

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

**[Review Jurisdiction]**

**PRESENT:**

Ch. Muhammad Ibrahim Zia, CJ.

Raja Saeed Akram Khan, J.

**Civil Review Petition No.26 of 2018**

(Filed on 15.12.2017)

1. M/s. Qureshi Vegetable Ghee and Oil Mills, Public Limited, Mirpur, through Mr. Afzal Qureshi, Managing Director.
2. Adam Flour Mills Limited through Tariq Mehmood Qureshi, Village Dhala Islam Garh, Tehsil and District Mirpur.

.... PETITIONERS

*v e r s u s*

1. Azad Government of the State of Jammu and Kashmir, through Chief Secretary, AJ&K Government, Civil Secretariat, Muzaffarabad.
2. Wildlife and Fisheries Department, Azad Government of the State of Jammu & Kashmir through Secretary Forests/Wildlife and Fisheries, Civil Secretariat, Muzaffarabad.
3. Board of Revenue/Member Board of Revenue, AJ&K Government, through Secretary Board of Revenue, Azad Jammu & Kashmir, Muzaffarabad.
4. Director Wildlife and Fisheries Department, AJ&K, Muzaffarabad.
5. Deputy Director, Wildlife and Fisheries Department, AJ&K, Mirpur.

6. Water and Power Development Authority (WAPDA) through Chairman WAPDA, WAPDA House, Lahore.
7. M/s Seven Star Contractors, plot No.119/1 First Floor, Green Plaza, Mall Road, Mirpur.
8. Commissioner, Mirpur, Division Mirpur.
9. Collector/Deputy Commissioner, District Mirpur.
10. Assistant Director, Wildlife and Fisheries Department, Opposite District Headquarter, Mirpur.

..... RESPONDENTS

[In the matter of review from judgment of this Court dated 31.10.2017 in Civil Appeal No.122 of 2017]

FOR THE PETITIONERS: M/s Muhammad Siddique Chaudhary and Rafiullah Sultani, advocates.

FOR THE RESPONDENTS: M/s Sajid Hussain Abbasi, advocate and Saadat Ali Kiani, Additional Advocate-General.

*Date of hearing:* 20.3.2019

**JUDGMENT:**

***Raja Saeed Akram Khan, J.***—Through the titled petition, the review of the judgment of this Court dated 31.10.2017, whereby the appeal filed by the

respondents, herein, was partly accepted, is sought by the petitioners.

2. The facts of the case, briefly stated, are that petitioner No.1, herein, filed a writ petition in the High Court challenging therein the notification dated 2.08.2015, whereby the land measuring 293 *kanal*, comprising survey number 484 and the land measuring 80 *kanal* from village Bega Bilawal, was allotted to the Wildlife and Fisheries Department. It was alleged in the writ petition that through notification dated 26.02.1980, the land measuring 325 *kanal* 4 *marla*, situated at Sahib Chak, Tehsil and District Mirpur, was sold to petitioner No.1, by the respondents, herein, and the consideration amount to the tune of Rs.276.08 per *kanal* was deposited in the light of letter dated 08.03.1980, issued by the Collector/Deputy Commissioner Mirpur. It was further alleged that the land measuring 200 *kanal* out of survey Nos.484 and 485, had also been sold to petitioner No.1, vide notification dated 26.02.1981 and the land measuring 200 *kanal* out of survey Nos.484, 485 and 487, situate at Sahib Chak, had been leased out for a period of 99 years in its favour by the Government through an

agreement, which was registered before the Sub-Registrar Mirpur on 15.10.1981. It was next alleged that a huge investment has been made in shape of a mega built-up structure of mills and installment of imported machinery since 1981. It was also alleged that petitioner No.1 sold the land measuring 126 *kanal*, 1 *mala*, out of the said land to the Adam Floor Mills Limited Mirpur (petitioner No.2, herein) through sale-deed dated 15.11.1987. The Government has also allotted the land measuring 293 *kanal* comprising survey No.484 to respondent No.7, herein, which is illegal, arbitrary and without lawful authority. It was further alleged that the land measuring 83 *kanal*, 17 *marla*, comprising survey No.484 and land measuring 108 *kanal*, 17 *marla* out of survey No.485, was allotted to the Police Department for establishment of Training College Mirpur, vide notification dated 15.05.2012. The notification dated 15.05.2012 was earlier challenged by filing a writ petition before the High Court on 11.09.2013, which was accepted vide judgment dated 19.12.2013 and the notification impugned therein was set aside. An appeal filed against the judgment of the High Court was dismissed by this Court on 30.04.2014. Lastly, the petitioners prayed for setting aside the

notification dated 26.08.2015 and the changes made in the Revenue record pertaining to survey No.484, having been made illegally, arbitrarily and against law. During pendency of the writ petition, through notification dated 10.02.2016 the notification dated 26.08.2015 was cancelled, which was brought on the record by the respondents, herein, along with the written statement. After necessary proceedings, the learned High Court, through the judgment dated 31.01.2017, accepted the writ petition and cancelled the notifications dated 26.08.2015 and 10.02.2016. Feeling aggrieved, respondents No.1 to 5, herein, filed an appeal before this Court, which was partly accepted through the judgment under review, dated 31.10.2017.

