

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

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA No.343 of 2017  
(Filed on 01.08.2017)

Farooq Ahmed s/o Faqeer Muhammad r/o  
Naloochi/Chatter Domail Tehsil and District  
Muzaffarabad.

.....PETITIONER

VERSUS

1. Custodian Evacuee Property Azad Jammu & Kashmir Muzaffarabad.
2. Military Estate Officer Hazara Circle Abbotabad through In-charge/Deputy Military Estate Officer Shoukat Line Muzaffarabad.
3. ARC, Muzaffarabad.
4. Tehsildar Muzaffarabad.
5. Patwari Halqa Naloochi Muzaffarabad.

.....RESPONDENTS

6. Raja Mehfooz Husain s/o Raja Abdul Hussain r/o Naloochi Tehsil & District Muzaffarabad.

.....PROFORMA-RESPONDENT

[On appeal from the judgment of the High Court  
dated 02.06.2017 in Writ Petition No.740 of 2009]

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FOR THE PETITIONER: Ch. Shabbir Ahmed,  
Advocate.

FOR THE RESPONDENTS: Ch. M. Mushtaq,  
Advocate.

Date of hearing: 12.12.2017.

**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 02.06.2017, whereby the writ petition filed by petitioner, herein, along with four others, has been dismissed.

2. Brief facts of the case as depicted from the record are that Farooq Ahmed, petitioner herein, filed a writ petition in the High Court alleging therein, that he was allotted an evacuee piece of land comprising survey Nos. 607, 608, 612, 613 and 616, total measuring 42 kanal, 17 marla, situate at village Naloochi, in year 1967, however, the proprietary Rights Transfer Order was issued in his favour by the Custodian to the extent of survey No.616, measuring 18 kanal, 10 marla,

on 15.04.1999. The land bearing survey Nos. 607, 608, 612, 613, 616, was renumbered as survey Nos. 605, 618, 620, 630, 631 and 633. He alleged that the learned Custodian of Evacuee Property leased out his land comprising of different survey numbers to the Police Department through order dated 24.09.2004. It was further alleged that against the order of the Custodian writ petition No.484/2004, *titled Muhammad Ilyas Khan and others vs. Custodian Evacuee Property & others* was filed before the High Court which was accepted and the order of the Custodian dated 24.09.2004 was set aside vide judgment dated 03.04.2009. He further alleged that the Custodian on the report of Assistant Custodian, Muzaffarabad on 10.12.2004, established a *Robkar* against him for cancellation of the disputed land before the learned Custodian. The Custodian without providing an opportunity of hearing proceeded ex-parte against him and illegally cancelled his allotment and proprietary rights transfer order vide the impugned order dated 28.10.2008, hence he is constrained to file the writ

petition. After necessary proceedings, the learned High Court through the impugned judgment dated 02.06.2017, dismissed the writ petition, hence this petition for leave to appeal.

3. Ch. Shabbir Ahmed, Advocate, the learned counsel for the petitioner argued the case at length. He discussed the detailed case history, some issues relating to the allotment of the land in village Nalochi and also referred some Court proceeding between some other parties. While summarizing his arguments, he submitted that the impugned order of the learned Custodian is against law and without jurisdiction. Once the allotment of the petitioner was found genuine and the proprietary rights have been duly granted, recalling the same is unlawful. He further argued that every authority is bound to act according to law. As the Custodian acted in violation of law, hence, the petitioner was forced to approach the High Court in writ jurisdiction but the learned High Court has failed to properly appreciate the legal and factual propositions involved in the case which resulted into miscarriage of justice. He

forcefully argued that the whole story of cancellation of allotment by the Rehabilitation Commissioner in the year 1971 is afterthought and based upon forged and self-contradictory record. The Custodian has failed to hold any inquiry and determine the factual aspects of the case. In view of the importance of propositions involved, grant of leave is justified.

