugned judgment dated 25.03.2014, hence, this appeal by leave of the Court.

3. The arguments were heard and judgment was kept reserved, however, while drafting the judgment, we felt advised that more assistance is required on the point;

whether the powers of review vested in the Custodian under section 43(6) of the Administration of Evacuee Property Act, 1957 can be exercised more than once or not? Upon this, the matter was re-fixed for hearing and a request was made to a senior member of the Bar, Raja Hassan Akhtar, Advocate, to assist the Court on the point.

4. Sardar Ejaz Nazir, Advocate, the learned counsel for the appellants argued that the impugned judgment of the High Court is against law and the facts of the case which is not sustainable in the eye of law. He submitted that the learned single judge of the High Court failed to adhere to law on the subject. He submitted the PRT0 issued in favour of the (allottee) the predecessor of the appellants was cancelled by the Custodian while exercising the powers of review, therefore, there was no other remedy available to the

appellants except to invoke the extraordinary Constitutional jurisdiction of the High Court, but the learned High Court failed to appreciate this aspect of the case. He lastly submitted that the powers of review vested with the Custodian are not unlimited. After exercise of powers of review by the Custodian, the matter has brought before the High Court. The learned High Court was not justified to dismiss the writ petition on the ground that alternate remedy in shape of review before the Custodian is available to the appellants.

5. On the other hand, Malik Muhammad Zarait Khan, Advocate, the learned counsel for the respondents strongly opposed the arguments advanced by the learned counsel for the appellants. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that the learned High Court has

rightly dismissed the writ petition in limine as the same was not maintainable in presence of alternate efficacious remedy. He contended that under section 43(6) of the Administration of Evacuee Property Act, 1957 there is no bar upon the Custodian to exercise the powers of review more than once. He has relied upon the cases reported as *Mumtaz Hussain and 11 others v. Muhammad Fazil Khan and another* [2000 SCR 600] and *Shaukat Ali and 6 others v. Custodian, Evacuee Property, Azad Jammu and Kashmir, Muzaffarabad and 2 others* [2013 SCR 1021].

6. The learned amicus curiae, Raja Hassan Akhtar appeared before the Court on 24.02.2016 and assist the Court while submitting that the powers of review under section 43(6) of the Administration of Evacuee Property Act, 1957 vested with the Custodian are not unlimited and the same cannot be

exercised more than once. He submitted that mere non-mentioning the number of review in the relevant provision does not mean that unlimited powers have been vested in the Custodian to exercise the powers of review more than once. He added that even in the Azad Jammu and Kashmir Interim Constitution Act, 1974, the powers of review of the apex Court are subject to the provisions of an Act of the Assembly or the Council or any rules made by the Supreme Court to review any judgment pronounced or any order made by it. Under the provisions of Order XLVI, rule 9 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 even entertainment of a second application for review is exclusively barred. The learned counsel referred to the cases reported as *Sahibrai v. The Custodian of Evacuee Property South Zone, West Pakistan, Karachi* [PLD 1957 S.C (Pak.) 63], *Manzoor*



*Ilahi Awan v. (1) The Rehabilitation Authority (2) The Custodian, Lahore* [PLD 1957 (W.P.) Lahore 228], *Ghazi Muhammad v. The Custodian Evacuee Property, West Pakistan* [PLD 1960 (W.P.) Lahore 862] and *Muhammad Shafi v. The Member (Cons) Board of Revenue, etc.* [NLR 1995 Revenue 53].

7. We have heard the counsel for the parties, Raja Hassan Akhtar, Advocate, the learned amicus curiae and gone through the record along with the impugned judgment. The learned High Court dismissed the writ petition in limine only on the ground that alternate remedy by way of review before the Custodian was available to the appellants. Thus, without entering upon the merits of the case, we intend only to concentrate to the question; whether the powers of review vested with the Custodian under section 43(6) of Administration of Evacuee Property Act, 1957

can be exercised more than once or not. In the case in hand, the Custodian, Evacuee Property cancelled the allotment/PRTTO issued in favour of the allottee on an application for review filed by the private respondents, meaning thereby, the Custodian exhausted the powers of review once on the application filed before it. To resolve the point; whether the Custodian can exercise the powers of review more than once, we have examined the relevant provision of the Administration of Evacuee Property Act, 1957, i.e. section 43(6), which reads as under:-

