SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.153 of 2016
(PLA filed on 9.4.2016)

1. Ch. Muhammad Shoukat,
2. Ch. Liaqat Ali,
3. Ch. Muhammad Saleem,
4. Ch. Muhammad Naseem,
5. Muhammad Sarfaraz,
6. Muhammad Naeem,
7. Amir Mahmood, sons,
8. Mst. Saira Chaudhary, d/o Kala Khan, all residents of Kham Drang Gojra, Tehsil and District Muzaffarabad.

….APPELLANTS

VERSUS

1. Custodian of Evacuee Property, Azad Jammu and Kashmir, Muzaffarabad.
2. Sheikh Hafiz-ur-Rehman, s/o Sheikh Abdul Rehman, r/o Kham Drang Gojra, Tehsil & District Muzaffarabad.
3. Assistant Rehabilitation Commissioner, Muzaffarabad.
4. Tehsildar, Muzaffarabad,
5. Patwari Halqa, Gojra, Muzaffarabad.

….RESPONDENTS

(On appeal from the judgment of the High Court dated 31.3.2016 in writ petition No. 2477 of 2014)

FOR THE APPELLANTS: Syed Nazir Hussain Shah Kazmi, Advocate.

FOR RESPONDENT NO.2: Mr. Abdul Rashid Abbasi, Advocate.

Date of hearing: 17.1.2017.

JUDGMENT:

Raja Saeed Akram Khan, J.— The above titled appeal by leave of the Court has been directed against the judgment passed by the High Court on 31.3.2016, whereby the writ petition filed by the appellants, herein, has been dismissed.

2. The facts in brief are that the appellants, herein, filed a writ petition in the High Court alleging therein that the land measuring 22 kanal, 12 marla bearing survey No. 83 along with survey No. 42 and 37 was allotted in the name of *Alam Din* s/o *Imam Din*, (the predecessor of the appellants) on 8th March,

1950, as a local destitute. After the death of Alam Din, the land was transferred to *Kala Khan* and *Sain Khan* as legal heirs of the deceased on 14th May, 1970. The land measuring 3 kanal out of the survey numbers mentioned above was surrendered by Sain Khan and the same was allotted to *Sheikh Hafiz-ur-Rehman*, respondent No. 2, herein. It has been alleged that the appellants, herein, have not surrendered any other portion of the land except the land measuring 3 kanal. The appellants obtained the Proprietary Rights Transfer order (PRTO) of the land measuring 9 kanal, 15 marla, comprising survey No. 83, on 28th February, 1982. Feeling aggrieved, respondent No. 2, filed a review petition on 17th May, 2013, before the Custodian of Evacuee Property to the extent of land measuring 18 marla out of the survey No.83. The learned Custodian vide order dated 30th June, 2014, accepted the review petition and

cancelled the PRTO to the extent of the land measuring 18 marla. The order of the Custodian being against law is not sustainable. After necessary proceedings, the learned Chief Justice of the High Court through the impugned judgment dated 31st March, 2016, dismissed the writ petition, hence, this appeal by leave of the Court.

3. Syed Nazir Hussain Shah Kazmi, Advocate, the learned counsel for the appellants, argued that the judgment passed by the learned High Court is against law and the facts of the case, hence, not sustainable in the eye of law. He argued that under rules the limitation for filing the review petition before the Custodian is 30 days, whereas, the same was filed on 17th May, 2013, after a considerable delay of 31 years, which was hopelessly time-barred. The learned Custodian failed to resolve the question of limitation in a legal manner. The

learned High Court while dismissing the writ petition has also committed the same illegality. He contended that the learned High Court has not appreciated the record made available in its true perspective. He further submitted that the land measuring 18 marla comprising survey No. 83, was never surrendered by the predecessor-in-interest of the appellants before any competent authority. He averred that in this regard the statement of the father of the appellants was never recorded at any forum, therefore, the findings recorded by the learned Custodian are against the record. The learned counsel further averred that the affidavits relied upon by the Custodian and the learned High Court are not legally admissible documents. The learned counsel relied upon the cases reported as *Makhan Jan & 5 others vs. Custodian of Evacuee Property, Azad Jammu & Kashmir, Muzaffarabad and 2 others* [PLJ 2001 SC (AJ&K)

