

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

1. Civil Appeal No. 101 of 2016
(Filed on 18.4.2016)

1. Muhammad Latif Khan s/o Faqeer Ullah Khan.
2. Muhammad Fayyaz Khan,
3. Muhammad Ayyaz Khan,
4. Anzar Ahmed (sons),
5. Parveen Bibi,
6. Yasmin Bibi,
7. Nazmeen Bibi,
8. Noreen Bibi,
9. Rizwana Bibi, daughters of Anayat Ullah Khan (and Tehmina Begum) r/o village Dhani Bakalan, Tehsil and District Hattian Bala.
10. Bashir Ahmed Khan s/o Nazeer Ahmed Khan r/o Malik Pura, Tehsil and District, Hattian Bala.

.... APPELLANTS

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad through its Chief Secretary Azad Jammu & Kashmir, Muzaffarabad.
2. Secretary Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
3. Director General Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.

4. Director Sports, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
 5. Deputy Director Sports, Azad Jammu & Kashmir, Muzaffarabad.
 6. Commissioner Revenue Division, Muzaffarabad.
 7. District Price Assessment Advisory Committee through Deputy Commissioner, Muzaffarabad.
 8. Collector District, Muzaffarabad.
 9. Collector Land Acquisition, Hattian Bala.
- RESPONDENTS

(On appeal from the judgment of the High Court dated 18.2.2016 in Civil Appeal No. 113 & 114 of 2011)

FOR THE APPELLANTS: Mir Abdul Latif, Advocate.

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

2. Civil Appeal No. 134 of 2016
(PLA filed on 9.4.2016)

1. Muhammad Farid,
2. Muhammad Bashir Ahmed, sons of Kaloo.
3. Zain ul Abiden,
4. Ali Al Hasnat,
5. Saim Ali, minor, through next friend Mst. Safeera Bibi, widow of Muhammad Riaz (Deceased),
6. Safeera Bibi widow of Muhammad Riaz (Deceased), r/o vllage Kotli, post office and Tehsil Chikar, Distirct Hattian Bala.
7. Jafar Hussain Shah,
8. Shabir Hussain Shah,
9. Syed Muhammad Hanif Shah,

10. Rasheed Hussain Shah, sons of Muzaffar Hussain Shah, r/o village, Tehsil and District, Hattian Bala.
11. Muhammad Ishaq Tahir son of Khushi Muhammad.
12. Muhammad Shafi s/o Sattar Muhammad, village Malikpura, post office, Tehsil and District Hattian Bala.

.... APPELLANTS

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad through its Chief Secretary.
2. Secretary Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
3. Director General Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
4. District Price Assessment Advisory Committee through Deputy Commissioner, Muzaffarabad.
5. Collector District, Muzaffarabad.
6. Collector Land Acquisition, Hattian Bala.
7. Director Sports, Muzaffarabad.
8. Deputy Director Sports, Muzaffarabad.
9. Commissioner Revenue Muzaffarabad Division, Muzaffarabad.

..... RESPONDENTS

10. Abid Hussain Shah s/o Sakhi Hussain Shah,
11. Safder Hussain Shah s/o Shah Hussain Shah.
12. Muhammad Irshad s/o Alam Din.
13. Syed Ibrar Shah s/o Syed Alam Shah, village Doba P/o Chinari, Tehsil and District Hattian Bala, c/o Abid Hussain Shah village Gujar Bandi, p/o Chinari, Tehsil and District, Hattian Bala.
14. Muhammad Sharif s/o Feroz Din,

15. Mst. Raj Begum w/o Wali Muhammad, alias Goodo.
16. Muhammad Fared,
17. Muhammad Sagheer,
18. Muhammad Safeer, sons,
19. Mst. Nisa Akhtar,
20. Mst. Gulshan Bibi,
21. Mst. Tameez Akhtar, daughters of Wali Muhammad, 14 to 21 village, Tehsil and District Hattian Bala.
22. Abdul Rasheed s/o Abdul Aziz.
23. Muhammad Maskeen,
24. Muhammd Shafi,
25. Ghulam Husain, sons of Abdul Latif.
26. Qasim Jan w/o Muhammad Karim,
27. Sheikh Riaz Ahmed.
28. Sheikh Abrar,
29. Sheikh Muhammad Nasir,
30. Sheikh Muhammad Farooq, sons,
31. Zahida Bibi,
32. Sajida Bibi,
33. Shazia Bibi,
34. Shabnum Rani,
35. Nazia Parven, daughters of Muhammad Karim,
36. Haji Basheer Ahmed s/o Suhbat Khan,
37. Munir Khan s/o Akbar Khan,
38. Muhammad Nazir s/o Mir Hussain.
39. Mir Akbar s/o Sain.
40. Muhammad Khan s/o Noor Muhammad.
41. Feroz Din,
42. Abdul Rasheed,
43. Muzafar Hussain,
44. Muhammad Munir, sons,
45. Zarina Begum d/o Atta, 40 to 45 r/o Centre Plate Muzaffarabad, Tehsil and District, Muzaffarabad.
46. Faisal Hameed, son,
47. Shugafta Hameed, daughter,
48. Zarmeen Bibi w/o Abdul Hameed,
49. Muhammad Alyas, son of Zainab Bibi,
50. Zaitoon Bibi,
51. Zainab Bibi,
52. Komal Habib,

