

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.211 of 2016
(PLA filed on 23.8.2016)

1. Sakeena Begum widow of Raja Hadayatullah Khan (late),
2. Raja Muhammad Dilpazeer Khan,
3. Raja Shahab-ud-Din,
4. Raja Naveed-ud-Din, sons of Raja Hadayatullah Khan (late),
5. Mst. Gulshad Bibi d/o Raja Hadayatullah Khan (late) all residents of Bhagsar, Tehsil & District Hattian Bala.

.... APPELLANTS

versus

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, Muzaffarabad.
2. Deputy Director Education Planning, Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at new District Complex, Block-L, Muzaffarabad.
3. Collector Land Acquisition, Muzaffarabad, having his office at New District Complex, Block-A, Muzaffarabad.

..... RESPONDENTS

4. Raja Bader Munir Khan s/o Raja Hadayatullah Khan r/o Bhagsar, Tehsil & District Hattian Bala.
5. Mst. Amina Haider widow of Raja Bader-ud-Din Zaffar (late),
6. Raja Haider Ali s/o Raja Bader-ud-Din Zaffar (late),
7. Meerb Fatima d/o Raja Bader-ud-Din Zaffar (late),
8. Anaya Raja d/o Raja Bader-ud-Din Zaffar (late), respondents No.6 to 8 are minors through their natural

guardian/real mother, proforma respondents No.5, who all are presently residing Buraidah, Al-Qaseem Saudi Arabia.

..... PROFORMA RESPONDENTS

(On appeal from the judgment & decree of the High Court, dated 21.06.2016 in Civil Appeals No.48 & 72 of 2004]

FOR THE APPELLANTS: Mr. Muhammad Hanif Khan Minhas, advocate.

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

Date of hearing: 11.4.2017

JUDGMENT:

Ghulam Mustafa Mughal, J.—This appeal filed has been filed under section 42(11) of the Azad Jammu & Kashmir Interim Constitution Act, 1974, against the judgment and decree passed by the High Court on 21.6.2016.

2. Facts forming background of the captioned appeal are that the land bearing survey No.19-min, measuring 5 kanal was awarded for construction of the building of Government Girls Middle School Dhal Chathian, Tehsil & District Hattian Bala through award No.23/1994, returned on 20.7.1994. The compensation of the land was determined by the Collector

Land Acquisition as Rs.36,000/- per kanal vis-à-vis to the claim of appellants, herein, for Rs.500,000/- per kanal. Feeling dissatisfied from the compensation determined by the Collector, the appellants herein, brought a reference before the Reference Judge/District Judge Muzaffarabad on 26.9.1994. The reference was entrusted to the Additional District Judge Muzaffarabad for hearing and disposal. After necessary proceedings, the learned Reference Judge through his judgment and order dated 11.6.1995, accepted the reference partly and enhanced the compensation amount from Rs.36,000/- to Rs.40,000/- per kanal. The appellants feeling aggrieved from the judgment dated 11.6.1995, challenged the legality and correctness of the same before the High Court. For the reasons recorded in the judgment dated 31.5.2000, the case was remanded to the Additional District Judge. On remand, the Additional District Judge Hattian Bala further enhanced the compensation amount to the tune of Rs.60,000/- per kanal along with 15% compulsory acquisition charges. The learned District Judge also granted 6% interest in favour of the appellants, herein, through his judgment and decree dated 31.3.2004. The appellants assailed the aforesaid judgment before the High Court. The High Court through the impugned judgment and decree dated 21.6.2016, modified the

judgment of the Reference Judge and fixed the compensation as Rs.100,000/- per kanal in addition to 15% compulsory acquisition charges. The appellants have further assailed the judgment on the ground that the land was of commercial nature and while deciding the reference, neither the learned Additional District Judge nor the High Court has taken into consideration its potential as well as commercial value.

3. Mr. Muhammad Hanif Khan Minhas, advocate, counsel for the appellants, vehemently argued that as the land was located near the roadside and both the learned Reference Judge as well as the High Court have not taken into consideration the potential as well as commercial value of the land. The learned counsel submitted that the permanent loss likely to be suffered due to the acquisition of land has also not been considered by the High Court, otherwise the conclusion might have been different. The learned counsel argued that the Courts below have misread the documentary as well as oral evidence and came to an erroneous conclusion.

4. Mr. Raza Ali Khan, the learned Advocate-General, appearing for the respondents, submitted that it could not be proved that the land was located at roadside rather the location of land is far away from the road, as is evident from

the inspection made by the Collector and evidence led by the appellants. The learned Advocate-General submitted that the Courts below have properly appreciated the evidence and have already enhanced the compensation, which cannot further be enhanced.

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

6. So far as the contention of the learned counsel for the appellants, that the appellants were entitled to the compensation of the land to the tune of Rs.5,00,000/- per kanal, is concerned, is devoid of any force. A perusal of the award reveals that the Collector Land Acquisition has assessed the compensation of the acquired land keeping in view the average price of village. The appellants themselves have claimed Rs.1,20,000/- per kanal in their objections. In support of their claim, they have produced documentary evidence, i.e. copies of sale-deeds, (Ex. PA, PB, PC and PD). So far as the sale-deed executed on 3.3.1992 (Ex.PA) is concerned, two marla land along with constructed shops have been transferred through it. Through sale-deeds executed on 17.6.1993 and 6.4.1994, (Ex. PB and PC), the land measuring 16x29 feet and 46x11 feet, has been transferred, respectively, which is of

commercial nature whereas through the sale-deed 24.1.1993, (Ex.PD) land measuring 1 marla along with shop has been transferred. As is evident from the sale-deeds produced by the appellants, small pieces of land have been transferred along with shops, which are commercial in nature, therefore, the same cannot be made basis of determination of the compensation or further enhancement. The oral evidence of the appellants is not of worth consideration. The Collector Land Acquisition while announcing the award, has visited the spot and found that the acquired land is not located at roadside, rather is away from road and cannot be compared with those areas, which are located at roadside. In the light of record as well as the evidence produced by the appellants, it can safely be concluded that reasonable enhancement in the compensation has already been made, hence further enhancement is not justified.

In view of the above, finding no force in this appeal, it is hereby dismissed with no order as to the costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad
.4.2017

Date of announcement: 17.04.2017