

JSUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Naseem, J.

Muhammad Younas Tahir, J.

Cri. Original No.24 of 2021

(Filed on 07.09.2021.)

1. Muhammad Nasar Khan,
2. Sajjad Hussain,
3. Muhammad Ejaz Khan,
4. Muhammad Imtiaz Khan,
5. Imran Khan,
6. Kamran Khan, sons of Muhammad Hussain Khan,
Caste Sudhan, r/o Rawalakot, District Poonch,
Azad Jammu & Kashmir.

.... APPLICANTS

VERSUS

1. Muhammad Javid Khan, s/o Khan Muhammad Khan, Caste Sudhan, r/o Rawalakot, District Poonch, Azad Jammu & Kashmir.
2. Muhammad Zohraz Khan, s/o Khan, Muhammad Khan, Caste Sudhan, r/o Rawalakot, District Poonch, Azad Jammu & Kashmir.
3. Mst. Makhan Jan, D/o Khan Muhammad Khan, Caste Sudhan, r/o Rawalakot, District Poonch Azad Jammu & Kashmir.
4. Zulfiqar Khan.
5. Waqar Khan.
6. Ibrar Khan.
7. Israr Khan, sons.
8. Ifat.
9. Nighat.

10. Nusrat Daughters of Rasheeda Begum, w/o Muhammad Ishfaq Khan, (Deceased) resident of Rawalakot District Poonch.
11. Subtain Kazmi, Retired Extra Assistant Commissioner Rawalakot, r/o Hoda Bari Tehsil & Bagh District Bagh.
12. Ch. Basharat Tehsildar Rawalakot.
13. Muhammad Naeem Khan Gardawar Rawalakot District Poonch.
14. Mudassar Patwari Halqa Rawalakot District Poonch.

..... RESPONDENTS

[In the Matter of Initiation of Contempt of Court
Proceedings]

FOR THE APPLICANTS: Syed Nazir Hussain
Shah Kazmi,
Advocate

FOR THE RESPONDENTS: Nemo.

Date of hearing: 29.11.2021.

ORDER:

Muhammad Younas Tahir, J.— The titled petition has been filed for initiation of contempt of Court proceedings against the respondents, herein, for violation of the judgment of this Court titled *Muhammad Nasar Khan & others vs. Board of Revenue & others* (Civil Appeal No.10 of 2019, decided on 17.10.2019).

2. Syed Nazir Hussain Shah Kazmi, Advocate, learned counsel for the petitioners, submitted that a gross violation has been committed by the respondents while ignoring the judgment of this Honourable Court, dated 17.10.2019. He further submitted Article 45 of the Azad Jammu & Kashmir Interim Constitution, 1974, read with Order XLVII of the AJ&K Supreme Court Rules, 1978 and section 3 of the Contempt of Court Act, 1993, is very much applicable in the present case. He further submitted that in para No.7 of the judgment a clear direction has been issued to the concerned authorities regarding partition proceedings, but the same has not been implemented by the private as well as official respondents, which shows clear contemptuous behavior, therefore, contempt of Court proceeding may be initiated and punishment/conviction should be awarded to the respondents. He further argued that after judgment of this Honourable Court, the private respondents have illegally interfered with the possession of the applicants survey No.628 old and 1604 present, measuring 4 kanal, and 5 marla. He further submitted that the aforesaid survey number has

already been transferred by the father of the applicants vide gift deed, dated 19.03.2013, and same has been entered in the revenue record to that effect. The applicants have raised construction upon the said survey No.628, which is in the possession of their father since 1954. The official respondents purposely avoiding to act upon the judgment of this Honourable Court.

3. We have heard the learned counsel for the petitioners and gone through the record made available.

4. The applicants wants initiating of contempt of Court proceedings against respondents for violation of para No.7 of the judgment of this Court, which is reproduced as under:-

“7. In the stated circumstances, while accepting this appeal and recalling the judgments of the revenue authorities as well as the impugned judgment, it is directed that the concerned revenue authority/Court shall conduct the partition proceedings relating to all the survey numbers, the subject-matter of the decree dated 06.08.1956 and while conducting the proceedings they shall strictly follow the procedure and guidelines provided under the statutory provisions to save

the interest of the parties in shape of construction or other accrued rights according to their family settlement.”

It is worth mentioning here that partition proceedings were initiated by the revenue authorities and the Extra Assistant Commissioner Poonch/Rawalakot, passed an order on 27.02.2020. Against the order of the Extra Assistant Commissioner, petitioners filed an appeal on 02.03.2020, before the Collector District Poonch, which was entrusted to Additional Collector District Poonch. The Additional Collector vide order, dated 27.07.2020, decided the appeal with the direction that civil suit (declaratory suit) titled, “*Muhammad Nisar vs. Javaid & others*”, regarding survey No.628 old, 1604 present, was pending in the Court of Senior Civil Judge Rawalakot, therefore, partition proceedings cannot be concluded before finalizing of civil suit. The order of the Additional Collector is reproduced as under:-

"لہذا اپیل اپیلانٹ بے وزن قرار دی جا کر خارج کی جاتی ہے فیصلہ عدالت ماتحت بحال رکھا جاتا ہے۔ مثل اس ہدایت کے ساتھ عدالت ماتحت کو ارسال کی جاتی ہے کہ دائر دعویٰ استقرار حق عدالت سننیر سول جج رولاکوٹ عنوانی محمد نثار بنام جاوید وغیرہ بابت اراضی

