

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No. 11 of 2018  
(PLA Filed on 20.11.2017)

Khadam Hussain s/o Ghulam Qadir r/o Ambore  
Tehsil & District Muzaffarabad.

.....APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary having his office at new Secretariat Muzaffarabad.
2. Secretary Public Works and Communication Azad Jammu & Kashmir, Muzaffarabad.
3. Commissioner, Muzaffarabad Division, Muzaffarabad AJ&K.
4. Collector/Deputy Commissioner/District Magistrate Muzaffarabad, Azad Kashmir.
5. Collector for land Acquisition regarding Award No. 10/2009 dated 16.11.2009 having its office at District Court Complex, Muzaffarabad, Azad Kashmir.
6. Executive Director, Al-Abbas Institute of Medical Sciences, Muzaffarabad, Azad Kashmir.
7. Assistant Commissioner, Muzaffarabad, Azad Jammu & Kashmir.
8. Principal AJ&K Medical College, Muzaffarabad.
9. Board of Revenue through Secretary Board of Revenue, Muzaffarabad AJ&K.

.....RESPONDENTS

10. Khalid Mehmood,
11. Ishtiaq,

12. Shahbaz Mir,
13. Arslan Mir, sons,
14. Noor Nab Khadam,
15. Seemab Khadim daughters r/o Ambore, Tehsil  
and District Muzaffarabad.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court  
dated 14.09.2017 in writ petition No.1048 of 2016]

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

FOR THE RESPONDENTS:    Sardar Karam Dad  
Khan, Advocate-General.

Date of hearing: 03.12.2018.

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The captioned appeal by leave of the Court is the outcome of the judgment of the High Court dated 14.09.2017, whereby, the writ petition filed by the appellant, herein, has been dismissed in limine.

2.            The brief facts of the case are that the appellant, herein, filed a writ petition before the High Court seeking direction to the respondents to act upon the orders of Worthy the Prime Minister, Azad Government of the State of Jammu & Kashmir, for de-awarding the land acquired for the

construction of Abbas Institute of Medical Sciences, Ambore, Muzaffarabad. It was averred that the acquired land vests in the sole property of the appellant, wherein, the residential houses were constructed and a graveyard for the deceased family members is also located in the said land. It was further averred that the appellant has got no alternate means of residence. Despite approval of the then Prime Minister and the concerned authorities, the respondents are not going to de-award the land, which remained surplus and now the same was transferred for the construction of Azad Jammu & Kashmir Medical College but has not been utilized by the said institution so far. He prayed as follows:-

*"It is, very humbly prayed that respondents may kindly be ordered to act upon, in accordance with the orders of the PM of AJ&K regarding process of De-Award and the land comprising old 37 survey No.223 measuring 3 kanals 10 marlas. It is further prayed to declare that Notification No.1088-98 dated 22.01.2016 whereby 140 kanals and 13 marlas land*

*was transferred to Medical College Muzaffarabad may very kindly be declared void, and illegal. It is further prayed that respondents may very kindly be directed to restrain from taking possession of the acquired land by ignoring the reports of NESPAK and JICA regarding constructions over the land situated at fault line. Any other relief which this Hon'ble Court deems fit and proper in the eye of law, may please be granted."*

The respondents filed comments, wherein, they refuted the claim of the appellant. The learned High Court, after necessary proceedings, dismissed the writ petition filed by the appellant, herein, in limine, through the impugned judgment dated 14.09.2017, hence, this appeal by leave of the Court.

3. During the pendency of appeal, keeping in view the nature of the controversy, for doing complete justice, we also deemed it appropriate to seek report from the revenue officer regarding the actual on spot position. The Deputy Commissioner/Collector, Muzaffarabad has

submitted the report which is made part of the record.

4. Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the appellant submitted that in view of the legal and factual proposition involved in this case, the impugned judgment of the High Court is against law. The learned High Court did not even bother to properly appreciate the legal and factual propositions involved, specially, the equal treatment under law and eradication of discrimination. It appears that the learned High Court has partially taken into consideration the prayed relief and remedy regarding cancellation of notification dated 22.01.2016 and the other sought remedy of de-award of the land has not been properly attended. He submitted that not only the Chief Executive has approved for de-award but it is also proved from the record that over the disputed piece of land the appellant-landowner has constructed the dwelling houses. The appellant has also brought on record the proof of the fact that in the same circumstances

and situation, the land has been de-awarded in favour of some other landowners. This aspect has not been properly considered, hence, the impugned judgment of the High Court is not sustainable.

5.           Conversely, Sardar Karam Dad Khan, the learned Advocate-General representing the respondents forcefully defended the impugned judgment and submitted that the same is well reasoned calling for no interference. The appellant has got no locus standi. The land was acquired for public purpose and the claim of the appellant is baseless, therefore, this appeal is not maintainable.

6.           We have heard the learned counsel for the parties and gone through the record made available. The careful examination of the impugned judgment reveals that the writ petition has been dismissed in limine while taking into consideration only the proposition of transfer of the land to Azad Jammu and Kashmir Medical College which is one of the sought remedy, whereas, the other main grievance of the appellant as agitated in grounds (A) and (B) of the memo of writ petition, prima

facie, remained unattended. In our considered view, at least the writ petition was not liable to be dismissed in limine. According to the report submitted by the Deputy Commissioner, Muzaffarabad, the appellant has constructed two shelter type houses in the awarded land measuring *7 marla 1 sarsai*. This aspect also requires detailed deliberation by providing opportunity to the parties to bring on record the relevant material to substantiate their respective versions. In this state of affairs, for doing complete justice, we admit the writ petition of the appellant for regular hearing to the extent of resolving the point of claimed de-award of the land which is under their constructed houses and being used to meet other necessities.

7. As the writ petition has been dismissed in limine, therefore, it is not appropriate to conclusively decide the controversy by ourselves rather according to the settled practice of this Court the proper course is to provide opportunity to the parties before the High Court to bring on record the whole controversy and submit their pleadings. After

conducting proceedings according to law, the learned High Court shall decide the controversy on merit according to law. The learned High Court shall also resolve the point of discrimination as in the same like situation the land has been de-awarded in favour of some other land-owners.

Consequently, this appeal is accepted, the impugned judgment of the High Court is recalled in the above stated terms, the writ petition is admitted for regular hearing and the case is remanded to the High Court for decision according to law.

CHIEF JUSTICE

JUDGE  
(J-II)

Muzaffarabad,  
07.12.2018



