

## **HIGH COURT OF AZAD JAMMU & KASHMIR**

Civil Appeal No.01/2012.  
Date of institution 02.01.2012.  
Date of decision 11.11.2022.

1. Mir Mohammad s/o Kaka Caste Chohan r/o Chakyas;
2. Mohammad Jameel s/o Mirza Caste Chohan r/o Chakyas Tehsil & District Haveli.

Appellants

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary Muzaffarabad;
2. Director Planning Muzaffarabad;
3. Deputy Commissioner/Collector District Haveli;
4. Collector Land Acquisition Haveli Kahutta.

Respondents

### **CIVIL APPEAL**

***Before:- Justice Syed Shahid Bahar, J.***

**PRESENT:**

Mohammad Khalid Naqashbandi, advocate for the Appellants.  
Nemo for the Respondents.

**JUDGMENT:**

The captioned appeal has been directed against the judgment and decree passed by the learned District Judge/Reference Judge Haveli/Kahutta dated 06.10.2011, whereby, the reference filed by the petitioners/appellants, herein, was dismissed being weightless.

2. Shortly stated facts of the case in hand are that through award dated 25.06.2009, the land of the appellants, herein, comprising survey No.219 measuring 5 kanal situated at Mozia Chakyas Tehsil Haveli District Haveli Kahutta was acquired by the respondents for construction of Govt. Girls Middle School Chakyas in lieu of Rs.60,000/- per kanal along-with 15% CAC, whereas, the appellants/land owner's claim is that the market value of the acquired land is very much higher than the price determined/fixed by the Collector and according to their version the market value of the land under reference is Rs.2,00,000/- per kanal along-with 15% CAC. It has also been averred in the reference application that the compensation of the trees i.e. fruity and non-fruity has also not been determined by the Collector. As per stance of the petitioners the land is nearby the roadside and is of commercial and agricultural nature, so, its value may be fixed as Rs.2,00,000/- per kanal alongwith 15% CAC.

3. The reference was contested by the other side by filing objections, whereby, the contents raised in the reference application were denied and it has been stated that the compensation has been fixed by the Collector in accordance with law while keeping in view the elements necessary for determination of the compensation and

finally prayed for dismissal of the reference application. The learned Court below after necessary proceedings dismissed the reference application being weightless vide the impugned judgment and decree dated 06.10.2011.

4. The learned counsel for appellants while reiterating the grounds taken in the memo of appeal submitted that the appellants have amply proved their case before the Court below by producing cogent and reliable oral as well as documentary evidence but the Court below has totally ignored the evidence i.e. misread and non-read the documentary evidence (sale deeds produced on behalf of the appellants/land owners).

5. I have heard the learned counsel for the appellants and gone through the record of the case with my utmost care.

6. A perusal of record reveals that the land of petitioners/appellants, herein, comprising survey No.219 measuring 5 kanal situated at Mozia Chakyas Tehsil and District Haveli was acquired by the respondents for construction of Govt. Girls Middle School Chakyas through award dated 25.06.2009 and the land owners while filing the reference application submitted that the compensation determined by the Collector is not in accordance with the market value and as per claim of the appellants, while

keeping in view the one year average of the land its compensation should have been fixed @ Rs.2,00,000/- per kanal as the land under reference is of commercial and agricultural in nature.

7. The appellants in support of their version produced witnesses namely Saif Deen s/o Mehr Deen, Wali Mohammad s/o Ali Mohammad, Mohammad Jameel s/o Mohammad Mirza. According to the statement of Saif Deen, the compensation of the land under reference should have been fixed @ Rs.2,00,000/- per kanal as the value of the land in the said Mozia is one to three lacs per kanal. The land under reference is plain, so, shops etc. could be constructed upon the land and the compensation of trees i.e. fruity and non-fruity has also not been determined by the Collector at the time of acquisition of the land. Similarly, another witness namely Wali Mohammad also deposed that firstly the compensation of the land was proposed to be given @ Rs.1,50,000/- per kanal but later on the same was reduced and two types of crops could be cultivated in the acquired land, the land is nearby the roadside and as per different sale deeds the land in the said Mozia is shown to have been sold for more than two lac rupees per kanal. Mohammad Jameel, the witness on behalf of the appellants also stated that the value of the land in Mozia Chakyas is

more than two lacs per kanal and the land under reference is situated at the Abbaspur Chirikot main road and is of commercial nature and shops have already been constructed upon the land, the compensation of the trees has also not been determined by the Collector, according to his deposition. The petitioners/appellants in support of their version taken in the reference application also produced documentary evidence Exh. "PA" a sale deed dated 06.02.2007, according to which land measuring 04 marla situated in the same Mozia was sold for consideration of Rs.30,000/- (Rs.75,00/- per marla & Rs.1,50,000/- per kanal) similarly, according to Exh. "PB" a sale deed dated 09.07.2008, the land measuring 01 marla situated in the same Village i.e. Chakyas Tehsil Haveli District Bagh was sold for consideration of Rs.10,000/- (Rs.10,000/- per marla and Rs.2,00,000/- per kanal). The average of both the sale deeds pertaining to Mozia Chakyas, wherein the land under reference is situated, comes to Rs.1,75,000/- per kanal (Rs.8750/- per marla). The Collector while determining the market value of the land under reference kept aside the factors relevant to determine the market value of the property like location of the land, its present and future use and potential market value, so, in my view, the fixation of the compensation made by the Collector was arbitrary and

illogical and unreasonable. The learned Reference Judge, while answering the reference in affirmative, enhanced the market value according to his own wish and whims while keeping aside the oral as well as documentary evidence. The cases must be decided in the light of evidence after appraising the same in its true perspective not at the sweet discretion and desire of a presiding officer.

