

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No.51 of 2018

(PLA filed on 11.12.2017)

1. Ghulam Rasul S/o Fateh Mohammad,
2. Mohammad Nazir S/o Ghulam Hussain,
3. Muhammad Razzaq S/o Muhammad Sarwar,
4. Muhammad Ishaq S/o Muhammad Yousaf, R/o Bindi,  
Tehsil Samahni, District Bhimber.

.....APPELLANTS

**VERSUS**

1. Mohammad Shamim Khan,
2. Zafar Iqbal,
3. Mohammad Zaheer, sons,
4. Mst. Feroz Begum,
5. Yasmin Akhtar,
6. Uzma Rani, daughters of Raja Mohammad Yaqoob Khan,
7. Mohammad Afzal Khan, (deceased represented by legal heirs;  
(i) Muhammad Nawaz Khan,  
(ii) Muhammad Farooq Khan, sons of Muhammad Afzal, R/o Bandi, Tehsil and District Bhimber.
8. Mohammad Younis Khan (deceased, represented by legal heirs);

- (i) Feroz Begum,
  - (ii) Zahoor Begum (widows)
  - (iii) Naveed,
  - (iv) Tanveer,
  - (v) Waleed,
  - (vi) Atique,
  - (vii) Waqas, sons,
  - (viii) Nazima Khatoon,
  - (ix) Nazia,
  - (x) Nadia, daughters of Muhammad Younas Khan,  
R/o Bindi Tehsil Samahni, District Bhimber.
9. Khalid Mehmood Khan,
10. Tariq Mehmood Khan,
11. Akhtar Mehmood Khan,
12. Mohammad Nadeem Khan, sons of Raja Mohammad Siddique Khan,
13. Mohammad Akram Khan,
14. Mohammad Ashraf Khan, sons of Taj Mohammad Khan, Caste Chib Rajput, R/o Village Bindi, Tehsil Samahni, District Bhimber.
15. Mohammad Shabbir Khan (deceased, represented by legal heirs);
- (i) Ali Shabbir,
  - (ii) Javena Shabbir,
  - (iii) Maiyam Shabbir, daughters
  - (iv) Nazma Khatoon, widow of Muhammad Shabbir, R.o Bandi, Tehsil and District Bhimber.
16. Saghir Begum, daughter of Mohammad Yaqoob Khan, R/o Bindi Tehsil Samahni, District Bhimber.

.....RESPONDENTS

17. Board of Revenue AJK, Muzaffarabad.

18. Board of Revenue (Full Board) AJK Muzaffarabad.
19. Member Board of Revenue (Appellate Authority) Muzaffarabad.
20. Commissioner Mirpur Division, Mirpur.
21. Additional Collector/Assistant Commissioner Samahni Bhimber.
22. Tehsildar Samahni,
23. Patwari Halqa Bindi,
24. Sohbat Ali,
25. Liaqat Ali, sons,
26. Chiragh Bi,
27. Sabira Bi,
28. Tazeem Akhtar,
29. Azeem Akhtar,
30. Naseem Akhtar,
31. Kaneez Akhtar, daughters,
32. Maryam Bibi, widow of Mohammad Yousaf R/o Bindi, Tehsil Samahni, District Bhimber.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 13.10.2017 in Writ Petition No.102/2011]

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FOR THE APPELLANTS: Mr. Muhammad Reaz Alam, Advocate.

FOR THE RESPONDENTS: Raja Hassan Akhtar, Mr. Tamoor Ali Khan and Ch. Jahandad Khan, Advocates.

Date of hearing: 20.02.2019.

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— This appeal by leave of the Court has been directed against the judgment of the learned High Court dated 13.10.2017, whereby while accepting the writ petition filed by the respondents, herein, the order dated 23.12.2010, passed by the Board of Revenue has been set aside, and the case has been remanded to the Board of Revenue for decision afresh.

2. The facts forming the background of the captioned appeal are that the father of the respondents, herein, moved an application before the Settlement Officer, Mirpur, stating therein, that in village Bindi Samahni, the names of the new owners are being incorporated in different survey numbers, due to which the rights of the old owners are being affected. This application was sent to the District Collector for proper orders. Ultimately, the matter was placed before the Additional Collector Samahni, who directed that the new

owners should be entered in the revenue record as *Ghair Mouroosi*. This order of the Additional Collector was assailed before the Commissioner, Mirpur Division, by filing an appeal which was accepted. Feeling aggrieved, the respondents filed an appeal before the Board of Revenue which was rejected. A review petition filed against the said order also failed on 14.11.2009. Thereafter, the respondents filed second review petition before the Full Board of Revenue which also met the same fate and dismissed on 23.12.2010. The order passed by the Full Board of Revenue dated 23.12.2010 passed in the second review petition was challenged through a writ petition before the Azad Jammu & Kashmir High Court. After necessary proceedings, the learned High Court, while accepting the writ petition filed by the respondents, herein, set aside the order dated 23.12.2010, passed by the Board of Revenue and the case was remanded to the Board of Revenue for decision afresh, hence this appeal by leave of the Court.