4. Conversely, Ch. Muhammad Mushtaq, Advocate, the learned counsel for the respondents forcefully opposed the petition on the ground that same is against law. The arguments advanced by the learned counsel for the petitioner are based upon misstatement of facts. The writ petition on the face of it was not maintainable. The petitioner has played fraud. Neither he is refugee of 1947 nor there is any genuine allotment in his favour. Even from the record, his self-contradictory claims are apparent. The whole story of allotment is forged. On one hand the petitioner claims that he was allotted 42 kanal 17 marla land and at the same time he claims that he applied for proprietary rights

of land measuring 18 kanal 10 marla. Same like, his own stated facts are speaking proof of fact that neither he is refugee of 1947 nor entitled for allotment. Leaving aside all these aspects according to the provisions of Pakistan Administration of Evacuee Property Act, 1957 and Rehabilitation Laws only that land can be allotted which is available in the pool for allotment, whereas, according to the record and admitted facts the land was in possession of Military Grass-farm. Neither it was duly pooled for allotment nor in possession of the Custodian. After thorough probe and inquiry the Rehabilitation Commissioner declared all such allotments as illegal vide order dated 27.11.1971. The argument that there is variation in date of decision of Rehabilitation Commissioner, is also misconceived. The Assistant Rehabilitation Commissioner after due inquiry submitted the report to the Commissioner on 16.11.1971 who in the light of detailed report and inquiry passed order on 27.11.1971. In compliance of this final order, the Assistant Rehabilitation Commissioner disposed

of the matter vide order dated 06.12.1971. He further submitted that on one hand the petitioner on the basis of allotment chit or certified copies claims his right and on the other hand he objects the copies of judicial documents and proceeding. He further argued that even otherwise the writ petition is not maintainable as the petitioner has failed to challenge the inquiry report of the Assistant Rehabilitation Commissioner or array him as party in the writ petition who is necessary party according to the stated facts. He further submitted that the petitioner himself annexed with the petition for leave to appeal the inquiry report of the Rehabilitation Commissioner dated 12.02.2013 but neither these findings have been challenged nor Rehabilitation Commissioner has been arrayed as party, thus, on this score the whole litigation is futile exercise. This petition has no substance, hence merits dismissal.

5. I have heard the learned counsel for the parties and examined the record made available. The petitioner has challenged the proprietary of

order of learned Custodian dated 28.10.2008 the careful examination of which reveals that it has been passed on the basis of report submitted by Assistant Custodian on 10.12.2004. Neither the petitioner has arrayed the Assistant Custodian as party in the writ petition nor has challenged his report. Moreover, the report of the Assistant Custodian is based on the order of Rehabilitation Commissioner (dated 27.11.1971) who has also not been arrayed as party in the writ petition. It is also worth mentioning that the petitioner himself placed on record the second inquiry report of the Rehabilitation Commissioner submitted to the Custodian on 12.02.2013 which is annexed as annexure "PF/2". These findings have also not been challenged by the petitioner through any amendment.

6. The petitioner raised main grievance in the writ petition relating to the order of the Custodian dated 28.10.2008 which is based upon inquiry of Assistant Custodian. The Custodian in its judgment determined the complicated questions of

facts, specially, that at the time of alleged allotment the age of petitioner according to record appears to be 15 years and his year of birth in this context is 1952. The Custodian held that neither the petitioner is refugee of 1947 nor at the time of alleged allotment, being underage of 15 years, he was entitled for allotment as head of family, thus, he has obtained the alleged allotment by fraud. The Custodian has also determined another factor that the petitioner claimed allotment of land measuring 42 kanal 17 marla but applied for proprietary rights only to the extent of land measuring 18 kanal 10 marla without any explanation that why he has not claimed proprietary rights of other allotted land. According to settled principle of law, all these questions, specially, the question of fraud being complicated and complex in nature cannot be determined in writ jurisdiction.

7. In view of the observations of the Custodian the petitioner was directed to satisfy the Court by producing any document regarding his claim to be refugee but despite availing number of

opportunities he failed to produce any document to justify his claim to be entitled for allotment of the land.

8. So far as the main proposition of cancellation of allotment by the Rehabilitation Commissioner vide order dated 27.11.1971 is concerned, it is worth mentioning that the parties as well as the authorities below due to lack of careful examination of the record misconceived regarding the date of decision of Rehabilitation Commissioner. In some of the documents it is mentioned as 27.11.1971 and in others as 06.12.1971. I deem it necessary to clarify this misconception. In fact, according to the record the matter was inquired into by the Assistant Rehabilitation Commissioner, Muzaffarabad in case number 43 filed on 23.09.1969. After detailed inquiry, he submitted a report on 16.11.1971 to the Rehabilitation Commissioner that the claimed allotment is illegal and liable to be cancelled as the same is regarding the land which is under the possession of the Military Grass-farm, hence,

basically, the land was not available for allotment. On this report, the Rehabilitation Commissioner passed an order on 27.11.1971, which reads as follows:-

