

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.164 of 2020

Civil Misc. No.66 of 2020

(Filed on 20.07.2020)

Shabir Ahmed s/o Muhammad Ali, caste Jatt, r/o Nai Abadi Penyam Kalyal, Chaksawari, Tehsil and District Mirpur.

....PETITIONER

**VERSUS**

1. Muhammad Altaf s/o Muhammad Shafi, caste Malik, r/o Nai Abadi Penyam Kalyal, Chaksawari, Tehsil and District Mirpur.
2. Administrator, Municipal Corporation, Mirpur.
3. Inspector, Highways, Mirpur.
4. Inspector, Encroachment, Municipal Committee, Chaksawari.
5. Overseer (In-charge), Highways, Mirpur.

.....RESPONDENTS

(On appeal from the judgment of the High Court dated 06.06.2020 in Civil Appeal No.23 of 2020)

**Application for Interim relief**

FOR THE PETITIONER: Mr. Kamran Riaz Butt,  
Advocate.

FOR THE RESPONDENTS: Raja Fiaz Haider Nawabi,  
Advocate.

*Date of hearing:* 27.11.2020.

**ORDER:**

**Ghulam Mustafa Mughal, J.**— This petition for leave to appeal has been filed against the judgment dated 06.06.2020, passed by the Azad Jammu & Kashmir High Court in Civil Appeal No.23 of 2020.

2. The facts forming the background of the captioned petition for leave to appeal are that the plaintiff/petitioner, herein, filed a suit for declaration on the basis of right of easement and perpetual injunction in respect of the land comprising *khewat* No.182/177, *khata* No.954/920 min, survey No.3637, measuring 4 *kanal*, 19 *marla*, situated at village Panyam, Tehsil and District Mirpur, against defendant/respondent No.1, herein, in the Court of Civil Judge Court No.II, Mirpur. Along with the suit an application for interim relief was also filed. The learned trial Court initially granted the interim relief subject to objections from the other side. After obtaining objections, the learned trial Court appointed local

commission, who submitted its report on 30.05.2019. The learned trial Court on the basis of the report of the Commission, vacated the stay order on 03.08.2019. The aforesaid order was challenged before the learned District Judge Mirpur on 10.08.2019, who after hearing the parties, remanded the case to the trial Court with a direction to appoint senior Revenue Officer as a local commission. It is maintained that the learned Civil Judge Court No.II, appointed Tehsildar Mirpur as a local commission who submitted fresh report on 29.11.2019, on the basis of which the learned trial Court while deciding the stay order application, vacated the stay order on 21.12.2019. Feeling aggrieved, the petitioner, herein, filed an appeal before the learned Additional District Judge Mirpur on 26.12.2019. The learned Additional District Judge Mirpur after hearing the parties vide judgment/order dated 28.01.2020, accepted the appeal and remanded the case to the trial Court with a direction to appoint local commission and after getting its report, decide the case afresh. The legality and correctness of the

judgment/order dated 28.01.2020, recorded by the learned Additional District Judge Mirpur, was challenged by the respondent, herein, through appeal before the Azad Jammu & Kashmir High Court on 10.02.2020. The learned High Court after hearing the parties through the impugned judgment dated 06.06.2020, accepted the appeal and remanded the case to the learned Additional District Judge to decide the case afresh on merits.

3. Mr. Kamran Riaz Butt, the learned Advocate appearing for the petitioner argued with vehemence that the report of the Commissioner which has been relied upon by the learned High Court is ambiguous and is against the T.O.Rs. laid down by the learned Civil Judge Court No.II, Mirpur, therefore, such a report was not considerable and the learned High Court should not interfere in the well-reasoned orders passed by the Courts below. The learned Advocate further argued that the judgment of the learned Additional District Judge was apt and in accordance with law and the report dated

28.01.2020 was rightly ignored because the same does not disclose the correct position.

4. Conversely, Raja Fiaz Haider Nawabi, the learned Advocate appearing for the other side submitted that the Court has to decide the case on the available report and the fresh report can only be obtained with the it becomes absolute necessary that the Court is not in a position to decide the case in light of the pleadings of the parties. The learned Advocate further submitted that the order passed by the learned High Court does not suffer from any legal infirmity.

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, remand in this case was desirable, 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 week 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 seeking approval for fixing the appeal in the next tour.

Mirpur.  
27.11.2020

**JUDGE**