

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No. 250/2018;
Date of Institution 01.12.2018;
Date of Decision 17.01.2023.

1. Muhammad Saleem S/o Mohib Ullah;
2. Rasheed;
3. Farid Sons of Kala;
4. Abdul Majeed;
5. Abdul Hmaeed Sons of Rahmat Ullha;
6. Safeena Bibi Widow;
7. Anjum Aziz;
8. Kamran Aziz sons;
9. Sobia Aziz;
10. Sania Aziz daughters of Abdul Aziz;
11. Hafiza Bano widow;
12. Fahad Ali Khalid;
13. Asad Ali Khalid;
14. Hamza Ali Khalid sons;
15. Khola Ali Khalid;
16. Hira Ali Khalid;
17. Zarnab Ali Khalid Daughters of Khalid Mehmood Residents of Gojra Tehsil and District Muzaffarabad;
18. Rahshma Bibi D/o Abdul Rahman W/o Ali Zaman;
19. Syed Mujahid Hussain Shah S/o Shah Hussain Shah;
20. Safina Bibi Widow of Syed Bashir Ahmed Shah through attorney real brother appellant No.19;
21. Riaz Khan;
22. Faiz Khan;
23. Sarfaraz Khan;
24. Afzal Khan sons of Gohar Rehman Residents of Village Mohri Tehsil and District Muzaffarabad.

Appellants

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary, office situated at New Secretariat Muzaffarabad;
2. Board of Revenue through Senior Member Board of Revenue Azad Govt. of the State of AJ&K Muzaffarabad;
3. Secretary Works Azad Govt. of the State of Jammu and Kashmir Muzaffarabad, office situate at New Secretariat Muzaffarabad;
4. Chief Engineer Highway North Division Azad Govt. of the State of Jammu and Kashmir Muzaffarabad;
5. Commissioner Muzaffarabad Division Muzaffarabad;
6. Chairman Development Authority Muzaffarabad;
7. Collector District Muzaffarabad;
8. Collector Land Acquisition City Development Projects Muzaffarabad;
9. District Price Assessment Committee District Muzaffarabad through Chairman District Price Assessment Committee;
10. Chairman District Price Assessment Committee District Muzaffarabad (Deputy Commissioner Muzaffarabad).

Real-Respondents

11. Parvaiz son of Raheem Ullah;
12. Safeer Ahmed;
13. Khalid Mehmood;
14. Jamal Abdul Nasir Son of Khawaja Sabar Residents of Mohri Gojra Tehsil and District Muzaffarabad.

Proforma- Respondents

(2) *Civil Appeal No.09/2019;*
Date of Institution 10.01.2019.

Raja Muhammad Siddique Khan S/o Raja Muzaffar-ud-Din Khan, Resident of Chinari, Tehsil Hattian Bala, District Jhelum Valley, Currently R/o at Gojra, Tehsil and District Muzaffarabad.

Appellant

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary, office situated at New Secretariat Chattar Muzaffarabad;
2. Board of Revenue through Senior Member Board of Revenue having his office at New Secretariat, Azad Jammu and Kashmir Muzaffarabad;
3. Secretary Works having his office at New Secretariat Muzaffarabad;
4. Chief Engineer Roads(North) Azad Jammu and Kashmir Muzaffarabad;
5. Commissioner Muzaffarabad Division Muzaffarabad;
6. Chairman Development Authority Muzaffarabad;
7. Collector District Muzaffarabad;
8. Collector Land Acquisition, City Development Projects, Muzaffarabad.

Real-Respondents

(3) Civil Appeal No.29/2019;
Date of Institution 26.01.2019.

Development Authority Muzaffarabad
through Chairman Development Authority
Muzaffarabad.

