

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA. No.230 of 2017
(Filed on 24.05.2017)

Raja Abdul Hussain Khan s/o Raja Saif Ali Khan r/o
Naloochi Tehsil & District Muzaffarabad.

.....PETITIONER

VERSUS

1. Custodian of Evacuee Property Azad Jammu & Kashmir Muzaffarabad.
2. Raja Naseer-u-Din Khan.
3. Nasarullah Khan, sons,
4. Raja Shabeer Hussain Khan, s/o Raja Muhammad Yaqoob Khan r/o Naloochi, Tehsil and District Muzaffarabad, Azad Kashmir.
5. Assistant Custodian Evacuee Property, Muzaffarabad.
6. Patwari, Constituency Naloodhi.

.....RESPONDENTS

[On appeal from the judgment of the High Court
dated 24.03.2017 in Writ Petition No.321 of 2005]

FOR THE PETITIONER: Syed Shujaat Ali Gillani,

FOR THE RESPONDENTS: Mr. Nasir Masood
Mughal, Advocate.

Date of hearing: 08.11.2017.

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.- The above titled petition for leave to appeal arises out of the judgment of the High Court dated 24th March, 2017, whereby writ petition filed by the petitioner, herein, has been dismissed.

2. Brief facts forming the background of the instant petition for leave to appeal are that the petitioner, herein, filed a writ petition in the High Court alleging therein, that an evacuee piece of land comprising survey Nos. 599, 399, 502 & 506 (old), total measuring 31 kanal, 19 marla, situate in village Naloochi, Tehsil & District Muzaffarabad was allegedly allotted to predecessor-in-interest of respondents No.2 and 3, herein, namely Maraj-ud-

Din, being refugee of 1947, by A.R.C. Muzaffarabad on 04.11.1956. Later on, entries regarding allotment to predecessor-in-interest of respondents No.2 and 3, were also recorded by the revenue authorities in the revenue record. It is maintained that the said predecessor-in-interest of respondents No.2 and 3, executed general power of attorney in favour of respondent No.4, namely Raja Shabeer Hussain Khan, from whom petitioner had purchased the land in question against consideration of Rs.13,0000/- through agreement-to-sell dated 01.03.1999. It is further stated that respondent No.1, illegally granted survey No.599, min 646 and 643 min (old), measuring 11 kanal, 2 marla, on lease to Police Department, upon which petitioner moved an application for exclusion of the aforesaid survey numbers from the lease. It is maintained that respondent No.1, without considering application of petitioner and perusing the relevant record,

illegally cancelled the allotment of his total land i.e. 31 kanal, 19 marla, vide order dated 20.07.2005. In the writ petition he requested for setting aside the order of the Custodian dated 20.07.2005. After necessary proceedings, the learned High Court through the impugned judgment dated 24.03.2017, dismissed the writ petition, hence this petition for leave to appeal.

3. Syed Shujaat Ali Gillani, Advocate, counsel for the petitioner after narration of necessary facts submitted that the learned High Court has not properly appreciated the facts and propositions involved in the case. The petitioner who is a bona-fide purchaser, purchased the land in lieu of Rs.12,0000/-. The allottee of the land Mehraj-ud-Din Khan executed a general power of attorney in favour of one Raja Shabir Hussain Khan, who executed an agreement-to-sell in favour of the petitioner. He submitted that according to

the celebrated principle of law an agreement-to-sell does not require registration. Mehraj-ud-Din was sick and had not appeared in the inquiry proceedings, hence the statement attributed to him is forged, fictitious and fabricated one. He further submitted that the petitioner has not been provided an opportunity of hearing, thus the whole proceedings conducted by the Custodian are against law. The impugned judgment is not sustainable. These are vital points involved in the case justifying the grant of leave. He referred to section 16 of the Administration of Evacuee Property Act and the case reported as [2016 SCR 1712].

4. Conversely, Mr. Nasir Masood Mughal, Advocate, counsel for the respondents while forcefully defending the impugned judgment seriously opposed the petition on the ground that complicated questions of facts were raised in the

writ petition and according to the settled principle of law such questions cannot be resolved in writ jurisdiction. The Custodian who is vested with exclusive powers declared the allotment of the petitioner as fake after conducting proper inquiry and due process of law and recorded findings of facts which cannot be disturbed while challenging the same in writ petition. So far as the argument of the counsel for the petitioner that the petitioner has been condemned unheard, is concerned, it appears to be totally misstatement of facts. The petitioner was party in the case before the Custodian as it is proved from annexure "PH" annexed with the petition for leave to appeal. Therefore, no question of law is involved in the petition for leave to appeal the same merits dismissal.

5. I have considered the arguments of the counsel for the parties and perused the record made available. Through the impugned judgment

the High Court has dismissed the writ petition of the petitioner in which he prayed for setting aside the order of the Custodian dated 20.07.2005, which is available at the paper book as annexure "PD". The perusal of this order reveals that the same has been issued on the application filed by the petitioner. According to the admitted facts the petitioner based his claim that he has purchased the land from the allottee, Mehraj-ud-Din s/o Muhammad Azeem Khan, through agreement-to-sell. During the inquiry, the allottee was summoned, who appeared before the Assistant Custodian and got his statement recorded. In his statement the said allottee clearly stated that no land in Naloochi in Azad Jammu & Kashmir or Pakistan is allotted to him and all the alleged allotments are fake and fraudulent. The recording of statement is not disputed. Even in ground "G" of the memo of petition for leave to appeal filed

before this Court, it has been admitted with an exception that Mehraj-ud-Din has got his statement recorded with mala-fide intention for extracting more amount from the petitioner. It is very amazing that if the intention of Mehraj-ud-Din had to extract more amount from the petitioner then he should not deny from the allotment in his name rather he should be attempted for protection of such allotment. Be that it may, however, according to the admitted facts the alleged allottee has totally denied from the allotment.

6. The order of the Custodian further reveals that the alleged allottee, Mehraj-ud-Din was summoned by the Custodian for the second time and got his statement recorded on 11.07.2005, in which he clearly stated that no land was allotted to him rather one Muhammad Shabir convinced him for execution of a deed of attorney but when it came to his knowledge that on the basis of such

deed he is practicing fraud and executing fake transactions, he revoked the same and requested for reversion of all the fraudulent actions of the agent. In view of this clear factual proposition the Custodian who is vested with exclusive authority relating to the deposition, passed the order. Thus, the Custodian has not acted against law. The petitioner has failed to justify for interference in the order on legal grounds for exercising the writ jurisdiction.

7. So far as the factual aspects of the case are concerned, as the order of the Custodian is based upon admitted and proved facts, thus the same even on facts does not suffer from any illegality. Even otherwise, such like complicated questions of facts cannot be resolved in writ jurisdiction.

8. According to the stated facts, it appears that some influential *land-mafia* is in action for grabbing the evacuee land by practicing fraud and forgery, which demands for initiation of action according to the relevant provisions of law. Therefore, if it is so felt advised, the Custodian may initiate the proceedings to bring such persons before law to be dealt with according to law.

For the above stated reasons, finding no force this petition for leave to appeal stands dismissed with costs.

CHIEF JUSTICE

Muzaffarabad.

Date of announcement: 13.11.2017