

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

1. Civil Appeal No.188 of 2018
(Filed on 09.07.2018)

1. Azad Government of the State of Jammu and Kashmir through Secretary Elementary and Secondary Education Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Education Department (Schools), through Secretary Education Schools Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
3. Director Education Planning Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
4. Commissioner Revenue Muzaffarabad Division.
5. Collector District/Deputy Commissioner Muzaffarabad.
6. Collector Land Acquisition Muzaffarabad.

....APPELLANTS

VERSUS

1. Mohkam Din Awan son of Allah Ditta, caste Awan, r/o Tariqabad, Tehsil and District Muzaffarabad.

....RESPONDENT

2. Senior Member Board of Revenue Azad Jammu and Kashmir, Muzaffarabad.

.....PROFORMA RESPONDENT

(On appeal from the judgement and decree of the High Court dated 10.05.2018 in civil appeals No.126 and 148 of 2017)

FOR THE APPELLANTS: Mr. Muhammad Zubair Raja, Add. Advocate-General.

FOR THE RESPONDENT: Mr. Muhammad Hafiz Bhatti, Advocate.

2. Civil Appeal No.194 of 2018
(Filed on 16.07.2018)

Mohkam Din Awan son of Allah Ditta, caste Awan, r/o Tariqabad, Tehsil and District Muzaffarabad.

....APPELLANTS

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Secretary Elementary and Secondary Education Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Education Department (Schools), through Secretary Education Schools Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
3. Director Education Planning Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
4. Commissioner Revenue Muzaffarabad Division.
5. Collector District/Deputy Commissioner Muzaffarabad.
6. Collector Land Acquisition Muzaffarabad.
7. Senior Member Board of Revenue Azad Jammu and Kashmir, Muzaffarabad.

.....RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 10.05.2018 in civil appeals No.126 and 148 of 2017)

FOR THE APPELLANT: Mr. Muhammad Hafiz
Bhatti, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad
Zubair Raja, Addl.
Advocate-General.

Date of hearing: 06.11.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals have been addressed against the judgment and decrees passed by the High Court on 10.05.2018, whereby, the appeal filed by appellant-landowner has been accepted while the cross appeal filed by the appellants, Azad Govt. & others has been dismissed.

2. The facts necessary for disposal of the instant appeals are that the land owned by the appellant, Mohkim Din, measuring 10 *marla*, situate at Tariqabad Muzaffarabad was acquired for construction of Girls High School Tariqabad and award was issued on 26.04.2014. The Collector Land Acquisition

assessed and determined the compensation of the acquired land as Rs.1,00,000/*marla*. Feeling dissatisfied from the compensation amount determined by the Collector the landowner filed reference application and claimed that the market value of the acquired land is Rs.5,00,000/*marla*, therefore, he is entitled to get the compensation at the same rate. He also claimed that he is entitled to get the compensation of the trees and stones etc. The learned Reference Judge after necessary proceedings vide its judgment dated 31.05.2017, while accepting the reference application enhanced and fixed the compensation as Rs.03,14,285/*marla*. Both the parties feeling aggrieved from the judgment of the Reference Judge filed separate appeals before the High Court. The learned High Court vide impugned judgment dated 10.05.2018, while accepting the appeal

filed by the landowner further enhanced and fixed the compensation as Rs.03,57,143/*marla* and dismissed the appeal filed by the appellants, Azad Government and others, hence, these appeals.

3. Mr. Muhammad Zubair Raja, Additional Advocate-General argued that the judgments of both the Courts below are based on misreading and non-reading of the record. He contended that the Collector Land Acquisition assessed the market value of the acquired land in accordance with law; therefore, there was no room to interfere with the same. He added that the landowners while filing reference application took the stance that the market value of the acquired land is not less than Rs.5,00,000/*marla* but he failed to bring on record any concrete evidence through which it could be ascertained that the market value of the land is higher than the

compensation amount assessed by the Collector. In such circumstances, under law the Courts below were not justified to make further enhancement in the compensation. He prayed for setting aside the judgments of the Courts below and restoration of the compensation determined by the Collector.