Appellant

VERSUS

1. Raja Muhammad Siddique Khan S/o Raja Muzaffar-U-Din R/o Chanari presently settled in Gojra Muzaffarabad;
2. Muhammad Saleem S/o Mohibullah;
3. Rasheed;
4. Fareed S/o Kala;
5. Godu Bibi D/o Saifullah;
6. Pervaiz S/o Raheemullah;
7. Abdul Aziz S/o Fazal Din;
8. Abdul Majeed;
9. Abdul Majeed sons of Rahmatullah;
10. Safia Bibi widow;
11. Anjum Aziz;
12. Kamran Aziz sons;
13. Sania Aziz;
14. Sobia Aziz Daughters of Abdul Aziz R/o Gojra;
15. Rashim Bibi D/o Abdul Rehman wife of Ali Zaman;
16. Syed Mujahid Hussain Shah S/o Shah Hussain Shah;
17. Hifza Bana widow;
18. Fahad Ali Khalid;
19. Asad Ali Khalid;

20. Hamza Ali Khalid;
21. Khawla Ali Khalid;
22. Zarnab Ali Khalid legal heirs of Khalid Mehmood S/o Ali Zaman;
23. Safeena Bibi W/o Syed Bashir Ahmed Shah;
24. Gohair Rehman S/o Abdul Rehman.
25. Safeer Ahmed;
26. Khalid Mehmood;
27. Jamal Abdul Nasir Sons of Haji Sher Wali;
28. Kh. Azam Qadri S/o Khawaja Sabar R/o Mohri(Gojra) Tehsil and District Muzaffarabad.

Real-Respondents

29. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary, office situated at New Secretariat Muzaffarabad;
30. Board of Revenue through Senior Member Board of Revenue Azad Govt. of the State of Jammu and Kashmir Muzaffarabad;
31. Secretary Works Azad Govt. of the State of Jammu and Kashmir Muzaffarabad, office situate at New Secretariat Muzaffarabad;
32. Chief Engineer Highway North Division Azad Govt. of the State of Jammu and Kashmir Muzaffarabad;
33. Commissioner Muzaffarabad Division Muzaffarabad;
34. Collector District Muzaffarabad;
35. Collector Land Acquisition (City Development Projects) Muzaffarabad;
36. District Price Assessment Committee through Chairman District Price Assessment Committee Muzaffarabad;

37. Chairman District Price Assessment Committee Muzaffarabad (Deputy Commissioner Muzaffarabad).

Proforma-Respondents

APPEALS AGAINST THE JUDGMENT DATED 30.10.2018

Before:- Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

M/s Ch. Muhammad Shabbir and Raja Ayyaz Ahmed, Advocates for appellants/respondents.
M/s Muhammad Yaqoob Khan Mughal and Aftab Ahmed Awan, Advocates for DAM.

JUDGMENT:

The captioned appeals have been filed against the judgment and decree dated 30.10.2018 passed by the learned Referee Court, Muzaffarabad, whereby the reference application of the landowners-appellants herein, was partly accepted while a cross-appeal has been filed on behalf by Development Authority, Muzaffarabad, for setting-aside the same.

2. As common question of facts and law is involved in the instant appeals, hence, the same were consolidated and are being decided through this single judgment.

3. Precise facts forming background of the instant appeals filed by the landowners-appellants, herein, are that a land survey No.906 min, 2622 min, 2591 min, 2594 min, 909 min, 910 min, 2624 min, 2625 min situated in Mozia Gojra and survey No.110, 95, 257, 256 & 112 situated in Mozia Mohri Tehsil & District Muzaffarabad was acquired for widening and up-gradation of Barar-kot road vide award No.12/2010 finalized on 28.07.2010 wherein the compensation of the acquired land of the landowners-appellants, herein, was assessed category-wise i.e. (A) Rs.25000/-, (B) Rs.10000/- & (C) Rs.8000/- per Marla. Feeling dissatisfied from the said award, landowners-appellants, herein, filed a reference application

before learned Referee Court, Muzaffarabad, on 19.12.2012 against award No.12 of 2010 dated 28.07.2010 claiming therein that the acquiring agency has not assessed the market value of the acquired land, hence, the same may enhanced to the tune of Rs.200000/- per Marla besides C.A.C. On reference application, the respondents were summoned who appeared before the Court and filed objections. The learned Referee Court in the light of the pleadings of the parties framed issues and provided them opportunity to lead their respective evidence and after recording evidence and hearing the parties partly accepted the reference application while enhancing the compensation amount to tune of Rs.150000/- per Marla for Mozia Gojra and Rs.1,20,000/- per Marla for Mozia Mohri besides 15% C.A.C. vide judgment and decree dated 30.10.2018. Being dissatisfied the

landowners-appellants filed two separate appeals, for enhancement of compensation amount while a cross appeals was filed by DAM for setting-aside the same.