“The Custodian or Additional Custodian may on application made to him in this behalf within the prescribed period or of his own motion at any time and after giving notice to the parties concerned and the Rehabilitation Authority, review his own order or an order passed by his predecessor in office on any

ground whatsoever as the justice of the case may require:

Provided that no final order passed on or before the seventeenth day of November, 1956, declaring any person to be not evacuee or any property to be not evacuee property shall be reviewed."

From the bare reading of the supra provision of law, it appears that the Custodian can review his own order or an order passed by his predecessor in office on application made to him in this behalf within the prescribed period or of his own motion at any time and after giving notice to the parties concerned and the Rehabilitation Authority. Although, in the relevant provision, the number of review has not been mentioned, however, to ascertain the point whether mere non-mentioning of the number of review gives unlimited powers to the Custodian to exercise review powers time

and again, we have also examined the other relevant provisions dealing with the powers of review vested with the Courts. For instance, the power of review conferred upon the Supreme Court under section 42-D, of the Interim Constitution Act, 1974. The relevant Constitutional provision reads as under:-

**"42-D Review of Judgment of order by the Supreme Court.-** The Supreme Court shall have power, subject to the provisions of an Act of the Assembly or the Council and of any rules made by the Supreme Court, to review any Judgment pronounced or any order made by it."

In the Constitutional provision referred to hereinabove, the number of review has also not been mentioned, however, in the relevant provision i.e. Order XLVI, rule 9 of Supreme Court Rules, 1978, framed in furtherance of Constitutional provisions, it has been provided that:

“9. After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry.”

After going through the above referred statutory provisions, it may be observed here that there is no provision providing the second review application before the Supreme Court. Even the referred rule provides that second application for review shall not be entertained. Mere on the ground that no number of review has been mentioned in the Constitutional provision, it cannot be said that unlimited powers have been given by the Constitution to the Supreme Court to review its judgments/orders. It may also be observed here that the scope of review before the Supreme Court is also very limited and under Order XLVI, Rule 1 of the Supreme Court

Rules, 1978, the Supreme Court can review its judgment or order in civil proceedings on the grounds similar to those mentioned in Order XLVII, rule 1 of the Code of Civil Procedure. The relevant statutory provision, i.e. Order XLVI, Rule 1, of the Supreme Court Rules, 1978 reads as under:-

“1. Subject to the law and the practice of the Court, the Court may review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code, and in a Criminal Proceeding on the ground of an error apparent on the face of the record.”

According to Order XLVII, rule 1, CPC following preconditions are essential to exercise the review jurisdiction:- (i) when new and important matter or evidence has been discovered after the passing of impugned judgment, decree or order, which, after the

exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the judgment, decree or order were passed (ii) there was some mistake or error apparent on the face of record, found in the impugned judgment or order; and (iii) or for any other sufficient reason, it was necessary to obtain review of the impugned judgment, order or decree passed. The powers of review conferred by Order XLVII, CPC are indeed of a limited and exceptional nature intended only to correct errors arising out of specified reasons and circumstances, thus, rule 9 of Order XLVI of Supreme Court Rules rightly lays down that power of review shall not be invoked repeatedly by the parties to a cause. The Superior Courts in a number of pronouncements has held that the review proceedings cannot partake re-hearing of a

decided case. If the Court has taken a conscious and deliberate decision on a point of law or fact while disposing of a case the review cannot be obtained on the ground that the Court has taken an erroneous view or that another view on reconsideration is possible. Review also cannot be allowed on the ground of discovery of some new material, if such material was available at the time of hearing of appeal or petition but not produced. A ground not urged or raised at the time of hearing of petition or appeal cannot be allowed to be raised in review proceedings. Only such error in the judgment/order would justify review, which is self-evident, found floating on the surface or discoverable without much deliberation and have a material bearing on the final result of the case and once a review petition is dismissed no further petition of review can be entertained. It may also be