53. Shabnum Habib, daughters,
54. Naseema Bibi w/o Habib Ullah,
55. Muhammad Mushtaq,
56. Mukhtar Ahmed,
57. Zubair Hussain,
58. Waqar Hussain, sons,
59. Rukhsana Bibi,
60. Farzana Bibi, daughters,
61. Anwar Jan w/o Abdul Karim,
62. Shahid Hussain, son,
63. Abida Bibi,
64. Syriya Bibi,
65. Sundas Bibi, daughters of Khalida Bibi w/o Ghulam Hussain,
66. Muhammad Sadique,
67. Muhammad Munir, sons,
68. Kaneeza Bibi, daughter of Muhammad Sharif (Deceased). No 22 to 39 and 48 to 68 r/o village Malikpura, Tehsil and District Hattian Bala.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 18.2.2016 in Civil Appeal No. 113 & 114 of 2011)

FOR THE APPELLANTS: Mr. Muhammad Shafi,
Advocate.

FOR THE RESPONDENTS: Kh. Attaullah Chak and
Miss Kokab Alsabah Roohi,
Advocates.

3. Civil Appeal No. 132 of 2017
(PLA filed on 1.4.2016)

1. Muhammad Khan son of Noor Muhammad.
2. Muhammad Sharif son of Feroz Din,
(deceased) represented by:-
 - i). Muhammad Bashir, son,
 - ii) Sameena Bibi, daughters,

- iii) Sakeen Bibi, widow,
3. Mst. Raj Begum w/o Wali Muhammad alias Goodu.
 4. Muhammad Farid,
 5. Muhammad Sagheer,
 6. Muhammad Safeer, sons,
 7. Mst. Nissa Akhtar,
 8. Mst. Gulshan Bibi,
 9. Mst. Tameez Akhtar, daughters of Wali Muhammad.
 10. Abdul Rasheed son of Abdul Aziz,
 11. Muhammad Miskeen,
 12. Muhammad Shafi,
 13. Ghulam Hussain, sons of Abdul Latif,
 14. Qasim Jan w/o Muhammad Karim,
 15. Sheikh Riaz Ahmed,
 16. Sheikh Ibrar,
 17. Sheikh Muhammad Naseer,
 18. Sheikh Muhammad Farooq, sons,
 19. Zahida Bibi,
 20. Sajida Bibi,
 21. Shazia Bibi,
 22. Shabnam Bibi,
 23. Nazia Parveen, daughters of Muhammad Karim,
 24. Haji Bashir Ahmed son of Suhbat Khan,
 25. Munir Khan son of Akbar Khan,
 26. Muhammad Nazir son of Mir Hussain,
 27. Mir Akbar son of Sain,
 28. Feroz Din,
 29. Abdul Rasheed,
 30. Muzaffar Husain,
 31. Muhammad Munir, sons,
 32. Zarina Begum d/o Atta, residents of Malikpura, Tehsil and District Hattian Bala.
 33. Faisal Hameed, son,
 34. Shagufta Hameed, daughter,
 35. Zarmeen Bibi, widow of Abdul Hameed,
 36. Muhammad Ilyas, son,
 37. Zainab Bibi,
 38. Zaitoon Bibi,
 39. Komal Habib,
 40. Shabnum Habib, daughters,
 41. Nasima Bibi, widow of Habibullah,

42. Muhammad Mushtaq,
 43. Mukhtar Ahmed,
 44. Zubair Hussain,
 45. Waqar Hussain, sons,
 46. Rukhsana Bibi,
 47. Farzana Bibi, daughters,
 48. Anwar Jan, widow of Abdul Karim,
 49. Shahid Hussain, son,
 50. Abida Bibi,
 51. Suriya Bibi,
 52. Sundas Bibi, daughters of Khalida Bibi widow of Ghulam Hussain, residents of village Malikpura, Tehsil and District Hattian Bala.
 53. Muhammad Saddique,
 54. Muhammad Munir sons of Muhammad Sharif,
 55. Kaneeza Bibi, daughter, residents of village Malikpura, Tehsil and District Hattian Bala.
- APPELLANTS

