

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No. 270 of 2016  
(PLA filed on 20.9.2016)

Zahid Ashraf s/o Mohammad Ashraf, r/o  
Naluchi, Businessman at Bank Road Tehsil and  
District Muzaffarabad.

.... APPELLANT

**VERSUS**

1. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
2. Development Authority, Muzaffarabad (DAM), through its Chairman, having its office at Tariqabad By-pass Road, District Muzaffarabad.
3. Director Estate Assessment Management Authority, DAM.
4. The Secretary Allotment Sales Commercial Plaza at Bank Road, Muzaffarabad.
5. The allotment Committee constituted by Govt. of AJ&K for the confirmation of allotment of shops.
6. Khawaja Arif Aziz s/o Abdul Aziz, Store Officer DAM.
7. Khawaja Farooq s/o Abdul Aziz, shopkeeper at Bank Road, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 15.9.2016 in Writ Petition No.2086 of 2016)

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FOR THE APPELLANT: Mrs. Bilqees Rasheed  
Minhas, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Yaqoob  
Khan Mughal, Advocate.

*Date of hearing:* 15.5.2017.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court arises out of the judgment of the High Court dated 15.9.2016, whereby writ petition filed by the appellant, herein, has been dismissed in limine.

2. The precise facts forming the background of the captioned appeal are that the appellant, herein, filed a writ petition in the Azad Jammu & Kashmir High Court, claiming therein that he was owner of three shops situated at Bank Road, Muzaffarabad. After the earthquake of 2005, the Government prepared a master plan through M.C.D.P., D.A.M. for reconstruction and development of Muzaffarabad City, which

includes the widening of the road and construction of commercial Plaza at Bank Road. The appellant, herein, had three shops at the place where the commercial Plaza is constructed. The Development Authority Muzaffarabad on behalf of the Government made a commitment through written agreement that after construction of the Commercial Plaza at the Bank Road, three shops will be allotted to the appellant for his business purpose. The respondents allotted shops No. 46 and 47 in the light of the verbal agreements. However, the appellant, herein, was entitled to the allotment of three shops. After necessary proceedings, a learned single Judge in the High Court, through the impugned judgment has dismissed the writ petition in limine.

3. Mrs. Bilqees Rasheed Minhas, Advocate, appearing for the appellant, vehemently argued that the dismissal of the writ petition in limine was illegal and erroneous because some important questions were involved

in the case. The learned Advocate contended that due to extension of Bank Road, two shops of the appellant, herein, i.e. shop No. 46 and 47 were utilized by the development authority as is evident from the letter dated 19<sup>th</sup> February, 2016 and at the time of taking over the possession of the shops belonging to the appellant, herein, the development authority, Muzaffarabad through its Chairman executed an agreement, whereby the authority undertook to allot 3 shops in the ground floor of the constructed plaza near the Bank Road, Muzaffarabad besides the payment of compensation of the shops. The learned Advocate contended that the Development Authority, Muzaffarabad instead of allotting three shops, which were requirement of the appellant, herein, for management of his business, has allotted only two shops, which is also against the policy. The learned Advocate argued that the writ petition, in fact, was filed for a direction to the respondents for implementation of the policy and fulfillment of

the commitment made by them through agreement, hence, the question of enforcement of contractual obligation was not involved in stricto sensu in the writ petition. She argued that the dismissal of the writ petition on the ground of availability of alternate remedy was not justifiable.

4. Mr. Muhammad Yaqoob Khan Mughal, Advocate, appearing for the respondents, contended that the available shops, as per policy of the development authority/Government, has been allotted to the appellant. As 3<sup>rd</sup> shop was not available, hence, the same could not have been allotted to the appellant. The learned Advocate argued that the writ petition has rightly been dismissed by the learned High Court because a decree for specific performance of contract cannot be passed in writ jurisdiction. The learned Advocate argued that the judgment of the High Court is supported by law as well as the dictum of this Court laid down in Neelum

Flour Mills' case (1992 SCR 381 and (2011 MLD 10).

5. We have heard the learned Advocates representing the parties and also gone through the record of the case. After hearing the learned counsel for the parties and perusing the record, we are of the view that the impugned judgment passed by the learned High Court does not suffer from any legal infirmity. The agreement executed with the appellant, herein, by the development authority, has not been denied by the respondents. It is categorically stated in the agreement that besides the agreed compensation the appellant, herein, would be allotted three shops front side of the ground floor. This is an agreement between the parties. The appellant has been allotted two shops and for the 3<sup>rd</sup> one, he had an adequate alternate remedy in shape of suit for specific performance of contract/possession. The jurisdiction conferred on the High Court under section 44 of the Azad Jammu & Kashmir Interim Constitution Act,

1974 is subject to condition listed therein. One of the conditions is that a writ petition under section 44 of the Azad Jammu & Kashmir Interim Constitution Act, 1974 shall be entertained only where no alternate and efficacious remedy is available. As stated above, in the present case remedy in shape of suit for specific performance of the contract/possession was available to the appellant, herein, therefore, the finding recorded by the learned High Court are hereby approved.

The result of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE  
Muzaffarabad.

.5.2017.

Date of announcement: 19.05.2017

CHIEF JUSTICE

Zahid Ashraf vs. Azad Govt. & others.

**ORDER:**

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

CHIEF JUSTICE  
Muzaffarabad.  
17.5.2017.

JUDGE