SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No. 145 of 2016

(PLA filed on 2.5.2016)

Development Authority, Muzaffarabad, through Chairman Development Authority, Muzaffarabad.

.... APPELLANT

VERSUS

1. Malik Attique-ur-Rehman s/o Faqir Muhammad Awan, r/o Ward No. 2 Chatter Domail, Muzaffarabad.

..... RESPONDENT

2. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, having his office at New Secretariat, Complex Chatter, Muzaffarabad.
3. Board of Revenue, through Senior Member Board of Revenue, New Secretariat, Muzaffarabad.
4. Commissioner, Muzaffarabad Division, Old Secretariat, Muzaffarabad.
5. Deputy Commissioner/Collector District Muzaffarabad, Old Secretariat, Muzaffarabad.
6. Patwari, Circle Ambore, Muzaffarabad.
7. Muhammad Hanif s/o Gul Zaman, r/o Chatter Domail, Muzaffarabad.
8. Collector Land Acquisition Urban, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 20.4.2016 in Writ Petition No. 78 of 2015)

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

FOR RESPONDENT NO.1: Mr. Abdul Rashid Abbasi, Advocate.

Date of hearing: 7.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— A piece of Land measuring 12 kanal bearing survey Nos. 1095, 1096 and 1097 was awarded through award No. 11/2012 drawn on 19th October, 2012 for construction of slaughter house. Respondent No.1, on 13th January, 2015, filed a writ petition in the High Court to the effect that he has applied to the Prime Minister for de-awarding of land measuring 2 kanal, 4 marla bearing survey No. 1097. The Prime Minster ordered for de-awarding of the land. The respondents have not completed the process of de-award. He requested that a direction be issued to the official respondents to complete the

process of de-award. A learned single Judge in the High Court, through the impugned judgment dated 20th April, 2016, directed the official respondents to de-award the whole land acquired through award No.11/2012, hence, this appeal by leave of the Court.

2. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the appellant, submitted that the land measuring 12 kanal was acquired for public purpose i.e. construction of the slaughter house. The land measuring 2 kanal 4 marla was in the ownership of respondent No.1, while the other land was in the ownership of the other land owners of the locality. He submitted that it is only the concerned department and the Collector who can determine the public purpose. The learned counsel referred to the case reported as *Administrator Municipal Committee Kotli and another vs. Muhammad Abdullah and 3 others* (2001 SCR 128). The learned counsel further argued that the land is not found surplus. It is

required for construction of slaughter house. When no land is found surplus how it can be de-awarded. The learned counsel submitted that the appellant-authority is in need of land. The learned counsel relied upon the case reported as *Sajida Maqsood vs. Azad Government through its Chief Secretary, having his office at Civil Secretariat, Muzaffarabad and others* (2013 SCR 461).

3. While controverting the arguments, Mr. Abdul Rashid Abbasi, Advocate the learned counsel for respondent No.1 submitted that the land is not suitable for construction of the slaughter house. The slaughter house is being constructed with the expenditures of funds by the City Development Project. The NESPAK is consultant of the project and NESPAK through letter dated 6th March, 2014 addressed to the Project Director, PMU-MCDP, Muzaffarabad, has apprised that the subject land is not suitable for construction. An alternate suitable land free from local hazards and site encumbrances be

arranged. He referred to another letter dated 26th May, 2014 addressed by Chairman Development Authority, Muzaffarabad to Deputy Commissioner, Muzaffarabad, whereby Chief Secretary and Finance Minister convened two meetings for two different occasions in connection with projects run by MCDP, wherein the representatives of SEERA, NESPAK, PMU-MCDP and Development Authority, Muzaffarabad participated and it was decided that the land acquired for the slaughter house is not suitable, therefore, the arrangements for alternate land be made. The learned counsel also referred to the minutes of review meeting whereby the Commissioner, Muzaffarabad Division and the Chairman Development Authority, Muzaffarabad were directed to identify suitable alternate land for the purpose. The learned counsel defended the impugned judgment of the High Court and requested for dismissal of appeal.

