

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 155 of 2018

(PLA Filed on 18.5.2018)

Kala Khan s/o Noora r/o Chella Bandi, Tehsil and
District Muzaffarabad.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu &
Kashmir through its Chief Secretary, having
his office at New Civil Secretariat Chatter,
Muzaffarabad.
2. Collector Land Acquisition (Urban)
Muzaffarabad, Azad Kashmir.
3. Deputy Commissioner, Collector District,
Muzaffarabad.
4. Chief Engineer PWD Highway,
Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
21.3.2018 in appeal No. 153 of 2012)

FOR THE APPELLANT: Mr. Nasir Masood Mughal,
Advocate.

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

Date of hearing: 3.12.2018.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 21.3.2018 passed by the learned High Court in Civil Appeal No. 153 of 2012.

2. The facts necessary for disposal of the captioned appeal are that

Kala Khan, appellant, herein, filed a reference before the Additional District Judge/Reference Judge, Muzaffarabad on 3.4.2010 alleging therein that the Collector Land Acquisition vide award No. 03/2009 acquired the land of the appellant compromising Kheewat No.1, Khasra No. 11 measuring 2 kanal 5 marla 1 sarsai for extension of Naloochi By-pass road. It was further alleged that the Collector has determined the compensation of the acquired land @ Rs.80,000/- per marla arbitrarily while totally ignoring its potential value as well as future use. It was

averred that due to the said award, the rest of the land of the appellant, herein, has become useless. It was claimed that the appellant has installed a block/pipe factory over the acquired land, which has also been affected and the appellant has not been given the compensation of the same, as such, he has been treated in an unjust manner. It was prayed that the compensation of the acquired land may be determined as Rs.30,00000/- per marla besides, compulsory acquisition charges. The reference was contested by the respondents by filing objections. It was stated that the award has rightly been issued in accordance with law. The respondents further stated that the award has been issued only to the extent of the land affected due to construction/widening of the road and the rest of the land was neither required nor it can be awarded. It was further stated that the compensation of the acquired land has been determined according to its location, potential and market value. It was prayed that the reference may be dismissed with costs. The

learned Reference Judge in light of the pleadings of the parties framed issues and directed them to lead evidence pro and contra. Finally vide judgment and decree dated 28.5.2012 the learned Reference Judge has dismissed the reference application to the extent of enhancement of the compensation of the acquired land as well as the compensation of the remaining land affected due to the award. However, the learned Reference Judge directed the respondents to issue supplementary award in favour of the appellant while determining the compensation of the Pipe/Block factory installed by the appellant, herein, over the land within a period of two months. Feeling dissatisfied from the judgment and decree issued by the learned Reference Judge, the appellant, herein, filed an appeal before the Azad Jammu & Kashmir High Court on 27.8.2012 for enhancement of the compensation of the acquired land @ Rs.30,0000/- per marla. The learned High Court after hearing the parties, vide impugned judgment and decree dated 21.3.2018 has

dismissed the appeal.

3. Mr. Nasir Masood Mughal, the learned Advocate appearing for the appellant argued that the landed property of the appellant, herein, was acquired vide award No. 3/09 dated 26.3.2009 and the compensation has been fixed by the Collector arbitrarily as Rs.80,000/- per marla whereas the land is located at Main Chehla Bandi road and has a commercial as well as potential value. The learned Advocate argued that the Collector has categorized the land arbitrarily and placed the land of the appellant, herein, in category (B), which in fact was *Hoter Awal*. He argued that a Block and Pipe Factory was set up by the appellant, herein, over the acquired land and due to acquisition of the land, the appellant has suffered a huge loss, which was liable to be considered under section 23 of the Land Acquisition Act by the Collector, but the same has been over-looked. The learned Advocate argued that the market value of the land was not less than Rs.30,000,00/- per marla and the appellant, herein, was entitled to the same but he has been

deprived of his lawful right without any justification. The learned Advocate argued that similarly placed land was acquired vide award No. 3/09 for construction, extension and widening of western by-pass road from Naloochi to Chehla and reasonable compensation has been given to the land owners and has been enhanced lastly by this Court in

Civil Appeal No. 234/2015 decided on 2.5.2017.

The learned Advocate argued that from the oral evidence coupled with the statement of the commission appointed by the Court, it was amply proved that the acquired land was being utilized for commercial purpose and the Collector has not fixed the compensation in accordance with law. He argued that despite all these facts, the learned Reference Judge dismissed the reference for erroneous reasons.

