

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

1. Civil Appeal No. 234 of 2015
(Filed on 24.8.2015)

1. Mumtaz Qamar s/o Muhammad Feroz,
 2. Bashir Ahmed Awan,
 3. Mehboob Ahmed Awan,
 4. Farooq Ahmed Awan (died) represented by his legal heirs;
 - i) Saima Bibi, widow;
 - ii) Abbas Ali, son,
 - iii) Komal,
 - iv) Iqra,
 - v) Nemra, daughters of Farooq Ahmed Awan.
 5. Mst. Shamim Akhtar, daughter Haji Muhammad Suleman (late),
 6. Haji Sheikh Abdul Qadir s/o Sheikh Abdul Aziz,
 7. Abdul Aziz s/o Ali Khan, residents of Chella Chowk, Tehsil and District, Muzaffarabad.
- APPELLANTS

VERSUS

1. The Government of Azad Jammu & Kashmir, through Chief Secretary, Muzaffarabad.
2. Chief Engineer, P.W.D. (North), Muzaffarabad.
3. XEN, P.W.D., Highway Division (North), Muzaffarabad.

4. District Price Assessment Advisory Committee, through Incharge Committee (Deputy Commissioner), Muzaffarabad.
5. Collector Land Acquisition, City Development Project, Muzaffarabad.
6. Secretary Works, Azad Jammu & Kashmir, Muzaffarabad.
7. Board of Revenue, through Secretary Board/Secretary Board of Revenue Muzaffarabad.
8. Director General SERRA, Azad Govt. of the State of Jammu & Kashmir.
9. Commissioner Revenue Muzaffarabad Division, Muzaffarabad.
10. Collector District, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 26.6.2015 in Civil Appeals No. 10, 11, 19 and 21 of 2011).

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

FOR THE RESPONDENTS: Sardar Javed Naz,
Additional Advocate
General.

2. Civil Appeal No. 241 of 2015
(Filed on 27.8.2015)

1. Azad Govt. of the of State of Jammu & Kashmir, through its Chief Secretary, AJ&K, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
2. Secretary Works, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat Complex, Lower Chatter Muzaffarabad.

3. Chief Engineer, Public Works Department (North), Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
4. Executive Engineer, Public Works Department, Highway Division (North), Muzaffarabad.
5. District Price Assessment Advisory Committee, through Incharge Committee (Deputy Commissioner), Muzaffarabad.
6. Collector, Land Acquisition (Rural), Muzaffarabad.

.... APPELLANTS

VERSUS

1. Bashir Ahmed Awan,
2. Mehboob Ahmed Awan,
3. Farooq Ahmed Awan (died) represented by his legal heirs;
 - i) Saima Bibi, widow;
 - ii) Abbas Ali, son,
 - iii) Komal,
 - iv) Iqra,
 - v) Nemra, daughters of Farooq Ahmed Awan.
4. Mst. Shamim Akhtar, daughter Haji Muhammad Suleman (late),
5. Mumtaz Qamar s/o Muhammad Feroz,
6. Haji Sh. Abdul Qadir Sh. Abdul Aziz r/o Challah Chowk, Tehsil and District, Muzaffarabad.
7. Abdul Aziz,
8. Gohar Rehman s/o Ali Khan r/o Challah Chowk, Tehsil and District, Muzaffarabad,
9. Kabir Hussain s/o Sain,
10. Nawaz Muzaffar,
11. Pervaiz Muzaffar s/o Muhammad Muzaffar Bloch,
12. Ch. Lal Din s/o Muhammad Baig,
13. Yasin s/o Jan Muhammad,
14. Muhammad Farooq s/o Said Alam (died) represented by his legal heirs:

- i). Mst. Shaheen Bibi, widow,
 - ii) Mr. Adil Farooq, son,
 - iii) Mr. Umer Farooq, son,
 - iv) Mst. SamraFarooq, daughter,
 - v) Mst. Mahnoor Farooq, daughter,
15. Tariq Mehmood s/o Sain,
 16. Jamil Tabassum d/o Muhammad Rafique,
 w/o Attique-ur-Rehman,
 17. Syed Hussain Shah s/o Bahadar Shah r/o
 No. 9 to 14 r/o Mohri No. 15 r/o Gojra, No.
 16 r/o Chatter Domel, Tehsil and District
 Muzaffarabad.

