

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.122 of 2017

(PLA filed on 01.04.2017)

1. Azad Government of the State of Jammu & Kashmir, through Chief Secretary to Azad Government, Civil Secretariat, Muzaffarabad.
2. Wildlife and Fisheries Department, Azad Government of the State of Jammu & Kashmir through Secretary Forest/Wildlife and Fisheries, Civil Secretariat, Muzaffarabad.
3. Board of Revenue/Member Board of Revenue, Azad Government of the State of Jammu & Kashmir, through Secretary Board of Revenue, Azad Jammu & Kashmir, Muzaffarabad.
4. Director Wildlife and Fisheries Department, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
5. Deputy Director, Wildlife and Fisheries Department, Mirpur.

.....APPELLANTS

VERSUS

1. M/s. Qureshi Vegetable Ghee and Oil Mills, Public Limited, Mirpur (A.K) through Mr. Afzal Qureshi, Managing Director.

2. Adam Flour Mills Limited through Tariq Mehmood Qureshi, Village Dhala Islam Garh, Tehsil and District Mirpur.

...RESPONDENTS

3. Water and Power Development Authority (WAPDA) through Chairman WAPDA, WAPDA House, Lahore.
4. M/s Seven Star Contractors, plot No.119/J, First Floor, Green Plaza, Mall Road, Mirpur.
5. Commissioner, Mirpur, Division Mirpur.
6. Collector/Deputy Commissioner, District Mirpur.
7. Assistant Director, Wildlife and Fisheries Department, Opposite District Headquarter, Mirpur.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 31.01.2017 in Writ Petition No.2098 /2015]

FOR THE APPELLANTS: Mr. Abdul Rasheed Abbasi, Advocate.

FOR PROFORMA RESPONDENT No. 3: Mr. Sajid Hussain Abbasi Advocate.

FOR THE RESPONDENTS: Ch. M. Siddique and M. Yaqoob Khan Mughal, Advocates and Deputy Commissioner Mirpur in person.

Date of hearing: 12.10.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The above titled appeal by leave of the Court arises out of the judgment of the High Court dated 31.01.2017, whereby the writ petition filed by respondent No.1, herein, has been accepted.

2. Necessary facts for disposal of the instant appeal are that respondent No.1, herein, a public company limited (*hereinafter to be referred as respondent*) filed writ petition in the High Court while challenging the notification dated 2.08.2015 whereby the land measuring 293 *kanal* comprising of survey number 484 and the land measuring 80 *kanal* from village Bega Bilawal was allotted to Wile Life and Fisheries Department. He alleged that through notification dated 26.02.1980 the land measuring 325 *kanal* 4 *marla* (*the notification shall be reproduced hereinafter*) situated at Sahib Chak, Tehsil and District Mirpur was sold to him by the appellants, herein and the consideration amount to the tune of Rs.276.08 per *kanal* was deposited in the light of the letter dated 08.03.1980, issued by

proforma respondent No.6, herein. It was alleged that the land measuring 200 *kanal* out of survey Nos.484 and 485 had also been sold to him vide notification dated 26.02.1981 and land measuring 200 *kanal*, out of survey Nos.484, 485 and 487 situate at Sahib Chak had been leased out for a period of 99 years in his favour by the Government, through an agreement which was registered before the Sub-Registrar Mirpur on 15.10.1981. It was further alleged that a huge investment has been made in shape of a mega built up structure of mills and installment of imported machinery since 1981. It was alleged that he sold the land measuring 126 *kanal*, 1 *mala*, out of the said land to the Adam Floor Mills Limited Mirpur (respondent No.2, herein) through sale deed dated 15.11.1987. The Government has also allotted the land measuring 293 *kanal*, out of survey No.484 in favour of respondent No.4, therein which is illegal, arbitrary and without lawful authority. It was further alleged that the land measuring 83 *kanal*, 17 *marla* out of survey No.484 and 108 *kanal*, 17 *marla* out of

