

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Muhammad Younis Tahir, J.

1. Civil Appeal No. 185 of 2019  
(PLA Filed on 22.5.2019)

1. Mirpur Development Authority Mirpur through its Director General.
2. Director General, Mirpur Development Authority Mirpur. AK.
3. Director Estate Management, Mirpur Development Authority Mirpur.
4. Town Planner Mirpur Development Authority Mirpur AK.
5. Inspector Encroachment Mirpur Development Authority Mirpur AK.
6. Allotment Committee Mirpur Development Authority Mirpur AK through its Chairman.
7. Chairman Allotment Committee Mirpur Development Authority Mirpur, AK.
8. Secretary Allotment Committee Mirpur Development Authority Mirpur AK.
9. Revising Authority Mirpur Development Authority Mirpur AK.
10. Chairman Revising Authority Mirpur Development Authority Mirpur, AK.
11. Secretary Revising Authority, Mirpur Development Authority Mirpur.

.... APPELLANTS

**VERSUS**

Rashid Mahmood son of Mohammad Saddique  
Resident of House Nol. D-15, Sector C/2, Tehsil

and District Mirpur through attorney Raja Azhar Mahmood.

..... RESPONDENT

(On appeal from the judgment of the High Court dated 28.3.2019 in Writ Petition No. 143 of 2017)

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APPEARANCES:

FOR THE APPELLANTS: M/s Qamar Zaman Mirza  
and Farooq Akbar Kayani,  
Advocates.

FOR THE RESPONDENTS: Mr. Babar Ali Khan,  
Advocate.

2. Civil Appeal No. 186 of 2019  
(PLA Filed on 22.5.2019)

Rashid Mahmood s/o Mohammad Siddique  
resident of House No. D-15, Sector C-2, Mirpur  
through attorney Raja Azhar Mahmood.

.... APPELLANT

**VERSUS**

1. Mirpur Development Authority Mirpur through its Director General.
2. Director General, Mirpur Development Authority Mirpur. AK.
3. Director Estate Management, Mirpur Development Authority Mirpur.
4. Town Planner Mirpur Development Authority Mirpur AK.
5. Inspector Encroachment Mirpur Development Authority Mirpur AK.
6. Allotment Committee Mirpur Development Authority Mirpur AK through its Chairman.
7. Chairman Allotment Committee Mirpur Development Authority Mirpur, AK.

8. Secretary Allotment Committee Mirpur Development Authority Mirpur AK.
9. Revising Authority Mirpur Development Authority Mirpur AK.
10. Chairman Revising Authority Mirpur Development Authority Mirpur, AK.
11. Secretary Revising Authority, Mirpur Development Authority Mirpur.
12. Raja Ali Shan s/o Sardar Ali resident of Dheri Rustam, Mirpur.
13. Farhat Kaleem wife of Kaleem Ahmed resident of House No. C-6, Sector F-1, Mirpur.
14. Kaleem Ahmed, Deputy Director Planning, Mirpur Development Authority, Mirpur.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 28.3.2019 in Writ Petition No. 143 of 2017)

APPEARANCES:

FOR THE APPELLANT: Mr. Babar Ali Khan,  
Advocate.

FOR THE RESPONDENTS: Mr. Farooq Akbar Kayani,  
and Qazi Adnan Qayyum,  
Advocates.

3. Civil Appeal No. 187 of 2019  
(PLA Filed on 24.5.2019)

1. Raja Ali Shan s/o Sardar Ali, resident of Dheri Rustam, Mirpur.
2. Farhat Kaleem wife of Kaleem Ahmad r/o House No. C-6, Sector F-1, Mirpur.

.... APPELLANTS

**VERSUS**

1. Rashid Mahmood son of Mohammad Siddique r/o House No. D-15, Sector C-2, Mirpur.

..... RESPONDENTS

2. Mirpur Development Authority Mirpur through its Director General.
3. Director General, Mirpur Development Authority Mirpur. AK.
4. Director Estate Management, Mirpur Development Authority Mirpur.
5. Town Planner Mirpur Development Authority Mirpur AK.
6. Inspector Encroachment Mirpur Development Authority Mirpur AK.
7. Allotment Committee Mirpur Development Authority Mirpur AK through its Chairman.
8. Chairman Allotment Committee Mirpur Development Authority Mirpur, AK.
9. Secretary Allotment Committee Mirpur Development Authority Mirpur AK.
10. Revising Authority Mirpur Development Authority Mirpur AK.
11. Chairman Revising Authority Mirpur Development Authority Mirpur, AK.
12. Kaleem Ahmed, Deputy Director, Planning Mirpur Development Authority Mirpur.