368], *Khawaja Ghulam Qadir and another vs. The Custodian Evacuee Property & 13 others* [2002 SCR 183], *Muhammad Aslam & another vs. Muhammad Rashid* [2006 SCR 11], *Bashir Hussain alias Muhammad Bashir vs. Custodian of Evacuee Property, Azad Jammu and Kashmir, Muzaffarabad and 5 others* [2012 SCR 384] and *Muhammad Khaliq & 10 others vs. Custodian Evacuee Property & 4 others* [2015 SCR 1229].

4. On the other hand, Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for respondent No. 2, strongly opposed the arguments addressed by the learned counsel for the appellants, while arguing that the judgment passed by the High Court is perfect and legal, therefore, no interference by this Court is warranted under law. He contended that the review petition was not filed under section 43 (6) rather it was filed under section 18-B of the Pakistan Administration of Evacuee Property Act,

1957 as amended in AJ&K through amending Act, III of 1987, (hereinafter to be referred as Act, 1957), wherein no period of limitation for filing of review petition in the matters enumerated therein, is prescribed. He further contended that the Custodian is a tribunal of exclusive jurisdiction and the findings recorded by the tribunal of exclusive jurisdiction are immune from interference in the writ jurisdiction. The appellants themselves have surrendered the land in dispute in favour of respondent No.2, therefore, they are estopped by their own conduct to challenge the order passed by the Custodian before the learned High Court. He argued that respondent No. 2 has constructed a house over the suit land but the appellants never raised any objection during the course of construction, thus, they have acquiesced. He further argued that respondent No.2 purchased the suit land measuring 3 kanal,

18 marla from the predecessor-in-interest of the appellants and since then he is in continuous possession of the same. He has relied upon the judgment of this Court delivered in the case titled *Ch. Muhammad Saeed and another vs. The Custodian of Evacuee Property and others,* (Civil Appeal No. 7 of 2014, decided on 13th November, 2014)*, Sardar Muhammad Hanif Khan and another vs. Raja Altaf Hussain Khan Rathore and another* [2000 SCR 464], *Azmatullah and another vs. Ali Bahadur and another* [1996 CLC 254], *Sardar Ali & others vs. Karamat Ali Khan & others* [1993 SCR 226] and *Muhammad Iqbal & 14 others vs. Custodian & 23 others* [2016 SCR 358].

5. We have heard the arguments of the learned counsel for the parties and gone through the record made available. The question of limitation has forcefully been argued by the learned counsel for the appellants while

submitting that the review petition/application before the learned Custodian was filed after a considerable delay of 31 years, whereas, under Rules the limitation for filing the review petition is 30 days. Before dilating upon the merits of the case, the question of limitation is required to be dealt with at first. According to the facts, respondent No.2, filed a review petition before the Custodian under section 43(6) of Act, 1957. Later on, during the course of proceedings, respondent No.2 moved an application for amendment in the review petition before the learned Custodian for seeking relief under section 18-B of Act, 1957, which was allowed meaning thereby that the application before the learned Custodian was moved under section 43 (6) read with section 18-B of Act, 1957. To appreciate the argument, it will be appropriate to reproduce below the relevant provision which reads as under:—

"43. Appeal, revision and review.- (1) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) 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."

