

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.244 of 2018.
(PLA filed on 13.06.2018)

Muhammad Ejaz Khan s/o Numberdar Muhammad Hayat Khan, caste Sudhan, r/o Kehna, Tehsil Rawalakot, District Poonch.

.... APPELLANT

VERSUS

1. Custodian of Evacuee Property of Azad Jammu & Kashmir, Muzaffarabad.
2. Food Department of Azad Jammu & Kashmir through its Secretary, Muzaffarabad.
3. Secretary Food Department of Azad Jammu & Kashmir, Muzaffarabad.
4. Director Food Azad Jammu & Kashmir, 7-A Khayaban Sir Syed, Rawalpindi.
5. Animal Husbandry Department through its Secretary, Muzaffarabad.
6. Assistant Director Animal Husbandry Department, Rawalakot.
7. Azad Jammu & Kashmir Government through its Chief Secretary, Muzaffarabad.
8. District Food Controller, Poonch, Rawalakot.
9. Revenue Department, District Poonch, through Deputy Commissioner/ Collector District Poonch, Rawalakot.

10. District Rehabilitation Commissioner, District Poonch, Rawalakot.
11. Rehabilitation Commissioner, Azad Jammu & Kashmir, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 18.04.2018 in Writ Petition No.228 of 2009)

FOR THE APPELLANT: Mr. Asghar Ali
Malik, Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan,
Advocate-General and
Syed Wasif Ali Gardezi,
Advocate.

Date of hearing: 09.01.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 18.04.2018, passed by the Azad Jammu & Kashmir High Court in writ petition No.228 of 2009.

2. The facts forming the background of the captioned appeal are that an evacuee piece of land measuring 20 *kanal*, 9 *marla*, comprising *khasra* No.121, which has been renumbered as 316 and

304, situated in village Kehna, Tehsil Rawalakot, District Poonch, was allotted to one Abdul Wahid as refugee by the Rehabilitation Commissioner vide order dated 10.06.1968. The Assistant Rehabilitation Commissioner, Rawalakot, issued the allotment permit on 12.06.1968. Thereafter, the allottee applied for grant of Proprietary Rights Transfer Order (PRTO) of the allotted land but in the midnight of 30th and 31st of May, 1990, whole of the record of District Court, Rawalakot, stood ablazed as is evident from the report of the Assistant Commissioner Rawalakot dated 18.11.1997. It is claimed that the allottee again applied for grant of PRTO, whereupon, the authorities after re-inquiry, referred the matter to the Custodian of Evacuee Property. The learned Custodian while agreeing with the recommendations of the Rehabilitation Commissioner, issued PRTO No.13354, on 02.11.1998, in favour of Abdul Wahid, allottee. Mutation No.106 was also entered in the revenue

record. Abdul Wahid, allottee, who became owner of the allotted land on the basis of the PRTO, transferred the same to the petitioner, herein, vide sale-deed dated 05.10.1999 and mutation No.127 was entered in favour of the vendee. It is also claimed that respondents No.2 to 6 occupied the aforesaid land with the assurance that the landowner shall be compensated, however, they fail to honor their commitment. The appellant, herein, moved an application to respondent No.4, herein, for payment of the compensation, however, there ensued a dispute between Food Department and Rehabilitation Authorities regarding construction made by the Food Department upon the disputed land. A portion of the land was also in the occupation of the Department of Animal Husbandry who file review petition No.28/2000 before the Custodian. The Food Department also filed review petition before the Custodian on 27.03.2002 against the PRTO dated 02.11.1998. The learned Custodian

also constituted Robkar No.23/2005, against the petitioner, herein, on 27.09.2005. All the proceedings were contested by the petitioner, herein, and due to the attitude of the Custodian, he moved an application for transfer of the case to the Chief Executive but the same was not decided. After necessary proceedings, the learned Custodian vide judgment dated 15.11.2008, cancelled the allotment, PRTO dated 02.11.1998 and the sale-deed dated 05.10.1999. The order passed by the learned Custodian on 15.11.2008 was challenged by the petitioner, herein, through writ petition before the Azad Jammu & Kashmir High Court on 13.02.2009. The writ petition was contested by the respondents by filing written statement. The learned High Court after hearing the arguments, through the impugned judgment dated 18.04.2018, has dismissed the writ petition.

3. Mr. Asghar Ali Malik, the learned Advocate appearing for the appellant argued that

admittedly the land in question was allotted to the appellant, herein, by the competent authority on 12.06.1968 and the same stood entered in the revenue record as such. He further argued that the PRTO certificate was issued in favour of the allottee on 02.11.1998 on the recommendations of the Rehabilitation Commissioner and thereafter mutation was entered in his favour. He further argued that the allottee transferred the land on 15.11.1999 through sale-deed to the appellant, herein, and mutation was also entered on the basis of this sale-deed in his favour. The learned Advocate further argued that instead of payment of the compensation, the respondents, herein/departments filed time barred review petitions before the Custodian without any proper sanction of the Government illegally which were not entertainable. In this regard, he placed reliance on a case reported as *Ehtesab Bureau Azad Jammu & Kashmir vs. Ch. Muhammad Hanif* [2004 SCR 284]. The learned

Advocate submitted that the exercise of suo moto powers by the Custodian was also not lawful because no inquiry was conducted by him before assuming the jurisdiction. The Custodian, according to the learned Advocate, has based his findings on the so called report of the District Rehabilitation Commissioner/Deputy Commissioner Poonch, in which the allottee was not heard at all. He further submitted that the Custodian was not at all competent to cancel the sale-deed as has been held in *Muhammad Khalil's* case [2005 SCR 97]. The learned Advocate further submitted that the judgment passed by the learned Custodian is illegal, ab initio void and it was enjoined upon the High Court to set aside the same after considering the case law as well as genuine allotment of the appellant, herein. The learned Advocate further submitted that the judgment of the learned High Court is also based on surmises and conjectures.

