SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

Ch.Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil appeal No.02 of 2016
(Filed on 04.01.2016)

1. Government of Azad Jammu & Kashmir through its Chief Secretary, Muzaffarabad.
2. Director Sericulture, Muzaffarabad.
3. Assistant Sericulture, District Bagh.
4. Secretary Sericulture/Industries Azad Jammu and Kashmir, Muzaffarabad.

….APPELLANTS

VERSUS

1. Ghulam Hussain,
2. Khadam Hussain sons of Wali Muhammad, caste Chowan,
3. Abdul Ghaffar Khan son of Fateh Aslam Khan,
4. Muhammad Yaseen,

5. Muhammad Saleem,
6. Abdul Hakeem Khan,
7. Muhammad Jamil Khan,
8. Muhammad Farooq Khan,
9. Abdul Ghafoor Khan, sons of Haji Rehamdil Khan,
10. Mir Afsar Khan son of Akbar Din, caste Narma,
11. Muhammad Khalid Naz,
12. Muhammad Saddique Khan, sons of Abdul Ahad, caste Sheikh,
13. Akbar Joo son of Habib Joo, caste Khawaja,
14. Shakir Khan son of Muhammad Shaffi Khan, caste Qureshi,
15. Manshad Khan son of Muhammad Ayub, caste Mughal,
16. Qaisar Sultan,
17. Nasir Sultan sons of Muhammad Yousaf Kiani, caste Kiani,
18. Sharbat son of Noor Muhammad Butt, r/o Paddar Muhammad Ali, Tehsil Hari Ghel, District Bagh.
19. Mumtaz Begum w/o Khan Bahadur Abdullah,
20. Fozia Jan w/o Ejaz Ahmed,

21. Shazia Jan w/o Muhammad Ayaz Khan, caste Mughal, Tehsil Harri Ghel, District Bagh.

….RESPONDENTS

22. Collector District Bagh.

….PROFORMA RESPONDENT

(On appeal from the judgment and decree of the High Court dated 29.10.2015 in civil appeal Nos.04 and 19 of 2014)

FOR THE APPELLANTS: Raja Anjam Feroz, Advocate.

FOR THE RESPONDENTS: Sardar M.R. Khan, Advocate.

Date of hearing: 14.11.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal has been directed against the judgment and decree of the High Court dated 29.10.2015, whereby the appeal filed by the respondents, herein, has been accepted while the appeal of the appellants, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the land of the respondents, herein comprising survey Nos.408, 409, 410, 412, 413, 414, 416, 417, 419, 497 and 697, measuring 37 *kanal* 2½ *marla*, situate at village Paddar Muhammad Ali, Tehsil Harigehl, was acquired for set-up of mulberry nursery vide award dated 25.01.2012. The Collector Land Acquisition determined the compensation of the acquired land as Rs.3,50,000/- per *kanal* along with 15% compulsory acquisition charges. Feeling dissatisfied from the compensation amount determined by the Collector, the landowners filed a reference in the Court of Reference Judge, Bagh. The learned Reference Judge vide judgment and decree dated 31.10.2013, enhanced the compensation from Rs.3,50,000/- to Rs.4,50,000/- per *kanal* along with 15% compulsory acquisition

charges. The landowners filed appeal before the High Court for further enhancement in the compensation, whereas, the appellants, herein, also filed appeal for setting aside the judgment and decree of the Reference Judge. The learned High Court vide impugned judgment dated 29.10.2015, while accepting the appeal filed by the landowners further enhanced the compensation from Rs.4,50,000/- to Rs.5,20,000/- per *kanal* and dismissed the appeal of the appellants. Now the appellants filed the instant appeal for setting aside the judgments/decrees of both the Court below.

3. Raja Anjam Feroz, Advocate, the learned counsel for the appellants argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that at the time

of making enhancement in the amount of compensation the kind of land and its location has not been considered by the Courts below. He forcefully contended that the landowners failed to prove their claim by producing the cogent evidence, but despite that, the Courts below enhanced the compensation which is not permissible under law. He also added that the Courts below while passing the impugned judgments have not appreciated the evidence produced by the appellants in a legal manner; therefore, the impugned judgments are based on misreading and non-reading of evidence. He also submitted that the learned Reference Judge while passing the impugned judgment has recorded the findings that the evidence produced by the appellants supports the version of the appellants, but despite that has not discussed and considered the same. The learned High Court has also not taken into

consideration the illegality committed by the Reference Judge and further enhanced the compensation in an arbitrary manner. He prayed for setting aside the judgments of both the Courts below.

