

SUPREME COURT OF AZAD JAMMU & KASHMIR
(Appellate Jurisdiction)

PRESENT:

Raja Saeed Akram Khan, J.

Civil PLA No.218 of 2018
(Filed on 16.10.2018)

Arshad Begum & others

..... PETITIONERS

VERSUS

Muhammad Sharif & others

..... RESPONDENTS

[On appeal from the judgment of the High Court,
dated 18.09.2018 in Writ Petition No.272/2018]

FOR THE PETITIONERS: Mr. Reaz Ahmed Alam,
Advocate.

FOR THE RESPONDENTS: Sardar Mushtaq Hussain
Khan, Advocate.

Date of hearing: 22.11.2018

ORDER:

Raja Saeed Akram Khan, I. – The titled petition for leave to appeal has been filed against the judgment passed by the High Court on 18.09.2018, whereby the writ petition filed by the petitioners, herein, has been dismissed in limine.

2. The facts necessary for disposal of the instant petition for leave to appeal are that the petitioners, herein, filed a writ petition in the High Court, alleging therein that the land comprising Survey Nos.781-337/782-387/380 measuring 10 kanal, 10 marla, was allotted to father of petitioners, herein, namely Fazal Hussain, on 09.01.1950. It was alleged that the petitioners on acquiring knowledge of the fact that the land allotted to their father is under dispute in a case titled "*Yousaf Haroon and others vs. Custodian of Evacuee Property and others*" which was subjudice before the Apex Court, hence opted to move an application for impleading party, however, the same was disallowed. It was further stated that the private respondents No.1 to 5 moved an application before the Apex Court for implementation of its judgment, on the

basis of which an appeal filed by them was dismissed by the Rehabilitation Commissioner vide order dated 25.10.2017. It was further stated that the aforesaid order was challenged by petitioners before the Custodian of Evacuee Property by filing a review petition, which is still pending. However, on the application of private respondents No.1 to 5, the District Magistrate, Bhimber, has passed the order dated 11.07.2018, pertaining to dispossession, hence they constrained to file the writ petition. The learned High Court after hearing preliminary arguments of the parties dismissed the writ petition in limine, hence this petition for leave to appeal.

3. Mr. Reaz Ahmed Alam, Advocate, counsel for the petitioners submitted that the impugned judgment of the learned High Court is against law and the record, which is liable to be vacated. He submitted that the petitioners were in possession of the disputed land since decades period on the basis of an allotment made by the Rehabilitation Department in year 1950. The said allotment was never challenged and is still intact. The learned counsel further added that the petitioners came to know

that a case titled *Muhammad Yousaf Haroon vs. Custodian and others* relating to the dispute over the land in their possession is pending before this Court, hence they moved application for impleading them as party, however, the said application was disallowed. Thereafter, the petitioners approached the Rehabilitation Authorities but their grievance has not been redressed due to which the petitioners constrained to invoke the extraordinary writ jurisdiction of the learned High Court. The learned counsel submitted that important legal questions were raised in the writ petition but the learned High Court without admitting the writ petition for regular hearing and resolution of the legal propositions, illegally dismissed the same in limine. The learned High Court also failed to consider the fact that the District Magistrate was not empowered to pass the order for dispossession of the petitioner. These are legal questions of public importance for the resolution of which grant of leave is justified.

4. On the other hand, Sardar Mushtaq Hussain Khan, Advocate, counsel for the caveator respondents, forcefully controverted the arguments addressed by the

counsel for the petitioners while submitting that the impugned judgment of the learned High Court is in accordance with law. He submitted that the petitioners filed application for impleading them as party in the case titled *Muhammad Yousaf Haroon vs. Custodian & others*, which was disallowed and controversy relating to the disputed land has already been resolved and finalized by the judgment of this Court. After finalization of the same, the petitioners have no locus standi to file the writ petition. The judgment of the learned High Court is perfectly legal. No legal question of public importance is involved in the petition for leave to appeal the same merits dismissal.

After hearing the counsel for the petitioner and going through the record, I am of the considered view that the points raised in the petition for leave to appeal merit consideration in regular appeal. Leave to appeal is, therefore, granted to consider the same, provided the petitioner deposits Rs.1000/- as security within thirty days, failing which the leave granting order shall automatically stand rescinded. The office is directed to complete the file

and place the same before the Hon'ble Chief Justice for constitution of bench.

JUDGE

Mirpur