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad through its Chief Secretary, New Secretariat Complex, Lower Chatter, Muzaffarabad.
 2. Secretary Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
 3. Director General Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
 4. District Price Assesment Advisory Committee through Deputy Commissioner.
 5. Collector District, Muzaffarabad.
 6. Collector Land Acquisition, Hattian Bala.
 7. Director Sports, Muzaffarabad.
 8. Deputy Director Sports, Muzaffarabad.
 9. Commissioner Revenue, Muzaffarabad Division, Muzaffarabad.
- RESPONDENTS
10. Abid Hussain son of Sakhi Hussain Shah,

11. Safdar Hussain Shah son of Shah Hussain Shah.
12. Muhammad Irshad son of Alam Din,
13. Syed Ibrar Shah son of Syed Alam Shah,
14. Jaffer Hussain,
15. Shabir Hussain,
16. Syed Muhammad Hanif Shah,
17. Rasheed Hussain Shah sons of Muzaffar Hussain Shah,
18. Muhammad Fareed,
19. Bashir Ahmed,
20. Muhammad Riaz, sons of Kalu Khan,
21. Muhammad Shafi son of Sattar Muhammad,
22. Muhammad Ishaq Tahir son of Khushi Muhammad, residents of village Malik-pura, Tehsil and District Hattian Bala, Azad Kashmir.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 18.2.2016 in Civil Appeal No. 113 & 114 of 2011)

FOR THE APPELLANTS: Kh. Attaullah Chak,
Advocate.

FOR THE RESPONDENTS: M/s Raza Ali Khan,
Advocate General and
Muhammad Shafi,
Advocate.

4. Civil Appeal No. 149 of 2016
(PLA filed on 15.4.2016)

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Secretary Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.

3. Director General Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
4. Director Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
5. Deputy Director Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
6. Commissioner Muzaffarabad Division, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Abid Hussain Shah s/o Sahki Hussain Shah,
2. Safdar Hussain Shah s/o Shah Hussain Shah,
3. Muhammad Irshad s/o Alam Din,
4. Syed Ibrar Shah s/o Syed Alam Shah,
5. Jaffar Hussain,
6. Shabbir Hussain,
7. Syed Muhammad Hanif Shah,
8. Rasheed Hussain Shsh (sons of Muzaffar Hussain Shah),
9. Muhammad Khan s/o Noor Muhammad,
10. Muhammad Sharif s/o Feroz Din,
11. Mst. Raja Baigum w/o Wali Muhammad alias Goddu,
12. Muhammad Farid,
13. Abdul Hameed,
14. Muhammad Sagheer,
15. Muhammad Safeer, sons,
16. Mst. Nissa Akhtar,
17. Mst. Gulshan Bibi,
18. Mst. Tameez Akhtar, daughters of Wali Muhammad.
19. Habib Ullah (deceased)
20. Abdul Karim (deceased) sons of Faqir,
21. Muhammad Farid,
22. Bashir Ahmed,
23. Muhammad Riaz, sons of Kaloo,
24. Abdul Rasheed s/o Abdul Aziz,

25. Muhammad Miskeen,
26. Muhammad Shafi,
27. Ghulam Hussian (sons of Abdul Latif),
28. Qasim Jan w/o Muhammad Karim,
29. Sheikh Riaz Ahmed,
30. Sheikh Farooq Ahmed,
31. Sheikh Abrar,
32. Sheikh Muhammad Nasir (sons),
33. Khalida Bibi (deceased),
34. Zahida Bibi,
35. Sajida Bibi,
36. Shazia Bibi,
37. Shabnam Rani,
38. Nazia Parveen (daughters of Muhammad Karim).
39. Muhammd Sharif s/o Abdul Karim.
40. Muhammad Shafi s/o Sittar Muhammad.
41. Haji Bashir Ahmed s/o Suhbat Khan,
42. Munir Khan s/o Akbar Khan,
43. Muhammad Nazir s/o Mir Hussain,
44. Muhammad Ishaq Tahir s/o Khushi Muhammad.
45. Mir Akbar s/o Sain,
46. Feroz Din,
47. Abdul Rasheed,
48. Muzaffar Hussain,
49. Muhammad Munir (sons),
50. Zarina Begum s/o Atta r/o villate Malik Pura, Tehsil and District Hattian Bala.

..... RESPONDENTS

51. District Price Assessment Committee through Deputy Commissioner, Muzaffarabad.
52. Collector District Muzaffarabad.
53. Collect Land Acquisition, Hattian Bala.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 18.2.2016 in Civil Appeal No. 112 of 2011)

FOR THE APPELLANTS: Miss Kokab Al Saba Roohi,
Advocate.

