

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(APPELLATE JURISDICTION)

PRESENT:

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

1. Civil appeal No.246 of 2018
(PLA filed on 28.06.2018)

Raja Umar Hayat Khan son of Raja Naseer Ullah Khan, caste Rajpoot, r/o village Salkhala, Tehsil Authmuqam, District Neelum.

....APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Department of Education through its Secretary Education (Schools) Azad Government of the State of Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.
3. Director Public Instructions (Female), Elementary and Secondary Education,

Azad Government of the State of Jammu and Kashmir having his office at New District Complex, Muzaffarabad.

4. Divisional Director Education Muzaffarabad Division Muzaffarabad having his office at New District Complex, Muzaffarabad.
5. District Education Officer (Female) Authmuqam, District Neelum.
6. Collector Land Acquisition, District Neelum.

....RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 30.04.2018 in civil appeals No.01 and 21 of 2015)

FOR THE APPELLANT: Mr. Muhammad Noorullah Qureshi, Advocate.

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

2. Civil appeal No.247 of 2018
(PLA filed on 29.06.2018)

1. Azad Government of the State of Jammu and Kashmir through Secretary Elementary and Secondary

Education, Azad Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.

2. Department of Education through its Secretary Education (Schools) Azad Government of the State of Jammu and Kashmir at New Secretariat, Muzaffarabad.
3. Director Public Instruction (Female) Elementary and Secondary Education Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
4. Divisional Director Education Department, Muzaffarabad Division Muzaffarabad.

....APPELLANTS

VERSUS

1. Raja Umar Hayat Khan son of Raja Naseer Ullah Khan, caste Rajpoot, r/o village Salkhala, Tehsil Authmuqam, District Neelum.

....RESPONDENT

2. District Education Office Authmuqam, District Neelum.
3. Collector Land Acquisition District

Neelum.

....PROFORMA RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 30.04.2018 in civil appeals No.01 and 21 of 2015)

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

FOR THE RESPONDENT: Mr. Muhammad
Noorullah Qureshi,
Advocate.

Date of hearing: 15.01.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The captioned appeals by leave of the Court have been directed against the consolidated judgment of the High Court dated 30.04.2018, whereby the appeals filed by both the contesting parties have been dismissed. As both the appeals arise out of the common judgment, therefore, the same are being disposed of through this single judgment.

2. The facts forming the background of the instant appeals are that the land owned by the appellant, Raja Umar Hayat Khan, comprising *khewat* No.9/9, survey No.43, measuring 5 *kanal*, situate at village Salkhala, Tehsil Authmuqam, District Neelum, was acquired by the Collector Land Acquisition for construction of Girls Middle School Salkhala. The Collector Land Acquisition determined and fixed the compensation of the acquired land as Rs.3,00,000/- per *kanal*. Feeling aggrieved from the said determination of the compensation, the landowner filed a reference application and sought enhancement in the compensation. The claim of the landowner was that the market value of the acquired land was not less than Rs.500,000/- per *kanal*, but the Collector Land Acquisition wrongly awarded the compensation at low rate. The learned Reference Judge after necessary proceedings

vide its judgment and decree dated 31.10.2014, by accepting the reference application enhanced and fixed the compensation of the acquired land as Rs.4,00,000/- per *kanal*. Feeling dissatisfied from the judgment and decree recorded by the Reference Judge, both the contesting parties filed separate appeals before the High Court. The landowner solicited further enhancement in the compensation, whereas, in the appeal filed on behalf of the Government, it was pleaded that the compensation assessed by the Collector was reasonable and further enhancement made by the learned Reference Judge is not justified. The learned High Court through the impugned judgment dated 30.04.2018, dismissed both the appeals, hence, these appeals by leave of the Court.

3. Mr. Muhammad Noorullah Qureshi, Advocate, the learned counsel for the

appellant-landowner argued that the impugned judgment is against law and the facts of the case. He submitted that the Collector Land Acquisition while determining the market value of the land failed to take into consideration the relevant provisions of section 23 of the Land Acquisition Act as well as the principles of law enunciated by the superior Courts. Admittedly, the acquired land is of commercial nature and the market value of the acquired land is not less than Rs.10,00,000/- per *kanal*, however, inadvertently the landowner claimed the compensation at the rate of Rs.5,00,000/- per *kanal*, but even then the same was not awarded to him. He added that the learned Reference Judge failed to appreciate the evidence brought on record and made a meager enhancement in the compensation and the learned High Court committed same illegality while upholding the judgment of the

Reference Judge. He lastly submitted that the learned High Court in some other appeals fixed the compensation of the lands adjacent to the land in question as Rs.6,00,000/- per *kanal* but in the instant case discriminately refused to accept the claim of the landowner. The learned counsel placed on record a copy of the consolidated judgment of the High Court delivered in the other appeals. The learned counsel prayed for acceptance of appeal and fixation of the compensation at the rate of Rs.5,00,000/- per *kanal*.