.... PROFORMA RESPONDENTSS

(On appeal from the judgment of the High Court dated 28.3.2019 in Writ Petition No. 143 of 2017)

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APPEARANCES:

FOR THE APPELLANT: Qazi Adnan Qayyum,  
Advocate.

FOR THE RESPONDENTS: M/s Babar Ali Khan and  
Farooq Akbar Kayani,  
Advocates.

*Date of hearing:* 26.5.2022

**JUDGMENT:**

**Raza Ali Khan, J.—** The captioned appeals by leave of the Court arise out of the judgment dated 28.3.2019, passed by the High Court, in writ petition No. 143 of 2019. As all the appeals involve common questions of law and facts, hence, were heard together and are decided as such.

2. The precise facts of the case are that Rashid Mahmood, appellant, herein, in appeal No. 186 of 2019, filed a writ petition before the High Court by alleging therein that plot No. 23, measuring 1 Kanal, situated at Block 5-B, Sector D-4, Mirpur was allotted to him on 18.02.1996 by the official respondents, and he was issued a notice for depositing the price amounting to Rs. 16,800/- which was deposited by him on 24.09.1996, through bank draft No. 295596 of the Allied Bank Ltd. It was stated that due to non-completion of the scheme, the possession was not delivered to the petitioner-appellant. It was alleged that after coming back

from England, the petitioner-appellant approached the official respondents to inquire about his plot but he was told that the file of his plot has been misplaced and he was directed to move an application for reconstruction of the file. It was averred that the petitioner-appellant filed an application in this regard but no proceedings were conducted and the appellant was not summoned again by the official respondents. It was alleged that one Kaleem Ahmed, Deputy Director Planning MDA, (respondent No. 14 in appeal No. 186/2019) wanted to grab the plot of the petitioner-appellant and maneuvering in the MDA for achieving that purpose. The petitioner-appellant received the notice dated 21.8.2007, issued by the official respondents, wherein, it was stated that the allotment of the petitioner has been cancelled because the said plot was recommended for allotment to Kaleem Ahmed, respondent No. 14. It was further alleged that the appellant, herein, filed a writ petition before

the High Court on 10.09.2007, which was returned on 13.05.2015, on the ground that Mirpur Development Authority's/appellate tribunal has been established and he should file the appeal before the tribunal and the tribunal without notice returned the appeal under Order VII Rule 10 of Code of Civil Procedure, on 14.11.2016. It was averred that initially, the status-quo order was issued by the High Court, on 26.12.2008, but despite the stay order, the plot of petitioner-appellant was adjusted in favour of respondent No. 12 through his attorney; respondent No. 13. It was prayed that the writ petition has been filed to challenge the legality and correctness of impugned order dated 21.08.2007, order/notice dated 26.12.2008, issued on 30.12.2008, temporary allotment order dated 20.12.2009, possession chit dated 20.01.2009 and permission for construction of boundary wall dated 21.01.2009. The learned High Court after necessary proceedings held that:-

*“Therefore, in the light of what has been stated above, while accepting the writ petition, the impugned order dated 21.08.2007, order/notice dated 26.12.2008 issued on 30.12.2008, temporary allotment order dated 20.12.2009, possession chit dated 20.01.2009, and permission for construction of boundary wall dated 21.01.2009, are hereby cancelled and the Mirpur Development Authority is directed to make assurance the allotment of plot No. 23, or any other alternate plot to the petitioner within a period of three months. The writ petition is disposed of in the manner indicated hereinabove”.*

2. M/s Qamar Zaman Mirza and Farooq Akbar Kiyani, the learned Advocates appearing for the MDA in appeal No. 185 of 2019, argued that Rashid Mehmood, respondent produced fake and bogus documents before the Court in relation to allotment of plot No. 23, Block 5-B, Sector D/4, whereas the fact of the matter is that no meeting of the Allotment Committee was ever convened regarding the said plot on 18.2.1996. The learned Advocates further



