

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.209 of 2018

(Filed on 25.09.2018)

1. MDA through Director General.
2. Director General MDA, Mirpur.
3. Estate Officer/Director Estate
Management MDA, Mirpur.

....APPELLANTS

VERSUS

1. Collector Land Acquisition Mangla Dam
Raising Project, Mirpur.
2. WAPDA through Chief Engineer/Project
Director Mangla Dam Raising Project,
Mirpur.

.... RESPONDENTS

(On appeal from the judgment and decree of
the High Court dated 26.07.2018 in reference
appeal No.410 of 2008)

FOR THE APPELLANTS: Raja Zafar Hussain
 Khan, Advocate.

FOR THE RESPONDENTS: Ch. Liaqat Afzal,
Advocate.

Date of hearing: 20.03.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal has been directed against the judgment of the High Court dated 26.07.2018, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that a piece of land owned by Mirpur Development Authority (MDA) was acquired by the Collector Land Acquisition for construction of a road. The Collector Land Acquisition assessed the market value of the acquired land as Rs.50,000 per *kanal*. The appellants filed reference application and claimed that the market value of the acquired land is not less than Rs.3,00,000 per *kanal*.

The learned Reference Judge after necessary proceedings dismissed the reference application on the sole ground that none of the appellants, herein, turned up as a witness. The appellants challenged the judgment of the Reference Judge by filing appeal before the High Court. The learned High Court while endorsing the afore-discussed findings of the Reference Judge dismissed the appeal through impugned judgment dated 26.07.2018, hence, this appeal.

3. Raja Zaffar Hussain Khan, Advocate, the learned counsel for the appellants argued that the impugned judgment is against law and the facts of the case. He submitted that the appellants got recorded the statement of one witness and also produced the documentary evidence before the trial Court, but the trial Court instead of deciding the case on the strength of the evidence brought on

record, dismissed the reference application on the sole ground of non-appearance of the appellants as witness which is against law. He added that the learned High Court on the strength of a case law, which having distinguishable facts and circumstances has no nexus with the case in hand, has decided the matter. The learned counsel lastly submitted that the concurrent findings recorded by the Courts below are based on misinterpretation of law and the facts which are liable to be vacated. He prayed for acceptance of appeal and remand of the case.

4. On the other hand, Ch.Liaqat Afzal, Advocate, the learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel for the appellants. He submitted that the judgments of the Courts below are perfect and legal; therefore, interference by this Court is

not warranted under law. He contended that even on merits the appellants failed to prove their case, moreover, the reference application was incompetently filed as the power to file suit or application etc. is vested with the Board of MDA and any officer of the MDA shall exercise the powers of the Board when the Board give him such powers through resolution, whereas, in the instant case no such resolution is available on record. He prayed for dismissal of appeal.

5. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned judgment. The perusal of the record shows that the learned Reference Judge refused to extend the prayed relief to the appellants mainly on the ground that no one from the appellants came into the witness box to substantiate the claim; and the learned

High Court on the strength of the case law reported as *Muhammad Sharif Khan v. Mst. Ismat Bi and 4 others* [PLD 1982 SC (AJK) 76] endorsed the findings recorded by the Reference Judge. It appears from the record that the appellants in support of their claim got recorded the statement of one witness and also produced the documentary evidence, from the perusal of which, it postulates that controversy could easily be resolved on the strength of the evidence brought on record; therefore, in such scenario, in our view, the learned Reference Judge was not justified to dismiss the reference application on the sole ground that none of the appellants appeared in the witness box. In the case law referred to by the High Court, the facts and circumstances of the case were quite different and this Court held that a party who is expected to know the controversy has to go into the witness box to

prove his claim, whereas, in the present case, sufficient evidence was available on record to resolve the controversy involved in the matter, hence, the learned High Court was also not justified to dismiss the appeal on the strength of case law (supra). Keeping in view the peculiar facts of the instant case, we are convinced that both the Courts below wrongly dismissed the reference application as well as appeal. The point raised by the counsel for the respondent, in respect of the competency of reference application, also requires consideration; therefore, to get the wisdom of the Courts below at first on all the issues involved in the case, we deem it proper to remand the case to the trial Court.

Resultantly, this appeal is accepted and while setting aside the judgments/decrees passed by the Courts below the case is remanded to the trial Court with the direction

to decide the same afresh after taking into consideration the observations made in the preceding paragraph. No order as to costs.

Mirpur,
.03.2019

JUDGE

JUDGE