..... RESPONDENTS

18. Board of Revenue, Azad Govt. of the State
 of Jammu & Kashmir, Muzaffarabad.
 19. Director General, SEERA, Azad Govt. of the
 State of Jammu & Kashmir, Muzaffarabad.
 20. Commissioner Revenue, Muzaffarabad
 Division, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court
 dated 26.6.2015 in Civil Appeals No. 10, 11, 19
 and 21 of 2011)

FOR THE APPELLANTS:	Sardar Javed Naz, Additional Advocate General.
FOR RESPONDENTS NO. to 8 & 15:	Mr. Muhammad Yaqoob 1 Khan Mughal,
FOR RESPONDENT NO.9:	Mr. Abdul Hamid Khan Shahid, Advocate.
FOR RESPONDENTS NO. 10 & 11:	Sardar Pervaiz Akhtar, Advocate.

Date of hearing: 13.4.2017.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeals are directed against the judgment passed by the Azad Jammu & Kashmir High Court on 26.6.2015 in civil appeals No. 10, 11, 19 and 21 of 2011. Appeal No. 234 of 2015 has been filed by Mumtaz Qamar and others against the said judgment of the High Court for enhancement of compensation, whereas, appeal No. 243 of 2015 has been filed by the Azad Government and others for setting aside the impugned judgment. As both the appeals arise out of the common judgment of the High Court and involve common questions of facts and law, hence, were heard together and are decided as such.

2. The facts forming background of the above entitled appeals are that vide award No. 3/2009, the land of the appellants in appeal No. 234 of 2015 was acquired for construction, extension and widening of West Bank by-pass road from Nalouchi to Chehla. It was claimed

that the appellants have constructed the residential houses and shops on their land. Award No. 12/2009 was issued on 5.11.2009 separately for the compensation of the built-up structures. The compensation of the land was assessed as Rs.110,000/- per marla by the Collector. The appellants were not satisfied from the compensation amount assessed for the built-up structure as well as the acquired land filed a reference before the Reference Judge, wherein it was claimed that their land is situated at Chehla Chouk near the Neelum Bridge, therefore, keeping in view the commercial and potential value of the land, the compensation of the land may be awarded as Rs.1,000,000/- per marla. They also claimed that the compensation of the built-up property may also be enhanced @ Rs.2400/- per Sft. The reference was contested by the respondents. After necessary proceedings, the learned Reference Judge dismissed the reference filed for enhancement of compensation for built-up structure, whereas, the other

reference filed for enhancement of compensation of the acquired land was partly accepted and the compensation was enhanced to the tune of Rs.30,000/- per marla. Feeling aggrieved from the judgment passed by the learned Reference Judge, the appellants, herein, went in appeal before the High Court. The learned High Court partly accepted the appeal and further enhanced the compensation amount up to Rs.200,000/- per marla for the acquired land and for built-up structure enhanced the amount of compensation up to Rs. 1200 Sft. The appellants were not satisfied from the judgment of the high Court and filed this appeal for further enhancement in the compensation amount, whereas, the counter appeal has been filed by the Government for vacation of the impugned judgment.

3. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for Mumtaz Qamar and others, contended that the land of the appellants is situate at Chehla Chouk adjacent to Neelum Bridge. The Collector while

returning the award has not considered the potential and commercial value of the land and the compensation has been fixed by him arbitrarily, without taking into consideration even the average price of the locality. The learned Advocate argued that the compensation of the built-up structure has also not been awarded by the Collector properly and subsequently by the learned High Court in accordance with the rules enforced by the Government at the relevant time, hence, the judgment under challenge is arbitrary, capricious and illegal. The learned Advocate argued that in the same vicinity, the land of the owners was acquired for the construction of main road or either Chehla to Tariqabad by-pass road. The compensation has been fixed by the Courts @ Rs.700,000/- per marla, whereas, Rs.500,000/- per marla has been determined for the land which has been acquired for the construction of Tariqabad road. The learned

counsel placed reliance on the followed judgments:-

1. *Zulfiqar Muhammad Khan & others vs. Azad Govt. and others* (Civil appeal No. 206 of 2014 decided on 3.12.2014;
2. *Raja Abdul Qayyum Khan vs. Azad Government and others* (2016 SCR 623).

4. Sardar Javed Naz, Additional Advocate General, contended that the judgment passed by the High Court is against the record and evidence produced by parties. The learned Additional Advocate General argued that a judgment can only be given on the basis of evidence led by the parties and onus of proof in this case was on the shoulder of the owners who miserably failed to prove that the market value of their land was Rs.1,000,000/- per marla. The learned Additional Advocate General, argued that the High Court, for determination of the compensation amount for the built-up structure, has relied upon the rules which were not in

existence, therefore, the impugned judgment is erroneous. The learned Additional Advocate General argued that the cross appeal filed by the Government may be accepted and the judgment of the High Court may be vacated.

5. Mr. Muhammad Yaqoob Khan Mughal, Advocate, appearing for the appellants Mumtaz Qamar and others, has controverted the arguments and submitted that the respondents have already filed cross appeal in which it is stated that the judgment passed by the High Court wherein the compensation has been partly enhanced in the references, is not proper. The learned counsel argued that the land of the respondents was of commercial nature and this aspect of the land has neither been considered by the Collector while drawing the award nor subsequently by the learned High Court. The learned Advocate prayed for dismissal of the appeal filed on behalf of the Government.

6. M/s Abdul Hamid Khan Shahid Advocate for respondent No.9 and Sardar Pervaiz

Akhtar, Advocate for respondents No. 10 and 11 in appeal No. 241 of 2015, have adopted the arguments advanced by Mr. Muhammad Yaqoob Khan Mughal, Advocate.

7. We have heard the learned Advocates representing the parties and gone through the record. A perusal of record reveals that vide award No. 3/2009 dated 26.3.2009, the land of the appellants, herein, was acquired for up-gradation and widening of Chehla to Naloochi by-pass road. Firstly, award No. 3/2009 was issued for acquisition of the land. Through which, land Khasra No. 585/34 min measuring 6 marla of Haji Muhammad Suleman and land Khasra No. 26 min measuring 9 marla, 1 *Sarsai* and 1 marla, 3 *Sarsai* of Mumutaz Qammar, was acquired, whereas, the land comprising *Khasra* No. 614/577/25 min, measuring 1 marla shop of Haji Sheikh Abdul Qadir, was acquired. A perusal of award further reveals that the Collector determined the compensation of the land @ Rs.1,10,000/- per marla. The land

owners were not satisfied from the aforesaid determination of the compensation. They filed reference before the District Judge, Muzaffarabad on 6.5.2010. Another reference was filed by the appellants, herein, against award No. 12/2009 drawn on 5.11.2009, whereby, the compensation of the built-up structure in shape of houses and shops of the land owners were determined. It was claimed by the land owners that while determining the compensation of the land as well as the built-up structure, commercial and potential value of the land has not been considered by the Collector. Similarly, the prevalent rates issued by the Government for determination of the compensation of the built-up structure were not considered. The references were contested by the Government. After necessary proceedings, the reference filed on behalf of the appellants, herein, for enhancement of the compensation of the built-up structure was dismissed, whereas, the other reference, which was filed for

enhancement of the compensation of the land was accepted and the compensation amount was enhanced to the tune of Rs.30,000/- per marla. The land owners feeling aggrieved from the judgment of the Reference Judge, went in appeal before the Azad Jammu & Kashmir High Court. Different appeals were preferred by different land owners, which were consolidated and decided through the impugned judgment, the appeal of the appellants, herein, has partly been accepted and the compensation amount of the land was further enhanced up to Rs.60,000/- per marla by the High Court and in total it was fixed as Rs.200,000/- per marla, whereas, the compensation of the built-up structure was fixed as Rs.1200/- per sft. The appellants, herein, are still not satisfied and they have preferred this appeal.

