SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, J.
Masood A. Sheikh, J.

Civil Appeal No.329 of 2014
(PLA filed on 20.08.2014)

1. Food Department, through its Secretary, having his office at new secretariat, Muzaffarabad.
2. Azad Govt. of the State of Jammu and Kashmir, through its Chief Secretary Azad Jammu and Kashmir, having his office at new secretariat, Muzaffarabad.
3. District Food controller District Bagh Azad Jammu & Kashmir.

….APPELLANTS

VERSUS

1. Iftikhar Hussain,
2. Zulfiqar Ali,
3. Ejaz Hussai,.

4. Khawaja Muhammad Ali,
5. Toufeeq Ali sons of Ali Muhammad (late),
6. Saleema Akhtar,
7. Naeema Akhtar,
8. Nagina Akhtar,
9. Samina Batool d/o Ali Muhammad (late),
10. Amjad Hussain,
11. Yasir Abbas,
12. Kurram Shahzad,
13. Hassan Ali sons of Kh. Nazir Hussain (late),
14. Farkah Zulfiqar,
15. Shaista Ali,
16. Mona Shahbab d/o of Kh. Nazir Hussain (late).
17. Mumtaz Begum widow of Kh. Nazir Hussain (late),
18. Safeeda Begum wife of Muhammad Aslam r/o of Paniali through Attorney Kh. Shafqat Naveed.

…. RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 21.06.2014 in civil appeal No.158 of 2013)

FOR THE PETITIONERS: Ch. Shoukat Aziz, Additional Advocate-General,

FOR THE RESPONDENTS: Mr. Muhammad Yaqoob Khan Mughal, Advocate.

Date of hearing: 08.02.2016.

JUDGMENT:

Raja Saeed Akram Khan, J.— The above tiled appeal by leave of the Court has been addressed against the judgment and decree of the High Court dated 26th June, 2014, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The facts necessary for disposal of the present appeal are that the land measuring 1 *kanal* and 19 *marla*, comprising survey No.1983, situate at village Bagh, Tehsil & District Bagh was awarded in favour of Food Department, Azad Jammu & Kashmir against compensation amount of Rs.8,71,600/- per *kanal* along with

15% compulsory acquisition charges. Feeling dissatisfied from the compensation amount determined by the Collector the land owners filed a reference before the Reference Judge, Bagh on 11.09.2012. The reference was contested by the other side by filing objections. The learned Reference Judge after necessary proceedings, enhanced the compensation amount from Rs.87,16,00/- per *kanal* to Rs.1,50,000/- per *marla* along with 15% compulsory acquisition charges. Thereafter, the appellants, herein, challenged the judgment and decree of the Reference Judge dated 28.01.2013, before the High Court. The learned High Court after hearing the parties, dismissed the appeal filed by the appellants, herein, vide impugned judgment dated 21.06.2014, hence, this appeal by leave of the Court.

3. Ch.Shoukat Aziz, the learned Additional Advocate-General argued that the impugned

judgment is against law and the facts of the case which is not sustainable in the eye of law. He submitted that the learned High Court wrongly dismissed the appeal on the sole ground of limitation as the respondents filed reference application without impleading the Secretary Food, being head of department as party and when the matter came into the knowledge of the department they approached the High Court. In this way, the appeal was filed by the appellants well within time from the date of knowledge. He forcefully contended that under the provisions of section 32 of the AJ&K Law Department Manual, 1984, only the Head of Department is competent to receive service of process in suits against the State, whereas, in the case in hand, the respondents deliberately did not implead the Secretary Food Department in the line of respondents. He added that it was enjoined upon the Reference Judge to dismiss the

reference on the sole ground that the same has been filed without impleading the necessary party. He added that the learned High Court also overlooked this important aspect of the case while passing the impugned judgment. He submitted that the learned Reference Judge without any cogent evidence enhanced the compensation and the learned High Court failed to give its verdict on merits.

4. On the other hand, Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the respondents strongly opposed the arguments advanced by the learned Addl. Advocate-General. He submitted that the impugned judgment is perfect and legal which does not warrant any interference by this Court. He contended that the appellants filed appeal before the High Court after lapse of 7 months without mentioning any reason for condonation of delay. He added that under law the appellants

were duty bound to explain sufficient reason for filing the appeal after such a long delay, but they failed to do so. He further contended that the Food Department pursued the matter through the District Food Controller and this fact is very much proved from the record, therefore, it cannot be said that the appellants have no knowledge regarding the judgment and decree passed by the Reference Judge. He added that the learned Reference Judge after evaluating the evidence brought on record has rightly enhanced the compensation, whereas, the respondents failed to prove their claim.

5. We have heard the learned counsel for the parties and gone through the record along with the impugned judgment. The perusal of the record reveals that the land of the respondents was acquired for construction of store/office of the Food Department, Bagh. The Collector Land Acquisition determined the compensation

amount as Rs.8,71,600/- per *kanal*. On reference application, the learned Reference Judge enhanced the compensation from Rs.8,71,600/- to Rs.25,00,000/- per *kanal* vide judgment and decree dated 28.01.2013. Against the judgment and decree of the Reference Judge the appellants, herein, filed appeal before the High Court on 04.09.2013, after a period of more than 7 months. The learned High Court has decided the appeal only on the ground of limitation and has not discussed the merits of the case. The learned Addl. Advocate-General has also forcefully agitated the point of limitation before this Court, therefore, we intend to resolve this point at first. The main contention of the learned Addl. Advocate-General is that the department was not aware about the judgment and decree of the trial Court. To appreciate this point whether the Food Department was aware of filing the reference

application and the judgment and decree of the trial Court or not; we have examined the record minutely. The perusal of the record reveals that the process of award was initiated on the recommendations of the District Food Controller, Bagh. The respondents, herein, while filing reference application impleaded the District Food Controller as party and as per record the notice was duly served upon the said officer of the Food Department on 19.09.2012. Moreover, it is also spelt out from the record that the standing counsel, representative of the department, fully participated in the whole proceedings and also argued the case. In such state of affairs, in cannot be said that the Food Department was not aware about the judgment and decree of the trial Court or filing of the reference application. It is settled principle of law that a party who remained slept over its right for a long time is not entitled for any relief as the law always

helps the vigilant not the indolent. The appellants failed to prove their stance that the Food Department was not aware about the judgment and decree of the Reference Judge, therefore, the argument of the learned counsel in this regard is hereby repelled. It may also be observed here that the respondents cannot be dragged into further litigation due to the negligence of the appellants. As the appellants failed to cross the barrier of limitation, therefore, we are satisfied, that the learned High Court has not committed any illegality while dismissing the appeal on the point of limitation.

Resultantly, having no force, this appeal is dismissed with no order as to costs.

Mirpur,
__.02.2016. **JUDGE** **JUDGE**