8. Now after survey of the above evidence, I have come to the conclusion that the learned Reference Judge has not appreciated the evidence in its true perspective and he has not considered the documentary evidence produced by the petitioners/appellants regarding the sale-deeds. The learned Court below has not given any findings in this regard and enhanced a very meagre amount. The Court has to fix the compensation of lands as per law and evidence produced by the parties while keeping in view present and its potential value and future use, as well.

9. The law is well settled that the market value is that value which a willing buyer is ready to pay to a willing seller, reliance in this regard can be placed upon 2015 SCR 712 and the learned Reference Judge has not bothered to go into the material brought on record to determine the market value of the acquired land. It is established principle of law that each and every case is to be decided upon the

strength of evidence produced in that case, so, automatically and mechanically the same compensation cannot be fixed for another land.

10. Fundamental purpose of Land Acquisition Act, is to provide complete indemnity to the owners. Compensation of the acquired land was an equivalent in terms of money for the land with a view to fully reimburse and remedy the loss for expropriation of the acquired land. Whenever, a land was acquired, the interest of the owners of the land was to be safeguarded, principle for determining the compensation reflected anxiety of law giver to compensate adequately those who were deprived of from property, so as to give “gold for gold” and not “copper for gold”. Exh. “PA” and “PB” pertain to the same Village Chakyas and these transactions were made in the relevant period i.e. prior to the issuance of award proceedings. Any portion of the statement or evidence not cross-examined or challenged in rebuttal should have been appreciated and considered. No evidence to rebut Exh. “PA” and “PB” from respondent side produced, so non-reading of these documents would be against law of justice. The average price of the both transactions in my opinion, is just, fair and appropriate market value of the land under reference.

11. At the outset the trial Court has misread and no-read the documentary evidence i.e. Exh. PA and PB and rendered the judgment under appeal in vacum, which is not sustainable in the eye of law, sufficient material/evidence particularly Exh. PA and PB (sale deeds) are available on record which is suffice qua adjudication of the lis, thus, remand of the case is futile exercise, hence, we address the entire evidence ourselves and decide the same in light of the law laid down by the superior Courts. The Hon'ble Supreme Court of Azad Jammu & Kashmir in a case titled "Azad Govt. Vs. Mohammad Yousaf" reported as 2012 SCR 1190 has categorically laid down that the sale deed registered during the period of one year prior to the issuance of notification under section 4 of the Land Acquisition Act, 1894 have to be considered but this is not a sole criteria for determination of the compensation. Furthermore, in 1996 SCR 132 titled "Faiz Akbar Khan Vs. Azad Govt. & others" it has been laid down that while assessing the market value the land is not to be valued merely by reference to be used for which it was made at the relevant time but also the use to which it can reasonably to be put in future. Similarly, in a case titled "Azad Govt. & others Vs. Mst. Razia Farooqi" reported as 1996 SCR 136, the same view was reiterated. Likewise, certain guiding



principles have been chalked out in a case titled “Mohammad Mehrban VS. WAPDA” 2013 SCR 635 which are as under:-

“This Court in the case titled Mohammad Mehrban Vs. WAPDA through Chief Engineer/Project Director Mangla Dam Raising Project, and 3 others [2013 SCR 635] has observed that the best evidence in determining the compensation can be the sale deeds executed in the Village from where the land was acquired but if no sale deed in that Village during the period of one year prior to issuance of notification under Section 4 of the Land Acquisition Act, 1894 is available then the compensation has to be assessed on the basis of average market value of the land situated in the adjacent villages. The Collector himself after determining the market value of the land failing in the adjacent village Chattro as Rs.8,33,333/- per kanal for kind of Banger Qadeem observed that the prices of the land in the village are much higher and people are ready to pay maximum price which anyone demands, despite that he assessed the compensation which appears erroneous.”

Whereas from Pakistan jurisdiction, the judgment of the Hon’ble Supreme Court in Murad Khan Vs. Collector Land Acquisition [1999 SCMR 1647] as well as province of West Pakistan Vs. Samiullah [PLD 1966 SC 547] are ready references for the purpose wherein, certain guiding principles have been chalked out qua determining and assessing the market value of the land. Latest judgment of

the Hon'ble apex Court in this regard is Secretary Education Vs. Mohammad Hafeez [2021 SCR 414].

In the light of above observation, by accepting the appeal filed by the appellants, the judgment and decree passed by the learned Reference Judge Haveli/Kahutta dated 06.10.2011, is modified in terms that the appellants are also entitled to receive the compensation amount @ (Rs.1,50,000/- per kanal), Rs.8750/- per marla along-with 15% CAC. The respondents are directed to manage the payment of the enhanced compensation amount to the appellants/land owners in accordance with law.

Muzaffarabad.  
11.11.2022 (Saleem)

-Sd-  
JUDGE

**Note:-** Judgment is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel accordingly

-Sd-  
JUDGE