argued that the attached receipt of initial payment submitted by the respondent reveals that the application for allotment of the plot was made on 24.3.1996, more than a month after the allotment of the said plot, which clearly shows that all the documents produced by the respondent are forged and fabricated, but this aspect of the case was not taken into consideration by the learned High Court while handing down the impugned judgment. They further argued that the allotment of respondent was declared fake by the Revising Authority in its meeting held on 13.8.2007. The learned Advocates contended that on the application of the respondent, a scrutiny was made and the respondent was given notice, in response whereof the respondent appeared and was heard, therefore, he could not take a stance that the authority has no power to make any order. They further argued that after proper inquiry and investigation, the plot was cancelled from the name of the respondent and was allotted to

the deserving person in accordance with law. The learned Advocates urged emphatically that the learned High Court through the impugned judgment has arbitrarily cancelled the temporary allotment order dated 20.12.2009, along with the possession chit and permission for construction of boundary wall and the direction for allotment of plot No. 23 or any other alternate plot to respondent, is also not justified as his allotment was already declared by the Revising Authority as illegal and unlawful, therefore, the impugned judgment of the learned High Court is liable to be set aside. The learned Advocates lastly requested for acceptance of the appeal.

4. Conversely, Mr. Babar Ali Khan, the learned Advocate appearing for Rashid Mehmood argued that plot No. 23, situated at Block 5-B, Sector D-4, Mirpur, was cancelled from the name of Raja Ali Shan son of Sardar Ali, but neither he nor his attorney has been arrayed in line of respondents, therefore, the appeal is

liable to be dismissed on this sole ground. He submitted that the plot in dispute was allotted in favour of Rashid Mehmood, respondent, subsequently the same was proposed in favour of Kaleem Ahmed, proforma respondent No.14 in his appeal, who is the husband of Farhat Kaleem, respondent No.13, also appellant No.2 in civil appeal No. 187 of 2019 and when the dispute arose, the same plot was cancelled illegally without hearing Rashid Mehmood and was further allotted as alternative plot to Raja Ali Shahn, respondent No. 12, appellant No.1 in civil appeal No. 187 of 2019. The learned Advocate further argued that Farhat Kaleem is attorney of Raja Ali Shan as such the whole proceedings were maliciously carried out just to allot the disputed plot in favour of Kaleem Ahmed, respondent No.14 and deprive the appellant, Rashid Mehmood of his valuable property. The learned Advocate argued with vehemence that while passing order dated 21.8.2007, the respondent, herein, was not

provided an opportunity of being heard, neither any notice was issued to him in this regard, as such the order dated 21.8.2007, was passed in derogation of the rule of law laid down by this Court in a number of cases, wherein it has been held that allotment creates a valuable right in favour of an allottee and the same cannot be recalled or cancelled without hearing the allottee, therefore, the learned High Court has committed no illegality while passing the impugned judgment to this extent. The learned Advocate further argued that all the proceedings relating to allotment of the disputed plot were conducted with mala-fide, in a hasty manner in connivance with the official respondents to give undue advantage to their colleague, therefore, the learned High Court has rightly cancelled the proceedings in relation to cancellation of plot from the name of Rashid Mehmood. The learned Advocate further argued that since the High Court has determined that the plot was rightly allotted in favour of the appellant, Rashid

Mehmood, and was cancelled for the reason that the same was allotted to an official of the department, then the direction by the High Court for allotment of alternate plot was uncalled for. The learned Advocate lastly requested that while accepting the appeal filed by Rashid Mahmood, the impugned judgment to the extent of direction to respondent No.1, for alternate allotment of any other plot may be expunged.

5. Qazi Adnan Qayyum, the learned Advocate appearing for Raja Ali Shan and Farhat Kaleem argued that the learned High Court has failed to appreciate the relevant record in its true perspective, hence, reached at a wrong conclusion, therefore, the impugned judgment is liable to be set aside. He submitted that MDA authorities categorically stated in their objections that all the documents produced and appended with the writ petition by the respondent are fake and bogus as no meeting of the allotment committee was ever held regarding

the disputed plot and this fact is further evident from the certificate attached by the respondent regarding submission of payment. The learned Advocate further argued that the learned High Court on one hand has cancelled the documents pertaining to the plot in dispute and on the other hand ordered the MDA authorities to provide alternate plot to the respondent, this observation of the High Court is not justified. The learned Advocate vehemently argued that if the learned High Court came to the conclusion that the respondent has any right for the allotment of the plot then MDA authorities could be directed to allot him an alternate plot and the plot of the appellant should not have been cancelled which is a vested fundamental right of the appellant. He submitted that the impugned judgment has been passed contrary to the facts, record and law, hence, the same may be set aside.