4. On the other hand, Mr. Muhammad Hafiz Bhatti, Advocate, the learned counsel for the appellant-landowner opposed the arguments advanced by the learned Additional Advocate-General. He submitted that the acquired land is of commercial nature, situate within the municipal limits of Muzaffarabad and the market value of the same is very High. He contended that in the matter in hand the Collector Land Acquisition arbitrarily assessed and determined the compensation and the Courts below also failed to appreciate the record in a legal manner. He submitted that

the landowner by producing evidence proved that the market value of the acquired land is more than Rs.5,00,000/*marla* and the compensation of trees and other material available on the spot was not awarded to him; whereas, in rebuttal the other side failed to bring on record any reliable evidence. Thus, in such state of affairs, the Courts below should have fixed the compensation as proved by the landowner. The learned counsel prayed for further enhancement and fixation of the compensation as Rs.5,00,000/*marla* and also for award of compensation of trees etc.

5. We have heard the arguments and gone through the record made available along with the impugned judgment. The record reveals that the Collector Land Acquisition determined the compensation of the acquired land as Rs.1,00,000/*marla*. The claim of the landowner in the reference application is that

the market value of the acquired land is Rs.5,00,000/*marla*. The landowner in support of claimed amount produced oral as well as documentary evidence, whereas, the appellants, Azad Govt. and others, also produced two witnesses in support of the compensation amount determined by the Collector. The perusal of the record shows that it is an admitted fact that the land in question is situate adjacent to Muzaffarabad city and valuable in nature. The Collector Land Acquisition mainly assessed the compensation of the acquired land on the basis of previous award No.04 issued in the year 2011, for the construction of Tariqabad Bypass Road. In the said award the compensation was determined as Rs.1,30,000/*marla*, whereas, in the instant award the Collector recorded that the land in question is situate at some distance from the road, therefore, the market value of the same

is Rs.1,00,000/marla. In our view the mode adopted by the Collector for determining the compensation in the present case is not in accordance with law. The Collector after a long period from the issuance of previous award without adhering to the fact that the prices of the lands have increased much relied on the same. Furthermore, from the record it transpires that witnesses produced by the appellants, Azad Government and others, also support the claim of the landowner. The witness Muhammad Riaz while recording his statement deposed as under:-

"یہ بات درست ہے کہ اراضی زیر ریفرنس کی Back میں سڑک ہے جہاں ایک بڑی مارکیٹ ہے۔ اراضی طارق آباد میں فی مرلہ 4/5 لاکھ ہو گی۔ مظہر کو علم نہ ہے کہ بشمول طارق آباد ہر علاقہ کی اراضی کی قیمتیں دن بدن بڑھ رہی ہیں۔"

The other witness, Muhammad Ashraf Qureshi, in his statement stated as under:-

the landowner has not been awarded to him. In view of the averments of the award the landowners from the acquired land could shift the material owned by them if any. As there was no bar on the landowner on the shifting of the alleged stones, therefore, later on he cannot claim the compensation of the same. To the extent of trees allegedly available in the acquired land at the time of acquisition, there are lot of contradictions, in respect of the number and classification of the trees, in the statements of the witnesses produced by the landowner. Thus, on the basis of such evidence prayed relief cannot be granted to the landowner. Even otherwise, in the award it has been mentioned that to the extent of trees available in the land, on the submission of reports/estimates from the relevant departments, supplementary award shall be issued, therefore, the landowner may pursue

the matter at the proper forum. To prove his claim that the market value of the acquired land is Rs.5,00,000/*marla* the landowner has brought on record two sale-deeds, available on record as Exh.PC and Exh.PD. The perusal of the same shows that through sale-deed, Exh.PC the land measuring 14 *marla* was sold against a price of Rs.44,00,000/-, meaning thereby that price of one *marla* land comes to Rs.3,14,000/-, whereas, through sale-deed, Exh.PD, land measuring 15 *marla* was sold against the consideration of Rs.60,00,000/- and price of one *marla* land comes to Rs.4,00,000/-. From the contents of award as well as the statements of the witnesses produced by the landowner it appears that the acquired land is located away from the road. Thus, in our view the landowner through concrete evidence failed to substantiate that the market value of the acquired land at the

relevant time was Rs.5,00,000/*marla*. The learned High Court in the light of the evidence brought on record by the landowner has already enhanced and fixed the compensation adequately; therefore, further enhancement is not justified.

In view of the above both the appeals being devoid of any force are hereby dismissed with no order as to costs.

Muzaffarabad,

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Azad Govt. & others v. Mohkam Din Awan
Mohkam Din Awan v. Azad Govt. & others

ORDER:-

The judgment has been signed. The same shall be announced by the Registrar after notifying the learned counsel for the parties.

Muzaffarabad,

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