FOR THE RESPONDENTS: Kh. Attaulla Chak and
Muhammad Shafi,
Advocates.

5. Civil Appeal No. 150 of 2016
(PLA filed on 15.4.2016)

1. Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad through its Chief Secretary Azad Jammu & Kashmir, Muzaffarabad.
2. Secretary Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
3. Director General Sports Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
4. Director Sports, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
5. Deputy Director Sports, Azad Jammu & Kashmir, Muzaffarabad.
6. Commissioner Revenue Division, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Muhammad Latif Khan s/o Faqeer Khan,
2. Tehmeena Begum w/o Anayat Ullah Khan,
3. Muhammad Fayyaz Khan,
4. Muhammad Ayaz Khan,
5. Insaar Khan,
6. Parveen Bibi,
7. Yasmeen Bibi,
8. Nasmeeen Bibi,
9. Noreen Bibi,
10. Rizwana Bibi r/o Dhani Bakalan, Tehsil and District Hattian Bala.

11. Bashir Ahmed Khan s/o Nazeer Ahmed Khan r/o Tehsil and District Hattian Bala Malik Pura.

..... RESPONDENTS

12. District Price Assessment Advisory Committee through Deputy Commissioner, Muzaffarabad.

13. Collector District Muzaffarabad.

14. Collector Land Acquisition, Hattian Bala.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 18.2.2016 in Civil Appeal No. 113 & 114 of 2011)

FOR THE APPELLANTS: Miss Kokab Al Sabah Roohi, Advocate.

FOR THE RESPONDENTS: Mr. Abdul Latif, Advocate.

Date of hearing: 15.11.2017.

JUDGMENT:

Ghulam Mustafa Mughal, J— Direct appeal No. 101/2016 and the other titled appeals by leave of the Court arise out of the two even dated judgments of the High Court passed on 18.2.2016 in civil appeals No. 112, 113 and 114 of 2011. As common question of facts and law is involved in all the titled appeals, hence,

are heard together and being decided as such. Civil appeals No. 101, 134 of 2016, and 132 of 2017 have been filed for further enhancement of compensation, whereas civil appeals No. 149 and 150 of 2016 have been filed by the Azad Govt. and others for setting aside the judgment of the High Court dated 18.2.2016.

2. The precise facts forming the background of the captioned appeals are that the land comprising survey No. 36 min, 74/1, 74/2, total measuring 5 kanal 19 marla in the ownership of the appellants/landowners situated in village Malikpura, Tehsil and District Hattian Bala, was acquired for construction of sports stadium vide award No.2/2008 and 38/2008 dated 5.5.2009. The Collector determined the compensation of the acquired land as Rs.350,000/- per kanal. The land owners, feeling aggrieved from the determination of the compensation, filed a reference before the learned District Judge/Reference Judge Hattian Bala on 12.6.2009. It was claimed that the

Collector has not determined the compensation of the acquired land while considering its market and potential value. It was further claimed that the land was located at the road side and its market value is more than Rs.2,000,000/- per kanal. It was averred that the appellants/landowners have been deprived of their holdings permanently without paying proper compensation, which is against the fundamental rights. The reference was contested by the other side. The learned Reference Judge after recording the evidence through the judgment and decree dated 12.5.2011, enhanced the compensation to the tune of Rs.550,000/- per kanal. On appeal, the High Court further enhanced the compensation amount to the tune of Rs.700,000/- per kanal.

3. M/s Muhammad Shafi, Mir Abdul Latif and Khawaja Attaullah Chak, the learned Advocates appearing for the appellants in appeals No. 101 of 2016, 134 of 2016, 132 of 2017, vehemently argued that the learned High

Court has illegally held that the cross objections filed by the appellants, herein, were time barred and rejected the same. The learned Advocates argued that the findings recorded by the learned High Court to this extent are against law, arbitrary and perverse. The learned Advocates further argued that even otherwise the High Court was competent to grant the relief to the appellants by enhancing the compensation as has been done in another case while exercising the powers conferred on it under Order XLI, rule 33, of the Code of Civil Procedure, 1908. The learned Advocates argued that sufficient evidence was produced in order to establish the market value as well as the potential value of the acquired land but the learned Reference Judge as well as the High Court failed to consider the same and the conclusion arrived at in the impugned judgment is against the record. The learned Advocates argued that the market value of the land was more than Rs.20,00,000/- per kanal and the same was proved but the High

