

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No.156/2014;
Date of Institution. 11.12.2014;
Date of hearing. 29.09.2022;
Date of decision. 03.10.2022

Akbar Ali s/o Minha Khan, caste Awan r/o
Tariqabad, Muzaffarabad

..... Appellant

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir
through Chief Secretary, Muzaffarabad;
2. Commissioner Muzaffarabad Division
Muzaffarabad;
3. Collector Land Acquisition Muzaffarabad;
4. Project Director Tariqabad Bypass road Up-
gradation, Muzaffarabad;
5. Collector Land Acquisition, Muzaffarabad;
6. Accountant General Azad Government of the
State of Jammu & Kashmir;
7. District Price Assessment Advisory
Committee, Muzaffarabad;
8. Chairman Development Authority
Muzaffarabad.

.....Respondents

.....

Civil Appeal No.157/2014;
Date of Institution. 11.12.2014;

1. Syed Sakhi Hussain Shah s/o Syed Ayoub
Shah Gillani;
2. Akbar Ali s/o Minha Awan r/o Tariqabad,
Muzaffarabad

..... Appellants

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary, Muzaffarabad;
2. Commissioner Muzaffarabad Division Muzaffarabad;
3. Collector Land Acquisition, Muzaffarabad;
4. Project Director Tariqabad Bypass road Up-gradation, Muzaffarabad;
5. Collector Land Acquisition, Muzaffarabad;
6. Accountant General Azad Kashmir;
7. District Price Assessment Advisory Committee, Muzaffarabad;
8. Development Authority through Chairman Development Authority Muzaffarabad.

.....Respondents

.....

Civil Appeal No.162/2014;
Date of Institution. 16.12.2014;

Development Authority Muzaffarabad through
Chairman Development Authority
Muzaffarabad.

..... Appellant

VERSUS

1. Syed Sakhi Hussain Shah s/o Syed Nawab Shah, caste Syed r/o Tariqabad;
2. Akbar s/o Minha Khan, caste Awan r/o Tariqabad Muzaffarabad;

.....Real Respondents

3. Azad Government of the State of Jammu & Kashmir through Chief Secretary, Muzaffarabad;
4. Commissioner Muzaffarabad Division Muzaffarabad;

5. Collector Land Acquisition, Muzaffarabad;
6. Project Director Tariqabad Bypass road Up-gradation, Muzaffarabad;
7. Collector Land Acquisition Urban;
8. Accountant General Azad Kashmir;
9. District Price Assessment Advisory Committee, Muzaffarabad.

.....Proforma Respondents

CIVIL APPEALS

Before: Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Mr. Mudasar Hussain Abbasi, Advocate for the appellants.

Ms. Yaqoob Khan Mughal and Muhammad Aslam Rathore, Advocates for respondents.

JUDGMENT:

The captioned appeals have been filed to assail the judgment and decree recorded by the learned Reference Judge, Muzaffarabad dated 12.09.2014, whereby references presented by landowners/appellants have been partly honoured.

Facts forming background of the captioned appeals are, Collector Land Acquisition acquired land comprising khasra No.1757 min measuring 3 marla 1 sarsai and survey No. 1758 measuring 1 marla 2 sarsai total measuring 4 marlas 3 sarsai situated at Tariqabad for extension of Tariqabad

bypass road vide award No. 15/2009 dated 21.12.2009 whereby the compensation of the land was determined as Rs.60,000/- per marla for commercial place of shops and Rs. 40,000/- per marla for the place of constructed houses. The owners of the land felt aggrieved from determination of the amount of compensation, filed reference before learned Reference Judge Muzaffarabad and claimed that market value of the land has not been determined in accordance with its potential value. It was submitted that the market value of the land is more than Rs.10,00,000/- per marla. During pendency of reference before the Reference Judge, another award No.03/2010 dated 31.03.2010 was also issued by the acquiring agency with regard to built up structure upon the acquired land. The owners of the land also filed a reference and it was claimed by Syed Sakhi Hussain Shah appellant in appeal No. 157/2014 that the acquiring agency failed to determine the compensation of four built up shops and a house constructed in the acquired land whereas petitioner No.2 Akbar Ali took a stance that meager compensation of built up structure in survey

