

HIGH COURT OF AZAD JAMMU AND KASHMIR

Civil Appeal No.265/2019;
Date of institution 24.08.2019;
Date of hearing. 21.02.2024;
Date of decision. 23.02.2024.

Government of Pakistan through Military Estate Officer
Muzaffarabad, Shoukat Lines Muzaffarabad.

....Appellant

VERSUS

- 1. Muhammad Imtiaz;
- 2. Muhammad Fayyaz Khan;
- 3. Muhammad Bashir;
- 4. Muhammad Mumtaz;
- 5. Shamim Khan;
- 6. Muhammad Saeed, sons;
- 7. Mst. Mitthi widow of Abdul Rehman;
- 8. Muhammad Ilyas Khan;
- 9. Muhammad Irshad Khan;
- 10. Muhammad Naseer Khan sons of Aziz-ur-Rehmabn Khan, R/o Kelgaran Tehsil Pattika/Naseerabad District Muzaffarabad.

....Real Respondents

- 11. Azad Government of the State of Jammu & Kashmir through Chief Secretary, Muzaffarabad;
- 12. Secretary Board/Senior Member Board of Revenue Muzaffarabad;
- 13. Commissioner Revenue Muzaffarabad Division Muzaffarabad;
- 14. Deputy Commissioner/Collector District Muzaffarabad;
- 15. Tehsildar Revenue Muzaffarabad;
- 16. Collector Land Acquisition (Rural) Muzaffarabad.

.... Proforma Respondents

.....
Civil appeal No. 266/2019;
Date of institution. 24.08.2019;

Government of Pakistan through Military Estate Officer
Muzaffarabad, Shoukat Lines Muzaffarabad.

..... Appellant

VERSUS

1. Muhammad Mushtaq Khan;
2. Muhammad Nawaz Khan;
3. Yasir Mehmood Khan sons of Muhammad Yousuf (deceased);
4. Chand Bibi;
5. Aamina Bibi;
6. Azra Wasim daughters of Muhammad Yousuf from his wife Mst. Resham Jan R/o Kelgaran Tehsil Naseerabad District Muzaffarabad.

.....Real Respondents

7. Azad Government of the State of Jammu & Kashmir through Chief Secretary Muzaffarabad;
8. Board of Revenue through Senior Member Board of Revenue Muzaffarabad;
9. Commissioner Muzaffarabad Division Muzaffarabad;
10. Collector District Muzaffarabad;
11. Collector Land Acquisition Muzaffarabad;
12. Price Assessment Committee Muzaffarabad through Chairman Price Assessment Muzaffarabad.

.... Proforma Respondents

.....
Civil appeal No. 270/2019;
Date of institution. 26.08.2019;

1. Muhammad Mushtaq Khan;
2. Muhammad Nawaz Khan;
3. Yasir Mehmood Khan sons Muhammad Yousuf (deceased);
4. Chand Bibi;
5. Aamina Bibi;
6. Azra Wasim daughters of Muhammad Yousuf (deceased) from his wife Mst. Resham Jan R/o Kelgaran Tehsil Pattika/Naseerabad presently Khamdarang Tehsil & District Muzaffarabad.

..... Appellants

VERSUS

1. Azad Government through Chief Secretary of Azad Jammu & Kashmir, Muzaffarabad;
2. Board of Revenue through Senior Member Board of Revenue, Muzaffarabad;
3. Military Estate Officer Shoukat Lines Muzaffarabad;
4. Commissioner Muzaffarabad Division Muzaffarabad;
5. Collector District Muzaffarabad;
6. Collector Land Acquisition Muzaffarabad;
7. Price Assessment Committee Muzaffarabad through Chairman Price Assessment Committee Muzaffarabad.

.... Respondents

CIVIL APPEALS

Before:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Raja Muhammad Arif Rathore, Advocate for appellants in appeals No.265/2019 and 266/2019.

Mr. Shahzad Siddique Janjua, Advocate for the respondents No.2 to 6 in appeal No.266/2019.

Mr. Shahzad Siddique Janjua, Advocates for appellants in appeal No.270/2019.

Chaudhary A. Naeem, Advocate for respondents No.1 to 10 in appeal No.265/2019.

JUDGMENT:

The captioned appeals have been filed against the judgments and decrees recorded by learned Additional District Judge/Reference Judge Muzaffarabad dated 31.05.2019, whereby references filed by landowners were accepted partly, raise common questions of facts and law and can conveniently

be decided simultaneously hence, were heard together and are decided as such through this judgment.

Facts giving rise to the captioned appeals are, vide award No.08/2016 dated 23.09.2016 land situated in village Khamdarang Tehsil & District Muzaffarabad was acquired and the compensation was determined as Rs.1,17,000/- per marla alongwith 15% CAC. Feeling dissatisfied, Mst. Resham Jan now survived by appellants Muhammad Mushtaq and others and Muhammad Imtiaz and others filed two separate references before Reference Judge Muzaffarabad/Additional District Judge and claimed that their own land acquired through award No.08/2016 is of commercial nature and is of much potential value but the collector determined very meager compensation, hence they are entitled to get Rs.6,00,000/- per marla alongwith 15% CAC.

Respondents contested references by filing objections, wherein it was pleaded that compensation of the land was determined keeping in view its location and nature with the consent of landowners, thus the references are liable to be dismissed.

