IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL PLA No. 491 OF 2024
(On appeal from the judgment of the High Court dated 04.06.2024, passed in Writ Petition No. 4312 of 2022).

Development Authority Muzaffarabad through its Chairman, having his office at Bypass Road Tariqabad District Muzaffarabad, Azad Kashmir & 07 others.

…Petitioners

VERSUS

Asif Ayoub s/o Muhammad Ayoub r/o kanoor Tehsil Naseerabad District Muzaffarabad and another.

…Respondents

Appearances:

For the Petitioners:	Mr. Muhammad Yaqoob Khan Mughal, Advocate.
For Respondent No.1:	Mr. Haroon Riaz Mughal, Advocate.
Date of hearing:	24.09.2024

ORDER:

***Raza Ali Khan, J*:-** The instnat petition for leave to appeal is instituted challenging the judgment

rendered by the High Court on 04.06.2024, whereby the writ petition preferred by the respondent herein was accepted.

2. The relevant facts of the case are that the respondent filed a writ petition before the learned High Court, claiming that Plot No. 26-C, measuring 10 marla, situated in the Gulshan Housing Scheme, was originally allotted to Colonel Ghazanfar Ali Khan and subsequently transferred to the respondent via an allotment order dated 07.02.2013. The possession of the plot was handed over to the respondent on 04.10.2015, however, upon starting excavation, it was discovered that the land measuring only 6 marla out of 10 marla was actually available on the spot as most part of the land had been merged in the road. Despite numerous requests and formal complaints to the relevant authorities, no remedial action was taken. After five years of futile efforts, the Chairman Ehtesab Bureau intervened, and the respondent was allotted the remaining land measuring 4 marla, along with an additional 1 marla, an allotment order dated 23.02.2022. The respondent subsequently took the possession of Plot No. D-01, measuring 5 marla, and was issued a No Objection Certificate (NOC) on 02.09.2022. Despite this, the petitioners canceled the allotment by relying document purportedly issued on 07.12.2022. He asserted that this document was fabricated and the cancellation was politically motivated. The petitioners contested the writ petition. After considering submissions from both sides, the learned High Court allowed the writ petition through its impugned judgment dated 04.06.2024.

3. The learned counsel for the petitioners advanced a singule argument, contending that the allotment order dated 23.03.2022, issued by the Chairman, was expressly subject to confirmation by the Board of the authority. However, since the board did not subsequently approve the said allotment, the order dated 23.02.2022 holds no legal validity. Furthermore, the counsel argued that as the respondent has challenged the legality of the order dated 07.12.2022, and failed to implead the Deveelopment Authority Board as a necessary party in the proceedings who was a necessary party. Therefore, on this procedural ground alone, the writ petition should have been dismissed.

4. During the course of arguments, Mr. Muhammad Yaqoob Khan Mughal, the learned legal Advisor of Development Authority conceded that, upon entertaining the respondent's application, vacant alternate land measuring 5 marla was indeed allotted to the respondent vide order dated 23.02.2022. Furthermore, the possession of Plot No. D-1, measuring 5 marla, was duly handed over to the respondent as is evident by the possession chit dated 29.03.2022. However, the counsel emphasized that this allotment was subject to subsequent confirmation by the Board. He further argued that even if it is conceded that the plot in question was lawfully allotted to the respondent and that the Board’s approval was required, the Court still could not issue a direction to the Development Authority Board for such approval. He emphasized that the respondent, while challenging the notification in question, failed to implead the Board as a necessary party in the writ petition, thus mandating the learned High Court to dismiss the petition on this technical ground.

5. In opposition, Mr. Haroon Riaz Mughal, learned counsel for respondent No.1, countered this argument by asserting that fundamental rights cannot be compromised or denied under the pretext of procedural technicalities. He further maintained that the learned High Court's impugned judgment is sound and should be upheld. However, he conceded that should the petition be disposed of with a direction to the Board to confirm the respondent's allotment, he would not object to such an outcome.

6. We have duly considered the arguments advanced by the learned counsel for the parties and thoroughly reviewed the case record. It is undisputed that the respondent was originally allotted/transferred a plot measuring 10 marla. However, upon starting construction, only 6 marla land was found available on the spot. After sustained efforts, the remaining 4 marla land was eventually allotted to the respondent in shape of an alternate Plot No. D-1, along with an additional 1 marla land on payment, bringing the total land to 5 marla. The possession of this plot was also handed over to the respondent. However, when the respondent began construction on the said plot, the petitioners, relying on a notification dated 07.12.2022, intended to cancel the allotment, asserting that the plot was allotted subject to Board approval, which had not been secured. Consequently, they claimed the plot could not be retained by the respondent. We find it perplexing that, at one hand, the Development Authority itself allotted the alternate plot to the respondent, while on the other, it is attempting to revoke the allotment based on a procedural issue entirely attributable to the authority. This contradiction points to no fault on the part of the

respondent, who cannot be held liable for the authority's actions or omissions. The record clearly demonstrates that the plot in question was allotted to the respondent through a lawful process. Therefore, the respondent's right to the plot cannot be arbitrarily revoked on the grounds that the Board has not yet confirmed the allotment. The petitioners' attempt to cancel the respondent's allotment, despite the authority's own procedural failures, is not legally tenable, and the respondent's rights must be protected in accordance with law.