No.1757 has been determined by the Collector and market value of the built up structure is more than Rs.80,00,000/-. Respondents filed objections and submitted that the compensation has been determined in accordance with law thus references are liable to be dismissed. The learned Reference Judge framed issues in the light of pleadings of the parties, provided them opportunity to lead evidence and at the conclusion of proceedings declared landowners/ petitioners entitled to get compensation of Rs.399276/- per marla. The reference filed against award No.03/2010 for enhancement/ payment of compensation of the built up structure was dismissed for want of proof vide its impugned judgment and decree dated 12.09.2014, hence, the captioned appeals.

The learned counsel for land owners/appellants vehemently argued that Collector failed to determine the compensation of the land as per its market and potential value, he further argued that land owners/appellants filed references for enhancement of compensation amount and proved the claimed marked value of the land by producing

tangible and convincing oral as well as documentary evidence however, the Court below has failed to appreciate the relevant evidence in its true spirit and perspective by escalating extremely meager and iota amount of compensation and merely denied to enhance the compensation of the built up structure upon the acquired land. The learned counsel claimed that the impugned judgment is an outcome of misreading and non-reading of evidence brought on record and the Court below while passing the impugned judgment has also failed to consider the relevant law on the subject hence, the impugned judgment and decree deserves to be modified as landowners/ appellants are liable to be awarded the claimed market value of the awarded land.

The learned counsel for the acquiring agency zealously contended that Collector fixed the compensation amount keeping in view the market value of the land by considering all the relevant factors hence, the references filed by the land owners entail dismissal but the Court below by relying upon a sale deed which was not tendered in evidence and executed after issuance of notification

under Section 4 of the land Acquisition Act, has anomalously enhanced the compensation through impugned judgment which is sine qua non.

I have heard the learned counsel for the parties and perused the record of the case with utmost care and caution.

The sole question which requires detailed deliberation by this Court is, whether the landowners succeeded to prove the claimed market price of awarded land? At the very outset it may be stated that Collector determined compensation on the recommendations of District Price Assessment Advisory Committee constituted for the purpose as is mentioned at page 3 of the impugned award. The law is very much clear on the point that it is the Collector who shall determine the market price of land to be acquired keeping in view the classification of land, kind of soil, location of land, average price of similar kind of land and its future credibility and scope, thus, the determination of compensation by the respondents on the recommendations of District Price Assessment Advisory Committee is alien for the relevant law because law has provided a specific

procedure mentioned in section 23 of the Land Acquisition Act for such eventuality and does not recognize any committee for the purpose. The superior Courts in plethora of judgments has already held that determination of compensation on the recommendations of any committee is void-ab-initio and coram-non-judice thus, on this sole ground the compensatory amount fixed by the Collector on the recommendations of District Price Assessment Advisory Committee is not sustainable. Reliance can be placed on 2016 SCR 1009. In such a situation the option which left with the Court is to remand the case to the Collector to re-determine the compensation of the acquired land in view of relevant provisions of law or to decide the case on the basis of available evidence produced by the parties. As the parties have already suffered a lot for the last 14 years and remand of the case would amount to coddle the parties into another torment of litigation which may stretch to decades, hence, would not be in the interest of justice, thus, I am inclined to decide the case by myself on the basis of

available record with the assistance of advocates for the parties.

Under law the average market price of land to be acquired shall be ascertained on the basis of bona fide transaction of sale and purchase of land of the same locality, estate or village, as the case may be, within a period of one year preceding the date of issue of notification under Section 4 of the Land Acquisition Act and where no such transaction is available in such locality, estate or village the land alienation transaction of sale and purchase taken place in the adjoining locality, estate or village may be considered for such ascertainment. A perusal of the award further reveals that the compensation has not been determined by the Collector by relying upon any of the transactions of sale in the same locality or in the adjoining locality. The land owners to prove the claimed market price of the land as documentary evidence placed on record sale deed dated 16.07.2009 through which 6 marla 1 sarsai land situated at Tariqabad has been sold for consideration of Rs.2,440,000/-. This document has been considered by the Court below and determined