Whereas, section 18-B of Act, 1957, reads as under:—

"18-B. (1) Notwithstanding anything contained contrary in any other law, for the time being in force, and without prejudice to the generality of the powers which already vest in him, the Custodian may cancel any allotment of evacuee property in the following cases:

(a) where an allottee has failed to comply with the terms and conditions of allotment within the meaning of section 18 of the Act;

(b) where an allottee has, to the satisfaction of the Custodian, voluntarily surrendered or abandoned the allotment;

(c) where the allotment has been made in violation of law or is without jurisdiction;

(d) where the evacuee property stands allotted to more than one person and it is necessary to determine the entitlement to allotment;

(e) where an allotment is in excess of the prescribed scale and it is necessary to bring the allotment within scale in order to confer

proprietary rights in accordance with law, upon such allottee. The Custodian shall exercise the powers of Multiple Judge under the Multiple Allotment Act, 1961, in cases processed or being processed for the grant of proprietary rights.

(2) The Custodian may eject summarily with the use of such force as may be necessary any person found in unauthorized possession of evacuee property or a person who is found by the Custodian to be an unsuitable person to hold such evacuee property or a person who in the opinion of the Custodian subsequently becomes unsuitable to hold such property.

(3) The orders passed by the Commissioner under subsection (3) and by Custodian under subsection (4) of section 18-A and subsection (1) of this section shall be final and

> shall not be called in question in any Court or authority."

The plain reading of the above reproduced statutory provisions, reveals that for review of an order under the provision of subsection (6) of section 43 and section 18-B of Act, 1957, there is no bar on the Custodian to exercise its powers on his own motion. The Custodian under these statutory provisions is vested with the vast *suo motu* powers of review. In the case in hand, respondent No.2, herein, filed a review petition/application before the Custodian and later on through an amendment in the review petition sought relief under section 18-B of Act, 1957. If the review petition had been filed under section 43(6) of Act, 1957, then the question of limitation could be raised by the appellants but after amendment in the review petition, the original review petition filed by respondent No. 2 was no more in existence. Moreover, it is settled law that after amendment

in the pleadings, the original pleadings loses its existence and only amended pleadings are taken into consideration. Reliance can be placed on an unreported case delivered by this Court titled *Azad Govt. & others vs. Iqra Sajjad & others* (Civil appeal No. 234 of 2016, decided on 9.2.2017)has observed as follows:—

> ".....The judgment of the High Court is based upon amended writ petition. The copy of the said amended writ petition has not been annexed with the petition for leave to appeal, which is a violation of Order XIII, rule 3(1)(ii) of the Azad Jammu & Kashmir Supreme Court Rules, 1978. As after the amendment of the pleadings the amended pleadings are taken into consideration and the original pleadings are become immaterial. The Supreme Court of Pakistan in a case reported as *Sardar Muhammad Nasim Khan vs. Returning Officer, PP-12 and others (2015 SCMR 1698)* observed as under:—

'4. Attending to the question of whether the amended pleading shall merge into the original pleading or otherwise, we have not been able to lay our hands on any case-law from our jurisdiction, however, some jurisprudence has been developed in foreign jurisdiction, such as in English case of *Warner v. Sampson and another* (1959)2 WLR 109 wherein the Court of appeal has propounded:- "*once pleadings are amended, that which stood before amendment is no longer material before the Court".* Per a judgment of Allahabad High Court reported as *Brij Kishore v. Smt. Mushtari Khatoon* (AIR 1976 Allahabad 399) it has been concluded:-"*the amended pleading alone should be considered and no reference ought to be made to the original pleadings while deciding an issue".* Another judgment from the same jurisdiction is B. Parbhu Narain Singh and others v. B. Jitendra Mohan Singh and another (AIR (35) 1948 Oudh 307) in which it has been held:- "*Court must take the pleadings*

in the case as they stand and leave out of consideration the pleadings as they stood before the amendment".