survey No.485 was allotted to Police for Training College Mirpur vide notification dated 15.05.2012. The notification dated 15.05.2012 was challenged through writ petition before the High Court on 11.09.2013 which was accepted vide judgment dated 19.12.2013 and the notification impugned therein was set aside. An appeal filed against the judgment of the High Court was dismissed by this Court on 30.04.2014. Lastly, the respondent prayed for setting aside the notification dated 26.08.2015 and the changes made in the revenue record of rights pertaining to survey No.484 being made illegally, arbitrarily and against law. During pendency of writ petition through notification dated 10.02.2016 the notification dated 26.08.2015 was cancelled which was brought on record by the appellants, herein, along with written statement. After necessary proceedings, the learned High Court through the impugned judgment dated 31.01.2017 accepted the writ petition and cancelled the notifications dated 26.08.2015 and 10.02.2016, hence this appeal by leave of the Court.

3. Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for the appellants submitted that the impugned judgment of learned High Court appears to be result of misconception of facts and lacking of proper appreciation of the record and material. The claim of respondent is totally baseless, against law and the facts. According to the facts, vide notification dated 26.02.1980 an approval was granted for sale of land measuring 325 *kanal* 4 *marla* but before execution, this notification was recalled vide order dated 14.06.1981. Through another notification dated 26.02.1981 once again the approval for sale of land measuring 200 *kanal* was granted in favour of the respondent but as the process of sale was not found according to law, thus, subsequently, it was agreed that instead of sale, the land shall be leased out to the respondent. Consequently, the order dated 26.02.1981 was also recalled and notification of approval of lease was issued on 24.09.1981. In furtherance of this notification the terms of lease were agreed between the parties and accordingly

deed was registered, thus, the respondent has got entitlement of lease only to the extent of land measuring 200 *kanal* comprising of survey numbers mentioned therein in the notification. He further argued that the respondent according to law and terms of lease is neither entitled to transfer the said land by any means to any other person nor the land can be used for any other purpose except for which the lease was granted but despite this the respondent claims that he has sold out the land measuring 126 *kanal 1 marla*. Such claim of the respondent is totally void, illegal and inoperative. The person who has got no title in the property neither can transfer the same nor can claim such property. Thus, the version of the respondent that he has got the title of the land is totally against law and facts and terms of the lease agreement. According to law and facts he is only entitled for lease of the land measuring 200 *kanal* for the purpose of running factory, thus any alleged transaction of sale of land to any other person is totally void, illegal and based upon fraud,

misrepresentation and tampering with the record. Any order or proceeding which is the outcome of the fraud has got no legal validity as according to the celebrated principle of law fraud vitiates the most solemn proceeding. Thus, the claim of the respondent that on the basis of previous judgment of the High Court he is owner of the land is totally baseless and has got no legal authenticity for the reason that the judgment obtained by practicing fraud or concealment of facts has no legal validity. Moreover, in the writ jurisdiction the Court has to exercise the powers for protection of legal right and set-aside the act which is against law, whereas, in this case no such eventuality arises. The writ jurisdiction cannot be exercised for protection of ill-gotten gains and illegal acts. Thus, the judgment which is the result of concealment of facts and practicing fraud is not binding upon the parties. He further argued that even otherwise the impugned judgment is not sustainable because the writ petition was filed during pendency of the civil suit relating to the same subject-matter between the

same parties, thus, in view of alternate remedy exercise of writ jurisdiction is against the constitution. In support of his arguments, he referred to the cases reported as *Rehmatullah Khan and others vs. Azad Govt. & others* [2014 SCR 1385], *Shaukat Hussain Awan vs. AJ&K Bar Council & others* [2015 SCR 284], *Collector Land Acquisition vs. Muhammad Taj & others* [2016 SCR 1009] and *Rafaqat Hussain & others vs. Azad Govt. & others* [2016 SCR 1302].

4. Mr. Sajid Hussain Abbasi, Advocate, the learned counsel for proforma-respondent No.3 supported the version of the appellants and argued that the land was acquired in favour of WAPDA. The same cannot be transferred to any other person without obtaining No Objection Certificate (NOC) from WAPDA. Only the land measuring 200 kanal was handed over to the Government of AJK for grant of lease in favour of respondent for a period of 99 years, whereas, regarding the rest of the land the respondent has got no legal right or interest.

