

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

CPLA No. 69/2014.

Ahlian-e-Zail through representatives:-

1. Abdul Qayyum s/o Dilawar Khan 2. Ajad son of Muhammad Anwar. 3. Murad Khan son of Azoor Khan 4. Ex. Subidar Sher Ahmed son of Niaz Muhammad 5. Ghulam Abbas Ex- Chairman Union Council son of Sidan r/o village Zail Tehsil Shouunter District Astore.

Petitioners.

Versus

1. Provincial Government through Chief Secretary Gilgit-Baltistan.
2. Secretary Local Government Gilgit-Baltistan, Gilgit.
3. Director LG&RD Gilgit-Baltistan, Gilgit.
4. Deputy Director LG&RD District Astore.
5. Deputy Commissioner Astore.
6. Ahlian Village Nogham and village Maikal through representatives.
7. Master Musa son of Noor.
8. Abdul Raziq son of Saidullah.
9. Muhammad Noor son of Fida.
10. Nabi son of Juma Khan.
11. Budoo son of Rozi Khan.
12. Juma Noor son of Ali Noor r/o village Nogham and village Maikal Tehsil Shiounter District Astore.

Respondents.

PRESENT:-

1. Mr. Amjad Husain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. The Advocate General on behalf of the respondents.
3. Mr. Johar Ali Khan Advocate on behalf of the respondent No. 06 to 12.

DATE OF HEARING: - 19.09.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned judgment dated 26.03.2014 in Civil Revision No. 25/2013 passed by the Division Bench of learned Gilgit-Baltistan Chief Court, whereby, the Revision Petition of the petitioners was dismissed while maintaining the judgment dated 07.05.2013 in CFA No. 05/2013 passed by the learned District

Judge Astore. The petitioners being aggrieved by and dissatisfied with the aforementioned impugned judgment of the learned Gilgit-Baltistan Chief Court filed this petition for leave to appeal. This court vide order dated 15.04.2016 issued notices to the respondents for their appearance and the case was finally heard today.

2. Briefly the facts of the case are that a Civil Suit No. 48/2010 was filed by the petitioners against the respondents for declaration with consequential relief etc alongwith an application under Order 39 Rule 1 & 2 read with Section 151 CPC for grant of temporary injunction. The learned Civil Judge 1st Class Astore upon hearing dismissed the application under Order 39 Rule 1 & 2 vide order dated 20.03.2013 while fixing the main case on 05.04.2013 for hearing on its own merits. The petitioners being aggrieved called in question the said impugned order before the First Appellate Court i.e. learned District Judge Astore seeking temporary injunction which upon hearing, instead of deciding application Order 39 Rule 1 & 2 CPC, the main suit pending in the learned Trial Court was dismissed vide order/judgment dated 07.05.2013. The petitioners feeling aggrieved filed Civil Revision before the learned Gilgit-Baltistan Chief Court, which was also dismissed vide impugned judgment dated 26.03.2014 in Civil Revision No. 25/2013, hence this petition for leave to appeal.

3. Mr. Amjad Hussain learned counsel for the petitioners submits that the present respondents have proposed a project titled

“Construction of Bridge” on the river near the village of the petitioners which was approved by the concerned Government functionaries without assent of the petitioners as the petitioners have rights of grazing pasture and fetch fire wood etc from a long time. The said proposal for construction of a bridge over a river of village Zail by the individuals of another village was based on malafide. He also submits that the petitioners being aggrieved filed Civil Suit before the learned Trial Court alongwith an application under Order 39 Rule 1 & 2 read with Section 151 CPC praying therein to grant interim relief. The learned Trial Court upon hearing dismissed the application of interim relief vide order dated 20.03.2013 whereas the main suit was fixed to be heard on 05.04.2013. He further submits that the petitioners being aggrieved from the refusal of grant of interim relief by the learned Trial Court filed Civil First Appeal before the learned District Judge Astore which upon hearing instead of deciding appeal relating to interim relief dismissed the main suit vide order dated 07.05.2013 which was upheld by the learned Gilgit-Baltistan Chief Court vide its impugned judgment dated 26.03.2014 passed in Civil Revision No. 25/2013. He reiterates that the petitioners through their application under Order 39 Rule 1 & 2 sought interim relief to restrain the respondents from carrying out the construction of the bridge in question at the village of the petitioners but the learned District Judge Astore contrary to the facts of the case dismissed the main suit which was upheld by the learned Gilgit-Baltistan Chief

Court, hence, the impugned judgment as well as findings/orders of First Appellate Court are not sustainable and liable to be set aside.

4. On the other hand, the learned Advocate General appearing on behalf of the respondent No 01 to 06 alongwith Mr. Johar Ali Khan Advocate for respondents No. 06 to 12 supports the impugned judgment. They contend that the learned Gilgit-Baltistan Chief Court has rightly upheld the order of the learned District Judge Astore being well reasoned. They also contend that Mouza Nogham is comprised of four (04) villages i.e. Gulteri, Makial, Zail and Khumy, hence, the same is a multiword from where three (03) members of Union Councils are elected. Similarly there is only single voter list of Mouza Nogham consisting upon 942 voters including both male and female as per election list of 2004. The bridge in question was proposed by the then elected members of the said Union Councils. They finally contend that the impugned judgment dated 26.03.2014 passed by the learned Gilgit-Baltistan Chief Court may graciously be maintained being passed in accordance with law and facts of the case and no interference is warranted.

5. We have heard both the learned counsels for the respective parties at length, perused the record of the case and gone through the impugned judgment passed by the learned Gilgit-Baltistan Chief Court as well as the orders passed by the courts below. The careful perusal of the case transpires that an application for grant of temporary injunction under Order 39 Rule 1 & 2 read

with Section 151 CPC was dismissed by the learned Trial Court vide order dated 20.03.2013. The same was challenged before the learned District Judge Astore by the petitioners for setting aside the same and granting interim relief thereto. The learned District Judge Astore dismissed the main suit in haste. Prima facie the both questions of facts and law involved which can only be resolved/decided after framing of disputed issues and recording of evidence of the parties thereto.

6. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned judgment dated 26.03.2014 passed by the learned Gilgit-Baltistan Chief Court as well as the order/judgment dated 07.05.2013 of learned District Judge Astore are set aside. The case is remanded back to learned Trial Court Astore to proceed with the case as directed by it to come up on 05.04.2013 for re-joinder vide order dated 20.03.2013.

7. The Appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?