

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 160/2018.
Date of Institution 16.05.2018.
Date of decision ..06.12.2023.

1. Parveen Akhtar, widow.
2. Ghafran Said Khan.
3. Abkan Munsaf Khan.
4. Shaban Akbar Khan, sons.
5. Sofia Khan.
6. Madiha Khan.
7. Jawera Kousar Khan.
8. Halima Atifa Reshma Khan daughters of Adalat Khan R/o Mangla Hamlet, Mirpur, presently settled in U.K. through attorney Mst. Parveen Akhtar, R/o Mangla Hamlet Mirpur.

....Petitioners

Versus

1. Mirpur Development Authority Mirpur through Director General MDA.
2. Director General MDA Mirpur.
3. Director Estate Management MDA.
4. Allotment Committee MDA Mirpur through Secretary Allotment Committee MDA Mirpur.
5. Gardawar MDA Circle Manla Hamlet.
6. Overseas-Patwari MDA, Mirpur Circle Mangla Hamlet.
7. Shaheen Akhtar Nabi W/o Choudhary Muhammad Mushtaq R/o Mangla Hamlet p/O Mangla Colony Tehsil and District Mirpur.

...Respondents

WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Muhammad Nadeem Khan, Advocate for the petitioners
Farooq Akbar Kiani, Legal Advisor MDA.
Ch. Riaz Alam, Advocate for respondent No.7.

Judgment:-

1. Through instant writ petition filed under Article 44 of AJ&K Interim Constitution, 1974, the impugned orders dated 31.05.2017 and 30.11.2017 have been challenged by the petitioners

for having been issued without lawful authority. It has been further prayed that the respondents may kindly be directed to restore the allotment order dated 15.09.2008 of the petitioner.

2. The long and short of the instant case as per petitioner are that the plot No.269 measuring 637-77 square size 85x70 Sector Mangla hamlet Phase II was allotted in the name of Adalat Khan/petitioner (now deceased) through allotment dated 15.09.2008, the petitioner paid fee challan No.431 amounting 1,22141/- rupees on the basis of possession. After the allotment the petitioner constructed wall and room on said plot and went abroad, the petitioner's family comes to Pakistan 2/3 time within the period of one year. It has been averred by the petitioner that respondent No.7 filed an appeal before the appellate Tribunal of MDA, for cancellation of allotment of petitioner as well as also filed the instant writ petition before this Court. After hearing both parties, this Court (High Court of Azad Jammu and Kashmir) dismissed the writ petition of respondent No.7 through judgment dated 13.04.2017. It has been alleged by the petitioner that in absence of the petitioner(s), respondent No.7 with malafide intention try to get possession of said plot, the wife of petitioner Parveen Akhtar who is attorney of petitioners came to Pakistan and filed an application before District Management against the illegal act of respondent No.7, the District Authority initiate the proceeding against respondents. Then the respondents provided order dated 13.05.2017

to the petitioner through which allotment of petitioner was cancelled illegally and against the law, rules and natural justice, thus, the petitioner prayed that the impugned order dated 31.05.2017 and 30.11.2017 are sheer violation of law and rules through which the fundamental guaranteed rights have been infringed by the respondents, thus, the said orders may be declared illegal and be set-aside.

3. Comments/written statement has been filed on behalf of the respondents, wherein the claim of the petitioner(s) has been negated in toto and contended further that the competent authority has cancelled the plot No.269 with due procedure and law as the respondent No.7 has the possession over the said plot and after scrutinized the matter, further allotment has been made by the competent authority, which needs no indulgence by this Court.

4. I have heard the learned counsel for the parties at some considerable length and gone through the record of the case with due care.

5. The claim of the petitioners in the petition are that the allotment of plot No.269 situated at Mangla Hamlet Phase II, Mirpur has been cancelled by the official respondents, illegally, against the facts and law, thus, the impugned orders dated 31.05.2017 and 30.11.2017 are liable to be set-aside. A perusal of Annexure 'PA' reveals that a plot No.269 situated at Mangla Hamlet was allotted to Adalat Khan. A perusal of order dated

31.05.2017 reveals that the impugned plot was cancelled by the authority on the basis of decision of MDA Board dated 04.03.2006, as the said plot was not in the possession of the petitioner(s) thus, same was sanctioned to proceed in favour of Shaheen Akhtar Nabi W/o Muhammad Mushtaq by the competent authority through approval dated 27.05.2017.

6. **Before parting with the judgment we have observed that it has become a consistent practice and routine of the MDA to pass wholesale allotment orders without adhering to the relevant law carelessly and thereafter fail to justify such like orders, that too creation of fresh plots by china cutting is also observed. Such like arbitrary practice is unwarranted and violation of law, authorities of MDA are directed to mend their ways.**

7. From perusal of file it reflects that the wisdom behind the impugned order dated 31.05.2017 is the decision of Board of MDA dated 04.03.2006, but the petitioner herein has not arrayed the MDA Board in the line of respondents, which in my considered view was a necessary party to reach on just decision of the case, hence, in absence of necessary party no effective order can be passed, thus, under the circumstances, the impugned order dated 31.05.2017 cannot be set-aside or same cannot be declared without lawful jurisdiction or illegal in absence of the necessary party i.e. Board of the Mirpur Development Authority who exposed their

wisdom in this regard, thus, the relief to this extent cannot be granted in favour of the petitioners, particularly when the petitioner has suppressed the material facts and failed to array the necessary party in the line of respondents.

8. However, the question regarding allotment of 02 plots i.e. 269 and 270 is worth consideration as allotment of two plots; one for respondent No.7 and one for her husband, speaks against rule of fairness and transparency, thus, conscious of the Court is attracted, particularly in view of the guarantee of constitution quo fair trial taking breath from the concept of better government provided in the preamble clause of the Constitution.

9. Nutshell of the above is that instant writ petition regarding setting aside the impugned order is not maintainable, thus, the claim of the petitioner to this extent is hereby discarded. Allotment of 02 plots simultaneously in favour of one family is arbitrary and colourable exercise of powers. State property/Govt. owned plots could not be disbursed as bunties as per sweet will. In this view of the matter dual allotment that too without disclosing reasons in view of section 24-A of the General Clauses Act. is not sustainable and fraud on Mirpur Development Authority Act and doctrine of justice. Thus, the petitioner is at liberty to file an application against the other piece of land i.e. allotment of plot No.270 in favour of husband of respondent No.7, before the concerned authority within 15 days and relevant authority MDA is

directed to decide the same judiciously and in the interest of justice after hearing parties, expeditiously. Relief accordingly molded in the interest of justice to that extent.

Writ petition stands disposed of in the manner indicated above. (Copy of the instant decision be served upon the MDA for compliance of Para No.6).

Announced.

Circuit Mirpur.
06.12.2023.

JUDGE