

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 04 of 2019
(PLA filed on 07.01.2019)

Muhammad Ibrahim Khan s/o Lal Hussain, r/o
village Tharyar, Tehsil Sehnsa, District Kotli.

.... APPELLANT

VERSUS

1. District Magistrate/Deputy Commissioner
Kotli.
2. D.F.O. Normal, Kotli.
3. D.F.O., Demarcation, Mirpur.
4. Assistant Commissioner, Revenue, Kotli.
5. Assistant Commissioner, Sehnsa.
6. Tehsildar, Sehnsa.
7. Range Officer, Sehnsa.
8. Forest Officer, Sehnsa.
9. Patwari, Halqa Sehnsa.
10. S.H.O., Police Station, Sehnsa.

..... RESPONDENTS

(On appeal from the judgment of High Court dated
05.12.2018 in Writ Petition No. 92 of 2013)

FOR THE APPELLANT: Ch. Muhammad Ilyas,
Advocate.

FOR THE RESPONDENTS: Mr. Saadat Ali Kiani,
Additional Advocate-
General.

Date of hearing: 21.05.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 05.12.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 92 of 2013.

2. The facts forming the background of the captioned appeal are that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court claiming, therein, that respondent No.1, herein, has issued an order dated 23.02.2011 for his ejectment from the land comprising survey No.1406, situated at Mozia Tharyar, Tehsil Sehnsa, and respondent No.6, herein, has been appointed for the purpose.

It was stated that he moved an application to the Worthy Prime Minister of AJ&K that he is living at a distance of 18 *karams* from the forest land, whereas, the Government through the notification dated 30.06.1988, has granted relaxation/permission to the extent of 25 *karams*, therefore, the order dated 23.02.2011 being issued without lawful authority may be set aside but the Worthy Prime Minister has not considered his claim. It was further stated that after some time he once again moved another application to the Worthy Prime Minister to the same effect but to no avail. It was prayed that the respondents may be directed to inspect the spot, prepare the report in light of the notification dated 30.06.1988 and thereafter act in accordance with law. The writ petition was contested by the other side by filing written statement, whereby, the claim of the appellant, herein, was refuted. It was stated that the land under the possession of the appellant, herein, is a part of the Forest Land and the appellant,

herein, is in illegal possession of the same, hence, the order of ejectment is in accordance with law. The learned High Court after necessary proceedings through the impugned judgment dated 05.12.2018 has dismissed the writ petition.

3. Ch. Muhammad Ilyas, the learned Advocate appearing for the appellant, herein, argued that the appellant, herein, has right to get the land in his possession regularized in light of the notification dated 30.06.1988 because the same is situated at a distance of 25 *karams* from the demarcation line. He further argued that the District Magistrate/respondent No.1, herein, has no lawful authority to dispossess the appellant, herein, from the land which is in his possession because the same is not *khalsa* land and the order in this regard can be passed by a Forest Officer after demarcating the land and determining the nature of possession in light of the Govt. notification dated 30.06.1988. The learned Advocate further argued that the learned

High Court has not considered this aspect of the case as well as the prayer clause of the writ petition and dismissed the same while travelling beyond the pleadings. The learned Advocate further argued that the leaned High Court has decided those ground which were not argued and in fact has pre-empted the jurisdiction of the Forest Authorities.

4. Conversely, Raja Saadat Ali Kiani, the learned Additional Advocate-General appearing for the respondents argued that the notification dated 30.06.1988 is not applicable to the case of the appellant, herein, because he has occupied a piece of forest land without any justification. His possession, according to the learned Additional Advocate-General, is not lawful, therefore, his dispossession cannot be termed as illegal. The learned Additional Advocate-General submitted that the order passed by the District Magistrate/respondent No.1, herein, was challenged by the appellant, herein, before the Commissioner by way of appeal which was

dismissed and no further appeal or revision has been filed by him, thus, in presence of the alternate efficacious remedy, he could not invoke the extraordinary jurisdiction of the learned High Court. He further submitted that the appellant, herein, has moved the High Court with unclean hands and for protection of the ill-gotten gain which is not allowed in writ jurisdiction.

5. We have heard the learned counsel for the parties and have gone through the record of the case. The appellant, herein, filed writ petition before the High Court and prayed the following relief:-

“It is very humbly prayed that a direction may kindly be issued that respondents, District Magistrate Kotli (Respondent No.1) and DFO Normal and DFO Demarcation/Assistant Commissioner Revenue immediately making spot inspection and after that prepared a report in the light of Government notification No.2337/2416/88 dated 30 June 1988.

(2) That an another direction may kindly be issued that respondents District Magistrate Kotli, DFO Normal after visiting and inspected sport, act in according with law with the spirit of notification

No.2337/2416/88 dated 30 June 1988.

(3) That it may Kindly be restrained respondent No.3 and respondent No.5, Assistant Commissioner Sehnsa, SHO Police Station not to evicting petitioner from the land in possession and demolishing.

(4) That a direction may kindly be issued for respondent No.1, 2, 4, 5, 6 to obey and act upon according to law and procedure.”

A perusal of the above would show that relief claimed by the appellant, herein, was only that an appropriate Forest Officer may be directed to visit the spot and determine the possession of the appellant, herein, in light of the notification dated 30.06.1988. The learned High Court has not considered the prayer of the appellant, herein, and dismissed the writ petition on some other ground while travelling beyond the pleadings which is not permissible under law. In our estimation there was no harm in giving the relief claimed by the appellant, herein, while accepting the writ petition. The contention of the learned Additional Advocate-General that the report of the revenue officers was

sufficient for dismissal of the writ petition, is devoid of any force because in these reports it is nowhere mentioned the nature of possession of the appellant, herein, and from which date he is in possession of the land in question.

In view of above, while accepting this appeal, the impugned judgment of the High Court dated 05.12.2018 is hereby dismissed. Resultantly, the writ petition filed by the appellant, herein, before the High Court stands accepted in the manner that the D.F.O., Demarcation, Mirpur/Kotli, is directed to visit the spot, determine the possession of the appellant, herein, in view of the Government notification dated 30.06.1988 and thereafter pass an appropriate order after providing an opportunity of hearing to the appellant, herein.

JUDGE

CHIEF JUSTICE

Mirpur
22.05.2019