5. From the ratio of the above case-law and form our own understanding of law, we are of the considered view that principle of merger as put forth by the learned counsel is neither relevant nor shall apply in this situation, rather it is the principle of substitution which shall be attracted. For the determination and resolution of issues in disputes before the Court, it is the amended pleading which shall be taken into consideration and not the former pleadings. It is on the basis of the amended pleadings that the issues shall be framed; and if already so framed, shall be modified to either score off any existing issue or to add the issues arising out of the amended pleadings (note:- however in the cases where there is any unauthorized addition in the amended pleadings for scoring it off or for the purposes of confronting someone within the earlier pleadings as a previous statement; the earlier pleadings may

have some relevance). The amended petition in this case for all intents and purposes shall be final, independent and separate document (election petition) which had to be verified per the mandate of law. It is conceded by the learned counsel for the appellant, when confronted with the fact that the amended election petition filed by the appellant has not been verified in accordance with law, that if the original election petition is ignored from consideration, the amended petition will be hit by the provisions of section 55(3) and 63 of the Act. Obviously on account of the above, the impugned decision of the Tribunal is unexceptionable.

As regards the other argument of the learned counsel that ground 'h' and 'i', which were part of the amended petition, should be struck off or ignored from consideration and the Election Petition should be tried per its original contents, suffice it to say that, as has been opined above, once the original petition was replaced and substituted by the amended petition, the earlier

could not be restored to and it is not left to the choice of the appellant to fall back on the original petition and have the two grounds deleted for the resolution of the election dispute agitated by the appellant. Besides, the striking off of the two grounds mentioned above was not the case of the appellant before the Election Tribunal and such a prayer even does not fall within the purview of Order VI, Rule 16 of the Code of Civil Procedure, which stipulates the striking off the pleadings in the following terms:-

> '*Striking out pleadings.*— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.'

It may be pertinent to mention here, that per section 64 of the Act, Code of Civil Procedure is attracted and no case

> has been made out by the appellant in terms of the provisions ibid (for striking off the pleadings). It may further be added that even in the present appeal, the plea that grounds 'h' and 'i' to the amended election petition must be scored out has not been set out in particular, therefore, such plea cannot be allowed. In light of the above, no case for interference has been made out. Dismissed accordingly.'
>
> This petition for leave to appeal was not competently filed, hence, the same merits dismissal."

The respondent in the amended review petition has categorically raised the plea in ground (v) that the act of 'voluntarily surrender' by the predecessor of appellants is covered by section 18-B of Act, 1957, therefore, the PRTO may be cancelled while exercising powers under statutory provisions of section 18-B of Act, 1957. The case is fully covered under section 18-B(1)(b) of Act, 1957, therefore, the question

of limitation is not attracted in the case and the Custodian has rightly dealt with the point.

6. The learned Custodian has rightly held that section 18-B of Act, 1957, is a special provision which empowers the Custodian to cancel the allotment if it is proved to the satisfaction of the Custodian that the allottee has voluntarily surrendered or abandoned the allotment. The learned High Court also affirmed the view expressed by the learned Custodian while assigning cogent reasons which is not open for interference by this Court. Therefore, the argument of the learned counsel for the appellants that the question of limitation was not properly attended by the learned High Court is ill-founded. Reliance can be placed on an unreported case delivered by this Court titled *Chaudhary Muhammad Saeed & another vs. Custodian Evacuee Property & others (Civil*

Appeal No. 7 of 2014, decided on 13.11.2014),

wherein it has been held as under:—

> "6. .....The appellants herein, filed a combined petition for reviewing the PRTO and a petition for cancellation of allotment under the provision of section 18-B of the Pakistan Administration of Evacuee Property Act, 1957. A perusal of the judgment of the learned Custodian reveals that the review petition has been dismissed as being time-barred coupled with other grounds but the aspect of the matter under the provisions of section 18-B of the Administration of Evacuee Property Act, 1957 has not been considered. The plain reading of the statutory provision of Section 18-B of Pakistan Administration of Evacuee Property Act, 1957 clearly reveals that no limitation is prescribed for such application. Under this statutory provision, the Custodian is vested with the vast powers in addition to general powers already vested in him including the holding of inquiry. Under the provision

> of Section 30 of the Administration of Evacuee Property Act, even the Custodian while holding inquiry is vested with the powers of Civil Court in certain matters. Even otherwise, for review of an order under the provision of subsection 6 of section 43 of the Pakistan Administration of Evacuee Property Act, 1957 there is no bar on the Custodian to exercise such powers on his own motion. ....."

