

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C. J.

Raja Saeed Akram Khan, J.

Civil Appeal No.27 of 2015

(PLA filed on 11.10.2014)

Muhammad Nazir s/o Ghulam Hussain, r/o Narian,
Tehsil & District Sudhnoti.

....APPELLANT

VERSUS

1. Custodian of Evacuee Property, Azad Jammu and Kashmir, Muzaffarabad.
2. Rehabilitation Commissioner, Azad Jammu and Kashmir, Muzaffarabad.
3. Assistant Rehabilitation Commissioner, Rawalakot.
4. Assistant Rehabilitation Commissioner, Sudhnoti.
5. Muhammad Rasheed,
6. Muhammad Jamil,
7. Muhammad Yousaf,
8. Muhammad Wazeer,
9. Muhammad Khurshid, sons,
10. Parveen, d/o Nussa, r/o Narian, Tehsil & District Sudhnoti.

....RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 10.10.2014 in writ petition No.281 of 2003)

FOR THE APPELLANT: Syed Nazir Hussian Shah
Kazmi, Advocate.

FOR RESPONDENTS Mr. Manzoor Hussain
NO. 5 TO 10: Raja, Advocate.

Date of hearing: 9.1.2017.

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 10.10.2014, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The facts briefly stated are that the evacuee land comprising survey No. 255-min, (Old), 694 (New), measuring 15 kanal, 8 marla, situate at village *Narian* was allotted to the appellant on 10.4.1990. The Custodian issued the Proprietary Rights Transfer Orders (PRTO) in favour of the appellant on 24.11.2000 and a mutation in the light of PRTO was also attested. It is averred that the suit land is in continuous

possession of the appellant and he made the improvements over the same. Respondents No. 5 to 10 filed a review petition against PRTD dated 24.11.2000 before the learned Custodian on 2.2.2001. The learned Custodian after hearing the parties, remanded the case to the Assistant Rehabilitation Commissioner, Palandri/*Sudhnoti* for a detailed inquiry. On the basis of the report submitted by the Assistant Rehabilitation Commissioner, Palandri/*Sudhnoti*, the learned Custodian after considering all the facts accepted the review petition vide order dated 30.10.2002. Against the order of the Custodian dated 30.10.2002, the appellants, herein, filed a review petition before the learned Custodian which was dismissed vide order dated 1.7.2003. Feeling dissatisfied by the orders of the learned Custodian, the appellant filed a writ petition in the High Court which also met the same fate vide impugned judgment dated 10.10.2014. The

appellant has now approached this Court through the instant appeal by leave of the Court.

3. Syed Nazir Hussain Shah Kazmi, Advocate, the learned counsel for the appellant, argued that the judgment passed by the learned High Court is based on misreading and non-reading of evidence, which is not sustainable in the eye of law. He argued that the Assistant Rehabilitation Commissioner, Palandri/*Sudhnoti*, on the direction of the Custodian inquired the matter and submitted the report that the allotment chit issued in favour of the private respondents, herein, is doubtful, but the Custodian as well as the learned High Court has not considered the same in a legal manner. He contended that in spite of the inquiry report issued in favour of the appellant, the learned Custodian accepted the review petition filed by the respondents and the learned High Court while ignoring this important aspect of the case has also committed the same illegality. He submitted that

the High Court failed to exercise extraordinary writ jurisdiction, while passing the impugned judgment. He further argued that the appellant is in continuous possession of the suit land and heavy improvements have been made by him. He contended that in spite of the clear cut findings recorded by the inquiry committee, the allotment made in favour of the respondents is found doubtful. The review petition filed by the appellant was dismissed by the learned Custodian without adhering to the inquiry report made by the Assistant Rehabilitation Commissioner which does not support the case of the respondents. This important aspect of the case escaped the notice of the learned High Court.

4. On the other hand, Mr. Manzoor Hussain Raja, Advocate, the learned counsel for respondents No. 5 to 10, raised a preliminary objection while submitting that in the instant case the appeal has incompetently been filed by the appellant as no second review petition was

permissible under law. The learned counsel referred to the latest judgment of this Court in the case reported as *Dr. Munawar Ahmed & 4 others vs. Muhammad Aslam & 23 others* [2016 SCR 1014], while arguing that the remedy of review before the learned Custodian cannot be availed more than once. He argued that even on the merits of the case, the appellant has got no case as both the Courts below have comprehensively resolved the issue and decided the same while assigning cogent reasons. He further contended that the learned counsel for the appellant misled the Court while relying on the inquiry report made by the Assistant Rehabilitation Commissioner as the same is not supportive to the version of the appellant rather the same supports the version of the respondents.

5. We have heard the arguments of the learned counsel for the parties and also gone through the record made available. Before dilating upon the merits of the case, we intend to

resolve the preliminary objection whether the powers of review vested with the Custodian under section 43(6) of Pakistan Administration of Evacuee Property Act, 1957, can be exercised more than once or not. From the record, it reveals that respondents No. 5 to 10 filed a review petition before the learned Custodian against PRTD dated 24.11.2000. After hearing the parties, the learned Custodian remanded the case to the Assistant Rehabilitation Commissioner, Palandri/*Sudhnoti* for holding an inquiry. On the strength of inquiry report submitted by ARC, the learned Custodian vide order dated 30.10.2002, accepted the review petition filed by respondents No. 5 to 10. It is also spelt out from the record that the order passed by the learned Custodian dated 30.10.2002, was challenged by way of filing second review petition before the learned Custodian of Evacuee Property which was dismissed on 1.7.2003. Now the question arises whether the learned Custodian can exercise the

review powers more than once. The proposition came under consideration of this Court in a case reported as *Dr. Munawar Ahmed & 4 others vs. Muhammad Aslam & 23 others* [2016 SCR 1014] in which it has been held as under:—

“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 2nd 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/PRTO 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 2nd review petition before the Custodian is available to the appellants. If such like practice is allowed, there will be not 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 fact 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.”

