

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.191 of 2018  
(PLA filed on 13.08.2018)

Ch. Altaf Hussain s/o Fazal Dad, r/o Sector B/4, Mirpur,  
AJK.

....APPELLANT

**VERSUS**

1. Mirpur Development Authority through its Director General, Mirpur, A.K.
2. Director General, Mirpur Development Authority, Mirpur.
3. Director Estate Management, Mirpur Development Authority, Mirpur.
4. Allotment Committee, Mirpur Development Authority, Mirpur.
5. Revising Authority, Mirpur Development Authority, Mirpur, through DG MDA.

....RESPONDENTS

(On appeal from the judgment of the High Court dated  
29.06.2018 in Writ Petition No.373 of 2016)

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

FOR THE RESPONDENTS: Mr. Farooq Akbar Kiani,  
Advocate.

*Date of hearing:* 27.02.2019.

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The captioned appeal by leave of the Court has been directed against the judgment dated 29.06.2018, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.373 of 2016.

2. The facts forming the background of the captioned appeal are that plot No.340, situated in Phase-II, Dadyal, District Mirpur, was allotted to the appellant, herein, on 10.07.1995. The appellant, herein, deposited an amount of 16,800/- as earnest money with the MDA on 17.07.1997. It is stated that the appellant, herein, could not construct the house over the said plot and approach the respondents, herein, on his retirement for permission to start construction over the plot, whereby, the appellant, herein, was told by the concerned officer that the revising

authority has cancelled the plot from his name vide order dated 28.10.2010. The appellant, herein, challenged the said order passed by the revising authority MDA, by way of writ petition before the Azad Jammu & Kashmir High Court on 19.12.2016. The writ petition was contested by the other side by filing para-wise comments, wherein, it was stated that the writ petition has not been filed within the prescribed period of limitation. The other contents of writ petition were also denied. The learned High Court, after hearing preliminary arguments advanced by the learned counsel for the parties, has dismissed the writ petition in limine on the ground of laches.

3. Mr. Muhammad Riaz Alam, the learned Advocate appearing for the appellant, argued that the impugned judgment passed by the learned High Court is erroneous, perverse and arbitrary. He further argued that as the order of the revising authority dated 28.10.2010 was passed without affording an opportunity of hearing to the appellant, herein, therefore, the question of laches is not attracted in the case in hand. The learned Advocate

submitted that the learned High Court should have admit the writ petition for regular hearing and decide the same on merits.

4. Conversely, Mr. Farooq Akbar Kiani, the learned Advocate appearing for the other side argued that as the order of the revising authority was passed on 28.10.2010 and the writ petition has been filed before the High Court on 19.12.2016, hence, the same was hopelessly time barred and the learned High Court has not committed any illegality in dismissing the writ petition on the ground of laches.

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 appellant, herein, was allotted the plot in question and also deposited the earnest money with the MDA vide notice dated 17.07.1995. It appears that subsequently, the revising authority has cancelled the plot from his name. The action taken by the revising authority was challenged by way of writ petition before the Azad Jammu & Kashmir High Court on the ground

that right of hearing was not provided to the appellant, herein. While contesting the writ petition, the respondents have not denied the allotment of the plot in question in favour of the appellant, herein. In such circumstances, in our view, the dismissal of the writ petition by the learned High Court in limine was not justified because laches alone is not fatal if the party is in possession of an enforceable legal right. Be that as it may, the point of laches can be attended by the learned High Court at final stage after giving reasonable opportunity to the parties for proving their case.

In view of the above, this appeal is accepted and the impugned judgment dated 29.06.2018 is hereby set aside. The writ petition is admitted for regular hearing to resolve the question raised therein. The learned High Court is directed to proceed further in accordance with law.

JUDGE

CHIEF JUSTICE

Mirpur  
28.02.2019