

2024 M L D 793
[High Court (AJ&K)]
Before Mian Arif Hussain, J
MUHAMMAD ASHIQ KHAN and 4 others---Petitioners
Versus
FULL BOARD OF REVENUE, MUZAFFARABAD and another---Respondents
Writ Petition. No. 18 of 2016, decided on 7th April, 2023.

JUDGMENT

MIAN ARIF HUSSAIN, J.---Through the captioned writ petition, addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 197, the petitioners herein have assailed the propriety of judgment of Full Board of Revenue dated 12.01.2016, with the assertion that proprietary rights of a piece of land comprising survey No.181, measuring 02 kanal 18 marla situate at village Anohi, Tehsil Kotli, were sanctioned in favour of their father Mulk Dad Kan under Nautor Act 1989, on 31.05.2000 and mutation No.186 was sanctioned accordingly and subsequently after the demise of their father mutation No.196 was sanctioned in favour of legal heirs of the deceased. It is claimed that due to family dispute between the parties, after elapsing a period of 8/9 years, non-petitioner No.2 (Ahlian e Deh through Ali Daad Khan), malafidely challenged the proprietary rights before the Commissioner from where the file was remanded to the Collector, who, while dealing with the us revoked the proprietary rights vide order dated 18.02.2011. It is claimed that petitioners herein challenged the said order and the Additional Commissioner vide order dated 30.07.2012, while setting aside the order of Collector District Kotli dated 18.02.2011, maintained the order of District Collector dated 31.05.2000, and the said order of Additional Commissioner was also maintained by the Member (Judicial) Board of Revenue, vide order dated 21.02.2014, but full Board of Revenue, the non-petitioner No.1 herein, while converting the appeal of non-petitioner No.2 herein into revision petition without any legal justification has accepted the appeal of respondent No.1 herein, resultantly, the proprietary rights sanctioned in favour of petitioners herein have been ordered to be revoked vide order dated 12.01.2016 which being against the law and facts is liable to be quashed.

After inviting the objections from the non-petitioners petition in hand vide order dated 27.03.2017 was ordered to be admitted for regular hearing and no-petitioners were asked to file written statement etc. On behalf of respondent No.2, the learned counsel submitted that the comments already submitted be treated a written statement as well which was allowed. In the objections/comments, the claim of the petitioners has been refuted in toto on legal and factual grounds as well. It is pertinent to mention here that an application for placing certain documents on record has also been allowed. Arguments heard. The learned counsel representing the petitioners, herein, after narration of facts of the case at some length pressed into service that under the Nautor Act, the proprietary rights of piece of land were duly sanctioned in favour of predecessor of petitioners herein, but while amalgamating the allotment of Muhammad Nawaz with the allotment of petitioners herein, a wrong perception was inferred and leveling allegation of preparation of forged document, non-petitioner No.2 herein succeeded to create confusion in the minds of Senior Revenue Officers and ultimately, Full Board of Revenue, in a state of confusion, without attending the legal and factual aspects of the case has recorded the judgment impugned herein, result of which, the petitioners herein have been deprived of their legal and vested rights, hence, by allowing the petition in hand, the order impugned herein be quashed, resultantly, order of the District Collector dated 31.05.2000 be restored. Conversely, Sardar Ghulam Mustafa Khan, advocate representing the respondent no.2 herein, while defending the judgment impugned herein argued with vehemence that petitioners herein in the light of revenue record were not entitled to be sanctioned the piece of land in dispute but one of the petitioner being Revenue Official, while preparing a forged document and suppressing the factual position of earlier allotment succeeded to attain the proprietary rights regarding the disputed piece of land and the learned District Collector vide order dated 18.02.2011 and learned members of full board of revenue vide order dated 12.01.2016, while evaluating the oral and documentary evidence have rightly reached the just conclusion, so, there exists no space to dive deep into factual controversy. The

learned counsel argued that the writ petition in hand being hit by certain legal lacunas is also liable to be dismissed. In this regard, the learned counsel pointed out that controversy in hand emerged from the order of the District Collector which has attained finality but the petitioners herein have not impleaded the Deputy Commissioner, Additional Commissioner, Board of Revenue as a party in the line of non-petitioners, hence, this soul ground is sufficient to dismiss the petition in hand. In this regard the learned counsel placed reliance on the following case law:

- (i) 2013 SCR 222;
- (ii) 1996 CLC 1502;
- (iii) 199 CLC 840.

In a case reported as 2013 SCR 222, it is observed that Board of Revenue was a necessary party and in absence of necessary party no effective

order could be passed. Petitioners failed to make out any question of public importance resultantly petition for leave to appeal was dismissed by

Hon'ble apex Court. In a case reported as 1996 CLC 1502 it is observed that question of non-impleading of necessary parties in constitutional petition

is of vital importance as no effective writ could be issued in absence of such parties. Similarly, in a case law reported as 1999 CLC 840, it is observed

that if public functionary whose order is challenged has not been impleaded as party writ is not competent.

The learned counsel for non-petitioner No.2 further pointed out that with the petition in hand certified copies of relevant record have not been

annexed. In this regard case law reported as NLR 2015 326 was relied upon wherein it is observed that without arraying the certified copy of

impugned order petition stands incompetent. The learned counsel submitted that while exercising the writ jurisdiction, the High Court cannot sit upon

the judgments of subordinate Courts or the local authorities or tribunals as a Court of appeal and in this regard case law reported as 1996 MLD 355

speaks volume, lastly, the learned counsel solicited dismissal of petition with costs.

