

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.

1. Civil Appeal No. 115 of 2015
(PLA filed on 9.9.2015)

Arshad Mehmood s/o Faiz Muhammad, r/o House No. 309, Sector B-1, Mirpur through attorney Ch. Muhammad Afzal Khan.

....APPELLANT

VERSUS

1. Mirpur Development Authority through its Director General.
2. Director General, Mirpur Development Authority, Mirpur.
3. Revising Authority, Mirpur Development Authority, Mirpur.
4. Chairman Revising Authority, Mirpur Development Authority, Mirpur.
5. Secretary Revising Authority, Mirpur Development Authority, Mirpur.
6. Director Estate, Mirpur Development Authority, Mirpur.
7. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.
8. Tasleem Kausar, d/o Abdul Kareem, r/o Chittarpari, Tehsil Mirpur.
9. Aftab Hussain s/o Sh. Rehmat Hussain R/o H. No. 496C, Sector F-1, Mirpur.

...RESPONDENTS

(On appeal from the judgment of the High Court dated 9.2.2015 in writ petition No. 07 of 2009)

FOR THE APPELLANT: Mr. Masood A. Sheikh,
Advocate.

FOR THE RESPONDENTS: Mr. Khalid Rasheed
Ch., Advocate.

2. Civil Appeal No. 196 of 2015
(PLA filed on 23.7.2015)

Tasneem Akhtar w/o Muhammad Farooq Ahmed r/o
Chechian, Tehsil Mirpur.

....APPELLANT

VERSUS

1. Revising Authority, Mirpur Development Authority, Mirpur.
2. Chairman Revising Authority, Mirpur Development Authority, Mirpur.
3. Estate Officer, Mirpur Development Authority, Mirpur.
4. Director Estate Management, Mirpur Development Authority, Mirpur.
5. Abdul Rasheed s/o Chaudhary Noor Hussain r/o village Mian Mora, Tehsil Mirpur.
6. Waqar Ahmed s/o Muhammad Lal, resident of House No. 74, Sector F-2, Mirpur.
7. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.

...RESPONDENTS

(On appeal from the judgment of the High Court dated 18.5.2015 in writ petition No. 62 of 2008)

FOR THE APPELLANT: Mr. Riaz Inqalabi,
Advocate.

FOR THE RESPONDENTS: Mr. Javaid Najam-us-
Saqib, Advocate.

Date of hearing: 21.12.2016.

3. Civil Appeal No. 128 of 2015
(PLA filed on 1.6.2015)

Khalil Ahmed s/o Noor Din, r/o House No. 414,
Sector F-1, Mirpur.

....APPELLANT

VERSUS

1. Revising Authority, MDA through its Chairman MDA, Mirpur.
2. Chairman Revising Authority, Mirpur Development Authority, Mirpur.
3. Chairman Mirpur Development Authority, Mirpur.
4. MDA through its Chairman, MDA, Mirpur.
5. Estate Officer, Mirpur Development Authority, Mirpur.
6. Town Planner, Mirpur Development Authority, Mirpur.
7. Khawar Jarral s/o Mirza Ghous, r/o Satelite Town Gujrawala at present House No. 126, Sector, F-11, Mirpur.
8. Ajaib Hussain s/o Jala Din, r/o Sanwala Gurah Kharak, Tehsil and District Mirpur.

9. Khadija Bibi w/o Muhammad Bashir, r/o Nathia Town, Mirpur.

...RESPONDENTS

(On appeal from the judgment of the High Court dated 22.4.2015 in writ petition No. 11 of 2009)

FOR THE APPELLANT: Sh. Masood Iqbal,
Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 23.12.2016.

JUDGMENT:

Raja Saeed Akram Khan, J.— The above titled appeals by leave of the Court have been directed against the judgments passed by the High Court on 9.2.2015 & 22.4.2015, respectively, whereby the learned High Court in writ petitions No. 7 & 11 of 2009, ordered to return the writ petitions to the petitioner-appellants, herein, in the light of the principle of law laid down in the case reported as *Ghulam Hussain & 3 others vs. Muhammad Bostan and 3 others* [PLD 1995 SC (AJ&K) 38]. The writ petition No. 62 of 2008, filed

by Tasneem Akhtar, appellant, herein, in civil appeal No. 196 of 2015, has been dismissed by the High Court being not maintainable. As common questions of the facts and law are involved in the instant appeals, therefore, these are being disposed of through this single judgment.