3. M/s Muhammad Siddique Chaudhary and Rafiullah Sultani, advocates, counsel for the petitioners, submitted that an important aspect of the case escaped the notice of this Court while handing down the judgment under review, as in the earlier round of litigation the petition for leave to appeal filed by the respondents was refused vide order dated 30.4.2014, regarding the same property and in this state of affairs, it was enjoined upon this Court to not reopen the

matter while passing the judgment under review. The learned counsel added that this Court also overlooked the fact that the land in question was duly purchased while depositing the earnest money in the Government treasury. In this regard, the learned counsel referred to the copy of bank-challan, while arguing that the allotment of land was not the result of undue influence, rather the same was allotted by the competent authority in accordance with law and the matter was not open for revisit by the Court. The learned counsel heavily relied upon the sale-deed registered on 27.8.2015, while submitting that the land was alienated through valid sale-deed. The learned counsel referred to and relied upon the cases reported as *Safdar Ali Khan v/s Azad Government of the State of Jammu & Kashmir through Chief Secretary & 2 others* [2012 SCR 331] and *Pakistan through Ministry of Finance Economic Affairs & another vs. Fector Belarus Tractors Limited* [PLD 2002 SC 208].

4. Mr. Rafiullah Sultani, advocate, while referring to the letter dated 2.3.1980, available at page 63 of the paper-book, submitted that one of the members of this bench has already expressed the

opinion while refusing leave to appeal and under law he is bound by his earlier opinion. The learned counsel also referred to and relied upon the cases reported as *Messrs N. J. Silk Industries vs. Presiding Officer, IVth Sind Labour Court & another* [PLD 1980 SC 283], *Muhammad Muzaffar Khan vs. Muhammad Yusuf Khan* [PLD 1959 Supreme Court 9] and *Muhammad Munir Raja vs. Chairman AJ&K council & 3 others* [2018 SCR 48].

5. Conversely, Mr. Sajid Hussain Abbasi, advocate, counsel for respondent No.6, submitted that new grounds/points have been raised in the review petition, which were not raised in the memo of appeal, therefore, the review petition is not maintainable. The learned counsel forcefully argued that apart from the new questions, the points which are made basis for the review of the impugned judgment, have already been dealt with thoroughly by this Court. The learned counsel forcefully argued that the Government is not competent to allot any State land arbitrarily without legislation in this regard, as held by the Courts in a number of cases. The learned counsel added that the petitioners tried to make out a new case through the

review petition, which is not permissible under law. The learned counsel referred to and relied upon the cases reported as *Rehmat Ullah Khan & 3 others vs. Azad Government & 13 others* [2014 SCR 1385], *Muhammad Iqbal vs. Allah Ditta & another* [2013 SCR 461], *Muhammad Mushtaq vs. Abdul Rehman & 2 others* [PLJ 2012 SC (AJ&K) 118], *Ghulam Rasool & another vs. Said Ahmed & others* [PLJ 2012 SC (AJ&K) 204] and Article 52-A of the Azad Jammu & Kashmir Interim Constitution, 1974.

6. Mr. Saadat Ali Kiani, Additional Advocate-General, while supporting the arguments of the counsel for respondent No.6, submitted that all the points raised in support of the review petition have already been resolved by this Court in paragraph 12 and 13 of the judgment under review and the petitioners failed to substantiate any error apparent on the face of the judgment. The learned counsel referred to and relied upon the cases reported as *Azad Government & 7 others vs. Shakoob Bashir & 39 others* [2011 SCR 228] and *Sabir Hussain & others vs. Muhammad Taj & others* [2010 SCR 65].



7. We have heard the learned counsel for the parties and gone through the record.

8. Petitioner No.1, herein, filed a writ petition before the High Court, challenging the validity of notification dated 26.8.2015, which was accepted and the notifications dated 26.8.2015 and 10.2.2016, subsequently issued, were recalled. On appeal to this Court, the judgment of the High Court was set aside through the judgment under review.

