

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J

Civil Appeal No.08 of 2019

(PLA filed on 08.12.2018)

1. Ali Bahadr,
2. Jabar Hussain s/o Abdul Khaliq, caste Jatt r/o  
Boha, Tehsil and District Mirpur.

.....APPELLANTS

VERSUS

1. Mst. Aisha Bi, widow,
2. Muhammad Yaseen,
3. Muhammad Miskeen,
4. Muhammad Amin, sons,
5. Mst. Rehmat Begum,
6. Azmat Begum,
7. Rukhsana d/o Muhammad Zaman, caste Gujjar  
r/o Boha Gujran, Tehsil and District Mirpur.
8. Atiq-ur-Rehman,
9. Mehmood Ali,
10. Sultan Mehmood, sons,
11. Maroof Akhtar,
12. Mehfooz Akhtar d/o Muhammad Malik r/o  
Hadali Dena, District Jhelum.
13. Collector Land Acquisition, Mangla Dam Raising  
Project, Mirpur.

.... RESPONDENTS

14. Sabir Hussain,
15. Dilawar Hussain,
16. Abdul Qadri,
17. Abid Hussain, sons,
18. Safeena Bi,
19. Zareena Bi,
20. Hajra Bi,
21. Sughra Bi d/o Abdul Khaliq,
22. Zulfiqar Ali, son,
23. Parveen Akhtar,
24. Noreen Akhtar,
25. Zafreen Akhtar d/o Sabran Bi d/o Abdul Khaliq  
r/o Boha, Tehsil and District Mirpur.
26. Manzoor Bi, widow,
27. Muhammad Yasin,
28. Muhammad Amin,
29. Muhammad Arif sons of Muhammad Sadiq r/o  
Hadali, Dena, District Jhelum.

.....PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court  
dated 09.10.2018 in Civil Appeal No.176/2014]

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FOR THE APPELLANTS: Mr. Muhammad Khalil  
Ghazi, Advocate.

FOR RESPONDENTS No.1-12: Sardar M. Azam Khan,  
Advocate.

Date of hearing: 18.02.2020

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**– The captioned appeal by leave of the Court is the outcome of the judgment of the High Court dated 09.10.2018, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The precise facts of the case are that the land of appellants and proforma-respondents, herein, bearing Khewat No.385/240 and 394/249 was acquired by the Collector Land Acquisition through award dated 12.12.2007. It is claimed by the appellants that the compensation of the land has been wrongly proposed in favour of respondents No.1 to 7. Feeling aggrieved, the appellants filed a reference before the Reference Judge on 18.09.2008. It was stated that the land in question is in equal shares of appellants, Abdul Khaliq (father of proforma-respondents No.14 to 21 and grandfather of proforma-respondents No.22-25) Muhammad Sadiq (father of proforma-respondents No.26 to 29 and Muhammad Malik

(father of respondents No.8 to 12). It was alleged that Muhammad Malik has sold the land of his share to Muhammad Zaman (father of respondents No.1 to 7), however, the share to the extent of father of appellants and proforma-respondents still exists. The Collector Land Acquisition through the impugned award has wrongly compensated respondents No.1 to 7 who do not deserve the same. After due process of law, the learned Reference Judge dismissed the reference vide judgment and decree dated 12.07.2014. In appeal, the learned High Court also concurred with the findings of the trial Court, hence, this appeal by leave of the Court.

3. Mr. Muhammad Khalil Ghazi, Advocate, the learned counsel for the appellants stated brief facts of the case and in the light of pleadings of the parties stressed on the sole point that the claim of respondents No.1 to 7 is misconceived. According to their claim that they have purchased the land from one Muhammad Malik, whereas, his total share in Khewat No.394/249 is near about one

kanal but the respondents have received the compensation of land measuring 4 kanal, which is against the law. He referred to the copy of Jamabandi, Exh.PA, and submitted that according to this document the share of Muhammad Malik in the Khewat is near about one kanal, thus, he was entitled to execute the sale-deed only to this extent and any transfer of land beyond his share is illegal. Same like, the payment of compensation to respondents No.1 to 7 is also against the law. The appellants were co-sharers in the land and are entitled for the compensation. This material issue has been proved through oral and documentary evidence but the learned Courts below have fell in error of law while ignoring the same, thus, the impugned judgments are not maintainable. In this state of affairs, while accepting this appeal the impugned judgments be recalled and the appellants be granted the compensation of the acquired land to the extent of their share.

