

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

1. Civil Appeal No.168 of 2018

(Date of institution: 22/6/2018)

1. Commissioner Division Poonch, Rawalakot.
2. Collector Land Acquisition, Poonch, Rawalakot.
3. Director Sports Poonch, Rawalakot.
4. Deputy Director Sports, Rawalakot.

..... APPELLANTS

v e r s u s

1. Mushtaq Sadiq s/o Sardar Muhammad Sadiq Khan, r/o Trar, Rawalakot.

.....RESPONDENT

2. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
3. Estate Officer/Chairman PDA, Poonch, Rawalakot.
4. XEN Highways Poonch, Rawalakot.

.....PROFORMA RESPONDENTS

[On appeal from judgment and decree of High Court, dated 19.4.20178 in Civil Appeals No.89 & 92 of 2013]

FOR THE APPELLANTS: Ms. Kokab Assaba Roohi, advocate.

FOR THE RESPONDENTS: Barrister Adnan Nawaz Khan, advocate.

2. Civil Appeal No.323 of 2018
(PLA filed on 21/6/2018)

1. Project Director Sports, Poonch, Rawalakot.
2. Deputy Director Sports, Poonch, Rawalakot.

..... APPELLANTS

v e r s u s

1. Mushtaq Sadiq s/o Sardar Muhammad Sadiq Khan, r/o Trar, Rawalakot.

.....RESPONDENT

2. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
3. Collector Land Acquisition, Poonch, Rawalakot.
4. Commissioner Division Poonch, Rawalakot.
5. Estate Officer/Chairman PDA, Poonch, Rawalakot.
6. XEN Highways, Poonch, Rawalakot.
7. Collector Land Acquisition, Poonch, Rawalakot.

.....PROFORMA RESPONDENTS

[On appeal from judgment and decree of High Court, dated 19.4.20178 in Civil Appeals No.89 & 92 of 2013]

FOR THE APPELLANTS: Ms. Kokab Al-Saba Roohi, advocate.

FOR THE RESPONDENTS: Barrister Adnan Nawaz Khan, advocate.

Date of hearing: 12.2.2019

JUDGMENT:

Raja Saeed Akram Khan, J.—Both the above-titled appeals arise out of the judgment of the High Court dated 19.4.2018, whereby while partly accepting the appeal filed by the respondent, herein, the compensation of the acquired plot has been enhanced and fixed as Rs.26,35,000/- instead of Rs.25,000,00/- along with 15% compulsory acquisition charges, whereas the counter appeal has been dismissed. As the appeals are offshoot of the single judgment passed by the High Court, therefore, the same have been heard together and being disposed off through the proposed single judgment.

2. The facts involved in the instant case are that Mushtaq Sadiq, respondent herein, filed a reference before the learned Reference Judge Rawalakot against the appellants, herein, on 24.2.2011, for enhancement of the compensation of plot acquired for construction of approach road Sports Stadium Rawalakot in lieu of Rs.5,00,000/- per kanal, along with 15% compulsory acquisition charges. The learned Reference Judge, after necessary proceedings, enhanced the compensation

and fixed the same as Rs.25,00,000/- along with 15% compulsory acquisition charges, vide judgment and decree dated 30.7.2013. Feeling dissatisfied, both the parties preferred separate appeals before the High Court. As stated above, the appeal filed by the respondent, land-owner, has been accepted whereas the counter appeal, filed by the official functionaries has been dismissed, through the impugned consolidated judgment.

3. Ms. Kokab Assaba Roohi, advocate, counsel for the appellants in both the appeals, submitted that the impugned judgment is based on misconception of law and the facts of the case. She added that the evidence has not been appraised by the Courts below in legal manner while handing down the judgments. She further added that both the Courts below fell in error while not adhering to the provisions of section 23 of the Land Acquisition Act, 1894, while making enhancement in the compensation. She also submitted that the document, on which the learned High Court has heavily relied while justifying the enhancement of compensation, is a transaction made between two

real brothers and the same was only executed just to get the market value of the acquired property at the enhanced rate. Such like document cannot safely be relied but the learned High Court has committed great illegality while taking into consideration the same.

4. On the other hand, Barrister Adnan Nawaz Khan, advocate, counsel for the respondent, while strongly opposing the argument of the counsel for the appellants and supporting the judgment of the High Court, submitted that the judgment is not open for interference, as the same is well-reasoned and plausible reasons have been assigned for enhancement of the compensation. He submitted that while deciding the reference application, the learned Reference Judge has not taken into account the document Ex.PD, (an attestation issued by the Pearl Development Authority, in respect of transfer of the plot in lieu of Rs.25,000,00/-, in favour of the respondent), which was relevant document and the same has rightly been taken into consideration by the learned High Court. The learned counsel further submitted that appeal before the High Court filed by

the appellants, herein, was dismissed on the ground that the same was incompetently filed without sanction of the Government and till the expiry of stipulated period, the appellants failed to bring on the record any sanction. The learned counsel submitted that such proposition has already been resolved by this Court in numerous judgments, especially in the cases reported as *Abdul Razzaque & 7 others vs. Anwar Hussain & 5 others* [2005 SCR 194], *Ch. Muhammad Yasin vs. Sardar Muhammad Naeem Khan and 3 others* [2010 SCR 17] and *Azad Government & 3 others vs. Mrs. Jamshed Naqvi & 2 others* [2014 SCR 13].

5. We have heard the learned counsel for the parties and gone through the impugned judgment along with the record made available.

6. The appellants challenged the judgment passed by the learned Reference Judge Rawalakot by way of appeal before the High Court. During the course of arguments, it transpired that the same has been filed without obtaining sanction from the Government. The learned High Court, while

attending to the point, has observed in the impugned judgment, as under:-

"7. It reflects from record that another appeal filed by Project Director Sports and another, has been filed without obtaining sanction of the Govt., which is not maintainable. The aforesaid view find supports from case titled "*Ch. Muhammad Yasin vs. Sardar Muhammad Naeem Khan and 3 others*" (2010 SCR 17). In paragraph No.22 of the report, it was opined as under:-

"According to the respondents they have been aggrieved by the appointment of petitioner as Advisor because when he will exercise the powers, then their schemes will be affected and their other official works will also suffer. This version reveals that they filed was in their official capacity as Minister and they want that their official business and the powers vested in them should not be jeopardized. According to rules 29 and 35 of the Law Department Manual no such kind of writ petition can be filed without the sanction of govt. both the writ petitions have been filed without the sanction of Government, therefore, *prima facie* at this stage it seems that these writ petitions were not maintainable as these have been filed without the sanction of Government."

From the perusal of the above, it reveals that no explanation could be offered before the High

Court that as to why the appeal was filed without proper sanction, which is the requirement of law. It is also an admitted position that for filing the appeal no sanction was brought on the record within stipulated period of time. The learned High Court has committed no illegality while dismissing the appeal. We agree to the argument of the counsel for the respondent and are justify to hold that the appeal filed before the High Court was incompetent. The arguments addressed by the counsel for the appellants on merits cannot, therefore, be considered. With these observations, the appeal stands dismissed.

JUDGE

JUDGE

Muzaffarabad