SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:
Ch. Muhammad Ibrahim Zia, CJ.
Raja Saeed Akram Khan, J.

Civil Appeal No.68 of 2018
(PLA filed on 18.4.2018)

Inaamullah Sheikh s/o Rehmatullah Sheikh, r/o House No.235, Sector B/3, Mirpur.

…… APPELLANT

v e r s u s

1. Muhammad Malik s/o Haji Fazal Ahmed, r/o Mohra Dolu, Tehsil & District Mirpur.

…..RESPONDENT

2. Mirpur Development Authority, Mirpur, through Director General, MDA.

3. Director General Mirpur Development Authority, Mirpur.

4. Director Estate Management, Mirpur Development Authority, Mirpur.

5. Deputy Director Admin, Mirpur Development Authority, Mirpur.

6. Revising Authority, Mirpur Development Authority, Mirpur, through Director General, MDA.

7. Town-Planner, Mirpur Development Authority, Mirpur.

8. Board Mirpur Development Authority, Mirpur, through Director General, Mirpur.

9. Mohammad Ramzan, s/o Sabir Khan, r/o House No.211, Sector F/2, Mirpur.

10. Razia Inaam, w/o Inamullah Sheikh, r/o House No.235, Sector B/3, Mirpur.

11. Mazhar Maqsood s/o Maqsood Ahmed, r/o House No.14, Sector B/2, Mirpur.

12. Said Ali Asghar Masoom s/o Abdul Qadir, r/o Khori, Muzaffarbad.

….. PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court, dated 16.2.2018, in writ petition No.212/2016]

FOR THE APPELLANT: Raja Hassan Akhtar and Mr. Taimoor Ali Khan, Advocates.

FOR THE RESPONDENT: Raja Fiaz Haider Nawabi and Hafiz Arshad Mehmood, advocates.

Date of hearing: *25.2.2019*

JUDGMENT:

Raja Saeed Akram Khan, J.–The titled appeal, by leave of the Court, has been filed against the judgment of the High Court dated 16.2.2018, whereby, while accepting the writ petition filed by the respondent, herein, the orders dated 31.3.2011 and 15.4.2011, passed by the Mirpur Development Authority, have been declared as null and void, and non-existing and the respondents, therein, have been

directed to revisit the matter and decide the same, while providing reasonable opportunity of hearing to the petitioner, respondent herein.

2. The brief facts of the case are that plot No.1-C, situate in Sector D/3, Mirpur, measuring 1 *kanal*, was allotted to the appellant, herein, vide allotment order dated 16.7.2014 and the possession chit was issued to him on 18.7.2014. The plot was adjusted by the Adjustment Committee of the Mirpur Development Authority as an alternate of Plot No.860-A, situate in Sector F-3, Part-V, Mirpur, which was marked in an un-awarded land. The appellant applied for the permission to construct a commercial building on plot No.1-C, by submitting the site-plan, which was approved by the Authority on 30.11.2014. Thereafter, the appellant started construction over the plot and raised two-storey structure. On 16.8.2016, the respondent, Muhammad Malik, filed a writ petition before the High Court, alleging therein that the disputed plot was originally allotted to one Syed Ali Asghar Masoom, as an alternate of plot No.37, Ali Block, K-Sector, Mujahid Town, Phase-I, Mirpur. Later on, the allottee sold the plot to one Mazhar Maqsood, which was transferred in

his name by the Mirpur Development Authority on 11.12.1995. It was alleged that the plot was purchased by the respondent, Muhammad Malik, on 25.2.1996 and consequently the transfer order was issued by the Mirpur Development Authority on 3.3.1996. It was further alleged that respondent, herein, after purchasing the plot, proceeded abroad for earning his livelihood and on his return, he approached the official respondents for approval of proposed site-plan of the house, whereupon he came to know that the disputed plot has further been allotted to someone else. On this, he filed an application before the concerned authority on 9.2.2000. On an inquiry conducted by the Authority, the file of the plot, prepared in favour of one Razia Inaam, was found bogus and fake. Respondent went back to the United Kingdom and came back in the year 2015. He got the knowledge of cancellation of the plot from his name and allotment in favour of the appellant, herein, and filed the writ petition. The learned High Court, after necessary proceedings, accepted the writ petition through the impugned judgment, hence this appeal, by leave.

3. Although Raja Hassan Akhtar, advocate, one of the counsel for the appellant, has submitted written arguments wherein it has been stated that the High Court has not appreciated the point of laches and moreover, the Court granted the relief beyond the pleadings, however, the learned counsel for the appellant were confronted that no adverse findings have been recorded by the High Court against them and the High Court only directed the MDA authorities to pass fresh orders, while providing fair opportunity of hearing to the parties. The learned counsel for the appellant very wisely opted to pursue the matter before the concerned authority in the terms that the Authority may be directed to reconsider the matter after providing the opportunity to the parties to place the relevant documents in support of their respective claims. The learned counsel for the respondent also stated that the learned High Court has not recorded any adverse finding against either party, therefore, the learned High Court has not committed any illegality while passing the impugned judgment, as it is evident that before passing the orders impugned before the High Court, the MDA authorities had violated the golden

principle of *audi alteram partem*. Both the parties have got ample opportunity to place their view-point before the MDA Authority, which is competent to resolve the issue. The parties may produce the documents in support of their claim before the MDA authorities.

4. Keeping in view the above-stated position, we, while endorsing the findings of the High Court, reiterate the direction already issued to the authority to reconsider the matter in the light of impugned judgment and resolve the controversy expeditiously among the parties, after providing them fresh opportunity of hearing/producing the documents, if any, in their support.

The appeal is disposed off in the terms indicated herein above. No order as to costs.

JUDGE **CHIEF JUSTICE**

Mirpur