3. Mr. Muhammad Reaz Alam, Advocate, counsel for the appellants submitted that the impugned judgment is based on misconception of law and the facts of the case, as the questions raised by the appellants/respondents, therein, were neither attended nor resolved by the learned High Court in a legal manner. He added that the question of laches was forcefully raised before the learned High Court but the learned High Court failed to appreciate and resolve the same which offends the norms of justice. He further submitted that the controversy raised in the writ petition was thoroughly examined and resolved by the competent forum which was not open for interference by the learned High Court while exercising the writ jurisdiction, hence remand of the case to the Board of Revenue amounts to indulge the parties into a new litigation, which is always discouraged by the superior Courts.

4. While controverting the arguments, Raja Hassan Akhtar and Mr. Tamoor Ali Khan, Advocate, counsel for the respondents, fully supported the impugned

judgment while submitting that no illegality has been committed by the learned High Court while remanding the case to the Board of Revenue. They submitted that the order of the Full Board of Revenue, headed/presided by one Sardar Khursheed Ahmed was challenged through writ petition. Previously, Sardar Khursheed Ahmed, while acting as a Commissioner passed the order in the same case, therefore, he was not competent to sit in appeal against his own order/judgment. They further added that even in the writ petition the comments have been filed by Mr. Sardar Khursheed as Head of the Full Board of Revenue, in which he has categorically stated that there is no bar on him to hear the matter.

5. We have heard the learned counsel for the parties and gone through the impugned judgment along with other material made available on record. During the course of arguments, in view of the argument of the counsel for the respondents when the counsel for the appellants was confronted that whether the Head of the Full Board of Board of Revenue can sit in appeal who has

previously passed the order while acting as a Commissioner, he showed his unawareness regarding the name of the then Commissioner and the Head of the Board of Revenue but when the relevant part of the comments filed by the Head of the Full Board was referred to him, he was unable to controvert the same. There is no cavil with the proposition that in view of the concept of natural justice no person can be a Judge in his own cause. This doctrine is indispensable to the administration of justice not only in the Courts of law but also in the Tribunals, as well as in the Administrative Bodies. According to this rule a person should not sit as a Judge in a cause in which there can be trace of even remotest possibility of the Judge's interest or bias in respect of the matter before him, if a Judge can be placed in such a situation it will disqualify him to hear the matter. The same proposition came under consideration of this Court in the case reported as *Nek Muhammad vs. Roda Khan* [PLD 1986 SC (AJ&K) 23], wherein it was held as under:-



“8. We have given our dispassionate thought to the arguments advanced at the bar and are of the view that the second limb of the argument with regard to the competency of Mr. Justice Abdul Majeed Mallick, the learned Chief Justice of the High Court, carries weight and is to be accepted for the reason to follow.

9. The concept of natural justice is:-

- (i) that no person can be a Judge in his own cause; and
- (ii) that no one shall be condemned unheard.

Since their inception, in the clear cut form, these rules/doctrines are indispensable to the administration of justice in the Court of law. We also observe that they are even now slowly and slowly extended to the Tribunals as well as Administrative Acts in so far as the nature of the case admits, “It becomes necessary to do so in view of the maxim that all powers are to be exercised fairly both in appearance and reality.”

10. There are volumes of decisions in which these rules of natural justice have been applied by judicial, quasi-judicial and administrative bodies while dealing with the rights of persons. The rule or principle that no man shall be a Judge in his own cause needs all respect and recognition. A person should not sit as a Judge in a cause in which there can be trace of even remotest possibility of the Judge’s interest or bias in respect of the matter before him, if a Judge can be placed in such a situation it will disqualify him to hear the matter....”

In the case in hand, the order was passed by the Full Board of Revenue which was presided/headed by Sardar Khurshid Ahmed, who previously while acting as a Commissioner passed the order in the same matter and this fact has not been denied by Sardar Khursheed Ahmed in the comments filed in the High Court, who categorically stated that there is no bar to hear the matter being Head of the Broad of Revenue, which cannot be approved. In this state of affairs without dilating upon the merits of the case, as the learned High Court has already remanded the case to the Board of Revenue for decision afresh, we are not inclined to interfere with in the impugned judgment. However, as Ch. Jahandad Khan, Advocate, counsel for the proforma respondents submitted that some observations have been made by the learned High Court while deciding the writ petition which may adversely affect the case of the either party, thus, a direction may kindly be issued to the Board of Revenue not to get influenced by the observations made by the learned High Court.

In view of the above, we are constrained to dismiss the appeal while directing the Board of Revenue that it shall decide the matter independently in all aspects without taking any influence from the observations of the High Court. No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Mirpur,  
20.02.2019.