

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.325 of 2019

(PLA filed on 18.02.2019)

M/s Valley Trackers (a partnership firm) through Khawaja Muhammad Awais, Managing Partners, M/s Valley Trackers Company, House No.B-61, Upper Chatter, Muzaffarabad.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
2. Board of Revenue, Azad Jammu & Kashmir Government through its Secretary, New Civil Secretariat, Muzaffarabad.
3. Deputy Commissioner/Collector, District Neelum, having his office at Athmuqam, Tehsil and District Neelum.
4. Commissioner Muzaffarabad Division, Muzaffarabad.
5. Tourism Department of Azad Jammu & Kashmir through Director General, Tourism, Muzaffarabad.
6. Sardar Munir Ahmed,
7. Sardar Mushtaq Ahmed,
8. Sardar Manzoor Ahmed,
9. Sardar Zahoor Ahmed, sons of Sardar Wali Ahmed Khan, r/o Village Kel Seri, Tehsil Sharda, District Neelum, Azad Kashmir.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 08.01.2019 in Writ Petition No.1501 of 2015 and 434 of 2017)

FOR THE APPELLANT: Raja Muhammad Hanif Khan, Advocate.

FOR THE RESPONDENTS: Raja Ayaz Ahmed Khan, Asst. Advocate-General and Mr. M. Yaqoob Khan Mughal, Advocate.

Date of hearing: 03.02.2020

JUDGMENT:

Ghulam Mustafa Mughal, J.— The titled appeal by leave of the Court has been directed against the judgment dated 08.01.2019, passed by the Azad Jammu & Kashmir High Court in Writ Petitions No.1501 of 2015 and 434 of 2017.

2. The facts forming the background of the captioned appeal are that the appellant-company, as per stand taken in the appeal, is a registered firm under section 58 (a) of the Partnership Act, 1932. It is claimed that with the view to promote Tourism in the Neelum Valley, AJ&K, the appellant-company entered into an agreement with the Tourism

Department of AJ&K, as a result whereof, Youth Hotel Sharda, Tourist Motel Keran, Tourist Lodge Kuttan and Angel Hut Dawarian were leased out in favour of the appellant-company vide notification dated 18.03.2011. It is claimed that the Tourism Department of AJ&K requested the Commissioner Muzaffarabad Division that in order to promote tourism in the Neelum Valley and with the view to establish tourism stations at Neelum Valley, *khalsa* land may be allotted to the appellant-company. Consequently, the Commissioner Muzaffarabad Division, directed the Deputy Commissioner Neelum to point out some piece of land in favour of the appellant-company for the purpose. It is stated that the Deputy Commissioner Neelum pointed out the land comprising survey No.391, measuring 29 *kanal*, 9 *marla*, situated in village Seri, Tehsil Sharda, District Neelum, vide letter dated 04.03.2015. It is further stated that the Commissioner Muzaffarabad Division

recommended for the sanction of the lease in favour of the appellant-company vide letter dated 06.03.2015. It is further stated that the Member Board of Revenue placed the matter before the Government and obtained sanction for grant of lease of the aforementioned land with the conditions mentioned in the lease. It is further stated that as per direction of the Board of Revenue, the Deputy Commissioner Neelum received advance lease amount of Rs.5,99,000/- from the appellant-company on 07.05.2015 and receipt was also sent to the Board of Revenue on 11.05.2015. It is claimed that after receipt of the amount, lease was sanctioned in favour of the appellant-company vide notification dated 14.05.2015. The private-respondents, herein, challenged the lease notification dated 14.05.2015, by way of writ petition before the Azad Jammu & Kashmir High Court on 27.07.2015. The writ petition was admitted for regular hearing and the appellant-company was

asked to file written statement. Meanwhile, the Government directed to hold an inquiry into the matter and the Commissioner Muzaffarabad Division, in compliance of the order of the Government, submitted an inquiry report on 26.12.2015. In the inquiry report, it was observed that sanctioning of the lease was in the interest of Government as well as for development of tourism projects in the area. It was also pointed out that the persons who have challenged the lease through writ petition before the Azad Jammu & Kashmir High Court are in an unauthorized possession of the land, thus, they have no claim at all. However, after submission of the report from the Commissioner, the Government vide notification dated 14.12.2016, cancelled the lease from the name of the appellant-company. The notification of cancellation of the lease dated 14.12.2016, was challenged by the appellant-company through separate writ petition before the Azad Jammu & Kashmir High Court on

11.03.2017. The learned High Court consolidated both the writ petitions and vide impugned consolidated judgment dated 08.01.2019, dismissed the writ petition filed by the appellant-company, whereas, cosigned the record the other writ petition filed by the private-respondents, herein, for having become infructuous.