" مسل پیش ہو کر رپورٹ اے آر سی صاحب اور مشمولہ کاغذات کا ملاحظہ کیا گیا۔ رپورٹ سے عیاں ہے کہ مہاجرین کو آباد کاری کے لیے زرعی رقبہ کی الاٹمنٹ کے بجائے سرکاری رقبہ زیر قبضہ ملٹری گراس فارم جان بوجھ کر بدوں تحقیقات و عدم اعتراض سرٹیفیکیٹ آفیسر ملٹری گراس فارم الاٹ کی گئی جس کا قطعاً کوئی جواز نہ تھا اور نہ ہے۔ اے آر سی مظفر آباد نے اپنی رپورٹ میں اُن اہلکاران اور آفیسران کی نشاندہی نہیں کی جو الاٹمنٹ کی اس کارروائی میں ملوث رہے۔ اس بارہ میں اے آر سی صاحب ریکارڈ اور امثلہ مرتب کر کے اس کارروائی کے مرتکب اہلکاران و افسران اور الاٹیان کی واضح نشاندہی کر کے رپورٹ بوساطت ڈی آر سی صاحب مظفر آباد اندر ایک ماہ دفتر ہذا کو ارسال کریں گے۔ بعد ملاحظہ رپورٹ ضروری کارروائی عمل میں لائی جائیگی۔ حسب سفارش اے آر سی صاحب مظفر آباد جملہ اراضی الاٹ شدہ مسٹولان نمبر 1 تا 11 مقبوضہ ملٹری گراس فارم منسوخ کی جاتی ہے۔ مسٹولان آباد کاری کے لیے علیحدہ طور زرعی آمدنی کی الاٹمنٹ کے لیے متعلقہ حکام سے چارہ جوئی کریں۔ مثل برائے مزید کارروائی و ضابطہ اے آر سی صاحب مظفر آباد مرسل ہو۔"

On the basis of this order the Assistant Rehabilitation Commissioner finally disposed of the case vide order dated 06.12.1971. As the certified copies of both the orders passed by Assistant Rehabilitation Commissioner and Rehabilitation Commissioner have been issued at the same time, thus, this misconception has arisen. In fact, there is no ambiguity or inconsistency according to the record.

9. According to the provisions of section 18 of Pakistan Administration of Evacuee Property Act, 1957 the land can be only allotted which is in possession of the Custodian. Same like, under the provisions of section 6 of the Pakistan Rehabilitation Act, 1956 the Government has to authorize the Rehabilitation Commissioner to pool such evacuee property as may be specified for allotment. As in view of hereinabove stated facts the claimed allotment relates to the land which was neither in possession of the Custodian nor has been pooled for allotment, therefore, the allotment of such property was without lawful authority. On this proposition this Court has already held in the case titled *Education Department vs. Custodian Evacuee Property & others* (Civil Appeal No.126/2017 decided on 04.10.2017) that:

“In this context, the statutory provisions of section 18 of the Pakistan (Administration of Evacuee Property) Act, 1957 and section 6 of the Pakistan Rehabilitation Act, 1956 are clear that only evacuee property of which the Custodian has taken possession or Government by order has authorized Rehabilitation Commissioner to pool such

evacuee property for allotment, can be allotted.”

Thus, the Rehabilitation Commissioner has rightly passed the cancellation order dated 27.11.1971 which does not call for any interference. In pursuance of this order, the petitioner has got no locus standi.

10. As hereinabove mentioned that even otherwise the petitioner has failed to array necessary parties i.e. Assistant Custodian, on whose inquiry report the Custodian passed the order and Rehabilitation Commissioner who passed the basic cancellation order dated 27.11.1971. Same like, the latest inquiry report was submitted by the Rehabilitation Commissioner on 12.02.2013, which has been placed on record by the petitioner himself, but despite passage of years time he has not challenged the same. The writ petition is also not maintainable on this score.

11. According to the settled principle of law, leave cannot be granted in routine mere for the purpose of fruitless litigation. The petitioner has got

no locus standi and failed to make out any valid ground for interference in the impugned judgment. Therefore, this petition stands dismissed.

However, before parting with the judgment, I deem it necessary to observe that from the story of this case it appears that relating to allotment of the land in village Naluchi, prima facie, some mal-practices, fraud and tampering of record has been committed which requires high level inquiry and action. The Custodian who is vested with the powers, is directed to take necessary steps for protection of evacuee property as well as public interest and enforcement of law.

CHIEF JUSTICE

Muzaffarabad,  
16.12.2017