5. Ch. Muhammad Siddique and Muhammad Yaqoob Khan Mughal, Advocates, the learned counsel for the contesting respondents forcefully defended the impugned judgment and submitted that the appellants have got no locus standi to file this appeal. Ch. Muhammad Siddique, Advocate, submitted that initially the land measuring 325 kanal 4 marla was sold to the respondent vide notification dated 26.02.1980, whereas, a further land measuring 200 *kanal* was sold vide notification dated 26.02.1981. Through third notification issued on 24.09.1981 a further land measuring 200 *kanal* was leased out in favour of the respondent. Thus, the respondent is owner of total land measuring 725 kanal 4 marla. He further argued that out of this land the respondent has sold the land measuring 126 kanal 1 *marla* through a registered sale-deed. There is no dispute regarding the ownership of above-mentioned land as the learned High Court vide judgment dated 19.12.2013 has already declared the respondent as owner of the same. All the transactions have been duly

incorporated in the revenue record. He referred to the copies of the revenue record, the sale-deed dated 15.11.1987 executed by the respondent in favour of Adam Floor Mills (respondent No.2) and contended that all the documents prove that the respondent is undisputedly owner of the land. The judgment of the High Court dated 19.12.2013 has attained finality as the petition for leave to appeal filed against the same has been refused. In view of final judgment of the High Court no further proceeding is required. All the actions taken by the appellants are against the law which have been rightly set-aside by the learned High Court through the impugned judgment. However, when he was confronted regarding the government notifications through which the notifications for sale of the property in favour of the respondent have been cancelled, he submitted that the same have no existence. The respondent has no knowledge of said notifications, therefore, the same have no legal value. He submitted that for the above stated reasons the appeal be dismissed with costs.

6. We have heard the learned counsel for the parties and minutely examined the record made available. According to the respondent's claim through notification dated 26.02.1980 the land measuring 325 *kanal* 4 *marla* was sold to him by the Government. It will be useful to reproduce here the notification dated 26.02.1980, which reads as follows:-

"آزاد حکومت ریاست جموں و کشمیر
سیکرٹریٹ مال۔"

فرمان حکومت:-

جناب صدر حکومت ریاست آزاد جموں و کشمیر نے حسب رضامندی چیئرمین صاحب
واپڈ اراضی تعدادی 325 کنال واقع موضع صاحب چک تحصیل میرپور جس کی تفصیل حسب
ذیل ہے بحق میسرز قریشی گھی ملز لمیٹڈ میرپور فروخت کرنے کی بشرائط ذیل منظوری صادر فرمائی
ہے۔

تعداد رقبہ		نمبر خسرہ	تعداد رقبہ		نمبر خسرہ
کنال	مرلے		کنال	مرلے	
10	01	509/1027	0	19	509/1026
7	15	512	7	11	511
16	02	514	7	10	513
9	07	516	4	18	515
02	09	528	3	10	517
4	05	529/1025	4	17	529/1024
4	05	531	8	17	530
2	13	533	2	11	532
1	11	535	1	10	534
8	15	537	2	18	536
4	11	539	4	11	538
4	08	544	4	04	540
1	19	546	3	01	545
1	00	548	1	00	547

1	01	559	5	05	549
1	16	561	5	11	560
1	06	563	1	07	562
2	15	565/1022	2	10	564
11	01	566	2	16	565/1023
16	04	568	19	00	567
0	07	570	1	19	569
0	12	572	0	04	571
1	08	576	0	14	573
2	19	609	7	04	607
1	19	612	2	18	611
11	09	614	8	11	613
1	06	616	9	8	615
8	03	618	1	10	617
14	09	620	16	06	619
1	05	622	7	18	621
0	19	635	1	07	634
08	02	637	1	15	636
325-4	میزان		12	00	638

شرائط:-

1- اراضی متذکرہ بالا میسرز قریشی گھی ملز کو باخذ قیمت بشرح 276/08 روپے فی کنال جس شرح قیمت پر اس سے قبل رقبہ اے کے ایم آئی ڈی سی کو فروخت کیا ہوا ہے، منتقل کی جائے گی۔ نیز اگر مزید قیمت جو بھی بعد میں حکومت آزاد جموں و کشمیر طلب کرے ادا کرنے کے پابند ہوں گے۔

