

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT**

BEFORE:

***Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge***

CPLA Under Objection No. 113/2019

(Against judgment dated 28.02.2019 passed by the learned Gilgit-Baltistan Chief Court in C.F.A. No.38/2017)

1. Provincial Govt. Gilgit-Baltistan through Chief Secretary
The Collector/Deputy Commissioner Astore
2. The Assistant Commissioner Astore
3. The Secretary Works, Gilgit-Baltistan
4. The Superintending Engineer Diamer-Astore Division
5. The Executive Engineer B&R Division Astore

.....

Petitioners

Versus

Muhammad Mashroof Khan s/o Niamat Khan, resident of Louse, Tehsil & District Astore

..... **Respondent**

PRESENT:

For the Petitioner : Advocate General, Gilgit-Baltistan

Date of Hearing: **22.03.2021**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 28.02.2019 passed by the learned Gilgit-Baltistan Chief Court in C.F.A. No. 38/2017 whereby C.F.A. filed by the present petitioners was dismissed.

2. Brief facts of the case are that a piece of land measuring 8 Marlas situated at Louse Astore owned by the present respondent was acquired for construction of road

under the project namely, "Chief Secretary Link Road Louse". Besides this piece of land, three Cattle Sheds having 14x16 each by size, Cemented Boundary Wall of approximately 60x8x3, Steel Gate and 30 Big Fruit Trees situated on the proposed Road site were also affected. Notice under Section 4 of the Land Acquisition Act was issued on 15th November, 2008. The Collector/DC Astore vide No. DK-5(05)/2012 dated 13.11.2014 prepared Award which included compensation rates notified in 2004. The present respondent felt aggrieved and showed dissatisfaction regarding the compensation rates contained in the Award on the ground that since compensation rates were revised by the Collector Astore in July, 2008 before issuance of notice under Section 4 of the Land Acquisition Act on 15th November, 2008, he was entitled to land compensation as per the prevalent rates of 2008. The present respondent claimed to have received compensation under protest. Reference was filed before the learned Referee Court, who after hearing the parties, partially accepted the reference petition and held the present respondent entitled to the revised compensation rates Rs. 180,000/- per kanal alongwith 8% compound interest from the date of notice under section 4 of the Land Acquisition Act till realization of decree. Being aggrieved and dissatisfied with the decision of the learned Referee Judge, the petitioners approached the learned Gilgit-Baltistan Chief Court with C.F.A. No. 38/2017 which, after hearing, was dismissed vide Order dated 28.02.2019 and maintained the judgment/decrees passed by the learned Referee Judge. Against this Order, the present petitioners have now approached this Court by way of the instant civil petition for leave to appeal.

3. Learned Advocate General Gilgit-Baltistan contended that the learned Gilgit-Baltistan Chief Court failed to apply its judicious mind to the facts and grounds of the case because after receiving the compensation amount by the present respondent, he had no right of protest and to claim compensation as per the revised rates, hence the impugned Order passed by the learned GB Chief Court by maintaining the judgment/decrees of the learned Referee Judge was liable to be set aside. It was next argued by learned Advocate General that the learned GB Chief Court without appreciating the fact that Issues No. 3 and 11 framed by the learned Referee Judge being incorrect and baseless were required to be discussed and taken into consideration however, the learned Gilgit-Baltistan Chief Court did not do so and went on to pass the impugned Order which was not maintainable and required to be set aside on this score alone. Learned Advocate General next argued that the land of the present respondent was acquired in the year 2007, hence he was not entitled to claim payment of compensation as per the revised rates notified in the year 2008 while this aspect of the matter has totally been ignored by the learned Courts below in their respective judgments/orders, therefore the judgments/orders passed by both the learned Courts are not maintainable and require to be set aside.

4. We have heard learned Advocate General, Gilgit-Baltistan and have also gone through the record as well as the impugned judgments/decrees of learned Courts below:

5. Admittedly land measuring 8 Marlas situated at Louse Astore alongwith three Cattle Sheds having 14x16 each by size, Cemented Boundary Wall of approximately 60x8x3,

Steel Gate and 30 Big Fruit Trees situated on the Road site owned by the present respondent was acquired for construction of a piece of road under the project namely, "Chief Secretary Link Road Louse". It is also an admitted fact that Notice under Section 4 of the Land Acquisition Act was issued by Collector/DC Astore on 15th November, 2008 and the rates of land compensation were revised and notified in July, 2008 i.e. after 4 and half months of the issuance of Notification of revised compensation rates issued by the Collector/DC Astore. It is also an established fact that when notice under Section 4 of the land Acquisition Act was issued on 15th November, 2008, revised rates of land compensation were already in force. In addition to this, by the time when Award was announced by the petitioner No. 3 (Collector/DC Astore) on 3rd April, 2014 a considerable time had elapsed between acquisition of land and announcement of award i.e. about 6 years. There is no denial to these facts by the present petitioners before the learned Courts below.

