

HIGH COURT OF AZAD JAMMU & KASHMIR

*Civil Appeal No.153/2018;
Date of Institution 12.07.2018;
Date of Decision 21.12.2023.*

Syed Nazir Hussain Shah S/o Qalandar
Shah R/o Kaloch Tehsil & District
Muzaffarabad.

Appellant

V E R S U S

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, AJ&K, Muzaffarabad;
2. Collector Land Acquisition Rural Muzaffarabad;
3. Price Assisment Committee through Chairman Assisment Committee, Muzaffarabad;
4. Deputy Project Co-ordinate NHA, Muzaffarabad;
5. Revenue Deparmtent through Commissioner Revnue, Muzaffarabad.

Respondents

APPEAL AGAINST JUDGMENT AND DECREE OF
REFEREE COURT, MUZAFFARABAD, DATED 22.04.2013

Before:- Justice Sardar Muhammad Ejaz Khan , J.

PRESENT:

Raja Waqar Ali Khan, Advocate for the
appellant.

Muhammad Hafeez Bhatti Legal Advisor for
respondent No.4.

JUDGMENT:

The captioned appeal has been directed against the judgment and decree passed by the learned Referee Court, Muzaffarabad, on 14.04.2013, whereby, the reference application of the petitioner-appellant, herein, was partly answered in affirmative.

2. Synthesized facts of the instant appeal are that land survey No.271/149 min measuring 05 Marlas 6 Sarsai, survey No.144 min measuring 13 Marlas total measuring 18 Marlas 6 Sarsai situated in *Mozia* Kaloch was acquired for widening of road from Muzaffarabad to Chokothi through award No.9 finalized on 23.07.2011. It has been stated therein that at the time of widening of road Patwari concerned in the absence of the appellant measured the land survey No.271/149 measuring 1 Kanal 13 Marlas,

survey No.145 measuring 16 Marlas & survey No.144 measuring 9 Marlas total measuring 25 Kanals 18 Marlas along-with NHA officials whereupon at the same time, NHA started cutting on spot as per field book dated 13.05.2005 and its debris was thrown in survey No.145. It has further been stated that during the award the compensation of standing fruitful and fruitless trees has not been assessed under the relevant provisions of law while he was entitled to receive the compensation amount of Rs.20,00,000/- per Kanal keeping in view the market value of the acquired land. On reference application, the defendants-respondents were summoned who appeared before the Court and filed objections. The learned Referee Court in the light of pleadings of the parties framed as many as 10 issues including relief and the parties produced evidence in support of their respective claim.

The learned trial Court after recording evidence and hearing the parties partly decreed the reference application vide impugned judgment & decree dated 14.04.2014, hence, this appeal.

3. The learned counsel for appellant mainly focused on the point that the learned Referee Court, Muzaffarabad, was not enhanced the compensation in accordance with law because the market value of the acquired land in question has not kept in the mind rather price of land in the locality is tremendously high nowadays while the land of the landowner/appellant was measured 2 Kanal 18 Marlas in view of field book whereupon on spot NHA started cutting and after that it was decided only 40ft land was required instead of 60ft while the award was issued only to the extent of land measuring 18 Marlas 6 Sarsai, which fact of the matter was fully established and proved by the appellant,

appellant, herein, but the learned Court below misread and non-read the evidence. The learned counsel maintained that the report of commission was objected to by petitioner/appellant on various grounds, which was admitted by the commissioner in his Court's statement but without any legal justification, the objections of the appellant were turned down. The learned counsel craved that the impugned judgment & decree was passed in a hasty manner without taking into account the other aspects of the case, which is a telegraphic one, hence, the same is liable to be set-aside. The learned counsel emphasised that the learned Court below has not considered that the land in question is situated at roadside, which can be utilized for commercial purpose and its future potentiality as well as market value has not been determined, which is not less than

Rs.20,00,000/- per Kanal, hence, the appeal may be accepted and the compensation amount may be enhanced as prayed for.