9. There is no second thought on the point that this Court has got ample powers to review its judgment/order, in criminal proceedings, if there is an error floating on the surface of the judgment and in civil proceedings on the grounds similar to those mentioned in Order XLVII Rule 1 of the Civil Procedure Code, on discovery of some new evidence or new facts or on any other sufficient ground, however, the power to review the judgment cannot be exercised on the ground that the party is not satisfied with the judgment or another view was possible, other than the one arrived at by the Court. The main thrust of the arguments of the counsel for the petitioners is that the land in dispute was obtained through valid allotment,

whereas they failed to place on the record any such document in support of their contention. The alleged document dated 15.11.1987, referred to by the counsel for the petitioners, cannot be termed as a valid sale-deed, as petitioner No.1, under the lease-deed, was not competent to transfer the land to petitioner No.2, through the sale-deed. This Court after detailed deliberation and thorough examination of the record, has resolved the controversy in detail, while handing down the judgment under review. The relevant observations of this Court are reproduced as under:-

"9. The respondent has produced only two registered documents i.e. the lease deed and the sale-deed regarding the land measuring 126 kanal executed by him in favour of respondent No.2. According to the terms of registered lease the lessee is not entitled to transfer the leased land by any means to any other person or party and in case of violation the lessor is competent to cancel the lease. Thus, it is clear that on the basis of this lease deed the respondent was not empowered or entitled to execute any type of sale-deed. The hereinabove mentioned documents prove that except the leased land neither any other land was transferred to respondent nor he has got any legal interest or right in the other claimed land. In this context, the logical conclusion can be drawn that the alleged sale-deed which is stated to be executed by the respondent in favour of respondent No.2 is against law, forged, fraudulent and amounts to criminal

offence. The official of the revenue department who has prepared the copy of the revenue record for such sale-deed with the connivance of respondent has also committed criminal offence which requires separate action according to law.”

Similarly in paragraph 12 and 13 of the judgment under review, this Court has resolved the controversy in the following terms:-

“12. In the light of the record and above stated facts it can safely be concluded that the land measuring 200 kanal comprising of survey numbers mentioned in the hereinabove reproduced notification and lease agreement, was leased out to the respondent and regarding the rest of the land he has got no legal right or interest and his alleged claim amounts to fraud and criminal act. The appellants, herein, and the proforma respondent No.3 in their written statement have taken the stand that the respondent was granted the lease of land measuring 200 kanal comprising survey numbers 468 and 487(new). They also brought on record the notifications dated 26.02.1980, 14.06.1981 and 24.09.1981 but the learned High Court neither properly appreciated the pleadings of the parties nor examined the record which resulted into drawing the incorrect conclusion. As mentioned hereinabove that the notifications dated 26.02.1980 and 26.02.1981 regarding approval of sale of the land in favour of respondent were recalled and cancelled and only the land measuring 200 kanal was finally leased out to the respondent for 99 years and in furtherance of this proceeding the lease deed was also registered. The

respondent himself based his whole case on the lease deed which is executed in the light of notification dated 24.09.1981 which clearly speaks that the earlier notification regarding approval of sale dated 26.02.1981 has been cancelled. In this state of affairs, the impugned judgment of the High Court to the extent of cancellation of notification dated 26.08.2015 does not appear to be consistent with the facts and record of the case rather the same is result of lacking proper application of judicial mind and minute examination of the record.

13. Same like, in the judgment dated 19.12.2013 it is mentioned that the sale-deed was executed on 15.10.1981, whereas, no such claim was made by the respondent rather in the pleadings it is mentioned that the process was initiated for sale-deed which was to be executed. Be that as it may, the Court finally rightly declared the respondent entitled to the extent of leased land. Same like, in the said judgment the legal status of the alleged sale-deed of land measuring 126 *kanal* 1 *marla* has also not been determined. The impugned judgment appears to be passed without determination of specification of the land leased out to respondent and proper scrutiny of the record.”

In this scenario, the review petition filed by the petitioners amounts to reopen the controversy finally resolved and settled by this Court.

10. As far the argument of Mr. Rafiullah Sultani, advocate, counsel for the petitioners, is concerned that once the opinion has been expressed by this Court,

while dismissing the petition for leave to appeal, the Court cannot go beyond that, it may be observed that the judgment under review is not in conflict with the findings recorded in leave refusing order and is in consonance with the same. The argument is, therefore, ill-founded and the law referred to is not applicable.

11. The whole thrust of arguments of the counsel for the petitioners for review of the judgment is that the land in question was purchased through the sale-deed, whereas, as observed hereinabove, admittedly no sale-deed has come on the record. Even otherwise, the notification through which the sale was permitted, was withdrawn on 10.2.2016 and the petitioner himself owned this while getting the lease. This Court has already held in a number of cases that the Government has no authority to allot the State land without proper legislation. In this regard, the case reported as *Rehmat Ullah Khan & 3 others vs. Azad Government & 13 others* [2014 SCR 1385], referred to by the counsel for the respondents, may be relied upon, wherein, it has been laid down by this Court, as under:-