Court has arbitrarily rejected the cross objections filed on behalf of the appellants which were well within the limitation from the date of service of notice upon the appellants, herein. In support of their submissions, the learned Advocates placed reliance on the cases reported as *Abdul Rehman vs. Military Estate Officer* (1998 MLD 692), *Naik Alam and 3 others vs. Muhammad Yaseen and 13 others* (1993 CLC 2174), *Messrs Galadari Cement (Gulf Ltd. vs. District Judge Khuzdar and 6 others* (1986 CLC 10), *Syed Ghaus Bakhsh and others vs. Land Acquisition Collector and others* (2007 MLD 1315), *North West frontier province Government, Peshawar through Collector Abbotabad and another vs. Abdul Ghafoor Khan through Legal Heirs and 2 others* (PLD 1993 Supreme Court 418), *Messrs S. M. Yousuf and Bros. vs. Mirza Muhammad Mehdi Pooya and another* (PLD 1965 Supreme Court 15), *Muhammad Zafaryab and 2 others vs. Malik Muhammad Iqbal and another* (2000 YLR 1468), *Province of Punjab through*

Collector, Bahawalpur and another vs. Abdul Majeed and 98 others (PLJ 1997 SC 1492). The learned Advocates argued that the judgment of the High Court is arbitrary and discriminatory in the sense that in the counter appeal filed against the same award i.e. appeal No.113 titled *Muhammad Latif Khan vs. Azad Govt. & others*, the learned High Court enhanced the compensation of the acquired land to the tune of Rs.700,000/-per kanal besides 15% compulsory acquisition charges, therefore, the appellants were also entitled at least to the same value and the Court has got vast powers to mould the relief while exercising appellate jurisdiction conferred on it under Order XLI, rule 33, CPC.

4. Mir Abdul Latif, the learned Advocate for Muhammad Latif and others, appellants, in appeal No. 101 of 2016, while adopting the arguments of Muhammad Shahfi and Khawaja Attaullah Chak, the learned Advocates for the appellants, further submitted that through the concrete evidence, the market value as well as

the commercial nature of the land was proved, but the compensation has not been enhanced reasonably by the learned Reference Judge. The learned Advocate argued that the evidence led by the appellants remained un-rebutted and despite the fact that the High Court has admitted that reasonable compensation is to be granted to the land owners, has not enhanced the compensation properly. The learned Advocate argued that the enhancement made by the High Court to the tune of Rs.700,000/- per kanal is neither proper nor reasonable.

5. M/s Raza Ali Khan, the learned Advocate-General and Miss Kokab Al-Sabah Roohi, the learned Advocate representing the respondents, submitted with vehemence that the service of notice was effected on proforma respondents No.28 to 39 on 19.11.2011 and all the respondents were represented by Muhammad Shafi the learned Advocate, which is sufficient proof of the fact that the date of hearing of the appeal fixed as 22.11.2011, was

well in the notice of all the respondents before the High Court, but despite the knowledge, the cross objections were filed on 22.12.2011, hence, the same were beyond the prescribed period of limitation either i.e. 30 days, hence, has rightly been rejected by the learned High Court. The learned Advocates argued that as all the respondents were represented by the same advocates, therefore, it cannot be said that the other respondents had not got the knowledge of the date of hearing of appeal. The learned Advocates argued that the provisions of rule 33 of Order XLI, CPC, cannot be invoked in the present case because the appellants, herein, had a right to file an appeal against the judgment passed by the learned Reference Judge which has not been availed by them. A relief which ordinarily can be granted by way of appeal, cannot be granted in the cross objections, submitted the learned Advocates. They further argued that the compensation was properly assessed by the Collector Land Acquisition after

considering the potential as well as the market value, future and present use of the land, but the Reference Judge has enhanced the same on the basis of the sale-deeds, executed for a small piece of land which cannot legally be made basis for determination of the compensation of a large track of the land, specially so when it is not proved that the land subject of sale-deed was is located in the same vicinity. The learned Advocates argued that the learned High Court has also enhanced the compensation in the appeal titled *Muhammad Latif Khan and others vs. Azad Government and others* on the basis of sketchy and inadmissible evidence.

6. We have heard the learned Advocates representing the parties and have gone through the record of the case. So far as the findings on rejection of the cross objections are concerned, it may be stated that the mode of filing the cross objections when appeal is not filed by any respondent is provided in rule 22 of Order XLI, C.P.C. Relevant provisions read as under:-.

“22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.—(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of objection and provisions applicable thereto.—(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3). Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall

cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondents.