After perusal of the above dictum laid down by this Court, it can safely be concluded that the learned Custodian is not vested with unlimited powers of review rather the powers of review are limited and the same can be exercised once in a matter. Thus, the objection raised by the learned counsel for the respondents is sustained while holding that the second review petition before the Custodian was not competent.

6. While adverting to the merits of the case, admittedly, the learned counsel for the appellant in support of his claim placed reliance upon the inquiry report made by ARC, Palandri/*Sudhnoti*, annexure 'PD'. The relevant portion of the inquiry report reads as under:—

"ضمن نمبر 3۔ مورث سائیلان کے نام جاری شدہ چٹ بدیں وجہ مشکوک ہے کہ وہ بروئے ریکارڈ مال 1966-67 سے قفل کا الائی تھا۔ اسلئے اس کو 1990ء میں چٹ الاٹمنٹ حاصل کرنے کی ضرورت ہی نہ تھی۔ اور اس کے نام جاری شدہ چٹ مشکوک ہونے کی صورت میں مسؤل کے نام جاری شدہ الاٹمنٹ بھی اس بناء پر مشکوک قرار پائی ہے کہ یہ چٹ مورث سائیلان کے نام دیرینہ الاٹ شدہ اراضی کے جزوی رقبہ سے متعلق ہے۔ تاہم الاٹمنٹ ہونے یا نہ ہونے کے متعلق حتمی رپورٹ اے۔ آر سی صاحب راولا کوٹ ہی دے سکتے ہیں۔ جن کے دفتر سے یہ چٹ ہاء الاٹمنٹ جاری ہوتی پائی جاتی ہیں۔ اگر یہ چٹیں ان کے دفتری ریکارڈ (رجسٹر الاٹمنٹ) میں درج نہ ہوں تو احوالہ جعلی قرار پائیں گی۔"

The

learned High Court while handing down the impugned judgment has taken into consideration the inquiry report submitted by ARC, in paragraphs No. 8, 9 & 10 of the impugned judgment, which read as under:—

"8. In the light of the order dated 25.10.2001, ARC Sudhonoti conducted an inquiry pertaining to the disputed land in presence of the parties and observed that impugned land has been allotted in favour of predecessor-in-interest of respondents, herein, Nusa Khan. The learned Custodian after considering all the facts and averments enumerated in the review petition and inquiry conducted by ARC on his order, accepted the review petition of respondents, herein, vide order dated 30.10.2002, and observed in it that:-

"لہذا بحالات بالا منظور کی درخواست نظر ثانی سائیلان افسر مال صاحب (اے آر سی) سدھوتی کی رپورٹ
 محرمہ 2.1.2002 کی روشنی میں الاٹمنٹ و حقوق ملکیت بحق مسئول محمد عزیز ولد غلام حسین شوقلیٹ حقوق ملکیت
 نمبر 12502 محرمہ 24.11.2000 بابت اراضی نمبر خسرو جریڈ 692 من تعدادی 15 کنال 18 مرلے
 واقع موضع نیریاں تحصیل پلندری (سدھوتی) منسوخ کئے جا کر الاٹمنٹ موروث سائیلان بحال رکھی جاتی
 ہے۔ مقدمہ ہذا میں اگر کوئی حکم اتمامی عارضی جاری ہوا ہو وہ منسوخ تصور ہو۔ عمل بعد تکمیل ضابطہ داخل دفتر
 ہو۔"

9. The learned Custodian revoked the proprietary rights issued in favour of petitioner, herein. Second review petition was filed by the petitioner, herein, against the respondents, herein, on 12.11.2002, which was discarded by the learned Custodian vide order dated 1.7.2003.

10. A perusal of impugned orders passed by the learned Custodian on 30.10.2002 & 1.7.2003 respectively, obviously manifest that the learned Custodian has perused all the record placed before him and came to the conclusion that the impugned land has already been allotted in favour of predecessor-in-interest of respondent, Nusa Khan, and allotment made in favour of the petitioner was subsequent allotment. It is well settled principle of law that subsequent allotment has no

substance in the eye of law. It is not out of place to mention here that petitioner, herein, has taken stand that allotment has been made in his favour in 1990, whereas, the revenue record placed on file clearly shows that the entries therein has been incorporated in the name of Nusa Khan, predecessor-in-interest of respondents, as allottee, therefore, the learned Custodian has rightly revoked the proprietary rights issued in favour of the petitioner, herein. I have also deeply gone through the available record, revenue record, placed by both the parties which clearly postulates that the impugned land has been allotted in favour of predecessor-in-interest of respondent, herein, Nusa Khan, and allotment made and proprietary rights issued in favour of petitioner, herein, become in the ambit of subsequent allotment which is against the scheme of Rehabilitation laws.....”

7. We have ourselves examined the relevant inquiry report and other material

available on record. From the perusal of the same, we failed to find out any misreading or non-reading of evidence in the judgment passed by the learned High Court. The learned High Court has passed the impugned judgment in proper exercise of discretion while keeping in view the facts and circumstances of the case which needs no interference by this Court.

In the light of what has been discussed above, the appellant could not succeed to call for an interference by this Court in the impugned judgment. Resultantly, finding no substance in this appeal, the same is hereby dismissed with no order as to costs.

Mirpur
.2.2017

JUDGE

CHIEF JUSTICE