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

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA No. 758 OF 2024
(On appeal from the judgment of the High Court dated 04.10.2024, passed in Writ Petition No. 16 of 2019)

Shamim Ahmed and others.

…Petitioner(s)

VERSUS

Custodian Evacuee Property, Azad Jammu and Kashmir and others.

…Respondent(s)

Appearances:

For the Petitioners:	Mr. Abdul Waheed Arif, Advocate.
For the Respondents:	Mr. M. Yaqoob Khan Mughal, Advocate.
Date of hearing:	13.02.2025

ORDER:

***Raza Ali Khan, J*:-** The petitioners have assailed the impugned judgment of the High Court dated 04.10.2024, whereby the writ petition filed by them stood dismissed.

2. The essence of the matter is that the petitioners filed a writ petition before the High Court, challenging the judgment of the learned Custodian dated 07.02.2019, as well as the subsequent process of allotment and issuance of the Certificate of Transfer of Proprietary Rights (*PRTO*), seeking their annulment on the ground that, local destitutes possessing limited immovable property, they were entitled to the allotment of evacuee land. They claimed ownership and possession of 1 kanal 2 marlas, comprising Survey No. 141, 144, since the time of their forefathers, and contended that the impugned allotment in favor of private respondents and the issuance of *PRTO* were factually flawed and legally untenable. They further claimed that the petitioners, having expended substantial sums on construction, qualified as "occupancy tenants" under the *Tenancy Act*. Consequently, they submitted a review petition, which was dismissed by the learned Custodian on the basis of mere assumptions and fabricated documents. Left with no alternative recourse, they invoked the extraordinary Constitutional jurisdiction of the High Court, seeking to nullify the impugned judgment and cancel the allotment and *PRTO* granted to *Feroz Begum and others*. However, after calling for comments from the respondents, the High Court, through the impugned judgment dated 04.10.2024, dismissed the writ petition.

3. Mr. Abdul Wahid Arif, learned counsel for the petitioners, contended that the impugned judgments of both the learned High Court and the Custodian are contrary to the record and violate settled principles of law. He argued that the petitioners, as lawful owners, have been in continuous and uninterrupted possession of the disputed land and have made substantial investments in its

development in good faith. Referring to the *Jamabandi* for the years 2001 to 2004 Bikrami, he asserted that the petitioner's possession of land has remained unchallenged. He further submitted that under the *Evacuee Property Act*, in cases where the legitimacy of a refugee status is in question, the matter ought to have been referred to the Government for consideration and adjudication; however, both the Subordinate courts failed to appreciate this crucial aspect. The petitioners specifically alleged that respondents No. 5 to 20 are inhabitants of a liberated area and failed to produce any credible documentary evidence substantiating their claim. Based on these assertions, he urged that both the impugned judgments should be set aside. Lastly, he maintained that the case raises substantial questions of law of public importance, warranting the grant of leave to appeal.

4. Conversely, Mr. Muhammad Yaqoob Khan Mughal, the learned counsel for the respondents, contended that both the courts below, after conducting a thorough and meticulous examination of the record, have delivered well-reasoned judgments that do not warrant interference by this Court. He submitted that the petitioners initially claimed to be local *destitutes*; however, in paragraph 5 of their application before the Custodian, they admitted that the houses constructed on the disputed land are valued at one crore and twenty lakh Rupees, comprising eight rooms and two kitchens, a claim that inherently contradicts their assertion of indigence. He argued that an individual residing in a property of such considerable value cannot be categorized as a local destitute, and therefore, the findings of both subordinate courts are firmly grounded in legal and

factual reasoning. He further maintained that the concurrent findings of fact, having been recorded after due appreciation of the evidence, do not merit any interference. In conclusion, he prayed for the dismissal of the petition.

5. Having heard the learned counsel for the parties and meticulously examined the record available, I thoroughly scrutinized the entire case in light of the arguments advanced. Upon perusal of the record, it is evident that the dispute pertains to land bearing *Khasra Nos. 181 and 188*, situated in *Mouza Tazala, Tehsil Sehla, District Kotli*. The aforesaid land comprising *Khasra Nos. 144 and 141*, along with other numbers, was initially allotted to the respondents as migrants on 02-00-30, and proprietary rights were subsequently conferred upon them vide *Order No. 13611 dated 23-09-1999.* The record further reveals that following the allotment of the subject land in 1982 in favor of the respondents' predecessor-in-interest, a suit titled *Muhammad Sharif Khan vs. Muhammad Sarwar Khan* was instituted before the *District Rehabilitation Court (DRC), Kotli*, by certain local individuals challenging the said allotment. The DRC, vide order dated 29-06-1989, dismissed the appeal, thereby affirming the allotment in favor of the respondents' father, *Muhammad Sarwar Khan*. Subsequently, in the revision proceedings, vide order dated 07-02-1990, the competent forum upheld the said allotment, thereby validating its legality. The record further establishes that certain local occupants, allegedly aggrieved at the time of allotment, duly approached the competent forum, which, after due inquiry, rendered a decision on the matter, however, the petitioner did not challenged the said allotment before proper forum within a reasonable time. If the

petitioners had any grievance against the said allotment, they were obligated to approach the competent forum within the prescribed time frame; however, the record unequivocally demonstrates that despite the allotment in 1982 and the transfer of proprietary rights in 1999, the present review petition before ethe Custodian was filed belatedly filed in the year 2017, without any plausible explanation for the extraordinary delay. Additionally, the petitioners have failed to establish any legal nexus with the subject property.

6. Furthermore, their purported claim of local destitute is further negated by their own assertion in the review petition, wherein they have asserted that they have constructed houses worth crores, thereby contradicting their own stance. Furthermore, the petitioners have neither demonstrated their status as *migrants* nor as *local destitutes* through any cogent evidence. There is also no material on record substantiating any ailment or legal disability that could have precluded them from approaching the competent forum in a timely manner, therefore, the learned Custodian rightly decided the matter against the petitioners and the decision has been affirmed by the High Court. Hence, the concurrent findings of the facts cannot be disturbed by this Court, especially, when no question of law of public importance is involved.

In view of the above, this petition for leave to appeal stands dismissed.

JUDGE

Muzaffarabad,
13.02.2025