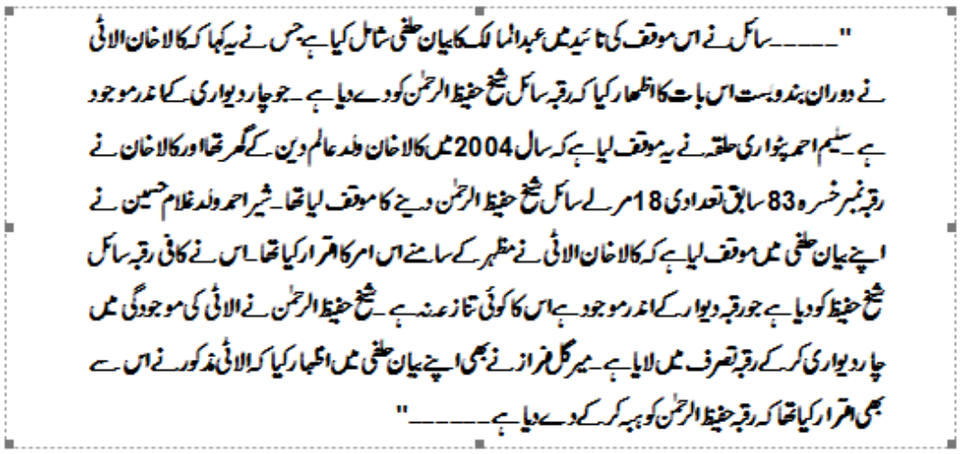
7. While adverting to the real controversy involved in the case, we have perused the record minutely. It appears that the land bearing survey No. 83 along with other survey numbers was allotted to *Alam Din* s/o *Imam Din*, (the predecessor of the appellants) on 8th March, 1950, as a local destitute. The land measuring 3 kanal, 18 marla was surrendered by the processor-in-interest of the appellants in favour of respondent No. 2, herein. After the death of Alam Din, the land measuring 15 kanal, 4 marla was transferred to *Kala Khan* and *Sain Khan* as

legal heirs of the deceased on 14th May, 1970. The land measuring 3 kanal was cancelled from the name of Sian Khan and allotted to *Sheikh Hafiz-ur-Rehman*, respondent No. 2, herein, whereas, the land measuring 18 marla could not be transferred in favour of respondent No.2. The appellants obtained PRTO of the land including the land measuring 18 marla, comprising survey No.83 (old), 508 (new) on 28th February, 1982.

8. It is also apparent from the record that respondent No. 2, herein, purchased the land comprising survey No. 83, measuring 18 marla from Kala Khan in lieu of Rs. 5000/- and the land was given in his possession. Respondent No.2, herein, constructed a house over the land surrendered by the appellants and also raised a boundary wall around the land in dispute. Neither the predecessor-in-interest of the appellants in his life time nor the appellants themselves have raised any objection in this

regard, therefore, the learned High Court has rightly held that the appellants by their own conduct have abandoned the allotment to the extent of dispute land measuring 18 marla. In support of his version, the leaned counsel for respondent No. 2, referred to the affidavits executed by *Abdul Malik, Saleem Ahmed, Patwari, Sher Ahmed, Mir Gulfraz,* and *Mistari Qasim*, who supported the version of respondent No.2. These affidavits were not rebutted by filing counter affidavits. The satisfaction of the learned Custodian in this case could have been challenged on the ground that the deponents of the affidavits produced from both sides, have not been examined by the Custodian but record shows that the appellants themselves have raised the plea before the Custodian that the documents/affidavits may be considered without summoning the deponents. Therefore, the learned Custodian was left with no option except

to consider the same and decide the review petition/application on the strength of the documents/affidavits available on record. In this regard, the learned Custodian in his order dated 1.12.2014 has recorded the findings in the following manner:—



