

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(APPELLATE JURISDICTION)

**PRESENT:**

*Raja Saeed Akram Khan, CJ.*

Civil P.L.A No.53 of 2021  
(Filed on 16.04.2021)

WAPDA through Director Legal WAPDA, WAPDA  
House Lahore (Authorized).

....PETITIONER

**VERSUS**

1. Raja Maroof son of Raja Jamshed Khan,  
r/o House No.7, Sector F-2, Mirpur.
2. Dr. Muhammad Akram, Noor Memorial  
Hospital Tehsil and District Mirpur.
3. Mirpur Development Authority through  
its Chairman (Now Director General).
4. Chairman (Now Director General) Mirpur  
Development Authority.
5. Director Estate Management Mirpur  
Development Authority.

....RESPONDENTS

6. Chief Engineer WAPDA Mangla Tehsil and

District Mirpur.

....PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 18.02.2021 in writ petition No.75 of 2020)

FOR THE PETITIONER: Haji Muhammad Afzal, Advocate.

FOR THE RESPONDENTS: Mr. Aurangzeb Ch. and Mr. Farooq Akbar Kiani, Advocates.

Date of hearing: 24.06.2021

**ORDER:**

**Raja Saeed Akram Khan, CJ.**— This petition for leave to appeal has been directed against the judgment of the High Court dated 18.02.2021, whereby the writ petition filed by the petitioner, herein has been dismissed.

2. The facts necessary for disposal of this petition for leave to appeal are that the a suit for declaration/possession-cum-perpetual injunction, was filed by the WAPDA in the Court of Civil Judge Court No.II, Mirpur, claiming

therein, that the land comprising survey No.2, measuring 1 *kanal*, 15 *marla*, situate at Mozia Pootha Behnsi, Tehsil and District Mirpur is in the ownership of WAPDA, but the defendants, therein, have raised construction over the same. Moreover, MDA has no authority to allot the said land to any other persons. The trial Court after necessary proceedings, dismissed the suit and appeal before District Judge and writ before the High Court also failed; hence, this petition for leave to appeal.

3. Haji Muhammad Afzal, Advocate, the learned counsel for the petitioner argued that the impugned judgment is against law and the facts of the case. He submitted that before the District Judge an application under Order I, Rule 10, CPC, was moved for impleading some persons in the line of the respondents. The learned District Judge heard the arguments on the said application but instead of deciding the

application dismissed the appeal. This illegality committed by the Court was highlighted in the writ petition but the learned High Court failed to rectify the same. He added that the land in question was acquired for Mangla Dam Raising Project; the same is in the ownership of WAPDA and Government of AJ&K has only the sovereignty rights; therefore, without the permission of the real owner, MDA has no authority to allot the land to any other person. He drew the attention of the Court towards the grounds taken in the plaint, appeal as well as writ petition and submitted that this point was forcefully raised in the pleadings but the Courts below failed to attend and resolve the same in a legal manner. He prayed for grant of leave and also made a request that an application has been moved for correction/amendment in the memo of petition for leave to appeal as due to clerical mistake the acreage of the land has

been entered 3 *kanal* 8 *marla* instead of 1 *kanal* 15 *marla*.

4. The learned counsel for the respondents at the very outset stated that they have no objection if the application filed for correction/amendment is allowed, however, the instant petition is liable to be dismissed as the same has been filed by unconcerned person. In support of this version, they relied upon a judgment of this Court delivered in the case titled *WAPDA and another v. Raja Maroof and other* (civil appeal No.49 of 2013, decided on 07.04.2014) and submitted that the Director Legal was not party in the Courts below; therefore; he comes within the purview of unconcerned person. They added that there are concurrent findings of facts recorded by all the Courts below and the petitioner failed to point out any misreading or non-reading of the record, hence, interference by this Court is not

warranted under law. They lastly submitted that the land in question was left unutilized, therefore, the Government under law is fully competent to utilize the same for any other purpose. They prayed for dismissal of petition for leave to appeal.

5. To rebut the objection raised by the counsel for the respondents in respect of the maintainability of the petition for leave to appeal the learned counsel for the petitioner submitted that Director Legal was fully authorized to file petition/appeal before this Court. In support of this version, he relied upon the full Court judgment reported as 2015 SCR 531.

After hearing the learned counsel for the parties at some length, I am of the view that the points involved in the matter are of vital importance which require thorough deliberation, therefore, leave is granted in the

case. The application filed for amendment by the petitioner is also allowed. The petitioner is directed to deposit Rs. 1000 as security within a period of 30 days failing which the leave granting order shall automatically be deemed rescinded. The office shall proceed further according to rules.

Mirpur,  
24.06.2021

**CHIEF JUSTICE**