

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

1. Civil Appeal No. 165 of 2015

(PLA filed on 02.05.2015)

1. Development Authority Muzaffarabad through Chairman having his office at Tariqabad, Tehsil and District Muzaffarabad.
2. Director Estate Management Development Authority, Muzaffarabad, office at Tariqabad.

.... APPELLANTS

VERSUS

1. Abdul Hafeez,
2. Bashir Hameed,
3. Mudassar Hameed,
4. Shazia Asif,
5. Fozia Hameed, sons and daughters,
6. Gulzar Bibi widow of Abdul Hameed r/o Tariqabad, Tehsil & District Muzaffarabad.
7. Muhammad Maroof,
8. Muhammad Shafee sons of Khani Zaman r/o Ranjata Tehsil and District Muzaffarabad.

.... RESPONDENTS

9. Azad Govt. through its Chief Secretary, Muzaffarabad.
10. Education Department through Secretary Education Schools, Muzaffarabad.
11. DPI Schools (Female) having its office at New District Complex, Muzaffarabad.
12. District Education Officer (Female), Muzaffarabad having his office at new District Complex, Muzaffarabad.
13. Assistant Education Officer Constituency No. 3, Female Headquarter, Muzaffarabad.
14. In-charge Teacher Girls Primary School Ranjata, Muzaffarabad.
15. Director MCDP having his office at Upper Chatter, Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 05.03.2015 in Writ Petition No. 811/2012)

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

FOR RESPONDENTS NO. 1-6: Raja Akhlaq Hussain Kiani and Sardar M. R. Khan, Advocates.

2. Civil Appeal No. 166 of 2015
(PLA filed on 06.05.2015)

1. Azad Jammu and Kashmir Government through its Chief Secretary, New Secretariat, Muzaffarabad.

2. Education Department through Secretary Education Schools, Muzaffarabad.
3. DPI Schools (Female) having its office at New District Complex, Muzaffarabad.
4. District Education Officer (Female), Muzaffarabad having his office at new District Complex, Muzaffarabad.

.... APPELLANTS

VERSUS

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9. Development Authority Muzaffarabad through Chairman having his office at Tariqabad, Tehsil and District Muzaffarabad.
10. Director Estate Management Development Authority, Muzaffarabad, office at Tariqabad.
11. Assistant Education Officer Constituency No. 3, Female Headquarter, Muzaffarabad.

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.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 05.03.2015 in Writ Petition No. 811/2012)

FOR THE APPELLANTS: Mr. Raza Ali Khan,
Advocate-General.

FOR RESPONDENTS NO. 1-6: Raja Akhlaq Hussain
Kiani and Sardar M. R.
Khan, Advocates.

Date of hearing: 05.10.2016.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This judgment shall dispose of both the titled appeals being arisen out of the common judgment of the High Court involving the common proposition.

2. The relevant facts in small compass are that the private respondents, herein, filed a writ petition before the High Court on 18.04.2012 alleging therein that they are owners of the land, comprising survey No. 577, 578, 520 and 560 total measuring 2 kanal. The respondents (appellants herein) entered into an

agreement with the owners of the land on 21.10.2008 that after construction of the school in the said land they will be paid the compensation but they have not paid the same. They sought a direction for payment of the compensation before taking the possession of the building and shifting of the school. The learned High Court, after necessary proceedings, accepted the writ petition and directed the respondents to pay the amount of compensation to the extent of land bearing survey No. 577, 578 measuring 2 kanal situate in village Ranjata according to the market value, hence these appeals by leave of the Court.

3. The original writ petition before the High Court was filed by respondents No. 1 to 6, however, during pendency of appeal before this Court Muhammad Mahroof and Muhammad Shafee sons of Khani Zaman have filed an application for arraying them as party in the line of respondents as they are the owners of the property, subject-matter of the case, being legal heirs of late Khani Zaman. Alongwith their application they have also furnished the copy of Misl-e-Haqieyt. The respondents although have resisted the application by filing the objections, however, later on

they have not objected, thus, vide order dated 05.10.2016 the application was allowed and the applicants were arrayed as party. The interest and the rights of the newly added parties shall be dealt with later on at appropriate stage.

4. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the appellant-development authority in his arguments has taken a very short cut stand that the dispute is regarding the construction of school which matter relates to the Education Department and the development authority has no concern with it. The appellant-authority has only challenged the impugned judgment to the extent that the High Court has wrongly issued the direction to all the respondents without determination of their liabilities. In view of peculiar facts of this case, the appellant-authority should have been excluded. He, as an alternate, submitted that the respondents have got no locus standi as they are not the owners of the land. They are mere possessors as غیر موروثی, therefore, while accepting this appeal the impugned judgment be set-aside.