"_____سائل نے اس موقف کی تائید میں عبدالمالک کا بیان حلفی شامل کیا ہے جس نے یہ کہا کہ کالا خان الاٹی نے دوران بندوبست اس بات کا اظہار کیا کہ رقبہ سائل شیخ حفیظ الرحمٰن کو دے دیا ہے۔جو چار دیواری کے اندر موجود ہے۔سلیم احمد پٹواری حلقہ نے یہ موقف لیا ہے کہ سال 2004 میں کالا خان ولد عالم دین کے گھر تھا اور کالا خان نے رقبہ نمبر خسرہ 83 سابق تعدادی 18 مرلے سائل شیخ حفیظ الرحمٰن دینے کا موقف لیا تھا۔شیر احمد ولد غلام حسین نے اپنے بیان حلفی میں موقف لیا ہے کہ کالا خان الاٹی نے مظہر کے سامنے اس امر کا اقرار کیا تھا اس نے کافی رقبہ سائل شیخ حفیظ کو دیا ہے جو رقبہ دیوار کے اندر موجود ہے اس کا کوئی تنازعہ نہ ہے۔شیخ حفیظ الرحمٰن نے الاٹی کی موجودگی میں چار دیواری کر کے رقبہ تصرف میں لایا ہے۔میر گل فراز نے بھی اپنے بیان حلفی میں اظہار کیا کہ الاٹی مذکور نے اس سے بھی اقرار کیا تھا کہ رقبہ حفیظ الرحمٰن کو ہبہ کر کے دے دیا ہے۔_____"

9. The argument of the learned counsel for the appellants that on the strength of the affidavits produced by respondent No.2, while accepting the review petition/application the allotment in favour of the appellants to the extent of land measuring 18 marla cannot be cancelled, has no substance. It may be stated here that respondent No.2, herein, furnished a list of the witnesses before the Custodian for

summoning them before the Court but the appellants resisted the same while stating therein that the documents/affidavits may be considered without summoning and examining the deponents. No reason whatsoever came on the record that why the appellants were reluctant to summon the deponents as witnesses before the Custodian in support of affidavits sworn by them. In this scenario, the learned Custodian has rightly relied upon the same while assigning the strong reasons. Nothing has come on record in rebuttal that the construction over the land in dispute by respondent No.2, herein, was not raised in presence of the deponents who sworn the affidavits in this regard. In this state of affairs, there was no occasion for the learned Custodian to disbelieve the affidavits.

10. Another claim of respondent No. 2 is that the father of the appellants got issued the

State subject certificate in the year 1958, whereas, the land in dispute was allotted to the father of the appellants in the year 1950, thus, the land could not be allotted to a person who was not a State Subject in the year 1950. The learned counsel also placed on record a photostate copy of the State Subject certificate and submitted that the same was issued in favour of the father of the appellants only for the purpose of employment. The argument of the learned counsel appears to be non-tenable. The record shows that this plea was also raised by the respondent before the Custodian but he failed to substantiate the claim. The learned Custodian while dealing with the point has recorded the findings that the State Subject certificate of the predecessor of the appellant was challenged at different fora but every forum has recorded the findings in favour of the

