

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 265 of 2018
(PLA filed on 20.08.2018)

Muhammad Hassan son of Nawab Din r/o
Nallah Kalas, presently Tariqabad, Tehsil and
District Muzaffarabad.

.... APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Director Education Planning, Muzaffarabad.
3. Commissioner Revenue Muzaffarabad Division, Muzaffarabad.
4. Collector District Muzaffarabad.
5. Collector Land Acquisition, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment and decree of the
High Court dated 27.06.2018 in appeal No. 96 of
2016)

FOR THE APPELLANT: Ch. Muhammad Ismail,
Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan,
Advocate.

Date of hearing: 04.03.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court is directed against the judgment and decree dated 27.06.2018 passed by the learned High Court in appeal No. 96 of 2016.

2. The facts necessary for disposal of the captioned appeal are that vide award No. 8 of 2014 dated 26.04.2014, the land of the appellant, herein, comprising khasra No. 1984, measuring 1 kanal situated in village Tariqabad was acquired for construction of school. The Collector Land Acquisition determined the compensation of the land to the tune of Rs. 1,00,000/- per marla. Feeling aggrieved from the determination of the compensation, the appellant, herein, filed a reference before the Reference Judge on 08.09.2014, claiming

therein that the acquired land was not agricultural land rather it was a developed plot and could be utilized for commercial as well as residential purpose. It was stated that while determining the compensation, the location of the land, its potential and commercial value, have not been considered by the Collector. It was prayed that as the land is located on the main Tariqabad road and it is within the municipal limits, hence, the market value of the acquired land is not more than Rs. 6,00,000/- per marla. The reference was contested by the other side by filing written statement. The learned trial Court framed issues and directed the parties to lead evidence pro and contra. At the conclusion of the proceedings vide judgment and decree dated 15.04.2016, the learned Reference Judge enhanced the compensation and held that the appellant, herein, is entitled to get the compensation to the tune of Rs. 3,14,285/- per marla besides 15% compulsory acquisition charges. The appellant, herein, was not satisfied

from the compensation amount enhanced by the learned Reference Judge and filed an appeal before the Azad Jammu and Kashmir High Court on 16.07.2016. The legality and correctness of the judgment dated 15.04.2016 was also challenged by the Azad Government through a separate appeal. Both the appeals were consolidated for the purpose of hearing and decision by the learned High Court and vide judgment and decree dated 27.06.2018 dismissed the same after hearing the parties.

3. Ch. Muhammad Ismail, the learned Advocate appearing for the appellant, argued with vehemence that the Courts below have not determined the compensation of the land in accordance with its commercial, potential value as well as while considering an unreported judgment of this Court titled *Zulfiqar Muhammad Khan & others vs. Azad Government & others* (civil appeal. No. 206 of 2014, decided on 03.12.2014). He argued that in the cited judgment, the compensation of the acquired

land in Tariqabad was fixed as Rs. 6,00,000/- per marla, by this Court. The learned Advocate further argued that the compensation has to be given to the appellant while considering the provisions contained in section 23 of the Land Acquisition Act. He argued that the Collector, Reference Judge as well as the learned High Court has considered the same properly. He prayed for enhancement of the compensation while accepting the appeal. In support of his submission, the learned Advocate placed reliance on the cases reported as *Marawat Khan and 4 others vs. Collector Land Acquisition, Mangla Dam Raising Project, Zone-I, Mirpur and 2 others* [2013 SCR 1224] and *Abdul Aziz vs. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffarabad and 2 others* [PLD 2010 SC (AJ&K) 37].

4. Conversely, Sardar Karam Dad Khan, the learned Advocate appearing for the official respondents, controverted the arguments and submitted that a reasonable enhancement has

already been ordered by the learned Reference Judge and maintained by the learned High Court, therefore, further enhancement on the basis of the judgment of this Court or evidence led by the appellant, herein, is not possible. He argued that it has not been proved that the acquired land was located on the road-side as it was proved in the cited judgment by the land-owners, therein. The learned Advocate further argued that the case law referred to and relied upon by the counsel for the appellant is not relevant at all.

5. We have heard the learned Advocates representing the parties and gone through the record of the case.

6. Firstly, we would like to deal with the claim of the appellant, herein, for determination of the compensation of the acquired land in accordance with the dictum of this Court laid down in an unreported judgment delivered in a case titled *Zulfiqar Muhammad Khan & others vs. Azad Government & others* (civil appeal. No. 206

of 2014, decided on 03.12.2014) referred to hereinabove. We are of the view that though in that case, the compensation to the tune of Rs. 6,00,000/- per marla along with 15% compulsory acquisition charges has been enhanced on the appeals of the land-owners for construction of Tariqabad bypass road but in the present case, admittedly, as per the statements of the witnesses, produced by the appellant, herein, the acquired land is not located on the roadside. Therefore, no comparison can be made with the land which was acquired for construction of Tariqabad bypass road and enhancement in the compensation cannot be claimed on the basis of said judgment.

7. We have considered the statements of the witnesses, namely, Ch. Ghulam Abbas, Ch. Gul Hassain and Tahir Mehmood, besides the statement of the appellant himself. In the oral evidence, the appellant, herein, has not been able to establish that the market value of the

acquired land was to the tune of Rs. 6,00,000/- per marla. The documentary evidence has properly been discussed by the learned Reference Judge and the conclusion reached by him has been approved by the learned High Court while giving sound reasons. To prove the market value of the land, the onus of proof is always on the land-owner who has to prove the same with cogent evidence. By now, it is well settled that the enhancement in compensation cannot be made on the basis of surmises and conjectures.

In view of the above, no case for further enhancement has been made out, therefore, finding no force in this appeal, the same is hereby dismissed. No order as to costs.

Muzaffarabad.
05.03.2019.

JUDGE

JUDGE

M. Hassan vs. Azad Govt. & others

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

Muzaffarabad.
05.03.2019.

JUDGE

JUDGE