

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.286 of 2017
(Filed on 29.12.2016)

1. Development Authority Muzaffarabad
through its Chairman DAM, Muzaffarabad.
2. Director Estate DAM, Muzaffarabad.

....APPELLANTS

VERSUS

1. Syed Nisar Hussain Shah,
2. Syed Sajid Hussain Shah,
3. Syed Sajjad Hussain Shah son of Syed
Sakhi Hussain Shah,
4. Syed Sajjad Hussain Shah son of
Muhammad Saeed Shah Gillani,
5. Muhammad Farid son of Saeed Mir,

6. Faqir Muhammad son of Aood Jo,
7. Khuram,
8. Zaffar sons of Faqir Muhammad,
9. Fiaz son of Abdul Rehman,
10. Mazloom Shah son of Walayat Shah,
11. Mehzoob Shah son of Mazloom Shah,
12. Arif Zaman,
13. Tariq Zaman sons of Muhammad Zaman
Mir,
14. Haji Habib Ullah son of Mursileen,
15. Muhammad Ashfaq son of Abdul Ghani,
16. Mahjabeen w/o Muhammad Aslam,
17. Iqbal Saeed Qadiri,
18. Israr Saeed Qadri, sons of Muhammad
Saeed Qadri,
19. Samra Akhtar widow of Mukhtar Qadri son
of Muhammad Saeed Qadri,
20. Syed Zafar-ul-Hassain Shah son of Syed
Tasadaq Hussain Shah,
21. Malik Javaid,

22. Malik Khursheed,
23. Malik Tahir, sons,
24. Mst. Mehnad Shehzadi,
25. Mst. Nighat Shehzadi,
26. Rozeena Mali,,
27. Irum Malik, daughters/legal heirs of Malik Alif Din son of Malik Noor Muhammad,
28. Mushtaq Qayyum widow of Muhammad Ameen Kashfi for Guardian of Moeen Qutbi minor son,
29. Saqiba Bibi daughter of Qazi Ghulam Muhammad Yaseen,
30. Ehtesham Javaid son of Qazi Javaid Ashraf,
31. Altaf Hussain Gillani son of Pir Hasam-ud-Din Gillani,
32. Farah Gillani daughters of Syed Muhammad Saleem Gillani (deleted vide Court order dated 15.11.2017),
33. Maqsood Ahmed son of Muhammad Usman,
34. Manzoor Ahmed,

35. Muhammad Farid,
36. Muhammad Munir,
37. Javaid Iqbal sons,
38. Gulshin Bibi,
39. Safina Bibi,
40. Rukhsana Bibi,
41. Alia Bibi daughters of Alif Din 1 to 19, 21 to 24, 28 to 33 resident of Sethi Bagh Dakhli Tariqabad, 20, 25 to 27 resident of Gulshin Pir Alla-ud-Din, Tehsil and District Muzaffaraad.

....RESPONDENTS

42. Azad Jammu and Kashmir Government through its Chief Secretary Muzaffarabad having his office at new Secretariat, Muzaffarabad.
43. Chief Engineer PWD, Muzaffarabad.
44. SERA through Director General, Muzaffarabad.
45. Revenue Department through Senior Member of Board of Revenue, Muzaffarabad.

46. Commissioner Revenue Muzaffarabad
Division.

47. Price Assessment Advisory Committee
through its Chairman Deputy
Commissioner/Collector, Muzaffarabad.

.....PROFORMA RESPONDENTS

(On appeal from the judgment and decrees of
the High Court dated 02.11.2016 in civil
appeals No.155 of 2014 and 16 of 2015)

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

FOR THE RESPONDENTS: Raja Anjam Feroz,
Advocate.

Date of hearing: 15.11.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled
appeal has been filed against the
judgement and decree passed by the High
Court on 02.11.2016, whereby the appeal
filed by the respondents, herein, has

been accepted while the cross-appeal filed by the appellants, herein, has been dismissed.

2. The facts in brief are that the land of the respondents-landowners, was acquired for up-gradation of Tariqabad bypass road phase-II. The Collector Land Acquisition divided the acquired land in two categories, i.e. 'A' and 'B' and determined the compensation of the land situated at Tariqabad, falling in category 'A' as Rs.60,000/- per *marla* and Rs.40,000/- per *marla* for category 'B', whereas, the land situate at Gulshan Pir Allau-Din as Rs.1,00,000/- per *marla* for category 'A' and Rs.60,000/- per *marla* for category 'B'. Feeling dissatisfied from the compensation determined by the Collector the landowners filed reference application. The learned Reference Judge after necessary proceedings, while accepting the reference application enhanced and fixed the compensation of the acquired land as

Rs.4,00,000/- per *marla* irrespective of any category along with 15% compulsory acquisition charges. Feeling dissatisfied from the enhancement made in the compensation both the parties filed separate appeals before the High Court. The landowners filed appeal for further enhancement in the compensation while the appellants filed appeal for setting aside the judgment and decree passed by the Reference Judge and restoration of the compensation amount determined by the Collector. The learned High Court after hearing the parties while accepting the appeal filed by the landowners further enhanced and fixed the compensation as Rs.6,00,000/- per *marla* for the land situate at Tariqabad and Rs.7,00,000/- per *marla* for the land situate at Gulshan Pir Allau-Din and dismissed the appeal filed by the appellants, herein, on the ground that the same has incompetently been filed

without prior sanction of the Government.
Hence, this appeal.

3. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the appellants argued 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 the learned High Court dismissed the appeal filed by the appellants on the ground that the same has been filed without prior sanction of the Government and failed to take into consideration that the appellants, Development Authority Muzaffarabad (DAM) is an autonomous body which under law is competent to file appeal without getting the sanction of the Government. In this regard, the learned counsel referred to and relied upon the case law reported as *AKMIDC v. Mohammad Shafique & 4 others* [2015 SCR 882]. While

arguing on the merits of the case he submitted that the Collector Land Acquisition after taking into consideration all the relevant provisions of the Land Acquisition Act, 1894, determined the correct market value of the land and the learned Reference Judge as well as the learned High Court made the enhancement without any justification. He contended that the land was acquired for up-gradation of the road. The only purpose of the project is to provide better facility of communication to the people and not to collect revenue, but this aspect of the case escaped the notice of the Courts below. He contended that it was decided prior to acquiring the land that the effectees of the award will be allotted alternate residential plots. In this way, the relief had already been granted to the effectees but both the Courts below failed to appreciate this aspect of the case. He forcefully contended that the

landowners failed to prove their claim by producing the evidence even then the Courts below enhanced the compensation. He also added that the landowners failed to array MCDP as party, therefore, in absence of necessary party the reference was liable to be dismissed. He prayed for acceptance of the appeal and setting aside the judgments of the Courts below.

4. On the other hand, Raja Anjam Feroz, Advocate, the learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel for the appellants. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that the Collector Land Acquisition while determining the compensation of the acquired land failed to discharge its duty and determined very meagre amount. The land in

dispute is adjacent to the Muzaffarabad City and is of commercial nature but this aspect was totally ignored by the Collector while determining the compensation. The landowners by producing evidence proved their claim, therefore, the learned High Court has not committed any illegality while fixing the compensation as per market value of the land. He submitted that this Court in the case titled *Zulfiqar Muhammad Khan & others v. Azad Government & others* (civil appeal No.206 of 2014, decided on 03.12.2014) fixed the compensation of the land acquired from the same area for the same project as Rs.6,00,000/- and Rs.7,00,000/- per *marla*. As the land under consideration in this case is also location and kind-wise similar to the land under consideration in *Zulifqar Muhammad Khan's* case, therefore, the learned High Court rightly relied upon the case law (*supra*) while

making enhancement. He lastly submitted that the award was issued on the recommendations of the DAM and the Collector Land Acquisition acquired the land and determined the compensation of the land, thus, MCDP was not necessary party. He prayed for dismissal of appeal.

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The learned High Court dismissed the appeal filed by the appellants, herein, on the ground that the same has been filed without prior sanction of the Government; therefore, it is not maintainable. To appreciate the point whether the appeal of the appellant (DAM) without prior sanction of the Government was competent or not; we have considered the case law referred to and relied upon by the learned counsel for the appellants,

i.e. *AKMIDC v. Mohammad Shafique & 4 others* [2015 SCR 882]. In that case this Court after appreciating the relevant provisions of law and the case law on the subject has held that autonomous bodies are independent in their spheres and the provisions of the Law Department Manual regarding Government sanction for filing of appeal are not applicable to their extent. Undisputedly, Muzaffarabad Development Authority is an autonomous body, therefore, in view of the law laid down by this Court the sanction of the Government was not requirement of law for filing the appeal before the High Court. As the learned High Court was not justified to dismiss the appeal filed by the appellants mere on the ground that the same has been filed without prior sanction of the Government, hence, to this extent the impugned judgment is hereby set aside while holding that the appeal of the

appellants before the High Court without prior sanction of the Government was competent.

6. While attending the merits of the case we have examined the material available on record minutely. It is an admitted fact that the land in dispute is situated near to Muzaffarabad city at a prime location and is of commercial nature. This Court time and again held that where the lands are not acquired with the consent of the owners rather they have been deprived of their lands under the power of the State, the owners are entitled to get maximum possible benefits. It is well settled phenomenon of law 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. In the case in hand, after examining the record it appears that the acquiring agency failed to discharge its duty

properly. In *Zulfiqar Muhammad Khan's* case referred to by the learned counsel for the respondents, the land situate at the similar location, acquired for the same project through the same award, was under consideration and this Court after thoroughly appreciating all the legal and factual aspects and the evidence brought on record by the parties fixed the compensation as Rs.6,00,000/- per *marla* for the land situate at Tariqabad and Rs.7,00,000/- per *marla* for the land situate at Gulshan Pir Allau-Din. As the location/nature of the land, evidence and all other factors are common in both the cases, therefore, the learned High Court has not committed any illegality to enhance the compensation on the strength of judgment delivered by this Court in *Zulfiqar Muhammad Khan's* case. The learned counsel for the appellants failed to establish anything which distinguishes the case in hand

from *Zulfiqar Muhammad Khan's* case; therefore, in such state of affairs, there is no room to interfere with the compensation fixed by the High Court.

7. The argument of the learned counsel for the appellants that the respondents filed reference application without arraying the necessary party MCDP, therefore, the same was liable to be dismissed on this sole ground has also no substance. We agree with the stance taken by the learned counsel for the respondents that the land in dispute was acquired by the Collector Land Acquisition on the recommendations of DAM. When the landowners duly arrayed DAM and Collector as party while filing reference application, it cannot be said that the reference was filed incompetently without arraying necessary party.

In view of the above, the learned High Court rightly enhanced the compensation while accepting the appeal filed by the landowners, therefore, to this extent the impugned judgment stands upheld and the appeal of the appellant having no substance stands dismissed. No order as to costs.

Mirpur,
_.11.2017

JUDGE

CHIEF JUSTICE