نمبر خسره ثابت 628 حال 1604 پر حتمی فیصلہ کے بعد ہی تقسیم کی بقیہ کاروائی ضابطہ عمل میں لائی جائے۔ اپیل ہذا میں جاری شدہ حکم امتناعی منسوخ تصور ہو مٹل بعد تکمیل ضابطہ داخل دفتر ہو حکم سنایا گیا۔"

A careful perusal of the order of the Additional Collector Rawalakot, shows that due to civil litigation it was not possible for Additional Collector to conclude the partition proceeding regarding survey No.628 old, 1604 present. After conclusion of the civil litigation, suit for declaration, the partition proceedings can be concluded by the relevant revenue Court. When this fact was confronted by the learned counsel for the applicants, he failed to satisfy the Court particularly on this point.

Keeping in view the circumstances of the case and validity of the order passed by the Additional Collector District Poonch that in presence of civil litigation how partition proceeding can be finalized by the revenue Court, therefore, the question of violation of the judgment of this Court does not attract at this stage. Our view finds support from a recent judgment of this Court, in case titled, "*Muhammad Javaid Khan, vs.*

Muhammad Nasar Khan” decided on 10.09.2021, as

under:

As per statutory provisions, if at the time of partition/division of any property the question of title arises, the property cannot be partitioned until the same is resolved first. The question of title means a dispute as to ownership of the property and once a plea of title is taken up by any of the parties to a partition proceedings, the issue has to be determined by a competent Court and it no longer remains in the jurisdiction of a Revenue Officer to say that this is a false or frivolous plea. There must be finding of a competent Court on the issue of title. This Court in the judgment dated 17.10.2019 directed the concerned authority to strictly follow the procedure and guidelines while conducting partition proceedings. The statutory provisions dealing with the partition of property proceedings is section 141 of the Land Revenue Act. For proper appreciation the said section is reproduced herein below:-

“141. Disposal of questions as to title in the property to be divided.—(1) When there is a question as to title in any property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the Revenue Officer does not himself proceed to determine the question of title as a Civil Court, he

may for reasons to be recorded by him in this behalf require a party specified by him to file a suit in a civil Court, within such period not exceeding ninety days from the date of his order as he may fix, for obtaining a decision regarding the question.

(3) On the filing of a civil suit by the party required so to do within the specified period, the Revenue Officer shall suspend further action on the application for partition till the said civil suit is decided by the Court and a copy of the Court's order is produced before him.

(4)

(5)"

In our considered view the disputed point of fact as to whether alleged claim of ownership of the said property by the respondents is correct or not, needs detailed probe and without detailed probe it cannot be held that the respondents have willfully disobeyed the order of the Court because to constitute a punishable contempt a case of willful disobedience has to be made. We are fortified in our view from the case reported as *Muhammad Mehrban and another vs. Muhammad Siddique and 2 others (2005 SCR 418)* wherein, this Court held as under:-

".....The petitioners filed an appeal before the High Court which was also dismissed. After due consideration, I am of the view that the disputed point of fact is as to whether the alleged construction made on suit land has been effected before or after issuance of stay order by the District Judge. It is settled by now that in such like cases contempt proceedings are not initiated.

Similarly, without a detailed probe it cannot be held that the petitioners have willfully disobeyed the order of the Court because to constitute a punishable contempt a case of willful disobedience has to be made...”

Thus, in light of the above it can safely be said that the respondents, herein, while filing the suit before the Civil Judge have not committed any contempt because question of title in the said property was raised by the respondents, herein, claiming their ownership & possession in light of gift-deed dated 19.3.2013 and before the resolution of this question of title, partition of property cannot be carried out as per statutory law. This Court in its judgment also issued direction for partition of the property strictly in accordance with the statutory provisions. In view of the above the applicants failed to make out any case for initiation of contempt of Court proceedings against the respondents.

4. There is no cavil with proposition that this Court has power to punish or convict any person under section 45 of the Azad Jammu & Kashmir Interim Constitution, 1974, read with Order XLVII of the AJ&K Supreme Court Rules, 1978 and section 3 of the Contempt of Court Act, 1993, in violation of any direction or order of this Court. It would be useful to reproduce the Section 45 of the AJ&K Interim Constitution, which is as under:-

“Contempt of Court.”-(1) in this Article “Court” means the Supreme Court of Azad Jammu and Kashmir or the High Court.

(2) A Court shall have power to punish any person who,-

- (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;
- (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Court; or
- (d) does any other thing which, by law constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.”

A bare reading of section 45 of the AJ&K Interim Constitution, 1974, postulates that this Court have ample power to punish any person who abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court, but in the

instant case the applicants have failed to point out any such eventuality which could make us believe that the respondents have disobeyed any judgment/order of this Court or committed any act which law constitute contempt of Court . In our considered view, the learned counsel for the applicants failed to establish any violation or disobedience, of the judgment of this Court.

The crux of the above discussion is that this contempt petition stands dismissed.

JUDGE

(iii)

Muzaffarabad
01.12.2021

JUDGE

(i)

M. Nasar Khan vs. M. Javid Khan & others

ORDER:

The judgment has been signed. The same shall be announced by the learned Registrar after notifying the learned counsel for the parties.

JUDGE

(iii)

Muzaffarabad
01.12.2021

JUDGE

(i)