SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No.15 of 2016

(PLA filed on 17.12.2015)

Khawaja Shoukat Iqbal Mir s/o Khawaja Abdul Ghani Mir, caste Khawaja/Mir, r/o Narkanyat/Trakhel, Tehsil, Trarkhel, District Sudhnuti Pallandri, at present residing at Taxila.

.... APPELLANT

VERSUS

1. The Custodian Evacuee Property, AJ&K, Muzaffarabad.
2. Mohammad Hanif s/o Faqir Mohammad. Allotee, caste Gujjar.
3. Mst. Nasreen, widow,
4. Sohail,
5. Rohail,
6. Rehan,
7. Raza, sons,
8. Saira,
9. Samira,
10. Sidra, daughters, Zakir Hussain (D),
11. Altaf Hussain s/o Shukur Mohammad,
12. Mohammad Jamil s/o Walayat Khan (D), allotee, caste Sudhan, all residents of Sanghar Jhandabegla, Tehsil and Distrcit Sudhnuti/Pallandri.
13. Collector, District Sudhnuti.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 27.11.2015 in Writ Petition No. 194 of 2010)

FOR THE APPELLANT: M/s Sardar Muhammad Akhtar Khan and Sardar Mushtaq Hussain Khan, Advocates.

FOR THE RESPONDENTS: Mr. Asghar Ali Mallick, Advocate.

Date of hearing: 28.11.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— The petitioner, appellant, herein, challenged the Proprietary Rights Transfer Orders issued in favour of Faqir Muhammad and Walayat Khan on 12.10.1982 and 28.1.1985, respectively, in respect of land measuring 44 kanal 17 marla bearing survey No. 613 and 20 kanal 12 marla bearing survey Nos. 613min and 614, situate in village Jhanda Bagla, District Poonch by filing a review petition before the Custodian Evacuee Property on 16.1.2006. The learned Custodian through judgment dated 30th January, 2010

dismissed the review petition. Dissatisfied, the petitioner challenged the judgment of the Custodian through a writ petition. A learned Judge in the High Court, through judgment dated 27th November, 2015, dismissed the writ petition, hence, this appeal by leave of the Court.

2. Sardar Muhammad Akhtar Khan and Sardar Muhammad Mushtaq Khan, Advocates, the counsel for the appellant submitted that the judgment of the High Court is against law and the facts. They stated that one Subedar Muhammad Hussain purchased 1/3rd share of land measuring 63 kanal and 6 marla from Khiali Ram before partition. The sale-deed was duly registered. It was sent to Poonch for countersigning by Moharaja. In the meantime, the war of liberation started and the sale deed was not received back, whereupon, Subedar Muhammad Hussain filed a suit for possession of the land. Khiali Ram appeared and admitted the claim of the plaintiff. The suit was decreed to

the extent of 1/3rd share of Khiali Ram i.e. measuring 63 kanal 6 marla. The learned counsel submitted that this decree was challenged by the Collector by filing a revision petition in the High Court. The High Court referred the matter to the Custodian for inquiry and after inquiry, the Custodian through judgment dated 8th November, 1962, declared the land as non evacuee. The decree was confirmed by the High Court through judgment and decree dated 9th March, 1978. Feroz Din, who was litigating, filed a petition for leave to appeal in this Court, which was dismissed on 22nd April, 1979 and Subedar Muhammad Hussain was declared owner of the land. The learned counsel argued that after the death of Subedar Muhammad Hussain, his son Talib Hussain sold his land to the appellant but in the Proprietary Rights Transfer Orders dated 12th October, 1982 and 28th January, 1985, it is shown that the land has been allotted which was in the ownership of Khiali Ram. The learned

counsel submitted that the appellant has purchased the land. The Civil Judge, Rawalakot has declared that the plaintiff is entitled to get possession of land comprising survey No. 565. The share of Khiali Ram, which was purchased by Subedar Muhammad Hussain cannot be allotted to any other person.

3. While controverting the arguments, Mr. Asghar Ali Mallick, Advocate, the learned counsel for the respondents submitted that the judgment of the High Court is perfectly legal. The appellant is litigating in misconception. The land allotted to Faqir Muhammad and Walayat Khan is not that land which was purchased by Subedar Muhammad Husain from Khiali Ram. It is a different land. It was in the share of Lal Chand another brother of Khiali Ram. His share comes to 64 kanal and only 64 kanal land has been allotted. He requested for dismissal of appeal.

