SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No. 148 of 2015

(PLA filed on 8.6.2015)

Umar Raza s/o Nazir Ahmed r/o Panjeri, District Bhimber.

.... APPELLANT

VERSUS

1. Chairman Board of Intermediate and Secondary Education, Mirpur.
2. Board of Intermediate and Secondary Education, through its Chairman.
3. Collector Land Acquisition/Assistant Commissioner, Mirpur.
4. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, Muzaffarabad.
5. Mirpur Development Authority, Mirpur through its Director General.
6. Dep[uty Commissioner, Mirpur.
7. Commissioner Mirpur Division, Mirpur.

..... RESPONDENT

8. Abdul Karim s/o Muhammad Ashraf r/o House No. 151, Sub-sector F/2, Mirpur.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.5.2015 in Writ Petition No. 326 of 2013)

FOR THE APPELLANT:	Mr. Muhammad Reaz Alam, Advocate:
FOR THE RESPONDENTS:	M/s Raja Inamullah & Javed Najam-us-Saqib, Advocates.

Date of hearing: 20.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— The titled appeal by leave of the Court arises out of the judgment of the High Court dated 19th May, 2015, whereby the writ petition filed by the appellant, has been dismissed.

2. The appellant is allottee of Plot No. 115-A, situate in Sector F/3, part 1, Mirpur. The respondent, Chairman , Board of Intermediate and Secondary Education (BISC), made a request to the Collector Land Acquisition for acquisition of the said plot for construction of approach road to the newly constructed halls and building. The notification under section 4 of

the land Acqusiotn Act, 1894 was issued. The appellant filed objections before the Collector and thereafter award was drawn on 25th October, 2013, against the price of Rs.55,25,000/- along with 15% compulsory charges, total amounting to Rs.63,53,750/-. The appellant challenged the said award by way of writ petition in the High Court on 5th December, 2013, alleging therein, that the plot is being acquired with mala-fide intention. There is alternate approach road available for the newly constructed building and halls. The Chairman, (BISC) wants to construct his house over the said plot. After necessary proceedings, the learned Chief Justice in the High Court through the impugned judgment dated 19th May, 2015, dismissed the writ petition, hence, this appeal by leave of the Court.

3. Mr. Muhammad Reaz Alam, Advocate, the counsel for the appellant, submitted that the judgment of the High Court is against law and the record. The learned counsel referred to the

site plan of sector which forms part of the paper book at page 17 and argued that there is alternate approach road available to the newly constructed buildings. In presence of the said approach road there is no need for another approach road, the respondents have acted mala-fidely to snatch the plot allotted to the appellant. The learned counsel submitted that the respondents have played trick with the appellant. In the negotiation, they agreed to pay an amount of Rs.12,800,000/- to the appellant but instead of paying the said amount the compensation amount including the compulsory acquisition charges has been fixed as Rs.63,53,725/-, which is unjust and arbitrary. The value of the plot allotted to the appellant is more than 13 million rupees as was agreed between the parties. The High Court has not considered this aspect of the case. He requested for acceptance of appeal.

4. While controverting the arguments, Raja Inamullah, Advocate, counsel for the other

side, submitted that there is no mala-fide on the part of the respondents. The new building of the (BISC), Mirpur including the examination halls have been constructed. There is no approach road to the said buildings. A proposal was made that the plot of the appellant be acquired because the road can be made by acquiring only one plot and if road is constructed from the other side, then 4 plots are to be acquired, therefore, it was in the interest of institution to award one plot. The learned counsel submitted that the appeal is not maintainable. The alternate remedy by way of reference is available to the appellant. He submitted that the appellant claims that an amount of Rs.12,800,000/- was agreed between the parties. The matter relates to compensation which can only be agitated by way of reference before the Reference Judge. The appeal is not maintainable.