4. The learned counsel for the parties were directed to file written arguments vide order dated 10.11.2022, which were filed according to the respective pleadings of the parties. Written arguments in view of record of the case were minutely perused.

5. From bare reading of record available on file, it shows that a reference application was filed by the landowners-appellants, herein, under Section 18 of the Land Acquisition Act, 1894 against award bearing No.12 of 2010 finalized on 28.07.2010 wherein it has been prayed that the compensation amount was assessed on the basis of category-wise i.e. (A) Rs.25000/-, (B) Rs.10000/- & (C) Rs.8000/- per Marla for Mozia Gojra and (A) Rs.25000/- &

(B) 15,000/- per Marla for Mozia Mohri, which is contrary to basic scheme law and market value of the land in question rather the acquired land is situated within the territorial limits of Municipal Corporation, Muzaffarabad, hence, the compensation amount to the tune of Rs.2,00,000/- may be enhanced besides 15% CAC.

6. It is apparent on face of record that the landowners-appellants, herein, in support of their version produced witnesses, Muhammad Rasheed, Ch. Muhammad Ashraf and one of the appellants herein Raja Muhammad Siddique Khan entered into witness box and got recorded his statement. On the other side, respondents produced witnesses Mumtaz Ahmed Patwari and Muhammad Shabir Awan Naib Tehsildar DAM.

7. After deep scrutiny of evidence produced by the appellants, herein, elucidates

that all the witnesses unanimously deposed that the compensation amount of the acquired land was wrongly assessed and determined while issuing award rather the land in question is of commercial nature, which is situated within the territorial limits of Municipal Corporation of Muzaffarabad and at the time of award, the market value of the acquired land was Rs.4/5 lac. per Marla. It has further been deposed that a land was acquired from Mozia Tariqabad and Gulshan Pir Alla-ud-Din to the tune of Rs.5/7 lac. per Marla, hence, the same may be enhanced according to market value of acquired land because of its commerciality and future potentiality. In support thereof, the landowners-appellants, herein, produced pivotal documentary evidence *Exh. "PA"* i.e. sale-deed dated 26.01.2009 whereby land measuring 04 Marlas from Moiza Chella was transferred in lieu of Rs.6,50,000/-, *Exh. "PC"*

i.e. sale-deed dated 28.01.2009, a land measuring 09 Marlas was transferred from Mozia Gojra to the tune of Rs.15,00,000/- *Exh. "PD"* i.e. sale-deed dated 17.10.2008 through which land measuring 1 ½ Marla in lieu of Rs.2,25,000/- was transferred from Mozia Gojra.

8. It is relevant to mention here that according to *Exh. "PA"* a land measuring 04 Marlas was transferred from Mozia Chella Tehsil & District Muzaffarabad, which cannot be taken into consideration rather the same can only be made basis if no sale-deed was executed from concerned Mozia then a sale-deed of adjacent Mozia can be made basis for determination of compensation. So, the sale-deeds *Exh. "PC"* dated 28.01.2009 and *Exh. "PD"* dated 17.10.2008 registered during the intervening period of issuance of notification under Section 4 of the Land Acquisition Act,

1894 and issuance of award No.12/2010 dated 28.07.2010 are important piece evidence to be considered for determination of fair compensation amount of the acquired land in view of dictum laid down by the Hon'ble apex Court reported as *Malik Muhammad Yousaf & 4 others Vs. Azad Govt. & 6 others, Arshad Mehmood & 7 others Vs. Azad Govt. & 6 others and WAPDA & another Vs. Arshad Mehmood & 12 others* [2015 SCR 712] in which it has been observed that:-

“The best method for determination of the market value of the land is to take into consideration the sale-deeds pertaining to the same village, which have been registered prior to the issuance of notification under section 4 or immediately thereafter---the reliance upon the sale-deeds registered during the period; one year, prior to the issuance of notification under section 4 is not a sole criteria rather the sale-deeds registered after the issuance of the notification under Section 4 are also relevant and the compensation has to be assessed

in the light of the said sale-deeds.”

9. So, for determination of fair compensation, *Exh. “PC”* sale-deed dated 28.01.2009 and *Exh. “PD”* dated 17.10.2008 are best piece of evidence and after calculation of both the sale-deeds, the average price of per Marla comes to Rs.1,64,285/- per Marla but the learned Referee Court, Muzaffarabad, fell in grave error while appreciating the evidence in its true perspective, hence, for determination of fair price of compensation of the acquired land of the present appellants, the aforesaid documentary evidence has been ignored without any legal justification rather the same is relevant to be considered.