4. On the other hand, Sardar Muhammad Rasham Khan, Advocate, the learned counsel for the respondents strongly opposed the arguments advanced by the learned counsel for the appellants. While raising a preliminary objection, he submitted that the appellants filed the instant appeal beyond the prescribed period of limitation; therefore, the same is liable to be dismissed on this sole ground. However, on perusal of record we directed the counsel to argue the case on merits. He further contended that the impugned judgment is perfect and legal as the learned High Court has not committed any

illegality while handing down the same. He added that the learned Judge of the High Court after evaluating the evidence brought on record in a legal manner has rightly enhanced the compensation and the learned counsel for the appellants failed to point out any misreading or non-reading of evidence, hence, interference by this Court is not warranted under law. He lastly submitted that the landowners proved their claim by producing the cogent evidence and the learned High Court enhanced the compensation while relying upon the same, therefore, the argument of the learned counsel for the appellants in this regard is ill-founded. He prayed for dismissal of the instant appeal.

5. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with

the impugned judgment. It is spelt out from the record that the notification under section 4 of the Land Acquisition Act, 1894, was issued on 08.08.2011, whereas, the award was announced on 25.01.2012. The Collector Land Acquisition determined the compensation of the acquired land as Rs.3,50,000/- per *kanal*. The claim of the landowners before the Reference Judge was that the market value of the acquired land is not less than Rs.9,60,000/- per *kanal*. The learned Reference Judge enhanced the compensation from Rs.3,50,000/- to Rs.4,50,000/- per *kanal* and on appeal the learned High Court further enhanced the compensation as Rs.5,20,000/- per *kanal*. Now the appellants have filed the instant appeal for setting aside the judgments of both the Courts below and restoration of the compensation determined by the Collector, whereas, the landowners have not filed appeal

against the judgment and decree of the High Court. From the scrutiny of the record it reveals that the landowners in support of their claim produced one year average price of the land of the relevant village, Exh.PA, prepared by the Revenue Department, along with some other documents and got recorded the statements of 6 witnesses and one of the landowners also recorded his statement as a witness. One year average price assessed by the Revenue Department shows that the same is based on 7 sale-deeds executed in the same vicinity during the year 2011. In rebuttal, the appellants, herein, produced 3 sale-deeds and also got recorded the statements of two witnesses. At first, we would like to examine the evidence produced by the appellants, herein, as the learned counsel for the appellants forcefully argued before this Court that the evidence produced by the appellants

has not been appreciated by the Courts below in a legal manner. The sale-deed, Exh.DA, executed on 22.12.2011, shows that from the same village the land measuring 3 *marla* was sold against a consideration of Rs.90,000/-. The sale-deed, Exh.DB, executed on 01.12.2011, shows that the land measuring 13 *marla* was sold against a price of Rs.3,70,000/, whereas, through sale-deed, Exh.DC, executed on 02.05.2012, the land measuring 5 *marla* was sold against a price of Rs.1,75,000/-. It may be observed here that it is now settled that for determining the compensation, the best evidence is the sale-deeds executed immediately after issuance of the notification under section 4 of the Land Acquisition Act, 1894 or prior to the issuance of the same. After examining the sale-deeds produced by the appellants, it appears that the sale deeds, Exh.PA and Exh.PB are the

relevant as the same were executed after the issuance of notification under section 4 of the Land Acquisition Act and prior to the issuance of the award. After going through these sale-deeds we are of the view that while leaving aside the evidence produced by the landowners if only the sale-deeds produced by the appellants in evidence are considered even then the conclusion will be the same as drawn by the learned High Court. In such state of affairs, when the evidence produced by the appellants itself supports the judgment of the High Court, we do not intend to go into the other material available on record as the landowners have not filed appeal against the judgment of the High Court. Keeping in view the overall circumstances of the case, we are of the view that the learned High Court has not committed any illegality while passing the

impugned judgment; hence, interference by this Court is not warranted under law.

In the result, we dismiss this appeal but with no order as to costs.

Mirpur, **JUDGE** **JUDGE**
__.11.2016