

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.955/2019.

Date of institution 13.06.2019.

Date of decision 15.09.2023.

1. Khawaja Abdul Waheed S/o Abdul Aziz Qureshi.
2. Rasheeda Begum D/o Abdul Aziz Qureshi W/o Sultan Muhammad.
3. Zahida Begum D/o Abdul Aziz Qureshi W/o Abdul Rasheed R/o Nakar Chikar, Tehsil Chikar, District Hattain Bala Azad Kashmir.

....Petitioners

Versus

1. Azad Govt. of the State of Jammu and Kashmir through its Secretary having his office at new Secretariat Muzaffarabad.
2. P.W.D Azad Jammu and Kashmir through its Secretary (works), having his office at new Secretariat Muzaffarabad.
3. Chief Engineer P.W.D (Roads) Muzaffarabad Division, having his office at old Secretariat Muzaffarabad.
4. Collector Land Acquisition, Hattian Bala/Muzaffarabad, Azad Kashmir.

.....Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

K.D Khan Tareen, Advocate for the petitioners.

Legal Advisor for P.W.D department.

A.A.G for Azad Govt.

Judgment:-

Ubi Jus incertum ibi jus nullum

1. **Supra doctrine speaks that, where the right is uncertain, there is no right. The petitioner has failed to establish his clear cut right, ambiguities, uncertainties and disputed claims regarding property and possessory rights cannot be resolved without taking evidence and proper fora for**

the purpose is to resort to the civil Court having jurisdiction over the matter by way of preferring civil suit as mandated by Section 9 CPC subject to the fulfillment of other prerequisites of enabling laws.

This Court while exercising extraordinary jurisdiction conferred under Article 44 of the Interim Constitution, 1974 cannot embark upon disputed questions of fact (requiring concrete evidence).

2. The above titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby the petitioners are seeking direction against the respondents for issuance of Award of acquired land i.e. old khewat No.15/17 new 16/18 old survey No.4 & 5, new 6, 16 measuring 2 kanal 7 marlas situated at Nakar Chikar Tehsil Chikar District Hattian Bala after making the assessment of the rate of market value and compensation amount may be paid to the petitioners and respondents may also be directed to issue the amended award of fruit trees in the light of assessment report (Annexure PH to PH/2).

3. Precise facts of the case according to petitioners are that the land old survey No.4,5 measuring 23 kanal 9 marlas situated at village Nakar Chikar, Tehsil Chaikar, district Hattian Bala is in the ownership of their father and after his death the same was transferred and entered in the name of the petitioners. The petitioners contended that in year 1993 respondent No.3 constructed/extended road Chikar to Bale in khewa No. old 15/17

new 16/18 old survey No.4 & 5 new 06, 16 measuring 2 kanal and 7 marlas, situated at Nakar Chikar Tehsil Chikar, District Hattian Bala and respondent No.4/Collector, without any legal, moral justification and without given any notice to petitioners issued the award No.1/96 and only compensation of Rs.14,720/- was given on a very low market rate, which is unjust, against the law and facts. The petitioners averred that they submitted application before Mohtasib Secretariat of AJ&K against respondent No.2 who issued a direction on 03.10.1994 to respondent No.2 to pay the compensation of un-awarded property of the petitioners and asked to submission of report, but he failed to do so, later on the DG, Mohtasib issued a letter to respondent No.2 on 05.10.1994 for the payment of compensation of House and fruits tress. The petitioners approached to the office of P.W.D, Collector as well as before the worthy Prime Minister of Azad Jammu and Kashmir for getting compensation of their land but the same remained fruitless; copies of applications as well as letters are attached with the writ petition as Annexures "PE, PE/1, PF, PF/1, PG, PG/1, PH to PH/2". Petitioners contended they submitted number of applications before the concerned authority as well as on the different forums but the same remained fruitless and no one took the notice of the applications submitted by the petitioners for compensation of their land affected due to road work, hence, they approached to this court for direction of compensation of their land.

