SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

1. Civil Appeal No. 147 of 2015

(Filed on 21.05.2015)

Abdul Aziz s/o Abdullah, Caste Sulehria r/o Ghan Chatter, Tehsil & District Muzaffarabad.

…. APPELLANT

VERSUS

1. Azad Government of State of Jammu & Kashmir through its Chief Secretary, Muzaffarabad.
2. Education Department through Secretary Education (Schools), Muzaffarabad.
3. Director General Education (Schools) Elementary, Muzaffarabad.
4. Director Education Planning, Muzaffarabad.
5. Commissioner Revenue, Muzaffarabad Division, Muzaffarabad.
6. Collector Land Acquisition, Rural, Muzaffarabad.
7. Collector District Muzaffarabad.

….. RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 24.03.2015 in Civil Appeal No. 79/2010)

FOR THE APPELLANT: Kh. Muhammad Nasim, Advocate.

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

2. Civil Appeal No. 149 of 2015
(Filed on 23.05.2015)

1. Azad Government of State of Jammu & Kashmir through its Chief Secretary, Muzaffarabad.
2. Education Department through Secretary Education, Muzaffarabad.
3. Director General Education Schools Elementary, Muzaffarabad.
4. Director Education Planning, Muzaffarabad.

…. APPELLANTS

VERSUS

1. Abdul Aziz s/o Abdullah, r/o Ghan Chatter, Tehsil & District Muzaffarabad.

….. RESPONDENT

2. Commissioner Revenue, Muzaffarabad Division, Muzaffarabad.
3. Collector Land Acquisition, Rural, Muzaffarabad.
4. Collector District Muzaffarabad.

….. PROFORMA RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 24.03.2015 in Civil Appeal No. 79/2010)

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

FOR RESPONDENT NO. 1: Kh. Muhammad Nasim, Advocate.

Date of hearing: 12.04.2016

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— These direct appeals have been filed against the judgment and decree of the High Court dated 24.03.2015, whereby the appeal filed by the appellant, Abdul Aziz, has been accepted.

2. According to the summary of the facts, through award No. 19/2009 dated 04.08.2009 the land of the appellant, Abdul Aziz, comprising of Khewat No. 2 Khasra No. 436-min measuring 6 *marla*, Khasra No. 437-min, measuring 1 *kanal* 7 *marla*, Khasra No. 438-min, measuring 3 *kanal* 2 *marla* and Khewat No. 3, Khasra No. 439-min measuring 5 *marla*, total measuring 5 *kanal* situate at village Ghan-Chatter was acquired for construction of Girls Middle School. The Collector determined the compensation as Rs. 1,50,000/- per *kanal*. Feeling aggrieved, from the amount of the compensation assessed by the Collector Land Acquisition, the appellant, land owner, filed a reference before the Reference Judge, Muzaffarabad while claiming therein that the value of the awarded land is more than one million rupees, whereas, the amount of compensation has been fixed as Rs. 1,50,000/- per kanal. The learned Reference Judge, after necessary proceedings while accepting the reference enhanced the amount of compensation to the tune of Rs. 2,00,000/- per kanal. An appeal was preferred before the High Court.

The learned High Court through the impugned judgment further enhanced the compensation to the tune of Rs. 3,00,000/- per kanal alongwith 15% compulsory acquisition charges, hence these cross appeals.

3. Kh. Muhammad Nasim, Advocate, the learned counsel for the appellant-land owner, discussed the detailed facts of the case. He seriously objected to the impugned judgment on the ground that the same is violative of principle of law enunciated by this Court and also against the record. The appellant-land owner by production of cogent documentary evidence has proved that the market value of the acquired land is more than one million rupees per kanal, specially, the documentary evidence i.e., the copies of the sale-deeds Exh.PB, PC and PD are of vital importance. All the Courts below have not made proper appreciation of the evidence. It is now settled principle of law that while determining the compensation of the acquired property, the potential of the land for which it may reasonably be put in use, has also to be considered. The acquired

land is located near to the airport having approach to the road, thus, the appellant deserves for Rs. 10,00,000/- per kanal as compensation. In support of his contention, he placed reliance on the case reported as *Faiz Akbar Khan & others vs. Azad Govt. & others* [1996 SCR 132] and an unreported case titled *Zulfiqar Muhammad Khan & others vs. Azad Govt. & others* (Civil Appeal No. 206/14 decided on 03.12.2014).

