

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Civil appeal No.350 of 2019

(Filed on 25.07.2019)

1. Secretary Works having his office at new Secretariat Muzaffarabad.
2. Collector Land Acquisition Construction District Complex, Muzaffarabad.
3. Chief Engineer Public Works Department Roads Muzaffarabad.
4. Superintendent Engineer Public Works Department Construction and Roads Division Muzaffarabad.
5. XEN Public Works Department Construction and Roads Division Muzaffarabad.

....APPELLANTS

VERSUS

1. Muhammad Azad son of Ghulam Hussain, caste Tak Kashmiri, r/o Lower Plate, Tehsil and District Muzaffarabad.

....RESPONDENT

2. Azad Government of the State of Jammu and Kashmir through its Chief Secretary having his office at new Secretariat Muzaffarabad.

....PROFORMA RESPONDENT

(On appeal from the judgment and decree of the High Court dated 28.05.2019 in civil appeal No.39 and 75 of 2018)

FOR THE APPELLANTS: Sardar Javed Naz Khan, Addl. Advocate General.

FOR THE RESPONDENT: Mr. Jamshed Ahmed Butt, Advocate.

Date of hearing: 09.01.2020

JUDGMENT:

Raja Saeed Akram Khan, J.— Through the titled appeal, the validity of the judgment and decree of the learned High Court dated 28.05.2019, has been challenged, whereby the appeal filed by the respondent, herein, has been accepted and the cross appeal filed by the appellants, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the land owned by the respondent comprising survey No.799, measuring 1 *kanal* 11 *marla*, situate at village Danna, Tehsil and District Muzaffarabad, was acquired for widening of a road through award No.11 of 2014, issued on 16.07.2014. The Collector Land Acquisition assessed/fixed the compensation of the acquired land at the rate of Rs.2,20,000/- per *kanal*. The landowner-respondent, herein, feeling dissatisfied from the compensation amount determined by the Collector filed a reference application and claimed that the market value of the land is not less than Rs.10,00,000/- per *kanal* and he is entitled to receive the compensation at the same rate. The learned Reference Judge while accepting the reference application enhanced and fixed the compensation at the rate of Rs.3,00,000/- per *kanal* vide its judgment and

decree dated 15.01.2018. Feeling aggrieved from the judgment and decree passed by the learned Reference Judge both the parties filed separate appeals before the High Court. The learned High Court while accepting the appeal filed by the respondent further enhanced the compensation from Rs.3,00,000/- per *kanal* to Rs.5,00,000/- per *kanal* and dismissed the appeal filed by the appellants for restoration of the compensation amount determined by the Collector through the impugned judgment dated 28.05.2019, which is the subject matter of the instant appeal.

3. Sardar Javed Naz, the learned Additional Advocate-General, argued that the impugned judgment is against law and the facts of the case. He contended that the Collector Land Acquisition determined the compensation in accordance with law. The claim of the landowner in the reference

application was that the market value of the acquired land is not less than Rs.10,00,000/- per *kanal* and to prove this claim he failed to bring on record any solid evidence but despite that the Courts below made the enhancement in the compensation which is not permissible under law. He contended that the learned High Court while relying on a judgment of this Court delivered in another case enhanced the compensation without adhering to the fact that each case has its own peculiar facts and circumstances. The learned Additional Advocate-General forcefully contended that the statement of the appellants' witness, Manzoor Ahmed Butt, has not been considered by the Courts below while passing the impugned judgments. He prayed for restoration of the compensation determined by the Collector.

4. Conversely, Mr. Jamshed Ahmed Butt, Advocate, the learned counsel for the respondent while opposing the arguments advanced by the learned Additional Advocate-General, submitted that the respondent in support of his claim produced un-rebutted documentary evidence and also produced the oral evidence. He submitted that the witnesses produced by the appellants do not support the appellants' version rather they support the version of the respondent. Thus, in such state of affairs, the learned High Court rightly enhanced the compensation and interference by this Court is not warranted under law.

5. We have heard the arguments and gone through the record along with the impugned judgment. In the matter in hand, the Collector Land Acquisition assessed and determined the compensation of the acquired land at the rate of Rs.2,20,000/- per *kanal*,

whereas, the claim of the landowner in the reference application was that the market value of the acquired land is Rs.10,00,000/- per *kanal*. The landowner-respondent in support of his claim brought on record different sale-deeds and produced three witnesses and also got recorded his own statement as a witness, whereas, in rebuttal, the appellant did not bring on record any documentary evidence and only produced two witnesses. The learned Additional Advocate-General forcefully submitted that the Courts below have not considered the statement of appellants' witness, Manzoor Ahmed Butt. From the perusal of the statements of the witnesses produced by the appellants it appears that the same are not helpful to the case of the appellants as they supported the version of the respondent. Muhammad Hanif Khan, a witness appeared on behalf of the

appellants, in the cross-examination has deposed that it is correct that the market value of the acquired land is Rs.20,00,000/- per *kanal*, whereas, the other witness, Manzoor Ahmed Butt, on whose statement the learned Additional Advocate-General has heavily relied also admitted in his statement that the acquired land according to its location etc. is precious in nature. The relevant portion of his statement reads as under:-

"سڑک زیر بحث کے ملحق ہوتر بازار بھی موجود ہے اور بھی بازار ہیں۔ ڈنہ تھانہ بھی ہے۔ بازار میں بنک، ڈاکخانہ بھی ہیں۔ یہ درست ہے کہ زمین سڑک کے کنارے کمرشل ہوتی ہے۔ از خود کہا کہ اراضی زیر بحث کمرشل نہ ہے۔ یہ درست ہے کہ اراضی زیر بحث کے متصل لوکل گورنمنٹ کا دفتر بھی ہے۔"

After going through the statements of the witnesses produced by the appellants and the other record made available, it becomes clear that the appellants badly failed to justify the compensation determined by the Collector. The perusal of the impugned judgment shows

that the learned High Court after discussing the evidence brought on record and the relevant law on the subject has passed the same. The appellants before this Court failed to point out any illegality or infirmity in the impugned judgment; hence, interference by this Court is not warranted under law.

Resultantly, this appeal being devoid of any force is hereby dismissed with no order as to costs.

JUDGE

Muzaffarabad,
13.01.2020

CHIEF JUSTICE