The learned Advocate submitted that in the impugned judgment of the High Court dated 21.3.2018 the evidence brought on record by the appellant, herein, has not been appreciated properly.

4. Sardar Karam Dad Khan, the learned Advocate General appearing for the respondents has argued that the appellant has failed to bring on record any iota of evidence to prove his case. The learned Advocate General further argued that to the extent of the award of Block and Pipe Factory, the Reference Judge has already directed the respondents to issue supplementary award and compensate the appellant, herein. He argued that from the other evidence the appellant, herein, has not proved that compensation has not been determined properly by the Collector and enhancement has rightly not been made by the Courts below. He argued that the impugned judgment of the learned High Court also does not suffer from any legal

infirmity.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record reveals that vide award No. 3/09 dated 26.3.2009, besides the land of some other land owners the land of the appellant, herein, was also

acquired for extension of western Naluchi by-pass road. The notification under section 4 of the Land Acquisition Act was issued on 17.10.2008. The land comprising Khasra No.1, survey No.11min measuring 2 kanal 5 marla and 1 sarsai was acquired through the aforesaid award. The appellant, herein, produced Muhammad Latif, Muhammad Iqbal, Abdul

Rashid, Muhammad Shafique and Ishtiaq Ahmed *Patwari* and also appeared himself as a witness in support of his claim. Besides the appellant, all the witnesses are unanimous on the point that the acquired land is located near the main Chehla Bridge. The commercial and potential value of the land is admitted by the

Collector as well as by the Commissioner and the same is evident from the report as well as from its statement. The learned Reference Judge has not accepted this oral evidence of the appellant for enhancement of the compensation. The enhancement in the compensation has been refused by the learned Reference Judge mainly on the ground that no documentary evidence has

been produced and mere the oral version of the witnesses cannot be accepted. We are of the view that this approach of the learned Reference Judge was not justified and the learned High Court has also not considered the same in its true perspective. The Reference Judge has appointed the commission, who after visiting the spot admitted that the land is located on the road side and is being used by the appellant, herein, for commercial purpose. It is also admitted even by the Collector that there is a Block and Pipe Factory being managed and run by the appellant, herein, on the same land, therefore, the Reference Judge while deciding the case was bound to consider the evidence as well as the admitted commercial position of the land, but while judging otherwise the appellant, herein, stood discriminated because the compensation in the other cases of the same vicinity has been enhanced by this Court earlier as is evident from the judgment referred to and relied upon by the learned Advocate for the appellant titled *Mumtaz Qamar & others vs. Azad Govt. and others* (Civil

Appeal No. 234/2015 decided on 2.5.2017) whereby the Court while deciding the case has relied upon very important observation of the apex Court of Pakistan recorded in the case reported as *Fazalur Rehman and others vs. General Manager, S.I.D.B. and others* (PLD 1986 Supreme Court 158). At page 162 of the report, it was observed as under:-

“I would, therefore, like to emphasize that while determining the value of the land acquired by the Government and the price which a willing purchaser would give to the willing seller, only the ‘past sales’ should not be taken into account but the value of the land with all its potentialities may also be determined by examining (if necessary as a Court witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market. In appropriate cases there should be no compunction even on relying upon the oral testimony with respect to the market value of the property intended to be acquired, because even while deciding cases involving questions of life and death, the Courts rely on oral testimony alone and do not insist

on the production of documentary evidence. The credibility of such witnesses would, however, have to be kept in mind and it would be for the Court in each case to determine the weight to be attached to their testimony. It would be useful, and even necessary, to examine such witnesses while determining the market price of the land in question, because of the prevalent tendency that in order to save money on the purchase of stamp papers and to avoid the imposition of heavy Gain Tax levied on sale of property, people declare or show a much smaller amount as the price of the land purchased by them than the price actually paid. The 'previous sales' of the land cannot, therefore, be always taken to be an accurate measure for determining the price of the land intended to be acquired."

Keeping in view the overall circumstances of the case as well as the potential and commercial value of the land, we are of the view that the appellant, herein, deserves compensation to the tune of Rs.1,20,000/- per marla of the acquired land. Accordingly ordered. The judgment and decree of the learned Reference Judge as well as the High Court stands modified in the manner indicated above.

6. As it is proved that the Block as well as Pipe Factory established by the appellant, herein, over the acquired land has not been awarded and the Reference Judge has also directed the respondents to issue supplementary award of the same, this direction is approved and the respondents shall do the needful within a reasonable time.

The appeal stands decided in the manner indicated above. No order as to costs.

JUDGE
Muzaffarabad.
7.12.2018

CHIEF JUSTICE