4. The learned counsel representing the respondents defended the impugned judgment & decree on all counts and craved that the learned Referee Court, Muzaffarabad, rightly decided the reference application of the appellant because no any confidence inspiring evidence on behalf of the appellant appears to have been brought on record, hence, the impugned judgment & decree passed by the learned Referee Court, Muzaffarabad, is in right direction against which appeal before this Court may be dismissed.

5. Having heard the respective arguments advanced by the learned counsel for the parties at bar, I have gone through the record made available on the face of file with my utmost care and caution.

6. The point is yet to be determined that the impugned judgment & decree dated 14.04.2018 has been passed in accordance with law or not?

7. Apart from discussing the merits & de-merits of the case, it appears from glance perusal of evidence in view of divergent claim of the parties that the impugned judgment & decree appears to have been passed in a perfunctory manner because the learned Referee Court, Muzaffarabad, has not appreciated the evidence of the parties in its true perspective while resolving the pivotal issues and reached at wrong conclusion, hence, the impugned judgment & decree does not fall within the virtue of speaking one rather some factual and legal propositions were left to be unattended. It was enjoined upon the learned Referee Court to enhance the compensation in the light of evidence and not

its own will and wish rather sale-deeds registered in the adjoining area were not considered without giving any solid reasons.

8. In this backdrop, I am of the considered view that the learned Referee Court, Muzaffarabad, while handing down the impugned judgment & decree dated 14.04.2018 failed to determine the legal and factual aspects of the case which were raised before it, which are necessary under recognized principles of law on the subject-matter rather the reference application has been decided in a slipshod manner. I would like to quote the famous judgment rendered in the case of *Mollah Ejahar Ali vs. Government of East Pakistan and others* [PLD 1970 S.C. 173], wherein, it has been held that:

“Litigants who bring their disputes to the law Courts with the incidental hardships and expenses involved do expect a patient and a judicious treatment of their cases and their determination by proper

orders. A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved by their proper adjudication.”

Likewise, in a case reported as *Government of Sindh vs. Muhammad Juman and another* [2009 SCMR 1407], the Hon’ble Supreme Court of Pakistan held that:-

“This Court in the cases reported as Gouranga Mohan Sikdar Vs. The Controller of Import and Export (PLD 1970 SC 158) and Mollah Ejahar Ali v. Government of East Pakistan PLD 1970 SC 173 held that the Court must pass a speaking judicial order manifesting by itself that the Court applied its mind to the issues involved in the case. Even section 24-A of the General Clauses Act requires an executive authority to pass the order reasonably, fairly, justly and by rendering reasons. Learned counsel for the respondents, when confronted with the afore-noted legal position, has nothing to say much. Additionally, we find that the learned High Court while deciding the matter neither referred to evidence nor any other material available on record justifying dismissal of appellant’s appeal. Although learned counsel for the

parties have raised other contentions, yet we have restrained ourselves from giving any findings on the said contentions, lest it may prejudice cause of any of the parties in post remand proceedings. However, the parties are at liberty raised the pleas available to them under law before the learned High Court.”

In similar circumstances, the Hon’ble Supreme Court of Pakistan in a case reported as *Muhammad Iqbal Chaudhry and another vs. Secretary, Ministry of Industries and Production, Government of Pakistan and others* [PLD 2004 S.C. 413] has opined as under:-

“It may be noted that the forums seized with the judicial matters are required to pass such a speaking judgment that it should give an impression to readers that the legal and factual aspects of the case which were raised before it for the purpose of decision have been considered and decided in the light of recognized principles of law on the subject instead of disposing of in slipshod manner.”

9. By taking into account the factual and legal position of the case in hand in view of the

above report, the impugned judgment & decree dated 23.07.2011 is hereby *set-aside* while accepting the appeal and the case is remanded to the learned Referee Court, Muzaffarabad, to decide the matter afresh within a period of one month from the date of announcement of this judgment in accordance with law. A copy of this judgment shall be sent to the learned Court below for compliance and the record of the case shall also sent to the said Court forthwith. The parties are directed to appear before the concerned quarter on 27.12.2023.

Muzaffarabad:
21.12.2023(J.ZEB)

JUDGE

Approved for reporting

JUDGE