

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.250 of 2016
(Filed on 25.10.2016)

1. Chief Engineer, Electricity Department, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Azad Government of the State of Jammu and Kashmir through its chief Secretary having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
3. Board of Revenue through Senior Member Board of Revenue Azad Government of the State of Jammu and Kashmir having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
4. Commissioner, Muzaffarabad Division Muzaffarabad.
5. Collector District Muzaffarabad.
6. Collector Land Acquisition, City Development Project, Muzaffarabad.

7. District Price Assessment Committee, Muzaffarabad through its Chairman, Muzaffarabad.
8. Chairman District Price Assessment Committee, Muzaffarabad (Deputy Commissioner, Muzaffarabad).

....APPELLANTS

VERSUS

Rehana Kousar d/o Muhammad Bashir wife of Muhammad Hafeez, r/o village Gojra, Tehsil and District Muzaffarabad.

....RESPONDENT

(On appeal from the judgement and decree of the High Court dated 24.08.2016 in civil appeal Nos.43 and 57 of 2015)

FOR THE APPELLANTS: Mr.Noorullah Qureshi,
Advocate.

FOR THE RESPONDENT: Ch.Amjad Ali,
Advocate.

Civil Appeal No.268 of 2016
(PLA filed on 25.10.2016)

Rehana Kousar d/o Muhammad Bashir wife of Muhammad Hafeez, r/o village Gojra, Tehsil and District Muzaffarabad.

....APPELLANT

VERSUS

1. Chief Engineer, Electricity Department, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Azad Government of the State of Jammu and Kashmir through its chief Secretary having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
3. Board of Revenue through Senior Member Board of Revenue Azad Government of the State of Jammu and Kashmir having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
4. Commissioner, Muzaffarabad Division Muzaffarabad.
5. Collector District Muzaffarabad.
6. Collector Land Acquisition, City Development Project, Muzaffarabad.
7. District Price Assessment Committee, Muzaffarabad through its Chairman, Muzaffarabad.

8. Chairman District Price Assessment Committee, Muzaffarabad (Deputy Commissioner, Muzaffarabad).

....RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 24.08.2016 in civil appeal Nos.43 and 57 of 2015)

FOR THE APPELLANT: Ch. Amjad Ali,
Advocates.

FOR RESPONDENTS: M/s Noorullah
Qureshi and Syed
Sehrosh Gillani,
Advocates.

Date of hearing: 18.05.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals have been directed against the judgment and decrees of the High Court dated 24.08.2016, whereby the appeals filed by both the contestant parties have been dismissed.

2. The facts necessary for disposal of these appeals are that the appellant, Rehana Kousar, filed the reference application in the

Court of the Reference Judge, Muzaffarabad on 08.12.2012. It was averred in the reference application that the land comprising survey No.1168, situate at village Gojra, Tehsil and District Muzaffarabad, is in her ownership and possession. The Government acquired the land for the Construction of the Office of Electricity Department. The compensation of the land was determined by the Collector at the rate of Rs.90,000/- per *mala*, which is very low price. The market value of the acquired land is not less than Rs.5,00,000/- per *marla*. The learned Reference Judge after necessary proceedings enhanced the compensation of the acquired land from Rs.90,000/- to Rs.2,50,000/- per *marla* along with 15% compulsory Acquisition charges. Both the parties feeling dissatisfied from the judgment and decree passed by the Reference Judge, filed the separate appeals before the High Court. The learned High Court

vide impugned judgment dated 24.08.2016, dismissed both the appeals, hence, these appeals.

3. Ch.Amjad Ali, advocate, the learned counsel for the respondent, Rehana Kousar (in appeal No.250 of 2016), at the very outset, raised a preliminary objection that in the matter in hand the learned High Court upheld the judgment passed by the Reference Judge, therefore, in view of section 42 (11) (d) of the Azad Jammu and Kashmir Interim Constitution Act, 1974, direct appeal was not competent. At this juncture, a query was made to the learned counsel for the appellants, the Chief Engineer Electricity & others that under the provision of section 42 (11) (d) of the Azad Jammu and Kashmir Interim Constitution Act, 1974 when the value of the subject matter in the Court of first instance and in the appeal is not less than fifty thousand rupees and the High Court has

altered or varied the judgment or decree of the Court immediately below, then a direct appeal lies in this Court, whereas, in the matter in hand the learned High Court has not altered or varied the judgment of the Reference Judge. The learned counsel for the appellants, Chief Engineer Electricity & others failed to controvert the same. We agree with the learned counsel for the respondent, Rehena Kousar, that the counter appeal titled *Chief Engineer Electricity & others v. Rehana Kousar*, has incompetently been filed and liable to be dismissed on this sole ground. In this regard, the counsel for the respondent has rightly relied upon the case law reported as *Ghulam Asghar v. Sarwar Begum & 15 others* [2015 SCR 141], wherein, it has been held that:-

“6. An appeal to the Supreme Court lies from the judgment,

decree, final order or sentence of the High Court of Azad Jammu & Kashmir under section 42(11) of the Azad Jammu & Kashmir Interim Constitution Act, 1974. An appeal under clause (d) of subsection (11) of Section 42 of the Constitution Act, if the amount of value of the subject matter of the dispute in the Court of first instance was and also in the dispute in appeal is not less than fifty thousand rupees and the High Court has varied or set aside the judgment, decree or final order of the Court immediately below. The proposition has been settled by this Court in a number of cases that if the amount or value of the subject matter of dispute in the Court of first instance was and also in dispute in appeal is not less than fifty thousand rupees and the High Court has varied or set aside the judgment, decree or final order appealed from, then a direct appeal lies to the Supreme Court.”