2- میسرز قریشی گھی ملز اس بات کے پابند ہوں گے کہ وہ رقبہ متذکرہ پر صرف گھی کارخانہ بنانے کے لیے عمارت تعمیر کریں گے اور کسی دیگر غیر صنعتی تعمیر کے لیے اس رقبہ کا استعمال نہیں کریں گے۔ اور نہ ہی کسی دوسرے فرد یا افراد/ فرم یا کمپنی کو کسی طریقہ سے منتقل کرنے کے مجاز ہوں گے۔

3- میسرز قریشی گھی ملز رقبہ کو صنعتی مقاصد صرف تعمیر گھی ملز کے لیے استعمال کرنے کے لیے تعمیرات عرصہ تین سال کے اندر مکمل کریں گے اور اگر وہ ایسا نہ کر سکیں تو جملہ رقبہ حکومت آزاد کشمیر کو عود کریگا۔ اور اس سلسلہ میں کسی قسم کا بھی دعویٰ قیمت یا حق طلب کرنے کے مجاز نہ ہوں گے۔

4- شرائط متذکرہ صدر کی کسی قسم کی خلاف ورزی کی صورت میں حکومت آزاد جموں و کشمیر کو جملہ اراضی متذکرہ بالا ادائیگی کوئی ہر جانہ / معاوضہ یا قیمت ضبط کرنے کا اختیار ہوگا۔ اور اس صورت میں کمپنی مذکور کو کسی قسم کی قانونی چارہ جوئی کا استحقاق نہ ہوگا۔

5- حکومت آزاد جموں و کشمیر کی طرف سے بطور بائع ڈپٹی کمشنر میر پور مشتری میسرز قریلیٹی گھی ملز کے حق میں بعد اخذ کل قیمت اراضی بحساب شرح متذکرہ بالا وصول کر کے شرائط مندرجہ بالا کے مطابق بیعنامہ رجسٹری کرنے کے لیے بطور نمائندہ حکومت مجاز ہونگے۔
(وحید احمد شیخ)
ڈپٹی سیکرٹری مال
آزاد حکومت ریاست جموں و کشمیر
منظر آباد۔"

According to the produced record this notification was recalled by the Government vide order dated 14.06.1981. The said order is reproduced as follows:-

"آزاد حکومت ریاست جموں و کشمیر

حکم:-

جناب صدر حکومت ریاست آزاد جموں و کشمیر نے فرمان حکومت مجریہ زیر نمبر س م 678-687 مورخہ 26-2-1980ء منسوخ کئے جانے کی منظوری صادر فرمائی ہے۔
(ایم۔ اے۔ شاہ)
افسر شعبہ مال"

The sanction for sale of the land measuring 200 kanal was granted through another notification dated 26.02.1981, which reads as follows:-

"سیکرٹریٹ محکمہ مال

آزاد حکومت ریاست جموں و کشمیر

نوٹیفیکیشن:-

جناب صدر حکومت ریاست آزاد جموں و کشمیر نے اراضی تعدادی 200 کنال (دو صد کنال) واقع موضع صاحب چک تحصیل و ضلع میر پور جس کی تفصیل و نشاندہی خسره نمبرات

حسب ذیل ہے، میسرز قریشی گھی ملز لمیٹڈ میرپور کے پاس فروخت کرنے کی بشرائط ذیل منظوری صادر فرمائی ہے۔

تعداد رقبہ		نمبر خسرہ	تعداد رقبہ		نمبر خسرہ
مرلے	کنال		مرلے	کنال	
4	11	538	2	9	485
4	11	539	7	11	511
5	19	540	7	15	512
2	00	543	7	10	513
00	7	544 / من	16	2	514
2	8	567	4	8	515
1	10	617	9	7	516
8	3	618	3	10	517
16	6	619	2	9	528
7	18	621	9	2	529
1	5	622	8	17	530
00	14	623	2	5	531
1	7	633	2	11	532
00	19	635	2	13	533
1	10	636	1	10	534
8	4	637	1	11	535
12	10	638	2	18	536
		میزان: 200 کنال	8	15	537