observed here that the practice of Supreme Court is not to review its orders/judgments unless there are exceptional grounds and compelling reasons. Reliance can be placed on the cases reported as *Mian Rafiq Saigol and another v. Bank of Credit & Commerce International (Overseas) Ltd. And another* [PLD 1997 SC 865], *Sikandar Abdul Karim v. The State* [1998 SCMR 908] *Dr. M.Fazil Zahir and others v. Mst. Begum Jand and others* [PLD 1966 (W.P) Lahore 53], *Lily Thomas v. Union of India*, [AIR 2000 SC 1650], *Raja Mohammad Arif Khan and another v. Regional HR Chief NBP and 3 others* [ 2014 SCR 564] and *Secretary Azad Jammu and Kashmir Council & another v. Muhammad Munir Raja & 2 others* [2015 SCR 474].

8. After combined study of the Constitutional Provision read with Supreme Court Rules and the case law referred to

hereinabove, it can safely be concluded that if the clog has been imposed upon the apex Court that 2<sup>nd</sup> review application cannot be entertained then how it can be allowed to the Custodian to exercise the review powers more than once merely on the ground that no bar has been imposed in the relevant provision of Administration of Evacuee Property Act, 1957. It may be observed here that mere non-mentioning the number of reviews in the statutory provision does not give the power to the Custodian to exercise the review powers on the wishes of the parties. In the case in hand, as the Custodian Evacuee Property while cancelling the allotment/PRT0 issued in favour of the appellants had already exercised the powers of review, therefore, in our considered view, the review powers of the Custodian had been exhausted. As the Custodian passed an order while exercising the review powers and

the same was challenged before the High Court by way of writ petition, therefore, the learned High Court was not justified to dismiss the writ petition on the ground that alternate remedy in shape of 2<sup>nd</sup> review petition before the Custodian is available to the appellants. If such like practice is allowed, there will be no end to the litigation rather the finality shall never be in sight which is against the scheme of law and the principle of natural justice.

9. It may be mentioned here that the Pakistan Administration of Evacuee Property Act, 1957 was adapted in Azad Jammu and Kashmir through the Azad Jammu and Kashmir Adaptation of Laws Act, 1959 passed under Council Order No.2159, dated 12.3.1959. At the time of adaptation, subsection 6 of section 43 as existing on the statute book in Azad Jammu and Kashmir was existing in Pakistan. Subsequently, the proviso to section 43(6) was

omitted through amendment Act, XLV of 1958 from the statute book in Pakistan. Later on, perhaps the legislature while realizing the fact *prima facie* an impression of unlimited review powers appears from reading of subsection 6, has wisely substituted the same with the following subsection:-

“(6) Clerical or arithmetical mistakes in any order passed by any Custodian under this Act, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Custodian concerned or his successor in office.”

The bare reading of section 43(6), now existing on statute book in Pakistan clearly shows that limited powers have been vested in the Custodian to review an order. It is worth mentioning that the Supreme Court of Azad Jammu and Kashmir is the highest Court of appeal in Azad Jammu and Kashmir and

against the judgment of this Court, no further remedy is available to a party, but despite that, limited review powers only once have been vested in the Court keeping in view the principle of administration of justice. It may be observed here that if the Supreme Court has not vested with the powers of review more than once on the ground that an endless chain of litigation may start then the view that the Custodian is vested with the unlimited powers to review its orders, does not appeal to a prudent mind as against the decision of the Custodian further remedy in shape of writ jurisdiction before the High Court and appeal before this Court is provided under law. Thus, while considering this aspect, it can safely be concluded that the Custodian is not possessed with unlimited powers of review rather the powers of review are limited and the same can be exercised once in a matter. In a case

reported as *Ghulam Nabi & 12 others vs. Custodian Evacuee Property & 10 others* [2000 SCR 158], this Court in the matters of successive review petition before the Rehabilitation Authorities adopted a plausible view while observing that:—

“8. The contention raised by the learned counsel for the respondent that successive review petitions could not have been filed by the appellants on the same facts and circumstances on which the first review petition was filed, we think that the contention of the learned counsel for the respondents is not without any substance. Although we have held in some of the cases that in the scheme of Rehabilitation Laws, the successive review petitions are not barred but the same does not mean that the successive review petitions should be filed on the same facts and circumstances which were existing at the time of filing of first review petition. In order to elaborate it may

be pointed out that in a judgment there is a glaring mistake appearing on the face of record or there appears some clerical mistake, the successive review petitions are not barred. Similarly, if the subsequent judgment under review suffers from such defect as pointed out above, the other review petition is not barred but it is not a rule of universal application that successive review petitions are permissible under all the circumstances.”

