

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 14 of 2017

(PLA filed on 19.11.2016)

1. Azad Government of the State of Jammu and Kashmir, through its Chief Secretary, Muzaffarabad.
2. Collector District Bagh (Deputy Commissioner) Bagh.

..... APPELLANTS

VERSUS

1. Muhammad Arif,
2. Naqi Muhammad Khan,
3. Zulfiqar Ali,
4. Nisar Ahmed, sons,
5. Gul Naqsha Begum,
6. Aziza Begum,
7. Shameem Akhtar daughters of Sajawal Khan,
8. Ulfat Mumtaz, daughter,
9. Nusrat Begum, widow,
10. Nuzhat Mumtaz,
11. Asifa Mumtaz,
12. Shamsa Mumtaz,
13. Ashiya Mumtaz,
14. Mudrasa Mumtaz, daughters of Mumtaz Ali Khan, r/o Chachri, Tehsil Dhirkot, District Bagh.

.... RESPONDENTS

(On appeal from the judgment of the High Court dated 27.09.2016 in Writ Petition No. 161/2009)

FOR THE APPELLANTS: Mr. Raza Ali Khan,
Advocate-General.

FOR THE RESPONDENTS: Sardar Abdul Sammie
Khan, Advocate.

Date of hearing: 11.04.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The titled appeal by leave of the Court has been preferred against the judgment of the High Court dated 27.09.2016, whereby the writ petition filed by the respondents, herein, has been accepted.

2. The facts necessary for disposal of this appeal are that the respondents, herein, filed a writ petition before the High Court claiming therein that the land comprising Khasra No.75, renumbered as 166 situate at village Chahcri, Tehsil Dheerkot is the crown land. Their predecessor-in-interest, Raja Sajawal Khan was in possession of said land since 1955, and after his death they are in possession of

the land as the owners. They further claimed that according to law of the land a person who is in possession of the crown land before 1957 and his possession is entered in the revenue record as such becomes owner of the land, therefore, they are owners of the land measuring 14 *kanal*. They filed an application before the revenue department upon which the land was sanctioned in their favour. However, the Additional Commissioner, on filing of revision petition, remanded the case vide order dated 03.06.1978 to the Collector on technical point that the sanction was issued by the Collector subdivision who was not competent. The Additional Commissioner also directed the Collector for passing fresh order after hearing the parties but the Collector has not passed any order despite spending long time. They prayed that they are the owners of the land, therefore, direction may be issued to the respondents (therein) for making entry in the revenue record. Ex-parte proceedings were ordered against the appellants, herein. After necessary proceeding, the learned High Court accepted the

writ petition through the impugned judgment while ordering that the Proprietary Rights regarding land comprising Khasra No.75 renumbered as 166 situated in village Chachri, Tehsil Dhirkot, District Bagh shall be granted in favour of the petitioners (therein) within a period of three months, hence this appeal by leave of the Court.

3. Mr. Raza Ali Khan, Advocate-General, the learned counsel for the appellants after narration of the necessary facts submitted that the impugned judgment of the learned High Court is result of misconception of the facts and law. Unluckily, the writ petition has been decided in absence of written statement of the respondents therein. The proceeding in the case has not been conducted properly. Most of the orders have been passed in the Registry office. The writ petition was initially filed at circuit office Rawalakot which was subsequently transferred to principle seat Muzaffarabad without any notice or knowledge of the appellants. Due to absence of the written statement the real facts could not be brought into

the notice of the Court. It is further argued that in this case the serious legal and factual proposition is involved but due to absence of written statement the High Court through the impugned judgment issued unqualified direction for granting proprietary rights of the land comprising Khasra No.75, renumbered as 166, which infact is a forest land. Even otherwise, according to the statutory provisions of law no proprietary rights order can be granted regarding the forest land without hearing the Forest Department. The direction issued by the High Court is not a proper course. If the judgment of the High Court is implemented, it amounts to violation of the statutory provisions of law, therefore, while accepting this appeal the impugned judgment may kindly be set-aside.

4. Conversely, Sardar Abdul Sammie Khan, Advocate, the learned counsel for the respondents forcefully defended the impugned judgment and submitted that the appellants, herein, failed to appear before the Court and file written statement, therefore, the Court was forced to pass the

impugned judgment. The writ petition has been decided after quite a long time of 7 years. The respondents are facing the litigation since a decade period, thus, this appeal has no substance and the same is liable to be dismissed.

5. We have heard the learned counsel for the parties and examined the record made available. As according to the legal and factual propositions involved in this case a serious matter is involved and in absence of the written statement the impugned judgment has been passed. The perusal of the writ petition also reveals that the grievance of the respondents was that the respondents therein, i.e., the Collector Land Acquisition and the Government have failed to act according to law. The prayer clause of the writ petition reads as follows:-

"لہذا ادب سے استدعا ہے کہ بمنظوری رٹ درخواست ہذا معہ خرچہ مقدمہ مستولان کو حکم دیا جائے کہ وہ رائج قانون کے مطابق چونکہ اپنے فرائض ادا کرنے میں طویل عرصہ سے ناکام رہے ہیں۔ اسلئے وہ قانون کے مطابق اپنے فرائض ادا کرتے ہوئے سائلان کے حق میں ضروری احکامات فوری طور صادر کریں۔ اور جس دیگر دادرسی کا سائل مستحق پایا جائے۔ وہ بھی دی جائے اور قرار دیا جائے کہ مروجہ قانون کے تحت سائلان اراضی زیر بحث کے مالک کاملان ہیں۔"

The learned High Court in the impugned judgment has unqualifiedly ordered for issuance of the proprietary rights of the land which, in our opinion, is not a proper course of law. The matter of grant of proprietary rights or lease etc., vests in the concerned authority. The respondents themselves approached the Court for issuance of direction to the concerned authority, thus, in this state of affairs issuance of unconditional direction of granting proprietary rights, appears to be inconsistent with the statutory provisions as well as principle of law.

6. As observed hereinabove that basically the judgment has been unilaterally handed down in absence of the written statement, thus, true picture could not be brought before the Court. During pendency of the appeal before this Court an application was also filed for arraying the Forest Department as party in the appeal, however, as the appeal was relating to the impugned judgment handed down in writ petition, therefore, it was not appropriate to array the Forest Department as party. Even otherwise, the department has to act

under the instructions of the Government, however, keeping in view the peculiar facts and circumstances of this case, the Forest Department through its Secretary is arrayed as party in the writ petition.

7. Keeping in view the above stated facts and reasons, while accepting this appeal and setting-aside the impugned judgment of the High Court the case is remanded. The appellants are directed to file the written statement on their behalf as well as on behalf of newly arrayed party i.e. the Forest Department within one month time. The learned High Court is directed to decide the case afresh within a period of three months from communication of this order.

This appeal stands accepted in the above terms with no order as to costs.

Mirpur,
_.04.2017

CHIEF JUSTICE

JUDGE
(J-I)

Date of announcement: 03.05.2017