4. We have heard the learned counsel for the parties and also perused the record. Under the Muzaffarabad City Development Project, MCDP, the land measuring 12 kanal was acquired for construction of slaughter house on the initiative of the Chairman Development Authority, Muzaffarabad in village Ambore through award No. 11/2012 drawn on 19th September, 2012. A perusal of the award reveals that the land was an evacuee land which was allotted to the different persons including respondent No.1, herein. In response to the notification issued under section 4 of the Land Acquisition Act, 1894, the land owners appeared before the Collector land Acquisition and demanded the compensation @ Rs.300,000/- per marla. The record also shows that respondent No.1, moved an application to the Prime Minister for de-awarding of the land measuring 2 kanal 4 marla comprising survey No. 1097 on the ground that it is a precious land and it has potential to be utilized for commercial

purpose. The Prime Minister, on 30th July, 2012, ordered for shifting of slaughter house to some other suitable place. Some photocopies of the letters purportedly shown to have been issued by the NESPAK, that some part of the land is not suitable for construction of slaughter house. At one side, it is a photocopy whether it was official communication of NESPAK or not, secondly, it is not opinion of the NESPAK rather a person who has addressed a letter himself stated that it has been informed that the land adjacent to the road is not available for construction, whereas, part of the area is also prone to flooding being sited along River Jhelum. It is erroneous that at one hand the respondent claims that his land is most precious land and has a potential to be utilized for commercial purpose and on the other hand, on the basis of some letters claims that the land is not suitable for construction. If the land is not suitable for construction how this land can be utilized for commercial purposes. A photocopy of the letter referred to by Mr. Abdul

Rashid Abbasi, the learned counsel for the respondent, purportedly written by Chairman Development Authority, Muzaffarabad in which the Chairman has shown to suggest that alternate land be provided in village Manakpiyan is also part of the record. It is interesting to note that the Chairman Development Authority in his comments sent to the Board of Revenue on 15th November, 2012, has categorically stated that without acquiring the land of Malik Attique-ur-Rehman, the project cannot be completed. The Site Selection Committee comprising of the XEN Buildings, the Assistant Commissioner, Muzaffarabad, the representatives of the department, the Deputy Commissioner the Chairman Site Selection Committee issued suitability certificate for construction of slaughter house. It may be observed that it is only the Collector who has authority to determine the suitability of the land and not the land owners as to whether any land is suitable for the proposed project or not. The Collector on

the report of the Site Selection Committee and on the request of the Chairman Development Authority, Muzaffarabad declared the land suitable for construction of the slaughter house. This Court in a case reported as *Administrator Municipal Committee Kotli and another vs. Muhammad Abdullah and 3 others* (2001 SCR 128), has laid down the rule of law for determining the public purpose in context of land acquisition. It was observed in para 8 of the referred judgment as under;

> "8. Even the question of public purpose cannot be determined by the High Court in exercise of writ jurisdiction because it is always the Collector Land Acquisition who determines under section 4 of the Land Acquisition Act as to whether a purpose is a public purpose or not. In a case reported as Muhammad Ashraf Khan vs. Revenue E.A.C. and 7 others [1980 CLC 1504] it was observed that public purpose broadly speaking means any purpose aiming at promotion of general welfare. Whether a purpose amounts to public purpose is a matter for Government and not for the High Court to decide."

The land was acquired by the Collector through a notification. The order of the worthy Prime

Minster passed merely on a white paper has no value in the eye of law. Such an order cannot be acted upon. Our this view finds support from the case reported as *Administrator Municipal Committee Kotli and another vs. Muhammad Abdullah and 3 others* (2001 SCR 128), wherein it was observed as under:-

> "…Thus the notification issued by the Collector Land Acquisition under section 4 of the Land Acquisition Act could not be cancelled by the Prime Minster by passing an order on the application of respondent that the land may be de-awarded. In a case reported as *Government of Punjab vs. Sikandar Khan and others* [PLD 1987 Peshawar 68] it was observed that in acquisition cases notification issued under section 4 of the Land Acquisition Act could be cancelled only by a notification as contemplated by section 21 of the General Clauses Act, 1897. Thus, mere order on the application submitted by the respondent to Prime Minister that the land may be de-awarded is not sufficient in the eye of law to stop the acquisition proceedings initiated by the Collector Land Acquisition."

5. There is another aspect of the case that the acreage of total acquired land comes to 12 kanal. The claim of respondent No.1 for de-awarding of the land is only to the extent of land

measuring 2 kanal, 4 marla. The writ petition was filed in the High Court only to the extent of land measuring 2 kanal, 4 marla and a direction was sought only to the extent of said land, but a learned Judge in the High Court without writ petition of any other person issued direction for de-awarding of the whole land and shifting of the slaughter house from the site of acquired land. The judgment of the High Court is against law and not maintainable.

The result of the above discussion is that the appeal is accepted and the impugned judgment of the High Court is set aside. The writ petition No. 78/2015 filed by Attique-ur-Rehman is dismissed. No order as to costs.

CHIEF JUSTICE JUDGE

Muzaffarabad
12.2016.