8. Firstly, we would like to take up the reference filed by the appellants, land owners, for enhancement of the compensation of the land. Before proceeding further, we may observe

that the Collector has not determined the compensation of the land in view of the statutory law available on the subject i.e. the Land Acquisition Act, 1894, rather the compensation has been fixed in an arbitrary manner on the report of some advisory committee, which has no statutory backing. The proper course in this case was to remand the case for fresh decision to the Collector/Reference Judge but the parties have already consumed a lot of time in prosecuting their cases, therefore, we have decided to resolve the controversy ourselves regarding the compensation on the basis of available record as was done in the case reported as *Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat Complex, Muzaffarabad and 7 others vs. Shahibzada Raja Muhammad Hanif Khan and others* (2013 SCR 513). For determination of the compensation of the acquired land, it was enjoined upon the Collector to consider the relevant provisions

contained in the Land Acquisition Act as well as the potential and commercial nature of the land of the appellants, herein. It was admitted by the Collector that the land as well as the built-up structure was located at Chehla Chauk near Neelum Bridge. The land owners have claimed the amount of compensation @ Rs.1,000,000/- per marla in their respective references and also brought documentary evidence Exh. "PF", "PE" and "PD" in support of their claim. From the perusal of the sale-deeds produced by the land owners, it appears that the average price of the sale-deeds of the acquired land was less than Rs.400,000/- per marla. It has been held by the apex Court in the various judgments that the land should not be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future and market value is the potential value of the property at the time of acquisition which would be paid by a

willing buyer to a willing seller when both are actuated by business principles prevalent in the locality at that time. The apex Court of Pakistan has further observed that if the sale-deeds are not available then there is no harm in accepting the oral evidence in support of the claim provided the same is of worth consideration and confidence inspiring. In the case reported as *Fazalur-Rehman and others vs. General Manager, S.I.D.B. and another* (PLD 1986 Supreme Court 158), the apex Court of Pakistan, in para No. 4 of the judgment observed as under:-

“4. Reason given by the learned High Court judges for fixing the price is difference of period in the issuance of Notifications under section 4 of the Land Acquisition Act, 1894 for village Chak Sikandarpur and village Qazian. Notification in the case of village Sikandarpur was published on 18.6.1973 i.e. six months earlier than that of the Notification for village Qazian. This difference of period was taken by the learned Judges as material factor in fixing

the compensation. It could hardly be the only reason for determining the compensation amount. There are others factors which have to be taken into consideration e.g. the land is not to be valued merely by reference to the use to which it is being put at the time at which it value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future and market value is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by business principles prevalent in the locality at that time. Hence, we allow the appeal with costs.”

Keeping in view the sale-deeds produced by the petitioners and the cases reported as *Azad Govt. vs. Sahibzada Raja Muhammad Hanif Khan and others* and *Fazalur Rehman’ case* (supra) we are inclined to hold that the assessment of the compensation by the Collector

on the basis of recommendations of the Advisory Committee was nullity in the eye of law. The Reference Judge as well as the High Court also failed to take into consideration the aforementioned facts, therefore, while considering the evidence as well as the potential and commercial value of the land, we enhance the compensation of the land @ Rs.300,000/- per marla. The judgment of the Reference Judge as well as the learned High Court to the extent of reference against the acquired land is modified in the terms indicated above.

