SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.155 of 2018
(PLA Filed on 11.7.2018)

Sohbat Ali s/o Saddar Din, caste Jaat, resident of village Maryal, Tehsil and District Bhimber.

.... APPELLANT

VERSUS

1. Rasheed Ahmed s/o Said Muhammad,
2. Muhammad Boota s/o Muhammad,
3. Muhammad Anwar,
4. Muhammad Sarwar, sons of Lal Din r/o village Maryal, Tehsil and District Bhimber.
5. Board of Revenue, AJK Muzaffarabad through its Senior Member,
6. Member Board of Revenue, Muzaffarabad (Member Judicial Board of Revenue AJK Muzaffarabad Camp, Mirpur,
7. Commissioner, Mirpur Division, Mirpur,
8. Addl. Commissioner, Mirpur Davison, Mirpur,
9. Collector District Bhimber,
10. Tehsildar Bhimber,
11. Naib Tehsildar Panjeri, Tehsil Bhimber
12. Girdawar Circle Panjeri, Tehsil Bhimber,
13. Patwari Halqa Panjeri, Tehsil and District Mirpur,
14. AJK Govt. through its Chief Secretary Muzaffarabad.

..... RESPONDENTS

15. Fazal Karim,
16. Muhammad Azeem,
17. Mohammad Jamil Akthar,

18. Shahid Hussain, sons,
19. Mst. Shaista Parveen d/o Mohd Zaman,
20. Mst. Sharifan d/o Fazal Ahmed,
21. Rehmat Ali,
22. Mir Ali,
23. Gulab, sons of Nathoo,
24. Shamim Akhtar,
25. Khalid Mahmood, sons,
26. Mst. Parveen Akthar,
27. Shaheen Akthar, daughters of Nawab, caste Jaat r/o village Maryal, Tehsil and District Bhimber.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 10.5.2018 in Writ Petition No. 185 of 2016)

FOR THE APPELLANT: Ch. Muhammad Afzal, Advocate.

FOR THE RESPONDENTS: Raja Zaffar Hussain Khan, Advocate.

Date of hearing: 19.2.2019

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 10.5.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 185 of 2016.

2. The precise facts forming the background of the captioned appeal are that the

appellant, and proforma respondents, herein, as per their stand, are owner of the land comprising survey No. 825, khata No. 364/478 to 752, Khewet No. 31 measuring 14 marla, situated in village Maryal, Tehsil and District Bhimber. It was stated that the appellant, herein, was entered as co-sharer in possession of the suit land in the record of rights. Muhammad Anwar, predecessor-in-interest of respondents No. 1 to 2, herein, moved an application for correction of the revenue record before the Collector District Bhimber. After due process, vide order dated 28.8.2006 correction was approved illegally by the Collector. The appellant, herein, challenged the said order before the Commissioner Mirpur Division by way of an appeal and subsequently through a revision petition before the Board of Revenue on 12.5.2008, which was accepted, resultantly, the order passed by the Commissioner as well as the Collector Bhimber was set aside vide order dated 6.4.2010. The Collector was directed to

pass fresh order after hearing the parties. The District Collector allegedly without hearing the parties obtained reports from the subordinate staff and vide order dated 15.7.2010 again sanction the correction and maintained the order passed by him earlier on 28.8.2006. The order dated 15.7.2010 was challenged by the appellant, herein, by way of an appeal before the Commissioner Mirpur, which was dismissed vide order dated 4.8.2011. An appeal was filed against the order passed by the Commissioner on 4.8.2011 before the Board of Revenue, which was too, dismissed on 28.4.2014. The order passed by the Board of Revenue was challenged through a writ petition before the Azad Jammu & Kashmir High Court. The learned High Court through the impugned judgment dated 10.5.2018 has dismissed the writ petition.

3. Ch. Muhammad Afzal, the learned Advocate appearing for the appellant while reiterating the grounds taken in the appeal argued with vehemence that the Board of

Revenue vide judgment dated 12.5.2008 accepted the revision petition and set aside the order dated 28.8.2006 passed by the Collector and directed the Collector for passing an appropriate order after hearing the parties. The learned Advocate argued that the Collector vide order dated 15.7.2010 after obtaining the reports from the revenue staff again sanction the mutation under challenge vide order dated 15.7.2010 and restored the earlier order dated 28.8.2006. He argued that as the direction issued by the Board of Revenue was with regard to passing the fresh order after hearing the parties, was not complied with and the appellant, herein, has been condemned unheard. He submitted that this very important aspect of the case escaped the notice of the High Court, which resulted into an erroneous decision in violation of the principle of natural justice (*audi alterm partem*). The learned Advocate argued that neither the Commissioner nor the Board of Revenue in revision/appeals considered

this aspect of the matter although it was forcefully argued. He argued that even otherwise the correction cannot be ordered.

4. Raja Zaffar Hussain Khan, the learned Advocate appearing for the respondents submitted that it is fourth round of litigation and the appellant has dragged the respondents into unnecessary litigation. He argued that the Board of Revenue as well as the Revenue Authorities after going through the record has properly considered the controversy and such like matters which fall within the exclusive domain of the Revenue Tribunals/Courts cannot be challenged in writ jurisdiction. He submitted that the learned High Court has rightly dismissed the writ petition in limine.

5. After hearing the learned Advocates representing the parties and going through the record of the case, we are of the view that in the circumstances of this case the writ petition should not have been dismissed without its admission. In view of the fact that we have made

up our mind to remand the case for admission of the writ petition and decision on merits, therefore, we will refrain from embarking upon the merits of the case as has been argued by the Advocates representing the parties. Suffice it to observe that the Board of Revenue vide judgment dated 6.4.2010 has cancelled the order dated 28.8.2006 as well as mutation No. 163 and remanded the case to the Collector for fresh decision after hearing the parties. The Collector after receiving the order of the Board of Revenue has not complied with the direction in letter and spirit. A perusal of the record reveals that the Collector after the receipt of the file from the Board of Revenue sent the same to the Tehsildar and after obtaining the report has passed the fresh order on 15.7.2010. This order has been maintained by the Commissioner as well as by the Board of Revenue. A perusal of order dated 15.7.2010 reveals that the Collector has not applied his mind independently rather has passed the order on the basis of the reports

obtained from Tehsildar etc. The parties have also not been heard and the effect of this has not been considered by the learned High Court. Therefore, while accepting the appeal and setting aside the impugned judgment dated 10.5.2018 passed by the learned High Court, the case is remanded with the direction that the learned High Court shall decide the same on merits after admission of the writ petition in accordance with law.

JUDGE CHIEF JUSTICE

Mirpur.
20.2.2019.