

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.87 of 2020

(Filed on 16.03.2020)

Masjid Farogh e Islam, Bandral, through Muhammad Ishaq s/o Muhammad Aslam, In-charge Masjid Committee, Farogh e Islam, Bandral, Tehsil and District Mirpur.

.....PETITIONER

**VERSUS**

1. Muhammad Akram Qureshi s/o Muhammad Idrees Qureshi, r/o Bandral, Tehsil and District Mirpur.
2. Aftab Qureshi s/o Muhammad Latif Qureshi, caste Qureshi, r/o Bandral, Tehsil and District Mirpur.
3. Ch. Muhammad Ramzan s/o Muhammad Ismail, caste Jatt, r/o Bandral, Tehsil and District Mirpur.
4. Muhammad Ishaq, Contractor, residence unknown.
5. Muhammad Asad, Contractor s/o Raja Muhammad Afzal Khan, r/o Muzaffarabad presently residing at Bandral Hemlet, Mirpur.

.....RESPONDENTS

6. Municipal Corporation Mirpur through Administrator Municipal Corporation, District Mirpur.
7. Estate Officer Municipal Corporation, Mirpur.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment and decree of the High Court dated 16.01.2020 in Civil Appeals No.10 and 222 of 2008]

FOR THE PETITIONER: Mr. Zulfiqar Ahmed Raja,  
Advocate.

FOR THE RESPONDETS: Mr. Ashiq Hussain,  
Advocate.

Date of hearing: 23.11.2020

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been filed against the judgment and decree dated 16.01.2020, passed by the Azad Jammu & Kashmir High Court in Civil Appeals No.10 and 222 of 2008.

2. The facts forming the background of the captioned petition for leave to appeal are that the plaintiff/petitioner, herein, filed two suits for perpetual injunction against the defendant/respondents, herein, in the Court of Senior Civil Judge Mirpur on 20.04.2005 and 18.05.2005. It was averred that the land comprising *khasra* No.1160, measuring 101 *kanal*, 3 *marla*, situated in village Bandral, Tehsil and District Mirpur, was de-awarded vide notification dated 19.06.2001 and its ownership has been cancelled from WAPDA. It was

further averred that the aforesaid land has been included in village Bandral and mutation No.161, in this regard, has also been attested. It was further averred that the residents of village Bandral with mutual consent decided that on 5 *kanal*, 5 *marla*, from the aforementioned land, a mosque will be constructed and a *waqfnama* in this regard was approved from the Municipal Corporation Mirpur. It was claimed that defendants No.1 to 3, therein, fraudulently and for personal benefit while showing themselves as president as well as members of the masjid committee, maneuvered a *waqfnama* on 21.05.2004, whereby, they got entered the land of the mosque as 1 *kanal*, whereas, gave the remaining land to the education department. It was stated that the *waqfnama* dated 21.05.2004, is illegal, fraudulent, bogus and inoperative upon the rights of the plaintiff/petitioner, herien. The suits were contested by the defendants by filing written statement, whereby, the claim of the plaintiffs was refuted. The learned trial Court consolidated both the suits, framed issues in light of the pleadings of the parties

and asked them to lead evidence pro and contra. Thereafter, on the request of the parties, the learned trial Court appointed Tehsildar Mirpur as local commission to furnish a detailed report with regard to the status of the land. After receipt of the report, the learned trial Court vide judgment and decree dated 13.01.2007, disposed of both the suits with the observation that Masjid Farogh e Islam would be entitled to 1 *kanal*, 3 *marla*, 1 *sarsai*, whereas, Govt. Middle School Bandral would be entitled to 12 *marla* land. It was further observed that the Masjid as well as School would be entitled to use remaining land with the consent of the inhabitants of the area and concerned authorities. Feeling aggrieved, both the parties filed separate appeals before the learned District Judge Mirpur which after necessary proceedings were dismissed vide judgment and decree dated 26.11.2007 and the judgment and decree dated 13.01.2007, recorded by the learned trial Court was upheld. The legality and correctness of the judgment and decree dated 26.11.2007, recorded by the learned District Judge Mirpur, was

challenged through separate appeals by the parties before the Azad Jammu & Kashmir High Court on 29.01.2008 and 23.02.2008. The learned High Court after hearing the parties, through the impugned consolidated judgment and decree dated 16.01.2020, has dismissed both the appeals.

3. Mr. Zulfiqar Ahmed Raja, the learned Advocate appearing for the petitioner argued with vehemence that the suit could not be decided on the report of the commission only without recording the evidence of the parties in light of the stand taken by them in their respective pleadings. The learned Advocate further argued that the statement of the parties has not been recorded to the effect that they will not adduce any evidence further, hence, disposal of the suits finally only on the report of the commission was not lawful. The learned Advocate submitted that the judgment and decree recorded by the learned District Judge Mirpur dated 19.03.2001, whereby, the possession of Haji Muhammad Din over

the land in question was declared illegal, has attained finality and in presence of this judgment, no further proceedings can be taken. In support of his submissions, the learned Advocate has placed reliance on the cases reported as *Raja Ali Shah vs. Messrs Essem Hotel Limited and others* [2007 SCMR 741] and *Ch. Maqbool Ahmed vs. Ch. Muhammad Iqbal* [2017 SCR 1653].

4. Ch. Ashiq Hussain, the learned Advocate appearing for the other side has defended the impugned judgment and submitted that the no any legal question of public importance is involved in the case, therefore, leave may refused.

After hearing the learned counsel for the parties and going through the record appended with the petition, I am of the view that the question, as to whether, the suits filed by the petitioner, herein, could have been decided on the basis of report of the commission only, is a legal question public

importance which require resolution in a regular appeal. Leave to appeal is, therefore, granted. The petitioner is directed to deposited security of Rs.1000/- within one month failing which the leave granting order shall automatically be deemed to have been rescinded. The office is directed to complete the file and place the same before the Hon'ble Chief Justice for constitution of the Bench.

**JUDGE**

Mirpur  
23.11.2020