5. We have heard the learned Advocates representing the parties and gone through the

record of the case made available along with the impugned judgment. First of all, we would like to deal with the argument of Mr. Babar Ali Khan, the learned Advocate appearing for the respondent in appeal No. 185/2019 to the effect that the appeal filed by the appellants, herein, before this Court is not competent on account of non-impleadment of the necessary parties arrayed as respondents No.12, 13 and 14, in the writ petition before the High Court. From the perusal of the writ petition filed by Rashid Mehmood, before the High Court it is revealed that (i) Raja Ali Shan; (ii) Farhat Kaleem; and (iii) Kaleem Ahmed, were arrayed as respondents No.12, 13 and 14, in the writ petition; moreover, these persons were interested persons and allotment in favour of Raja Ali Shan was cancelled by the High Court. But these persons were not arrayed as party in the appeal before this Court by the appellants, herein, as such the appeal filed by MDA and others is liable to be

dismissed on the sole ground of non-arraying of the necessary parties.

6. Now we advert to appeal No. 186 of 2019, filed by Rashid Mehmood. The stance of the petitioner before the High Court was that the plot in dispute was allotted in his favour on 18.2.1996 and thereafter, in pursuance of the notice issued to him for payment of the price of the said plot, the said amount was paid by him through the bank draft dated 24.9.1996. The petitioner-appellant further alleged that after the payment of the amount, possession of the plot was not delivered to him and the reason given to him was the non-completion of the scheme/sector. He was further told that he would be informed as and when the scheme/sector gets completed. Subsequently, the said plot was illegally allotted to respondent No.12, without informing or hearing the petitioner-appellant. The learned High Court, after hearing the parties, through the impugned judgment, has accepted the writ petition



through order dated 21.8.2007, whereby the allotment made in the name of the appellant, herein was cancelled. The record depicts that the cancellation of the plot from the name of the appellant, herein, is based on ill-will and connivance of the official respondents to deprive Rashid Mehmood and to benefit one of their colleagues, Kaleem Ahmed, which reflects that the entire matter is based on mala-fide. Another aspect of the case is that the disputed plot was cancelled vide order dated 16.08.2007, from the name of the appellant taking the plea that the same had been recommended for allotment in favour of one, Kaleem Ahmed, Deputy Director Planning of MDA, respondent No. 14, herein. However, the plot was allotted to another person, respondent No. 12, Raja Ali Shan, on 19.8.2008. Surprisingly, a thorough insight revealed that the application for allotment as an alternate plot by Raja Ali Shah was filed on 6.9.2008 through his attorney, Farhat Kaleem (wife of Kaleem Ahmed), and the fact becomes

clear that the said application was filed subsequent to the allotment of the alternate plot, which is absurd and other-worldly.

7. It is also important to state here that it is in the judicial notice of the Court that on this Court's direction, whenever the MDA is required to allot any alternate plot of similar nature or equivalent to price of decretal amount, the plots which are offered for allotment to decree holder/allottee are of meager value/nature which are refused to be accepted by the decree holder/allottee. Upon confrontation, MDA has always taken the stance of non-availability of plots of the required value for the allotment but when it comes to case like the case in hand, plots of millions of worth are allotted to favourites, influential persons and officials, which is a state of disappointment and dismay.

8. Respondent No. 13, Farhat Kaleem, who is admittedly wife of Kaleem Ahmed, has been shown as attorney of Raja Ali Shan, through the general power of attorney, and the

notice for payment of price of plot to Raja Ali Shan by Secretary Allotment/Director Estate Management has been issued on 30.12.2008, through the said attorney, which is an unusual practice and smells fishy. Later on, as the record shows that said attorney sold the plot against the price of Rs. 60 lacs on 12.03.2009, to another person namely Sabir Hussain resident of sector C/3, Mirpur. But, astonishingly, the said buyer of the plot has not stepped forward to file appeal against the judgment of the High Court or applied to be arrayed as a party before this Court or the High Court. This makes the case doubtful that a person directly interested in the case is nowhere to be found, consequently, it appears that the transaction was made on for the purpose to defeat the interest of Rashid Mehmood. Further, Raja Ali Shan and his ostensible attorney, Farhat Kaleem have also jointly filed appeal No. 187/2019, against the judgment of the High Court. The Mirpur Development Authority has also filed an appeal

against the judgment of the High Court to protect its official's whims and wishes.