2. The brief facts involved in appeal No. 115 of 2015 titled *Arshad Mehmood vs. Mirpur Development Authority & others* are that the petitioner-appellant, herein, filed a writ petition in the High Court on 24.1.2009, for setting aside the allotment/revising order of plot No. 132-B, situate at Sector G-1, Part-1, Mirpur made by the Revising Authority of the time. The learned High Court vide impugned judgment dated 9.2.2015, without touching upon the merits of the case returned the writ petition to the petitioner-appellant, herein, on the ground that vide Mirpur Development Authority (Amendment Act), 2014 (Act XXXIX of 2014), section 48-A, was substituted of 'The Mirpur

Development Authority Ordinance, 1974, through which an appellate Tribunal has been established for adjudication of the appeals regarding allotment, cancellation and revision of plots, therefore, an efficacious remedy is available to the appellant in shape of appeal before the Appellate Tribunal.

3. The brief facts involved in appeal No. 196 of 2015 titled *Tasneem Akhtar vs. Revising Authority, Mirpur Development Authority & others* are that the petitioner-appellant, herein, filed a writ petition in the High Court, alleging therein, that plot No. 2-N/2, measuring 1 kanal situate at sub-sector D-3, East, Mirpur, was allotted to him by Mirpur Development Authority (MDA) on 25.9.1995. A certificate has been issued on payment of the price of the plot by the concerned Estate Officer of the MDA, on 24.4.1998. It is further alleged that the Azad Jammu & Kashmir Government vide notification dated 17.11.2005, amended on 28.11.2005, declared the allotments

made during the period w.e.f. 9.7.1990 to 31.12.2001 as illegal without any justification and constituted a Revising Authority for scrutinizing the same. The learned High Court after necessary proceedings, dismissed the writ petition being not maintainable on the same ground that alternate efficacious remedy in shape of appeal before the Appellate Tribunal established under section 48-A, Ordinance IV of 1974, is available to the petitioner-appellants vide impugned judgment dated 18.5.2015.

4. The brief facts involved in appeal No. 128 of 2015 titled *Khalil Ahmed vs. Revising Authority, Mirpur Development Authority & others* are that the petitioner-appellant, herein, filed a writ petition in the High Court, alleging therein, that a plot No. 13-A, remarked as 13-B, sector, D-3, West, near Grid Station, Mirpur, allotted to the petitioner-appellant in alternative of plot No. 155, measuring 1 kanal, sector Gulshan Kashmir, Phase-III, Mirpur. The

respondents prepared a file in respect of plot No. 13-A, in the names of respondents No. 8 & 9 and cancelled the allotment of the appellant vide order dated 5.1.2009. The learned High Court, after necessary proceedings, vide impugned judgment dated 22.4.2015, returned the writ petition to the appellant on the same ground that vide Mirpur Development Authority (Amendment Act), 2014 (Act XXXIX of 2014), section 48-A was substituted of 'The Mirpur Development Authority Ordinance, 1974 through which the Appellate Tribunal has been established for adjudication of the appeals regarding allotment, cancellation and revision of plots, therefore, an efficacious remedy is available to the appellant in shape of appeal before the Appellate Tribunal. Hence, these appeals by leave of the Court.

5. M/s Masood A. Sheikh and Sheikh Masood Iqbal, Advocates, the learned counsel for the appellants, while arguing appeal No. 115 of 2015 &

128 of 2015, submitted that the learned High Court while handing down the impugned judgment failed to understand the real controversy involved in the matter. They further submitted that the learned High Court has wrongly returned the writ petitions to the appellants while holding that an efficacious remedy is available to them in shape of appeal before the Appellate Tribunal established in pursuance of the amendment made in 'The Mirpur Development Authority Ordinance, 1974'. They contended that the appellants filed writ petitions in the High Court on 24.1.2009 and 11.2.2009, whereas, the amendment through which section 48-A has been inserted, was not available at the time of filing of writ petitions as the same has been made on 9.10.2014, w.e.f., 10.11.2013. They added that there was no other alternate efficacious remedy available to the appellants except to invoke the extraordinary Constitutional jurisdiction of the High Court. They further contended that the writ petitions were filed in the year 2009, and the

learned High Court returned the same to the appellants after a lapse of more than 6 years without any justification which is not warranted under law. They further submitted that the judgment of the High Court has been passed on the strength of the case law reported as *Ghulam Hussain & 3 others vs. Muhammad Bostan and 3 others* [PLD 1995 SC (AJ&K) 38], which has no nexus with the case in hand. The learned counsel lastly argued that it was enjoined upon the learned High Court to decide the writ petitions on merits rather to decide the same on technical ground.