4. Comments/written statement has been filed on behalf of the respondents wherein the claim of the petitioners has been negated. It has been contended by the respondents that the report of Patwari Halqa dated 20.07.2019 clearly mentioned that new khasra number 6 and 4 are not affected by the construction of the road and that road passes through khasra Nos.1 and 5, hence, petitioners are misleading the court by saying that through award No.1/96 compensation of Rs.14,720/- was awarded for the fruit trees. The award No.1/96 is clear enough that 'faslana' was awarded and not compensation for fruit trees. The respondents refuted the whole stance of the petitioners and prayed for dismissal of the writ petition.

5. *I have heard the learned counsel for the parties and gone through the record of the case with due care.*

6. The core question that comes to the force is that the petitioners through instant writ petition seeking direction against the respondents for issuance of award of acquired land old khewat No.15/17 new 16/18 old survey No.4 & 5, new 6, 16 measuring 2 kanal 7 marlas situated at Nakar Chikar Tehsil Chikar District Hattian Bala, and prayed that after making the assessment of the rate of market value, the compensation amount may be paid to the petitioners and respondents may also be directed to issue the amended award of fruit trees in the light of assessment report. The petitioners averred that in year 1993 respondent No.3 constructed/extended road Chikar to Bale from khewat No. 15/17

(old) new 16/18, old survey No.4, and 5 new 06, 16 measuring 2 kanal and 7 marlas, situated at Nakar Chikar Tehsil Chikar, District Hattain Bala, whereas, respondent No.4/Collector through award No.1/96 only determined a compensation of fruit trees on a very low market rate as Rs.14,720/- through its decision on 07.02.1996.

7. In comments/written statement, the respondents have raised preliminary objections that the constructed road did not pass from the land of the petitioners, however, some rubbles/rubbish (malba) was fell into the land of the petitioner for which the petitioner has been paid 'falsana'. It is necessary to reproduce the preliminary objection No.1 of comments/written statement submitted by respondents, as under:-

1. That link road Chikar to Bail was constructed in 1992-93. The road did not pass through the land of the petitioner. However, during construction of the road, some malba fell into the land of the petitioner, for which he has been paid 'Falsana' vide award No.1/1996 dated 7.2.1996. Copy of the award is already attached by the petitioner with the petition as Annexure PC/1."

8. The petitioners considered 'falsana' as compensation for fruit trees and averred that the amount awarded was less and prayed to enhancement of awarded amount. It may be mentioned here that if for the sake of arguments it assumes true even then they could file application for reference as provided by law, now at this juncture, after lapsing period of about 25 years, they have no right

to claim enhancement of the amount of 'falsana' through instant writ petition.

9. As the petitioners have failed to prove their ownership pertaining to the land which came under the Link Road Chikar to Bale (constructed in 1992-93). They have only built their case on the perspective of 'faslana', which was given to the petitioner(s), thus, the petitioners were entitled to the compensation, which is not true perspective of the matter and claim of the petitioners in guise of 'faslana' given to him/them is not maintainable in the eye of law. Relief given in the writ jurisdiction is equitable, subject to the conduct of the petitioner which requires clean handed approach. It is celebrated principle of law that one who seeks equity must come with clean hands.

10. Remedy in the shape of writ is purely an extra ordinary equitable relief, which inter-alia is subject to bonafide approach of the person who seeks indulgence of the court quo redressal of his grievance, random approach with unclean hands, particularly pertaining to the matter governed under special law does not warrant entertainment.

11. Falsana is a kind of compensation for damaging crops resultant of excavation and extracting of link road.

12. Civil Court is the Court of ultimate jurisdiction to take cognizance of such like controversies subject to the set protocols of law.

13. Petitioner may approach civil Court (if so advised) for resolution of disputed questions of facts subject to the law of limitation and other enabling laws. Writ cannot be issued for answering the academic questions.

14. Even otherwise, the petitioners have failed to point out any violation of law, rules or violation of statutory provisions of relevant law, thus, no direction can be given.

15. Nub of above discussion is that finding no substance in this writ petition, the same stands dismissed with no order as to costs.

File shall be kept in archive.

Muzaffarabad,
15.09.2023.

JUDGE

Approved for reporting

JUDGE