The whole chain of events: cancellation of allotment of plot from the name of Rashid Mehmood on the ground that the same is marked for allotment to Mirza Kaleem Jarral, respondent No. 14, but the plot was never allotted to him, allotment of the plot as an alternate plot to Raja Ali Shan even before his application, whose attorney, happened to be wife of the said MDA's Official, Mirza Kaleem Jarral and selling of the plot through the said attorney, the buyer's act of not coming forward to protect alleged sale of plot in his favour etc. clearly demonstrate sham proceedings, the conflict of interest, favoritism and maneuvering of all un-official and official events, actions and orders by respondent No. 14 and Mirpur Development Authority. All the pre-litigation and thereafter circumstances lead to strong presumption against respondent No. 14, that he is behind the whole maneuvering of cancellation of the

disputed plot from the name of Rashid Mehmood, allotment of plot to Raja Ali Shan and his wife's becoming of attorney of Raja Ali Shan, and selling of plot through the said attorney.

Such practices by MDA officials emerge now and then and become the talk of town, consequently, deprive overseas Kashmiris, Mangla Dam effectees and other lawful allottees of their valuable plots, who, due to their absence and otherwise vulnerability could not protect their vacant plots. It is also in judicial notice of the Court that there are gross violations of statutory provisions in the matters falling within ambit of authority of MDA. The involvement of officials of Government departments or its attached institutions, which are otherwise responsible under law for provision or regulating some particular service to masses or particular segment of society, in such practices creates conflict of interest, disguised violation of laws and bad governance of institutions at general level. The allotment of plots to proxy allottees, practice of

buying and selling of plots by regulatory authorities' officials for themselves, near relatives, friends etc. become detrimental to rights of genuine allottees, buyers and persons eligible under law for allotments, due to conflict of interest of the officials as likelihood of misuse of official position and exerting influence on colleagues for advancing private interests.

The point of public importance and need of the hour is the doctrine of "conflict of interest" as involved in the case in hand. This doctrine in its legal aspect, arises when a person chooses his personal gain over his duties and exploits his position for personal gain in some way. Present controversy is an instance which reflects how the citizens are put into financial and mental agony by the development authorities with regard to allotment of plots. This affair is unfortunate and it appears that the "fair work culture" has failed to develop in the premises of such authorities. Such authorities are meant to facilitate the public but unfortunately it has

been observed otherwise. It is high time that the authorities and public officers realize the sense of duty they have towards the public and put an end to the practices which involve infringement of people's rights, striving for own interests and denying the interests of the public. On a broader perspective, the authorities have to abide by the law and rules and be conscious to ensure that they do not act with arbitrariness, biasness or favouritism. This Court also finds it necessary to emphasize on the issue that "conflict of interest" being an important doctrine of the time, needs attention and demands legislation. It is high-time that this issue should be handled or the consequences would amount to a greater harm to the public interest, about which this Court is afraid of.

9. After perusal of the concluding paragraph of the impugned judgment, we are of the view that the direction issued by the learned High Court to the extent of "or any other alternate plot" is not in line with the findings

recorded by the learned High Court itself as when the High Court after going through the record and hearing the parties has arrived at the conclusion that the allotment made in the name of the petitioner-appellant was legal and the cancellation of the same was not justified then such like direction is not in line with law. Thus, the direction issued by the learned High Court in the impugned judgment to the extent of “or any other alternate plot) is expunged, whereas the remaining portion of the judgment is upheld.

10. So far as appeal No. 187 of 2019 filed by Raja Ali Shan and another is concerned, as while concurring with the findings recorded by the learned High Court, we have declared the allotment made in the name of Rashid Mehmood as legal, therefore, appeal No. 187 of 2019 has no force and liable to be dismissed.

The upshot of the above discussion is that appeal No. 186 of 2019 is accepted in the terms indicated above, whereas appeal No. 185 and 187 of 2019 are hereby dismissed with



costs. The appellant, Rashid Mehmood, is at liberty to file a suit for damages, which shall be in addition to the cost awarded by this Court.

JUDGE  
Muzaffarabad  
20.7.2022

JUDGE

JUDGE

MDA, Mirpur & others      vs. Rashid Mahmood  
Rashid Mahmood          vs.MDA, Miprur & others.

**ORDER:**

Judgment has been signed. It shall be announced by the Additional Registrar after notice to the learned counsel for the parties.

JUDGE  
Muzaffarabad  
20.7.2022

JUDGE

JUDGE