9. So far as the reference against the built-up structure is concerned, that has been dismissed by the learned Reference Judge without recording any reason and the reasons assigned in his order are not tenable under law. The learned High Court has also failed to consider the fact that at the time of the award as per Government notification, rates for determination of the compensation were Rs.3000/- per sft. This notification has not been

rebutted by the official respondents. Even the statements of the officials of the Government have been recorded but nothing has been said about fixation of the compensation of the built-up structure contrary to notification Exh. "PD". The learned High Court has handed down the judgment while relying upon the case reported as *Raja Abdul Qayyum Khan vs. Azad Govt. and others* (2016 SCR 623. The relevant para of the report is as under:-

"15. The appellant, Raja Abdul Qayyum Khan, claimed the cost of construction as Rs. 2200/- per square foot. The engineer who prepared the drawing, estimate and supervised the construction of building, also stated that the cost of construction of the building is Rs.22/- per square foot. The High Court while delivering the judgment has observed that the statement of Raja Abdul Qayyum Khan and the Engineer is un-rebutted but refused to enhance the compensation at the rate of Rs.2200/- per square foot on the ground that the estimate prepared by the Committee is Rs.830/-

per square foot while the plaintiff has proved the cost of construction temperateness and by adopting the principle of equity and frugality, it declared that the appellant is entitled to receive the cost of construction of built-up property as Rs.1500/- per square foot. The findings are contradictory. At one side the Court has declared that the statement is un-rebutted but on the other side has refused to enhance the same according to the proved rate. The finding recorded by the High Court on the point is not maintainable and against the principle governing the appreciation of evidence. The cost of construction is proved to be Rs.2200/- per square foot.

The result of the above discussion is that appeal No. 148/2015 titled *Raja Abdul Qayyum Khan v/s Azad Govt. and others*, is accepted and the judgment and decree of the High Court is modified. The appellant is declared entitled for compensation in the following terms:-

- (a) the built-up property measuring 11000 square feet @ Rs.2200/-

per square foot along with 15% compulsory acquisition charges;
 $11000 \times 2200 = \text{Rs.} 2,42,000,00/-$
 +15% compulsory acquisition charges: Rs.36,30,000/-
 Total: Rs.2,78,30,000/-

(b) the rent for one year @ Rs.1,88,000/- per month:
 $1,88,000/- \times 12 = \text{Rs.} 22,56,000/-$,
 and;

(c) the electricity bills @ Rs.1000/- per shop per month for one year:
 $1000 \times 30 \times 12 = 3,60,000/-$

Resultantly, appeal No. 195/2015, titled King Abdullah University v/s Raja Muhammad Abdul Qayyum Khan & others is dismissed.”

A perusal of the above portion of the referred judgment, it reveals that the compensation in that case was determined on the basis of Rs.830/sft. by the Acquiring Agency and it was proved by the appellant that the cost of built-up structure was 2200/sft. This Court while adopting the principle of equity and frugality, hold that the land owners are entitled to Rs.1500/- sft. along with the compulsory

acquisition charges for built-up structure. We are of the view that the appellants, herein, are entitled for the same compensation i.e. Rs.1500/- per sft. Now the appellants would be entitled to the enhanced amount of built-up structure to the tune of Rs.1500/- per sft. The impugned judgment of the High Court dated 26.6.2015 is amended accordingly.

The upshot of the above discussion is that while accepting appeal No. 234/2015, the judgment passed by the learned High Court as well as by the Reference Judge is modified in the terms indicated above and appeal No. 241 of 2015, filed by *Azad Government and others* is dismissed having no substance in it. No order as to costs.

JUDGE

CHIEF JUSTICE

Mirpur.

.4.2017.

Mumtaz Qamar & others vs. Azad Govt. & others.
Azad Govt. & others vs. Bashir Ahmed Awan &
others.

ORDER:

Judgment has been signed. It shall be
announced by the Registrar after notice to the
learned counsel for the parties.

CHIEF JUSTICE
Mirpur.
.4.2017.

JUDGE

Date of announcement: 02.05.2017