4. Conversely, Sardar Muhammad Azam Khan, Advocate, the learned counsel for the

respondents opposed the appeal on the ground that the arguments advanced on behalf of the appellants are misconceived, against the pleadings and produced evidence. Both the Courts below have recorded findings of facts after due appreciation of the evidence brought on record. According to the appellants' own produced evidence they miserably failed to prove the alleged version. The land was transferred prior to the acquisition of land through registered sale-deed. Neither the sale-deed has been challenged within time at proper forum nor the appellants succeed to prove that there is any illegality in the transfer of land. This appeal has no substance and is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record. The sole argument of learned counsel for the appellants, advanced at bar, is that the sale-deed executed on behalf of Muhammad Malik (father of respondents No.8 to 12) in favour of Muhammad Zaman (father of respondents No.1 to 7); is beyond the share. This assertion has not been clearly made in the

reference application rather the facts mentioned in the reference are quite contrary. In paragraph 2 of the reference the appellant himself stated that:

"--- مسی محمد مالک والد نیک عالم کی بحصہ برابر ملکیتی تھی مسی محمد مالک مذکور نے اپنے حصہ کی سالم اراضی بدست مسؤلان 1 تا 7 کے والد مسی محمد زمان کو فروخت کر دی جبکہ والد سائیلات و ترتیبی مسؤلان 14 تا 21 اور والد ترتیبی مسؤلان 21 تا 26 کے حصہ کی سالم اراضی محفوظ البیع ہے۔"

Thus, the appellants themselves in the reference have admitted that Muhammad Malik transferred the land according to his share and they have not disputed that the transfer was beyond his share. Same like, the appellants have also relied upon the copy of record of rights for the years 1991-92, annexed with the reference application, which clearly contains the entry of sale-deed executed by Muhammad Malik in favour of respondents No. 1 to 7. The same entry has been repeated in the *Jamabandi*, Exh.PA, thus, according to the appellants' own produced record it is proved that the sale-deed was executed more than decade earlier to the acquisition proceedings but no one has challenged the sale-deed being against law or beyond the share of the vendor.

6. The record shows that the appellants themselves produced Nisar Ahmed, Patwari, as witness, who tendered hereinabove referred copy of the revenue record and also verified the entries to be correct, thus, the transfer of land through the sale-deed in favour of respondents No.1 to 7 has been proved by the appellant themselves. None of the other produced witnesses stated that that the sale-deed was beyond the share of the vendor, Muhammad Malik. One of the appellants, Ali Bahadar, himself appeared as witnesses. He also relied upon the aforesaid documents but did not utter a single word regarding the sale-deed. The learned reference Judge as well as the High Court has recorded findings of facts in the light of record and evidence produced by the parties. The concurrently recorded findings of the Courts below neither are against law nor inconsistent with the record and evidence, hence, the same do not suffer from any illegality.

7. Thus, the arguments advanced at bar do not find support from the record and in the light of



hereinabove stated facts the appellants have failed to point out any illegality in the impugned judgment.

8. So far as the apprehension of the learned counsel for the appellants that due to disbursement of the compensation to respondents No.1 to 7, the share of appellants will be adversely affected, is concerned, it appears to be baseless because according to the stated facts the share of the appellants in the land (which neither has been awarded nor compensation has been paid) will not be adversely affected rather the same shall be deemed legally intact.

For the above stated reasons, finding no force, this appeal is hereby dismissed with no order as to costs.

CHIEF JUSTICE

JUDGE

Mirpur,  
19.02.2020

Ali Bahadar & another VS Mst. Aisha Bi & others

**ORDER:**

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

CHIEF JUSTICE

JUDGE

Mirpur,  
19.02.2020