10. The learned counsel for the respondents referred to and relied upon the case reported as *Mumtaz Hussain and 11 others v. Muhammad Fazil Khan and another* [2000 SCR 600], wherein, this Court has held that subsequent review petitions under the Pakistan Administration of Evacuee Property Act, could be filed. However, in view of the findings recorded in the preceding paragraph, we are of the unanimous view that the

principle of law enunciated by this Court in the referred judgment as well as the cases reported as *Sardar Ali & others v. Karamat Ali Khan & others* [1993 SCR 226], *Azmatullah and another v. Ali Bahadur and another* [1996 CLC 254] and *Muhammad Akram & 4 others v. Custodian Evacuee Property and 3 others* [2010 SCR 426], cannot be enforced, therefore, we constrained to overrule these judgments and adopt the principle of law enunciated by the Lahore High Court in a case reported as *Muhammad Shafi v. The Member (Cons) Board of Revenue, etc.* [NLR 1995 Revenue 53] referred to and relied upon by Raja Hassan Akhtar, Advocate. It is pertinent to mention here that although, in that judgment section 8 of the West Pakistan Board of Revenue Act, 1957 was under consideration which deals with the review powers of the Board of Revenue, whereas, in the case in



hand, section 43(6) of the Administration of Evacuee Property Act, 1957 is under consideration which deals with the review powers of the Custodian, however, the basic question is common in both the statutory provisions that number of review has not been mentioned in the same, on the basis of which successive review petitions are filed. The Lahore High Court while dealing with the proposition has held that:

“No clear authority on the competence and maintainability of successive review applications under section 8 of the West Pakistan Board of Revenue Act, 1957 was brought to my notice by the learned counsel for the parties and I have also not been able to lay my hands on any. As far Rule 9 of Order XLVII, Civil P.C., there was a specific bar provided in it for successive review applications. Obviously, the object behind was to

prevent erosion from the finality of judgment of a competent Court. Successive applications for review on similar grounds jeopardized rule of res judicata firmly embedded in jurisprudence. Besides, it led to uncertainty also. In my opinion if a ground for review was available but was not taken in first application for review, rule of constructive res judicata precluded its agitation in the subsequent review petition. Otherwise, successive application on different grounds at different times could be filed time after time for their endless agitation. In that eventuality, finality shall never be in sight. Therefore, an aggrieved person must once take all the available grounds for review of the decision sought by him. If any ground is omitted by him, it could be added by amendment to the application for review. However, once a final decision was reached on review application, a subsequent application for review in absence of

clear available course must not lie. I am conscious of the fact that there was no express prohibition for a second review application in the West Pakistan, Board of Revenue Act, 1957 but it did not either expressly or impliedly exclude the general principle of res judicata and rule of finality of the judgment. Therefore, except for the clerical or arithmetical mistakes or accidental slips or omission in the decision which every Court, Tribunal or authority had inherent jurisdiction to correct, second application for review after the decision of the first on its merits could not be competently instituted."

11. In the light of above stated reasons, while accepting this appeal, the impugned judgment of the High Court is set aside and the case is remanded to the High Court with the direction to decide the same afresh in the

light of the observations made in the preceding paragraphs. No order as to costs.

Before parting with the judgment, we pay our gratitude and thanks to Raja Hassan Akhtar, Advocate, who rendered his valuable assistance while appearing as amicus curiae.

**JUDGE**

**CHIEF JUSTICE**

**JUDGE**

Muzaffarabad,

\_\_\_ .05.2016