Similarly, in the other case law referred to by the learned counsel for the appellant, Rehana Kousar, titled *Azad Government & 3 others v. Muhammad Yousaf & 10 others* [2015 SCR 1190], this Court after considering the relevant law of the subject has held that:-

“Thus, it is concluded that if the value of the subject matter in the Court of first instance was and in the appeal is not less than Rs.50,000/- and the High Court has altered, varied or set aside the judgment and decree of the Court immediately below, then direct appeal lies in the Supreme Court.”

4. While arguing on the merits of the case (in appeal No.268 of 2016), Ch. Amjad Ali, Advocate, the learned counsel for the appellant, Rehana Kousar submitted that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that both the

Courts below failed to appreciate the record in a legal manner. The appellant by producing un-rebutted evidence proved that the market value of the acquired land is not less than Rs.5,00,000/- per *marla*, but the Courts below failed to appreciate the same. In this way, the concurrent findings recorded by the Courts below are based on misreading and non-reading of evidence. He further added that the learned High Court without assigning any reason upheld the judgment passed by the learned Reference Judge.

5. On the other hand, Mr. Noorullah Qureshi & Syed Sehrosh Gillani, Advocates, strongly controverted the arguments advanced by the learned counsel for the appellant, Rehana Kousar. They submitted that the Collector Land Acquisition after taking into consideration all the relevant factors determined the market value of the acquired

land and the learned Reference Judge without appreciating the record enhanced the compensation. Thus, the learned High Court was not justified to uphold the judgment passed by the learned Reference Judge. They contended that the acquired land is situated away from the road which has no commercial value. The learned Reference Judge while enhancing the compensation amount relied upon the report of the local commission, wherein, it has been mentioned that the acquired land is of commercial nature. No expert was deputed for spot inspection and the report is against the factual position, therefore, the same cannot be made basis for enhancement in the compensation. They contended that the learned Reference Judge at one hand rejected the documentary evidence produced by the landowner while recording the findings at page 8 of the judgment, but on the

other hand enhanced the compensation without assigning any reason. In such state of affairs, the judgments of the Courts below are liable to be set aside.

6. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. It appears from the record that the land owned by the appellant, Rehana Kousar, comprising survey No.168, situate at Gojra Muzaffarabad, measuring 10 *marla* was acquired for construction of the complaints office of the Electricity Department. The Collector Land Acquisition determined the market value of the land as Rs.90,000/- per *marla*, whereas, the claim of the landowner was that the market value of the acquired land is not less than Rs.5,00,000/- per *marla*. The landowner in support of her claim tendered in evidence six sale-deeds and got recorded the

statements of 3 witnesses and also recorded her statement as witness. On the application of the landowner, a commission was appointed by the Reference Judge to make the spot inspection and submit the report. The report of local commission is available on record as Exh.PH/1. From the scrutiny of the material available on record it depicts that the landowner has not produced any evidence on the basis of which it can be said that the market value of the acquired land is Rs.5,00,000/- per *marla*. The sale-deeds, Exh.PC and Exh.PD relates to the built-up property, therefore, the same cannot be considered, whereas, through sale-deed Exh.PB, land measuring 9 *marla*, was sold at the rate of Rs.1,66,666/- per *marla*; sale-deed, Exh.PD, shows that land measuring 1½ *marla* was sold against a consideration of Rs.2,25000/-, meaning thereby the price of

one *marla* land was Rs.1,50,000/-. The sale-deed, Exh.PG, shows that the land measuring 4 *marla* was sold at the rate of Rs.1,62,500/- per *marla*. The witnesses produced by the appellant stated in their statements that the acquired land is of commercial nature while the claim of the respondents is that the acquired land is away from the road which cannot be utilized for commercial purpose. The record shows that to ascertain the factual position the learned Reference Judge appointed Tehsildar Muzaffarabad as local commission. The local commission reported that the acquired land is plain and adjacent to the western bypass road Nalochi. The witness produced by the respondents, namely, Gohar-ur-Rehman, Head Lineman while recording his statement has himself deposed that the acquired land can be used for commercial

purpose. The relevant portion of his statement reads as under:-

"یہ درست ہے کہ اراضی زیر ریفرنس مین روڈ پر واقع ہے۔ یہ بات درست ہے کہ اراضی زیر ریفرنس پر اگر سائلہ دکانات کمرشل نوعیت کی بنانا چاہتی تو بنا سکتی تھی۔"

After going through the statements of the witnesses produced by the appellant as well as of the respondents it is clear that the land in dispute is of commercial nature and the market value of the same has not properly been assessed at the time of acquisition. The word 'market value' has been interpreted in a number of pronouncements by this Court that it means the value on which the owner is ready to sell the land to a willing buyer voluntarily. It is well settled that while determining the compensation it is the duty of the acquiring agency to look into the usage to which the acquired land can be put in future along with other factors. It may be observed here that where the lands are not acquired

with the consent of the owners rather they have been deprived of their lands under the powers of the State, the owners are entitled to get maximum possible benefits. Although, the appellant has not proved that the market value of the acquired land is Rs.5,00,000/- per marla but it has been proved that the land is precious in nature and the compensation has not been awarded to the landowner by the Collector according to the market value of the land. After the perusal of the judgment passed by the learned Reference Judge, we are of the view that the learned Reference Judge keeping in view the material available on record and the potential value of the land has rightly enhanced the compensation from Rs.90,000/- to Rs.2,50,000/- per *marla* and the learned High Court has not committed any illegality while upholding the judgment and decree passed by the Reference Judge.

Nutshell of the above discussion is that the appeal filed by the appellants, Chief Engineer Electricity & others is dismissed being incompetently filed, whereas, the appeal filed by the landowner is dismissed having no substance. No order as to costs.

Mirpur,
_05.2017

JUDGE

JUDGE

Date of Announcement 30-05-2017