10. It is pertinent to mention here that while determining the compensation amount of the acquired land, provisions of Land Acquisition Act, 1894, were to be construed

liberally in favour of public and strictly against the Government. A fundamental purpose of Land Acquisition Act, was to provide complete indemnity to the landowners and a 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 their property, so as to give "*gold for gold*" and not "*copper for gold*". It is also established principle of law that a "Gold" is given for a "Gold" and not "Copper" for a "Gold". Similar proposition has been resolved in a case titled *Land Acquisition Collector and others Vs. Mst.*

Iqbal Begum and others [PLD 2010 SC 719] in which it has been observed as under:-

“The principles laid down for determination of compensation reflect anxiety of law-giver to compensate those deprived of property adequately enough so as to be given gold for gold and not copper for gold”.

Reliance can be placed on a case reported as *Azad Jammu & Kashmir Government through Chief Secretary, Muzaffarabad and others vs. Muhammad Ishaq and others* [PLD 2004 AJ&K 22].

11. To determine the fair compensation amount the guidelines were given by the apex Court of Pakistan in a case reported as *Murad Khan through his widow and 13 others Vs. Land Acquisition Collector, Peshawar and another* [1999 SCMR 1647] in the following words:-

“13. Section 23 of the Act lays down, by way of criterion, that ‘market value’ of the land on the date of

publication of notification under section 4 (ibid) would be the amount of the compensation. The expression 'market value' has not been defined in the act. But there is considerable case-law on the point encompassing the period of about time decades in which the expression in question has come to assume almost definite meaning. In this judgment we would, however, refer to a number of very important cases in which the expression 'market value' occurring in section 23 (ibid) has been judicially constructed by various High Courts and even the Supreme Court of Pakistan. According to these judgments the following matters are to be taken into consideration in determining the amount of compensation:-

- (i) The date from which the market value of the land can be estimated is given in Rule 13 of the North-West Frontier Province Circular No.54 issued presumably under section 55 of the Act.*
- (ii) The best method to work out the market value is the practical method of a prudent man laid down in Article 2, Qanun-e-*

Shahdat, 1984 to examine and analyze all the a material and evidence available on the pint and to determine the price which a willing purchaser would pay to willing seller of the acquired land.

- (iii) *Subsection (I) of Section 23 of the Land Acquisition Act provides that in determining the amount of compensation the Court shall take into consideration the market value, loss by reason of serving such land from his other land, acquisition injuriously affecting his other property or his earning in consequence of change of residence or place of business and damage, if any, resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. This, however, is not exhaustive of other injuries or loss which may be suffered by an owner on account of compulsory acquisition.*

- (iv) *The best method of determination of the market price of the plots of land under the acquisition is to rely on instances of sale of it near about the date of notification under section 4(1) of the Land Acquisition Act. The next best method is to take into consideration the instances of sale of the adjacent lands made shortly before and after the notification. When the market value is to be determined on the basis of the instances of sale of land in the neighboring locality, the potential value of the land need not be separately awarded because such sales cover the potential value.*
- (v) *It is obvious that the law provides determination of compensation not with reference to classification or nature of land but its market value at the relevant time. No doubt, for determining the market value, classification or the nature of land may be taken as relevant consideration but that is not the whole truth. An area may be Banjar*

Qadeem or Barani but is market value may be tremendously high because of its location, neighbourhood, potentiality or other benefits.

- (vi) According to well-settled principle while determining the value of the compensation the market value of the land at the time of requisition/acquisition and its potentiality have to be kept in consideration.*
- (vii) Consideration should be had to all the potential uses to which the land can be put, as well as all the advantages, present of future, which the land possess in the hands of the owners.*
- (viii) In determining the quantum of fair compensation the main criterion is the price which a buyer would pay to a seller for the property if they voluntarily entered into the transaction.*
- (ix) The measure of fair compensation is the value of the property in open market which a*

seller voluntarily entering into a transaction of sale can reasonable demand from a purchaser this means that Court has to determine the value of the land in the open market at the relevant time on the assumption that the notification of acquisition did not exist.