7. With respect to the argument advanced by the learned counsel for the petitioners, asserting that no direction can be issued to the Board since it was not impleaded as a party before the High Court, we find this contention lacking merit. We are mindful that fundamental rights cannot be sacrificed at the altar of procedural technicalities. The Supreme Court has been conferred inherent powers under Article 42-A of the Azad Jammu and Kashmir Interim Constitution, 1974, read with Order XLIII Rule 5 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 which make it clear that the these rules do not curtail or restrict the Court’s inherent powers to issue orders necessary to achieve justice or prevent abuse of the Court’s process. In light of these principles, and in the interest of justice, we are exercising our inherent powers to convert this petition into an appeal disposing of the same accordingly and the Board of the Development Authority is hereby directed to approve the plot already allotted to the respondent within one month positively from the communication of this order. Furthermore, the impugned judgment of the High Court is affirmed and shall remain intact

8. Before parting with, the case at hand highlights a significant and recurring issue within the functioning of Development Authorities, particularly concerning their mismanagement of land allotment and the subsequent legal complications faced by citizens. The instant controversy, which began in the year 2015, revolves around the erroneous allotment of land by the Development Authority, which, despite knowing that a portion of the plot was already utilized for construction of a road, still proceeded with the allotment to the respondent. This mismanagement has led the respondent to endure nearly a decade of litigation, mental stress, and harassment, without any fault on his part.

9. The situation reflects a common pattern seen in various cases where Development Authorities, due to either negligence or malfeasance, entangle innocent citizens in prolonged litigations over land and property. Citizens often spend years saving small amounts of money to secure property, are to be subjected to unnecessary hardship because of administrative failings or malpractice. In many instances, Development Authorities allot plots of land without proper verification of boundaries, land use, or encumbrances, leading to disputes and legal proceedings that are avoidable with due diligence.

10. The situation is particularly concerning when seen in light of the fundamental rights guaranteed by the Constitution, which safeguards the right to property and protection from undue hardship. Right No. 14 of the Constitution, guarantees every citizen the right to acquire, hold, and dispose of property. When authorities act negligently or unlawfully, leading to deprivation or

obstruction of these rights, it not only violates the Constitution but also undermines public trust in these institutions. This is not the first case before us but a recurring problem. Despite several directions issued in previous cases, the Development Authorities appear to have taken little to no corrective action, thus perpetuating a cycle of mismanagement. The Court, in this instance, has expressed its intention to deal with such matters strictly in future, if any personnel or officials found involved in such irregularities.

11. To prevent future occurrences of such malpractice, a set of clear, actionable directives should be issued to Development Authorities across the State. These directions should focus on streamlining processes, ensuring transparency, and holding officials accountable for any mismanagement. Some suggested directions are as follows:

1. Development Authorities must institute a rigorous verification process before allotting any plot of land. This should include confirming the exact boundaries, land use, and whether any part of the plot has been utilized for public infrastructure (e.g., roads, parks etc);

2. Each plot must be physically inspected by a qualified officer from the Development Authority, who should certify that the land is clear of encumbrances, disputes, or public use. A detailed site plan with clear measurements should be attached to every allotment file;

3. Development Authorities should be mandated to maintain and update digital records of all land allotments, including survey reports, boundary markings, and encumbrances. Citizens should have online access to verify the status of any plot before purchasing it;

4. A dedicated grievance redressal cell should be created within each Development Authority to address complaints from citizens regarding land

allotment disputes. This cell should resolve disputes promptly to avoid lengthy court battles;

5. Clear protocols should be established to hold officials accountable for any negligence or misconduct related to land allotment. Officials involved in malpractices should face strict disciplinary action, including suspension and legal consequences;

6. Independent audits of Development Authorities should be conducted periodically to ensure compliance with laws and proper procedures. These audits should review land allotment records, examine complaints, and suggest improvements;

7. Development Authorities should run awareness campaigns to educate citizens about their rights regarding property purchase and allotment, including information as how to verify land records and avoid fraud, and;

8. All previous and future directives issued by the Court concerning land allotments must be implemented in letter and spirit. Any deviation from or non-compliance with court orders should attract contempt proceedings against the responsible officials.

It is imperative that Development Authorities take immediate and substantive steps to rectify their processes, as their negligence not only harms individuals but also undermines public confidence in government institutions. Courts must continue to monitor such matters closely and intervene where necessary to protect the fundamental rights of citizens. The present case should serve as a wake-up call to all development bodies, underscoring that any future misconduct will be met with strict legal consequences. The proposed reforms, if implemented, can go a long way in preventing further instances of administrative failure and ensuring that citizens are not subjected to undue hardship at the hands of Development Authorities. A copy of the judgment shall be sent to the Chairmen of Development Authorities

across the State for internal circulation, with a directive to implement these reforms immediately and report back to the Registrar of this Court.

With the above said observations, this petition for leave to appeal stands disposed of.

JUDGE JUDGE

Muzaffarabad,
24.09.2024