

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

Civil Appeal No.61 of 2019  
(PLA filed on 06.05.2019)

Ch. Mazhar Iqbal son of Ch. Muhammad Yousaf  
resident of Chabrain Gujran, Post Office Afzalpur,  
Teshil and District Mirpur.

.....APPELLANT

VERSUS

1. Muhammad Jameel son of Ch. Hussain Alam  
r/o House No.37, Sector B-5, Mirpur City.
2. Naseem Akhtar daughter of Ghulam Nabi wife  
of Rafiq Ahmed r/o House No.57, Sector C-3,  
Mirpur.

.....RESPONDENTS

3. Mirpur Development Authority Mirpur through  
its Chairman/Director General MDA.
4. Chairman/Director General MDA, Mirpur.
5. Revising Authority Mirpur Development  
Authority Mirpur through its Chairman.
6. Chairman Revising Authority, MDA, Mirpur.
7. Estate Officer/Director Estate Management  
MDA, Mirpur.
8. Town Planner, MDA, Mirpur.

9. Head Draftsman Department of Planning, MDA Mirpur.
10. Overseer Department of Planning, MDA, Mirpur.
11. Director Works MDA, Mirpur.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court dated 27.12.2018 in writ petitions No.161 and 162 of 2011]

-----

FOR THE APPELLANTS: Mr. Khalid Rasheed Chaudhary, Advocate.

FOR THE RESPONDENTS: Sardar Mushtaq Hussain Khan, Advocate.

Date of hearing: 25.02.2020

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The captioned appeal by leave of the Court has been filed against the judgment of the High Court dated 27.12.2018, whereby the writ petitions filed by the respondents, herein, have been accepted.

2. The precise facts of the case are that respondent No.1 (Muhammad Jamil) filed a writ petition before the High Court claiming therein that vide order dated 14.07.2011 he was allotted plot No 14-B as an alternate of plot No 593, C-I, Gulshan Kashmir Mirpur. It was stated that according to the approved plan, plot No. 14-B is situated on the main F-2 road, while the plot No. 14-E is situated in the street, i.e. at the back side of Plot No. 14-B. However, the proforma-respondents, herein, by preparing a forged and fictitious site plan, have shifted the above mentioned plots in the place of one another and now according to the unapproved plan, the plot No. 14-B situates at the back side of Plot No. 14-E, which has been shifted at the main road. It was claimed that the proposed unapproved plan of shifting the plots, in place of one another is against the law, facts and on ground position. The respondent No.2 also filed a separate writ petition before the High Court relating to illegal shifting of

his plot No.14-C in place of plot No.14-D/1, on the same grounds. The writ petitions were contested by the other side by filing written statements. The learned High Court clubbed both the writ petitions and after necessary proceeding while accepting the same declared the respondents, herein, entitled to retain their allotted plots as per the Master Plan and all the contrary actions taken thereafter were declared as null and void. Hence, this appeal by leave of the Court.

3. Mr. Khalid Rasheed Chaudhary, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the impugned judgment of the learned High Court is against law and the facts. According to the enforced statute, the Development Authority Board is competent to make necessary alterations/changes in the approved scheme falling within the financial competence. The approval of the Government is only required when the matter is beyond the financial competence of Development

Authority/Board. He further argued that according to the record, the plots claimed by the respondents were not validly allotted as all the proceedings are bogus. In fact, in the garb of this maneuvered claim, they want to usurp the commercial property of the appellant. Even on the identical points, the learned High Court has adopted the inconsistent mode in the case titled *Saeed Ahmed vs. MDA & others* [writ petition No.163/2011 decided on 27.12.2018]. The said writ petition was dismissed but on the same points the writ petitions filed by the respondents have been accepted through the impugned judgment. The learned High Court has ignored the pleadings of the parties, specially, the written statement filed on behalf of the appellant has not been considered. Therefore, while accepting this appeal the impugned judgment be set-aside. Consequently, the writ petitions filed by the respondents be dismissed.

4. Conversely, Sardar Mushtaq Hussain Khan, Advocate, the learned counsel for the

respondents forcefully defended the impugned judgment on the ground that arguments advanced by the learned counsel for the appellant are misconceived. The law has been amended and now the alteration or change in the master plan can be made by Mirpur Development Authority without the approval of the Government. This Court in the case titled *Kashmir Blood Bank vs. Mirpur Development Authority* has laid down an authoritative judgment, which is fully attracted to the case in hand. The appellant has also brought on record some documents such as copy of master plan which was not brought on record before the High Court, hence, this appeal is not maintainable and liable to be dismissed.

5. We have heard the learned counsel for the parties and examined the record made available. Irrespective of the points agitated on behalf of the parties, the careful examination of the impugned judgment of the High Court reveals that the same has been passed without proper appreciation of the

material facts brought on record and pleadings of the parties. The writ petitions have been decided while referring to some judgment of this Court. We have no cavil that the principle of law laid down by this Court is of binding nature but it is also a celebrated principle of law that before application of the principle of law laid down by this Court the Courts have to properly appreciate and attend the material propositions brought on record in the pleadings of the parties. The impugned judgment clearly speaks that neither the contents of the writ petitions or the written statement have been properly discussed nor facts of the case have been appreciated to determine whether the enunciated principle of law is applicable or not.

6. It is legally required that the Court has to decide the cases according to the pleadings of the parties. In this case, the written statement submitted by the appellant has neither been discussed nor considered. In the writ statement filed on behalf of the appellant, it has been clearly

stated the claimed allotted plot was not situated on main road rather it was on back side. It is also mentioned that the petitioner (respondent No.1, herein) has been allotted residential plot but now he claims the commercial plot. Same like, in paragraph 3 of the written statement the location and allotment of the plot has also been denied and disputed. It is amazing that such serious averments have neither been discussed nor attended or resolved in the impugned judgment. Thus, it appears that the judgment has been passed in vacuum without attending the special facts of the case or pleadings of the parties. In this state of affairs, without adverting to the merits of the case, in our considered opinion, the learned High Court has not decided the matter according to law while attending all the material propositions, hence, it is felt advised that the matter should be remanded to the High Court for fresh decision according to law.

7. For the above stated reasons, we are constrained to accept this appeal, recall the



impugned judgment and remand the case to the High Court for deciding the same afresh according to law after providing opportunity of hearing to the parties and attending all the material legal and factual propositions raised in the pleadings of the parties.

This appeal is accepted in the above terms with no order as to costs.

Mirpur,  
26.02.2020

CHIEF JUSTICE

JUDGE