

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 06 of 2017
(PLA filed on 18.08.2016)

Ahmed Hussain Shah s/o Mir Ahmed Shah, r/o Bagh,
Tehsil & District Bagh.

.... APPELLANT

VERSUS

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
2. Collector District Bagh having his office at Bagh.
3. Collector Land Acquisition, District Bagh, having its office at Bagh.
4. Secretary Education (Colleges), having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
5. Deputy Education Colleges, Muzaffarabad.
6. Director Education Planning, Muzaffarabad.

..... RESPONDENTS

7. Miss Sajida Begum (died) w/o Mir Ahmed Shah,

8. Anwar Hussain Shah s/o Mir Ahmed Shah,
9. Saeed Ahmed Shah s/o Mir Ahmed Shah,
10. Miss Ayesha Begum d/o Mir Ahmed Shah,
11. Miss Shameem Begum d/o Mir Ahmed Shah All the r/o village Bagh, Tehsil and District Bagh.
12. Nazeer Ahmed Shah s/o Anyat Ali Shah,
13. Gul Ahmed Shah s/o Yaqoob Shah (deceased), represented by:
 - (i) Shabir Hussain Shah,
 - (ii) Ahmed Hussain Shah,
 - (iii) Amjid Hussain Shah, sons,
 - (iv) Naseem Akhtar,
 - (v) Jameela Akhtar,
 - (vi) Robina Akhtar, daughters of Gul Ahmed Shah.
14. Mir Akbar Shah s/o Yaqoob Shah (deceased), represented by:
 - (i) Mohsin Ali Shah,
 - (ii) Hassan Ali Shah, sons,
 - (iii) Shaheen Akhtar,
 - (iv) Rozina Bibi,
 - (v) Shugufta Bibi,
 - (vi) Sumaira Bibi,
 - (vii) Rabia Bibi,
 - (viii) Maria Bibi,
 - (ix) Shamim Akhtar,
 - (x) Faiza Akhtar d/o Mir Akbar Shah r/o Mohakhra City, Bagh.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 20.06.2016 in Writ Petition No.1668/2013)

FOR THE APPELLANT: Sardar Karam Dad Khan,
Advocate.

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

Date of hearing: 10.04.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The titled appeal by leave of the Court is the outcome of the judgment of the High Court dated 20.06.2016, whereby the writ petition filed by the appellant, herein, has been dismissed in limine.

2. The grievance of the appellant is that his land comprising survey No.419 measuring 3 *kanal*, 2 *marla*, situate at village Bagh, was awarded for construction of the Inter College Bagh, on 26.05.1970. He did not receive the compensation amount as the same being less to the market value of the land. The Education Department vide the script dated 19.05.1985, informed the Collector Land Acquisition that the department needed only 1½

kanal of the land for the purpose of the College. He claims that respondents Nos.2 and 3 have not proceeded for fresh award on the basis of the above mentioned script of the Education Department. In this regard, he filed a writ petition before the High Court on 26.10.2013, soliciting the direction to the respondents for payment of the compensation of land in question at the price of present market value and prayed for rent with effect from 13.02.1988. The learned High Court dismissed the writ petition in limine through the impugned judgment, hence this appeal by leave of the Court.

3. Sardar Karam Dad Khan, Advocate, the learned counsel for the appellant after narration of the necessary facts of the case submitted that the impugned judgment of the High Court is against the facts and law. The High Court has failed to properly appreciate the legal and the factual propositions involved in this case. The appellant has been deprived of his valuable rights. The official respondents failed to arrange the funds for payment of the compensation at appropriate time. The appellant is

running from the pillar to post for remedy since last four decades. He is entitled for the compensation at the rate of prevailing market value of the land, therefore, while accepting this appeal the relief prayed in the writ petition may kindly be granted.

4. Conversely, Mr. Raza Ali Khan, Advocate-General, the learned counsel for the official respondents strongly opposed the appeal on the ground that the writ petition has been filed against law and the facts. The appellant has got no locus standi to invoke the extra ordinary remedy of writ jurisdiction. The matter has already been finalized at the proper forum. The appellant has availed the remedy available under law and failed to prove his version, thus, in this state of affairs the writ petition has rightly been dismissed by the learned High Court in limine.

5. We have heard the learned counsel for the parties and gone through the record made available. According to appellant's own version the land relating to which he is claiming the remedy was awarded on 26.05.1970. The department in whose favour the

land was awarded, also provided the estimated cost. The record annexed with the writ petition also speaks that the appellant was having knowledge of the award since very beginning. Even in the year 1985, he approached the concerned authority regarding the issue of the possession of the land in dispute. Thereafter, the matter was also brought before the civil Court. The appellant himself produced the record which speaks that notice was issued for disbursement of the compensation in the year 1985. According to enforced scheme of law, all the matters relating to the measurement of the land, adequacy of the amount of compensation determined, apportionment of the compensation among the landowners and the ancillary issues fall within the competence of the Reference Judge under the provisions of section 18 of the Land Acquisition Act, 1894. Same like, under the provisions of section 28 of the Land Acquisition Act, 1894, the Court is empowered to award compensation on the enhanced amount with 6% per annum interest rate. The appellant's own produced record proves that the matter was brought before the

civil Court, thus, in this state of affairs according to the clear constitutional provision the remedy of writ can only be availed when no alternate, efficacious remedy is provided under law. According to peculiar facts of this case, the appellant has filed the writ petition relating to the matter regarding which efficacious alternate remedy is provided under law, thus, under the provisions of section 44 of the Interim Constitution Act, 1974, in such like matters the writ jurisdiction cannot be exercised.

6. There is yet another aspect of the matter that the award was issued in the year 1970. The writ petition has been filed after the lapse of more than 43 years' period, thus, the principle of laches is also fully attracted in this case. In this state of affairs, the impugned judgment of the High Court does not suffer from any illegality. The judgment of the High Court is speaking one, well reasoned, consistent with the principle of law and also supported by legal precedents on the subject. The High Court has rightly dismissed the writ petition in limine because such like fruitless litigation cannot be allowed which unduly

burdens the parties to face the agony of the litigation and ultimately results into wastage of the Court's time.

For the above stated reasons, this appeal stands dismissed with no order as to costs.

Muzaffarabad,
_ .04.2017

CHIEF JUSTICE

JUDGE
(J-II)

Date of announcement: 18.04.2017