1- ڈپٹی کمشنر صاحب میرپور اراضی واپڈا متذکرہ حاصل کر کے ازاں حکومت ریاست آزاد جموں و کشمیر کی طرف سے اس کا فوری قبضہ بیجنگ ڈائریکٹر میسرز قریشی گھی ملز کو دینے لیکن اس سے قبل وہ مذکورہ سے ایک باضابطہ رجسٹری شدہ قرار نامہ بدیں شرائط حاصل کریں گے کہ:-

(الف) کہ یہ اراضی متذکرہ صرف گھی ملز لگانے کے لیے استعمال ہوگی اور کسی دوسرے شخص کو منتقل نہیں کی جائے گی۔ نیز

(ب) اراضی کی قیمت کا تعین حسب ضابطہ و مروجہ قانون کیا جائے گا اور فرم مذکور اس طرح تعین شدہ قیمت اراضی بلا عذر ادا کرنے کے پابند ہوگی اور قبل ازیں فرم کی طرف سے ڈپٹی کمشنر صاحب میرپور کے پاس جمع شدہ رقم بطور زر ضمانت پیشگی تصور ہوگی۔

2- اقرار نامہ متذکرہ شرط نمبر 1 بیجنگ ڈائریکٹر فرم آزاد حکومت کی طرف سے ڈپٹی کمشنر صاحب میرپور کے مابین ضبط تحریر میں لایا جائیگا۔

3- میسرز قریشی گھی ملز جب تک بنگ کنال پل تعمیر نہیں ہو جاتا واپڈا کی تعمیر کردہ سڑک استعمال کرنے کے مجاز ہونگے۔ البتہ وہ واپڈا کو اسکی سالانہ مرمت وغیرہ کے اخراجات کا

مناسب حصہ (Maintenance cost) تحت قواعد ادا کرنے کے پابند ہوں گے۔

4۔ اراضی متذکرہ کی قیمت کی وصولی کے بعد حکومت آزاد جموں و کشمیر کی طرف سے بطور بائع ڈپٹی کمشنر صاحب میرپور مشتری میسرز قریشی گھی ملز کے حق میں بمطابق شرائط مندرجہ بالا بیعنامہ رجسٹری کرنے کے لیے بطور نمائندہ آزاد جموں و کشمیر ہوں گے۔

5۔ شرائط متذکرہ سے کسی قسم کے انحراف کی صورت میں حکومت آزاد جموں و کشمیر کو جملہ اراضی متذکرہ بالا بلا ادائیگی کوئی ہر جانہ یا معاوضہ یا قیمت ضبط کرنے کا اختیار ہوگا۔ اور اس صورت میں فرم مذکور کو کسی قسم کا قانونی چارہ جوئی کا استحقاق نہ ہوگا۔

(وحید احمد شیخ)

ڈپٹی سیکرٹری مال "

The examination of the record further reveals that admittedly the Government recalled this notification vide another notification dated 24.09.1981 and the said land measuring 200 *kanal* was leased out to respondent for a period of 99 years, instead of sale. In furtherance of this notification the lease agreement was executed between the parties, which reads as follows:-

"Agreement between the Azad Govt. of the State of Jammu & Kashmir and M/s. Qureshi Vegetable Ghee Mills, Ltd. Mirpur A.K.

WHEREAS the Azad Government of the State of Jammu and Kashmir (hereinafter called as Lessors) has agreed to lease out an area of land measuring two hundred kanals situated in village Sahib Chak, Teh & District Mirpur adjacent to the area leased out to A.K.M.I.D.C to M/S Qureshi Vegetable Ghee Mills Ltd. Mirpur

(hereinafter called lessee) for the purpose of setting up of a Ghee Mill in that area and the lessee has agreed to take this land on lease.

THEREFORE the following terms of the lease have been agreed upon by the Lessor and the Lessee.