4. We have heard the learned counsel for the parties and also perused the record. Three

brothers namely; Khiali Ram, Karpa Ram and Lal Chand, were owner of the land measuring 190 kanal comprising survey Nos. 561, 613, 614, 565min and 613min. One Subedar Muhammad Hussain purchased the total land falling under the share of Khiali Ram i.e. 63 kanal 6 marla as is evident from decree dated 31st January, 1953. The other brother, Karpa Ram also sold his share measuring 63 kanal 6 marla to one Sultan Muhammad. The share of third brother, Lal Chand, remained intact. The land measuring 44 kanal 17 marla, out of survey No. 613 was allotted to Faqir Muhammad and the land measuring 20 kanal 12 marla, out of survey No. 613min and 614, was allotted to Walayat Khan and Proprietary Rights Transfer Orders were granted to them on 12th October, 1982 and 28th January, 1985, respectively. In both the Proprietary Rights Transfer Orders, it is mentioned that the rights of the land left by Khiali Rama son of Gokal Chand have been granted to Faqir Muhammad and Walayat Khan.

5. It is admitted between the parties that total acreage of land in the ownership of the three brothers; Khiali Ram, Karpa Ram and Lal Chand comes to 190 kanal bearing survey Nos. 565min, 2 kanal, 613min, 44 kanal 17 marla, 614, 6 kanal 4 marla, 565min 122 kanal 11 marla and 613min 14 kanal 8 marla. All the three brothers mentioned hereinabove were the owners of the land in equal shares. Subedar Muhammad Hussain purchased the total share of Khiali Ram measuring 63 kanal 6 marla out of the said survey numbers. Karpa Rama, the other brother sold his share measuring 63 kanal 6 marla to Sultan Muhammad. The third brother, Lal Chand migrated to India and his share measuring 63 kanal 6 marla was declared evacuee. It appears from the judgment of this Court dated 22nd April, 1979 that Faqir Muhammad was allotted the land measuring 53 kanal and 1 marla and Walayat Khan was allotted the land measuring 20 kanal and 12 marla out of total land measuring 190 kanal.

The Proprietary Rights Transfer Orders have been granted to Faqir Muhammad to the extent of land measuring 44 kanal 17 marla on 12.10.1982 and to Walayat Khan to the extent of land measuring 20 kanal 12 marla. The High Court, through judgment and decree dated 9th March, 1978 has declared Subedar Muhammad Hussain as owner of land.

6. From the record, it is evident that Khiali Ram and Karpa Ram have sold their shares to Subedar Muhammad Hussain and Sultan Muhammad on the basis of consent decrees. The share left by third brother, Lal Chand, was declared as evacuee. Subedar Muhammad Hussain was owner of the land measuring 63 kanal 6 marla falling under the share of Khiali Ram, in the light of the decree passed by the Civil Court on 31st January, 1953, declaration made by the Custodian on 8th November, 1962 and the judgment of the High Court dated 9th March, 1978 and that the judgment of this Court on 22nd April, 1978. In

both the Proprietary Rights Transfer Orders, the words “left by Khiali Ram son of Gokal Chand” have been entered due to the reason that in the record of rights the name of Khiali Ram appears at No. 1 and second name is of Lal Chand sons of Gokal Barhaman and due to the appearance of the name of Khiali Ram at No. 1 in the record of rights the entry was made as such. The share of Subedar Muhammad Hussain and Sultan Muhammad i.e. 1/3rd measuring 63 kanal 6 marla each shall remain intact.

7. The total acreage of the land is 190 kanal. Thus, share of each brother in the total land comes to 63 kanal 6 marla. The land falling under the share of Lal Chand measuring 63 kanal 6 marla was declared evacuee out of which the allotments have been made to Faqir Muhammad and Walayat Khan. The Proprietary Rights Transfer orders in favour of Faqir Muhammad were issued on 12th October, 1982 regarding the land measuring 44 kanal 17 marla. After grant of Proprietary Rights Transfer

Order of land measuring 44 kanal 17 marla to Faqir Muhammad on 12th October, 1982, the land measuring 18 kanal 9 marla remains available for allotment, while the Proprietary Rights Transfer Order to Walayat Khan have been granted on 28th January, 1985 to the extent of the land measuring 20 kanal 12 marla. The Proprietary Rights Transfer Orders to the extent of land measuring 2 kanal 3 marla is in excess of share of Lal Chand allotted to Walayat Khan. Since Proprietary Rights Transfer Order in favour of Walayat Khan was issued on 28th January, 1985 when only the land measuring 18 kanal 9 marla was available as evacuee land, therefore, the Proprietary Rights Transfer Order in favour of Walayat Khan to the extent of land measuring 2 kanal 3 marla is hereby cancelled, while Proprietary Rights Transfer Order to the extent of land measuring 18 kanal 9 marla shall remain intact.

The appeal is disposed of with the observations made hereinabove. No order as to costs.

CHIEF JUSTICE JUDGE

Mirpur.
03.12.2016