the compensation by solely relying upon such document. No doubt, the sale deed relied upon by the Referee Court has been executed after the issuance of notification under Section 4 of the Land Acquisition Act, however, the Court was justified to fix the compensation by relying upon such transaction as the superior Courts have held in various edicts that a sale deed executed after issuance of notification under section 4 of the Land Acquisition Act can be considered for determination of the compensation. Reliance can be placed on 2020 SCMR 365 and 2016 SCR 1009. In this case the sale deed relied upon by the Court below has much importance because neither the Collector relied upon any of the sale deed while determining the compensation nor the acquiring agency placed on record any sale deed in support of their claim, thus, the Court below has accurately relied upon the same. So far oral evidence is concerned the landowners/appellants produced Syed Mohammad Shah and Sher Mohammad as witnesses. The witnesses produced by the landowners did not take specific stand that what is the market value of the

land and they simply stated that the landowners are entitled to get 10/15 lakhs. Akbar Ali one of the land owners got recorded his statement on 22.11.2013, he also failed to take a specific stance about the market price of the land at the time of award by deposing that at present any land at Tariqabad Road is not available in 10/15 lakhs per marla. However, the landowners contended in their pleadings that the acquired land is situated adjacent to the road and is of commercial nature. This fact has not been denied by the acquiring agency. Mohammad Shabir Awan Naib Tehsildar development Authority Muzaffarabad got recorded his statement and deposed that the awarded land is adjacent to road and is a plain area. He also admitted that the awarded land of Akbar S/o Manah Khan is commercial in nature whereupon six shops and a furniture factory were constructed. As per various dictums of the superior Courts of the subcontinent the most critical factor, which has to be kept in mind for determination of the compensation is the future utility of the proposed acquired land, keeping in view the availability of facilities of its said

utilization. Reliance can be placed on 2014 SCMR 75 and 2015 SCMR 28. In these circumstances the determination of the compensation by the Referee Court by relying upon a sale deed produced by the landowners is justified despite the fact that the same has not been tendered in evidence because the procedural laws are to be construed liberally and nothing in law prevented the Court from looking into a document available on record but was not exhibited if is reliable, trustworthy, authentic and necessary for just decision of the case. Reliance can be placed on PLD 1984 AJK 41, 2015 YLR 1213 and 2017 CLC 495.

The claim of the land owners Syed Sakhi Hussain Shah that there was 4 shops and a house at second floor in his awarded land is concerned, the plaintiff failed to prove such stance either through oral or documentary evidence. In oral evidence the witnesses produced by the landowner/appellant did not utter a single word regarding the built up structure of petitioner No.1. Moreover, appellant No.1 in his objections filed before the Collector did not take stand that there are 4 constructed shops in

his awarded land and he contended that he has only 4 marla land whereupon he has constructed house, hence, the appellant took contradictory standings. The witnesses produced by the respondents specifically stated that there was no built up structure at the time of award upon the land of Sakhi Shah. In civil matters the cases are to be decided on the basis of preponderance of the evidence thus, the Court below has rightly observed that appellant No.1 has failed to prove that there was any built up structure upon the land of appellant, Sakhi Shah.

So far the compensation of built up structure upon the land of appellant No.2 Akbar Ali s/o Manah is concerned, a separate award No. 03/2010 was issued on 31.03.2010 with regard to built up structure upon land comprising survey No.1757. The landowner claimed that the market price of built up structure was Rs.80,00,000/- however, failed to prove such claim. Under law cost or price of built up structure has to be evaluated by the respective professional and technical personnel of the concerned department. The respondents have

determined the compensation of built up structure on the report of technical expert whereas, appellant even could not produce the evaluation of the built up structure by any private technical expert thus, the ration decidendi of the Court below is in nexus with the evidence brought on record and law on the subject in its true perspective.

The sum and substance of the above discussion is, finding no essence the supra titled appeals are hereby sent away.

Muzaffarabad;
03.10.2022.(M.N.Khan)

-Sd-
JUSTICE

Approved for reporting.

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JUSTICE