6. A number of such cases are brought to this Court having grievances and issues similar to the case in hand. In order to avoid repetition of observations of this Court recorded in similar cases, we deem it appropriate to quote one of such cases i.e. Provincial Government of GB & others Vs. Asghar Ali & others, CPLA No. 117/2019 wherein this Court has elaborately discussed the legal and factual aspects of such cases and the observations made by this Court in that case are reproduced as under:-

"In observance of the above provisions of the Constitution of Islamic Republic of Pakistan and Government Gilgit-Baltistan Order, 2018, with a view to safeguard the rights/ interest of public and also to enable the government to acquire land for

public/ government purposes, the legislatures have enacted the Land Acquisition Act. It would be appropriate to clarify that the Land Acquisition Act is a harsh confiscatory law which requires to be interpreted in favour of the person(s) affected and the superior Courts of Pakistan are very much clear about it and in a number of cases have held that such law/ enactments be interpreted so as to extend maximum benefits to the aggrieved. In this regard, we may rely upon a judgment of the Hon'ble Supreme Court of Pakistan titled Abdul Hafeez Abbasi and others versus Managing Director, Pakistan International Airlines Corporation, Karachi & others reported as 2002 SCMR 1034, wherein it has been held as under:

“It is also to be borne in mind that the Court/ Tribunal seized with the matter is competent to interpret the law liberally with the object to extend its benefits largely to the aggrieved persons”.

In addition to above, it would be appropriate to appreciate the object envisaged under the Land Acquisition Act. The Act aims at to provide the procedure for compulsory acquisition of privately owned land needed for public purposes and for companies, and to this end, the mode and manner of determination of the amount of compensation to be awarded to the rightful owners of the Acquired Property has also been provided in the said Act which has further been interpreted in illustrative way by the superior Courts of Pakistan. The legislature in its wisdom has provided in the Act, an inbuilt mechanism for redressal of grievances of persons having rights and interests in the land being compulsorily acquired. First, we note that the formal declaration of the Provincial Government to acquire a particular land only takes place after the objections of interested persons, if any, are addressed by the competent authority. This protection afforded to the private landowners under the Act surely bolsters their fundamental right enshrined under Article 24 of the Constitution. In another case titled Sub. (Retd.) Muhammad Ashraf v. District Collector Jhelum and others (PLD 2002 SC 706) the Hon'ble Supreme Court of Pakistan has observed as under:

“and the only embargo which has been imposed under Article 24 of the Constitution is that no private property can be acquisition save in

accordance with law and that too for a public purpose and on payment of compensation".

In another case reported as MST. IQBAL BEGUM's case (PLD 2010 Supreme Court 719) it has been held 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.... Various factors have to be taken into consideration i.e. the size and shape of the land, the locality and its situation, the tenure of property, the user, its potential value, and the rise or depression in the value of the land in the locality and even in its near vicinity".

The word used "Adequately enough", would certainly demand that since the owners of private land/ property might have sentimental/ emotional attachments to the property which is being acquired by the acquiring agency, therefore, they must be satisfied by redressing their genuine grievances. However, it must be ensured that in order to satisfy a land owner/ affectee/ person interested, the Land Acquisition Collectors may not go beyond the parameters provided in the Land Acquisition Act and the dictums of the superior Courts of Pakistan in similar matters to give an undue advantage to any party at the cost of public exchequer.