1. The lessor lease out an area of two hundred Kanals of land in village Sahib Chak, Teh & District Mirpur for 99 years comprised of Khasra numbers:

Khasra Number	Area	
	Kanals	Marlas
485	2	9
511	7	11
512	7	15
513	7	10
514	16	2
515	4	8
516	9	7
517	3	10
528	2	9
529	9	2
530	8	17
531	2	5
532	2	11
533	2	13
534	1	10
535	1	11
536	2	18

537	8	15
538	4	11
539	4	11
540	5	19
543	2	00
544 min	00	7
567	2	8
617	1	10
618	8	3
619	16	6
620	14	9
621	7	18
622	1	5
623	--	14
634	1	7
635	--	19
636	1	10
637	8	2
638	12	10

Total area 200 kanals

2. The lessee shall use this land exclusively for setting up the Ghee Mill and shall not use it for any other purpose.

3. The lessee shall be authorized to Mortgage this land with any Scheduled Bank or recognized financing agency including I.D.B.P for the purpose of obtaining Loan to meet out of setting up of Ghee Mill and Running capital;

4. The lessee shall not transfer this land by any means to any other person or party.

5. The lessee shall pay the lease money of the land Rs.987.40. per kanal in lumpsum to the Lessor (1,97480 total amount). The amount already paid by the Lessee on account of this land shall be adjusted against the lease money and the balance recovered from them (the lessee).

6. The lessor shall be competent to revise the terms of this agreement as and when they (lessor) deem it necessary before the date of expiry of the lease period.

7. The lessor shall fix a date by which the lessee shall complete the Ghee Mill.

8. The Lessor shall be competent to cancel the lease if the leased land is used in contravention of any terms of this agreement.

9. The lease could be extended after the expiry of lease period by mutual agreement.

10. This agreement shall be binding on the successors and heirs of the Lessor and the Lessee.

11. This agreement will be got registered after the payment of the entire amount of lease money by the Lessee to the lessor and shall become valid after the registration.

Deputy Commissioner Mirpur Mohd Afzal Qureshi
On behalf of the lessor. Mohd Afzal on behalf
Under the Govt. Order 2937- of the Lessee."
45-81 dated 24.9.81

7. So far as the contention of the respondents that the land measuring 325 kanal 4 marla was transferred to him through sale is concerned, it does not find support from the record as he has just relied upon the notification which is not sale-deed rather it was an approval for sale which has been recalled before execution of sale. Same like, the respondent claims that a further land measuring 200 *kanal* was also sold to him. This claim is also without any substance as it was also an approval and neither any sale-deed was executed nor sale took place, whereas, the same land was subsequently leased out to the respondent for a period of 99 years period through notification dated 24.09.1981. The respondent has himself relied upon this notification which itself clearly speaks that the earlier notification for sale of this land had been cancelled. Thus, the argument of the learned counsel for the respondent that the notifications for cancellation of sale are fictitious and not in the knowledge of the respondent, appears to be baseless as he himself produced the

notification dated 24.09.1981 in furtherance of which the lease deed was executed and registered. In paragraph 2 of this notification it is clearly mentioned that the previous notification bearing No.81/539-44/م س dated 26.02.1981 and the agreement agreed between Deputy Commissioner Mirpur and Qureshi Ghee Mills dated 28.02.1981 are cancelled and revoked. Thus, this fact is proved from the respondent's own produced and relied record that only the land measuring 200 *kanal* was leased out to him and rest of his claim is incorrect, false and amounts to fraud.

8. It is universal proverb that "lie has no legs to stand upon". In this case, the appellants, herein, have filed comments and written statement before the High Court wherein they have categorically stated the whole story. It will be useful to reproduce here paragraph 4 of the written comments, which reads as follows:-

4- غلط ہے۔ اراضی تعدادی 325 کنال کے بجائے اراضی تعدادی 200 کنال کی حد تک بروئے نوٹیفیکیشن نمبر / س م / 36-524-1981 مورخہ 26-02-1981 کو مسیز زقریشی گھی ملز لمیٹڈ کو فروخت کرنے کی منظوری صادر ہوئی اور اس کے مطابق

ڈپٹی کمشنر میرپور اور محمد افضل قریشی ڈائریکٹر گھی ملز کے درمیان مورخہ 1981-02-28 کو معاہدہ/اقرار نامہ بھی رجسٹرڈ ہوا۔ لیکن بروئے نوٹیفیکیشن نمبر ف/م/45-2937-1981 مورخہ 1981-09-24 متذکرہ بالانویٹیفیکیشن مورخہ 1981-02-26 و معاہدہ مورخہ 1981-02-28 منسوخ کیے جا کر اراضی تعدادی 200 کنال عرصہ 99 سال کے لئے تابع شرائط پٹہ پردی گئی۔۔۔"