- (4)
- (5)”

A perusal of the above reproduced provisions of law would show that if a respondent who has not otherwise gained the knowledge of hearing of appeal, can prefer cross objection within 30 days after due notice to him. As stated above, in the present case, the service was affected upon some of the respondents on 19.11.2011 and they have filed the cross objections on 22.12.2011, therefore, it can safely be concluded that the cross objection have not been filed within the limitation stipulated by the above provision of rule 22, Order XLI, C.P.C. Not a single sentence has been mentioned in the cross objections about the knowledge/ service or for condonation of delay. As, Muhammad Shafi, Advocate was representing all the respondents before the High Court, therefore, it will be presumed that all the

respondents had the notice of hearing of appeal, which was fixed for 24.11.2011. It may be stated that cross objections can be filed before service of notice if it is otherwise in the knowledge of respondents that appeal has been filed and they had the notice of the date of hearing as has been held in the case reported as *Labhu Ram and others vs. Ram Partap and others* (AIR (31) 1944 (Lahore 76)(F.B), wherein at page 87 of the report it was observed as under:-

“...The only question is whether the right of a respondent to file his cross-objections is so restricted as is adumbrated in A.I.R. 1936 Lah. 362. In other words, could it be the intention of the Legislation in enacting O.41, R.22, to specify the point of time in which such cross-objections could be filed at both ends? After giving this matter my careful consideration, I have reached the conclusion that it could serve no purpose to restrict the right of a respondent to prefer his cross objections in the manner suggested. No doubt, they cannot be presented after the expiry of one month from the date of the service of the notice on him or his pleader, but the right to submit his cross-objections, in my view, accrues to a respondent as soon as an order is made issuing notice of the date of hearing of the appeal to him and it is not necessary for him to wait until the

service is actually effected on him. It is even open to him to appear in a Court of appeal on the date of hearing and present his objections there and then though not served at all. To put the restricted interpretation upon this provision of law would create situations which may look anomalous. I would, therefore, hold that in the circumstances of this case, the cross-appeal presented by Labhu Ram and others could be treated as cross-objections.”

The same view was reiterated in the case reported as *East Indai Hotels Ltd. v. Smt. Mahendra Kumari & Anr* (AIR 2008 Rajasthan 131), wherein in paragraphs No. 10, 11 and 12, it was observed as under:-

“10. From the above provisions, it is manifestly clear that the cross-objection has to be filed in the Appellate Court within a period of one month from the date of service on him or his pleader of the notice of the day fixed for hearing of the appeal or even within such further time as the Appellate Court may see fit to allow. A close scrutiny of the procedure of filing of appeal and thereafter proceedings provided under Order 41, Rule 9 of the Code reveals that after proper presentation of the appeal the same is to be posted for admission which may be dismissed at the admission stage and if the same is not dismissed at the stage of admission under Order 41, Rule 11 of the Code then the Appellate Court shall fix the day for hearing of

such appeal as provided under Rule 12 of Order 41 of the Code and notice shall be served on the respondent or his pleader to appear and answer. As has been pointed out earlier, the objector-respondent already put his appearance before this Court even before admission of the appeal as a caveator and his counsel was present and participated in proceedings at the admission stage and in his presence the appeal was admitted, therefore, in my considered view formal notice in writing under the prescribed form under Order 41, Rule 14 of the Code was not essential to be served upon the objector-respondent who participated in the proceedings and was having full knowledge of the admission of the appeal. Similar view has been taken by this Court in Ram Saran Sharma's case (supra) wherein it was observed that when a caveat has already been entered into, service of notice of hearing of the appeal, on the respondent, cannot be taken to be necessary, and the limitation of one month, for filing cross-objections, at the most can be computed from the date of admission of the appeal and not prior to that. In the case of Mutyam Agaiah v. Special Deputy Collector, (NTPC) LA Unit, reported in 2002 (2) ALT 715, while taking the similar view it was held as under:-

'We have to understand the issue of notices in the proper perspective. The notices are meant for giving knowledge to the other side regarding the judicial proceedings filed by the appellant. It is not every time necessary that the notices should be in writing in the prescribed form. If the

knowledge of filing of the appeals can be proved then it is sufficient notice in law. The respondent-cross-objector engaged an Advocate, who filed Vakalatnama and he defended the cause of the claimant in the Original Petition. It means that cross-objector had sufficient knowledge regarding the appeals. Nothing prevented for the respondent-cross-objector for filing the objections.'

11. So far ratio decided in the cases of Union of India vs. Jhutter Singh; Union of India vs. Shibu Ram Mittal and Rashida Begum v. Union of India (all supra) is concerned, the facts of these three cases are distinguishable from the present case since in all these three cited cases there was no point in issue that at the time of admission of the appeal the objector-respondent was present and participated in the proceedings.

12. In view of above discussion, I am of the firm view that in the instant case the period of limitation for filing the cross objection by the objector-respondent starts running from 28.3.2006 when in the presence and active participation by the counsel for the objector-respondent in the proceedings, the appeal was admitted and the notice after admission was ordered to be served upon remaining respondent No.2 Ranjeet Singh who was not present before the Court."