6. On the other hand, Mr. Khalid Rasheed Ch., Advocate, the learned counsel for the respondents, in appeal No. 115 of 2015, strongly controverted the arguments addressed by the counsel for the appellant. He submitted that the position was confronted with the counsel for the appellants at the time of deciding the writ petitions and they frankly conceded that the writ petitions

were not maintainable. Thus, the appellants cannot be allowed to take u-turn from earlier stance made before the High Court.

7. Mr. Riaz Inqalabi, Advocate, the learned counsel for the appellant, in appeal No. 196 of 2015, has also adopted the arguments advanced by the counsel for the appellants in appeals No. 115 & 128 of 2015. He further added that the learned High Court fell in error of law while holding that an efficacious remedy is available to the appellant in shape of appeal before the Appellate Tribunal established under section 48-A of the Mirpur Development Authority Act, 1974. He contended the learned High Court failed to understand that under section 48-A of the Mirpur Development Authority Act, 1974, the Appellate Tribunal has been constituted only to adjudicate the appeal filed against the orders made by the 'Board' regarding the allotments, cancellation and revision of the plots.

8. On the other hand, Mr. Javeid Najam-us-Saqib, Advocate, the learned counsel for the respondents, in appeal No. 196 of 2015, strongly controverted the arguments addressed by the learned counsel for the appellant. He submitted that the judgment passed by the learned High Court is in accordance with law which is not open for interference by this Court. He argued that the learned High Court while dismissing the writ petition has rightly held that an efficacious alternate remedy is available to the appellant in shape of appeal before the Appellate Tribunal.

9. We have heard the arguments of both the learned counsel for the parties and also perused the record made available. The learned High Court while handing down the impugned judgments has not reproduced the correct provision of law. As the sole point involved in the matter relates to the amendment made in 'The Mirpur Development Authority (Amendment Act), 2014 (Act XXXIX of

2014), therefore, we intend to reproduce here the same, which reads as under:—

“48-A. Establishment of Appellate Tribunal and adjudication of appeals regarding allotment, cancellation and revision of plots;- (1) There shall be established an Appellate Tribunal by the Government to adjudicate upon the appeals from orders made by Board, regarding allotment, cancellation and revision of plots and matters relating thereto.”

After going through the above reproduced amended section, it appears that the Appellate Tribunal has jurisdiction only to adjudicate upon the appeals from orders made by the Board, regarding allotment, cancellation and revision of plots and matter relating thereto, whereas, the proposition involved in the cases in hand is quite different. After going through the memo of writ petitions, it appears that the orders impugned before the High Court have not been passed by the Board, therefore, the provisions of amended section

(supra) were not applicable in the cases in hand. Even otherwise, the provisions of the amended law relied upon by the High Court was also not part of the statute at the time of filing of the writ petitions, which has been given effect from 10.11.2013, whereas, admittedly, all the writ petitions were filed in the years 2008 and 2009. Thus, it is clear that the amended law was not holding the field at the time of filing of the writ petitions. Therefore, the writ petitions cannot be disposed of on the strength of law which was not in existence at the time of filing of the writ petitions.

10. Mr. Khalid Rasheed Ch., Advocate, the learned counsel for the respondents, in appeal No. 115 of 2015, argued that the appellant is estopped by his own conduct as the writ petition being not maintainable was disposed of by the consent of his counsel. At this juncture, the learned counsel was confronted with the situation that the amended law i.e. section 48-A, has been

given effect from 10.11.2013, whereas, the writ petition was filed in the year 2009, therefore, the principle of estoppel is not applicable, as there is no estoppel against law and retrospective effect to law cannot be given mere by the consent of the parties. On this, the learned counsel for the respondent very graciously conceded the legal position.

In the light of what has been discussed above, the appeals are accepted and while setting aside the impugned judgments dated 9.2.2015, 18.5.2015 & 22.4.2015, the cases are remanded to the learned High Court with the direction to decide the same afresh on merits. No order as to costs.

Mirpur,
31.1.2017

JUDGE

JUDGE

CHIEF JUSTICE

Arshad Mehmood vs. Mirpur Development Authority & others

Tasneem Akhtar vs. Revising Authority, Mirpur Development Authority & others

Khalil Ahmed vs. Revising Authority, Mirpur Development Authority & others

ORDER:

The judgment has been signed. The same shall be announced by the Additional Registrar after notifying the learned counsel for the parties.

Mirpur,
31.1.2017.

CHIEF JUSTICE

JUDGE

JUDGE