4. Conversely, Ch. Shoukat Aziz, Additional Advocate-General, the learned counsel for the respondents, Azad Govt. & others (appellants in cross appeal), seriously opposed the appeal on the ground that the arguments of the learned counsel for the appellant-landowner are misconceived. The acquired land is situated at a distance of 3/4 kilometres from the airport having no approach to the road. The produced copies of the sale-deeds are not admissible as none of the vendors or vendees of the sale-deeds has been produced as witnesses. Moreover, one of the referred sale-deeds is of another village, thus, the same cannot be considered. Out of the relied sale-

deeds, one has been executed much after the issuance of award, whereas, only the sale-deed executed at the time or before issuance of notification under section 4 of the Land Acquisition Act, 1894 has to be considered, therefore, the compensation assessed by the Collector was proper. The trial Court has enhanced the reasonable amount of compensation, however, the High Court has fell in error while making further enhancement in the amount of compensation. The appeal of the appellant-landowner has no substance and the same is liable to be dismissed with costs.

3. In the light of the arguments advanced at bar on behalf of the parties, we have examined the record made available. The sole proposition requiring resolution is the market value of the acquired land. According to the appellant-land owner, he has proved the market value of the acquired land as Rs. 10,00,000/- per *kanal*. In this regard, the copies of sale-deeds, Exh.PB, PC and PD have been produced and tendered in evidence. The learned High Court, according to the version of the appellant-landowner,

has fell in error of law while making appreciation of these documents. The average price of sale-deeds, Exh.PC and PD has been calculated as Rs. 3,33,000/- per kanal, whereas it is not correct. Through sale-deed, Exh.PC, one *kanal* land has been sold against a price of Rs. 6,00,000/-, whereas, through sale-deed, Exh.PD, 10 *marla* land has been sold for Rs. 5,00,000/-, thus, the average price comes to Rs. 8,00,000/- per *kanal*.

4. We have made the appreciation of the evidence in this context. So far as the document, Exh.PD is concerned, it relates to the sale-deed of another village hence in presence of sale-deeds of the same village, the consideration of sale-deed executed in another village is not proper. So far as the sale-deed, Exh.PB is concerned, through it the sale has been effected after issuance of award and almost more than 19 months' period after the issuance of notification published under section 4 of the Land Acquisition Act. Thus, it is not proper to rely on this sale-deed otherwise, it will amount to frustrate the statutory provisions of section 23 of the Land

Acquisition Act. There remains only one sale-deed, Exh.PC through which 1 *kanal* land has been sold for a consideration of 6,00,000/- rupees. The careful examination of this document speaks that it does not relate to the agriculture land rather through it, the land has been sold for residential purpose as mentioned in the sale deed that the vendee is entitled to make improvements and construction of house. The Collector Land Acquisition in its award has categorically observed:

> "رقبہ کا موقع ملاحظہ بھی کیا گیا ہے۔ رقبہ زیر بحث میں سڑک اپروج نہ ہے، درمیان میں ایک نالہ ہے جسے عبور کر کے زیر بحث اراضی میں جانا پڑتا ہے"

This factual aspect regarding the location of the acquired land has not been refuted by the land-owner. Even, the oral statements tendered by the parties established that there is no road directly approaching the acquired land. The land-owner has not succeeded to establish that the location of the acquired land is identical to the location of the land transferred through sale-deed, Exh.PC. Moreover, neither the vendees nor vendors of the sale-deed have been produced to establish that the amount

mentioned in it has actually been transacted and paid. However, keeping in view the overall trend of rising in the prices of land, in our opinion, the market value of the acquired land in these circumstances at the time of acquisition cannot be less than Rs. 4,00,000/- per kanal. After appreciation of the overall evidence and facts of the case, we deem it just and proper to determine the market value of the land at the time of issuance of award as Rs. 4,00,000/- per *kanal*.

5. So far as the principle of law enunciated by this Court in the judgment handed down in the case titled *Zulfiqar Muhammad Khan and others vs. Azad Govt. & others* (Civil Appeal No. 206/14 decided on 03.12.2014) is concerned, the same is not strictly applicable to the case in hand due to location of the acquired property. The subject-matter of the referred judgment was situated within the heart of the city and the limits of the Municipal Corporation, whereas, the land, subject-matter of the instant case is a village property and the land-owner while adducing the evidence has produced the evidence regarding

the determination of the value of the land with reference to the agriculture produces and crops and it is not established from the evidence that the future potential of the acquired land is of commercial or industrial nature.

6. For the reasons stated in paragraph 4, while accepting the appeal of the land-owner the judgment of the High Court, stands modified and it is declared that the land-owner is entitled for compensation of the awarded land at the rate of Rs. 4,00,000/- per *kanal* alongwith 15% compulsory acquisition charges.

As the appeal of the land-owner has been accepted, therefore, consequently the cross appeal filed by Azad Government and others for reduction in the amount of compensation having no substance stands dismissed.

Mirpur,
18.04.2016. JUDGE CHIEF JUSTICE
(J-I)