The claim of the respondent that firstly the land measuring 325 *kanal* 4 *marla* was sold to him, subsequently a further land measuring 200 *kanal* and thereafter in addition to this further land measuring 200 *kanal* was leased out; is refuted from the record. In all these alleged three transactions the survey numbers of the land are almost common. It is very illogical that the same property has been transacted thrice to the respondent. Be that as it may, the land is common and just on the basis of three transactions it cannot be multiplied by three.

9. The respondent has produced only two registered documents i.e. the lease deed and the sale-deed regarding the land measuring 126 *kanal* executed by him in favour of respondent No.2. According to the terms of registered lease the lessee is not entitled to transfer the leased land by

any means to any other person or party and in case of violation the lessor is competent to cancel the lease. Thus, it is clear that on the basis of this lease deed the respondent was not empowered or entitled to execute any type of sale-deed. The hereinabove mentioned documents prove that except the leased land neither any other land was transferred to respondent nor he has got any legal interest or right in the other claimed land. In this context, the logical conclusion can be drawn that the alleged sale-deed which is stated to be executed by the respondent in favour of respondent No.2 is against law, forged, fraudulent and amounts to criminal offence. The official of the revenue department who has prepared the copy of the revenue record for such sale-deed with the connivance of respondent has also committed criminal offence which requires separate action according to law.

10. It is established from the record that except the land measuring 200 *kanal* which was leased out to the respondent no other land is

vested in the respondent and his claim exceeding 200 *kanal* is based upon fraud and misstatement of facts. According to the celebrated principle of law the fraud vitiates the most solemn proceeding. Our this view finds support from the cases reported as *Lal Din & another vs. Muhammad Ibrahim* [1993 SCMR 710], *Rehmatullah & others vs. Saleem Khan & others* [2007 SCJ 655], *Talib Hussain & others vs. Member Board of Revenue & others* [2003 SCMR 549], *Ch. Muhammad Younas Arvi vs. Sohail Bostan & others* [2004 SCR 352] and *M/s. Ideal Engineering vs. Azad Govt. & others* [2017 SCR 1100].

11. The sole argument advanced on behalf of counsel for the respondent that he is owner of the land on the basis of judgment of the High Court dated 19.12.2013 against which the petition for leave to appeal was refused by this Court, appears to be misconceived, against law and has no substance as neither the proposition of determination of sale-deed was brought on record nor the same was determined by the High Court or

this Court. In the previous judgment dated 19.12.2013 the learned High Court has drawn the following conclusion:-

"I am of the view that before allotment of the land to the Police Department it was enjoined upon the respondents to determine as to whether land in question was available for allotment only then after deducting the land given to the petitioner through lease other allotment can be made. The petitioner has been deprived of the land rights without providing a right of hearing."

The material legal proposition resolved in that case was of right of lease of the respondent regarding which still there is no dispute. Same like, in the impugned judgment the learned High Court has drawn the following conclusion:-

"...As the allotment notification dated 26.06.2015 as well as subsequent notification reproduced herein above has been issued in presence of lease in favour of the petitioner and without notice to the petitioner and providing a right of hearing to him, hence, are illegal and bad in law."

Thus, it is clear that the learned High Court has given legal protection to the lease executed in favour of the respondent. The respondent has played fraud and made

misstatement before the Court regarding the specification of lease property with reference to survey numbers and has trickily mentioned that the process of sale of the land measuring 325 kanal 4 marla under the Government notification dated 26.02.1980 was initiated so that the sale-deed be executed. In the previous writ petition he has misstated that the land measuring 200 kanal comprising survey Nos. 484 to 487 was leased out, whereas, he has himself annexed the copy of lease deed of the land in which except survey No.485 measuring 2 kanal 9 marla the mentioned survey numbers are not included. The judgment of the High Court dated 19.12.2013 according to its spirit and nature to the extent of lease deed is correct and there is no cavil in this regard.