appellants. The relevant portion of the findings reads as under:—

"جہاں تک کونسل سائل کے اس موقف کا تعلق ہے کہ مورث مسئولان ریاستی باشندہ وجہ اول نہ ہے بلکہ ایبٹ آباد ضلع ہزارہ کے رہنے والے ہیں ۔قانونی طور پر غیر ریاستی باشندہ الاٹمنٹ کرنے کا حقدار نہ ہے ۔اس لئے الاٹمنٹ وحقوق ملکیت قائم منسوخی ہے ۔ہمیں کونسل سائل کے اس موقف کے ساتھ اتفاق نہ ہے ۔کیونکہ مورث مسئولان کا پشتنی سٹیٹ سبجیکٹ سال 1958ء میں جاری ہوا جو تا حال بحال ہے ۔اس کی منسوخی کے لئے مجاز فورم الگ سے موجود ہے ۔سائل پشتنی سٹیٹ سبجیکٹ کو مجاز فورم پر چیلنج کر سکتا ہے ۔عدالت کسٹوڈین اس سلسلہ میں کوئی قرارداد صادر کرنے کی مجاز نہ ہے اور حقوق ملکیت جاری کرتے وقت پشتنی باشندہ کا سٹیٹ سبجیکٹ موجود تھا ۔اسلئے اس بناء پر الاٹمنٹ کو غیر قانونی قرار نہیں دیا جا سکتا اور کونسل سائل کا یہ بھی عذر قائم پذیرائی نہ ہے ۔مجوزہ State Subject سٹیٹ سبجیکٹ صرف ملازمت کے حصول کے لئے جاری نہیں ہوتا ۔State Subject جب جاری ہو جائے تو اس State Subject کی بناء پر جملہ قانونی فائدہ حاصل کیا جا سکتا ہے اور نہ ہی قانون میں State Subject جاری کرنے کا کوئی اقسام موجود ہے ۔اس لئے کونسل سائل کا یہ عذر قائم قبول نہ ہے ۔ایسے بھی مسئولان کے اس سٹیٹ سبجیکٹ کو قبل ازیں کئی فورم پر چیلنج کیا گیا تھا لیکن ہر فورم پر مسئولان کے حق میں قرارداد صادر کی گئی جس کا ثبوت شامل شکل ہے ۔"

The respondent has not challenged the findings recorded by the Custodian, therefore, we are not intended to dilate upon the point raised by the counsel for the respondent.

11. After scanning the record, we are in agreement that the learned Custodian has rightly exercised the jurisdiction under section 18-B of Act, 1957, for which no limitation is prescribed and rightly cancelled the allotment

and PRTO to the extent of land measuring 18 marla. The learned High Court affirmed the findings recorded by the Custodian while assigning the strong reasons. The appellants themselves have stated before the learned Custodian that the affidavits may be considered without summoning the deponents amounts to admit the claim of respondent No.2. Later on, the appellants cannot be allowed to take u-turn as they are estopped by their own conduct and the principle of acquisance is fully applicable as laid down by this Court in a case reported as *Muhammad Sharif vs. Muhammad Manzoor and others* [1993 SCR 92], wherein it has been held as under:—

> ”We have given our due consideration to the arguments raised at the bar. Irrespective of validity of the other arguments advanced at Bar, we are of the view that the question of effect of the affidavit filed by the appellant, herein, in the High Court has not been

properly adverted to. We are of view that after filing the affidavit in the High Court accepting the correctness of the award Muhammad Sharif, appellant, was not competent to pursue the matter any further. It amounts to gross misuse of the process of the Court if a party is allowed to change its position during the course of litigation. A party may be estopped by his conduct in the proceedings by taking a specific position. After filing the aforesaid affidavit the appellant had no locus standi to prefer an appeal to this Court so as to annual the finding of the High Court on the point. A reference may be made to the commentary by M. Monir on the law of evidence. The relevant part of the commentary is reproduced as under (1969 Edition page 366)-

> 'It may be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently

> with it; one cannot play fast and loose. It is a well settled principle that a party litigant cannot be permitted to assume inconsistent position in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate, to the detriment of his opponent; and this wholesome doctrine applies not only to the successive stages of the same suit, but also to a suit other than the one in which the position was taken up, provided that second suit grows out of the judgment in the first suit'."

12. The learned High Court and the Custodian while delivering the judgments have dilated upon all the aspects of the case in a comprehensive manner. The concurrent findings arrived at by both the Courts below cannot be interfered with by this Court when there appears no misreading and non-reading of evidence. The case law referred to by the counsel for the appellants having distinguishable facts is not

applicable to the case in hand, therefore, need not be discussed, whereas, the learned counsel for respondent No.2, has referred to the correct law enunciated by this Court.

In the light of what has been discussed above, this appeal having no force is hereby dismissed with no order as to costs.

Muzaffarabad.
__.2.2017 **JUDGE** **CHIEF JUSTICE**

Date of announcement:21.2.2017