- (x) *While determining the value of the land acquired by the 'Government and the price which a willing purchaser would give to the willing seller, only the 'past sales' should not be taken into account but the value of the land with all its potentialities may also be determined by examining (if necessary as Court-witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market. In appropriate cases there should be no compunction even relying upon the oral testimony with respect to market value of the property intended to be acquired, because even while*

deciding cases involving question of life and death, the Court rely on oral testimony alone and do not insist on the production of documentary evidence. The credibility of such witnesses would, however, have to be kept in mind that it would be for the Court in each case to determine the weight to be attached to their testimony. It would be useful and even necessary, to examine such witnesses while determining the market prices of the land in question, because of the prevalent tendency that in order to save money on the purchases of stamp papers and to avoid the imposition of heavy gain tax levied on sale of property, people declare or show a much smaller amount as the price of the land purchased by them than the price actually paid. The 'previous sales' of the land, cannot, therefore, be always taken to be an accurate measure for determining the price of land intended to be acquired.

(xi) *The sale-deed and mutation entries do serve as an aid to the prevailing market value.*

(xii) *It is a well-settled law that in cases of compulsory acquisition effort has to be made to find out what the market value of the acquired land was or could be on the material date. While so venturing the most important factor to be kept in mind would be the complexion and character of the acquired land on the material date. The potentialities it possessed on that date are also to be kept in view in determining a fair compensation to be awarded to the owner who is deprived of his land as a result of compulsory acquisition under the Act.*

(xiii) *The value of the land of adjoining area which was simultaneously acquired and for which different formula of compensation has been adopted should be taken into consideration.*

(xiv) *The phrase 'market value of the land' as used in section 21 (1) of*

the Act means 'value to the owner' and, therefore, such value must be the basis for determination of compensation. The standard must be not a subjective standard but an objective one. Ordinarily, the objection standard would be the price that owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser. The property must be valued not only with reference to its condition at the time of the determination but its potential value must be taken into consideration."

Identical proposition came under consideration before the apex Court in a case titled *Marawat Khan and 4 others Vs. Collector Land Acquisition, Mangla Dam Raising Project, Zone-I, Mirpur and 2 others* [2013 SCR 1224] wherein relevant portion of the report is reproduced as under:-

"Before proceedings further, it may be observed that the basic

principle laid down by the apex Court of Pakistan and the apex Court of the State of Azad Jammu and Kashmir is that the land is not to be valued merely by reference to the use to which it is being put at the relevant time, but also by a reference to the use to which it is reasonably capable of being put in future; and the market value is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevalent in the locality at that time. The price of the Land acquired had to be fixed in accordance with the aim and rule that willing buyer was ready to pay and willing seller was prepared to receive the price so fixed for whole of the land, had to be kept in view.”

12. By taking into account of the circumstances of case and the quoted law, the landowners/present appellants proved their case through cogent evidence, hence, the learned Referee Court, Muzaffarabad, while passing the impugned judgment and decree misread and non-read the evidence produced before it. As the land was awarded from Mozia

Gojra and Mohri for widening and up-gradation of Barar-kot, road, which was acquired for the same purpose while both are adjacent to each other, hence, the landowners of the both Mozia will be compensated equally and under the uniform policy. The market value of the acquired land of the landowners/present appellants, herein, of Mozia Gojra and Mohri after consideration and calculation of aforesaid sale-deeds comes to Rs.164,285/- per Marla, besides 15% Compulsory Acquisition Charges irrespective of any category of land, which is appropriate and quite adequate to be compensated fairly.

13. The nutshell of the foregoing reasons is that while accepting the appeals, the impugned judgment & decree dated 30.10.2018 passed by the learned Referee Court, Muzaffarabad, is hereby modified in terms that the landowners/present appellants of Mozia

Gojra and Mohri are entitled to receive the compensation amount of Rs.164,285/- per Marla besides 15% Compulsory Acquisition Charges (C.A.C.) irrespective of any category of land from the respondents while a cross-appeal filed by Development Authority, Muzaffarabad, finding no force, is hereby dismissed. The respondents are directed to manage the payment of remaining compensation amount after deduction of the amount already paid within a period of three months from the date of announcement of the judgment. A copy of this judgment shall be annexed along-with the other relevant files accordingly.

Muzaffarabad.
17.01.2023(J.ZEB)

JUDGE

APPROVED FOR REPORTING

JUDGE