4. Conversely, Sardar Karam Dad Khan, Advocate-General and Syed Wasif Ali Gardezi, Advocate while appearing on behalf of the respondents argued that in fact the so called allotment made in favour of Abdul Wahid on 12.06.1968 does not exist and the allotment has been procured by the allottee through illegal means in the name of a fictitious person in order to occupy the precious piece of land located in the Municipal limits of Rawalakot. They further argued that though the review petitions were filed by the official-respondents before the Custodian without proper sanction of the Government but the Custodian has assumed the suo moto powers which conferred upon him for looking into the legality and correctness of any allotment under section 43 (6) of the Pakistan (Administration of Evacuee Property) Act, 1957. They further argued that the Custodian being a special tribunal and a Judge in his own cause, can base his findings upon the report as well as other

documents and such findings are sacrosanct and cannot be called in question in writ jurisdiction. They further argued that a void/fraudulent order cannot be protected in exercise of writ jurisdiction. They submitted that the allotment itself shows that the same is concocted and bogus because it has been made till further order, moreover, in 1968, the relevant village was not the part of Tehsil Sudhnuti/Pallandri. They further submitted that the land in question was in possession of the respondent-departments prior to 1968, hence, was not available for allotment until and unless its possession has been taken by the Custodian.

5. We have heard the learned counsel for the parties and have gone through the record of the case. It may be stated that the Custodian is a Special Tribunal and enjoys full authority to check the legality and correctness of an allotment under section 43 (6) of the West Pakistan (Administration of Evacuee Property) Act, 1957. The Custodian has

exercised this power which cannot be questioned, therefore, deliberation on the question raised by Mr. Asghar Ali Malik, Advocate, that the review petitions before the Custodian were not filed with proper sanction of the Government, is hardly required. The Custodian has observed that the allottee has not appeared before him, he has not been made party before the learned High Court and even before this Court which strengthens the fact that the allotment is bogus and has been made in the name of a fictitious person in order to occupy the precious piece of land located in the Municipal limits of Rawalakot. A perusal of the record reveals that the land was given in the possession of the Food Department and was not available for allotment at the relevant time. It has already been observed that the Custodian is a Special Tribunal who has based his opinion upon the report as well as the record placed before him and such findings are sacrosanct and immune from challenge until and unless it is

shown that the same are based on no evidence, are arbitrary and capricious. The learned High Court has refused to recall the order passed by the learned Custodian on the ground that the allotment was bogus and has been obtained through fraud. In this regard, the learned High Court has placed reliance of the cases reported as *Azad Govt. & 3 others vs. Abdul Ghaffar Butt & 2 others* [2000 SCR 250], *Abid Hussain Jafri and others vs. Azad Govt. & others* [1993 SCR 105] and *Iqtedar Hyder vs. Bank of Punjab through its Chairman and another* [PLJ 2001 Lahore 927]. In the first case, at page 254 of the report, it was observed as under:-

“9. The contention of the learned counsel for the appellants that even if the allotment in favour of the appellants is void, that should have been challenged by the respondent before the appropriate authority otherwise it cannot be ignored, does not help his case. Because it was the appellants who filed the writ petition in the High Court and it has been repeatedly held by this Court that a person who seeks relief by invoking writ jurisdiction must come with clean hands; if a person bases his

claim on a void order, he is not entitled to any relief in exercise of writ jurisdiction.”

In *Abid Hussain Jafri's* case, at page 108 of the report, it was concluded as under:-

“.....This is well settled principle of law that a person seeking redress of his grievance by resorting to the writ jurisdiction, must come with clean hands. If it is found that the person seeking relief by way of writ petition has no legal or moral case, then irrespective of the fact that the Chief Secretary or, for that matter, any other departmental authority is bound to obey the orders of the Prime Minister, the High Court may refuse to issue a writ of mandamus in exercise of its discretionary powers vested in it. As the order which was sought to be implemented by the appellants was passed in violation of the principle of ‘audi alteram partem’, the High Court could rightly refuse to issue a writ of mandamus for the implementation of the same irrespective of the fact as to whether the Secretary Works was bound to carry out the same or not. The writ jurisdiction cannot be exercised in perpetuation of an illegal order.”

In *Iqtedar Hyder's* case, at page 929 of the report, it was held as under:-

“....It is also settled principle of law that he who seeks equity must come to the Court with clean hands. It is pertinent to mention there that decree was passed against petitioner on 12.09.1998 and petitioner did not agitate the same before this Court by way of appeal or filed any objection petition before the executing Court. In this view of the matter I am not inclined to exercise my discretion in favour of petitioner as the law laid down in *Nawabzada Ronaq Ali's* (PLD 1973 SC 236).”

In view of the above discussion and case law, we have reached the conclusion that this appeal has no substance, hence, stands dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad.
10.01.2019.