

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.
(Original Jurisdiction)**

Before:

Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.
Mr. Justice Muzaffar Ali, Judge.

(Allotment of Land to the Refugees of Village Mir Malik at Bunji)

S.M.C No 25/2011.

Present:-

The Advocate General, Gilgit-Baltistan.
The Deputy Commissioner, Astore.
Mr. Isaa Haleem, representative of village Mir Malik.

DATE OF HEARING 09-05-2013.

ORDER

This Court had taken cognizance of the matter on an application submitted by one Muhammad Issa Haleem in his representative capacity on behalf of effectees/refugees of village Mir Malik district Astore, under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009.

2. The brief facts of the case are that Village Mir Malik is a far flung and snow bounded area of District Astore. In the year 1966-67, there was heavy snow fall in the area on account of which there were as many as 28 families of village Mir Malik consisting of a number of people had migrated from village Mir Malik to Rawalpindi, where they were promised by the concerned authorities to settled them and resultantly, the Ministry of Kashmir Affairs and Northern Areas and Resident commissioner Northern Areas were directed y the President of the county to effect that the said affectees be settled at any appropriate area of District Astore. In pursuance of the stated direction, the refugees were statedly allotted about 1400 Kanal

Land near Bunji desert at Ramghat Das and the alleged allotted land was further divided 50 Kanal to each family. In view of the alleged allotment , the allotment orders were reportedly incorporated in the revenue record and the “Aks Shajra” was also statedly prepared and formal possession of the land was handed over to the effectees/refugees of village Mir Malik at site. It was further asserted that the refugees were also reportedly given Twenty Thousand Rupees to each family for their rehabilitation.

3. It has further been stated in the application that in order to make the land arable, the effectees of Village Mir Malik were said to have lost 40 valuable lives of their and they were buried in the same land.

4. It has been alleged that in the year 2000, on the completion of construction of Thalichi RCC Bridge, the people of Bunji started passing through the bridge and saw towards the development of the aforesaid land and moved by covetousness and were influenced by greed. They had taken over the possession of the land forcibly and the said allottees/refugees were forced to leave the land and they were made to run away from their land has also taken over the possession of the water channel constructed by the effectees of Village Mir Malik. As per contents of application, the stand of people of Bunji is that they had been pottering in the area during British Rule from 1840 to 1920, therefore, in 1979 Ghulam Nabi Deputy Commissioner, allotted 10 Thousand Kanal of land to 450 families of Bunji, wherein, Fourteen Hundred Kanals of land allegedly allotted to effectees Village Mir Malik is also included. This allotment is said to have duly been documented in the relevant record.

5. The petitioners have prayed that the people of Bunji, over and above the allotment of land to the effectees, forcibly and illegally have taken over the possession of land, therefore, the illegal occupation of people of the

area be ordered to be vacated and be handed over to the refugees/alleged allottees.

6. However, vide order dated 24-05-2011, the office was directed to call a report from the Home Secretary Gilgit-Baltistan. The requisite report was submitted and was made part of the file. The said report of Home Department Gilgit-Baltistan was examined and was found unsatisfactory, therefore, the Deputy Commissioner Astore was directed to examine the case thoroughly after hearing the respective parties and shall also make thorough inspection of the disputed land and thereafter, shall prepare a comprehensive report of the perusal of the court. The Deputy Commissioner Astore referred the matter to Assistant Commissioner (headquarter) Astore for the inspection of the relevant record. The Assistant Commissioner (Headquarter) Astore after thorough examination of the record came to the conclusion that neither any documentary evidence is available in the revenue record of Moza Bunji with regard to the allotment of land to refugees nor the claimants could produce any official document pertaining to the said allotment. The Deputy Commissioner Astore prepared the report to the effect that the names of applicants do not appear either in revenues records i.e. "Lattha" and "Khasra Girdawari" etc. or in the column meant for proprietary rights/tenancy etc. and submitted that the claim of applicants was not only baseless rather the same is based on flimsy grounds and hearsay stories and is without any documentary evidence in favour of effectees and that in fact, the said land was allotted to the natives of Bunji in the year 1979, by the then District Collector, which is part of revenue record of District Bunji.

7. The case was fixed for hearing before the Court on 03-11-2011, and after hearing the parties, once again the Deputy Commissioner Astore was directed to conduct a regular inquiry into the matter after associating all

the concerned official and the effectees through their representative. The effectees were also directed to associate with the inquiry proceedings and may produce evidence in support of their claim before the Inquiry Officer. The Deputy Commissioner was directed further to prepare a comprehensive report after conclusion of the inquiry and shall also pass an appropriate order under the law and the report was directed to be submitted before the Court within three months.

8. In pursuance of the order dated 03-11-2011, the Deputy Commissioner Astore had submitted an Interim Report dated 21-03-2012 wherein he very categorically stated that the applicants/refugees of Village Mir Malik were permanent residents of snow bounded area and the accessible roads remained closed from November to March on account of heavy snow fall in the year 2011-12 and since there was no such facility of communication available in the area, therefore, despite issuance upon them nor they could make their availability to associate with the inquiry proceeding. He requested that an adequate time may again be given to him to conclude the inquiry proceedings as early as possible.