5. We have heard the learned counsel for the parties and perused the record. On the

initiation of Board of Intermediate and Secondary Education, Mirpur, the Collector Land Acqusiotn, on 13th March, 2013, issued notification under section 4 of the Land Acquisition Act and the award was drawn on 25th October, 2013. A perusal of award reveals that in response to notice under sections 9 and 10 of the land Acquisition Act, the appellant appeared through Haroon Bilal, Advocate and filed written objections that he has purchased the plot for residential purpose. It was stated in the objections that one year prior, in the negotiation with the appellant for acquiring the plot, the respondents agreed to pay compensation to the tune of Rs.12,800,000/-. The present market price of the plot is one million rupees per malra, therefore, he shall be paid compensation at the same rate. After considering the record, the Collector land Acquisition fixed the compensation @ Rs.5,525,000/- and 15% compulsory acquisition charges amounting to Rs.828,750/-, total

amounting to Rs.6,353,750/-. The appellant filed writ petition on 15th December, 2013. It appears from the perusal of the writ petition and award that dispute raised by the appellant is in respect of price of the plot. Under section 18 of the Land Acquisition Act, 1894, if the land owner is dissatisfied from the compensation assessed by the Collector Land Acquisition, he may file an application for referring the matter to the Court for enhancement of compensation. The appellant instead of filing the reference application filed the writ petition.

6. Under section 44 of the Azad Jammu & Kashmir Interim Constitution Act, 1974, an aggrieved person may file a writ petition if there is no alternate efficacious remedy available to the petitioner. In presence of alternate efficacious remedy, the writ petition is not maintainable. Mere alternate remedy is no bar for maintaining a writ petition. The remedy must be efficacious. In the writ petition, the appellant has claimed that value of the plot is 17 million

rupees. It was also averred by the appellant in the writ petition that the plot is not required for public purpose. The Chairman of the Board is acquiring the plot for construction of his personal house. It may be observed that determination of public purpose is in the ambit of Collector Land Acquisition. Mere allegation of mala-fide is not sufficient for proving the same. In a case reported as *Administrator Municipal Committee Kotli and another vs. Muhammad Abdullah and 3 others* (2001 SCR 128), it was observed in para 6 and 8 as under;

> "6. After hearing the respective contentions of the learned counsel for the parties, the point which needs resolution is as to whether the acquisition proceedings initiated by the appellants against respondent No.1 are based on mala fides of the appellants. It was alleged by respondent No.1 before the High Court that the whole proceedings initiated by the Collector Land Acquisition and the Municipal Committee Kotli are based on mala fide. However, the particulars or details of mala fide have not been alleged by respondent. By now the law stands settled that a person who challenges the bona fidely of a public functionary who contends that the public functionary acted mala-fide he is under an obligation to establish his

case on convincing and cogent legal evidence. In a case reported as Ajit Kumar Das vs. Province of East Pakistan [PLD 1959 Dacca 586] it was observed that it lies heavily on the person who challenges the bona fide of a public authority or who contents that authority has acted mala-fidely to establish his case on cogent legal evidence. He cannot succeed by leaving the matter in the air and to the ingenuity of his counsel in creating a mere atmosphere of suspicion which falls far short of legal proof. It was further observed that it is well settled that where an Act or Regulation commits to an executive authority the decision as to what is necessary and expedient and that authority makes the decision, it is not competent to the Courts to investigate the grounds or the reasonableness of the decision in the absence of bad faith.....'

"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 Board of Intermediate and Secondary Education (BISC), Mirpur initiated the process for acquisition of the plot on the ground that the Board is constructing a new building and the said plot is required for approach road as there was no alternate approach road. The Collector after necessary proceedings drew the award. Thus, the land/plot was acquired for public purpose bona-fidely. The contention of the counsel for the appellant that Chairman Board has initiated the process for acquisition of the said plot for constructing his own house is falsified because according to the counsel for the appellant two Chairmen of the Board have been changed since initiation of process of the acquisition and road has been constructed through the said plot. The land was acquired for public purpose. Mala-fide is not proved.

7. It is in our judicial notice that prices of the plots in Mirpur City are very high and compensation assessed is not adequate. The fact is supported from the award itself where the

Collector land Acquisition observed that negotiations were taken place between the parties and in the negotiations, the compensation was agreed as Rs.12,800,000/-, but the fact remains that for enhancement of compensation there is a remedy available to the land owners under section 18 of the Land Acqusiotn Act, 1894. The remedy by way of reference application under section 18 of the land Acquisition Act, 1894 for enhancement of compensation is not only an alternate remedy but also is an efficacious remedy. The writ petition was not maintainable. It has rightly been dismissed.

Finding no force in this appeal, it is hereby dismissed with no order as to costs.

CHIEF JUSTICE JUDGE

Mirpur.
__.12.2016.