3. Raja Muhammad Hanif Khan, the learned Advocate appearing for the appellant-company argued with vehemence that on the move of the Tourism Department of AJ&K, the land was sanctioned in favour of the appellant-company who is engaged in promoting tourism activities in the area which is beneficial for the Government as well as the people of the locality. The learned Advocate further argued that the lease sanctioned in favour of the appellant-company, vide notification dated 14.05.2015, has been cancelled by the Government vide notification dated 14.12.2016, without providing an opportunity of hearing to the appellant-

company which is against the principle of *audi alteram partem*. The learned Advocate submitted that as the notification dated 14.05.2015, was acted upon and the possession of the land was also delivered to the appellant-company who has made a huge investment while launching tourist resorts, therefore, valuable right has accrued in favour of the appellant-company which cannot be taken back arbitrarily. The learned Advocate referred to the various documents including the report made in favour of the appellant-company by the revenue authorities.

4. Conversely, Mr. Muhammad Yaqoob Khan Mughal, the learned Advocate appearing for the private-respondents argued with vehemence that it is not correct that the appellant-company has not been heard before issuance of the notification dated 14.12.2016. He further argued that fact of the matter is that on the application of the private-respondents, herein, a subsequent report was obtained from the

Commissioner Muzaffarabad Division and on the basis of the same, the order dated 14.12.2016, has been passed. The learned Advocate further argued that the jurisdiction of the Government is also disputed, therefore, hearing was even otherwise not necessary.

5. Sardar Javed Naz, the learned Additional Advocate-General appearing for the official-respondents has defended the impugned judgment.

6. We have heard the learned counsel for the parties and have gone through the record of the case. In view of the proposed conclusion, we would refrain from expressing ourselves on the merits or demerits of the case. Suffice it to observe that on a duly processed file, the Government of AJ&K, vide notification dated 14.05.2015, granted lease in favour of the appellant-company on the conditions mentioned in the lease. The legality and correctness of the aforesaid notification was challenged by the private-respondents, herein, by way of writ petition

before the Azad Jammu & Kashmir High Court on 27.07.2015. The writ petition was contested by the appellant-company by filing written statement. During pendency of the writ petition, vide notification dated 14.12.2016, the earlier notification dated 14.05.2015, was rescinded and stood cancelled. The appellant-company challenged the notification dated 14.12.2016, through a separate writ petition. Both the writ petitions were consolidated by the learned High Court and through the impugned judgment dismissed the writ petition filed by the appellant-company, whereas, consigned to record the writ petition filed by the private-respondent, herein, for having become infructuous. As stated above, on a duly processed file, a notification of grant of lease of the land comprising survey No.391, measuring 29 *kanal*, 9 *marla*, situated in village Seri, Tehsil Sharda, District Neelum, was issued in favour of the appellant-company on 14.05.2015. The case was pending

when the Government vide another notification dated 14.12.2016, cancelled the earlier notification of lease dated 14.05.2015. As the notification dated 14.05.2015, issued by the competent authority was acted upon and the possession of the land was handed over to the appellant-company who as per stand of the learned counsel for the appellant has invested a huge amount on the project, therefore, it was enjoined upon the Government/competent authority to provide an opportunity of hearing to the appellant-company before rescinding the notification dated 14.05.2015, because right of hearing is essential and nobody can be condemned unheard. We are fortified in our view by the case reported as *Chaudhry Ali Muhammad Chacha vs. Azad Government & 4 others* [2006 SCR 232], wherein, at page 237 of the report, it was observed as under:-

“8. It would also not be out of place to mention here that in the instant case the notification was issued in 1997 whereby 100 kanals of land was reserved and notified for the

Girls College. The building was completed in the year 2000 and handed over to the Government. After five years of running the College, the Government has reduced the land measuring 50 kanals from the notification issued in the year 1997. It was enjoined upon the Government at least to hear the appellants before reducing the land because the appellant No.1 had spent his days and nights and a huge amount for the construction of the College building for the benefit of public at large, therefore, the action of the Government is not justified.”

In the referred case, the Government initially allocated 100 *kanal* land through a notification for construction of Girls College in private sector which was subsequently reduced to 50 *kanal* by amending the earlier notification and without providing right of hearing to the other party. The legality and correctness of the notification of reducing the land was challenged through writ petition before the Azad Jammu & Kashmir High Court which was dismissed but on appeal this Court set aside the notification in the terms of above reproduced observation.

In view of the above, this appeal is accepted and the notification dated 14.12.2016, is hereby set aside. The authority is at liberty to recall the aforesaid notification subject to all just exceptions but before doing that the appellant-company shall be provided an opportunity of hearing.

JUDGE

CHIEF JUSTICE

Muzaffarabad
03.02.2020

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