Having heard the learned counsel of both sides, I have also gone through the record made available at the file. Case law referred to and relied upon

on behalf of non-petitioner No.2 has also been examined.

The case of the petitioners is that in favour of their predecessor, a piece of land in dispute was duly sanctioned and

subsequently after the demise of allottee, his legacy was devolved in favour of petitioners herein but initially, District Collector Kotli, while dealing with the petition of the non-petitioner No.1 herein issued an order to revoke the said allotment vide order dated 18.02.2011. It is claimed that the learned Additional Commissioner dealing with the appeal of the appellant herein turned down the order of District Collector Kotli dated 18.02.2011, result of which the order of the District Collector dated 31.05.2000, stood restored and the said order was kept intact by the learned Member (Judicial) Board of Revenue but full board of Revenue, while dealing with the appeal of non-petitioner No.2 herein has again revoked the said allotment vide order dated 12.01.2016 impugned herein.

In their petition, the main claim of the petitioners herein is that the petitioners were not owners and possessors of beyond the prescribed scale but while adding a piece of land recorded in favour of Muhammad Nawaz in the share of allottee Full Board of Revenue has revoked the allotment, hence, by examining the relevant documents, the reality can be adjudged.

From the perusal of judgment impugned herein recorded by Full Board of Revenue, it depicts that earlier learned District Collector Kotli while entertaining the complaint of respondent No.2 herein observed that "after thorough examination of Misl-e-Haqiat, it reflects that father of Muhammad Ashiq and others named Mulk Daad Khan" prior to allotment in question had a piece of land measuring 35 kanal 1/2 marla and 20 kanal 7-1/2 marla situated at village Agound.

The learned Deputy Collector further observed that "respondents" after purchasing the piece of land measuring 04 kanal 18 marla from his father, claimed himself a owner in Deh and while suppressing said purchase succeeded to obtain proprietary rights regarding a piece of land measuring 18 kanal 03 marla. The learned District Collector while narrating the said factual position has opined that under the Azad Jammu and Kashmir grant of Khalsa Land (amended) Act, 1989, a Nautor Kuninda stands entitled for proprietary rights, if his ownership in Deh is less than 30 kanal land but in the matter in hand ownership of the allottee was beyond the prescribed scale so order of collector regarding allotment dated

18.03.1999 is not maintainable.

The learned members of Full Board of Revenue, while examining the documents of parties brought on record agreed with the findings of learned

District Collector recorded vide order dated 18.02.2011 and observed that legal heirs of "Mulk Daad" remained fail to establish that the ownership of

"Mulk Daad" was only 19 kanal and 10 marl, whereas, from the Revenue Record available at file it depicts that "at the time of preparation of file

regarding allotment of proprietary rights, respondent was appointed as Girdawar who succeeded to attain proprietary rights beyond entitlement".

From the perusal of observation recorded by learned members of "Full Board of Revenue" it establishes that judgment impugned herein is based on

evaluation of revenue record and in order to defeat the veracity and truthfulness of verdict of learned members of Full Board of Revenue, petitioners

herein have brought no documentary proof on record, rather a some photocopies of revenue record have been annexed with the petition. Under law a

photocopy neither be treated as genuine nor the same could be relied upon, moreover, during the course of arguments, no documentary proof has been

referred to on behalf of petitioners, whereas, on behalf of behalf of non-petitioner No.2, certified copies of relevant documents in support of their

claim have been brought on record, meaning thereby, that petitioners herein miserably failed to point out any illegality in the judgment impugned

herein through bringing a relevant proof in support of their claim.

Moreover, it is pertinent to point out here that in the matter in hand, all the concerned revenue hierarchy from Deputy Commissioner to Full Board

of Revenue, in terms of nature of lis was a necessary party and admittedly, the order of Deputy Collector (time) dated

18.02.2011 was also against the

petitions herein but neither the Deputy Collector (time) has been arrayed as a party nor his order dated 18.02.2011 has been assailed. For the sake of

arguments if it is presumed that the final order of Full Board of Revenue dated 12.01.2016 has been assailed and there was no need to challenge the

order of District Collector dated 18.02.2011, even then, to my mind, the said order has provided a foundation to learned members of Full Board of

Revenue. So, Deputy Collector was a necessary party to be arrayed in the line of non-petitioners but petitioners herein have not arrayed him as a party.

Similarly, as it has been pointed out hereinabove, that only photocopies have been relied upon which under law having no veracity and sanctity could be looked into. Furthermore, it deems appropriate to observe here that there is a marked distinction between jurisdiction of civil court vested with it, while dealing with the revision, appeal etc. whereas, the jurisdiction exercised by this Court in a writ petition is a limited in nature and the High Court, while invoking writ jurisdiction cannot sit upon the judgment of subordinate Courts or local authorities or tribunal etc. as a court of appeal.

Keeping in view the aforementioned circumstances it can safely been observed that on the one hand, the petition in hand, due to non-impleadment of necessary parties, non-annexing the certified copies of relevant record etc. is incompetent and on the other hand petitioners herein remained fail to point out any illegality or infirmity in the judgment impugned herein, so, the petitioners, herein, cannot be awarded the relief claimed for.

The crux of above discussion is that petition in hand being devoid of substance is hereby, dismissed with no order as to costs.

JK/16/AJKHC Petition dismissed

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