“12. So far as the question of grant of acquired land to private persons for utilization of the same for the purpose other than that for which it was acquired

is concerned, it also hardly requires any detailed deliberation as the same has been dealt with in detail by this Court in the previous judgments especially in Ghulam Rasool's case [2012 SCR 367]. It will be suffice to reproduce here the relevant portion of the judgment as under:-

"9. The basic constitutional provision dealing with the transfer of land by the Government, is section 52(A) of the Azad Jammu and Kashmir Interim Constitution Act, 1974. Subsection of this section provides that "transfer of land by the Government or the Council shall be regulated by law". This is mandatory under the provisions of the Constitution that for transfer of land, there must be some procedural law. It is not a sweet discretion of the Government or other public authorities to distribute this State property as charity. Under the provisions of Land Acquisition Act, the Azad Jammu and Kashmir Land Acquisition Rules, 1994 have been framed but in these rules, the Government is only empowered to transfer the acquired land to such a legal person for whom the Government is empowered to acquire the land. Relevant rules reads as following: ----

'14. Where any land has been acquired for department of the Government or a local authority for a public purpose and the said land or a portion thereof is no more required for that purpose, it may be used for any other public purpose or for a company or industry for which land can be acquired under the Act.

15. (1) where any land has been acquired for a company, it shall not be sold or otherwise disposed of except with the prior and express approval of Government.

(2) If the company for which any land has been acquired makes an application to Government under sub rule (1) for permission to sell or otherwise disposed of the acquired land or any part thereof, and in case the required permission is declined, then the following procedure shall be followed:---

- (i) In a case where compensation to the original owners or their heirs had not been paid, the land shall be resumed and restored to the original owner or their heirs.
- (ii) In a case where compensation had been paid fully or partly, the land shall be resumed and offered for sale to the original landowners or their heirs in lieu of reimbursement of the amount of compensation with interest at the Government rate prevalent during the period the land remained out of their possession.
- (iii) If the original landowners or their heirs have been provided alternate land in lieu of their acquired land or if the original landowners or their heirs are not prepared to accept restoration of land under clause (ii) the land shall be resumed in lieu of reimbursement of the amount of compensation with interest at the Government rate prevalent during the period the land remained in possession of the company. The land shall just be utilized or disposed of by Board of Revenue in

accordance with the policy of the Government regarding disposal of lands.

- (iv) In a case where any improvement has been made or any structure has been raised by the company on the land proposed to be disposed of, the permission to sell land may be granted by Government subject to the condition that the difference in the market value of the land at the time of the sale and the amount of the acquisition shall be payable to the original landowners or their heirs.

16. Where the land is used for a purpose other than the one for which it was got acquired, by the acquiring company the same shall be resumed immediately by Government without any compensation and the acquiring company shall also be liable to a penalty which may extend to Rs.50,000,00/- depending upon the nature of each case.'

10. The reading of hereinabove, reproduced rules reveals that once the land is acquired by the Government for public purpose or for company or industry it cannot be utilized against the public interest or for the individual's benefit. The first condition is that the acquired land can only be used for the purpose it is acquired, the land can be acquired under the Land Acquisition Act, whereas there is no provision empowering the Government to acquire land for any individual's personal interest or benefit. The other condition is that even if the



land is acquired for a company, the company cannot sell the same without express approval of the Government. This condition also is laid down with spirit that public interest is supreme. The Government will have to watch the interest of public. The third condition is that if at all, the acquired property is not required for the public purpose or for the purpose for which it is acquired, the same shall be resumed and restored to the original owners or their heirs from whom it was acquired and if there is no such eventuality, the land shall be utilized or disposed of by the Board of Revenue, in accordance with policy of Government regarding disposal of the land. Thus, the scheme and spirit of these rules ultimately also is in consonance of the constitutional provision as expressed under the provision of section 52(A) of the Interim Constitution Act, 1974 which means that without any express and specific legislation no one is empowered to transfer the Government land to any person in an arbitrary manner.

11. Even otherwise, the question in the instant case is whether the Government is empowered to transfer or exchange the "Shamlat" or "Khalsa" land with any private land. Neither any such provision exist in the statutes, dealing with "Khalsa" land or the "Shamlat" land nor any other provision of any enforced law empowers the Government to execute such like transaction of exchange in the interest of private person. In the "Shamlat" land of

village the owners of the State have got vested legal rights and interest, hence the Government even otherwise is not empowered to transfer such land through notification to any individual person.”

The case-law referred to by the counsel for the petitioners is distinguishable and has no nexus with the case in hand.

Hereinabove are the detailed reasons for the short-order dated 20.3.2019, which reads as under:-

“Arguments heard. The detailed reasons shall follow. This review petition is dismissed with cost of Rs.25,000/-. The petitioners are directed to deposit the same within two week’s time otherwise the same shall be recovered as the arrears of the land revenue.”

Order accordingly.

**JUDGE**

**CHIEF JUSTICE**

Mirpur  
3.4.2019