9. The case was once again fixed for hearing on 11-03-2013. The learned Advocate General Gilgit-Baltistan was present in the Court and submitted that on 30th March 2012, notices were issued to the concerned families of the refugees to ensure their presence on 10-04-2012 before the Deputy Commissioner/Inquiry Officer but neither the families of refugees nor their representative entered appearance to associate with the inquiry proceedings. The notices were once again issued to the aforesaid families on 10-04-2012 for their appearance on 19-04-2012 but once again none had appeared before the Inquiry Officer in order to prove their claim with regard to the allotment of the land in Bunji. Mr. Issa Haleem, representative of the

families of refugees of Village Mir Mailk was also present in the court and he, frankly conceded that they had not appeared before the Inquiry Officer on the aforesaid two dates and requested that further time with undertaking to the effect that he shall appear and associate with the inquiry proceedings before the Deputy Commissioner/Inquiry Officer in the next date of hearing so fixed by the Inquiry Officer. In this view of the matter the Deputy Commissioner/Inquiry officer once again was asked to submit final report after concluding the inquiry within a month.

10. In compliance of the order dated 03-11-2011 and 11-03-2013, the Deputy Commissioner/Inquiry Officer submitted a detail report dated 4th April, 2013 after concluding the inquiry proceedings. The perusal of the report transpires that the Inquiry Officer recorded the statements of representative of Village Mir Malik namely, Issa Haleem, Yousuf ali and some representatives and noteables of Village Bunji. Mr Issa Haleem, representative of refugees of Village Mir Malik asserted with vehemence that the allotment of the aforesaid land to 28 families of refugees and in proof thereof an affidavit of late Sultan Muhammad Shah was produced before the Inquiry Officer. On the other hand, the careful perusal of the statements of the representatives and noteables of Village Bunji reveals that in the year 1979, the land question was allotted to the residents of Bunji by the then Deputy Commissioner Diamer and the allotment orders accordingly issued and the same were incorporated in the revenue record, whereas, no such documents is absolutely available neither in the revenue record nor it has been produced by the effectees of village Mir Malik, meaning thereby, no allotment order in favour of said effectees/ refugees was ever passed.

11. The Deputy Commissioner, Astor/Inquiry Officer is present in the Court and states that he himself has examined revenue record of Bunji

and has taken keen interest in the inquiry and full opportunity was afforded to the families of effectees of Village Mir Malik and they were time and again informed that there is no such record pertaining to the allotment of the land to the said families of the effectees of Village Mir Malik available in the revenue record and he has also given sufficient opportunity to the said families to place on record any document of any year with regard to the allotment of aforesaid land to them but the representative of the effectees of Village Mir Malik could not bring on record any such document showing the allotment of the land in the name of effectees of Village Mir Malik. The stark reality in this case is that no allotment order of the land of Bunji was ever made in favour of applicants/refugees.

12. The representative of the effectees is also present in the Court and on query of the Court he very frankly admitted that he has no such document with him to prove the claim of effectees. In this view of the matter, it is abundantly clear that the families of effectees neither have any documentary evidence nor any other cogent evidence has been produced which could be believed that they were ever allotted the land in Bunji and they had remained in possession of that land and made improvements thereon and when the representative of the effectees of Village Mir Mailk was asked as to whether he wants further probe in the matter, he answered in negative.

13. The exercise undertaken on the application of the effectees of Village Mir Malik is found baseless frivolous and having no proof of their allotment, the whole exercise was futile. It is the foremost duty of the citizens of the area to come to the court with clean hand to get the relief. They cannot be allowed in any manner whatsoever, to start frivolous litigation in the superior court of area which is nothing but a mere wastage

of public money and time. It has not only caused loss to public exchequer but also the time has been wasted. This has arisen only on account of irresponsible attitude and conduct of said effectees as well as their representative who had made an application on behalf of afore-referred effectees. Had it been verified from the revenue record before filing and application, the matter would have been absolutely different.

14. It was the foremost duty of the applicant to verify the record before coming to the Court for relief. From the minute examination of the record and the activities of the representative, it seems, prima facie, it was in his knowledge that he would not be in a position to substantiate his case, hence, wrong committed by him. He pursued the case with great effort and energy. He should have not made the same an issue of this prestige and should have not continuously insisted upon the same. No wrong can be allowed to persist. The wrong should be corrected at the earliest. It would be a greatness of a man who realizes his mistake and corrects the same. In the instant case, the petitioner through this application kept the government official engaged for a long time in a futile exercise which ultimately was admitted by him in the court. He had no proof favourable to him with regard to the alleged allotment of land except an affidavit sworn by late Sultan Muhammad Shah which does not carry any evidentiary value at all.

15. Since Sultan Muhammad Shah, who had sworn affidavit had died, therefore, he can neither be produced by the applicant to authenticate the testimony in his favour nor he can be made available for cross examination which loses the evidentiary value of the said affidavit.

16. The examination of the affidavit sworn by Sultan Muhammad Shah on 05.05.2011 was also endorsed by two marginal witnesses i.e. Muhammad Younas s/o Muhammad Ismail and Gulsher Khan s/o Jumma

Khan, who have also not been produced before the Inquiry Officer in order to prove the affidavit sworn by Sultan Muhammad Shah. Therefore, reliance on testimony of such kind of affidavit cannot be taken into consideration for the just decision of case.

17. The land in question was slotted to the people of Bunji Village in the year 1979 and the documentary evidence is also available with record of the allotment of the said land to the people of Bunji Village. Keeping in view this situation, the oral evidence or evidence in the shape of an affidavit cannot be given preference over the documentary evidence. It is crystal clear that the applicant could not prove his case in any manner whatsoever.

18. In view of what has been discussed in the preceding paragraph, no further action is required to be taken in this case.

This Suo Moto case is disposed of accordingly.

Chief Judge

Judge

Judge