7. So far as the contention of the learned Advocates for the appellants that the High Court should have granted the relief in shape of

appropriate compensation of the acquired land under Order XLI, rule 33, C.P.C. is concerned, it has a substance. An Appellate Court has got vast powers under Order XLI, rule 33, C.P.C. to grant a relief to a non-appealing party if a proper case is made out. The relevant provision of rule 33, is reproduced as under:-

“33. Power of Court of Appeal.—

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Provided that the Appellate Court shall not make any order under Section 35-A in pursuance of any objection on which the Court from whose decree the appeal is preferred

has omitted or refused to make such order.”

A perusal of the above would show that if a proper case is made out then an Appellate Court is competent to grant relief to a non-appealing party. In the case reported as *Province of West Pakistan through the Secretary, Revenue Department, Lahore and 2 others vs. Associated Hotels of India Ltd* (1973 SCMR 367), the apex Court of Pakistan has taken an identical view and observed at page 373 of the report as under:-

“...No appeal had been filed by the Associated Hotels Ltd., but in an appeal before us we can pass any order that ought to have been passed even though the party in whose favour we pass it has not appealed. An ordinary appellate Court has such a power by virtue of Order XLI, rule 33, C.P.C., and for this Court there is similar provision in Order XLIX, rule 5 of the Supreme Court Rules, 1956, but even apart from that rule, there is an inherent power in this Court to pass

any order which in its opinion should have been passed.”

The same view was reiterated and followed by this Court in the case reported as *Mst. Fazal Bi and 8 others vs. Ghulam Hussain and 4 others* (PLJ 1980 SC (AJ&K) 5).

8. The contention of the learned Advocate for the appellants that they are entitled for the compensation to the tune of Rs.2,000,000/- per kanal of the acquired land, is devoid of any force. On the basis of the evidence led by the parties, the market value of the acquired land to the extent of the claim of the appellant has not been proved. A judgment in a civil case has to be given on the basis of concrete evidence, not on surmises and conjectures. The contention of the learned Advocates for the appellants that against the same award, the High Court while accepting civil appeal No. 113 of 2011 decided on 18.2.2016 has enhanced the compensation of the acquired land to the tune of Rs.700,000/- per kanal irrespective of the kind of the land along with the compulsory acquisition charges,

is correct. Vide judgment dated 18.2.2016 passed by the learned High Court in the above referred appeal, the High Court has enhanced the compensation to the tune of Rs. 700,000/- per kanal irrespective of the kind of the land, but before dilating upon the point we intend to decide the fate of the appeals filed on behalf of the Government. It is not denied by the respondents in their written statement/comments that the acquired land is located at Sarinagar road and has a potential value. The market value of the land is also not denied by the respondents having regard to the provisions contained in section 23 of the Land Acquisition Act, 1894, therefore, the compensation determined by the Reference Judge was not reasonable, however, the same was reasonably determined and enhanced by the learned High Court after taking into consideration the evidence of the parties and location of the land. Therefore, we find no substance in the argument of the learned Advocates representing the

respondents that by accepting their appeals the enhancement made by the Reference Judge/learned High Court in *Muhammad Latif Khan's* case be vacated. We approve the reasons listed in the impugned judgment and maintain the same while holding that the appeals filed on behalf of the Azad Government and others, have no merit. This brings us to the question of grant of compensation to the private appellants, herein, on the strength of the judgment of the High Court rendered in *Muhammad latif Khan's* case (supra). A perusal of the record reveals that in appeal titled Muhammad Latif Khan and others vs. Azad Government arising out of the same award, the learned High Court has accepted the appeal of Muhammad Latif Khan and others, landowners and has enhanced the compensation amount to the tune of Rs.700,000/- per kanal besides, the 15% compulsory acquisition charges. After considering the entire record, we are of the view that the enhancement is reasonable and benefit

of the judgment is liable to be extended to the appellants, herein, in appeals No. 101, 134 of 2016 and 132 of 2017. It was imperative for the High Court to exercise the powers conferred on it under Order XLI, rule 33, C.P.C. because similarly placed litigants deserve to be treated in the like manner when the award was same and the evidence on the basis of which the compensation has been enhanced was also not different. We are fortified in our view from rule of law laid down in *Sadaqat Ali Khan's* case (PLD 2010 Supreme Court 878), wherein, an identical point came up for consideration before the apex Court of Pakistan as to whether the benefit which had accrued to the landowners who had filed an appeal in the High Court seeking further enhancement of the compensation vis-à-vis their acquired land could be extended to the similarly placed landowners who had, however, not filed any appeal in the High Court. While considering the provision contained in Order XLI, rule, 33 read with section 151, C.P.C.; Order XXXIII,