5. Mr. Raza Ali Khan, Advocate-General, the learned counsel for the appellants in appeal No. 166/2016 argued the case at some length and submitted that the respondents have got no legal cause of action as they have donated the property for construction of school and now they cannot turn round and claim the compensation. In lieu of the donation of their land, they only demanded for appointment of a person in grade B-1. They are estopped by their conduct. He further argued that the respondents are not owners of the land, therefore, they have no locus standi.

6. Conversely, Raja Ikhtlaq Hussain and Sardar M. R. Khan, Advocates, the learned counsel for the respondents forcefully defended the impugned judgment on the ground that the same is legal one. The respondents are owners of the land and their right to property is constitutionally guaranteed right. Neither they have donated the property nor there exists any such agreement. The public authorities cannot usurp the property of any citizen without payment of compensation. The argument that the respondents are not owners of the land is against the record and even

against the conduct of appellants. On one hand they claim that being owners the respondents have donated the property but in the same breath they deny their ownership. Thus, the principle of a probate and reprobate is clearly attracted and they are debarred to dispute the ownership of the respondents. They further argued that even this argument stood falsified from the appellants own produced record. The appellants themselves have produced the copies of the revenue record according to which the respondents are owners of the land. So far as the entries of the respondents as *غير موروثی* are concerned, it is misconceived as it has already been clarified through mutation No. 231 and even stood proved from the record produced by the appellants in appeal No. 165 i.e., the copy of Misl-e-Haqieyt (Annexure "D"). They further argued that the stand of the appellant-development authority is against the record. The respondents have brought on record the official communication of the development authority in which it has been agreed that they will pay the compensation for the road approach to the School. So far as the stand of the other party is concerned, it is without any substance. They have failed to substantiate

their baseless stand of donation through any sort of evidence. The High Court has rightly accepted the writ petition. The appellants have no legal justification to challenge the impugned judgment, hence, both the appeals are liable to be dismissed with costs.

7. We have heard the learned counsel for the parties and examined the record made available. So far as the argument of the learned counsel for the appellant-development authority that the authority has no concern with the matter is concerned, it appears to be ill-founded. The respondents-landowners, have brought on record the copy of the alleged undertaking of the development authority dated 21.10.2008, wherein it has been undertaken that the process of acquisition of land for approach road to the school shall be initiated. This assertion has not been specifically denied in the written statement filed by the development authority. Thus, according to the celebrated principle of law the evasive denial shall be deemed admission.

8. So far as the other material proposition raised regarding the ownership of the land is concerned, in the light of pleadings of the parties the

appellants have taken the contradictory stand. On one hand they have claimed that the respondents have donated the land free of cost and at the same time they denied their ownership. Although, according to the celebrated principle of law, such contradictory stand cannot be allowed but leaving aside this aspect the argument appears to be misconceived. In appeal No. 165, the appellants have themselves brought on record the copy of the revenue record (Annexure "D") which clearly proves that through mutation No. 231, the land, subject-matter of this case, is shown in the ownership and possession of Khani Zaman, the predecessor-in-interest of the respondents-landowners. The revenue record produced by the parties in the application for arraying as parties and objections filed also contains certified copies of the revenue record and report of the revenue officials according to which the disputed land is in the possession and ownership of the respondents. Therefore, the objection regarding the ownership of the land appears to be baseless. Moreover, this issue has to be conclusively resolved by the concerned authority at the time of process of the award according to the provisions of enforced law.

9. Now, we come to the main proposition of the case which relates to the constitutionally guaranteed fundamental rights of the property. According to the stated facts, the respondents have legal interest and rights in the property, subject-matter of this case, which has been utilized by the appellants, herein, for public purpose i.e., the construction of educational institution and approach road. A property can be acquired for the public purpose but according to the constitutional provisions the same can be utilized by the authority of law which provides for compensation, therefore, there is no ambiguity that the property of an individual state subject can only be utilized for public purpose subject to acquisition according to law and payment and determination of the adequate compensation. In this regard, the impugned judgment of the High Court does not suffer from any infirmity.

10. So far as the interse claim of the landowners regarding entitlement of the property and compensation is concerned, we deem it necessary to clarify that this proposition has to be determined by the concerned authority, the Collector Land Acquisition, who is under the obligation according to the statutory

provisions of the relevant law to determine all the questions relating to the rights of the persons interested in the land, their shares and determination of the compensation etc. Therefore, while upholding the judgment of the High Court the concerned acquisition authorities are directed to determine all these matters at the time of issuance of the award according to law.

In the light of hereinabove stated reasons, finding no force, both these appeals stand dismissed. No order as to costs.

Mirpur,
17.10.2016

JUDGE
(J-I)

CHIEF JUSTICE