4. On the other hand, Sardar Karam Dad Khan, the learned Advocate-General strongly opposed the arguments advanced by the learned counsel for the landowner and submitted that the Collector Land Acquisition after duly appreciating all the relevant factors assessed the market value of the land as Rs.3,00,000/- per *kanal*, but the learned

Reference Judge without any justification made the enhancement in the compensation. He added that each case has its own peculiar facts and circumstance and enhancement cannot be claimed on the ground that the market value of land situate adjacent to the acquired land has been determined higher than the disputed acquired land; as the location, nature etc. of the adjacent land may be quite different. He further added that both the Courts below also failed to take into consideration that the reference application before the Referee Judge was filed beyond the prescribed period of limitation and liable to be dismissed on this sole ground, but this important legal aspect of the case escaped the notice of both the Courts below.

5. We have heard the arguments and gone through the record made available along with the impugned judgment. Before attending

the merits of the case, we deem it appropriate to meet the point of limitation raised by the learned Advocate-General at first. The record shows that the award was announced on 18.10.2012 and the landowner filed reference application on 12.11.2012 before the Collector Land Acquisition but the Collector Land Acquisition sent the same to the Reference Judge after a period of 6 months. Thus, as the landowner filed reference application within limitation, therefore, due to the lapses on the part of the Collector, he cannot be penalized. The learned Advocate-General was confronted during the course of arguments; whether any action was taken by the concerned authority against the Collector on such negligence; he failed to satisfy the Court. Thus, the argument that the reference application was hopelessly time barred, is ill-founded which is hereby repelled.

6. To appreciate the points relating to the merits of the case, we have carefully scrutinized the material made available on record. The Collector Land Acquisition assessed the market value of the land as Rs.3,00,000/- per *kanal*, whereas, the claim of the landowner in the reference application is that the market value of the acquired land is not less than Rs.5,00,000/- per *kanal*. The Collector Land Acquisition in the award has not mentioned even a single word that on the strength of which material, he assessed the market value of the disputed land. Nothing is spelt out from the contents of award that the Collector Land Acquisition considered the sale-deeds executed in the vicinity during the relevant period as well as the other factors necessary to be considered for determination of the market value under law. After going through the contents of award, we are of the

view that the argument of the learned Advocate-General that the Collector Land Acquisition assessed the market value in accordance with law, is not supported by the record.

7. So far as, the claim of the landowner that the market value of the acquired land is not less than Rs.5,00,000/- per *kanal* is concerned, it appears from the record that the landowner in support of the claim brought on record the average price of the land situate in the vicinity, assessed by the revenue officials on the strength of 3 different sale-deeds, Exh.PB. In the said document, the average price of the land in the year 2011-2012, has been shown as Rs.4,00,044/- per *kanal*. The landowner also brought on record a sale-deed executed in the year 2012, through which a piece of land measuring 10 *marla*, was sold against a price of Rs.2,50,000/-. The learned

Reference Judge while enhancing the compensation discussed all the material brought on record and refused to rely upon the sale-deed produced in evidence on the ground that the same was executed after the issuance of notification under section 4 of the Land Acquisition Act; even otherwise, this Court in a plethora of pronouncements has held that mere tendering of the sale-deeds is not sufficient until and unless the landowner has not proved that the acquired land is location-wise similar and its nature, kind or potential value is same as that of the land sold through sale-deed tendered in evidence. In the case in hand, the landowner has not substantiate that the acquired land and the land sold through sale-deed tendered in evidence location and nature wise are similar, therefore, on the basis of such sale-deed the compensation could not be enhanced. The learned Reference Judge has

relied upon the average price of the land situate in the vicinity, assessed by the revenue officials, discussed hereinabove, and the record shows that the appellants, Azad Government & others, even failed to rebut this document, therefore, in our view the learned Reference Judge rightly enhanced and fixed the compensation while relying upon the said document. Although, the Collector Land Acquisition has not discussed in the award that how he assumed that the market value of the acquired land was Rs.3,00,000/- per *kanal*, however, the learned Reference Judge thoroughly appreciated the record of the acquisition proceedings and observed that the Collector has assessed the market value on the strength of the average price of the land situate in the vicinity assessed in the year 2009-10, whereas, the notification under section 4 of the Land Acquisition Act in the

instant matter was issued in the year 2012, furthermore, in the year 2009-10, the average price was shown as Rs.3,40,000/- per *kanal*, but the Collector in the year 2012, instead of increasing the market value further decreased the same and fixed as Rs.3,00,000/- per *kanal* which is against law and justice. We are satisfied that the learned Reference Judge properly appreciated the record; enhanced the compensation in a legal manner and has not committed any illegality and the learned High Court also rightly concurred with the findings recorded by the learned Reference Judge. As both the parties failed to point out any misreading or non-reading of evidence or any violation of law in the findings concurrently recorded by the Courts below, therefore, interference by this Court is not warranted under law. The judgment of the High Court delivered in some other cases, produced

before the Court by the landowner, is not helpful to the case of the landowner as enhancement cannot be made on the strength of the judgment delivered in the other case rather the landowner has to prove his claim by producing the evidence.

In view of the above, finding no substance, both the appeals are hereby dismissed with no order as to costs.

Mirpur,

JUDGE

CHIEF JUSTICE

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