The learned Reference Judge Muzaffarabad 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 Rs.4,20,000/- per marla alongwith 15% CAC vide its even dated impugned judgments and decrees issued on 31.05.2019, hence the captioned appeals.

Mr. Muhammad Pervaiz Mughal, the learned counsel for the appellants in appeal No.270/2019 submitted that this Court while deciding civil appeals filed against the same award of 08/2016 declared landowners entitled to get Rs.10,00,000/- per marlas alongwith 15% CAC, hence the appellants are also entitled to get the same compensation. He further argued that appellants also proved their stance by producing cogent oral as well as documentary evidence but the Court below miserably failed to appreciate the relevant evidence in its true spirit and perspective by enhancing very meager compensation.

Raja Muhammad Arif Rathore, the learned counsel for the acquiring agency contended that the impugned judgments are not based on proper appreciation of evidence rather are passed on the basis of conjectures and surmises, hence not sustainable.

Chaudhary A. Naeem, learned counsel for the respondents in appeal No.265/2019 while referring to 1998 SCMR 2197 argued that the respondents are also entitled to get compensation fixed by this Court in appeal No.30/2019 decided on 03.11.2023, wherein same award No.08/2016 was the subject matter.

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

A perusal of record reveals that Mst. Resham Jan, landowner filed a reference and claimed that market price of her acquired land is Rs.6,00,000/- per marla. To prove her claim, she produced sale deed Exh.PA whereby one marla land alongwith constructed shop was sold for the consideration of Rs.12,00,000/- on 06.01.2016. This document is not relevant for determination of compensation for the reason that through the said sale deed, one marla land alongwith constructed shop was sold. Petitioners also produced Exh.PB through which 5 marlas of land situated in village Khamdarang Tehsil & District Muzaffarabad was sold for the consideration of Rs.21,00,000/- on 21.03.2016. As per this document, the average price of land at village Khamdarang comes to Rs.4,20,000/-. This document

has much relevancy for determination of compensation. As oral evidence petitioners produced Yasir Mehmood Khan who deposed that the acquired land is of commercial nature. He further deposed that price of land at the time of award was about Rs.4,50,000/- per marla. Relevant portion of his statement is reproduced as under:

"اراضی 23.09.2016 میں ایوارڈ ہوئی تھی۔ اراضی کی قیمت کا تعین بہت کم ہوا تھا۔ اس وقت اراضی کی قیمت تقریباً ساڑھے چار لاکھ تھی۔۔۔۔۔۔ یہ درست ہے کہ اراضی کے قریب کوئی مارکیٹ، ہسپتال یا دیگر ادارہ نہ ہے۔"

She also produced Muhammad Imtiaz who deposed that market price of acquired land is Rs.10,00,000/- per marla, however, stated that he did not produce any proof regarding price of the land as Rs.10,00,000/- per marla. The attorney of petitioner also got recorded his statement and claimed compensation of land by relying upon the sale deed Exh.PB and deposed that at this time (time of recording his statement on 15.01.2019) the market price of the land is Rs.10,00,000/- per marla. It is a celebrated precept of law that the compensation cannot be fixed merely on oral statements rather through oral statements in references, the location, nature and potential value of the acquired land as well as land sold through sale deeds produced by landowners has to be established and for determining compensation, sale deeds of the concerned village

have to give weight. In this case, the witness Yasir Mehmood Khan produced by the petitioner himself deposed that the market price of the land at the time of award was Rs.4,50,000/- per marla. The petitioner is bound by the statement of her witness. The documentary evidence Exh.PB produced by the plaintiff also speaks that at the time of award, market value of the land was Rs.4,20,000/-. Petitioners/respondents Muhammad Imtiaz and others also relied upon said sale deeds dated 21.03.2016 and 06.01.2016, thus the Court below has appreciated the evidence in a legal fashion and rightly declared the landowner as entitled to get Rs.4,20,000/- per marla.

The argument advanced by the learned advocate for the appellants in appeal No.270/2019 that appellants are also entitled to get Rs.10,00,000/- per marlas as has been ordered vide judgment dated 03.11.2023 in different appeals filed against the same award No.08/2016 has got no plausible substance because it is well settled precept of law that every case has to be decided on the basis of evidence led by the parties in the said case and evidence of one case cannot be considered in the other case. Reliance may be placed on 2001 CLC 468. The relevant observations recorded at page 471 are reproduced as under:

“It is a settled law that evidence of one case cannot be shifted verbatim to the other case for decision. Such a procedure is unknown under the Civil Procedure Code. The consent of the parties cannot change the prescribed procedure.”

The argument advanced by the learned counsel for the respondents that respondents in appeal No.265/2019 are also entitled to get Rs.10,00,000/- per marla as has been ordered vide judgment dated 03.11.2023 has also got no substance because respondents accepted the judgment of the Court below and have not filed appeal before this Court and even did not file cross objections, thus the argument is repelled. The judgment rendered in 1998 SCMR 2197 relied upon by the learned counsel is not applicable to this case because in the cited judgment the parties who were declared entitled to get enhanced compensation though not approached the court directly but the case on their behalf was filed in representative capacity.

The sum and substance of the above discussion is, the captioned appeals stand dismissed and the judgment of the Court below is hereby maintained.

Muzaffarabad:
23.02.2024.

JUSTICE

Approved for reporting.

JUSTICE