Rule 5 of the Supreme Court Rules, the apex Court observed as under:-

“15. What is discernable from the above quoted judgments and others is that the basic object behind establishment of Courts in a society was never just to administer law but was, in fact, to dispense justice. The ultimate goal sought to be achieved by the courts was thus to do complete justice between the parties and to ensure that the rights were delivered to those to whom they belonged and no hurdles were ever considered strong enough to detract the Courts from reaching the said end. Incorporation of provisions such as section 151, C.P.C.; section 561-A in the Cr.P.C.; revisional powers of wide amplitude exercisable even suo-moto under section 115 of the C.P.C. and section 439 of the Cr.P.C.; various provisions of the like contained in Order XLI, rule 4 and Order XLI, rule 33 of the C.P.C.; the provisions of Order XXXIII, rule 5 of the Supreme Court Rules of 1980; suo motu powers exercisable under Article 184(3) of the Constitution and provisions of Article 187 of the

Constitution, are some of the examples which could be quoted as having been made available to the Courts at all levels to surmount any impediments which a Court might confront in the path of doing complete justice. With respect to the proceedings under the Land Acquisition Act, it may also be added that the same are of a rather peculiar nature as in the ultimate analysis what is required to be determined under the said Act is the value of the acquired land. Once the same stands resolved then the Acquiring Authorities become repositories of the said value of land as a trust for the ones who own the same which authorities are then obligated to identify the said persons and to discharge the said trust by paying the same to them.”

Again in paragraphs No. 19, 20 and 22, it was concluded as under:-

“19. We are also shocked and pained at the conduct of the governmental authorities who were adamant in denying to the present appellants what rightfully belonged to them and this these authorities were doing by seeking shelter under mere technicalities of law. They failed to realize that a Government and its

various departments and agencies enjoyed a parental status vis-à-vis the subjects and it never behoved a Government or its agents to deny to the subjects what stood judicially determined to be belonging to, them. The law of Limitation may be an impediment, though surmountable, in the way of a Court to grant a deserved relief but it would never be a bar in the way of repository of a trust to discharge his obligations. A person would never qualify as a gentlemen if he was to refuse to re-pay a debt only because he had managed to hold on to the same for more than three years. Needless to say that a government is expected to be a gentleman—nay, the noblest person in a State. Once, the price of an area of land had been finally and judicially determined, then it distressing and agonizing to find the Government, saying brazenly to its subjects and its wards that yes the Court has found you entitled to a given amount of compensation but I shall not pay it to you because you did not disgrace me by dragging me to the Courts of law. This is, to say the least, not a conduct befitting a gentle and a noble man. The appellants before us appear to be petty landowners owning small land-holdings and enrichment of the governmental agencies at the cost of such like poor subjects could never be said to be civilized, moral or an ethical conduct.

20. Having thus examined all aspects of the matter we find that the concerned Courts had failed in their duties to ensure justice to the appellants in these appeals before us inasmuch as they had refused to exercise the discretion vesting in them

under Order XLI, rule 33 of the C.P.C. and the other enabling provisions including the provisions of section 151, C.P.C. Consequently, we find that the appellants before us in these three appeals had been treated discriminately and that justice had been un-deservedly denied to them and further that the impugned orders and judgments had led to a gross contradiction in the terms which warranted rectification.

22. The submission loose sight of the provision of Order XLI, rule 33 of the C.P.C. If the said submission of the learned senior Advocate Supreme Court was to be accepted then the same would lead to ludicrous and absurd results. It would mean that an affected person who had not filed any appeal ever at all, would be entitled to relief in terms of Order XLI, rule 33 of the C.P.C. but a similarly affected person who does file an appeal, though beyond time, would be thrown out on account of delay in filing the same. Such an interpretation would lead to laughable results and could not be accepted.”

While repeatedly following the rule of law laid down in *Sadaqat Ali Khan's* case (supra), we have reached the conclusion that enhancement granted by the learned High Court in the same award in *Muhammad Latif Khan's* case, the land owners whose land has been acquired through the same award would also be entitled to the same enhanced amount notwithstanding the

fact that their cross objections have been rejected on the ground of limitation. As an appellate Court has got vast powers for granting relief to a non-appealing party in an appeal if a proper case is made out.

The upshot of the above discussion is that appeals No. 134 of 2016 and 132 of 2017 are accepted and the impugned judgment of the learned High Court dated 18.2.2016 is modified in the terms that the appellants in the above appeals would also be entitled to the compensation of the acquired land at the rate of Rs.700,000/- per kanal besides 15% compulsory acquisition charges, resultantly, appeals No. 149 and 150 of 2016 filed by the Azad Government and others are hereby dismissed. Appeal No. 101 of 2016 filed by Muhammad Latif Khan and others is also dismissed for the reasons listed hereinabove.

No order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad.

..2017

Date of Announcement:25.11.2017