12. In the light of the record and above stated facts it can safely be concluded that the land measuring 200 kanal comprising of survey numbers mentioned in the hereinabove reproduced notification and lease agreement, was leased out to the respondent and regarding the rest of the land

he has got no legal right or interest and his alleged claim amounts to fraud and criminal act. The appellants, herein, and the proforma respondent No.3 in their written statement have taken the stand that the respondent was granted the lease of land measuring 200 kanal comprising survey numbers 468 and 487(new). They also brought on record the notifications dated 26.02.1980, 14.06.1981 and 24.09.1981 but the learned High Court neither properly appreciated the pleadings of the parties nor examined the record which resulted into drawing the incorrect conclusion. As mentioned hereinabove that the notifications dated 26.02.1980 and 26.02.1981 regarding approval of sale of the land in favour of respondent were recalled and cancelled and only the land measuring 200 kanal was finally leased out to the respondent for 99 years and in furtherance of this proceeding the lease deed was also registered. The respondent himself based his whole case on the lease deed which is executed in the light of notification dated 24.09.1981 which clearly speaks that the earlier

notification regarding approval of sale dated 26.02.1981 has been cancelled. In this state of affairs, the impugned judgment of the High Court to the extent of cancellation of notification dated 26.08.2015 does not appear to be consistent with the facts and record of the case rather the same is result of lacking proper application of judicial mind and minute examination of the record.

13. Same like, in the judgment dated 19.12.2013 it is mentioned that the sale-deed was executed on 15.10.1981, whereas, no such claim was made by the respondent rather in the pleadings it is mentioned that the process was initiated for sale-deed which was to be executed. Be that as it may, the Court finally rightly declared the respondent entitled to the extent of leased land. Same like, in the said judgment the legal status of the alleged sale-deed of land measuring 126 *kanal* 1 *marla* has also not been determined. The impugned judgment appears to be passed without determination of specification of the land leased out to respondent and proper scrutiny of the record.

14. The land measuring 200 kanal leased out to the respondent is still intact and he has not been deprived of this land by any act of the appellants, herein. However, to the extent of specification of land the respondent has committed misstatement of facts and intentionally played fraud. As mentioned hereinabove that according to the celebrated principle of law the fraud vitiates the most solemn proceeding, thus, the respondent can neither take benefit of fraud and claim right regarding the land which is not part of the lease deed nor the judgments of High Court have binding nature regarding such land.

15. According to the celebrated principle of law neither the writ jurisdiction can be exercised for protection of ill-gotten gains nor for illegal acts. Moreover, the relief in the writ jurisdiction is discretionary in nature and the party who does not approach the Court with clean hands, plays fraud and conceals the material facts or makes misstatement, is not entitled to any discretionary relief. Respondent No. 1 in the light of hereinabove

mentioned misstatement of facts based his claim on forged documents and approached the Court with unclean hands for protection of ill-gotten gains hence on this score too the writ petition was not maintainable.

16. In the light of the peculiar facts of this case, the act of respondent to execute the sale-deed of the land measuring 126 kanal 1 marla apparently amounts to forgery and fraud. It also appears that these illegal acts have been done by him with the connivance of the officials of the revenue department who issued the copies of the revenue record for execution of the alleged illegal sale-deed and registration of the same purportedly due to illegal gratification. This act amounts to usurp the public property and falls within the definition of 'offence' as defined under section 4(o) and Corruption and Corrupt Practices as defined under section 10 read with Schedule II of the AJ&K Ehtesab Bureau Act, 2001 justifying registration of criminal case and initiation of proceedings against the culprits. Therefore, the copy of this judgment

shall be sent to the Chairman Azad Jammu and Kashmir Ehtesab Bureau for registration of the case and conducting the investigation.

17. In this state of affairs, the impugned judgment is modified with the observation that the respondent has only got a right and interest according to the terms of lease deed registered on 15.10.1981 relating to the land specified and mentioned in it, whereas, in respect of the rest of the land the respondent has got no legal right or interest and the appellants, herein, and the proforma respondent can deal with the land which is beyond the leased land.

This appeal stands partly accepted in the terms indicated above.

CHIEF JUSTICE
Muzaffarabad,
___.2017

JUDGE

