SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 54 of 2016

(PLA filed on 17.12.2015)

MDA, through Chairman Development Authority, Tariqabad, Muzaffarabad.

.... APPELLANT

VERSUS

1. Muhammad Farooq Abbasi,
2. M. Abdul Rehman Abbasi, sons of Haji Khani Zaman Abbasi.
3. Khursheed Hussain Abbasi s/o Mir Zaman Abbasi.
4. Resham Jan, widow.
5. Zahid Abbasi, son,
6. Kalsoom Bibi,
7. Rukhsana Bibi,
8. Shamim Bibi,
9. Noreen,
10. Riffat Abbasi,
11. Farzana d/o Mirzaman Abbasi.
12. Resham Jan.
13. Mst. Shahzadi Begum d/o Haji Khanizaman r/o Mera Tanaolian, Tehsil and District, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 20.10.2015 in Civil Appeal No. 139 of 2013)

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

FOR THE RESPONDENTS: Sardar Pervaiz Akhtar, Advocate.

Date of hearing: 6.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— The titled appeal by leave of the Court arises out of the judgment of the High Court dated 20th October, 2015, whereby the appeal filed by the appellant has been dismissed.

2. The precise facts of the case are that a *Shamilat Deh* land under Awards No. 5/91 and 6/91 drawn on 10th January, 1991, was acquired for the public purpose @ Rs.50,000/- per kanal. The respondents filed reference application, which was entrusted to the Reference Judge. After necessary proceedings, the Reference Judge, enhanced the

compensation amount from Rs.50,000/- to Rs.90,000/- per kanal along with 15% Compulsory Acquisition Charges. The appellant, herein, filed an appeal in the High Court. A learned Judge in the High Court, through the impugned judgment dated 20th October, 2015 dismissed the appeal, hence, this appeal by leave of the Court.

3. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the appellant, submitted that while resolving issue No.3 the Reference Judge observed that the land is *Shamilat Deh* land. If respondents are land owners and have any share in the *Shamilat Deh,* then they are entitled to compensation according to their shares but while concluding the judgment, declared them entitled for compensation of the land. The learned counsel submitted that the High Court has incorrectly dismissed the appeal. The learned counsel relied upon an unreported judgment of this Court titled *Development Authority*

Muzaffarabad, through its Chairman vs. Abdul Latif Abbasi and others (Civil Appeal No. 353 of 2014, decided on 28th March, 2016).

4. Sardar Pervaiz Akhtar, Advocate, the learned counsel for the respondents, submitted that the respondents are owners in the village. They are in possession of the land and are entitled for compensation of land in their possession.

5. We have heard the learned counsel for the parties and also perused the record with utmost care. It is undisputed that the acquired land is *Shamilat Deh* land. The land owners, respondents herein, in the reference application claimed that they are in possession of the *Shamilat Deh* land, as such, they are entitled for compensation of the land.

6. *Shamilat Deh* land is owned by the whole proprietary body of the village. An owner in the village cannot claim exclusive ownership of a particular area of *Shamilat Deh* land. The possession of one land owner in *Shamilat Deh* is

the possession of the whole proprietary body of the village and such possession is always subject to partition. The proposition has been resolved by this Court in the case titled *Development Authority Muzaffarabad, through its Chairman vs. Abdul Latif Abbasi and others* (Civil Appeal No. 353 of 2014 decided on 28th March, 2016), wherein, in para 5, it was observed as under:-

> "5. …The *shamilat deh* land is owned by the whole proprietary body of the village. An owner in the village cannot claim exclusive ownership of a particular area of *shamilat deh* land. The possession of one land owner in *shamilat deh*, is the possession of the whole proprietary body of the village and such possession is always subject to partition. Our this view is fortified by the judgment of this Court delivered in the case reported as *Muhammad Bashir & 6 others vs. Azad Govt. & 27 others* [2013 SCR 185), whereby it was observed as under:-
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> > "6…..admittedly the disputed land is '*Shamlat Deh*' land which has not partitioned as yet. Under the law, every inhabitant of the village is owner of '*Shamlat Deh*' according to his proportionate share and on the basis of possession over the '*Shamlat Deh*' land…..'

> Thus, an owner in village can claim compensation of undivided *shamilat deh* land only to the extent of his share in the *shamilat deh* land. When the land is admittedly a *shamilat deh* land, the whole proprietary body of the village is owner of such land. No Court has power to order for payment of compensation of *shamilat deh* land to a particular person who is in possession of the *shamilat-deh* land. The Reference Judge as well as the High Court failed to consider the legal question of ownership of the land and ordered for payment of compensation only on the ground of possession."

The appeal is partly accepted and it is declared that compensation of the land will be payable to the whole proprietary body of the village and the respondents, if proved to be amongst the owners in the village, they will be entitled for compensation according to their shares in *Shamilat Deh,* which shall be determined by the Revenue Authorities.

With the observations made hereinabove, the appeal is disposed of. No order as to costs.

CHIEF JUSTICE JUDGE

Muzaffarabad
__.12.2016.