6. As far as the contention of the learned Advocate General, GB regarding assumption of wrong jurisdiction by the learned Gilgit-Baltistan Chief Court, it would not be out of context to clarify herein that after getting or acquiring the land, payment of compensation to the owners of the land is the obligation of the authority which has taken/acquired the land and the Constitution gives the payment of compensation to the owners of the land a status of fundamental right. It is the duty of the authority to pay the compensation before taking the possession or soon thereafter within a reasonable time. Being custodian of the Constitution, it is paramount duty of the Courts to enforce fundamental rights of citizens guaranteed by the Constitution. Therefore, in our view non-payment of compensation to the land owners is infringement of right of the land owners, as such, they rightly approached the learned Gilgit-Baltistan Chief Court for enforcement thereof. Writ

jurisdiction of the learned Chief Court can be availed when no adequate remedy is available to aggrieved party in the present case, the Land Acquisition Collector stopped further proceedings of acquisition and the respondents had no other forum except the writ jurisdiction. We note that land in question was acquired by the government through Land Acquisition Collector, Nagar, as such, the land owners cannot be denied to have the compensation received in lieu of their land. Reliance in this regard can be placed on a case reported as 2015 SCMR 1440 Mst. Nasreen Zahra Vs. Multan Development Authority. Relevant lines from the judgment are extracted and reproduced below:

“As regards the liability of Government of Punjab for payment of compensation for the land acquired for construction of Multan Bye-Pass, the very first Notification dated 7-5-1976 issued under section 4 of the Act shows that the land was acquired by Government of the Punjab for public purpose i.e. construction of Multan Bye-Pass. Through a Corrigendum Notification dated 18-3-1977, the land of Mst. Nasreen Zahra was included in the project i.e. construction of Multan Bye-Pass. The beneficiary of land in terms of the above Notification is Government of the Punjab and this fact alone is sufficient to establish its liability for payment of compensation for the land acquired”

7. The owners/affectees whose land is acquired by the government for public purpose approach the Courts of law with grievances which mostly relate to depriving of them from their legitimate right to land compensation on the very technicalities exercised by the Collectors. Same situation prevails with the case in hand. There is no apparent reason of depriving of the present respondent from the right to fair compensation in lieu of his land/property except one reason that land of present respondent was acquired before issuance of Notification of revised rates in 2008. It appears that on the basis of this reason alone, Collector/DC Astore included previous compensation rates in the award instead of including the rates revised by him on July, 2008. The

Collectors/Deputy Commissioners are obliged under the law to have legal knowhow that right to property is included as a fundamental right in Constitution which could not be taken away just on the basis of technicalities or succumbed to sweet will or wishes of the Collectors concerned which is also against the injunctions of Islam. No person could be deprived of his property except in accordance with the law and in lieu of compensation thereof. However, the compensation which is given to the land owners in lieu of their land/property must redress the grievances of owners reasonably by adhering to requirements of law, significance of property for the concerned owners and keeping in view the rights of land/property owners protected in the Constitution. It would be more appropriate to highlight the relevant Articles 24 & 25 of Gilgit-Baltistan Order, 2018 read with enabling articles of the Constitution of Islamic Republic of Pakistan which emphasizes the significance of the land/property to the owners as under:

“24. Provision s as to property.- *Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to acquire, hold and dispose of property.*

25 . Protection o f property.- (1) *No person shall be deprived of his property save in accordance with law.*

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given”.

8. Besides other reliefs, it was the main claim of the respondent before the learned Referee Judge that since his land was acquired for construction of the said road on 15th November, 2008 i.e. before revision of compensation rates on 1st July, 2008 by the Collector Astore hence, he was entitled to the revised rates of 2008 instead of 2004. This claim was

accepted by the learned Referee Judge vide judgment/decrees dated 10.08.2017 which was further upheld by the learned Chief Court vide impugned judgment. The judgment/decrees passed by the learned Referee Judge, being a well reasoned one and in accordance with the law also finds our favour. Keeping in view circumstances of the present case and provisions of the relevant law as well, we also hold the present respondent entitled to enhanced compensation rates of cultivated land i.e. Rs. 180,000/- per kanal instead of 90,000/- per kanal. It is further observed that the learned Referee Judge has also not erred in law to hold the respondent entitled to compound interest as it has duly been provided for under section 34 of the Land Acquisition Act from the date of taking possession of land until the awarded amount is paid to the land owners.

9. The position as discussed above has led us to hold that no infirmity, illegality or irregularity has been attributed to the impugned judgment passed by the learned Gilgit-Baltistan Chief Court. As such, leave in the above CPLA No. 113/2019 is refused. Impugned judgment dated 28.02.2019 passed by the learned Gilgit-Baltistan Chief Court in C.F.A. No. 38/2017 is maintained. The above were the reasons for our short order dated 22.03.2021 which is reproduced below:

"Case heard and record perused. We did not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA Under Objection No. 113/2019 is refused. The impugned judgment dated 28.02.2019 passed by the learned Gilgit-Baltistan Chief Court, in C.F.A No. 38/2017 stands maintained"

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)